

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

PHIL MCCOY,)	No. ED103719
)	
Relator,)	
)	Writ of Prohibition
v.)	
)	
THE HONORABLE SANDY MARTINEZ ,)	
JUDGE, CIRCUIT COURT, ST. FRANCOIS)	
COUNTY, DIVISION I,)	
)	
Respondent.)	FILED: January 19, 2016

Phil McCoy ("Relator") filed a Petition for Writ of Prohibition with this Court, seeking to prohibit the enforcement of Circuit Judge Sandy Martinez's ("Respondent's") Orders of April 9, 2015, and November 9, 2015,¹ in the action of Debrah Blumenberg, a Mother and Next Friend of Shelby Blumenberg, a Minor v. Richwoods R-VII School District and Phil McCoy, Circuit Court of St. Francois County, Missouri, Cause No. 12WA-C00472-02 ("Lawsuit"), denying Phil McCoy's Motion to Dismiss and Motion to Reconsider the Motion to Dismiss. Relator contends the trial court erroneously failed to dismiss both counts of negligence and negligent supervision against him based upon the official immunity doctrine. This Court previously issued an Order directing Respondent to file its answer and suggestions in opposition to the petition in prohibition. After receiving the same from Respondent, we hereby issue a permanent writ of prohibition barring Respondent from taking further action other than vacating its Orders dated April 9, 2015, and November 9, 2015, and dismissing Relator with prejudice.

ORDER IN PROHIBITION MADE ABSOLUTE.

Writ Division Six Holds: Official immunity is an affirmative defense that protects public officials from liability for alleged acts of ordinary negligence committed during the course of their official duties for the performance of discretionary acts. Davis v. Lambert-St. Louis Intern. Airport, 193 S.W.3d 760, 763 (Mo. banc 2006). Relying on the Supreme Court's clarification of the doctrine of official immunity in Southers, this Court found that teachers are public employees who are protected from liability for negligent acts committed during the course of their official duties for the performance of discretionary acts. Boever v. Special Sch. Dist. of St. Louis County, 296 S.W.3d 487, 492 (Mo. App. E.D. 2009). Plaintiffs' first amended petition alleges that Relator was at all relevant times employed by the public school district as a teacher and supervisor; thus, the allegations on their face meet the test to determine that Relator is a public official protected by official immunity. See Southers v. City of Farmington, 263 S.W.3d 603, 610 (Mo. banc 2008).

¹ Respondent's Order indicates it was actually entered on July 25, 2015; however, the order was not recorded until November 9, 2015.

Additionally, to discern whether an act is ministerial or discretionary, the court looks to three factors: (1) the nature of the duties; (2) how much policymaking or professional expertise and judgment the act involves; and (3) the consequences of withholding immunity. Kanagawa v. State By and Through Freeman, 685 S.W.2d 831, 836 (Mo. banc 1985) (overruled on other grounds by Alexander v. State, 756 S.W.2d 539 (Mo. banc 1988)). Plaintiffs' first amended petition alleges no "ministerial" duty imposed upon Relator by alleging negligence and negligent supervision in such discretionary acts as (a) Relator's failure to remove the metal tables from the gymnasium floor; (b) instructing students to perform a physical exercise in close proximity to the metal tables; (c) instructing students to run toward the metal tables and stop abruptly; and (d) failing to take proper precautions to ensure that students would not be injured by the metal tables. Moreover, Plaintiffs fail to allege the essential element of a breach of the ministerial duty. Thus, Relator should have succeeded in arguing that the petition must be dismissed for failure to state a claim which is barred by the doctrine of official immunity as a matter of law.

Opinion by: Roy L. Richter, Presiding Judge

Lisa S. Van Amburg, C.J., and Robert M. Clayton III, concur.

Attorney for Appellant: Matthew Hughes Noce, Gerard Thomas Noce

Attorney for Respondent: Gary Burger

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.