

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF  
ARKANSAS, CENTRAL DIVISION

**A.W., a minor, through his parent and next friend, and Lee Wise v. Pine Bluff School District; Jennifer Barbaree, individually and in her official capacity as Superintendent; Timothy Scott, individually and in his official capacity as Principal of Broadmoor Elementary School; Andrea Wright, individually and in her official capacity as an employee of Broadmoor Elementary School; Monica Norful, individually and in her official capacity as an employee of Broadmoor Elementary School; Faseeia Preston, individually and in her official capacity as a State of Arkansas employee; and Arkansas Department of Health**

A.W. v. Pine Bluff School District · No. 4:24-cv-1106-DPM · Decided December 17, 2025

SUMMARY

The United States District Court for the Eastern District of Arkansas grants the Pine Bluff defendants’ motion for summary judgment in an action arising from the administration of an unwanted flu vaccination to a minor student. The court rejects the plaintiffs’ substantive due process claims, concluding that the defendants’ conduct did not shock the conscience, and also rejects their Arkansas claims for outrage and negligence. The court directs the Clerk to terminate the Pine Bluff School District and four associated defendants from the case.

CASE DETAILS

|                       |                                                                                     |
|-----------------------|-------------------------------------------------------------------------------------|
| COURT                 | United States District Court for the Eastern District of Arkansas, Central Division |
| WRITING FOR THE COURT | D.P. Marshall Jr.                                                                   |
| JURISDICTION          | United States District Court for the Eastern District of Arkansas, Central Division |
| DECIDED               | December 17, 2025                                                                   |
| DOCKET                | 4:24-cv-1106-DPM                                                                    |
| DISPOSITION           | other                                                                               |

|                           |                                                                                                                                                                                                           |
|---------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>PROCEDURAL POSTURE</b> | The Pine Bluff defendants moved for summary judgment. The plaintiffs moved under Rule 56(d) to postpone consideration of the merits pending discovery.                                                    |
| <b>STANDARD OF REVIEW</b> | Summary judgment was considered on the undisputed material facts alleged in the third amended complaint, with the evidence viewed in the light most favorable to the plaintiffs on the state-law claims.  |
| <b>PRECEDENTIAL VALUE</b> | Unknown                                                                                                                                                                                                   |
| <b>PARTIES</b>            | A.W., a minor, through his parent and next friend, Lee Wise v. Pine Bluff School District, Jennifer Barbaree, Timothy Scott, Andrea Wright, Monica Norful, Faseeia Preston, Arkansas Department of Health |

## TOPICS

summary judgment substantive due process negligence sovereign immunity  
negligent infliction of emotional distress

## PRACTICE AREAS

civil rights constitutional law civil procedure torts government liability

## QUESTIONS PRESENTED

1. Whether the plaintiffs were entitled under Rule 56(d) to defer consideration of the defendants' summary-judgment motion to conduct additional discovery.
2. Whether administering an unwanted flu shot to A.W. without parental consent violated the plaintiffs' substantive due process rights.
3. Whether the defendants' conduct supported an Arkansas claim for negligent infliction of emotional distress or outrage.
4. Whether the Pine Bluff defendants were immune from the plaintiffs' negligence claim under Arkansas law absent insurance coverage.

## HOLDINGS

1. The plaintiffs were not entitled to defer ruling on the summary-judgment motion because their supporting declaration did not identify specific facts sought through further discovery or explain how those facts were essential to opposing summary judgment.
2. The plaintiffs' substantive due process claims failed because no defendant's conduct was sufficiently shocking to the contemporary conscience, even assuming that A.W. had a liberty interest in refusing an unwanted flu shot and that Lee had a liberty interest in withholding consent on A.W.'s behalf.

3. Arkansas does not recognize a tort for negligent infliction of emotional distress, and the plaintiffs' outrage claim failed because the defendants' conduct was not beyond all possible bounds of decency.
4. The Pine Bluff defendants were entitled to summary judgment on the negligence claim because Arkansas Code section 21-9-301 provides immunity absent applicable insurance coverage, and the defendants submitted evidence that no such coverage existed.

#### KEY QUOTATIONS

*“their lawyer’s supporting declaration doesn’t set forth “the specific facts that they hope to elicit from further discovery” and how “these sought-after facts are essential to resist the summary judgment motion.”” (-2-)*

*“Both A.W. and Lee’s constitutional claims fail, though, because no defendant’s conduct shocked the conscience.” (-3-)*

*“The Pine Bluff defendants are immune absent any insurance coverage.” (-4-)*

#### FACTUAL BACKGROUND

A.W., an elementary school student, received a flu shot at school even though his father, Lee Wise, had not consented to the vaccination. A health aide mistakenly called A.W. to the nurse's office, A.W.'s teacher did not correct the mistake, and Nurse Faseeia Preston administered the shot. A.W. and Lee alleged constitutional and Arkansas tort claims, asserting that similar incidents had occurred previously at the school.

#### PROCEDURAL HISTORY

A.W. and Lee Wise sued the Pine Bluff School District, school employees, a state employee, and the Arkansas Department of Health after A.W. received a flu shot without parental consent. The district court denied the plaintiffs' Rule 56(d) request, granted the Pine Bluff defendants' motion for summary judgment on the constitutional and state-law claims, and directed the Clerk to terminate several Pine Bluff defendants.

#### DISPOSITION

other

#### CASES CITED

- Marlow v. City of Clarendon, 78 F.4th 410, 416-17 (8th Cir. 2023)
- Torgerson v. Roberts County of South Dakota, 139 F.4th 638, 644 (8th Cir. 2025)
- Cruzan by Cruzan v. Director, Missouri Department of Health, 497 U.S. 261, 279 n.7 (1990)
- Washington v. Harper, 494 U.S. 210, 229 (1990)
- Buckley v. Hennepin County, 9 F.4th 757, 762-63 (8th Cir. 2021)
- Mitchell v. Dakota County Social Services, 959 F.3d 887, 897 (8th Cir. 2020)
- Brandt by & through Brandt v. Griffin, 147 F.4th 867, 885-87 (8th Cir. 2025) (en banc)
- B.A.B., Jr. v. Board of Education of City of St. Louis, 698 F.3d 1037, 1040-41 (8th Cir. 2012)
- Dowty v. Riggs, 2010 Ark. 465, at 6-11, 385 S.W.3d 117, 120-23

- Duggar v. City of Springdale, 2020 Ark. App. 220, at 10, 599 S.W.3d 672, 682

## OPINION

IN THE UNITED STATES DISTRICT COURT EASTERN DISTRICT OF ARKANSAS  
CENTRAL DIVISION A.W., a minor, through his parent and next friend, and LEE WISE  
PLAINTIFFS No. 4:24-cv-1106-DPM PINE BLUFF SCHOOL DISTRICT; JENNIFER  
BARBAREE, individually and in her official capacity as Superintendent; TIMOTHY SCOTT,  
individually and in his official capacity as Principal of Broadmoor Elementary School; ANDREA  
WRIGHT, individually and in her official capacity as an employee of Broadmoor Elementary  
School; MONICA NORFUL, individually and in her official capacity as an employee of  
Broadmoor Elementary School; FASEEIA PRESTON, individually and in her official capacity as  
a State of Arkansas employee; and ARKANSAS DEPARTMENT OF HEALTH DEFENDANTS  
ORDER No child likes to get a shot.

No parent wants their child to get a shot without their consent. That unfortunately happened, which is how we got here. It was flu shot day at Broadmoor Elementary. A.W. wasn't supposed to get one. Lee Wise, A.W.'s father, hadn't consented. But Monica Norful, a health aide, mistakenly called on A.W. to report to the nurse's office. Andrea Wright, A.W.'s teacher, didn't speak up.

And Nurse Faseeia Preston administered the shot. A.W. and Lee say that this sort of thing has happened before at Broadmoor. So, they sued everyone involved, bringing constitutional and state law claims. The Pine Bluff defendants move for summary judgment. \* Lee and A.W. argue that the Court should postpone ruling on the merits until they can conduct discovery.

It's true that the motion was filed early in the case. Little discovery has been done. But the undisputed material facts come from what's alleged in the third amended complaint. (With one exception, the affidavit and payroll records attached to the motion deal with issues that aren't essential to deciding summary judgment.

The Court hasn't considered those materials, except as specified later in this Order.) And their lawyer's supporting declaration doesn't set forth "the specific facts that they hope to elicit from further discovery" and how "these sought-after facts are essential to resist the summary judgment motion." Marlow v. City of Clarendon, 78 F.3d 410, 416 (8th Cir.

2023) (quotation omitted). Their Rule 56(d) motion, Doc. 27, is denied. Marlow, 78 F.3d at 416-17. -2- \* A.W. and Lee say that their substantive due process rights were violated. To prevail, they must show that each defendant violated one or more of their fundamental constitutional rights and that the defendants' conduct was shocking to the contemporary conscience.

Torgerson v. Roberts County of South Dakota, 139 F.3d 638, 644 (8th Cir. 2025). A.W. had a liberty interest in refusing an unwanted flu shot, though it isn't clear that A.W. actually refused the shot. Cruzan by Cruzan v. Director, Missouri Department of Health, 497 U.S. 261, 279 n.7 (1990);

Washington v. Harper, 494 U.S. 210, 229 (1990); Buckley v. Hennepin County, 9 F.4th 757, 762-63 (8th Cir.

2021). The Court assumes without deciding that Lee had a liberty interest in withholding consent on his child's behalf. Mitchell v. Dakota County Social Services, 959 F.3d 887, 897 (8th Cir. 2020); but see Brandt by & through Brandt v. Griffin, 147 F.4th 867, 885-87 (8th Cir. 2025) (en banc). Both A.W. and Lee's constitutional claims fail, though, because no defendant's conduct shocked the conscience.

B.A.B., Jr. v. Board of Education of City of St. Louis, 698 F.3d 1037, 1040-41 (8th Cir. 2012). This vaccination shouldn't have happened. A.W. and Lee are understandably upset. But their due process rights were not violated. -3- \* A.W. and Lee bring two state law claims against the Pine Bluff defendants. One they style as "negligent infliction of emotional distress (outrage)." Doc.

21 at 6-7. Arkansas does not recognize a tort for the negligent infliction of emotional distress. Dowty v. Riggs, 2010 Ark. 465, at 6-11, 385 S.W.3d 117, 120-23. The tort of outrage is the intentional infliction of emotional distress. Duggar v. City of Springdale, 2020 Ark. App. 220, at 10, 599 S.W.3d 672, 682. And, viewing the evidence in the light most favorable to A.W. and Lee, none of the Pine Bluff defendants' conduct was "beyond all possible bounds of decency." Ibid; see also B.A.B., 698 F.3d at 1040-41.

Their other claim is for negligence. The Pine Bluff defendants are immune absent any insurance coverage. Ark. Code Ann. § 21-9-301. They've submitted an affidavit saying that there isn't any (this is the exception mentioned earlier). Doc. 24-1 at 1. A.W. and Lee haven't met proof with proof.

The Pine Bluff defendants are therefore entitled to summary judgment. \* Motion for summary judgment, Doc. 24, granted. The Court directs the Clerk to terminate the Pine Bluff School District, Jennifer Barbaree, Timothy Scott, Andrea Wright, and Monica Norful as defendants. -4- So Ordered. D.P. Marshall Jr. United States District Judge 1% )Stetmlor 2025 \_ 5-