

CASE SUMMARY:

James ACHTERHOF; Grace Achterhof, Plaintiffs-Appellants,

v.

Anthony F. SELVAGGIO, individually and as a Children's Protective Services employee of the Department of Social Services; Anna Meade, individually and as a Supervisor for the Department of Social Services; Richard H. Ritter, Individually and as the Director of the Barry County Depart of Social Services, jointly and severally, Defendants-Appellees.

No. 88-2213.

United States Court of Appeals, Sixth Circuit.

Argued July 7, 1989. Decided Oct. 6, 1989.

James and Grace Achterhof appeal the dismissal of their section 1983 action for state interference with the family relationship in violation of their rights to due process, equal protection and freedom of association. The district court dismissed the action under Fed.R.Civ.P. 12(b)(6) for failure to state a claim upon which relief can be granted.

On October 9, 1984, the Forest Hills Northern High School reported a case of suspected child abuse to the Kent County Department of Social Services in Kent County, Michigan. Officials at the high school noticed that Karen Achterhof, the daughter of James and Grace Achterhof, had suffered a minor injury to her face. They reported the case to the Michigan Department of Social Services pursuant to the Michigan's Child Protection Law. The injury resulted from an incident on October 7, 1984, when Karen apparently disobeyed a family rule. A family argument ensued in which James Achterhof slapped his daughter on the face.

Anthony Selvaggio, a social worker for the Michigan Department of Social Services in Barry County, but working in Kent County at the time, was assigned to the case on October 9, 1984. He allegedly "opened a case" and began his investigation with the approval of Ann Meade, his supervisor, and Richard Ritter, director of the Barry County Department of Social Services. Selvaggio also placed James Achterhof's name on the Department's central registry, a record of all reports which contain relevant and accurate evidence of child abuse or neglect. James Achterhof's name remained on the central registry despite his request that the record be expunged. On February 20, 1985, Achterhof's name was expunged from the record following an administrative hearing pursuant to Mich.Comp.Laws. From November 8, 1984 until January 31, 1985 Selvaggio continued to contact Karen Achterhof.

As a result of this investigation, James and Grace Achterhof filed this lawsuit on January 28, 1988. An amended complaint was filed on February 3, 1988. In count I of their amended complaint the Achterhofs alleged that the investigation violated their rights to freedom of association and due process guaranteed by the first and fourteenth amendments by interfering with their family relationship. In count II the couple alleged that the defendants violated their rights to due process and equal protection under the fourteenth amendment by failing to remove James Achterhof's name from the central registry of child abuse reports. In count III the Achterhofs claimed that their rights to due process and freedom of association were violated by Selvaggio's continued contact with Karen Achterhof in the process of investigating the case. In count IV the Achterhofs alleged that Meade and Ritter were responsible for authorizing

Selvaggio's actions. Counts V and VI stated that the defendants committed various torts against the Achterhofs under Michigan law.

On February 25, 1988, the defendant filed a motion to dismiss the complaint under Fed.R.Civ.P. 12(b)(6) for failure to state a claim upon which relief could be granted. On October 25, 1988, the district court entered an opinion and order dismissing the Achterhofs' complaint.

The court dismissed counts I and II of the complaint because it found that Selvaggio, Meade and Ritter enjoyed absolute immunity in deciding to "open a case," for placing James Achterhof's name on the central registry and for later refusing to remove it. The court noted that officials who perform "prosecutorial functions" are entitled to absolute immunity so that they may perform their duties free from intimidation and harassment. The court found that the decision to "open a case" and to place a person's name on the central registry under Michigan's Child Protection Law were strongly analogous to prosecutorial acts and thus entitled to absolute immunity.

The district court dismissed count III because it found that Selvaggio's attempts to contact Karen Achterhof after the initial investigation were entitled to qualified immunity.

The district court found that in continuing to contact Karen Achterhof, Selvaggio had not violated any "clearly established statutory or constitutional rights of which a reasonable person would have known."

The court dismissed count IV of the Achterhofs' complaint. The court found that this claim, directed against Selvaggio's superiors, Ritter and Meade, could not be sustained because it failed the standard for evaluating proximate cause in section 1983 cases announced by this court.

In count IV of their complaint, the Achterhofs complained that Ritter and Meade failed to properly select, discipline and control their employees, including Selvaggio, and that this failure made their misfortune possible. The district court held that the injury allegedly caused by Selvaggio's conduct was too remote a consequence of Ritter and Meade's actions to hold them responsible.

HOW THE COURT RULED:

[1] The dismissal of the Achterhofs' complaint under Rule 12(b)(6) was improper in this case for two reasons. First, the district court incorrectly found that absolute immunity applied to the actions of Selvaggio complained of in counts I and II.

Traditionally, absolute immunity has applied only to prosecutors. Recently, the Court has expanded the application of absolute immunity to those government officials whose duties are functionally analogous to the duties of judges and prosecutors.

The Court has declined to grant absolute immunity to those not "intimately associated with the judicial phase of the criminal process. Official conduct not entitled to absolute immunity can at most enjoy the protection of qualified immunity.

In restricting absolute immunity to those functions intimately associated with the judicial process, courts have made use of the distinction between prosecutorial and judicial duties and duties which are administrative or investigatory.

In accord with this approach, we have recognized that social workers who initiate judicial proceedings against those suspected of child abuse or neglect perform a prosecutorial duty, and so are entitled to absolute immunity.

We have not, however, decided what level of immunity applies to social workers who simply begin an investigation of alleged child abuse. *See Salyer*, 874 F.2d at 378. The present case requires us to decide this issue now.

It is undeniable that Selvaggio's investigation could have led to criminal prosecution. Despite the possibility that criminal prosecution might have resulted from Selvaggio's investigation, his decision to "open a case" was not entitled to absolute immunity. This decision was only investigatory or administrative in nature, not prosecutorial, judicial or otherwise intimately related to the judicial process. Selvaggio did not initiate any court action in the role of a prosecutor, nor did he sit as a judge in an adversary proceeding. His work was investigatory. Indeed, it was investigatory work of the most ordinary kind since it was mandated by the statute. The statute, moreover, provides that even if a criminal investigation or prosecution takes place, it does not "relieve the department of its responsibility to investigate reports of suspected child abuse or neglect under this act." If, as the Achterhofs allege, Selvaggio chose to continue his investigation after an initial investigation revealed no evidence of child abuse, then this action was also investigatory not prosecutorial.

[2] Similarly, Selvaggio's placement of James Achterhof's name on the central registry was not entitled to absolute immunity. This action was administrative in nature, not prosecutorial. It appears that the placement of Achterhof on the central registry was, like the initial investigation of the case, mandated by the statute. This action was an administrative function not intimately related with the judicial process. If, as the Achterhofs allege, Selvaggio chose to maintain James Achterhof's name on the registry after an initial investigation revealed no accurate and relevant evidence of child abuse, then this decision was not entitled to absolute immunity since it too was administrative in nature, not prosecutorial.

The dismissal of the Achterhofs' complaint under Rule 12(b)(6) is also flawed because an incorrect standard of evaluation was applied to the motion to dismiss under Rule 12(b)(6). "The court must deny the motion to dismiss unless it can be established beyond a doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief."

MINI SUMMARY FOR SMALL GROUP EXERCISE

RE: Achterhof v. Selvaggio, individually and as CPS employee; Meade, individually and as supervisor; Ritter, individually and as Director

In October 1984, the local high school reported a suspected child abuse incident when one of the students claimed her father slapped her in the face. Selvaggio, the caseworker, with his supervisor's and director's approval opened the case, and listed the father on the central registry, Although the case was expunged administratively, the caseworker refused to remove father's name from the registry, and continued to contact the child and family. A lawsuit was filed claiming that the investigation violated the family's right to a family relationship; that the failure to remove the name from the central registry violated due process; that the supervisor's approval of the caseworker's actions was improper supervision, and that the caseworker's contact with the child was violating their rights to due process.