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Case

KENNETH L. WAGNER, II v. CREIGHTON-BEY, ET AL.
(Record Number 121869)

From

The Circuit Court of Stafford County; C. Sharp, Judge.

Counsel

Thomas H. Roberts and Andrew T. Bodoh (Thomas H. Roberts & Associates, P.C.) for appellant.

Jack L. Gould for appellees.

Assignments of Error

1. The circuit court erred in dismissing Wagner's 42 U.S.C. §§ 1983 and 1988 claim on sovereign immunity grounds, as state sovereign immunity does not apply to claims brought under 42 U.S.C. §§ 1983 and 1988 against the state's subdivisions and their agents, and Defendants did not seek dismissal of this claim on those grounds.
2. The circuit court erred in dismissing the intentional assault and battery claims on sovereign immunity grounds, as Virginia law does not immunize government agents when they commit intentional torts.
3. The circuit court erred in dismissing the gross negligence claim and the willful and wanton negligence claim, as the complaint alleges sufficient facts to support these claims, especially as such claims may be pled generally.
4. The circuit court erred in dismissing the claims against the Respondents in their individual capacities, because sovereign immunity does not apply where the government agent was acting outside the scope of his employment, which is a jury question in this case.

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4-22-2013

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