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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2021-2022

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Ex parte Susan Runnels

PETITION FOR WRIT OF MANDAMUS

**(In re: Malia Fooladi, by and through her father and next
friend, Amir Michael Fooladi**

v.

Leisure Time Products, Inc., et al.)

(Baldwin Circuit Court, CV-18-900041)

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STEWART, Justice.

Susan Runnels petitions this Court for a writ of mandamus directing the Baldwin Circuit Court ("the trial court") to enter a summary judgment determining that a spoliation-of-evidence claim asserted against her by Amir Michael Fooladi ("Fooladi"), as father and next friend of Malia Fooladi ("Malia"), is barred by the defense of State-agent immunity. For the reasons discussed below, we grant the petition and issue the writ.

Facts

This case arose from an incident in which Malia, a four-year-old student in the prekindergarten program at Elsanor Elementary School ("the school"), was injured while playing on playground equipment located at the school. Based on the materials before us, the following facts are undisputed. On January 29, 2016, Malia was playing on a glider swing set ("the glider") when the swing she was on broke off from the glider structure and caused her to fall to the ground. At the time of the incident, Runnels was the principal of the school, which is a public school operated by the Baldwin County Board of Education ("the Board").

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In February 2016, an attorney retained by Malia's family sent a letter to the Board advising it of Malia's injuries and requesting that it preserve the glider. Shortly thereafter, Runnels received a copy of a response letter sent by an attorney for the Board agreeing that the glider would be stored for an indefinite period and that the Board would provide advance notification before disposing of the glider. Thereafter, the Board's attorney contacted Runnels to request that she store the glider at the school. The Board's assistant superintendent of elementary schools, Hope Zeanah, separately instructed Runnels to store the glider at the school.

In response to those requests, Runnels asked the head custodian at the school to put the glider into storage on school grounds, and the head custodian then moved the glider into the boiler room of the school. At some point between February 2016 and March 2018, a new custodial assistant at the school removed the glider from the boiler room and placed the glider in the trash.

In 2019, Fooladi, as father and next friend of Malia, filed a complaint in the trial court asserting various causes of action arising from Malia's injuries and naming Runnels, in her individual capacity, the Board, the

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manufacturer of the glider, and others as defendants. Fooladi alleged that Runnels had been negligent and wanton (1) in failing to ensure that the glider was appropriate for use on a school playground, (2) in failing to ensure that the glider would be safe for children to play on, (3) in failing to maintain the glider in proper working order, and (4) in failing to inspect the glider for defects. Fooladi further alleged that, by permitting the disposal of the glider, Runnels had spoliated evidence and that that spoliation had severely impacted Fooladi's ability to prove the product-liability claims asserted against the manufacturer of the glider.

Runnels filed a motion for a summary judgment in which she argued, among other things, that she was entitled to State-agent immunity as to all the claims asserted against her. In support of her motion, Runnels attached various evidentiary materials, including her own affidavit and the deposition of Zeanah. Fooladi opposed the summary-judgment motion, arguing that Runnels had failed to follow specific guidelines and warnings related to the use of the glider and that she was, therefore, not entitled to State-agent immunity as to the wantonness and negligence claims. Fooladi, however, offered no argument

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or evidence in response to Runnels's contention that the spoliation-of-evidence claim was also barred by State-agent immunity.

On May 25, 2021, the trial court entered an order granting Runnels's motion for a summary judgment as to the wantonness claims, reserving its ruling on whether a summary judgment was warranted as to the negligence claims, and denying Runnels's motion as to the spoliation-of-evidence claim. Runnels now petitions this Court for a writ of mandamus directing the trial court to enter a summary judgment in her favor determining that Fooladi's spoliation-of-evidence claim against her is barred by State-agent immunity.

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 for summary judgment grounded on a claim of immunity is reviewable by petition for writ of mandamus.' " Ex parte Nall, 879 So. 2d 541, 543 (Ala. 2003) (quoting Ex parte Rizk, 791 So. 2d 911, 912 (Ala. 2000)) (emphasis omitted). A writ of mandamus is an extraordinary remedy available only when the petitioner can demonstrate " '(1) a clear legal right to the order

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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 at 543 (quoting Ex parte BOC Grp., Inc., 823 So. 2d 1270, 1272 (Ala. 2001)).

In reviewing the denial of a summary-judgment motion based on immunity, this Court must "view the [materials] 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." Ex parte Wood, 852 So. 2d 705, 708 (Ala. 2002) (citing Ex parte Rizk, 791 So. 2d at 912).

Moreover, when reviewing by mandamus petition claims alleged to be subject to the defense of State-agent immunity, as set forth in Ex parte Cranman, 792 So. 2d 392 (Ala. 2000) (plurality opinion),¹ this Court "first

¹Although Cranman was a plurality decision, the restatement of law pertaining to State-agent immunity set forth in Cranman was subsequently adopted by this Court in Ex parte Rizk, 791 So. 2d 911 (Ala. 2000), and Ex parte Butts, 775 So. 2d 173 (Ala. 2000).

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review[s] the facts surrounding the activities of the agent. If those facts support immunity and the burden therefore shifts to the claimant, we review any facts offered to establish an exception to immunity as prescribed in Cranman to determine whether that exception is supported by substantial evidence." Ex parte Utilities Bd. of Foley, 265 So. 3d 1273, 1281 (Ala. 2018) (citing Ex parte Price, 256 So. 3d 1184 (Ala. 2018)).

Discussion

The question presented by this mandamus petition is whether a spoliation-of-evidence claim asserted against a school principal in her individual capacity is barred because she was performing a function covered by State-agent immunity. In Cranman, this Court restated the test for determining when State employees sued in their individual capacities are entitled to State-agent immunity. In relevant part, that test provides that a State agent is immune from civil liability when, among other things, the conduct giving rise to the claim against the State agent is

"based upon the agent's

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

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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:

"....

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

"....

"(5) exercising judgment in the discharge of duties imposed by statute, rule, or regulation in ... educating students."

Ex parte Cranman, 792 So. 2d at 404.

This Court has also established a "burden-shifting" process when a defendant asserts the defense of State-agent immunity. Giambrone v. Douglas, 874 So. 2d 1046 (Ala. 2003). To invoke the protections of State-agent immunity, a State agent must first make a prima facie showing that the plaintiff's claims arise from one of the functions that would entitle the State agent to immunity. Giambrone, 874 So. 2d at 1052. If the State agent makes such a showing, the burden then shifts to the plaintiff to show that one of the exceptions to State-agent immunity applies -- in this case, whether the State agent "acted willfully,

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maliciously, fraudulently, in bad faith, or beyond [his or her] authority."

Id.

Runnels asserts in her mandamus petition, as she did before the trial court, that she is entitled to State-agent immunity because the spoliation-of-evidence claim against her is based on acts that fall within three categories of conduct recognized as immune under Cranman -- namely, categories (1), (2), and (5), quoted above. According to Runnels, when taking action to store the glider in the boiler room of the school, she was exercising her judgment in administering a public school, conduct that she alleges comes within category (2) set forth in Cranman. In support of that proposition, Runnels cites several Alabama appellate-court decisions that concluded that public-school principals who had engaged in similar conduct were entitled to State-agent immunity as to claims stemming from such conduct. See Ex parte Trotman, 965 So. 2d 780 (Ala. 2007); Louviere v. Mobile Cnty. Bd. of Educ., 670 So. 2d 873 (Ala. 1995); and Bayles v. Marriott, 816 So. 2d 38 (Ala. Civ. App. 2001).

In Trotman, this Court concluded that, in the absence of an official school-checkout procedure, a principal who had designated a particular

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person to oversee checking out students from school had been exercising his judgment in administering the school. 965 So. 2d at 786-87. Moreover, this Court's pre-Cranman decision in Louviere stated that a school principal was entitled to immunity when "any decision she might have made was related to the performance of her duties as principal[] and ... called for 'personal deliberation[s], decision[s], and judgment[s]' in the performance of her job." Louviere, 670 So. 2d at 877 (citing Byrd v. Sullivan, 657 So. 2d 830, 833 (Ala. 1995), and White v. Birchfield, 582 So. 2d 1085, 1087 (Ala. 1991)). Similarly, the Court of Civil Appeals determined in Bayles that a principal who had failed to warn a school employee that a chair would "sink" under her weight, and who testified that she had not viewed the chair as a safety problem, had been exercising her judgment regarding school safety. Bayles, 816 So. 2d at 41-42. Significantly, the Court of Civil Appeals also observed that the school-safety policy in Bayles had been "drafted in general terms to advise the principal of his or her responsibility for the overall safe condition of the school," 816 So. 2d at 41, and indicated that a different result might have been reached "if, instead of the broadly stated, general safety policy,

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[the principal] had instead been responsible for following a detailed rule or checklist and had failed in this responsibility," 816 So. 2d at 41-42.

In this case, the evidentiary materials and arguments presented to the trial court in connection with Runnels's summary-judgment motion provide support for Runnels's entitlement to State-agent immunity under the second category identified in Cranman. In particular, Runnels's affidavit states that, in her position as the principal of the school, the Board had delegated to her the duty of storing the glider on school premises; that, pursuant to that duty, she had exercised her judgment as an administrator of the school when assigning the head custodian the task of storing the glider; that neither the Board's attorney nor Zeanah had provided her with specific instructions on how to perform that duty; and that she had not disposed of the glider or instructed anyone else to dispose of the glider. Zeanah's deposition testimony confirms that Zeanah had made only a general request that Runnels store the glider and had relayed no further instructions on how that storage was to be executed. Therefore, Runnels established that the spoliation-of-evidence claim against her, like the claim against the school principal in Trottman, arises from an exercise

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of judgment in the administration of a public school.² Because Runnels made a prima facie showing that there was no genuine issue of material fact as to whether she was engaged in conduct covered by category (2) set forth in Cranman, the burden shifted to Fooladi to present substantial evidence creating such an issue or establishing that one of the exceptions to State-agent immunity applies in this case.

In his reply to the mandamus petition, Fooladi argues that Runnels exceeded her authority by failing to obey the "detailed instruction" from the Board and Zeanah "to preserve the ... [the glider]." Significantly, however, none of the arguments raised by Fooladi in response to Runnels's mandamus petition were raised in the trial court. Thus, Fooladi's arguments are not properly before this Court, and we decline to address them. See, e.g., Ex parte Green, 108 So. 3d 1010, 1013 (Ala. 2012) (concluding that new argument raised in response to mandamus petition was not properly before this Court); Ex parte Harper, 934 So. 2d 1045,

²Because we determine that Runnels's conduct qualifies for State-agent immunity under category (2) set forth in Cranman, we pretermitt discussion of whether Runnels's conduct fell within category (1) or category (5).

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1048 (Ala. 2006) (declining to address an alternate argument that a transfer was proper under the doctrine of forum non conveniens because "the trial court did not address this ground for transferring the action in its order"); and Ryan's Family Steak Houses, Inc. v. Regelin, 735 So. 2d 454, 457 n.1 (Ala. 1999) ("[T]he propriety of a ruling on a motion to compel arbitration, like the propriety of a ruling on a summary-judgment motion, must be tested by reviewing the pleadings and the evidence the trial court had before it when it ruled.").

Before the trial court, Fooladi presented no arguments or evidence regarding Runnels's entitlement to State-agent immunity with respect to the spoliation-of-evidence claim. As a result, Fooladi failed to carry his burden of either raising a genuine issue of material fact as to Runnels's entitlement to State-agent immunity or showing that one of the exceptions to State-agent immunity applied in this case.

Conclusion

For the reasons stated above, Runnels is entitled to State-agent immunity with respect to the spoliation-of-evidence claim. Therefore, we grant Runnels's petition for a writ of mandamus and direct the trial court

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to enter an order granting her motion for a summary judgment as to that claim.

PETITION GRANTED; WRIT ISSUED.

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