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No. #60054-1-I

JOHN T. LALLAS AND IRENE LALLAS,

Appellant

v.

SKAGIT COUNTY, et al.

Respondent

BRIEF OF APPELLANT

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I. ASSIGNMENT OF ERROR

1. The trial court committed error by finding that a Deputy, ordered by the court to transport a prisoner, was acting in a “judicial” or “quasi-judicial” capacity and was thus entitled to absolute immunity for negligently transporting such prisoner. (CP-15)
2. The trial court committed error by finding that any absolute immunity accruing to the Deputy by virtue of the court’s order regarding the transport of the prisoner also accrued to her employer through the doctrine of imputed judicial immunity.(CP-16)
3. The trial court committed error by finding that due to the doctrine of judicial immunity, the defendants had complete immunity and thus issues of their duty or negligence were irrelevant. (CP-16)

II. ISSUES PRESENTED

1. Whether a Deputy who after being ordered by the court to transport a prisoner from the courtroom to jail is acting in a “judicial” or “quasi-judicial” capacity, thus entitling that Deputy and her employer to absolute immunity for the negligent transport of such prisoner.
2. Whether the absolute immunity said to accrue to the Deputy by

virtue of the court's order regarding the transportation of a prisoner from the courtroom to jail necessarily extends to the Deputy's employer by virtue of the doctrine of imputed judicial liability.

3. Whether, due to the independent claim of improper training of the Deputy by the County, her employer, it was proper for the trial court to dismiss all claims against the County based upon the doctrine of judicial immunity.

III. STATEMENT OF CASE

The plaintiff, John Lallas was injured on or about September 4, 2002 (CP-115). His claims were not resolved through negotiation so a Summons and Complaint were filed in Snohomish County on March 25, 2005 (CP-139-149). A Motion for Summary Judgement was brought by the Defendants in the Snohomish County Superior Court before the Honorable Kenneth L. Cowsert (CP-118-128) and an order granting Defendants summary judgment was entered on May 2, 2007 (CP-14-16). Plaintiff then brought this appeal.

STATEMENT OF FACTS

On or about September 4, 2002, the Appellant, John Lallas was working as a private security guard responsible for screening entrants to

the Skagit County Public Safety Building (CP-116). On that same date, District Court Judge Stephen Skelton ordered Skagit County Corrections Deputy Deanna Randall to transport prisoner Anthony Reijm from his courtroom for booking in the Skagit County Jail (CP-116).

Mr. Reijm is approximately 6'6" tall. Deputy Randall is approximately 5'4" tall. (CP-84)(CP103). Despite the substantial difference in size, while transporting Mr. Reijm, Deputy Randall did not place Reijm in handcuffs (CP-84), despite the requirement of the Skagit County Sheriff's Office policy and procedures manual on "Transportation of Inmates"(CP-102-103).

When Mr. Reijm exited the courtroom of Judge Skelton, into the lobby of the Public Safety Building, he broke free from Deputy Randall in an attempt to escape through the door that was being monitored by the Plaintiff, John Lallas (CP-116). Mr. Lallas tried to slow Mr. Reijm as he was running through his monitoring station (CP-117). Mr. Reijm knocked Mr. Lallas to the ground, causing him serious personal injuries (CP-117).

Plaintiff brought suit in Snohomish County Superior Court. The defendants Randall and Skagit County moved for Summary Judgment. (CP-118-128). This motion was based entirely upon the doctrine of

judicial immunity and did not contest or present evidence to show that the moving defendants were not negligent. Based entirely therefore upon the doctrine of judicial immunity, summary judgment was awarded to defendants Randall and Skagit County and this appeal followed (CP-14-16).

III. ARGUMENT AND ANALYSIS

1. The negligence of the defendants was not contested and must be presumed. The only issue on this appeal is whether or not the doctrine of judicial immunity applies.

For purposes of this appeal, the negligence of the Defendants is not at issue. The Defendants' Motion for Summary Judgment did not contest the fact of their negligence, but rather focused entirely upon a claim to judicial immunity. (CP-118-128). Therefore, in this appeal, the negligence of the defendants must be presumed.

2. Claims of negligence against governmental entities and public officials are specifically authorized by RCW 4.96.010.

The plaintiff brought suit alleging that both the Deputy and her employer were negligent. Thus far, the fact of this negligence has not been

contested and must therefore be presumed.

RCW 4.96.010 provides that governmental entities, whether acting in a governmental or proprietary capacity, shall be liable for damages arising out of their tortious conduct of their past or present officers, employees, or volunteers while performing or in good faith purporting to perform their official duties, to the same extent as if they were a private person or corporation.”

Clearly, the claim by Mr. Lallas against the Deputy and the County is authorized and contemplated by RCW 4.96.010. Thus, in this appeal, there is a viable claim, authorized by statute, with the negligence of the defendants presumed. The remaining question therefore is whether or not the viable claim of the plaintiff and the negligence of the Deputy and her employer become irrelevant and preempted by a claim to absolute judicial immunity. The trial court found that because the Deputy was ordered by the court to transport the prisoner, she was acting as “an arm of the court” and therefore, regardless of her negligence, both she and her employer were entitled to absolute judicial immunity. (CP-15). Clearly the trial court was in error and this error should be reversed.

3. The doctrine of absolute judicial immunity is intended to protect

the independent decision making process of judges or those acting in a similar capacity and should not be extended beyond this purpose.

The doctrine of judicial immunity is well established. 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).

In considering the proper extension of judicial immunity, it is important to recognize that the doctrine is not intended to protect the individual judge or official per se, but rather to protect the public by preserving the independence and integrity of the office held by that judge or official. Adkins v. Clark County, 105 Wn. 2d 675, 717 P.2d 275 (1986).

In other words, through judicial immunity, it is recognized that the proper functioning of any independent dispute-resolving system requires that judges must have the unfettered ability to exercise free and independent judgment without fear of subsequent lawsuits that allege the improper use of judicial powers. Lutheran Day Care v. Snohomish, 119 Wn.2d 91, 829 P.2d 746 (1992). Sellers v. Procuner, 641 F.2d 1295, 1299-1300 (9th Cir.) (1981). Its protections therefore are only extended to acts that are so “intimately associated with the judicial process” that they warrant the

absolute immunity provided by the doctrine. Mauro . Kittitas Cy., 26 Wn. App. 538, 613 P.2d 195 (1980).

The doctrine of judicial immunity therefore contemplates a significant balancing of interests. That is, by granting absolute immunity to judges who are acting in a judicial capacity, there is the potential that genuinely wronged persons will be left without civil redress. When considering this balance, the perception is that the systemic protection of the independence of the judiciary is more important than allowing redress for every potential wrong that may arise from the improper use of judicial powers. This balance between the competing interests involved in a judicial immunity is an important one and the doctrine should only be extended to cases where the well defined public policy considerations (protection of the independent decision making of the judiciary) is at stake. Lutheran Day Care, supra.

In the present case, again the fact of the wrong suffered (i.e. the negligence of the Deputy and the county) is uncontested. By statute (RCW 4.96.010), the plaintiff has right to seek civil redress for the wrong that he suffered. The question now becomes whether or not extending absolute judicial immunity the facts of this case (a Deputy being ordered to

transport a prisoner to jail) does anything to further the public policy considerations that underlie the doctrine of judicial immunity. Clearly it does not and the trial court was in error in granting summary judgment to the Deputy and Skagit County based entirely upon this doctrine.

4. The transportation of a prisoner from the courtroom to the jail is an administrative act that is not entitled to the protection of absolute judicial immunity.

In summary, the crucial public policy that underlies the doctrine of judicial immunity is the desire to protect the independent exercise of judgment and discretion of the judiciary. Babcock, supra. As such, the doctrine is further said to protect the judges not as individuals, but rather only to the extent necessary to protect the independent exercise of their judicial discretion. Adkins, supra.

With these considerations in mind, the law draws an important distinction between actions involving judicial decision-making and discretion and those involving administrative and ministerial duties. When a judge is acting in an administrative or ministerial capacity, the decisions made by the judge do not directly impact the integrity or the independence of the judicial system. As such, a judge, like any other

public servant or private citizen, is subject to civil liability if he or she is negligent in the performance of these administrative/ministerial duties. RCW 4.96.010. Thus whereas a judge has absolute immunity regarding judicial decisions made, that same immunity does not extend to administrative or ministerial matters or decisions. Forrester v. White, 488 U.S. 329, 108 S. Ct. 538, 98 L. Ed. 2d 555 (1988), Babcock, *supra*.

In the present case, the judge asked the Deputy to do what she was hired to do. That is to transport a prisoner from the courtroom to the jail. Under any other circumstances, the Deputy and her employer would be liable for the negligent performance of these duties. Thus it is purely the judicial order that purportedly provides the immunity in the present case.

Logically then, if this same negligent event happened while the Deputy was bringing the prisoner to court for a scheduled hearing (without being directly ordered by the court to do so), the Deputy would not have immunity. But, according to the trial court, simply because the judge ordered the prisoner to be taken from the courtroom back to jail, somehow the Deputy and her employer are entitled to absolute immunity regardless of the extent and severity of their negligence. What possible public policy consideration underlying the doctrine of judicial immunity is furthered by

these two different results involving the same basic situation?

The point is that when the court decided to send the prisoner back to jail instead of letting him go free, the court's judicial decision making and discretion came to an end. At that point, there simply remained the administrative task of having the prisoner transported to jail. Mauro, *supra*. As discussed below, the responsibility and details for how to accomplish this task were not part of the "official duties" of the judge but rather were completely those of the Deputy and her employer.

Put differently, if the judge had decided that he himself was going to escort the prisoner to jail without any resources or training to do so, it is hard to imagine that anyone would conclude that he would then be exercising the type of judicial wisdom and discretion that should be protected by the doctrine of judicial immunity. If the judge would not have had immunity for transporting the prisoner himself, what would be the basis for extending the immunity intended to protect only those performing acts "intimately associated with the judicial process" to someone that is clearly performing a non-judicial act? Mauro, *supra*.

Further, how far would this immunity extend? In that it is an "absolute" immunity, would this mean that if the Deputy had been ordered

to transport the prisoner and doing so by car, caused a rear-end collision; would both she and her employer then also have immunity for that negligent act? If not, why not?

The obvious answer is that judicial immunity was never intended to protect the type of activity involved in this case. The plaintiff's complaint is that the procedure used to transport the prisoner was negligent. This negligence has nothing to do with the court's order and has nothing to do with the integrity or independence of the judiciary. Pure and simple the transport of the prisoner involved an administrative act and it was error for the trial court to find that the negligent undertaking of this act was shielded by judicial immunity.

5. The doctrine of "quasi-judicial" immunity has the same basic requirement that it will only protect actions that involve judicial decision making and discretion. It therefore does not extend to the administrative act of transporting a prisoner.

Obviously, neither the Deputy nor her employer were acting as judges on the date of the plaintiff's accident. Thus in addition to the above discussed difficulties in extending the doctrine of judicial immunity to the facts of this case, there is the additional consideration of how does the

immunity that is granted to a judge acting in a judicial capacity get transferred to two parties that clearly are not judges?

In their motion for summary judgment, the defendants argued that in spite of the fact that the Deputy was not acting as a judge at the time of the plaintiff's injury, she was nevertheless entitled to immunity because she was "acting as an arm of the court" in a "quasi-judicial capacity" and thus was entitled to absolute immunity regardless of her negligence. This argument was adopted by the trial court and reflected in its order granting summary judgment (CP-15).

Although it is true that the doctrine of judicial immunity has been extended to officials other than judges, it should be noted that because the immunity that flows from this doctrine is "absolute", the United States Supreme Court has been reluctant to extend this immunity to anyone but prosecutors and judges. *Babcock, supra*. Again, in considering either a question of "judicial" or "quasi-judicial" immunity, the focus is placed upon whether or not the person involved is exercising judge-like discretion or judgment. Put differently, quasi-judicial immunity is proper only when the act involved is functionally similar enough to those performed by a judge to warrant the immunity. See, e.g., *Butz v. Economou*, 438 U.S. 478,

512-17, 57 L. Ed. 2d 895, 98 S. Ct. 2894 (1978).

Thus for example, 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 (independent decision making), the officer's actions are protected by quasi-judicial immunity. But when the officer takes purely supervisory or administrative actions, no such protection arises. Plotkin v. Department of Corrections, 64 Wn. App. 373, 826 P.2d 221(1992).

Therefore, in Taggart v. State, 118 Wn.2d 195, 822 P.2d 243 (1992) the court very carefully drew a distinction between the quasi-judicial function of the parole board and the administrative function of parole officers charged with supervising the activities of parolees and found that when probation officers failed to require a parolee to submit to drug testing or monitor his activities, they had failed in their administrative duties and thus could not seek the protection of quasi-judicial immunity. As with the present case, the acts involved were found to be administrative because they did not involve or impact independent decision making.

Most importantly though, when considering questions of whether or not immunity should be extended to acts that are claimed to be “quasi-

judicial”, it is critical to consider that it is never the office or title alone that conveys the immunity. Instead it is always important to consider whether the specific act involved required the exercise of independent judicial-like discretion. If it did not, immunity does not apply. Lutheran Day Care, supra.

In Lutheran, the court specifically admonished against reaching hasty conclusions from prior judicial immunity cases without considering the policy oriented factual inquiry that is necessary to make sure that the doctrine applies. The Lutheran Day Care court wrote as follows:

“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.”

Lutheran Day Care, (Emphasis Added).

In holding that the Deputy was entitled to immunity in this case despite her negligence, the court seemed to place a heavy reliance upon the holding of Adkins v. Clark County, *supra*. A careful reading of Adkins, as it applies to the present case, reveals the appropriateness of the Lutheran Day Care court's admonishment against broad brush application of cases without considering the policy considerations behind judicial immunity.

In Adkins, a court bailiff gave a legal dictionary to a jury that was in deliberations. This caused a mistrial and the plaintiff in the underlying civil case ultimately sued the county and the state for damages arising from the mistrial. In the suit against the county and the state, the plaintiff claimed that when the bailiff gave the dictionary to the jury, she was performing a ministerial function and thus was not entitled to immunity. The county and state argued that the bailiff, as the "right arm" of the judge should be afforded the same protection as the judge when acting in an official capacity. The Adkins court sided with the county and state and held that when the bailiff gave the dictionary to the jury, she was so intimately associated with the judicial process that her actions were entitled to immunity. Adkins, *supra*.

But again, a careful reading of the Adkins holding reveals that the

court was not so much concerned with the fact that the actor involved held the title of “bailiff” as it was with exactly what she was doing when she engaged in the alleged tortious conduct. More specifically, the court wrote as follows:

“A superior court judge has the power to appoint as many bailiffs as may be necessary for the orderly and expeditious dispatch of judicial business. When a judge delegates part of the judges’s official duties to a bailiff, the bailiff becomes in effect the alter ego of the judge; the actions of the bailiff are the actions of the judge and the shortcomings of the bailiff are the shortcomings of the judge. Although the judge is in charge of the jury, the bailiff becomes viewed by the jury as speaking on behalf of the judge...If the bailiff is viewed as speaking for the judge, then the bailiff’s action in this case was within the color of her jurisdiction. One of the judge’s duties is to determine what information can be given to the jury. The bailiff, as the judge’s alter ego, did this even though she may have been acting incorrectly or in excess of her authority.”

Adkins, *supra*. (Citations omitted. Emphasis added).

Thus for the court in Adkins it was the fact that the judge had delegated part of his “official duties” to the bailiff that was critical. More specifically, he had delegated the ability to speak on his behalf to the jury. When the bailiff decided to give the dictionary to the jury, she did so as an alter-ego to the judge and for the judicial (as opposed to the ministerial) purpose of deciding what information could be considered by the jury in its deliberations. Most importantly though, the analysis of the Adkins court

went beyond considering that the person involved had the title of “bailiff”. Instead the critical consideration was the fact that the bailiff was acting fully as an alter-ego of the court and thus because the judge would have been entitled to judicial immunity for giving a dictionary to the jury while in deliberations, so too would the bailiff, his “alter-ego”.

Obviously the facts of this case are completely different. The duty to transport the prisoner was not part of the “official duties” of the judge and he was not delegating those responsibilities to the Deputy as his “alter ego”. Instead, the judge was simply ordering the Deputy to do what she was hired and present in court to do. That for purposes of this appeal, the negligence of the Deputy and that of her employer in fulfilling this duty is uncontested and there is no basis for finding that either judicial or quasi-judicial immunity applies, the plaintiff respectfully requests that this court reverse the order granting the defendants summary judgment.

6. Any immunity that may accrue to the Deputy through judicial immunity does not extend to Skagit County, the Deputy’s employer.

In his complaint, the plaintiff alleged that the defendant Skagit County failed to properly train its employee Defendant Deputy Deanna

Randall in proper restraint of a prisoner. (CP-149). By itself, this claim of negligence is not in any way related Judge Skelton's order to Deputy Randall to transport the prisoner to jail. In other words, Judge Skelton only ordered the transport, he did not instruct the Deputy regarding how she was to carry out this responsibility. (CP-116). Presumably the procedures the Deputy used or failed to use were the subject of the training and procedures that were given to her by her employer, Skagit County. The plaintiff has alleged that this training was negligent. In its motion for summary judgment, Skagit County did not contest this negligence so it was error for the trial court to order that because of imputed immunity, "the issues of duty and negligence" involving the County "do not enter into this action and need not be considered".

In Savage v. State, 127 Wn.2d 434, 899 P.2d 1270 (1995), the court made clear that an agent's immunity from civil liability generally does not establish a defense for the principal. Accordingly, if the court should find that Deputy Randall was entitled to immunity by virtue of Judge Skelton's order, that immunity would not shield the County that employed her, even when liability is predicated upon respondent superior. It was therefore error for the court to award summary judgment to the

County based upon the “doctrine of imputed judicial immunity”. CP-16.

CONCLUSION

In this appeal, the negligence of the defendants has not been contested and must therefore be presumed. The plaintiff’s complaint against both the Deputy and the County is authorized by statute and has been duly filed. The sole basis for the trial court’s grant of summary judgment to the defendants was based upon the doctrine of judicial or quasi-judicial immunity. Whether for judicial or quasi-judicial immunity, this doctrine is intended to protect the independent exercise of judicial discretion and decision making and is never extended to administrative or ministerial actions, regardless of the title or office of the party claiming entitlement to immunity. The transportation of a prisoner from the courtroom to the jail is an administrative act. By the time that the court gave this order to the Deputy, he had already completed the judicial decision making to which the doctrine would apply and he simply ordered the Deputy to do what the County had a responsibility to do and what the Deputy was hired to do anyway. As with any other citizen, the Deputy and her employer had a duty to secure the prisoner in their custody in a manner that was free of negligence. The Defendants failed in this regard and

because their failure involved a purely administrative act, they are not entitled to the absolute protections of judicial immunity.

Should the court find however that at the time of the plaintiff's injury, the Deputy was acting in a quasi-judicial capacity and was thus entitled to immunity, that immunity should not extend to the County. The case law makes clear that the principal (County) is not entitled to the immunity granted to the agent (Deputy). Further, the plaintiff has alleged that the County improperly trained the Deputy and such claim is completely independent of Judge Skelton's order to transport the prisoner.

Based upon the foregoing, the plaintiff, John Lallas, requests that the court reverse the trial court's grant of summary judgment to the Deputy and the County.

DATED this 18th day of September, 2007.

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