

COMMONWEALTH OF KENTUCKY COURT OF APPEALS

Harvey Pelfrey; Daniel Shoemaker; Debbie Alexander; Harley Conkright; Jesse Jones; Julie Adams; Randall Ross; and Unknown Employees, Agents, and/or Representatives of the Three Forks Regional Jail v. The Estate of Steven Dewey McDowell, by and Through Brenda Roberts, as Administratrix

No. 2025-CA-0498-MR (Ky. App. May 29, 2026) · No. 2025-CA-0498-MR · Decided May 29, 2026

SUMMARY

The Kentucky Court of Appeals reviewed an interlocutory appeal from the denial of jail officials' motion for summary judgment. The court held that Ross, Jones, Conkright, and Pelfrey were entitled to qualified official immunity because their relevant acts were discretionary, performed in good faith, and within the scope of their authority. The court dismissed the portion of the appeal concerning substantive negligence arguments against Alexander, Shoemaker, and Adams and remanded for further proceedings.

CASE DETAILS

COURT	Commonwealth of Kentucky Court of Appeals
WRITING FOR THE COURT	Thompson, Chief Judge; Combs, Judge; A. Jones, Judge
JURISDICTION	Commonwealth of Kentucky Court of Appeals
DECIDED	May 29, 2026
DOCKET	2025-CA-0498-MR
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Interlocutory appeal from the denial of individual-capacity defendants' motion for summary judgment asserting qualified official immunity and, as to some defendants, arguing that the evidence was insufficient to support negligence claims.
STANDARD OF REVIEW	The denial of summary judgment is reviewed to determine whether the trial court correctly found no genuine issue of material fact and that the moving party was entitled to judgment as a matter of law. The record is viewed in the light most favorable to the nonmoving party, with all doubts resolved in that party's favor. Entitlement to qualified official immunity is a question of law reviewed de novo. On an

	interlocutory appeal from denial of summary judgment based on immunity, the court does not consider substantive issues.
PRECEDENTIAL VALUE	Published and designated to be published; precedential under Kentucky law.
PARTIES	Harvey Pelfrey, Daniel Shoemaker, Debbie Alexander, Harley Conkright, Jesse Jones, Julie Adams, Randall Ross, Unknown Employees, Agents, and/or Representatives of the Three Forks Regional Jail v. The Estate of Steven Dewey McDowell, by and Through Brenda Roberts, as Administratrix

TOPICS

interlocutory appeal

summary judgment

qualified immunity

appellate jurisdiction

government liability

PRACTICE AREAS

civil procedure

government liability

torts

civil rights

QUESTIONS PRESENTED

1. Whether deputies Ross, Jones, and Conkright were entitled to qualified official immunity for their use of oleum capsicum to control McDowell.
2. Whether Jail Administrator Pelfrey was entitled to qualified official immunity for alleged failures involving jail rules, training, and medical procedures concerning oleum capsicum.
3. Whether the Court of Appeals could review the substantive sufficiency of negligence claims against Alexander, Shoemaker, and Adams in an interlocutory appeal from the denial of summary judgment.

HOLDINGS

1. The deputies' use of oleum capsicum to control an inmate who left his cell and repeatedly disobeyed verbal commands was discretionary rather than ministerial. The deputies made a prima facie showing that the acts were within their discretionary authority, the Estate did not establish bad faith, and the acts were within the scope of their employment. They were therefore entitled to qualified official immunity and summary judgment.
2. Pelfrey's rule-making and enforcement functions concerning the conduct of jail employees and inmates, including the use of oleum capsicum and related medical response, were discretionary acts performed in good faith and within the scope of his authority. Pelfrey was therefore entitled to qualified official immunity and summary judgment.
3. The court lacked authority to consider the defendants' substantive argument that the record did not support negligence claims because the interlocutory-appeal exception for immunity-based summary-judgment denials does not permit review of substantive issues.

KEY QUOTATIONS

“Qualified official immunity applies to the negligent performance by a public officer or employee of (1) discretionary acts or functions, i.e., those involving the exercise of discretion and judgment, or personal deliberation, decision, and judgment, (2) in good faith; and (3) within the scope of the employee’s authority.”
(at 9-10)

“We may not consider substantive issues on an interlocutory appeal from summary judgment.” (at 18-19)

FACTUAL BACKGROUND

Steven Dewey McDowell was incarcerated at Three Forks Regional Jail and was reported to be hallucinating and experiencing Xanax withdrawal. Jail staff moved him to a medical observation cell and began detox procedures, but the Estate alleged that he did not receive a medical or psychiatric evaluation. After McDowell left the cell and failed to comply with commands, deputies Ross, Jones, and Conkright used oleum capsicum spray to obtain his compliance; he was returned to his cell and was found unresponsive approximately ten minutes later. Staff began CPR and summoned EMS, but McDowell died at the scene.

PROCEDURAL HISTORY

The Estate filed a wrongful-death action in Lee Circuit Court alleging negligence, excessive force, assault and battery, negligent hiring, training and supervision, negligent medical care, Kentucky constitutional violations, and violations of Kentucky statutes and administrative regulations. The circuit court dismissed claims against Three Forks Regional Jail and defendants in their official capacities, but the action continued against the defendants individually. The circuit court denied the individual-capacity defendants' motion for summary judgment. The Court of Appeals reversed as to Ross, Jones, Conkright, and Pelfrey, holding them entitled to qualified official immunity and summary judgment, and dismissed the portion of the appeal concerning the substantive negligence arguments of Alexander, Shoemaker, and Adams.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The order of the Lee Circuit Court was reversed as to Ross, Jones, Conkright, and Pelfrey, who were held entitled to qualified official immunity and summary judgment. The portion of the appeal addressing the substantive negligence claims of Alexander, Shoemaker, and Adams was dismissed, and the matter was remanded to the Lee Circuit Court for further proceedings.

CASES CITED

- Transportation Cabinet, Bureau of Highways, Commonwealth of Kentucky v. Leneave, 751 S.W.2d 36, 37 (Ky. App. 1988)
- Breathitt Cnty. Bd. of Educ. v. Prater, 292 S.W.3d 883, 886 (Ky. 2009)
- Baker v. Fields, 543 S.W.3d 575, 577-78 (Ky. 2018)
- Steelvest, Inc. v. Scansteel Service Center, Inc., 807 S.W.2d 476, 480 (Ky. 1991)

- Scifres v. Kraft, 916 S.W.2d 779, 781 (Ky. App. 1996)
- Yanero v. Davis, 65 S.W.3d 510, 521-23, 529 (Ky. 2001)
- Mattingly v. Mitchell, 425 S.W.3d 85 (Ky. App. 2013)
- Rowan Cnty. v. Sloas, 201 S.W.3d 469, 475, 478-81, 491 (Ky. 2006)
- Patton v. Bickford, 529 S.W.3d 717, 724 (Ky. 2016)
- Kindred Healthcare, Inc. v. Henson, 481 S.W.3d 825, 829 (Ky. App. 2014)
- Franklin County, Ky. v. Malone, 957 S.W.2d 195, 200 (Ky. 1997)
- Wilson v. England, 705 S.W.3d 35, 40 (Ky. App. 2024), disc. rev. denied (Feb. 13, 2025)

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