IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

September 2026 Term

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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

No. 24-405

WEST VIRGINIA DEPARTMENT OF HUMAN SERVICES, MICHELLE BAST, AND AIMEE GALLO,
Defendants Below, Petitioners,

v.

A.Z. AND K.Z., INDIVIDUALLY AND AS PARENTS AND GUARDIANS OF C.Z.,
Plaintiffs Below, Respondents.

Appeal from the Circuit Court of Harrison County
Honorable Joseph Shaffer, Jr., Judge
Civil Action No. CC-17-2022-C-231

REVERSED AND REMANDED WITH DIRECTIONS

Submitted: October 14, 2026
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JUSTICE WOOTON delivered the Opinion of the Court.

SYLLABUS OF THE COURT

1. """The common law is not to be construed as altered or changed by statute, unless legislative intent to do so be plainly manifested." *Shifflette v. Lilly*, 130 W. Va. 297, 43 S.E.2d 289 [1947].' Syllabus Point 4, *Seagraves v. Legg*, 147 W. Va. 331, 127 S.E.2d 605 (1962)." Syl. Pt. 4, *State ex rel. Van Nguyen v. Berger*, 199 W. Va. 71, 483 S.E.2d 71 (1996).

2. "'In the absence of an insurance contract waiving the defense, the doctrine of qualified or official immunity bars a claim of mere negligence against a State agency not within the purview of the West Virginia Governmental Tort Claims and Insurance Reform Act, W. Va. Code § 29-12A-1 *et seq*., and against an officer of that department acting within the scope of his or her employment, with respect to the discretionary judgments, decisions, and actions of the officer.' Syl. Pt. 6, *Clark v. Dunn*, 195 W. Va. 272, 465 S.E.2d 374 (1995)." Syl. Pt. 7, *W. Va. Reg.'l Jail & Corr. Facility Auth. v. A.B.*, 234 W. Va. 492, 766 S.E.2d 751 (2014).

3. "To determine whether the State, its agencies, officials, and/or employees are entitled to immunity, a reviewing court must first identify the nature of the governmental acts or omissions which give rise to the suit for purposes of determining whether such acts or omissions constitute legislative, judicial, executive or administrative policy-making acts or involve otherwise discretionary governmental functions. To the extent that the cause of action arises from judicial, legislative, executive or administrative policy-making acts or

omissions, both the State and the official involved are absolutely immune pursuant to Syl. Pt. 7 of *Parkulo v. W. Va. Bd. of Probation and Parole*, 199 W. Va. 161, 483 S.E.2d 507 (1996)." Syl. Pt. 10, *W. Va. Reg.'l Jail & Corr. Facility Auth. v. A.B.*, 234 W. Va. 492, 766 S.E.2d 751 (2014).

4. "'If a public officer is either authorized or required, in the exercise of his judgment and discretion, to make a decision and to perform acts in the making of that decision, and the decision and acts are within the scope of his duty, authority, and jurisdiction, he is not liable for negligence or other error in the making of that decision, at the suit of a private individual claiming to have been damaged thereby.' Syllabus Point 4, *Clark v. Dunn*, 195 W. Va. 272, 465 S.E.2d 374 (1995)." Syl. Pt. 4, *Crouch v. Gillispie*, 240 W. Va. 229, 809 S.E.2d 699 (2018).

5. "To the extent that governmental acts or omissions which give rise to a cause of action fall within the category of discretionary functions, a reviewing court must determine whether the plaintiff has demonstrated that such acts or omissions are in violation of clearly established statutory or constitutional rights or laws of which a reasonable person would have known or are otherwise fraudulent, malicious, or oppressive in accordance with *State v. Chase Securities, Inc*., 188 W. Va. 356, 424 S.E.2d 591 (1992). In absence of such a showing, both the State and its officials or employees charged with such acts or omissions are immune from liability." Syl. Pt. 11, *W. Va. Reg.'l Jail & Corr. Facility Auth. v. A.B.*, 234 W. Va. 492, 766 S.E.2d 751 (2014).

6. “Where qualified immunity is raised by a state agency as grounds for summary judgment on a claim of oppressive conduct, the nonmoving party, in order to avoid summary judgment, must produce some admissible evidence that creates an issue of fact as to whether an official, employee, or agent of the agency acted in a manner that was an abuse of any discretionary power invested by law in the exercise of, or under color of exercising, the duties of his or her office and while doing so acted with an improper motive.” Syl. Pt. 5, *W. Va. Dept. of Hum. Serv. v. David B.,* 251 W. Va. 217, 911 S.E.2d 884 (2024).

WOOTON, Justice:

The Department of Human Services ("DHS") and two of its employees, Child Protective Services ("CPS") workers Michelle Bast and Aimee Gallo,[1] file this interlocutory appeal of the Circuit Court of Harrison County's June 7, 2024, order denying their motion for summary judgment.[2]

A.Z. and K.Z., who are the plaintiffs below and the respondents here, sued the DHS defendants alleging that the CPS workers were grossly negligent and violated state law and the CPS policy manual by failing to protect the plaintiffs' child from being assaulted by another child. The DHS defendants assert that the circuit court erroneously denied their motion for summary judgment because they have both qualified and statutory immunity from these claims.

For the reasons set forth below, we conclude that the DHS defendants have qualified immunity from this lawsuit and are thus entitled to summary judgment on that basis. Because they have qualified immunity, it is unnecessary, and we therefore decline,

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[1] For ease of discussion in this opinion, we collectively refer to the DHS, Ms. Bast, and Ms. Gallo as "the DHS defendants." Because this case involves minors and sensitive matters, we use initials to refer to the children and their families. *See, e.g.*, W. Va. R. App. P. 40(e).

[2] When the lawsuit was filed, the agency was named the Department of Health and Human Resources. We have updated the style of this case to reflect the agency's current name. Also, the circuit court judge who entered this order, the Honorable Thomas A. Bedell, has retired and his successor judge is now listed for this case.

to decide whether the DHS defendants would also have other grounds for summary judgment. We reverse the circuit court's June 7, 2024, order and remand this case for entry of an order granting summary judgment and dismissing the DHS defendants from this civil action.

I. Facts and Procedural Background

On April 24, 2021, CPS workers Bast and Gallo attended a youth baseball game to supervise a visit between M.H., a ten-year-old girl who was in the DHS's legal custody, and her parents Mr. and Mrs. T. The CPS workers were supervising this visitation in the course of their employment with the DHS. A circuit court had previously removed both M.H. and her twelve-year-old brother, T.B., from their home after M.H. accused T.B. of sexually assaulting her.[3] However, M.H. had recanted the allegations, and two months before this baseball game, T.B. was released from the custody of juvenile services, with no restrictions, and was placed in the custody of his parents/guardians Mr. and Mrs. T. M.H. was still in the DHS's custody, and on this day, the CPS workers were supervising M.H. as part of the process of reunifying M.H. with her family.[4]

[3] According to the plaintiffs, there was also an allegation that T.B. sexually assaulted another child relative.

[4] The parties' briefs and the documents in the Appendix Record variously refer to Mr. and Mrs. T. as the children's parents, grandparents, step-grandparents, custodians, and guardians. However, their designation and the exact nature of the relationship are not relevant to our analysis in this case.

Another family also attended this game. Father A.Z. and mother K.Z. brought three of their children, twelve-year-old L.Z. and five-year-old twins C.Z. and J.Z., to watch their fourth child play baseball. CPS workers Bast and Gallo did not know this family. It began to rain during the game, so Mother K.Z. and two of her children, J.Z. and L.Z., went to their car. C.Z. stayed by the baseball field with her father. Soon thereafter, the mother and J.Z. left the car to go to the restroom. C.Z. told her father that she was cold, so he allowed her to go to the car while he remained by the field. From where he was sitting, Father A.Z. watched C.Z. walk to the family's vehicle, knock on the car door, and go inside. The father saw that someone inside the car had opened the door for C.Z. and he believed, incorrectly, that his wife was in the car.

After a short time sitting in the car with her brother, C.Z. left the car unaccompanied. The plaintiffs allege that T.B. intercepted C.Z., lured her behind a concession stand structure, and physically and sexually assaulted her. Both of the CPS workers saw T.B. and C.Z. walking together before the alleged assault, but they did not intervene. According to their deposition testimony, the CPS workers did not realize that C.Z. was in any danger.

A.Z. and K.Z., individually and on behalf of C.Z., filed this lawsuit against the DHS, CPS workers Gallo and Bast, and Mr. and Mrs. T.[5] In their Second Amended Complaint, the plaintiffs allege that Ms. Gallo and Ms. Bast were aware of T.B.'s history of "violent and sexually predatory behavior" against other children, they were present to supervise M.H.'s visitation with her family in the wake of her removal from the home because of her prior allegations against T.B., and they observed T.B. and C.Z. together—but the CPS workers did nothing to protect C.Z. from T.B. In the Second Amended Complaint, the plaintiffs allege that the two CPS workers were grossly negligent; violated West Virginia Code § 49-1-105(b)(12) (2015) that requires the DHS to "[p]rotect the welfare of the general public"; and violated Section 5.10 et seq. of the West Virginia CPS Policy Manual by not continually assessing and supporting M.H.'s family. The plaintiffs allege that the DHS is liable under a theory of respondeat superior.

After discovery was completed, the DHS defendants filed a motion for summary judgment asserting, inter alia, common law qualified immunity, statutory immunity pursuant to West Virginia Code § 49-2-810 (2020), and the statutory protection from personal liability set forth in West Virginia Code § 49-2-802(h) (2018).[6] In its June

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[5] Although Mr. and Ms. T. remain defendants in circuit court, they are not parties to this appeal.

[6] West Virginia Code § 49-2-810 provides immunity from civil or criminal liability resulting from good faith actions taken pursuant Article 2, Chapter 49 of the West Virginia Code (Child Welfare, State Responsibility for Children). West Virginia Code § 49-2-802(h), quoted below, states that no CPS worker may be held personally liable for

7, 2024, order, the circuit court focused on the "gross negligence" exception to West Virginia Code § 49-2-802(h), discussed *infra*, and did not perform a qualified immunity analysis. The court concluded that the plaintiffs had made sufficient evidentiary proffers to allow a jury to decide whether the CPS workers were grossly negligent inasmuch as the CPS workers were present at the baseball field to supervise M.H.'s family visitation and they observed T.B. and C.Z. together. The DHS defendants appeal the June 7, 2024, order.

II. Standard of Review

The DHS defendants file this interlocutory appeal of the circuit court's denial of their motion for summary judgment on the grounds of immunity. As explained herein, we find it unnecessary to address the assignments of error regarding statutory immunity because qualified immunity is dispositive of this appeal.

"Typically, the denial of a motion for summary judgment is an interlocutory ruling not subject to appellate review." *Praetorian Ins. Co. v. Chau*, 247 W. Va. 521, 530, 881 S.E.2d 432, 441 (2022). However, "[a] circuit court's denial of summary judgment that is predicated on qualified immunity is an interlocutory ruling which is subject to immediate appeal under the 'collateral order' doctrine." Syl. Pt. 2, *Robinson v. Pack*, 223 W. Va. 828, 679 S.E.2d 660 (2009). Our review on appeal is plenary. "This Court reviews *de novo* the denial of a motion for summary judgment, where such a ruling is properly

professional decisions or actions taken in the performance of official duties unless the loss was caused by gross negligence, willful and wanton misconduct, or intentional misconduct.

reviewable by this Court." Syl. Pt. 1, *Findley v. State Farm Mut. Auto. Ins. Co.*, 213 W. Va. 80, 576 S.E.2d 807 (2002). With this standard in mind, we turn to the parties' arguments.

III. Discussion

The DHS defendants contend that they have both qualified and statutory immunity in this case. The plaintiffs respond that the DHS defendants have neither type of immunity because CPS workers Bast and Gallo were grossly negligent when, under the particular circumstances of this matter, they failed to protect C.Z. from T.B.

Before analyzing whether the DHS defendants have immunity, we must first untangle the plaintiffs' main argument on appeal. When arguing against the application of common law qualified immunity from suit, the plaintiffs rely on a statute, West Virginia Code § 49-2-802(h), that grants CPS workers protection from personal liability:

> No child protective services caseworker may be held personally liable for any professional decision or action taken pursuant to that decision in the performance of his or her official duties as set forth in this section or agency rules promulgated thereupon. However, nothing in this subsection protects any child protective services worker from any liability arising from the operation of a motor vehicle or for any loss caused by gross negligence, willful and wanton misconduct, or intentional misconduct.

Because West Virginia Code § 49-2-802(h) limits this statutory protection by stating that "nothing in this subsection protects any child protective services workers from any liability arising from . . . any loss caused by gross negligence . . . ," the plaintiffs argue that they only need to prove gross negligence to defeat either qualified or statutory immunity. The

plaintiffs argue that because of this statute, qualified immunity "does not apply in this case as a matter of law." The circuit court apparently accepted this notion, inasmuch as the court's order denying summary judgment focuses on the plaintiffs' claim of gross negligence and lacks a qualified immunity analysis.

Essentially, the plaintiffs suggest that the Legislature has abrogated common law qualified immunity for all CPS workers and replaced it with West Virginia Code § 49-2-802(h). We disagree. "'The common law is not to be construed as altered or changed by statute, unless legislative intent to do so be plainly manifested.' *Shifflette v. Lilly*, 130 W. Va. 297, 43 S.E.2d 289 [1947]." Syl. Pt. 4, *State ex rel. Van Nguyen v. Berger*, 199 W. Va. 71, 483 S.E.2d 71 (1996) (internal citation omitted). To be sure, there will be some overlap in the facts and arguments used to analyze common law qualified immunity and the protection provided by West Virginia Code § 49-2-802(h). However, these are separate concepts. There is nothing in the statute indicating a legislative intent to take common law qualified immunity away from CPS workers. The "gross negligence" provision in the statute expressly applies only to the limitation on personal liability provided "in this subsection[.]" *See id.* Moreover, the statute limits a CPS worker's personal liability—but qualified immunity is immunity from suit, rather than a defense to liability. *See, e.g.*, *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985) ("The entitlement is an *immunity from suit* rather than a mere defense to liability; and like an absolute immunity, it is effectively lost if a case is erroneously permitted to go to trial."); *Hutchison v. City of Huntington*, 198 W. Va. 139, 149 n.13, 479 S.E.2d at 649, 659 n.13 (1996) ("if the claim of immunity is

proper and valid, the very thing from which the defendant is immune—a trial—will absent a pretrial ruling occur and cannot be remedied by a later appeal").

Thus, we turn to our de novo review of whether the DHS defendants have qualified immunity from this lawsuit. "The ultimate determination of whether qualified . . . immunity bars a civil action is one of law for the court to determine." *Hutchison*, 198 W. Va. at 144, 479 S.E.2d at 654, Syl. Pt. 1, in part. "[U]nless there is a bona fide dispute as to the foundational or historical facts that underlie the immunity determination, the ultimate questions of statutory or qualified immunity are ripe for summary disposition." *Id.*

Qualified immunity protects State officials from negligence claims while engaging in discretionary judgments, decisions, and actions in the scope of their employment.

> "In the absence of an insurance contract waiving the defense, the doctrine of qualified or official immunity bars a claim of mere negligence against a State agency not within the purview of the West Virginia Governmental Tort Claims and Insurance Reform Act, W. Va. Code § 29-12A-1 *et seq.*, and against an officer of that department acting within the scope of his or her employment, with respect to the discretionary judgments, decisions, and actions of the officer." Syl. Pt. 6, *Clark v. Dunn*, 195 W. Va. 272, 465 S.E.2d 374 (1995).

Syl. Pt. 7, *W. Va. Reg.'l Jail & Corr. Facility Auth. v. A.B.*, 234 W. Va. 492, 766 S.E.2d 751 (2014). There is no dispute that CPS workers Bast and Gallo were acting in the scope

of their employment.[7] The next step in the qualified immunity analysis examines the nature of the DHS defendants' "acts or omissions which give rise to the suit for purposes of determining whether such acts or omissions constitute legislative, judicial, executive or administrative policy-making acts or involve otherwise discretionary governmental functions. . . ." *Id.*, 234 W. Va. at 497, 766 S.E.2d at 756, Syl. Pt. 10, in part (citation omitted). We have described qualified immunity for discretionary acts as follows:

> "If a public officer is either authorized or required, in the exercise of his judgment and discretion, to make a decision and to perform acts in the making of that decision, and the decision and acts are within the scope of his duty, authority, and jurisdiction, he is not liable for negligence or other error in the making of that decision, at the suit of a private individual claiming to have been damaged thereby." Syl. Pt. 4, *Clark v. Dunn*, 195 W. Va. 272, 465 S.E.2d 374 (1995).

Syl. Pt. 4, *Crouch v. Gillispie*, 240 W. Va. 229, 809 S.E.2d 699 (2018). Obviously, the acts of two CPS workers who are engaged in supervising a specific family's visitation are not acts of judicial, legislative, or executive policymaking. Rather, we have categorized this type of DHS activity as discretionary for purposes of a qualified immunity analysis. *See*, e.g., *W. Va. Dept. of Hum. Serv. v. David B.*, 251 W. Va. 217, 911 S.E.2d 884 (2024) (CPS worker's decision that there was no child abuse was discretionary decision for purposes of qualified immunity analysis); *Crouch*, 240 W. Va. 229, 809 S.E.2d 699 (CPS worker's closure of abuse and neglect case without removing child from the home following

[7] There is also no allegation that the State's insurance contract has waived the defense of qualified immunity, and it is undisputed that the Governmental Tort Claims and Insurance Reform Act does not apply to these claims against a State agency and its employees.

investigation was discretionary judgment call protected by qualified immunity); *W. Va. Dept. of Hum. Res. v. Payne*, 231 W. Va. 563, 746 S.E.2d 554 (2013) (DHS's oversight of facility's care of a disabled person fell within the category of discretionary acts for purposes of qualified immunity analysis). The purpose of qualified immunity is to "insulate the decision[-]making process from the harassment of prospective litigation" so that officials will not be "unduly timid in carrying out their official duties." *Id.* at 568, 809 S.E.2d at 577 (citation omitted).

Because CPS workers Bast and Gallo were acting within the discretionary functions of their employment, both they and the DHS have qualified immunity unless the plaintiffs can show that the alleged failure to protect C.Z. was "in violation of clearly established statutory or constitutional rights or laws of which a reasonable person would have known" or was "otherwise fraudulent, malicious, or oppressive[.]" *See A.B.*, 234 W. Va. at 497, 766 S.E.2d at 756, Syl. Pt. 11 (citing *State v. Chase Securities, Inc.*, 188 W. Va. 356, 424 S.E.2d 591 (1992)). "In absence of such a showing, both the State and its officials or employees charged with such acts or omissions are immune from liability." *Id.* When a plaintiff alleges the violation of a clearly established right or law, specificity is required:

> To prove that a clearly established right has been infringed upon, a plaintiff must do more than allege that an abstract right has been violated. Instead, the plaintiff must make a particularized showing that a reasonable official would understand that what he is doing violated that right or that in the light of preexisting law the unlawfulness of the action was apparent.

Hutchison, 198 W. Va. at 149 n.11, 479 S.E.2d at 659 n.11 (internal citation and quotation marks omitted). "[T]he question of whether the constitutional or statutory right was clearly established is one of law for the court." *Id.* at 149, 479 S.E.2d at 659.

The plaintiffs' Second Amended Complaint cites two sources for an alleged violation of a clearly established right or law, but neither are sufficient to overcome the DHS defendants' qualified immunity in this case. First, the plaintiffs rely on West Virginia Code § 49-1-105(b)(12), which requires the DHS to "[p]rotect the welfare of the general public." This general statement of the agency's purpose would not put a reasonable person on notice that Ms. Bast and Ms. Gallo were obligated to protect C.Z., a child whom they did not know, when they did not perceive any danger. Moreover, the CPS workers could reasonably expect that C.Z.'s own parents, who were present at the baseball game, were supervising C.Z.[8] Second, the plaintiffs cite to provisions in the CPS Policy Manual requiring the CPS to implement family case plans when children are in DHS custody; the

[8] The plaintiffs' arguments in this respect sound in the special relationship exception to the public duty doctrine, that is, that the DHS owed a special duty of care to protect C.Z. The public duty doctrine is a negligence-based defense often asserted by the State alongside immunity defenses; the State argues that it does not owe a general duty of care to the public, subject to rebuttal by proof of the creation of a special relationship. *See A.B.*, 234 W. Va. 492, 517-18, 766 S.E.2d 751, 776-77. This Court has made clear that the public duty doctrine, and any purported special relationship exception, is a concept distinct from an immunity determination and, moreover, is not properly considered in an interlocutory appeal. *Id.* Accordingly, our analysis of West Virginia Code § 49-1-105(b)(12) is limited to the recognition that a broad statutory purpose to protect the welfare of the general public is not sufficiently specific to satisfy the "violation of a clearly established right" for purposes of a qualified immunity analysis.

plaintiffs allege that a family case plan would require the CPS to continually assess and support M.H.'s parents. However, the plaintiffs fail to explain how this section of the CPS Manual would invoke a duty with respect to a child who was not in DHS custody. And even more on point, we expressly concluded in *David B.* that the internal CPS Policy Manual cannot be a source of clearly established law for purposes of defeating qualified immunity. *David B.*, 251 W. Va. at 229, 911 S.E.2d at 884.

In their brief to our Court, the plaintiffs cite an additional statutory provision. They argue that these CPS workers "arguably ha[d] the mandatory statutory duty under W. Va. Code § 49-2-802(c)(5) [2018] to immediately report or act on what they saw" when they saw T.B. and C.Z. walking together. This statute requires a local CPS office to "[r]espond immediately to all allegations of imminent danger to the physical well-being of the child or of serious physical abuse." *Id.* While this statute is more specific, it would not have put the CPS workers on notice of the need to protect C.Z. when they did not realize C.Z. was in any danger. The plaintiffs are contending that Ms. Bast and Ms. Gallo should have known or guessed that the twelve-year-old T.B. would molest a younger child in this public location. However, the plaintiffs have offered no evidence that the CPS workers saw T.B. do anything wrong prior to the alleged assault; M.H. had previously recanted her allegations; a circuit court had returned T.B. to the family's custody; and the DHS was in the process of reunifying M.H.'s family. "The challenges facing a CPS worker in making the determination of whether or not a situation of present danger exists . . . strikes at the

heart of qualified immunity[.]" *Crouch*, 240 W.Va. at 236, 809 S.E.2d at 706. The conjecture advanced by the plaintiffs does not defeat qualified immunity.

Finally, a plaintiff may overcome qualified immunity by showing that a State official acted in a manner that was "otherwise fraudulent, malicious, or oppressive[.]" *A.B.*, 234 W. Va. at 497, 766 S.E.2d at 756, Syl. Pt. 11, in part.

> Where qualified immunity is raised by a state agency as grounds for summary judgment on a claim of oppressive conduct, the nonmoving party, in order to avoid summary judgment, must produce some admissible evidence that creates an issue of fact as to whether an official, employee, or agent of the agency acted in a manner that was an abuse of any discretionary power invested by law in the exercise of, or under color of exercising, the duties of his or her office and while doing so acted with an improper motive.

David B., 251 W. Va. at 219, 911 S.E.2d at 887, Syl. Pt. 5; *accord Payne*, 231 W. Va. at 570, 746 S.E.2d at 561 ("[T]he party opposing a motion for summary judgment may not rest on allegations of his or her unsworn pleadings and must instead come forth with evidence of a genuine factual dispute. Mere allegations are insufficient in response to a motion for summary judgment to show that there is a genuine issue for trial.") (internal citation and quotation marks omitted).

The plaintiffs do not expressly argue that the "oppressive conduct" exception applies here (instead, as set forth above, they argue that qualified immunity does not apply as a matter of law). However, their brief and their Second Amended Complaint are replete with fiery allegations of negligence and assertions that the CPS workers "affirmatively"

"created or helped to create the unreasonable risk of harm that led to the attack on C.Z." For example, the plaintiffs accuse the DHS of making the decision to allow T.B. to be returned to his family's custody, but the evidence shows that a circuit judge made that decision in the juvenile case. The plaintiffs suggest that the DHS failed to provide any services to T.B., but T.B. was not in DHS custody and the plaintiffs have not offered any proof regarding what services were provided to anyone in M.H. and T.B.'s family. The plaintiffs complain that the DHS planned this family visitation with M.H. in a public place, and failed to track T.B.'s actions at the ball field, but the CPS workers testified that they did not know T.B. was going to be there that day, and, in any event, M.H. had previously recanted her allegations. The unchallenged evidence shows that the CPS workers did not know C.Z., did not know that C.Z. was unsupervised by her own parents, and did not perceive that C.Z. was in danger.

At its base, the plaintiffs are complaining about discretionary decisions and actions which are fully protected by qualified immunity. While the plaintiffs' allegations against T.B. are horrific, and this Court will never condone any form of physical or sexual assault, the plaintiffs have failed to offer any evidence that the CPS workers engaged in any oppressive or malicious conduct. As we explained in *Crouch* and other cases:

> "Also, like *Payne*, in discovery, respondent made the skeletal assertion that if D.H. were properly trained and supervised, the rape would not have occurred. This illusory and languid contention is no more sufficient to overcome the State's immunity in this case than in *Payne*: "Respondents seem to argue simply that if the DHHR defendants were doing their job properly, this incident would not have occurred. . . . Although

> this overly simplistic analysis may be appealing in light of these tragic events, qualified immunity insulates the State and its agencies from liability based on vague or principled notions [of government responsibility]."

Crouch, 240 W. Va. at 238, 809 S.E.2d at 708 (quoting *A.B.*, 234 W. Va. at 516 n.33, 766 S.E.2d at 775 n.33) (citing *Payne*, 231 W. Va. at 574, 746 S.E.2d at 565).

For these reasons, we conclude that the DHS defendants have qualified immunity. Because qualified immunity is dispositive of all claims against the DHS defendants, we decline to address the DHS defendants' other assignments of error.

IV. Conclusion

We reverse the circuit court's June 7, 2024, order and remand this case to the circuit court with directions to grant summary judgment to the DHS defendants on the basis of qualified immunity and to dismiss the DHS defendants from this lawsuit.

Reversed and remanded with directions.