STATE OF MICHIGAN

COURT OF APPEALS

DAWNIELLE RICHMOND, Individually and as Next Friend of OLIVIA BRYANT, AMANDA BROWN, RACHEL BRYANT, and THERESA BRYANT, Minors,

Plaintiffs-Appellants,

v

CATHOLIC SOCIAL SERVICES and ARCHDIOCESE OF DETROIT,

Defendants-Appellees,

and

KATHIE SPRATT, REGINA BOMAN, ANN MURPHY, LISA MOLLOY, CRISTINA PIEXOTO, and ABIGAIL MCINTYRE,

Defendants.

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UNPUBLISHED
June 24, 2004

No. 246833
Wayne Circuit Court
LC No. 02-219805-NI

Before: Murphy, P.J., and Jansen and Cooper, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(7) and (C)(8). This case involves claims that Catholic Social Services (CSS), through its employees, acted improperly and unlawfully with respect to services related to the placement and adoption planning of a minor child, where the parental rights to the child and her three older siblings were terminated, and where Dawnielle Richmond, sister of the biological mother, provided foster care to the three siblings and sought the adoption of all four children. Foster parents, unrelated to the children, provided separate foster care for the youngest child, who they wished to adopt, and, for a short period of time, they also provided foster care for the three older siblings. Eventually, Richmond adopted all four children after she challenged, in court, the adoption findings and decisions made by the Michigan Children's Institute in regard to the youngest child that were predicated on CSS' input. We affirm.

Plaintiffs first contend that the trial court erred in finding defendants immune, and thus the court erred in granting summary disposition pursuant to MCR 2.116(C)(7). We disagree. This Court reviews de novo a trial court's ruling on a motion for summary disposition. *Glancy v City of Roseville*, 457 Mich 580, 583; 577 NW2d 897 (1998). MCR 2.116(C)(7) tests, in part, whether claims are barred due to immunity granted by law. *Id.* The contents of the complaint are accepted as true unless contradicted by documentation submitted by the moving party. *Pusakulich v City of Ironwood*, 247 Mich App 80, 82; 635 NW2d 323 (2001). In analyzing a motion for summary disposition pursuant to MCR 2.116(C)(7), the trial court must consider all affidavits, depositions, admissions, or other documentary evidence if submitted or filed by the parties. *Id.* When facts material to the immunity claim are not disputed, the issue becomes whether the defendant is entitled to immunity as a matter of law. *Gilliam v Hi-Temp Products, Inc*, 260 Mich App 98, 108-109; 677 NW2d 856 (2003).

Immunity extends to social workers in regard to activities involving the initiating and monitoring of child placement proceedings and to placement recommendations in cases where there is close oversight of the recommendations by the court. *Martin v Children's Aid Society*, 215 Mich App 88, 95-99; 544 NW2d 651 (1996). Absolute immunity is necessary to assure that the system can continue to function effectively. *Id.* at 96. The *Martin* panel stated that "we find convincing the decisions granting absolute immunity to social workers" and that "absolute immunity is necessary to assure that our important child protection system can continue to function effectively[.]" *Id.* at 97. To permit social workers to become lighting rods for harassing litigation would seriously hinder the effectiveness of Michigan's child protection schemes. *Id*. at 96, quoting *Coverdell v Dep't of Social & Health Services*, 834 F2d 758, 765 (CA 9, 1987). In *Spikes v Banks*, 231 Mich App 341, 347; 586 NW2d 106 (1998), this Court ruled that "[w]e agree with the circuit court and affirm its grant of summary disposition to Teen Ranch [child care organization making foster care placements] based on its absolute immunity from tort liability arising from its placement and supervision of plaintiff."[1]

It is undisputed that this case involves the placement of children and adoption planning activities by social workers stemming from child protection proceedings. Plaintiffs acknowledge that CSS supervises foster care placements and recommends adoption placements, and the gravamen of plaintiffs' complaint and grievances is that CSS undertook these functions in an inappropriate and unlawful manner. Therefore, under *Spikes* and *Martin,* it would appear that defendants are entitled to absolute immunity from liability.

Plaintiffs erroneously identify the immunity in question in this case as governmental immunity. But this case does not involve governmental immunity. *Martin* specifically distinguished its grant of absolute immunity to social workers from immunity granted to governmental entities and employees under MCL 691.1407. *Martin*, *supra* at 95-96 n 5. The immunity at issue here has nothing to do with CSS' relationship to the government or governmental immunity. Defendants and other social workers are immune because of their

[1] Teen Ranch placed a fourteen-year-old female in a foster home, where she became impregnated by a twenty-three-year-old occupant of the home.

important role in child protective proceedings, not because of their relationship to the government. Therefore, plaintiffs' discussion of governmental immunity is misplaced and unavailing.

Plaintiffs next argue that defendants proceeded in bad faith, or minimally there exists an issue of fact as to whether they acted in bad faith, and thus defendants are not afforded protection by any immunity status. In *Martin, supra* at 93, this Court noted the nature of the plaintiffs' claims, stating that "[p]laintiffs made various allegations against defendants, including negligence, breach of statutory and contractual duties, *bad faith*, and violation of their constitutional rights." (Emphasis added.) Because the *Martin* panel held that it was appropriate for the entire action to be dismissed, it necessarily ruled that a claim of bad faith could not survive the defense of absolute immunity.[2] Plaintiffs' heavy reliance on *Snell v Tunnell,* 920 F2d 673 (CA 10, 1990) is misplaced. In *Snell, supra* at 689, the federal appeals court held that social worker activity which is not integral to the judicial process is not afforded absolute immunity. The Tenth Circuit stated that "courts have looked to the particular task a defendant was performing and its nexus to the judicial process rather than deciding that social workers or guardians ad litem as a class are entitled to absolute immunity." *Id.* at 687. The federal appeals court concluded that social workers, who sought a pre-petition conditional protective custody order in an investigation into neglect at an emergency shelter, and who were accused of knowingly using and conveying false information, were entitled to only qualified immunity, like police officers, from civil rights liability under 42 USC 1983. *Id.* at 691-692.

Here, as in *Martin,* plaintiffs did not pursue a § 1983 action. The *Martin* panel indicated that "immunity may be unavailable for social workers in an action brought under 42 USC 1983. However, plaintiffs do not allege a cause of action against the CAS [Children's Aid Society] defendants under that section." *Martin, supra* at 95 n 4. Regardless whether *Snell* conflicts with our opinion today or not, it is irrelevant because we are bound by Michigan law, i.e., *Martin* and *Spikes,* not federal law. Additionally, in *Martin,* this Court did not rule that social workers have absolute immunity with respect to all aspects of their employment. The Court stated:

> Further, while *Kurzawa* [v *Mueller,* 732 F2d 1456 (CA 6, 1984),] has been described as granting "blanket absolute immunity" to social workers, as the dissent notes, our decision is not properly so described. It is limited to the facts of this case, in which the close oversight of the social worker's placement recommendations by the probate court is especially noteworthy. [*Martin, supra* at 96 n 5.]

Plaintiffs seize this language, asserting that the case at bar does not fit within the framework of *Martin* and is thus distinguishable. Plaintiffs contend that, because CSS is not a governmental entity and not under the direct supervision of the court, absolute immunity is not applicable. Plaintiffs further maintain that "CSS was engaged in the prohibited act of baby brokering, far outside the jurisdiction" of the court.

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[2] We also note that the concepts of "good faith" and "bad faith' typically arise in matters regarding *qualified* immunity. See *Guider v Smith,* 431 Mich 559, 566; 431 NW2d 810 (1988).

In *Martin*, CAS was a private organization just as CSS here. CAS was contracted to provide services for neglected and abused children, and it placed the minor child at issue in *Martin* into a foster care home. The *Martin* plaintiffs sued CAS and four of its employees, along with suing the Department of Social Services (now FIA) and some of its employees. The underlying basis of the suit in *Martin* concerned the initiation and continuation of child protection proceedings against the parents predicated on claims of physical abuse that were vehemently denied by the plaintiff parents. Eventually, the minor child was removed from the wardship and foster care placement and returned to the care of her parents. In support of its decision, the Court stated:

> [P]laintiffs have not been without a remedy regarding the allegedly wrongful conduct of the CAS defendants. The probate court regularly reviewed the placement recommendations of the CAS defendants at statutorily required hearings. This provided judicial oversight sufficient to protect plaintiffs from allegedly wrongful conduct against their interests by the CAS defendants. Plaintiffs had the statutory right to request accelerated hearings to contest their case service plan. The probate court had broad power to address concerns with the case service plan if, after a hearing, they were found to be legitimate. To allow plaintiffs additional protection in the form of a cause of action against the CAS defendants for money damages would be too costly; it would "disserve the broader public interest in having participants [in contested child protection cases] . . . perform their respective functions without fear of having to defend their actions in a civil lawsuit." [*Id.* at 98-99 (citations omitted; alteration and omission in original).]

Here, while a foster parent's or potential adopting parent's interests are at issue instead of a parent who is subject to having his or her parental rights terminated, there remained judicial oversight of the process. Although not entirely clear from the opinion, it appears that the complaint against CAS in *Martin* regarded placement of the child in foster care and continuing efforts to keep the child in protective care and away from the natural parents because of suspected abuse.[3] Decisions, recommendations, and activities regarding the placement of children in a particular foster care home and adoption planning are distinguishable from those regarding removal and separation of children from an abusive home environment.[4] Yet those

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[3] The context of the *Martin* decision is reflected in the following passage:

> These precedents [from federal appellate courts] recognize the important role that social workers play in court proceedings to determine when to remove a child from the home and how long to maintain the child in foster care. They also recognize that, to do that difficult job effectively, social workers must be allowed to act without fear of intimidating or harassing lawsuits by dissatisfied or angry parents. [*Martin, supra* at 96 (citation omitted).]

[4] In their respective appellate briefs, the parties give conflicting accounts on whether CSS was involved in the initial placement of the youngest child and in the temporary placement of the older siblings in the other foster home (not Richmond's home), as opposed to only being

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recommendations, decisions, and activities are also vital to the overall well-being of a child, and we believe equally deserving of absolute immunity protection. We reach this conclusion because, consistent with *Martin,* foster care placement and adoption are overseen by the family court and mechanisms exist to challenge actions and recommendations by social workers. See generally, Michigan Adoption Code, MCL 710.21 *et seq.*; MCR 3.800 *et seq.* (Adoption); Chapter XIIA of the Probate Code of 1939 – Juveniles and Juvenile Division, MCL 712A.1 *et seq.*; MCR 3.901 *et seq.* (Proceedings Involving Juveniles). This is best evidenced by the simple fact that Richmond was able to petition a court, challenge adoption recommendations, point out the alleged improprieties of CSS, and request and obtain adoption of the youngest child. In a hearing, the family court judge harshly rebuked and criticized the actions of the FIA and CSS. Moreover, *Spikes* makes abundantly clear that "placement" actions by social workers are subject to absolute immunity. We conclude that defendants are absolutely immune from liability under the circumstances of the case.

The trial court granted summary disposition pursuant to MCL 2.116(C)(7) only on plaintiffs' tort claims. Plaintiffs contend that the trial court incorrectly granted summary disposition pursuant to MCR 2.116(C)(8) on their implied contract and third-party beneficiary claims. But defendants contend on appeal that their immunity was total and should have resulted in the dismissal of all the claims in this case. Under the reasoning in *Martin*, the goal expressed by this Court was to grant immunity to social workers so they could make their important decisions without fear of reprisal in the form of civil suits. Furthermore, as noted above, *Martin* involved claims such as breach of statutory and contractual duties, but none survived absolute immunity, and the contractual claims likewise fail here.

We do note, however, that summary disposition was also appropriate on the contractual claims under MCR 2.116(C)(8) because the contracts alleged by plaintiffs merely amounted to an obligation to follow the law. "A pledge to undertake a preexisting statutory duty is not supported by adequate consideration." *General Aviation, Inc v Capital Region Airport Authority (On Remand)*, 224 Mich App 710, 715; 569 NW2d 883 (1997). In this case, the trial court correctly ruled that defendants' preexisting duty to follow the law could not constitute consideration for the contract plaintiffs attempt to imply. Plaintiffs failed to state a claim on which the trial court could grant relief, and summary disposition was appropriate under MCL 2.116(C)(8). We also find that the contractual claims appear to have been an attempt to circumvent an immunity defense, and the essence of the plaintiffs' claims sound in tort. As our Supreme Court stated in *Maiden v Rozwood,* 461 Mich 109, 135; 597 NW2d 817 (1999), a plaintiff "cannot avoid the protection of . . . immunity by artful pleading; the gravamen of plaintiff's action is determined by considering the entire claim."

(…continued)

involved in the adoption planning, or whether this was the work solely of the FIA. For purposes of this appeal, any conflict is not pertinent.

Finally, plaintiffs contend that summary disposition was inappropriate because genuine issues of material fact remain. We disagree. As we concluded, *supra*, the trial court correctly granted summary disposition pursuant to MCL 2.116(C)(7) and (C)(8). This is true regardless of the existence of any disputed facts because they are immaterial. Therefore, plaintiffs' claims are without merit.

Affirmed.

/s/ William B. Murphy
/s/ Kathleen Jansen
/s/ Jessica R. Cooper