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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2167**

Thomas Shimota, et al.,
Appellants,

vs.

Dr. Susan Phipps-Yonas, Ph.D.,
Respondent.

**Filed August 27, 2012
Affirmed; motion denied
Bjorkman, Judge**

Hennepin County District Court
File No. 27-CV-11-3165

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Considered and decided by Bjorkman, Presiding Judge; Halbrooks, Judge; and
Worke, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

On appeal from judgment on the pleadings, appellants challenge the district
court's determinations that respondent court-appointed parenting consultant is immune
from suit and appellants have no right to bring a private action under the Health

Insurance Portability and Accountability Act (HIPAA). Because we conclude that appellants' claims are precluded by quasi-judicial immunity, we affirm.

FACTS

Appellant Thomas Shimota (Shimota) and JoAnn Shimota divorced in 2002. They have two minor children, including appellant A.S.

Numerous custody and parenting-time disputes arose following the dissolution. As a result, the family court ordered the parents to retain a parenting consultant in 2007. The parents selected respondent Susan Phipps-Yonas, Ph.D., and the family court issued an amended order, directing the parents to retain Phipps-Yonas and authorizing her to resolve parenting-time disputes, modify the parenting-time schedule, and make binding therapy recommendations:

The parties *shall* retain Dr. Susan Phipps-Yonas to serve as parenting consultant to address co-parenting issues, and to develop strategies to improve communication and conflict resolution skills among the parties. In addition to providing instruction and guidance, the parenting consultant *shall have the authority to resolve disputes regarding parenting time, including but not limited to making changes in the parenting time schedule* to serve the best interests of the children. Until a party brings a dispute back to court by motion resulting in a court order, *decisions of the parenting consult[ant] shall be binding on the parties*. The parties should equally split all costs associated with the parenting consultant, except that the parenting consultant shall have the authority to apportion costs differently based on a party unreasonably requiring her services. The parenting consultant *shall also have the authority to require the parties and children to participate in appropriate therapy*. Release of information shall be provided to allow Dr. Phipps-Yonas to monitor compliance with therapy recommendations.

(Emphasis added.) Appellants allege that the parents entered into a contract with Phipps-Yonas at some point that required Phipps-Yonas to maintain complete confidentiality with respect to the family. The record does not contain any such contract.

Shimota became dissatisfied with Phipps-Yonas's services and eventually attempted to terminate her involvement with the family via a letter requesting that she discontinue her services and refund Shimota's retainer fee. He later moved the family court to grant him temporary sole physical custody over A.S. Phipps-Yonas testified at the December 2, 2008 hearing on Shimota's motion, but the substance of her testimony is not part of the record currently before this court.

In 2011, appellants commenced this action alleging breach of contract, negligence, violation of HIPAA, breach of fiduciary duty, fraud and misrepresentation, deceptive trade practices, and abuse of process. Phipps-Yonas moved for judgment dismissing the case on the pleadings. The district court granted the motion, holding that appellants' claims are precluded by quasi-judicial and expert-witness immunity, and appellants' HIPAA claims fail because HIPAA does not create a private cause of action. This appeal follows.

D E C I S I O N

A district court may grant judgment on the pleadings if a complaint fails to set forth a legally sufficient claim for relief. Minn. R. Civ. P. 12.03. In deciding a motion for judgment on the pleadings, the district court must take the facts alleged in the complaint as true and draw all inferences in favor of the nonmoving party. *Bodah v.*

Lakeville Motor Express, Inc., 663 N.W.2d 550, 553 (Minn. 2003). This court reviews judgments on the pleadings de novo. *Id.*

I. A court-appointed parenting consultant is entitled to quasi-judicial immunity for acts performed in the scope of the appointment.

“A judge or judicial officer cannot be held liable to anyone in a civil action for acts done in the exercise of judicial authority.” *Myers v. Price*, 463 N.W.2d 773, 775 (Minn. App. 1990) (quotation omitted), *review denied* (Minn. Feb. 4, 1991). The rationale for such immunity is to preserve judicial independence by allowing judges to carry out their official duties without fear of retaliatory civil suits. *Id.* Quasi-judicial immunity protects those who are appointed by the court to perform quasi-judicial functions. *Zagaros v. Erickson*, 558 N.W.2d 516, 523 (Minn. App. 1997), *review denied* (Minn. Apr. 17, 1997). Quasi-judicial immunity is grounded in the notion that “[b]ecause judicial immunity is designed to protect the judicial process, it also extends to persons who are integral parts of that process.” *Myers*, 463 N.W.2d at 775. Courts have granted quasi-judicial immunity to individuals who perform a variety of services on behalf of the court, including guardians ad litem, *Tindell v. Rogosheske*, 428 N.W.2d 386, 387 (Minn. 1988); therapists appointed to provide evaluations of child victims, *Myers*, 463 N.W.2d at 776; physicians appointed to provide evaluations of a party in what was known as an insanity proceeding, *Linder v. Foster*, 209 Minn. 43, 48, 295 N.W. 299, 301 (1940); and parenting-time expeditors, Minn. Stat. § 518.1751, subd. 5 (2010).

The family court appointed Phipps-Yonas as a parenting consultant and authorized her to resolve parenting-time disputes, modify the parenting-time schedule, and make

binding therapy recommendations. These are undoubtedly judicial functions. Minn. Stat. § 518.175 (authorizing courts to award and modify parenting time) (2010); *see also* Minn. Stat. § 518.131 (2010) (authorizing courts to mandate things such as therapy to prevent emotional harm to parents or children). And the family court appointed Phipps-Yonas to perform these functions.

Appellants argue that Phipps-Yonas is not entitled to quasi-judicial immunity because: (1) no case or statute has explicitly conferred quasi-judicial immunity upon parenting consultants, (2) the family court order did not explicitly grant Phipps-Yonas immunity, (3) Phipps-Yonas did not notify the parties that she was immune from suit prior to this action, (4) Phipps-Yonas is liable for breaching her contract with the parents, and (5) application of quasi-judicial immunity contravenes public policy. We address each argument in turn.

First, century-old precedent establishes that one who is appointed to and performs judicial functions, as court-appointed parenting consultants are, is entitled to quasi-judicial immunity. *Melady v. S. St. Paul Live Stock Exch.*, 142 Minn. 194, 196, 171 N.W. 806, 807 (1919); *Stewart v. Case*, 53 Minn. 62, 66, 54 N.W. 938, 938 (1893). The fact that no case or statute has expressly extended immunity to individuals appointed by the court to resolve parenting disputes does not change our analysis. As to appellants' second and third arguments, there is no authority suggesting that either an explicit grant of immunity or notice of immunity is a prerequisite to quasi-judicial immunity, and we decline to create such a requirement. We also reject appellants' fourth argument, that the purported contract between the parents and Phipps-Yonas creates liability that cannot be

extinguished by virtue of immunity. The terms of a private contract cannot trump a court's appointment order and has no bearing on whether Phipps-Yonas is entitled to quasi-judicial immunity.

Finally, we are not persuaded that application of quasi-judicial immunity to court-appointed parenting consultants contravenes public policy. The legislature expressly authorizes courts to appoint experienced psychologists and social workers to make recommendations to the court and resolve parenting-time disputes. *See* Minn. Stat. §§ 518.167, subd. 1 (authorizing courts to appoint county welfare agencies to conduct custody investigations and submit reports to the court); .1751, subd. 1 (authorizing courts to appoint parenting time expeditors “to resolve parenting time disputes”) (2010). Moreover, protecting parenting consultants from civil liability does not preclude a parent from challenging or obtaining relief from a parenting consultant's actions. A parent may bring a motion before the family court to remove the consultant or seek reversal of the consultant's parenting-time decisions. Appellants' public-policy objections therefore fail.

II. Appellants' claims fall within the scope of Phipps-Yonas's quasi-judicial immunity.

Appellants contend that their claims are outside the scope of Phipps-Yonas's quasi-judicial immunity because they challenge how she performed her duties as a parenting consultant rather than the decisions that she made in that capacity. This distinction does not make a difference. Quasi-judicial immunity protects one from civil liability not only for decisions made in a judicial capacity but more broadly for “acts done in the exercise of judicial authority,” “however erroneous, or by whatever motives

prompted.” *Linder*, 209 Minn. at 45, 46, 295 N.W.2d at 300 (quotation omitted). Accordingly, challenges to the way in which Phipps-Yonas performed her duties as a court-appointed parenting consultant fall squarely within the scope of her immunity.

Appellants further argue that quasi-judicial immunity does not protect Phipps-Yonas from suit for medical malpractice, provision of unauthorized services, breach of privacy, or fraud. But because appellants make this argument for the first time on appeal and provide no law or analysis to support it, they have waived the argument. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988); *In re Irwin*, 529 N.W.2d 366, 373 (Minn. App. 1995), *review denied* (Minn. May 16, 1995).¹

Finally, we deny appellants’ motion to strike Phipps-Yonas’s statement of the case and statement of the facts. The challenged factual assertions, including that Phipps-Yonas testified in a December 2008 family court hearing, are referenced in appellants’ complaint and otherwise supported by the record.

Affirmed; motion denied.

¹ Because we conclude that quasi-judicial immunity precludes all of appellants’ claims, we decline to address whether Phipps-Yonas is entitled to expert-witness immunity and whether HIPAA creates a private cause of action.