

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**P.L.S. A MINOR CHILD BY AND THROUGH DONNA SHELTON, HER MOTHER
AND NEXT FRIEND**

APPELLANT,

v.

**CHRIS KOSTER, ATTORNEY GENERAL OF THE STATE OF MISSOURI; AND
KELVIN L. SIMMONS, COMMISSION OF ADMINISTRATION, STATE OF
MISSOURI**

RESPONDENTS.

DOCKET NUMBER WD73275
**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: December 13, 2011

Appeal From:

Cole County Circuit Court
The Honorable Patricia S. Joyce, Judge

Appellate Judges:

Division Three: James E. Welsh, P.J., James M. Smart, Jr., and Joseph M. Ellis, JJ.

Attorneys:

Kenneth Allen Wagoner, West Plains, MO, for **appellant**.
Ronald R. Holliger, Jefferson City, MO, for **respondents**.

MISSOURI APPELLATE COURT OPINION SUMMARY

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Before Division Three: James E. Welsh, P.J., James M. Smart, Jr., and Joseph M. Ellis, JJ.

Robert Griffith, a school bus driver for the Doniphan R-I School District, molested a four-year-old preschool girl ("the Child" or "the Plaintiff") while she was on the school bus. Griffith was prosecuted, convicted, and sentenced to incarceration. The Child, through her mother and next friend, sued Griffith in U.S. District Court under 42 U.S.C. § 1983 for violation of the girl's "right to due process" under the Fourteenth Amendment. Griffith defaulted. The court entered judgment in Child's favor, reciting that Griffith had been hired by the School District to provide transportation and that his actions "arose out of his official duties in behalf of the State of Missouri." The judgment imposed liability on Griffith only in an individual capacity. The court entered judgment against Griffith.

The Child then brought a declaratory judgment action in circuit court, naming Chris Koster, Attorney General, and Kelvin Simmons, Commissioner of Administration, as defendants in their official capacities associated with the State Legal Expense Fund. The Child sought a declaration that the Fund is obligated to satisfy the United States District Court judgment against Griffith, pursuant to § 105.711 RSMo. The petition alleged that Griffith had requested, but the Attorney General declined to provide, a defense from the Fund. Plaintiff alleged that the School District is an "agency or arm of the State, created by statute, and that therefore the judgment awarded is covered by the State Legal Expense Fund." The Defendants admitted that Griffith was a bus driver employed by the School District and that Griffith molested Plaintiff. Defendants denied, and do not concede, that Griffith's conduct "arose out of or was performed in connection" with any "official duty on behalf of the State of Missouri."

Plaintiff moved for summary judgment in her behalf. The State also moved for summary judgment. The trial court, after consideration of the dispositive motions, agreed with the Defendants, entering judgment for Defendants. The Plaintiff appealed.

AFFIRMED.

MODIFIED: January 31, 2012

Division Three holds: The Doniphan R-I School District is not an "agency of the state" for purposes of the State Legal Expense Fund, and the trial court was not bound by the recital of the federal district court judgment to the extent that it purported to find that the school district was an "agency" of the state for purposes of the Legal Expense Fund. Thus, the trial court did not err in granting summary judgment in favor of the Commissioner of Administration and the Attorney General and denying the Plaintiff's motion. The judgment is affirmed.

Opinion by James M. Smart, Jr., Judge

December 13, 2011

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