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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 SCDSS RESPONDENTS' RESPONSE BRIEF

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I. Each interrogation of the children by SCDSS was a constitutional violation.

The South Carolina Department of Social Services asserts, "...there were relatively few interviews, and they were of short duration, as discussed below." SCDSS's Response Brief, *2. The manner in which one wishes to frame the timing and frequency of the warrantless seizures and interrogations by SCDSS matters little, they were violations of the Plaintiffs' rights.

II. SCDSS erroneously relies upon its on administrative findings to justify warrantless interrogations.

The need for the Court to protect constitutional rights of the Mays', and more importantly, the families of South Carolina, is laid bare in SCDSS's argument: because the Agency made an administrative finding, it has the right to interrogate children so it does not, "...abdicate its responsibility to protect the children's safety and welfare at the very time when such protection appears to be necessary." SCDSS's Response Brief, *12. Appellants assert it is even more important for the judiciary to check executive power to search, seize, and interrogate children when the State strongly suspects wrongdoing, as this is when the Agency is most likely to abuse power.

"The point of the Fourth Amendment, ***which often is not grasped by zealous officers***, is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. Its protection consists in requiring that ***those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime***. Any assumption that evidence sufficient to support a magistrate's disinterested determination to issue a search warrant will justify the officers in making a search without a warrant would reduce the Amendment to a nullity and leave the people's homes secure only in the discretion of police officers." *Johnson v. United States*, 333 U.S. 10, 13-14 (1948) (emphasis added).

When the State searches, seizes, and interrogates children, our Constitution relies upon two tests of the validity of the power of the Courts to issue such process: "He must be neutral and detached, and he must be capable of determining whether probable cause exists for the requested arrest or search." *Shadwick v. City of Tampa*, 407 U.S. 345, 354 (1972). The Constitution requires that SCDSS not make the ultimate decision as the Agency is neither neutral nor is it detached. Coolidge v. New Hampshire, 403 U.S. 443, 449-451 (1971) (warrant issued by state attorney general who was leading investigation and who as a justice of the peace was authorized to issue warrants); *Mancusi v. DeForte*, 392 U.S. 364, 370–72 (1968) (subpoena issued by district attorney could not qualify as a valid search warrant); *Lo-Ji Sales v. New York*, 442 U.S. 319 (1979) (justice of the peace issued open-ended search warrant for obscene materials, accompanied police during its execution, and made probable cause determinations at the scene as to particular items).

Similarly, SCDSS's explanation of its policy to conduct "one face to face interview once a calendar month with the victim child, siblings, and any other children in the home, and parents, protective adult, and/or other caregiver..." demonstrates that the interrogations are investigatory and fall within the parameters of Constitutional limitations. SCDSS's Response Brief, *12-13. The Court should note that SCDSS does not claim it has the right to enter the Appellants home to inspect and interrogate the children and family, under this same policy – the Agency only violates the Constitution when the children are vulnerable. SCDSS's Response Brief, *12-13.

III. SCDSS misrepresents the operative facts and holdings in decisional law to justify the Agency's Constitutional violations.

SCDSS asks the Court to note that the United States Supreme Court "declined to hold that a social worker's warrantless in-school interview of a child pursuant to a child abuse investigation violates the Fourth Amendment." SCDSS's Response Brief, *17, citing *Camreta v.*

Greene, 563 U.S. 692, 713-714 (2011). This is true, but the reason why was because the minor child reached the age of majority and moved across the county, which denied the father, Camreta, his appeal rights under the mootness doctrine. *Id.*, at 713.

The Respondents found constitutional law cases that made any mention of child protective services, pulled general statements and dicta from the opinions, and argued it supported their policies of warrantless searches, seizures, and interrogations. But they were not on point.

One of the cases offered by SCDSS and the School District, and adopted by the trial court, *Wildauer*, is completely irrelevant to the warrantless seizure and interrogation of children at school. See *Wildauer v. Frederick County*, 993 F.2d 369, 372 (4th Cir. 1993); SCDSS's Response Brief, *17-18; Order, ROA 16 (September 18, 2020).

Ann Wildauer was a foster parent for fifteen children, "most of whom were disabled". *Id.*, at 370. Two sets of parents requested the return of their children, four in total, and Wildauer refused, telling the parents she had adopted the children. *Id.*, at 370-371. When the parents, a social worker, two sheriff's deputies, and others went to Wildauer's home to pick up the children, Wildauer returned the two youngest children but claimed "the two older children disappeared and invited the social worker to search the home for the missing children. The missing children were eventually discovered in a neighbor's home." *Id.*, at 371.

When the social worker was invited into Wildauer's home, she noted that the "home was unhygienic and potentially unsuitable for disabled and sick children, [the social worker] opened a neglect investigation for the eleven children remaining in Wildaeur's care". *Id.*, at 371. The social worker returned to the home four and eight days later, accompanied with nurses from the health department. "Although Wildauer did not object to these visits at the time, she now claims

she was threatened into cooperating." *Id.*, at 371.

The pivotal fact was Wildauer kidnapped someone else's children and lied to social services and law enforcement about the children's whereabouts. More importantly, she consented or did not object to the entry of government officers into her home. The citations to *Wildaeur* by SCDSS in its brief generally address policies regarding child protective services' right to investigate. When SCDSS misinforms the Court by implying the Fourth Circuit made these statements to justify forced entry into a home or warrantless searches, seizures, and interrogations of children. A reading of *Wildauer* and subsequent cases demonstrates that the Fourth Circuit's broad sweeping statement, quoted by SCDSS, that, "investigative home visits by social workers are not subject to the same scrutiny as searches in the criminal context...", is merely dicta and is not relevant to this matter.

Against all common sense, SCDSS argues there are no limits to its interrogations of children at school. Under SCDSS's reasoning, S.C. Code Ann. §63-7-920(C) allows the Agency to send a social worker to every school every single day and interrogate every single child, whether or not there is an open case. Or if the Agency were intent on harassing one family, it could send its social workers to interrogate a child every single day.

The trial court's and the Respondents' reliance upon *Martin v. Saint Mary's Dep't of Soc. Servs.*, 346 F.3d 502 (4th Cir. 2003) is also founded upon inapposite operative facts and pulls general statements to support their position. SCDSS's Response Brief, *18 citing *Martin*, at 503-505. Nothing in the *Martin* holding abrogates the Mays' Constitutional protections from warrantless searches, seizures, and interrogations in a school setting.

While the District Court did not find a violation in the children's Fourth Amendment rights in *Williams v. Cty. of San Diego*, it did find a violation of the parents' Fourteenth

Amendment rights because the parents had explicitly forbade the social workers from interrogating the children at school. *Williams v. Cty. of San Diego*, 2021 U.S. Dist. LEXIS 25711, 2021 WL 488361 *9, 29-30 (S.D.Cal. February 10, 2021). *See also, Williams v. Cty. of San Diego*, 2021 U.S. Dist. LEXIS 106551, 2021 WL 2311873, *11-16 (S.D.Cal. June 7, 2021).

SCDSS refers the Court to *Loftus v. Clark-Moore*, 690 F.3d 1200 (11th Cir. 2012). SCDSS's Response Brief, *18-19. In *Loftus*, the Eleventh Circuit found qualified immunity because the violation of the constitutional right was not clearly established. The Eleventh Circuit then chose not to address whether the act violated the constitution as it is allowed to do under qualified immunity analysis. *Loftus*, at 1204 (We are "permitted to exercise [our] sound discretion in deciding which of the two prongs of the qualified immunity analysis should be addressed first in light of the circumstances in the particular case at hand." *Pearson v. Callahan*, 555 U.S. 223, 236 (2009).).[1] *Loftus* provides no support to SCDSS's argument and only addresses whether the defendants had notice that what they were doing was unconstitutional. *Id.*, at 1205-1206.

[1] *See also, Evans v. Skolnik*, 997 F.3d 1060, 1072 (9th Cir. 2021) (Dissent by J. Marsha S. Berzon) (Discussing the failure of a Court to rule on the constitutionality of a state officer's act: "Indeed, unless a decision on the first prong would "provide[] little guidance for future cases," courts should, I strongly believe, continue to develop constitutional precedent, to give better guidance to officers of the law so that they may better avoid violating rights guaranteed by the constitution. *Pearson*, 555 U.S. at 237. Otherwise, the lack of clearly established law becomes perpetual, as does the lack of incentive to avoid violations of constitutional rights in circumstances—such as this one—in which the Fourth Amendment exclusionary rule has little or no application. "Qualified immunity thus may frustrate 'the development of constitutional precedent' and the promotion of law-abiding behavior." *Camreta v. Greene*, 563 U.S. 692, 706, 131 S. Ct. 2020, 179 L. Ed. 2d 1118 (2011) (quoting Pearson, 555 U.S. at 237); *see* Aaron L. Nielson & Christopher J. Walker, *The New Qualified Immunity*, 89 S. Cal. L. Rev. 1, 12 (2015) ("[M]any rights potentially might never be clearly established should a court 'skip ahead to the question whether the law clearly established that the officer's conduct was unlawful in the circumstances of the case.'" (quoting *Saucier*, 533

IV. SCDSS's additional grounds for affirmation of the trial court's order are without merit.

a. Standing.

As a matter of law, SCDSS specifically consented to and overturned the Agency's finding of abuse and neglect against Kaci May and her Husband. ROA 533-534 (Plt. Tr. Ex. 16, Stipulation of Voluntary Dismissal (June 14, 2018)). Kaci May was never stripped of any of her rights to bring any action on behalf of her children.

SCDSS fails to state why a parent, who the Agency conceded was innocent, cannot bring a case on behalf of her own children. The order cited by SCDSS from *M.M. v. Mitchum* involved sexual abuse where the children involved may have had claims against each other. This case is laser focused on the actions by SCDSS and the School District from March 28, 2017 through November 20, 2017. The M.M. case is distinguishable because the plaintiffs in the case harmed each other and were seeking damages for those harms.

In this matter, the sexual abuse is not even the subject of this suit.

b. Exclusive jurisdiction of the Family Court.

This argument is without merit. But, here we go:

SCDSS relies upon S.C. Code Ann. § 63-7-1610 which states:

S.C. Code Ann. § 1610. Jurisdiction and Venue.

> (A) The family court has exclusive jurisdiction over all proceedings held pursuant to this article.
> (B) The county in which the child resides is the legal place of venue.

"The Family Court is a statutory court created by the Legislature and, therefore, is of limited jurisdiction." *S.C. Dep't of Mental Health v. State*, 301 S.C. 75, 78, 390 S.E.2d 185 (1990). *See also*, S.C. Code Ann. § 63-3-10 (There hereby are created courts of limited jurisdiction to be known and designated in this title as "family courts." The number and

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U.S. at 201))."

boundaries of such family courts shall be the same as the judicial circuits.). Its jurisdiction is limited to that expressly or by necessary implication conferred by statute. The jurisdictional authority of the Court is set forth in the Children's Code. *Id.*

First, the Family Court only has jurisdiction over adjudication of abused, neglected, and delinquent children (S.C. Code Ann. § 63-3-510; 63-3-520; 63-3-540, 63-7-1610); domestic matters (S.C. Code Ann. § 63-3-530); termination of parental rights (S.C. Code Ann. § 63-7-2620), and adoptions (S.C. Code Ann. § 63-9-40).

Simply because SCDSS and allegations of child abuse and neglect are involved does not mean that jurisdiction falls within the purview of the family courts. There is no decisional law regarding SCDSS's assertion because, really, not too many lawyers assert with a straight face that the Family Court is the proper locale to vindicate civil rights issues. Even *pro se* litigants do not file §1983 claims in Family Court. Civil remedies live in either Summary Court or the Court of Common Pleas. While Mays could have very easily sought money damages in this matter for the very same claims they has asserted, instead of for injunctive relief, would the Defendants still argue that the claims are restricted to the Family Court and that the Family Court should empanel a jury to hear the claims?

The South Carolina Rules of Family Court specifically forbid many of the procedural vehicles necessary for a civil rights prosecution like this matter. A Family Court is not allowed to empanel a jury pursuant to Rules 38, 39, 40(a & b), 42 (to the extent it refers to trial by jury), 47, 48, 49, and 51 SCRCP, which the Defendants would be entitled to have as it relates to factual issues.[2] Defendants would also be forbidden from making a motion pursuant to Rule 50, SCRCP

[2] Rule 2(a), SCRFC. Domestic Relations Actions. In addition to the rules set forth in Sections I, II and III of these Rules of Family Court, the South Carolina Rules of Civil Procedure (SCRCP) shall be applicable in domestic relations actions to the extent permitted by Rule 81, SCRCP. The following SCRCP, however, shall be inapplicable: 5(a) to the extent it does not require notice to

or a summary judgment motion pursuant to Rule 56, SCRCP. Plaintiffs could have filed to have a class certified as the actions of SCDSS and school districts throughout the state to force these governmental agencies to comply with the Constitutional Principles set forth in Plaintiff's Complaint, as there are hundreds of families who have had similar problems with SCDSS harassment and school district complicity. But a class action under Rule 23, SCRCP is forbidden pursuant to Rule 2(a), SCRFC.

Lastly, how does SCDSS propose that the School District fall under the Family Court's jurisdiction?

There is nothing in the South Carolina Code of Laws, Court Rules, or decisional law that allows a Family Court to provide injunctive relief under 42 U.S.C. § 1983.

c. Live case or controversy.

The child protective services case was dismissed by stipulation of the parties pursuant to Rule 41(a)(1)(B), SCRCP. ROA 533-534 (Plt.'s Tr. Ex. 16, Stipulation for Voluntary Dismissal (June 14, 2018)). The dismissal was not on the merits except for the stipulation that the "...finding of abuse and/or neglect on or about May 12, 2017 is hereby overturned." *Id. See Innovative Waste Mgmt. v. Crest Energy Partners GP, LLC*, 425 S.C. 568, 569, 824 S.E.2d 214, 215 (2019). By that time, this matter had been pending over six months, December 7, 2017. ROA 19-29 (Verified Complaint (December 7, 2017)).

SCDSS's arguments on justiciability are adequately addressed in Appellants' arguments at *36-49.

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a defendant of every hearing, 8(d) to the extent it provides that the failure to file a responsive pleading constitutes an admission, 12(b) to the extent it permits a 12(b)(6) motion to be converted to a summary judgment motion, 12(c), 13(j), 18, 23, 38, 39, 40(a & b), 42 to the extent it refers to trial by jury, 43(b)(1) to the extent it limits the use of leading questions to cross-examination, 43(i & j), 47, 48, 49, 50, 51, 54(c) to the extent it permits the court to grant relief not requested in the pleadings, 55, 56, 68, 69, 71, 72, 78, 79, and 84.

V. 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 SCDSS's Response Brief complies with Rule 208, SCACR.

Respectfully submitted,

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