IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Charles P. Golbert, Cook County Public Guardian, as next friend for John Doe, a minor	)	
Plaintiff,	)	
v.	)	No. 19 L 7879
Shawanda Lucas f/k/a Shawanda White and James White	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

The Illinois Supreme Court has long recognized a limited parental immunity for foster parents, however, the Court has also carved out certain bright-line exceptions to this immunity. In this case, the defendant does not qualify for the limited immunity because the Department of Children and Family Services reached an indicated finding of abuse. The defendant's motion to dismiss must, therefore, be denied.

Facts

Shawanda Lucas was a licensed foster parent for the Department of Children and Family Services (DCFS) from March 6, 2014 to March 6, 2018. She was also married to James White from July 24, 2010 to December 26, 2017. Lucas and White lived in the same home from November 2014 until at least June 16, 2015. White is a convicted felon and has been required to register as a sex offender relating to a conviction for sexual exploitation of a child in 2002.

DCFS placed John Doe in Lucas's home on October 30, 2014. DCFS removed Doe from the home at Lucas's request on June 16, 2015. On October 11, 2017, Doe told his therapist that White had sexually assaulted him. The plaintiff's complaint alleges that 12-year-old Doe was sexually assaulted multiple times by White in or around May 2015. The therapist contacted DCFS through a child abuse hotline. DCFS then launched an investigation. On May 9, 2018, DCFS reached an indicated finding of abuse by Lucas and sexual abuse by White. The finding against Lucas was based on her placing Doe at risk by allowing a registered sex offender to stay in her home. The finding against White was based on credible evidence that he had sexually assaulted Doe.

On July 18, 2019, Cook County Public Guardian Charles P. Golbert, as next friend for John Doe, filed a three-count complaint against Lucas and White: one count of negligence against Lucas (count I), one count of willful and wanton misconduct against White (count II), and one count of negligence against White (count III). On May 27, 2020, Illinois Attorney General Kwame Raoul filed a section 2-619 motion to dismiss count I only on Lucas's behalf, asserting that she is privy to parental immunity. Golbert filed a response brief, and the Attorney General replied. This court has reviewed the parties' submissions.

Analysis

A section 2-619 motion to dismiss authorizes the involuntary dismissal of a claim based on defects or defenses outside the pleadings. *See* 735 ILCS 5/2-619; *see also Illinois Graphics Co. v. Nickum*, 159 Ill. 2d 469, 485 (1994). A court considering a section 2-619 motion must construe the pleadings and supporting documents in a light most favorable to the non-moving party. *See Czarobski v. Lata*, 227 Ill. 2d 364, 369 (2008). All well-pleaded facts contained in the complaint and all inferences reasonably drawn from them are to be considered true. *See Calloway v. Kinkelaar*, 168 Ill. 2d 312, 324 (1995). A court is not to accept as true those conclusions unsupported by facts. *See Patrick Eng., Inc. v. City of Naperville*, 2012 IL 113148, ¶ 31. As has been stated: "The purpose

of a section 2-619 motion is to dispose of issues of law and easily proved issues of fact early in the litigation." *Czarobski*, 227 Ill. 2d at 369.

One of the enumerated grounds for a section 2-619 motion to dismiss is that the claim is barred by "affirmative matter" that avoids the legal effect of or defeats the claim. *See* 735 ILCS 5/2-619(a)(9). Affirmative matter is something in the nature of a defense that negates the cause of action completely or refutes crucial conclusions of law or conclusions of material fact contained in or inferred from the complaint. *See Illinois Graphics*, 159 Ill. 2d at 485-86. While the statute requires that affirmative matter be supported by affidavit, some affirmative matter has been considered to be apparent on the face of the pleading. *See id.*

Illinois common law is clear that a form of qualified parental immunity exists for foster parents. In *Nichol v. Stass*, the Supreme Court reiterated their extension of a qualified form of parental immunity to foster parents, reasoning that foster parents stand *in loco parentis* to their foster children. As the Court wrote:

> Like teachers, foster parents receive compensation for their work. Moreover, the relationship between a foster parent and a foster child, like the relationship between a teacher and a student, is not permanent and may even be relatively brief. Yet foster parents, like teachers and biological parents, are responsible for a broad range of decisions affecting the vital interests of the children involved. It would be anomalous to grant a qualified immunity to educators and biological parents but to deny immunity entirely to foster parents, who, in their relationships with their foster children, share many important similarities with the others. Thus, it can be seen that our result in this case does not represent an undue expansion of the immunity doctrine; rather, our holding is entirely consistent with this court's previous decisions recognizing immunity for persons who stand *in loco parentis* to children.

Nichol v. Stass, 192 Ill. 2d 233, 246 (2000).

The Supreme Court has, however, also limited the scope of this immunity to conduct that is inherent to the parent-child relationship. "The standard we have thus developed focuses primarily on conduct inherent to the parent-child relationship. . . . Thus, under our standard, parental discretion in the provision of care includes maintenance of the family home, medical treatment, and supervision of the child." *Cates v. Cates*, 156 Ill. 2d 76, 105 (1993).

Although the existence of limited immunity is unquestionable, this court does not need to reach the issue of whether Lucas was acting within her proper role as a parent in the foster parent-child relationship. The Supreme Court has already established certain bright-line exceptions to the qualified immunity, which, if met, disqualify parties from raising the affirmative defense. As the Court has explained:

> To be sure, the defendants correctly suggest that the scope of parental immunity in this context must be tempered by the circumstances peculiar to the foster-child relationship. Thus, the defendants acknowledge that parental immunity should not be available when, for example, the underlying conduct resulted in the revocation of a foster parent's license or a finding of neglect, or when it is the subject of a criminal charge. The defendants also suggest that any recognized immunity should not override Department [of Children and Family Services] regulations to the contrary. We believe that these are appropriate restrictions on the scope of the immunity in these circumstances.

Nichol, 192 Ill. 2d at 246-47.

As the Supreme Court notes, the qualified parental immunity is extended if the conduct is inherent to the foster-child relationship. Foster parents are charged by the state with caring for their foster children. If a foster parent's conduct falls outside

the scope of their responsibilities as a parent – such as a revocation of their license, a finding of neglect, or a criminal charge – then they are not protected by the immunity. *Id.* Since the Court's list is prefaced by the phrase "for example," other conduct or findings could certainly fall outside the limited immunity. The Court reaffirmed this principle in *Wallace v. Smyth* when it wrote: "Parental immunity is not available to foster parents when the allegedly negligent conduct results in a revocation of their license, a finding of neglect, or a criminal charge; it also cannot override any DCFS regulations." 203 Ill. 2d 441, 450-51 (2002).

In this case, it is undisputed that DCFS arrived at an indicated finding of abuse against Lucas, owing to the fact that she allowed Doe to be placed in a home with a sex offender, her husband, White. Cmplt. at ¶ 21. An indicated finding is the conclusion by DCFS after investigating, confirming, and recording instances of abuse or neglect. *See* DCFS, *Hearings and Appeals*, https://www2.illinois.gov/dcfs/aboutus/had/Pages/default.aspx. An indicated finding stipulates that an investigation conducted by DCFS determined that there existed credible evidence to support a finding of abuse or neglect. *Id.* While an indicated finding is not equivalent to a criminal charge, it is evident the Court in *Nichol* was referring to such a finding by writing of "a finding of neglect." Although the Court in *Nichol* specifically identified "neglect" and the DCFS indicated finding against Lucas was for "abuse," this is a distinction without a difference. The Court must have reasonably believed that a finding of either abuse or neglect is sufficient to place the conduct outside the bounds of the normal foster parent-child relationship and, therefore, deny the affirmative defense of parental immunity.

The only reasonable interpretation of the Court's exception to the foster parent immunity rule supports this finding. The exception is crafted to deny parental immunity to foster parents who are not behaving properly in their charge as caregivers. The Court determined that a revocation of a DCFS license, criminal charges, or a finding of neglect is sufficient to establish that a foster parent is no longer acting within the scope of their responsibilities

and, therefore, not protected by the immunity. If any of those three indicium apply, then a finding of "abuse" by DCFS must also apply. The alternative would produce an absurd result. In short, the DCFS indicated finding of abuse by Lucas categorically disqualifies her from the parental immunity defense.

It is also possible that DCFS revoked Lucas's license, based on another criterion of the Supreme Court's exception. The circumstances are not entirely certain, especially given that Lucas has not answered the complaint and neither party has filed any other supporting documents. Yet assuming the truth of the complaint's allegations, DCFS licensed Lucas from March 6, 2014 to March 6, 2018. Cmplt. at ¶ 7. DCFS placed Doe in Lucas's home from October 30, 2014 to June 16, 2015, when Lucas requested he be removed. Cmplt. at ¶ 16. Doe then disclosed his alleged sexual assault on October 11, 2017 to his therapist, who then informed DCFS. Cmplt. at ¶¶ 17-18. DCFS reached its indicated finding of abuse on May 9, 2018, two months after DCFS revoked her license. Cmplt. at ¶ 20. It is unclear whether DCFS revoked her license in relation to the investigation. This issue is nevertheless peripheral. The DCFS indicated finding of abuse is alone sufficient to decide the motion.

Conclusion

For the reasons presented above,

It is ordered that:

1. The defendant's motion to dismiss is denied; and
2. The defendant has until August 21, 2020 to answer the complaint.

Judge John H. Ehrlich

JUL 23 2020

Circuit Court 2075

John H. Ehrlich, Circuit Court Judge