

Circuit Court for Baltimore City
Case No. 24-C-21-003624

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1810

September Term, 2021

MICHAEL MARKS

v.

CRAIG RIVERS, et. al.

Kehoe,
Berger,
Arthur,

JJ.

Opinion by Berger, J.

Filed: December 9, 2022

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This case arises from a shooting incident at Frederick Douglass High School (“Douglass”) in Baltimore City. Appellant, Michael Marks, was a para-educator employed at Douglass and was shot twice during an encounter with the shooter. Marks filed suit against the Baltimore City Public School System (“BCPSS”), Craig Rivers, the principal of Douglass, Johnny Rhue, a Baltimore City School Police officer, and Robert Cannon, a hall monitor and/or security officer (collectively referred to as “Appellees”). Appellees filed a joint Motion to Dismiss and argued that Principal Rivers, Rhue, and Cannon were entitled to public official immunity. The Circuit Court for Baltimore City dismissed Marks’s claims, finding that Rhue and Cannon were entitled to public official immunity as Baltimore City School Police officers, and further, that Principal Rivers was also entitled to public official immunity as a public school principal.

Marks presents two questions for our review,¹ which we have rephrased and consolidated, for clarity, as follows:

- I. Whether the circuit court erred in granting Appellees’ Motion to Dismiss on the grounds of public official immunity as to Principal Rivers and Cannon.

¹ Marks’s original questions presented are as follows:

1. Did the circuit court err in denying Plaintiff the opportunity to amend his complaint when new information was brought to light during discovery while the court simultaneously considered Defendant’s Motion to Dismiss?
2. Did the circuit court err in finding that a school principal enjoyed public official immunity and was thus immune from suit that do not allege malice or gross negligence?

For the reasons explained herein, we vacate the circuit court’s dismissal as to Principal Rivers and Cannon and remand for further proceedings consistent with this opinion.

FACTS AND PROCEDURAL HISTORY

We address only the facts necessary for our review of the circuit court’s dismissal of Marks’s claims and will provide a brief description of the events leading to Marks’s lawsuit and this appeal.

On February 8, 2019, Neil Davis walked into the main lobby of Douglass. Marks alleges in his complaint that Davis entered Douglass without being screened or checked-in by Cannon. Marks alleges in his complaint that he witnessed Davis loitering in the lobby and that he approached him to ask if he could assist him. Marks claims that Davis told him that he was there to get revenge on students of Douglass who had attacked his sister. Marks alleges in his complaint that he took Davis to an office near the lobby security desk. At this point, Davis drew a firearm from his pocket and fired at Marks. A struggle ensued, and Marks was able to wrestle the firearm from Davis and subdue him. During the struggle, Davis fired five more shots, two of which struck Marks in the stomach and groin.

Marks filed suit against BCPSS, Principal Rivers, Rhue, and Cannon. Marks alleged Principal Rivers negligently reduced the security protocols for entrance into Douglass. Marks further alleged Rhue and Cannon failed to keep the school safe in their capacities as a police officer and/ or “school resource officers.” Appellees filed their Motion to Dismiss, arguing Rhue and Cannon were entitled to public official immunity as

Baltimore City School Police officers. Appellees further argued Principal Rivers was also entitled to public official immunity as a public school principal. Marks filed a response and indicated that information had come to light that Cannon was merely a hall monitor -- not a police officer -- and was not entitled to public official immunity.

The circuit court held a hearing on January 10, 2022. The circuit court determined that it would not consider matters and evidence outside of the complaint, and therefore, would render its decision under the standard imposed for ruling on a motion to dismiss. The circuit court found that Rhue and Cannon were Baltimore City School Police officers and public officials acting in their discretionary capacities. The circuit court concluded that Rhue and Cannon were entitled to public official immunity, and therefore, granted Appellees' Motion to Dismiss.

The circuit court further found that Principal Rivers was a public official acting within his discretionary capacity and concluded he was also entitled to public official immunity. The circuit court granted Appellees' Motion to Dismiss as to Principal Rivers and declined to reach Appellees' additional arguments. Marks filed this timely appeal of the circuit court's dismissal as to Principal Rivers and Cannon.

DISCUSSION

Standard of Review

Our review of the circuit court's grant of a motion to dismiss is *de novo*. *D.L. v. Sheppard Pratt Health Sys., Inc.*, 465 Md. 339, 350 (2019). "When reviewing the grant of a motion to dismiss, the appropriate standard of review is whether the trial court was legally

correct.” *Id.* (quoting *Blackstone v. Sharma*, 461 Md. 87, 110 (2018) (internal quotation marks omitted)). When reviewing a motion to dismiss, appellate courts “accept all well-pled facts in the complaint, and reasonable inferences drawn from them, in a light most favorable to the non-moving party because the object of a motion to dismiss is to argue that relief could not be granted on the facts alleged as a matter of law.” *Sprenger v. Pub. Serv. Comm’n of Md.*, 400 Md. 1, 21 (2007) (internal quotation marks and citations omitted).

I. The circuit court erred in granting Appellees’ Motion to Dismiss.

We first consider whether the circuit court erred in granting Appellees’ Motion to Dismiss as to Principal Rivers. The circuit court determined that Principal Rivers was a public official entitled to public official immunity, and therefore, dismissed Marks’s complaint against Principal Rivers.

There are four factors that are “useful in determining whether an individual is a public official[.]” *D’Aoust v. Diamond*, 424 Md. 549, 587 (2012). Those factors are: (1) whether the position was created by law and involves continuing and not occasional duties; (2) whether the individual performs an important public duty; (3) whether the position calls for the exercise of some portion of the sovereign power of the State; and (4) whether the position has a definite term for which a commission is issued, and a bond and oath are required. *James v. Prince George’s Cnty.*, 288 Md. 315, 323–24 (1980) (citing *Duncan v. Koustenis*, 260 Md. 98, 105 (1970)).

These four factors are not conclusive to determining whether an individual is a public official. *D’Aoust, supra*, 424 Md. at 587. An individual may still be considered a

public official if he or she “exercises a large portion of the sovereign power of government or can be called on to exercise police powers as a conservator of the peace.” *de la Puente v. Cnty. Comm’rs of Frederick Cnty.*, 386 Md. 505, 512 (2005) (internal quotation marks and citations omitted). The term “sovereign power” has been interpreted to mean “[t]he power to make and enforce laws” and/or “contemplates [] service in a legislative or policy making capacity.” *Id.* at 513.

In our view, Principal Rivers fails to satisfy the four factors entitling him to “public official” status. There is nothing in the record before us to indicate that Principal Rivers’s position “has a definite term for which a commission is issued and a bond and an oath are required.” *James, supra*, 288 Md. at 324. Although a high school principal fulfills an important public duty, there is no indication that Principal Rivers’s position requires any exercise of sovereign power. Indeed, a high school principal neither “make[s] and enforce[s] laws” nor “serve[s] in a legislative or policymaking capacity.” *de la Puente, supra*, 386 Md. at 513.

Further, inasmuch as the position of public school principal is created by law, it is predicated by the position of public school teacher. The Maryland Code provides for an “administrator track” for “develop[ing] teachers into principals.” Md. Code (1978, 2018 Repl. Vol., 2021 Suppl.), § 6-1006 of the Education Article. Accordingly, in order to become a public school principal under the statute, an individual must first be a public school teacher. Maryland law has conclusively established that public school teachers are not public officials. *Duncan, supra*, 260 Md. at 105; *see also Jekofsky v. State Roads*

Comm'n, 264 Md. 471 (1972). In our view, a public school principal is akin to a public school teacher with additional responsibilities. Accordingly, absent any indication otherwise, a public school principal is similarly not a public official. Our holding that a public school principal is not a public official is in accordance with prior case law holding that a public school superintendent is not a public official. See *Baltimore City v. Lyman*, 92 Md. 591 (1901). Indeed, if a public school superintendent is not a public official, it stands to reason that a public school principal who reports to the local public school superintendent is also not a public official.

On the record before us, Principal Rivers fails to satisfactorily meet the four factors that make an individual a public official. We hold, therefore, that Principal Rivers is not entitled to public official immunity and that the circuit court erred in granting Appellees' Motion to Dismiss. We, therefore, vacate the circuit court's dismissal as to Principal Rivers and remand to the trial court for further proceedings consistent with this opinion.

We now consider whether the circuit court erred in granting Appellees' Motion to Dismiss as to Cannon. Appellee concedes that "Cannon is not a public official for purposes of public official immunity[.]" Accordingly, we vacate the circuit court's dismissal as to Robert Cannon. In so doing, we will not address the alternative grounds on which Appellee would have us affirm.² None of these alternative arguments were considered by the trial court and we decline the invitation to consider these arguments initially.

² Alternative grounds advanced by Appellee include that: (1) the exclusive remedy for Marks's injury is workers' compensation; (2) Principal Rivers and Cannon did not owe

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY VACATED AND
REMANDED TO THAT COURT FOR
FURTHER PROCEEDINGS CONSISTENT
WITH THIS OPINION. COSTS TO BE
PAID BY APPELLEES.**

a special duty to Marks; (3) Marks's injury was the result of unforeseen actions of a third party; and (4) Marks's negligence claim is not viable because educators cannot be liable for claims that go to the heart of their educational judgment.