

CASE SUMMARY:

David Glen MEYERS, et al.,
Plaintiffs-Appellants,

v.

CONTRA COSTA COUNTY DEPARTMENT OF SOCIAL SERVICES, et al.,
Defendants-Appellees.

No. 85-2127.

United States Court of Appeals, Ninth Circuit.

Argued and Submitted March 11, 1986. Decided March 16, 1987.

Haaland was a social casework specialist employed by the DSS in its Children's Protective Services Unit. Among his numerous responsibilities were the initiation and pursuit of dependency petitions in cases of suspected child neglect and abuse. His alleged conduct about which plaintiffs complain in this appeal was directly related to those functions.

Plaintiffs claim that, beginning on October 9, 1981, Haaland conspired with Amy Meyers to deprive David Meyers of custody of their children. According to the complaint, after being told by Amy that David had molested their son Paul, Haaland embarked on a course of conduct designed to separate Paul from his family by supervising an investigation and filing verified dependency petitions with the juvenile court of the Contra Cost County Superior Court requesting that the minor children be declared dependents of the juvenile court and removed from the custody of their father.

In this appeal plaintiffs place particular emphasis on the allegation that on October 23, 1981, Haaland ordered David to stay away from his home until after a judicial hearing could take place on October 26, although Haaland knew that the police department had terminated its investigation for lack of evidence. At the October 26 hearing, Haaland stated that he would arrange for supervised visitation between David and his children. According to the complaint, Haaland permitted David only one opportunity to visit with his children between the date the petition was filed, October 26, and the date it was dismissed pursuant to Haaland's recommendation, November 17.

The complaint also states that in a January 19, 1982 custody hearing, Haaland, in furtherance of his conspiracy with Amy to deprive David of custody, testified to his conclusion that David had molested Paul. Haaland's role appears to have ceased at this point. David was eventually reunited with his children when a superior court awarded him custody on January 23, 1984.

All of Haaland's challenged actions except for the January 1982 testimony took place within a short period of time-between October 9, 1981, and November 17, 1981. All revolve around Haaland's initiation of dependency proceedings against David. They include his instructions to David before proceedings were instituted to stay away from the children until custody had been resolved, and his subsequent testimony against David in the dependency proceedings.

It is beyond question that Haaland is entitled to absolute immunity for the testimony he gave during the dependency proceedings and the custody hearing because witnesses, including government witnesses, are immune from liability for their testimony.

HOW THE COURT RULED:

[1] Haaland should be accorded prosecutorial immunity for his role in the initiation of dependency proceedings against Meyers. Prosecutorial immunity is absolute, rather than qualified, in order to permit prosecutors to perform their duties without fear of even the threat of section 1983 litigation. If the prosecutor were only qualifiedly immune, the threat of § 1983 suits would undermine performance of his duties no less than would the threat of common-law suits for malicious prosecution. A prosecutor is duty bound to exercise his best judgment both in deciding which suits to bring and in conducting them in court. The public trust of the prosecutor's office would suffer if he were constrained in making every decision by the consequences in terms of his own potential liability in a suit for damages... Further, if the prosecutor could be made to answer in court each time... a person charged him with wrongdoing, his energy and attention would be diverted from the pressing duty of enforcing the criminal law.

... Frequently acting under serious constraints of time and even information, a prosecutor inevitably makes many decisions that could engender colorable claims of constitutional deprivation. Defending these decisions, often years after they were made, could impose unique and intolerable burdens upon a prosecutor responsible annually for hundreds of indictments and trials.

[2] Although child services workers do not initiate criminal proceedings, their responsibility for bringing dependency proceedings, and their responsibility to exercise independent judgment in determining when to bring such proceedings, is not very different from the responsibility of a criminal prosecutor. The social worker must make a quick decision based on perhaps incomplete information as to whether to commence investigations and initiate proceedings against parents who may have abused their children. The social worker's independence, like that of a prosecutor, would be compromised were the social worker constantly in fear that a mistake could result in a time-consuming and financially devastating civil suit. We therefore hold that social workers are entitled to absolute immunity in performing quasi-prosecutorial functions connected with the initiation and pursuit of child dependency proceedings.

[3] We do not agree, however, that all of Haaland's alleged conduct falls within the scope of quasi-prosecutorial activities. On October 23, Haaland allegedly ordered Meyers to stay away from his home until after the hearing before the juvenile court. At that time, Haaland had not yet initiated dependency proceedings. Haaland is not entitled to absolute immunity for this act.

Haaland's ordering of Meyers away from his home can be characterized neither as advocacy or quasi-judicial. Haaland's action did not aid him in the preparation or presentation of his case to the juvenile court. Rather than contributing to an informed judgment by an impartial decisionmaker as an advocate, Haaland acted unilaterally prior to the operation of the judicial process. We do not suggest that Haaland's alleged action was necessarily improper; it was merely not that of an advocate.

We conclude that, like the decisions of other officials acting in a non-judicial role, it is the qualified immunity standard which must govern Haaland's immunity defense for the alleged action of ordering Meyers from his house.

Under the doctrine of qualified immunity, executive officers are shielded from liability where "their conduct does not violate clearly established statutory or constitutional rights of

which a reasonable person would have known." Under California law, social workers are given broad general authority to protect and promote the welfare of all children; to prevent or remedy problems which may result in the neglect or abuse of children. Haaland's conduct on October 23, which indisputably involved no physical interference with parental custody, cannot be said to have violated clearly established statutory or constitutional rights.

[4] Crossley is a "supervising counselor" and Allison is an "associate counselor" of the Family Conciliation Court. Their positions were created by the Family Conciliation Court Act and they are employees of the court. Their duties, as described by Cal.Civ.Proc.Code § 1744, encompass mediation of custody and visitation disputes, investigating matters pertaining to such disputes, and providing reports to the courts.

During the fall of 1977, the parents, Amy and David Meyers, together with the paternal grandparents, participated in a series of voluntary counseling sessions conducted by Allison under the auspices of the Family Conciliation Court. The adult plaintiffs allege that during these sessions Allison became biased against them. They further allege that at some point during the latter half of 1981, but before October 8, 1981, Amy made allegations of child abuse to Allison who willfully failed to discuss them with David or to otherwise investigate them.

The complaint further alleges that from November 19, 1981, through January 21, 1982, Allison refused to arrange for visitation between David and his children in willful violation of a court order requiring her to arrange such visits. The complaint continues that on or about April 7, 1982, Crossley and Allison visited the foster parents in whose care the court had placed the children and attempted to induce them to refuse David and his parents the right to see the children.

Based on these precedents, we agree with the district court that as officers of the court Allison and Crossley have absolute immunity in the performance of duties authorized by the statute. Although the plaintiffs allege that certain actions taken by Allison and Crossley constituted violations of court orders, absolute immunity is lost only if these actions were "clearly and completely outside the scope of [Allison's and Crossley's] jurisdiction."

[5] The district court held that the plaintiffs had made an insufficient showing that the acts complained of in this case were pursuant to an established policy or practice as required by *Monell v. Department of Social Services*, 436 U.S. 658, 691, 98 S.Ct. 2018, 2036, 56 L.Ed2d 611 (1978). We agree with the district court that a close reading of the first count of the complaint indicates that it is not the policies themselves that are alleged to give rise to the constitutional deprivations of which plaintiffs complain. Rather, the complaint states that various unauthorized actions were committed by the named defendants in furtherance of an alleged conspiracy to deprive plaintiffs of custody of the children.

Because municipalities are not liable for the unauthorized activities of their employees, the district court correctly dismissed the claim as to DSS.

Affirmed.

RE: Myers v. **Contra Costa County Department of Social Services**

The Child Protective Services unit, through caseworker Haaland, began an investigation of child molestation by a father against his son. After Mother told Haaland that father molested the child the caseworker did the following: filed a dependency petition; ordered father from his home with knowledge that police terminated the investigation for lack of evidence; provided only one visit to the father in a three week period; recommended the petition be dismissed at the hearing held three weeks later, and then later testified at a custody hearing that he believed the father had molested his child.

The issue in the litigation became which of Haaland's actions should be afforded absolute immunity, and which should be afforded qualified immunity.