

YEAR 2004 CASE SUMMARIES

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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.

