

RENDERED: FEBRUARY 3, 2017; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-001767-MR

LEWIS WILLIAMSON

APPELLANT

v. APPEAL FROM ROWAN CIRCUIT COURT
HONORABLE WILLIAM E. LANE, JUDGE
ACTION NO. 15-CI-90186

MOREHEAD STATE UNIVERSITY and
COMMONWEALTH OF KENTUCKY

APPELLEES

OPINION
AFFIRMING

** ** *

BEFORE: KRAMER, CHIEF JUDGE; ACREE AND TAYLOR, JUDGES.

KRAMER, CHIEF JUDGE: Lewis Williamson appeals from an order by the Rowan Circuit Court dismissing his suit against Morehead State University (MSU), in which he alleged that he suffered damages as a result of being exposed to asbestos while at MSU. Because the Board of Claims has exclusive jurisdiction over this matter, we affirm.

Facts

Williamson received a B.S.N. in nursing from MSU in 2002. He then worked at MSU from 2004 to 2007 as the multi-media laboratory coordinator.

Williams began experiencing pain and inflammation, which he attributed to the presence of asbestos within MSU's facilities. As a result, he claims that he refused a job with the federal government and has not been able to work since 2010. In his complaint, Williamson states that he currently has "[a]sbestosis, lung disease, asbestos-induced pleural disease, COPD with [a]sthma overlap syndrome [and] whole body asbestos saturation inducing generalized inflammation with multi-organ involvement...."

Williamson filed a complaint in the Rowan Circuit Court. The circuit court dismissed on the basis that exclusive jurisdiction asbestos-related claims relating to government entities is vested in the Board of Claims.¹ This appeal follows.

Analysis

The Board of Claims Act "represents not a creation of immunity, but rather a limited waiver of immunity to the extent that immunity exists. It also designates where and when a claim can be asserted against the Commonwealth or against an otherwise immune agency, officer, or employee." *Yanero v. Davis*, 65 S.W.3d 510, 524 (Ky. 2001). "All claims against immune entities fall squarely

¹ At the time Williamson filed this case he also had a pending action in the Board of Claims and a separate worker's compensation claim. He stated to the circuit court that he moved to dismiss his worker's compensation claim because he had filed the present case. The disposition of either case is not included in the record to this appeal.

within the purview of the Board of Claims Act where resides exclusive jurisdiction for claims against the entity. The Board of Claims Act and sovereign immunity are co-extensive.” *Withers v. University of Kentucky*, 939 S.W.2d 340, 346 (Ky. 1997).

“Governmental immunity extends to state agencies that perform governmental functions (*i.e.*, act as an arm of the central state government) and are supported by money from the state treasury. However, unless created to perform a governmental function, a state agency is not entitled to governmental immunity.” *Autry v. Western Kentucky University*, 219 S.W.3d 713, 717 (Ky. 2007) (citation omitted). Our Supreme Court has previously held that both Western Kentucky University (WKU) and the University of Kentucky are state agencies. *Withers*, 939 S.W.2d at 343-44; *Autry*, 219 S.W.3d at 718. In *Autry*, a student died from her injuries after she was assaulted, raped and set on fire in a campus dormitory room. 219 S.W.3d at 716. Because WKU “was in charge of hiring personnel, making policy, and generally managing the operations of the dorm[,]” the student’s estate sued WKU. *Id.*

The Court in *Autry* examined whether WKU was entitled to sovereign immunity:

WKU is a state agency because it serves as a central arm of the state performing the essential function of educating state citizens at the college level and because it receives money from the state treasury in support of this function. *Withers v. University of Kentucky*, 939 S.W.2d 340, 343 (Ky.1997). Further, KRS 44.073(1) says that WKU is a state agency, as a state institution of higher education.

Pursuant to KRS 164.300, WKU must also render the supplemental service of establishing and maintaining dormitories. It is therefore entitled to governmental immunity unless the functions at issue can be deemed proprietary.

Id. at 717. This analysis is applicable to the present case. KRS 44.073(1) provides that “state institutions of higher education under KRS Chapter 164 are agencies of the state.” Because MSU is a state agency, it is entitled to sovereign immunity if maintaining facilities free of asbestos is not a proprietary function. “A proprietary function is of the type normally engaged in by businesses or corporations and will likely include an element of conducting an activity for profit.” *Caneyville Volunteer Fire Dep’t v. Green’s Motorcycle Salvage, Inc.*, 286 S.W.3d 790, 804 (Ky. 2009).

In KRS 164.300, the legislature provided that state universities have the following purpose:

The purpose of the state universities and colleges is to give instruction at the college level, in residence and through extension study, in academic, vocational and professional subjects and in the science and art of teaching, including professional ethics, to conduct training schools, field service and research, and to render such supplemental services as conducting libraries and museums, dormitories, farms, recreational facilities and offering instruction in such general and cultural subjects as constitute a part of their curricula.

Using KRS 164.300 as a guidepost, the Court in *Autry* concluded that WKU was not engaged in a proprietary function, stating that “[o]nly WKU can run an official residence hall for the benefit of the students. Other providers of housing

do so as a business, for profit; WKU does so as part of its definitive function.

Viewed in this light, WKU clearly is entitled to governmental immunity.” 219

S.W.3d at 718. Examining *Autry* in the context of this case, MSU was not engaged

in a proprietary function; maintaining a classroom environment free from

hazardous materials is subsumed within a state university’s stated purpose in KRS

164.300. Accordingly, MSU cannot be sued in circuit court for Williamson’s

alleged injury.

We agree with the circuit court that KRS 44.070(1) applies to the present case. That statute provides in relevant part that:

Any claim against the Commonwealth, its departments, agencies, officers, agents, or employees, or a school district board of education, its members, officers, agents, or employees for damages sustained as the result of exposure to asbestos before, during or after its removal from a facility owned, leased, occupied, or operated by the Commonwealth or a school district board of education shall be brought before the Board of Claims.

This case falls squarely within the purview of KRS 44.070(1), as the only damages Williamson requests are purportedly the result of his alleged asbestos exposure at MSU. Williamson claims that he sued MSU for both negligent and intentional torts, and that therefore KRS 44.070(1) is inapplicable. We disagree. KRS 44.070(1) on its face applies to “[a]ny claim ... for damages sustained as the result of exposure to asbestos” (Emphasis added). Because MSU’s sovereign immunity was waived to the extent that those claims must be raised before the Board of Claims, the circuit court lacked jurisdiction over this

case. Because the Board of Claims had exclusive jurisdiction over this case, the order of the Rowan Circuit Court dismissing this case is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Lewis Williamson
Louisa, Kentucky

BRIEF FOR APPELLEE:

Katherine M. Coleman
Patsey Ely Jacobs
Lexington, Kentucky

Supreme Court of Kentucky

2017-SC-000093-D
(2015-CA-001767)

LEWIS WILLIAMSON

MOVANT

V.

ROWAN CIRCUIT COURT
2015-CI-90186

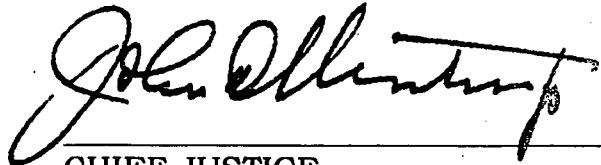
MOREHEAD STATE UNIVERSITY, ET AL.

RESPONDENTS

ORDER DENYING DISCRETIONARY REVIEW

The motion for review of the decision of the Court of Appeals is
denied.

ENTERED: December 7, 2017.

A handwritten signature in black ink, appearing to read "John C. Blanton", is written over a horizontal line.

CHIEF JUSTICE

**Additional material
from this filing is
available in the
Clerk's Office.**