
**IN THE
MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

| | | |
|--------------------------------------|---|--------------------------|
| DR. GARY EDWARDS, |) | |
| |) | |
| Appellant, |) | |
| |) | |
| v. |) | Case No. WD 66678 |
| |) | |
| |) | |
| LAWRENCE M. GERSTEIN, et al., |) | |
| |) | |
| Respondents. |) | |

**Appeal from the Circuit Court of Cole County, Missouri
The Honorable Thomas J. Brown, Judge**

Respondent's Brief

**JEREMIAH W. (JAY) NIXON
Attorney General**

**MATTHEW BRIESACHER
Missouri Bar No. 54060
Assistant Attorney General**

**Post Office Box 899
Jefferson City, Missouri 65102
Phone: (573) 751-3321
Facsimile: (573) 751-9456
matthew.briesacher@ago.mo.gov**

ATTORNEYS FOR RESPONDENTS

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Statement of Facts

On July 27, 2005, Appellant Dr. Gary Edwards filed a petition in the Jackson County Circuit Court, in Independence, Missouri, alleging that Respondents Lawrence Gerstein, Teresa Price, Charles Klinginsmith, Larry Lovejoy, Lee Richardson, Mary Holyoke, Charlotte Hill, Jack Rushin, and Julie Robinson (the members of the Missouri Board of Chiropractic Examiners) acted with gross negligence for investigating, prosecuting and disciplining him after the Board received complaints that Edwards was using an improper device to treat his patients and practicing medicine without a license. Legal File at 5-13.

Edwards also brought a claim against Respondent Jeanette Stuenkel, an employee of the Missouri Board of Chiropractic Examiners, for malicious prosecution for her role as an investigator into the allegations against Edwards. *Id.*

On September 26, 2005, the Board members and Stuenkel filed a motion to dismiss, or in the alternative, to transfer venue to Circuit Court of Cole County in Jefferson City, Missouri. L.F. at 15-21. The Circuit Court of Jackson County transferred the case to the Circuit Court of Cole County on October 5, 2005. L.F. at 31.

On November 7, 2005, Edwards filed a motion to transfer venue from Cole County back to Jackson County. L.F. at 38-43. This motion was denied. L.F. at 3.

On January 27, 2006, the Circuit Court of Cole County held a hearing regarding the Board members and Stuenkel's pending motion to dismiss. L.F. at 3.

In their motion, the Board members argued that they were entitled to quasi-judicial immunity for their role in investigating, prosecuting and disciplining Edwards. L.F. at 15-21. Stuenkel argued that she was immune from Edwards' claims on the basis of official immunity and the public duty doctrine. *Id.* The Board members and Stuenkel's motion was granted on February 3, 2006. L.F. at 48-51.

On March 6, 2006, Edwards appealed the Circuit Court of Cole County's orders denying his motion to change venue and granting Respondents' motion to dismiss. L.F. at 52.

Argument

The trial court did not err in that: 1) the Board members are entitled to quasi-judicial immunity from Edwards' claims they were grossly negligent in seeking discipline against his chiropractic licence; 2) Stuenkel is immune from Edwards' claim of malicious prosecution pursuant to official immunity and the public duty doctrine; and 3) the trial court properly denied Edwards' motion to transfer venue from the Circuit Court of Cole County to the Circuit Court of Jackson County. (Responds to Appellant's Points I, II and III)

1. Respondent Board members are entitled to quasi-judicial immunity from Appellant Edwards' claims

Standard of Review

In reviewing a trial court's dismissal for failure to state a claim upon which relief may be granted, this Court must examine the pleadings, by giving them the broadest reading, "treating all facts alleged as true, [and] construing allegations as favorable to plaintiffs, [to] determine whether the petition invokes principles of substantive law upon which relief can be granted." *Group Health v. State Bd. of Registration*, 787 S.W.2d 745, 747 (Mo. App. E.D. 1990).

The Board members are entitled to Quasi-Judicial Immunity

The trial court correctly granted the Board members' motion to dismiss because each Board member is exempt from liability under the doctrine of quasi-judicial immunity. *Butz v. Economou*, 438 U.S. 478, 515 (1978). The doctrine protects agency officials from liability for actions taken in performing quasi-judicial functions. *Id.* at 512. Missouri Courts have held that quasi-judicial functions include actions taken by agency officials when balancing whether to pursue and prosecute proceedings against an individual, and when making a determination. *Group Health*, 787 S.W.2d at 750.

Other courts follow the same principle. In *Kwoun v. Southeast Mo. Professional Standards Review Org.*, 811 F.2d 401, 405 (8th Cir. 1987), the Eight Circuit held that the medical services director of the Missouri Department of Social Services, and the executive secretary of the Missouri State Board of Registration for the Healing Arts, have absolute immunity for their roles in deciding whether to initiate suspension or revocation, and similar proceedings. Part of the court's rationale was that state administrative review was available to plaintiff, which acts as a check on overzealous prosecutors. *Id.* (citing *Kanawaga v. State*, 685 S.W.2d 831, 835 (Mo. *banc* 1985)).

Through §331.060, RSMo, Board members are authorized to file a complaint with the administrative hearing commission, which can result in the

revocation or suspension of a chiropractor's license for one, or a combination, of the twenty enumerated reasons. Section 2 of this provision reads in pertinent part: "[t]he board may cause a complaint to be filed with the administrative hearing commission[] against any holder of any certificate[,] permit[,] or license[.]" In *Kwoun*, the court found that the defendants were entitled to quasi-judicial immunity because defendants bore the responsibility of "deciding whether a proceeding should be brought and what sanctions should be sought, against a specific target." *Kwoun*, 811 F.2d at 405 n.10 (internal quotations and citations omitted).

In the present case, the Board members have similar responsibilities. They are responsible for initiating proceedings and taking disciplinary actions against chiropractors. These powers would be meaningless if the Board members did not also have the authority to decide against whom and how to pursue disciplinary actions. In *Griffith v. Slinkard*, 44 N.E. 1001, 1002 (Ind. 1896), one of the first cases to extend the doctrine of judicial immunity,¹ the court held that "[w]henver duties of a judicial nature are imposed upon a public officer, the due execution of which depends upon his own judgment, he is exempt from

¹ The court extended the doctrine of judicial immunity to a state prosecutor for discretionary actions pursued in the course of initiating and trying a criminal prosecution on behalf of the state.

responsibility [] for the manner in which said duties are performed.” Each of Edwards’ allegations against the Board members pertain to their authority and judgment in pursuing disciplinary actions against a licensed chiropractor. These duties, which are of a judicial nature, are statutorily granted or “imposed” on the Board members. Thus, Edwards’ claims against the Board members are barred under the doctrine of quasi-judicial immunity and he cannot recover damages. For these reasons, this Court should affirm the trial court’s dismissal.

Quasi-Judicial Immunity is Absolute

The trial court correctly held that quasi-judicial immunity is an absolute immunity. L.F at 50. This holding is consistent with both federal and state court precedents. See *Butz*, 438 U.S. at 515; *Group Health*, 787 S.W.2d at 750. Specifically, the Eastern District Court of Appeals held that “[a]gency officials responsible for deciding whether to initiate proceedings are absolutely immune from a suit for damages for their parts in that decision.” *Group Health*, 787 S.W.2d at 750.

Whether §331.100.5, RSMo, supersedes quasi-judicial immunity is a case of first impression for this Court. In *Group Health*, the Eastern District examined a similar issue. 787 S.W.2d at 750. There, plaintiffs alleged that the Board of Healing Arts (“BHA”) was not protected by quasi-judicial immunity in threatening to file administrative complaints against them. The BHA was subject to §334.128 RSMo, which waives immunity from suit when a member acts in the absence of

good faith or with malice. Despite §334.128, the Court held that BHA's conduct fell squarely within the contemplation of "quasi-judicial" acts which are afforded absolute immunity by *Butz*. *Id.* at 750.

The language of §334.128, waiving immunity for acts in the absence of good faith or with malice in regards to the BHA, is substantially similar to the language of §331.100.5, waiving immunity for acts of gross negligence against the Board members. Thus, the Board members are entitled to quasi-judicial immunity despite the language of §331.100.5 based on the rationale of *Group Health* and *Butz*.

Edwards relies on *Golden v. Crawford*, 165 S.W.3d 147 (Mo. banc 2005), to support the argument that §331.100.5, RSMo, supersedes quasi-judicial immunity. The holding and facts of *Golden* are distinguishable from the present case. In *Golden*, Crawford sued Golden, a 911 operator, for negligently failing to record accurate information from a 911 call, failing to pass accurate information from the call, and failing to verify dispatched information. *Id.* at 147. The court queried whether §190.307, RSMo, qualifies a 911 operator's protection under the official immunity and public duty doctrines. *Id.* The court answered in the affirmative. Section 190.307, RSMo, supersedes the defenses of official immunity and the public duty doctrine. *Id.* at 149. In his brief, Edwards fails to note that *Golden's* holding merely stands for the proposition that a public official can be held liable for damages, under §190.307, notwithstanding the doctrines of

official immunity and public duty. As the trial court found, “[t]he *Golden* court did not consider the issue of quasi-judicial immunity.” LF at 49.

In settling on the proposition that quasi-judicial immunity is a common law doctrine, as are official immunity and the public duty doctrine, Edwards discounts the importance of the quasi-judicial immunity and its importance to public policy.

Quasi-judicial immunity affords absolute protection because only with complete protection can an agency assure that it will fully and freely perform its duties. *Butz v. Economou*, 438 U.S. at 515-16. Complete protection is the only means by which the initiation of proceedings, the conducting of a proceeding, and adjudication can be done independent of intimidation and harassment. *Id.*; See *State ex. rel. Bird v. Weinstein*, 864 S.W.2d 376, 382, 385-86 (Mo. App. E.D. 1993). Because the Board members are responsible for deciding, among other duties, whether to initiate proceedings against a licensed chiropractor, there is great potential for intimidation. Complete protection assures that agency officials will not abandon their responsibility to act for the benefit of Missouri citizens out of fear of their own potential liability. See *Butz*, 438 U.S. at 515-16; *Bird*, 864 S.W.2d at 385-86.

To better serve the interests and needs of society, officials entitled to quasi-judicial immunity are completely exempt from liability. Thus, the Board members are entitled to absolute immunity, and this Court should affirm the trial court’s dismissal of Edwards’ claims against the Board members.

2. Respondent Stuenkel is immune from Appellant Edwards' claims pursuant to official immunity and the public duty doctrine

Official Immunity

The trial court correctly held that Stuenkel is entitled to official immunity from Edwards' claims of malicious prosecution for Stuenkel's actions as an investigator for the Board and pursuing a complaint against him. L.F. at 50. Official immunity protects public officials acting within the scope of their authority from liability from injuries arising from their discretionary acts or omissions. *Kanagawa v. State*, 685 S.W.2d 831, 835 (Mo. banc 1985).

Stuenkel is a public official

A public officer is an individual "invested with some portion of the sovereign functions of the government." *State ex rel. Eli Lilly & Co. v. Gaertner*, 619 S.W.2d 761, 764 (Mo.App. E.D. 1981)(citing *State ex rel. Pickett v. Truman*, 64 S.W.3d 105, 106 (1933)). Whether a public employee is a public officer is made on a case-by-case determination. *Id.*

Edwards misrepresents in holding in *Gaertner*. He incorrectly states that *Gaertner* stands for the proposition that a supervised employee is not a public officer for purposes of official immunity. In actuality, in *Gaertner*, the court determined the defendants were not public officials because their duties did not involve the exercise of the sovereign's power, and because their duties and authority were not statutorily granted. *Id.* at 764.

Edwards' reading of *Gaertner* is contrary to what later cases have held to be sufficient to find a defendant a public official. In *State ex. rel. Missouri Dep't of Agric. v. McHenry*, 687 S.W.2d 178, 183 (Mo. 1985), the court found that public employees may be entitled to official immunity. In *Green v. Denison*, 738 S.W.2d 861, 865 (Mo. banc 1987), the court held that official immunity does not only protect higher ranked officials.

In *State ex rel. Howenstine v. Roper*, the court analyzed whether a medical director enjoyed official immunity as a treating physician. 155 S.W.3d 747 (Mo. banc 2005). The court found it immaterial that the director was an "employee of the University of Missouri[.]" *Id.* at 752. Howenstine "serve[d] as the medical director of the health department pursuant to an agreement between the City of Columbia and the university[.]" *Id.* Congress delegated the authority to improve the health of the public to the health department. *Id.* The city and university delegated this duty to the director. *Id.* For these reasons, the court held that the medical director was a public official for purposes of the official immunity doctrine. *Id.*

Similarly, Stuenkel's status as an employee has no impact on her entitlement to protection under the official immunity doctrine. *See also Missouri Dep't of Agric.*, 687 S.W.2d at 183 (official immunity protects mere employees). Chapter 331 confers upon the Board the authority to file a complaint, the authority to investigate that complaint, and the authority to employ investigators to carry out

their investigative functions. Section 331.100.3 reads, “[t]he board shall employ such board personnel as may be necessary to carry out the provisions of this chapter, [which] shall include [] investigators[.]” Using the same analysis illustrated in *Howenstine*, Stuenkel is a public officer because she is invested, through her employment with the Board and under the reading of the statute, with a portion of the sovereign function.

Stuenkel’s actions were discretionary

Public officials’ actions are divided into two categories: discretionary and ministerial. Public officials acting within the scope of their authority are immune exclusively for injuries arising from their discretionary acts or omissions. *Kanagawa*, 685 S.W.2d at 835. A discretionary act is one requiring the exercise of reason in the adaptation of means to an end. *Id.* Discretion relates to the exercise of judgment in determining how or whether an act should be done, or course pursued. *Id.* By contrast, a ministerial function is one of a clerical nature, which a public officer is required to perform upon a given set of facts, in a prescribed mandate of legal authority, without regard to his own judgment concerning the propriety of the acts to be performed. *Id.*

Edwards contends that Stuenkel’s activities were not discretionary and cites *Balderee v. Beeman*, 837 S.W.2d 309 (Mo. App. S.D. 1992),² as support.

² *Balderee* was later overruled for other reasons.

These facts are easily distinguishable. In *Balderee*, the court analyzed whether the plaintiff Balderee, an employee of Missouri Ozarks Community Action, Inc. (“MOCA”), could hold the defendant, an employee of Lake Ozark Council of Local Governments (“LOCLG”), a regional planning commission, liable for slander. *Id.* at 311-12. Allegedly, Beeman, in a professional setting, told various people that Balderee had propositioned several men. *Id.* at 312.

Beeman unsuccessfully defended on the ground that she could not be held liable under the doctrine of official immunity. *Id.* at 320. Beeman’s responsibilities as an executive director for LOCLG did not include supervising, evaluating or disciplining MOCA employees. *Id.* at 321. Beeman’s sole responsibility was to make sure funds were properly requested, documented and disbursed. *Id.* The court concluded that because Beeman’s discretionary duties did not include the subject and nature of her statements, the mere utterance was not a discretionary act. *Id.*

The trial court correctly held that Edwards’ suit against Stuenkel is barred. Edwards’ seeks to hold Stuenkel liable for her discretionary acts as a government official. “The purpose of official immunity is to protect public officers from the consequence of erroneous or negligent judgments made in the execution of their official duties.” *Gaertner*, 619 S.W.2d at 765. Specifically, Edwards seeks to hold Stuenkel liable for pursuing a complaint against him. Thus, Edwards claims against Stuenkel is barred under the doctrine of official immunity.

Stuenkel's Actions are Protected by the Public Duty Doctrine

The trial court correctly held that defendant Stuenkel is protected by the public duty doctrine. L.F. at 50-51. According to the public duty doctrine, “[a] public employee may not be held civilly liable for breach of a duty owed to the general public, as distinguished from a duty owed to a particular individual.” *Green v. Denison*, 738 S.W.3d at 866 (Mo. banc 1987); see also *Heins Implement Co., v. Missouri Hwy. & Trans. Comm’n*, 859 S.W.2d 681, 694 (Mo. banc 1993). The public duty rule recognizes that the duties of public officers are normally owed only to the general public. *State ex rel. Twiehaus v. Adolf*, 706 S.W.2d 443, 445 (Mo. banc 1986). Whether the official acted in good faith or bad faith makes no difference; the public duty rule bars a plaintiff’s claims in either instance. *Berger v. City of Univ. City*, 676 S.W.2d 39, 42 (Mo. App. E.D. 1984)(“Adding to the allegations the words “intentional,” “wanton,” “grossly negligent” and in “utter disregard for safety of plaintiffs’ property” causes no change in defendant’s liability.”)

As an employee for the Board, Stuenkel must act in the public interest to ensure that licensed chiropractors comply with the minimum standards set out in Chapter 331. Stuenkel also bears the responsibility of making sure chiropractors who are not in compliance have their license either revoked or suspended. Her duties run only to the public, not to Edwards. See *Howenstine*, 155 S.W.3d at

755-56 (“The test is simply a determination of whether the person owed a duty to the public or to a special individual.”) When Stuenkel signed the complaint against Edwards, she was acting for the public benefit.

As the trial court held, “Stuenkel’s actions, as alleged in [appellant’s] brief, were taken as [part] (sic) of her duty owed to the general public to ensure the quality of chiropractic care provided to the citizens of the State of Missouri.” L.F. at 50-51. Therefore, the trial court correctly held that Edwards’ claims against Stuenkel are barred under the public duty doctrine.

3. The trial court properly denied Appellant Edwards' motion to transfer venue from the Circuit Court of Cole County to the Circuit Court of Jackson County.

Standard of Review

On the issue of venue, this Court should affirm the trial court's judgment "unless it is not supported by substantial evidence, it is against the weight of the evidence, or it erroneously declares or applies the law. *Platinum Express v. Scott*, 164 S.W.3d 537, 538 (Mo. App. W.D. 2005)(citing *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. banc 1976)).

Venue Lies Exclusively in Cole County

In Missouri, venue is solely determined by statute for the purpose of providing a convenient, logical and orderly forum for litigation. *State ex. rel. Rothermich v. Gallagher*, 816 S.W.2d 194, 196 (Mo. 1991). Paragraph (1) of §508.010, RSMo the general venue statute, provides that when the defendant is a resident of the state, the suit may either be brought in the county within which the defendant resides, or in the county within which the plaintiff resides and the defendant may be found. Where there is a lawsuit against executive department officials, though, venue lies exclusively in the county where the officials' offices are located and their principle official duties are performed. *State ex rel. Nixon v. Clark*, 926 S.W.2d 22, 24 (Mo. App. W.D. 1996); see also *United Pharmacal Co. of Missouri, Inc. v. Missouri Bd. of Pharmacy*, 159 S.W.3d 361, 364 (Mo. 2005).

Under Article IV, §12 and §20 of the Missouri Constitution, the Board maintains its central office in Jefferson City, Cole County, Missouri. Article IV, §20 of the Missouri Constitution limits the legal residence of administrative officials, and the location of where they can be found, to Jefferson City for the purposes of the general venue statute. *State ex rel. Missouri Dep't of Natural Resources v. Roper*, 824 S.W.2d 901, 902 (Mo. 1992). Edwards contends that because Richardson's personal residence is in Jackson County, venue is also proper in Jackson County. But Richardson is a Board member and Edwards' claims against him are for his duties as a member of the Board. For the purposes of venue, Richardson, sued as a member of the Board, is located in Jefferson City, Cole County, Missouri.

For these reasons, this Court should affirm that venue lies exclusively in the Circuit Court of Cole County, Missouri.

Conclusion

WHEREFORE, for the aforementioned reasons, Respondents Gerstein, Klinginsmith, Lovejoy, Richardson, Holyoke, Hill, and Stuenkel respectfully ask this this Court to affirm the trial court's denial of Edward's motion to transfer venue and dismissal of Edwards' petition.

Respectfully submitted,
JEREMIAH W. (JAY) NIXON
Attorney General

MATTHEW BRIESACHER
Assistant Attorney General
Missouri Bar No. 54060

P.O. Box 899
Jefferson City, Missouri 65102
Phone No. (573) 751-3321
Fax No. (573) 751-9456
matthew.briesacher@ago.mo.gov

ATTORNEYS FOR RESPONDENT

Certification of Service and of Compliance with Rule 84.06(b) and (c)

The undersigned hereby certifies that on this 30th day of June, 2006, one true and correct copy of the foregoing brief, and one disk containing the foregoing brief, were mailed, postage prepaid, to:

Dale Wiley
Wiley Law Office, P.C.
P.O. Box 407
Crane, MO 65633

The undersigned further certifies that the foregoing brief complies with the limitations contained in Rule No. 84.06(b), and that the brief contains 3,849 words.

The undersigned further certifies that the labeled disk, simultaneously filed with the hard copies of the brief, has been scanned for viruses and is virus-free.

Assistant Attorney General