

IN THE SUPREME COURT OF THE STATE OF NEVADA

TIFFANY B., AN INDIVIDUAL; AND
TIFFANY B., AS LEGAL GUARDIAN
TO G.B., F/K/A G.K., A MINOR CHILD,
Appellant,

vs.

RONALD D. SLAY, AN INDIVIDUAL;
AND W.S.C., INC., A NEVADA
CORPORATION,
Respondents.

No. 50419

FILED

OCT 21 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Appeal from district court orders, certified as final under NRCPC 54(b), dismissing Ronald D. Slay and his affiliated entity, W.S.C., Inc. as parties defendant. Eighth Judicial District Court, Clark County; David B. Barker, Judge.

In this case, appellant Tiffany B. seeks damages individually and as guardian for her minor daughter for alleged malpractice by a court-appointed polygraph examiner. The district court concluded that the polygraph examiner, Slay, enjoyed absolute quasi-judicial immunity and dismissed him and his affiliated entity with prejudice. We affirm.

“[C]ourt-appointed experts are entitled to absolute quasi-judicial immunity when they provide information that a court may utilize in rendering a decision because they act, in that context, as an arm of the court.” State of Nevada v. Dist. Ct. (Ducharm), 118 Nev. 609, 618, 55 P.3d 420, 426 (2002); see Foster v. Washoe County, 114 Nev. 936, 964 P.2d 788 (1998). The expert here, like the psychologist in Duff v. Lewis, 114 Nev. 564, 958 P.2d 82 (1998), was appointed by a family court judge, who in



turn relied on the expert's challenged report in determining custody and visitation, causing the injury alleged in the later, separate suit.¹ For the public policy reasons addressed in Duff, the remedy for such injury by a court-appointed expert is not an individual claim for damages. Rather, the remedy is to engage "the adversarial process of cross-examination [in the original action] and [take] the opportunity to bring to the [appointing] judge's attention any alleged deficiencies in the evaluation." Id. at 571, 958 P.2d at 87 (internal quotation omitted). Of note, this remedy worked for Tiffany—she attacked the polygraph exam results before the family court, presented a new examiner's report, and ultimately persuaded the family court judge to revoke the original, injurious order.

Nor does the allegation that the polygraph examiner violated professional standards by accepting appointment despite a disqualifying and undisclosed conflict of interest overcome the immunity. Lavit v.

¹The family court judge ordered the polygraph examination based on Tiffany stipulating to submit to it to help the judge sort out the credibility-dependent custody and visitation dispute between Tiffany and her husband. The stipulation obviates the otherwise glaring problem with a judge relying on polygraph evidence, which this court has held does not qualify as admissible expert testimony under NRS 50.275 or as more probative than prejudicial under NRS 48.035. American Elevator Co. v. Briscoe, 93 Nev. 665, 671, 572 P.2d 534, 538 (1977); see Corbett v. State, 94 Nev. 643, 644-45, 647, 584 P.2d 704-05 (1978). While we recognize that "trial judges may find it necessary to consult with non-judicial professionals in resolving child custody disputes," Lavit v. Superior Court, 839 P.2d 1141, 1146 (Ariz. Ct. App. 1992), and have recognized quasi-judicial immunity for CASA volunteers and others who assist a family court in the custody and visitation setting, Foster, 114 Nev. at 943-44, 964 P.2d at 793, we, in this instance, neither endorse nor disapprove the practice followed in this case beyond noting our concern with it.

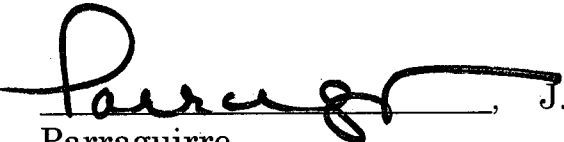
Superior Court, 839 P.2d 1141 (Ariz. Ct. App. 1992) (holding that an undisclosed conflict of interest did not vitiate the quasi-judicial immunity of the court-appointed psychologist on whose report the family court relied), cited with approval in Duff, 114 Nev. at 570-71, 958 P.2d at 86-87; see Duff, 114 Nev. at 567-68, 571, 958 P.2d at 84-85, 87 (upholding quasi-judicial immunity even though the state licensing board subsequently disciplined the expert for violating applicable professional standards in connection with his work on the case; noting that referring a court-ordered expert to a licensing or professional board for disciplinary sanctions is among the remedies available to a party aggrieved by the work of a court-appointed expert).

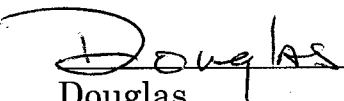
Finally, the amended complaint's tangled allegations about Slay disclosing Tiffany's polygraph exam results directly to Tiffany's later retained expert instead of to Tiffany's lawyer do not survive review under NRCP 8 and 12(b)(5). It is hard to fathom how these allegations state a claim for relief, since the second examiner was retained to refute the first examiner's report and presumably would have had to eventually review the report in any event. What is more, the statute allegedly violated by this disclosure does not provide a private right of action. NRS 648.197. And again, if the disclosure violated professional standards, the remedy lies with vigorous cross-examination and/or reporting the violation to the

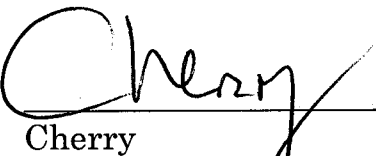
licensing or disciplinary board, not in a separate suit for damages. Duff,
114 Nev. at 570-71, 958 P.2d at 87. Accordingly, we


AFFIRM the district court's orders.

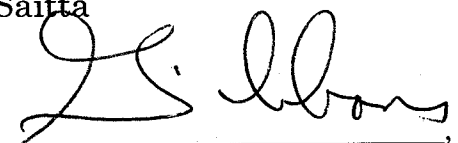

_____, C.J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons


_____, J.
Pickering

cc: Hon. David B. Barker, District Judge
Ara H. Shirinian, Settlement Judge
Anthony L. Barney, Ltd.
Law Office of Lisa Rasmussen
Alverson Taylor Mortensen & Sanders
Eighth District Court Clerk