

Title 42 U.S.C. Section 1983, enacted as part of the Ku Klux Klan Act of 1871, creates the primary remedy for deprivation of federal constitutional rights by state or local officials. Section 1983 reads:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

Although enacted as part of a legislative package designed to deal with southern racial problems, Section 1983 reaches not only deprivation of equal protection, but of any right which may properly be characterized as springing from the Constitution. As Representative Dawes said, in supporting Section 1983's enactment:

"[t]he rights, privileges, and immunities of the American citizen, secured to him under the Constitution of the United States, are the subject-matter of this bill. They are not defined in it, and there is no attempt in it to put limitations upon any of them; but whatever they are, however broad or important, however minute or small, however estimated by the American citizen himself, or by his legislature, they are in this law".

CONGRESSIONAL GLOBE, 42nd Congress, 1st Session 475 (1871). See also the statement of Section 1983's author, Representative Shellabarger, *id.* at appendix 68.

Recent commentary suggests that Section 1983's protections may extend only to a limited set of constitutional rights. This is inconsistent with the view which almost all courts have taken of Section 1983. A review of the legislative history cited reveals that it has either been quoted out of context by the United States Supreme Court and the lower federal courts in many judicial immunity and other public official immunity cases, or it has been mistakenly only applied to sections of the Ku Klux Klan Act other than Section 1983.

Federal court jurisdiction for litigation of Section 1983 claims and of other federal civil rights causes of action is provided by 28 U.S.C. 1343. Congress from time to time has enacted other causes of action for the protection of particular constitutional or statutory civil rights. Section

1983's coverage of the broad spectrum of constitutional rights, however, has made it far and away the most popular of civil rights statutes.

This broad and flexible civil remedy was limited, however, by the 1967 decision in *Pierson v. Ray*, 386 U.S. 547 (1967). Over the dissent of Mr. Justice Douglas, the U.S. Supreme Court held state court judges immune from Section 1983 damages. However, a clear reading of the *Pierson* case shows that the Supreme Court justices made major mistakes and inappropriately gutted the Civil Rights Act with respect to judicial immunity. Much of the Section 1983 litigation has been against state judges. Plaintiffs in such lawsuits have often been state prisoners suing pro se. Many of the actions have been frivolous litigation and inartfully drawn actions by laymen with limited educational backgrounds. But some the litigation has brought positive results in overturning barbaric prison conditions (*Holt v. Sarver*, 300 F.Supp. 825 (E.D. Ark. 1969), inhuman or inecent treatment of prisoners in jails (*Jordan v. Fitzharris*, 257 F.Supp.674 (N.D.Cal. 1966), suing entire appellate court panels for alleged misconduct at arraignments and suing judges in all other types of proceedings. Attempts to dispose summarily of such cases on shaky procedural grounds have not always met with approval in the federal appellate courts.

In the *Pierson* decision the Supreme Court confined their search for legislative intent to the debates of the Ku Klux Klan Act of 1871, of which Section 1983 was the first section. These debates back then, however, are singularly unenlightening, for in them Section 1983 received scant and perfunctory attention. Despite its primacy in the bill and despite its importance today, in 1871 Section 1983 was by far the least controversial portion of a politically explosive package which also included a grant of unprecedented peacetime powers to the federal government. Furthermore, it was well understood that Section 1983 was to be modeled directly upon a statute, now known as 18 U.S.C. 242, which provides a criminal analog to Section 1983 in virtually identical language and which had been fully discussed by Congress in 1866. Both the author and most of the proponents of Section 1983 were members of that Congress. As Section 1983's author said in discussing it:

"[m]y first inquiry is as to the warrant which we have for enacting such a section as this. The model for it will be found in the second section of the act of April 9, 1866, known as the "civil rights act". That section provides a criminal proceeding in identically the same case as this one provides a civil remedy for..."

CONGRESSIONAL GLOBE, 42nd Congress, 1st Session appendix 68 (1871).
(Representative Shellabarger)

The 1866 Act was directed primarily at state judicial behavior. Both the House and the Senate debates confirm that the criminal nature of the Act's penalties extended to state judges. In each house of Congress, hostile questions as to whether state judges would be criminally liable were met with unequivocal affirmatives from the Act's sponsors and supporters. See the Remarks of Senator Trumbull (Senate sponsor of the bill), being interrogated by Senator Cowan, CONGRESSIONAL GLOBE, 39th Congress, 1st Session 475-476 (1865-1866); and colloquy between Representatives Thayer and Eldridge. *Id.* at 1154-1155.

In further proceedings on the 1866 Act, the propriety and constitutionality of federal imposition of criminal liability upon state judges was the subject of bitter debate. While the debate demonstrated that there was considerable opposition to criminal liability for state judges, it is equally clear that all parties understood that such criminal liability was intended by the Civil Rights Act. On at least two occasions amendments to delete the imposition of criminal liability on state judges were unsuccessfully introduced. Interestingly enough, the second such amendment would have substituted "civil liability" for judges (in words almost identical to Section 1983) for criminal liability. The Act's sponsor, in opposing this amendment, pertinently commented that the issues as to criminal and civil liability were identical--if Congress could constitutionally make judges civilly liable, it could constitutionally make them criminally liable and vice versa. *Id.* at 1925 (statement of Representative Wilson).

Based on the recent history of case decisions handed down by the U.S. Supreme Court and other federal courts, the proposition that Section 1983 leaves the common law of judicial immunity intact, while the statute upon which it was consciously modeled abrogates it) approaches the incredible. If the test is one of Congressional purpose (as it surely is), no absolute immunity for state judges can be read into Section 1983. As Mr. Justice Douglas pointed out in his *Pierson v. Ray* dissent at 386 U.S. at 563-64, *Ex Parte Virginia*, 100 U.S. 339 (1879), holds that a state judge may constitutionally be subjected to federal criminal liability for violating federal civil rights. There can therefore be no serious doubt of the constitutionality of federal civil liability for state judges. Barring constitutional impediments, whether or not state judges are to be liable under the Civil Rights Act is a matter solely left to Congress.

It may be suggested that the equivalency of criminal versus civil liability is not so clear as is assumed by the argument in the text of *Pierson*. But, however correct such a suggestion might be in general, it is not applicable to the Civil Rights Act debate. First, as we have seen, the author of the Civil Rights Act (and presumably a majority of his fellow Congressmen) considered the issues of civil and criminal liability to be the

same. Second, the federal courts have repeatedly held that criminal statutes enacted for the protection of a particular class from a particular harm endow the intended beneficiaries thereof with a civil cause of action for their violation. See, e.g., *J.I. Case Co. v. Borak*, 377 U.S. 426 (1964)(construing provisions of Securities and Exchange Act for the enforcement of which only criminal penalties are provided, to create civil cause of action); *Reitmeister v. Reitmeister*, 162 F.2d 691 (2d Cir. 1943)(civil cause of action impliedly created by congressional prohibition of wire tapping). Indeed, that very principle has been applied to hold that Sections 1981 and 1982, the only enforcement of which was by the general criminal prohibition now contained in 18 U.S.C. Section 242 (1964), create civil causes of action both for damages and for an injunction. *Sullivan v. Little Hunting Park, Inc.*, 396 U.S. 229 (1969); *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409 (1968).

The possibility of a judge's being held liable in damages for a good faith mistake or even for a negligent mistake is the one thing proponents of judicial immunity fear. But as commentary suggests, the appropriate standard for Section 1983 judicial liability is one of "actual malice", a term which is defined to include "reckless disregard". These definitions can be found in every State Tort Claims Act as they apply to government officials and employees. A review of the 1866 debate amply supports the proposition that Section 1983's authors intended it to provide for partial immunity for mistakes. The Act's Senate sponsor and its other supporters vigorously denied that state judges who "innocently" infringed upon the rights conferred by the statute would be liable. Rather, they said, state judges would be liable only if they acted "acted knowingly, viciously or oppressively, in disregard of a law of the United States..." CONGRESSIONAL GLOBE, 39 Congress, 1st Session 1758 (1865-66) (statement of Senator Trumbull).

However, as we have seen the history of absolute judicial immunity unfold in the past 10 years, the U.S. Supreme Court has given judges absolute immunity protection even if they act with malice or corruptly. Now, the new standard is a two-pronged test: (1) Was the judge acting within his/her jurisdiction and the act is a function normally performed by a judge; (2) whether the parties dealt with the judge in his judicial capacity. The U.S. Supreme Court has undermined the whole Civil Rights Act, as it pertains to judges, and has allowed tyranny to present itself. **The Supreme Court has held that if a judge has acted maliciously it is of no moment because a judge "should not have to have fear that unsatisfied litigants may hound him [or her] with litigation charging malice or corruption".** See, *Pierson v. Ray*, supra; accord *Stump v. Sparkman*, 435 U.S. 349, 356, rehearing denied, 436 U.S. 951 (1978); *Forrester v. White*, 108 S.Ct. 538, 544 (1988). These rulings are beyond the scope and authority of the U.S. Supreme Court and are

only allowed within the province of Congress. **The Supreme Court has overstepped its boundaries and violated the Separation of Powers of the Constitution for the United States of America by ruling state and local judges have absolute immunity, even though Congress has never addressed the issue, but in fact addressed the opposite via the Civil Rights Acts of 1866 and 1871.**

Judges should be liable with Section 1983 if (1) he/she has knowingly erred as to law or fact, or both, or erred with reckless disregard of making the proper decision; and (2) if this was done for the purpose of harming the victim or discriminating against the victim or his class or of depriving him of his constitutional rights. Such a standard would exclude even an intentional misconstruction of law or misfinding of fact when not committed for a discriminatory purpose or to infringe on constitutional rights.

Difficulties in standards of proof to find judges liable may prove extremely difficult for plaintiffs. Proving that a judge's error in deciding one or more complex legal issues or factual questions was knowing rather than merely negligent or even incompetent will be difficult to prove. These difficulties of proof are surmountable, however, where there are blatant cases of judicial malfeasance to which Congress intended judicial liability to apply. The difficulties of proof will increase in exact proportion as the judicial decision is less clearly motivated by prejudice and involves more complex questions of law and/or fact as to which good faith error is possible.

The proposed standard of liability for judges requires proof of two distinct elements: (1) intentional or reckless error and malice; (2) class discrimination or intentional deprivation of constitutional rights. Proof of one of these elements will tend to go hand in hand with the other. Once the proof of intentional error is made, the burden shifts to the defendant judge to go forward with evidence that he was actuated by something other than malice or prejudice. Proof that a judge was prejudiced against a particular defendant or civil litigant (notice the two different terminologies used to differentiate criminal and civil proceedings) might support an inference that a gross error was knowing or reckless rather than merely incompetent.

Because most of Section 1983 litigation has involved only injunctive relief there has been little discussion of Section 1983 damage claims. An outstanding source on damages claims is found in Niles, "Civil Actions for Damages under the Federal Civil Rights Acts", TEXAS L.REV. 1015 (1967). The antiquarian language of the Civil Rights statute broadly, but unenlighteningly, authorizes "an action at law, suit in equity, or other

proper proceeding for redress". The remedial resources available to a Section 1983 plaintiff must be read in light of 42 U.S.C. Section 1988 which, in language both complex and verbose, requires federal courts to adopt any remedy available under the law of the state in which they sit where necessary to effectuate the civil rights laws. Thus, Section 1988 declares a simple, direct abbreviated test: "What is needed in the particular case under scrutiny to make the civil rights statutes fully effective?" *Brazier v. Cherry*, 293 F.2d 401, 409 (5th Cir. 1965)(state wrongful death statute adopted into the case to provide cause of action for wife of Negro beaten to death by sheriff), cited with approval in *Sullivan v. Little Hunting Park*, 396 U.S. 229, 240 (1969). Both federal and state rules on damages may be utilized, whichever better serves the policies expressed in the federal [civil rights] statutes--although Section 1983 authorizes punitive damages with or without compensatory damages regardless of whether state law would do so. *Basista v. Weir*, 340 F.2d 74 (3d Cir. 1965)(punitive damages available without proof of compensatory damages, though punitive damages not so available under state law).

Damage suffered as a result of knowing judicial error or misconduct seems roughly divisible into two categories: (1) actual demonstrable damage; and (2) loss of constitutional rights. Constitutional rights deprived by knowing judicial error or misconduct would presumably be either due process or the right to equal treatment in judicial proceedings (a subcategory of equal protection of the law), or both. But they could also include other constitutional rights, as for instance where the judicial misconduct had been motivated by desire to punish the plaintiff for his opinions or associations. A person against whom an adverse judgment (civil or criminal) is rendered through judicial misconduct will suffer demonstrable consequential damages in the form of counsel and other fees expended to appeal, time served in jail or cost of bail pending appeal. Counsel fees and other costs in a successful appeal of a criminal conviction resulting from a false arrest were recovered in *Stringer v. Dilger*, 313 F.2d 536 (10th Cir. 1963). Costs of counsel and other fees to defend against a criminal charge brought subsequent to a false arrest were recovered in both *McArthur v. Pennington*, 253 F.Supp. 420 (E.D.Tenn. 1963); and *Brooks v. Moss*, 242 F.Supp. 531 (W.D.S.C. 1965). Shepardizing of cases necessary.

Where the judicial misconduct did not relate to or result in an adverse judgment (as, for instance, where the person aggrieved is a witness subjected to verbal abuse because of his race), the only damages would be humiliation and emotional distress. Emotional distress of varying types may be suffered both where a verdict was rendered against the Section 1983 plaintiff and where it was not. A party who loses a case through judicial misconduct, but who was not subjected to public humiliation, may nevertheless suffer considerable anxiety and emotional distress until that judgment is corrected on appeal. A party who has suffered an adverse

judgment and been publicly humiliated, as, for instance, by being held in contempt for refusal to answer questions addressed to her by her first name will suffer both varieties of emotional harm.

The gravamen of a Section 1983 complaint is deprivation of constitutional rights. It has repeatedly been held that deprivation of such rights is remediable in damages without proof of other loss.

"...While traditional tort-law damage rules may be appropriate to accomplish some of the civil rights statutes' purposes, the tort-law rules do not allow full realization of those purposes because of their emphasis upon loss-shifting rather than upon punishment and deterrence."

Niles, "Civil Actions for Damages under the Federal Civil Rights Acts", 45 TEXAS L.REV. 1015, 1026, note 51 (1967).

No mere standard of proof--however rigorous, however difficult to satisfy-- will answer the objections of partisans of judicial immunity. Their objection is not to successful litigation against judges, that is, to the idea that judges, like other men, should be liable for torts. Their objection is that for every one legitimate grievance, there will be a hundred or a thousand frivolous cases in which judges will be put to the unremunerated expense of defending successfully. The case for complete judicial immunity (and complete tyranny and oppression against We the People) is perhaps most persuasively put in a classic Learned Hand opinion:

"It does indeed go without saying that an official, who is in fact guilty of using his powers to vent his spleen upon others, or for any other personal motive not connected with the public good, should not escape liability for the injuries he may so cause; and, if it were possible in practice to confine such complaints to the guilty, it would be monstrous to deny recovery. The justification for doing so is that it is impossible to know whether the claim is well founded until the case has been tried, and that to submit all officials, the innocent as well as the guilty, to the burden of a trial and to the inevitable danger of its outcome, would dampen the ardor of all but the most resolute, or the most irresponsible, in the unflinching discharge of their duties.

Again and again the public interest calls for action which may turn out to be founded on a mistake, in the face of which an official may later find himself hard put to it to satisfy a jury of his good faith. There must indeed be means of punishing public officers who have been truant to their duties; but that is quite another matter from exposing such as have been honestly mistaken to suit by anyone who has suffered from their errors. As is so often the case, the answer must be found in a balance between the evils inevitable in either alternative. In this

instance it has been thought in the end better to leave unredressed the wrongs done by dishonest officers than to subject those who try to do their duty to the constant dread of retaliation." *Gregoire v. Biddle*, 177 F.2d 579, 581 (2d Cir. 1949).

Judge Learned Hand should have immediately been removed from the bench for the aforementioned remarks. These were treasonous remarks that implicated official misconduct and obstruction of justice, not to mention violating his Oath of Office to Uphold and Defend the Constitution.

A direct opposition and repudiation to Judge Hand's slick opinion comes from a member of the House Judiciary Committee, during the Civil Rights Acts' debates in 1866. Representative Lawrence, declared:

"I answer it is better to invade the judicial power of the State than permit it to invade, strike down, and destroy the civil rights of citizens. A judicial power perverted to such uses should be speedily invaded. The grievance would be insignificant".

See, *Briscoe v. La Hue*, 103 S.Ct. 1108, 1123, 1127-1130 (1983).

Because of the high incidences of frivolous civil rights litigation that ultimately negatively impacts on meritorious cases, the development of devices which will radically decrease the incidence of frivolous litigation removes the need for complete judicial immunity as a "balance between the evils inevitable in either alternative". Absolute immunity for judges and other government officials eliminates meritorious as well as frivolous suits. Rights of citizens to litigate meritorious claims against judges are protected by the First and Fourteenth Amendments and perhaps by Article III of the Constitution for the United States of America as well. *United Mine Workers v. Illinois State Bar*, 389 U.S. 217 (1967); *Brotherhood of R.R. Trainmen v. Virginia State Bar*, 377 U.S. 1 (1964); *NAACP v. Button*, 371 U.S. 415 (1963); *Ex Parte Young*, 209 U.S. 123 (1908). See also *Cotting v. Kansas City Stockyards Co.*, 183 U.S. 79, 102 (1901).

A further objection to damage actions against state court judges is the inappropriateness of the federal judiciary sitting in judgment upon its state counterparts. See, e.g., *City of Greenwood v. Peacock*, 384 U.S. 808, 828 (1967) ("The civil rights removal statute does not require and does not permit the judges of the federal courts to put their brethren of the state judiciary on trial". *Id.* at 828). This interesting case can also apply when the federal government tries to bring state Citizens into the federal judiciary on Income Tax cases, RICO cases and the like, or the mere fact that federal judges cannot grant immunity to state court judges, because it is only a legislative function that Congress can bring.

Chief Justice John Marshall decisively repudiated this argument over 175 years ago when he declared federal courts to be the final and authoritative expositors of the Constitution. *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264 (1821). See also *Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat.) 304 (1816). It is a little late for federal judges, who regularly review the constitutionality of state judicial conduct (both directly and on habeas corpus review) to assert the impropriety of such review. The federalism objection doesn't apply where federal criminal liability of state judges involves discrimination in jury selection or they otherwise knowingly violate federal constitutional standards. 18 U.S.C. Section 243; *Ex parte Virginia*, 100 U.S. 339 (1879).

Opinions asserting the impropriety of federal review of state judicial conduct invariably go on to suggest appellate review as the "remedy" for constitutional error by state judges. This ignores the fact that appellate review (in itself a process often involving tremendous financial and emotional costs for the appellant) provides no compensation for the financial, emotional, and other harms suffered as a result of the trial court's impropriety. Appellate review is a method of correcting judicial error, not a remedy for judicial misconduct. To deny compensation to litigants whose constitutional rights have unintentionally been violated by an erroneous decision may, on balance, be a necessary prerequisite to fearless and principled judicial decision-making. To deny compensation where the constitutional error was intentional and malicious, however, is both unjust to the litigant and harmful to the legal system as a whole.

Judicial immunity gives a state judge who is not inclined to vindicate constitutional rights (or who fears to do so in the face of popular disapprobation) every reason to ignore his duty. If the litigant lacks the funds or perseverance to appeal, the state judge has fully accomplished his objective. Even if the party appeals and wins, the judge has lost nothing. Even though there is some point that state judges dislike their decisions appealed and reversed, a judge who intentionally or quasi-intentionally decides to violate a litigant's constitutional rights has probably calculated that his satisfaction in doing so is worth the risk of eventual appellate reversal. In this connection, it should be also remembered that some federal district judges have suffered scores and even hundreds of reversals of their decisions in civil rights cases.

At the very least, a state judge has put the litigant to the high cost of obtaining appellate relief. During the course of protracted appellate proceedings, the effect of the initial ruling (as enforced, interpreted and complied with by eager public officials) may have been to undermine or destroy a civil rights movement or organization or otherwise to make the appellant's eventual victory fruitless. The standard of proof in most civil proceedings, state or federal, is the preponderance of the evidence. But a

trial court's findings of fact can be challenged on appeal only if "clearly erroneous". Thus a judge who declines to vindicate constitutional rights can shield his decision by deliberately misfinding the facts. Plaintiffs seeking to vindicate constitutional rights before such a judge must, therefore, virtually prove their cases beyond a reasonable doubt in order to secure appellate reversal.

No where is this more true in New Jersey state courts than in domestic violence courts and enforcement courts when litigants are forced to appear against their wills under threat of incarceration, duress and coercion, and over their objections on child support enforcement matters. In both cases, the family courts have a propensity for tremendous gender bias against male litigants. Male litigants are routinely imprisoned for debt in child support enforcement matters, while the same law that is used prohibits incarcerating women for debt, even though state family court judges know that the existing laws and constitutions prohibit imprisonment for debt in any matter. In domestic violence matters, judges are blatantly biased against males to the extent that they grant over 95 percent of all domestic violence restraining orders against males. In child custody matters, the same applies. Judges routinely grant custody to females in over 90 percent of the cases, even though the male parent may be more capable of raising children.

Male litigants must prove beyond a reasonable doubt in civil domestic violence matters and civil child support enforcement matters that they are not guilty of violating orders of the court. Male litigants are held to even higher standards than beyond reasonable doubt in these family-type matters which is unconstitutional but constantly practiced by state court judges. Such judicial misconduct not only deprives litigants of their opportunity to vindicate constitutional rights in cases actually brought, but discourages others from bringing such cases.

State trial judges--from the justice of the peace or police court judge to the judge of the superior court of general jurisdiction--are among the most powerful and influential local officials in our country. Their decisions can hold a man for trial or convict and sentence him and can dictate the victor in civil litigation (even before a jury) as well as the bearer of costs and the scope of the remedy. The manner in which they address litigants, order their courtrooms, and otherwise perform their judicial functions can set an example to be followed by other local officials and can influence the attitudes of every element and individual in the community.

The conduct of the local judiciary, both in judicial decision-making and in judicial administration, probably more than the conduct of any other state or local official, determines whether and to what extent the abstract

guarantees of the Constitution are realized in a particular locality. It is no secret that all too often neither the pay nor the standards of selection of state judges of general jurisdiction (much less justices of the peace or of police courts) are commensurate with the great importance of their offices. It is also true that even the best judges, as other men, may sometimes feel inclined to indulge their prejudices or desires for community approval--particularly when they can do so without any prospect of personal liability. It is therefore a questionable doctrine that allows these local officials an absolute immunity comparable to that enjoyed by federal cabinet officers. A trial judge can make some of his rulings stick simply by fudging his findings of fact. See, e.g., *Gregoire v. Biddle*, 177 F.2d 579 (2d Cir. 1949).

The disinclination of the federal judiciary to sit in judgment upon its state brethren assures that it will do so leniently. In any case, whether or not state judges should be liable for intentional deprivations of constitutional rights was settled by Congress over 125 years ago by the Ku Klux Klan Act of 1871. It found that judges were liable, both criminally as well as civilly, for constitutional rights violations. As abortion protesters, tax protesters, human rights protesters, war protesters, draft resisters, fathers rights organizations, the patriot movement, and others of the same ilk are so often reminded, the federal courts sit not to judge the wisdom of Congress' wishes, but to carry those wishes out:

"We decline to void [the statute involved] essentially on the ground that it is unwise legislation...." *O'Brien v. United States*,
391 U.S. 367, 384 (1968).

The federal judiciary cannot pick and choose what laws it can void. It must uphold the laws made by Congress, including the Ku Klux Klan Act of 1871, which specifically denied state judges any immunity from civil or criminal liability, just as their Oaths when they took office demanded.

When suing state judges in state or federal courts, if immunity is granted by other judges sitting in judgment, those judges must be sued, removed from the case, if not the bench, and judicial misconduct complaints filed against them, for violations of constitutional rights. Under 28 U.S.C. 372 federal judges can be removed for a disability & misconduct. Under the Federal Tort Claims Act (FTCA), federal judges can and must be sued for being willful and malicious when violating your constitutional rights. It is interesting to note here that federal judges grant state judges immunity, when the FTCA allows for federal officials (including judges) to be sued. Each state has a Tort Claims Act which essentially supercedes any immunities. What is that disability you ask? They took an Oath to Uphold and Defend the Constitution for the United States of America, when they became a federal judge, a state judge, a lawyer, a prosecutor,

etc. To violate that Oath indicates a severe mental imbalance on the part of the particular judge. The Complaint against a federal or state judge must be in the form of an Affidavit and sent immediately to the U.S. Senate Judiciary Committee, the U.S. House Judiciary Committee, each state Senate and Assembly(House)Judiciary Committees, the Judicial review boards in each state, the Chief Justice of the United States Supreme Court, the Judicial Council for the particular federal Circuit, the Chief Justice of the respective state, and each respective state Bar Association (judges in almost every case have to be lawyers). In New Jersey, the case of In the Matter of Imbriani, former criminal court judge Michael Imbriani admitted to stealing over \$175,000 from his business partners, was convicted, sentenced to 5 years probation (even though Imbriani, while as a judge, had a convicted white collar defendant before him for stealing the exact same amount, sentenced him to the maximum N.J. penalty--10 years behind bars), had his Bar license revoked and stands to lose his pension.

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VanHorn v. Oelschlager

United States Court of Appeals, Eighth Circuit.

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Summary of Opinion

This case was brought by several veterinarians against the Nebraska Racing Commission alleging that the commission had violated their due process rights by banning them from treating race horses. This appeal is from the lower court's holding that quasi-judicial immunity barred the action. This court held that the defense of absolute, quasi judicial immunity was not available to Oeschlager and the Commissioners for claims against them in their official capacities, therefore, they cannot seek an interlocutory appeal from an order denying such immunity. The appeal was dismissed for lack of jurisdiction.

Text of Opinion

Dennis Oelschlager, the Executive Secretary for the Nebraska State Racing Commission (“the Commission”), and its three appointed Commissioners, Chairman Dennis P. Lee, Janell Beveridge, and Bob Volk (“the Commissioners”) seek an interlocutory appeal. Oelschlager and the Commissioners request reversal of the district court’s^{FN1} denial of their motion to reconsider its order directing that lawsuits filed by Dr. Stacy Lane VanHorn and Dr. Douglas L. Brunk shall proceed against Oelschlager and the Commissioners in their official capacities. We now dismiss the interlocutory appeal for lack of jurisdiction.

I. Background

The background facts underlying this dispute are fully set forth in our prior opinion, *VanHorn v. Oelschlager*, 457 F.3d 844 (8th Cir.2006) (“*VanHorn I*”). We repeat the underlying facts here only as necessary to the instant appeal.

Dr. VanHorn and his employer, Dr. Brunk, licensed veterinarians in the State of Nebraska, brought suit against Oelschlager and the Commissioners, alleging that they were denied due process and equal protection. They contended that the Commission violated these constitutional rights when it disciplined and banned them from treating race horses. The district court denied Oelschlager and the Commissioners’ motion for summary judgment based on qualified or quasi-judicial immunity. On appeal, we reversed the district court, holding that “[u]pon careful review, we find that the appellants are entitled to absolute, quasi-judicial immunity.”*VanHorn I*, 457 F.3d at 847. We concluded that “the holding in *Dunham [v. Wadley]*, 195 F.3d 1007 (8th Cir.1999), [was] controlling in the instant case.”*Id.* at 848. We therefore reversed the district court’s denial of summary judgment to Oelschlager and the Commissioners and “remanded for further proceedings consistent with th[at] opinion.”*Id.* at 848.

On remand, the district court denied in part Oelschlager and the Commissioners’ motion for summary judgment, finding that the claims against them in their official capacities for declaratory and injunctive relief should proceed. Oelschlager and the Commissioners filed a motion for reconsideration, arguing that the district court should have dismissed the case in its entirety based on our holding in *VanHorn I*.

The district court denied the motion for reconsideration, explaining that absolute, quasi-judicial immunity “only applies to individual capacity suits” and that the only immunities that apply in an official-capacity action “`are forms of sovereign immunity that the entity, *qua* entity, may possess, such as the Eleventh Amendment.” (Citing *Kentucky v. Graham*, 473 U.S. 159, 167, 105 S.Ct. 3099, 87 L.Ed.2d 114 (1985)).

Additionally, the district court rejected Oelschlager and the Commissioners’ argument that they were absolutely immune from suit for injunctive or declaratory relief. The district court noted that the 1996 amendment to 42 U.S.C. § 1983 provided that “in any action brought against a judicial officer for an act or omission taken in such officer’s judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.” According to the district court, no authority existed for the proposition that Oelschlager and the Commissioners qualified as “judicial officers” merely because this court concluded that their actions “were functionally comparable to those of judges and

prosecutors.”*VanHorn I*, 457 F.3d at 848. Furthermore, the district court noted that this court previously held in *Heartland Academy Community Church v. Waddle*, 427 F.3d 525, 530-31 (8th Cir.2005), that prosecutors are not immune from suit for injunctive relief under § 1983.

Finally, the district court found no support for Oelschlager and the Commissioners' claim that official officers cannot be sued for declaratory relief under § 1983. Thus, the district court ordered the actions against Oelschlager and the Commissioners in their official capacities for declaratory and injunctive relief to proceed.

II. Discussion

On appeal, Oelschlager and the Commissioners argue that the district court (1) erred in holding that absolute, quasi-judicial immunity “only applies to individual capacity suits,” as the issue of immunity goes to the act, rather than the actor, and is based upon the function performed and (2) erroneously *implicitly* applied *Ex Parte Young*, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714 (1908), in concluding that absolute, quasi-judicial immunity does not extend to claims for injunctive and declaratory relief.

In response, Dr. VanHorn and Dr. Brunk argue that this court lacks jurisdiction to hear the appeal. They acknowledge that a denial of summary judgment based on qualified immunity is immediately appealable to the extent that the appellant seeks review of the purely legal determinations made by the district court. They argue, however, that no immunity exists for claims against the appellants in their official capacities for injunctive and declaratory relief. Thus, they assert that Oelschlager and the Commissioners cannot take an interlocutory appeal to this court.

As an initial matter, this court must consider its jurisdiction of the interlocutory appeal.”*Alternate Fuels, Inc. v. Cabanas*, 435 F.3d 855, 858 (8th Cir.2006). “A court has jurisdiction to determine its own jurisdiction.”*United States v. Haskins*, 479 F.3d 955, 957 (8th Cir.2007). “The denial of summary judgment is not generally a final order subject to immediate appeal.”*Alternate Fuels*, 435 F.3d at 858. Under the collateral order doctrine, however, when the defense of absolute immunity is available, “an interlocutory appeal lies from a denial of absolute immunity.”*Id.*

Here, Oelschlager and the Commissioners are appealing from the denial of absolute, quasi-judicial immunity for claims against them in their official capacities for declaratory and injunctive relief. As an initial matter, we must first determine whether such immunity is available to them when they are sued in their official capacities. If it is not available, then this court cannot entertain their interlocutory appeal from the *denial* of such immunity. Specifically, the question is whether in *VanHorn I*, in finding that Oelschlager and the Commissioners were entitled to absolute, quasi-judicial immunity, we extended such immunity to them in both their individual *and* official capacities.

In *VanHorn I*, we concluded that Oelschlager and the Commissioners were entitled to absolute, quasi-judicial immunity based on our holding in *Dunham*. At issue in *Dunham* was a veterinarian's appeal of the district court's grant of summary judgment to members of the

Arkansas Veterinary Medical Examining Board (“the Board”) based on the veterinarian's § 1983 claims. 195 F.3d at 1008. The district court had held that the Board members were absolutely immune from suit “by virtue of the fact that their proceedings were quasi-judicial in nature.” *Id.* On appeal, we determined that “[p]ersons who perform quasi-judicial functions are entitled to absolute immunity.” *Id.* at 1010. Because we found that “the defendants' actions were functionally comparable to those of judges and prosecutors,” we held that they were “entitled to absolute immunity.” *Id.* at 1011.

In *Dunham*, however, the plaintiff only brought suit against the defendants in their *individual capacities*, not in their *official capacities*.^{FN2} Therefore, *Dunham* does not resolve whether Oelschlagler and the Commissioners are entitled to absolute, quasi-judicial immunity for claims against them in their official capacities.

We have previously indicated that immunity only extends to claims against government employees sued in their individual capacities. *Johnson v. Outboard Marine Corp.*, 172 F.3d 531, 535 (8th Cir.1999) (“Qualified immunity is not a defense available to governmental entities, but only to government employees sued in their individual capacity.”); *Davis v. Hall*, 375 F.3d 703, 710 n. 3 (8th Cir.2004) (approving of the district court's conclusion that neither qualified immunity nor absolute immunity was available to a government employee sued in his official capacity). Furthermore, the Supreme Court has specifically stated that “[t]he only immunities that can be claimed in an official-capacity action are forms of sovereign immunity that the entity, *qua* entity, may possess, such as the Eleventh Amendment.” *Graham*, 473 U.S. at 167, 105 S.Ct. 3099.

Case law from our sister circuits also supports the conclusion that absolute, quasi-judicial immunity only extends to claims against defendants sued in their individual-not official-capacities. *See, e.g., Lonsetta Trucking & Excavating Co. v. Schan*, 144 Fed.Appx. 206, 210-211 (3d Cir.2005) (unpublished) (“Therefore, it follows that the zoning officials ... would be entitled to absolute immunity in their *individual capacities* if they were performing ‘quasi-judicial’ functions. However, the zoning officials in their *official capacities* ... are not entitled to absolute immunity.”) (emphasis in original); *Denton v. Bedinghaus*, 40 Fed.Appx. 974 (6th Cir.2002) (unpublished) (“Of critical importance here is that plaintiffs sue defendants in only their official capacities. Yet, immunity defenses apply to individual capacity suits and they do not shield municipalities from § 1983 liability.”); *Turner v. Houma Mun. Fire & Police Civil Serv. Bd.*, 229 F.3d 478, 483 (5th Cir.2000) (rejecting municipal fire and police service board members' argument that the district court erred in not holding that the board and its members were entitled to absolute, quasi-judicial immunity in their “official capacities” because such an argument “misconstrues the distinction between immunities available for ‘individual-capacity’ and ‘official capacity’ suits under § 1983”); *Alkire v. Irving*, 330 F.3d 802, 810-11 (6th Cir.2003) (holding that “as a result of being sued only in their official capacities, Sheriff Zimmerly and Judge Irving cannot claim any personal immunities, such as quasi-judicial or qualified immunity, to which they might be entitled if sued in their individual or personal capacities.”).

We, like the Fifth Circuit, acknowledge that confusion can often arise in litigation when “[c]ourts discuss immunity defenses without clearly articulating to whom and in which capacity [immunity] defenses apply....” *Turner*, 229 F.3d at 485. Nevertheless, this court's precedent,

Supreme Court precedent, and case law from our sister circuits make clear that absolute, quasi-judicial immunity is not available for defendants sued in their official capacities. This court in *VanHorn I* did not extend absolute, quasi-judicial immunity to such claims and, in fact, specifically found *Dunham* controlling—a case that only extended absolute, quasi-judicial immunity to the defendants sued in their individual capacities.

we hold that the defense of absolute, quasi-judicial immunity is not available to Oelschlager and the Commissioners for claims against them in their official capacities; thus, they cannot seek an interlocutory appeal from the denial of such immunity.

III. Conclusion

Accordingly, we dismiss the appeal for lack of jurisdiction.

State judges are not entitled in a federal lawsuit to judicial immunity for decisions made as members of an adult probation judicial board [Alexander v. Tarrant County] (04-4-05)

On August 23, 2004, the United States District Court for the Northern District of Texas held that state district court judges are not entitled to judicial immunity for decisions they made as members of an adult probation judicial board which provided oversight for a boot camp in which a resident died.

04-4-05. *Alexander v. Tarrant County*, No. Civ.A. 403CV1280Y, 2004 WL 1884579 (N.D. Tex. 8/23/04) *Texas Juvenile Law* (6th Ed. 2004).

Facts: Pending before the Court are several motions to dismiss: (1) defendant judges' Motion to Dismiss [doc. # 57-1], filed November 26, 2003; (2) defendant James Wilson's Motion to Dismiss [doc. # 69-1], filed January 27, 2004; and (3) defendant Sharen Wilson's Motion to Dismiss [doc. # 75-1], filed February 26. Having carefully considered the motions, response, and replies, the Court concludes that the defendant judges' motions should be DENIED.

This suit is one of several that arises as a result of the death of Bryan Dale Alexander ("Alexander"), which occurred while he was incarcerated at the Tarrant County Community Correctional Facility ("the Facility") in Mansfield, Texas. [FN3] On December 31, 2002, the plaintiffs filed suit, alleging claims against the defendant judges for civil-rights violations, [FN5] negligence, [FN6] violation of a non-delegable duty, and for damages. The defendant judges are being sued for the actions they took while serving as members of a legislatively established board that has informally become known as the "Tarrant County Board of Criminal Judges" ("the Board"). The plaintiffs allege, in essence, that the Board failed to properly staff and manage the Tarrant County Supervision and Corrections Department ("CSCD"), the Correctional Services Corporation ("CSC"), [FN7] and the Facility. The defendant judges, in their motions, claim they should be dismissed from the case because, *inter alia*, they are entitled to judicial, legislative, or sovereign immunity. They also argue that any claims against the Board as the "Tarrant County Board of Criminal Judges" should also be dismissed because the board is a "nonexistent and fictitious entity" that cannot be sued.

FN3. Alexander was placed at the Facility in the "Shock Incarceration Facility," which was "initially set up as and subsequently operated as a residential military style boot camp for treating the needs of young non-violent offenders." (Pls.' Compl. at 14.)

FN5. Specifically, the plaintiffs allege:

The Defendant Judges, as supervisory officials acting in their administrative capacity, failed to institute adequate TCCCF policies for providing timely and adequate medical evaluation and treatment. This failure reflects a deliberate and conscious choice to follow one course of action among various alternatives. In light of the excessive duties and demands assigned to the sole facility nurse and the part time doctor and the lack of an available county hospital, the need for additional medical care was obvious to Defendants. The inadequacy of the medical treatment available to probationers at the TCCCF was likely to result in violations of constitutional rights, the Defendants knew that the medical treatment available to probationers was inadequate, and the Defendants can reasonably be said to have been deliberately indifferent to the medical needs of probationers such as Bryan.

....

...In the alternative, the Defendants are liable under the standard announced by the Supreme Court in *Youngberg v. Romeo*, 457 U.S. 307, 102 S.Ct. 2452, 73 L.Ed.2d 28 (1982), which provides that the standard for determining whether the state has adequately protected the rights of an individual involuntarily committed to a state institution is not deliberate indifference but instead whether professional judgment was in fact exercised.

(Pls.' Compl. at 40-42.)

FN6. As to negligence, the plaintiffs state:

...Plaintiffs allege that Defendants were negligen[t] and such negligence was the proximate cause of Bryan's death. The Defendants, including the Judges in their administrative capacity, owed a legal duty to Bryan to supervise the terms of his confinement and to ensure the district personnel were employed as necessary to adequately staff the TCCCF to which he was confined. The Defendants had a statutory or ministerial duty to provide sufficient medical personnel, equipment, budgets, resources, and facilities to ensure the timely and adequate availability of medical evaluation and treatment. The Defendants had a statutory and ministerial duty to oversee the operation and management of the TCCCF, including the availability of medical evaluation and treatment.

(Pls.' Compl. at 42-43.)

FN7. CSCD contracted with CSC to operate the Facility.

Held: Motions to dismiss denied.

Opinion Text: "A motion to dismiss for failure to state a claim is viewed with disfavor and is rarely granted." *Kaiser Aluminum & Chem. Sales v. Avondale Shipyards, Inc.*, 677 F.2d 1045, 1050 (5th Cir.1982), *cert. denied*, 459 U.S. 1105, 103 S.Ct. 729, 74 L.Ed.2d 953 (1983) (quoting Wright & Miller, *Federal Practice and Procedure* § 1357 (1969)). The court must accept as true all well pleaded, non-conclusory allegations in the complaint, and must liberally construe the complaint in favor of the plaintiffs. *Kaiser Aluminum*, 677 F.2d at 1050. A court should not dismiss a complaint for failure to state a claim

unless it appears beyond doubt from the face of the plaintiff's pleadings that he can prove no set of facts in support of his claim that would entitle him to relief. *Hishon v. King & Spalding*, 467 U.S. 69, 73, 104 S.Ct. 2229, 81 L.Ed.2d 59 (1984); *Garrett v. Commonwealth Mortgage Corp.*, 938 F.2d 592, 594 (5th Cir.1991); *Kaiser Aluminum*, 677 F.2d at 1050.

Like other forms of official immunity, judicial immunity is an immunity from suit, not just from ultimate assessment of damages. *Mitchell v. Forsyth*, 472 U.S. 511, 105 S.Ct. 2806, 86 L.Ed.2d 411 (1985). Under federal law, judges are entitled to absolute immunity against civil actions based upon their judicial acts, even if the acts exceed their jurisdiction and were allegedly performed maliciously or corruptly. See *Mireles v. Waco*, 502 U.S. 9, 11-12, 112 S.Ct. 286, 116 L.Ed.2d 9 (1991); *Stump v. Sparkman*, 453 U.S. 349, 355-56 (1978). [FN8] To determine whether a judge's act is a "judicial" one, the Court is to consider four factors: (1) whether the act complained of is one normally performed by a judge; (2) whether the act occurred in the courtroom or an appropriate adjunct such as the judge's chambers; (3) whether the controversy centered around a case pending before the judge; and (4) whether the act arose out of a visit to the judge in his judicial capacity." *Malina v. Gonzales*, 994 F.2d 1121, 1124 (5th Cir.1993). These four factors are to be broadly construed in favor of immunity, and the absence of one or more factors does not prevent a determination that judicial immunity applies in a particular case. See *Malina*, 994 F.2d at 1124; *Adams v. McIlhany*, 764 F.2d 294, 297 (5th Cir.1985). The policy underlying judicial immunity is to recognize and guarantee the need for independent and disinterested decision making. [FN9] See *Johnson v. Kegans*, 870 F.2d 992, 997 (5th Cir.1989) (recognizing immunity for a judge's letter to a parole board years after sentencing urging denial of parole). If the denial of immunity creates a potential of concern in the mind of a future judge that any action taken might carry personal liability and thereby distort the decision-making process, then immunity should not be denied. See *Adams*, 764 F.2d at 297.

FN8. There are only two circumstances when a judge is not entitled to judicial immunity: (1) when he performs acts not in his judicial capacity and (2) when he performs act, although judicial in nature, in the complete absence of all jurisdiction. *Mireles*, 502 U.S. at 11-12.

FN9. "Although unfairness and injustice to a litigant may result on occasion, 'it is a general principle of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him, shall be free to act upon his own convictions, without apprehension of personal consequences to himself.'" *Mireles*, 502 U.S. at 9 (quoting *Bradley v. Fisher*, 13 Wall. 335, 347, 20 L.Ed. 646 (1872)).

In this case, the plaintiffs' allegations against the defendant judges are based on decisions they made in their capacity as members of the Board. The plaintiffs allege that the defendant judges made decisions regarding the management and staffing at the Facility that led to the death of Alexander. The Board was established by the Texas legislature through section 76.002 of the Texas Government Code, which states:

(a) The district judge or district judges trying criminal cases in each judicial district shall:

(1) establish a community supervision and corrections department; and

(2) employ district personnel as necessary to conduct presentence investigations, supervise and rehabilitate defendants placed on community supervision, enforce the conditions of community supervision, and staff community corrections facilities.

(b) The district judges trying criminal cases and judges of statutory county courts trying criminal cases that are served by a community supervision and corrections department are entitled to participate in the management of the department.

Tex. Gov't Code Ann. § 76.002 (Vernon 1998) (emphasis added). The supervision of persons placed on probation is inherently judicial. See Tex. Gov't Code Ann. § 76.002 (Vernon 1998); Tex.Code Crim. Proc. Ann. Art. 42.12, § 1 (Vernon Supp.2004); *Cobb v. State*, 851 S.W.2d 871 (Tex.Crim.App.1993). [FN10]

FN10. Article 42.21 of the Texas Code of Criminal Procedure states:

It is the purpose of this article to place wholly within the state courts the responsibility for determining when the imposition of sentence in certain cases shall be suspended, the conditions of community supervision, and the supervision of defendants placed on community supervision, in consonance with the powers assigned to the judicial branch of this government by the Constitution of Texas.

Tex.Code Crim. Proc. Ann. art. 42.12, § 1 (Vernon Supp.2004).

With respect to judicial immunity, the defendant judges argue that they should be dismissed from the case because the alleged actions they took relating to the Facility where Alexander died were judicial in nature. The plaintiffs, on the other hand, argue that the actions of the defendant judges relating to the Facility were administrative, not judicial acts. In support of this argument, the plaintiffs assert that the actions taken by the defendant judges: (1) took place in various places, both at the courthouse and at the bootcamp itself; (2) did not take place in the context of holding court; and (3) did not center around any case pending before any particular judge.

After reviewing the parties' arguments, the relevant case law, and the policy underlying judicial immunity, the Court concludes that the defendant judges are not entitled to judicial immunity. While the defendant judges would be entitled to judicial immunity for all the decisions they made in furtherance of their legislatively mandated responsibilities as judges in establishing the CSCD and making personnel decisions pursuant to section 76.002(a) of the Texas Government Code, the plaintiffs allege that the defendant judges acted in excess of these responsibilities. Pursuant to 76.002(b) of the Texas Government Code, the defendant judges "are entitled [but are not required] to participate in the management of the CSCD." Consequently, if the defendant judges decide to take on such managerial duties, these duties are administrative duties, not judicial duties entitling them to judicial immunity.

In this case, the plaintiffs specifically allege:

The Board of Judges established the budgets for the operation of the CSCD and the [Facility], approved the selection of CSC as the operator of the [Facility] in spite of a significant history of operational deficiencies by CSC as a private prison operator, monitored the operation of the [Facility] for compliance with the contract with CSC, failed to make any provision for the residents at the Facility to have timely and appropriate access to county or other appropriate medical facilities, and were responsible for the establishment of the programs, policies, and procedures for the operation of the [Facility].

(Pls.' Compl. at 4.) In support of these allegations, the plaintiffs claim that the defendant judges "performed their administrative tasks regarding the CSCD and its facilities by participating in the establishment of the Contract terms, participating in selecting the contractor to operate the facility, participating in the establishment of minimum staffing levels for the [Facility], and participating in the establishment of the budgets for the operation of the [Facility]." (Pls.' Compl. at 8.) In addition, the plaintiffs claim that the defendant judges "also exercised control and judgment over the adoption and promulgation of rules, policies, and procedures which went into affect at the [Facility]." (Pls.' Compl. at 9.) Based upon these allegations that the defendant judges acted outside of their statutorily required duties and were making administrative decisions, the Court concludes that the defendant judges are not entitled to judicial immunity.

As to the defendant judges' claims that they are entitled to legislative or sovereign immunity, the Court concludes that these claims should be denied for the reasons stated by the plaintiffs in their response.

As to the defendant judges' claim that the Tarrant County Board of Criminal Judges should be dismissed as a defendant because it is a nonexistent and fictitious entity that cannot be sued, the Court notes that the plaintiffs wholly fail to address this issue. Instead the plaintiffs state in their response that "the Defendant Tarrant County Board of Judges has neither appeared nor moved for relief, despite being served." Because the plaintiffs have failed to plead any facts indicating that Tarrant County Board of Judges is a legal entity that is capable of being sued, the Court concludes that it should be dismissed from this suit. [FN11]

FN11. Even assuming that the Board was a legal entity that could be sued, the Court concludes that it would be entitled to immunity pursuant to the Eleventh Amendment of the United States Constitution as to the plaintiff's section 1983 claims against it because it is an arm of the state. *See, e.g. Clark v. Tarrant County, Tex.*, 798 F.2d 736 (5th Cir.1986) (explaining the relationship between the state, probation departments, judges, and counties, in the context of the Eleventh Amendment).

Based on the foregoing, it is ORDERED that the defendant judges' Motion to Dismiss [doc. # 57-1] is DENIED.

Mosher-Simons v. Allegany, 2002 N.Y. Int. 0151 (Dec. 12, 2002).

JUDICIAL IMMUNITY - SOCIAL SERVICES - HOME STUDIES - CHILD CUSTODY - NEGLIGENT PLACEMENT

ISSUE & DISPOSITION

Issue(s)

Whether a legal claim exists against a county where the county's family court ordered the department of social services to conduct a home study evaluation to assist the court in a child custody decision and the child was later beaten to death as a result of the placement decision.

Disposition

No. Where the county's social services department works as part of the judicial process, such as when conducting court ordered home studies, it benefits from judicial immunity.

SUMMARY

Allegany County Department of Social Services (DSS) removed Plaintiff's son, Jarrett, from her custody after DSS received information that the child was being beaten and neglected. While Jarrett was in temporary foster care, his aunt and grandmother petitioned for custody. The Family Court ordered DSS to conduct home studies of the aunt and

grandmother to facilitate the court's placement decision. The home studies, conducted by DSS caseworkers, provided relevant information about the homes but did not make a placement recommendation. All parties stipulated at a hearing to place Jarrett with his aunt, Deborah Mosher. Shortly thereafter, Deborah Mosher fatally beat Jarrett. Plaintiff, acting on Jarrett's behalf, brought an action against the County and others in federal district court. The District Court dismissed with prejudice all of Plaintiff's claims with the exception of a negligent placement claim against the County regarding the home study of Mosher; however, the District Court later declined to use its supplemental **jurisdiction** and dismissed the claim. Plaintiff then brought the negligence claim against the county to state court. The Supreme Court denied the County's motion for summary judgment. The Appellate Division dismissed on the grounds that the County is entitled to both judicial and government immunity, because the Family Court had discretion to order the home study and the caseworker who performed the evaluation acted on the Family Court's orders. The Court of Appeals affirmed.

The Court first noted that Plaintiffs' claim was not really a negligent placement claim, as the home study evaluation did not include a placement recommendation and all parties agreed to the placement. Instead, Plaintiffs' claim was "premised on a faulty home evaluation by the DSS caseworker." The Court stressed that the judiciary could not perform its function if members were subject to personal liability for their decisions. See *Tarter v. State*, 68 N.Y.2d 511, 518 (1986). Mistakes of the judiciary are properly resolved through appeals and review, not through suits against the judiciary itself. The Court said judicial immunity is properly extended to neutral government officials who are performing "judicial or quasi-judicial" tasks. See *Briscoe v. LaHue*, 460 U.S. 325 (1983). In this case, DSS was essentially acting as an "arm of the court." The Family Court could not itself have conducted these home studies, nor could it have made a placement decision without them. Thus, the Court found the court-ordered home study to be "an integral part of the judicial decision-making process," and therefore the County must be afforded judicial immunity.