

# Court of Claims of Ohio

The Ohio Judicial Center  
65 South Front Street, Third Floor  
Columbus, OH 43215  
614.387.9800 or 1.800.824.8263  
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KELSEY'S LEARNING CENTER, et al.

Case No. 2006-03087

Plaintiffs

Judge J. Craig Wright

v.

DECISION

OHIO DEPARTMENT OF JOB AND  
FAMILY SERVICES

Defendant

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{¶1} Plaintiffs brought this action alleging violations of their due process rights under 42 U.S.C. 1983 and alleging claims of tortious interference with contract, tortious interference with their business relationships, civil conspiracy, assault, malicious criminal prosecution, and trespass. The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability.

{¶2} On February 7, 2002, defendant granted plaintiffs, Sherri Chatman and Betty Dixon, a six-month provisional license to operate Kelsey's Learning Center (Kelsey's), a childcare center located in the basement of Praise Temple Community Church in Columbus, Ohio. On June 26, 2002, in accordance with their statutory duty, defendant's employees Janene Kehl, a licensing specialist, and Peggy Blevins, Kehl's supervisor, made an unannounced visit at Kelsey's for the purposes of inspection and to determine whether the center was in compliance with all applicable regulations.

{¶3} During the inspection visit, Blevins entered a small house that was located in the parking lot of the church. According to plaintiffs, the building was private property; it was always locked; and it was not accessible to the children. When Chatman realized that Blevins had gone into the building, she followed her and requested that she leave. At this point, Chatman had become frustrated with the inspection process because it had not been proceeding smoothly and she was angry when she entered the house; a confrontation ensued. Chatman raised her arm, pointed a finger at Blevins, and told Blevins to leave the

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building or she would call the police. Blevins alleged that Chatman struck her with her raised hand and that, because Chatman continued to point her finger and demand that she leave, Blevins grabbed Chatman's wrist to avoid being struck a second time. Chatman claimed that Blevins refused to leave the premises and that Blevins grabbed her arm and would not release it. Chatman stated that she later called the police regarding the incident. After leaving the house, Blevins immediately returned to her automobile, where she telephoned her supervisor and then the police. Chatman was subsequently arrested on one count of assault and one count of disorderly conduct as a result of Blevins' complaint. Chatman alleges that when she contacted the police she was informed that nothing could be done about her complaint until Blevins' charges were resolved. The charges against Chatman were ultimately dismissed by a city prosecutor.

{¶4} After the incident, Kelsey's provisional license was revoked due to a number of code violations<sup>1</sup> noted during the inspection that were unrelated to the alleged assault. Pursuant to R.C. Chapter 119, plaintiffs were afforded both an agency review, and an appeal from the hearing examiner's affirming order. The revocation was affirmed by both the Franklin County Court of Common Pleas and the Tenth District Court of Appeals.<sup>2</sup> The Supreme Court of Ohio declined jurisdiction to hear plaintiffs' appeal to that court.<sup>3</sup>

{¶5} At the outset of the proceedings, the court heard oral argument on defendant's July 20, 2007 motion in limine and motion for partial dismissal of plaintiffs' claims. The motion for partial dismissal was GRANTED and, as a result, the motion in

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<sup>1</sup>For example, plaintiffs were cited for inadequate staffing, caring for a child younger than permitted by licensing or fire codes, leaving children unattended or engaged in unsafe activities, deficiencies in record keeping, and facility non-compliance.

<sup>2</sup>Franklin County Court of Common Pleas Case No. 04CVF11-12485 and Franklin App. No. 05AP-1311, 2006-Ohio-3657, respectively.

<sup>3</sup>112 Ohio St.3d 1408, 2006-Ohio-6447.

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limine was DENIED as moot. Plaintiffs' claims for relief under 42 U.S.C. 1983 were DISMISSED due to lack of subject matter jurisdiction. See *Graham v. Ohio Board of Bar Examiners* (1994), 98 Ohio App.3d 620. Plaintiffs' claims of tortious interference with contract, tortious interference with business relationships, and civil conspiracy were also DISMISSED for lack of subject matter jurisdiction inasmuch as the substance of those claims was a collateral appeal of the license revocation that was properly and fully litigated through the R.C. 119 process. See *Avon Lake City School Dist. v. Ohio Dept. of Taxation* (1989), 55 Ohio App.3d 171; *Elliot v. Ohio Dept. of Insurance* (1993), 88 Ohio App.3d 1. The court also agreed in toto with the alternative grounds for partial dismissal set forth in defendant's motion.

{¶6} The trial then proceeded on plaintiffs' claims of assault, malicious prosecution, and trespass. At the close of the proceedings, the court announced its decision that plaintiff had failed to prove any of her claims by a preponderance of the evidence.

{¶7} Specifically, "the tort of assault is defined as the willful threat or attempt to harm or touch another offensively, which threat or attempt reasonably places the other in fear of such contact." *Smith v. John Deere Co.* (1993), 83 Ohio App.3d 398, 406. The court was not persuaded by Chatman's testimony that she was assaulted by Blevins when Blevins grabbed her wrist during the June 26, 2002 inspection visit. Chatman's testimony on that issue lacked credibility. Rather, the weight of the evidence demonstrated that Chatman attempted to assault Blevins and that Blevins grabbed Chatman's wrist in self-defense. Thus, Chatman did not prevail on her claim of assault.

{¶8} In order to prevail on her claim of malicious prosecution, plaintiff was required to prove the following elements: 1) malice in instituting or continuing the prosecution, 2) lack of probable cause, and 3) termination of the prosecution in her favor. *Criss v. Springfield Twp.* (1990), 56 Ohio St.3d 82. Although all three elements must be established, "the want of probable cause is the real gist of the action." *Melanowski v. Judy*

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(1921), 102 Ohio St. 153, 155. Probable cause does not depend upon whether the claimant was guilty of the crime charged. *Waller v. Foxx* (Oct. 6, 1982), Hamilton App. No. C-810568. Rather, the question is whether the accuser had probable cause to believe that the claimant was guilty. *Id.* The person instituting the criminal proceeding is not bound to have evidence sufficient to insure a conviction but is required only to have evidence sufficient to justify an honest belief of the guilt of the accused. *Epling v. Pacific Intermountain Exp. Co.* (1977), 55 Ohio App.2d 59, 62.

{¶9} Although there was conflicting evidence whether Chatman actually struck Blevins, the court was persuaded that Blevins had an honest belief that she was being threatened with harm or offensive contact and that she was reasonably in fear of such contact. Therefore, plaintiff could not prove that there was lack of probable cause for Blevins' charges, and her claim of malicious prosecution failed.

{¶10} Plaintiffs' claim of trespass concerns Blevins' entry into the house where the confrontation occurred. Plaintiffs acknowledged that Blevins and Kehl had entered the house on previous occasions when plaintiffs were attempting to obtain a license for an infant childcare center in that building. The visits to the house occurred in the course of obtaining the license for the church basement childcare center. However, plaintiffs were unable to obtain the necessary permits to use the house for that purpose. Plaintiffs also acknowledged that they kept childcare supplies for the basement center in the house. Dixson testified that, during the inspection, she entered the house to get popsicles for the children and did not lock the door immediately afterward. According to Blevins, she entered the house because she observed a child attempting to open the door. Blevins explained that if the door had been locked she would not have entered; however, she was required to inspect any part of the premises where children could be present.

{¶11} A trespasser is "one who unauthorizedly goes upon the private premises of another without invitation or inducement, express or implied, but purely for his own purposes or convenience." *Jeffers v. Olexo* (1989), 43 Ohio St.3d 140, 145, citing

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*Keesecker v. G.M. McKelvey Co.* (1943), 141 Ohio St. 162, 166. Plaintiff's claim of trespass failed because there was no evidence that Blevins entered the house for her own purposes or convenience or that she was told by anyone that her entry into the house was not authorized. Moreover, because the door was unlocked and a child was attempting to enter the house, Blevins had a legal duty to enter the premises for inspection.

{¶12} For the foregoing reasons, judgment shall be rendered in favor of defendant.

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JUDGMENT ENTRY

OHIO DEPARTMENT OF JOB AND  
FAMILY SERVICES

Defendant

This case was tried to the court on the issue of liability. The court has considered the evidence and, for the reasons set forth in the decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiffs. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

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J. CRAIG WRIGHT  
Judge

cc:

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LH/cmd  
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