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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Maite Murphy, Circuit Court Judge

Appellate Case No.: 2020-001352

Kaci May and Kaci May as guardian ad litem for A.R.M., J.H.M., J.T.M., C.B.M., J.R.M., and J.W.M., ... Appellants,

v.

Dorchester School District Two,
South Carolina Department of Social Services,
Michael Leach, and Jasmine Flemister .... Respondents.

RESPONDENTS DORCHESTER SCHOOL DISTRICT TWO AND SOUTH CAROLINA DEPARTMENT OF SOCIAL SERVICES JOINT RETURN TO PETITION FOR REHEARING

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STANDARD OF REVIEW

A petition for rehearing must state with particularity the points supposed to have been overlooked or misapprehended by the court. Rule 221(a), SCACR. The purpose of a petition for rehearing is not to present points which lawyers for the losing parties have overlooked or misapprehended, nor is it the purpose of the petition for rehearing to have the case tried in the appellate court a second time. *Kennedy v. S.C. Retirement Sys.*, 349 S. C. 531, 532, 564 S.E.2d 322, 322 (2001)(quoting Jean H. Toal, *Appellate Practice in South Carolina* 309 (1999)).

In this case, most of the arguments in Appellants' Petition for Rehearing are taken verbatim from their appellate brief with little articulation of the points supposedly overlooked or misapprehended by the Court's thorough and well-reasoned opinion.

ARGUMENTS

I. The Court correctly found that L.C.M. was sexually abused prior to being placed in foster care.

Though it does not impact the legal analysis or outcome, Appellants contend that "the Court's finding that L.C.M. was removed from the home is erroneous and she was not sexually abused by her biological family before coming into care." It appears the objected-to reference is the Court's finding on the first page of its Order that "[o]ne or more of the adopted children suffered severe sexual abuse while with their biological family" and to footnote 2 which states that at the time of the bench trial, "the three adopted children had been moved from the May home to residential facilities."[1] The first finding is not erroneous – the record reflects that all three children were subjected to sexual abuse in their biological home. (See Complaint, ¶ 21, ROA p. 22). The second finding was clarified by Appellant: at the time of the bench trial, two of the adopted

[1] On page five, under the Irreparable Harm analysis, the Court states that the "three adopted children no longer live with the biological May family."

children, J.H.M. and J.R.M., had been in residential facilities but L.C.M. was not; L.C.M. had been in facilities prior to the bench trial. (See ROA p. 315) During the pendency of the appeal, J.R.M. and J.H.M. were later returned to D.S.S. custody, with Ms. May ultimately relinquishing her parental rights to them. L.C.M. remains with Ms. May. However, correction of this factual issue does not change the outcome.

II. The Court did not make any erroneous findings regarding the Family Court action.

It is not clear what error Appellants are alleging with this argument, because the Court of Appeals never made the finding objected to. The Court's Order correctly reflects that the family court action was dismissed by voluntary action and it did not make any rulings.

III. The Court correctly found that there was no likelihood of success on the merits.

In support of their argument that they established a likelihood of success on the merits, Appellants assert that that removal of a child from class to be questioned by a caseworker is a seizure for Fourth Amendment purposes, citing *Scanlon v. County of Los Angeles*, 92 F.4th 781 (9th Cir. 2024) and other cases. This is not an accurate statement of the law, and the cases cited by Appellant do not stand for such a proposition. *Scanlon*, though it discusses the constitutional implications of school interviews, does not lend support their position. The Court actually declined to address the Plaintiff's claim that her daughter's 4th Amendment rights were violated by a child protective services school interview and upheld the lower court's grant of judgment on the pleadings on that issue. *Id.* at 809 ("[W]e decline the invitation to resolve the Fourth Amendment contours of social worker interviews of children at school.") The court's discussion of the state of federal case law on this specific issue actually supports the conclusion in this case that there is not a likelihood of success on the merits. See, *Id.* at 805-810. The court, reflecting on the "very fact-specific inquiry" of the constitutional reasonableness standard, reviews the factors that must be weighed including

the age of the child; the child's cognitive and emotional abilities; whether the parents consented to the interview; the nature of the claim being investigated; whether the child is a witness, a perpetrator or victim; whether law enforcement is involved; whether the child can have a trusted adult present; and whether the child had the option to stop the interview. *Id.* at 809. In this case, the evidence supports the finding that both the District's allowance of the DSS interviews and the interviews were reasonable in scope and manner. The District required the DSS workers to show identifications and sign in, and the children were allowed to have an adult from the school sit in the interviews if they wanted, and they were not forced to answer questions. (ROA p. 155, 250, 268-9; 271-2) The interviews did not last long (the longest being 15-20 minutes; other lasted just a few minutes), no law enforcement officer was present, the children were not upset by them and did not otherwise exhibit any distress from being in the brief interviews. (ROA pp. 127,131; 272-3) After the first interviews, they all knew they could decline to answer questions. The Court of Appeals and the Circuit Court both properly recognized the reasonableness of the District and DSS with regard to the interviews.

While the Fourth Circuit has held that the Fourth Amendment applies to social workers involved in child abuse investigations, "investigative *home* visits by social workers are not subject to the same scrutiny as searches in the criminal context." *Wildauer v. Frederick County*, 993 F.2d 369, 372 (4th Cir.1993). Further, the Fourth Circuit has held that the state "has a legitimate interest in protecting children from neglect and abuse and in investigating situations that may give rise to such neglect and abuse. *Martin v. St. Mary's Dep't of Social Services*, 346 F.3d 503, 506 (4th Cir.2003). The Supreme Court has never held that a social worker's warrantless in-school interview of a child pursuant to a child abuse investigation violates the Fourth Amendment. See *Camreta v. Greene*, 563 U.S. 692, 713–14 (2011). Thus, any suggestion that the District, as opposed to DSS, somehow "seized" or violated plaintiff's constitutional rights by summoning the

children and observing interviews by DSS is even further attenuated and unsupported by the law. Moreover, as the Court correctly noted, S.C. Code Ann. § 63-7-920 - which allows for school interviews of a child alleged to be abused or neglected - is dispositive of the Respondents' purported liability to Appellants, thereby negating any likelihood of success on the merits.

Appellants argue that any interviews after the statutory investigative time period were "unlawful seizures outside the scope of the investigation." (Petition for Rehearing, p.7, 9) However, upon conclusion of the investigation, in May of 2017, the case was indicated for neglect. At that point, DSS had a duty to ensure the children's safety. (ROA p. 237-238; p. 262) Ms. May would not permit DSS to see them at the house, so in the fall of 2017, DSS was forced to do welfare checks of the children at the school, and the record reflects that the checks were very brief. The District has no obligation to inquire from DSS the status of their investigation or services being provided, and statutorily has no power to prohibit DSS from interviewing or coming to check on children who are known subjects of an abuse and neglect investigation.

IV. The Court correctly found that Appellants failed to show irreparable harm.

Appellants argue that they produced evidence of "irreparable harm" pointing to the interviews at the school (Petition for Rehearing, p. 15) and arguing that each of those constituted a violation of their constitutional and legal rights.[2] First, the court found that those interviews did not violate any constitutional standards. Based on the nature of the reported abuse, the interviews were reasonable at the inception, in their scope and manner. Neither DSS nor the School District exceeded the bounds of what was reasonable under the circumstances, and both acted in compliance with their statutory obligations to facilitate the investigation of the allegations of

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[2] This argument is mostly repeated from their appellate brief.

- Pages 15-18 of the petition consist of arguments made initially in Appellants' brief at pages 40-43
- Pages 18-20 of the petition come from pages 38-39, 43 of Appellants' brief

abuse.[3] As noted by both the circuit court and the Court of Appeals, Appellants only produced evidence of minimal discomfort directly related to the interviews. After the initial interviews at the schools, Ms. May told the children that they could refuse to answer questions in subsequent interviews, an option some of them exercised, while others felt comfortable answering DSS's questions. Moreover, Appellants have previously conceded that any interviews during the investigative time period were permissible, so it is disingenuous for them to argue in their Petition that every interview was a violation (Petition, p. 15).

Second, Appellants have not shown a likelihood of irreparable harm that is immediate and concrete and as opposed to some illusory future possibility. It is a basic principle of equity that entry of a permanent injunction is appropriate only if the movant establishes that it is currently under imminent threat of suffering further harm in the absence of the injunctive relief sought. See, *Rondeau v. Mosinee Paper Corp.*, 422 U.S. 49, 59, 95 S.Ct. 2069, 45 L.Ed.2d 12 (1975); See also, *Anderson v. Davila*, 125 F.3d 148, 163 (3d Cir. 1997) ("To show irreparable harm [for purposes of permanent injunction], the party seeking injunctive relief must at least demonstrate 'that there exists some cognizable danger of recurrent violation' of its legal rights." (quoting *United States v. W.T. Grant Co.*, 345 U.S. 629, 633, 73 S.Ct. 894, 97 L.Ed. 1303 (1953)) The Court of Appeals noted the undisputed finding that the last DSS interview of any of the May children was in November of 2017 and the trial in this case was held on August 11 and 12, 2020, nearly three years later. Once the family court case was dismissed in June of 2018, the family had no more involvement with DSS prior to the trial. At the time of the trial, there was no concrete or immediate threat of any "harm" to Appellants. Without any such

[3] The act of DSS interviewing or the District allowing DSS to interview a child at school, after a report of abuse has been received, is not in and of itself a violation of a constitutional right, though Appellant seems to make this assertion.

evidence, the Court correctly determined that Appellants did not meet their burden of establishing "irreparable harm."

V. The Court correctly found that there was an adequate remedy at law.

It is not clear what fault Appellants find with respect to this determination other than their disagreement with it.[4] They do not point with particularity to any error by the Court. The Court correctly found that Appellants have an adequate remedy at law if they were able to establish a constitutional violation in the future. To the extent such a claim had any merit, Appellants would be entitled to a full range of damages permitted under 42 U.S.C. §1983.

CONCLUSION

In order for an injunction to be granted, a party must demonstrate all three requirements: likelihood of success on the merits, irreparable harm and no adequate remedy at law. As both the circuit Court and Court of Appeals found, Appellants cannot satisfy any. Based on the Order below and the arguments herein, Respondents respectfully request that this Court affirm its ruling upholding the circuit court's order denying injunctive relief.

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[4] Most of Appellants' argument in the Petition for Rehearing at pp. 21-26 are verbatim from their appellate brief, pp. 44-49.

Respectfully submitted,

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v.

Dorchester School District Two,
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Michael Leach, and Jasmine Flemister .... Respondents.

PROOF OF SERVICE

I certify that I have served the **Respondent's Dorchester School District Two Return To Petition For Rehearing** upon all counsel of record via e-mail and by depositing a copy of same in the United States Mail, postage prepaid, on **April 11, 2024** and by filing the originals of same with the South Carolina Court of Appeals, 1220 Senate Street, P.O. Box 11629, Columbia, SC 29211.

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Appellate Case Number: 2020-001352

Dear Ms. Kitchings:

Enclosed please find Respondents Dorchester School District Two and South Carolina Department of Social Services Joint Return to Petition for Rehearing.

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