IN THE COURT OF APPEALS OF IOWA

No. 2-928 / 11-1584
Filed November 29, 2012

JOHN ROCKAS,
Plaintiff-Appellant,

vs.

SUSAN STOCKDALE, Executor of the Estate of David Cowan, CHILD PSYCHIATRY ASSOCIATES, P.C. Jointly and Severally,
Defendant-Appellee.

Appeal from the Iowa District Court for Polk County, Eliza Ovrom, Judge.

Plaintiff appeals the grant of summary judgment. **AFFIRMED.**

Linda Channon Murphy of the Law Office of Linda Channon Murphy, P.L.C., Des Moines, for appellant.

William J. Miller and Megan Flynn of Dorsey & Whitney LLP, Des Moines, for appellee Child Psychiatry Associates, P.C.

Jason C. Palmer and Andrew C. Johnson of Bradshaw, Fowler, Proctor & Fairgrave, P.C., Des Moines, for appellee Estate of David Cowan.

Heard by Eisenhauer, C.J., and Vogel and Vaitheswaran, JJ.

VOGEL, J.

Plaintiff, John Rockas, appeals the district court's grant of summary judgment to Susan Stockdale, as executor of the estate of David Cowan, and Cowan's alleged former employer, Child Psychiatry Associates, P.C. (CPA). Rockas claims the district court erred in finding Cowan was immune from suit as a quasi-judicial officer, and the cause of action was barred by the statute of limitations. Rockas also faults the district court for rejecting his alternative tort claims. We affirm.

I. Background Facts and Proceedings

This case was brought in the aftermath of a dissolution of marriage and custody dispute between Rockas and his ex-wife Tracy Ventling. Cowan, a licensed social worker, was retained to treat the couple's minor daughter, S.S., during the divorce proceeding.[1] Initially, however, Cowan counseled Ventling on several occasions between February and December 2005. On December 2, 2005, Tracy filed a petition for relief from domestic abuse against Rockas. On December 8, 2005, Ventling filed a petition for dissolution of marriage. Ventling took S.S., then age five, to Cowan for counseling on December 29, 2005, and again on January 6, 2005. Following these two sessions, Cowan prepared an affidavit that noted S.S.'s description of Rockas's inappropriate conduct and recommended supervised visitation between Rockas and the children.

[1] John Rockas changed his name at some point during this dispute; Tracy remarried and now goes by Tracy Ventling. Cowan died during the pendency of this litigation, and the executor of his estate was substituted as the party in interest.

On January 9, 2006, the district court granted Ventling temporary sole legal and physical custody of S.S and N.S.,[2] subject to supervised visitation with Rockas. On February 22, 2006, Ventling and Rockas, while represented by counsel, agreed that Rockas's visitation "should be determined by the child's therapist, David Cowan." This stipulation was incorporated into an order entered on February 23 in which the court wrote, "[Rockas's] visitation shall continue as set forth in the Order on Temporary Matters entered on January 9, 2006, until such time as David Cowan recommends a different schedule or unsupervised visitation."

On March 9, 2006, and again on May 2, 2006, Rockas and Cowan met to discuss issues related to S.S. and the visitation dispute. Rockas, after mediation, again agreed to have Cowan determine visitation, as memorialized in the mediation agreement of May 15. Cowan was provided a copy of that agreement.

On June 16, 2006, based upon terms and conditions stipulated to by Rockas and Ventling, the Court entered a decree of dissolution. The Decree states, in pertinent part:

> IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the parties are awarded joint legal custody of the minor children and [Ventling] is awarded primary physical care, custody and control.
>
> IT IS FURTHER ORDERED, ADJUDGED AND DECREED that [Rockas's] visitation shall continue to be at the discretion of Dave Cowan. However, [Rockas] shall be allowed to obtain his own third party expert to submit recommendations for his visitation with the minor children after reviewing all of the facts and circumstances and information. That expert shall work with Dave Cowan to establish an acceptable visitation schedule. Should the parties not agree on a reasonable visitation schedule once the

[2] N.S. is Rockas and Ventling's younger child.

> experts have made their recommendations, they shall immediately be required to mediate the issue. If they are still unable to reach an agreement through mediation, they shall immediately set the matter for hearing. [Rockas] shall not be required to show a material and substantial change in circumstances in order to request this hearing.

The decree remained in force and unmodified for nearly one year. On May 17, 2007, Ventling filed an application to modify the spousal and child support provisions of the decree. In response, Rockas sought to modify the decree so as to allow him unsupervised visitation with the children. Rockas also filed a motion for declaratory ruling on July 3, 2007, seeking a clarification from the court as to "the responsibilities of the third party expert and the children's therapist, David Cowan." Ventling dismissed her application to modify, but Rockas's counterclaim and motion for declaratory ruling remained pending.

As allowed under the dissolution decree, Rockas hired his own expert, Dr. Anthony Tatman, a licensed psychologist, to review the current circumstances and submit recommendations for visitation arrangements. On August 15, 2007, a hearing was held on Rockas's motion for declaratory ruling. Dr. Tatman testified "my conclusion at the end of all this, talking with multiple people, is that there are conflicting stories about this alleged abuse . . . and that's why we're at a standstill right now of what do to." Cowan also testified, reiterating his belief that, because of the "documented severe child abuse," Rockas should continue to only have supervised visitation with the children. On August 20, 2007, the Court entered an order denying Rockas's motion for declaratory ruling.

On March 11, 2008, in response to Rockas's subpoena served on Cowan requesting access to the children's treatment records with Cowan, Cowan drafted

his second and final affidavit in the post-dissolution proceedings. In this affidavit, Cowan stated that he did not "believe it is in the children's best interests that any of [his] notes be released because what [he has] observed of [Rockas] is that he can be revengeful and vindictive," and that "with any information regarding statements made by the children [Rockas] would retaliate against them."

Cowan died on May 22, 2008. On October 30, 2008, the district court modified the June 2006 dissolution of marriage decree, describing Cowan's death as "a substantial change in circumstances" warranting a modification of the decree. Although it also called for the eventual restoration of unsupervised visitation rights for Rockas after he completed an anger management course and "responsibility" and "apology" sessions with the children, Rockas's visits were to remain supervised until November 1, 2009.

Rockas filed his initial petition in this action on April 8, 2008, as amended on September 10, 2008. Rockas asserted a total of ten claims, six of which were against Cowan.[3] At the time Cowan filed this motion for summary judgment on May 2, 2011, only six claims remained: (1) negligence; (2) negligence per se; (3) negligent infliction of emotional distress; (4) intentional infliction of emotional distress; (5) defamation; and (6) loss of services, companionship, and society of a child. The amended petition against CPA included claims of respondent superior and negligent hiring, retention, and supervision.

[3] Initially, Rockas filed the petition individually and as next friend to S.S. and N.S., and Ventling was also a named defendant. As the case progressed, the claims asserted by Rockas on behalf of N.S. and S.S. were settled and dismissed, as were the claims brought against Ventling. Rockas also asserted a claim against all defendants of interference with custodial rights, but that claim was dismissed on an earlier summary judgment which Rockas did not appeal.

In a June 30, 2011, ruling Cowan and CPA were granted summary judgment on each of Rockas's claims against them. According to the district court, Rockas's claims against Cowan failed for several reason including: (1) they were barred by the applicable two-year statute of limitations, (2) they were prohibited under the doctrine of quasi-judicial immunity; (3) the defamation claim was prohibited under the doctrine of absolute immunity, and (4) Cowan did not owe Rockas any duty upon which Rockas could pursue his negligence-based claims. Rockas filed the present appeal believing the district court dismissed his claims in error.

II. Standard of Review

We review the district court's summary judgment rulings for the correction of errors at law. Iowa R. App. P. 6.907; *Alliant Energy–Interstate Power & Light Co*. *v*. *Duckett*, 732 N.W.2d 869, 873 (Iowa 2007). Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits show there is no genuine issue of material fact, and the moving party is entitled to a judgment as a matter of law. Iowa R. Civ. P. 1.981(3); *Walderbach v*. *Archdiocese of Dubuque*, *Inc*., 730 N.W.2d 198, 199 (Iowa 2007). A fact question arises if reasonable minds can differ on how the issue should be resolved. *Walderbach*, 730 N.W.2d at 199. "No fact question exists if the only dispute concerns the legal consequences flowing from undisputed facts." *McNertney v*. *Kahler*, 710 N.W.2d 209, 210 (Iowa 2006).

III. Quasi-Judicial Immunity

Rockas claims Cowan should not have immunity from his actions because he was Ventling's expert rather than a quasi-judicial officer. Although initially

hired by Ventling to counsel S.S., Cowan's function took on a broader role when he was ordered, after an agreement of the parties, to aid the court in sorting out the visitation matter. The district court found Cowan was entitled to quasi-judicial immunity for all acts occurring after his initial appointment on February 23, 2006.

We begin with the broad principle regarding protected activities of judges. "Iowa law has long recognized that judges have absolute immunity from damages for acts committed within their judicial jurisdiction." *Muzingo v. St. Luke's Hosp.*, 518 N.W.2d 776, 777 (Iowa 1994). This immunity applies even when a judge is accused of acting maliciously and corruptly because, as a matter of policy, it is in the public's best interests that judges should exercise their function without fear of consequences. *Id.* "[A]bsolute judicial immunity has been extended to non-judicial officers where their duties had an integral relationship with the judicial process." *Whitesel v. Sengenberger*, 222 F.3d 861, 867 (10th Cir. 2000). This extension of absolute immunity to non-judicial officers is often referred to as "absolute quasi-judicial immunity." *Holmes v. Crosby*, 418 F.3d 1256, 1258 (11th Cir. 2005). Our supreme court has recognized quasi-judicial immunity and has extended it to non-judicial officers when their actions were "integral to the judicial process." *Muzingo*, 518 N.W.2d at 777. In reaching its conclusion that the defendants, court-appointed psychiatrists and hospitals, were entitled to quasi-judicial immunity, the court observed:

> Without this immunity, mental health professionals would continually be subject to vexatious lawsuits any time a disenchanted citizen did not like the recommendation made regarding an individual's mental health. The threat of liability could undermine objectivity and independence and the professionals' willingness to accept court appointments.

Id. at 778. To determine whether quasi-judicial immunity applies, we look to the nature of the function performed rather than the identity or title of a particular action. *Id.*

Here, the district court framed the question as "whether Cowan's activities are an integral part of the judicial process so that to deny immunity would disserve the broader public interest that non-judicial officers act without fear of liability." The decree of dissolution expressly states, "[Rockas's] visitation shall continue to be at the discretion of [Cowan]" and, should Rockas retain a third party expert, that expert "shall work with Cowan to establish an acceptable visitation schedule."

Rockas claims Cowan was not a quasi-judicial officer because the formalities of Iowa Code section 598.12(4) (2007)[4] were not followed. This section provides:

> The court may require that an appropriate agency make an investigation of both parties regarding the home conditions, parenting capabilities, and other matters pertinent to the best interests of the child or children in a dispute concerning custody of the child or children. The investigation report completed by the appropriate agency shall be submitted to the court and available to both parties. The investigation report completed by the appropriate agency shall be a part of the record unless otherwise ordered by the court.

Iowa Code § 598.12(4).

Section 598.12(4) deals with disputes regarding custody, and while custody was initially in play, Cowan was involved to advise as to the visitation dispute. The parties have provided no case law that has construed this

[4] For purposes of this opinion, we use the code applicable at the time this petition was filed. There was no change in this section of the code during the pendency of either the divorce or this action.

subsection to include other types of disputes regarding children beyond custody, and we will not interfere with the plain, if not limiting, language the legislature has chosen to use. *See Kruidenier v*. *McCulloch*, 158 N.W.2d 170, 174 (1968) (holding the courts should use "extreme reluctance" to "venture upon the dangerous path of judicial legislation to supply omissions or remedy defects in matters committed to a coordinate branch of the government").

Moreover, the *Muzingo* court was clear that we look to the nature of the function performed, not the identity or title of the particular actor. 518 N.W.2d at 778. We also find Rockas's argument somewhat disingenuous. In January 2006, Cowan prepared his first affidavit, which contained what Rockas claimed was a "litany of false allegations." Had he felt Cowan could not be objective, Rockas could have objected to Cowan's involvement. Instead, Rockas consented to having Cowan manage the visitation parameters, relieving the court of a hands-on function, during a fluid time in the relationship between the children and their father. It allowed Cowan to function as a quasi-judicial officer from the stipulation incorporated into the February 23, 2006 order. Therefore, the nature of Cowan's involvement with this dispute after February 23, 2006, took on a quasi-judicial function—to oversee how and when visitation should occur—a role normally performed by the court. *See* Iowa Code § 598.41 (providing the court shall look at the best interests of the child in determining an appropriate visitation schedule).

Cowan's recommendations did not substitute for the ultimate authority of the court, but rather provided guidance to both the parties and the court as to appropriate visitation arrangements considering the best interests of the children.

District courts are free to seek and consider a therapist's recommendations. *In re Marriage of Stephens*, 810 N.W.2d 523, 531 (Iowa Ct. App. 2012).[5]

The Rockas and Ventling's stipulated dissolution decree, entered June 15, 2006, states:

> [Rockas's] visitation shall continue to be at the discretion of Dave Cowan. However, [Rockas] shall be allowed to obtain his own third party expert to submit recommendations for his visitation with the minor children after reviewing all of the facts and circumstances and information. That expert shall work with David Cowan to establish an acceptable visitation schedule. Should the parties not agree on a reasonable visitation schedule once the experts have made their recommendations, they shall immediately be required to mediate the issue. If they are still unable to reach an agreement through mediation, they shall immediately set the matter for hearing. [Rockas] shall not be required to show a material and substantial change in circumstances in order to request this hearing.

Rockas claims this language indicated that Cowan was not a quasi-judicial officer but Ventling's expert, and Rockas was able to retain his own expert. However, we read this language to offer Rockas a way to challenge Cowan's recommendations, and a route to trigger court intervention. Coupled with the stipulated agreement in the February 23, 2006 order providing that supervised visitation shall continue until such time as Cowan recommends to the court a different schedule or unsupervised visitation, this demonstrates that Cowan was

[5] Neither party mentioned the propriety of the district court's action in allowing Cowan discretion in recommending the visitation schedule based on the holding of *Stephens*, 810 N.W.2d 523 (Iowa Ct. App. 2012). In *Stephens*, one party sought to have the other held in contempt of court for failing to abide by a visitation schedule devised by a third party in a modification action. We determined since it is well established that the district court is the only entity that can modify a custody or visitation order, "the obligation to modify a decree cannot be delegated to any person or entity because that person or entity has no jurisdiction to render such a decision." *Stephens*, 810 N.W.2d at 530. This case, however, is factually distinguishable as Cowan was not ordered to act in place of the court, but rather was given the responsibility of making visitation recommendations to the parties and to the court.

not acting as one party's expert, but rather assisting the court in its judicial function of determining a beneficial visitation arrangement. Rockas was allowed the opportunity to object to what he had previously stipulated to by having another expert of his choice meet with Cowan to aid or challenge Cowan's ultimate recommendations to the court.

At the court's direction, Cowan determined what level of visitation was appropriate, which was to serve an integral function to that court by providing the judge presiding over the dissolution with impartial fact-gathering on the issue of visitation. The prospect of liability from suit would seriously erode the ability of persons in Cowan's position to carry out their independent fact-finding function and thereby impair the presiding judge's ability to carry out his or her judicial duties. *See Muzingo*, 518 N.W.2d at 777.

Rockas also argues that quasi-judicial officers are only entitled to absolute immunity to the extent they are acting within the scope of that appointment. He asserts some of Cowan's conduct was so egregious as to be outside the scope of his appointment. First of all, on our review of the record, we find Cowan's actions were clearly within his appointed responsibilities. Moreover, the law is clear that Cowan is immune for all conduct undertaken in his role as a quasi-judicial officer in the dissolution proceedings, even the conduct alleged to be negligent, defamatory, deceitful, malicious, tortious, and conspiratorial by Cowan.[6] The undisputed facts show that Cowan was acting on behalf of the

[6] Rockas discusses at length how Cowan's actions could not be viewed as judicial because the actions would be contrary to the Iowa Code of Judicial Conduct. This argument is wholly rejected because immunity would apply to a judge even if he or she

court to determine when or whether Rockas should have unsupervised visitation with his children; a function agreed upon by the parties and approved of by the court. Cowan is entitled to quasi-judicial immunity for actions occurring after February 23, 2006, and is immune from all claims for actions alleged to have occurred on or after that date.

IV. Statute of Limitations

Next, Rockas contends the district court erred when it determined that those actions that occurred prior to April 8, 2006, were barred by the statute of limitations. The district court found that because Cowan was entitled to quasi-judicial immunity for any activity after February 23, 2006, and the relevant statutory period would be two years preceeding April 8, 2008,[7] when the petition was filed, even under Rockas's asserted application of the continuing tort doctrine, Cowan is immune for any claims arising during the limitation period.

The parties do not dispute that a two-year statute of limitation applies. *See* Iowa Code § 614.1(2) (providing for a two-year statute of limitations for injuries to person or reputation whether based on contract or tort). However, Rockas claims Cowan was engaged in a "continuing tort" such that the statute of limitations period did not begin to run until his final tortious action on March 11, 2008, the date of Cowan's final affidavit. *See Riniker v*. *Wilson*, 623 N.W.2d 220, 228 (Iowa Ct. App. 2000).

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were to offend the cannons. Claiming Cowan was not acting in accordance with the judicial canons of ethics has no bearing on whether he is entitled quasi-judicial immunity.

[7] In his brief, Rockas claims his petition was filed on April 8, 2006. This is clearly a typo and contrary to the record. The original petition was filed on April 8, 2008.

Even if the continuing tort doctrine did apply, Rockas is only entitled to recover damages for actions occurring within the relevant statutory period. *See Riniker*, 623 N.W.2d at 228. Rockas does not have any viable claims as we have affirmed the district court's conclusion that Cowan is shielded by quasi-judicial immunity from any actionable offense after February 23, 2006.

V. Summary Judgment to CPA

CPA joined in Cowan's motion for summary judgment. It argued, in part, that is it entitled to summary judgment for all of the same reasons asserted by Cowan. The alleged liability of CPA is vicarious liability based on Cowan's actions as an employee of CPA.[8] As such, because Cowan is not liable, CPA was also entitled to summary judgment. We need not reach the other arguments presented by CPA because we affirm the district court's ruling.

VI. Conclusion

Rockas consented to the appointment of Cowan to serve as a quasi-judicial officer. Cowan was immune for any conduct, proper or not, once he was appointed by the court. Any action before he was appointed is barred by the two-year statute of limitations; any action after the appointment is shielded by quasi-judicial immunity. Finally, because there is no actionable claim against Cowan, there can be no vicarious liability claim against CPA.

AFFIRMED.

[8] We note the district court made no finding as to Cowan's relationship with CPA, for example, whether he was an employee or independent contractor.