

NOTICE
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2014 IL App (5th) 120411-U

NO. 5-12-0411

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

CHARLES WILLIAMS and STACEY WILLIAMS,)	Appeal from the
as Co-Independent Administrators for the Estate of)	Circuit Court of
Brandon C. Williams, Deceased, and CHARLES)	Monroe County.
WILLIAMS and STACEY WILLIAMS,)	
Individually,)	
)	
Plaintiffs-Appellants,)	
)	
v.)	No. 09-L-7
)	
BRIAN CHARRON, HATTIE DOYLE, and)	
VALMEYER COMMUNITY UNIT SCHOOL)	
DISTRICT NO. 3,)	Honorable
)	Dennis B. Doyle,
Defendants-Appellees.)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court.
Presiding Justice Welch and Justice Goldenhersh concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court's entry of summary judgment in favor of the defendants was appropriate under Illinois Tort Immunity Act. Trial court did not abuse its discretion in denying the plaintiffs' motion for leave to amend complaint.

¶ 2 Plaintiffs, Charles Williams and Stacey Williams, individually, and as coadministrators for the estate of their deceased son, Brandon C. Williams, appeal the grant of summary judgment in favor of defendants, Brian Charron, Hattie Doyle, and

Valmeyer Community Unit School District No. 3. The plaintiffs also appeal the denial of their motion for leave to file an amended complaint, filed prior to the hearing on the defendants' motion for summary judgment. We affirm.

¶ 3 In October of 2008, the plaintiffs' son, Brandon Williams, was a 15-year-old sophomore attending Valmeyer High School. The defendant Brian Charron was superintendent for Valmeyer Community Unit School District No. 3, and the defendant Hattie Doyle was principal of Valmeyer High School. On October 29, Brandon took his own life, after being questioned by defendants Charron and Doyle about several criminal incidents that had recently occurred at Valmeyer High School.

¶ 4 The record reveals that in mid-October, one of the school janitors spotted several students leaving a concession stand after school hours. Upon further investigation, it was learned that these students had vandalized the area, smoked marijuana inside the stand, and consumed several food items. The three students who were seen leaving the concession stand were questioned by defendants Charron and Doyle and eventually confessed to the vandalism. One of these three students also implicated several other students, claiming that, over the past summer, the other students had stolen a master key to the school, which they had been using to gain access to school property after hours. Armed with this additional information, the defendants began questioning the newly implicated students, one of whom was Brandon. The first round of questioning of these newly implicated students took place on Friday, October 24, 2008. At that time, all of the students denied any involvement in the concession stand incident or in the theft of or use of the master key.

¶ 5 Over the weekend, the missing master key mysteriously appeared on the windshield of Superintendent Charron's vehicle, parked outside his house. On Monday, October 27, defendants Charron and Doyle decided to reinterview the three newly implicated students about the theft of the master key and its unexpected return over the weekend. All three continued to deny any involvement with the key. On Wednesday, October 29, the three students were summoned once again for further questioning. Two of the students finally confessed to having taken the master key. According to them, Brandon was not involved in the taking of the key but had been present on several occasions when they and others had entered the school after hours. Brandon was implicated, however, in possessing the key at various times over the past few months as well as assisting in the return of the key to Superintendent Charron's vehicle.

¶ 6 During the third round of questioning on Wednesday, October 29, Brandon finally admitted to helping return the master key and to having entered school property after hours with others over the summer. He continued to deny, however, any involvement in any other incident of wrongdoing as well as in the concession stand incident despite the fact that he had been observed walking away from the concession stand just prior to the vandalism incident. According to the plaintiffs, Superintendent Charron no longer believed Brandon's claims of innocence, given that Brandon had been lying to them for several days. Again, according to the plaintiffs, Superintendent Charron made threats and accusations against Brandon with the intent to scare, humiliate, and intimidate him in to confessing his true involvement. These threats included turning the matter over to the police which, according to the defendants, would result in Brandon being found guilty of

a Class 1 felony, something that would follow him for the rest of his life. Other threats focused on the reimbursement of \$16,000 to cover the cost of changing all the school locks and Brandon's suspension and expulsion from school. The plaintiffs also alleged that during this last round of questioning, Superintendent Charron kicked a trash can, pounded his fist on a desk, yelled at Brandon while leaning in close proximity to his face, called Brandon a liar, and told Brandon that he was disgusting. In his deposition, Superintendent Charron admitted to kicking the trash can and further admitted that such behavior was not appropriate. He also admitted to telling the students that they could be charged with a Class 1 felony and that it would cost \$12,000 to \$16,000 to change the locks. He further agreed that his questioning of Brandon had been more intense on Wednesday than at the other two sessions. The other two students testified via deposition that Brandon was upset, frustrated, and very aggravated after the last round of questioning. Principal Doyle, however, testified that there was no indication that Brandon was emotionally unstable after the last round of questioning.

¶ 7 At the end of the questioning on Wednesday afternoon, Brandon was informed that he was suspended immediately from school and was facing expulsion. After Brandon left the school at approximately 3:55 p.m., Superintendent Charron attempted to contact Brandon's father to inform him that his son had been suspended. His father had already left work, however, and Superintendent Charron was not able to reach him. Superintendent Charron then called Brandon's mother at approximately 4:20 p.m. to inform her of her son's suspension and to discuss the situation. Prior to these telephone calls, neither parent had been contacted by the school because, according to

Superintendent Charron, all of the incidents were still under investigation and Brandon had not admitted to any participation in any of the events until that final round of questioning. After he was suspended, Brandon returned home, made a call to a friend, and then shot himself with his father's gun. He died the next day of his injuries.

¶ 8 The plaintiffs filed suit against the defendants claiming that they were guilty of making numerous threats to their son and verbally abusing him over the course of several days resulting in his severe emotional distress and suicide. The defendants countered with a motion for summary judgment based on the Illinois Local Governmental and Governmental Employees Tort Immunity Act (Act) (745 ILCS 10/2-201, 2-109 (West 2008)). The trial court agreed with the defendants and granted their motion for summary judgment. The plaintiffs now argue on appeal that the court erred in granting the defendants' motion, particularly when there were several issues of material fact as to whether the defendants' conduct fell within the purview of the Act.

¶ 9 A motion for summary judgment should be granted only when the pleadings, depositions, and affidavits reveal that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2008). Because summary judgment is such a drastic means of disposing of litigation (see *Community Bank of Greater Peoria v. Carter*, 283 Ill. App. 3d 505, 508, 669 N.E.2d 1317, 1319 (1996)), it should only be granted when the right of the moving party is free from doubt (see *Loyola Academy v. S&S Roof Maintenance, Inc.*, 146 Ill. 2d 263, 271, 586 N.E.2d 1211, 1215 (1992)). A triable issue precluding summary judgment exists when the material facts are disputed, or when the material facts are undisputed but

reasonable persons might draw different inferences from the undisputed facts. *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 43, 809 N.E.2d 1248, 1256 (2004). Moreover, any inferences to be drawn from the evidence are to be construed strictly against the movant and liberally in favor of the opponent. *Adams*, 211 Ill. 2d at 43, 809 N.E.2d at 1256. If, however, after considering all of the evidence in the record, it cannot be established with reasonable certainty that the defendant's acts caused the plaintiff's injury, then summary judgment is appropriate. *Chelkova v. Southland Corp.*, 331 Ill. App. 3d 716, 729, 771 N.E.2d 1100, 1111 (2002). Ultimately, review of a grant or denial of summary judgment is *de novo*. *Warren v. Burris*, 325 Ill. App. 3d 599, 603, 758 N.E.2d 889, 892 (2001).

¶ 10 The trial court granted the defendants' motion for summary judgment here because the court concluded that Superintendent Charron and Principal Doyle were immune from liability under the provisions of the Act (745 ILCS 10/2-201 (West 2008)). The court further determined that Valmeyer Community Unit School District No. 3 was also immune from liability under the Act for the acts of its employees (745 ILCS 10/2-109 (West 2008)). We conclude the court properly granted summary judgment in favor of the defendants in this instance.

¶ 11 The purpose of the Act is to protect local public entities and public employees from liability arising from the operation of government. *Kevin's Towing, Inc. v. Thomas*, 351 Ill. App. 3d 540, 544, 814 N.E.2d 1003, 1007 (2004). The Act includes school districts within the definition of protected local public entities. See 745 ILCS 10/1-206 (West 2008). Section 2-109, in particular, provides that "[a] local public entity is not

liable for an injury resulting from an act or omission of its employee where the employee is not liable." 745 ILCS 10/2-109 (West 2008). Consequently, if Superintendent Charron and Principal Doyle are determined to be immune from liability, so too is Valmeyer Community Unit School District No. 3. Section 2-201 of the Act provides: "Except as otherwise provided by Statute, a public employee serving in a position involving the determination of policy or the exercise of discretion is not liable for an injury resulting from his act or omission in determining policy when acting in the exercise of such discretion even though abused." 745 ILCS 10/2-201 (West 2008). In other words, in order for immunity protection under the Act to be applicable, the defendants' acts or omissions must be both a determination of policy and an exercise of discretion. *Capps v. Belleville School District No. 201*, 313 Ill. App. 3d 710, 715, 730 N.E.2d 81, 86 (2000). Policy determinations are considered to be those acts that require the public entity or employee to balance competing interests and to make a judgment call as to what solution will best serve each of those interests. *Albers v. Breen*, 346 Ill. App. 3d 799, 808, 806 N.E.2d 667, 675 (2004). We agree that defendants Charron and Doyle were exercising their discretion while involved in a series of policy determinations throughout the course of the disciplinary matters at issue here.

¶ 12 Over the course of several days in late October of 2008, the defendants were faced with the daunting task of determining exactly what had happened inside their school and who was involved. From the beginning, Superintendent Charron and Principal Doyle were engaged in a series of judgment calls to balance competing interests while investigating the student theft and vandalism at their school. First they used their

judgment to handle the allegations within the school as a school matter so that the students would not be charged by the police with a crime. They next used their judgment to balance the competing interests of the school district and the students themselves during the investigation. Both the defendants testified that there was no guide on how to investigate allegations of school rule violations or criminal allegations, nor had they received any training on how to question students involved in disciplinary matters. The school agenda or handbook, upon which the plaintiffs rely, established only general disciplinary guidelines broad enough to allow school administrators to use their discretion in determining the appropriate course of action and consequence depending on the circumstances and students involved. The techniques Superintendent Charron and Principal Doyle decided to use for questioning changed over the course of the investigation as they acted in the exercise of their discretion in determining how the investigation would proceed. Lastly, the defendants also made the decision as to when to call or involve the students' parents in order to balance the best interests of the students, the parents, and the general welfare of the student body as a whole. As Superintendent Charron stated, they did not contact Brandon's parents following the first questioning on Friday, October 24, because they did not believe Brandon had anything to do with the concession stand or master key incident. There was no reason to involve his parents if he was innocent of any wrongdoing. At that point, the defendants were still just investigating the matter. The same was true for the second day of questioning on Monday, October 27, because the defendants still believed Brandon was innocent. When the story finally unfolded on the third day of questioning, however, Superintendent

Charron attempted to call Brandon's parents after Brandon admitted to his participation in the master key incident. Again, prior to October 29, he had no reason to call Brandon's parents as the investigation was still ongoing. Superintendent Charron testified he determined it was appropriate to contact a student's parent concerning alleged criminal conduct only after an allegation was determined to be founded or the student admitted guilt. This is exactly what Superintendent Charron did. The defendants were engaged in an investigation of several incidents that required the balancing of various competing interests and required the use of their judgment and discretion as to how best to handle the situation based upon the various considerations present. They were not performing ministerial acts required to be carried out with any specificity by statute or ordinance or in obedience to any particular authority. Compare *Snyder v. Curran Township*, 167 Ill. 2d 466, 474, 657 N.E.2d 988, 993 (1995) (installation of street sign) with *Hascall v. Williams*, 2013 IL App (4th) 121131, ¶ 28 (guidelines did not mandate particular response to specific set of circumstances). Additionally, there were no facts pled that Brandon was troubled in any way prior to the events of October 29, 2008. Moreover, no facts were pled that even remotely suggested that Brandon had ever contemplated suicide, or if he did, that it was known to the defendants. The likelihood of an injury occurring from the failure to notify Brandon's parents under these circumstances was nonexistent. It simply is unforeseeable that suicide will occur from a failure to immediately notify parents every time a school employee investigates and questions a student about a possible disciplinary rule violation. See *La Bombarbe v. Phillips Swager Associates, Inc.*, 130 Ill. App. 3d 896, 474 N.E.2d 942 (1985) (elements of duty include

forseeability, the likelihood of injury, the magnitude of the burden guarding against it, and the consequences of placing that burden upon the defendant). Again, Superintendent Charron immediately contacted Brandon's parents upon determining that a violation of school disciplinary rules had occurred and that Brandon had been involved. We acknowledge that the plaintiffs object to the manner in which the investigation was conducted, and this court certainly does not condone the acts of intimidation allegedly used by Superintendent Charron when questioning Brandon during the third day of interviews. Nevertheless, the Act makes clear that discretion, even though abused, remains subject to immunity. *Albers*, 346 Ill. App. 3d at 808-09, 806 N.E.2d at 675; see also *In re Chicago Flood Litigation*, 176 Ill. 2d 179, 196, 680 N.E.2d 265, 273 (1997). Accordingly, we see no reason to overturn the judgment of the court granting summary judgment in favor of the defendants under these circumstances.

¶ 13 The plaintiffs also contend on appeal that the court erred in denying their motion for leave to amend the complaint. The plaintiffs argue that Illinois law supports a liberal policy of allowing amendments to pleadings so as to enable parties to fully present their alleged causes of action especially while still in the pleadings stages. See *Simon v. Wilson*, 291 Ill. App. 3d 495, 508, 684 N.E.2d 791, 800 (1997). The plaintiffs point out that their motion was filed before the hearing was held on the defendants' motion for summary judgment while the case was still in the pleading stage and that there was no prejudice to the defendants. The court denied the plaintiffs' motion, however, because it was not filed until a year after the court had entered an earlier order pertaining to the issue of the defendants' failure to supervise, and because section 24-24 of the School

Code (105 ILCS 5/24-24 (West 2008)) does not impose a duty on the defendants under these circumstances to provide supervision. We agree.

¶ 14 The decision to grant leave to amend a complaint rests within the sound discretion of the trial court, and we, as a reviewing court, will not reverse that decision absent an abuse of the court's discretion. *I.C.S. Illinois, Inc. v. Waste Management of Illinois, Inc.*, 403 Ill. App. 3d 211, 219, 931 N.E.2d 318, 325 (2010). The relevant factors considered in determining whether to allow amendment of pleadings are: (1) whether the proposed amendment would cure the defective pleadings, (2) whether other parties would sustain prejudice or surprise by virtue of the proposed amendment, (3) whether the proposed amendment is timely, and (4) whether previous opportunities to amend the pleadings could be identified. *Hayes Mechanical, Inc. v. First Industrial, L.P.*, 351 Ill. App. 3d 1, 7, 812 N.E.2d 419, 424 (2004). The primary consideration is whether the amendment would further the ends of justice (*Ruklick v. Julius Schmid, Inc.*, 169 Ill. App. 3d 1098, 1113, 523 N.E.2d 1208, 1217 (1988)), but the right to amend is neither absolute nor unlimited (*I.C.S. Illinois*, 403 Ill. App. 3d at 219, 931 N.E.2d at 325). When it is apparent that even after amendment no cause of action can be stated, leave to amend should be denied. *Regas v. Associated Radiologists, Ltd.*, 230 Ill. App. 3d 959, 968, 595 N.E.2d 1223, 1229 (1992). Such is the situation here. The proposed amendment would not have cured the plaintiffs' defective pleadings.

¶ 15 We initially note that the plaintiffs' proposed amendment does not contain any facts other than those previously alleged. The proposed amendment merely adds language suggesting an alleged duty to supervise Brandon and the defendants' alleged

failure to do so. The trial court had already determined on January 4, 2011, after the issue had been fully briefed by the parties, that the "supervision" language of section 3-108 of the Act (745 ILCS 10/3-108 (West 2008)) was inapplicable. Similarly, section 24-24 of the School Code (105 ILCS 5/24-24 (West 2008)) does not impose a duty upon the defendants to provide supervision pursuant to section 3-108(b) of the Act. Section 24-24 provides that educational employees stand in the relation of parents and guardians in all matters relating to discipline and that relationship may be exercised at any time for the safety and supervision of the pupils. See 105 ILCS 5/24-24 (West 2008). Moreover, section 3-108 of the Act only applies to public employees who specifically have a duty to provide supervision. Failure to supervise contemplated by section 3-108 typically concerns situations such as those involving adult leaders overseeing after-school programs, lifeguards supervising swimming pools, and teachers supervising physical education classes. See *Doe v. Dimovski*, 336 Ill. App. 3d 292, 298, 783 N.E.2d 193, 198 (2003). The conduct at issue here involved the defendants' administrative investigation into several students' involvement in breaches of disciplinary rules. The plaintiffs' proposed amendment would not have cured the pleadings because it did not establish a duty to supervise.

¶ 16 We also note that the plaintiffs' motion for leave to amend was filed just one week before the scheduled hearing on the defendants' motion for summary judgment and some 15 months after the trial court had ruled that a claim based on a duty to supervise was inapplicable given that the plaintiffs had not alleged the duty in their complaint. The plaintiffs had already twice amended their complaint. See *Mendelson v. Ben A.*

Borenstein & Co., 240 Ill. App. 3d 605, 620, 608 N.E.2d 187, 196 (1992) (affirming denial of motion to amend because the plaintiff had amended complaint twice before, had opportunity to add proposed amendment before, and offered no explanation for failure to include the claim). The belated timing of the plaintiffs' motion would prejudice the defendants especially when the plaintiffs had had previous opportunities to amend the pleading. Accordingly, the trial court did not abuse its discretion in denying the plaintiffs' motion for leave to amend.

¶ 17 School administrators face challenging responsibilities on a daily basis which require a delicate balancing of competing interests. Illinois law protects these employees as they make discretionary policy determinations in their attempt to best serve the interests of the school and its students. Again, we acknowledge that Superintendent Charron's actions may be viewed by some as outrageous, and granting him and Principal Doyle immunity may seem like an injustice under the circumstances. The trial court, however, was obligated to follow the law. See *Hascall*, 2013 IL App (4th) 121131, ¶ 38. We therefore conclude the court properly granted the defendants' motion for summary judgment based on the immunity provided under the Act.

¶ 18 For the foregoing reasons, we affirm the judgment of the circuit court of Monroe County granting summary judgment in favor of the defendants.

¶ 19 Affirmed.