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No. #60054-1-1

JOHN T. LALLAS AND IRENE LALLAS,

Appellant

v.

SKAGIT COUNTY, et al.

Respondent

REPLY BRIEF OF APPELLANT

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ORIGINAL

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ARGUMENT AND ANALYSIS

1. The Parties agree that negligence is not an issue in this appeal.

Through their brief, the Respondents point out (as the Appellants did also), that the negligence of the Respondents is not at issue in this appeal. The trial court's award of summary judgment to the Respondents was a based entirely upon the doctrine of absolute judicial immunity. Therefore, as discussed below and previously, because the trial court incorrectly applied absolute immunity to the facts of this case, the award of Summary Judgment by the trial court must be reversed.

2. Because the Respondents were not acting as a judge at the time of the plaintiff's injury, the question is whether or not the Respondents are entitled to "quasi-judicial immunity". "Judicial immunity" applies only to judges.

Although the significance is not entirely clear, the Respondents appear to argue that the doctrines of "judicial" and "quasi-judicial" immunity have become confusingly "conflated" and that it was misleading to refer to this case as one involving "quasi-judicial" as opposed to "judicial" immunity (Respondents' Brief, pp.4-5). Although this may ultimately prove to be a question of semantics, a simple reading of the relevant cases establishes however that the courts routinely distinguish

between cases involving judges, which are referred to as “judicial” and those involving non-judges, which are referred to as “quasi-judicial. For example, in Snyder v. Nolen, 380 F.3d 279 (7th Cir. 2004), the court wrote:

“These policy concerns have required that, in some instances, “[t]he absolute immunity afforded to judges [be] extended to apply to quasi-judicial conduct of [n]on-judicial officials whose official duties have an integral relationship with the judicial process.” ... (“Absolute judicial immunity is not reserved solely for judges, but extends to nonjudicial officers for ‘all claims relating to the exercise of judicial functions.’” (Citations omitted).

Regardless of whether or not it is necessary to make this fine distinction however, it is clear that the Deputy involved in this case was transporting a prisoner. She was not acting as a judge, nor was she performing any duty that a judge would typically perform. At a minimum therefore it is important to scrutinize what duty she was performing at the time of the plaintiff’s injury to determine whether or not that duty is one to which the absolute forfeiture of the Appellants’ right to seek redress for his injuries should be subjected. Lutheran Day Care v. Snohomish, 119 Wn.2d 91, 829 P.2d 746 (1992). Clearly the case law supports a finding that whether considered as “judicial” or “quasi-judicial”, the doctrine of absolute judicial immunity does not extend to the facts of this case.

3. Even though the Deputy was ordered by the court to transport a prisoner from court to jail, the court did not, in any way, instruct the Deputy in how she should fulfill this duty. It is therefore not the court order that is at issue, but rather the way in which that order was carried out. In that this was left completely to the training and discretion of the Deputy, judicial immunity does not apply.

In their brief, the Respondents purportedly cite to “a line of federal cases holding that those taking orders from a judge in open court are entitled to share in the absolute immunity of the judge. A reading of these cases will reveal however that their holdings do not apply to the facts of this case. Again, at the time of the plaintiff’s accident, the Deputy involved was not, in any way, acting as a judge. She was however carrying out an order from a judge and it is because of this order that the Respondents claim absolute immunity.

Nevertheless, before proceeding further, it is important to consider exactly what the judge did and did not order the Deputy to do. What the judge ordered the Deputy to do was to simply transport the prisoner from his courtroom to the Skagit County Jail (CP-116). What he did not do was to tell her how to accomplish this task or more specifically that she was not to use restraints during the transport.

Although it is true that there is a line of cases that hold that

absolute judicial immunity can extend to officials that are executing an order of the court, these cases each depend upon a determination that the extension of the doctrine of absolute judicial immunity to the facts of the case in question will serve to further the public policy behind the doctrine and to preserve the independence of the judiciary.

Again, the admonition of the Lutheran, *supra* court must be kept in mind. Thus simply because quasi-judicial immunity has been previously extended to a person holding an office (a bailiff, a clerk, a sheriff, etc..) or a person fulfilling a specific duty (such as following a court's order) does not mean that immunity should be applied to each case that follows thereafter. Instead, each case must be decided after carefully considering the balance between a plaintiff's absolute loss of a right to seek redress for injuries sustained and the perceived greater good of preserving the independence of the judiciary. Lutheran Day Care, *supra*.

Thus in Snyder, *supra* the court first described the history and public policy behind traditional judicial immunity and then described two circumstances under which this immunity has been extended to "non-judges" (as it would need to be in the present case). The court wrote as follows:

This immunity has been extended to non-judges in two circumstances. First, it has been applied to "quasi-judicial conduct," (citation omitted) that is, actions of non-judicial officers acting in a judicial capacity...

Absolute judicial immunity also has been extended to the conduct of a second group of individuals. "[W]hen functions that are more administrative in character have been undertaken pursuant to the explicit direction of a judicial officer, we have held that that officer's immunity is also available to the subordinate (citations omitted)."

The Respondents' argue apparently that they fall within the second group as the Deputy was performing an act that was administrative in nature (transporting a prisoner), pursuant to an order of the court. The questions then becomes whether or not extending immunity to the facts of this case will in anyway preserve the independence of the judiciary.

In Richman v. Sheahan, 270 F.3d 430 (7th Cir. 2001), the court considered a case in which police officers were ordered by the court to make an arrest. It was alleged however that during the arrest, unreasonable force was used.

Because judicial immunity is absolute, according to the logic of the Respondents', the officers in Richman should have had a complete shield against the claim of the person that they had arrested despite the

allegation of unreasonable force. This is not however how the court in Richman held.

Drawing a distinction between the specific order given by the judge and the manner in which that order was carried out, the court wrote as follows:

“In Mireles, the plaintiff challenged the judge's order directly--that is, by suing the judge. Mireles holds that when the challenged conduct is the judge's own decision making, the applicability of absolute immunity cannot turn on the correctness of the judge's decision. 502 U.S. at 12-13. By contrast, when the conduct directly challenged is not the judge's decision making, but the manner in which that decision is enforced, we agree with the Tenth Circuit that the law enforcement officer's fidelity to the specific orders of the judge marks the boundary for labeling the act "quasi- judicial."

...

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, at 270 F.3d 436-437)

Similarly, in Turney v. O'Toole, 898 F.2d 1470 (10th Cir. 1990), a court ordered a seventeen-year-old plaintiff to be confined at a state mental health hospital. At the hospital, the plaintiff was placed in an adult maximum-security unit. Ultimately, the plaintiff sued alleging violations of § 1983. In reviewing a claim by the defendants that they were entitled to complete immunity because they were acting pursuant to a court order, the Tenth Circuit held that the defendants were absolutely immune from liability arising from the fact of [the plaintiff 's] confinement, but that this immunity did not extend to the way in which the defendants confined the plaintiff (i.e. in a maximum-security unit). The Court explained:

[T]his absolute immunity [for the plaintiff 's confinement] extended only to acts prescribed by [the court's] order, . . . and . . . all the order decreed was [the plaintiff 's] confinement at [the hospital]. It did not dictate any specific placement or treatment within the facility. Therefore, the defendants are not absolutely immune from liability arising from [the plaintiff 's] placement in the maximum security ward. Turney 898 F.2d at 1474 (citations omitted); see also Nixon v. Fitzgerald, 457 U.S. 731, 755 (1982) ("In defining the scope of an official's absolute privilege, this Court has recognized that the sphere of protected action must be related closely to the immunity's justifying purposes.").

The application of the reasoning of these two cases to the present case is obvious. As in Richman and Turney, the court did not order the Deputy to transport the prisoner to jail without restraints, but rather simply

ordered her to transport the prisoner. Thus what is being contested in this case is not the order of the judge, but rather the way in which the Deputy chose to execute that order and the manner in which her employer trained and supervised the Deputy in the fulfillment of these duties.

Again, for purposes of this appeal, it must be presumed that both the Deputy and her employer were negligent. As such, the only question that remains is whether or not there is any public policy argument that should shield them from the negligent performance of their duties.

In Richman, the court went on to reiterate that the purpose of "absolute immunity is not primarily to protect the enforcement function performed by the deputies, but rather to protect the judicial decision-making function" (Richman at 270 F.3d 437). Thus although it was recognized that officers working within a courtroom provide a vital service, it was also pointed out that other law enforcement officers provide services just as vital without the shield of absolute immunity to shield them from the consequence of the negligent performance of their duties. Thus the court saw no public policy reason to give added immunity to officers acting on the orders of a judge while not giving that same

immunity to other officers who perform services that are equally vital or dangerous.

Again, the court is asked to consider the hypothetical situation that was suggested in the initial brief of the Appellant. If two officers are escorting two prisoners to jail, one with a court order and one without, and both cause an independent plaintiff injuries through the negligent performance of their duty, is there really any public policy that supports the conclusion that the court ordered officer should enjoy absolute immunity for his negligence whereas the officer acting without such an order would be held accountable?

Implicit in the holdings of Richman and Turney is the recognition that there is a sound public policy reason for holding officers and officials accountable for their actions. The doctrine of judicial immunity is specifically intended to protect the independence of the judiciary and should not be used as a catchall to extend immunity to every action that emanates from the courtroom.

Thus in Richman, it would not have been appropriate to establish a precedent whereby officers, acting under court orders, can use even

unreasonable force to make arrests, knowing that regardless of how unreasonable or negligent they may be, they will nevertheless have absolute immunity.

Likewise, in Turney, there was no public policy reason to allow the defendants acting under a court order to be held to a lesser standard of care towards a patient in their custody than they would be towards a patient without a court order.

Finally, in the present case, it is clear that the independence of the judiciary will not, in any way, be protected by henceforth allowing an officer, to completely disregard the duty to exercise due care and caution that would otherwise be imposed upon him or her simply because a court has ordered that officer to do what they have been hired to do anyway. Despite the *ipse dixit* assertions by the Respondents that the public policy that underlies the doctrine of judicial immunity supports an extension of the doctrine to the facts of this case, a more thorough analysis is required. Lutheran Day Care, *supra*.

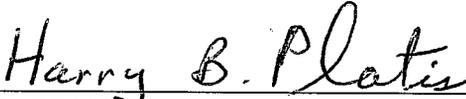
The deputy involved in the present case was performing a purely administrative task. She was ordered only by the court to transport the

prisoner from the court to the jail. How she accomplished this task was properly left to her discretion and training. Again, for purposes of this appeal, it must be presumed that she was negligent and because there is no public policy reason to extend judicial immunity to her under these circumstances, the grant of summary judgment to the Respondents on the basis of absolute judicial immunity must be set aside.

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 20 day of November, 2007.

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