

No. 81672-7

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
2009 SEP 29 A 10:45  
BY RONALD R. CARPENTER  
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**SUPREME COURT OF THE STATE OF WASHINGTON**

John T. LALLAS and Irene LALLAS,  
*Plaintiffs-Respondents,*

v.

SKAGIT COUNTY and Deputy Deanna RANDALL,  
*Defendants-Petitioners.*

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**BRIEF OF AMICUS CURIAE WASHINGTON  
ASSOCIATION OF PROSECUTING ATTORNEYS**

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## **STATEMENT OF AMICUS CURIAE**

Amicus Curiae Washington Association of Prosecuting Attorneys (“WAPA”) represents the elected prosecuting attorneys of Washington State. The prosecuting attorneys represent counties which, like Skagit County, provide security and support for the state’s judicial branch within its boundaries. WAPA has an interest in ensuring a county, its court, and its employees, can confidently follow directions of its judicial officers. By extension, they should share in the immunity that extends to all judicial branch officials. If allowed, the brief will address the extension of absolute judicial immunity..

### **INTRODUCTION**

Judge Skelton ordered Deputy Deanna Randall to take Anthony Reijm to jail because he violated his release order; Reijm then broke loose and injured John Lallas. When Randall took custody of Reijm, she acted as an extension of the judge. Because the court is immune, Randall, an extension of the court, should share in the court’s absolute immunity, as should her employer, Skagit County.

### **STATEMENT OF THE CASE**

On September 4, 2002, Hon. Stephen Skelton of the Skagit County District Court ordered Anthony Reijm to wait in his courtroom until court had concluded. (CP at 129.) Judge Skelton informed Reijm that, due to

his failure to comply with the court's orders, he was ordering Reijm to jail. (CP at 130.) Judge Skelton summoned the court security deputy, Deanna Randall. (CP at 130.) When Deputy Randall arrived, Judge Skelton pointed at Reijm and ordered Reijm be taken to jail. (CP at 83; CP at 130.)

Deputy Randall said to Reijm, "Let's go," and she took him by the elbow; she didn't handcuff him because she had encountered Reijm before and didn't know him to be violent or a flight risk. (CP at 83-84.) She led him out of the courtroom to the nearby elevator. (CP at 84.) Reijm asked Randall if he could go outside and talk to his girlfriend; Randall told him no, but she would talk to his girlfriend after he went upstairs to the jail. (Id.) Before she finished saying the words, Randall broke loose and ran for the door near the x-ray machine at the courthouse entrance. (Id.) Although Randall grabbed at Reijm, she was unable to stop him. (Id.) John Lallas, a security guard manning the x-ray machine, squared himself between Randall and the door. (CP at 117.) Reijm rushed headlong into Lallas, knocking him down. (Id.) Randall summoned medical help for Lallas, then began to search for Reijm; law enforcement officers joined her in the search. (Id.) They found Reijm two blocks away and took him into custody. (Id.)

Two-and-a-half years later, John Lallas and his wife brought this action against Anthony Reijm, Deanna Randall, and Skagit County. (CP

at 139-149.) Plaintiffs allege Randall was negligent in failing to adequately restrain Reijm, and Skagit County was negligent in training Randall. (CP at 142.) Plaintiffs also alleged Skagit County is liable for Randall's alleged negligence under a *respondeat superior* theory. (CP at 141.) Skagit County and Randall moved for summary judgment, arguing that because Randall was acting in obedience to a court order, she is immune from suit, and the county shares in her immunity. (CP at 118-128.) The Hon. Kenneth Cowsert, J., Snohomish County Superior Court judge, agreed judicial immunity inheres in Randall's actions and dismissed her and Skagit County from the case. (CP at 14-16.) The Court of Appeals rejected the extension of judicial immunity to court security personnel and reversed the grant of summary judgment. Lallas v. Skagit County, 144 Wn. App. 114 (2008). This appeal followed.

## ARGUMENT

### **A. The Court, and not the County, is responsible for the actions of its bailiffs.**

Bailiffs, like other court functionaries, are properly deemed servants of the court in the discharge of their duties, and not of the county that may pay their salaries. See Adkins v. Clark County, 105 Wn.2d 675, 717 P.2d 275 (1986); State v. Hopson, 113 Wn.2d 273, 281 n.1, 778 P.2d 1014 (1989) (“[i]t is clear [. . .] that a bailiff would be an officer of the

court.”) They share this distinction as court functionaries with court clerks. See RCW 2.32.050; CR 78; Swanson v. Olympic Peninsula Motor Coach Co., Inc., 190 Wash. 35, 38, 66 P.2d 842 (1937) (court clerk “is an officer of a court of justice”). The legislature has not explicitly defined the duties of a bailiff. Instead, it has fallen to the judiciary to determine just what duties a bailiff has. See, e.g., SAR 19 (defining the duties of the Supreme Court bailiff, which includes “such other duties as may be required by the court”).

Bailiffs’ duties are specified by judicial custom, rather than by any legal code. Bailiffs’ duties are given to them by the judiciary (whether by rule, as SAR 19, or verbally, as in this case). They are chosen by the court, rather than by the county government. They carry out the court’s orders, doing whatever the court may deem appropriate in its presence.

The doctrine of *respondeat superior* obligates the master to answer for the misdeeds of the servant. Niece ex rel. Niece v. Elmview Group Home, 131 Wn.2d 39, 48, 929 P.2d 420 (1997). The relationship between “master” and “servant” is often discussed as if the words were synonymous with “employer” and “employee,” but Washington courts, following long-standing practice in the common law, recognize other relationships as giving rise to this sort of vicarious liability.

Washington counties are not liable for the negligence of court bailiffs. Kildall v. King County, 120 Wash. 472, 207 P. 681 (1922). In Kildall, a juror was struck by a car while a bailiff led her across a busy street. The juror sued King County on a *respondeat superior* theory, alleging that the bailiff was negligent, the bailiff was a county employee, and therefore the county was liable for his negligence. The trial court dismissed her complaint against the county, and the Supreme Court, en banc, upheld the dismissal. The bailiff, wrote Justice Holcomb, was not properly a county employee, but was a servant of the court, and the county was not liable for the bailiff's actions<sup>1</sup>.

Unlike other public servants paid by a county, bailiffs are directed in their actions by a judge. Kildall, 120 Wash. at 476, 207 P. 681. For a bailiff's negligence, a *respondeat superior* action would lie against the judge, not against the county. Id.; King County v. United Pac. Ins. Co., 72 Wn.2d 604, 612, 434 P.2d 554 (1967) (justice court district judge was the nominal "master" of a clerk who misappropriated court funds); but see

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<sup>1</sup> For this proposition, he found support in statutes that survive (albeit in modified form) to this day. See Rem. 1915 Code sec. 9056 (now RCW 2.32.330) (giving courts of record the power to appoint as many bailiffs and criers as they deem necessary); Rem. 1915 Code sec. 8983 (now RCW 2.32.360) (giving county commissioners the power to fix compensation for superior court bailiffs); Rem. 1915 Code sec. 8984 (now RCW 2.32.370) (commanding county treasurer to pay the salaries of superior court bailiffs).

Bolin v. Kitsap County, 114 Wn.2d 70, 74-75, 785 P.2d 805 (1990) (re-examining Kildall in light of the Industrial Insurance Act; defining judges, jurors, and bailiffs as county employees for the limited purpose of construing that act).

Deputy Randall was called upon by the Court and was acting as a bailiff at the time she took Reijm into custody. See Lallas v. Skagit County, 144 Wn. App. 114, 119, 182 P.3d 443 (2008), review granted, 165 Wn.2d 1003, 198 P.3d 511 (2008) (comparing Deputy Randall's position to that of a bailiff); see generally RCW 2.32.330 (empowering courts of record to appoint as many bailiffs as they deem expedient). It was Judge Skelton, not Skagit County, ordering her to act. Deputy Randall was simply effecting Judge Skelton's order by taking Reijm to jail. Therefore, it is the court that should answer for any alleged negligence. As discussed below, the court's immunity should apply to her actions.

**B. Judges, and Those Effecting the Orders of Judges, Are Entitled to Absolute Immunity.**

Under the doctrine of judicial immunity, judges enjoy absolute immunity from suit for their official acts as judges. See Taggart v. State, 118 Wn.2d 195, 203, 822 P.2d 243 (1992). Judicial immunity comprehends even willful misconduct. Babcock v. State, 116 Wn.2d 596,

606, 809 P.2d 143 (1991). The policy behind judicial immunity is society's compelling interest in preventing members of the judicial branch from being inhibited in their decision-making by the threat of litigation. Id. "Its purpose is to insure the independent administration of justice by judges who are free from fear of personal consequences." Adkins, 105 Wn.2d at 677, 717 P.2d 275; see also Butz v. Economou, 438 U.S. 478, 509 (1992) (without judicial immunity, "judges would lose that independence without which no judiciary can either be respectable or useful.") This doctrine of judicial immunity has been extended to those whose acts are intimately connected with the judicial function. Adkins, 105 Wn.2d at 678, 717 P.2d 275 (the bailiff, acting under authority delegated to him by the judge, is the "alter ego" of the judge).

Extending judicial immunity is distinct from the shield of "quasi-judicial" immunity. "Quasi-judicial immunity" is afforded 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, 119 Wn.2d at 99, 829 P.2d 746. Those warranting quasi-judicial immunity are decision-makers themselves. A bailiff would not qualify as a "quasi-judicial officer" since a quasi-judicial officer is someone charged with some decision-making power, whereas bailiffs, like clerks, are simply court

functionaries with no judicial powers of their own. Clearly, in this case, Randall was simply following the court's instruction.

As Justice Andersen noted, “[i]mmunity is not accorded because of the status of an individual but because of the function being performed by that individual.” Babcock, 116 Wn.2d 596, 642, 809 P.2d 143 (concurring in part, dissenting in part). Judicial officers are granted absolute immunity. The policy rationale behind extending absolute judicial immunity applies in the case of the court functionary who may have been negligent in discharging his or her duties.

When a court rules, the judge does so without needing to fear personal consequences resulting from that ruling. When the court orders someone taken into custody, the judge is free of trepidation, and the bailiff, executing that command, should not need to hesitate for fear of personal consequences as a direct result. As Justice Andersen observed:

The rationale for immunizing persons who execute court orders is apparent. Such persons are themselves “integral parts of the judicial process.” The fearless and unhesitating execution of court orders is essential if the court's authority and ability to function are to remain uncompromised.

Babcock, 116 Wn.2d 596, 627-28, 809 P.2d 143 (concurring in part, dissenting in part) (citations omitted).

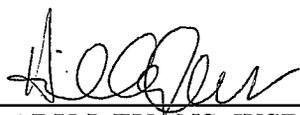
Because bailiffs are servants of the court, directed by the court, and acting as the arm of the court, it is the court which should have to answer for a bailiff's negligence; and the court's absolute immunity should apply.

### CONCLUSION

Judicial immunity should extend to those persons whose judicially related acts, if they were performed negligently, would be imputable not to an agency or municipality, but to the court itself. In this case, Deputy Randall's actions were done at Judge Skelton's direction and by his order. While Judge Skelton did not tell her how to do her duty, he (and, by extension, the court) would be liable under the doctrine of *respondeat superior*. This would erode the doctrine of judicial immunity and undermine judicial independence; the trial court recognized this. The trial court's order granting summary judgment to Deputy Randall and Skagit County should be reinstated.

Respectfully submitted this 16<sup>th</sup> day of September, 2009.

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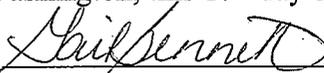
**DECLARATION OF SERVICE**

I, Gail Bennett, hereby certify that on September 17th, 2009, I caused the original of the foregoing Brief as Amicus Curiae Washington State Prosecuting Attorneys to be transmitted via mail to the Washington State Supreme Court (Temple of Justice, P.O. Box 40929, Olympia, WA 98504); and that I caused to be served a true and correct copy of the foregoing Motion to File Brief as Amicus Curiae upon the individuals listed herein by the following means:

<p><b>Atty for Petitioner Deanna Randall and Petitioner Skagit County:</b> Paul H. Reilly Skagit Co. Prosecuting Attorney's Office 605 S. 3<sup>rd</sup> Street Mount Vernon, WA 98273</p>	<p><input type="checkbox"/> Electronic service <input type="checkbox"/> Facsimile <input type="checkbox"/> Express Mail <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Messenger Service</p>
<p><b>Atty for Respondents Irene and John T. Lallas:</b> Harry Platis Denis C. Wade Platis Law Firm 20016 Cedar Valley Rd. Suite 103 Lynnwood, WA 98036-63321</p>	<p><input type="checkbox"/> Electronic service <input type="checkbox"/> Facsimile <input type="checkbox"/> Express Mail <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Messenger Service</p>
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I declare under the penalty of perjury of the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

SIGNED at Everett, Washington, this 17<sup>th</sup> day of September, 2009.

  
 \_\_\_\_\_  
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