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No. 60054-1-I

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

JOHN T. LALLAS and
IRENE LALLAS, husband and wife

Appellants,

vs.

SKAGIT COUNTY, DEPUTY DEANNA RANDALL;
ANTHONY REIJM; and JOHN DOES I-III and JANE DOES I-III

Respondents.

FILED
COURT OF APPEALS DIV #1
STATE OF WASHINGTON
2007 OCT 26 PM 1:35

RESPONDENTS' ~~REPLY~~ BRIEF

By: PAUL H. REILLY, Civil Litigator
WSBA #10709
Attorney for Respondents Skagit County
and Deanna Randall

SKAGIT COUNTY PROSECUTING ATTORNEY #90159
Courthouse Annex, 605 S. Third
Mount Vernon, WA 98273
Telephone (360) 336-9460, Fax (360) 336-9497

ORIGINAL

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I. INTRODUCTION

The questions posed in Defendant's Notice and Motion for Summary Judgment in the trial court are solely concerned with Defendant Randall's right to claim absolute judicial immunity when acting as a bailiff to the Skagit County District Court and acting at all times material as an "arm of the court" in carrying out a direct verbal order to her by Skagit County District Court Judge Stephen Skelton in open court, and whether that immunity inures to Defendant Skagit County through the doctrine of imputed judicial immunity. (CP 133)

At the outset it should be noted that at the trial court the Defendants made a motion to strike Plaintiff's Motion for Partial Summary Judgment on liability, which motion was based entirely on negligence theory. The Defendants' Motion to Strike was granted by the Court. (CP 17-18) The Plaintiffs, as Appellants here, appear to be attempting to revive a negligence theory, relying on material within the stricken

summary judgment motion and the two declarations supporting those negligence theories. The Defendants' Motion for Summary Judgment at the trial court was made entirely on the basis of absolute judicial immunity and its correlative imputation to the municipal defendant, which motion was granted on that basis alone. Respondents will address those issues alone. The Order Granting Summary Judgment (CP 14-16) is the Appendix to this response brief.

II. ISSUES

Was the trial court correct in finding for Defendants and granting summary judgment on the sole issues before it, presented by Defendants' Motion for Summary Judgment, to wit:

1. Was Deputy Randall, while acting at the verbal direction of a district court judge in open court to take a person appearing in court into custody to be booked into the county jail, acting as a bailiff to the court and thus entitled to claim the protection of judicial immunity against the tort claim of a third

person present in the courthouse who was injured during an escape by the person being escorted by Randall to the second floor jail?

2. Where a deputy is found entitled to judicial immunity in the performance of a judicially imposed direction, does that immunity also protect the municipality from tort liability by the doctrine of imputed judicial immunity irrespective of Appellants' continued negligence claims?

III. ARGUMENT

Judicial immunity has been long recognized by the courts of Washington and by the federal courts as protecting both the judge and those who act on his or her behalf in carrying out judicial orders. For judges to be protected by this immunity from lawsuits, they must have been acting in a judicial capacity, as opposed to an administrative or ministerial capacity when the event out of which a lawsuit arises occurred. The same is true for the judge's subordinates who

claim the protection of the judges immunity. Both Washington and federal case law bear this out.

As pointed out in Defendants' Memorandum of Law in Support of their motion for summary judgment at the trial court, and solely for the purpose of distinguishing the concept of absolute judicial immunity from other species of immunity such as "quasi-judicial immunity", and "qualified immunity", what might be called "original" judicial immunity attaches only to those persons who are intrinsically associated with the judicial process and those acting as "arms of the court". The key for making the determination is not the title of the person acting at the direction of the court, but the task given the person by the judge.

Over time and because of what may be confusion regarding these concepts, the terms "judicial immunity" and, the more recently formulated "quasi-judicial immunity" have become somewhat conflated in some Washington case law. Unfortunately, Appellants have seized upon this conflation and attempt to use it to their advantage here, even to go so far as

to misquote the trial court by stating (at Appellants' Brief, Assignment of Error #1, page 2), that the term "quasi-judicial immunity" appears in the order granting summary judgment. It does not. (See Appendix hereto and CP 15.) Appellants' Brief then makes a detailed attempt to re-conflate the two concepts, beginning at page 12 of Appellants' Brief.

A reading of Judge Cowser's Order granting summary judgment, (see Appendix hereto), will show that Appellants' negligence issues are entirely irrelevant.

Judicial immunity is earned by those other than judges when they perform acts which are intrinsically associated with the judicial process. Inescapably, this must include seeing that a judge's order, made in court to an officer of the court, is carried out. This question as to whether Randall was acting as the court's bailiff need not be a technical inquiry. Anyone directed by a judge in open court to carry out an order that helps the judge perform judicial duties would seemingly qualify based upon the historical record. In Washington, this is particularly true of sheriff's deputies.

In Washington, sheriff's deputies have been distinguished as being bailiffs by definition and as non-clerical court personnel. In Massie v. Brown, 84 Wn. 2d 490 (1974), the Washington Supreme Court affirmed this Court in finding that warrant servers for the Seattle Municipal Court were bailiffs by historical fact:

The pivotal question thus becomes whether the functions of a warrant server most closely resemble those of a court attaché, such as bailiffs and probation officers, or those of clerical personnel.

The term "bailiff" is nowhere defined in RCW 35.20 nor in its precursor, Laws of 1955, ch. 290. Moreover, while the duties of the chief clerk are expressly delineated, those of a bailiff are not. However, the term "bailiff" is generally defined to include a sheriff's deputy or officer. J. Ballentine, Law Dictionary with Pronunciations, 119 (3rd ed. 1969); W. Shumaker and G. Longsdorf, Cyclopedic Law Dictionary, 97 (3rd ed. 1940), Black's Law Dictionary, 178-79 (4th ed. 1951).

Massie, at page 494.

The record shows that Deputy Randall was a Skagit County corrections deputy temporarily assigned as a court

security deputy for a period of six months. Also called a “court rover”, Randall was charged with providing security for both Skagit County District Court and Skagit County Superior Court. The District Court judges do not have assigned bailiffs. The court security deputy fulfills this function, acting at the direction of the judges, including to take persons into custody as directed. (CP 115-16) Thus, like the military terms “TAD” and “TDY” denoting temporarily assigned duties, the function Randall was fulfilling was a “court attaché” just as that term is used in Massie, Id.

Mauro v. County of Kittitas, 26 Wn. App. 538 (1980) is cited by Appellants as authority for their argument. It is difficult to see why. In Mauro, a court clerk failed in her clerical duty of following a written policy describing how to quash warrants. Nothing from that case relates to the facts of this case. Moreover, Mauro is specifically confined to the facts of that case. Mauro, at page 541.

The “public policy” involved in extending judicial immunity from the county-paid, but court-supervised employee

to the county itself is contained in Washington case law. Savage v. State, 127 Wn. 2d 434, 441-43 (1995), recognizes that sound public policy supports an extension of judicial immunity to the State in order to safeguard the independence of the judiciary. As to the public policy rationale for the extension of judicial immunity to those persons who act as arms of the court, see Babcock v. State, 116 Wn. 2d 596, page 627-28 (1991):

“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.”

(Anderson, J. , concurring in part, dissenting in part.)

This public policy aspect is also set forth in the seminal case of Creelman v. Svenning, 67 Wn. 2d 882, (1996), wherein it is stated that the public policy that requires immunity for the prosecuting attorney acting in his or her prosecutorial capacity also requires immunity for the county and state; otherwise, the

objectives of prosecutorial immunity would be compromised or destroyed. The public policy related to both absolute judicial immunity, and the extension of that immunity to those the court finds necessary to carry out its judicial functions, is deemed so important that it trumps an injured person's opportunity for legal recourse. West v. Osbourne, 108 Wn. App. 764, 773 (2001); Babcock v. State, 116 Wn. 2d 596, 606-08 (1991).

The Appellants ask, in effect, "How far does such immunity extend?" It is unnecessary, and this Court should not be led to answer such a rhetorical question. The absolute immunity extends to those who act as "arms of the court" in carrying out the judicial function. Asking this Court to look for a difficult set of facts to which to apply the law is a red herring. The facts of this case are not difficult and applying the well-established doctrine will net a just result.

The Appellants appear to be arguing that ordering a person to jail is not a judicial function, or that once the order leaves the judge's mouth directed at a bailiff, what the bailiff

then does to see that the order is carried out is not part of the judicial function which began with the judge's verbal order. This seems on its face nonsensical. Without the action of the bailiff, the judicial function is not complete.

Just as in any court of justice, in the federal or state systems, a court must have the muscle, sometimes literally, to have its orders obeyed. Though in this case, the record shows that Anthony Reijm, the person who was ordered to jail, sat peaceably in the court while Randall, who was at the superior court, was summoned by the judge's clerk, it would be too much to expect that either the man would follow the judge's order to go upstairs and turn himself in to be booked or that the judge would escort him to the booking desk himself.

(CP 130)

In Appellants' Brief, at page 11, they attempt an argument which suggests that a judge, having ordered a person to jail and elects to escort that person to the booking desk, would have stepped outside his judicial role and would then cease to be protected by judicial immunity. This example,

far from illustrating where a judge's judicial immunity ends, instead illustrates precisely why the "arm of the court" doctrine was developed. No judge could possibly carry out all the actions and aspects necessary to judicial acts and processes. This is why those whose function it is to carry out the immediate and necessary orders of the court are clothed with the court's judicial immunity.

A continuing line of federal cases hold that those taking orders from a judge in open court are entitled to share in the absolute judicial immunity of the judge. "When an official acts pursuant to a direct judicial order, absolute quasi-judicial immunity is obvious. Rollin v. Phillips, 19 F. 3d 552 (fn. 4) (11th Cir. 1994); "Judges' absolute judicial immunity extends to public officials for acts they are specifically required to do under a court order at a judge's direction." Martin v. Hendren, 127 F. 3d 720 (8th Cir. 1997) (Bailliff made arrest in court.) See also Haldane v. Chagnon, 345 F. 2d 601 (9th Cir. 1965). (Bailliff entitled to judicial immunity, and in following the

direction of a judge, "he was part of the body of the court itself".) Haldane at page 604.

Many Washington cases are specific on this issue as well. For this case one need only examine Babcock v. State, supra. There, in explaining why DSHS caseworkers were not entitled to invoke absolute immunity, the court contrasted the DSHS employees, who were carrying out a court directive in a generalized way, not having been told by a judge what disposition to make of dependent children, but instead carrying out an administrative function in placing these children in foster care, where they were raped. The court's opinion stated that, "*Had the court ordered the actions complained of, quasi-judicial immunity would attach.*" Babcock, at 609 (emphasis provided). There is no possibility of that part of the opinion being considered dicta, as it was part of the analysis of why the caseworkers were not entitled to immunity. Negligence never enters into the equation because the actor's degree of incompetence in carrying out the judge's instruction is irrelevant. Even intentional misconduct or gross negligence

does not deprive the actor of immunity once it is established.
Plotkin v. State, 64 Wn. App. 373, 377-78 (1992).

A duty imposed upon a bailiff, by the court, is a judicial duty and the failure to perform the duty properly is a judicial injury, not a personal injury. Adkins v. Clark County, 105 Wn. 2d 675, 678-79 (1986).

When a judge delegates part of the judge'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.

Adkins, at 678.

In Appellants' discussion of the law affecting this case, citation is made to Lutheran Daycare v. Snohomish, 119 Wn. 2d 91 (1992). The chief value of that case is in distinguishing the issue in this case. Lutheran Daycare is a case illustrating how the common law doctrine of judicial immunity can be abrogated by statute, both for those claiming by association with the judicial activities of the court, and for the employers of those persons.

IMPUTED JUDICIAL IMMUNITY

Ordinarily, the doctrine of absolute judicial immunity afforded to those acting as an arm of the court will run to the government employer as well. In Creelman v. Svenning, 67 Wn. 2d 882 (1966), the Supreme Court found that neither Snohomish County nor the state could be held liable in damages for the Snohomish County Prosecuting Attorney was found to have absolute immunity when acting in a quasi-judicial capacity, as a matter of public policy. Lutheran Daycare, supra, coined this as “the Creelman rule of imputed municipal immunity”. This rule was followed in Taggart v. State, 118 Wn. 2d 195 (1992), by implication, as shown in Plotkin v. State, supra, which found that the state was also necessarily immune for the acts of the Parole Board.

The Supreme Court held that the Board had absolute quasi-judicial immunity for release decisions. It did not expressly discuss whether their immunity extended to the state as opposed to members of the Board. However, it necessarily concluded that it did, for it affirmed the dismissal of Taggart’s negligent release claim against the State. Taggart, 118 Wn.2d at 228, 822 P. 2d 243. In this case, then, the State and the Board are absolutely immune from

liability due to the Board's decision to parole Doran from prison in 1980.

Plotkin, at 377.

Washington courts have followed the rule of imputed municipal immunity since. In McKenna v. Edwards, 65 Wn. App. 905, review denied 120 Wn.2d 1003 (1992), Spokane County was held not liable in damages where its corrections officer was acting as an arm of the court. This doctrine is now known as the "rule of vicarious quasi-judicial immunity".

The basic rule for vicarious quasi-judicial immunity is that a county "which employs an officer also enjoys the quasi-judicial immunity of that officer for the acts of that officer. See Lutheran Daycare, 119 Wn.2d at 101, 829 P. 2d 746. This is because [t]he public policy which requires immunity for the [individual officer] also requires immunity for both the state and the county for acts of judicial and quasi-judicial officers in the performance of the duties which rest upon them; otherwise the objective sought by immunity to the individual officers would be seriously impaired or destroyed.

Reddy v. Karr, 102 Wn. App. 742, 751 (2000).

This principle is also enunciated in Dutton v. Washington Physicians' Health Program, 87 Wn. App. 614-619 (1997) and Savage v. State, 127 Wn. 2d 434, 442 (1995).

More recently, though comparing qualified immunity to quasi-judicial immunity, the Supreme Court flatly stated:

In contrast, if absolute quasi-judicial immunity applies to the officer's actions, that immunity does extend to the employing agency.

Bishop v. Miche, 137 Wn. 2d 518, 525 (1999).

In most cases like this one, the issue of imputed judicial immunity would not arise because a bailiff's employer would likely be recognized by all parties as the court itself, and it is unlikely that many plaintiffs would sue the court. Here, like a person with the title "bailiff", the entity that pays Randall's salary is the municipal government. However, it is well established in Washington law that "the government", as an entity, does not control what happens in the courts. To do so would be a violation of the separation of powers. Randall was temporarily detached from her duties as a corrections deputy and placed under the direction of the courts.

Despite the fact that most of the persons who work in the courts of Skagit County are county employees, it is the court, not the municipality of Skagit County, which has the

authority over these persons. Crossler v. Hille, 136 Wn. 2d 287 (1998), Easterday v. Irrigation District, 49 Wn. App. 746, 749 (1987), Keenan v. Allen, 889 F. Supp. 1320 (E.D. Wash. 1995), affirmed 91 F. 3d 1275 (9th Cir. 1996). The “public policy” involved in extending judicial immunity from the county-paid, but court-supervised employee to the county itself should need no further explanation, particularly under the facts of this case. Appellants’ claim that Randall’s judicial immunity does not extend to Skagit County seems to rest that theory on agency law. This is an invalid argument under the facts and circumstances of this case.

V. CONCLUSION

Absolute judicial immunity and quasi-judicial immunity are not the same thing. Quasi-judicial immunity has a myriad of applications, but absolute judicial immunity has but two. Only judges acting in their judicial capacity and those whom he relies upon as the “arms of the court” to carry out his direct orders on matters that relate to his judicial activities are

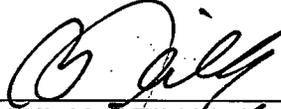
entitled to claim absolute judicial immunity. However, the two, absolute judicial immunity and quasi-judicial immunity, have two things in common. First, once these immunities attach to a person, he or she may not be made to defend a civil tort action related to the acts for which they are immune. Second, neither may their employers be put to trial in tort for damages arising out of the same events.

The sole issue in this case is whether absolute judicial immunity attached to Randall when she acted to carry out Judge Skelton's order to her. Appellants' Brief, insofar as it is full of discussion of negligence and concern whether Mr. Reijm was a "prisoner" entirely begs the question. Those issues are mere strawmen.

In the final analysis, it could be accurately stated that it is irrelevant that Randall was a sheriff's deputy. She might have been a spectator in the courtroom who was willing to accept the court's request to escort a body to the jail to be booked. Absolute judicial immunity would attach to her efforts to carry out the judge's orders even in those circumstances.

But those would be hard facts to deal with. Here, the facts upon which to apply the law are much simpler.

Respectfully submitted by:

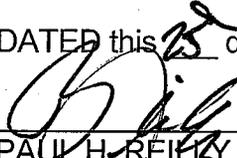


PAUL H. REILLY, Civil Litigator; WSBA#10709
SKAGIT COUNTY PROSECUTING
ATTORNEY'S OFFICE
Attorney for Respondents

DECLARATION

The undersigned, Paul H. Reilly, declares under penalty of perjury under the laws for the State of Washington that the facts set forth herein above are true to the best of his knowledge and belief.

DATED this 25 day of October, 2007.

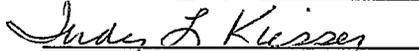


PAUL H. REILLY, Civil Litigator
WSBA#10709
SKAGIT COUNTY PROSECUTING
ATTORNEY'S OFFICE

DECLARATION OF DELIVERY

I, Judy L. Kiesser, declare as follows:

I sent for delivery by; [x]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, 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 25 day of October, 2007.


JUDY L. KIESSER

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APPENDIX A

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7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
8 FOR SNOHOMISH COUNTY

9 JOHN T. LALLAS AND IRENE LALLAS,)
10 husband and wife,)

) NO. 05-2-08892-1
)

11 vs.)

) ORDER GRANTING
) SUMMARY JUDGMENT

12 SKAGIT COUNTY; DEPUTY DEANNA)
13 RANDALL; ANTHONY REIJM;)
14 and JOHN DOES I-III AND JANE DOES I-III)

15 Defendants.)
16)

FILED

MAY 02 2007

PAM L. DANIELS
COUNTY CLERK
SNOHOMISH CO. WASH

17 THIS MATTER came before the Court and the undersigned Judge on February
18 23, 2007, all parties appearing by their respective counsel.

19 Defendants' Motion for Summary Judgment was based primarily on the claim that
20 Defendant Deanna Randall was, at the time of the incident out of which this action
21 arises, acting as a bailiff to Skagit County District Court Judge Stephen Skelton and was
22 protected by that judge's judicial immunity while acting as an arm of the court while
23 carrying out a direct verbal order from Judge Skelton during a judicial proceeding.

24 In reaching a decision on this matter, the Court heard the comments of counsel
25 for both parties and examined the following documents filed with the Court:
26

27
28 ORDER GRANTING
SUMMARY JUDGMENT
Page 1

SKAGIT COUNTY PROSECUTING ATTORNEY
605 S. 3RD ST. -- Courthouse Annex
Mount Vernon, WA 98273
Phone: (360) 336-9460
Fax: (360) 336-9497

ORIGINAL

COPY

1
2 Defendants Skagit County and Deanna Randall's Notice and Motion for Summary
3 Judgment, and Memorandum of Law of Defendants Skagit County and Deanna Randall
4 un Support of Motion for Summary Judgment; Errata to Correct Memorandum of Law in
5 Support of Summary Judgment, the Declaration of Judge Stephen Skelton; Declaration
6 of Deputy Deanna Randall; Plaintiffs' Response to Motion for Summary Judgment and
7 Plaintiffs' Motion for Partial Summary Judgment*; Declaration of Harry B. Platis;
8 Declaration of D.P. Van Blaricom; Declaration of Joseph Sanford; Defendants' Rebuttal
9 and Motion to Strike¹; with Exhibit 1 (Excerpt of transcript of Deposition of Deanna
10 Randall), Exhibit 2 (Chapter 13 of Jail Procedures Manual "Transportation of Inmates");
11 Exhibit 3 (Excerpt of transcript of Deposition of Chief Deputy Gary Shand); Exhibit 4
12 (Excerpt of transcript of Deposition of John Lallas); Exhibit 5 (Declaration of retired Chief
13 Deputy Dan Slattery); Declaration of Paul H. Reilly (Authenticity of Transcripts); and the
14 pleadings of both parties.
15
16

17 The Court, having considered all the foregoing, finds that Deputy Randall was, at
18 the time and place of the incident out of which this action arises, acting as a bailiff for
19 Judge Skelton and was carrying out a direct judicial order made to her in open court
20 during judicial proceedings. For that reason, Randall, in acting as an arm of the court,
21 was included within the judicial immunity long recognized to protect those carrying out a
22 judge's directions related to judicial activities.
23
24

25
26 ¹ *Decisions on Plaintiffs' Motion for Partial Summary Judgment and Defendants' Motion to Strike are
27 addressed by separate Order.

1 Further, the doctrine of imputed judicial immunity includes Deputy Randall's
2 nominal employer, Skagit County, within the immunity which inures to Randall.

3 Because the Court finds both Randall and Skagit County immune from the civil
4 liability in this matter, the issues of duty and negligence do not enter into this action, and
5 need not be considered.
6

7 Wherefore, the Court having made the foregoing determinations, and there being
8 no just cause for delay, Defendants are entitled to summary judgment with prejudice,
9 and are entitled to an award of their costs and statutory attorneys fees.

10 It is so ORDERED, this 2nd day of May, 2007.

11
12 **KENNETH L. COWSERT**

13 HONORABLE KENNETH COWSERT, JUDGE

14 Submitted by:

15 SKAGIT COUNTY PROSECUTING ATTORNEY

16
17 By _____

18 PAUL H. REILLY, Civil Litigator

19 WSBA #10709

20 Attorney for Skagit County and Deanna Randall

21 Approved for entry; notice of presentation waived:

22
23 _____
24 HARRY B. PLATIS; WSBA #17732

25 Attorney for Plaintiffs