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# SUPREME COURT OF ALABAMA

SPECIAL TERM, 2021

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Ex parte Amy Williamson

PETITION FOR WRIT OF MANDAMUS

(In re: Re.W., by and through her parents and next friends,  
Ro.W. and V.W.)

v.

Amy Williamson)

(Tuscaloosa Circuit Court, CV-19-901490)

WISE, Justice.

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Amy Williamson, the defendant below, petitions this Court for a writ of mandamus directing the Tuscaloosa Circuit Court to enter a summary judgment in her favor based on State-agent immunity. We grant the petition and issue the writ.

### Facts and Procedural History

Twenty-year-old Re.W. was a student in the CrossingPoints program, a collaborative program between the University of Alabama, the Tuscaloosa City Board of Education, and the Tuscaloosa County Board of Education that serves college-aged students with mental disabilities.<sup>1</sup> Williamson was a teacher in the program and an employee of the Tuscaloosa City Board of Education, and Amy Burnett was a "para-educator" with the program. On March 10, 2015, Williamson and Burnett transported Re.W. and three other students to various businesses to submit job applications. While Williamson and Burnett took two students into a Lowe's home-improvement store to submit applications,

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<sup>1</sup>Pursuant to Rule 52, Ala. R. App. P., to protect Re.W.'s anonymity, we have used initials when referring to Re.W. and her family members in this opinion.

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Re.W. and a male student stayed in the CrossingPoints van. Re.W. stated that, during the short time that the others were inside the store, the male student touched her on her breast and between her legs.

On December 17, 2019, Re.W., by and through her parents and next friends, Ro.W. and V.W., sued Williamson in the Tuscaloosa Circuit Court. The complaint included counts alleging negligent, wanton, and/or willful failure to perform ministerial acts and the tort of outrage. On January 23, 2020, Williamson filed an answer to the complaint. She denied the material allegations and asserted multiple affirmative defenses.

On May 15, 2020, Williamson filed a motion for a summary judgment, with supporting materials. In the motion, she asserted, among other things, that Re.W.'s claims were barred by the doctrine of State-agent immunity. Specifically, Williamson presented evidence indicating that, at the time of the incident, she was exercising judgment and discretion in the supervision and education of students. She also presented testimony from Dr. William L. Bainbridge, her expert on educational policies and practices, who stated that he could not identify any specific rules, regulations, or policies the CrossingPoints program, the

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Tuscaloosa City Board of Education, or the Tuscaloosa County Board of Education had adopted that Williamson was told to follow under the circumstances of this case.

On May 29, 2020, Re.W. filed a response in opposition to Williamson's motion for a summary judgment and attached additional materials to support her response. She did not challenge Williamson's argument that Williamson had been engaged in a function that could entitle her to State-agent immunity. Instead, Re.W. argued that an exception to State-agent immunity applied because, she alleged, Williamson had "acted beyond her authority by not following established policies and procedures containing non-discretionary duties that governed CrossingPoints teachers and employees of the Tuscaloosa City School Board." In her statement of facts, Re.W. included the following:

"Olivia Robinson testified that a teacher, like ... Williamson, was required to stay with [Re.W.] 'at all times from the point where the van was parked at a location until they left that location.' (Def's Ex. E, O. Robinson Dep., 53:8-54:2). Teachers and paraeducators are responsible for students until the students leave at the end of the day. (Id., 54:3-5)."

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However, although Re.W. referenced and purported to quote portions of pages 53 and 54 of Olivia Robinson's deposition, she did not attach those pages of Robinson's deposition to her response in opposition to Williamson's motion for a summary judgment.

After conducting a hearing, the trial court entered an order that provided, in relevant part:

"2. [Re.W.] asserted claims against ...Williamson in her individual capacity for the negligent, wanton, and/or willful failure to perform ministerial acts in count one of the complaint and for the tort of outrage in count two of the complaint. At the outset, the Court finds that the facts of this case do not support an outrage claim in as much as there is no evidence of any intent of ... Williamson to inflict emotional distress upon plaintiff [Re.W.]. Furthermore, there is no evidence that the conduct of ... Williamson was so extreme and outrageous as to cause emotional distress so severe that no reasonable person could be expected to endure it.

"3. Turning to the negligence claim contained in count 1 of the complaint, the Court finds at the time of the incident made the basis of this lawsuit, ... Williamson was engaged in educating students which entitles her to state agent immunity. The burden then shifts to [Re.W.] to establish that ... Williamson acted willfully, maliciously[,] fraudulently, in bad faith, or beyond her authority. [Re.W.] failed to offer any evidence that ... Williamson acted willfully, maliciously, fraudulently, or in bad faith. Therefore, the only remaining issue is whether ... Williamson acted beyond her authority when she left [Re.W.] [in] the van with the male student.

"4. In addressing the issue of whether ... Williamson acted beyond her authority, the Court reviewed the evidence submitted by [Re.W.] to determine if ... Williamson failed to discharge duties pursuant to detailed rules and regulations such as check list. As the Court viewed the evidentiary submissions of the [Re.W.] in opposition to the Motion for Summary Judgment, the only detailed rule, regulation, or policy which [Re.W.] can rely on is the statement in Olivia Robinson['s] deposition ... (Def's Ex. E, O Robinson Dep., 53:8-54:2) that a teacher like ... Williamson was required to stay with [Re.W.] 'at all times from the point where the van was parked at a location until they left that location.'

"5. [Williamson] contended that [Re.W.] mischaracterized the testimony of Olivia Robinson by pointing out that Ms. Robinson testified, 'I guess I'm confused by your question' [Def.'s Ex. E, p. 54, line 9]. Once the question was clarified according to [Williamson's] argument, Ms. Robinson said, 'I don't know. There's no policy in place for that, so I guess it depends on the teacher and the paraeducator, whoever is with them.' [Def.'s Ex. E, p. 54, line 20.] [Williamson] then argued that Ms. Robinson never testified that any teacher or educator was required to stay with [Re.W.] at all times or provide constant supervision.

"6. In the Court's view the parties are in dispute as to whether or not [Williamson] failed to discharge duties pursuant to detail rules or regulations which turned on whether the testimony of Ms. Robinson should be viewed as establishing detail[ed] rules and regulations which [Williamson] failed to discharge. Viewing the evidentiary submissions of the parties in the light most favorable to [Re.W.,] who is the non-movant, the Court for purposes of Summary Judgment finds that by leaving [Re.W.] [in] the van with the male student, ... Williamson acted beyond her

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authority and violated the policy that teachers are required to stay with [Re.W.] 'at all times from the point where the van was parked at a location until they left that location.' For this reason, the Court finds that ... Williamson['s] Motion for Summary Judgment is due to be and is hereby DENIED."

This petition followed.

### Standard of Review

" ' "While the general rule is that the denial of a motion for summary judgment is not reviewable, the exception is that the denial of a motion for summary judgment grounded on a claim of immunity is reviewable by petition for writ of mandamus." Ex parte Rizk, 791 So. 2d 911, 912 (Ala. 2000). A writ of mandamus is an extraordinary remedy available only when there is: "(1) a clear legal right to the order sought; (2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; (3) the lack of another adequate remedy; and (4) the properly invoked jurisdiction of the court." Ex parte BOC Group, Inc., 823 So. 2d 1270, 1272 (Ala. 2001).'

"Ex parte Nall, 879 So. 2d 541, 543 (Ala. 2003). Also,

" 'whether review of the denial of a summary-judgment motion is by a petition for a writ of mandamus or by permissive appeal, the appellate court's standard of review remains the same. If there is a genuine issue as to any material fact on the question whether the movant is entitled to immunity, then the moving party is not entitled to a summary judgment. Rule 56, Ala. R. Civ. P.

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In determining whether there is a [genuine issue of] material fact on the question whether the movant is entitled to immunity, courts, both trial and appellate, must view the record in the light most favorable to the nonmoving party, accord the nonmoving party all reasonable favorable inferences from the evidence, and resolve all reasonable doubts against the moving party, considering only the evidence before the trial court at the time it denied the motion for a summary judgment. Ex parte Rizk, 791 So. 2d 911, 912 (Ala. 2000).'

"Ex parte Wood, 852 So. 2d 705, 708 (Ala. 2002)."

Ex parte City of Montgomery, 272 So. 3d 155, 159 (Ala. 2018).

" "Once the [summary-judgment] movant makes a prima facie showing that there is no genuine issue of material fact, the burden then shifts to the nonmovant to produce 'substantial evidence' as to the existence of a genuine issue of material fact. Bass v. SouthTrust Bank of Baldwin County, 538 So. 2d 794, 797-98 (Ala. 1989); Ala. Code 1975, § 12-21-12. '[S]ubstantial evidence is evidence of such weight and quality that fair-minded persons in the exercise of impartial judgment can reasonably infer the existence of the fact sought to be proved.' West v. Founders Life Assur. Co. of Fla., 547 So. 2d 870, 871 (Ala. 1989)."

"Prince v. Poole, 935 So. 2d 431, 442 (Ala. 2006) (quoting Dow v. Alabama Democratic Party, 897 So. 2d 1035, 1038-39 (Ala. 2004))."



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Brown v. W.P. Media, Inc., 17 So. 3d 1167, 1169 (Ala. 2009).

### Discussion

Williamson argues that she is entitled to State-agent immunity and that the trial court erred in denying her motion for a summary judgment. Specifically, she contends that she established that, at the time of the incident, she was engaged in a discretionary function that could entitle her to State-agent immunity; that her expert testified that he could not identify any specific policies, rules, or regulations that applied to her under the circumstances of this case; and that Re.W. failed to present substantial evidence to establish that an exception to State-agent immunity applied under the circumstances of this case. We agree with Williamson.

In Ex parte Cranman, 792 So. 2d 392 (Ala. 2000), the rule governing "State-agent immunity" was restated as follows:

"A State agent shall be immune from civil liability in his or her personal capacity when the conduct made the basis of the claim against the agent is based upon the agent's

"(1) formulating plans, policies, or designs; or

"(2) exercising his or her judgment in the administration of a department or agency of government, including, but not limited to, examples such as:

"(a) making administrative adjudications;

"(b) allocating resources;

"(c) negotiating contracts;

"(d) hiring, firing, transferring, assigning, or supervising personnel; or

"(3) discharging duties imposed on a department or agency by statute, rule, or regulation, insofar as the statute, rule or regulation prescribes the manner for performing the duties and the State agent performs the duties in that manner; or

"(4) exercising judgment in the enforcement of the criminal laws of the State, including, but not limited to, law-enforcement officers' arresting or attempting to arrest persons[, or serving as peace officers under circumstances entitling such officers to immunity pursuant to § 6-5-338(a), Ala. Code 1975]; or

"(5) exercising judgment in the discharge of duties imposed by statute, rule, or regulation in releasing prisoners, counseling or releasing persons of unsound mind, or educating students.

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"Notwithstanding anything to the contrary in the foregoing statement of the rule, a State agent shall not be immune from civil liability in his or her personal capacity

"(1) when the Constitution or laws of the United States, or the Constitution of this State, or laws, rules, or regulations of this State enacted or promulgated for the purpose of regulating the activities of a governmental agency require otherwise; or

"(2) when the State agent acts willfully, maliciously, fraudulently, in bad faith, beyond his or her authority, or under a mistaken interpretation of the law."

792 So. 2d at 405 (bracketed modification added by Hollis v. City of Brighton, 950 So. 2d 300, 309 (Ala. 2006)). Even though Cranman was a plurality decision, its restatement of the law as to State-agent immunity was later adopted by this Court in Ex parte Butts, 775 So. 2d 173 (Ala. 2000). "Once it is determined that State-agent immunity applies, State-agent immunity is withheld upon a showing that the State agent acted willfully, maliciously, fraudulently, in bad faith, or beyond his or her authority. Cranman, 792 So. 2d at 405." Ex parte Bitel, 45 So. 3d 1252, 1257-58 (Ala. 2010). Also,

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"[t]his Court has established a 'burden-shifting' process when a party raises the defense of State-agent immunity. Giambrone v. Douglas, 874 So. 2d 1046, 1052 (Ala. 2003). In order to claim State-agent immunity, a State agent bears the burden of demonstrating that the plaintiff's claims arise from a function that would entitle the State agent to immunity. Giambrone, 874 So. 2d at 1052; Ex parte Wood, 852 So. 2d 705, 709 (Ala. 2002). If the State agent makes such a showing, the burden then shifts to the plaintiff to show that the State agent acted willfully, maliciously, fraudulently, in bad faith, or beyond his or her authority. Giambrone, 874 So. 2d at 1052; Wood, 852 So. 2d at 709; Ex parte Davis, 721 So. 2d 685, 689 (Ala. 1998)."

Ex parte Estate of Reynolds, 946 So. 2d 450, 452 (Ala. 2006). Further,

"[o]ne of the ways in which a plaintiff can show that a State agent acted beyond his or her authority is by proffering evidence that the State agent failed "'to discharge duties pursuant to detailed rules or regulations, such as those stated on a checklist.'" ' Giambrone v. Douglas, 874 So. 2d 1046, 1052 (Ala. 2003) (quoting Ex parte Butts, 775 So. 2d [173,] 178 [(Ala. 2000)])."

Ex parte Kennedy, 992 So. 2d 1276, 1282-83 (Ala. 2008). Finally,

"State-agent immunity protects agents of the State in their exercise of discretion in educating students. We will not second-guess their decisions." Ex parte Blankenship, 806 So. 2d 1186, 1190 (Ala. 2000).

Williamson presented evidence indicating that she was exercising her judgment and discretion in both the supervision and the education of

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students at the time the incident occurred. In her affidavit, she stated, in part:

"During my tenure as a teacher, and during the time in question, there were no detailed rules or checklists to dictate how I supervise students; thus, I used my judgment and discretion in supervising and educating the students of CrossingPoints, whether those students were from the Tuscaloosa County or Tuscaloosa City school system. Furthermore, I exercised my judgment and discretion in administering the CrossingPoints Program. In dealing with [Re.W.], I acted at all times within the scope of my authority, in good faith performance of my responsibilities, and in compliance with all directives from my superiors. I had no malice or ill-will towards [Re.W.] I never breached any duty owed to [Re.W.], nor did I engage in any wanton, reckless, negligent or outrageous conduct.

"On March 10, 2015, I followed all applicable rules and policies of both the Tuscaloosa City Board of Education and the CrossingPoints Program. Nothing required Ms. Burnett, me, or other school personnel to maintain constant visual contact with every student at every moment of the day nor would that be possible.

"Based on my education (including my Ph.D. in special education, obtained in 2017), training and experience, I am familiar with the standard of care applicable to teachers, para-educators and educators in the State of Alabama, Tuscaloosa City School system, and the CrossingPoints Program. I met those standards of care on March 10, 2015, and at all times relevant to this lawsuit. At all times relevant to the claims made in this lawsuit, I was acting within the scope of my authority and performing official duties for the

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Tuscaloosa City Board of Education, in compliance with the policies, rules, regulations and procedures of the Board and in compliance with local, state, and federal laws."

Therefore, we conclude that Williamson established that she was performing a discretionary function that would entitle her to State-agent immunity if no exceptions applied.

Because Williamson established that she was performing a discretionary function that could entitle her to State-agent immunity, the burden then shifted to Re.W. to establish that "'one of the two categories of exceptions to State-agent immunity recognized in Cranman is applicable.'" Ex parte City of Montgomery, 99 So. 3d 282, 293 (Ala. 2012)(quoting Ex parte Kennedy, 992 So. 2d at 1282).

Re.W. argues that she presented credible evidence that established that Williamson violated a specific, nondiscretionary rule. Specifically, she contends that Olivia Robinson, a fellow teacher, testified that "someone was required to stay with [Re.W.] 'at all times from the point where the van was parked at a location until they left that location.'" In her statement of facts in her response to Williamson's motion for a summary judgment, Re.W. asserted:

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"Olivia Robinson testified that a teacher, like ... Williamson, was required to stay with [Re.W.] 'at all times from the point where the van was parked at a location until they left that location.' (Def's Ex. E, O. Robinson Dep., 53:8-54:2). Teachers and paraeducators are responsible for students until the students leave at the end of the day. (Id., 54:3-5)."

Although Re.W. referenced and purported to quote portions of pages 53 and 54 of Olivia Robinson's deposition, she did not attach those pages to her response in opposition to Williamson's motion for a summary judgment. Also, Williamson did not attach those pages of Robinson's deposition in support of her motion for a summary judgment. Therefore, based on the materials before us, that purported evidence was not actually before the trial court and could not be used as a basis for finding that there was a rule, regulation, or policy that required Williamson to stay with Re.W. from the time the van was parked until they left that location. See Autauga Creek Craft House, LLC v. Brust, 315 So. 3d 614, 627 (Ala. Civ. App. 2020)("Although Craft House referred to the answers to interrogatories, it does not appear that it submitted those answers to the trial court in opposition to Brust's motion for a summary judgment. It is well settled that ' "[m]otions and arguments of counsel are not evidence.'

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'[S]tatements in motions are not evidence and are therefore not entitled to evidentiary weight.' '[B]riefs submitted in support of motions are not evidence to be considered by the Court in resolving a summary judgment motion.' " ' Ex parte Coleman, 861 So. 2d 1080, 1084 (Ala. 2003) (quoting Fountain Fin., Inc. v. Hines, 788 So. 2d 155, 159 (Ala. 2000)); see Ex parte Russell, 911 So. 2d 719, 725 (Ala. Civ. App. 2005) ('The unsworn statements, factual assertions, and arguments of counsel are not evidence.'). Therefore, Craft House's references to answers to interrogatories did not constitute evidence that could have demonstrated any genuine issues of material fact."). See also Ex parte Edwards, 299 So. 3d 238, 242-43 (Ala. 2020).

Re.W. did not present any evidence other than Robinson's purported deposition testimony to refute Williamson's testimony that "there were no detailed rules or checklists to dictate how [she] supervise[d] students" and that "[n]othing required Ms. Burnett, [her], or other school personnel to maintain constant visual contact with every student at every moment of the day nor would that be possible." In fact, the trial court specifically stated that Robinson's testimony on pages 53 and 54 of her deposition was



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"the only detailed rule, regulation, or policy" Re.W. could rely on to establish that Williamson was required to stay with Re.W. " 'at all times from the point where the van was parked at a location until they left that location.' " Therefore, Re.W. did not present any actual evidence to establish that there was any rule, regulation, or policy that required Williamson to stay with Re.W. from the time the van was parked until they left that location.<sup>2</sup> Accordingly, Re.W. did not carry her burden of establishing that an exception to State-agent immunity applied.

### Conclusion

Because we conclude that Williamson established that, at the time of the incident, she was performing a discretionary function, and because we conclude that Re.W. did not present any evidence to establish that an exception to State-agent immunity applied, we conclude that Williamson has established that she is entitled to State-agent immunity. Accordingly, we grant the petition for the writ of mandamus and direct the trial court

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<sup>2</sup>In its order denying the motion for a summary judgment, the trial court also found that the facts of the case do not support a claim alleging the tort of outrage. Neither party disputes that finding on appeal.

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to vacate its order denying Williamson's motion for a summary judgment and to enter a summary judgment for Williamson.

PETITION GRANTED; WRIT ISSUED.

Bolin, Shaw, Bryan, Sellers, Mendheim, Stewart, and Mitchell, JJ.,  
concur.

Parker, C.J., dissents.