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.

FINAL BRIEF OF RESPONDENT DORCHESTER SCHOOL DISTRICT TWO

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II. STATEMENT OF THE CASE

A. Factual Background.

In late March 2017, Respondent SCDSS received a report of possible child abuse and/or neglect involving the May household. The report was made after Appellant Kaci May disclosed some disturbing information at a school meeting with a number of school professionals, including regular and special education teachers, a school counselor, a school psychologist, then-Principal Dr. Wally Baird, J.H.M., and an outside advocate for the family. (Record on Appeal, pp. 180-181.) Ms. May made very concerning statements, in graphic detail, among other things: that two of her children had sexually abused all of her other children; that the same children were killing the family's chickens and pet fish; that one of the boys had threatened her life; that she had very sick children who loved to rape other children in the household; that J.H.M. brutally raped her babies; that J.H.M. had dragged the victim children across the floor to rape them while those children dug their nails into the floor; and that J.H.M. used a wooden paddle or utensil to rape the

other children. (Record on Appeal, pp. 184-188.) In that meeting, in which J.H.M. was present, Ms. May called her a rapist. (Record on Appeal, p. 199.)[1]

As a result of that report, DSS opened an investigation. As part of the investigation, DSS interviewed or attempted to interview five of the children at Sand Hill Elementary School in Defendant Dorchester School District Two ("District" or "DD2") where they attended school:

- On March 29, 2017, A.R.M. was interviewed
- On March 30, 2017, C.B.M., J.H.M., and J.R.M. were interviewed
- On May 12, 2017, A.R.M., J.H.M., J.R.M. were interviewed
- On May 25, 2017, J.T.M and C.B.M were interviewed

Ms. May conceded that she did not object to DSS interviewing the children at school while the case was still within the investigative period. (Record on Appeal, pp. 351-352; 366-367.) Sometime after May 25, 2107, as a result of the above investigation, DSS indicated a case of physical neglect against Kaci May, a determination that she appealed. (Record on Appeal, pp. 499-500.)

Because of the indicated finding against Ms. May, DSS filed a family preservation case in Family Court against her which was *still pending* in the fall of the 2017-18 school year. (Record on Appeal, pp. 499-500; 514-528.) During the pendency of that case, by letter dated October 16, 2017, Ms. May's attorney requested that school officials prohibit DSS from meeting with the children. (Record on Appeal, pp. 531-532.) Dr. Baird did not comply with this request, but testified that he would have if he had received a court order. (Record on Appeal, p. 162.) By law, caseworkers are required to make a monthly face-to-face visit with children who are the suspected

[1] Ms. May related the conversation with school officials somewhat differently. She testified at trial that J.H.M. "lured her babies into her room with candy while the babysitting uncle was asleep; J.H.M. prevented them from leaving and put paddles in their buttholes; J.H.M. put her mouth on their private parts and put their mouths on her private parts." (Record on Appeal, p. 350.)

victims of abuse or neglect while a matter is pending. (Record on Appeal, pp. 261-264; 221; 237.) That school year, DSS came to interview the children on the following dates:

- September 19, 2017, A.R.M., C.B.M., and J.W.M at Sand Hill Elementary[2]
- September 22, 2017, J.T.M. at Gregg Middle School
- November 20, 2017, A.R.M., C.B.M and J.W.M. at Sand Hill Elementary[3]

DSS did not come back to the schools after November 20, 2107, to interview any of the children and has not interviewed or attempted to interview any of the May children at school since November 2017. (Record on Appeal, p. 195.) Eventually, on June 14, 2018, the DSS action was voluntarily dismissed with no findings against either parent.

A.R.M. testified at trial that she was interviewed by DSS at the school and that she was uncomfortable talking to the caseworker but not upset. (Record on Appeal, pp. 108-109.) She told her mother immediately after school that someone had come to talk to her, and Ms. May told her that she did not have to talk to DSS if she did not want to. (Record on Appeal, pp. 103-104.) When DSS returned to meet with A.R.M. subsequently, she chose to talk with the caseworker because she did not want to disobey an adult. (Record on Appeal, pp. 104-109.)

C.B.M. testified at trial that when DSS came to talk to him at school he was nervous but that he was not upset. (Record on Appeal, pp. 119-120; 131.) Though he testified that he felt he did not have a choice but to talk to the DSS caseworker, he also testified that if he had a choice, he would have stayed and answered some of the questions. (Record on Appeal, pp. 120-121; 124.) Just like his sister, after the first DSS visit, he told his mother about the interview, and Ms. May told him he could talk to DSS if he wanted but he did not have to. (Record on Appeal, pp. 127-

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[2] There was differing testimony and notes as to whether DSS came to the school on September 18 or 19, 2017.

[3] Record on Appeal pp. 473-478

128.) When DSS returned a second time, he chose not to talk to the caseworker. (Record on Appeal, p. 128.) C.B.M testified that now that he knows he does not have to talk to DSS, he does not care if they come and try to talk to him again. (Record on Appeal 124-125; 131.)

Dr. Baird sat in on the September 19, 2017, DSS interviews. None of the three children seemed upset, angry or were crying. (Record on Appeal, p. 192.) Their demeanor was calm. (Record on Appeal, p. 193.) Dr. Baird testified the children told him and the DSS caseworker that Ms. May said they were not allowed to speak to DSS, and they did not. (Id.) The meeting lasted no more than five or six minutes. (Record on Appeal, p. 192.) The DSS caseworker who came to meet with the children was very friendly, did not try to coerce the children into talking to her, and stopped asking questions immediately upon the children telling her that they were not allowed to talk to her. (Record on Appeal, pp. 202-203.) She thanked the children and they returned to class. (Record on Appeal, pp. 198, 203.) Similarly, during the November 20, 2017, visit, the three children stated they were not allowed to speak with the DSS caseworker. During that visit, an assistant principal, and a teacher's assistant for the youngest child, sat in while the DSS caseworker met with the children. (Record on Appeal, p. 274.) Because the children did not want to speak to her, the caseworker simply said hello to them, observed them, and sent them back to class. (Record on Appeal, pp. 274-275.) The assistant principal did not ask any questions of the children or of the caseworker and the caseworker did not disclose to the assistant principal any information about the investigation. The meeting only lasted a few minutes. (Record on Appeal, pp. 250; 273-276.)

The practice of DD2 schools when DSS comes to interview children is to ask the DSS worker to present his or her badge; make a copy of the badge, noting the date and time of the visit; and ask discreetly which child DSS wishes to see or interview. (Record on Appeal, p. 190.) DSS writes down the names of the children and the children are asked to come to the office. (Record

on Appeal, pp. 190; 271-272.) This process was followed in this case. (*See* Record on Appeal, pp. 473-478.) DD2 had someone from the school sit in on the meetings between DSS and students to make them feel safe and comfortable. (Record on Appeal, pp. 155-156.) A student who refused to talk to DSS because his or her parent instructed otherwise would not be forced to talk to the DSS caseworker and would not be punished for refusing to answer questions. (Record on Appeal, pp. 153-155.)

B. Procedural Background.

On December 7, 2017, Plaintiffs filed a Complaint and Motion for a Temporary Restraining Order ("TRO") seeking temporary and permanent injunctive relief pursuant to 42 U.S.C. § 1983 and the South Carolina Constitution. Plaintiffs sought to restrain Defendant DSS from "interrogating the Plaintiff children" without a court order or new allegation of abuse or neglect and to restrain DD2 from "facilitating" such interrogations. In seeking an injunction, Plaintiffs alleged that DD2 and DSS violated their rights to be free from unreasonable seizures and unreasonable invasions of privacy by interviewing and permitting DSS workers to interview the minor children at DD2 schools without a court order, subpoena or exigent circumstances.

On July 29, 2019, the Circuit Court heard Plaintiffs' Motion for a TRO, and by form order dated July 30, 2019, denied the TRO both for failure to establish irreparable harm and for failure to establish that Plaintiffs lacked an adequate remedy at law. Both Defendants filed motions to dismiss. Those motions were denied in part and granted in part only as to the individually-named DD2 defendants by form order dated March 17, 2020. Thereafter, both the DSS Defendants and DD2 filed separate answers to Plaintiffs' complaint for permanent injunctive relief. The case proceeded through discovery and mediation, which was unsuccessful. A bench trial was held on August 11 and 12, 2020, at the conclusion of which the Court granted a directed verdict in favor

of the Defendants. The Order granting the directed verdict was filed on September 18, 2020. Appellants filed their Notice of Appeal on October 8, 2020.

III. ARGUMENTS

A. The Circuit Court Properly Exercised Its Discretion In Denying The Permanent Injunction Appellants Sought Against The School District.

Standard of Review

"To obtain an injunction, a party must demonstrate irreparable harm, a likelihood of success on the merits, and the absence of an adequate remedy at law." *Ray v. City of Rock Hill*, 428 S.C. 358, 368, 834 S.E.2d 464, 469 (Ct. App. 2019), *cert. granted,* (May 22, 2020). The standard for granting a permanent injunction is the same as that for preliminary relief, except that the court must consider plaintiff's actual success on the merits rather than the likelihood of success. *See Amoco Production Co. v. Village of Gambell*, 480 U.S. 531, 546 n. 12 (1987).

"Actions for injunctive relief are equitable in nature." *Denman v. City of Columbia*, 387 S.C. 131, 140, 691 S.E.2d 465, 470 (2010). An injunction is a drastic and "extraordinary equitable remedy courts may use in their discretion in order to prevent irreparable harm to a party" when no adequate remedy exists at law. *Hampton v. Haley*, 403 S.C. 395, 409, 743 S.E.2d 258, 265 (2013).

Due to its drastic and extraordinary nature, courts should issue injunctions with caution and only where no adequate remedy exists at law. *Id.* The grant or denial of an injunction by the trial court will not be reversed absent an abuse of discretion. *See Gilley v. Gilley*, 327 S.C. 8, 11–12, 488 S.E.2d 310, 312 (1997); *Strategic Res. Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006) ("The power of the court to grant an injunction is in equity."); *City of Columbia v. Pic-A-Flick Video, Inc.*, 340 S.C. 278, 282, 531 S.E.2d 518, 520-21 (2000). While the Circuit Court technically granted a directed verdict due to lack of evidence supporting a permanent injunction, DD2 submits that the abuse of discretion standard, rather than a directed

verdict standard that would normally be applied to a case at law, should be applied. *Cf. Baggerly v. CSX Transp. Inc.*, 370 S.C. 362, 635 S.E.2d 97 (2006) ("[T]he evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the party against whom the verdict was directed."). Even applying the directed verdict standard, however, the Circuit Court properly held that the evidence Appellants offered to support their case did not meet the rigorous injunction standard as a matter of law.

1. The Circuit Court Properly Held that Appellants Failed to Show Irreparable Harm.

The trial of this case took place during the week of August 10, 2020. It was undisputed that the last DSS interview with any of the May children was in November 2017, almost three years before the trial. (Record on Appeal, pp. 195; 460-465.) Appellants offered no evidence of any threatened or pending DSS investigations of the family or plans to interview any of the children at school. (Record on Appeal, pp. 361-362; 267; 270; 275.) Further, Appellants did not identify any injury aside from inconvenience or mild upset at the prospect of DSS returning to interview the children, since the children attending school in DD2 at the time of the trial understood and had previously exercised their rights to refuse to speak with DSS. (Record on Appeal, pp. 104-109;119-129.) Finally, Appellants could only cite a speculative or hypothetical chance of any future DSS interviews at any of DD2's schools. This was simply not the type of "continuous trespass" in which ongoing disputes were imminent and likely to occur and an injunction might have been warranted to prevent them. *See Carter v. Lake City Baseball Club, Inc.*, 218 S.C. 255, 271-72, 62 S.E.2d 470, 477 (1950).

Accordingly, the Circuit Court was well within its discretion to find that no showing of irreparable harm supported a permanent injunction prohibiting DSS from ever interviewing any of the May children at school again without a warrant or probable cause. Appellants simply provided

no evidence to support a showing of irreparable harm establishing the need for a permanent injunction.

2. The Circuit Court Properly Held that Appellants Did Not Succeed on the Merits.

School employees are mandatory reporters under S.C. Code Ann. § 63-7-310. Pursuant to S.C. Code Ann. § 63-7-920, *Investigations and case determination*:

> (C) The department or law enforcement, or both, may interview the child alleged to have been abused or neglected and any other child in the household during the investigation. The interviews may be conducted on school premises, at childcare facilities, at the child's home or at other suitable locations and in the discretion of the department or law enforcement, or both, may be conducted outside the presence of the parents. To the extent reasonably possible, the needs and interests of the child must be accommodated in making arrangements for interviews, including time, place, method of obtaining the child's presence, and conduct of the interview. The department or law enforcement, or both, shall provide notification of the interview to the parents as soon as reasonably possible during the investigation if notice will not jeopardize the safety of the child or the course of the investigation. All state, law enforcement, and community agencies providing child welfare intervention into a child's life should coordinate their services to minimize the number of interviews of the child to reduce potential emotional trauma to the child. (emphasis added)

Additionally, S.C. Code Ann. § 63-7-390, Reporter immunity from liability, provides:

> A person required or permitted to report pursuant to § 63-7-310 or who participates in an investigation or judicial proceedings resulting from the report, acting in good faith, is immune from civil and criminal liability which might otherwise result by reason of these actions. In all such civil or criminal proceedings, good faith is rebuttably presumed. Immunity under this section extends to full disclosure by the person of facts which gave the person reason to believe that the child's physical or mental health or welfare had been or might be adversely affected by abuse or neglect.

DD2 simply does not have the authority to prevent DSS from conducting student investigations at school, regardless of whether a parent has expressed a desire that the students not be interviewed at school. Contrary to Appellants' arguments, the Circuit Court did not ignore their constitutional claims in denying injunctive relief and refusing to declare S.C. Code Ann. § 63-7-920(C) unconstitutional.[4] The Circuit Court specifically addressed the potential applicability of the Fourth Amendment to the facts of the case and determined that Appellants had not established an unlawful, unreasonable seizure of the children by way of DSS interviews at school. (Order, p. 6.)

The Fourth Amendment reads as follows:

> The right of the people to be secure in their persons, houses, papers, and effects, against *unreasonable* searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

(*emphasis added.*)

As the Circuit Court noted, the U.S. Supreme Court and the Fourth Circuit Court of Appeals have never applied Appellants' desired standard to DSS interviews of children at school. *See Camreta v. Greene*, 563 U.S. 692, 713–14 (2011). The Fourth Circuit has applied a lesser standard for in-home visits and searches. *See Wildauer v. Frederick County*, 993 F.2d 369, 372 (4th Cir. 1993) ("investigative home visits by social workers are not subject to the same scrutiny as searches in the criminal context.") Further, and as Appellants concede, the Fourth Circuit has

[4] Appellants made no cognizable argument to the Circuit Court or in their brief regarding alleged violations of the U.S. or State Constitutions other than search and seizure arguments that might potentially implicate the Fourth Amendment or the South Carolina corollary, Article I, Section 10. Likewise, the South Carolina Constitution is not self-effectuating and provides no civil remedy in these circumstances. *See Palmer v. State*, 427 S.C. 36, 46, 829 S.E.2d 255, 261 (Ct. App. 2019), *reh'g denied* (July 12, 2019).

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." *See Martin v. St. Mary's Dep't of Social Services*, 346 F.3d 502, 506 (4th Cir. 2003). Other federal circuits examining social services interviews of students at schools have applied a reasonable suspicion standard rather than requiring probable cause or a warrant, instead reviewing whether a search was reasonable in its inception and scope. *See Schulkers v. Kammer*, 955 F.3d 520, 534 (6th Cir. 2020) (citing *New Jersey v. TLO*, 469 U.S. 325, 341 (1985)).

First, the Circuit Court properly held that the interviews of the May children did not constitute a "seizure" for purposes of the Fourth Amendment. A "seizure" triggering the Fourth Amendment's protections occurs only when government actors have, "by means of physical force or show of authority, ... in some way restrained the liberty of a citizen." *See Terry v. Ohio*, 392 U.S. 1, 19, n. 16 (1968); *Brower v. County of Inyo*, 489 U.S. 593, 596 (1989); *Camden v. Hilton*, 360 S.C. 164, 175, 600 S.E.2d 88, 93 (Ct. App. 2004).

As the Circuit Court, which heard the testimony and observed the demeanor of the student witnesses noted, the contested interviews with the May children at issue in this case were of very limited duration and did not upset the children. The children were aware of their rights to terminate the interviews or refuse to speak to the social workers and did so. As such, the Circuit Court properly found that the limited inquiries made of the May children did not rise to the level of a Fourth Amendment seizure, in contrast to the cases cited by Appellants that either involved rigorous and extended questioning at public schools by social services and law enforcement personnel or no articulable suspicion of abuse or neglect to justify an interview at school. *See, e.g., Stoot v. City of Everett*, 582 F.3d 910, 918 (9th Cir. 2009) (two-hour school interview of 14-year-old boy during which police detective threatened punishment if the child denied guilt and

promised leniency if he admitted guilt constituted a seizure); *Jones v. Hunt*, 410 F.3d 1221, 1226 (10th Cir. 2005) (an "emotionally vulnerable" 16-year-old female was seized where a social worker and uniformed police officer, both of whom the teenager knew "had the authority to determine her custodial care," confined her for an "hour or two" in a small office at her school and repeatedly threatened that they would arrest her if she did not agree to live with her father); *see Schulkers,* 955 F.3d at 534, 538 (no plausible or articulable suspicion that any child had been subjected to abuse and neglect prior to interviews). Further, Appellants offered no evidence that DD2, as opposed to DSS, was responsible for any alleged "seizure" for purposes of the DSS interviews.

Second, even if the very limited DSS interviews of the May children could have been considered "seizures" for constitutional purposes, the Circuit Court properly found that the interviews at school were reasonable in both their inception and scope and highly distinguishable from those federal courts have found to be unreasonable under the Fourth Amendment. The DSS investigation, case, and interviews were occasioned by Kaci May's specific and graphic report to DD2 teachers and officials that two of her children were sexually abusing her other children in the home and killing household pets. (Record on Appeal, pp. 184-188.) DSS attempted to interview the May children at their home and only interviewed them at school when Ms. May continually rebuffed them. (Record on Appeal, pp. 240-245; 262-267.) The contested interviews were limited in both time and scope, with none of them lasting longer than a few minutes. (Record on Appeal, pp. 259-260; 272-274.) Finally, as noted, the children were not detained after refusing to answer questions or declaring their opposition to the interviews, as instructed by Ms. May.

Thus, the Circuit Court properly rejected Appellants' attempt to read the word "unreasonable" out of the Fourth Amendment and determined that even if any of the interviews

constituted a "seizure" for constitutional purposes, any DSS interviews at school were reasonable at their inception and in their scope under the facts and circumstances Appellants presented.

S.C. Code Ann. § 63-7-920(C) controls the School District's duties and responsibilities as to DSS interviews of students on campus. Because DSS's interviews of the children did not violate either the Fourth Amendment in this case or § 63-7-920(C), there was no need for the Circuit Court to address the ultimate constitutionality of § 63-7-920(C) as applied to hypothetical fact situations not before it, as Appellants urge.[5] All statutes are presumed constitutional and will, if possible, be construed so as to render them valid. *Davis v. Cnty. of Greenville*, 322 S.C. 72, 77, 470 S.E.2d 94, 96 (1996). Court review of statutes begins with a presumption of constitutionality. *Curtis v. State*, 345 S.C. 557, 569, 549 S.E.2d 591, 597 (2001) ("This Court has a limited scope of review in cases involving a constitutional challenge to a statute because all statutes are presumed constitutional and, if possible, will be construed to render them valid."). "[A] legislative act will not be declared unconstitutional unless its repugnance to the Constitution is clear and beyond a reasonable doubt." *Id.* at 570, 549 S.E.2d at 597. Accordingly, the Circuit Court properly rejected Appellants' argument that the statute was unconstitutional either on its face or as applied in this case, and properly held that DD2's actions were at all times consistent with the statute.

Finally, Appellants cite no authority for holding school officials constitutionally responsible for a DSS-conducted interview of students on school property, and the Circuit Court should be affirmed on this additional ground to the extent that it denied Appellants injunctive relief against DD2. *See* SCACR Rule 220(c) (trial court may be affirmed on any ground appearing in the record).

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[5] Section 63-7-920(c) clearly withstands the applicable level of constitutional scrutiny, as there is obviously a rational basis for its enactment. Providing DSS investigators authority to interview students away from parents being investigated for potential abuse is inherently and obviously necessary to both protect the children and to obtain unbiased information pertinent to the investigation.

3. The Circuit Court Properly Held That Appellants Could Not Show That They Lacked Or Would Lack Adequate Remedies At Law If DSS Conducted Constitutionally or Statutorily Deficient Interviews Of The Children In The Future.

The Circuit Court properly recognized that if DSS were to return and conduct interviews in an unconstitutional or tortious matter, Appellants would have adequate legal remedies under state and federal law and could seek actual and compensatory damages. As such, it was well within the trial court's discretion to deny injunctive relief on this additional basis. *See, e.g. Knohl v. Duke Power Co.*, 260 S.C. 374, 196 S.E.2d 115 (1973) (plaintiff not entitled to injunction unless he has "no adequate and complete remedy at law"); 42 Am. Jur. 2d., *Injunctions*, § 24 (2000 & Supp. 2004) ("an injunction will not be granted where there is a choice between the ordinary processes of law and the extraordinary remedy of injunction, and where the remedy at law sufficiently provides the injured party with the full relief to which the party is entitled under the circumstances."). An injunction will typically be denied "if the applicant has an adequate remedy in the form of money damages or other relief." 11A Wright, Miller & Kane, *Federal Practice and Procedure* § 2498.1 at 149-50 (1995); *see also Scratch Golf Co. v. Dunes W. Residential Golf Properties, Inc.*, 361 S.C. 117, 123, 603 S.E.2d 905, 908 (2004).

Such is the case here. Appellants' strategic decision to forgo a claim for damages and instead pursue only injunctive relief does not change the outcome or establish that a remedy at law would not have been adequate in the instant case had Appellants sought one, nor did they make any showing that an appropriate legal remedy would be unavailable if a hypothetical or highly speculative inappropriate or unconstitutional interview of the children were to occur at school in the future. Appellants cite no authority for the argument that civil rights cases are not attractive to attorneys, and thus, it is unlikely that someone challenging the legality of a social services

interview of a child at school could obtain a legal remedy. (Appellants Brief, p. 44-45.) Accordingly, the Circuit Court properly exercised its discretion in holding that, as a matter of equity, Appellants did not establish the final element needed for injunctive relief.

IV. CONCLUSION

The Circuit Court properly directed a verdict in Respondent Dorchester School District Two's favor as clearly established by the record and applicable law. Accordingly, this Court should affirm the Circuit Court's ruling.

Respectfully submitted,

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