SIXTH CIRCUIT GRANTS IMMUNITY FOR SOCIAL WORKER IN ABUSE INVESTIGATION

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On December 2, 2015, the Sixth Circuit Court of Appeals decided Barber v. Miller, which serves as instructive concerning the law pertaining to whether certain conduct in child abuse investigations violates the constitution. The relevant facts of Barber, taken directly from the case, are as follows:

In January 2011, a member of Barber's family reported to the Children's Protective Services unit of the Michigan Department of Human Services (CPS) that Barber was neglecting J.B. Soon after, Miller, a CPS social worker, interviewed J.B. at his public elementary school without first obtaining a court order or Barber's consent. That same day, Miller interviewed Barber and inquired about his use of controlled substances. Barber defended his marijuana and prescription-drug use as medically authorized. Six days later, Miller again interviewed J.B. at school without a court order or parental consent. He also spoke with J.B.’s paternal grandmother, Mary Lou Buttis.

These various interviews prompted Miller to petition the family court to place J.B. in protective custody pending a hearing. See Mich. Comp. Laws §§ 712A.14b, 722.638. The court issued a protective-custody order; Miller picked J.B. up from school pursuant to that order. After a two-day hearing held over three calendar days, the judge found probable cause to support one or more allegations in the petition. Deciding to return J.B. to Barber's custody nevertheless, the judge conditioned the return on: Barber's abstaining from marijuana until further notice of the court, submitting to drug screening, and ensuring that J.B. has constant adult supervision.

Displeased with the intervention by CPS, Barber sued Miller under 42 U.S.C. § 1983 for violating his constitutional rights. He alleged that Miller violated J.B.'s Fourth Amendment rights and Barber's Fourteenth Amendment substantive due process rights by (1) interviewing J.B. at school without a court order or parental consent, (2) littering the protective-custody petition with falsehoods and misrepresentations, and (3) removing J.B. from school pursuant to the protective-custody order. Barber also sought a declaratory judgment striking down Mich. Comp. Laws § 722.628(8), (9)—the statute authorizing CPS to conduct in-school interviews of suspected child-abuse victims.
Miller filed a motion to dismiss all claims against him and the district court granted him absolute immunity regarding the statements in the protective custody petition and qualified immunity regarding the other constitutional claims. This article will not discuss the request for declaratory judgment regarding the state statute. Barber appealed the dismissal to the Sixth Circuit Court of Appeals.

The first issue on appeal was whether the district court properly granted absolute immunity to Miller regarding the claim that he provided false or misleading testimony in the protective custody petition before the court. The Sixth Circuit, citing their decision in *Pittman v. Cuyahoga County Department of Children & Family Services*, stated:

*Pittman* teaches though, social workers enjoy absolute immunity when acting in their capacities as legal advocates. 640 F.3d at 724-25 (citing Holloway v. Brush, 220 F.3d 767, 775 (6th Cir. 2000)). A social worker acts as a legal advocate when initiating court proceedings, filing child-abuse complaints, and testifying under oath. *Id.* And this absolute immunity holds, even under allegations that the social worker intentionally misrepresented facts to the family court. Absolute immunity enables social workers to "protect the health and well-being of the children . . . without the worry of intimidation and harassment from dissatisfied parents." *Id.* at 725 (quoting *Kurzawa v. Mueller*, 732 F.2d 1456, 1458 (6th Cir. 1984)). [emphasis added]

The court of appeals observed that Miller made statements before the court in the child protective custody petition in his capacity as an advocate, and therefore he is entitled to absolute immunity against all allegations of false or misleading statements to the family court.

The court next sought to decide whether the district court properly granted qualified immunity to Miller on a variety of Fourth and Fourteenth Amendment claims. Qualified immunity is the doctrine that protects government officials from suit when they act in their discretionary capacity. When a governmental official, such as a social worker, law enforcement officer, or school official is sued for a constitutional violation regarding a discretionary act, and the government official invokes qualified immunity, to defeat that immunity, the plaintiff must show that (1) the official did in fact violate the constitution, and (2) the constitutional right was clearly established such that a reasonable official would have known his conduct was unlawful. A right is clearly established when there is case law from the Supreme Court of the United States, the federal appellate court for the appropriate circuit (here the Sixth Circuit) or the highest court in the state where the incident occurred that is sufficiently clear to put the official on notice that his conduct is unlawful. Courts can skip to the first prong of this and review the second prong to determine if qualified immunity is appropriate. This is what the Sixth Circuit chose to do in this case.

With that in mind, second issue is whether the district court properly granted qualified immunity to Miller for claims that he violated J.B.’s (the juvenile) rights under the Fourth Amendment when he interviewed him at school without a court order or parental consent. The court examined this issue by looking to whether J.B. had a clearly established right under the Fourth Amendment to be free from an in-school interview by a social worker absent a court order or parental consent.
The plaintiff only cited two Sixth Circuit cases in support of his argument that the law was clearly establish on this issue. However, both cases held that a social worker violated the Fourth Amendment by entering a home without consent or a warrant to interview and remove a child from the home. Particularly, in Andrews v. Hickman County, social workers and police officers went Andrew’s residence, entered and search it without consent, and coerced him into giving permission to interview his children outside of his presence. The Sixth Circuit held that the official violated the Fourth Amendment but that the law was not clearly established at the time of the violation.

The second case was Kovacic v. Cuyahoga County Department of Children & Family Services, in which social workers conducted a warrantless removal of children from a home. The Sixth Circuit held that this violated the Fourth Amendment and that the right was clearly established, therefore they denied qualified immunity for the officials.

The Sixth Circuit then distinguished Andrews and Kovacic by noting that both of those cases involved intrusions into a home, whereas this case dealt with an in-school interview.

Barber also cited a Seventh Circuit case, which would not put the official on notice but does bear discussion. Regarding that case, the court stated:

In the other case, Doe v. Heck, the Seventh Circuit held that the defendant social workers violated a child’s Fourth and Fourteenth Amendment rights by interviewing him on parochial school premises without his parents’ or the school’s consent. 327 F.3d 492, 499 (7th Cir. 2003). Because the social workers pointed to no evidence giving rise to a reasonable suspicion that the plaintiff parents were abusing their child, the interview violated the child’s constitutional rights. Id. at 515, 524. Doe lends little support to Barber’s position regarding the clearly established nature of J.B.’s Fourth Amendment rights because a single out-of-circuit case generally cannot clearly establish the law in the Sixth Circuit. See Brent, 555 F. App’x at 530 (citing Russo v. City of Cincinnati, 953 F.2d 1036, 1042-43 (6th Cir. 1992)).

As such, the court held the law was not clearly established since the plaintiff cited no case to support his contention that this was a clearly established right, therefore, Miller was entitled to qualified immunity.

The third issue was whether the district court properly granted qualified immunity to Miller on claims that the in-school interview violated Barber’s Fourteenth Amendment Due Process rights based on the “fundamental liberty interest of natural parents in the care, custody, and management of their child.”

The court first observed:

[O]ur circuit has explained that "[m]ere investigation by authorities into child abuse allegations without more . . . does not infringe upon a parent’s right to custody or control of a child." Kottmyer v. Maas, 436 F.3d 684, 691 (6th Cir. 2006). Indeed, "the right to family integrity clearly does not include a constitutional right
Since Barber cited no case law on point that shows that Miller violated a clearly established right, the court affirmed the grant of qualified immunity on this issue.

The fourth issue before the court was whether the district court properly granted qualified immunity on claims that Miller violated the Fourth and Fourteenth Amendments when he picked up J.B. at school pursuant to a court protective custody order. The court noted that Miller obtained the court order before he picked J.B. up from school. Regarding this issue, the Sixth Circuit stated:

Barber may fault only the family court—and not Miller—for any due process deprivation here. See Pittman, 640 F.3d at 729 (dismissing the parent’s substantive due process claim against the social worker because "to the extent that [the parent] suffered a deprivation of his fundamental right to family integrity, that deprivation was perpetrated by the juvenile court, not by [the social worker]"). "Because the juvenile court has the ultimate decisionmaking power with respect to placement and custody, it alone could deprive [the parent] of his fundamental right."

Therefore, only the juvenile court could be accused of violating Barber’s constitutional rights on this claim, not Miller. As such, the court affirmed the grant of qualified immunity on this an all claims in this case.

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Note: Court holdings can vary significantly between jurisdictions. As such, it is advisable to seek the advice of a local prosecutor or legal adviser regarding questions on specific cases. This article is not intended to constitute legal advice on a specific case.