

STATE OF MICHIGAN  
COURT OF APPEALS

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JEFFREY GARRETT and MATTIA GARRETT,  
Individually, and DONELL GARRETT and  
LONELL GARRETT, Minors, by their Next  
Friends and Legal Parents JEFFREY GARRETT  
and MATTIA GARRETT,

UNPUBLISHED  
July 22, 2003

Plaintiffs-Appellants,

v

ORCHARDS CHILDREN'S SERVICES,

No. 239632  
Wayne Circuit Court  
LC No. 00-032132-NZ

Defendant-Appellee.

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Before: Owens, P.J., and Bandstra and Murray, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order granting defendant's motion for summary disposition. We affirm.

Plaintiffs had sought to recover from defendant<sup>1</sup> under theories of adoption fraud, fraudulent concealment, failure to provide adoption records, and breach of contract. In granting defendant's motion for summary disposition on all counts, the trial court ruled that defendant was absolutely immune from liability pursuant to *Martin v Children's Aid Society*, 215 Mich App 88; 544 NW2d 651 (1996). In *Martin*, we ruled that social workers are absolutely immune from civil lawsuits arising out of the initiation and monitoring of "child placement proceedings and placements." *Martin, supra* at 95-99.

We review de novo a trial court's ruling on a motion for summary disposition. *Beaudrie v Henderson*, 465 Mich 124, 129; 631 NW2d 308 (2001). Summary disposition is appropriate under MCR 2.116(C)(7) where a claim is barred by immunity.<sup>2</sup> In reviewing a motion for

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<sup>1</sup> Defendant is a state licensed agency that contracts with the Michigan Family Independence Agency ("FIA"), which used to be called the Department of Social Services ("DSS"), to provide foster care and adoption services.

<sup>2</sup> Although the trial court referenced MCR 2.116(C)(8) during the initial stages of the hearing, it is apparent from the text of the trial court's ruling that it intended to grant defendant's motion for summary disposition based on immunity. Accordingly, MCR 2.116(C)(7) was the more  
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summary disposition pursuant to MCR 2.116(C)(7), we “must accept the nonmoving party’s well-pleaded allegations as true and construe the allegations in the nonmovant’s favor to determine whether any factual development could provide a basis for recovery.” *Diehl v Danuloff*, 242 Mich App 120, 123; 618 NW2d 83 (2000). “The court must consider any pleadings, affidavits, depositions, admissions, or other documentary evidence that has been submitted by the parties . . . [although] the moving party is not required to file supportive material.” *Id.* Whether a claim is barred by immunity is a question of law. *Id.*

Plaintiffs contend that the trial court erred in ruling that defendant was absolutely immune from liability because defendant violated plaintiffs’ “clearly established statutory right,” MCL 710.27, by not providing plaintiffs with pertinent birth information concerning the minor children. Indeed, in *Martin*, we noted that the DSS was “protected from liability unless their conduct violated a clearly established statutory or constitutional right of plaintiffs of which the DSS defendants should have known.” *Martin, supra* at 94. However, the *Martin* panel recognized that the DSS was only entitled to “qualified immunity,” whereas social workers were entitled to “absolute immunity.”<sup>3</sup> *Id.* In addition to social workers, this absolute immunity extended to Children’s Aid Society (CAS)—a private organization of social workers that contracted with the DSS to provide child protection services. *Id.* at 90-92. Here, defendant is not the DSS. Rather, as a private organization contracting with FIA, defendant is the equivalent of CAS. Thus, plaintiffs’ reliance on the “clearly established statutory or constitutional right” language is misplaced. Instead, defendant is absolutely immune from civil liability arising out of its placement of the minor children. Accordingly, plaintiff’s contention of error is without merit.

Plaintiffs also contend that the trial court erred in ruling that defendant was absolutely immune because defendant was “not engaged in a prosecutorial function.” However, in *Spikes v Banks*, 231 Mich App 341, 343-344; 346-347; 586 NW2d 106 (1998), we ruled that a child care organization was absolutely immune from potential civil liability arising out of its placement of a child in a foster case setting. Thus, contrary to plaintiffs’ contention, absolute immunity is not limited to merely removing the child from an abusive setting. Accordingly, the trial court did not err in ruling that defendant was absolutely immune from liability in a civil lawsuit. Consequently, the trial court did not err in granting defendant’s motion for summary disposition pursuant to MCR 2.116(C)(7).<sup>4</sup>

Affirmed.

/s/ Donald S. Owens  
/s/ Richard A. Bandstra  
/s/ Christopher M. Murray

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(...continued)

appropriate subsection at issue.

<sup>3</sup> To be sure, the *Martin* panel cautioned that absolute immunity may not extend to a civil rights violation, 42 USC 1983. *Martin, supra* at 95 n 5. However, that specific federal statutory provision is not relevant to the instant matter.

<sup>4</sup> We may affirm where the trial court reaches the right result, but for the wrong reason. *Etefia v Credit Technologies, Inc*, 245 Mich App 466, 470; 628 NW2d 577 (2001).