

LIABILITY: STORIES FROM THE FIELD

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FOCUS GROUP: 1999

- DSS SHOULD PROTECT KIDS
- DSS SHOULD NOT INTERFERE WITH MY FAMILY

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BACKGROUND ON LITIGATION

- 7 CHILD PROTECTIVE SERVICES CASES- SETTLED 2 FOR 330K AND 200K
 - 4 FOSTER CARE CASES- SETTLED 1 FOR 20K
 - 1 ADULT PROTECTIVE SERVICES CASE- 1 PENDING

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ISSUES UNDER FEDERAL LAW

- 1. ABSOLUTE IMMUNITY
- 2. MUNICIPAL LIABILITY
- 3. QUALIFIED IMMUNITY

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ISSUES UNDER FEDERAL LAW

- 1. ABSOLUTE IMMUNITY
 - 2 SITUATIONS
 - 1. ACTING AS GUARDIAN PURSUANT TO COURT ORDER
 - 2. FILING PETITIONS

ISSUES UNDER FEDERAL LAW

- 1. ABSOLUTE IMMUNITY
 - social workers and guardians ad litem have absolute immunity from damages under section 1983 for their actions “that could be deemed prosecutorial.” *Fleming v. Asbill*, 42 F.3d 886, 889 (4th Cir. 1994); *Vosburg v. Department of Social Services*, 884 F.2d 133, 138 (4th Cir. 1989).

ISSUES UNDER FEDERAL LAW

- 1. ABSOLUTE IMMUNITY
 - *MCADOO V. RUTHERFORD COUNTY DSS ET. AL.*
 - ADULT PROTECTIVE SERVICES CASE
 - DSS APPOINTED AS GUARDIAN
 - DSS IGNORED THE WISHES OF THE FAMILY BY ALLOWING FATHER TO HAVE SURGERY AT VA HOSPITAL
 - DSS ALLOWED CARETAKER TO MAKE DECISIONS

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ISSUES UNDER FEDERAL LAW

- 1. ABSOLUTE IMMUNITY
 - *MCADOO V. RUTHERFORD COUNTY DSS ET. AL.*
 - ACTS OF GUARDIAN PURSUANT TO NORTH CAROLINA LAW ARE PART OF THE JUDICIAL PROCESS
 - N.C.G.S. § 35A-1114

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ISSUES UNDER FEDERAL LAW

- 1. ABSOLUTE IMMUNITY
 - *MCADOO V. RUTHERFORD COUNTY DSS ET. AL.*
 - *Rugler v. Anne Arundel County*, 2011 U.S. Dist. Lexis 14980 at *7 (Dist. Md. 2011) (claims against court appointed guardian acting within judicial process barred by absolute immunity); *Myers v. Kaufmann*, 2010 U.S. Dist Lexis 114388 at *22 (D.S.C. 2010) (suit against father’s guardian barred because they allege wrongful actions occurring within the judicial process).

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ISSUES UNDER FEDERAL LAW

- 1. ABSOLUTE IMMUNITY
 - *MCADOO V. RUTHERFORD COUNTY DSS ET. AL.*
 - The purpose of granting such immunity is to allow a guardian ad litem to “function without the worry of possible later harassment and intimidation from dissatisfied parents...[a] failure to grant immunity would hamper the duties of a guardian ad litem in his role as advocate for the child in judicial proceedings.”
 - *Fleming v. Asbill*, 42 F.3d 886, 889 (4th Cir. 1994); *Vosburg v. Department of Social Services*, 884 F.2d 133, 138 (4th Cir. 1989)

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ISSUES UNDER FEDERAL LAW

- 1. ABSOLUTE IMMUNITY
 - *MOUAV. ALEXANDER COUNTY DSS*
 - WIFE SAYS HUSBAND THREATENED TO KILL HER WITH GUN
 - WIFE GOES TO SHELTER WITH KIDS AND THEN DECIDES TO RETURN HOME
 - DSS TAKES CUSTODY OF KIDS VIA CUSTODY ORDERS
 - DSS NOTICES BRUISES ON CHILDREN WHILE IN CUSTODY

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ISSUES UNDER FEDERAL LAW

- 1. ABSOLUTE IMMUNITY
 - *MOUAV. ALEXANDER COUNTY DSS*
 - COURT RETURNS CUSTODY OF CHILDREN TO PARENTS
 - PARENTS SUE FOR CPS INVESTIGATION WHICH RESULTED IN NON SECURE CUSTODY ORDERS AND TEMPORARY LEGAL CUSTODY OF KIDS WITH DSS FOR 3 MONTHS

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ISSUES UNDER FEDERAL LAW

- 1. ABSOLUTE IMMUNITY
 - *MOUAV. ALEXANDER COUNTY DSS*
 - ACTUAL FILING OF PETITIONS SEEKING NON-SECURE CUSTODY OF PLAINTIFF'S CHILDREN CONSTITUTES A JUDICIAL ACT OF ALEXANDER COUNTY DSS GIVEN THAT THE FILING OF THE PETITION TRIGGERS JUDICIAL INTERVENTION AND PROCESS.
 - FILING OF PETITIONS- DSS ACTING IN ROLES THAT ARE THE FUNCTIONAL EQUIVALENT OF PROSECUTORS

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ISSUES UNDER FEDERAL LAW

- 1. ABSOLUTE IMMUNITY
 - *MOUAU V. ALEXANDER COUNTY DSS*
 - “the filing of a removal petition is, in essence, the start of judicial proceedings against the parent or guardian of a minor child, and the duties of a social worker at that point are those of an advocate in the process...Like a prosecutor, a social worker must exercise her best judgment and discretion in deciding when to file a Removal Petition”

– *Vosburg v. DSS*, 884 F.2d. 133, 135 (4th Cir. 1989)

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ISSUES UNDER FEDERAL LAW

- 2. MUNICIPAL LIABILITY
 - THEORY OF LIABILITY IS THAT DSS HAS POLICY OR CUSTOM IN FAILING TO TRAIN WORKERS OR FAILING TO PROPERLY INVESTIGATE OR SCREEN COMPLAINTS
 - MUST SHOW THAT CONSTITUTIONAL VIOLATION WAS CAUSED BY OFFICIAL POLICY OR CUSTOM OF DSS

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ISSUES UNDER FEDERAL LAW

- 2. MUNICIPAL LIABILITY
 - *SHAYE SMITH V. CLEVELAND COUNTY DSS*
 - MUNICIPAL LIABILITY THEORY WAS THAT DSS LIABLE FOR DECISION REQUIRING SUPERVISED VISITATION BECAUSE DECISION TO REQUIRE SUPERVISED VISITATION WAS MADE BY PERSON WITH FINAL POLICY MAKING AUTHORITY, THE DSS DIRECTOR

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ISSUES UNDER FEDERAL LAW

- 2. MUNICIPAL LIABILITY
 - *SHAYE SMITH V. CLEVELAND COUNTY DSS*
 - CT: SIMPLY GOING ALONG WITH DISCRETIONARY DECISIONS BY SUBORDINATES IN NOT A DELEGATION TO THEM OF POLICY MAKING AUTHORITY
 - NO EVIDENCE THAT DIRECTOR APPROVED DECISION

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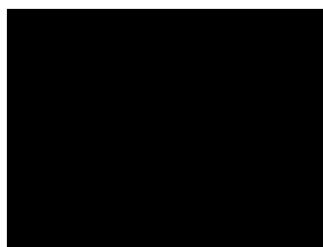
ISSUES UNDER FEDERAL LAW

- 3. QUALIFIED IMMUNITY
 - “THE MAXIM OF FAMILIAL PRIVACY IS NEITHER ABSOLUTE NOR UNQUALIFIED, AND MAY BE OUTWEIGHED BY A LEGITIMATE GOVERNMENTAL INTEREST. THE RIGHT TO FAMILY INTEGRITY CLEARLY DOES NOT INCLUDE A CONSTITUTIONAL RIGHT TO BE FREE FROM CHILD ABUSE INVESTIGATIONS.”
 - HODGE V. JONES, 31 F.3d. 157, 163 (4th Cir. 1994)

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ISSUES UNDER FEDERAL LAW

- 3. QUALIFIED IMMUNITY
 - *WORD OF FAITH FELLOWSHIP V. RUTHERFORD COUNTY DSS*
 - ALLEGATIONS OF RELIGIOUS DISCRIMINATION IN CHILD PROTECTIVE SERVICES INVESTIGATIONS IN INVESTIGATING “BLASTING PRAYER” AND “DISCIPLESHIP”



ISSUES UNDER FEDERAL LAW

- 3. QUALIFIED IMMUNITY
 - *WORD OF FAITH FELLOWSHIP V. RUTHERFORD COUNTY DSS*
 - FAMILIES REFUSED TO SIGN SAFETY ASSESSMENTS AND DSS ORDERS PSYCHOLOGICAL EVALUATIONS OF CHILDREN
 - DSS ALLEGEDLY USED COERCIVE QUESTIONING CONCERNING RELIGIOUS BELIEFS AND ENTICED THEM TO LEAVE FAMILY HOMES

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ISSUES UNDER FEDERAL LAW

- 3. QUALIFIED IMMUNITY
 - *WORD OF FAITH FELLOWSHIP V. RUTHERFORD COUNTY DSS*
 - “REASONABLE DSS AGENT WOULD KNOW THAT INITIATING SHAM INVESTIGATIONS MOTIVATED BY RELIGIOUS ANIMUS AND ENTICING CHILDREN TO REJECT THEIR PARENTS’ FAITH VIOLATES A CLEARLY ESTABLISHED RIGHT TO EXERCISE ONE’S RELIGION.”

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ISSUES UNDER FEDERAL LAW

- 3. QUALIFIED IMMUNITY
 - *WORD OF FAITH FELLOWSHIP V. RUTHERFORD COUNTY DSS*
 - “FOR DSS WORKERS TO SERVE THE LEGITIMATE STATE INTEREST OF PROTECTING CHILDREN, THEY MUST INFRINGE, TO SOME DEGREE, ON FAMILIES’ PRIVACY RIGHTS. TO EXPECT DSS WORKERS TO FORECAST EXACTLY HOW COURTS WILL WEIGH THE RIGHT TO FAMILIAL PRIVACY AGAINST STATE’S INTEREST IN

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ISSUES UNDER FEDERAL LAW

- 3. QUALIFIED IMMUNITY
 - *WORD OF FAITH FELLOWSHIP V. RUTHERFORD COUNTY DSS*
 - “PROTECTING CHILDREN WOULD STIFLE THOSE WORKERS’ INITIATIVE AND WOULD HAVE SERIOUSLY ADVERSE CONSEQUENCES FOR THE CHILDREN OF NORTH CAROLINA.”

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ISSUES UNDER FEDERAL LAW

- 3. QUALIFIED IMMUNITY
 - *MARK GAY V. MECKLENBURG COUNTY DSS*
 - NO REASONABLE SOCIAL WORKER WOULD ATTEMPT TO GET CHILD TO CHANGE STORY BY USE OF SUGGESTIVE METHODS

ISSUES UNDER STATE LAW

- 1. NO NEGLIGENCE
- 2. NO FORSEEABILITY
- 3. PUBLIC OFFICIAL IMMUNITY

ISSUES UNDER STATE LAW

- 1. NO NEGLIGENCE
 - *SHAYE SMITH V. CLEVELAND COUNTY DSS*
 - MOM TAKES 2 NAKED PICTURES OF SON ON ROAD TRIP
 - DAD FINDS PICTURES OF CAMERA
 - DSS CALLED AND SON SAYS MOM “WIGGLES HIS PENIS” AND GOES “WHOMP WHOMP WHOMP” WHEN DOING SO

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ISSUES UNDER STATE LAW

- 1. NO NEGLIGENCE
 - *SHAYE SMITH V. CLEVELAND COUNTY DSS*
 - MOM SIGNS SAFETY ASSESSMENT AND RETAINS JOINT CUSTODY
 - 2 WEEKS LATER DURING STAFFING, DSS DECIDES SAFETY PLAN NEEDS TO BE CHANGED TO ALLOW FOR SUPERVISED VISITATION ONLY
 - 3 MONTHS LATER DSS UNSUBSTANTIATES CASE

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ISSUES UNDER STATE LAW

- 1. NO NEGLIGENCE
 - *SHAYE SMITH V. CLEVELAND COUNTY DSS*
 - MOM SUES, SAYING THAT NO PETITION WAS FILED AND THAT'S ONLY WAY SHE COULD BE REQUIRED TO HAVE SUPERVISED VISITATION
 - CT: NOT NECESSARY TO HAVE A PETITION BECAUSE JOINT CUSTODY WITH DAD

ISSUES UNDER STATE LAW

- 1. NO NEGLIGENCE
 - *ESTATE OF MICHAEL ROGERS V. PENNSYLVANIA COUNTY DSS*
 - MOM COMPLAINS THAT DAD ALLOWS SON TO HAVE SEX, DRINK, AND DO DRUGS AT HOME
 - 3 MONTH INVESTIGATION REVEALS NOTHING WHICH CORROBORATES MOM'S STORY

ISSUES UNDER STATE LAW

- 1. NO NEGLIGENCE
 - *FULFORD V. DUPLIN COUNTY DSS*
 - 13 YO WILLIE M CHILD- DSS WORKING WITH HIM FOR 3 YEARS DUE TO POOR HOME ENVIRONMENT BUT NEVER TOOK CUSTODY OF HIM
 - CHILD PLACED WITH GRANDMA
 - DSS ASKS COURT WHETHER IT SHOULD TAKE CUSTODY OF HIM
 - CHILD KILLS GRANDMA'S NEIGHBOR

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ISSUES UNDER STATE LAW

- 1. NO NEGLIGENCE
 - *FULFORD V. DUPLIN COUNTY DSS*
 - DIRECTED VERDICT FOR DSS BECAUSE CHILD NEVER IN DSS CUSTODY SO NO DUTY TO NEIGHBOR

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ISSUES UNDER STATE LAW

- 2. NO FORSEEABILITY
 - *ESTATE OF ROGERS V. TRANSYLVANIA COUNTY DSS*
 - DSS INVESTIGATES COMPLAINT FROM 5/09-7/09 AND UNSUBSTANTIATES
 - DECEDENT KILLED IN 2/10 AT A PARTY

ISSUES UNDER STATE LAW

- 3. PUBLIC OFFICIAL IMMUNITY
 - *ESTATE OF AUNDREA HUNTER V. TRANSYLVANIA COUNTY DSS*
 - GRANDMOTHER REPORTS THAT CHILD IS BEING ABUSED BY MOM'S BOYFRIEND
 - MOM SAYS NOT TRUE
 - COLLATERALS ALL SAY NO DANGER

ISSUES UNDER STATE LAW

- 3. PUBLIC OFFICIAL IMMUNITY
 - *ESTATE OF AUNDREA HUNTER V. TRANSYLVANIA COUNTY DSS*
 - 3 REPORTS, LAST ONE STILL OPEN
 - ISSUE WAS WHETHER SW WAS PUBLIC OFFICIAL – SOMEONE WHOSE POSITION IS CREATED BY CONSTITUTION OR STATUTE AND WHO EXERCISES SOME PORTION OF SOVEREIGN POWER AND DISCRETION

ISSUES UNDER STATE LAW

- 3. PUBLIC OFFICIAL IMMUNITY
- *ESTATE OF AUNDREA HUNTER V. TRANSYLVANIA COUNTY DSS*
 - SW RESPONSIBLE FOR CONDUCTING INTERVIEWS, DECIDING WHO TO INTERVIEW, MAKING DECISIONS ON ASSESSMENTS, PART OF DECISION MAKING PROCESS

ISSUES UNDER STATE LAW

- 3. PUBLIC OFFICIAL IMMUNITY
- *ESTATE OF AUBREY LITTLEJOHN V. SWAIN COUNTY DSS*
 - 2 CPS REPORTS
 - 9/10- ALLEGATIONS THAT BABY FELL OUT OF CAR SEAT AND DOWN STAIRS AND AUNT GAVE CONFLICTING STORIES ABOUT IT- UNSUBSTANTIATED
 - 11/10- ALLEGATIONS THAT AUNT SMACKED BABY ACROSS THE FACE AND JERKED HER ARM- OPEN CASE



ISSUES UNDER STATE LAW

- *ESTATE OF AUBREY LITTLEJOHN V. SWAIN COUNTY DSS*
 - CASE SPECIFIC PROBLEMS:
 - DSS WORKER LIED ABOUT TALKING WITH THE DOCTOR
 - DSS REMOVED ONE CHILD FROM HOME BUT NOT THE OTHER
 - NO CONTACT WITH CHILD FOR 49 DAYS AFTER SUPERVISOR SAYS TO GO SEE CHILD



ISSUES UNDER STATE LAW

- *ESTATE OF AUBREY LITTLEJOHN V. SWAIN COUNTY DSS*
 - AFTER THE FACT PROBLEMS:
 - DSS WORKER FORGED SAFETY ASSESSMENT
 - DSS WORKER FORGED RELEASE OF INFORMATION FORM
 - DSS WORKER HAD OTHER WORKERS SIGN STAFFING SHEET 3 MONTHS LATER
 - DSS WORKER AND SUPERVISOR INDICTED FOR OBSTRUCTION OF JUSTICE AND FORGERY

ISSUES UNDER STATE LAW

- *ESTATE OF AUBREY LITTLEJOHN V. SWAIN COUNTY DSS*
 - AGENCY PROBLEMS:
 - CASELOADS WERE VERY HIGH AND OVER STATE MANDATED AMOUNTS
 - NO SUPERVISOR TRAINING FOR SUPERVISOR
 - LOW PAY AND POOR MORALE

OTHER ISSUES

- DSS IS A NONSUABLE ENTITY
 - *MALLOY V. DURHAM COUNTY DEPT. SOCIAL SERVICES*, 58 N.C. APP. 61, 293 S.E.2d 285 (1982)

OTHER ISSUES

- DISCOVERY
 - WHAT DO YOU THINK DSS CAN DO?
 - WHAT DO YOU CONTEND DSS SHOULD HAVE DONE?
 - WHAT FACTS DEMONSTRATE THAT SOCIAL WORKER ACTED MALICIOUSLY, CORRUPTLY, OR OUTSIDE THE SCOPE OF THEIR OFFICIAL AUTHORITY?
 - REQUESTS FOR ADMISSIONS

QUESTIONS?

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