Order

Michigan Supreme Court
Lansing, Michigan

November 20, 2026

Megan K. Cavanagh,
Chief Justice

Brian K. Zahra
Richard H. Bernstein
Elizabeth M. Welch
Kyra H. Bolden
Kimberly A. Thomas
Noah P. Hood,
Justices

SC: 169973
COA: 370585
Genesee CC: 15-105945-NO

HOWARD T. LINDEN, Personal Representative of the ESTATE OF OMARION HUMPHREY,
Plaintiff-Appellant,

v

ALTERNATIVES FOR CHILDREN & FAMILIES, INC.,
Defendant-Appellee,

and

LASENETTE LULU RICHARDSON,
Defendant.

On order of the Court, the application for leave to appeal the February 10, 2026 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

HOOD, J. (*concurring*).

I concur in the Court's order denying leave but write separately to acknowledge a shift in the foundation of the law governing this case. Here, our precedents provide a clear path to disposition. In *Martin v Children's Aid Society*, 215 Mich App 88, 95-99 (1996), the Court of Appeals recognized absolute immunity for private social-service organizations that contract with the state to perform foster care placement and related functions, grounding that rule in the judiciary's continuous oversight of child protection proceedings and the need to protect professional judgment in aid of the court against the chilling effect of lawsuits. *Id*. See also *Spikes v Banks*, 231 Mich App 341, 347 (1998) (extending absolute immunity to foster placement agency for "placement and supervision" decisions), and *Beauford v Lewis*, 269 Mich App 295, 298-300 (2005) (holding that a state-appointed social worker, as the court's "advisor[] and agent[]," was absolutely immune against civil litigation while the court provides parents a forum to contest recommendations). Under that longstanding body of state law, denial of leave is appropriate.

I write separately, however, for two reasons. First, I write to note an important jurisprudential development outside Michigan. Second, I write to highlight the potential need to revisit this doctrine in the future. I address each in turn.

First, we should recognize that the authorities that originally persuaded our courts to adopt the doctrine that disposes of this case have moved in a different direction. When the Court of Appeals decided *Martin*, it acknowledged that it was the first Michigan decision to articulate absolute social-worker immunity as a matter of state common law, and it expressly drew persuasive support from federal cases that, at the time, favored absolute immunity for government employees. See *Martin*, 215 Mich App at 95-99 (citing, among others, *Babcock v Tyler*, 884 F2d 497 (CA 9, 1989); overruled by *Miller v Gammie*, 335 F3d 889 (CA 9, 2003) (en banc)). Since *Martin*, federal courts have moved away from blanket absolute immunity toward a functional analysis that confers absolute immunity only when officials perform tasks intimately associated with the judicial process and otherwise applies qualified immunity. See, e.g., *Miller*, 335 F3d at 898-900 (explaining that *Babcock*'s blanket absolute immunity for social workers is "directly at odds with the functional approach" taken by the United States Supreme Court in subsequent cases and limiting absolute immunity to acts "functionally similar to prosecutorial or judicial decisions"), citing *Antoine v Byers & Anderson, Inc*, 508 US 429 (1993), and *Kalina v Fletcher*, 522 US 118 (1997). Consistent with that shift, the United States Court of Appeals for the Ninth Circuit has recognized that *Babcock* "had been overruled by subsequent Supreme Court decisions to the extent it granted absolute prosecutorial immunity to social workers for duties beyond which prosecutors were rendered immune at common law." *Safouane v Fleck*, 226 F Appx 753, 762 (CA 9, 2007). Put simply, the authorities on which our courts relied have since moved in a different direction.

This shift in federal law does not determine Michigan law. See *Sharp v Lansing*, 464 Mich 792, 803 (2001) (acknowledging that federal caselaw can only be persuasive authority, not binding precedent, in resolving questions of state law). Our doctrine is a matter of Michigan common law, and *Martin* stands on its own authority. Still, because *Martin* incorporated much of the federal rationale by reference and cited *Babcock*, the evolution of that rationale in other jurisdictions raises questions about the scope of our state's absolute immunity for social workers.

Michigan's child-welfare ecosystem has relied on the social-worker-immunity doctrine for three decades. Agencies, courts, and families have ordered their conduct in reliance on *Martin* and its progeny. See *Martin*, 215 Mich App 88; *Spikes*, 231 Mich App 341; *Beauford*, 269 Mich App 295. Abruptly discarding absolute immunity would risk destabilizing casework, contracting arrangements, and litigation exposure across the system. If we were to undertake reconsideration of this absolute immunity, we should be particularly attentive to reliance interests in the child protection system and whether any refinement should be given purely prospective effect, such that those who acted under the existing legal framework are not subjected to liability based on a later change in the law.

Acknowledging these reliance concerns, we may still be called upon to revisit this doctrine in years to come. The concerns regarding the scope of this immunity are not

abstract. In the matter prompting this writing, a nine-year-old foster child with nonverbal autism died after an agency placed him with a caregiver alleged to have a history of failing to supervise children and alleged to lack adequate training in caring for children with special needs. Yet his estate was unable to seek relief because of the absolute-immunity doctrine. His estate urged the courts to apply a functional approach to immunity, but the Court of Appeals panel rejected the functional approach and applied absolute immunity under *Martin* and its progeny. See *Linden v Alternatives for Children & Families, Inc*, unpublished per curiam opinion of the Court of Appeals, issued February 10, 2026 (Docket No. 370585), p 11 n 9. If we continue to construe absolute immunity so broadly that foster-care agencies effectively escape judicial oversight for practically every casework decision, then we risk an obvious moral hazard. Careful reconsideration may be warranted.

Still, our Legislature may wish to review whether it should refine Michigan's absolute immunity for child-welfare professionals to reflect a functional approach and to account for the availability of remedies in qualifying proceedings. Targeted legislation could codify the immunity while clarifying its scope. For example, it could afford absolute immunity for functions that are judicial in nature and for which social workers merely act as agents of the court, apply qualified (or no) immunity to defined categories of nonjudicial conduct, and specify transition rules to protect reliance interests through prospective effect. Similarly, any review of this doctrine by Michigan's courts should consider reliance interests and prospective effect. These suggestions are not a comment on the merits of this case or the lower court's opinion. Rather, they recognize that the doctrine affecting children, families, and caseworkers would benefit from review and, if warranted, thoughtful consideration of what a different approach would require.

For these reasons, I respectfully concur with the Court's denial order.

I, Elizabeth Kingston-Miller, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

November 20, 2026

Clerk