

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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CARMAL MORRIS, RACHEL BOE  
and HAELY BOE,

Plaintiffs,

v.

MEMORANDUM and ORDER  
06-C-681-S

ERIN MIESS and KAREE  
GANDER,

Defendants.

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Plaintiffs Carmal Morris, Rachel Boe and Haely Boe commenced this action against defendants Erin Miess and Karee Gander in Richland County Circuit Court. Defendants removed the action to this Court. Plaintiffs claim that their Fourth Amendment and Fourteenth Amendment due process rights were violated. They also pursue state law claims.

On January 24, 2007 plaintiffs moved for partial summary judgment pursuant to Rule 56, Federal Rules of Civil Procedure, submitting proposed findings of facts, conclusions of law, affidavits and a brief in support thereof. Defendants cross moved for summary judgment on February 23, 2007. These motions have been fully briefed and are ready for decision.

On a motion for summary judgment the question is whether any genuine issue of material fact remains following the submission by both parties of affidavits and other supporting materials and, if

not, whether the moving party is entitled to judgment as a matter of law. Rule 56, Federal Rules of Civil Procedure. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence and shall show affirmatively that the affiant is competent to testify to the matters stated therein. An adverse party may not rest upon the mere allegations or denials of the pleading but the response must set forth specific facts showing there is a genuine issue for trial. Celotex Corp. v. Catrett, 477 U.S. 317 (1986).

There is no issue for trial unless there is sufficient evidence favoring the non-moving party that a jury could return a verdict for that party. If the evidence is merely colorable or is not significantly probative, summary judgment may be granted. Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).

#### FACTS

For purposes of deciding the motions for summary judgment the Court finds that there is no genuine dispute as to the following material facts.

Plaintiff Rachel Boe is a juvenile and resides in Richland County, Wisconsin with her mother, plaintiff Carmal Morris, and her daughter, plaintiff Haely Boe. Defendants Erin Miess and Karee Gander are employed by Richland County Department of Health and

Human Services (RCDHHS). Defendant Miess is supervised by defendant Gander.

By early March of the 2005-2006 school year plaintiff Rachel Boe had missed three of every four days of school with 75% of these absences being unexcused. The school referred Rachel to the Richland County Department of Health And Human Services based upon her habitual truancy. The Department attempted to address the truancy problems through a Deferred Prosecution Agreement but less than one week after signing the agreement Rachel was truant.

On March 6, 2006 the Richland County District Attorney filed a formal Juvenile in Need of Protection or Services (JIPS) petition based upon Rachel's habitual truancy. At the initial appearance on the JIPS matter on March 29, 2006 Judge Leineweber ordered Rachel to attend school with no unexcused absences which she ignored.

On May 1, 2006 Judge Leineweber again ordered Rachel to attend school with no unexcused absences. He advised her that if she disobeyed the order she would be placed in non-secure detention. On May 2, 2006 Suzanne Edwards was appointed by the Public Defender's Officer to represent Rachel Boe.

On May 4, 2006 plaintiff was absent from school without an excuse. The school attendance officer contacted Erin Miess who discussed with her supervisor, Karee Gander, how to proceed. Ms. Gander advised Miess to contact District Attorney Sharp. He requested that Miess prepare an affidavit in support of a capias.

Attorney Sharp prepared the capias and submitted it to Judge Leineweber. The judge signed the capias on May 5, 2006. Plaintiff was detained pursuant to the capias. She was placed in nonsecure detention from May 5-8, 2006.

On May 8, 2006 a hearing was held at which plaintiff was represented by Attorney Edwards. Judge Leineweber again ordered Rachel to attend school without unexcused absences. He informed her that if she violated this order she would be placed in secure detention. Rachel was absent from school without an excuse for parts of the days of May 15 and 16.

Ms. Miess contacted Attorney Sharp who advised her to prepare an affidavit in support of a capias, Attorney Sharp prepared the capias and presented it to the Court. The capias was signed by Court Commissioner James Robb. A law enforcement officer detained Rachel and Ms. Miess met with her. As a result of her unexcused absences Rachel was placed in secure detention for the weekend beginning May 19, 2006.

A court hearing was commenced before Judge Leineweber at 10:55 a.m. on May 22. It was adjourned to allow Attorney Edwards to be present. The hearing was reconvened at 3:05 p.m. when Attorney Edwards called in and was completed that day. Rachel was placed in non-secure custody with her mother and ordered to have no further unexcused absences.

## MEMORANDUM

Plaintiffs claim that the defendants violated plaintiff Rachel Boe's Fourth Amendment rights by seizing her on two occasions. The Fourth Amendment prohibits unreasonable seizures. A determination of whether a seizure is unreasonable depends on the particular facts and circumstances of each case. Chimel v. California, 395 U.S. 752 (1969).

On May 1 and 8, 2006 Judge Leineweber ordered that Rachel attend school with no unexcused absences. On May 1, 2006 the judge ordered that she would be placed in non-secure detention if she had an unexcused absence from school. On May 8, he ordered her placed in secure detention if she failed to obey his order to attend school. Rachel's attorney did not challenge or appeal these orders.

On May 5, 2006 Judge Leineweber signed a capias based on a violation of his May 1, 2006 order. Rachel was seized pursuant to this capias and placed in non-secure detention pursuant to the May 1, 2006 order. On May 18, 2006 Court Commissioner James Robb signed a capias based on Rachel's violation of Judge Leineweber's May 8, 2006 order. Rachel was seized pursuant to this capias and placed in secure detention. There was judicial review prior to each seizure. Based on the facts in this case the seizures were reasonable under the Fourth Amendment.

Plaintiffs also claim the defendants violated Rachel Boe's Fourteenth Amendment due process rights. Rachel claims that she was entitled to a hearing prior to being placed at the Baraboo group home on May 5, 2006. In Cleveland Bd. Of Educ. V. Loudermill, 470 U.S. 532 (1985), the Court noted that some pre-deprivation process may be necessary depending on the circumstances to protect against mistaken deprivations. The Juvenile Code specifically allows juveniles to be taken into and held in custody without a hearing and provides that a hearing must be held within 24 hours after the end of the day on which the decision to hold the juvenile is made, excluding Saturday, Sundays and legal holidays. Rachel was provided a hearing within the time period provided by the statute.

Plaintiff Rachel Boe had a court hearing prior to being detained. A capias which was reviewed by a judicial officer was issued each time before she was detained. She had a prompt post-deprivation hearing each time. She has received the due process to which she was entitled. Accordingly, her Fourteenth Amendment due process rights were not violated.

Plaintiff Rachel Boe also argues that she was denied access to the Court when she was not provided a statutory hearing within the 72 hour statutory time period in the Juvenile Code. Rachel was taken into custody on Friday at 11:30 a.m and the hearing commenced by 10:55 a.m. Monday. Although the hearing was adjourned until the

afternoon until Rachel's attorney could appear, plaintiff was not denied access to the Courts.

Plaintiffs claim that their Fourteenth Amendment substantive due process right to family integrity was violated. This claim is based on Rachel's detentions pursuant to Judge Leineweber's court orders.

Defendants contend that they are entitled to absolute quasi judicial immunity. A public official or employee is entitled to quasi-judicial absolute immunity for all actions related to executing a facially valid Court order. Henry v. Farmer City State Bank, 808 F.2d 1228, 1239 (7<sup>th</sup> Cir. 1986).

A social worker acting pursuant to a valid court order is accorded absolute quasi-judicial immunity. Coverdell v. Dept. Of Social and Health Svcs., 34 F.2d 758, 765 (9<sup>th</sup> Cir. 1987). Defendants could not be held liable for seizing Rachel pursuant to two valid court orders.

Plaintiffs, however, are arguing that Judge Leineweber had no statutory authority to order sanctions for Rachel because she had not been adjudicated delinquent or as a juvenile in need of protection. These orders had not been appealed or challenged and were thus valid. Rachel's detentions were based on court orders which could have been appealed where she alleged violations of the state Juvenile Code.

Defendant contends that the Rooker-Feldman doctrine bars federal review of these state court orders. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 476, 582 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413, 415-16 (1923). This doctrine provides that a federal district court lacks jurisdiction to review the final judgments of a state court in judicial proceedings. Further, the doctrine bars federal claims that are "inextricably intertwined" with the underlying state court judgment. Exxon Mobile Corp. v. Saudi Basic Industries Corp., 544 U.S. 280 (2005). Plaintiff's claims concerning her detentions are inextricably intertwined in the state court orders of Judge Leineweber. Accordingly, plaintiffs' Fourth Amendment and Fourteenth Amendment due process claims are barred by the Rooker-Feldman doctrine.

Defendants are entitled to judgment in their favor on plaintiffs' federal law claims. Their motion for summary judgment on these claims will be granted.

Remaining are plaintiffs' state law claims for false imprisonment and abuse of process. This Court declines to exercise continuing supplemental jurisdiction over plaintiffs' state law claims pursuant to 28 U.S.C. § 1367(c)(3) and United Mine Workers of America v. Gibbs, 383 U.S. 715, 726 (1986). See Brazinski v. Amoco Petroleum Additives Co., 6 F.3d 1176, 1182 (7<sup>th</sup> Cir. 1993). Plaintiffs' state law claims will be remanded to the Circuit Court for Richland County, Wisconsin.



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ORDER

IT IS ORDERED that plaintiffs' motion for partial summary judgment is DENIED.

IT IS FURTHER ORDERED that defendants' summary judgment motion on plaintiffs' federal law claims is GRANTED.

IT IS FURTHER ORDERED that judgment be entered in favor of defendants against plaintiffs' DISMISSING their federal law claims with prejudice.

IT IS FURTHER ORDERED that plaintiffs' state law claims are REMANDED to Richland County Wisconsin Circuit Court.

Entered this 29<sup>th</sup> day of March, 2007.

BY THE COURT:

s/

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JOHN C. SHABAZ  
District Judge