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Supreme Court No. _____
Court of Appeals No. 60054-1-1

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

PETITION FOR REVIEW

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ORIGINAL

TABLE OF CONTENTS

A.	IDENTITY OF PETITIONER	1
B.	COURT OF APPEALS DECISION	1
C.	ISSUES PRESENTED FOR REVIEW	1
D.	STATEMENT OF THE CASE	2
	Litigation chronology	2
	Facts	2
	Issues	5
E.	ARGUMENT	6
F.	CONCLUSION	20

TABLE OF AUTHORITIES

<u>Babcock v. State</u> , 116 Wn. 2d 596, 809 P. 2d 143 (1991)	13, 17, 18
<u>Briscoe v. LaHue</u> , 460 U.S. 325, 103 S. Ct. 1108, 75 L. Ed. 2d 96 (1983)	17
<u>Creelman v. Svenning</u> , 67 Wn. 2d 882, 410 P. 2d 606 (1996)	20
<u>Forrester v. White</u> , 484 U.S. 219, 108 S. Ct. 538, (1988)	16, 17
<u>Gregory v. Thompson</u> , 500 F. 2d 59 (9 th Cir. 1974)	14, 16, 17
<u>Lutheran Day Care v. Snohomish County</u> , 119 Wn. 2d 91, 829 P. 2d 746 (1992)	8, 10, 19, 20
<u>Martin v. Hendren</u> , 127 F. 3d 720 (8 th Cir. 1997)	9
<u>Mireles v. Waco</u> , 502 U.S. 9, 112 S. Ct. 286, 116 L. Ed 2d 9 (1991)	17
<u>Plotkin v. State</u> , 64 Wn. App. 373, 826 P.2d 221 (1992)	13
<u>Richman v. Sheahan</u> , 270 F. 3d 430 (7 th Cir. 2001)	5, 6, 10, 12, 13, 14, 17, 19
<u>Savage v. State</u> , 127 Wn. 2d 434, 899 P. 2d 1270 (1995)	19
<u>Snyder v. Nolen</u> , 380 F. 3d 279 (7 th Cir. 2004)	6, 10, 11, 12
<u>Waco v. Baltad</u> , 934 F.2d 214 (9 th Cir. 1991)	16

APPENDIX

APPENDIX A

Court of Appeals Decision

A. IDENTITY OF PETITIONERS

Petitioners SKAGIT COUNTY and DEANNA RANDALL (hereinafter RANDALL) ask the Supreme Court to accept review of the Court of Appeals decision terminating review designated in Part B of this Petition.

B. COURT OF APPEALS DECISION

Petitioners are petitioning for review of an opinion of Division One of the Court of Appeals, which reversed the trial court's grant of summary judgment in their favor. The decision of the Court of Appeals, under 60054-1-I was filed April 21, 2008. A copy of the decision is attached as **Appendix A**.

C. ISSUES PRESENTED FOR REVIEW

1. Whether Petitioner RANDALL is entitled to bar the present lawsuit by an extension of the absolute immunity of the district court judge from whom she took a direct verbal order in open court while functioning as that judge's bailiff.

2. Whether such absolute immunity inures to the benefit of Petitioner SKAGIT COUNTY by the doctrine of imputed municipal immunity.

D. STATEMENT OF THE CASE

Litigation chronology On May 2, 2007, an Order Granting Summary Judgment to RANDALL and SKAGIT COUNTY was entered on the basis that RANDALL was entitled to claim absolute judicial immunity, derived from that of Skagit County District Court Judge Stephen Skelton, and cannot be put to trial for any alleged negligence causing injury to LALLAS. SKAGIT COUNTY was also dismissed by the trial court's Order pursuant to the doctrine of imputed municipal immunity. (CP 14-16)

There was no motion for reconsideration. LALLAS filed his appeal to Division 1 Court of Appeals on May 30, 2007. After briefing was complete, oral argument was had on February 26, 2008.

On April 21, 2008, the Court of Appeals issued its opinion which reversed the trial court's summary judgment of dismissal. **(Appendix A).**

Facts On September 4, 2002, RANDALL, a SKAGIT COUNTY Corrections Deputy, was in the fifth month of a six month temporary attachment to the SKAGIT COUNTY courts as a "Court Security Deputy". During this six month period her sole duties were to the Skagit County courts, and particularly to answer to the call of

any of the Superior or District Court judges in either of the two courthouses, which are across the street from one another. (CP115-116; CP 131)

Late in the afternoon of that date, RANDALL received a radio message to report to the courtroom of District Court Judge Stephen Skelton. When she entered the courtroom, she observed Anthony REIJM seated alone in the court. Judge Skelton looked up from the bench when RANDALL entered the courtroom, indicated REIJM, and simply said "He needs to go to jail". (CP 115-117)

RANDALL, who was acquainted with REIJM from a prior contact with him when she working in the jail, instructed REIJM to come with her. RANDALL took REIJM by the elbow to walk him the few steps from the courtroom to the elevator to the second floor jail. (CP 115-117)

Though a Skagit County Jail Manual describes various rules, including the handcuffing of inmates being transported from the jail, there existed no rule or regulation addressing the escort of litigants ordered to jail from the district court. (CP 62-63)

Because RANDALL was acquainted with REIJM, and knew him from previous contact to be docile and cooperative, she elected not to handcuff him. (CP 115-117; CP 51-52)

At the elevator door REIJM asked RANDALL if he could go out to the building's parking lot to inform his waiting girlfriend that he was not going home. RANDALL said, "No," and REIJM immediately bolted toward the nearby doors to the street. (CP 115-117)

In order for REIJM to gain the street he had to pass through the area immediately inside the doorway given over to an incoming security area where visitors were screened for weapons. (CP 115-117)

Employed as a private security guard for a company contracted to the County, LALLAS was in the security area and happened to be watching RANDALL and REIJM at the moment REIJM bolted. LALLAS made an attempt to block REIJM's escape and was knocked to the floor by the fleeing REIJM. CP 115-117

Appendix A, page 2.

RANDALL sounded the alarm by her radio, paused to check LALLAS, who was conscious, and joined the hunt for REIJM, who was captured nearby a short time later. (CP 115-117)

LALLAS filed his lawsuit against RANDALL, REIJM, and SKAGIT COUNTY on May 25, 2005, in Snohomish County Superior Court.

RANDALL and SKAGIT COUNTY answered, asserting immunity as a bar to the lawsuit. They then engaged in discovery and moved for summary judgment on the basis of absolute immunity. (CP 135-138; CP 132-34; CP 118-128; CP 106-112)

LALLAS also moved for summary judgment. (CP 65-105), which was stricken on motion as untimely. (CP 17-18)

Following oral argument, the Honorable Kenneth Cowser, signed an Order granting summary judgment to RANDALL and SKAGIT COUNTY on the basis of RANDALL's absolute judicial immunity, imputed to Skagit County, on May 2, 2007. (CP 14-16)

Issues In the Court of Appeals, though RANDALL did not assert "quasi-judicial immunity" as grounds of summary judgment in the trial court, in the opinion of the Court of Appeals that doctrine was the basis for reversing the summary judgment of the trial court. That court adopted the reasoning of a 7th Federal Circuit Court opinion, Richman v. Sheahan, 270 F. 3d 430 (7th Cir. 2001), that emphasized the manner in which a judge's order is carried out as

determinative of the right to claim the immunity derived from the judge. That, in turn, may be derived from the allegations of the Complaint.

The Petitioners will show this Court that the adoption of the Richman reasoning works a very significant change in the doctrine of judicial immunity long established by Washington Courts and has the effect of bringing Division 1 of the Court of Appeals in conflict with this Court's statements of the doctrine, and also those of other divisions of Court of Appeals.

Petitioners will show herein that "extended judicial immunity" is unfortunately often conflated with "quasi-judicial immunity" in the case law of this state's courts and many others, including several federal circuits, leading to much confusion when citing to published opinions.

E. ARGUMENT

The chief evils arising from the adoption of the 7th Circuit's Richman formulation, which is explained in detail by the same court in Snyder v. Nolen, 380 F. 3d 279 (7th Cir. 2004), includes disallowing the doctrine from having its primary effect of being a bar to lawsuits, allowing artful pleading to defeat it and, in this instance, installing an artificial distinction between the direct "judicial" order by placing an

"executive" label on the person carrying out the judicial order, all of which work changes in Washington law, effectively calling into question case law from this Court and from the Court of Appeals.

The term "quasi-judicial immunity" had the effect of a red herring in this case. Where Petitioners have used that term in their pleadings, it was in an attempt to distinguish that concept from the concept of judicial immunity as it has been used by the courts long before the term "quasi-judicial immunity" was coined or unavoidable to make a point.

It is critical to note that the Order Granting Summary Judgment signed by Judge Cowser nowhere mentions "quasi-judicial immunity". (CP 14-16) That Order specifically avoids the use of that term because the term has no application in this matter. Yet the Court of Appeals, beginning very early in its opinion, shows that the Petitioners' argument was entirely misinterpreted.

The trial court granted the defendants' motion for summary judgment on the basis of quasi-judicial immunity.

Appendix A, page 3, line 4.

Apparently proceeding on that premise, the court's opinion went on to cite Lutheran Day Care v. Snohomish County, 119 Wn. 2d 91, at page 99, by correctly, but irrelevantly stating,

Quasi-judicial immunity attaches to persons or entities that perform functions so comparable to those performed by judges that they ought to share in the judge's absolute immunity when carrying out those functions.

(Appendix A, page 3)

Had the Court of Appeals continued that quote to the end of the paragraph in which it appears, it would have read:

It should be made clear, however, that such immunity is not to be confused with absolute *judicial* immunity. The phrase "quasi-judicial" employs the word "judicial" only in comparing the *function* of a non-judicial person or entity to the functions of a judge. True judicial immunity of judges and of those to whom courts have accorded extended judicial immunity are not here involved.

Lutheran Day Care v. Snohomish County, at page 100.

(emphasis provided)

Lutheran Day Care has therefore provided a phrase that might be employed by this Court to clarify the confusion existing in the various Washington cases in which the concepts of immunity are conflated, including the Court of Appeals opinion in the present case.

The Petitioners have never advocated for “quasi-judicial immunity”. Moreover, the Petitioners have never claimed that RANDALL carried out a “judicial function” in the sense of a “judge-like” function, but rather, obeyed a judicial order.

The problem of citing authority in this area of law in which other courts, in this and other jurisdictions, have been less than fastidious in maintaining a distinction between “quasi-judicial immunity” and “absolute judicial immunity” is illustrated in the 8th Circuit case of Martin v. Hendren, 127 F. 3d 720 (8th Cir. 1997), in which the court describes as “quasi-judicial immunity” that part of absolute judicial immunity which extends from the judge to others and is relevant to explain the Petitioners’ claims in this case.

A judge’s absolute immunity extends to public officials for “acts they are specifically required to do under court order or at a judge’s direction”. (citations omitted) Like other officials, bailiffs enjoy absolute quasi-judicial immunity for actions “specifically ordered by the trial judge and related to the judicial function” (citation omitted). In subduing Martin, Hendren was acting as a de facto bailiff, obeying specific judicial commands to restore order in the courtroom. Those orders unquestionably related to the judicial function.

Martin, at page 721.

With few exceptions, one of which was adopted by the Court of Appeals in its opinion, what occurred in Judge Skelton’s Court

between he and RANDALL, the person acting as his bailiff, has been enough to successfully invoke and extend to the subject of that explicit order sufficient of the judge's mantle of immunity against lawsuits by third parties claiming damages as a result of the bailiff carrying out the judge's order.

As pointed out in Lutheran Day Care, judicial immunity has existed in Anglo-American jurisprudence since at least the 17th century. In other case law, it is traced back to the 13th century. Of the few cases which resemble the facts of this case and in which the actor/bailiff has not been afforded the protection against being brought to trial by a claimant, none are from Washington courts.

The Court of Appeals, in adopting the 7th Circuit formula from Richman for assigning the right of a court employee to partake of a judge's absolute immunity has adopted a formula that is unusual among the federal circuits, and one which is founded on an instance of brutal conduct by Cook County law enforcement officers called to court to eject a litigant, and then to arrest him because he would not leave.

A clear explanation of the reasoning of Richman is found in Snyder v. Nolen, 380 F. 3d 279 (7th Cir. 2004), per curiam. The

extension of the judge's absolute immunity is appropriate in two instances. First, the judge's immunity might be extended in the case of "quasi-judicial conduct" where nonjudicial officers act in a judicial capacity. (Snyder, at page 286) This is the sort of quasi-judicial immunity which the Court of Appeals apparently mistakenly believed that Petitioners were urging in that court.

The Snyder court explained that "a second group of individuals" are entitled to share in the judge's absolute immunity when a member of that group has taken on a function that is more administrative in character, provided that the function is "undertaken pursuant to the explicit direction of a judicial officer". (Snyder at page 287.)

The policy of justifying an extension of absolute immunity in these circumstances is to prevent court personnel and other officials from becoming a lightning rod for harassing litigation aimed at the court. Richman, 270 F. 3d at 435 (internal quotation marks and citations omitted).

Snyder at page 287

To this point, the Snyder court might well be describing the existing test for extending a judge's absolute immunity under Washington law. However, the court then states that a further distinction must be made *as between the court's order and the*

manner in which the order is enforced. Where deputies called to a courtroom to restore order as a result of a judge summoning help by pushing a "panic button", the use of excessive force by the fourteen Cook County sheriff's deputies which caused the death of a litigant on the courtroom floor, the 7th Circuit found that the deputies' method of arresting a litigant at the judge's order required examination as part of the determination of whether an extension of the judge's absolute immunity was warranted, that court describing the type of immunity involved as "quasi-judicial". In Snyder, the facts are not important. The real value of Snyder is to explain the rationale in Richman, which reveals how the adoption of the Richman case for absolute judicial immunity has altered present Washington law. Heretofore, the extension of a judge's absolute immunity to another person cuts off all question of that person's conduct. The law of Washington has held that one entitled to absolute immunity cannot lose that immunity even due to wanton and willful conduct.

The absolute immunity afforded by Taggart is not affected by the fact that Plotkin alleges gross negligence and the willful/wanton misconduct in addition to ordinary negligence. The Taggart court expressly stated that the board is entitled to the same immunity as judges. (citations omitted) Judicial immunity precludes liability even when conduct is malicious or corrupt. (citations omitted) A fortiori, such

immunity also precludes liability due to conduct which is grossly negligent or willful and wanton.

Plotkin v. State, 64 Wn. App. 373, 377-78 (1992) (Div. 2)

Absolute immunity shields the recipient from liability for willful misconduct as well as negligence.

Babcock v. State, 116 Wn. 2d 596, 606, (1991).

Here, LALLAS filed a pleading which alleges negligence by RANDALL for not using handcuffs when she escorted REIJM from the courtroom to the jail. Notwithstanding the fact that there was no rule or regulation requiring the use of handcuffs, a principle of absolute immunity under Washington law heretofore has been that it is not forfeited by an act of negligence.

Richman held that a court must examine the pleadings as a part of determining whether immunity is warranted. It seems obvious that if all a plaintiff has to do is to artfully plead away any connection between the judge and all others who take orders from him or her, there would never again be a case of judicial immunity extending to those a judge depends upon to help him do his job. If what otherwise might be found to be a matter worthy of extending a judge's absolute judicial immunity to include another can be defeated by the "negligent conduct" of the judge's bailiff, clerk, probation officer, or other court

personnel given direction by the judge, then the principle of extending absolute judicial immunity is dead in Washington.

Moreover, if a plaintiff can, by the artifice of artful pleading, make, by the use of agency law, a court employee carrying out a judicial order the responsibility of the municipality, another significant volume of Washington precedent it at least put in doubt by the Court of Appeals in this case. Heretofore, under Washington law the entity which issues its employee's paycheck has not been determinative of what branch of government is the actual employer with right of control – the test for agency in Washington.

Other courts have foreseen this problem.

The essence of Judge Thompson's conduct is protected by immunity, therefore, it remains protected even if the plaintiff alleged that Thompson used manifestly excessive force. Any other rule would place a judge at the mercy of a pleader's allegations.

Gregory v. Thompson, 500 F. 2d 59, 62-63 (9th Cir. 1974)

The Court of Appeals, in adopting Richman stated

The distinction it makes between the substance of a judge's order and the manner in which it is carried out is similar to the distinction in Adkins between a judicial function and other kinds of functions. Judge Skelton performed a judicial function when he ordered that Reijm be taken immediately into custody. Deputy Randall performed an executive function when she

carried out that order and chose to take Reijm into custody without using handcuffs.

Appendix A, page 6 -7 .

If the Court of Appeals had not erred in determining that RANDALL was a "law enforcement officer", it likely would not have reached this conclusion. If this method of analysis for determining whether a functional court employee becomes an employee of the executive when she undertakes to obey a judicial order, it also acts to alter existing law, in addition to encouraging the artful pleading device allowing a plaintiff to get at a municipality for a court functionary's alleged negligence.

Here, RANDALL was acting at the explicit instruction of Judge Skelton. Because RANDALL had the discretion to effect Judge Skelton's order to take REIJM to be booked without the use of handcuffs, she did not violate any rule of the court, or of the executive branch of Skagit County. She exercised her discretion in the performance of a duty imposed upon her by Judge Skelton's direct order. (CP 63, lines 15-21

This morph from a "judicial function" when Judge Skelton made his decision and issued his order to RANDALL to an "executive function" to carry out the order - which was essentially to give effect

to, and complete the judicial function – is new to Washington law. This ignores a very basic part of the case law which has helped form the basis of Washington law. That is that the identity, job title, or position held by the actor is irrelevant. What is important to the determination is the task assigned by the judge. Forrester v. White, 484 U.S. 219, 229; 108 S. Ct. 538, 545 (1988).

It has been argued by LALLAS that the escorting of a litigant to jail might be “judicial” if the judge came down from the bench and performed that act. In fact, no wise judge, at least within the 9th Circuit, would personally leave the bench to put hands on any person in his court. To do so would act to forfeit his judicial immunity. Gregory v. Thompson, 500 F. 2d 59 (9th Cir. 1974).

In Gregory this court held that when judges themselves use physical force to preserve order they are not entitled to absolute immunity, though they may be entitled to the defense of qualified immunity. 500 F. 2d at 61, 64-65. (Judge asked person to leave his courtroom and, after person refused, judge physically removed him.) - Although the Gregory judge would have retained his absolute immunity if had directed the sheriff to remove the person, he lost his immunity because he performed an act “similar to that normally performed by a sheriff or bailiff”. Id., at 65

Waco v. Baltad, 934 F. 2d 214, 215 (9th Cir. 1991).

Though Gregory remains good law, Waco was reversed in the Supreme Court by Mireles v. Waco, 502 U.S. 9, 112 S. Ct. 286, 116 L. Ed. 2d 9 (1991) per curiam (see 962 F2d 865 (9th Cir. 1992)). Here, with regard to the Court of Appeals opinion in this case that Judge Skelton's order became an "executive" matter once it was uttered, language from Mireles is instructive, if not dispositive:

Nor does the fact that Judge Mireles's order was carried out by police officers somehow transform his action from "judicial" to "executive" in character. As Forrester instructs, it is "the nature of the function performed, not the identity of the actor who performed it, that inform[s] our immunity analysis." 484 U.S. at 229, 108 S. Ct. 545. A judge's direction to an executive officer to bring counsel before the court is no more executive in character than a judge's issuance of a warrant to an executive officer to search a home.

Mireles, 502 U.S. at 12.

The foregoing view of the Supreme Court, though not binding on state courts, taken together with the points made in Forrester and Briscoe v. LaHue, *infra*, as pointed out in Judge Andersen's partially concurring and partially dissenting opinion in Babcock v. State, *supra*, at 627-628 (1991), demonstrate how out of the mainstream Richman is.

The rationale for immunizing persons who execute court orders is apparent. Such persons are themselves 'integral parts of the judicial process'. Briscoe v. LaHue,

460 U.S. 325, 335, 103 S. Ct. 1108, 1116, 75 L. Ed. 2d 96 (1983). The fearless and unhesitating execution of court orders is essential if the court's authority and ability to function are to remain uncompromised.

Babcock, supra.

In that mainstream, heretofore including Washington appellate law, it would seem that a verbal order from a judge in open court which essentially says, "Do this for me in order to give effect to my decision," the task assigned was a critical part of the judicial function, and the actor, for the reasonable duration of the task of walking a defendant a few feet from the courtroom to the jail elevator, should have that judge's immunity extended to her. To deny that extension of immunity because the person directed to carry out the order had at the time an attenuated connection to the executive branch is not consistent with the application of the doctrine.

Nor is it consistent with the doctrine as applied in Washington law to permit artful pleading to circumvent the court's immunity against lawsuits in order to get at the executive for the alleged negligence of even a temporary agent of the court by simply pleading what might produce a question ordinarily reserved for a fact finder.

This Court has the opportunity to clarify the present conflation of terms and incidents of absolute immunity. The Court's statement

regarding "extended judicial immunity" as set out in Lutheran Day Care, supra at page 100, would lend itself to that effort. This Court also alluded to the need to clarify that species of absolute immunity in Savage v. State, 127 Wn. 2d 434, 441-442, and at footnote 4, (1995).

The most salient features in instances wherein courts have found it necessary and proper to extend absolute judicial immunity to persons, of whatever job description, have most often involved a direct verbal order, in a court in session, to perform some act necessary to carry on and/or complete judicial functions. Those elements exist here.

The specific language of the Court of Appeals' opinion at **Appendix A**, page 7, more than suggests that RANDALL's job title means more than her function.¹ Being lumped with "law enforcement officers of all kinds" and suggesting that a bailiff escorting a defendant from a courtroom to be booked is comparable to the fourteen Cook County deputies who rushed into the courtroom and ended up killing a litigant because he would not leave, as in Richman, is in the same universe of possibilities in a courtroom as "on the street" is hardly

¹ The Court of Appeals opinion refers to Randall as a "sheriff's deputy" at page 2 and lumps her with "law enforcement officers of all kinds" at page 7. Appendix A.

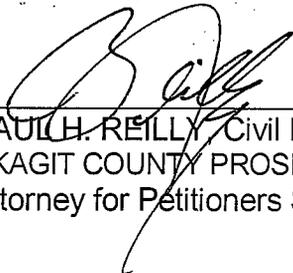
within the same topic Petitioners presented to the trial court at summary judgment.

SKAGIT COUNTY is entitled to benefit from the absolute immunity extended to RANDALL under the doctrine of "imputed municipal immunity", as it has become called. Creelman v. Svenning, 67 Wn. 2d 882, 885 (1996); Lutheran Day Care, 119 W. 2d, at 127.

F. CONCLUSION

The Court of Appeals decision should be reversed and the case dismissed.

Respectfully submitted this 18 day of May, 2008.

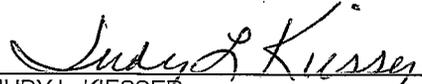


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DECLARATION OF DELIVERY

I, Judy L. Kiesser, declare as follows:

I sent for delivery by; [xx]United States Postal Service; []ABC Legal Messenger Service, a true and correct copy of the document to which this declaration is attached, to Harry Platis and Denis C. Wade, Cedar Valley Offices, 20016 Cedar Valley Road Ste 103, Lynnwood, WA 98036. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Executed at Mount Vernon, Washington, this 19 day of May, 2008.



JUDY L. KIESSER

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APPENDIX A

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

JOHN T. LALLAS AND IRENE) NO. 60054-1-I
LALLAS,)
)
Appellants,)
)
v.) PUBLISHED OPINION
)
SKAGIT COUNTY; DEPUTY DEANNA)
RANDALL; ANTHONY REIJM; AND)
JOHN DOES I-III AND JANE DOES I-III,)
)
Respondents.) FILED: April 21, 2008

BECKER, J. -- The victim of an assault alleges that a deputy sheriff was negligent when carrying out a judge's order to escort the assailant to jail. Because the lawsuit challenges the manner in which the order was carried out rather than the substance of the order itself, quasi-judicial immunity does not shield the deputy or her employer.

Anthony Reijm appeared before Skagit County District Court Judge Stephen Skelton on September 4, 2002. Reijm apparently had failed to abide by conditions of release previously imposed. Judge Skelton decided that he should be immediately taken into custody.

At the time, Skagit County Sheriff's Deputy Deanna Randall was working as a "court rover," a six-month assignment to provide security in the superior and district courts subject to the direction of the judges. Judge Skelton notified Deputy Randall that he needed her to report to his courtroom to take Reijm to the jail. Deputy Randall came to the courtroom, placed her hand on Reijm's elbow, and began to escort him on the short walk from the courtroom to the jail.

It seems Reijm had not anticipated that he would be booked into jail right after his court appearance. He asked Deputy Randall if he could first go outside and talk with his girlfriend. Deputy Randall denied this request. Reijm broke free and ran towards the front door of the courthouse. Deputy Randall yelled at him to stop. John Lallas, a security guard at the Skagit County Courthouse, was at his station near the door when he heard the commotion. Lallas squared himself between Reijm and the exit. Reijm ran straight into Lallas, knocked him to the floor, and ran out the door. Police found Reijm hiding in a stairwell a few blocks from the courthouse. Meanwhile, an ambulance took Lallas to the hospital.

Lallas filed this lawsuit against Deputy Randall and Skagit County in May 2005, seeking damages for the injuries he sustained when Reijm escaped. His theory of liability was that Deputy Randall, who was at least a foot shorter than Reijm, was negligent when she failed to put Reijm in handcuffs for the trip to the jail. The defendants countered that they could not be sued because Deputy Randall was acting as "an arm of the court" when carrying out Judge Skelton's order.¹ The trial court granted the defendants' motion for summary judgment on the basis of quasi-judicial immunity.

Lallas appeals. Our review is de novo. Babcock v. State, 116 Wn.2d 596, 598, 809 P.2d 143 (1991).

The doctrine of judicial immunity was developed to protect judges from harassing lawsuits filed by litigants displeased with a judge's decision. Judicial immunity is absolute; it shields the recipient from liability for willful misconduct as well as negligence. Babcock, 116 Wn.2d at 606. Absolute immunity is strong medicine that is justified only when the danger of officials being deflected from 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).

Quasi-judicial immunity attaches to persons or entities that perform functions so comparable to those performed by judges that they ought to share the judge's absolute immunity while carrying out those functions. Lutheran Day

¹ Clerk's Papers at 121.

Care v. Snohomish County, 119 Wn.2d 91, 99, 829 P.2d 746 (1992). For example, a bailiff who gave a dictionary to a deliberating jury was protected by judicial immunity because the bailiff was viewed as speaking to the jury on behalf of the judge:

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.

The duty imposed upon the bailiff, as a judicial officer, is a judicial duty; her failure to perform it properly is a judicial and not an individual injury.

Adkins v. Clark County, 105 Wn.2d 675, 678-79, 717 P.2d 275 (1986).

Adkins does not imply that a bailiff, or other court employees with duties comparable to a bailiff, will be shielded by judicial immunity for every act carried out in a courtroom. The title held by the official claiming absolute immunity is not dispositive. It is "the nature of the function performed, not the identity of the actor who performed it," that informs a determination of whether an actor is entitled to absolute immunity. Forrester, 484 U.S. at 229.

The county reasons that Deputy Randall's acts are protected by quasi-judicial immunity because the assignment she fulfilled was to carry out a judge's order and therefore, like the bailiff in Adkins, she was performing a judicial function. In support of this argument, the county cites Babcock in which our Supreme Court rejected an argument that a state caseworker was absolutely immune for negligently placing foster children in the care of a sexual predator

who molested them. Babcock, 116 Wn.2d at 598. The court stated: "Had the court ordered the actions complained of, quasi-judicial immunity would attach." Babcock, 116 Wn.2d at 609. But one would have to read this statement out of context to understand it as a blanket grant of absolute quasi-judicial immunity to anyone who carries out a court order. In context, the Supreme Court was clarifying that the trial court judge had not ordered the specific placement complained of.

A federal case that does support the county's position is Martin v. Hendren, 127 F.3d 720 (8th Cir. 1997). In Hendren, an Arkansas judge ordered an officer to "put the cuffs on" and remove an unruly woman from the courtroom. Hendren, 127 F.3d at 721. When the woman resisted, the officer flipped her face down on the floor, handcuffed her, and pulled her up by the handcuffs and her hair. The Eighth Circuit ultimately ruled that quasi-judicial immunity shielded the officer from the woman's claim of excessive use of force. The court concluded that the officer was acting as a de facto bailiff when obeying the specific judicial command to restore order in the courtroom. Hendren, 127 F.3d at 721. As pointed out by the dissenting judge in Hendren, this ruling means that if a judge orders a bailiff to remove a litigant from the courtroom, the bailiff will enjoy absolute immunity even if the bailiff decides that the most expeditious way to accomplish this order is to bash the litigant in the head with a baseball bat. Hendren, 127 F.3d at 723 (Lay, J., dissenting).

The Seventh Circuit has disagreed with the Hendren majority in a case with similar facts, Richman v. Sheahan, 270 F.3d 430 (7th Cir. 2001). Jack Richman and his mother waited several hours in court to contest a traffic ticket. They protested when the judge continued the case to a later date. The judge ordered Richman restrained when he refused to be quiet. Fourteen deputies attacked Richman, wrestled him to the ground and put him in handcuffs. Richman stopped breathing and was pronounced dead upon arrival when taken to the hospital. Richman, 270 F.3d at 433-34.

Richman's mother sued the deputies for wrongful death caused by use of excessive force. The deputies claimed quasi-judicial immunity on the basis that they were executing the judge's order to provide courtroom security. The district court ruled that the deputies were not absolutely immune from the claim. The Seventh Circuit affirmed. Quasi-judicial immunity does not attach when the lawsuit challenges the manner in which a judge's order was enforced rather than the specifics of the order:

The policies articulated in our quasi-judicial immunity cases have less force when, as in this case, the challenged conduct is the manner in which the judge's order is carried out, and not conduct specifically directed by a judge. Reading Richman's complaint in the light most favorable to her, the claim is not that the judge ordered the deputies to use unreasonable force, but that the deputies exceeded the judge's order by the manner in which they executed it. The claim for damages in this case is not therefore a collateral attack on the judge's order (an order that Richman concedes was valid), and an appeal of the judge's order would provide no remedy. Similarly, the deputies are not being called upon to answer for wrongdoing directed by the judge, but instead

for their own conduct. And that conduct--the manner in which they enforced the judge's order--implicates an executive, not judicial, function.

Richman, 270 F.3d at 437-38.

Richman in our view is more persuasive than Hendren. The distinction it makes between the substance of a judge's order and the manner in which it is carried out is similar to the distinction in Adkins between a judicial function and other kinds of functions. Judge Skelton performed a judicial function when he ordered that Reijm be immediately taken into custody. Deputy Randall performed an executive function when she carried out that order and chose to take Reijm into custody without using handcuffs. She is not being called upon to answer for anything Judge Skelton did or failed to do. She is being called upon to answer for her own conduct. Allowing Deputy Randall to be sued for the manner in which she carried out Judge Skelton's directive is not a collateral attack on Judge Skelton's decision to send Reijm to jail. It will not threaten the independence of judges who must make future decisions to have litigants taken into custody.

The county argues that absolute immunity must be extended to courtroom security officers as a matter of public policy, in order to assure that the fear of being sued will not cause them to hesitate in carrying out a judge's orders.

Richman persuasively addresses this concern, noting that "without in any way minimizing the vital and often valorous service of those who provide security to

judges and other participants in the judicial process,” the need for immediate action in the face of potentially fatal consequences is not a situation unique to courtrooms—and yet qualified immunity, not absolute immunity, “is the rule for law enforcement officers of all kinds.” Richman, 270 F.3d at 438; see also Savage v. State, 127 Wn.2d 434, 899 P.2d 1270 (1995). That the need for security arises in a courtroom rather than on the street does not justify granting immunity that is absolute rather than qualified.

Because Deputy Randall was not performing a judicial function when she engaged in the conduct that is challenged in this lawsuit, justification is lacking for the application of quasi-judicial immunity to her conduct. The order of dismissal is reversed.

Becker, J.

WE CONCUR:

Grosse, J. Ajda, J.