

REL: September 18, 2020

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SUPREME COURT OF ALABAMA

SPECIAL TERM, 2020

1180843

Frankie Bryant, administrator of the Estate of Deitrick
Bryant, deceased

v.

Elston Carpenter and Athelyn Jordan, individually and in
their official capacities as officers of the Greene County
Sheriff's Office

Appeal from Greene Circuit Court
(CV-14-900060)

MITCHELL, Justice.

Deitrick Bryant ("Deitrick") committed suicide in his cell while he was an inmate at the Greene County jail.

1180843

Deitrick's mother, as the administrator of his estate, sued two jail employees, alleging that their negligence allowed Deitrick's suicide to happen. The trial court entered a summary judgment in favor of the jail employees, and Deitrick's mother appeals. We affirm the judgment.

Facts and Procedural History

On April 3, 2012, an investigator from the Greene County Sheriff's Office attempted to arrest Deitrick on an outstanding warrant. While he was being handcuffed, Deitrick knocked the investigator down and fled the premises. Later that evening, Greene County Sheriff Joe Benison and several deputies went to Deitrick's last known address and found him hiding in a freezer. After he was handcuffed, Deitrick knocked down a deputy, again broke away, and began to run. Deputy Jeremy Rancher pursued him and ultimately used a stun gun to subdue him and take him into custody. Deitrick was then transported to the Greene County jail.

It is undisputed that Deitrick was compliant while being booked into the jail. As part of the intake process, Deitrick was asked about his health and medical history and he gave no indication that he was in pain or had any injuries, nor did he

1180843

express any suicidal ideations. Jail employee Elston Carpenter assisted in the intake process by searching Deitrick and supervising him while he changed into jail clothes. According to Carpenter, Deitrick never complained that he was in pain, expressed suicidal ideations, or indicated that "he was even depressed."

Based on the aggressive behavior Deitrick exhibited both times the sheriff's office attempted to take him into custody, he was placed in an isolation cell in the booking area. That cell was visible to staff in the booking area and monitored remotely by staff in the security-control room, where 36 monitors showed live feeds of various areas throughout the jail. No camera was dedicated exclusively to Deitrick's cell, but his cell door and window were within the area monitored by a camera located in the booking area.

The next day, April 4, Deitrick's mother, Frankie Bryant, visited the Greene County courthouse to inquire about having Deitrick released on bond. She states that she spoke with a district court judge and Sheriff Benison and that she told Sheriff Benison that Deitrick did not need to be in jail because "he [was] not well." Nevertheless, Deitrick was not

1180843

released on bond, and he remained in jail. Carpenter states that his interactions with Deitrick in jail that day were normal, that they talked while Deitrick was eating his food, and that Deitrick said he wanted to talk to his grandmother.

On April 5, at 4:00 P.M., Carpenter reported to work. He states that, as he came in, he asked Deitrick how he was doing and that Deitrick replied that he was fine.

About an hour later, jail employee Athelyn Jordan, who also began her shift at 4:00 P.M., had her first and only interaction with Deitrick when they spoke while she was passing through the booking area.¹ Jordan states that Deitrick told her that he had been sexually assaulted sometime before he was jailed and that he needed to see a doctor. Jordan testified that Deitrick "did not seem alarmed, distressed, or emotional" when he told her about the sexual assault and that she told him she would pass that information along.

¹At various places in the record, Jordan is referred to as "Jones." During a deposition, however, Jordan stated that she has never used the name Jones and did not know why she had repeatedly been referred to as Jones during the course of this litigation.

1180843

A video recorded by the camera in the booking area shows that approximately an hour later, at 6:11 P.M., Deitrick committed suicide by hanging himself with his bed sheet. At 6:39 P.M., another inmate who was passing through the booking area saw Deitrick's body and used a call box to contact Carpenter in the security-control room. Carpenter and the inmate got Deitrick down and telephoned emergency medical personnel, but Deitrick was pronounced dead on the scene.

Bryant sued various entities and individuals associated with Greene County and the Greene County Sheriff's Office, including Carpenter and Jordan, in the United States District Court for the Northern District of Alabama, alleging that excessive force had been used during Deitrick's arrest, that he had not been provided with proper medical care, and that the defendants' negligence had proximately caused Deitrick's death. The federal district court dismissed Bryant's lawsuit after concluding that none of her federal claims were viable. But the court noted in its order of dismissal that Bryant could refile some of her claims in state court if she concluded that those claims were "appropriate and supported by

1180843

law." Bryant v. Greene Cnty., No. 7:14-CV-519-LSC, July 23, 2014 (N.D. Ala. 2014) (not reported in F.Supp.).

One week later, Bryant did precisely that, filing a wrongful-death action against Greene County; the Greene County commissioners, in their official capacities; and Carpenter, Jordan, and Barbara Collins, the administrator of the Greene County jail, in their individual and official capacities, in the Greene Circuit Court. Bryant eventually withdrew her claims against all defendants except Carpenter and Jordan.

Bryant's complaint alleged that Carpenter and Jordan failed to follow proper procedures for monitoring Deitrick and that they failed to provide him with necessary medical care. Carpenter and Jordan denied Bryant's allegations and moved for summary judgment, arguing (1) that Bryant's claims against them were barred by § 14-6-1, Ala. Code 1975, which extends the State immunity held by sheriffs to individuals employed by a sheriff "to carry out [the sheriff's] duty to operate the jail and supervise the inmates housed therein" provided that those employees "are acting within the line and scope of their duties and are acting in compliance with the law," and (2) that Deitrick's death was unforeseeable. The trial court

1180843

granted Carpenter and Jordan's motion and entered a summary judgment in their favor. Bryant appealed.

Standard of Review

When a party "appeals from a summary judgment, our review is de novo." Nationwide Prop. & Cas. Ins. Co. v. DPF Architects, P.C., 792 So. 2d 369, 372 (Ala. 2000). We therefore apply the same standard of review the trial court used to determine whether the trial court had before it substantial evidence establishing the existence of a genuine issue of material fact that must be resolved by the factfinder. Id. "Substantial evidence" is "evidence of such weight and quality that fair-minded persons in the exercise of impartial judgment can reasonably infer the existence of the fact sought to be proved." West v. Founders Life Assurance Co. of Florida, 547 So. 2d 870, 871 (Ala. 1989). We further note that, in reviewing a summary judgment, we view the evidence in the light most favorable to the nonmovant and entertain such reasonable inferences as the jury would have been free to draw. Jefferson Cnty. Comm'n v. ECO Pres. Servs., L.L.C., 788 So. 2d 121, 127 (Ala. 2000).

Analysis

Bryant's brief is largely devoted to arguing that Carpenter and Jordan are not entitled to immunity. Bryant references § 14-6-1 -- the statute that is the basis of Carpenter and Jordan's claim of immunity -- but the vast majority of her argument focuses on the doctrine of State-agent immunity. This Court has yet to definitively articulate how § 14-6-1 should be interpreted. And while we might interpret § 14-6-1 in a manner that would dispose of this case, it would not be prudent for us to make an interpretation of that statute here, when one party's arguments are largely directed to other issues, unless the posture of the case requires us to do so.² See Cook Transps., Inc. v. Beavers, 528 So. 2d 875, 878 (Ala. Civ. App. 1988) (explaining that an issue of first impression regarding the proper application of a statute "must await a better vehicle for interpretation"). Ultimately, however, we do not have to interpret § 14-6-1 or decide whether it applies because the trial court's judgment

²We note that one federal court to consider § 14-6-1 has concluded that it should be interpreted "in a manner that would render it more effective than a discretionary-driven defense already available under state-agent immunity." Young v. Myhrer, 243 F. Supp. 3d 1243, 1261 (N.D. Ala. 2017).

1180843

is due to be affirmed on the other basis of Carpenter and Jordan's summary-judgment motion -- that Deitrick's suicide was not foreseeable.

This Court has previously decided appeals involving wrongful-death claims stemming from the suicides of individuals being kept in law-enforcement or mental-health facilities. In Popham v. City of Talladega, 582 So. 2d 541, 543 (Ala. 1991), the Court explained the circumstances under which a party might bear liability for such a suicide:

"The controlling factor in determining whether there may be a recovery for a failure to prevent a suicide is whether the defendants reasonably should have anticipated that the deceased would attempt to harm himself. Annot., 11 A.L.R.2d 751, 782-92 (1950). In Keebler v. Winfield Carraway Hospital, 531 So. 2d 841 (Ala. 1988), this Court held 'that foreseeability of a decedent's suicide is legally sufficient only if the deceased had a history of suicidal proclivities, or manifested suicidal proclivities in the presence of the defendant, or was admitted to the facility of the defendant because of a suicide attempt.' Keeton v. Fayette County, 558 So. 2d 884, 887 (Ala. 1989)."

See also City of Crossville v. Haynes, 925 So. 2d 944, 951 (Ala. 2005) ("Th[e] test of foreseeability [set forth in Popham] remains the law applicable today in determining whether a duty to prevent a suicide exists."). Applying this test to the facts of Bryant's case, a factfinder could not

1180843

conclude that Carpenter and Jordan reasonably should have anticipated that Deitrick would attempt to harm himself while he was incarcerated in the Greene County jail.

A. Deitrick had no history of suicidal proclivities

First, there is no allegation, much less evidence, that Deitrick had a history of suicidal proclivities. Bryant has acknowledged that, although she was concerned about Deitrick's mental health, he never expressly indicated to her that he was suicidal and she was unaware of any previous suicide attempts. Bryant nonetheless emphasizes that she had concerns about Deitrick's mental health and says that she shared those concerns with Sheriff Benison. But Bryant's own description of her conversation with Sheriff Benison reveals that her stated concerns were vague and that suicide was never mentioned:

"Q. [By the attorney for Carpenter and Jordan:]
Tell me about that conversation [with Sheriff Benison].

"A. He was passing through [the courthouse], and I asked him, you know, what was going on, why didn't my son have a bond, and he said, well, it's not up to him for him to have a bond. I said, 'Well, he don't need to be in jail because, you know, he's not well.' And he told me that, you know, like he say, he got other charges pending. And I'm like, 'What?' And he

1180843

was like, 'Well, like I say, you need to speak to the judge.' I said, 'Okay, I plan on doing that.'

"Q. That was the conversation?

"A. That was the conversation.

"Q. And you said that he was not well?

"A. Yes.

"Q. And what did you mean that he was not well?

"A. I mean that he was depressed and just the vibe. Like I said, the vibe I got from him he wasn't well.

"Q. And the words that you used to the sheriff was that he was not well?

"A. Pretty much I think so that's the word I used."

This conversation was insufficient to put Sheriff Benison on notice that Deitrick might harm himself. Moreover, there is no evidence indicating that Carpenter and Jordan were ever told of this conversation or that anybody expressed concerns to them about Deitrick's mental health. To the contrary, both Carpenter and Jordan have testified that they were never given any information indicating that Deitrick might be suicidal or that he had expressed suicidal ideations.

1180843

B. Deitrick did not manifest suicidal proclivities in the presence of Carpenter or Jordan

Second, there is no evidence indicating that Deitrick manifested suicidal proclivities in the presence of Carpenter or Jordan. The employee who initially booked Deitrick into jail stated that Deitrick did not express suicidal ideations when he was asked whether he had such ideations while being booked on April 3. Carpenter confirmed that point in his own testimony. Carpenter further stated that there was nothing remarkable about his interactions with Deitrick on April 4 and that, when he spoke with Deitrick on April 5, approximately two hours before his death, Deitrick told him he was doing fine.

The only time Jordan interacted with Deitrick was on April 5, about an hour before he committed suicide, when they spoke while she was passing through the booking area. Jordan states that Deitrick told her at that time that he had been sexually assaulted sometime before coming to jail and that he needed to see a doctor. She further explained that "he did not seem alarmed, distressed, or emotional" and that she told him she would pass along that information, but she never got

1180843

the chance to do so because he committed suicide shortly thereafter.

Bryant argues that Jordan should have foreseen that Deitrick might harm himself based on that conversation. We disagree. Deitrick's disclosure of a past sexual assault and his request for medical attention -- unaccompanied by any indication that he was suicidal -- cannot be considered a "manifest[ation of] suicidal proclivities." Popham, 582 So. 2d at 544. Bryant has cited no caselaw to support her argument, and as the federal district court succinctly explained in its order dismissing Bryant's federal lawsuit: "The fact that [Deitrick] hanged himself shortly thereafter does not retrospectively give [Jordan] knowledge that suicide was likely." Bryant, supra.

Bryant makes additional arguments, all of which are unpersuasive. She argues that Carpenter and Jordan should have anticipated that Deitrick might harm himself because, she says, Deitrick had recently experienced "excessive" pain when a stun gun was used on him, he was not eating, he had been exhibiting irrational, impulsive, and aggressive behavior before he was arrested, and he was facing multiple felony

1180843

charges. But Bryant has failed to support the stun-gun allegation with citations to evidence in the record. Bryant cites her complaint and other filings in which she previously made that allegation, but allegations are not evidence. This Court has no duty to search the record to determine whether it contains evidence to support a party's allegation. Chestang v. IPSCO Steel (Alabama), Inc., 50 So. 3d 418, 430 (Ala. 2010).

Moreover, the record contains evidence to the contrary. See Maxwell v. Dawkins, 974 So. 2d 282, 287 (Ala. 2006) (affirming a summary judgment when the appellant "identified no evidence in the record" to support his allegations and "there [was] evidence to the contrary"). Specifically, Deputy Rancher, who used the stun gun on Deitrick, testified that the prongs did not break Deitrick's skin and that Deitrick never complained that he was in pain as a result of being stunned. And Carpenter and Jordan reinforced in their testimony that Deitrick never told either of them that he was in pain.

Bryant has similarly failed to support, with record evidence, her allegation that Bryant was not eating. In fact, the record refutes this allegation, because Carpenter

1180843

testified that Deitrick was eating when he talked to him on April 4.

Bryant next emphasizes that Carpenter and Jordan, in their summary-judgment motion, acknowledged that Deitrick was exhibiting "escalated and aggressive behavior" before he was taken into custody. Thus, she argues, they should have been aware that he might harm himself. But as Popham and other cases make clear, it is manifested suicidal proclivities, not just erratic behavior, that potentially gives rise to a duty to prevent a suicide. The evidence in the record indicates that the sheriff's office was concerned about Deitrick's resistance before he was taken into custody and that his behavior was the reason he was placed in the cell in the booking area, instead of another cell where he would be in close proximity to other prisoners with whom he might get into an altercation. But Sheriff Benison and Deputy Rancher also testified that Deitrick had not voiced any suicidal thoughts or exhibited suicidal signs. In sum, Deitrick's pre-arrest behavior, while concerning, was not the type of behavior that would impose a duty upon a party to prevent his suicide. See also Smith v. King, 615 So. 2d 69, 73 (Ala. 1993) (concluding

1180843

that staff at a mental-health facility could not have reasonably foreseen an admitted patient's suicide); Williams v. Lee Cnty., Alabama, 78 F.3d 491, 493-94 (11th Cir. 1996) (holding that there was insufficient evidence to permit a jury to find that a prisoner's suicide was foreseeable even though the prisoner was being held on an order of the probate court pending his transfer to a mental-health facility).

The final argument made by Bryant fails as well. Carpenter and Jordan could not have reasonably foreseen that Deitrick might harm himself simply because he was facing multiple felony charges. It is not uncommon for county jails to house prisoners facing multiple felony charges, and the vast majority of those prisoners do not attempt suicide.

C. Deitrick was not being held in the Greene County jail because of a suicide attempt

Finally, the undisputed evidence indicates that Deitrick was not taken into custody and held in the Greene County jail because of a suicide attempt. Thus, none of the circumstances described in Popham would permit a finding that Deitrick's suicide could have been foreseen -- Deitrick did not have a history of suicidal proclivities, Deitrick did not manifest suicidal proclivities in the presence of Carpenter or Jordan,

1180843

and Deitrick was not being held in the Greene County jail because of a suicide attempt. 582 So. 2d at 544.

Conclusion

Bryant sued Carpenter and Jordan alleging that they had negligently performed their duties as employees at the Greene County jail and that their negligence allowed her son Deitrick to commit suicide while he was being held in the jail. But "[t]he controlling factor in determining whether there may be a recovery for a failure to prevent a suicide is whether the defendants reasonably should have anticipated that the deceased would attempt to harm himself," Popham, 582 So. 2d at 543. Bryant has failed to put forth evidence that would allow a factfinder to conclude that Carpenter or Jordan could have anticipated Deitrick's suicide. Accordingly, the summary judgment entered by the trial court is affirmed.

AFFIRMED.

Parker, C.J., and Bryan, J., concur.

Shaw and Mendheim, JJ., concur in the result.