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Supreme Court No. 81672-7
Court of Appeals No. #60054-1-1

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IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION ONE

SKAGIT COUNTY, DEPUTY DEANNA RANDALL;

Petitioners

v.

JOHN T. LALLAS AND IRENE LALLAS, husband and wife

Respondents

On Appeal from the Superior Court of the
State of Washington for Snohomish County
The Honorable Kenneth Cowsert

Answer ~~REPLY~~ TO PETITION FOR REVIEW

Attorney for Respondents:

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“What ’s in a name? That which we call a rose by any other name would smell as sweet.” William Shakespeare, Romeo and Juliet. Act ii. Sc. 2.

The 20-page argument of the Petitioner can be reduced down to a simple paragraph. The reasoning of the Petitioner appears to be that Superior Court Judge Skelton had absolute immunity while exercising judicial discretion. When he ordered Deputy Randall to transport the prisoner, he then fully “extended” that absolute judicial immunity to Deputy Randall such that, regardless of her negligence or even wanton disregard, she too enjoyed absolute immunity. The Petitioner then argues that this “extended judicial immunity” is not to be confused with the concepts of “judicial immunity” or “quasi-judicial immunity” that are found in numerous cases decided in Washington, but rather is to be derived and developed from a single sentence of dicta taken from Lutheran Day Care v. Snohomish County, 119 Wn.2d 91, 829 P.2d 746 (1992) which reads as follows:

True judicial immunity of judges and those to whom courts have accorded extended judicial immunity are not involved here. (Emphasis added).

There is not a magic touch that “extends” the doctrine of judicial immunity from one person to another however, and the same Lutheran Day Care court also had this admonition regarding the extension of the doctrine beyond its traditional bounds of protecting the independence of the judiciary:

We note that these cases, where they contain any analysis of the issue at all, have generally based their holdings on conclusory citation of authority and not on detailed policy-oriented factual inquiry which we will later show is necessary to decide the immunity question. When a governmental action is characterized >legislative= or >adjudicative=, there is the risk that the characterization will be carried beyond the specific issue being decided. (Citations omitted). Thus, strict reliance on case law to determine the extent of immunity carries the risk of finding immunity based on the fact that the function being performed has been characterized as >quasi-judicial= in a prior case which may have concerned entirely different issues and in which the court did not have reason to consider the policy implications of absolute immunity. Such reliance also carries with it the risk of finding immunity based on analogy to a case where the title held by the relevant official is the same as the one at issue, but the functions, procedures, and inherent protections available are quite different.@

At its core, the doctrine of judicial immunity is intended to protect the independence of the judiciary. Adkins v. Clark County, 105 Wn. 2d 675, 717 P.2d 275 (1986). It holds that judges have absolute immunity

from civil liability for decisions made by them while acting in a judicial capacity. Babcock v. State, 112 Wn.2d 83, 768 P.2d 481 (1989). Because the doctrine provides “absolute” immunity, its protections are only extended to acts that are “intimately associated with the judicial process”. Mauro v. Kittitas Cy., 26 Wn. App. 538, 613 P.2d 195 (1980) and its application is justified only when the danger of officials being deflected from the effective performance of their duties is very great. Forrester v. White, 484 U.S. 219, 230, 108 S. Ct. 538, 98 L. Ed. 2d 555 (1988). Because the immunity granted by the doctrine is “absolute”, courts have been traditionally reluctant to extend this immunity to anyone but prosecutors and judges. Babcock, *supra*.

Nevertheless, in proper circumstances, the doctrine has been extended beyond its traditional judicial confines. When this occurs, the extension is usually referred to as “quasi-judicial immunity” and its protections are given to persons, who though not judges, perform functions that require the independent exercise of judge-like discretion or judgement [e.g. parole board officer Plotkin v. State, 64 Wn. App. 373, 836 P.2d 221 (1992)] Irrespective however of whether considering “judicial” or “quasi-judicial” immunity, the concerns are the same. That is, to protect the

independent decision making process of people that are making judge-like decisions. Lutheran Day Care, *supra*.

In the present case, Judge Skelton made a judge-like decision. He decided and then ordered Deputy Randall to take a prisoner to jail. (CP-116) For our purposes however, it is more important to consider what the judge did not do. That is, he did not, in anyway tell Deputy Randall how to accomplish the task that he had assigned to her, and as even the Petitioners admit, these logistics were left entirely to the discretion of Deputy Randall.

Mr. Lallas has no criticism whatsoever of the fact that Judge Skelton ordered Deputy Randall to transport the prisoner to jail. He recognizes that this decision involved the exercise of independent judicial discretion and has no intention to interfere with that process. What he does take issue with however is the negligent way in which Deputy Randall, as an employee of the county, executed the judge's order on that day.¹ This negligence had nothing whatsoever to do with the judicial decision making process of Judge Skelton and, as the Court of Appeals concluded, there is simply no reason to extend the extraordinary

¹ In the Petitioner's Motion for Summary Judgment, the Petitioner did not contest the issue of negligence so for purposes of this appeal, it must be presumed.

protections of the doctrine of judicial immunity to the humble facts of this case.

Pursuant to RCW4.96.010, it is beyond questioning that whether inside a courtroom or out, Deputy Randall and her employer could be held civilly liable for the negligent performance of their duty. Thus what the Petitioners are now asking the court to hold is that simply because Judge Skelton ordered Deputy Randall to transport a prisoner (with nothing more) all of the doctrine's protections for the independence of the judiciary should be magically transferred to the Deputy such that she too would have absolute immunity.

The Petitioner claims that the Court of Appeals was misled by artful pleading and confusion and conflation of the concepts of "judicial" and "quasi-judicial" immunity. However, a reading of the Court's opinion evidences that the Court had a much better understanding of the doctrine than the Petitioners are now willing to concede. More specifically, the Court of Appeals heeded the above set forth admonition from Lutheran Day Care and carefully considered whether extending the absolute immunity of the doctrine to Deputy Randall would do anything to further the purpose of protecting the independence of the judiciary. They decided

that when Judge Skelton ordered the transport of the prisoner, he was performing a judicial function but that function was completely irrelevant to the claim of Mr. Lallas. Thereafter, when Deputy Randall was executing the judge's order, through the use of the discretion that the judge's order allowed her, she was performing a purely executive function to which the extension of the doctrine's absolute immunity would do nothing to promote or preserve the independence of the judiciary. Properly therefore, the Court of Appeals concluded that neither Deputy Randall nor her employer were entitled to the protections of the doctrine of judicial immunity. Certainly, this was the correct decision and the Petition should therefore be denied.

DATED this ____ day of _____, 2008

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Please find attached for filing, respondents' Reply to Petition for Review, regarding # 60054-1-I, Skagit County, Deputy Deanna Randall (Petitioners) v. John T. Lallas and Irene Lallas, husband and wife, (Respondents). Original document will follow via U.S. Mail. Thank you.

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