2022 IL App (4th) 200071-U

NO. 4-20-0071

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
March 24, 2022
Carla Bender
4th District Appellate
Court, IL

TYELER KESSINGER,	)	Appeal from the
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Sangamon County
BRIAN STEVENS,	)	No. 19L84
Defendant-Appellee.	)	
	)	
	)	
	)	Honorable
	)	Raylene Grischow,
	)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Presiding Justice Knecht and Justice Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court reversed, finding sovereign immunity did not bar plaintiff's negligence claim because defendant's duty to plaintiff arose from his status as a driver on the roadway and not from his status as a state employee; therefore, the circuit court erred in dismissing plaintiff's complaint for lack of subject matter jurisdiction.

¶ 2 Plaintiff, Tyeler Kessinger, sued defendant, Brian Stevens, alleging defendant negligently operated his 2002 Dodge Ram pickup truck, causing plaintiff to fall from the truck and sustain injuries. Pursuant to section 2-619(a)(1) of the Code of Civil Procedure (735 ILCS 5/2-619(a)(1) (West 2018)), defendant moved to dismiss plaintiff's complaint, arguing sovereign immunity barred the negligence claim, so the circuit court lacked subject matter jurisdiction. The circuit court granted defendant's motion and dismissed the complaint. Plaintiff filed a motion to reconsider, which the circuit court denied.

¶ 3 On appeal, citing *Currie v. Lao*, 148 Ill. 2d 151, 592 N.E.2d 977 (1992), plaintiff argues his suit against defendant falls outside the doctrine of sovereign immunity because it involves a claim based on the negligent operation of an automobile by a state employee. We agree with plaintiff; therefore, we reverse the circuit court's judgment and remand for further proceedings.

¶ 4 I. BACKGROUND

¶ 5 On or about June 18, 2018, plaintiff, an inmate in the Illinois Department of Corrections (DOC) at the time, worked on a crew tasked with maintaining and watering flowerbeds at the Illinois State Fairgrounds. Defendant, a DOC employee, supervised the workers, including plaintiff, and transported them to various worksites driving a 2002 Dodge Ram pickup truck while pulling a trailer holding an 80-gallon water tank. Defendant directed plaintiff and the other inmates to ride in the back of the truck. As defendant drove, plaintiff "was ejected from the *** truck and subsequently was run over by the attached water trailer." Plaintiff sustained "severe and permanent injuries" from the incident.

¶ 6 On April 11, 2019, plaintiff filed a complaint alleging defendant "owed a duty to use reasonable and ordinary care in the operation of the 2002 Dodge Ram pick-up truck to other persons and vehicles on Illinois roadways and the Illinois State Fairgrounds." Plaintiff specifically alleged defendant breached this duty by "operating the vehicle in an unsafe and negligent manner." In July 2019, defendant filed a motion to dismiss, acknowledging "[p]laintiff was ejected from a pick-up truck and sustained injuries," but arguing, "[p]laintiff's claim against Defendant Stevens is in fact one against the State is barred by sovereign immunity, and should be dismissed for lack of subject matter jurisdiction."

¶ 7 On January 21, 2020, the matter came before the circuit court, which granted defendant's motion to dismiss. Utilizing a "but-for" analysis, the trial court concluded, "[t]he relationship between the plaintiff and the defendant would not have had a source outside of the employment of the defendant." The court found that had defendant not been a DOC employee, he would not have been at the fairgrounds supervising and transporting plaintiff and would have owed plaintiff no duty whatsoever. Building upon the "but-for" analysis, the circuit court then expressly found: "The duty charged [to defendant] arose out of his status as a [DOC] employee," meaning "his actions were uniquely related to his status as a correctional officer." The court concluded: "The plaintiff does not allege[ ] the officer acted outside the scope of his authority or in violation of the law, thus exclusive jurisdiction must lie with the Court of Claims."

¶ 8 The next day, plaintiff filed a motion to reconsider, arguing the circuit court "did not properly apply the 'source of the duty' test or rule as articulated by the Illinois Supreme Court in *Loman v. Freeman*, 229 Ill. 2d 104 (2008) and *Currie* *** and therefore this case should not have been dismissed." Defendant responded by arguing the trial court committed no error of law or fact in dismissing the lawsuit. The circuit court denied plaintiff's motion.

¶ 9 This appeal followed.

¶ 10 Plaintiff challenges the circuit court's judgment as contrary to law. Labeling this case "a routine vehicular negligence claim," plaintiff argues Illinois case law "clearly explain[s] that claims against state employees based upon the negligent operations of automobiles fall[ ] outside the doctrine of sovereign immunity, and there is no unique fact pattern in the instant lawsuit that dictates diversion from this well-established rule of law." Defendant, by contrast, argues the sovereign immunity doctrine does apply to bar this claim because the duty owed by

defendant to plaintiff "arose solely by virtue of his state employment as a corrections officer." We agree with plaintiff and reverse.

¶ 11 II. ANALYSIS

¶ 12 "A section 2-619 motion to dismiss admits the legal sufficiency of the plaintiff's claim, but asserts affirmative matter that defeats the claim." *Hubble v. Bi-State Development Agency of the Illinois-Missouri Metropolitan District*, 238 Ill. 2d 262, 267, 938 N.E.2d 483, 488 (2010). Here, defendant asserted plaintiff's complaint should be dismissed under section 2-619(a)(1) of the Code of Civil Procedure, which provides for the dismissal of a claim where "the court does not have jurisdiction of the subject matter of the action." 735 ILCS 5/2-619(a)(1) (West 2018). The dismissal of a complaint based on the lack of subject matter jurisdiction is reviewed *de novo*. *Leetaru v. Board of Trustees of the University of Illinois*, 2015 IL 117485, ¶ 41, 32 N.E.3d 583.

¶ 13 The General Assembly resurrected the previously abolished common law doctrine of sovereign immunity through the Court of Claims Act. 705 ILCS 505/1 *et seq.* (West 2018). "Section 8(d) of the Act provides as follows: 'The [C]ourt [of Claims] shall have exclusive jurisdiction to hear and determine *** [a]ll claims against the [s]tate for damages in cases sounding in tort ***.' " *Jackson v. Alverez*, 358 Ill. App. 3d 555, 559-60, 831 N.E.2d 1159, 1163 (2005) (quoting 705 ILCS 505/8(d) (West 2002)). "Whether an action is in fact one against the State, and hence one that must be brought in the Court of Claims, depends not on the formal identification of the parties but rather on the issues involved and the relief sought." *Healy v. Vaupel*, 133 Ill. 2d 295, 308, 549 N.E.2d 1240, 1247 (1990). For example, in an effort to avoid sovereign immunity or the court of claims's exclusive jurisdiction, a plaintiff may not name an individual state employee as a defendant in a lawsuit " 'when the real claim is against the State

of Illinois itself and when the State of Illinois is the party vitally interested.' " *Healy*, 133 Ill. 2d at 308 (quoting *Sass v. Kramer*, 72 Ill. 2d 485, 491, 381 N.E.2d 975, 977 (1978)).

¶ 14 "Our supreme court has found an action is actually against the State when the following [three criteria] are present:

> ' "(1) no allegations that an agent or employee of the State acted beyond the scope of his authority through wrongful acts; (2) the duty alleged to have been breached was not owed to the public generally independent of the fact of State employment; and (3) where the complained-of actions involve matters ordinarily within that employee's normal and official functions of the State." ' " *Sellers v. Rudert*, 395 Ill. App. 3d 1041, 1046, 918 N.E.2d 586, 591 (2009) (quoting *Healy*, 133 Ill. 2d at 309 (quoting *Robb v. Sutton*, 147 Ill. App. 3d 710, 716, 498 N.E.2d 267, 272 (1986))).

Here, plaintiff acknowledges he challenges the second factor only, what Illinois courts have labeled "the source of the duty." See *Currie*, 148 Ill. 2d at 159 ("[T]he proper inquiry is to analyze the source of the duty the employee is charged with breaching in committing the allegedly negligent act.").

¶ 15 The source of the duty test typically yields one of two results, depending on whether the employee's duty arose solely or independently from his state employment. The *Currie* court explained:

> "Where the charged act of negligence arose out of the State employee's breach of a duty that is imposed on him *solely* by

> virtue of his State employment, sovereign immunity will bar maintenance of the action in circuit court. [Citations.] Conversely, where the employee is charged with breaching a duty imposed on him *independently* of his State employment, sovereign immunity will not attach and a negligence claim may be maintained against him in circuit court. [Citations.]" (Emphases in original.) *Currie*, 148 Ill. 2d at 159.

"Illinois courts have found a duty to be an *independent* one in several different situations." (Emphasis added.) *Sellers*, 395 Ill. App. 3d at 1050. One situation includes driving a car. To be sure, heeding case law, we have said, "an independent duty exists when the duty arises from the person's general status regardless of one's employment, *i.e.*, a person's status as a driver of a vehicle on a state roadway imposes a duty to drive safely." *Sellers*, 395 Ill. App. 3d at 1050 (citing *Grimes v. Saikley*, 388 Ill. App. 3d 802, 814, 904 N.E.2d 183, 192 (2009)). Though we did not cite it directly, our statement derived from *Currie*'s application of the source of the duty test to those particular facts and its conclusion that "claims based on the negligent operation of an automobile by a State employee are *generally* outside the doctrine of sovereign immunity." (Emphasis added.) *Currie*, 148 Ill. 2d at 160 (citing *Bartholomew v. Crockett*, 131 Ill. App. 3d 456, 462, 475 N.E.2d 1035, 1039-40 (1985); *Gocheff v. State Community College of East St. Louis*, 69 Ill. App. 3d 178, 184, 386 N.E.2d 1141, 1145 (1979)). Courts have found the rationale for finding an independent duty to drive safely on public roadways to be "apparent" because "negligence that arises from the ordinary operation of a motor vehicle is based on the breach of the duties every driver owes to every other driver." *Currie*, 148 Ill. 2d at 160.

¶ 16 The *Currie* court, however, did acknowledge one exception to this rule and underlying reasoning—*i.e.*, when a defendant's state employment makes operation of the vehicle extraordinary or unique. *Currie* noted that "in some circumstances, a State employee's manner of operating a vehicle may be so unique to his employment that a lawsuit aimed at his negligent driving could operate to control the actions and policies of the State." *Currie*, 148 Ill. 2d at 160. The court cited as an example a police officer engaged in a high-speed chase of a suspect who negligently caused the suspect's death. *Currie*, 148 Ill. 2d at 160 (citing *Campbell v. White*, 207 Ill. App. 3d 541, 566 N.E.2d 47 (1991)). And since *Currie*, courts have applied the exception outside the high-speed police chase context and found sovereign immunity barred claims based on negligent operation of a motor vehicle when the defendant's duty to use reasonable care while driving arose solely from state employment or was unique to state employment. See *Shirley v. Harmon*, 405 Ill. App. 3d 86, 96-97, 933 N.E.2d 1225, 1233-34 (2010) (holding sovereign immunity applied because defendant's duty to safely operate a snow plow on state roads in a safe manner was a unique duty imposed on him solely by virtue of his state employment); *Kawaguchi v. Gainer*, 361 Ill. App. 3d 229, 244-45, 835 N.E.2d 435, 447-48 (2005) (holding sovereign immunity applied because the defendant state trooper acted in a way unique to her job when responding to a *bona fide* emergency call and her car collided with plaintiff's vehicle); *Starr v. Ward*, 289 Ill. App. 3d 299, 303-06, 681 N.E.2d 1064, 1067-69 (1997) (holding sovereign immunity applied because defendant's duty to mow the highway median arose solely from his state employment); *Kostopoulos v. Poladian*, 257 Ill. App. 3d 95, 101, 628 N.E.2d 628, 632-33 (1993) (holding sovereign immunity applied because defendant's duty to operate a back-up truck that followed behind work crews fixing potholes on the highway was unique and arose solely from his state employment); *Landon v. Jarvis*, 255 Ill. App. 3d 439, 443, 627 N.E.2d 371, 374

(1993) (holding sovereign immunity applied because defendant tow-truck driver's duty to assist stranded motorists or investigate possible accidents was unique to his state employment).

¶ 17 Turning our attention to the claims and defenses here, it does not appear the parties dispute whether defendant had a duty to drive the pickup safely. Rather, they quarrel over whether the source of that duty arose solely from or independently from defendant's employment as a correctional officer. In simplest terms, plaintiff contends this case falls squarely within *Currie*'s rule that sovereign immunity does not apply to negligence claims arising from ordinary operation of a motor vehicle by a state employee. Plaintiff specifically argues the source of the duty defendant owed to plaintiff (to drive with reasonable care) he owed to the public generally (including plaintiff) apart from his DOC employment. Defendant, on the other hand, argues this case perfectly fits into *Currie*'s exception because his manner of driving his pickup truck while transporting DOC inmates to worksites at the Illinois State Fairgrounds was unique to his employment. We agree with plaintiff.

¶ 18 Plaintiff's complaint alleged defendant (a DOC employee) drove a 2002 Dodge Ram pickup truck that pulled a trailer carrying an 80-gallon water tank to transport him and other DOC inmates assigned to maintain and water flowerbeds at the Illinois State Fairgrounds. The complaint further alleged defendant, because he was the correctional officer supervising the workers, ordered him to ride in the back of the pickup truck without first ensuring safe seating or seatbelts. The complaint finally alleged defendant unsafely and negligently drove the truck, causing plaintiff to fall from the truck and causing the trailer to run over plaintiff. Defendant's motion to dismiss acknowledged, "Plaintiff was ejected from a pick-up truck and sustained injuries," but he denied he "breach[ed] a duty owed to the public generally independent of his State employment."

¶ 19 Given the barebones facts before us, we conclude this case falls under *Currie*'s rule that "claims based on the negligent operation of an automobile by a State employee are generally outside the doctrine of sovereign immunity." *Currie,* 148 Ill. 2d at 160. The facts do not show the source of defendant's duty to drive safely on public roadways arose solely from his employment as correctional officer. There does not appear to be anything unique or extraordinary in the manner in which defendant operated the pickup truck. He was transporting a work crew to another worksite and had them sit in the back of his truck. Strip away his employment as a correctional officer, and defendant still owed a duty of reasonable care when driving the truck to ensure his passengers were not ejected from the truck. Strip away plaintiff's status as a DOC inmate assigned to work at the fairgrounds, and defendant's duty remained because it ultimately derived from his status as a driver on the roadway. *Sellers,* 395 Ill. App. 3d 1050; *Grimes,* 388 Ill. App. 3d at 814. The duty to drive safely on public roadways is "imposed on all other persons operating motor vehicles on the public highways." *Bartholomew,* 131 Ill. App. 3d at 463. No matter his employment, defendant owed a duty to the public and his passengers to use reasonable care when driving.

¶ 20 Defendant likens his case to those where Illinois courts have applied *Currie*'s exception, arguing his duty to plaintiff arose solely from his employment because the manner in which he operated the pickup truck was unique to his employment. He directs our attention to decisions in *Kawaguchi, Campbell,* and *Shirley*; but we do not see the similarities between those cases and the particular facts before us now.

¶ 21 In *Kawaguchi,* as part of her official duties, a state trooper was responding to a legitimate emergency while she drove south across westbound lanes of traffic in order to reach the authorized vehicle turnaround when the plaintiff's car collided with her vehicle. *Kawaguchi,*

361 Ill. App. 3d at 233. In *Campbell*, a state trooper pursued the speeding Campbell in a high-speed chase reaching 109 miles per hour. *Campbell*, 207 Ill. App. 3d at 544-45. Campbell dismounted his motorcycle, stepped onto the highway, and was struck and killed by the pursuing Trooper White. *Campbell*, 207 Ill. App. 3d at 545. In both cases, we found sovereign immunity barred the plaintiffs' negligence claims because the defendant state troopers were operating their vehicles in a manner unique to their state employment. *Kawaguchi*, 361 Ill. App. 3d at 245; *Campbell*, 207 Ill. App. 3d at 552. State troopers responding to *bona fide* emergencies or pursuing speeding vehicles must operate their vehicles in a unique manner. Defendant's actions here are not comparable to those state troopers.

¶ 22 In *Shirley*, the defendant, a state employee operating a snowplow, " 'lost control of his vehicle such that his snowplow blade and/or truck struck' plaintiff's vehicle." *Shirley*, 405 Ill. App. 3d at 88. This court held sovereign immunity applied to bar plaintiff's negligence claim (*Shirley*, 405 Ill. App. 3d at 96) because "the duty that defendant allegedly breached was to plow state roads in a safe manner, which was a unique duty imposed on him solely by virtue of his state employment." *Shirley*, 405 Ill. App. 3d at 97. Again, we do not consider transporting workers in the back of a pickup truck to a new worksite within the fairgrounds comparable to operating a snowplow on state roads. Driving a pickup truck with passengers in the back is not unique to state employment, whereas driving a snowplow to clear public roadways is unique to state employment.

¶ 23 The spectrum for negligence cases arising from operating a vehicle that fit into *Currie*'s exception range from high-speed police chases (*Campbell*, 207 Ill. App. 3d at 552) to driving a back-up truck following a work crew filling potholes on public roadways (*Kostopoulos*, 257 Ill. App. 3d at 101). In between fall police responding to legitimate emergencies

(*Kawaguchi*, 361 Ill. App. 3d at 245), operating a snowplow (*Shirley*, 405 Ill. App. 3d at 96-97), operating a tow truck tasked with assisting motorists (*Jarvis*, 255 Ill. App. 3d at 444), and operating a lawn mower on the median of a divided highway (*Starr*, 289 Ill. App. 3d at 306). In each instance, there is either something unique about the vehicle, the task, or the duties and responsibilities of the operator that fall outside those of the average driver. Based on the particular facts before us, this case does not fit on that spectrum. Unlike the cases applying the *Currie* exception, defendant points us to no facts indicating his duty to drive the pickup truck safely arose solely from his employment and not from his general status as a driver on the public roadways. *Currie*, 148 Ill. 2d at 159; *Sellers*, 395 Ill. App. 3d at 1050. He directs us to no facts indicating he was not an ordinary driver on the road or that he had to operate the pickup truck in a manner unique to his employment. *Currie*, 148 Ill. 2d at 160. We, therefore, cannot affirm the trial court's finding that defendant's "actions were uniquely related to his status as a correctional officer." Nor can we affirm the trial court's "but-for" reasoning that "Defendant would not have been at the fairgrounds, supervising the inmates, and operating the vehicle except for his job duties." This is the wrong lens through which to access defendant's actions. Using the proper "source of the duty" analysis, the source of defendant's duty arises not from his status as a state correctional officer, but as the driver of a motor vehicle. The duty he owed plaintiff was the same he owed any other person who might be riding in the bed of his pickup truck. The trial court determined defendant's duty to plaintiff rested on defendant's status as a correctional officer and plaintiff's status as an inmate rather than on defendant's status as a driver on the roadways. We do not find support for this reasoning in the relevant case law. See *Sellers*, 395 Ill. App. 3d at 1050; *Grimes*, 388 Ill. App. 3d at 814.

¶ 24 Given the particular facts of this case, we hold sovereign immunity does not apply to bar plaintiff's claims because the source of the duty defendant owed to plaintiff arose independently from his state employment. See *Currie*, 148 Ill. 2d at 159. His status as a driver operating a vehicle on a public roadway imposed upon him a duty of reasonable care to plaintiff, not his status as a DOC employee. See *Grimes*, 388 Ill. App. 3d at 814 (quoting *Brandon v. Bonell*, 368 Ill. App. 3d 492, 505-07, 858 N.E.2d 465, 480-81 (2006)). Accordingly, the trial court erred in granting defendant's motion to dismiss. Exclusive jurisdiction over plaintiff's claims does not lie in the court of claims, and this matter may proceed in the circuit court.

¶ 25 III. CONCLUSION

¶ 26 For the reasons stated, we reverse and remand this matter to the circuit court for further proceedings.

¶ 27 Reversed; cause remanded.