

STATE OF CONNECTICUT

SUPREME COURT

S.C. 18548

DANIEL GROSS

Plaintiff/Appellant

v.

M. JODI RELL, ET AL.

Defendants/Appellees

AMICUS CURIAE BRIEF IN OPPOSITION TO
DEFENDANT/APPELLEE

MR. JOHN CARAVELLA
PRO SE SUBMISSION
NON-RESIDENT

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Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA ET AL. 559 U.S. (2010)....4

STATEMENT OF THE INTERESTS OF AMICUS

Amicus is experienced in criminal and civil law with recent emphasis on guardianship and conservatorship procedures affecting the elderly and incapacitated. I am concerned that this present case, if upheld in favor of the defendants/appellees desire to benefit from immunity, will evolve into and result in a widespread mis-use of protection by immunity for criminal and civil wrongs perpetrated against citizens, especially the elderly and incapacitated.

STATEMENT OF FACTS AND PROCEEDINGS

Amicus adopts the Statement of Facts and Proceedings in the brief of the Appellant.

ARGUMENT

Currently before this Court is an issue presented by Kathleen Dovovan (Donovan), a defendant/appellee, seeking recognition as being qualified to enjoy either absolute or limited quasi-judicial immunity for all actions taken in the performance of duties as a court appointed conservator. Whether the appointee is a professionally qualified care giver or an attorney holding one's self out for such service or a citizen qualified for such service, such appointee is essentially an employee of the person for whom care is deemed necessary. This relationship is generally evidenced by the fees for such service being paid by the person for whom care is deemed necessary. This employer/employee relationship, even though it may be established by the court, does not terminate the safeguards provided to every citizen by the United States Bill of Rights First Amendment, i.e., the right to petition the government for redress of grievances; therefore, absolute or limited immunity must not be granted either by law or court order:

U.S. Constitution, Bill Of Rights, Amendment I: Congress¹ shall make no law² respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government³ for a redress of grievances. (underlined for emphasis)

No person participated in or contributed financially toward the preparation of this Amicus Brief.

¹ "In *United Mine Workers of America v. Illinois State Bar Association* (1967), the U.S. Supreme Court exalted the right" (*to petition*) "as 'among the most precious liberties safeguarded by the Bill of Rights' and implicit in 'the very idea of government.' The Court had earlier affirmed the right to engage in such activity; it thus deemed it a fundamental liberty, protected against encroachment"² "by federal, state and local governments." (*Not simply Congress*³.) "Hence, in *NAACP v. Button* (1963), it formed the conceptual basis for the Court's ruling that a civil rights group could not be barred from soliciting people to serve as litigants in civil rights cases. The Court declared: 'Litigation may well be the sole practical avenue open to a minority to petition for a redress of grievances'." By Adam Newton, lawyer & contributing writer and Ronald K.L. Collins, First Amendment Center scholar. First Amendment Center at Vanderbilt University, Nashville, TN (underlined for emphasis)

I. Conservatorship Assignment Does Not Constitute Civil Service.

The business relationship evidenced in this present case is not one of a civil servant working for and being paid by a branch of government whose work may benefit from a degree of immunity, but this is instead a private enterprise for-profit relationship routinely governed and regulated by state statute, as are many business relationships. The mere fact that a court may appoint an individual to supply a regulated service to a citizen does not relieve the supplier of the service from the need to follow administrative regulations and/or appropriate state or federal laws governing such service. The court may indeed order a service provider in a conservatorship role to initiate a particular duty, but it is administrative regulation and/or appropriate law that provide the means to lawfully carry out that duty, thereby protecting the recipient. The legislature, then, not the court, is the provider's keeper.

Simply put, if a service provider is allowed to hide behind the court's cloak of immunity for their actions to any degree, then administrative regulations and appropriate state and federal laws become meaningless and void, and a victim's right to redress of any grievance is effectively thwarted and unconstitutionally eliminated. Should a service provider not wish to be bound by administrative regulations, and appropriate state laws, and appropriate federal laws, and face the possibility of redress, such provider certainly has the freedom of choice not to engage in or to hold one's self out for providership, which may also require a choice to either learn the appropriate regulations and laws or remain ignorant of them.

² Court Order—*noun* any rule or regulation of a court with which one must comply or risk a contempt action. <http://dictionary.reference.com/browse/court+order>

³ *California Motor Transport Co. v. Trucking Unlimited*, 404 U. S. 508, 511 (1972) "The same philosophy governs the approach of citizens or groups of them to administrative agencies (which are both creatures of the legislature, and arms of the executive) and to courts, the third branch of Government. Certainly the right to petition extends to all departments of the Government. The right of access to the courts is indeed but one aspect of the right of petition. See *Johnson v. Avery*, 393 U. S. 483, 393 U. S. 485; *Ex parte Hull*, 312 U. S. 546, 312 U. S. 549." (underlined for emphasis)

II. Absolution Synonymous With Immunity

In a public Florida 2008 lower court case (Probate Division, Seminole County, Florida, IN RE: GUARDIANSHIP OF LOUISE A. FALVO, File No. 2008-CP-0509) a guardian petitioned the court on June 9, 2008 for:

“23 h) Regardless of the option chosen by the court in letters f) and g) above, or otherwise, petitioner respectfully requests that the court’s order finds that the petitioner is neither responsible for nor authorized to attempt to determine the true intentions of the Ward regarding her estate plan, and absolves her of any responsibility or liability either now or in the future for carrying out the order of this court.”

and was granted the court’s order on June 10, amended on June 11, 2008:

“6. “ the Plenary Guardian of the Property and Person of the Ward, is hereby absolved of all liability and responsibility for not attempting to preserve the alleged intentions or estate plan of the Ward, except that records of the accounts at liquidation be maintained for potential distribution should any remain at death.”

The above attempt to be held harmless brings to light a future-need immunity granted to a provider in the form of absolution⁴. In its religious sense, absolution provides forgiveness of sin or wrongdoing upon confession and repentance. In this instance the petitioner can perform a court ordered duty, commit a crime in the process by self-chosen means, then profess guilt and remorse, and have the benefit of immunity from all liability, responsibility, and prosecution. Immunity also removes a prosecutor’s option and ability to bargain with an offender in order to uncover additional wrongdoing.

Denying all degrees of immunity in this Court’s present case will supply a solid reference that will prevent the eroding of all victims’ rights to redress.

⁴ Ab`solve´ (Webster Dictionary)

1. To set free, or release, as from some obligation, debt, or responsibility, or from the consequences of guilt or such ties as it would be sin or guilt to violate; to pronounce free; as, to absolve a subject from his allegiance; to absolve an offender, which amounts to an acquittal and remission of his punishment.

2. To free from a penalty; to pardon; to remit (a sin); - said of the sin or guilt.

III. U.S. Supreme Court Addresses Responsibility – 04/21/2010⁵

In the case of a collection agency and its attorney's dealings with an alleged consumer, the United States Supreme Court recently held to a long-standing maxim:

We have long recognized the “common maxim, familiar to all minds, that ignorance of the law will not excuse any person, either civilly or criminally.” *Barlow v. United States*, 7 Pet. 404, 411 (1833) (opinion for the Court by Story, J.); see also *Cheek v. United States*, 498 U. S. 192, 199 (1991) (“The general rule that ignorance of the law or a mistake of law is no defense to criminal prosecution is deeply rooted in the American legal system”). Our law is therefore no stranger to the possibility that an act may be “intentional” for purposes of civil liability, even if the actor lacked actual knowledge that her conduct violated the law. In *Kolstad v. American Dental Assn.*, 527 U. S. 526 (1999), for instance, we addressed a provision of the Civil Rights Act of 1991 authorizing compensatory and punitive damages for “intentional discrimination,” 42 U. S. C. §1981a, but limiting punitive damages to conduct undertaken “with malice or with reckless indifference to the federally protected rights of an aggrieved individual,” §1981a(b)(1). We observed that in some circumstances “intentional discrimination” could occur without giving rise to punitive damages liability, such as where an employer is “unaware of the relevant federal prohibition” or acts with the “distinct belief that its discrimination is lawful.” 527 U. S., at 536–537. See also W. Keeton, D. Dobbs, R. Keeton, & D. Owen, *Prosser and Keeton on Law of Torts* 110 (5th ed. 1984) (“[I]f one intentionally interferes with the interests of others, he is often subject to liability notwithstanding the invasion was made under an erroneous belief as to some . . . legal matter that would have justified the conduct”); Restatement (Second) of Torts §164, and Comment e (1963–1964) (intentional tort of trespass can be committed despite the actor’s mistaken belief that she has a legal right to enter the property).

Understandably, any individual facing the possibility of suffering liability and responsibility for their unlawful conduct would be most appreciative of having the court’s absolution.

IV. Conclusion

Two nagging and unanswered questions surface: “How much is immunity worth to the giver and to the receiver?” and, “Can I have it, too?” These questions will follow any provision for absolution and this Court has the opportunity now in this present case to deny immunity and put an end to this corrosive attempt to halt justice.

⁵ JERMAN v. CARLISLE, MCNELLIE, RINI, KRAMER & ULRICH LPA ET AL.
Cite as: 559 U. S. ____ (2010), 08-1200

CERTIFICATE OF COMPLIANCE AND SERVICE

I hereby certify that the foregoing complies with the requirements set forth in Practice Book § 67-7. I further certify that a copy of the foregoing has been mailed, postage paid, to the following individuals on November 18, 2010.

Sally R. Zanger, Esquire
Connecticut Legal Rights Project
Box 351, Silver Street
Middletown, CT 06457
Tel: (860) 262-5787
Fax: (860) 262-5035

Francis J. Grady, Esquire
Grady & Riley, LLP
86 Buckingham Street
Waterbury, CT 06710
Tel: (203) 575-1131
Fax: (203) 754-1675

Louis B. Blumenfeld, Esquire
Cooney, Scully and Dowling
10 Columbus Boulevard
Hartford, CT 06106
Tel: (860) 527-1141
Fax: (860) 247-5215

Chief Judge Dennis Jacobs
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007
Tel: (212) 857-8576
Fax: unavailable

Jeffrey R. Babbin, Esquire
Wiggin and Dana, LLP
One Century Tower
P.O. Box 1832
New Haven, CT 06508
Tel: (203) 498-4400
Fax: (203) 782-2889

Judge Peter W. Hall
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007
Tel: (212) 857-8576
Fax: unavailable

Judge Chester J. Straub
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007
Tel: (212) 857-8576
Fax: unavailable

Judge Vanessa L. Bryant
Abraham Ribicoff Federal Building
United States Courthouse
450 Main Street – Suite 320
Hartford, CT 06103
Tel: (860) 240-3123
Clerk's Office Fax: (860) 240-3211

Kathleen Donovan, Esquire
45 Woodland Street
Naugatuck, CT 06770
Tel: (203) 729-1880
Fax: unavailable

John Caravella
Pro Se Submission
Non-Resident