

IN THE CLAIMS COMMISSION FOR THE STATE OF TENNESSEE  
WESTERN DIVISION

LATONIE SEALS,

Claimant,

v.

Claim Number 20-091-070  
REGULAR DOCKET

STATE OF TENNESSEE,

Defendant.

FILED

DEC 01 2009

Tennessee Claims Commission  
CLERK'S OFFICE

ORDER ON DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT

SEARCHED ✓  
INDEXED ✓  
SERIALIZED ✓  
FILED ✓  
DEC 01 2009  
CLERK'S OFFICE  
TENNESSEE CLAIMS COMMISSION  
WESTERN DIVISION  
MEMPHIS, TENNESSEE

This matter comes before the Commission pursuant to Tennessee Code Ann. § 9-8-307 (a)(1)(E), for negligent care, custody and control of persons. It arises out of the brutal multiple murders of Claimant's husband, Hollis Pete Seals, and five others in March, 2008, on Lester Street in Memphis, Tennessee, allegedly at the hands of Jesse Dotson. Mr. Dotson had been paroled in August, 2007, after serving fourteen years for second degree murder.

It is Claimant's contention that Dotson should not have been released on parole and, in fact, that Mr. Dotson should have been

sentenced to death and/or given a true life sentence for the earlier murder.

In August, 2009, the Commission granted the State's *Motion to Dismiss* Claimant's cause of action against the sentencing judge after finding that the judge had judicial immunity with regard to the sentencing of Jesse Dotson for second degree murder. See *Webb v. Fisher*, 109 Tenn. 701, 705, 72 S.W.110, 111 (1903); *Mercer v. HCA Health Servs. of Tenn., Inc.*, 87 S.W.3d 500, 503-04 (Tenn. Ct. App. 2002).

With regard to Mr. Dotson's release on parole, the Commission denied the State's *Motion to Dismiss*. The State's motion, which was based on the State's assertion that because Mr. Dotson's sentence was set to expire on January 26, 2008, he would have been released prior to the Lester Street murders even if he had not been paroled, was not accompanied by affidavits or other documents establishing when Mr. Dotson's sentence would have expired.

However, the State subsequently filed documents which establish that Dotson's sentence would have expired on January 26, 2008, more than a month before the heinous murders.

According to the affidavit of Candace Whisman, Director of Sentence Management Services for the Tennessee Department of Correction, hereinafter referred to as TDOC, Jesse Dotson was release on parole on August 27, 2007. (Whisman affidavit, para. 4) After Mr. Dotson's Prisoner Sentence Reduction Credits were applied, his expiration date was moved to January 26, 2008. (Whisman affidavit, para. 8)

According to the Tennessee Board of Probation and Parole's general counsel, Columba A. McHale, at the time of the Lester Street murders on March 3, 2008, "the Board of Probation and Parole had no jurisdiction to revoke Mr. Dotson's parole or file a warrant since Mr. Dotson's sentence had expired on January 26, 2008." (Affidavit of Columba A. McHale, para. 2-H)

The standard for granting or denying summary judgment motions has recently come under close scrutiny in Tennessee. In *Martin v. Norfolk Southern Railroad*, 271 S.W.3d 76 (Tenn. 2009), the Court sets out a succinct synopsis of the current state of summary judgment procedure:

The moving party is entitled to summary judgment only if the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits ... show that there is no genuine issue as to any material

fact and that the moving party is entitled to a judgment as a matter of law.” Tenn. R. Civ. P. 56.04; *accord Penley v. Honda Motor Co.*, 31 S.W.3d 181, 183 (Tenn. 2000). The moving party has the ultimate burden of persuading the court that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. *Byrd v. Hall*, 847 S.W.2d 208, 215 (Tenn. 1993). Accordingly, a properly supported motion for summary judgment must show that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. *See Staples v. CBL & Assocs., Inc.*, 15 S.W.3d 83, 88 (Tenn. 2000); *McCarley v. W. Quality Food Serv.*, 960 S.W.2d 585, 588 (Tenn. 1998). If the moving party fails to make this showing, then “the non-movant’s burden to produce either supporting affidavits or discovery materials is not triggered and the motion for summary judgment fails.” *McCarley*, 960 S.W.2d at 588; *accord Staples*, 15 S.W.3d at 88.

The moving party may make the required showing and therefore shift the burden of production to the nonmoving party by either: (1) affirmatively negating an essential element of the nonmoving party’s claim; or (2) showing that the nonmoving party cannot prove an essential element of the claim at trial. *Hannan v. Alltel Publ’g Co.*, 270 S.W.3d 1, 5 (Tenn. 2008); *see also McCarley*, 960 S.W.2d at 588; *Byrd*, 847 S.W.2d at 215 n. 5. Both methods require something more than an assertion that the nonmoving party has no evidence. *Byrd*, 847 S.W.2d at 215. Similarly, the presentation of evidence that raises doubts about the nonmoving party’s ability to prove his or her claim is also insufficient. *McCarley*, 960 S.W.2d at 588. The moving party must either produce evidence or refer to evidence previously submitted by the nonmoving party that negates an essential element of the nonmoving party’s claim or shows that the nonmoving party cannot prove an essential element of the claim at trial. *Hannan*, 270 S.W.3d at 5. We have held that to negate an essential element of the claim, the moving party must

point to evidence that tends to disprove an essential factual claim made by the nonmoving party. See *Blair v. W. Town Mall*, 130 S.W.3d 761, 768 (Tenn. 2004). If the moving party is unable to make the required showing, then its motion for summary judgment will fail. *Byrd*, 847 S.W.2d at 215.

If the moving party makes a properly supported motion, then the nonmoving party is required to produce evidence of specific facts establishing that genuine issues of material fact exist. *McCarley*, 960 S.W.2d at 588; *Byrd*, 847 S.W.2d at 215.

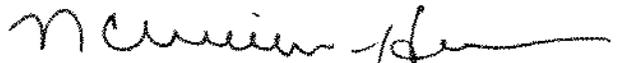
In the case at bar, the Commission has jurisdiction over this claim only if Mr. Dotson was in the care, custody and control of the State on March 3, 2008. In light of the evidence presented by the State regarding the expiration of Mr. Dotson's sentence, the Commission **FINDS** it does not have jurisdiction over this claim pursuant to Sec. 9-8-307(a)(1)(E).

Even if the Claimant had been able to establish jurisdiction over this claim, the Claimant cannot not prevail with proving that the parole board's decision to release Jesse Dotson in August was the proximate cause of the Lester Street murders. The essence of Claimant's argument is that if the parole board had kept Mr. Dotson in prison, or had returned him to prison after it was reported to police that he robbed and threatened his brother, Cecil Dotson, on January 29, 2008, he would not have been able to commit the Lester Street

murders. However, the State's proof establishes that Dotson's sentence had already expired on January 26, 2008, before the alleged crime and threat against his brother, and before the Lester Street murders were committed. By that time, the parole board had lost all its authority over Mr. Dotson.

The Commission therefore **FINDS** that Claimant cannot prove an essential element of her claim at trial. *Hannan*, 270 S.W.3d at 5. Defendant's motion for summary judgment must, therefore, be **GRANTED** and the Claimant's claim **DISMISSED**. The trial previously scheduled for December 10, 2009 is cancelled.

**IT IS SO ORDERED.**

  
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**NANCY C. MILLER-HERRON,  
COMMISSIONER**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was mailed by first class U.S. mail, postage prepaid, to:

Ms. LaTonie Seals  
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This the 1 day of December, 2009.

  
MARSHA RICHESON, CLERK  
TENNESSEE CLAIMS COMMISSION