

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**Jeffrey Alan Hylton and Tamara Hylton Woods,
Plaintiffs Below, Petitioners**

vs) **No. 12-0194** (Nicholas County 08-C-70)

FILED

November 16, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

**Wetzel Bennett, individually and in his capacity as
Sheriff of Nicholas County; Henry Spinks, individually and
in his capacity as a Deputy Sheriff of Nicholas County; and
the County Commission of Nicholas County, a public entity,
Defendants Below, Respondents**

MEMORANDUM DECISION

Petitioners Jeffrey Alan Hylton and his mother, Tamara Hylton Woods, plaintiffs below, appeal portions of the Circuit Court of Nicholas County's October 18, 2011, "Final Dismissal Order." Petitioners are represented by Kevin B. Burgess. Respondents, who were defendants below, are Wetzel Bennett, individually and as the Sheriff of Nicholas County; Henry Spinks, individually and as a Deputy Sheriff of Nicholas County; and the County Commission of Nicholas County.¹ Respondents are represented by David J. Mincer.

This Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

On June 30, 2005, which was six days before his eighteenth birthday, Petitioner Mr. Hylton broke into a church and stole musical equipment. He was arrested on July 14, 2005, and was charged as an adult with breaking and entering and grand larceny. He was appointed counsel and ultimately pled guilty to breaking and entering. The circuit court sentenced Mr. Hylton to the statutory term in prison, but then suspended that sentence, granted youthful offender status, and placed Mr. Hylton at the Anthony Center. Mr. Hylton did not appeal his conviction or sentencing. He completed his sentence and was released from the Anthony Center in 2007.

According to respondents, during the criminal proceedings petitioner failed to advise either them or the circuit court that he was a minor at the time he committed the crime. Following his release from the Anthony Center, petitioner informed his probation officer of this

¹ Other defendants were also sued, but petitioners do not assign any error with regard to the dismissal of the other defendants.

issue. The probation officer notified the circuit court, and the court ordered that petitioner's criminal record be expunged.

On April 10, 2008, Mr. Hylton and his mother, Ms. Woods, filed the instant lawsuit seeking damages allegedly arising from Mr. Hylton's prosecution as an adult, rather than as a juvenile. On October 18, 2011, the circuit court dismissed the entire lawsuit with prejudice for multiple reasons.² The present appeal concerns just two of the counts asserted against respondents: malicious prosecution and violation of civil rights.

Among other grounds for dismissal, the circuit court concluded that respondents have statutory immunity from liability for these claims pursuant to West Virginia Code § 29-12A-5. Subsection (a) of this statute provides that "[a] political subdivision is immune from liability if a loss or claim results from: . . . (2) Judicial, quasi-judicial or prosecutorial functions[.]" Subsection (b) of this statute provides that

[a]n employee of a political subdivision is immune from liability unless one of the following applies:

- (1) His or her acts or omissions were manifestly outside the scope of employment or official responsibilities;
- (2) His or her acts or omissions were with malicious purpose, in bad faith, or in a wanton or reckless manner; or
- (3) Liability is expressly imposed upon the employee by a provision of this code.

We consider a circuit court's order granting a motion to dismiss under a de novo standard of review. *Syl. Pt. 2, State ex rel. McGraw v. Scott Runyan Pontiac-Buick, Inc.*, 194 W.Va. 770, 461 S.E.2d 516 (1995). Upon our review of the parties' arguments and the record on appeal, we conclude that respondents do have statutory immunity from these claims and thus the circuit court properly dismissed respondents with prejudice.

Deputy Spinks arrested Mr. Hylton for his crime. Sheriff Bennett and the County Commission had no direct involvement in this arrest or prosecution and were sued because they supervised and employed Deputy Spinks. Petitioner's Complaint makes no factual allegations to show that Deputy Spinks acted manifestly outside the scope of his employment or official responsibilities or acted with malicious purpose, in bad faith, or in wanton or reckless manner when arresting petitioner. Indeed, there is no allegation in the Complaint that Deputy Spinks even recognized the issue of Mr. Hylton's age. There are absolutely no allegations that Deputy Spinks concealed Mr. Hylton's age, took some action to ensure that Mr. Hyton was charged as an adult despite his age, or the similar. Indeed, Mr. Hylton—who was an adult at the time of arrest and prosecution and who had an attorney—apparently did not challenge his prosecution as an adult. Instead, he pled guilty and received the benefit of being treated as a youthful offender. Although petitioners allege in their Complaint that respondents "maliciously and without probable cause prosecuted Mr. Hylton as an adult although he was a juvenile at the time of the

² Because county officials were defendants, a judge from a different circuit was appointed to preside over the case.

alleged offense[,]” the Complaint is devoid of any factual assertions to support this bald claim of malice. We conclude that Deputy Spinks and Sheriff Bennett have statutory immunity from this suit pursuant to West Virginia Code § 29-12A-5(b)

Finally, the petitioners’ claims—malicious prosecution and violation of his civil rights arising from his prosecution as an adult—unquestionably concern prosecutorial functions. The county commission, as an entity of a political subdivision, is statutorily immune from these claims pursuant to West Virginia Code § 29-12A-5(a).

Because we conclude that respondents have statutory immunity, it is unnecessary for us to address the circuit court’s additional reasons for dismissing the claims against them.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: November 16, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Margaret L. Workman
Justice Thomas E. McHugh