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Jun 21 2021

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,

INITIAL REPLY BRIEF OF APPELLANTS

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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. Plt. Tr. Ex. 1, Dictation, *10-11; Plt. Tr. Ex. 4, Guided Supervision Staffing, *5-6; Plt. Tr. Ex. 7, Determination Fact Sheets & Appeal, *1-4. **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 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, 2017, and no order was ever issued by the Dorchester Family Court allowing SCDSS to interrogate Kaci May's children at school or otherwise. Plt. Tr. Ex. 12, Summons and Complaint, *SCDSS v. May*, 2017-DR-18-01334; Trans., *10 (Aug. 12, 2020).

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 fanaticizes 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, *12-15. *See also*, Trans., *7-8 (Aug. 11, 2020); Trans., *93, 94, 98, 108-109 (Aug. 12, 2020).

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

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. Plt. Tr. Ex. 1, Dictation, *46. 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...

Plt. Tr. Ex. 1, Dictation, *46; Trans., *162-163 (Aug. 11, 2020).

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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June 21, 2021

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The undersigned counsel for the Appellants certifies that the Initial Reply Brief of Appellants complies with Rule 208, SCACR.

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Dorchester School District Two,
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Flemister.

Respondents,

CERTIFICATE OF SERVICE

I certify that I have served the following documents:

- a. Appellants' Initial Reply Brief;

upon Kenneth P. Woodington, counsel for SCDSS, Michael Leach, and Jasmine Flemister; and Susan Fittipaldi, counsel for Dorchester School District Two, by electronic mail at their respective email addresses, pursuant to the Order of the Supreme Court:

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