

ALASKA SUPREME COURT

McGrew v. State, Department of Health & Social Services, Division of Family & Youth Services

106 P.3d 319 (Alaska 2005) · Decided February 4, 2005

SUMMARY

The Alaska Supreme Court reviewed the dismissal under Alaska Civil Rule 12(b)(6) of grandparents' claims against the Division of Family and Youth Services arising from child-in-need-of-aid and adoption proceedings. The court affirmed dismissal of the negligence and constitutional claims, holding that DFYS owed no actionable duty to the grandparents and that alternative judicial remedies were available. It reversed dismissal of the intentional infliction of emotional distress claim because the complaint adequately pleaded the required elements.

CASE DETAILS

COURT	Alaska Supreme Court
WRITING FOR THE COURT	Eastaugh, Justice; Bryner, Chief Justice; Carpeneti, Justice; Fabe, Justice; Matthews, Justice
JURISDICTION	Alaska
DECIDED	February 4, 2005
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The grandparents of an orphaned child appealed the superior court's Alaska Civil Rule 12(b)(6) dismissal of their negligence, Bivens-type constitutional, and intentional infliction of emotional distress claims against the State of Alaska and DFYS.
STANDARD OF REVIEW	Rule 12(b)(6) dismissals are reviewed de novo, with all facts alleged in the complaint deemed true and provable. The existence and nature of a duty of care are questions of law reviewed de novo; an IIED threshold determination is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published precedential Alaska Supreme Court opinion
PARTIES	Johnny and Mary McGrew v. State of Alaska, Department of Health and Social Services, Division of Family and Youth Services

TOPICS

motions to dismiss

intentional infliction of emotional distress

negligence

civil procedure

constitutional law

PRACTICE AREAS

civil procedure

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remedies

QUESTIONS PRESENTED

1. Whether the complaint stated a negligence claim based on DFYS's alleged failure to follow statutory requirements, regulations, and internal policies in placing the child.
2. Whether the McGrews could pursue a Bivens-type damages remedy for alleged violations of the Alaska Constitution when they had judicial remedies available in the CINA and adoption proceedings.
3. Whether the McGrews adequately pleaded an intentional infliction of emotional distress claim.
4. Whether the superior court erred in denying the McGrews' motion to supplement the record.

HOLDINGS

1. DFYS did not owe the McGrews an actionable duty of reasonable care in connection with the CINA proceeding. Alaska Statute 47.10.960 precluded reliance on Title 47 provisions as the source of a tort duty, and Karen L. controlled the negligence issue.
2. The McGrews could not pursue a Bivens-type tort remedy because they had adequate alternative judicial remedies in the CINA and adoption proceedings; the court therefore did not need to recognize a Bivens remedy under the Alaska Constitution.
3. The complaint adequately pleaded an IIED claim and should not have been dismissed under Rule 12(b)(6).
4. The court did not need to decide whether the superior court erred in denying supplementation of the record.

KEY QUOTATIONS

“We affirm the dismissal of their negligence claim, because the state owed them no actionable duty. We also affirm the dismissal of their constitutional claim, because they had alternative litigation remedies available. But because their complaint adequately pleaded an IIED claim, we reverse the Rule 12(b)(6) dismissal of that claim and remand.” (at 320)

“We conclude that the D.S.W. multi-factor duty analysis we applied in Karen L. does not apply to intentional tort claims.” (at 325)

“We AFFIRM the dismissal of the McGrews' negligence and constitutional violation claims. We REVERSE the dismissal of their IIED claim and REMAND for further proceedings.” (at 326)

FACTUAL BACKGROUND

DFYS took emergency custody of the McGrews' infant granddaughter after the deaths of the child's parents and twin sibling and placed the child with a family friend. The McGrews alleged that they notified DFYS of their willingness and ability to take custody, but DFYS withheld or misrepresented placement information, failed to disclose their interest to the CINA court, and failed to disclose an alleged criminal history of one placement adult. They also alleged that DFYS violated applicable statutes, regulations, and internal policies.

PROCEDURAL HISTORY

The McGrews intervened in CINA proceedings concerning their granddaughter and later filed a tort complaint alleging that DFYS mishandled the child's placement and misled them. The superior court dismissed the negligence and IIED claims, declined to recognize a Bivens remedy, denied reconsideration, and entered final judgment for the State. The Alaska Supreme Court affirmed dismissal of the negligence and constitutional claims, reversed dismissal of the IIED claim, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The superior court must conduct further proceedings on the McGrews' IIED claim, including any threshold determination concerning whether the alleged conduct was sufficiently outrageous and whether the alleged emotional distress was sufficiently severe. The parties may also address the effect of *In re Adoption of L.E.K.M.* and the potential application of AS 09.50.250.

CASES CITED

- *In re Adoption of L.E.K.M.*, 70 P.3d 1097 (Alaska 2003)
- *Valdez Fisheries Development Association, Inc. v. Alyeska Pipeline Service Co.*, 45 P.3d 657 (Alaska 2002)
- *Guerrero v. Alaska Housing Finance Corp.*, 6 P.3d 250 (Alaska 2000)
- *Angnabooguk v. State*, 26 P.3d 447 (Alaska 2001)
- *D.S.W. v. Fairbanks North Star Borough School District*, 628 P.2d 554 (Alaska 1981)
- *Wongittilin v. State*, 36 P.3d 678 (Alaska 2001)
- *Waskey v. Municipality of Anchorage*, 909 P.2d 342 (Alaska 1996)
- *Estate of Day v. Willis*, 897 P.2d 78 (Alaska 1995)
- *Karen L. v. State, Department of Health & Social Services, Division of Family & Youth Services*, 953 P.2d 871 (Alaska 1998)
- *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971)
- *Brown v. Ely*, 14 P.3d 257 (Alaska 2000)
- *King v. Alaska State Housing Authority*, 633 P.2d 256 (Alaska 1981)
- *Thoma v. Hickel*, 947 P.2d 816 (Alaska 1997)
- *Dick Fischer Development No. 2, Inc. v. Department of Administration*, 838 P.2d 263 (Alaska 1992)

- *Correctional Services Corp. v. Malesko*, 534 U.S. 61 (2001)
- *Lincoln v. Interior Regional Housing Authority*, 30 P.3d 582 (Alaska 2001)
- *Chizmar v. Mackie*, 896 P.2d 196 (Alaska 1995)
- *Hawks v. State, Department of Public Safety*, 908 P.2d 1013 (Alaska 1995)
- *Silvers v. Silvers*, 999 P.2d 786 (Alaska 2000)
- *Transamerica Title Insurance v. Ramsey*, 507 P.2d 492 (Alaska 1973)
- *Howarth v. Pfeifer*, 443 P.2d 39 (Alaska 1968)
- *Lucas v. Hamm*, 364 P.2d 685 (Cal. 1961)
- *State v. Sandsness*, 72 P.3d 299 (Alaska 2003)

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