Rel: 02/26/2016

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2015-2016

1150029

Ex parte Cathy Trimble and Ida Longmire

PETITION FOR WRIT OF MANDAMUS

(In re: Crystal Lewis, individually and by and through her mother and next friend, Mary Lewis

v.

Perry County Board of Education et al.)

(Perry Circuit Court, CV-12-900067)

MAIN, Justice.

Cathy Trimble and Ida Longmire petition this Court for a writ of mandamus directing the Perry Circuit Court to enter a

summary judgment in their favor on certain claims asserted against them by Crystal Lewis, individually and by and through her mother and next friend, Mary Lewis. We grant their petition and issue the writ.

I. Facts and Procedural History

In October 2012, Crystal was a 12th-grade student at Francis Marion High School, a school within the Perry County public-school system. The school system is covered by Section 504 of the Rehabilitation Act, 29 U.S.C. § 794 ("the Act"). That Act generally requires a school district to provide reasonable accommodations to assist any child deemed to have a "disability" as that term is defined by the Act. Crystal has a medical condition that required the Perry County public-school system to provide her with certain special accommodations.

Longmire is an English teacher at Francis Marion High School and also served as committee-member secretary for the school's Section 504 special-accommodations meetings. In October 2012, Longmire prepared an updated report of the special accommodations required by Section 504. The report was intended to inform particular teachers of the 504

accommodations for specific students. Longmire placed a copy of the report in sealed envelopes, which were to be hand delivered to the teachers.

On October 16, 2012, Longmire contacted Trimble, who was then the acting principal at Francis Marion High School. Longmire asked Trimble about distributing the envelopes containing the 504-accommodation information. Trimble assigned a student office aide the task of delivering the envelopes to the teachers. Longmire gave the aide the sealed envelopes with specific instructions to hand deliver them to the teachers whose names were on the outside of each envelope.

Rather than delivering the envelopes as instructed, the student office aide opened one of the sealed envelopes and read about Crystal's medical condition. She shared that information about Crystal's medical condition with other students.

On December 11, 2012, Crystal, individually and by and through her mother and next friend, Mary Lewis, commenced this action against Longmire, Trimble, the student office aide, the Perry County Board of Education, "Francis Marion High School," and other school administrators. In her complaint, Crystal

alleged that she has faced ridicule, harassment, and bullying as a result of the dissemination of her confidential medical information. She asserted claims of negligence, wantonness, nuisance, breach of contract, and invasion of privacy against each defendant and claims of negligent hiring, training, and supervision against all the defendants except the student office aide and Longmire. Following a period of discovery, Longmire and Trimble moved for a summary judgment on the ground that they were entitled to State-agent immunity as to all claims asserted against them by Crystal. On August 31, 2015, the trial court entered an order denying Longmire and Trimble's motion for a summary judgment, concluding that there was a genuine issue of material fact as to whether Longmire and Trimble had violated a written policy concerning the confidentiality of student records..[1] Longmire and Trimble then filed this petition for a writ of mandamus.

II. Standard of Review

> "'"While the general rule is that the denial of a motion for summary judgment is not reviewable, the exception is that the denial of a motion grounded on a claim of immunity is reviewable by petition for writ

[1]The trial court subsequently entered a summary judgment as to all the other defendants except the student office aide.

> of mandamus. Ex parte Purvis, 689 So. 2d 794 (Ala. 1996) ....
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> "'"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.' Rule 56(c)(3), Ala. R. Civ. P., Young v. La Quinta Inns, Inc., 682 So. 2d 402 (Ala. 1996). A court considering a motion for summary judgment will view the record in the light most favorable to the nonmoving party, Hurst v. Alabama Power Co., 675 So. 2d 397 (Ala. 1996), Fuqua v. Ingersoll-Rand Co., 591 So. 2d 486 (Ala. 1991); will accord the nonmoving party all reasonable favorable inferences from the evidence, Fuqua, supra, Aldridge v. Valley Steel Constr., Inc., 603 So. 2d 981 (Ala. 1992); and will resolve all reasonable doubts against the moving party, Hurst, supra, Ex parte Brislin, 719 So. 2d 185 (Ala. 1998).
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> "'"An appellate court reviewing a ruling on a motion for summary judgment will, de novo, apply these same standards applicable in the trial court. Fuqua, supra, Brislin, supra. Likewise, the appellate court will consider only that factual material available of record to the trial court for its consideration in deciding the motion. Dynasty Corp. v. Alpha Resins Corp., 577 So. 2d 1278 (Ala. 1991), Boland v. Fort Rucker Nat'l Bank, 599 So. 2d 595 (Ala. 1992), Rowe v. Isbell, 599 So. 2d 35 (Ala. 1992)."'

"Ex parte Turner, 840 So. 2d 132, 135 (Ala. 2002) (quoting Ex parte Rizk, 791 So. 2d 911, 912-13 (Ala. 2000)). A writ of mandamus is an extraordinary remedy available only when the petitioner can

> demonstrate: '"(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 Nall, 879 So. 2d 541, 543 (Ala. 2003) (quoting Ex parte BOC Group, Inc., 823 So. 2d 1270, 1272 (Ala. 2001))."

Ex parte Yancey, 8 So. 3d 299, 303-04 (Ala. 2008).

III. Analysis

Trimble and Longmire contend that they are entitled to State-agent immunity as to the claims asserted against them by Crystal. They argue that Crystal's claims arise out of their performance of official duties as employees of the Perry County Board of Education and from their exercise of discretion in distributing 504-accommodation information to teachers.

In Ex parte Cranman, 792 So. 2d 392 (Ala. 2000),[2] we stated:

> "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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> "(1) formulating plans, policies, or designs; or

[2]Although Cranman was a plurality opinion, the test set forth in Cranman was subsequently adopted by a majority of the Court in Ex parte Butts, 775 So. 2d 173, 178 (Ala. 2000).

"(2) exercising his or her judgment in the administration of a department or agency of government, including, but not limited to, examples such as:

"(a) making administrative adjudications;

"(b) allocating resources;

"(c) negotiating contracts;

"(d) hiring, firing, transferring, assigning, or supervising personnel; or

"(3) discharging duties imposed on a department or agency by statute, rule, or regulation, insofar as the statute, rule or regulation prescribes the manner for performing the duties and the State agent performs the duties in that manner; or

"(4) exercising judgment in the enforcement of the criminal laws of the State, including, but not limited to, law-enforcement officers' arresting or attempting to arrest persons; or

"(5) exercising judgment in the discharge of duties imposed by statute, rule, or regulation in releasing prisoners, counseling or releasing persons of unsound mind, or educating students.

"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."

792 So. 2d at 405.

> "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).

Additionally, as this Court has stated:

> "'State-agent immunity protects agents of the State in their exercise of discretion in educating students. We will not second-guess their decisions.' Ex parte Blankenship, 806 So. 2d 1186, 1190 (Ala. 2000). However, '[o]nce it is determined that State-agent immunity applies, State-agent immunity is withheld upon a showing that the State agent acted willfully, maliciously, fraudulently, in bad faith, or beyond his or her authority. [Ex

> parte] Cranman, 792 So. 2d [392,] at 405 [(Ala. 2000)].' Ex parte Bitel, 45 So. 3d 1252, 1257-58 (Ala. 2010)."

N.C. v. Caldwell, 77 So. 3d 561, 566 (Ala. 2011).

Crystal does not contest whether her claims arise out of Longmire's and Trimble's exercise of "a function that would entitle the state agent[s] to immunity." Reynolds, 946 So. 2d at 452. Rather, Crystal argues that there is a genuine issue of material fact as to whether Longmire and Trimble acted beyond their authority by allegedly violating the Perry County Board of Education's policy on confidentiality of student records. That policy provides:

> "The principal is the legal custodian of student records. Student records are confidential and information other than 'directory information' will not be released without the consent of the parent/guardian or student 18 years of age or older, or otherwise allowed by law."

Crystal contends that Longmire's and Trimble's entrustment of Crystal's confidential information to a student office aide violated this policy. Thus, she argues that Longmire and Trimble exceeded their authority and are not entitled to State-agent immunity. We disagree.

Nothing in the materials before us suggests that Longmire and Trimble acted beyond their authority. It was necessary

for Longmire and Trimble to distribute the 504-accommodation information regarding students to the teachers to whom that information was applicable. They chose to distribute the information by hand delivering a sealed envelope addressed to each teacher affected by the 504-accommodation information in their respective classrooms by a student office aide. The use of a student office aide in this manner was not prohibited by any detailed policy, rule, or procedure. See, e.g., Ex parte Spivey, 846 So.2d 322, 333 (Ala. 2002) (holding that general responsibility to ensure safety in classroom was not the type of "detailed rules or regulations" that would remove a State agent's judgment on the performance of required acts). Moreover, it is undisputed that Longmire and Trimble did not expect the student office aide to open and read the material enclosed in the sealed envelope. Accordingly, we conclude that Longmire and Trimble did not act "willfully, maliciously, fraudulently, in bad faith, or beyond [their] authority." Therefore, they are entitled to State-agent immunity as to Crystal's claims against them.

IV. Conclusion

Because Longmire and Trimble are entitled to State-agent immunity, they have a "clear legal right" to a summary

judgment in their favor. The trial court is ordered to vacate its order denying the motion for a summary judgment filed by Longmire and Trimble and to enter a summary judgment in their favor.

PETITION GRANTED; WRIT ISSUED.

Stuart, Bolin, Parker, Shaw, and Wise, JJ., concur.

Murdock and Bryan, JJ., concur in the result.

Moore, C.J., dissents.

MURDOCK, Justice (concurring in the result).

The third of various categories of immune conduct described in Ex parte Cranman, 792 So. 2d 392, 405 (Ala. 2000), is discharging duties in accordance with a rule or regulation that prescribes the manner for performing those duties. Unfortunately, decisions of this Court have seized upon the converse of this circumstance as an exception to immunity that not only prevents the actor from qualifying for protection under this third category, but deprives the actor of protection under any category of Cranman immunity. See, e.g., Ex parte Lawley, 38 So. 3d 41, 49-50 (Ala. 2009) (Murdock, J., concurring specially).

Viewed from a different angle, the "beyond-authority" exception was not intended to apply whenever, or merely because, there is a departure from one of the rules or regulations described in the third Cranman category. Thus, I do not believe that this exception is correctly explained by the following statement from Giambrone v. Douglas, 874 So. 2d 1046, 1052 (Ala. 2003), quoted and applied by the main opinion in this case: "'"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.'"'" ___ So. 3d at ___ (quoting Ex parte Estate of Reynolds, 946 So. 2d 450, 452 (Ala. 2006), quoting in turn Giambrone v. Douglas, 874 So. 2d at 1052). See Ex parte Monroe Cty. Bd. of Educ., 48 So. 3d 621, 630 (Ala. 2010) (Murdock, J., concurring in part and dissenting in part); N.C. v. Caldwell, 77 So. 3d 561, 570 (Ala. 2011) (Murdock, J., dissenting); and Ex parte Lawley, 38 So. 3d 41, 49-50 (Ala. 2009) (Murdock, J., concurring specially).

> "Obviously, in one sense, no State employee is 'authorized' to violate any applicable regulation, federal or state, or to disregard appropriate instructions from a supervisor. Must we not be circumspect, however, in concluding that merely because an employee fails to follow a requirement of a regulation or all the instructions given to him or her in a memorandum from a supervisor, the employee, insofar as a third party is concerned, has acted beyond his or her authority as an official or employee of the agency or department involved? If that is the sense in which we are to address the matter, then would we not be obliged to say that an employee told by his or her supervisor always to refrain from any tortious conduct vis-à-vis third parties will be acting beyond the employee's authority whenever he or she does otherwise? Indeed, a directive from a supervisor to this effect would not even be necessary because, in this sense, an employee never has the authority to act tortiously toward others.
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> "... I fear that the manner in which this Court has begun to apply the 'beyond authority' exception to State-agent immunity does not allow for the drawing on a principled basis of a line that prevents this exception (which increasingly is the

> subject of our State-agent-immunity cases) from becoming an exception that swallows the rule.
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> "... The Restatement [(Second) of Torts § 895D (1979)] ... provides the following insight as to what is meant when we speak of an employee acting beyond his or her authority:
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> > "'An immunity protects an officer only to the extent that he is acting in the general scope of his official authority. When he goes entirely beyond it and does an act that is not permitted at all by that duty, he is not acting in his capacity as a public officer or employee and he has no more immunity than a private citizen. It is as if a police officer of one state makes an arrest in another state where he has no authority.'
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> "Restatement (Second) of Torts § 895D cmt. g (emphasis added). In other words, the concept of a State employee acting beyond his or her authority corresponds with the concept of an employee acting outside the line and scope of his or her employment. It has never been a concept intended to address every situation in which a State employee, while acting within the general line and scope of his or her employment, nonetheless violates some federal or state regulation, instructions from his or her supervisor, or, taken to its logical conclusion, Alabama law prohibiting negligent conduct."

Ex parte Watson, 37 So. 3d 752, 766-67 (Ala. 2009) (Murdock, J., concurring in part and dissenting in part) (footnote omitted). See also Ex parte Coleman, 145 So. 3d 751, 761-62 (Ala. 2013) (Murdock, J., concurring in the result) (quoting at length from Holloman v. Harland, 370 F.3d 1252 (11th Cir. 2004), to explain the "untenable tautology" created by the

manner in which this Court has understood the "beyond-authority" exception to immunity); L.N. v. Monroe Cty. Bd. of Educ., 141 So. 3d 466, 466-69 (Ala. 2013) (Murdock, J., concurring specially).

That said, I concur in the result reached by the main opinion because the conduct of the education defendants, i.e., the teacher and the administrators, falls within the fifth Cranman category, exercising judgment in the educating of students, and there is not substantial evidence that they acted "willfully, maliciously, fraudulently, in bad faith, [or] beyond [their] authority" as required in order to trigger application of the second of the two exceptions to Cranman immunity. See Cranman, 792 So. 2d at 405.