When Qualified Immunity Protects Social Workers From 42 U.S.C. §1983 Lawsuits

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Social work has developed into an increasingly seasoned, mature, and specialized profession. The role of social workers has also changed, resulting in an increased expectation that social workers will be aware of and will satisfy legal responsibilities owed to their clients. While many public sector social work administrators and practitioners are concerned about liability litigation, no national studies of appellate cases have been synthesized to illustrate when suits against social workers succeed, and when social workers can rely on the doctrine of qualified immunity. This article explores when social workers are and are not successful in asserting qualified immunity when sued in civil court under 42 U.S.C. §1983.

42 U.S.C. §1983

Courts have generally recognized the need to protect government employees from unduly burdensome and baseless litigation that may interfere with the exercise of lawful discretion in their official functions. However, under 42 U.S.C. §1983, any person may bring a civil action against an individual who acted under color of any law (with the exception of judges, who are generally immune from such suits when concerning official action) and who caused a deprivation of any Constitutional right or federal law.[1]

Many courts characterize an individual who acted under color of any law as an "official." There is consensus among courts that social workers may be considered to be officials. The social workers who were successfully sued in the cases described in this article are described as caseworkers in state and county child protective services agencies, social workers in various departments of public health and human services, in mental health departments, and in foster care and child placement offices. "It is well-settled that the immunity to which a public official is entitled depends not on the official's title or agency, but on the nature of the function that the person was performing when taking the actions that provoked the lawsuit."[2] Thus, an official, including a social worker, can be sued under §1983 for constitutional violations if she sets in motion a series of events that she knew or reasonably should have known would cause violations of the plaintiff's constitutional rights.[3]

While liability clearly seems to attach under §1983 to actual participants in constitutional violations, it is not enough for a plaintiff merely to show that a defendant was in charge of other state actors who actually committed the violation. "Instead, just as with any individual defendant, the plaintiff must establish a deliberate, intentional act by the supervisor to violate constitutional rights."[4] "In order to overcome the qualified immunity of a supervisor, a plaintiff most [*sic*] show that the defendant-supervisor took deliberate action in directing the constitutional violation, or had actual knowledge of the violation and allowed the violation to continue."[5]

A social worker can be considered a state actor or official for the purposes of 42 U.S.C. §1983, and liability can attach if the following conditions are met: a violation of a constitutional or other federal legal right has occurred, the law protecting a right was in existence at the time of the claimed violation, and a reasonable person (social worker) would have known that the action would cause a violation of that right. Furthermore, the social worker can be held liable under §1983 if his or her actions caused others to violate the right.[6]

Qualified Immunity

Although states and officials acting in their official capacity are generally absolutely immune from lawsuits, especially if they are acting in prosecutorial-like functions,[7] "[s]tate executive branch officials receive qualified immunity if they could have reasonably believed that their conduct did not contravene federal law, which depends on the facts of their actions and the nature of the federal rule in existence at the time. Thus, …1983 essentially establishes a tort-based exception to state sovereign immunity because recovery requires that a government official have [*sic*] acted unreasonably."[8]

Qualified immunity is a judicially created mechanism that protects state officials who are sued in their individual capacity for civil damages under 42 U.S.C. §1983. Qualified immunity generally shields government officials performing discretionary functions from individual liability for civil damages under §1983 "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known."[9] It is an entitlement that provides an immunity from suit rather than a mere defense to liability. As such, it "is effectively lost if a case is erroneously permitted to go to trial."[10]

When claiming qualified immunity, social workers tend to file 12(b)(6) motions to dismiss, based on the theory that due to immunity, no legal claim can be made. Defendants can affirmatively plead qualified immunity, and the plaintiff has the burden to prove that the government actor is not entitled to the qualified immunity. When considering a 12(b)(6) motion, all the facts alleged in the complaint are assumed to be true and are read in the light most favorable to the nonmoving party. Thus, if there is any way in which the facts can support the claim brought by the plaintiff, the case will not be dismissed.[11] Conversely, if social workers are properly using discretionary powers as part of their job, and if the facts alleged in the complaint cannot be construed to amount to a constitutional violation or deprivation of rights, then the case will be dismissed if qualified immunity has been asserted by the social worker. A district court's denial of a claim of qualified immunity, to the extent that it turns on an issue of law, may be appealed as a "final decision" within the meaning of 28 U.S.C. §1291, notwithstanding the absence of a final judgment.

The following cases exemplify situations wherein motions filed by social workers to dismiss, based on qualified immunity, were not granted. Note that in these cases, the issue is only whether the case against the social worker should be dismissed on the basis of qualified immunity. Denial of a motion to dismiss does not mean

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that the social workers were found liable for the alleged deprivations—only that the case was allowed to proceed and be tried on the facts.

Cases Demonstrating When Qualified Immunity Is Denied to Social Workers

When evaluating claims for qualified immunity, courts must first determine if the plaintiff has alleged a deprivation of a law or constitutional right, whether the law was clearly established at the time of the alleged violation, and finally, whether a reasonable official could understand that what one is doing violates the law or constitutional right.[12] The subjective intent of the public official being sued for direct action or inaction is not the question. It is, rather, an objective inquiry as to whether a reasonable person would understand the law and would know that their action was in violation of it.[13]

When suits have been brought against social workers under §1983 for violations of constitutional rights, the most common claims are based on unreasonable search and seizure (Fourth Amendment) and due process (Fourteenth Amendment). Typically, when social workers seek dismissal based on the doctrine of qualified immunity, they attempt to show that the plaintiffs have either failed to allege a constitutional deprivation, or that even if they asserted a violation of a constitutional right, the right was not clearly established. However, in each case where this affirmative defense fails, it is because the facts alleged are always read in a light most favorable to the plaintiff, and the actions of the social worker would have been illegal or unreasonable taking the facts as presented as true.

Unreasonable Searches and Seizures

The Fourth Amendment of the U.S. Constitution, incorporated by the Fourteenth Amendment, protects, in relevant part, against unreasonable searches and seizure. Thus, seizure alone is not enough for §1983 liability—the seizure must be unreasonable. Of course, *reasonableness* is not precisely defined and will be dependent on the particular facts of a case. However, it is clear that "the *Fourth Amendment* applies to [social workers], as it does to all other officers and agents of the state whose requests to enter, however benign or well-intentioned, are met by a closed door. There is … no social worker exception to the strictures of the *Fourth Amendment.*"[14] "A person has been 'seized' within the meaning of the Fourth Amendment…if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave."[15] Many courts have found that "in the context of removing a child from his home and family, a seizure is reasonable if it is pursuant to a court order, if it is supported by probable cause, or if it is justified by exigent circumstances."[16]

The following is an example of a motion to dismiss, based on qualified immunity, which was denied on the basis of a Fourth Amendment violation. The facts, as presented, supported allegations that a social worker seized a girl at her high school with no legitimate justification, demanded that she leave her mother's care and return to her abusive father (while there was an existing court order assigning temporary custody to the girl's mother and forbidding the father from contacting the girl).[17] No qualified immunity was permitted by the court for the social worker, as the seizure was an "obvious and outrageous" violation of the Fourth Amendment, since an emotionally vulnerable 16-year-old would not have felt free to terminate the encounter.

In another example, qualified immunity was not granted to a social worker due to a determination, based on an unreasonable seizure, that the defendants (a social worker and police officer) dressed in plain clothes, allegedly arrived during evening hours in an unmarked car, entered the home without knocking or identifying themselves, seized the children, and refused to identify themselves when asked. The defendants grabbed the screaming children from the home in a manner suggesting to the children and their parents that they were being kidnapped.[18] This case demonstrates that even if a court order directed a child's removal, or exigent circumstances or probable cause justified the seizure, "the manner in which the defendants seized [the child] may still make his seizure unreasonable."[19]

First Amendment

Freedom of religion is another claim that has been successful in defeating the qualified immunity claim of social workers under §1983. Religious beliefs are tricky in terms of determining child endangerment. Generally speaking, if parental actions, such as punishments or medical decisions based on religious beliefs, are the basis of neglect and a removal, exigent circumstances will be difficult to show, except in the most extreme circumstances. Further, courts have coupled the free exercise clause of the First Amendment, which prohibits governmental regulation of religious beliefs, with the interest in familial relations as protected by the substantive due process of the Fourteenth Amendment.[20]

Due Process

A removal without a warrant, absent imminent, immediate danger, has been universally held to be in violation of due process, leading to unreasonable seizures.[21] Additionally, qualified immunity assertions have been defeated by procedural due process claims based on the constitutional inadequacy of post-deprivation hearings.[22] Some courts explicitly distinguish between procedural and substantive due process.[23] An example is a case involving a child who, while in foster care, repeatedly suffered abuse and injuries. The court denied the social worker qualified immunity based on a *substantive* due process claim, holding that deliberate indifference by state officials to the safety and welfare of a child in foster care constitutes a violation of the child's substantive due process rights and is actionable under §1983.[24] However, the court found that the *procedural* due process violation was not actionable against the social worker under §1983, holding that "only when the state refuses to provide a process sufficient to remedy the procedural deprivation does a constitutional violation actionable under section 1983 arise."[25] The court concluded that the state's laws provided a constitutionally adequate postdeprivation remedy.

Other jurisdictions have made similar distinctions between procedural and substantive due process. Even when there is a finding of adequate state procedures, and thus qualified immunity was afforded the social worker for the procedural due process claims, many courts have found that no qualified immunity is applicable to the substantive due process claims.[26]

Another substantive due process claim that has defeated the assertion of qualified immunity by social workers is the liberty interest in familial relations. Under the Fourteenth Amendment, parents have a protected liberty interest in the care, custody, and control of their children.[27] However, cases claiming governmental interference with the right of family integrity are balanced with the state's interest in protecting children and family privacy. "The balance here, however, is no different than that developed in the Fourth Amendment context."[28]

Where defendants (social workers) provided false information to a district attorney who filed a petition seeking to take custody of children, the plaintiffs asserted that their substantive due process right to familial integrity was violated.[29] While the court noted that the Supreme Court has long recognized family relations as one of the liberties protected by the due process clause of the Fourteenth Amendment, they noted that parents have no constitutional right to freedom from child abuse investigations. Nonetheless, the court held that the social workers were not entitled to qualified immunity, as the facts indicated that they knowingly made false accusations of abuse and neglect. Since the facts as presented did not establish an objectively reasonable suspicion of imminent danger, and the protection of family integrity was well established, the social workers (or, at least a reasonable person) would have known that their actions were unconstitutional. Thus, the motion to dismiss based on qualified immunity was denied.

In another case, a social worker and police officer were denied qualified immunity for a coerced entry into a home and the interrogation and strip search of a child, all conducted without a warrant or exigency.[30] The reasoning concerning the warrantless search is much the same as discussed above, but concerning the strip search, the court ruled that a "social worker is not entitled to sacrifice a family's privacy and dignity to her own personal views on how parents ought to discipline their children" finding that "there is a very substantial interest, which forcing the mother to pull the child's pants down invaded … the mother's dignity and authority in relation to her own children in her own home."[31] Thus, this court appears to have embraced a right to dignity as well as privacy and authority in support of familial rights.

The following is an example of denial of qualified immunity under 42 U.S.C. §1983 for individual social workers, based on a different aspect of substantive due process. The complaint alleged that the defendants, who were caseworkers in a family services agency, must have known they were placing the minor in a sequence of foster homes that were detrimental to the child's mental health. The court held that the due process clause requires that state officials take steps to prevent children in state custody from deteriorating physically or psychologically.[32] This case cites one of the "negative liberties" under the due process clause—to be free from governmental oppression.[33] The court concluded that while there is no constitutional right to governmental protection against physical abuse by parents or other private persons not acting under the direction of the state, the state, having removed a child from the custody of parent, cannot place the child in a position of danger without violating her rights under the due process clause of the Fourteenth Amendment. "[O]nce the state assumes custody of a person, it owes him a rudimentary duty of safekeeping no matter how perilous his circumstances when he was free."[34]

In a case where a child was beaten to death after being placed for adoption, the court granted summary judgment to one social worker based on qualified immunity because the undisputed facts showed that she exercised professional judgment, but qualified immunity was denied for another, as there were issues of material fact as to whether the social worker violated the child's substantive due process by failing to investigate several suspicious events during the period when she was directly responsible for the child.[35] The court held that while state officials are generally not responsible for the actions of third parties under the substantive component of the due process clause, the state may have a special relationship with children in state custody. Thus, "if the state or its employees knew of the asserted danger to minor children in state custody, or failed to exercise professional judgment with respect thereto… and if an affirmative link to the injuries the children suffered can be shown, then the state or its employees violated plaintiffs' constitutional rights."[36]

In another substantive due process case, a court dismissed the civil rights action under 42 U.S.C. §1983 for all defendants (various mental health professionals and administrators) based on qualified immunity *except* for the suit against the social worker.[37] The suit arose from the involuntary commitment of a minor to a state mental heath facility, during which time the minor hung himself. Summary judgment was denied to the social worker because of her failure to monitor the boy after having been warned that he had tried to commit suicide numerous times in the past. The court found that based on the alleged facts, she demonstrated deliberate indifference under the Fourteenth Amendment, which affords him a right to reasonably safe conditions of confinement, and she did not communicate the boy's past actions and threats to the other defendants. The other public officials in the case were granted qualified immunity based on the facts of this case, showing that a reasonable public official could have believed that his or her actions were lawful, in light of clearly established law and the information possessed by each official. The social worker's actions were found to be deliberately indifferent, and thus not entitled to qualified immunity under §1983.

Conclusion

Understanding qualified immunity is important for all public agency social workers. It has been clearly established that social workers are "officials" for the purpose of being entitled to utilize qualified immunity when acting in their individual capacities in accordance with their discretionary functions. Provided that social workers remain aware of laws and constitutional rights, follow appropriate procedures, and act with reasonableness and good faith, the doctrine of qualified immunity is a viable defense against suits brought against them in their individual capacity under 42 U.S.C. §1983. Social workers acting within the scope of their employment should be immune from prosecution for taking any legal actions they reasonably believe are necessary and proper in the performance of their functions.

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State and local governments indemnify their employees against court judgments incurred in the scope of their employment. Also covered are the costs of defending the lawsuits. The affirmative defense of qualified immunity, if appropriately asserted and granted, will prevent cases from proceeding to trial. Thus, it is imperative that government administrators are keenly aware that the conduct of public sector social workers may have profound fiscal as well as legal implications.

Notes

1. The relevant part of the code discussed in this article reads as follows: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, 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, except 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."
2. Mabe v. San Bernadino County *et al.*, 237 F3d 101, 1106 (9th Cir. 2001).
3. A social worker cannot rely on following a state law that enables a constitutional violation to invoke qualified immunity. *See* Brown v. State of Montana *et al.,* 442 F. Supp. 2d 982, 996 (D. Mont. 2006).
4. Rinehart v. U.S. Dist. Court for the Western District of Oklahoma, 2006 U.S. Dist. LEXIS 35764 (2006), quoting Foot v. Spiegel, 118 F.3d 116, 1423 (10th Cir. 1997).
5. *Id.,* quoting DeAnzona v. City and County of Denver, 222 F3d 1229, 1234 (10th Cir. 2000).
6. *See* Brokaw v. Mercer County *et al.*, 235 F.3d 1000, 1014 (7th Cir. 2000) (a Deputy Sheriff and a social worker were claimed to have falsely removed children based on knowingly false claims of neglect, because they disapproved of the parents' religious practices and beliefs. Regarding the social worker, even though she was not present during the actual seizure of the plaintiff, when the allegations were read in the light most favorable to the plaintiff, the court found that she directed the removal of the children, and that was enough to affix liability).
7. Butz v. Economou, 438 U.S. 478 (1978). The Supreme Court has held that §1983 preserves common law immunity; social workers and other officials are immune from §1983 if they were immune from tort liability at common law. See also Imbler v. Pachtman, 424 U.S. 409, 418, 420.
8. Jesse H. Coper & John C. Yoo, "Essay: Who's Afraid of the Eleventh Amendment? The Limited Impact of the Court's Sovereign Immunity Rulings," 106 Colum L. Rev. 213 (January 2006).
9. Harlow v. Fitzgerald*,* 457 U.S. 800, 818, 102 S. Ct. 2727, 73 L. Ed. 2d 96 (1982).
10. Mitchell v. Forsyth, 472 U.S. 511, 526 (1985).
11. *See* Conley v. Gibson, 355 U.S. 41, 45–46, 2 L.Ed. 2d 80, 78 S. Cit. 99 (1957).
12. See *Mabe* at 1106–1107; Villanueva v. San Marcos Consolidated Independent School district *et al.*, U.S. District Court for the Western District of Texan, Austin Division, 2006 U.S. Dist. LEXIS 68280 (2006).
13. See *Villanueva*, page 7. See also *Jones* at 1229 ("To defeat a claim of qualified immunity, plaintiffs need not point to a prior holding that the specific conduct at issue is unlawful; rather, the unlawfulness of the alleged action must have been apparent.") See also *Starkey* at 18, quoting Pierce v. Gilchrist, 359 F3d 1279, 1298 (10th Cir. 2004, discussing Hope v. Pelzer, 536 U.S. 730, 122 S.Ct. 2508, 153 L.Ed.2d 666 (2002).
14. *O'Donnell* at 802, quoting from Walsh v. Erie County of Job & Family Servs., 240 F. Supp. 2d 731, 746-47 (N.D. Ohio 2003). *See* also Jones v. Hunt *et al.*, 410 F.3d 1221, 1125 (10th Cir. 2005), citing Dubbs v. Head Start, Inc., 336 F.3d 1194, 1205 (10th Cir. 2003).
15. *Brokaw* at 1010 (determining that a child who was carried from his house, placed in a car and driven away was not free to leave and thus was "seized" within the meaning of the Fourth Amendment), quoting from United States, v. Mendenhall, 446 U.S. 544, 554, 64 L. Ed. 2d 497, 100 S. Ct. 1870 (1980).
16. See *Brokaw* at 1010, listing other cases discussing Fourth Amendment seizures of children.
17. Jones v. Hunt at 1223. Further, qualified immunity also may not protect individual defendants when acting on false or incomplete information. The test remains whether a reasonable person would recognize that the seizure was unreasonable.
18. *Brokaw.*
19. *Id.* at 1011. Additionally, some social workers have been found liable on the basis of the "danger creation" theory. Under this theory, state officials can be liable for acts of third parties, if it can be shown that the state actor played a part in creating the danger, or their actions rendered the plaintiff more vulnerable to the danger. *See* Briggs v. Oklahoma ex rel. Oklahoma Dept. of Human Servs., 2007 U.S. Dist. LEXIS 7092 (W.D. Okla., Jan. 31, 2007). *See also* Johnson v. Holmes *et al.*, 455 F.3d 1133, 1145 (10th Cir. 2006) (enumerating six elements that must be met to establish liability under a danger creation theory).
20. *See* Starkey *et al.* v. U.S. District Court for the District of Colorado, 2006 U.S. Dist. LEXIS 84768 (2006).
21. See *Mabe* at1106–1107.
22. See *Brokaw* at 1021.
23. See *e.g., McCall.*
24. *Id.* at 1367.
25. *Id.* at 1369.
26. See *Brokaw*, where the plaintiff claims that he was removed based on knowingly false statements of child neglect, and that the defendants removed him from his home without an investigation, a predeprivation hearing, or exigent circumstances, and the court allowed the procedural due process claim to proceed against the defendants, including the social worker.
27. Santosky v. Kramer, 455 U.S. 745, 753, 71 L.Ed. 2d 599, 102 s. Ct. 1388 (1982). See also *Brokaw* at 1017–1019, and *Mabe* at 1107.
28. *Brokaw* at 1019 (note that the claim is separate from a Fourth Amendment unreasonable seizure claim; this claim under substantive due process is for a continuing violations that occurred during a 4-month separation from the child's parents, due to his removal being arguably not justified by a sufficiently compelling governmental interest.).
29. See *Rinehart.* See also *O'Donnell* at 826.
30. Calabretta v. Floyd *et al.*, 189 F.3d 808 (9th Cir. 1999).
31. *Id.* at 819, 820.
32. K.H. v. Gary T. Morgan *et al.*, 914 F.2d 846 (7th Cir. 1990). The plaintiff was discovered at the age of 17 months to have gonorrhea contracted in vaginal intercourse. When she was removed from the custody of her parents, she was placed with four sets of foster parents in the course of a year, then returned to her parents briefly and removed again after 3 months on the basis of neglect. After several more placements, she was found to have been beaten and sexually abused by foster parents.
33. *K.H.* at 848, citing to Youngberg v. Romeo, 457 U.S. 307, 315–316, 73 L. Ed. 2d 28, 102 S.Ct. 2452 (1982).
34. *Id.* at 849. "The state, having saved a man from a lynch mob, cannot then lynch him, on the ground that he will be no worse off than if he had not been saved."
35. Johnson v. Holmes *et al.*, 455 F.3d 1133 (10th Cir. 2006).
36. *Id.* at 1143 (internal quotations omitted).
37. Dolihite v. Maughon *et al.*, 74 F.3d 1027 (11th Cir. 1996).

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