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STATE OF WASHINGTON

No. 45949-3-II

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

CHRISTOPHER T. DAVIS

Plaintiff/Appellant,

v.

THURSTON COUNTY, etal,

Defendants/Respondents.

Appeal from underlying cause of action filed in Thurston County Superior Court No. 12-2-01707-4. Visiting Judge: The Honorable Stephen M. Warning

APPELLANT'S REPLY BRIEF

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TABLE OF AUTHORITIES

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ARGUMENT

Respondent's brief is essentially a re-cap of the issues that were presented to the court for summary judgment. Appellant's position on these issues is contained in the record. Appellant relies on documents submitted to this court under Designation of Clerk's Papers.

Respondent brought up one additional issue not previously presented: quasi-judicial immunity. This issue will be discussed below.

Quasi-Judicial Immunity

It is well settled that appellate courts review the record on summary judgment de novo, engaging in the same inquiry as the trial court. Benjamin v. Wash. State Bar Ass'n, 138 Wash.2d 506, 515, 980 P.2d 742 (1999). Because the review is de novo, appellate courts are free to premise their holding affirming summary judgment on an issue not decided by the trial court. See Redding v. Va. Mason Med. Ctr., 75 Wash.App. 424, 426, 878 P.2d 483 (1994) (an appellate court may affirm a trial court's disposition of a summary judgment motion on any basis supported by the record); see also LaMon v. Butler, 112 Wash.2d 193, 200-01, 770 P.2d 1027 (1989). Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to

judgment as a matter of law. Clements v. Travelers Indem. Co., 121 Wash.2d 243, 249, 850 P.2d 1298 (1993); CR 56(c).

In reviewing a summary judgment, the appellate court must draw all reasonable inferences from the pleadings, affidavits, depositions and admissions in the light most favorable to the nonmoving party. Hemenway v. Miller, 116 Wash.2d 725, 731, 807 P.2d 863 (1991). The reviewing court considers all facts submitted, engaging in the same inquiry as the trial court, Scott Galvanizing, Inc. v. Northwest EnviroServices, Inc., 120 Wash.2d 573, 580, 844 P.2d 428 (1993), and may affirm on any basis supported by the record. Hadley v. Cowan, 60 Wash.App. 433, 444, 804 P.2d 1271 (1991). It is unnecessary for the trial court to enter findings on summary judgment. CR 52(a)(5)(B). Any that are entered may be disregarded on appeal, because summary judgment determines issues of law, not issues of fact. Duckworth v. City of Bonney Lake, 91 Wash.2d 19, 586 P.2d 860 (1978). The moving party bears the burden of showing the absence of a material issue of fact. Safeco Ins. Co. of America v. Butler, 118 Wash.2d 383, 395, 823 P.2d 499 (1992).

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." Lutheran Day Care v. Snohomish County, 119 Wn.2d 91, 99, 829 P.2d 746 (1992), cert. denied, 506 U.S. 1079 (1993); Savage v. State, 127 Wn.2d 434, 441, 899 P.2d 1270 (1995). Therefore, quasi-judicial immunity protects those who perform judicial-like functions to ensure they can also do so without fear of personal consequences. See Lutheran Day Care, 119 Wn.2d at 99; Taggart v State, 118 Wn.2d, 195, 203 (1992).

When [quasi-judicial immunity] applies, it is an absolute bar to civil liability and necessarily leaves wronged claimants without a remedy." West v. Osborne, 108 Wn.App. 764, 773, 34 P.3d 816 (citing Lutheran Day Care, 119 Wn.2d at 99; Babcock v. State, 116 Wn.2d 596, 606-08, 809 P.2d 143 (1991)), review denied, 145 Wn.2d 1012 (2001).

To determine if immunity applies, Washington courts will look to the function the person is performing, rather than to the person who is performing it. Regan v. McLachlan, 163 Wn.App. 171, 179, 257 P.3d 1122 (2011). This analysis may require a court to examine the functions of the official as set forth in statute. See West, 108 Wn.App. at 772-73.

In Reddy v. Karr, 102 Wn.App. 742, 9 P.3d 928 (2000), the Court of Appeals discussed the issue of quasi-judicial immunity. In Reddy, the

Superior Court ordered King County Family Court Services (FCS) to conduct an investigation and evaluation on the issue of who should be the primary residential parent. Social worker Karr conducted interviews and reviewed declarations and reports. Karr recommended that the father be designated the primary residential parent and also made other recommendations. Reddy, 102 Wn.App. at 746. Susan Reddy filed a complaint for damages alleging that she suffered damages due to negligence by Karr and negligent supervision of Karr by FCS. Id at 747.

The Reddy Court noted:

“These principles have been applied to protect parole officers and guardians ad litem from suits stemming from their recommendations to courts. For example, in Taggart, the court held that parole officers are entitled to quasi-judicial immunity "for those functions they perform that are an integral part of a judicial or quasi-judicial proceeding." Taggart, 118 Wash.2d at 213, 822 P.2d 243. The court explained that quasi-judicial immunity was appropriate "when a parole officer performs functions such as ... providing the [Parole] Board with a report to assist the Board in determining whether to grant parole [.]” Id

Likewise, in Barr v. Day, 124 Wash.2d 318, 319, 879 P.2d 912 (1994), the court held that guardians ad litem in guardianship proceedings involving court approval of settlements of civil claims of incompetents act as an arm of the court, and are, therefore, entitled to quasi-judicial immunity from civil liability. Id. at 331-32, 879 P.2d 912; see also Adkins, 105 Wash.2d at 677-78, 717 P.2d 275 (bailiff acting as an arm of the court during trial and therefore is protected by judicial immunity).”

Id at 748-749.

The Reddy Court analyzed Karr's situation:

"Here, similarly to the situations in Taggart and Barr, Karr did not have any independent decision making authority over the parties. The court was solely responsible for fashioning the orders under which Steven Reddy was granted temporary residential care of Kalen pending the final parenting plan order. Accordingly, Taggart and Barr are analogous to the instant case and, as in those cases, quasi-judicial immunity is appropriate..."

"In contrast to the DSHS, FCS is a division of the King County Superior Court and its caseworkers' duties are explicitly defined by the individual court orders that initiate each FCS investigation. The FCS investigator's role is defined in the FCS Standards of Practice and Procedures Manual: "[T]he evaluator is charged with the responsibility of providing information and making recommendations to the Court on the issues ordered by the Court. It is not the role or the responsibility of the evaluator to decide the case [.]" Clerk's Papers at 179. Unlike a DSHS caseworker, Karr had no capacity to effect her recommendations. The sole responsibility for the court's orders in this case lie with the court."

Id at 750.

Expanding on the holding of Taggart:

"We hold that parole officers are entitled to quasi-judicial immunity only for those functions they perform that are an integral part of a judicial or quasi-judicial proceeding. Thus when a parole officer performs functions such as enforcing the conditions of parole or providing the Board with a report to assist the Board in determining whether to grant parole, the officer's actions are protected by quasi-judicial immunity. But when the officer takes purely

supervisory or administrative actions, no such protection arises.

In the present case, Taggart and Sandau allege that Brock's and Geyman's parole officers failed substantially to perform their supervisory functions. Taggart claims that Richardson never required Brock to submit to drug testing and never contacted Brock's friends or employers to inquire as to his progress. These are supervisory failings and hence unprotected by judicial or quasi-judicial immunity."

Taggart v. State, 118 Wn.2d at 213.

In the case at hand, Ms. Harrison's situation is not analogous to those in Taggart and Barr. As stated above, in those cases, the parole officers and guardians ad litem were making recommendations to the Court. Here, Ms. Harrison was not making recommendations. She had independent decision making authority over Mr. Davis' request for expert services. This authority is demonstrated by the fact that Ms. Harrison prepared documents and pleadings in order to overturn the judge's initial approval of the funding. She was successful in doing so. Utilizing the language from Reddy, Ms. Harrison had the capacity "to affect her recommendations."

Quasi-judicial immunity therefore does not apply. Ms. Harrison's actions are "supervisory failings" and hence unprotected by judicial or quasi-judicial immunity.

The respondent wishes to have it both ways in this case. On one hand, the respondent has argued throughout this case that Ms. Harrison is a department head who had no attorney client relationship with Mr. Davis. On the other hand, defendant argues that Ms. Harrison is entitled to quasi-judicial immunity because she “was performing a function that is normally a court function, but which was delegated to her by the Court via Local Rule.”

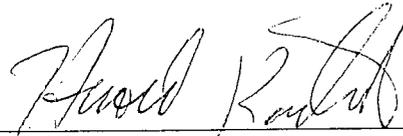
CONCLUSION

Ms. Harrison’s actions throughout have not been as an arm of the court for the purpose of quasi-judicial functions. The court delegated to Ms. Harrison the task of providing public funds for indigent clients as Director of the Thurston County Office of Assigned Counsel. This created a duty to Mr. Davis, an indigent defendant. The court had previously authorized public funds in the amount of \$3,000.00 to assist Mr. Davis and Mr. Gazori, his private criminal defense attorney. Ms. Harrison, as an attorney, and as the Director of the Office of Assigned Counsel drafted a legal document, filed it with the court clerk, and argued to vacate the order depriving Mr. Davis of the funds approved by the court. Ms. Harrison’s action was on behalf of Thurston County Office of the Assigned Counsel

against Mr. Davis, a former criminal client, and current client for public funding. Ms. Harrison was clearly not operating as an arm of the court.

The record demonstrates that Ms. Harrison and Thurston County are not entitled to quasi-judicial immunity.

DATED this ²⁵ ___ day of September 2014.

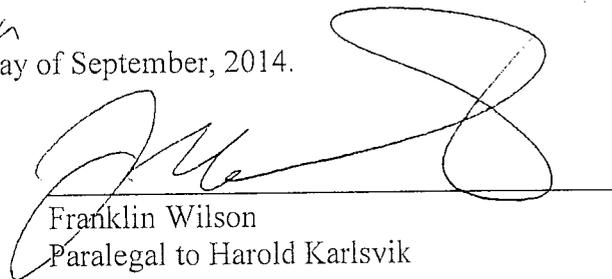


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CERTIFICATE OF SERVICE

I hereby certify that on 9/25/2014 I personally mailed a copy of the Reply Brief of Appellant Christopher T. Davis, and caused a copy to be electronically emailed to John Justice, Attorney at Law, and personally served at his law firm. A hard copy was also sent regular mail to Mr. Justice, and the Thurston County Prosecuting Attorney's Civil Division. The Reply Brief of Appellant Christopher T. Davis was filed with the Clerk of the Appeals Court, Division II, by regular mail, and a full copy emailed to the court

DATED this 25th day of September, 2014.



Franklin Wilson
Paralegal to Harold Karlsvik