No. _____

In The
Supreme Court of the United States

_____

Anmarie Calgaro,

Petitioner,

vs.

St. Louis County; Linnea Mirsch, individually and in her official capacity as Interim Director of St. Louis County Public Health and Human Services; Fairview Health Services, a Minnesota nonprofit corporation; Park Nicollet Health Services, a nonprofit corporation; St. Louis County School District; and Michael Johnson, individually and in his official capacity as Principal of the Cherry School, St. Louis County School District, and E.J.K.,

Respondents.

MOTION FOR EXTENSION OF TIME TO FILE PETITION

To: The Honorable Neil M. Gorsuch, Associate Justice of the Supreme Court of the United States and Circuit Justice for the U.S. Court of Appeals for the Eighth Circuit.

Petitioner Anmarie Calgaro, through her attorney, makes application for an extension of time under 28 U.S.C. § 210(c) and Supreme Court Rule 13, to file a petition for a writ certiorari from June 24, 2019 to Tuesday, August 6, 2019.

The appellate judgment sought to be reviewed is from the U.S. Court of Appeals for the Eighth Circuit, *Calgaro v. St. Louis County,* 919 F.3d 1054 (8th Cir. 2019) dated March 25, 2019. The appellate decision is attached.

REASONS FOR GRANTNG THE EXTENSION

Supreme Court Rule 13 requires an applicant for an extension of time to set out specific reasons why the application should be granted.

The issues Calgaro upon which she seeks review, we believe, are of first impression in the factual context given. They involve parental rights, emancipation of a minor, medical aid to a minor for a sex change without giving notice to the parents. The decisions were made for emancipation when the child had not been judicially determined to be emancipated under Minnesota common law, and when county and medical institutions were acting as judicial decision-makers to determine emancipation so as to be considered as state actors for 42 U.S.C. § 1983 due process claims.

There are several reasons for the application for which the extension should be granted. First, Ms. Calgaro, since the appellate court decision, required time to decide whether to continue the appellate process, to gather the necessary funds for the petition to this Court and continue representation, and generally, to generate support for her petition efforts. She has succeeded.

Second, counsel of record has had and continues to experience several conflicts of timing issues related to his appellate and litigation practice. For instance, a response is due on a petition for review to the Minnesota Supreme Court on June 18,

2019 in the matter *Save Lake Calhoun v. Sarah Strommen, Commissioner of the Minnesota Department of Natural Resources* (Minn. Sup. Ct. File No. A18-1007). Counsel successfully represented the Respondent Save Lake Calhoun in the appellate court which reversed the district court decision concerning issues related to the executive branch authority of the Commissioner. Issues revolve around statutory interpretation, executive branch authority, and procedure in changing geographic names in existence for decades (here for Lake Calhoun, over 150 years). The Commissioner is seeking review from Minnesota's highest court claiming he has sole authority to affirm decisions of county boards to change geographic names, although no procedure allows his office to do so.

Another state appellate court principal brief is due in California. The case, *Cynthia Lopez v. Eric Quaempts, et al.* (Ct. App. Cal. 3d App. Div. File No. C087445), is a matter related to tribal officials allegedly doing unauthorized acts resulting in tortious behavior and whether tribal immunity prevents the claims from going forward to adjudication when the tribe ratified the alleged wrongful acts after they occurred. The principal brief is due in two weeks on June 21. Counsel stepped in on the appellate briefing for the pro se appellant-plaintiff after a third-party requested assistance and after a final extension had been granted.

In a matter presently before the Eighth Circuit, counsel appealed for Dwight Mitchell, in *Dwight Mitchell v. Dakota County Social Services, et al.* (8th Cir. File No. 19-1419). The underlying federal matter involved the taking of minors from their parents

for spanking and then holding them for months although the underlying district court had no jurisdiction. Meanwhile, the county attempted to place the children with Mitchell's former wife, a convicted criminal, who was deported to Spain and told one of the minors to tell the police he abused the children (because he spanked them). The response briefs raised new issues in the appeal and, hence, makes a reply brief necessary (if not mandatory in this case). The brief is due July 1st.

Last week, counsel completed a post-trial memorandum related to violations of Minnesota's campaign finance laws. The trial was before a judicial tribunal in Minnesota's Office of Administrative Hearings. In *Shannon Bruce v. Our Minnetrista, et al.* (OAH 71-0325-35774 consolidated) counsel represented the complainant Shannon Bruce. Three separate complaints were consolidated into one proceeding. The underlying issues involved an alleged scheme in which four candidates (also defendants) used a committee, Our Minnetrista, to avoid reporting of campaign contributions in excess of campaign contribution limits and expenses as well as other campaign finance law violations. Ms. Bruce sought the maximum of civil fines to be imposed and referral to the county attorney for possible criminal conviction. That was filed on June 7th.

Just before that, counsel filed a mandatory response to a petition for review before the Minnesota Supreme Court in the Minnesota Secretary of State's effort to reverse an appellate court decision affirming a district court order related to Minnesota's Government Data Practices Act. In *Andy Cilek and the Minnesota Voters*

Alliance v. Office of the Minnesota Secretary of State, et al., (Minn. Sup. Ct. File No. A-18-1140), counsel successfully represented Andy Cilek and his organization, the Minnesota Voters Alliance as plaintiffs. The Secretary of State reclassified public data of voters making the data private in a statewide voter registration system which he had no authority to do so. The public data sought was to assist in studies by Cilek and his organization to improve Minnesota's voter administration and systems, particularly in light of a Legislative's audit of previous elections that identified issues that needed attention. Cilek and the Minnesota Voters Alliance won both at the district court and appellate court levels.[1] That petition was filed on May 30th. A decision on the petition remains pending.

Most recently, on June 14, 2019, counsel filed a motion to dismiss regarding a major political free speech issue. In *R. Leigh Frost, Ltd., et al v. Christian Action League of Minnesota and its agents,* a law firm and sole practitioner obtained a temporary harassment restraining order on counsel's client Christian Action League of Minnesota. (Minn. Distr. Ct. File No. 27-CV-19-4885). The League and three of its agents wrote an email and sent three postcards to the law firm asking, without any threat, to stop advertising in a local Minneapolis, Minnesota newspaper, the City Pages. The Christian Action League is a 501(c)(3) organization dedicated to curtail pornography, sexual exploitation, and sex oriented businesses.

[1] Recently, we successfully represented the Minnesota Voters Alliance before this Court in *Minnesota Voters All. v. Mansky*, 138 S. Ct. 1876 (2018).

The City Pages accepts advertising from sex oriented businesses. Because Frost advertised in the City Pages, the communications asked if Frost knew about the City Pages supporting and receiving revenue from sex oriented businesses, asked if Frost would discontinue the ads, a course of business, and that by giving revenue to the City Pages, Frost is assisting in the continuation of sexual exploitation. The Christian Action League had been successful in its passive writing campaign with other businesses. The memorandum to dismiss also challenged the constitutionality of Minnesota's harassment statute as it related to pure political speech. The memorandum was filed on June 14, 2019.

Finally, counsel's colleague, responsible for drafting most of the law firm's appellate briefs, and the above noted filings as well, will be on vacation with his wife from June 19 to June 26th. The vacation has been months in the planning and cannot be postponed. His absence will make meeting the deadline virtually impossible.

Counsel for Anmarie Calgaro, on her behalf, respectfully requests this application for the extension of time to file a petition for a writ of certiorari be granted. We understand that under Rule 13, a filing for an extension is usually 10 days prior to the due date of the petition and as of today, we are unfortunately within that window of time. However, due to some of the extenuating circumstances described, we should have filed on Friday, June 14, 2019, but inadvertently missed that date.

Counsel believes the extra time requested for the petition's filing to Tuesday, August 6, 2019, is necessary and adequate time.

CONCLUSION

Therefore, it is respectfully requested that the time within which to file the petition for a writ of certiorari for Anmarie Calgaro be extended to and including Tuesday, August 6, 2019.

Dated: June 17, 2019

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919 F.3d 1054
United States Court of Appeals, Eighth Circuit.

Anmarie CALGARO, Plaintiff - Appellant,
v.
ST. LOUIS COUNTY; Linnea Mirsch, individually and in her official capacity as Director of St. Louis County Public Health and Human Services; Fairview Health Services, a Minnesota nonprofit corporation; Park Nicollet Health Services, a nonprofit corporation; St. Louis County School District; Michael Johnson, individually and in his official capacity as Principal of the Cherry School, St. Louis County School District; E.J.K., Defendants - Appellees.
World Professional Association for Transgender Health, Amicus on Behalf of Appellee(s),
Foundation for Moral Law, Amicus on Behalf of Appellant(s).

No. 17-2279
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Submitted: October 16, 2018
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Filed: March 25, 2019

Synopsis

Background: Mother of minor child who resided apart from her filed § 1983 action against county, health care providers, school district, and various officials, alleging that they violated her due process rights to make decisions concerning the care, custody, and control of her child, after her request to obtain her child's health care and educational records, and to participate in her child's health care and educational decisions were denied, and seeking declaratory and injunctive relief to prevent defendants from providing services to minor child until state court adjudicated the scope of her parental rights. The United States District Court for the District of Minnesota, Paul A. Magnuson, J., 2017 WL 2269500, granted judgment on the pleadings and summary judgment in favor of defendants. Mother appealed.

Holdings: The Court of Appeals, Colloton, Circuit Judge, held that:

[1] mother did not state plausible due process claim against county for deprivation of parental rights;

[2] mother did not state plausible claim against director of county agency;

[3] health care providers were not state actors, and thus could not be liable under § 1983;

[4] allegations did not state plausible claim against school district; and

[5] principal was entitled to qualified immunity.

Affirmed.

West Headnotes (11)

[1] **Civil Rights**
Particular Causes of Action

78Civil Rights
78IIIFederal Remedies in General
78k1392Pleading
78k1395Particular Causes of Action
78k1395(1)In general

Allegations by mother that a county employee erroneously determined that minor child who resided apart from mother was emancipated and paid for her medical services, and that employee acted based on county custom or policy did not state plausible § 1983 due process claim against county for deprivation of mother's parental rights, absent specific allegations about the policy or custom that was the moving force behind the alleged due process violation. U.S. Const. Amend. 14; 42 U.S.C.A. § 1983.

Cases that cite this headnote

[2] **Civil Rights**
Governmental Ordinance, Policy,

Practice, or Custom

78Civil Rights
78IIIFederal Remedies in General
78k1342Liability of Municipalities and Other Governmental Bodies
78k1351Governmental Ordinance, Policy, Practice, or Custom
78k1351(1)In general

A county may be liable for a constitutional violation under § 1983 only if the violation resulted from a policy or custom of the county. 42 U.S.C.A. § 1983.

Cases that cite this headnote

[3] **Civil Rights**
Acts of officers and employees in general; vicarious liability and respondeat superior in general

78Civil Rights
78IIIFederal Remedies in General
78k1342Liability of Municipalities and Other Governmental Bodies
78k1345Acts of officers and employees in general; vicarious liability and respondeat superior in general

There is no respondeat superior liability under § 1983 for actions of an individual municipal employee. 42 U.S.C.A. § 1983.

Cases that cite this headnote

[4] **Civil Rights**
Liability of Public Employees and Officials

78Civil Rights
78IIIFederal Remedies in General
78k1353Liability of Public Employees and Officials
78k1360Other particular cases and contexts

Mother of minor child who resided apart from her failed to state plausible § 1983 due process claim against director of county agency for deprivation of mother's parental rights, in connection with county's determination that child was emancipated from mother, absent allegations that director personally took any action that violated mother's due process rights. U.S. Const. Amend. 14; 42 U.S.C.A. § 1983.

Cases that cite this headnote

[5] **Civil Rights**
Private Persons or Corporations, in General

78Civil Rights
78IIIFederal Remedies in General
78k1323Color of Law
78k1326Particular Cases and Contexts
78k1326(3)Private Persons or Corporations, in General
78k1326(4)In general

Private health care providers who gave medical treatment to minor child based on minor's consent because they mistakenly believed that minor was emancipated were not "state actors," and thus, could not be liable in mother's § 1983 due process claim for deprivation of parental rights. U.S. Const. Amend. 14; 42 U.S.C.A. § 1983; Minn. Stat. Ann. § 144.341.

Cases that cite this headnote

[6] **Civil Rights**
Color of Law

78Civil Rights
78IIIFederal Remedies in General
78k1323Color of Law
78k1324In general

To state a claim under § 1983, a plaintiff must show that defendants acted under color of state law. 42 U.S.C.A. § 1983.

Cases that cite this headnote

[7] **Health**
Minors in general; consent of parent or guardian
Infants
Role, power, and authority of courts; discretion

198HHealth
198HVIConsent of Patient and Substituted Judgment
198Hk911Minors in general; consent of parent or guardian
211Infants
211XIVDependency, Permanent Custody, and Termination of Rights; Children in Need
211XIV(A)In General
211k1826Role, power, and authority of courts; discretion

Under Minnesota law, a health care provider does not terminate parental rights by recognizing a minor's consent for medical treatment, even if the provider is mistaken in doing so; only a court can terminate parental rights. Minn. Stat. Ann. §§ 144.341, 260C.301.

Cases that cite this headnote

[8] **Civil Rights**
Education

78Civil Rights
78IIIFederal Remedies in General
78k1392Pleading
78k1395Particular Causes of Action
78k1395(2)Education

Allegations by mother that public school district refused her requests to obtain minor child's educational records and to participate in educational decisions for minor child did not state plausible § 1983 due process claim against school district for deprivation of mother's parental rights, absent nonconclusory allegations identifying an actual policy or custom of the school district that caused the refusals. U.S. Const. Amend. 14; 42 U.S.C.A. § 1983.

Cases that cite this headnote

[9] **Civil Rights**
Schools

78Civil Rights
78IIIFederal Remedies in General
78k1372Privilege or Immunity; Good Faith and Probable Cause
78k1376Government Agencies and Officers
78k1376(5)Schools

High school principal was entitled to qualified immunity from liability for his alleged conduct in refusing mother's requests to obtain educational records and to participate in educational decisions for minor child who did not reside with mother, in mother's § 1983 due process claim for deprivation of parental rights; it was not clearly established whether and to what extent a parent's fundamental liberty interest in the custody, care, and management of a child mandated access to school records, and it was not clearly established that parents had constitutional right to manage all details of child's education. U.S. Const. Amend. 14; 42 U.S.C.A. § 1983.

Cases that cite this headnote

[10] **Declaratory Judgment**
Counties and municipalities and their officers
Declaratory Judgment
Education

118ADeclaratory Judgment
118AIISubjects of Declaratory Relief
118AII(K)Public Officers and Agencies
118Ak209Counties and municipalities and their officers
118ADeclaratory Judgment
118AIISubjects of Declaratory Relief

118AII(K)Public Officers and Agencies
118Ak210Education

Mother's claims for injunctive and declaratory relief to prevent Minnesota county, school district, and others from providing services to minor child who did not reside with mother until Minnesota state court adjudicated the scope of her parental rights were rendered moot, in § 1983 action, after child reached age of majority, under Minnesota law. Minn. Stat. Ann. §§ 256D.05(1)(a)(9), 645.451(2).

Cases that cite this headnote

[11] **Federal Courts**
Inception and duration of dispute; recurrence; "capable of repetition yet evading review"

170BFederal Courts
170BIIICase or Controversy Requirement
170BIII(A)In General
170Bk2108Mootness
170Bk2113Inception and duration of dispute; recurrence; "capable of repetition yet evading review"

There is an exception to mootness for cases that are capable of repetition yet evading review, but the exception applies only when there is a reasonable expectation that the alleged actions of the defendant will recur.

Cases that cite this headnote

***1056** Appeal from United States District Court for the District of Minnesota - Minneapolis

Attorneys and Law Firms

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David M. Wilk, LARSON & KING, Saint Paul, MN, for Defendant - Appellee Park Nicollet Health Services.

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John Allen Eidsmoe, FOUNDATION FOR MORAL LAW, Montgomery, AL, for Amicus on Behalf of Appellee Foundation for Moral Law.

Before WOLLMAN, COLLOTON, and BENTON, Circuit Judges.

Opinion

COLLOTON, Circuit Judge.

***1057** Anmarie Calgaro sued several parties alleging violations of her parental rights over one of her minor children under the Due Process Clause of the Fourteenth Amendment. The district court[1] granted the defendants' dispositive motions and dismissed the complaint with prejudice. Calgaro appeals, and we affirm.

[1] The Honorable Paul A. Magnuson, United

States District Judge for the District of Minnesota.

According to Calgaro's complaint, she is the mother of E.J.K. and three younger, minor children. In May 2015, E.J.K. moved out of Calgaro's home in St. Louis County, Minnesota. Calgaro never surrendered her parental rights, but E.J.K. obtained a letter from Mid-Minnesota Legal Aid describing E.J.K.'s father and Calgaro as "hav[ing] given up control and custody of their child." The letter concluded that E.J.K. was therefore "legally emancipated under Minnesota law."

Although this letter from a legal aid association had no legal effect, E.J.K. presented the letter to several state agencies as evidence of emancipation. Under Minnesota law, a child under age eighteen is eligible for general public assistance if she is "legally emancipated." Minn. Stat. § 256D.05, subdiv. 1(a)(9). Based on E.J.K.'s claims of emancipation, St. Louis County provided E.J.K. with funding for medical services and other living expenses, and E.J.K. obtained gender transition care from Park Nicollet Health Services. E.J.K. also received prescription medication from Fairview Health Services. Both providers thought E.J.K. could give effective consent to treatment under Minnesota law because she was living apart from her parents and managing her personal financial matters. *See* Minn. Stat. § 144.341.

When Calgaro attempted to acquire E.J.K.'s medical records from Park Nicollet and Fairview, both providers denied her request under the standard of Minnesota Statutes § 144.346. That provision allows disclosure of treatment information if "failure to inform the parent or guardian would seriously jeopardize the health of the minor patient." *Id.* Calgaro also approached ***1058** the St. Louis County School District and Michael Johnson, the principal of E.J.K.'s high school, requesting access to E.J.K.'s educational records and an opportunity to participate in certain educational decisions. Johnson and the School District denied those requests.

Calgaro then sued St. Louis County, the interim director of St. Louis County Public Health and Human Services (individually and in her official capacity), medical providers Fairview and Park Nicollet, the St. Louis County School District, Principal Johnson (individually and in his official capacity), and E.J.K., as an interested party. She alleged that the defendants had violated a fundamental right of a parent, under the Due Process Clause, to make decisions concerning the care, custody, and control of her children. Calgaro claimed damages and also sought declaratory and injunctive relief that would prevent the defendants from providing services to any of her minor children until a state court adjudicated the scope of her parental rights.

Calgaro moved for summary judgment, and the defendants filed cross-motions in response. St. Louis County moved for judgment on the pleadings and for summary judgment, and the other defendants moved to dismiss for failure to state a claim. The district court granted the defendants' motions, denied Calgaro's motion, and dismissed the complaint with prejudice. We review those dismissals *de novo*.

[1] [2] [3]The district court properly granted judgment on the pleadings for St. Louis County (including the official-capacity claim against the interim director) because Calgaro did not adequately plead a claim under § 1983. A county may be liable for a constitutional violation under § 1983 only if the violation resulted from a policy or custom of the municipality. *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 694, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978). There is no *respondeat superior* liability for actions of an individual employee. *Id.* at 691, 98 S.Ct. 2018. Although Calgaro alleges that the County's "policies, customs, practices, or procedures (or lack of procedures)" led to violations of her due process rights, she never specified a policy or custom that was the moving force behind the alleged violation. She pleads only that the County "determined" that E.J.K. was emancipated and paid for her medical services. But one erroneous determination by a county employee that E.J.K. was emancipated does not establish a policy or custom of the County that deprives parents of their constitutional rights. Calgaro's conclusory assertion that the County acted based on a policy or custom is insufficient to state a claim, and the district court correctly granted judgment on the pleadings.

[4]Calgaro also fails to state a claim for damages against the then-interim director of Public Health and Human Services, Linnea Mirsch. The complaint lists Mirsch's position and title, and

alleges that "[t]he director is the final decision and policy maker for the Department." But the complaint does not allege that Mirsch personally took any action that violated Calgaro's constitutional rights, and Mirsch cannot be held liable for the unconstitutional acts of her subordinates. *Ashcroft v. Iqbal*, 556 U.S. 662, 676, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009). The district court correctly ruled that Calgaro failed to state a claim against Mirsch in her individual capacity.

[5] [6] [7]Calgaro's claims for money damages against the medical providers fare no better. To state a claim under § 1983, Calgaro must show that Park Nicollet and Fairview acted "under color of state law." ***1059** *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 49-50, 119 S.Ct. 977, 143 L.Ed.2d 130 (1999). Although both facilities provided medical services to E.J.K. without parental consent, and allegedly honored E.J.K.'s consent in accordance with § 144.341 of the Minnesota Statutes, these actions did not transform either medical provider into a state actor. 526 U.S. at 52, 119 S.Ct. 977. Calgaro contends that the providers exercised a "public function" by terminating her parental rights concerning health care decisions, but this claim mischaracterizes what happened. Section 144.341 states that certain minors may give effective consent to medical services, but a provider does not terminate parental rights by recognizing a minor's consent, even if the provider is mistaken. Only a Minnesota court can terminate parental rights. *See* Minn. Stat. § 260C.301.

[8]Calgaro next claims that the St. Louis County School District (including Principal Johnson in his official capacity) violated her rights by carrying out a "policy, practice, and custom" of declining to give notice or to hold a hearing with parents before determining that a minor student is emancipated. We agree with the district court that Calgaro alleged only a legal conclusion on this point. The complaint identifies no actual policy or established custom of the District about making emancipation determinations. Calgaro cites only the single incident at issue here, in which the District refused to disclose E.J.K.'s educational records or to allow Calgaro to participate in E.J.K.'s educational decisions. The District's alleged handling of this particular case, even assuming that it interfered with Calgaro's constitutional rights, is insufficient to establish a custom or practice under *Monell*. 436 U.S. at 694, 98 S.Ct. 2018.

[9]Calgaro also sued Johnson individually for damages on the ground that he violated her constitutional rights by denying access to educational records and excluding her from educational decisions. But it remains "open to question whether and to what extent the fundamental liberty interest in the custody, care, and management of one's children mandates parental access to school records." *Schmidt v. Des Moines Pub. Sch.*, 655 F.3d 811, 819 (8th Cir. 2011). Nor is it clearly established that parents have a constitutional right to manage all details of their children's education or to obtain consultation with school officials on everyday matters. *See Stevenson v. Blytheville Sch. Dist. #5*, 800 F.3d 955, 966 (8th Cir. 2015). Because existing precedent does not clearly establish the rights that Calgaro asserts, Johnson is entitled to qualified immunity. *Ashcroft v. al-Kidd*, 563 U.S. 731, 741, 131 S.Ct. 2074, 179 L.Ed.2d 1149 (2011).

[10] [11]Calgaro's remaining claims for declaratory and injunctive relief against the several defendants are moot. E.J.K. has turned eighteen years old, ceased to be a minor under Minnesota law, and completed her education in the St. Louis County School District. *See* Minn. Stat. § 645.451, subdiv. 2. There is no ongoing case or controversy over Calgaro's parental rights to make decisions for E.J.K. as a minor or to access her medical or educational records. That Calgaro has three other minor children does not preserve a controversy. There is an exception to mootness for cases that are capable of repetition yet evading review, but the exception applies only when there is a reasonable expectation that the alleged actions of the defendant will recur. *Murphy v. Hunt*, 455 U.S. 478, 482, 102 S.Ct. 1181, 71 L.Ed.2d 353 (1982) (per curiam). Calgaro seeks an injunction against actions directed toward "the minor children of Ms. Calgaro deemed emancipated by Defendants without Ms. Calgaro's consent." But Calgaro has not established a reasonable expectation that any of her three minor children will be deemed emancipated by ***1060** the defendants. The claims for declaratory and injunctive relief are therefore moot.

E.J.K. was joined in the lawsuit as an interested party under Federal Rule of Civil Procedure 19(a)(1)(B)(i). Given that none of Calgaro's claims against the other defendants may proceed, the

district court properly dismissed any claims against E.J.K. as well.

The judgment of the district court is affirmed.

All Citations

919 F.3d 1054, 364 Ed. Law Rep. 46