REL: March 8, 2019

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2018-2019

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Ex parte Wilcox County Board of Education and Lester Turk, Donald McLeod, Joseph Pettway, Jr., and Shelia Dortch, in their individual and official capacities as members of the Wilcox County Board of Education

PETITION FOR WRIT OF MANDAMUS

(In re: Kimberly Perryman, as guardian and next friend of R.M., a minor

v.

Wilcox County Board of Education and Lester Turk, Donald McLeod, Joseph Pettway, Jr., and Shelia Dortch, in their individual and official capacities as members of the Wilcox County Board of Education, and Timothy Irvin Smiley and Roshanda Jackson, in their individual and official capacities as teacher and principal, respectively, of J.E. Hobbs Elementary School)

(Wilcox Circuit Court, CV-17-4)

MENDHEIM, Justice.

The Wilcox County Board of Education ("the Board"), and Board members Lester Turk, Donald McLeod, Joseph Pettway, Jr., and Shelia Dortch (hereinafter referred to collectively as "the Board members"), petition this Court for a writ of mandamus directing the Wilcox Circuit Court to vacate its order denying their motion to dismiss the claims against them based on immunity and to enter an order granting that motion. We grant the petition in part and deny it in part.

I. Facts

On February 6, 2017, Kimberly Perryman, as guardian and next friend of her minor son, R.M., sued the Board, Roshanda Jackson, and Timothy Irvin Smiley. Jackson was the principal at J.E. Hobbs Elementary School in Camden, Alabama -- a part of the Wilcox County school system -- and Smiley was a teacher at the elementary school at the time of the alleged events. Perryman alleged that on March 1, 2016, Smiley, "in a fit of rage and unprovoked, did lift the Plaintiff R.M. and slam him down upon a table, with such force as to break said table." Perryman further alleged in her rendition of the facts that "Smiley was in the habit of continuously and repeatedly using

harsh, physical and otherwise inappropriate tactics on the students in his class" and that "Smiley's behavior was known or should have been known to the Principal Defendant and the School Board Defendant[]." Perryman asserted that Jackson had "prior knowledge of the violent and inappropriate behaviors of Defendant Smiley prior to Smiley's violent assault upon Plaintiff R.M." but that no disciplinary action was ever taken against Smiley. Perryman also asserted that, despite the "assault" Smiley committed upon R.M., the Board "failed to take any action whatsoever against the Defendant Smiley." Perryman added that, "despite [the] Board's policies and procedures regarding protecting students from assault, Defendant Jackson, and the Wilcox County Board of Education neither reprimanded nor disciplined Defendant Smiley." Perryman alleged that R.M. suffered physical pain and mental anguish as a result of Smiley's "violent assault" upon him and that R.M. had to receive psychological counseling because of the incident. Indeed, Perryman alleged that, "[s]ince the assault upon the Plaintiff R.M., R.M. has been in an almost noncommunicative state" and that "[h]is emotional debilitation is likely permanent." Perryman further asserted that

> "R.M.'s mental and physical conditions have been directly caused and/or exacerbated by a systematic failure of the Defendant Jackson, and the Wilcox County School Board to supervise, discipline, suspend and reassign teachers, like Defendant Smiley who showed a pattern and practice of abusive and criminal behavior towards their students, and who posed a real and immediate danger to said student population."

Perryman asserted claims of assault and battery and intentional infliction of emotional distress against Smiley; claims of negligence and negligent/wanton hiring, training, retention, and supervision against Jackson; and a claim of negligence against the Board. Specifically, the negligence claim against the Board stated: "The ... Wilcox County Board of Education negligently breached [its] dut[y] to R.M. by failing to supervise, discipline or remove if necessary, the Defendant teacher [Timothy Smiley], thereby placing the Plaintiff R.M. in harm's way."

Perryman listed several remedies in the "Prayer for Relief" section of her complaint:

> "a. Declare the conduct engaged in by the Defendants to be in violation of Plaintiff RM's rights and Alabama law;
>
> "b. Enter appropriate declaratory and injunctive relief;

> "c. Award Plaintiff R.M. compensatory damages against the Defendants, in an amount that will fully compensate him for the physical injuries, mental distress, anguish, pain, humiliation, embarrassment, suffering and concern that he has suffered as a direct and/or proximate result of the statutory and common law violations as set out herein;
>
> "d. Enter a judgment against all the Defendants, save the Wilcox County School Board, for such punitive damages as will properly punish them for the constitutional, statutory and common law violations perpetrated upon Plaintiff as alleged herein, in an amount that will serve as a deterrent to Defendants and others from engaging in similar conduct in the future;
>
> "...."

On March 15, 2017, the Board filed a motion to dismiss Perryman's action, asserting State immunity under Art. I, § 14, Ala. Const. 1901, as one of its defenses.

On July 24, 2017, Perryman filed an amended complaint in which she added the Board members as defendants in both their official and individual capacities. In the amended complaint, Perryman asserted, verbatim, the same claims she had asserted in her original complaint, including her negligence claim against the Board. None of the claims specifically mentioned the Board members. The amended complaint requested the same relief as the original complaint.

On August 3, 2017, the Board and the Board members filed a motion to dismiss the amended complaint. Once again, State immunity was asserted as a defense on behalf of the Board, and it was also asserted as a defense for the Board members in their official capacities. The motion to dismiss also asserted that the Board members were entitled to State-agent immunity in their individual capacities for any claims asserted against them.

On August 9, 2017, Perryman filed a response in opposition to the motion to dismiss the amended complaint. Perryman appeared to argue in that response that the defenses of State immunity and State-agent immunity were not available in this case because an assault had occurred that was committed by someone who Jackson knew, and the Board should have known, had a propensity for violence.

Also on August 9, 2017, Perryman filed a second amended complaint. The second amended complaint contained the same factual allegations and asserted the same state-law claims as the previous two complaints. It did not name the Board members in any of the state-law claims. However, the second amended complaint also added a claim alleging a "violation of

[R.M.'s] federal civil rights" against all the defendants, including the Board and the Board members, under 42 U.S.C. § 1983 ("the § 1983 claim"). Specifically, the § 1983 claim stated:

"Count 5
"Violation of Federal Civil Rights
(As to all named Defendants)

"....

"51. ... 42 U.S.C.A. § 1983 provides that:

> "'Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or any other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress ....'

"52. The Defendants violated various dimensions of the U.S. Constitution and of federal law as they relate to [R.M.], and as are set forth in the counts in this Complaint.

"53. The defendants' violations of such provisions were done with the defendants acting under color of state law, in their capacities as school district and administrative/supervisory employees of the district acting in the scope of their employment.

"54. As a direct and proximate result of the Defendants' violations of [R.M.'s] federal civil

> rights, [R.M. has] suffered financial, physical, and emotional injuries.
>
> "55. As a direct and proximate result of the Defendants' conduct, [R.M.] suffered the injuries described herein."

The second amended complaint requested the same relief as did the previous two complaints.

On August 21, 2017, the Board and the Board members filed a motion to dismiss the second amended complaint. Once again, they asserted State immunity and State-agent immunity as defenses to Perryman's state-law claims. The Board and the Board members also contended that the amendments to Perryman's original complaint were nullities because, they said, the original complaint, which named only the Board and none of the Board members as defendants, had failed to invoke the subject-matter jurisdiction of the circuit court. With respect to the § 1983 claim, they argued, among other things, that the Board was entitled to immunity under the Eleventh Amendment to the United States Constitution and that the Board members in their individual capacities were entitled to federal qualified immunity.

On November 16, 2017, the circuit court held a hearing on the motion to dismiss filed by the Board and the Board

members. On March 21, 2018, the circuit court entered an order denying the motion to dismiss the second amended complaint. In the order, the circuit court did not explicate the reasons for its ruling.

On April 13, 2018, the Board and the Board members filed a motion to stay the circuit court's ruling in anticipation of their filing a petition for a writ of mandamus concerning the March 21, 2018, order denying their motion to dismiss the second amended complaint. On the same date, the circuit court granted the motion to stay. The Board and the Board members subsequently filed their petition for a writ of mandamus on May 2, 2018.

II. Standard of Review

In Ex parte Branch, 980 So. 2d 981 (Ala. 2007), this Court stated:

> "The denial of a motion for a summary judgment or of a motion to dismiss grounded on immunity is reviewable by a petition for a writ of mandamus. Ex parte Rizk, 791 So. 2d 911, 912 (Ala. 2000). Ex parte Haralson, 853 So. 2d 928, 931 n.2 (Ala. 2003) ('The denial of a motion to dismiss or a motion for a summary judgment generally is not reviewable by a petition for writ of mandamus, subject to certain narrow exceptions, such as the issue of immunity. Ex parte Liberty Nat'l Life Ins. Co., 825 So. 2d 758, 761-62 (Ala. 2002).'). This Court has stated:

> "'A writ of mandamus is an extraordinary remedy available only when there is: "(1) a clear legal right to the order sought; (2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; (3) the lack of another adequate remedy; and (4) the properly invoked jurisdiction of the court." Ex parte BOC Group, Inc., 823 So. 2d 1270, 1272 (Ala. 2001).'
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> "Ex parte Nall, 879 So. 2d 541, 543 (Ala. 2003)."

980 So. 2d at 984.

> "In reviewing the denial of a motion to dismiss by means of a mandamus petition, we do not change our standard of review. [Ex parte Butts, 775 So. 2d 173, 176 (Ala. 2000)]; see also [Ex parte] Wood, 852 So. 2d [705,] 709 [(Ala. 2002)] (review of a denial of a summary-judgment motion grounded on a claim of immunity by means of a petition for a writ of mandamus does not change the applicable standard of review). Under Rule 12(b)(6), Ala. R. Civ. P., a motion to dismiss is proper when it is clear that the plaintiff cannot prove any set of circumstances upon which relief can be granted. Cook v. Lloyd Noland Found., Inc., 825 So. 2d 83, 89 (Ala. 2001). '"In making this determination, this Court does not consider whether the plaintiff will ultimately prevail, but only whether [she] may possibly prevail."' Id. (quoting Nance v. Matthews, 622 So. 2d 297, 299 (Ala. 1993)). We construe all doubts regarding the sufficiency of the complaint in favor of the plaintiff. Butts, 775 So. 2d at 177."

Ex parte Haralson, 853 So. 2d 928, 931 (Ala. 2003).

III. Analysis

The Board and the Board members contend that they are entitled to immunity -- both state and federal -- from the claims asserted against them by Perryman. They also argue that the circuit court lacked subject-matter jurisdiction over the original complaint and that, therefore, it should have disallowed Perryman's amendments to the complaint and dismissed her action in its entirety. We will first address the Board and Board members' immunity arguments with respect to the state-law claims and the § 1983 claim. Then we will examine the contention that the circuit court lacked subject-matter jurisdiction over the original complaint.

A. Immunity as to the State-law Claims

The Board argues that it is entitled to State immunity under Article I, § 14, Ala. Const. 1901, from the negligence claim Perryman has asserted against it.

> "'[T]he State of Alabama shall never be made a defendant in any court of law or equity.' Article I, § 14, Ala. Const. 1901. 'Section 14 immunity is more than a defense; when applicable, it divests the trial courts of this State of subject-matter jurisdiction.' Alabama State Univ. v. Danley, 212 So. 3d 112, 127 (Ala. 2016).
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> "Concerning § 14 immunity, this Court has stated:

> "'"The wall of immunity erected by § 14 is nearly impregnable. Sanders Lead Co. v. Levine, 370 F. Supp. 1115, 1117 (M.D. Ala. 1973); Taylor v. Troy State Univ., 437 So. 2d 472, 474 (Ala. 1983); Hutchinson v. Board of Trustees of Univ. of Alabama, 288 Ala. 20, 24, 256 So. 2d 281, 284 (1971). This immunity may not be waived. Larkins v. Department of Mental Health & Mental Retardation, 806 So. 2d 358, 363 (Ala. 2001) ('The State is immune from suit, and its immunity cannot be waived by the Legislature or by any other State authority.'); Druid City Hosp. Bd. v. Epperson, 378 So. 2d 696 (Ala. 1979) (same); Opinion of the Justices No. 69, 247 Ala. 195, 23 So. 2d 505 (1945) (same); see also Dunn Constr. Co. v. State Bd. of Adjustment, 234 Ala. 372, 175 So. 383 (1937). 'This means not only that the state itself may not be sued, but that this cannot be indirectly accomplished by suing its officers or agents in their official capacity, when a result favorable to plaintiff would be directly to affect the financial status of the state treasury.' State Docks Comm'n v. Barnes, 225 Ala. 403, 405, 143 So. 581, 582 (1932) (emphasis added); see also Southall v. Stricos Corp., 275 Ala. 156, 153 So. 2d 234 (1963)."

"'Patterson v. Gladwin Corp., 835 So. 2d 137, 142 (Ala. 2002).'

> "Alabama Agric. & Mech. Univ. v. Jones, 895 So. 2d 867, 872-73 (Ala. 2004)."

Woodfin v. Bender, 238 So. 3d 24, 27 (Ala. 2017).

With respect to whether county boards of education are State entities, and, concomitantly, whether such boards are entitled to State immunity, this Court has explained:

> "'"County boards of education are not agencies of the counties, but local agencies of the state, charged by the legislature with the task of supervising public education within the counties."' Board of Sch. Comm'rs of Mobile County [v. Architects Grp., Inc.], 752 So. 2d [489] at 491 [(Ala. 1999)] (quoting Hutt [v. Etowah Cty. Bd. of Educ.], 454 So. 2d [973,] 974 [Ala. 1984)]). 'Under Ala. Const. of 1901, § 14, the State of Alabama has absolute immunity from lawsuits. This absolute immunity extends to arms or agencies of the state.' Ex parte Tuscaloosa County, 796 So. 2d 1100, 1103 (Ala. 2000).
>
> > "'For purposes of § 14 immunity, county boards of education are considered agencies of the State. Louviere v. Mobile County Bd. of Educ., 670 So. 2d 873, 877 (Ala. 1995) ("County boards of education, as local agencies of the State, enjoy [§ 14] immunity."). Thus, this Court has held that county boards of education are immune from tort actions. See Brown v. Covington County Bd. of Educ., 524 So. 2d 623, 625 (Ala. 1988); Hutt v. Etowah Cty. Bd. of Educ., 454 So. 2d 973, 974 (Ala. 1984).'
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> "Ex parte Jackson County Bd. of Educ., 4 So. 3d 1099, 1102-03 (Ala. 2008).

> "Because county boards of education are local agencies of the State, they are clothed in constitutional immunity from suit ...."

Ex parte Hale Cty. Bd. of Educ., 14 So. 3d 844, 848 (Ala. 2009) (emphasis added); see also Ex parte Montgomery Cty. Bd. of Educ., 88 So. 3d 837, 842 (Ala. 2012) (concluding that "the motion for a summary judgment based on § 14 immunity was due to be granted as to the [Montgomery County] Board [of Education] and a summary judgment entered on the tort claims against the Board"); Ex parte Monroe Cty. Bd. of Educ., 48 So. 3d 621, 625 (Ala. 2010) (observing that the Monroe County Board of Education "is a local agency of the State that has absolute immunity under Ala. Const. of 1901, § 14").

Perryman asserted one claim against the Board, alleging that the Board was negligent in failing to discipline or to remove Smiley from his teaching position before he allegedly assaulted R.M. Perryman sought damages against the Board for that allegedly negligent conduct. The cases quoted above are clear that county boards of education such as the Board are absolutely immune from such a claim.

Perryman offers no refutation of the Board's straightforward argument that it is entitled to State

immunity, other than to argue that she has alleged that the Board should have had prior knowledge of Smiley's abusive conduct and that somehow this allegation removes the Board's immunity from her negligence claim. But there is no "knowledge exception" to State immunity. "Actions against the State or against State agencies are absolutely barred by § 14." Ex parte Alabama Dep't of Fin., 991 So. 2d 1254, 1257 (Ala. 2008). County boards of education are State agencies for purposes of State immunity. Therefore, the Board is entitled to absolute immunity from Perryman's state-law claims.

The Board members contend that they also are entitled to State immunity from any claim asserted against them in their official capacities. Before we examine this argument, we must note that none of Perryman's complaints actually asserts a state-law claim against the Board members in either their official or individual capacities. In particular, the second amended complaint, which is the operative complaint for purposes of this petition, does not name the Board members in any of the state-law claims, even though the complaint lists the individual Board members as defendants under the "Parties"

section of the complaint. Thus, it is difficult to assess whether the Board members are entitled to State immunity, because Perryman has not asserted any specific state-law claims against them.[1]

Assuming that Perryman meant to assert the same negligence claim against the Board members that she asserted against the Board, the Board members are correct that they are entitled to State immunity in their official capacities.

> "Section 14 prohibits actions against state officers in their official capacities when those actions are, in effect, actions against the State. Lyons v. River Road Constr., Inc., 858 So. 2d 257, 261 (Ala. 2003); Mitchell v. Davis, 598 So. 2d 801, 806 (Ala. 1992). 'In determining whether an action against a state officer or employee is, in fact, one against the State, [a] [c]ourt will consider such

[1]It appears that the circuit court should have granted the Board members' motion to dismiss for failure to state a claim upon which relief could be granted with respect to any state-law claims. However, we cannot reach that issue in this petition, which is proper only with respect to whether the circuit court erred in denying the motion to dismiss, which was based on the Board's and the Board members' assertion of immunity as a defense to the action. See, e.g., Ex parte Rock Wool Mfg. Co., 202 So. 3d 669, 671 (Ala. 2016) (observing that, "[s]ubject to certain narrow exceptions ..., we have held that, because an 'adequate remedy' exists by way of an appeal, the denial of a motion to dismiss ... is not reviewable by petition for writ of mandamus" and that "[o]ne of the exceptions to the general rule that the denial of a motion to dismiss is not reviewable by mandamus is where the motion to dismiss asserts a defense of immunity" (internal quotation marks omitted)).

> factors as the nature of the action and the relief sought.' Phillips v. Thomas, 555 So. 2d 81, 83 (Ala. 1989). Such factors include whether 'a result favorable to the plaintiff would directly affect a contract or property right of the State,' Mitchell, 598 So. 2d at 806, whether the defendant is simply a 'conduit' through which the plaintiff seeks recovery of damages from the State, Barnes v. Dale, 530 So. 2d 770, 784 (Ala. 1988), and whether 'a judgment against the officer would directly affect the financial status of the State treasury,' Lyons, 858 So. 2d at 261. Moreover, we note that claims against state officers in their official capacity are 'functionally equivalent' to claims against the entity they represent. Hinson v. Holt, 776 So. 2d 804, 810 (Ala. Civ. App. 1998); see also McMillian v. Monroe County, Ala., 520 U.S. 781, 785 n. 2, 117 S.Ct. 1734, 138 L.Ed.2d 1 (1997)(noting that a suit against a governmental officer in his official capacity is the same as a suit against the entity of which the officer is an agent); Yeldell v. Cooper Green Hosp., Inc., 956 F.2d 1056, 1060 (11th Cir. 1992) (holding that official-capacity suits generally represent only another way of pleading an action against an entity of which an officer is an agent). ..."

Haley v. Barbour Cty., 885 So. 2d 783, 788 (Ala. 2004) (emphasis added). See also Ex parte Hampton, 189 So. 3d 14, 17 (Ala. 2015) (noting that "[c]ounty boards of education, along with the members of the those boards sued in their official or representative capacities, also enjoy the protection of immunity provided by § 14 when the action against them is effectively an action against the State"); Colbert Cty. Bd. of Educ. v. James, 83 So. 3d 473, 480 (Ala.

2011) (holding that "[t]he [Colbert County] Board [of Education] members in their official capacities are immune under § 14 from the state-law claims filed against them insofar as those claims seek monetary damages"); and Ex parte Dangerfield, 49 So. 3d 675, 681 (Ala. 2010) (observing that "[i]t is settled beyond cavil that State officials cannot be sued for damages in their official capacities").

Perryman's action against the Board members in their official capacities is effectively one against the State itself. Any judgment for money damages she would receive on R.M.'s behalf against the Board members in their official capacities would require a recovery of damages from the State. Therefore, the Board members in their official capacities are entitled to State immunity from Perryman's negligence claim.

As we noted in the rendition of the facts, Perryman also seeks declaratory and injunctive relief. That request was extremely vague -- it did not identify a statute Perryman contended applied to the Board members, nor did it explain the conduct Perryman sought to enjoin. Indeed, it is apparent from the tenor of the complaint that its aim is to recover damages for the wrongful conduct alleged therein and that the

requests for declaratory and injunctive relief point toward the same goal. We have previously noted that in such an action a request for declaratory or injunctive relief will not survive the application of § 14 immunity.

> "[T]he fact that an action seeks a declaratory judgment and thus purportedly falls within an exception to § 14 does not necessarily open the doors of the State treasury to legal attack. The exception afforded declaratory-judgment actions under § 14 generally applies only when the action seeks 'construction of a statute and how it should be applied in a given situation,' Aland v. Graham, 287 Ala. 226, 230, 250 So. 2d 677, 679 (1971), and not when an action seeks other relief. Curry v. Woodstock Slag Corp., 242 Ala. 379, 6 So. 2d 479 (1942) (holding that a declaratory-judgment action that seeks only a declaration to construe the law and direct the parties, and no other relief, does not violate § 14). Section 14 bars an action characterized as a declaratory-judgment action 'when it is nothing more than an action for damages.' Lyons [v. River Rd. Constr., Inc.], 858 So. 2d [257,] 263 [(Ala. 2003)]. As the Court of Civil Appeals noted in Moody v. University of Alabama, 405 So. 2d [714] at 717 [(Ala Civ. App. 1981)]: '[W]hile an action for declaratory judgment against the state or its agencies which seeks the interpretation of a statute is generally not prohibited, ... such an action is prohibited when, as here, a result favorable to the plaintiff would directly affect a contract or property right of the state. ...'"

Ex parte Town of Lowndesboro, 950 So. 2d 1203, 1211 (Ala. 2006) (footnote omitted); see also Woodfin v. Bender, 238 So. 3d at 29 ("In the present case, ... the plaintiffs did not

'seek[] construction of a statute and its application in a given situation.' ... Instead, the plaintiffs sought a construction of the Board's policy and monetary relief. Thus, the declaratory-judgment 'exception' to § 14 immunity does not apply."); Ex parte Hampton, 189 So. 3d 14, 23 (Ala. 2015) ("Here, Franks's request for declarative and injunctive relief involves monetary relief, and § 14 immunity bars any action characterized as a declaratory-judgment action or a writ of mandamus 'when it is nothing more than an action for damages.' Lyons v. River Road Construction, Inc., 858 So. 2d 257, 263 (Ala. 2003)."). Perryman's requests for declaratory and injunctive relief, to the extent they can be said to be against the Board members in their official capacities, constitute proxies for her damages claim and are therefore barred by the doctrine of State immunity.

The Board members also contend that they are entitled to State-agent immunity for any claims asserted against them in their individual capacities. As we have already noted with respect to any state-law claims against the Board members in their official capacities, again, it is difficult to assess this contention because Perryman does not appear to have

asserted any state-law claims against the Board members. Regardless, we will once again assume that Perryman meant to assert against the Board members in their individual capacities the same negligence claim she asserted against the Board itself.

> "A State agent shall be immune from civil liability in his or her personal capacity when the conduct made the basis of the claim against the agent is based upon the agent's
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> "....
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> "(2) exercising his or her judgment in the administration of a department or agency of government, including, but not limited to, examples such as:
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> "....
>
> "(d) hiring, firing, transferring, assigning, or supervising personnel;
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> "....
>
> "Notwithstanding anything to the contrary in the foregoing statement of the rule, a State agent shall not be immune from civil liability in his or her personal capacity
>
> "(1) when the Constitution or laws of the United States, or the Constitution of this State, or laws, rules, or regulations of this State enacted or promulgated for the purpose of regulating the activities of a governmental agency require otherwise; or

> "(2) when the State agent acts willfully, maliciously, fraudulently, in bad faith, beyond his or her authority, or under a mistaken interpretation of the law."

Ex parte Cranman, 792 So. 2d 392, 405 (Ala. 2000).

> "This Court has established a 'burden-shifting' process when a party raises the defense of State-agent immunity. Giambrone v. Douglas, 874 So. 2d 1046, 1052 (Ala. 2003). In order to claim State-agent immunity, a State agent bears the burden of demonstrating that the plaintiff's claims arise from a function that would entitle the State agent to immunity. Giambrone, 874 So. 2d at 1052; Ex parte Wood, 852 So. 2d 705, 709 (Ala. 2002). If the State agent makes such a showing, the burden then shifts to the plaintiff to show that the State agent acted willfully, maliciously, fraudulently, in bad faith, or beyond his or her authority. Giambrone, 874 So. 2d at 1052; Wood, 852 So. 2d at 709; Ex parte Davis, 721 So. 2d 685, 689 (Ala. 1998). 'A State agent acts beyond authority and is therefore not immune when he or she "fail[s] to discharge duties pursuant to detailed rules or regulations, such as those stated on a checklist."' Giambrone, 874 So. 2d at 1052 (quoting Ex parte Butts, 775 So. 2d 173, 178 (Ala. 2000))."

Ex parte Estate of Reynolds, 946 So. 2d 450, 452 (Ala. 2006).

The Board members contend that they are entitled to State-agent immunity in their individual capacities because, they say, the function they were performing that gave rise to Perryman's negligence claim was the supervision of and failure to terminate Smiley's employment as a teacher at the

elementary school. The Board members further observe that under § 16-8-23, Ala. Code 1975, they have discretion in hiring, firing, and suspending teachers who fall under their supervision.[2]

Perryman does not contest whether her claims arise out of the Board members' exercise of "a function that would entitle the State agent[s] to immunity." Ex parte Estate of Reynolds, 946 So. 2d at 452. Indeed, Perryman does not specifically discuss State-agent immunity in any way in her response to the petition except to quote the following from Ex parte Dangerfield, 49 So. 3d 675, 682 (Ala. 2010):

> "'"[A] motion to dismiss is typically not the appropriate vehicle by which to assert ... State-agent immunity and ... normally the determination as to the existence of such a defense

[2]Section 16-8-23, Ala. Code 1975, provides:

> "The county board of education shall appoint, upon the written recommendation of the county superintendent, all principals, teachers, clerical and professional assistants authorized by the board. The county board may suspend or dismiss for immorality, misconduct in office, insubordination, incompetency or willful neglect of duty, or whenever, in the opinion of the board, the best interests of the school require it, superintendents, principals, teachers or any other employees or appointees of the board, subject to the provisions of Chapter 24 of this title."

> should be reserved until the summary-judgment stage, following appropriate discovery."' Ex parte Alabama Dep't of Youth Servs., 880 So. 2d 393, 398 (Ala. 2003) (emphasis added) (quoting Ex parte Alabama Dep't of Mental Health & Mental Retardation, 837 So. 2d 808, 813-14 (Ala. 2002)). This is so because the question whether a State agent was acting 'willfully, maliciously, fraudulently, in bad faith,' or was not 'exercising ... judgment in the manner set forth in the examples in [Ex parte] Cranman[, 792 So. 2d 392 (Ala. 2000)],' Howard [v. City of Atmore], 887 So. 2d [201] at 205 [(Ala. 2003)], is generally fact specific."

Although it is true that determinations regarding the applicability of State-agent immunity ordinarily should wait for the summary-judgment stage, the difficulty for Perryman in this case is that she never alleged that the Board members in their individual capacities acted willfully, maliciously, fraudulently, in bad faith, or beyond their authority. There was no allegation in the second amended complaint that would remove the protection of State-agent immunity from the Board members in their individual capacities. Consequently, the Board members in their individual capacities are entitled to State-agent immunity from any state-law claim asserted against them.[3]

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[3]To the extent that Perryman also sought injunctive relief against the Board members in their individual capacities, that request is meaningless. See, e.g., Ex parte Hampton, 189 So. 3d at 23-24 (noting that "[i]n Ex parte Moulton, 116

B. Immunity as to Perryman's Federal-law Claims

Although we have determined that the Board and the Board members are immune from Perryman's state-law claims, § 14 immunity and State-agent immunity provide them with no protection from the § 1983 claim. As this Court previously has observed concerning federal claims against a county school board:

> "[T]he [Colbert County] Board [of Education] and its members are not immune under § 14 from the federal-law claims filed against them. See Abusaid v. Hillsborough County Bd. of County Comm'rs, 405 F.3d 1298, 1315 (11th Cir. 2005) (holding that 'state sovereign immunity principles are no bar to § 1983 claims against a county')."

Colbert Cty. Bd. of Educ. v. James, 83 So. 3d 473, 481 (Ala. 2011).

The Board and the Board members in their official capacities contend that they are entitled to immunity from the § 1983 claim under the Eleventh Amendment to the United States Constitution. As a general matter, this Court has observed

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So. 3d [1119,] 1141 [(Ala. 2013)], this Court restated the sixth 'exception' to the sovereign-immunity bar under § 14 to clarify that a suit for injunctive relief against a State official in his or her individual capacity would be meaningless because State officials act for and represent the State only in their official capacities").

that "[c]laims for monetary relief against State officials in their official capacities are barred by the Eleventh Amendment." Ex parte Retirement Sys. of Alabama, 182 So. 3d 527, 538 (Ala. 2015). The Board and the Board members note that this Court repeatedly has determined that under state law county school boards are considered to be State agencies. See, e.g., Ex parte Montgomery Cty. Bd. of Educ., 88 So. 3d at 842; Ex parte Monroe Cty. Bd. of Educ., 48 So. 3d at 625; and Ex parte Hale Cty. Bd. of Educ., 14 So. 3d at 848. Because the Board is considered to be a State agency for this purpose, the Board argues that it should be entitled to Eleventh Amendment immunity, and the Board members add that the same should be true for them in their official capacities.

Whether a State entity is entitled to Eleventh Amendment immunity is a matter of federal law, and this Court has already examined that law in relation to county school boards.

> "[I]t is well established that if a local government body is acting as an 'arm of the State,' which includes agents or instrumentalities of the State, then Eleventh Amendment immunity bars the suit. Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle, 429 U.S. 274, 280, 97 S.Ct. 568, 50 L.Ed.2d 471 (1977), and Regents of the Univ. of California v. Doe, 519 U.S. 425, 429–30, 117 S.Ct. 900, 137 L.Ed.2d 55 (1997). 'Whether a defendant is an "arm of the State" must be assessed in light of the particular

> function in which the defendant was engaged when taking the actions out of which liability is asserted to arise.' Manders v. Lee, 338 F.3d 1304, 1308 (11th Cir. 2003). ...
>
> "In Manders, the United States Court of Appeals for the Eleventh Circuit acknowledged that although the decision whether an entity is an 'arm of the State' for Eleventh Amendment purposes is a question of federal law, 'the federal question can be answered only after considering provisions of state law.' 338 F.3d at 1309. ... To assist in the analysis, the Manders court established the following four-factor test to apply when determining whether an entity is an 'arm of the State' in carrying out a particular function:
>
> > "'(1) [H]ow state law defines the entity; (2) what degree of control the State maintains over the entity; (3) where the entity derives its funds; and (4) who is responsible for judgments against the entity.'
>
> "338 F.3d at 1309."

Ex parte Madison Cty. Bd. of Educ., 1 So. 3d 980, 987 (Ala. 2008). The Madison County Court concluded that "application of the Manders test to the facts before us does not support a finding that the Board has established a right to Eleventh Amendment immunity." 1 So. 3d at 989.

The Madison County Court also noted that the United States Court of Appeals for the Eleventh Circuit in Stewart v. Baldwin County Board of Education, 908 F.2d 1499 (11th Cir.

1990), concluded that the Baldwin County Board of Education was not an arm of the State and therefore was not entitled to Eleventh Amendment immunity. See Stewart, 908 F.2d at 1511. The Madison County Court added that,

> "because § 1983 liability is determined by federal law, and because Stewart, which holds that a board of education is not entitled to Eleventh Amendment immunity, reflects what we understand to be the federal law with regard to the status of a county board of education and its authority to suspend, dismiss, or terminate a teacher, we conclude that the Board, which fulfills the same role for the schools in Madison County as the Baldwin County Board of Education does for the schools in Baldwin County, is also not an arm of the State for the purposes of § 1983 liability and is not entitled to Eleventh Amendment immunity."

1 So. 3d at 989-90.

Just as important, the Eleventh Circuit Court of Appeals has more recently reiterated the same conclusion. After summarizing the decision in Madison County, as well as its own earlier decision in Stewart, the Eleventh Circuit observed:

> "Simply stated, we do not create an incongruous result by adhering to our Stewart decision because the Alabama Supreme Court's Madison County decision agrees with Stewart that, with respect to employment decisions, a local school board in Alabama is not an arm of the state for purposes of Eleventh Amendment immunity."

Walker v. Jefferson Cty. Bd. of Educ., 771 F.3d 748, 756 (11th Cir. 2014). The Walker Court then concluded:

> "Both of the cases before us concern employment-related decisions (i.e., hiring, assignment, and compensation), and under Stewart, 908 F.2d at 1509–11, local school boards in Alabama are not arms of the state with respect to such decisions. Accordingly, the Jefferson County Board of Education and the Madison City Board of Education are not immune under the Eleventh Amendment from suits challenging those decisions under federal law."

771 F.3d at 757.

Perryman's § 1983 claim, like the claims at issue in Madison County and Walker, concerns an employment-related decision, i.e., whether the Board should have removed Smiley from his teaching position before he allegedly assaulted R.M. When making such decisions, the Board and the Board members in their official capacities are not an "arm of the state" under the Eleventh Amendment. Therefore, they are not entitled to Eleventh Amendment immunity for the § 1983 claim asserted against them by Perryman. The circuit court did not err in refusing to dismiss this claim against the Board and the Board

members in their official capacities based on Eleventh Amendment immunity.[4]

The Board members also contend that they are entitled in their individual capacities to federal qualified immunity from the § 1983 claim because, they assert, "there are no allegations in Perryman's complaint, as amended, showing that their conduct was somehow unlawful." Petition, p. 23. More specifically, they argue that "Perryman's complaint fails to identify what constitutional right of student R.M. was violated by the Board members and what specific actions or omissions by the Board members violated such right." Id. at 23-24.

> "'[G]overnment officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or

[4]We note that the Board has not argued that Perryman's suit must fail because she did not allege that a policy or custom of the Board caused a § 1983 violation. See, e.g., Monell v. Department of Soc. Servs. of New York, 436 U.S. 658, 694 (1978) ("[A] local government may not be sued under § 1983 for an injury inflicted solely by its employees or agents. Instead, it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983.").

> constitutional rights of which a reasonable person would have known.'

"Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982). 'Qualified immunity is designed to allow government officials to avoid the expense and disruption of going to trial, and is not merely a defense to liability.' Hardy v. Town of Hayneville, 50 F. Supp.2d 1176, 1189 (M.D. Ala. 1999). 'An official is entitled to qualified immunity if he is performing discretionary functions and his actions do "'not violate clearly established statutory or constitutional rights of which a reasonable person would have known."'" Hardy, 50 F. Supp. 2d at 1189 (quoting Lancaster v. Monroe County, 116 F.3d 1419, 1424 (11th Cir. 1997)).

> "'While the defense of qualified immunity is typically addressed at the summary judgment stage of a case, it may be ... raised and considered on a motion to dismiss. See Chesser v. Sparks, 248 F.3d 1117, 1121 (11th Cir.2001). The motion to dismiss will be granted if the "complaint fails to allege the violation of a clearly established constitutional right." Id. (citing Williams v. Ala. State Univ., 102 F.3d 1179, 1182 (11th Cir. 1997)). Whether the complaint alleges such a violation is a question of law that we review de novo, accepting the facts alleged in the complaint as true and drawing all reasonable inferences in the plaintiff's favor. Id.'

"St. George v. Pinellas County, 285 F.3d 1334, 1337 (11th Cir. 2002) (emphasis added)."

Ex parte Alabama Dep't of Youth Servs., 880 So. 2d 393, 402-03 (Ala. 2003).

In this case, Perryman's § 1983 claim alleges simply that "[t]he Defendants violated various dimensions of the U.S. Constitution and of federal law as they relate to [R.M.], and as set forth in the counts of this complaint."

> "[I]t is not enough to make 'conclusory allegations of a constitutional violation' or to state 'broad legal truisms.' Dartland v. Metropolitan Dade County, 866 F.2d 1321, 1322-23 (11th Cir. 1989). The right must be particularized so that potential defendants are on notice that conduct in violation of that right is unlawful."

Spivey v. Elliott, 29 F.3d 1522, 1527 (11th Cir. 1994).

If Perryman's factual allegations are combined with her legal allegation, a claim can be fashioned that alleges that Smiley, though unprovoked, physically assaulted R.M.; that Smiley had a history of "violent and inappropriate behaviors"; and that the Board members knew or should have known about Smiley's past behavior and yet did nothing "to keep R.M. and other students safe." The difficulty for Perryman is that such a claim still does not specify the constitutional-rights violation at issue.

It may be surmised that Perryman attempted to state an excessive-force claim under the Due Process Clause of the Fourteenth Amendment.

> "The Due Process Clause protects individuals against arbitrary exercises of government power, but 'only the most egregious official conduct can be said to be "arbitrary in the constitutional sense."' County of Sacramento v. Lewis, 523 U.S. 833, 845–46, 118 S.Ct. 1708, 1716, 140 L.Ed.2d 1043 (1998) (quoting Collins v. City of Harker Heights, 503 U.S. 115, 129, 112 S.Ct. 1061, 1071, 117 L.Ed.2d 261 (1992)). To be arbitrary in the constitutional sense, an executive abuse of power must 'shock[] the conscience.' Id. at 846, 118 S.Ct. at 1717. '[T]he constitutional concept of conscience shocking duplicates no traditional category of common-law fault, but rather points clearly away from liability, or clearly toward it, only at the ends of the tort law's spectrum of culpability.' Id. at 848, 118 S.Ct. at 1717. The Due Process Clause does not 'impos[e] liability whenever someone cloaked with state authority causes harm.' Id. '[C]onduct intended to injure in some way unjustifiable by any government interest is the sort of official action most likely to rise to the conscience-shocking level.' Id. at 849, 118 S.Ct. at 1718. Both this Court and the Supreme Court have 'said repeatedly that the Fourteenth Amendment is not a "font of tort law" that can be used, through section 1983, to convert state tort claims into federal causes of action.' Neal ex rel. Neal v. Fulton County Bd. of Educ., 229 F.3d 1069, 1074 (11th Cir. 2000); see also Lewis, 523 U.S. at 848, 118 S.Ct. at 1718."

T.W. ex rel. Wilson v. School Bd. of Seminole Cty., Fla., 610 F.3d 588, 598 (11th Cir. 2010).

It also might be surmised that, by alleging that the Board knew or should have known about Smiley's previous abusive conduct, Perryman sought to establish a causal

connection between the constitutional-rights violation alleged and the conduct of the Board members.

> "'"Supervisor liability [under § 1983] occurs either when the supervisor personally participates in the alleged constitutional violation or when there is a causal connection between actions of the supervising official and the alleged constitutional deprivation. The causal connection can be established when a history of widespread abuse puts the responsible supervisor on notice of the need to correct the alleged deprivation, and he [she] fails to do so. The deprivations that constitute widespread abuse sufficient to notice the supervising official must be obvious, flagrant, rampant, and of continued duration, rather than isolated occurrences."'
>
> "Braddy v. Florida Dep't of Labor & Employment Sec., 133 F.3d 797, 802 (11th Cir. 1998) (quoting Brown v. Crawford, 906 F.2d 667, 671 (11th Cir. 1990) (citations omitted and emphasis added)). Accord George v. McIntosh-Wilson, 582 So. 2d 1058, 1062-63 (Ala. 1991)."

Ex parte Alabama Dep't of Youth Servs., 880 So. 2d at 403.

However, these suppositions are just that -- suppositions -- not articulations of Perryman's actual claim or any arguments she made in the circuit court or to this Court.

Even construed generously, Perryman's § 1983 claim does not allege the violation of a clearly established constitutional right or causally link such a violation to the Board members' conduct, both of which would be required in order to withstand the defense of federal qualified immunity. Accordingly, the Board members are correct that they are entitled to qualified immunity in their individual capacities from Perryman's § 1983 claim.

C. Subject-Matter Jurisdiction Over the Original Complaint

Finally, the Board and the Board members contend that the circuit court lacked subject-matter jurisdiction over the original complaint and that, therefore, the circuit court should have disallowed Perryman's amendments to that complaint and dismissed the action in its entirety. This is so, they say, because in her original complaint Perryman named only the Board and not the Board members as defendants. As we noted in Part A of this analysis, because the Board is a State agency for purposes of Art. I, § 14, Ala. Const. 1901, the Board cannot be sued for damages under state law, as Perryman purported to do in her original complaint. Subsequently, in her first amended complaint, Perryman added the Board members

as defendants in their official and individual capacities, who are amenable to such a suit, and in her second amended complaint Perryman added a federal-law claim against both the Board and the Board members. The Board and the Board members observe that this Court has held that when a State agency is the sole defendant in a complaint, the circuit court in which the complaint is filed lacks subject-matter jurisdiction over the complaint, and the jurisdictional defect cannot be cured by amending the complaint to add parties or claims over which the circuit court would have subject-matter jurisdiction.

A recent example of this scenario occurred in Ex parte Alabama Peace Officers' Standards & Training Commission, [Ms. 1170892, Oct. 26, 2018] ___ So. 3d ___ (Ala. 2018):

> "It is undisputed that the [Alabama Peace Officers' Standards and Training] Commission is an agency of the State of Alabama. As a State agency, the Commission is entitled to absolute immunity under § 14. See Ex parte Alabama Peace Officers' Standards & Training Comm'n, 34 So. 3d 1248, 1251 (Ala. 2009) ('Section 36-21-41, Ala. Code 1975, creates the Alabama Peace Officers' Standards and Training Commission. It is undisputed that the statutorily created Commission is an agency of the State of Alabama.'). Accordingly, the circuit court had no subject-matter jurisdiction over the complaint and, thus, was required to dismiss it in its entirety. As noted, after the Commission moved to dismiss the complaint on the basis of sovereign immunity, Grimmett amended the complaint to add as

> a defendant the Commission's executive secretary in his official capacity. However, because the circuit court never acquired subject-matter jurisdiction over the original complaint naming only the Commission, the amended complaint is also a nullity. See Alabama Dep't of Corr. [v. Montgomery Cty. Comm'n], 11 So. 3d [189] at 193 [(Ala. 2009)] (explaining that '[t]he Commission's original complaint named only the DOC [Department of Corrections] as a defendant. Because the DOC is a State agency, it is, under § 14, absolutely immune from suit. Because the original complaint named only a party that has absolute State immunity, it failed to trigger the subject-matter jurisdiction of the circuit court. Consequently, it was a nullity. The purported amendment of a nullity is also a nullity')."

___ So. 3d at ___. The Board and the Board members contend that the circuit court should have dismissed the original complaint and disallowed the amended complaints on the basis stated in Alabama Peace Officers' Standards & Training Commission.

The problem with this argument is that in every case in which this Court has invoked the proposition relied upon in Alabama Peace Officers' Standards & Training Commission -- starting with Ex parte Alabama Department of Transportation, 978 So. 2d 17, 26 (Ala. 2007) -- the original complaint named only one defendant, and that defendant was a State entity. See, e.g., State Banking Dep't v. Taylor, 40 So. 3d 669, 671

(Ala. 2009); Alabama Dep't of Pub. Safety v. Ogles, 14 So. 3d 121, 125 (Ala. 2009) (noting that, "[i]n the present case, the original class-action complaint filed on February 25, 2005, listed the Department as the sole defendant"); Alabama Dep't of Corr. v. Montgomery Cty. Comm'n, 11 So. 3d 189, 192 (Ala. 2008) (analogizing another case and noting that "this case [like that one] began with a complaint filed solely against a State agency"); and Ex parte Alabama Dep't of Transp., 6 So. 3d 1126, 1128 (Ala. 2008).

Unlike in the above-cited cases, Perryman in her original complaint asserted claims against multiple defendants. Specifically, Perryman named the Board, Jackson, and Smiley as defendants in her original complaint. Perryman's original complaint invoked the jurisdiction of the circuit court by asserting cognizable claims against those individual defendants. See Ex parte Seymour, 946 So. 2d 536, 538 (Ala. 2006) (observing that "[s]ubject-matter jurisdiction concerns a court's power to decide certain types of cases"). The fact that the original complaint also named the Board as a defendant does not mean that the circuit court had to dismiss the complaint, and therefore the case as a whole, when the

Board filed its motion to dismiss the original complaint. Even though the circuit court should have granted the Board's first motion to dismiss the negligence claim against it, such a judgment would not have resulted in dismissal of the case because claims remained pending against Jackson and Smiley. Therefore, no jurisdictional impediment existed to prevent Perryman from amending her complaint to name the Board members as defendants and subsequently to assert a federal claim against the Board and the Board members.

IV. Conclusion

Based on the foregoing, we conclude that the Board and the Board members in their official capacities are entitled to § 14 immunity from the state-law claims asserted against them, that the Board members in their individual capacities are entitled to State-agent immunity from any state-law claims asserted against them, and that the Board members in their individual capacities are entitled to qualified immunity from the § 1983 claim asserted against them. Therefore, the circuit court should have dismissed Perryman's claims with respect to those parties, and to that extent the petition is granted. However, the Board and the Board members in their

official capacities are not entitled to Eleventh Amendment immunity from the § 1983 claim asserted against them, and the petition is denied with respect to Perryman's § 1983 claim against the Board and the Board members in their official capacities.

PETITION GRANTED IN PART AND DENIED IN PART; WRIT ISSUED.

Parker, C.J., and Bolin, Shaw, Wise, Bryan, Sellers, Stewart, and Mitchell, JJ., concur.