IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
December 9, 2014 Session

KEVIN BLOOMFIELD v. THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY

Appeal from the Circuit Court for Davidson County
No. 09C3451 Joseph P. Binkley, Jr., Judge

No. M2014-00438-COA-R3-CV – Filed March 26, 2015

Plaintiff, a firefighter, who sustained personal injuries while serving in the course and scope of his employment with the Nashville Fire Department, brought this action against the Metropolitan Government of Nashville and Davidson County ("Metro") asserting that he sustained serious personal injuries due to the negligence of a paramedic who was employed by Metro. The injury occurred while Plaintiff and the paramedic were moving a patient in a wheelchair. Following discovery, Plaintiff filed a motion for partial summary judgment on the issue of liability. After determining that no material facts were in dispute, the trial court granted summary judgment on the issue of liability upon the findings that an established procedure existed for the lifting of patients in a wheelchair, that the paramedic violated the established procedure, that the violation caused Plaintiff's injuries, and that Plaintiff was not comparatively at fault. Following an evidentiary hearing on the issue of damages, the trial court awarded Plaintiff a judgment of $300,000 in damages. On appeal, Metro contends that there is a genuine dispute of fact regarding the policy for moving patients in wheelchairs, whether the paramedic violated the procedure, and whether Plaintiff is comparatively at fault. We affirm the trial court's findings that there was an established policy for moving patients in a wheelchair, that the paramedic violated the policy by lifting the foot of the wheelchair without communicating with Plaintiff prior to initiating the lift, and that the paramedic's violation of the established policy was the sole and proximate cause of Plaintiff's injuries. Accordingly, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

FRANK G. CLEMENT, JR., P.J., M.S., delivered the opinion of the Court, in which ANDY D. BENNETT and RICHARD H. DINKINS, JJ., joined.

Patrick John Bradley, Christopher Michael Lackey, and Andrew David McClanahan, Nashville, Tennessee, for the appellant, Metropolitan Government of Nashville and Davidson County.

Larry R. McElhaney, II, Nashville, Tennessee, for the appellee, Kevin Bloomfield.

OPINION

Kevin Bloomfield, a firefighter-paramedic for the Nashville Fire Department, responded to an emergency call on October 9, 2008, involving an elderly patient who was experiencing shortness of breath. Moments later, Michael Hall, a paramedic with the Nashville Fire Department, arrived in an ambulance. When Mr. Hall went inside the home, he found Mr. Bloomfield with the patient who was in a wheelchair.

Following an assessment of the patient's condition, Mr. Bloomfield and Mr. Hall decided that the wheelchair-bound patient needed to be transported to a hospital; Mr. Bloomfield took the position at the head of the patient, and Mr. Hall took the position at the foot of the patient. While moving the patient down the hallway into the living room, Mr. Bloomfield was pushing the wheelchair forward and Mr. Hall was pulling in a crouched position at the foot of the wheelchair. When they reached the front door of the house, they realized there was a raised door jamb with a six-inch drop from the floor of the house to the front porch.

Prior to initiating a lift to move the wheelchair-bound patient to the porch, Mr. Bloomfield told Mr. Hall to "hang on a minute" so that Mr. Bloomfield could ask a question of the patient's family members. Believing Mr. Hall heard him because the wheelchair stopped, Mr. Bloomfield let go of the wheelchair and turned to the family members; however, Mr. Hall had not heard Mr. Bloomfield. Assuming that Mr. Bloomfield was prepared to initiate a lift of the wheelchair, Mr. Hall proceeded to raise the front wheels of the wheelchair. As a result of Mr. Hall's unilateral lift, the wheelchair began tilting backwards. When Mr. Bloomfield saw the wheelchair tilting backwards, he reached out with his right arm to prevent the patient from hitting her head on the floor. As he grabbed the wheelchair, Mr. Bloomfield felt a sharp pain in his back and a pop in his shoulder.

Immediately following the incident, Mr. Bloomfield discussed his injury with Captain George Owen, the commanding officer in charge of the scene, and the two filled out a 101 Metro Form for detailing occupational injuries. Within the Form, Captain Owen listed the cause of the incident as "the paramedic lift[ing] the front wheel of patient's wheelchair causing patient to fall backwards." Captain Owen further stated on the Form that there was no unsafe act of Mr. Bloomfield leading to his injuries, that Mr. Bloomfield followed protocol, had never been written up for violating protocol, and that he responded correctly when the wheelchair tipped backwards towards him. In addition,

Captain Owen noted on the Form that an unsafe condition included "no communication between medic and fire personnel."

On October 1, 2009, Mr. Bloomfield timely commenced this action against the Metropolitan Government of Nashville and Davidson County ("Metro") asserting that the injuries he sustained were caused by the negligence of a Metro employee, Michael Hall.[1] Specifically, Mr. Bloomfield alleged that his injuries resulted from Mr. Hall's failure to follow proper safety procedures and protocols regarding the movement of a wheelchair-bound patient by initiating a lift of the wheelchair-bound patient without communicating that intent to Mr. Bloomfield.

Mr. Bloomfield moved for partial summary judgment on the issue of liability, relying on the deposition testimony of several Metro employees to prove that Metro established the standard for lifting a patient in a wheelchair, that Mr. Hall admitted that he violated that standard, and that Metro employees admitted that Mr. Bloomfield did nothing wrong. Following a hearing on the motion, the trial court granted partial summary judgment on the liability issue in favor of Mr. Bloomfield, finding:

> [T]here is no genuine issue [of] material fact concerning the protocol and procedures which required Kevin Bloomfield as the person at the head of the wheelchair on October 9, 2008, to initiate and communicate the lift. The record is clear and undisputed that Michael Hall, an employee of Metro, violated and admitted to violating the procedures and protocols by lifting the front of the wheelchair before Mr. Bloomfield was ready or initiated the lift.
>
> The Court rejects the arguments of Metro that no lift occurred or is disputed to have occurred. The Court finds that all of the deponents in the case referred to the maneuver performed by Mr. Hall as a lift on October 9, 2008. Metro established the policies and Mr. Hall admitted to violating the procedures and protocols.
>
> The Court further finds that there are no facts in dispute in the record to create a genuine issue of material fact regarding Mr. Bloomfield's comparative fault. The Court finds as a matter of law that Mr. Bloomfield is not comparatively at fault and bears no legal responsibility for his injury.

Thereafter, the case went to trial on the issue of damages. The trial court found that Mr. Bloomfield had sustained damages in the aggregate amount of $1,044,594, but

[1]Mr. Bloomfield's cause of action arises under the Governmental Tort Liability Act under Tenn. Code Ann. § 29-20-205, pursuant to which Metro's immunity for the negligence of its employee, Michael Hall, is removed.

entered a judgment of $300,000, the maximum amount available under the Tennessee Governmental Tort Liability Act. In addition, Mr. Bloomfield was awarded $3,358.25 in discretionary costs.[2]

Metro appeals the award of summary judgment on the issue of liability contending that there are genuine issues of material fact regarding the procedure or protocol for moving a patient in a wheelchair, whether or not a lift of the wheelchair occurred triggering the need to communicate, whether Mr. Hall was negligent, and whether Mr. Bloomfield was comparatively at fault for his injury. Metro does not directly appeal the assessment of damages sustained by Mr. Bloomfield, but requests that the amount of the judgment be reduced proportionately based on the percent of fault attributed to Mr. Bloomfield on remand.

STANDARD OF REVIEW

This appeal arises from the grant of summary judgment. Summary judgment is appropriate when a party establishes that there is no genuine issue as to any material fact and that a judgment may be rendered as a matter of law. Tenn. R. Civ. P. 56.04; *Stovall v. Clarke*, 113 S.W.3d 715, 721 (Tenn. 2003). It is appropriate in virtually all civil cases that can be resolved on the basis of legal issues alone. *Byrd v. Hall*, 847 S.W.2d 208, 210 (Tenn. 1993); *Pendleton v. Mills*, 73 S.W.3d 115, 121 (Tenn. Ct. App. 2001). It is not appropriate when genuine disputes regarding material facts exist. *See* Tenn. R. Civ. P. 56.04. The party seeking summary judgment bears the burden of demonstrating that no genuine disputes of material fact exist and that the party is entitled to judgment as a matter of law. *Godfrey v. Ruiz*, 90 S.W.3d 692, 695 (Tenn. 2002). To be entitled to summary judgment, the moving party must affirmatively negate an essential element of the nonmoving party's claim *or* show that the nonmoving party cannot prove an essential element of the claim at trial. *Martin v. Norfolk S. Ry. Co.*, 271 S.W.3d 76, 83 (Tenn. 2008).

Summary judgments do not enjoy a presumption of correctness on appeal. *BellSouth Adver. & Publ'g Co. v. Johnson*, 100 S.W.3d 202, 205 (Tenn. 2003). Because the resolution of a motion for summary judgment is a matter of law, we review the trial court's judgment de novo with no presumption of correctness. *Martin*, 271 S.W.3d at 84. The appellate court makes a fresh determination that the requirements of Tenn. R. Civ. P. 56 have been satisfied. *Hunter v. Brown*, 955 S.W.2d 49, 50-51 (Tenn. 1977). As does the trial court, the appellate court considers the evidence in the light most favorable to the

[2]This case was initially assigned to the Second Circuit Court for Davidson County, and Judge Amanda McClendon ruled upon the motion for partial summary judgment entering judgment in favor of Plaintiff on the issue of liability. When the case came on for trial on the issue of damages, it was reassigned to the Firth Circuit Court for Davidson County, and Judge Joe Binkley presided over the remaining proceedings. Because he entered the final judgment from which this appeal lies, Judge Binkley is identified as the trial judge on page one of this opinion.

nonmoving party and resolves all inferences in that party's favor. *Martin*, 271 S.W.3d at 84; *Stovall*, 113 S.W.3d at 721; *Godfrey*, 90 S.W.3d at 695. When reviewing the evidence, the appellate court first determines whether factual disputes exist. If a factual dispute exists, the court then determines whether the fact is material to the claim or defense upon which the summary judgment is predicated and whether the disputed fact creates a genuine issue for trial. *Byrd*, 847 S.W.2d at 215.

A party is entitled to summary judgment only if the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits . . . show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Tenn. R. Civ. P. 56.04. A properly supported motion for summary judgment must show that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. *Staples v. CBL & Assocs., Inc.*, 15 S.W.3d 83, 88 (Tenn. 2000); *McCarley v. W. Quality Food Serv*., 960 S.W.2d 585, 588 (Tenn. 1998).

ANALYSIS

Metro disputes the trial court's finding concerning the procedure for moving wheelchair-bound patients and whether or not a lift of the wheelchair was ever initiated. Metro relies on the testimony of George Owen, a Captain/EMT of the Nashville Fire Department for thirty-two years, and the commanding officer at the scene on the day of the incident, to insist the trial court's finding was in error. The pertinent portions of Captain Owen's testimony read as follows:

> Q: Is [the standard one-two-three lift method] something you adhere to?
>
> A: If a patient's laying [sic] on the floor flat, that is [the] protocol. That's the way we do it.
>
> Q: What if they're in a chair?
>
> A: If they're in a chair, it's communications between the two people.
> . . .
>
> Q: Have you ever used a one-two-three protocol with a chair lift?
>
> A: No, not one-two-three. If I'm on a chair, I'll usually go—I'll look at whoever's on the chair with me and I go, let's go, and we'll pick it up and go.
> . . .

Q: And so based on protocol, either the one-two-three protocol or the communicate protocol, Mr. Bloomfield makes the call on when the lift takes place?

A: Yeah.

Q: Okay. And if he's turned talking to the family, getting information, and the EMS lifts, that violates the standard protocol; correct?

A: Yes. But also Mr. Bloomfield should have told the man at the chair, hold up, I need more information. There was that lack of communication again between the two of them . . . I'm just saying that if there was no communication, it was both of them's [sic] fault.
. . .

Q: Based on our discussions, you would agree with me, Captain Owen, with your thirty-two years of experience, that if the person at the head of a patient lift doesn't signal for the lift, either verbally or with eye communication, that the lift should not be started by the person at the foot?

A: If the patient is being lifted from the ground to the cot, I agree with that. As far as I know on protocol on a wheelchair, you should communicate to each other as to, we're moving the chair we're lifting the chair.

Q: And you told me earlier that that communication starts with the person at the head?

A: It should, yes.

Q: Okay. If the person at the head does not start communication, the person at the foot should not lift?

A: Not without communication.

Q: Okay. If a person at the foot did lift without communication, it would violate Metro standards and policies and protocols?

A: On lifting a patient from the floor up to a cot, it would . . . There's no training on lifting a wheelchair. It's just—you try to keep everything the same by the head controlling, but there is no protocol to that, to my knowledge.
. . .

Q: Okay . . . If there's no communication, the guy at the foot shouldn't lift, should he?

A: No.

Q: And if he does lift without communication, it's violating the standard?

A: It's violating a standard of the lift from the floor to the cot.

Q: So it's okay to do it on a chair?

A: Not without communication.

Q: All right.

A: There is no protocol is what I'm saying for a chair. That should be from the guys working together.

Although Captain Owen's testimony is somewhat confusing as to what constitutes a training protocol as distinguished from an established procedure, he clearly and unequivocally testified that there is an established procedure for lifting a wheelchair-bound patient, and he identified three key elements of that procedure: (1) "communication" between the two people performing the lift is an essential element of the procedure for lifting a wheelchair-bound patient, (2) the person at the head of the wheelchair determines when to initiate the lift by communicating that instruction to the person at the foot of the chair, and (3) the person at the foot may not lift the wheelchair until the person at the head of the chair instructs him to do so.

These facts are supported by the testimony of Darrell Adair and Barry Sims, employees of the Nashville Fire Department, each of whom not only emphasized the importance of communication between employees when moving or lifting a patient, but also testified that the person at the head of the patient is responsible for initiating the lift, regardless of whether the patient is sitting in a wheelchair or lying flat on a cot. Moreover, there is no evidence in the record that is contrary to the aforementioned testimony that the person at the head of the wheelchair determines when to initiate the lift by communicating that instruction to the person at the foot of the chair and that the person at the foot may not lift the wheelchair until the person at the head of the chair instructs him to do so. For the foregoing reasons, we have concluded that Mr. Bloomfield and Mr. Hall were required to comply with the above established procedure for lifting a wheelchair-bound patient.

The foregoing notwithstanding, Metro contends there is a dispute of fact regarding whether a lift of the wheelchair occurred. Metro relies on the affidavit of Mr. Hall and

deposition testimony of Mr. Bloomfield to establish that a lift of the wheelchair was unnecessary because the back wheels did not leave the ground in order to clear the doorway of the home. We find this argument unpersuasive because Mr. Hall did indeed "lift" the wheelchair by lifting the foot of the chair, thereby putting in motion the possibility that the head of the chair, and more importantly, the head of the patient in the chair, would crash to the floor. Stated another way, had Mr. Hall not lifted the foot of the wheelchair, Mr. Bloomfield would not have reached for the wheelchair to prevent the head of the patient from hitting the floor. Therefore, whether a lift was *necessary* is not material; instead, it is material that Mr. Hall did in fact *lift* the foot of the wheelchair without being instructed by Mr. Bloomfield, who was at the head of the chair, to commence the lift.[3]

The material facts, which are undisputed, proved that an established procedure existed for lifting a wheelchair-bound patient, pursuant to which the person at the head of the wheelchair initiates the lift by communicating that instruction to the person at the foot of the chair, and that the person at the foot may not lift the wheelchair until the person at the head of the wheelchair instructs him to do so. Mr. Hall admits that Mr. Bloomfield did not instruct him to lift. Further, Mr. Hall admitted in his deposition that he violated the procedure by lifting the wheelchair without having communicated with Mr. Bloomfield before the lift:

> Q: So a second ago when I asked you had you ever lifted before you made sure everybody was ready, you told me no, but in fact, you did, in this instance, lift before you knew everybody was ready?
>
> A: Yes, sir.
>
> Q: So did you violate the procedures and protocols by doing that?
>
> A: I suppose so.
>
> Q: I'm not trying to trick you. I'm just wanting to know, based on your earlier testimony when you told me that if somebody did that at the foot, they would be violating protocols.
>
> A: Right.

For the foregoing reasons, we affirm the trial court's finding that Mr. Hall was 100% at fault for the injuries sustained by Mr. Bloomfield, and, therefore, as Mr. Hall's

[3]The unfortunate facts of this case bring to mind the famous phrase, "What we've got here is failure to communicate," from the 1967 film *Cool Hand Luke*, spoken in the movie by Strother Martin, who played the role of Captain, the prison warden, to admonish Paul Newman, who played the role of Luke, a stubborn prisoner.

employer, Metro is liable for the injuries sustained by Mr. Bloomfield. Therefore, we affirm the grant of summary judgment on the issue of liability as well as the judgment for damages awarded.

IN CONCLUSION

The judgment of the trial court is affirmed. Costs of appeal are assessed against Metropolitan Government of Nashville Davidson County, Tennessee.

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FRANK G. CLEMENT, JR., JUDGE