COURT OF APPEALS
DECISION
DATED AND RELEASED

NOVEMBER 21, 1995

NOTICE

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-1090-FT

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

TODD MC GRECK and
BETH MC GRECK,

Plaintiffs-Appellants,

v.

COUNTY OF MARATHON, a municipal corporation,

Defendant-Respondent.

APPEAL from a judgment of the circuit court for Marathon County: ANN WALSH BRADLEY, Judge. *Affirmed*.

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Todd McGreck and his juvenile daughter, Beth, appeal a summary judgment that dismissed their lawsuit against Marathon County. Beth and eleven other juvenile girls broke out of the County's juvenile shelter home, with temperatures hovering around -40 degrees Fahrenheit. The McGrecks' lawsuit sought damages for the injuries Beth incurred from the cold.

Their complaint alleged that the facility employees negligently (1) controlled and supervised Beth, (2) deactivated an alarm on the facility door, (3) failed to detect the breakout, and (4) failed to notify police of the breakout. The trial court ruled that the employees had no ministerial duties regarding the breakout and that the County therefore enjoyed immunity from the McGrecks' lawsuit. The trial court correctly granted summary judgment if the County showed the nonexistence of material factual disputes and a right to judgment as a matter of law. ***Powalka v. State Mut. Life Assur. Co.***, 53 Wis.2d 513, 518, 192 N.W.2d 852, 854 (1972). On appeal, the McGrecks argue that the trial court misanalyzed the ministerial duty issue. We reject their arguments and affirm the summary judgment.[1]

In general, public officers enjoy immunity from personal liability for injuries that result from acts performed within the scope of their employment. ***C.L. v. Olson***, 143 Wis.2d 701, 710, 422 N.W.2d 614, 617 (1988). Public officers have no immunity, however, for their negligent performance of ministerial duties. ***Id***. Ministerial duties arise under either of two conditions: (1) the law imposes, prescribes, and defines the time, mode, and occasion for the duty's performance with such certainty that nothing remains for the exercise of the officer's judgment and discretion; or (2) a "known present danger" of such force exists that the danger itself defines the time, mode, and occasion for the duty's performance with such certainty that nothing remains for the exercise of the officer's judgment and discretion. ***Id***. at 717, 422 N.W.2d at 620. If public officers' acts meet neither the "comprehensively defined duty" exception nor "known present danger" exception, then the officials have no ministerial duties and their employer has no vicarious liability for their actions.

Here, the County employees, and thus the County, had immunity. First, no law comprehensively defined the employees' duties concerning the specific acts and omissions the McGrecks allege constitute negligence. Neither the state nor the County has specifically mandated by statute, rule or ordinance how County employees must use door alarms, supervise detainees, take inventory of detainees, or notify law enforcement of breakouts. The facility's own AWOL rules create no ministerial duties; such rules do not have the force of law, and at any rate, they do not specifically prescribe employees' duties in the event of a multiple detainee breakout. Second, the County employees

[1] This is an expedited appeal under RULE 809.17, STATS.

encountered no "known present danger" that would have compelled them to take further precautions against the breakout. The event was sudden and unexpected; County employees had no prior knowledge and no reason to anticipate it, especially in light of the -40 degrees temperature. Further, we note that at least one of the McGrecks' negligence claims was irrelevant; County employees saw the breakout, rendering the alarm deactivation immaterial. In sum, County employees acted within their discretion, and no ministerial duties arose from the facts shown on summary judgment.

This case is unlike ***Cords v. Anderson***, 80 Wis.2d 525, 259 N.W.2d 672 (1977), which the McGrecks cite. In ***Cords***, three coeds sustained injuries when they fell into a deep gorge at Parfrey's Glen. The ***Cords*** court held that the hazardous conditions at Parfrey's Glen posed a "known present danger" and that the manager of Parfrey's Glen should have posted warning signs or closed hazardous trails. ***Id***. at 541-42, 259 N.W.2d at 679-80. Parfrey's Glen posed uniquely dangerous terrain to unwary visitors, fully appreciated only by the custodial state officials. Here, the danger was not comparable. The knowledge of ambient outside temperatures was available to anyone. Further, the unknown threat in ***Cords*** presented irreversible consequences; someone who fell into the gorge would sustain injuries precipitously. Here, however, the detainees retained control over their health; they could always return to the facility and avoid the cold temperatures. The fact that injuries ultimately occurred does not mean that County employees failed to heed a "known present danger." Finally, the McGrecks have not challenged the trial court's refusal to pierce the employees' immunity under cases involving municipal medical personnel. We thus will not review them. *See, e.g.*, ***Scarpaci v. Milwaukee County***, 96 Wis.2d 663, 686-87, 292 N.W.2d 816, 827 (1980). In sum, the trial court correctly granted the County summary judgment.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.