Rel: September 4, 2020

SUPREME COURT OF ALABAMA

SPECIAL TERM, 2020

1180834

Ex parte Sam Smith, individually and in his capacity as director of the Calhoun County Department of Human Resources; Pamela McClellan; and Teresa Ellis

PETITION FOR WRIT OF MANDAMUS

(In re: William David Streip, as personal representative of the Estate of Jerrie Leeann Streip, deceased

v.

Sam Smith, individually and in his capacity as director of the Calhoun County Department of Human Resources; Pamela McClellan; and Teresa Ellis)

(Jefferson Circuit Court, CV-17-903149)

SHAW, Justice.

The defendants below, Sam Smith, director of the Calhoun County Department of Human Resources ("CCDHR"); Pamela McClellan, an adult-protective-services caseworker with CCDHR; and Teresa Ellis, McClellan's supervisor (hereinafter referred to collectively as "the petitioners"), petition this Court for a writ of mandamus directing the Jefferson Circuit Court to vacate its order denying their motion for a summary judgment in a wrongful-death action filed by William David Streip ("David"), as the personal representative of the estate of his sister, Jerrie Leeann Streip ("Leeann"), deceased,[1] and to enter a summary judgment in their favor on the basis of immunity. We grant the petition and issue the writ.

Facts and Procedural History

Leeann suffered from numerous serious physical, mental, and emotional conditions beginning with her birth in 1971. Those conditions were exacerbated by brain surgery in 2013. Following that surgery, Leeann was released to a nursing-home facility before being discharged into the care of her father.

[1]In the materials before this Court, Leeann is referred to as both "Leeann" and "Jerrie" interchangeably. When she is referred to as "Leeann," her name is spelled various ways. In this opinion, we refer to her as "Leeann" and use the spelling used in the majority of the materials before us.

Leeann subsequently reported to a CCDHR social worker that her father had raped her. As a result, an adult-protective-services case was opened under Alabama's Adult Protective Services Act ("the APSA"),[2] and McClellan was assigned as Leeann's caseworker. Upon the conclusion of the ensuing investigation, CCDHR removed Leeann from her father's care. Following a brief hospitalization and initial, temporary placements, Leeann was placed by her then guardian at Magnolia Place, an unlicensed "boarding home." Leeann remained at Magnolia Place from May 2014 until March 2016. At that time, in relation to concerns regarding Magnolia Place's unlicensed status and the fact that it might be providing more assistance than was permissible in a "boarding-home" setting, CCDHR removed Leeann from Magnolia Place and, on or around March 25, 2016, placed her at Leviticus Place, a licensed boarding home.

On April 14, 2016, McClellan spoke with Leeann and reportedly had no resulting concerns about Leeann's well being. On April 20, 2016, however, McClellan was notified that Leeann had left Leviticus Place on April 15 and had not

[2]See § 38-9-1 et seq., Ala. Code 1975.

returned. A body located in Birmingham was later identified as Leeann's; her cause of death remains "undetermined."

Following Leeann's death, David sued, among others, Smith, McClellan, and Ellis,[3] alleging that they had committed willful, malicious, or fraudulent acts or had acted in bad faith or had failed to act and that those acts or omissions violated specific laws, rules, or regulations of the Alabama Department of Human Resources ("DHR") and had thereby caused Leeann's death. More specifically, David's complaint alleged that, because of Leeann's mental and physical disabilities, she was not capable of living in a "communal" living facility like Leviticus Place and, instead, "required the level of care of a 'nursing home,'" as purportedly recommended by her physician. David further alleged that the petitioners negligently or wantonly placed Leeann in a boarding home where, he alleges, she failed to receive appropriate monitoring and supervision and that that decision, according to David, both violated DHR policy and "put [Leeann's] health and safety at risk."

[3]David's complaint indicated that he was suing Smith in both "his individual and official capacities" and was suing McClellan and Ellis "in [their] individual capacit[ies]."

The petitioners filed a joint motion seeking a summary judgment in their favor on David's claims against them. In their motion, the petitioners argued that they were entitled to a summary judgment because, they said, David could not prove that they had proximately caused Leeann's unexplained death; they were entitled to statutory immunity under § 38-9-11, Ala. Code 1975, a provision of the APSA, because, they said, they had exercised their duties in "good faith" and in compliance with the DHR Adult Policy Services Manual ("DHR's APS manual"); and they were entitled to State-agent immunity because, they said, all decisions concerning Leeann's placement were based on an exercise of discretion performed within the scope of their duties.

In opposition to the petitioners' motion, David argued that substantial evidence showed that the petitioners' placement of Leeann in a boarding-home facility was the proximate cause of Leeann's death because, he asserted, they placed Leeann in a boarding home despite ample evidence indicating that she "could not perform normal activities of daily living" and that she "needed help with simple tasks such as self-administering medication, bathing, toileting, cooking,

and handling her finances" -- requirements that, according to David, rendered Leeann ineligible for boarding-home placement under the clear requirements of DHR's APS manual. David contended that Leeann's allegedly improper placement deprived the petitioners of State-agent immunity available under Ex parte Cranman, 792 So. 2d 392 (Ala. 2000) (plurality opinion setting out a restatement of law pertaining to State-agent immunity, which restatement was adopted by a majority of the Court in Ex parte Butts, 775 So. 2d 173 (Ala. 2000)). David also disputed that the petitioners were entitled to statutory immunity under § 38-9-11 because, he says, the petitioners did not satisfy the "good-faith" requirement of that Code section in placing Leeann in a boarding-home setting, which, he maintains, was in violation of DHR's APS manual. Alternatively, he argued that the immunity provided in § 38-9-11 "refers to immunity from claims stemming from investigations and recommendations about the status of neglect, incapacity and/or abuse claims, not to claims that stem from DHR's work with individuals already determined to be incapacitated." (Emphasis omitted.)

Following further filings and a hearing, the trial court entered an order denying the petitioners' motion for a summary judgment. In response, they filed the instant petition; this Court subsequently ordered answers and briefs.

Standard of Review

"A writ of mandamus is a

> "'drastic and extraordinary writ that will be issued only when there is: 1) a clear legal right in the petitioner 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) properly invoked jurisdiction of the court.'

"Ex parte United Serv. Stations, Inc., 628 So. 2d 501, 503 (Ala. 1993)."

Ex parte Wood, 852 So. 2d 705, 708 (Ala. 2002). Although this Court generally will not review a trial court's denial of a summary-judgment motion, we will consider a challenge to a denial of a summary-judgment motion that is "grounded on a claim of immunity." Id. Our review in such as case is limited to the trial court's determination of immunity issues; we will not consider secondary arguments that a summary judgment was appropriate on other grounds or review the trial court's conclusions on other issues. See Ex parte Hudson, 866 So. 2d

1115, 1120 (Ala. 2003) (explaining that, in reviewing the denial of a summary-judgment motion that asserts immunity, "[w]e confine our interlocutory review to matters germane to the issue of immunity. Matters relevant to the merits of the underlying tort claim, such as issues of duty or causation, are best left to the trial court").

In reviewing the denial of a summary-judgment motion asserting immunity, whether by petition for a writ of mandamus or by permissive appeal, this Court applies the following standard of review:

> "If there is a genuine issue as to any material fact on the question whether the movant is entitled to immunity, then the moving party is not entitled to a summary judgment. Rule 56, Ala. R. Civ. P. In determining whether there is [an issue of] material fact on the question whether the movant is entitled to immunity, courts, both trial and appellate, must view the record in the light most favorable to the nonmoving party, accord the nonmoving party all reasonable favorable inferences from the evidence, and resolve all reasonable doubts against the moving party, considering only the evidence before the trial court at the time it denied the motion for a summary judgment. Ex parte Rizk, 791 So. 2d 911, 912 (Ala. 2000)."

Wood, 852 So. 2d at 708.

Discussion

In their petition, the petitioners renew their claim that they were entitled to a summary judgment and that the trial court erred in denying their summary-judgment motion because, they contend, they are entitled to statutory immunity under § 38-9-11 of the APSA. Section 38-9-11 provides:

> "Any officer, agent, or employee of the department,[4] in the good faith exercise of his duties under this chapter, shall not be liable for any civil damages as a result of his acts or omissions in rendering assistance or care to any person."

(Emphasis added.) According to the petitioners, in handling Leeann's case, they acted at all times within the line and scope of their duties as agents of DHR and CCDHR. They maintain that David has failed to demonstrate that their placement decisions in Leeann's case were not made in good faith so as to deprive them of statutory immunity.

As noted above, David contends that § 38-9-11, when read in pari materia with the remainder of the APSA, clearly demonstrates that its sole purpose is to provide DHR employees with immunity for liability arising from their actions in

[4]For purposes of the APSA, the "department" is the Alabama Department of Human Resources. See § 38-9-2(5), Ala. Code 1975.

investigating reports of abuse or making related findings. We are unpersuaded by David's reading of § 38-9-11.

Section 38-9-11 states that it applies to the exercise of duties under "this chapter"; "this chapter" refers to Chapter 9, Title 38, Ala. Code 1975, where the APSA is codified. Although certain portions of Chapter 9 govern investigating reports of abuse, that chapter also governs arranging protective services for a client, see § 38-9-4, Ala. Code 1975, and the placement of a client in an appropriate facility, see § 38-9-6, Ala. Code 1975. Those are "duties under" Chapter 9 relating to "rendering assistance or care" for which the plain language of § 38-9-11 provides immunity. "When the language of a statute is plain and unambiguous, as in this case, courts must enforce the statute as written by giving the words of the statute their ordinary plain meaning ...." Ex parte T.B., 698 So. 2d 127, 130 (Ala. 1997). Because the language of § 38-9-11 is "plain and unambiguous," there is no need either to interpret the Code section or to resort to the in pari materia rule of statutory construction. See Deutsche Bank Nat'l Tr. Co. v. Walker Cty., [Ms. 1160926, June 28, 2019] ___ So. 3d ___, ___ (Ala. 2019) ("If the language of

a statute is not 'plain' or is ambiguous, then -- and only then -- may a court construe or interpret it to determine the legislature's intent."). Because that plain and unambiguous language fails to limit the immunity provided by § 38-9-11 to investigations of abuse, David's interpretation is contrary to the language of the Code section and thus meritless.

We are also unpersuaded by David's alternate claim that the petitioners failed to establish that they exercised their duties "in good faith" in placing Leeann, so as to entitle them to the immunity afforded by § 38-9-11. As explained, David alleges that the petitioners' placement of Leeann in a boarding-home setting was violative of Leeann's best interests and DHR policy and was clearly in bad faith when, he says, Leeann could not perform basic tasks of daily living. The petitioners, however, counter that Leeann's placement was the result of actions taken by them within the line and scope of their job responsibilities, which specifically include responsibility for the placement of incapacitated adults under the APSA. They further argue that David has failed to demonstrate that Leeann's boarding-home placement was made in bad faith. We agree.

DHR's APS manual provides that protective services for its adult clients, like Leeann, include:

> "[I]dentifying those in need of such services, investigating their situations, assessing their situations and service needs, providing case management services to them and to others on their behalf, ... arranging appropriate alternate living arrangements, ... arranging for protective placement, ... filing adult protective service reports, making required reports to the court and [i]nformation and [r]eferral."

(Emphasis added.) Although, as testimony below indicated, making those decisions might not be an "exact science," DHR's APS manual provides certain guidelines, including that DHR may

> "refer clients or participate in planning for their placement only in facilities approved, licensed, or certified to provide the appropriate level of care required by the client. No referral or planning for placement may be made to a facility that is subject to the licensing or approving authority of a local or State agency and is unlicensed or not-approved. No referral or planning for placement may be made to a facility, though licensed or approved, if not licensed or approved to provide the level of care the client requires."

(Emphasis added.) DHR's APS manual also provides that the type of placement sought on behalf of an adult client depends on "the client's particular needs and preferences, physician recommendations, and resources available." Under DHR's APS manual, placement options include, among others, boarding or

rooming homes -- the majority of which apparently do not restrict a client's ability to come and go at will.

The materials reveal that in an assessment conducted at or around the time of Leeann's postsurgery rehabilitation in 2013, Leeann's treating physician, Dr. Carla Thomas, opined that LeeAnn required adult-protective services because, aside from the alleged sexual abuse by Leeann's father, she believed that Leeann did "not understand normal daily decisions" and their consequences, that Leeann forgot to take prescribed medications, that Leeann was physically unable to care for herself, and that Leeann was mentally unable to handle her financial affairs. Similarly, an affidavit submitted by CCDHR to the trial court in determining guardianship issues at that time indicated that Leeann "need[ed] daily assistance and care and [could] no longer live independently."

According to McClellan, however, Leeann's condition improved after her 2013 surgery. Specifically, McClellan indicated that, while housed at Magnolia Place,

> "[Leeann] could ambulate independently. She no longer needed the assistance of a walker. She could groom herself. She could wash and bathe without any help. She could dress herself. She could feed herself. She could communicate well. She was even compliant with treatment and medication through the

> local mental health center. She could read and write."

When it became necessary to move Leeann from Magnolia Place, McClellan, in determining what placement best fit Leeann's needs at that time, explained in her affidavit that she

> "[g]athered information from [Leeann's] doctor, from [Leeann], from her case record, from her prior service records and from her prior placements .... [She] considered [Leeann's] financial resources, the resources that were available to her and how policy applied in her particular case. [McClellan] also consulted with her supervisor[, Ellis,] and [they] in turn, conferenced with [the] state office consultant and other state office staff."

The affidavit testimony of Dr. Thomas, which the petitioners offered in support of their summary-judgment motion, confirms that, in April 2015, Dr. Thomas "made a recommendation [to CCDHR] of boarding home placement for [Leeann]" with a guardian to assist with financial matters -- a recommendation that, also according to Dr. Thomas's testimony, did not change from that time until the time of Leeann's death in April 2016. Because Leeann's primary deficiencies, according to McClellan, were with managing money and cooking, the most appropriate placement for Leeann under DHR's APS manual, as demonstrated by Leeann's own needs and the recommendation of her treating physician, was a boarding home -- a placement that, according

to McClellan, met Leeann's needs while also providing the maximum freedom required by the APSA.[5] Thus, the petitioners concluded that Leeann should be moved to Leviticus Place, a boarding home offering daily staff supervision until 4:30 p.m.

DHR's APS manual concerning boarding or rooming homes states:

> "Placements or referrals to boarding or rooming homes may be made for those individuals who need a facility to provide only rooms and meals. Individuals whose physical or mental disabilities require any care or supervision from another individual shall not be placed in or indirectly referred to [a] boarding home.
>
> "....
>
> "The following requirements apply to admission to Jefferson County boarding or rooming homes:
>
> "a. Residents must be able to perform their personal care, such as bathing, dressing, feeding, and taking their own medicines.
>
> "b. All residents must be able to ambulate independently without bodily assistance...."

(Emphasis added.) It further restricts from boarding-home placement any client with chronic or communicable medical conditions requiring medical care, treatment, or supervision.

[5]See, generally, § 38-9-3, Ala. Code 1975.

In support of his claim that the petitioners' decision to place Leeann at Leviticus Place was made in bad faith, David points to purported "substantial evidence" indicating that Leeann's boarding-home placement violated the above-quoted policy. Specifically, according to David, the petitioners were aware that Leeann allegedly required assistance with personal care, bathing, dressing, feeding, and taking her own medicine -- all conditions that, according to David, indicated that Leeann required more care and supervision than offered by the boarding-home setting. Thus, he contends, Leeann's placement amounted to a clear violation of established DHR policy, which, he says, deprives the petitioners of statutory immunity in the present case.

David fails to acknowledge, however, that, as of her move to Leviticus Place -- and even at the time of her earlier residence at Magnolia Place -- Leeann's needs had decreased and her ability to care for herself had improved. Specifically, each resource examined by McClellan before Leeann's placement at Leviticus Place revealed that, at the time of her boarding-home placement, Leeann could ambulate independently and could groom, bathe, dress, eat, and

communicate without any help. Importantly, Dr. Thomas agreed that "Leeann [was] safe to stay in a boarding environment."

Despite David's claim to the contrary, it is apparent that, in selecting boarding-home placement for Leeann, the petitioners complied with both DHR's APS manual and the provisions of the APSA. David failed to counter the petitioners' showing with substantial evidence to the contrary. Notably, David presented nothing demonstrating either that, at the time of her placement, Leeann required a facility providing 24-hour supervision or that the petitioners exhibited bad faith in placing Leeann in the least-restrictive environment and in a facility providing anything less than 24-hour supervision. This Court would be hard-pressed to conclude that a placement made in accordance with and in reliance on the recommendations of a client's treating physician was in bad faith. Because the petitioners provided unrefuted evidence that they acted in "good faith" in following DHR's APS manual and Dr. Thomas's recommendation in choosing Leeann's placement, there is no remaining question of

material fact as to the petitioners' entitlement to statutory immunity under § 38-9-11.[6]

Conclusion

Based on the foregoing, the petitioners have established that they are entitled to statutory immunity; they thus had a clear legal right to a summary judgment in their favor on that ground. The trial court is accordingly directed to vacate its order denying the petitioners' motion for a summary judgment and to enter a summary judgment in the petitioners' favor.

PETITION GRANTED; WRIT ISSUED.

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

Mitchell, J., concurs specially.

[6]Because we hold that the petitioners are entitled to statutory immunity, we pretermit discussion of the petitioners' remaining claims. See Favorite Market Store v. Waldrop, 924 So. 2d 719, 723 (Ala. Civ. App. 2005).

MITCHELL, Justice (concurring specially).

I concur with the majority opinion and write specially to explain my view of the following statement in the opinion:

> "Because the language of § 38-9-11 is 'plain and unambiguous,' there is no need either to interpret the Code section or to resort to the in pari materia rule of statutory construction. See Deutsche Bank Nat'l Tr. Co. v. Walker Cty., [Ms. 1160926, June 28, 2019] ___ So. 3d ___, ___ (Ala. 2019) ('If the language of a statute is not "plain" or is ambiguous, then -- and only then -- may a court construe or interpret it to determine the legislature's intent.')."

___ So. 3d at ___. I understand this statement to mean that when a statute is ambiguous -- i.e., its plain meaning in its appropriate context is not clear -- it may be necessary to apply appropriate canons of statutory interpretation. See Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts at 53, "Interpretation Principle" (Thomson/West 2012).