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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

Circuit Court Case Number 2017-CP-18-02001

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,

**REPLY BRIEF OF APPELLANTS TO SCHOOL DISTRICT RESPONDENTS'
RESPONSE BRIEF**

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I. Respondent Dorchester School District Two misstates crucial facts.

On May 12, 2017, South Carolina Department of Social Services (SCDSS) conducted a decisional staffing and indicated the child protective services investigation against the Mays for physical neglect. ROA 410-411, 477-478, 499-505. **At this point, SCDSS's investigation was complete.** S.C. Code Ann. §63-7-920(A)(2).

Dorchester School District Two (School District) implies that a family court action was pending during the entirety of the summer and fall of the 2017-2018 school year. Response Brief of School District, *2 (June 9, 2021). SCDSS did not file a family preservation case until September 14, 2018, and no order was ever issued by the Dorchester Family Court allowing SCDSS to interrogate Kaci May's children at school or otherwise. ROA 516-523, 295.

School District misstates the law in asserting, “[b]y law, caseworkers are required to make a monthly face-to-face visit with children who are the suspected victims of abuse or neglect while a matter is pending”. Response Brief of School District, *2-3 (June 9, 2021). The authority the School District cites, trial testimony, does not cite to any law. This is because what SCDSS says, wants, wishes, and fantasizes about – especially when dealing with fundamental Constitutional rights – is not often the law.

School district states, “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.” Response Brief of School District, *7 (June 9, 2021). This is false. *See*, Initial Brief of Appellant, *41-43 (April 8, 2021). More importantly, any violation of a Fundamental Constitutional Protection is an injury. *See*, Initial Brief of Appellant, *38-40.

II. Appellants raised the constitutionality of the application of S.C. Code Ann. §63-7-920.

Defendants assert Kaci May and Appellant Children failed to raise the constitutionality of the application of S.C. Code Ann. §63-7-920:

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.

Response Brief of School District, *9, fn. 4 (June 9, 2021).

Appellants briefed the trial court School District's and SCDSS's unconstitutional application of S.C. Code Ann. §63-7-920 and relied upon the brief in arguments. Plaintiff's Pretrial Brief, ROA 711-714. *See also*, ROA 96-97, 378, 379, 383, 393-394..

Furthermore, Appellants have not stated that S.C. Code Ann. §920(C) is unconstitutional, but rather that it is the School District's and SCDSS's interpretation and application of the code and their justification for their actions that are unconstitutional.

III. Respondent School District claims it is not responsible for allowing SCDSS to interrogate children at school.

Defendants argued:

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.

Response Brief of School District, *12 (June 9, 2021).

This argument is betrayed by the record. On November 20, 2017, SCDSS attempted to interrogate J.T.M. at Gregg Middle School. ROA 446. SCDSS documented the following:

CM attempted to make contact with J.T.M. Upon arrival CM was told by the school that the parent stated they need to contact with family's attorney before the child can be seen by anyone. CM asked if they have a signed court order, they did not have an order. CM requested the guidance counselor see the child as a

collateral...

ROA 446, 251-252. Schools have the authority to regulate who comes onto their property and who the children encounter. By the School District allowing SCDSS to enter it's buildings and interrogate children, especially after a parent has instructed them not to do so, put School District in the position of participating in the interrogation itself by providing the stage for SCDSS to seize and interrogate a child.

I. Conclusion.

The Appellants ask the Court for the following relief:

1. Reverse and remand this matter for a new trial.
2. Award attorneys' fees and costs pursuant to 42 U.S.C. § 1983.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned counsel for the Appellants certifies that the Reply Brief of Appellants to Respondent School District's Response Brief complies with Rule 208, SCACR.

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