IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

DR. GARY EDWARDS

Appellant,

LAWRENCE M. GERSTEIN, ET AL.

Respondents.

No. WD 66678

Appeal from the
Circuit Court of Cole County, Missouri,
Case No 05AC-CC01021
The Honorable Thomas J. Brown, Circuit Judge

APPELLANT'S BRIEF

Submitted by:

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INTRODUCTION

This case involves a lawsuit brought by Dr. Gary Edwards against the individual members of the Missouri Board of Chiropractic Examiners and one of its employees on grounds of gross negligence and malicious prosecution. The trial court dismissed the suit despite specific statutory language creating liability of the Board members for gross negligence.

This appeal presents three issues:

1. Section 331.100.5, RSMo, specifically states that the members of the Missouri Board of Chiropractic Examiners may be held liable for gross negligence. The Supreme Court of Missouri has held that such a legislative mandate supersedes a common law immunity doctrine. Plaintiff sued defendant Board members for gross negligence. In light of the controlling statute, was the circuit court's dismissal of the action on the basis of the common law quasi-judicial immunity doctrine proper?

2. The official immunity doctrine protects public officers from liability for their discretionary acts. The public duty doctrine protects public employees for individual claims for breach of a duty owed to the general public. Should Jeannette Stuenkel, not a public officer, be protected by either doctrine from the Plaintiff's claim that she swore out a complaint against the Plaintiff without any independent knowledge of or any investigation into the truth of its allegations?

3. The Missouri venue statute in effect on the date this case was filed provided for venue in any county in which any individual defendant resides. Missouri courts

have held that a trial judge cannot disturb a plaintiff's choice of proper venue. Defendant Richardson resides and was served in Jackson County, where plaintiff filed this case. Was transfer of venue to Cole County and refusal to transfer back to Jackson County an abuse of discretion?

JURISDICTIONAL STATEMENT

The Circuit Court of Cole County, Missouri, dismissed the case of the Plaintiff, Dr. Gary Edwards, holding that Dr. Edwards' claim against the members of the Missouri Board of Chiropractic Examiners was barred by the doctrine of quasi-judicial immunity. The circuit court also dismissed Dr. Edwards' claim against Jeanette Stuenkel, a Board employee, citing official immunity and the public duty doctrine. Dr. Edwards appeals because the dismissal ignores the plain language of § 331.100.5, RSMo, which allows the Board members to be held liable for gross negligence, and the policy behind the official immunity and public duty doctrines, and also because the case was improperly transferred from Jackson County to Cole County. Because this issue does not involve any of the categories reserved for the exclusive appellate jurisdiction of the Supreme Court, Mo. Const. art. V, § 3, jurisdiction of this appeal lies in the Court of Appeals, Western District, § 477.070, RSMo 2000.

STATEMENT OF FACTS

In 1998 and 1999, the Defendants—nine members and one employee of the Missouri State Board of Chiropractic Examiners—pursued disciplinary action against the professional license of the Plaintiff, Dr. Gary Edwards, based on unsubstantiated claims of fraud, misrepresentation, and practicing medicine without a license. L.F. at 9–10. One of the defendants, Lee Richardson, resides in Jackson County. L.F. at 6, 14.

In an effort to initiate proceedings, the Board's investigator visited the widow and mother-in-law of one of Dr. Edwards' former patients five times soliciting a complaint against Dr. Edwards but was unable to obtain a complaint. L.F. at 9. On the sixth trip, the Board's attorney accompanied the investigator and persuaded the mother-in-law to sign a complaint. *Id*. The widow signed a complaint two months later. *Id.* Both the widow and the mother-in-law subsequently withdrew their complaints; even so, the Board members continued pursuit of disciplinary action against Dr. Edwards after having Jeanette Stuenkel, a Board employee, swear out a complaint despite her lack of knowledge of the case or investigation into the truth of the complaint. L.F. at 10.

In the course of their efforts to pursue discipline against the Plaintiff, the Board members failed to follow their own procedures and specifically avoided sources of exculpatory information. L.F. at 11. They also withheld discoverable information, including exculpatory information that they did have, from the Plaintiff and submitted derogatory information for publication in the National

Practitioner's Data Bank, which prevented the Plaintiff from obtaining insurance company reimbursement and professional liability insurance. L.F. at 12.

The Board originally sentenced Dr. Edwards to two years suspension of license and five years probation. L.F. at 10. This determination was upheld by the administrative hearing officer and the reviewing trial court, but this Court reversed and remanded the decision to the trial court. *Id.* The Board failed to ever produce the documents required by this Court and withdrew their complaint on July 29, 2003. *Id.*

Dr. Edwards suffered much personal and professional damage from the actions of the Board members and employee Stuenkel, including depression, anxiety, emotional distress, loss of reputation, loss of income, and other pecuniary loss, in addition to substantial attorney fees. L.F. at 12.

On July 27, 2005, Dr. Edwards filed a petition in Jackson County, Missouri, to recover damages from the Board members for their gross negligence and from Board employee Jeanette Stuenkel for malicious prosecution. L.F. at 5–13. The subsequent procedural history occurred as follows:

September 6, 2005	Defendants filed motion to dismiss, or in the alternative, to transfer venue to Cole County. L.F. at 15.
October 3, 2005	Plaintiff filed suggestions in opposition to motion to dismiss or transfer venue. L.F. at 24.

October 5, 2005	Judge Roldan (Jackson County) transferred the case to Cole County. L.F. at 31.
October 18, 2005	Judge Roldan (Jackson County) denied Plaintiff's motion to reconsider transfer of venue. L.F. at 32.
November 7, 2005	Plaintiff filed a motion in Cole County to transfer venue back to Jackson County. L.F. at 38.
November 23, 2005	Judge Brown (Cole County) denied motion to transfer venue back to Jackson County. L.F. at 3.
December 20, 2005	Defendants' suggestions in support of motion to dismiss filed in Cole County. L.F. at 44.
January 27, 2006	Cole County hearing on motion to dismiss. L.F. at 3.
February 3, 2006	Cole County granted motion to dismiss. L.F. at 48–51.
March 6, 2006	This appeal filed. L.F. at 52.

POINTS RELIED ON

I.

The trial court erred in granting the Board member defendants' motion to dismiss on the basis of quasi-judicial immunity because § 331.100.5, RSMo, supersedes the common law immunity doctrines by expressly allowing the members of the Missouri Board of Chiropractic Examiners to be held liable for gross negligence and Plaintiff Dr. Edwards has pled sufficient facts to support a gross negligence claim in that his petition alleges, among other things, that the Board members solicited complaints against him, continued to pursue action after the complaints were withdrawn, withheld discoverable and exculpable information, and ensured publication of unsubstantiated derogatory information regarding the Plaintiff.

Golden v. Crawford, 165 S.W.3d 147 (Mo. banc 2005)

Group Health v. State Board of Registration, 787 S.W.2d 745 (Mo. App. E.D. 1990)

Section 331.100.5, RSMo

II.

The trial court erred in granting Defendant Jeanette Stuenkel's motion to dismiss on the basis of official immunity and the public duty doctrine because the law requires that a public officer be acting in a discretionary capacity for official immunity to apply and that an individual claim for breach of duty to the general public be involved for the public duty doctrine to apply, and Plaintiff Dr. Edwards has pled sufficient facts to make a submissible case in that Jeanette Stuenkel is not a public officer and the petition alleges that Stuenkel swore out a complaint against Dr. Edwards without independent knowledge of or investigation into its allegations, which was neither a discretionary act nor an act involving a breach of a duty to the general public.

State ex rel. Howenstine v. Roper, 155 S.W.3d 747 (Mo. banc 2005)

State ex rel. Eli Lilly & Co. v. Gaertner, 619 S.W.2d 761 (Mo. App. E.D. 1981)

Balderee v. Beeman, 837 S.W.2d 309 (Mo. App. S.D. 1992)

Sherrill v. Wilson, 653 S.W.2d 661 (Mo. banc 1983)

III.

The trial court erred in refusing to transfer venue to Jackson County, where the Plaintiff's claim was originally filed, because § 508.010(2), RSMo 2000, provides that venue is proper in any county in which a defendant resides, and this case was properly filed in Jackson County in that one of the defendants resides and was served in Jackson County.

Platinum Express v. Scott, 164 S.W.3d 537 (Mo. App. W.D. 2005)

State ex rel. Palmer v. Goeke, 8 S.W.3d 193 (Mo. App. E.D. 1999)

State ex rel. Missouri Dept. of Natural Resources v. Roper, 824 S.W.2d 901 (Mo. 1992)

Section 508.010, RSMo 2000

ARGUMENT

I. The trial court erred in granting the Board member defendants' motion to dismiss on the basis of quasi-judicial immunity because § 331.100.5, RSMo, supersedes the common law immunity doctrines by expressly allowing the members of the Missouri Board of Chiropractic Examiners to be held liable for gross negligence and Plaintiff Dr. Edwards has pled sufficient facts to support a gross negligence claim in that his petition alleges, among other things, that the Board members solicited complaints against him, continued to pursue action after the complaints were withdrawn, withheld discoverable and exculpable information, and ensured publication of unsubstantiated derogatory information regarding the Plaintiff.

Standard of Review

Review of a trial court's dismissal requires a broad reading of the pleadings, "treating all facts alleged as true, construing allegations as favorable to plaintiffs and determining whether the petition invokes principles of substantive law upon which relief can be granted." *Group Health v. State Board of Registration*, 787 S.W.2d 745, 747 (Mo. App. E.D. 1990).

Common law quasi-judicial immunity is superseded by § 331.100.5, RSMo

The trial court granted the Board member defendants' motion to dismiss on the basis of quasi-judicial immunity. L.F. at 49–50. But § 331.100.5, RSMo,

supersedes the common law immunity doctrines and allows civil liability in cases involving gross negligence.

Section 331.100.5 establishes the conditions under which the members of the Missouri Board of Chiropractic Examiners may be liable for acts committed in the performance of their official duties as members of the board. The statute states that the Board members "shall not be personally liable either jointly or separately for any act or acts committed in the performance of their official duties as board members *except for gross negligence*" (emphasis added). If the actions of the Board members are protected by the common law doctrine of quasi-judicial immunity, the phrase "except for gross negligence" is rendered meaningless, and the legislature is stripped of its power to choose the language that would govern the Board and its authority.

The Supreme Court of Missouri recently evaluated the significance of such a statutory provision for gross negligence liability in *Golden v. Crawford*, 165 S.W.3d 147 (Mo. banc 2005). In *Golden*, the Court analyzed whether the legislature intended for the immunity provisions of §190.307, RSMo, to supersede the common law immunity doctrines. *Id*. The Court found that the express language of the statute, which exempted public officials from liability except in cases of willful and wanton misconduct or gross negligence, clearly demonstrated the legislature's intent to supersede the common law immunity doctrines for the officials listed in the statute. *Id*. at 149. Thus, the Court held that § 190.307 provided the officials "with a qualified immunity allowing civil liability only in

instances where gross negligence can be established." In other words, the statute replaces the absolute official immunity under the common law with a qualified official immunity that can be overcome by a showing of gross negligence.

Like § 190.307, § 331.100.5 contains express language that provides an exemption from liability except in cases of gross negligence. As in *Golden*, this language clearly demonstrates the legislature's intent to supersede the common law immunity doctrine and allow civil liability in cases establishing gross negligence. While the *Golden* case considers official immunity rather than quasi-judicial immunity, which the trial court relied on in this case, both are common law doctrines, over which specific statutory provisions take precedence.

Defendants' actions exceed protection of quasi-judicial immunity doctrine

Even notwithstanding the superseding language of § 331.100.5, the quasi-judicial immunity doctrine is designed to protect agency officials from liability for their role in initiating proceedings. *Group Health v. State Board of Registration*, 787 S.W.2d 745, 750 (Mo. App. E.D. 1990) (citing *Butz v. Economou*, 438 U.S. 478, 515–16 (1978)). In this case the actions of the Defendants for which the Plaintiff is seeking relief went far beyond their quasi-judicial role of deciding to initiate and adjudicate an action against the Plaintiff's license. Among other things, the Board members:

- actively pursued the patient's widow and mother-in-law, seeking out a complaint against the Plaintiff, L.F. at 9, 11;
- specifically avoided discussing the case with the patient's parents, who would clearly have provided information verifying the Plaintiff's claims, L.F. at 11;
- failed, for the first time in at least seven years, to follow their own practice of holding an informal hearing, L.F. at 11;
- sought to have the patient's mother-in-law change portions of her statement, L.F. at 11;
- after the complaints of the patient's widow and mother-in-law were withdrawn, solicited another complaint from an employee who had no personal connection to or knowledge of the case, L.F. at 10, 11;
- withheld discoverable information from the Plaintiff, L.F. at 12;
- failed to provide exculpatory information to the Plaintiff, L.F. at 12; and
- ensured that derogatory information was published in the National Practitioner's Data Bank to prevent the Plaintiff from obtaining insurance company reimbursement and professional liability insurance, L.F. at 12.

Such grossly negligent actions are not a part of the decision to initiate proceedings and are not a part of the quasi-judicial function of agency officials that the immunity doctrine is designed to protect.

Summary

The Plaintiff's allegations clearly constitute a claim of gross negligence on the part of the Defendant Board members. Such a cause of action is specifically created by § 331.100.5, RSMo. The trial court's reliance on the common law quasi-judicial immunity doctrine to dismiss the Plaintiff's claims fails to recognize the extreme nature of the Defendants' actions as well as the specific statutory mandate overriding the common law immunity doctrine.

II. The trial court erred in granting Defendant Jeanette Stuenkel's motion to dismiss on the basis of official immunity and the public duty doctrine because the law requires that a public officer be acting in a discretionary capacity for official immunity to apply and that an individual claim for breach of duty to the general public be involved for the public duty doctrine to apply, and Plaintiff Dr. Edwards has pled sufficient facts to make a submissible case in that Jeanette Stuenkel is not a public officer and the petition alleges that Stuenkel swore out a complaint against Dr. Edwards without independent knowledge of or investigation into its allegations, which was neither a discretionary act nor an act involving a breach of a duty to the general public.

Standard of Review

Review of a trial court's dismissal requires a broad reading of the pleadings, "treating all facts alleged as true, construing allegations as favorable to plaintiffs and determining whether the petition invokes principles of substantive law upon which relief can be granted." *Group Health v. State Board of Registration*, 787 S.W.2d 745, 747 (Mo. App. E.D. 1990).

Stuenkel not protected by official immunity

The trial court held that Defendant Stuenkel is entitled to official immunity from the Plaintiff's claims. L.F. at 50. But to be protected by official

immunity, an individual must (1) be a public officer and (2) be acting in a discretionary capacity. *State ex rel. Howenstine v. Roper*, 155 S.W.3d 747, 751 (Mo. banc 2005). Stuenkel fails the test on both counts.

Stuenkel not a public officer. 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). "That portion of the sovereign's power delegated to the officer must be exercised independently . . . without control of a superior power other than the law." *Id*. Because Stuenkel is an employee of the Missouri Board of Chiropractic Examiners, subject to the authority of both the executive director and the Board, she is not a public officer and does not qualify for official immunity protection.

Stuenkel's actions did not constitute a discretionary official act. After the patient's widow and mother-in-law withdrew their complaints, Stuenkel signed a complaint against the Plaintiff with no investigation into the truth of its allegations. L.F. at 11–13. Such an act is not a discretionary official act protected by official immunity. *See Balderee v. Beeman*, 837 S.W.2d 309 (Mo. App. S.D. 1992).

In *Balderee*, Balderee brought a slander claim against Beeman, who had allegedly accused Balderee, in a business setting, of "propositioning" various men. *Id*. at 312. The court held that discretionary decisions protected by the official immunity doctrine are "those which go to the essence of governing," *Id*. at 321, and concluded that "[t]elling . . . people that Plaintiff had 'propositioned' [men]

without knowing it was true does not, under any stretch of imagination, constitute a discretionary official act." *Id*. at 322. Nor can Stuenkel's comparable act of signing a complaint against the Plaintiff in this case without knowing whether its allegations were true be classified as a discretionary official act protected by official immunity.

Stuenkel's actions not protected by public duty doctrine

The trial court also held that Defendant Stuenkel's actions were taken as part of her duty owed to the general public and thus protected by the public duty doctrine. L.F. at 50–51. But this mischaracterizes the nature and purpose of the public duty doctrine.

The public duty doctrine is designed to protect public employees from liability for breach of a duty owed to the public at large when that breach causes harm to an individual. *Heins Implement v. Hwy. & Transp. Com'n*, 859 S.W.2d 681, 694 (Mo. banc 1993). For example, in a case involving a poorly designed highway bypass, the public employee engineer was protected from suit by adjacent landowners because his breach was of a duty to the general public and he owed no higher duty to the landowners. *Id.* at 695.

In *Sherrill v. Wilson*, 653 S.W.2d 661, 669 (Mo. banc 1983), in applying the public duty doctrine, the Supreme Court of Missouri recognized that they were dealing "only with tort liability arising out of duties owed to the public at large." In the present case, the Plaintiff's claims against Stuenkel do not involve a breach

of any duty owed to the general public, but rather her specific act of swearing out a complaint containing allegations that she did not have personal knowledge of. L.F. at 11–13. Thus, the public duty doctrine does not apply.

Summary

Defendant Stuenkel fails to meet the test for classification as a public official, and signing a complaint without knowledge of or investigation into the truth of its allegations is not protected by either the official immunity or the public duty doctrine. Therefore, the trial court erred in dismissing the Plaintiff's claims against Stuenkel on the basis of official immunity and public duty.

III. The trial court erred in refusing to transfer venue to Jackson County, where the Plaintiff's claim was originally filed, because § 508.010(2), RSMo 2000, provides that venue is proper in any county in which a defendant resides, and this case was properly filed in Jackson County in that one of the defendants resides and was served in Jackson County.

Standard of Review

The standard of review on the venue issue is governed by *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. banc 1976). *Platinum Express v. Scott*, 164 S.W.3d 537, 538 (Mo. App. W.D. 2005). The trial court's judgment "will be affirmed unless it is not supported by substantial evidence, it is against the weight of the evidence, or it erroneously declares or applies the law." *Id.*

Venue is proper in Jackson County

Venue is Missouri is controlled by statute. *State ex rel. BJC Health Sys. v. Neill*, 121 S.W.3d 528, 529 (Mo. banc 2003); *Platinum Express v. Scott*, 164 S.W.3d 537, 538 (Mo. App. W.D. 2005). Section 508.010(2), RSMo 2000, the general venue statute in effect when this case was filed, provided that when a suit is brought against multiple defendants who reside in different counties, the suit may be brought in any county in which one of the defendants resides. Because defendant Richardson lives in and was served in Jackson County, L.F. at 14, according to § 508.010, venue is proper in Jackson County.

Section 508.010(6), RSMo 2000, provided that in tort actions the suit may be brought where the cause of action accrued. Because several of the instances of gross negligence occurred in Jackson County, L.F. at 9, additional grounds for proper venue in Jackson County exist.

Court is without discretion to disturb Plaintiff's proper choice of venue

Missouri appellate courts have clearly held that a trial court has no discretion to interfere with a plaintiff's choice of proper venue. *State ex rel. Palmer v. Goeke*, 8 S.W.3d 193, 196 (Mo. App. E.D. 1999) (quoting *Jones v. Overstreet*, 865 S.W.2d 717, 718 (Mo. App. E.D. 1993)). The trial court therefore erred in refusing to transfer the case back to Jackson County, where the Plaintiff's petition was filed, L.F. at 5.

Caselaw supports venue in Jackson County

Respondents have in their motions cited *State ex rel. Nixon v. Clark*, 926 S.W.2d 22 (Mo. App. W.D. 1996), and *United Pharmacal Co. of Missouri, Inc. v. Missouri Board of Pharmacy*, 159 S.W.3d 361 (Mo. 2005), seemingly for the proposition that venue in any case involving executive or administrative officials is only proper in Cole County. But this interpretation is not supported by the cases or applicable in this case. In *Clark*, the sole defendant was the state director of Probation and Parole, and the case stands only for the proposition that proper venue in a case involving a *state department head* is in the county where their

office is located and their principal duties are performed. *Clark* at 24. In *United Pharmacal*, the sole defendant was a state agency, and the case stands only for the proposition that venue in a case involving a state agency as the sole defendant is proper in Cole County.

In the present case, the defendant is not an executive department head or a state agency, but rather the defendants are the members of the State Board of Chiropractic Examiners in their individual capacities. L.F. at 5–7. Under the Missouri venue statute, § 508.010, RSMo, because one of the individual defendants resides in and was served in Jackson County, venue is proper there.

Respondents may also cite *State ex rel. Missouri Dept. of Natural Resources v. Roper*, 824 S.W.2d 901, 902 (Mo. 1992), for the proposition that the legal residence of administrative officials is limited to Jefferson City for venue purposes. But this mischaracterizes the import of *Roper* as it relates to this case. Although *Roper* holds that the legal residence of a state agency itself is in Cole County, it actually supports the notion that venue in this case is proper in Jackson County because one of the defendants resides in Jackson County, L.F. at 6.

In *Roper*, the plaintiff petitioned in Boone County to recover damages he suffered as a result of a collision with a truck driver who resided in Boone County. 824 S.W.2d at 902. The truck driver was an employee of the Missouri Department of Natural Resources, and the plaintiff sued both the truck driver and the department. *Id*. The only issue decided by the *Roper* Court was "whether a case against a state agency must be brought in the county of its legal residence when

there are additional defendant(s) who otherwise could be sued in the county of their residence under § 508.010(2), the 'general' venue statute." *Id*. The Court concluded that no constitutional or statutory requirement exists mandating "that such actions be brought only in the county of residence of the state agency." *Id*. The Court did state that if the department was the sole defendant and the accident occurred in Cole County, a suit under § 508.010(1) could only be brought in Cole County. *Id*. at 903. The court further stated, however, that because a co-defendant resided in another county, § 508.010(2) "clearly and unambiguously states that, as a general rule, either Cole County or the other county—in this case, Boone County—would have venue over this suit." *Id*.

Like *Roper*, this case involves multiple defendants, including the individual members of the Board of Chiropractic Examiners. L.F. at 5–7. Section 508.010(2) clearly states that venue is proper in any county in which a co-defendant resides. As noted above, Defendant Richardson resides and was served in Jackson County. L.F. at 14. Even if the board itself were included as a co-defendant, *Roper* establishes that Jackson County would still have venue over the suit.

Summary

Because Missouri statutes confer venue in Jackson County, where the case was originally filed, L.F. at 5, and the trial court is without discretion to disturb the Plaintiff's proper choice of venue, the trial court erred in applying the law by not transferring the case to Jackson County, where the petition was originally filed.

CONCLUSION

Appellant requests that this Court reverse the trial court's dismissal and remand with directions to transfer the case to Jackson County for a trial on the merits or, in the alternative, to remand with directions to proceed with a trial on the merits.

RULE 84.06(c) and (g) CERTIFICATION

The undersigned respondent's counsel hereby certifies that:

(1) This brief contains the information required by Rule 55.03;

(2) This brief complies with the limitations contained in Rule 84.06(b);

(3) This brief contains 4,504 words as calculated by a Microsoft Word 2003 computer count;

(4) This brief contains 469 monospaced lines;

(5) The 3.5 inch floppy disk which accompanies the original of this Brief and also the floppy disk provided to counsel for appellant have been scanned with Norton (Symantec) Antivirus Software and are virus free.

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CERTIFICATE OF SERVICE

The undersigned certifies that on _____, 20 _____, two hard copies of Respondents' Brief along with a digital copy thereof on a 3.5 floppy disk in Microsoft Word 2003 format, scanned for viruses using and up-to-date Norton (Symantec) Anti-Virus program and found to be virus free, were mailed, postage prepaid, to each other party not in default in this action, or upon that party's legal representative, as required by Rule 84.06.

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Appellant,

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No. WD 66678

APPENDIX TO
APPELLANT'S BRIEF

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Section 508.010, RSMo A7

CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

DR. GARY EDWARDS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 0516-CV20118
	)	
LAWRENCE M. GERSTEIN, et al.,	)	
	)	
Defendants.	)	

JUDGMENT AND ORDER

Defendants Gerstein, Klinginsmith, Lovejoy, Richardson, Holyoke, Hill, Rushin, Robinson, Price and Stuenkel filed a motion to dismiss pursuant to Missouri Rule of Civil Procedure 55.27(a)(6). Plaintiff responded in opposition. A hearing was held on this motion on January 27, 2006. Counsel for these defendants appeared in person. Counsel for plaintiff appeared by phone.

Being duly advised and upon review of the pleadings in this matter, this Court grants defendants' motion to dismiss.

Plaintiff brings three counts in his petition. In Count I, plaintiff alleges gross negligence on the part of defendants Gerstein, Price, Klinginsmith, Lovejoy, Richardson, Holyoke, Hill, Rushin, and Robinson for pursuing an administrative action to discipline plaintiff's license to practice chiropratic medicine. Defendants Gerstein, Price, Klinginsmith, Lovejoy, Richardson, Holyoke, Hill, Rushin, and Robinson are all named as members of the Missouri State Board of Chiropractic Examiners (herein referred to as "the Board members").

In Counts II and III of plaintiff's petition, plaintiff alleges two theories of malicious prosecution against defendant Stuenkel, an employee of the Missouri State Board of Chiropractic Examiners.

The Board Members

In their motion to dismiss, the Board members assert that they are entitled to quasi-judicial immunity for their actions in the attempted discipline of plaintiff's chiropractic licence. Plaintiff, relying on *State ex rel. Golden v. Crawford*, 165 S.W.3d 147 (Mo. *banc* 2005), asserts that the language of Mo. Rev. Stat. §331.100.5[1] waives all immunity defenses for members of the Board. This Court finds the decision in *Golden* distinguishable from the present matter.

In *Golden*, the Missouri Supreme Court considered whether Mo. Rev. Stat. §190.307[2] waived a 911 dispatcher's defenses of official immunity and immunity under the public duty doctrine. The *Golden* Court held that the language of §190.307 waived the dispatcher's official immunity and public duty defenses. However, the *Golden* Court did not consider the issue of quasi-judicial immunity.

Agency officials responsible for deciding whether to initiate proceedings are absolutely immune from a suit for damages for their parts in that decision. *Butz v. Economou,* 438 U.S. 478,

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[1] Mo. Rev. Stat. §331.100.5 states:
Members of the board shall not be personally liable either jointly or separately for any act or act committed in the performance of their official duties as board members except gross negligence.

[2] Mo. Rev. Stat. §190.307.2 states:
No person who gives emergency instructions through a system established pursuant to sections 190.300 to 190.340 to persons rendering services in an emergency at another location, nor any persons following such instructions in rendering such services, shall be liable for any civil damage as a result of issuing or following the instructions, unless issuing or following the instructions constitutes willful and wanton misconduct, or gross negligence.

515-16 (1978). This immunity is also referred to "quasi-judicial" immunity and is afforded to those officials whose special functions require complete protection from suit. This immunity defeats a suit at the outset. *Group Health v. State Bd. of Registration*, 787 S.W. 2d 745, 750 (Mo. App. E.D. 1990). In his petition, plaintiff seeks to hold the members of the Board liable for their decisions based on their quasi-judicial roles in determining to initiate an action against plaintiff's licence and adjudicating that action. This Court finds that based on the significance of the principles behind quasi-judicial immunity, a claim of gross negligence is not sufficient to overcome defendants' quasi-judicial immunity from these claims.

Stuenkel

In her motion, Defendant Stunkel asserts official immunity, the public duty doctrine, and quasi-judicial immunity. This Court finds that plaintiff's petition seeks to hold defendant Stuenkel liable for activities as an employee of the State Board of Chiropractic Examiners. This Court finds that the plain language of Section 331.100.5 does not apply to plaintiffs' claims against Defendant Stuenkel as she is not a member of the Board of Chiropractic Examiners.

Official immunity protects public officials acting within the scope of their authority from liability for injuries arising from their discretionary acts or omissions. *Kanagawa v. State*, 685 S.W.2d 831, 835 (Mo. *banc* 1985). This Court finds that plaintiff seeks to hold defendant Stuenkel liable for her discretionary acts as a government official, and thus she is entitled to official immunity from plaintiff's claims.

The public duty rule protects public employees from being 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.2d 861, 866 (Mo. *banc* 1987). This Court finds that defendant Stuenkel's

actions, as alleged in plaintiff's petition, were taken as party of her duty owed to the general public to ensure the quality of chiropractic care provided to the citizens of the State of Missouri. Thus, plaintiff's claims also fail under the public duty doctrine.

In view of the foregoing, it is hereby:

ORDERED, that defendants' motion to dismiss is sustained. Plaintiff's claims against defendants Gerstein, Klinginsmith, Lovejoy, Richardson, Holyoke, Hill, Rushin, Robinson, Price and Stuenkel are dismissed, with prejudice.

Hon. Thomas J. Brown III
Circuit Judge

Dated: 2/3/06

Section 331.100, RSMo

Organization of board — duty of officers — compensation, powers — meetings — liability for official acts, exception. —

1. The board shall elect a president and secretary at the first regular meeting held after January first of each year. Each member of the board shall receive as compensation for his services the sum of fifty dollars per day while discharging the actual duties of the board, and each member shall receive necessary traveling expenses while actually engaged in the performance of his duties as a member of the board.

2. The board shall have a common seal, and shall adopt rules and regulations for the application and enforcement of this chapter. The president and secretary shall have power to administer oaths. Four members shall constitute a quorum. They shall publish the dates and places for examinations at least thirty days prior to the meeting. The board shall create no expenses exceeding the sums received from time to time as herein provided.

3. The board shall employ such board personnel as may be necessary to carry out the provisions of this chapter. Board personnel shall include an executive secretary or comparable position, inspectors, investigators, attorneys, and secretarial support staff for these positions.

4. Board personnel shall have their duties and compensation prescribed by the board within appropriations for that purpose, except that compensation for board personnel shall not exceed that established for comparable positions, as determined by the board, under the job and pay plan of the department of economic development.

5. Members of the board shall not be personally liable either jointly or separately for any act or acts committed in the performance of their official duties as board members except gross negligence.

Section 508.010, RSMo 2000

Suits instituted by summons shall, except as otherwise provided by law, be brought:

(1) When the defendant is a resident of the state, either in the county within which the defendant resides, or in the county within which the plaintiff resides, and the defendant may be found;

(2) When there are several defendants, and they reside in different counties, the suit may be brought in any such county;

(3) When there are several defendants, some residents and others nonresidents of the state, suit may be brought in any county in this state in which any defendant resides;

(4) When all the defendants are nonresidents of the state, suit may be brought in any county in this state;

(5) Any action, local or transitory, in which any county shall be plaintiff, may be commenced and prosecuted to final judgment in the county in which the defendant or defendants reside, or in the county suing and where the defendants, or one of them, may be found;

(6) In all tort actions the suit may be brought in the county where the cause of action accrued regardless of the residence of the parties, and process therein shall be issued by the court of such county and may be served in any county within the state; provided, however, that in any action for defamation or for invasion of privacy the cause of action shall be deemed to have accrued in the county in which the defamation or invasion was first published.