MISSOURI COURT OF APPEALS
WESTERN DISTRICT

JUDY CONWAY, ET AL.

APPELLANTS,

v.

REBECCA CALDWELL, ET AL.

RESPONDENTS.

DOCKET NUMBER WD84487

DATE: March 15, 2022

Appeal From:

Jackson County Circuit Court
The Honorable Charles H. McKenzie, Judge

Appellate Judges:

Division One: Mark D. Pfeiffer, Presiding Judge, Karen King Mitchell, Judge and Gary D. Witt, Judge

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Attorneys:

Michaela C. Shelton-Sinkhorn, Overland Park, KS, for appellant.

John Patrick Sullivan, Kansas City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

JUDY CONWAY, ET AL., APPELLANTS,
v.
REBECCA CALDWELL, ET AL., RESPONDENTS.

WD84487 Jackson County

Before Division One Judges: Mark D. Pfeiffer, Presiding Judge, Karen King Mitchell, Judge, and Gary D. Witt, Judge

Judy Conway, et al. ("Appellants"), appeal the judgment of the Circuit Court of Jackson County, Missouri ("trial court"), granting judgment on the pleadings in favor of Respondents Rebecca Caldwell and other Missouri Department of Social Services ("MoDSS") employees (collectively, "Respondents"), finding that Respondents were protected by the doctrine of official immunity. On appeal, Appellants claim that the trial court erred in granting Respondents' motion for judgment on the pleadings because (1) the Respondents' answer denied that they were Missouri employees, so they were not entitled to official immunity; and (2) Appellants' petition sufficiently alleged that the Respondents were performing a ministerial duty making official immunity inapplicable, and even if their petition had been deficient, the trial court should have allowed them to file a second amended petition to cure the defects.

AFFIRMED.

Division One Majority holds:

This case involves the circumstances surrounding the tragic death of A.J., a little boy who died as a result of severe abuse from his father and his stepmother. Despite repeated hotline calls over an extended period of time, many of which found that abuse was occurring, A.J. was left in the care and custody of his abusers. Respondents were caseworkers, supervisors or others that were involved in the investigation of the reports of abuse prior to A.J.'s death.

A logical reading of Respondents' answer to Appellants' First Amended Petition leads to the conclusion that Respondents intended to deny only that two of the numerous Respondents listed were employees of the MoDSS for purposes of the petition. The answer expressly pled that the Respondents "as employees of the state of Missouri, are entitled to official immunity due to the fact that they did not breach any mandatory, non-discretionary duty imposed by statute or regulation whose breach resulted in harm to the Plaintiffs." Moreover, a "party moving for judgment on the pleadings *admits, for purposes of the motion*, the truth of all well-pleaded facts in the opposing party's pleadings." *Anderson v. Crawford*, 309 S.W.3d 863, 866 (Mo. App. W.D. 2010).

Official immunity protects public employees from liability for alleged acts of negligence committed during the course of their official duties for the performance of discretionary acts.

Laughlin v. Perry, 604 S.W.3d 621, 627 (Mo. banc 2020). The actions of the MoDSS employees in this case were discretionary in nature, not ministerial. 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 the act is to be done." *State ex rel. Alsup v. Kanatzar*, 588 S.W.3d 187, 192 (Mo. banc 2019). Such was the case here, and so official immunity applies to protect the employees from suit.

Majority Opinion by: Gary D. Witt, Judge March 15, 2022
Karen King Mitchell, Judge, concurs

Judge Pfeiffer's Concurring Opinion states:

The author concurs with the majority opinion with regard to the law. The author also agrees that the role and function of a Social Services investigator is fraught with difficult circumstances, and the discretionary work that such investigators perform is valuable to the public and should, generally, be immunized from criticism that comes in the form of civil lawsuits. However, nobody should be immunized from self-reflection.

Our state's system of the partnership between the Division of Social Services, the Juvenile Office, the prosecutorial authorities, and the courts of this state are designed to protect the A.J.'s of the world. Our system let A.J. down. Let us never forget A.J.'s story. Let us all learn from it. Let us all be resolved to never let it happen again.

Concurring Opinion by: Mark D. Pfeiffer, Presiding Judge March 15, 2022

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