STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER Kaci May and Kacy 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., Plaintiff, vs. Dorchester School District Two, , South Carolina Department of Social Services, Michael Leach, and Jasmine Flemister, Defendants.	)	IN THE COURT OF COMMON PLEAS C.A. No. 2017-CP-18-02001 **ORDER**

This matter came before the Court for a bench trial on August 11 and 12, 2020, during which Plaintiff argued generally that she was entitled to permanent injunctive relief prohibiting Defendant South Carolina Department of Social Services (DSS) from interviewing any of her children at any of Defendant Dorchester School District Two (DD2) schools without parental permission, a warrant, or a court order. At the conclusion of Plaintiff's case, Defendants moved for a directed verdict. After careful consideration of the testimony of the witnesses and arguments of all parties and fully reviewing the evidence presented, as set forth more fully below, the Court grants Defendants' motion for a directed verdict.

I. INTRODUCTION AND FINDINGS OF FACT

Plaintiff filed this action seeking both preliminary and permanent orders enjoining DSS from interviewing her children at school and enjoining DD2 from facilitating those interviews unless DSS presented a court order, warrant, subpoena, or a new allegation of abuse or neglect.

In March 2017, DSS received a report of possible child abuse and/or neglect involving the

Plaintiff household.[1] The report was made after Plaintiff Kaci May disclosed in graphic detail during a school meeting, among other things, that one of her children had brutally raped other children in the household. As a result of that report, DSS opened an investigation into the allegations. As part of the investigation, DSS interviewed or attempted to interview the five school-aged children[2] at Sand Hill Elementary School in DD2 on two occasions in March 2017 and two occasions in May 2017. Plaintiff refused to allow DSS to interview the children in her home.

In May 2017, DSS indicated a case of physical neglect against Kaci May, a determination that she appealed. DSS later filed a Family Court action against Kaci May which was still pending in the fall of the 2017-18 school year. DSS interviewed or attempted to interview some of the children at DD2 schools on two occasions in September and once in November 2017.

DSS did not return to DD2 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. Eventually, on June 14, 2018, the DSS action and Plaintiff's later filed counterclaim were both voluntarily dismissed.

In seeking an injunction, Plaintiff alleged that the District and DSS violated the federal and state constitutional rights of Plaintiff and her minor children by interviewing and permitting DSS workers to interview the minor children at District schools without a court order, subpoena or exigent circumstances.

II. LEGAL STANDARD

When the Court considers a motion for a directed verdict, the Court must "view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motion and [must] deny the motion when either the evidence yields more

[1] Plaintiff is the mother of the seven children, four of whom are biological and three adopted. Plaintiff testified that her adopted children were subjected to significant abuse and neglect prior to their adoption which has caused continued and serious negative effects on her family.

[2] J.W.M. and L.C.M. were only four years old and were not in school.

than one inference or its inference is in doubt." *Estate of Carr ex rel. Bolton v. Circle S Enters., Inc.*, 379 S.C. 31, 38, 664 S.E.2d 83, 86 (Ct. App. 2008). The Court's task is to "resolve whether it would be reasonably conceivable to have a verdict for a party opposing the motion under the facts as liberally construed in the opposing party's favor." *Pye v. Estate of Fox*, 369 S.C. 555, 564, 633 S.E.2d 505, 509 (2006). "The trial court must deny the motions when the evidence yields more than one inference or its inference is in doubt." *Welch v. Epstein*, 342 S.C. 279, 300, 536 S.E.2d 408, 418 (Ct. App. 2000).

III. LEGAL ANALYSIS

"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 her 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.*

Viewing the testimony and other evidence presented at trial and inferences reasonably drawn therefrom in the light most favorable to Plaintiff, I find that Plaintiff failed to produce evidence supporting any of the three elements required for injunctive relief.

First, Plaintiff did not show irreparable harm that would justify an injunction. Two of the children, CBM and ARM, testified that they were not upset about the meetings or interviews with

DSS. They were not crying and did not observe any of their siblings to be upset or crying. There was no evidence that any of the children's grades suffered or that any of the children were harmed to any extent that would override the need to meet or talk with them regarding the report of abuse or neglect, which was indisputably justified and reasonable in this case. Although Plaintiff Kaci May testified that the children were upset by the interviews with DSS, there was no evidence to support that the children suffered or would suffer harm in the absence of injunctive relief. The children had significant life circumstances and psychological issues that caused stress and upset in their lives outside of the issues raised in this case such that any upset the children may have experienced could not be attributed to the DSS interviews. Further, Plaintiff made no showing that DSS returning to DD2 to interview the children was anything more than speculation or a hypothetical possibility, which is insufficient to support injunctive relief.

Second, Plaintiff did not prove that she would have no adequate remedy at law if DSS returned to DD2 to interview her children. Ms. May testified that she told the children that if DSS ever tried to talk to them, they did not have to answer any questions. The children knew that they did not have to talk with DSS and some exercised this right not to answer questions. ARM and CBM both testified that they knew they did not have to talk to DSS unless they wanted to. Moreover, there is no pending DSS case with the family. The underlying DSS case that formed the basis of this lawsuit was resolved in June 2018. DSS has not attempted to speak with any of the May children since November of 2107. If an entirely speculative future interview is conducted in a tortious or unconstitutional manner, Plaintiff will have adequate remedies at law and equity to address it.

Finally, Plaintiff did not establish a likelihood of success on the merits. S.C. Code Ann. § 63-7-920, *Investigations and case determination*, provides:

> 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.

The language of the above statute is clear and unambiguous: DSS is permitted by statute to interview children at school. As a corollary, DD2 has no authority to prevent properly credentialed DSS workers or law enforcement from conducting interviews of children on school premises. Where a statute expressly enumerates the requirements on which it is to operate, additional requirements are not to be implied. *Byrd v. Irmo High School*, 321 S.C. 426 (1996), citing, *Trayco, Inc. v. United States,* 994 F.2d 832 (Fed.Cir.1993).

With regard to the underlying constitutional issues, the Fourth Amendment protects against unreasonable searches and seizures. *United States v. Place,* 462 U.S. 696 (1983). 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 DD2 or DSS somehow "seized" or violated plaintiff's constitutional rights by summoning the children and asking limited, basic questions for a limited amount of time is unsupported by the law.

Plaintiff failed to show that DSS or DD2 acted unreasonably by interviewing or permitting interviews, respectively, at school. Based on the largely undisputed testimony, I find that the DSS interviews were both reasonable in inception and scope based on the report to DSS and Plaintiff's refusal to allow DSS to interview the children in the home. No legal authority supports a claim on the merits against DD2 or DSS under the facts of this case.

IV. CONCLUSION

For the foregoing reasons, Defendants' Motion for a Directed Verdict is GRANTED.

IT IS SO ORDERED.

The Honorable Maite Murphy

September __, 2020

Columbia, South Carolina

Dorchester Common Pleas

Case Caption:	Kaci May , plaintiff, et al VS Dorchester School District Two , defendant, et al
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So Ordered

s/ Maite Murphy 2166