Rel: February 19, 2021

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2020-2021

1190547

Chris Moore and Suzanne Moore, as parents and next friends of Sydney Moore, a minor

v.

Pamela Tyson and Jennifer Douthit

Appeal from Madison Circuit Court
(CV-19-900638)

STEWART, Justice.

Chris Moore and Suzanne Moore, as parents and next friends of Sydney Moore, a minor, appeal from a summary judgment entered by the

Madison Circuit Court ("the trial court") in favor of Pamela Tyson and Jennifer Douthit, two employees of the Huntsville City Board of Education ("the Board"), with regard to negligence and wantonness claims asserted against Tyson and Douthit by the Moores arising from injuries suffered by Sydney at her elementary school. We affirm.

Facts and Procedural History

On May 21, 2018, Tyson was employed by the Board as a teacher at Goldsmith-Schiffman Elementary School ("the school"), Douthit was employed as the principal of the school, and Sydney was enrolled at the school as a third-grade student in Tyson's class. Tyson left the students unsupervised in the classroom while she went to the restroom. During that time, Sydney and another student in the class left their seats, and, according to Sydney, the other student caused her to fall and hit her head and face on a counter in the classroom.[1] Sydney suffered injuries from her fall, including fractures of her left orbital bone, her eye socket, and her

[1]The Moores often refer to the other student as a "special needs student." The record indicates, however, that Tyson's class was not a special-needs class and that Tyson was not a special-needs teacher.

nose and entrapment of her eye. Sydney was admitted for treatment at a hospital and underwent surgery as a result of the injuries.

The Moores sued Tyson, "in her individual and official capacities," along with the student who allegedly caused Sydney's injuries and fictitiously named defendants, alleging claims of negligence and wantonness. The Moores alleged that Tyson had breached her duty to supervise her students by leaving them unsupervised in the classroom. Tyson filed an answer and asserted, among other things, that she was immune from suit.

The Moores filed an amended complaint in which they added Douthit, "in her individual and official capacities," as a defendant. The Moores asserted that Douthit had breached a nondiscretionary duty to implement policies and procedures that would ensure that teachers at the school were provided a daily 30-minute break from supervisory and instructional duties and that she should have known that the failure to provide such a break would create a significant risk that teachers would leave their students unsupervised. The trial court approved a pro ami settlement between the Moores and the student who allegedly caused

Sydney's injuries, and that student was dismissed as a defendant from the action.

As explained in more detail below, the Moores' claims were based on their allegations that Tyson and Douthit had violated provisions contained in the Huntsville City Board of Education Policy Manual ("the policy manual") and certain SafeSchools training videos ("the SafeSchools videos").

Tyson filed a summary-judgment motion to which she attached several exhibits. In February 2020, Douthit also filed a motion for a summary judgment, incorporating by reference the numerous evidentiary exhibits submitted by Tyson in support of her summary-judgment motion. Tyson and Douthit argued that, pursuant to Article I, § 14, Ala. Const. of 1901 (Off. Recomp.), they were entitled to immunity from suit in both their individual capacities and their official capacities. Tyson and Douthit also argued that the Moores' claims against them in their individual capacities were barred by the immunity provided under § 36-1-12(c), Ala. Code 1975, and the principles of state-agent immunity set forth in Ex

parte Cranman, 792 So. 2d 392, 405 (Ala. 2000)(plurality opinion), and adopted by the Court in Ex parte Butts, 775 So. 2d 173, 178 (Ala. 2000).

Tyson and Douthit provided, among other evidence, affidavit testimony in support of their summary-judgment motions. In her affidavit, Douthit testified, among other things:

> "9. I have not received and am otherwise unaware of any detailed policy or rule promulgated by the Alabama Department of Education, the Board, or any other entity that dictates the manner in which teachers are to supervise their students. As such, I have never provided the faculty and staff at [the school] with any written guidelines, policies, and/or rules regarding the manner in which they are to supervise their students.
>
> "10. Instead, teachers at [the school] are expected to use their discretion based upon their training and experience to determine how to effectively supervise their students in any given circumstance or situation.
>
> "11. Classroom teachers such as Ms. Tyson have daily schedules which are created pursuant to my direction. Attached to this affidavit as Exhibit A is a true and accurate copy of Ms. Tyson's daily schedule for the 2017-2018 school year. Ms. Tyson's students went to Physical Education (P.E.) class each day from 9:35 a.m. to 10:15 a.m., a total of 40 minutes. Classroom teachers such as Ms. Tyson do not attend or participate in P.E. class, but rather leave their students with the P.E. teacher in the school gymnasium. During the 40 minutes that Ms. Tyson's students attend P.E., Ms. Tyson has no supervisory or instructional duties. Teachers, including Ms.

Tyson, have the discretion to use this 40 minute time period for a variety of tasks or functions, including using the restroom. This 40 minute period exceeds the '30 minutes free of instructional and supervisory responsibilities' discussed in my deposition. I did not impose any policy, rule, or procedure that kept teachers from using this 40 minutes free of instructional and supervisory responsibilities. However, I misspoke in my deposition when I said that teachers always supervise their students. While the teacher is the one who must record grades, attendance, discipline, etc., when a teacher's class is at P.E., the P.E. teacher supervises the class, not the teacher himself/herself. When I said 'the kids are still under their supervision,' I meant for recording grades, attendance, discipline, etc. and not direct classroom supervision.

"12. I have never instructed Ms. Tyson or any other teacher at [the school] that they could not use the restroom while their class was at P.E.

"13. I have never instructed teachers at [the school] that they need to always be in the physical presence of a student in order to be properly supervising the student.

"14. I have never promulgated any rule or procedure or otherwise provided any specific instruction or training to the teachers at [the school] on whether or when a teacher may leave a classroom without another adult present.

"15. I have no knowledge of any written policy or rule promulgated by the State of Alabama, the Board, or any other entity that prohibits a teacher from leaving a classroom without another adult present in order to use the restroom.

"16. A teacher at [the school] is not required to request that another adult or staff member be present in the teacher's classroom while the teacher goes to the restroom.

"17. Ms. Tyson has the discretion to determine whether she may leave the classroom without another adult present to use the restroom.

"18. A teacher has the discretion to leave a classroom without another adult present without necessarily violating the policy requiring 'effective supervision.'

"19. As an administrator, I am familiar with Safe Schools training. The training provided by Safe Schools is meant to serve as professional development for the staff and to be helpful maintaining safety in schools. However, the advice provided in Safe Schools professional development videos is not intended to serve as mandatory directives for the teachers. The mandatory directives for the teachers come from the law, Board policy, or from their supervisors, but not from professional development or training from outside entities.

"20. There are a number of videos in the Safe Schools library. However, employees are not directed to review all videos in the library for their professional development. Rather, specific videos are chosen by Board administrators in the Central Office to be assigned to certain employees. Not all employees are assigned the same videos. The Board tracks which videos are assigned and reviewed by each employee. Attached to this affidavit as Exhibit B is a list of all Safe Schools videos assigned to me for professional development. I do not recall ever being assigned the videos entitled 'Administrative Supervision of Students,' 'Manager Role in Safety and Liability,' or 'Special Education Safety in the

> Classroom.' None of these videos appear in my training history.
>
> "21. As a result of my education, certification, training and experience, I am familiar with the standards of care required of school administrators in Madison County and in the State of Alabama."

In her affidavit, Tyson testified, among other things, that she was not aware of a rule or regulation prohibiting her from leaving students in the classroom without another adult present and that she had never been instructed or advised that she was required to secure the presence of another adult before she could leave students in the classroom. Tyson further testified that it was within her discretion as a teacher to decide whether and when to leave the classroom without another adult present. Tyson also testified that she had never been informed of a specific definition of "effective supervision," a term used in the policy manual. Tyson testified that the SafeSchools videos were intended as professional-development resources for teachers and that she had never been directed to review all the SafeSchools videos. More particularly, Tyson testified that the Board assigns specific videos to certain teachers, that the Board keeps a record of those assignments, and that Tyson did "not recall ever

being assigned the videos entitled 'Administrative Supervision of Students,' 'Manager Role in Safety and Liability,' or 'Special Education Safety in the Classroom' " -- the videos relied upon by the Moores. Tyson attached as an exhibit to her affidavit the Board's record of the SafeSchools videos assigned to her, which supported her assertion that she had not been assigned the aforementioned videos. Tyson also testified that she received 40 minutes each day free of instructional and supervisory duties while her students attended physical-education class and that she was not aware of any policy providing teachers with "break time."

The Moores filed responses in opposition to both Tyson's and Douthit's summary-judgment motions. In support of their responses, the Moores attached as exhibits, among other evidence, excerpted deposition testimony and the policy manual. The pertinent portions of the policy manual relied upon by the Moores state that employees "must provide effective supervision, discipline, organization, and instruction of the students"; that "[s]upervisory and instructional duties for teachers commence a minimum of fifteen (15) minutes prior to the actual arrival

and conclude fifteen (15) minutes after the departure of students"; and that "[t]eachers will be provided a minimum of thirty (30) minutes free of instructional and supervisory responsibilities each instructional day." The Moores also submitted screenshots from certain SafeSchools videos. In particular, one SafeSchools video was entitled "Special Education: Safety in the Classroom: Everyday Safety" and stated: "You should maintain visual and audio contact with other staff members at all times, and ALWAYS check with other staff before leaving the area." (Capitalization in original.) Another SafeSchools video the Moores submitted was entitled "Manager's Role in Safety and Liability: General Liability Concerns in Schools" and stated: "School personnel should supervise students in the classroom to ensure that they act appropriately and are not doing things that could be harmful, such as standing on desks or fighting with others."

The trial court entered a summary judgment in favor of Tyson and Douthit. The Moores appealed.

Standard of Review

> " ' "We review a summary judgment de novo." Potter v. First Real Estate Co., 844 So. 2d 540, 545 (Ala. 2002) (citation omitted). "Summary judgment is appropriate only when 'there is no genuine issue as to any material fact and ... the moving

party is entitled to a judgment as a matter of law.' " Ex parte Rizk, 791 So. 2d 911, 912 (Ala. 2000) (citations omitted).' "

Hollis v. City of Brighton, 950 So. 2d 300, 303–04 (Ala. 2006).

Discussion

I. State-agent Immunity

As this Court recently explained,

" ' "[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 ... exercising judgment in the discharge of duties imposed by statute, rule, or regulation in ... educating students.' " Ex parte Butts, 775 So. 2d 173, 177-78 (Ala. 2000)(quoting Ex parte Cranman, 792 So. 2d 392, 405 (Ala. 2000), and adopting the Cranman test for determining State-agent immunity). We have also explained that 'educating students' encompasses 'not only classroom teaching, but also supervising and educating students in all aspects of the educational process.' Ex parte Trottman, 965 So. 2d 780, 783 (Ala. 2007). ...

"Once a State agent meets his or her initial burden of 'demonstrating that the plaintiff's claims arise from a function that would entitle the State agent to immunity' '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.' Ex parte Estate of Reynolds, 946 So. 2d 450, 452 (Ala. 2006)(citing Giambrone v. Douglas, 874 So. 2d 1046, 1052 (Ala. 2003), and Ex parte Wood, 852 So. 2d 705, 709 (Ala. 2002)). ' "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.' " ' Reynolds, 946 So. 2d at 452 (quoting Giambrone, 874 So. 2d at 1052, quoting in turn Ex parte Butts, 775 So. 2d at 178)."

Edwards v. Pearson, [Ms. 1180801, May 22, 2020] ___ So. 3d ___, ___ (Ala. 2020).

It is undisputed that Tyson and Douthit were " 'exercising judgment in the discharge of duties imposed by statute, rule, or regulation in ... educating students,' " Ex parte Butts, 775 So. 2d at 178 (quoting Ex parte Cranman, 792 So. 2d at 405), and, therefore, generally would be entitled to State-agent immunity. The question for our resolution is whether the Moores met their burden of showing that Tyson and Douthit "acted willfully, maliciously, fraudulently, in bad faith, or beyond [their] authority." Ex parte Estate of Reynolds, 946 So. 2d 450, 452 (Ala. 2006).

A. Tyson

The Moores assert that Tyson acted beyond the scope of her authority by violating the policy manual and provisions in the SafeSchools videos. Tyson argues that there is no policy specifically prohibiting a teacher from leaving a classroom unattended and that neither the policy manual nor the SafeSchools videos constitute detailed binding rules that

removed Tyson's discretion to leave the classroom without an adult present. Tyson further asserts that the undisputed evidence concerning the applicability of the SafeSchools videos demonstrated that they were for the purpose of professional development, that not all the videos were assigned to each employee, and that Tyson was never assigned the videos referenced by the Moores.

The Moores argue that Tyson violated the policy manual by failing to provide "effective supervision" and that, "[b]y taking a break separate and apart from her 30 minutes of guaranteed break time ... Tyson abandoned her supervisory duties and her duty to protect her students." The Moores' brief at p. 34.

Tyson argues that the policy requiring "effective supervision" is broad and not the type of detailed rule or regulation that would remove a teacher's discretion in deciding the manner in which to supervise students. In support, Tyson points to Douthit's testimony that the "effective supervision" requirement did not prohibit Tyson from leaving the classroom without an adult present. Tyson further argues that the portion of the policy manual imposing supervisory duties on teachers from

15 minutes before school begins until 15 minutes after school ends, except for a 30-minute period when no supervisory or instructional duties are imposed, is not a detailed rule or regulation that Tyson violated. Tyson asserts that that policy does not support the Moores' contention that Tyson was required to be physically present in the classroom at all times. Tyson also points to Douthit's testimony that there was no rule imposed by the Board or by school administrators that prohibited a teacher from leaving a classroom unattended, and, Tyson further asserts, the Moores did not provide evidence to dispute Douthit's testimony.

The Moores next argue that the SafeSchools videos restricted Tyson's discretion in supervising students because, they say, those videos provided specific instructions to teachers regarding how to supervise students. In particular, the Moores rely on the statement from a SafeSchools video that teachers "should maintain visual and audio contact with other staff members at all times, and ALWAYS check with other staff before leaving the area." (Capitalization in original.) As explained above, that statement is contained in the SafeSchools video entitled "Special Education: Safety in the Classroom: Everyday Safety." There is no

evidence to demonstrate that Tyson is a special-education teacher, that she had a special-education classroom, or that she had been directed to view that video. Furthermore, that statement specifically pertains to special-education teachers' interaction with other staff members; it does not apply to the supervision of students. The Moores also rely on the statement from another SafeSchools video that "personnel should supervise students in the classroom to ensure that they act appropriately and are not doing things that could be harmful, such as standing on desks or fighting with others." As noted above, that statement is contained in a video entitled "Manager's Role in Safety and Liability: General Liability Concerns in Schools," and there is no evidence to indicate that Tyson is in a management position or that she was ever directed to view that SafeSchools video. The Moores did not present any evidence to controvert Tyson's or Douthit's testimony or to otherwise demonstrate that the information contained in the SafeSchools videos constituted binding, mandatory rules or guidelines imposed on Tyson. Although the Moores rely on deposition testimony from Douthit in which she stated that it was her understanding that the training through the SafeSchools program is

mandatory, as explained above Douthit's testimony indicated that the Board assigned specific videos or training to particular employees. Additionally, the videos relied on by the Moores are applicable to special-education teachers and managers, and Tyson is neither.

The Moores assert that the provisions of the policy manual and the SafeSchools videos are similar to the "guidelines" at issue in Giambrone v. Douglas, 874 So. 2d 1046 (Ala. 2003). In Giambrone, a student-athlete was injured in a wrestling match with the coach of his wrestling team. The student asserted that the coach had violated certain rules that had been promulgated regarding high-school athletic programs. The evidence indicated that the local school board had not adopted those rules. This Court determined, however, that the athletic director of the school had furnished those rules to the coach and had specifically required the coach to adhere to those rules. Therefore, this Court held, the coach's discretion was curtailed by those specific, mandatory rules and, as a result, he was not entitled to State-agent immunity. Giambrone, 874 So. 2d at 1054. The student had also sued the athletic director and the principal of his school, this Court determined that the athletic director and the principal were

free to exercise their discretion regarding how to supervise personnel, how to choose a wrestling coach, and what safety measures to require at practices because the school board had not adopted any guidelines or rules addressing those issues. Id. at 1055. In this case, as explained above, the Moores put forth no evidence to demonstrate that the statements contained in the policy manual and the SafeSchools videos upon which they base their claims are detailed, mandatory rules applicable to Tyson like those applicable to the coach in Giambrone.

The Moores also assert that the statements in the SafeSchools videos are analogous to the school policy examined by this Court in Ex parte Ingram, 229 So. 3d 220 (Ala. 2017), a case in which, they assert, this Court "denied state agent immunity." The Moores' brief at p. 36. In Ex parte Ingram, this Court did not "deny" immunity to the teacher; instead, we declined to overrule a trial court's denial of a teacher's summary-judgment motion based on immunity because there was conflicting evidence as to whether the teacher was entitled to immunity. More importantly, the policy at issue in Ex parte Ingram specifically stated that a student " 'should never be left unattended in the classroom or locke[r]

rooms. There are no exceptions.' " 229 So. 3d at 224. As explained above, the Moores have not put forth any similarly specific rules or mandatory guidelines applicable in this case that would remove Tyson's discretion in supervising her students.

Furthermore, this Court has recognized the importance of taking into account real-world situations when a teacher is tasked with the supervision of students. As this Court previously explained in holding that a teacher's "mere absence from class" was not "a breach of the duty of reasonable supervision":

> "The question whether certain conduct amounts to 'reasonable supervision' and whether supervision would have prevented the injury complained of is, of course, a question that must be answered on a case by case basis. However, it must always be remembered that the reality of school life is such that a teacher can not possibly be expected to personally supervise each student in his charge at every moment of the school day."

Stevens v. Chesteen, 561 So. 2d 1100, 1103 (Ala. 1990).

There is no detailed rule or regulation that prohibited Tyson from leaving the students in her classroom unattended in order to use the restroom. The statements from the policy manual and the SafeSchools

videos submitted by the Moores are "general statements" and "are not the type of 'detailed rules or regulations' that would remove [Tyson's] judgment in the performance of required acts." Ex parte Spivey, 846 So. 2d 322, 333 (Ala. 2002)(quoting Ex parte Butts, 775 So. 2d at 178). The Moores have failed to demonstrate that Tyson acted beyond her authority, and, accordingly, the trial court correctly entered a summary judgment in favor of Tyson on the basis that State-agent immunity barred the Moores' claims against her in her individual capacity.

B. Douthit

The Moores' argument in their brief discussing why they believe Douthit is not entitled to State-agent immunity is sparse. The Moores assert that Douthit violated the policy manual by failing to provide teachers a minimum of 30 minutes a day free of instructional and supervisory duties. In support of their assertion, the Moores rely on Douthit's testimony that she had not implemented procedures to ensure that a teacher receives a 30-minute break each day, that there was no guarantee that a teacher would receive 30 minutes of daily break time, and that teachers were not required to check in with school

administrators before leaving students unsupervised. Throughout their brief, the Moores routinely refer to the 30-minute period referenced in the policy manual as "breaktime," but the policy manual does not refer to it as such. Specifically, the policy manual states: "Teachers will be provided a minimum of thirty (30) minutes free of instructional and supervisory responsibilities each instructional day." It was undisputed that Tyson received 40 minutes each day free of supervisory and instructional duties while her students attended physical-education class. The Moores have not demonstrated that Douthit violated the provision in the policy manual requiring that teachers receive 30 minutes free of supervisory and instructional duties.

The Moores also assert that the SafeSchools videos "placed explicit limitations on Douthit's discretion to allow her teachers to leave classrooms unsupervised." The Moores' brief at pp. 45-46. The Moores, however, do not state what provision of the SafeSchools videos "placed" those alleged limitations or otherwise explain how those videos applied to Douthit.

Finally, the Moores do not support their assertions that Douthit is not entitled to State-agent immunity with sufficient authority or argument, and, as a result, this Court declines to further address those assertions. See Dykes v. Lane Trucking, Inc., 652 So. 2d 248, 251 (Ala. 1994)(citing Spradlin v. Spradlin, 601 So. 2d 76 (Ala. 1992))("We have unequivocally stated that it is not the function of this Court to do a party's legal research or to make and address legal arguments for a party based on undelineated general propositions not supported by sufficient authority or argument."). Accordingly, we hold that the trial court did not err in entering a summary judgment in favor of Douthit on the basis that State-agent immunity barred the Moores' claims against her in her individual capacity.

II. Article I, § 14 Immunity

We first address the Moores' claims asserted against Tyson and Douthit in their official capacities. In Ex parte Montgomery County Board of Education, 88 So. 3d 837 (2012), Elaine L. Guice, a third-grade teacher, and others were sued by the mother of one of Guice's students after the student was injured while going to the restroom unattended. The mother

asserted claims of negligence and wantonness against Guice. In holding that Guice and others were immune under Article I, § 14, insofar as they had been sued in their official capacities, this Court stated:

> "The Board members and Guice ... contend that they enjoy immunity under § 14 for the claims asserted against them in their official capacities. The Board members and Guice are correct. See [Ex parte] Bessemer Bd. of Educ., 68 So. 3d [782] at 789 [(Ala. 2011)] (' "Not only is the State immune from suit under § 14, but '[t]he State cannot be sued indirectly by suing an officer in his or her official capacity.' " ' (quoting Alabama Dep't of Transp. v. Harbert Int'l, Inc., 990 So. 2d 831, 839 (Ala. 2008))); and Ex parte Dangerfield, 49 So. 3d 675, 681 (Ala. 2010) (holding that all claims against a State official in his or her official capacity seeking damages are barred by the doctrine of immunity). 'This Court has held that the immunity afforded the State by § 14 applies to instrumentalities of the State and State officers sued in their official capacities when such an action is effectively an action against the State. Lyons v. River Road Constr., Inc., 858 So. 2d 257, 261 (Ala. 2003).' Vandenberg v. Aramark Educ. Servs., Inc., 81 So. 3d 326, 332 (Ala. 2011). 'It is settled beyond cavil that State officials cannot be sued for damages in their official capacities. Burgoon v. Alabama State Dep't of Human Res., 835 So. 2d 131, 132-33 (Ala. 2002).' Ex parte Dangerfield, 49 So. 3d at 681. Therefore, because the claims against the Board members and Guice in their official capacities are barred by Art. I, § 14, Ala. Const. 1901, the motion for a summary judgment as to them in their official capacities was due to be granted."

88 So. 3d at 842. Likewise, in this case, the claims asserted against Tyson and Douthit in their official capacities are barred by Article I, § 14.

The Moores also assert in their brief that neither Tyson nor Douthit is entitled to § 14 immunity as to the claims asserted against them in their individual capacities. The Moores argue that Ex parte Cranman "decline[d] to label all discretionary acts by an agent of the State, or all acts by such an agent involving skill or judgment, as 'immune' simply because the State has empowered the agent to act." The Moores' brief at p. 18. The Moores argue that Barnhart v. Ingalls, 275 So. 3d 1112 (Ala. 2018), and Ex parte Wilcox County Board of Education, 279 So. 3d 1135 (Ala. 2018),which Tyson and Douthit relied upon in their summary-judgment motions, are distinguishable from the present case. We need not consider this argument, however, because we are affirming the summary judgment as to the individual-capacity claims based on our holding that Tyson and Douthit are entitled to State-agent immunity. See Liberty Nat'l Life Ins. Co. v. University of Alabama Health Servs. Found., P.C., 881 So. 2d 1013, 1020 (Ala. 2003)(explaining that an appellate court can affirm a

trial court's judgment based on "any valid legal ground presented by the record").

Conclusion

The Moores have not demonstrated that the trial court erred in entering a summary judgment in favor of Tyson and Douthit based on immunity. Accordingly, we affirm the trial court's summary judgment.

AFFIRMED.

Parker, C.J., and Bolin, Wise, and Sellers, JJ., concur.