SUPREME COURT NO. 94441-5

COURT OF APPEALS NO. 75995-7-I

SUPREME COURT
OF THE STATE OF WASHINGTON

BECKY DEVELLE,

Appellant,

v.

LANDON POPPLETON

Respondents.

RESPONDENT LANDON POPPLETON'S ANSWER TO PETITION FOR REVIEW

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I. IDENTIFICATION OF RESPONDENT[1]

Respondent Landon Poppleton, Ph.D., requests that the Supreme Court deny Petitioner Becky Develle's Petition for Review. Ms. Develle's Petition fails to identify a sufficient basis for Supreme Court review as required by RAP 13.4.

II. COURT OF APPEALS DECISION

Becky Develle seeks review of the February 27, 2017, Court of Appeals decision in Develle v. Poppleton, No. 75995-7-1 (Wn.App. Div. I February 27, 2017). In a unanimous opinion, the Court of Appeals affirmed the trial court's 12(b)(6) dismissal of her claims against Dr. Poppleton, agreeing that he is protected by quasi-judicial immunity. The Court of Appeals also rejected Develle's argument that the trial court did not have authority to appoint Poppleton as a parenting evaluator, citing RCW 26.12.050(1)(b), which statute authorizes a superior court to appoint investigators and other personnel deemed necessary to carry on the work of the family court.

In dismissing her claims, the trial court and the Court of Appeals appropriately recognized that parenting evaluators, when investigating and

[1] Plaintiff/Petitioner Deville added NW Family Psychology, LLC, to the caption of her Amended Complaint, but the proposed amendment was never authorized by the trial court as required by CR 15(a). NW Family Psychology, LLC, has never been properly served and is not a party to this action.

testifying as to child custody, act as "arms of the court" and are, therefore, entitled to quasi-judicial immunity. "Quasi-judicial immunity 'attaches to persons or entities who perform functions that are so comparable to those performed by judges that it is felt they should share the judge's absolute immunity while carrying out those functions.'" Reddy v. Karr, 102 Wn. App. 742, 748, 9 P.3d 927 (2000) (quoting Lutheran Day Care v. Snohomish County, 119 Wn.2d 91, 99, 829 P.2d 746 (1992)). Immunity from suit provides "an entitlement not to stand trial or face the other burdens of litigation." Janaszak v. State, 173 Wn.App. 703, 712, 297 P.3d 723 (2013) (internal quotation marks omitted). Both in the trial court and on appeal, Develle failed to allege any reason or present any evidence as to why Dr. Poppleton, a lawfully appointed parenting evaluator, should be denied immunity, thereby mandating the dismissal of her claims as a matter of law.

III. ISSUES PRESENTED

1. Whether this Court should decline review, because the decision by the Court of Appeals is not in conflict with any decision of the Supreme Court? RAP 13.4(b)(1).
2. Whether this Court should decline review, because the decision of the Court of Appeals is not in conflict with a published decision of the Court of Appeals? RAP 13.4(b)(2).
3. Whether this Court should decline review, because no

significant question of law under the Constitution of the State of Washington or of the United States is involved? RAP 13.4(b)(3).

4. Whether this Court should decline review, because it does not involve an issue of substantial public interest. RAP 13.4(b)(4).

IV. COUNTERSTATEMENT OF FACTS

In August 2014, Develle filed a civil complaint for damages, personal injuries, and wrongful death against Dr. Poppleton. In her Complaint, Develle alleged that in 2011, "the Superior Court of Clark County, WA, appointed by order of the court, Defendant, LANDON POPPLETON, to conduct a Bilateral Parenting Evaluation Plan in order to protect the best interest of the children involve in a custody dispute." Clerk's Papers (CP) at 30. Develle alleged that Dr. Poppleton "breached his Fiduciary Duties as entrusted by this Honorable Court to protect the children involved in the dispute by recommending a custody placement with a neglectful parent." CP at 31. She also alleged that Dr. Poppleton participated in a civil conspiracy against her, and accused him of being the "actual cause"[2] of the suicide of her 17-year-old son, which occurred years after her divorce. Id. Dr. Poppleton answered Develle's Complaint in

[2] In a separate action, Develle sued her former husband, Marc Develle, and his current wife, Robyn Develle, for wrongful death and personal injuries in connection with her son's suicide. Develle v. Develle, Clark County Superior Court Cause No. 15-2-02820-4, filed October 12, 2015.

November 2014 with a CR 12(b)(6) motion to dismiss asserting quasi-judicial immunity.

In response to Dr. Poppleton's motion to dismiss, Develle filed an Amended Complaint for damages without leave of the trial court, as required by CR 15(a). The Amended Complaint, which was never properly filed or served, identified Dr. Poppleton's practice, NW Family Psychology, LLC, as a defendant and deleted the allegation that Dr. Poppleton "was appointed by order of the court." CP at 10. Instead, Develle alleged "the parties entered into an arrangement in which defendant, LANDON POPPLETON, would conduct a Bilateral Parenting Evaluation Plan in order to protect the best interests of the children involved in a custody dispute." Id. After oral argument, the trial court dismissed Develle's civil action on December 11, 2015. The trial court found, and the Court of Appeals later affirmed, that (1) Dr. Poppleton, as a court appointed parenting evaluator, was entitled to quasi-judicial immunity; and that (2) Develle had not alleged any facts, nor propounded any evidence, sufficient to deprive Dr. Poppleton of immunity. The Court of Appeals subsequently denied a motion for reconsideration filed by Develle on March 30, 2017.

V. ARGUMENT AND AUTHORITY

Develle fails to articulate a valid basis for the Supreme Court to accept review of this case. Instead, Develle merely complains that the trial

court and the Court of Appeals were wrong in finding that, as a lawfully court-appointed parenting evaluator, Dr. Poppleton is entitled to quasi-judicial immunity from her civil claims. Both the trial court and the Court of Appeals properly applied the law, but Develle simply rejects the result, which she perceives as unfair. In fact, this case is a text book illustration of why quasi-judicial immunity exists: to enable professionals like Dr. Poppleton, who perform judicial-like functions, to act without fear of personal reprisal by angry parent litigants.[3]

A. Review is not authorized by RAP 13.4(b)(1), because the Court of Appeals decision does not conflict with any decision of this Court.

The Court of Appeals' decision in this case does not conflict with this Court's decision in Babcock v. State, 116 Wn.2d 596, 809 P.2d 143 (1991). Babcock concerned absolute immunity for DSHS caseworkers for negligent foster care investigation and placement. The caseworkers claimed absolute immunity as prosecuting and judicial officers, even though the Legislature had only granted qualified immunity for caseworkers when removing children from abuse in an emergency, and only when doing so in

[3] Develle has never accurately described the circumstances under which she lost custody. Develle lost custody of her children after violating a court-approved parenting plan to which she and her former husband had stipulated. In Re Develle, Cause No. 44484-4-II, Consolidated with No. 44614-6-II, (Wn. App. Div. II, May 27, 2015). Among other things, the Petitioner failed to protect her minor daughter from a boyfriend's son who had previously propositioned the child for sex.

good faith. This Court held that caseworkers were not entitled to absolute immunity from tort liability for negligent foster care investigation and placement that occurred prior to court involvement. Absolute immunity shields the recipient from for willful misconduct as well as negligence. Thus, "[a] caseworker cloaked in absolute immunity could deliberately arrange a foster care placement with a known rapist in order to facilitate the sexual abuse of a child and escape tort liability." Id. at 606-607. As this Court correctly noted, this "should not be the law." Id.

The instant case is different and concerns quasi-judicial immunity for acts specifically authorized by a Washington court of competent jurisdiction. Develle sued Dr. Poppleton, because she did not like the testimony he offered in court regarding her fitness as a parent relative to her now ex-husband. Specifically, Develle alleged that Dr. Poppleton "breached his Fiduciary Duties as entrusted by this Honorable Court to protect the children involved in the dispute by recommending a custody placement with a neglectful parent." CP at 31. Thus, the instant case involves immunity for investigating and testifying as to child custody in court of law, as a court-appointed expert functioning as an "arm of the court" for investigative purposes.

In Babcock, the social workers claimed absolute immunity based upon the "intimate connection between their actions and the judicial

process," even though no Washington court had adjudicated the question of foster care placement. Here, custody of the minor Develle children was decided by the trial court. Develle sued Dr. Poppleton, because she disagrees with what he told the trial court. The Court of Appeals decision in this case does not conflict with Babcock.

B. Review is not authorized by RAP 13.4(b)(2), because the decision of the Court of Appeals is not in conflict with a published decision of the Court of Appeals.

The decision of the Court of Appeals is not in conflict with the holding in Kelley v. Pierce County, 179 Wn. App. 566, 319 P.3d 74 (2014). In Kelley, the appellate court was asked whether quasi-judicial immunity should apply to a GAL appointed in a parental termination action who was alleged to have used his authority and job premises to stalk, prey, and sexually harass the mother. Kelley did not change, and does not otherwise conflict with, Reddy v. Karr, 102 Wn. App 742, 9 P.3d 927 (2000), the case in which the Court of Appeals held that a parenting investigator preparing an evaluation to assist a court in determining a child's custody status is entitled to quasi-judicial immunity. Id. at 749. Both cases hold that a GAL or parenting evaluator is entitled to quasi-judicial immunity when investigating facts and reporting them to a court. Kelley merely clarifies that a GAL or parenting evaluator does not act within his statutory or court-

appointed function when committing alleged torts or making sexual advances towards a parent. Thus, a GAL or parenting evaluator engaged in stalking, assault, or harassment would not be entitled to quasi-judicial immunity.

The record in this case is devoid of any allegation, yet alone evidence, of an intentional tort or misconduct by Dr. Poppleton. Here, the Petitioner alleges only that Dr. Poppleton made a bad custody recommendation by recommending custody with her now ex-husband, whom Develle deemed a "neglectful parent." CP at 31. Independent investigations of allegations between warring parents, professional evaluations of parenting abilities, and determining the degree of bonding between children and parents are difficult tasks and not exact in nature. While judges and experts alike pray for the wisdom of Solomon, a parenting evaluator can be wrong or even negligent, but still be immune from liability. However, as Kelley clarifies, a parenting evaluator cannot, for example, offer to make a different recommendation in exchange for sex or otherwise abuse the powers invested in him or her by the court. This is a critical distinction, which the Petitioner fails to appreciate.

The Petitioner has now pursued multiple appeals in connection with her highly contentious divorce and multiple lawsuit against Dr. Poppleton

both in state and federal[4] court. Over time, as she has become more sophisticated and familiar with the applicable case law and exception, the Petitioner now routinely uses terms like "gross negligence" and "intentional, tortious conduct" in her pleadings. However, the gravamen of her complaint has always been the same: Dr. Poppleton's opinions and recommendations to the trial court were wrong. The record contains no evidence of any intentional or wrongful conduct by Dr. Poppleton. He is, therefore, legally entitled to immunity.

C. Review is not authorized under RAP 13.4(b)(3), because this case presents no significant question of law under the Constitution of the State of Washington or of the United States.

Quasi-judicial immunity is a long-recognized legal doctrine. The immunity attaches to persons or entities that perform functions so comparable to those performed by judges that they ought to share the judge's absolute immunity while carrying out those functions. Lutheran Day Care v. Snohomish County, 119 Wn.2d 91, 99, 829 P.2d 746 (1992). The history of absolute judicial immunity dates back to Bradley v. Fisher, 13 Wall. 355 (1872), wherein the United States Supreme Court first

[4] While this case was pending on appeal, Develle sued GAL Erin Wasley, Clark County, Dr. Poppleton and his psychology practice in federal court alleging the same facts. The case was dismissed in July 2016. See Develle v. Wasley, No. C15-5911BHS, 2016 U.S. Dist. LEXIS 96190 (W.D. Wash. July 21, 2016).

analyzed the need for absolute immunity to protect judges from lawsuits claiming that their decisions had been tainted by improper motives. In Bradley, the nation's highest court explained that the value of this rule was proved by experience. Judges were often called to decide "[controversies] involving not merely great pecuniary interests, but the liberty and character of the parties, and consequently exciting the deepest feelings." Id., at 348. Such adjudications invariably produced at least one losing party, who would "[accept] anything but the soundness of the decision in explanation of the action of the judge." Id.

Here, after first attempting to appeal the trial court's orders from her dissolution proceeding, the Petitioner wrongly targeted Dr. Poppleton, then later Clark County and the GAL Erin Wasley, because she could not sue the trial court itself. This case presents no new or novel questions of law, but rather serves as a textbook illustration of why judicial immunity and quasi-judicial immunity exists. The Petitioner merely objects to this result, but her Petition raises no valid constitutional questions.

D. Review is not authorized under RAP 13.4(b)(4), because this case does not involve an issue of substantial public interest.

There is no matter of public importance stemming from the Petitioner's dissolution proceeding. The Petitioner blames Dr. Poppleton for losing custody of her children and the tragic suicide death of her son

years later, but some important facts are omitted from her pleadings, including the fact that this Court previously declined review of her dissolution case after an unsuccessful appeal that included no allegations of misconduct against Dr. Poppleton.

After the Petitioner's dissolution proceeding was completed, the Court of Appeals affirmed the trial court's ruling on Petitioner's appeal. In that opinion, the appellate court explained the facts of the dissolution case as follows:

> Marc and Becky were married in June 1986. Becky filed for legal separation in March 2011. Marc and Becky had eight children together, five of whom were dependents at the time of trial. Throughout the marriage, Becky was a homemaker who also homeschooled the children.
>
> Dr. Landon Poppleton, a clinical psychologist, conducted a custody evaluation for the Develle family. The efficacy of Becky's teaching methods were central to the resolution of the parenting plan. Dr. Poppleton found that, notwithstanding intelligence quotients in the normal ranges, each of the children scored unacceptably low in various domains of their academic achievement. Citing complaints from the children, Dr. Poppleton noted serious concerns regarding Becky's ability to provide a healthy, supportive home routine including adequate nutrition. Dr. Poppleton also had concerns about Becky's live-in boyfriend's son (D.J.) who had propositioned one of Becky's young daughters for sex.
>
> The trial court appointed Erin Wasley as guardian ad litem to serve as a liaison between the court and the Develle children. Wasley's subsequent investigations corroborated many of Dr. Poppleton's concerns.

The parties proceeded to trial in August 2012. On the second day of trial, the parties announced on the record that they had reached "a global agreement on all of the issues at this time." 2 Report of Proceedings (RP) at 35. The parties agreed that the two youngest children, H.D. and B.D., would remain primarily with Becky while Marc would retain custody over the remaining three dependent children. The trial court adopted the parties' agreement including a review hearing 45 days after entry of the order to determine whether the parenting schedule proved successful for the family and also to reexamine the custody arrangement if necessary. The agreement provided that Marc would pay Becky $1,000 per month in child support, but the trial court made it clear that this amount was subject to review at a later date.

The agreement further specified that Marc had sole decision-making rights relating to the children's education and that Becky could no longer homeschool the children. Moreover, the parties agreed that D.J. would not have unsupervised contact with H.D. or B.D.

The parties agreed that Marc would receive the family home. The trial court ordered Becky to vacate the home and to leave it in a clean and habitable condition. The trial court permitted Becky to take some of the personal property from the home provided she made a list of those items and left the children's possessions there.

The court specifically warned Becky not to leave the home empty of furnishings. The trial court discussed each agreement provision, asking Becky and Marc separately whether they agreed. Becky answered in the affirmative to each question, including the maintenance and child support issue (with the associated review period) as well as the custody arrangement. Becky also answered affirmatively when the trial court asked her whether she "firmly believed" that she and Marc had an agreement. 2 RP at 60. The terms of the agreement were accurately memorialized in a decree of dissolution, parenting plan, and order of child support.

The trial court instructed Wasley to monitor the children's

progress to determine whether the parenting schedule and custody arrangement was working for the family. Before the first review hearing, Marc filed a motion for contempt based in part on reports that there had been a second incident involving D.J. making inappropriate sexual remarks to H.D. Marc alleged that Becky continued to fail to protect H.D. from D.J. contrary to the court's previous order. Marc also complained that the home was in disarray when Becky left and that she took the children's personal property.

The trial court set these matters over for a review hearing the following week. There, informed initially by Wasley's report, the trial court heard testimony from Becky regarding her efforts to supervise her children around D.J. amidst allegations that there had been further unseemly conduct. Becky conceded that she had left H.D. alone with D.J. for a short time on one occasion. Becky also admitted that she allowed B.D. and D.J. to sleep in the same bedroom, asserting ignorance as to that particular prohibition in the parenting plan.

The trial court awarded temporary custody of H.D. and B.D. to Marc pending an evidentiary hearing. Wasley testified at the evidentiary hearing and recommended that Becky be denied overnight visits from that point forward. Wasley's recommendation was based on her ongoing investigation and her interviews with the Develle children. Wasley noted that Becky actively minimized the risk D.J. posed and that the children strongly preferred the current schedule with Marc as the primary parent. Wasley also doubted whether Becky was willing to enforce the court's restrictions.

The trial court examined the factors contained in RCW 26.09.187(3) and concluded that Marc was best suited for primary custody of all the dependent children. The court expressed several concerns, not the least of which was its uncertainty that Becky could provide a loving, stable, and consistent relationship with each of the children. The trial court also noted that, in its view, Becky had overlooked the emotional and developmental needs of the children and that, unlike Marc's home, there were allegations of recent

> emotional and physical abuse in Becky's home. The court awarded primary custody to Marc on a permanent basis.
>
> Becky moved for reconsideration, claiming that the children had been coached to lie. The court denied Becky's motion, ruling that she had not established her burden under either CR 59 or CR 60. The trial court then found Becky in contempt for failing to leave the family home in a clean and habitable condition and because she defied the same order by taking the vast majority of the parties' personal property, including the children's personal property. The trial court allowed her to purge the contempt finding by returning specific items belonging to the children.

In re Marriage of Develle, 187 Wn.App. 1036 (2015), review denied sub nom. In re Marriage of Develle, 185 Wn.2d 1010, 368 P.3d 171 (2016).

The first appellate opinion concerning the Petitioner's dissolution proceeding was issued May 27, 2015. After losing on appeal, Develle commenced this action, her first civil lawsuit against Dr. Poppleton, in August 2015. Develle then filed a second civil action in federal lawsuit in United States District Court in as a reaction to the instant case being dismissed. In a separate civil action, Develle has also sued her former husband, Marc Develle, and his current wife, Robyn Develle, asserting causes of action for wrongful death and personal injuries. Critically, at no time, in no any pleading or other proceeding, has the Petitioner acknowledged the fact that she lost custody of her children only after she materially violated court orders, which, among other things, required that

she protect her young daughter from unwanted sexual advances.

For years, the Petitioner has wrongly made conclusory, nonspecific allegations against Dr. Poppleton, which each reviewing court has rejected, as this Court should. The Petitioner's Petition for Review simply is not properly grounded in fact or law and presents no novel constitutional or public policy issue meriting the attention of the State's highest court.

VI. CONCLUSION

This Court should reject Petitioner's Petition for Review.

DATED this 26th day of June, 2017.

ANDREWS • SKINNER, P.S.

By _____

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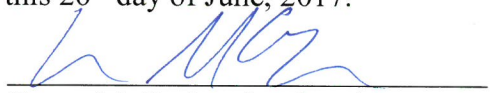
DECLARATION OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington, that the following is true and correct:

That on June 26, 2017, I arranged for service of the foregoing Respondent Landon Poppleton's Answer to Petition for Review, to the court and to the parties to this action as follows:

Supreme Court of the State of Washington	Via email for filing
Becky Develle 5702 NE 64th St. Vancouver, WA 98661 Email: rubies31@comcast.net	Via US Mail

Dated at Seattle, Washington this 26th day of June, 2017.



Conor McCauley, legal assistant