

NO: 20-CI-3560

JEFFERSON CIRCUIT COURT

DIVISION NINE (9)

NICHOLAS CLARK, Individually and as Administrator to the
ESTATE OF CHRISTOPHER MCKINNEY

PLAINTIFF

V.

UNITY, LLC., ET. AL.

DEFENDANTS

OPINION AND ORDER

This matter comes before the Court on Defendants Louisville/Jefferson County Metro Government (Metro) and Louisville Metro Police Department's (LMPD) Motion to Dismiss. Plaintiff has responded and Defendants have filed their Reply.

On January 5, 2020, Christopher McKinney died after an altercation with security at the Nowhere Bar operated by Defendant Unity, LLC. Mr. McKinney's Administrator has brought the within action alleging "negligent investigation" against Metro and LMPD. All parties apparently now concede that while Metro is an appropriate party, LMPD is not an entity capable of being sued and must be dismissed. *Matthews v. Jones* 35 F. 3d 1046 (6th Cir. 1994).

A party may move for dismissal pursuant to CR 12.02 (f) for failure to state a claim upon which relief may be granted. This is purely a question of law, *James v. Wilson*, 95 SW 3d 875 (Ky. App. 2002). For purposes of this analysis, the facts of the complaint are admitted as true and are construed most favorably to the plaintiff, *Fox v. Grayson*, 317 SW 3d 1 (Ky. 2010). As set forth in *Pari-Mutuel Clerks' Union v. Kentucky Jockey Club*, 551 SW 2d 801 (Ky. 1977) granting a motion to dismiss is only warranted where it appears that the plaintiff would be unable to prevail under any set of facts. *Gall v. Scroggy*, 725 SW 2d 867 (Ky. App. 1987).

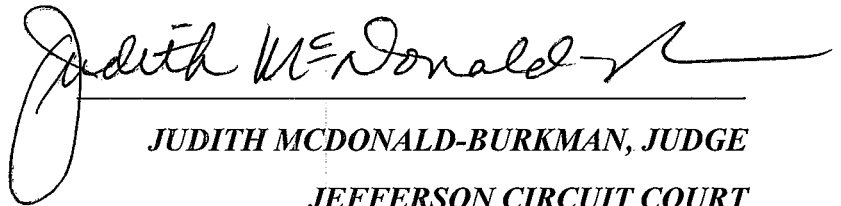
Metro too argues that it should be dismissed as a party. The stated grounds for said dismissal is the doctrine of sovereign immunity. *Yanero v. Davis*, 65 SW 3d 510 (Ky. 2001). Metro is a consolidated local government as set forth in KRS 67C. KRS 67C.101 (2) (e) provides that a consolidated local government shall have the same immunity as that afforded counties. *Jewish Hosp. Healthcare Services, Inc. v. Louisville/Jefferson County Metro Government*, 270 SW 3d 905 (Ky. App. 2008). Metro's immunity was recognized in *Louisville/Jefferson County Metro Government v. Cowan*, 508 SW 3d 107 (Ky. App. 2016).

In his Response Plaintiff engages in a lengthy discussion of the distinction between “discretionary” and “ministerial” actions in support of his argument that, in spite of Metro's claim of sovereign immunity it can be held liable for negligently performing ministerial duties. However, in its Reply Metro notes that it cannot be held liable for the allegedly negligent acts of its employees asserting that while “sovereign immunity” applies to governments, “qualified immunity” applies to its employees.

In *Schwindel v. Meade County*, 113 SW 3d 159 (Ky. 2003), the Court held that a county and by extension a local government cannot “...absent a legislative waiver of immunity be held vicariously liable in a judicial court for the ministerial acts of its agents, servants and employees. If damages could be recovered against a county on the basis of respondeat superior, the concept of sovereign immunity would be largely nullified because state and county governments perform their ministerial functions by and through their agents, servants and employees.” While Plaintiff argues that such a waiver has taken place in KRS 65.2003, Metro asserts that it has not since the Claims Against Local Government Act is designed to protect employees of local government. *Louisville/Jefferson County Metro Government v. Braden*, 519 SW 3d 386 (Ky. App. 2017).

Further, the *Schwindel* case, *supra*, specifically held that the Claims Against Local Government Act does not waive sovereign immunity.

IT IS HEREBY ORDERED AND ADJUDGED that Defendants Louisville/Jefferson County Metro Government (Metro) and Louisville Metro Police Department's (LMPD) Motion to Dismiss is GRANTED.



JUDITH MCDONALD-BURKMAN, JUDGE
JEFFERSON CIRCUIT COURT
DIVISION NINE (9)

CONFERENCE CALL NUMBER: 1-774-220-4000

I.D. NUMBER: 595-4356

DATE: _____

8-20-2020

Cc: *Brendan R. Daugherty*
Georgia T. Connally
Unity LLC/David Mattingly/Christopher Watson
Justin Wright
Cole Gibson/Tony Grant/Bert Delong

