

CASE SUMMARY:

Alice COVERDELL, acting on her own behalf and as the natural guardian of her daughter,
Christina Robyn Coverdell, Plaintiffs-Appellants,

v.

The DEPARTMENT OF SOCIAL AND HEALTH SERVICES, STATE OF WASHINGTON;
Barbara McLaughlin; Laura Langston' and Albert J. Golden, Defendants-Appellees.

No. 86-3825.

United States Court of Appeals, Ninth Circuit,
Submitted Oct. 9, 1987. Decided Dec. 15, 1987.

Defendant-appellee Barbara McLaughlin (McLaughlin) was employed as a child protective services (CPS) worker by defendant-appellee The Department of Social and Health Services, State of Washington (DSHS). Her duties included investigating and reporting cases of alleged child abuse and neglect. Prior to September 1978, a fellow CPS worker informed McLaughlin that plaintiff-appellant Alice Coverdell (Coverdell) had moved into McLaughlin's service region, that Coverdell was pregnant with her third child, and that the court had already terminated Coverdell's parental rights to her eldest child. Coverdell's rights were terminated because she and her husband, Roscoe, were emotionally unstable, easily angered, violent, and a danger to the child.

After receiving this information, McLaughlin attempted to visit the Coverdell residence to determine whether conditions there were suitable for the expected child. Coverdell denied McLaughlin admission to the residence.

The expected child, Christina, was born on September 27, 1978. Later that day, McLaughlin received a telephone call from an employee of the hospital at which Coverdell was confined. The employee informed McLaughlin that Coverdell had given birth to a girl and that Coverdell had requested that the hospital refrain from notifying DSHS of the birth.

The following day, September 28, 1978, McLaughlin provided the Columbia County Prosecutor with an affidavit stating that the court had previously deprived Roscoe and Alice Coverdell of permanent custody of their eldest child, Angel, because of hazardous living conditions; that Union County, Oregon was currently seeking to deprive the Coverdells of permanent custody of their second child, James; that McLaughlin had had personal contact with the Coverdells and believed them to be emotionally unstable; that McLaughlin had requested admission to the Coverdell residence but had been denied access; and that McLaughlin believed that the newborn Christina would be in danger if she were to reside with the Coverdells.

The next day, on the basis of McLaughlin's affidavit, the Columbia County Prosecutor filed a motion in state court for an order to take Christina into custody. Coverdell received no notice of the motion, nor was she represented at the hearing. On the same day, the court issued an order authorizing the DSHS to take immediate custody of Christina. The next day, September 20, 1978, McLaughlin executed the court's order by removing Christina from the hospital and placing her in temporary shelter care. On October 27, 1978, the state court ordered that Christina remain in shelter care until further court order.

In March 1980, Coverdell petitioned the state court to regain custody of Christina. At the hearing on the petition, McLaughlin testified in opposition to Christina's placement with

Coverdell, as did defendant-appellee Laura Langston (Langston), the foster mother who was then caring for Christina. Langston filed a motion to permit her to intervene in this proceeding and requested a hearing. The court denied these requests but stayed its order pending Langston's appeal. Langston then instituted a separate action in state court seeking custody of Christina.

Shortly after Coverdell filed her petition, DSHS petitioned the court for termination of Coverdell's parental rights to Christina. During the pendency of that proceeding, DSHS did not permit Coverdell to visit with Christina. Coverdell sought and obtained a court order permitting visitation. Langston again filed a motion to intervene and asked for reconsideration of the order permitting Coverdell to visit Christina. Langston's motion was denied. Sometime after Coverdell began exercising her court ordered visitation rights, Langston reported to DSHS her suspicion that Coverdell had been sexually abusing Christina. In February 1982, after hearings on the matter, Coverdell's visitation rights were terminated by the state court.

The various state court proceedings culminated on December 20, 1984, when the court ordered termination of the parental rights of Alice and Roscoe Coverdell over Christina. That order is now final.

On May 31, 1985, Coverdell filed her Amended and Supplemental Complaint in the present case, alleging that the actions of DSHS and McLaughlin, under color of state law, deprived Coverdell of her rights under the United States Constitution and the laws of the United States. Coverdell further charged that DSHS, McLaughlin, and Langston acted individually and in concert to prevent the return of Christina to Coverdell, thereby denying Coverdell her right to equal protection of the laws and equal privileges and immunities under the law; and that the defendants' actions were predicated on their belief that Coverdell was "of an inferior intellectual capacity and of an inferior personality and otherwise mentally handicapped."

HOW THE COURT RULED:

A. COVERDELL'S CLAIM FOR DAMAGES AGAINST McLAUGHLIN

The district court dismissed Coverdell's claim for damages against McLaughlin on the ground that all McLaughlin's actions were within the scope of her statutory authority, hence she enjoyed absolute quasi-prosecutorial immunity from liability for civil damages. On this appeal, Coverdell argues that the district court erred in ruling that McLaughlin enjoyed absolute immunity. Coverdell contends that McLaughlin enjoyed, at most, qualified immunity, and that a jury should be permitted to decide whether McLaughlin's actions were sufficiently malicious and/or unreasonable to defeat the qualified immunity.

The record shows that McLaughlin sought and obtained a court order directing the immediate apprehension of Christina. In so doing, McLaughlin was "performing quasi-prosecutorial functions connected with the initiation and pursuit of child dependency proceedings." Her actions were not only within the scope of her authority under Washington law, they may well have been required.

Because McLaughlin's actions in seeking and obtaining a court order were within the scope of her statutory authority as a quasi-prosecutor, she is entitled to absolute immunity from civil liability for her quasi-prosecutorial conduct.

The record also reveals that McLaughlin, pursuant to the court order, obtained custody of Christina and removed her from the hospital. McLaughlin's execution of the order was not a quasi-prosecutorial function connected with the pursuit of the dependency proceeding. Execution of a court order is not an act analogous to any that a prosecutor would normally perform; it is not, in any sense, advocacy. Accordingly, McLaughlin is not protected by quasi-prosecutorial immunity for her action in obtaining custody of Christina at the hospital.

Other circuits, however, have held that persons who faithfully execute valid court orders are absolutely immune from liability for damages in civil rights actions challenging conduct authorized by the order.

The rationale for immunizing persons who execute court orders is apparent. Such persons are themselves "integral parts of the judicial process." The fearless and unhesitating execution of court orders is essential if the court's authority and ability to function are to remain uncompromised.

Coverdell had an opportunity to challenge the court's order directing that Christina be apprehended and placed in temporary shelter care. That order became final long ago and is not at issue on this appeal. Coverdell has neither alleged nor shown that in executing the order, McLaughlin exceeded its scope or acted improperly in any other way. Coverdell's complaint, at bottom, is that McLaughlin apprehended Christina without notice shortly after the child's birth, while mother and child were still recuperating at the hospital. McLaughlin's act, however, was plainly authorized by the court's order, which expressly directed the immediate apprehension of the child from the hospital. Accordingly, McLaughlin enjoys absolute quasi-judicial immunity for executing that order.

B. COVERDELL'S CLAIM FOR INJUNCTIVE RELIEF AGAINST McLAUGHLIN

Coverdell's Amended and Supplemental Complaint requested that the lower court enjoin DSHS and McLaughlin "from seizing children of Alice Coverdell and other parents without notice and an opportunity for hearing and an opportunity for parent and child to defend their constitutionally protected interest in their parent-child relationship under the circumstances of this case in which (a) child and mother are confined in their normal relationship at hospital; and (b) [t]here is no allegation supported by probable cause that the child is being harmed by the mother...."

A de novo review of the record in this case reveals no evidence to support Coverdell's subjective concern that McLaughlin is likely, at some future time, to seize any child of Coverdell from the hospital. Coverdell, however, presented no evidence to satisfy her burden. She presented no evidence that she was pregnant, that she anticipated becoming pregnant, that she was still capable of bearing children, that she still resided within McLaughlin's service region, or that McLaughlin had taken any action or made any statement to suggest that Coverdell's newborn children might be seized in the future.

Coverdell's claim for injunctive relief rests on her unsupported and subjective "continuing concern" that future children will be taken from her at the hospital. We have no reason to doubt the genuineness of that concern. As a matter of law, however, Coverdell's subjective concern is insufficient to show a reasonable likelihood that she will again be the victim of allegedly unlawful conduct.

C. COVERDELL'S CLAIM FOR DAMAGES AGAINST LANGSTON

Coverdell's Amended and Supplemental Complaint purported to allege claims against Langston under the second clause of 42 U.S.C. and under the first clause of 42 U.S.C. Both such clauses require allegation and proof of racial or class-based invidious discrimination. Accordingly, Coverdell alleged that Langston's actions were "based on [her] belief that the plaintiff Alice Coverdell was of an inferior intellectual capacity and of an inferior personality and otherwise mentally handicapped."

As the moving party, Langston discharged her burden by pointing out to the district court the absence of any evidence that Langston's actions had been motivated by racial or other class-based animus. The burden then shifted to Coverdell to make a showing that there was a genuine issue of fact concerning the motivation underlying Langston's conduct.

Coverdell failed to come forward with any evidence to raise a genuine issue concerning Langston's motivation. Coverdell filed no affidavit of her own, took no depositions, and propounded no interrogatories or requests for admissions. Consequently, the only evidence before the district court was that provided by DSHS and McLaughlin. That evidence provides no support for Coverdell's allegation that Langston acted from a belief that Coverdell was mentally handicapped and inferior to Langston, or from any other class-based or invidiously discriminatory animus.

RE: Coverdell vs. Dept. of Social and Health Services

Child Protective Services worker McLaughlin investigated cases of child abuse and neglect for the State of Washington Dept. Social and Health Services. She was assigned the case of the pregnant Coverdell who had lost her first child to a termination of parental rights. The concerns were emotional instability; anger, and violence. McLaughlin attempted a home visit and was denied access. The hospital reported the birth of the child. McLaughlin signed an affidavit to the prosecutor detailing her concerns for the family and an order for temporary custody was granted. McLaughlin provided no notice to the mother when she took physical custody. She provided testimony at the hearing and later the parental rights were terminated. A denial of visits also became an issue.

The issue was whether McLaughlin's actions in obtaining the court order and in executing the court order were entitled to absolute or qualified immunity.