

COURT OF APPEALS NO. 48587-7-II

CLARK COUNTY SUPERIOR COURT NO. 15-2-02252-4

IN THE COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON

BECKY DEVELLE,

Appellant,

v.

LANDON POPPLETON, et ux., and
NW FAMILY PSYCHOLOGY, LLC,

Appellees.

FILED
COURT OF APPEALS
DIVISION II
2016 SEP 22 AM 11:25
STATE OF WASHINGTON
BY Becky Develle
DEVELLE

REPLY BRIEF OF APPELLANT

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I. TABLE OF AUTHORITIES

Washington Cases

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Kelley v. Pierce, 4398-2-II (2014)

Other

Washington Superior Court case no.: 11-3-00581-7, Clerk's
Papers 37

II. INTRODUCTION

Appellant, Becky Develle, respectfully replies to the Brief of Respondent (BOR), Landon Poppleton.

Poppleton's BOR is irrelevant in significant part, as it discusses litigation of Develle in her subsequent divorce, which is not on review at this time. BOR misconstrues the train of events after his involvement with Develle, arguing his case in the pre-answer stage.

In fact, by inclusion of issues of the subsequent dissolution case of Develle, BOR makes an argument which tends to implicate Poppleton as the proximate cause of Develle's injuries; but this is not the issue in the instant case.

There is one main issue before this court: may an action be brought for bad faith and gross negligence committed outside the course and scope of the duty of an investigator. This honorable court in *Kelley v. Pierce*, 4398-2-II (2014) has said emphatically, yes. The same answer should be held in the instant case as well.

III. REBUTTAL OF COUNTERARGUMENTS

A. BOR states Develle has produced a record which, "is devoid of any evidence of improper conduct on the part of Dr. Poppleton." This case was dismissed pre-answer and no opportunity has been given to

proceed to the evidence stage. BOR agrees on this point, "In such a case, a plaintiff's allegations are presumed true and a court may consider hypothetical facts not included in the record." Once this honorable court reverses the lower court's decision, these issues may be properly addressed.

Indeed at this point, the facts and allegations as set out in Develle's complaint must be presumed as true. Poppleton's conduct must be taken as the dependent intervening cause of Develle's injuries. Any other presumption is premature at this stage.

B. The BOR counter argues the merits of the Develle divorce, which is irrelevant. The only issue for this honorable court to decide in the instant case is if *Kelley v. Pierce, supra*, applies to exclude quasi-judicial immunity.

C. Appellee argues that competent investigators are relied upon to protect the best interests of children. This also means the issue is a matter of public policy. When investigators become abusive towards clients, use their office for retaliatory actions, exercising bad faith and gross negligence, justice requires the tortious conduct be allowed to be addressed in court.

Otherwise, without any accountability, a profession is created

whose reporters operate based upon personal choices and preferences. A lack of checks and balances, as well as oversight into the workmanship of such investigators, would leave families vulnerable to malpractice and malfeasance all without recourse. Withholding any course of action for such tortious conduct is anathema to justice.

It is foreseeable when fraudulent reports are given to judges from which facts are drawn and decisions are made regarding the best interests of children, poor rulings will be the result.

D. BOR argues that Poppleton was court ordered to perform his function. However, a careful reading of the order will show the parties to the dissolution were the ones compelled by the court. During Develle's divorce case, Poppleton's name was mentioned by opposing counsel and the court accepted the recommendation, ordering the parties to seek the services of Poppleton at NWFP. This is not a court appointment.

Poppleton was under no compulsion by the court and did in fact retain the autonomy to decline his services. The court did not order Poppleton to receive Develle. This is a valid distinction from a court appointing a guardian ad litem.

BOR does not dispute this fact, but argues the court's authority. Develle and her ex husband were ordered by the court to hire and pay for

the services of Poppleton in his private practice. In short, Poppleton was no more an arm of the court than any other witness who might be hired for trial, e.g., an independent traffic collision reconstruction expert who testifies.

BOR does not argue that a private LLC may not claim quasi-judicial immunity.

VI. CONCLUSION

The holding in *Kelley* is clear, “A GAL is not entitled to quasi-judicial immunity as a matter of law because if these allegations are true, [Defendant] was not acting within a GAL' s function when he engaged in this conduct and, therefore, would not be entitled to immunity.” Due to the fact Poppleton was not acting within his function as an arm of the court, he remained in fact an employee of a private LLC, and his actions exceeded the functions of a GAL, he is not entitled to quasi-judicial immunity.

BOR did not discuss *Kelley* nor did it begin to refute Develle’s assertion that quasi-judicial immunity does not apply to acts of bad faith and gross negligence. Instead the BOR prematurely argues merits of the fault in the case.

For each of the foregoing reasons, Develle requests this Court hold

that the trial court erred in its decision by applying quasi judicial immunity to the defendants and the decision be reversed.

Respectfully submitted this 19th day of September, 2016.

Becky Develle

Becky Develle

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FORM 18.
MOTION [Rule 17.3(a)]a

COURT OF APPEALS DIVISION II OF THE STATE OF WASHINGTON

Becky Develle,)	
Appellant,)	Appeals No. 48587-7-II
)	
v.)	RETURN OF SERVICE
)	
Landon Poppleton,)	
Respondent.)	

I, Becky Develle, Appellant, served electronic copies of the following documents on counsel for Respondent, Landon Poppleton:

Reply Brief

I served these documents on September 19, 2016.

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED September 19, 2016 at Vancouver, Washington.

Respectfully submitted,
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