STATE OF MICHIGAN

COURT OF CLAIMS

JAMI VAUGHN, as Next Friend of P.V.,
a minor,

Plaintiff,

v

Case No. 24-000040-MM

MICHIGAN DEPARTMENT OF
HEALTH AND HUMAN SERVICES,

Hon. Christopher P. Yates

Defendant.
_____/

OPINION AND ORDER GRANTING IN PART, AND DENYING IN PART, DEFENDANT MDHHS'S MOTION FOR SUMMARY DISPOSITION

On July 22, 2024, this Court entered an order granting summary disposition to Defendant Michigan Department of Health and Human Services (the MDHHS), but affording Plaintiff Jami Vaughn, as next friend of P.V., a minor, leave to file a second amended complaint making "claims of substantive due process and a violation of MCL 330.1722." And on September 3, 2024, plaintiff filed a second amended complaint setting forth claims of "state created danger" under the Michigan Constitution, art 1, § 17, a violation of the "substantive right to bodily integrity" under that same constitutional provision, and a violation of MCL 330.1722. The MDHHS responded with a motion for summary disposition under MCR 2.116(C)(7) and (8), and the Court conducted oral argument on that motion. Now, after careful consideration, the Court shall grant summary disposition to the MDHHS on the statutory claim under MCL 330.1722, but deny summary disposition on the claims predicated on the due process guarantee in article 1, § 17, of the Michigan Constitution.

I. FACTUAL BACKGROUND

Because the MDHHS has requested summary disposition under MCR 2.116(C)(7) and (8), the Court will draw the facts from the second amended complaint that plaintiff filed. See *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019) (standards under MCR 2.116(C)(8)). The allegations in plaintiff's second amended complaint should be "accepted as true unless contradicted by documentation submitted by the movant." *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999) (standards under MCR 2.116(C)(7)).

On October 18, 2023, P.V. was confined at the Hawthorn Center in the Walter P. Reuther Psychiatric Hospital, and in the custody of the MDHHS. Younger children and adolescents at the Hawthorn Center "were divided into two units ("A" and "B")" for the purpose of keeping younger children away from older children. P.V. was housed with the younger children in Unit A, which was separated from Unit B "by a locked and secured door that could only be released by staff at the Hawthorn Center with a key[.]"

At approximately 6:45 p.m. on October 18, 2023, "P.V. was in Unit A and standing directly behind the secured double doors that divided the two units." Surveillance cameras captured what happened next. First, P.V. stuck his fingers under the doors, and then a Hawthorn Center employee "stomp[ed] on P.V.'s fingers several times." Next, another Hawthorn Center employee "stepp[ed] on P.V.'s fingers while she provoked/encouraged [the older children] in unit B to join her" in doing so. Finally, a Hawthorn Center employee encouraged one of the older children in Unit B to stand by the doors while the employee "walked around the hallway and entered unit A." Once in Unit A, the employee "walked to P.V. and encouraged him to prepare for a physical altercation" with the older child waiting on the other side of the doors. The employee "used her key and unlocked

the door" separating Unit A and Unit B, thereby allowing the older child to enter Unit B, in which P.V. was housed.

When the door separating Unit A from Unit B was opened, the older child "chas[ed] P.V. down the hallway of unit A and corner[ed] him against another locked and secured doorway." At that point, the older child "pushed P.V. to the ground and began stomping and kicking P.V. in the head 8 or more times before an unknown staff member wrestled [the older child] off P.V." That attack left P.V. visibly "unable to support himself on both feet, stumbling and swaying, while he exhibited obvious signs of head trauma." P.V. was taken for medical treatment and was diagnosed with "a closed head injury and lacerations to his face." Following the attack, one Hawthorn Center employee was discharged, a second employee resigned, and a third employee was suspended, but eventually allowed to return to work. The parties seem to agree that all of those employees worked for the MDHHS at the time of the attack.

II. LEGAL ANALYSIS

Plaintiff's second amended complaint presents three claims arising from the incident at the Hawthorn Center. Count I sets forth a substantive due process claim under Const 1963, art 1, § 17, for "state-created danger." Count II alleges a violation of the "substantive right to bodily integrity" under Const 1963, art 1, § 17. Count III presents a claim for a violation of MCL 330.1722. All of those claims are challenged by the MDHHS under MCR 2.116(C)(7) or (8). A motion pursuant to MCR 2.116(C)(8) "may only be granted when a claim is so clearly unenforceable that no factual development could possibly justify recovery." *El-Khalil*, 504 Mich at 160. A request for summary disposition under MCR 2.116(C)(7) may be granted when "a claim is barred because of immunity granted by law." *Dextrom v Wexford Co*, 287 Mich App 406, 428; 789 NW2d 211 (2010). When

"no facts are in dispute, and if reasonable minds could not differ regarding the legal effect of those facts, the question whether the claim is barred [by immunity] is an issue of law for the court." *Id.* "However, if a question of fact exists to the extent that factual development could provide a basis for recovery, dismissal is inappropriate." *Id.* With these standards in mind, this Court will turn to the viability of each of the three claims in plaintiff's second amended complaint.

A. STATE-CREATED DANGER

Plaintiff presents a substantive due process claim in Count I by relying on the state-created-danger doctrine, which purportedly "applies in situations in which the State assumes a caretaking role over an individual – by incarceration, institutionalization, or some other custodial arrangement – and the individual suffers harm from third-party violence resulting from an affirmative action of the State to create or make the individual more vulnerable to a danger of violence." This theory is recognized and explained by the United States Court of Appeals for the Sixth Circuit in *Cartwright v Marine City*, 336 F3d 487, 493 (CA 6, 2003). Our Court of Appeals quoted from *Cartwright* in discussing the state-created-danger doctrine, but observed in that discussion: "This Court has never before considered whether a cause of action for state-created danger is cognizable under Michigan law." *Mays v Governor*, 323 Mich App 1, 73-73; 916 NW2d 227 (2018), aff'd by equally divided Court, 506 Mich 117 (2020). Our Court of Appeals commented: "Were this Court to recognize a cause of action for state-created danger arising from the Michigan Constitution, it would be narrow in scope" and would require that "the harm necessary to sustain a constitutional tort claim of state-created danger must spring from a source other than a state actor." *Id.* at 78. Here, unlike in *Mays*, the state-created-danger theory fits this case like a glove. P.V. was in the custody of the MDHHS, P.V. was individually placed in greater danger of violence by a third party while in the custody of the MDHHS because of the actions of MDHHS employees, and P.V. suffered injuries at the hands

of someone who was not a state actor. To be sure, plaintiff cannot recover on the claim presented in Count I for any acts of the MDHHS employees (as opposed to the third party) that harmed P.V., such as stepping on his fingers. See *id.* at 77-78. But plaintiff can proceed on the theory of state-created danger to recover for injuries inflicted on P.V. by the older child who attacked him.

Relying entirely on MCR 2.116(C)(8), the MDHHS contends that plaintiff has not pleaded facts to establish that the MDHHS can be held legally responsible on a respondeat superior theory. As a general proposition, an employee "is within the scope of his employment when he is engaged in the master's service and furthering the master's business though the particular act is contrary to instructions." *Barnes v Mitchell*, 341 Mich 7, 15-16; 67 NW2d 208 (1954). And more specifically, in the realm of constitutional torts, our Supreme Court has not only ruled that "monetary damages are available to remedy constitutional torts," *Bauserman v Unemployment Ins Agency*, 509 Mich 673, 681; 983 NW2d 855 (2022), but also expressly rejected "favoring a direct standard of liability over respondeat superior liability[.]" *Id.* at 708. As a result, plaintiff not only may seek monetary damages for a constitutional tort, but also may pursue that relief on a theory of respondeat superior liability.

The MDHHS asserts that, even accepting those legal principles, summary disposition must be granted under MCR 2.116(C)(8) because plaintiff has failed to state a claim in Count I on which relief may be granted. But this Court cannot award that relief unless plaintiff's "claim is so clearly unenforceable that no factual development could possibly justify recovery." *El-Khalil*, 504 Mich at 160. With respect to the claim for state-created danger, plaintiff has pleaded that an employee of the MDHHS encouraged an older child to come to the door dividing Unit A from Unit B, then went around to P.V.'s unit and opened the door, and then let the older child attack P.V. in his own unit, which should have remained separated from the other unit for older children by the door. The

employee who opened the door to facilitate the attack had been entrusted with the key to the door, and monitoring and opening the door separating the units was part of that employee's job. Under the standards governing MCR 2.116(C)(8) motions, Count I readily passes muster. See *El-Khalil*, 504 Mich at 159-160. Of course, the MDHHS can challenge Count I after the close of discovery in a motion for summary disposition pursuant to MCR 2.116(C)(10), but plaintiff has done enough at the pleading stage to comfortably survive the MDHHS's motion under MCR 2.116(C)(8).

B. SUBSTANTIVE RIGHT TO BODILY INTEGRITY

Plaintiff alleges in Count II that P.V. was deprived of the right to bodily integrity free from unjustifiable governmental interference. The substantive component of due process encompasses "an individual's right to bodily integrity free from unjustifiable governmental interference." *Mays*, 323 Mich App at 58-59. But in order to survive dismissal when asserting such a claim, "the alleged violation of the right to bodily integrity must be so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience." *Id.* at 60. Although negligent conduct does not shock the conscience, "conduct intended to injure in some way unjustifiable by any government interest is the sort of official action most likely to rise to the conscience-shocking level." *Id.* The conduct supporting plaintiff's claim in Count II includes the MDHHS employees intentionally stepping on P.V.'s fingers as well as their initiating and facilitating the attack on P.V. by the older child.

The MDHHS disclaims responsibility for the acts of its employees for two reasons. First, the MDHHS insists that plaintiff cannot rely on a respondeat superior theory to reach the MDHHS. As this Court has explained, however, the decisions of our Supreme Court in *Barnes*, 341 Mich at 15-16, and, more significantly, *Bauserman*, 509 Mich at 708, say otherwise. To be sure, the actions of the MDHHS in stepping on P.V.'s fingers seem unrelated to their responsibilities on the job, so

plaintiff has a steep hill to climb in establishing liability for those acts under a respondeat superior theory. But the act of the MDHHS's employee in instigating and facilitating the attack on P.V. by the older child appears to fall within the employee's authority to control the door between the two units, so this Court cannot dispose of Count II on that basis.

Second, the MDHHS minimizes the legal significance of its employee's actions in opening the door between the units and initiating the attack on P.V. by the older child. If the employee had simply opened the door in a negligent manner and done nothing more to instigate the attack, then this Court would readily grant summary disposition to the MDHHS on the bodily-integrity claim. But the allegations in the second amended complaint accuse the MDHHS employee of stirring up a fight and then taking all the steps necessary to make that happen, including opening the door and allowing the older child to attack P.V. That intentional conduct, which led directly and predictably to a violent assault under the watchful eyes of MDHHS employees, could shock the conscience of any observer. As our Court of Appeals put it in *Mays*, 323 Mich App at 60, "conduct intended to injure in some way unjustifiable by any government interest is the sort of official action most likely to rise to the conscience-shocking level." Accordingly, at this early stage of the case, and accepting the allegations in plaintiff's second amended complaint as true, *El-Khalil*, 504 Mich App at 160, this Court must deny the MDHHS summary disposition under MCR 2.116(C)(8).

C. VIOLATION OF MCL 330.1722

Plaintiff's claim in Count III of the second amended complaint relies upon MCL 330,1722, which states that "[a] recipient of mental health services shall not be subjected to abuse or neglect" and affords any recipient of mental health services who is abused or neglected the "right to pursue injunctive and other appropriate civil relief." The MDHHS insists that that claim is foreclosed by

immunity under the Government Tort Liability Act (GTLA), MCL 691.1401 *et seq.*, so summary disposition is appropriate under MCR 2.116(C)(7).

Ordinarily, under the GTLA, "a governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function." MCL 400.1407(1). The Hawthorn Center was operated by the MDHHS when P.V. was confined there, and the MDHHS's operation of the Hawthorn Center constituted a governmental function. *Perry v Kalamazoo State Hosp*, 404 Mich 205, 212; 273 NW2d 421 (1978). Significantly, our Court of Appeals has decided that the assurance of "appropriate civil relief" in MCL 330.1722(3) is not an exception to immunity conferred by the GTLA. *Dockweiler v Wentzell*, 169 Mich App 368, 376; 425 NW2d 468 (1988). Therefore, based on the immunity conferred by the GTLA, this Court shall grant summary disposition to the MDHHS on Count III pursuant to MCR 2.116(C)(7).

IT IS SO ORDERED.

This is not a final order, so it does not close the case.[1]

Date: August 6, 2025

Hon. Christopher P. Yates (P41017)
Judge, Court of Claims

[1] After this Court heard oral argument, plaintiff filed a motion to allow a supplemental exhibit to be added to the record, but the MDHHS opposed that motion. Because this Court addressed Counts I and II only on the pleadings under MCR 2.116(C)(8), see *El-Khalil*, 504 Mich at 159-160, and it dismissed Count III under MCR 2.116(C)(7) based on governmental immunity, this Court had no need to review the proposed supplemental exhibit. Therefore, the Court will issue an order denying as moot the motion to allow submission of the supplemental exhibit. The parties are free to submit that proposed exhibit in connection with any future motion for relief under MCR 2.116(C)(10).