

[Cite as *Bykova v. Cuyahoga Cty. Dept. of Child & Family Servs.*, 2011-Ohio-1250.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 95484**

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**IRINA BYKOVA**

PLAINTIFF-APPELLANT

vs.

**CUYAHOGA COUNTY DEPARTMENT OF  
CHILDREN AND FAMILY SERVICES, ET AL.**

DEFENDANTS-APPELLEES

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**JUDGMENT:  
AFFIRMED**

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Civil Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CV-721621

**BEFORE:** S. Gallagher, J., Celebrezze, P.J., and Jones, J.

**RELEASED AND JOURNALIZED:** March 17, 2011

## **FOR APPELLANT**

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## **ATTORNEYS FOR APPELLEE**

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BY: Michael A. Dolan  
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SEAN C. GALLAGHER, J.:

{¶ 1} Appellant Irina Bykova appeals the decision by the Cuyahoga County Court of Common Pleas dismissing her complaint against appellees Cuyahoga County Department of Children and Family Services (“CCDCFS”); CCDCFS employees Deborah Forkas, Larry Snyder, Joseph Shepherd, Linda Julian, and Alexandra Bogdanovic; and Cuyahoga County Assistant Prosecutors Yvonne Billingsley and Stephen Ritz (collectively referred to as “appellees”).<sup>1</sup> For the reasons set forth herein, we affirm.

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<sup>1</sup> Stephen Ritz was not named in Bykova’s original complaint, but was added in her amended

{¶ 2} The facts in this case are gleaned from Bykova’s complaint against appellees, the documents she attaches to her pleadings, and her representations at oral argument. The juvenile case file, which Bykova claims substantiates facts alleged in her civil lawsuit, is sealed, and she has not provided it as part of the record on appeal.

{¶ 3} Bykova has two teenaged children. She homeschools her children in accordance with the statutory provisions outlined by the state of Ohio and reviewed by the Cleveland Municipal School District (“CMSD”). Because of the superior education Bykova provides them, her children are considered “gifted” and “academically advanced.” Bykova’s son, who had been diagnosed with autism at an early age, is considered high-functioning and very intelligent.

{¶ 4} In February 2009, CCDCFS received information that Bykova’s children were not enrolled in school and that CMSD had not received the necessary documentation from Bykova to demonstrate that they were receiving an education in accordance with state guidelines. CCDCFS initiated an investigation to determine whether there was evidence of educational neglect warranting removal of the children from Bykova’s home. Bykova cooperated with CMSD and submitted all information it needed to determine that Bykova was abiding by the state educational guidelines for her children’s education.

{¶ 5} In June 2009, the juvenile court determined that Bykova had complied with the proper statutes for homeschooling her children, and the complaint filed by CCDCFS was dismissed. In March 2010, Bykova filed a complaint against appellees alleging causes of action for libel, slander, and malicious prosecution. She filed an amended complaint on May 26, 2010. She attached various documents from the juvenile case record to support her claims that appellees made untrue statements about her and her children and that CCDCFS was trying to take her children from her.<sup>2</sup> Appellees filed a motion to dismiss, arguing that Bykova's complaint failed to state a claim upon which relief could be granted. They asserted that they were immune from liability under R.C. Chapter 2744.

{¶ 6} On July 16, 2010, the trial court granted appellees' motion to dismiss. On July 29, 2010, Bykova filed the instant appeal. Although Bykova sets forth 17 assignments of error,<sup>3</sup> these are more accurately characterized as individual arguments supporting her claim that the trial court's dismissal of her complaint under Civ.R. 12(B)(6) and 12(C) was improper.

{¶ 7} We review an order dismissing a complaint for failure to state a claim for relief de novo. *Perrysburg Twp. v. Rossford*, 103 Ohio St.3d 79, 2004-Ohio-4362, 814 N.E.2d 44. When

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<sup>2</sup> We note that the documents Bykova attached to several of her pleadings were made part of the public record by her, and not CCDCFS. Juvenile court records are confidential. See *In re T.R.* (1990), 52 Ohio St.3d 6, 556 N.E.2d 439; R.C. 5153.17.

reviewing a Civ.R. 12(B)(6) motion to dismiss, we must accept the material allegations of the complaint as true and make all reasonable inferences in favor of the plaintiff. *Johnson v. Microsoft Corp.*, 106 Ohio St.3d 278, 280, 2005-Ohio-4985, 834 N.E.2d 791. For a defendant to prevail on the motion, it must appear from the face of the complaint that the plaintiff can prove no set of facts that would justify a court in granting relief. *Id.*

{¶ 8} Bykova named all appellees in their official capacity. She asserts that they were acting outside the scope of their employment when they filed a complaint against her for educational neglect and made certain untrue statements about her and her children. We find that, given the facts before us, appellees, as a governmental agency and government employees, are entitled to statutory immunity for their actions.

{¶ 9} The Ohio Supreme Court has outlined a three-tier analysis for determining whether a political subdivision is entitled to immunity under R.C. Chapter 2744. “The first tier is the general rule that a political subdivision is immune from liability incurred in performing either a governmental function or proprietary function. R.C. 2744.02(A)(1). However, that immunity is not absolute. R.C. 2744.02(B). The second tier of the analysis requires a court to determine whether any of the five exceptions to immunity listed in R.C. 2744.02(B) apply to expose the political subdivision to liability. \* \* \* If any of the exceptions to immunity in R.C. 2744.02(B) do apply and no defense in that section protects the political subdivision from liability, then the third

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<sup>3</sup> See appendix.

tier of the analysis requires a court to determine whether any of the defenses in R.C. 2744.03 apply, thereby providing the political subdivision a defense against liability.” (Citations omitted.)

*Colbert v. Cleveland*, 99 Ohio St.3d 215, 2003-Ohio-3319, 790 N.E.2d 781, ¶ 7-9.

{¶ 10} “Under either R.C. 2744.01(C)(2)(m) or (o), Cuyahoga County Department of Children and Family Services is a political subdivision performing a governmental function.” *Rankin v. Cuyahoga Cty. Dept. of Children & Family Servs.*, 118 Ohio St.3d 392, 2008-Ohio-2567, 889 N.E.2d 521.

A claim against a person in an official capacity is actually a claim against the governmental agency. *Piphus v. Blum* (1995), 108 Ohio App.3d 218, 225, 670 N.E.2d 518, citing *Leach v. Shelby Cty. Sheriff* (C.A.6, 1989), 891 F.2d 1241, 1245. Likewise, the statutory definition of “governmental function” includes prosecutorial functions. R.C. 2744.01(C)(2)(f).

{¶ 11} None of the exceptions listed in R.C. 2744.02(B), denying general liability, applies to the facts in this case. The injuries alleged by Bykova did not involve the operation of a motor vehicle (R.C. 2744.02(B)(1)), a proprietary function (R.C. 2744.02(B)(2)), public roads (R.C. 2744.02(B)(3)), physical defects of a building (R.C. 2744.02(B)(4)), or a duty expressly imposed on appellees by statute (R.C. 2744.02(B)(5)).

{¶ 12} As noted above, without the ability to review the juvenile case file, we are constrained to make our determination on the record before us. Despite Bykova’s allegations that appellees acted outside the scope of their employment,

nothing in the record supports this. She has attached documents that we find support appellees' assertions that they followed agency procedures to determine whether Bykova was complying with the educational mandates of the state of Ohio regarding her children's education. We also find that the juvenile court's dismissal of the case against Bykova further supports appellees' argument that they were only doing their jobs.

{¶ 13} While we applaud Bykova for the time and effort she devotes to providing her children with an excellent education, we must also be cognizant of the equally challenging task CCDCFS faces in making sure the children in our county receive the education to which they are entitled.

{¶ 14} The trial court did not err in granting appellees' motion to dismiss. Bykova's assignments of error are overruled.

Judgment affirmed.

It is ordered that appellees recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

SEAN C. GALLAGHER, JUDGE

FRANK D. CELEBREZZE, JR., P.J., and  
LARRY A. JONES, J., CONCUR

## APPENDIX

“Plaintiff’s Assignment of Error No. 1:

The trial court erred pursuant to R.Civ.P. 8(A-G) by dismissing due to Defendants’ failure to contest any part of factual substance of claim.”

“Plaintiff’s Assignment of Error No. 2:

The trial court erred pursuant to R.Civ.P. 8(A-G) by dismissing due to Defendants’ failure to contest any part of evidential substance of claim.”

“Plaintiff’s Assignment of Error No. 3:

The trial court erred pursuant to R.Civ.P. 8(A-G) by dismissing due to Defendants’ failure to contest allegations of multiple perjuries and/or falsifications.”

“Plaintiff’s Assignment of Error No. 4:

The trial court erred pursuant to R.Civ.P. 8(A-G) by dismissing due to Defendants’ irrelevant and offensive construction of part LAW of motion to dismiss.”

“Plaintiff’s Assignment of Error No. 5:

The trial court erred pursuant to R.Civ.P. 3(E) by dismissing the entire case due to Defendants’ failure to establish defense on immunity for Defendant CCDCFS.”

“Plaintiff’s Assignment of Error No. 6:

The trial court erred pursuant to R.Civ.P. 3(E) by dismissing the entire case due to Defendants’ failure to establish defense on immunity for Defendants Billingsley, Ritz and Julian.”

“Plaintiff’s Assignment of Error No. 7:

The trial court erred pursuant to R.Civ.P. 3(E) by dismissing the entire case due to Defendants’ failure to establish defense on immunity for Defendants Forkas, Snider, Shepherd, Davis and Bogdanovic.”



“Plaintiff’s Assignment of Error No. 8:

The trial court erred pursuant to R.Civ.P. 3(E) by dismissing the entire case due to Defendants’ failure to establish expired statute of limitations for Defendant Ritz.”

“Plaintiff’s Assignment of Error No. 9:

The trial court erred pursuant to R.Civ.P. 3(E) by dismissing the case summarily for all Defendants due to their failure to establish individual and group defense and their failure to apply and/or argue an umbrella defense which covers simultaneously all Defendants.”

“Plaintiff’s Assignment of Error No. 10:

The trial court abused its discretion and erred pursuant to R.Civ.P. 8(A-G) by denying justified consideration to the exceptional merits of Plaintiff’s claim uncontested by Defendants.”

“Plaintiff’s Assignment of Error No. 11:

The trial court abused its discretion and erred pursuant to R.Civ.P. 12(A-D) & (H) by dismissing on invalid declaration of motion for judgment.”

“Plaintiff’s Assignment of Error No. 12:

The trial court abused its discretion and erred pursuant to R.Civ.P. 12(C) by dismissing on invalid application of motion for judgment.”

“Plaintiff’s Assignment of Error No. 13

The trial court abused its discretion and erred pursuant to R.Civ.P. 12(A-D) & (H) by dismissing on invalid and null motion to dismiss.”

“Plaintiff’s Assignment of Error No. 14:

The trial court abused its discretion and erred pursuant to R.Civ.P. 12(A-D) & (H) by accepting invalid and null motion to dismiss for consideration.”

“Plaintiff’s Assignment of Error No 15:

The trial court abused its discretion and erred pursuant to R.Civ.P. 7(A-B), 8(A-G), 12(A-D) & (H) and pursuant to Amendment XIV of U.S. Constitution (Section 1) by denying Plaintiff equal opportunity to file respective motion for judgment.”

“Plaintiff’s Assignment of Error No. 16:

The trial court abused its discretion and erred pursuant to R.Civ.P. 7(A-B), 8(A-G), 12(A-D) & (H) by dismissing [Amended] Complaint as the only valid pleading.”

“Plaintiff’s Assignment of Error No. 17:

The trial court abused its discretion and erred pursuant to R.Civ.P. 55(A) by not awarding Plaintiff with default judgment.”