IN THE COURT OF APPEALS OF IOWA

No. 7-410 / 06-1665
Filed October 12, 2007

BARBARA QUERY,
Plaintiff-Appellant,

vs.

POLK COUNTY, IOWA, POLK COUNTY SHERIFF'S DEPARTMENT, and POLK COUNTY JAIL,
Defendants-Appellees.

Appeal from the Iowa District Court for Polk County, Robert B. Hanson, Judge.

The plaintiff appeals from the district court's order granting summary judgment in favor of the defendant. **AFFIRMED.**

Andrea Flanagan and Theodore Sporer of Sporer & Ilic, P.C., Des Moines, for appellant.

Roger J. Kuhle, Des Moines, for appellee.

Heard by Huitink, P.J., and Vogel and Baker, JJ.

VOGEL, J.

Barbara Query brought a tort claim against Polk County based upon injuries she received while incarcerated in the Polk County Jail. Query appeals from the district court's order granting summary judgment in favor of the County. Because we agree with the district court that discretionary function immunity applies to the County, we affirm.

In 2002, Query was incarcerated in the Polk County Jail along with fellow inmate Montemayor. On December 15, 2002, Montemayor had a seizure, was transported to Broadlawns Hospital, and was given medical attention. A short time later, Montemayor was returned to the jail and the general inmate population, with no medical restrictions. Four days later, on December 19, Montemayor had a second seizure. During this second seizure, Query and Montemayor became entangled as Montemayor fell to the floor, pulling Query down with her. As a result, Query was injured. Query sued the County claiming the County was negligent for not segregating Montemayor from the general inmate population after her first seizure on December 15. The County moved for summary judgment asserting the affirmative defense of discretionary function immunity. The district court found that the County did have immunity based upon the discretionary function exception, thereby shielding the County from liability, and granted the County's motion for summary judgment.

We review the district court's grant of summary judgment for correction of errors at law. *Stevens v. Iowa Newspapers, Inc.*, 728 N.W.2d 823, 827 (Iowa 2007). Summary judgment shall be granted when the entire record demonstrates there is no genuine issue as to any material fact and that the

moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 1.981(3); *id*. Discretionary function immunity is an affirmative defense; therefore, the County has the burden of raising and proving the defense. *Anderson v. State*, 692 N.W.2d 360, 364 (Iowa 2005).

Query asserts on appeal that the district court erred when it found that discretionary immunity applied to the County and granted the County's motion for summary judgment. Iowa Code Chapter 670 governs the tort liability of governmental subdivisions, and provides that a county is liable for its torts and the torts committed by its officers and employees acting within the scope of their employment or duties. Iowa Code § 670.1–2 (2007). However, Iowa Code section 670.4 sets forth exceptions to the general rule of liability, including the discretionary function exception. Iowa Code § 670.4(3). A county is immune from liability for "any claim based upon an act or omission of an officer or employee . . . based upon the exercise or performance or the failure to exercise or perform a discretionary function . . . whether or not the discretion is abused." *Id*. The question is whether the district court correctly applied the discretionary function immunity under Iowa Code section 670.4(3) to the jail staff's decision not to administratively segregate Montemayor.

On the federal level, the discretionary function immunity "marks the boundary between Congress's willingness to impose tort liability upon the United States and its desire to protect certain governmental activities from exposure to suit by private individuals." *Berkovitz v. United States*, 486 U.S. 531, 536, 108 S. Ct. 1954, 1958, 100 L. Ed. 2d 531, 540 (1988) (quoting *United States v. Varig Airlines*, 467 U.S. 797, 808, 104 S. Ct. 2755, 2761–62, 81 L. Ed. 2d 660, 671

(1984)). In order for the discretionary function immunity exception to apply, the governmental action must pass a two-part test. *Goodman v. City of Le Claire*, 587 N.W.2d 232, 238 (1998) (adopting "the *Berkovitz* two-step analysis in determining whether a challenged action falls within the discretionary function exception"). First, the action must have some element of judgment or discretion upon the part of the government official. *Anderson*, 692 N.W.2d at 364. Second, the governmental action must be of the kind that the exception was intended to protect. *Id*. This requirement functions as a limitation on the judiciary and prevents judicial "second-guessing of legislative and administrative decisions grounded in social, economic, and political policy through the medium of an action in tort." *Berkovitz*, 486 U.S. at 536–37, 108 S. Ct. at 1959, 100 L. Ed. 2d at 541 (quoting *Varig Airlines*, 467 U.S. at 814, 104 S. Ct. at 2764–65, 81 L. Ed. 2d at 674–75). Therefore, the governmental decision must be susceptible to a public policy analysis. *Anderson*, 692 N.W.2d at 364.

In order to satisfy the first prong of the test, the County must demonstrate that there was some discretion exercised in the decision to not segregate Montemayor from the general jail population. A discretionary decision requires that the action complained of be a matter of choice for the County employees. *See Berkovitz*, 486 U.S. at 536, 108 S. Ct. at 1958, 100 L. Ed. 2d at 540 (stating the discretionary function exception will not apply where a statute mandates that an employee follow a course of action); *Graber v. City of Ankeny*, 656 N.W.2d 157, 161–62 (Iowa 2003) (stating the discretionary function exception may apply where a statute is nothing more than a guideline). The Polk County Jail policy provides that "inmates who require special housing to ensure their safety, the

safety and security of the facility, or the safety of inmates in the general population will be housed in administrative segregation." In order for an inmate to be administratively segregated, the jail staff must make a decision as to whether or not the inmate "poses a serious threat of life, [or] property, to himself/herself," or others. If the decision is made that the inmate poses such a threat, then the inmate will be administratively segregated. Therefore, the jail staff must use their judgment to determine whether an inmate is a threat for an inmate to be administratively segregated. *See Cohen v. United States*, 151 F.3d 1338, 1343 (11th Cir. 1998) (concluding that there is discretion in classifying prisoners).

Here, the jail staff determined that administrative segregation was unnecessary, based on the information they possessed at the time. The record does not contain any evidence that Montemayor was a danger to herself or other inmates. Montemayor had one previous seizure and received medical attention. The treating hospital staff returned Montemayor to the jail, without any orders that she be segregated for her own safety or the safety of others. The jail staff determined that Montemayor posed no serious threat and, based on their judgment, administrative segregation was unnecessary. This factual setting clearly demonstrated the jail staff exercised discretion as to the appropriate classification of confinement of Montemayor.

Because the County has met the first part of the discretionary function immunity test, we next review whether the decision to segregate an inmate is the type of act the immunity is designed to protect. As noted above, discretionary function immunity is designed to protect decisions based upon social, economic,

and political policy. *Berkovitz*, 486 U.S. at 537, 108 S. Ct. at 1959, 100 L. Ed. 2d at 541. As the district court found, the county jail must function in a manner that is economically efficient while providing for the safety of inmates, jail staff, and the facility's security as a whole. The jail staff may use administrative segregation to accomplish this policy, but they may not use administrative segregation as a punitive measure. Additionally, jail staff may only use administrative segregation after determining an inmate poses a serious threat. The jail staff's decision not to segregate Montemayor was consistent with a policy analysis that takes into account the operations of the jail, the purpose of administrative segregation, the safety of the inmates, and the security of the jail as a whole. While decisions of this nature are made on a daily basis, each decision is made within the framework of balancing competing policy interests. *See Graber*, 656 N.W.2d at 166 (holding that the timing of traffic devices is an ordinary day-to-day decision because it only takes into account a general safety concern). "Deciding how to classify prisoners . . . [is] part and parcel of the inherently policy-laden endeavor of maintaining order and preserving security at our nation's prisons." *Cohen*, 151 F.3d at 1344 (citing *Bell v. Wolfish*, 441 U.S. 520, 547, 99 S. Ct. 1861, 1878, 60 L. Ed. 2d 447, 474 (1979)).

Furthermore, we believe the legislature intended for discretionary function immunity to apply to this type of case. *See Cohen*, 151 F.3d at 1344 (stating the classification of prisoners by a correctional institution is protected by discretionary function immunity); *see also Anderson*, 692 N.W.2d at 366 (finding an operational decision of an education institution is protected by discretionary function immunity). Decisions regarding the maintenance and safety of a jail or

prison are matters in which courts are ill equipped to intrude. *See, e.g.*, *Pell v. Procunier*, 417 U.S. 817, 826–27, 98 S. Ct. 2800, 2806, 41 L. Ed. 2d 495, 504 (1974) (stating the maintenance and security of a prison "are peculiarly within the province and professional expertise of corrections officials, and . . . courts should ordinarily defer to their expert judgment in such matters"); *Overton v. State*, 493 N.W.2d 857, 860 (Iowa 1992) (stating that courts should "recognize the unique problems of penal environments by invoking a policy of judicial restraint" and "accord prison administrators wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security" (citing *Bell*, 441 U.S. 520 at 547, 99 S. Ct. at 1878, 60 L. Ed. 2d at 474 (1979))); *Guy v. State*, 396 N.W.2d 197, 202 (Iowa 1986) ("[W]e will not substitute our own opinion where we find the decision of prison officials . . . has been reasonable"). "[S]econd-guessing of the [jail staff's] discretionary decisions is the type of thing avoided by the discretionary function exception, which was designed to prevent judicial second-guessing of legislative and administrative decisions grounded in social, economic, and political policy through the medium of an action in tort." *Cohen*, 151 F.3d at 1344 (citing *Gaubert*, 499 U.S. 315, 323, 111 S. Ct. 1267, 1273, 113 L. Ed. 2d 335) (internal quotations omitted). Accordingly, we hold the district court correctly concluded discretionary function immunity attached to the County's decision not to administratively segregate Montemayor from the general jail population. Summary judgment was appropriately rendered in favor of the County.

AFFIRMED.