

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JASON JACOBS : CIVIL ACTION  
 :  
 v. :  
 :  
 IMPACT PROJECT, INC., et al. : NO. 04-2074

MEMORANDUM

Bartle, J.

June 16, 2005

Plaintiff Jason Jacobs, as the administrator of the estate of his brother Matthew D. Jacobs, has brought an action arising from the tragic death of Matthew Jacobs, a twelve-year-old boy. The complaint alleges that Matthew was struck and killed by a moving locomotive in Amity Township, Berks County, Pennsylvania. The defendants are: (1) Impact Project, Inc. ("Impact"), a private company that administered the foster care placement of Matthew; (2) the Berks County Department of Child and Youth Services ("DCYS"); (3) Susan Hoke, the caseworker at Berks County DCYS who was assigned to Matthew's case; and (4) Thomas and Kathy Sigaofoos, the foster parents with whom Matthew was living at the time of his death.

Plaintiff has brought claims against Hoke pursuant to 42 U.S.C. § 1983 for violation of Matthew's Fourteenth Amendment substantive due process right to placement in a foster home that provided an appropriate level of care and supervision. Compl. ¶¶ 40, 41. Berks County DCYS entered into a "Placement Provider Agreement" with Impact to administer Matthew's foster

care. Impact then entered into a professional foster parent contract with the Sigafooses. Because Berks DCYS was working through Impact, Hoke never had any direct contact with the Sigafooses while Matthew was under their care.

To establish that Hoke violated Matthew's right to a minimally safe foster care placement, plaintiff must demonstrate that her conduct rose to the level that was "so ill-conceived or malicious that it 'shocks the conscience.'" Nicini v. Morra, 212 F.3d 798, 810 (3d Cir. 1983) (quoting County of Sacramento v. Lewis, 523 U.S. 846 (1998)). In the foster care context, conduct that is "deliberately indifferent" will shock the conscience. Nicini, 212 F.3d at 810. Plaintiff must establish that Hoke knew of and disregarded an excessive risk to Matthew's health and safety. Id. at 811 (citations omitted).

Reviewing the evidence in the light most favorable to plaintiff, we find that he cannot prove sufficient facts from which a reasonable fact-finder could determine that Hoke actually knew of and disregarded an excessive risk of serious harm to Matthew under such circumstances that her conduct "shocks the conscience." Id. at 810. Indeed, the level of culpability, if any, was no greater than in Nicini, where our Court of Appeals granted summary judgment on a foster child's § 1983 claims against a state caseworker. In that case, the court found that the caseworker's conduct in allowing a foster child to be placed with an abusive family did not rise to the level of deliberate indifference. At most, Hoke may have been negligent in allowing

Matthew to remain with the Sigafos. "Mere negligence is never sufficient for substantive due process liability." Id.

(citations omitted).

Accordingly, we will grant the motion of Susan Hoke for summary judgment.

