



SUPREME COURT OF MISSOURI

en banc

STATE ex rel.	)	<i>Opinion issued June 15, 2021</i>
OFFICER SERGEANT DIRK HELMS	)	
and CHIEF JOE EDWARDS,	)	
	)	
Relators,	)	
	)	
v.	)	No. SC98711
	)	
THE HONORABLE JOSEPH ALFRED	)	
RATHERT,	)	
	)	
Respondent.	)	

ORIGINAL PROCEEDING IN MANDAMUS

Lonnie Decker (“Mr. Decker”) filed a petition for wrongful death against Sergeant Dirk Helms (“Sergeant Helms”) and Chief Joe Edwards (“Chief Edwards”) of the De Soto Police Department and several other defendants following the death of Mr. Decker’s daughter, Lillian Flath (“Ms. Flath”). Ms. Flath was a passenger in a vehicle who died during an automobile accident in the course of a police pursuit by separate defendant Officer David Krassinger (“Officer Krassinger”). Sergeant Helms and Chief Edwards each filed separate motions to dismiss the claims against them alleging such claims were barred by official immunity and the public duty doctrine. The circuit court overruled both motions. Sergeant Helms and Chief Edwards now seek a writ of prohibition from this Court ordering the circuit court to take no action other than to

dismiss Sergeant Helms and Chief Edwards from the lawsuit. This Court has the authority to “issue and determine original remedial writs.” Mo. Const. art. V, § 4.1. For the reasons set forth below, this Court’s preliminary writ of prohibition is now made permanent.

Background

On May 22, 2018, at around 11:52 p.m., Officer Krassinger noticed a vehicle had parked and turned off its headlights in Woodlawn Cemetery, located in the City of De Soto, Jefferson County, Missouri. Based on the license plate number and details of the vehicle, Officer Krassinger identified the vehicle as an Oldsmobile owned by Mr. Decker. Officer Krassinger approached the vehicle and activated his spotlight and takedown lights, at which point the driver of the Oldsmobile, Anthony Santiago (“Mr. Santiago”), put the car in gear and pulled away. Ms. Flath was a passenger in the Oldsmobile.

Officer Krassinger pursued the Oldsmobile turning out of Woodlawn Cemetery traveling eastbound on Vineland School Road. Mr. Santiago, with Officer Krassinger in pursuit, passed through and ignored various traffic signals, including stop signs. At approximately 11:55 p.m., Mr. Santiago drove the Oldsmobile through an intersection and was struck by a Chevrolet truck. Ms. Flath was pronounced dead at the scene of the accident as a result of blunt force trauma.

Mr. Decker, Ms. Flath’s father, filed suit against several defendants, including Sergeant Helms and Chief Edwards. Mr. Decker alleged Sergeant Helms and Chief Edwards were both supervisors of Officer Krassinger and each failed to adopt vehicle

pursuit policies or train their police officers (including Officer Krassinger) regarding proper vehicle pursuit procedures under those policies.¹ Mr. Decker also alleged

¹ A review of Mr. Decker's petition reveals he alleges the following:

- 79. At all times relevant herein, ***the De[]Soto Police Department*** lacked polic[i]es, guidelines, general orders, operations, training or instructions on law enforcement driving and police pursuits.
- 80. Upon information and belief, ***the De[]Soto Police Department*** policies, procedures, customs and practices regarding police pursuits were inadequate, improper, and not sufficient to prevent the unjustified death of [Ms. Flath].
- 81. Defendant Officer Krassinger, Defendant Officer Schuler, and Defendant Sergeant Helms lacked knowledge of any policies that existed and were not properly trained in law enforcement driving and police pursuits.
- 82. Defendant Chief Edwards failed to train subordinate police officers on law enforcement driving, police pursuits, and any polic[i]es that existed in the department.

...

- 98. That notwithstanding the aforesaid duties, [Sergeant Helms] breached his duty and was thereby negligent in one or more of the following respects:
 - a. Failed to properly train De[]Soto Police Officers on policy governing initiation, continuation and termination of vehicle pursuits;
 - b. Failed to properly train De[]Soto Police Officers on Missouri POST Standards for pursuits;
 - c. Failed to properly train Missouri statutory guidelines for police pursuits;
 - d. Failed to implement ***general police policies and procedures*** for the De[]Soto Police Department;
 - e. Failed to terminate the pursuit of the Oldsmobile vehicle[.]

...

- 104. That notwithstanding the aforesaid duties, [Chief Edwards] breached his duty, and was thereby negligent, in one or more of the following respects:
 - a. Failed to properly train De[]Soto Police Officers on policy governing initiation, continuation and termination of vehicle pursuits;
 - b. Failed to properly train De[]Soto Police Officers on Missouri POST Standards for pursuits;
 - c. Failed to properly train Missouri statutory guidelines for police pursuits;
 - d. Failed to implement ***general police policies and procedures*** for the De[]Soto Police Department;

Sergeant Helms and Chief Edwards failed to use due regard for the safety of those not involved in the pursuit, failed to avoid creating a dangerous condition on a public roadway, and failed to avoid causing injury to Ms. Flath.

Sergeant Helms and Chief Edwards filed motions to dismiss, each arguing that Mr. Decker's claims were barred by official immunity and the public duty doctrine. Mr. Decker responded, arguing that exceptions to the official immunity and public duty doctrines applied because (1) the actions Sergeant Helms and Chief Edwards failed to take were ministerial in nature and (2) Sergeant Helms and Chief Edwards owed a special duty to Mr. Decker's daughter rather than a general public duty. The circuit court overruled both motions. Sergeant Helms and Chief Edwards now seek a writ of prohibition with this Court compelling the circuit court to sustain their motions and dismiss the claims against them.

Analysis

"Prohibition is a discretionary writ that only issues to prevent an abuse of judicial discretion, to avoid irreparable harm to a party, or to prevent exercise of extrajudicial power." *State ex rel. Schwarz Pharma, Inc. v. Dowd*, 432 S.W.3d 764, 768 (Mo. banc 2014) (citation omitted). This Court has utilized the remedy of prohibition when an individual was entitled to dismissal either due to official immunity

e. Failed to terminate the pursuit of the Oldsmobile vehicle[.]

[Emphasis added.] Although Mr. Decker could have been more explicit in alleging Sergeant Helms and Chief Edwards were the parties responsible for failing to implement vehicular pursuit policies, this Court's review assumes the facts contained in the petition are true and construes the facts alleged in the petition in Mr. Decker's favor. *See Ward v. W. Cnty. Motor Co.*, 403 S.W.3d 82, 84 (Mo. banc 2013).

or the public duty doctrine. *State ex rel. Barthelette v. Sanders*, 756 S.W.2d 536, 539 (Mo. banc 1988). Importantly, immunity protects an official from suit altogether, not merely judgment. *State ex rel. Alsup v. Kanatzar*, 588 S.W.3d 187, 190 (Mo. banc 2019).

Official immunity “protects public officials sued in their individual capacities from liability for alleged acts of negligence committed during the course of their official duties for the performance of discretionary acts.” *Id.* (quotation marks omitted). There is “a narrow exception to the application of the official immunity doctrine – i.e., when a public officer fails to perform a **ministerial** duty required of him by law, he may be personally liable for the damages caused.” *Id.* at 191.

A ministerial duty “is one in which a certain act is to be performed upon a given state of facts in a prescribed manner in obedience to the mandate of legal authority, and without regard to [the public official’s] judgment or opinion concerning the propriety or impropriety of the act to be performed.” *Id.* (alteration in original) (quotation marks omitted). The central question in determining whether an act is ministerial “is whether there is any room whatsoever for variation in when and how a particular task can be done.” *Id.* “If so, that task – by definition – is not ministerial.” *Id.* “The fact that a statute or regulation may confer authority – or even a duty – to act in a given situation says nothing about whether the act authorized or compelled is the sort of ministerial or clerical act to which official immunity does not extend.” *Id.* at 192. “[E]ven when a clerical or ministerial act appears to be authorized or required by statute, official immunity will still apply if the official retains authority to decide when and how that act is to be done.” *Id.* at 192-93.

Sergeant Helms and Chief Edwards argue Mr. Decker's allegations are similar to the plaintiffs' allegations in *Southers v. City of Farmington*, 263 S.W.3d 603 (Mo. banc 2008), where this Court held official immunity barred suit. Sergeant Helms and Chief Edwards point out that Mr. Decker alleges they were negligent in failing to (1) terminate a police pursuit, (2) implement proper vehicular pursuit policies, and (3) properly train officers in pursuit procedures. Sergeant Helms and Chief Edwards contend these are nothing more than allegations of mere negligence in the performance of discretionary functions, which are barred by the official immunity doctrine.

Mr. Decker argues section 544.157.4² renders the duty to supervise vehicular pursuits a ministerial one. This provision states: "A public agency electing to institute vehicular pursuits shall adopt a policy for the safe conduct of vehicular pursuits by peace officers. Such policy shall meet the following minimum standards: (1) There shall be supervisory control of the pursuit[.]" § 544.157.4. Mr. Decker also argues his petition alleges the absence of control of the pursuit, the absence of training in any capacity, and the absence of required policies. Though he concedes Sergeant Helms and Chief Edwards may have had discretion in determining some aspects of these requirements, Mr. Decker argues Sergeant Helms and Chief Edwards had no discretion to fail altogether in their duty to adopt some policy and conduct some training. Mr. Decker contends their failure even to attempt to comply with section 544.157.4 and Peace Officer Standards and Training renders them liable notwithstanding official immunity.

² All statutory references are to RSMo 2016 unless otherwise noted.

Mr. Decker's argument misses the mark in two important respects. First, it should be noted that section 544.157.4 places the "duty" to adopt vehicle pursuit policies on the "public agency electing to institute vehicular pursuits." Neither Sergeant Helms nor Chief Edwards, alone or combined, is a "public agency" as that term is used in section 544.157.4. Accordingly, nothing before this Court establishes that the duty on which Mr. Decker relies falls on these two officials. More importantly, even assuming section 544.157.4 imposes some duty on Sergeant Helms and Chief Edwards to adopt a vehicle pursuit policy, this is not sufficient to render the duty "ministerial" such that official immunity will not apply. An act is not ministerial simply because it is required by statute. *See Alsup*, 588 S.W.3d at 192-93 (finding even when an "act appears to be authorized or required by statute, official immunity will still apply if the official retains authority to decide when and how that act is to be done").

Section 544.157.4 does not remove all authority to decide when, how, or what vehicle pursuit policies and procedures to adopt or when and how training under those policies should be conducted. Having minimum standards does not remove all authority to make decisions regarding the vehicular pursuit policy or how to properly train officers to follow the procedures. Additionally, the decision to terminate a police pursuit is a "highly discretionary supervisory and policy decision[]" that the [official immunity] doctrine is intended to shield." *Southers*, 263 S.W.3d at 621.

Each of the actions Mr. Decker argues are "ministerial" (i.e., adopting a vehicle pursuit policy, training officers under that policy, and deciding when and how to terminate a vehicular pursuit) are replete with discretion. Nothing in section 544.157.4

removes this discretion, and the officials charged with the duty that statute imposes retain wide latitude to determine precisely what vehicle pursuit policy to adopt, when to adopt it, and when and how best to train peace officers under that policy. These are the types of decisions the official immunity doctrine is meant to protect. *See Alsup*, 588 S.W.3d at 191 (explaining “society’s compelling interest in vigorous and effective administration of public affairs requires that the law protect those individuals who, in the face of imperfect information and limited resources, must daily exercise their best judgment in conducting the public’s business”).³ Sergeant Helms and Chief Edwards may have been negligent in failing to fulfill these discretionary duties with due regard for the public safety and in such a way as to protect Ms. Flath – and this Court assumes as much for purposes of this analysis – but the doctrine of official immunity prohibits the courts of this state from holding them personally liable for such a failure.

Conclusion

For the reasons set forth above, this Court’s preliminary writ of prohibition is made permanent.

Paul C. Wilson, Judge

Draper, C.J., Russell, Powell, Breckenridge
and Fischer, JJ., concur.

³ Sergeant Helms and Chief Edwards also argued the public duty doctrine bars Mr. Decker’s claims against each of them. This Court does not address this argument because the official immunity doctrine issue is dispositive.