

IN THE CIRCUIT COURT OF JACKSON COUNTY MISSOURI  
AT INDEPENDENCE

JUNE P. NGUYEN, et al )  
 )  
 Plaintiffs, )  
 vs. )  
 )  
 GRAIN VALLEY R-5 )  
 SCHOOL DISTRICT, et al. )  
 )  
 Defendants. )

Case No. 0916-CV31823  
Division 17

FILED  
DEPARTMENT OF CIVIL RECORDS  
COURT ADMINISTRATOR'S OFFICE

OCT 06 2010

CIRCUIT COURT OF JACKSON CO. MO.  
BY  DOR

JUDGMENT

On this date, the Court takes up separate Defendants Dr. Chris Small, Keri Peterson, Ryan Evans, Francie Aumua, Robin Wagner, Denise Beach and Theresa Nelson's Motion to Dismiss, filed June 11, 2010, Plaintiff's Suggestions in Opposition, filed June 23, 2010, Defendants' Reply in Support, filed July 8, 2010, and the arguments and evidence taken on October 10, 2010.

Having ruled on September 7, 2010 that these individual defendants are entitled to official immunity, the issue is whether the claimed negligent actions were discretionary or ministerial.

Preliminarily, the Court considers Plaintiffs' objection to the hearing on the Motion to Dismiss. Missouri Rule of Civil Procedure, 55.27(b) provides:

**Motion for Judgment on the Pleadings.** After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 74.04, and all parties shall be given reasonable opportunity to present all materials made pertinent to such a motion by Rule 74.04.

Missouri Rule of Civil Procedure, 74.04(f) provides:

**When Affidavits Are Unavailable.** Should it appear from the affidavits of a party opposing the motion that for reasons stated in the affidavits facts essential to justify opposition to the motion cannot be presented in the affidavits, the court may refuse the application for judgment or may order a continuance to permit



affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

On February 1, 2010 this Court entered a judgment allowing the plaintiffs to conduct discovery “to allow them to present evidence on ministerial v. discretionary acts.” Both interrogatories and requests for production of documents have been propounded by the Plaintiffs to all Defendants. Further, depositions have been taken of all Defendants (except Dr. Small) as well as two other non-party school district employees, Jeff Scalfaro and Brenda Franks. Accordingly, Plaintiffs have had ample opportunity to conduct discovery and Plaintiffs’ objection to proceeding on the merits of Defendants’ Motion to Dismiss is overruled.

Turning to the merits of the motion, the judicially-created doctrine of official immunity “protects public employees from liability for alleged acts of negligence committed during the course of their official duties for the performance of discretionary acts.” *Southers v. City of Farmington*, 263 S.W.3d 603, 610 (Mo. banc 2008). “Official immunity is intended to provide protection for individual government actors who, despite limited resources and imperfect information, must exercise judgment in the performance of their duties.” *Id.* at 611. “Its goal is also to permit public employees to make judgments affecting public safety and welfare without concerns about possible personal liability.” *Id.*

However, the official immunity doctrine “does not provide public employees immunity for acts committed when acting in a ministerial capacity.” *Boever v. Special School Dist. of St. Louis County*, 296 S.W.3d 487 (Mo.App. 2009). A ministerial function is one “ ‘of a clerical nature which a public officer is required to perform upon a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to his own judgment or

opinion concerning the propriety of the act to be performed.’ ” *Id.* (quoting *Kanagawa v. State By and Through Freeman*, 685 S.W.2d 831, 836 (Mo. banc 1985)). This reference to “the mandate of legal authority” is a reference to a duty imposed by statute or regulation. See *Brummitt v. Springer*, 918 S.W.2d 909, 912 (Mo.App.1996). In addition, in order to prescribe a ministerial duty, the statute or regulation must be mandatory and not merely directory. *Brummitt*, 918 S.W.2d at 912-13. Absent allegations averring the existence of a statutory or departmentally-mandated duty and a breach of that duty, a petition fails “to state a claim that is not barred by the doctrine of official immunity as a matter of law.” *State ex rel. Twiehaus v. Adolf*, 706 S.W.2d 443, 446 (Mo. banc 1986).

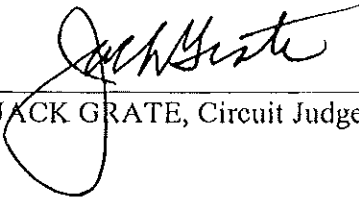
In this case, while Plaintiffs reference statutes in their petition, they do not allege the existence or breach of any statutory or regulatory duty and therefore, have not alleged facts establishing that an exception to the official immunity doctrine applies. Further, based on the testimony of Peterson, Beach and Nelson, the claimed negligent actions in this case were discretionary. The acts alleged require the exercise of judgment, training and experience, rather than a directive found in Missouri statutes or regulation. The acts complained of were not of a clerical nature, were not required to be performed upon a given state of facts in a prescribed manner or in obedience to the mandate of a of legal authority. The acts complained of alleged negligence by Plaintiffs required the exercise of judgment and were therefore, discretionary.

Plaintiffs have failed to allege a breach of a statutory or regulatory duty. Therefore, they have not stated a claim for breach of a ministerial duty falling within an exception to the official immunity doctrine. Defendants Motion to Dismiss is granted. These individual separate Defendants are entitled to judgment as a matter of law. Judgment is therefore entered for separate Defendants Small, Nelson, Peterson, Evans, Aumua, Wagoner and Beach. Because

there are multiple parties and more than one claim, there is no just reason for delay of any appeal of this judgment.

SO ORDERED.

10/6/10  
Date

  
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JACK GRATE, Circuit Judge

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