Supreme Court of Louisiana

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **30th day of September, 2021** are as follows:

BY Hughes, J.:

2020-CC-01266

JASON AND JOHNNA KUNATH, INDIVIDUALLY AND AS NATURAL TUTOR AND TUTRIX OF GRAYSON KUNATH, MINOR VS. SAMANTHA FAYE GAFFORD, THE STATE OF LOUISIANA, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, AND SUZY SONNIER, SECRETARY, LOUISIANA DEPARTMENT OF CHILDREN AND FAMILY SERVICES (Parish of Desoto)

AFFIRMED AND REMANDED. SEE OPINION.

Retired Judge Freddie Pitcher, Jr., appointed Justice ad hoc sitting for McCallum, J., recused in case number 2020-CC-01266 only.

Weimer, C.J., concurs and assigns reasons.
Crichton, J., concurs and assigns reasons.
Griffin, J., concurs and assigns reasons.

09/30/21

SUPREME COURT OF LOUISIANA

No. 2020-CC-01266

JASON AND JOHNNA KUNATH, INDIVIDUALLY AND AS NATURAL TUTOR AND TUTRIX OF GRAYSON KUNATH, MINOR

VERSUS

SAMANTHA FAYE GAFFORD, THE STATE OF LOUISIANA, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, AND SUZY SONNIER, SECRETARY, LOUISIANA DEPARTMENT OF CHILDREN AND FAMILY SERVICES

ON SUPERVISORY WRIT TO THE FORTY-SECOND JUDICIAL DISTRICT COURT, PARISH OF DESOTO

HUGHES, J.[*]

This suit was filed to recover damages for personal injuries suffered by an infant while in the custody of the Louisiana Department of Children and Family Services ("DCFS") and in the physical care of foster parents. After all other claims were dismissed except allegations that DCFS was vicariously liable for the actions of the foster mother, based not only on an employer-employee relationship, but also based on DCFS's non-delegable duty as the legal custodian of the child, as set forth in **Miller v. Martin**, 02-0670 (La. 1/28/03), 838 So.2d 761, DCFS filed a peremptory exception pleading the objection of no cause of action, claiming La. R.S. 42:1441.1 bars the application of La. C.C. art. 2320 to DCFS. The district court denied the peremptory exception, and the appellate court denied the ensuing writ application filed by DCFS; we affirm the district court and remand for further proceedings.

[*]Retired Judge Freddie Pitcher, Jr., participated in this decision as Justice Ad Hoc, sitting for McCallum, J., recused in this case.

FACTS AND PROCEDURAL HISTORY

The child at issue in this case, Grayson, was born on February 14, 2013 to a mother with a significant history of drug abuse, and Grayson allegedly had drugs in his system at birth. Shortly thereafter, in March of 2013, Grayson was adjudicated a "child in need of care,"[1] placed in the custody of DCFS, and entrusted to the physical care of foster parent Samantha Gafford. While in the care of Samantha Gafford, Grayson suffered severe personal injuries, which included brain damage, blindness, and seizures; it was also alleged that the child had bite marks on his thigh and abdomen. Gafford did not disclose these injuries until Grayson was taken to the hospital on or about May 2, 2013.

The instant suit for Grayson's personal injuries was initially instituted on May 1, 2014 by his birth mother, who asserted that Samantha Gafford intentionally and negligently caused Grayson's injuries; that DCFS was liable under 42 U.S.C. §§ 1983 and 1988; that DCFS was negligent, inter alia, in its hiring, supervising, and training of Gafford; and that DCFS was liable for Grayson's damages vicariously, pursuant to its employment of Gafford and its non-delegable duty as his legal custodian.[2]

When Grayson was subsequently adopted by Jason and Johnna Kunath, they were substituted as plaintiffs in this suit, in August of 2018. In 2019, the plaintiffs' federal claims, under 42 U.S.C. §§ 1983 and 1988, and state claims, based on DCFS's alleged negligence related to Gafford's hiring, training, and supervision, as well as with respect to DCFS's alleged deficient promulgation and implementation

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[1] See La. Ch.C. art. 601 et seq.

[2] The petition alleged that foster parent Samantha Gafford was "an agent and/or employee" of DCFS and that the injuries sustained by Grayson "were sustained while in the custody of Defendant Gafford, who was at all times acting in the course and scope of her employment as a foster parent by the DCFS"; "[a]ccordingly, DCFS is liable, vicariously and *in solido*, to the Petitioner for all damages arising from the injuries received by [Grayson], while in the custody of Defendant Samantha Gafford." The petition also stated that the duty of DCFS was "to care for and protect [Grayson], by virtue of its custody of the child" which is "a non-delegable duty."

of appropriate policies and procedures to prevent the abuse of foster children by foster parents, were dismissed on the parties' stipulated judgments, signed in May of 2019 and December of 2019, respectively.

Thereafter, the only remaining bases of liability, as to DCFS, were pursuant to allegations that DCFS was vicariously liable for the actions of Samantha Gafford based on its employer-employee relationship and that DCFS was liable for Grayson's injuries under its non-delegable duty as his legal custodian, pursuant to this court's holding in **Miller v. Martin**, 02-0670 (La. 1/28/03), 838 So.2d 761. Citing La. R.S. 42:1441.1, DCFS filed a peremptory exception pleading the objection of no right of action, on May 29, 2020, which was subsequently denied by the district court in July of 2020 (on concluding that it was "bound to follow **Miller**"). The appellate court denied the writ application of DCFS, citing **Herlitz Construction Company v. Hotel Investors of New Iberia, Inc.**, 396 So.2d 878 (La. 1981) ("A court of appeal has plenary power to exercise supervisory jurisdiction over district courts and may do so at any time, according to the discretion of the court. In cases in which peremptory exceptions are overruled, appellate courts generally do not exercise supervisory jurisdiction, since the exceptor may win on the merits or may reurge the exception on appeal."). This court granted the writ application of DCFS.

DCFS asserts in this court that the district court erred: (1) in denying its exception of no cause of action "as there is a statutory bar to finding DCFS vicariously liable for actions of a foster parent" and "even assuming vicarious liability could be applied under Civil Code article 2320, there are no allegations supporting such a cause of action"; and (2) in denying its exception of no cause of action as the plaintiffs' claim for punitive damages "as there is no law providing for the recovery of punitive damages from DCFS."

LAW AND ANALYSIS

In arguing that it should not be held liable for the actions of foster parent Samantha Gafford, DCFS asserts that that the holding of this court in **Miller v. Martin** (relying on **Vonner v. State of Louisiana, through the Department of Public Welfare**, 273 So.2d 252 (La. 1973)), runs afoul of La. R.S. 42:1441.1, which provides:

> Civil Code Article 2320 and other laws imposing liability on a master for the offenses and quasi offense*s* of his servant shall not extend or apply to and shall not impose liability on the state for the offenses and quasi offenses of any person who is not expressly specified by R.S. 13:5108.2(A) to be an official, officer, or employee of the state entitled to indemnification under R.S. 13:5108.2.

DCFS states that "there are no allegations that DCFS could have prevented the alleged actions of the foster parent and, in turn, failed to do so."[3]

DCFS asks this court: to overturn the **Miller v. Martin** decision, which it claims is "unconstitutional due to its encroachment upon exclusive legislative authority" as "R.S. 42:1441.1 statutorily bars Plaintiffs' vicarious liability claim against DCFS"; to reverse the district court denial of its exception of no cause of action; and to dismiss DCFS from this suit.

We first note that neither **Vonner** nor **Miller** discussed La. R.S. 42:1441.1; the former because the statute was not enacted until 1985, after the 1973 decision was rendered, and the latter because it was not raised by the parties. Therefore, it is necessary to first examine whether the Legislature intended La. R.S. 42:1441.1 to be

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[3] We note that this court has previously commented on the requirement that "responsibility only attaches ... when the masters or employers ... might have prevented the act which caused that damages" in **Blanchard v. Ogima**, 253 La. 34, 43-44, 215 So.2d 902, 905 (1968) (cited by the Legislature in La. R.S. 42:1441.4, setting forth "[l]egislative findings and purposes" for 1985 La. Acts, No. 451, discussed infra), stating: "Louisiana jurisprudence has not interpreted this restriction literally, and the demands of modern commerce and the needs of society would not permit such a stringent and severe limitation of the liability of a master for his servant. However, by inquiring into the overall relationship of the parties and the element of control, our jurisprudence has established reasonable definitions and limitations of vicarious liability to replace the literal codal restriction which has fallen into desuetude." Because of our disposition herein we find it unnecessary to reach this issue in this case.

applicable to a cases such as the one now before this court.

As this court stated in **Milbert v. Answering Bureau, Inc.**, 13-0022, p. 8 (La. 6/28/13), 120 So.3d 678, 684, in order to determine legislative will, we must start with the language of the statute itself, interpreting the words used as they are generally understood; this court is bound to a strict interpretation of the plain language of the statutory provisions when the words of a statute are clear and unambiguous and the application of the law does not lead to absurd consequences.

The language of R.S. 42:1441.1 clearly limits the liability of the State for offenses and quasi-offenses, under La. C.C. art. 2320[4] and other laws imposing such liability for its "servants," to only those officials, officers, or employees (referred to in R.S. 13:5108.1 as "covered individual[s]") expressly specified as entitled to indemnification "under R.S. 13:5108.2."

The former text of La. R.S. 13:5108.2 now appears in La. R.S. 13:5108.1,[5]

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[4] Civil Code Article 2320 provides:

> Masters and employers are answerable for the damage occasioned by their servants and overseers, in the exercise of the functions in which they are employed.
> Teachers and artisans are answerable for the damage caused by their scholars or apprentices, while under their superintendence.
> In the above cases, responsibility only attaches, when the masters or employers, teachers and artisans, might have prevented the act which caused the damage, and have not done it.
> The master is answerable for the offenses and quasi-offenses committed by his servants, according to the rules which are explained under the title: Of quasi-contracts, and of offenses and quasi-offenses.

[5] See **Morgan v. Laurent**, 06-0467, p. 6 (La. App. 5 Cir. 12/27/06), 948 So.2d 282, 285, writ denied, 07-0178 (La. 3/16/07), 952 So.2d 701 ("[T]he list of specified employees for which the state may be held vicariously liable is now found in LSA-R.S. 13:5108.1 since LSA-R.S. 13:5108.2 has been repealed."). By means of 2000 La. Acts, 1st Ex. Sess., No. 65, La. R.S. 13:5108.2 was repealed by Section 2 of that Act. In addition, Act No. 65 revised and re-enacted La. R.S. 13:5108.1, combining the subject matter and some text previously appearing in both La. R.S. 13:5108.1 and La. R.S. 13:5108.2, along with new text. After Act No. 65 was passed, pursuant to the authority granted to it by 2015 House Concurrent Resolution No. 84, the Louisiana State Law Institute re-designated La. R.S. 40:1299.91 (originally enacted by 1978 Acts, No. 597, § 1) as La. R.S. 13:5108.2 to read: "The Department of Justice shall provide any worker of the child protection services division of the office of children and family services of the Department of Children and Family Services with a legal defense in any civil action arising from any activity within the course and scope of the worker's employment." Revised Statute 13:5108.2, as it now reads, obviously does not address who is considered a "covered individual" for purposes of indemnification by the State. Notwithstanding, La. R.S. 42:1441.1 continues to inaccurately refer to La. R.S. 13:5108.2 and should now reference La. R.S. 13:5108.1 instead.

and R.S. 13:5108.1 states in pertinent part:

> **A. Indemnification.**
> (1) The state shall defend and indemnify ***a covered individual*** against any claim, demand, suit, complaint, or petition seeking damages filed in any court over alleged negligence or other act by the individual, including any demand under any federal statute when the act that forms the basis of the cause of action took place ***while the individual was engaged in the performance of the duties of the individual's office, employment with the state, or engaged in the provision of services on behalf of the state or any of its departments pursuant to Paragraph (E)(2)*** of this Section.
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> **E. Definition.**
> As used in this Section "***covered individual" includes***:
> (1) An official, officer, or ***employee holding office or employment***:
> (a) ***In the executive branch*** of state government ***or in any department***, office, division, or agency thereof.
> (2) A physician or dentist who either contracts with or provides services on behalf of the state or any of its departments, whether compensated or not, (a) in treating and performing evaluations of persons when such persons cause harm to third parties, or (b) in providing professional assistance to the contracting agency when such professional assistance is alleged to have caused harm to third parties. For the purposes of this Section, such physicians or dentists who provide services under contract shall be deemed to be employees of the contracting agency.
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> * * *

(Emphasis added.)

The plain language of R.S. 42:1441.1 limits the liability of the State to only "offenses and quasi offenses" committed by officials, officers, or employees specified as entitled to indemnification in R.S. 13:5108.1. Further, R.S. 13:5108.1(A)(1) specifies that the right to indemnification is extended only to "a covered individual" when "the act that forms the basis of the cause of action took place while the individual was engaged in the performance of the duties ***of the individual's office***, ***employment with the state***, ***or engaged in the provision of services*** on behalf of the state or any of its departments ***pursuant to Paragraph (E)(2)*** of this Section." (Emphasis added.)

DCFS contends that foster mother Samantha Gafford was not a "covered individual" under La. R.S. 13:5108.1, which encompasses an "***employee holding***

office or employment" (emphasis added), because it asserts Gafford was not a "state office holder, employed by the state, nor [did] she provide the services set out in Paragraph (E)(2)." While DCFS may ultimately be able to prove these assertions, no evidence has yet been submitted to the district court, as the district court was only asked to rule on DCFS's no cause of action exception, which is decided exclusively on the allegations of a plaintiff's petition. See **United Teachers of New Orleans v. State Board of Elementary & Secondary Education**, 07-0031, p. 9 (La. App. 1 Cir. 3/26/08), 985 So.2d 184, 193 ("In ruling on an exception raising the objection of no cause of action, the court must determine whether the law affords any relief to the claimant if he proves the factual allegations in the petition at trial. ... Any reasonable doubt concerning the sufficiency of the petition must be resolved in favor of finding that a cause of action has been stated.").[6]

The plaintiffs' petition does allege, inter alia, that Gafford "acted in her capacity as a foster parent selected, trained, and ***employed by DCFS*** as its agent to provide for the care, supervision, health, and welfare of the infant Grayson," that "Gafford was an ***agent and/or employee of DCFS***," and that she was "at all times pertinent hereto acting in the course and scope of her ***employment as a foster parent by DCFS***." (Emphasis added.)

A "covered individual" under La. R.S. 13:5108.1(E)(1) includes "[a]n ...

[6] The function of the peremptory exception of no cause of action is to test the legal sufficiency of the petition, which is done by determining whether the law affords a remedy on the facts alleged in the pleading. **Ramey v. DeCaire**, 03-1299, pp. 7-8 (La. 3/19/04), 869 So.2d 114, 118-19. Louisiana has chosen a system of fact pleading; therefore, it is not necessary for a plaintiff to plead the theory of his case in the petition. **Id.** The burden of demonstrating that the petition states no cause of action is upon the mover. **Id.** The pertinent question is whether, in the light most favorable to plaintiff and with every doubt resolved in plaintiff's behalf, the petition states any valid cause of action for relief. **Id.** The court reviews the petition and accepts well-pleaded allegations of fact as true; no evidence may be introduced to support or controvert the exception (see **id.**, 03-0129 at p. 7, 869 So.2d at 118, and La. C.C.P. art. 931), unless evidence is admitted without objection to enlarge the pleadings (see **Woodland Ridge Association v. Cangelosi**, 94-2604, p. 3 (La. App. 1 Cir. 10/6/95), 671 So.2d 508, 510). The issue in ruling on the no cause of action exception is whether, on the face of the petition, the plaintiff is legally entitled to the relief sought. **Ramey v. DeCaire**, 03-1299 at p. 7, 869 So.2d at 118. Every reasonable interpretation must be accorded the language used in the petition in favor of maintaining its sufficiency and affording the plaintiff the opportunity of presenting evidence at trial. **Badeaux v. Southwest Computer Bureau, Inc.**, 05-0612, p. 7 (La. 3/17/06), 929 So.2d 1211, 1217.

employee holding office or ***employment*** ... ***[i]n*** the executive branch of state government or ***in any department***, office, division, or agency thereof." (Emphasis added.) As stated in La. R.S. 36:4(10), DCFS is one of the twenty *departments* allowed to this state's executive branch of government by La. Const. Art. IV, § 1, and La. Const. Art. 14, § 6.

When ruling on an exception of no cause of action, a plaintiff's allegations are accepted as true. <u>See</u> **Scheffler v. Adams & Reese, LLP**, 06-1774, p. 5 (La. 2/22/07), 950 So.2d 641, 646. The plaintiffs have alleged that Samantha Gafford was *employed* as a foster parent by DCFS and that she caused injury to Grayson *while in the course and scope of her employment* as a foster parent. Therefore, if plaintiffs can prove these allegations, Gafford may be found to have been a "covered individual" under La. R.S. 13:5108.1 and a person for whom R.S. 42:1441.1 would extend liability to the State for her offenses and quasi-offences under C.C. art. 2320 ("Masters and employers are answerable for the damage occasioned by their servants and overseers, in the exercise of the functions in which they are employed."). <u>See</u> **Garrett v. Fleetwood**, 93-2382, p. 7 (La. App. 4 Cir. 9/29/94), 644 So.2d 664, 669, <u>writ denied,</u> 94-3081 (La. 2/17/95), 650 So.2d 253 ("R.S. 42:1441.1 ... does not limit the State's liability for only negligent acts of its employees, but rather codal article 2320 imposes vicarious liability on the State for ***<u>all</u>*** actions of the individuals specifically listed in 13:5108.[1]."). (Emphasis added.)

In denying DCFS's writ application, on the basis of **Herlitz Construction Company v. Hotel Investors of New Iberia, Inc.**, supra, the appellate court in this case undoubtedly determined that, after some evidence on the nature of foster mother Samantha Gafford's employment with DCFS is introduced into the record (which has not yet occurred), the trial court will be in a better procedural position to decide the matter on either a subsequent re-urging of a no cause of action exception, on the filing of a motion for summary judgment, or at a trial of this matter, rather than

merely on the basis of the allegations of the petition (to which a determination on the no cause of action exception currently before this court is restricted).

Accordingly, we find no error in the district court's denial of the exception of no cause of action filed by DCFS. Accepting, for the purpose of the exception, the truth of the allegations of the plaintiffs' petition, plaintiffs have stated a cause of action.[7]

DECREE

We affirm the district court ruling, denying the exception pleading the objection of no cause of action, filed by the Louisiana Department of Children and Family Services, and we remand this matter to the district court for further proceedings in accordance with the forgoing.

AFFIRMED AND REMANDED.

[7] We find it unnecessary to express an opinion on any claim made by plaintiffs under La. C.C. art. 2315.8 (authorizing, in addition to general and special damages, the award of exemplary damages upon proof that the injuries on which the action is based were caused by a wanton and reckless disregard for the rights and safety of a family or household member, as defined in R.S. 46:2132, through acts of domestic abuse resulting in serious bodily injury or severe emotional and mental distress, regardless of whether the defendant was prosecuted for his or her acts), since such damages would be contingent upon the plaintiffs first prevailing on establishing the liability of DCFS at the trial of this matter.

09/30/21

SUPREME COURT OF LOUISIANA

NO. 2020-C-01266

JASON AND JOHNNA KUNATH, INDIVIDUALLY AND AS NATURAL TUDOR AND TUTRIX OF GRAYSON KUNATH, MINOR

VS.

SAMANTHA FAYE GAFFORD, THE STATE OF LOUISIANA, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, AND SUZY SONNIER, SECRETARY, LOUISIANA DEPARTMENT OF CHILDREN AND FAMILY SERVICES

On Supervisory Writ to the 42nd Judicial District Court, Parish of Desoto

WEIMER, C.J., concurring.

Based on the facts and procedural posture of the case, I agree with the majority opinion affirming the district court's denial of DCFS's exception of no cause of action as it relates to plaintiffs' claims of vicarious liability arising under La. R.S. 42:1441.1.

The issue that must be currently resolved is whether La. R.S. 42:1441.1 prohibits the application of vicarious liability based on the facts of this case. Louisiana R.S. 42:1441.1 provides that the state can only be vicariously liable for those who are officials, officers or **employees** of the state.[1] The majority correctly

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[1] La. R.S. 42:1441.1 provides:

> Civil Code Article 2320 and other laws imposing liability on a master for the offenses and quasi offenses of his servant shall not extend or apply to and shall not impose liability on the state for the offenses and quasi offenses of any person who is not expressly specified by R.S. 13:5108.2(A) to be an official, officer, or employee of the state entitled to indemnification under R.S. 13:5108.2.

La. R.S. 13:5108.2 was repealed by 2000 La. 1st Ex. Session, Act 65, § 1. The substance of La. R.S. 13:1508.2 was incorporated into La. R.S. 13:5108.1, which in relevant part provides:

> (A)(1) The state shall defend and indemnify a covered individual against any claim, demand, suit, complaint, or petition seeking damages filed in any court over alleged negligence or other act by the individual, including any demand under any

points out that plaintiffs' petition alleges the foster mother was employed by DCFS and that she caused injury to the foster child while in the course and scope of that employment. Because the issue of DCFS's liability was raised in an exception of no cause of action, the district court was required to accept the allegations of plaintiffs' petition as true and, thus, correctly denied DCFS's exception. To be clear, my agreement with the majority on this issue does not mean that I find the foster mother was an employee of DCFS. Should DCFS produce evidence that the foster mother is not an employee, it will be able to raise this issue again in another exception or by motion for summary judgment. Furthermore, assuming the foster mother is neither an official, officer nor employee, DCFS would not be vicariously liable for her actions based on the clear language of La. R.S. 42:1441.1.

My position in this case is not inconsistent with former Justice Victory's dissent in **Miller v. Martin**, 02-0670 (La. 1/28/03), 838 So.2d 761, with which I agreed. In **Miller**, this court reaffirmed the holding of **Vonner v. State, Dep't. of Pub. Welfare**, 273 So.2d 252 (La. 1973), imposing a nondelegable duty of care on DCFS as the legal custodian of the child. As evidenced by my dissent in **Miller**, I believed–and continue to believe–that such holding was in error because there is no legal justification to impose a nondelegable duty of care on DCFS. See **Miller**, 838 So.2d at 770-71 (Victory, J., dissenting) (Weimer, J., dissenting for the reasons assigned by J. Victory). Although La. R.S. 42:1441.1 was not at issue in **Vonner** or **Miller**, this statutory provision provides further support for not following those decisions.

> federal statute when the act that forms the basis of the cause of action took place while the individual was engaged in the performance of the duties of the individual's office, employment with the state, or engaged in the provision of services on behalf of the state or any of its departments pursuant to Paragraph (E)(2) of this Section.

Although I find plaintiffs' petition sufficiently states a cause of action for liability of DCFS under La. R.S. 42:1441.1, I also note that there is no remaining cause of action for liability of DCFS arising out of breach of its statutory duties as the legal custodian of the minor child. While there are certainly statutory duties imposed on DCFS relative to care of foster children,[2] all of the plaintiffs' claims related to such allegations of fault on the part of DCFS in this case have already been dismissed with prejudice. In my opinion, the only potential remaining claim against DCFS is not based on fault, but rather based on a theory of vicarious liability for the actions of the foster parent under La. R.S. 42:1441.1, and only if it is determined that the foster mother was an employee of DCFS.

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[2] See, e.g., La. R.S. 46:1401, *et seq*.; La. Ch.C. art. 116(12).

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VS.

SAMANTHA FAYE GAFFORD, THE STATE OF LOUISIANA, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, AND SUZY SONNIER, SECRETARY, LOUISIANA DEPARTMENT OF CHILDREN AND FAMILY SERVICES

ON SUPERVISORY WRIT TO THE 42ND JUDICIAL DISTRICT COURT, PARISH OF DESOTO

Crichton, J., concurs and assigns reasons:

I agree with the majority's conclusion that the district court did not abuse its discretion in overruling the exception of no cause of action based on the procedural posture of this case. I write separately to note that I believe the issue of whether the plain language of La. R.S. 42:1441.1 prohibits the application of vicarious liability in this case under *Miller v. Martin*, 2002-0670 (La. 1/28/03), 838 So. 2d 761, warrants further study. For the foregoing reasons, I concur.

SUPREME COURT OF LOUISIANA

No. 2020-CC-01266

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VS.

SAMANTHA FAYE GAFFORD, THE STATE OF LOUISIANA, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, AND SUZY SONNIER, SECRETARY, LOUISIANA DEPARTMENT OF CHILDREN AND FAMILY SERVICES

On Supervisory Writ to the 42nd Judicial District Court, Parish of Desoto

GRIFFIN, J., concurs and assigns reasons.

I pretermit the issue as to whether La. R.S. 42:1441.1 statutorily abrogates the non-delegable duty articulated in *Vonner v. State Through Dep't. of Pub. Welfare*, 273 So.2d 252 (La.1973) and *Miller v. Martin*, 02-0670 (La. 1/28/03), 838 So.2d 761. I further note the absence of any specific legislative response in the eighteen years since this Court's opinion in *Miller* was handed down. *See Borel v. Young*, 07-0419, pp. 21-22 (La. 11/27/07), 989 So.2d 42, 65. Should this prolonged silence not indicate its will, it is the prerogative of the legislature to respond accordingly.