

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D21378  
O/hu

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - November 10, 2008

PETER B. SKELOS, J.P.  
ROBERT A. LIFSON  
FRED T. SANTUCCI  
RUTH C. BALKIN, JJ.

---

2008-01140

DECISION & ORDER

Paul Scholz, et al., respondents, v Helen  
Wright, et al., appellants.

(Index No. 17037/06)

---

Catalano Gallardo & Petropoulos, LLP, Jericho, N.Y. (Ralph A. Catalano of  
counsel), for appellants.

Martin, Fallon & Mullé, Huntington, N.Y. (Larry M. Shaw of counsel), for  
respondents.

In an action, inter alia, to recover damages for negligence and defamation, the  
defendants appeal from an order of the Supreme Court, Suffolk County (Cohalan, J.), dated  
December 27, 2007, which denied their motion to dismiss the complaint pursuant to CPLR  
3211(a)(7).

ORDERED that the order is modified, on the law, by deleting the provision thereof  
denying that branch of the defendants' motion which was to dismiss the cause of action alleging  
negligence insofar as asserted against the defendants St. Peter's Evangelical Lutheran Church, Inc.,  
and St. Peter's Nursery School, and substituting therefor a provision granting that branch of the  
motion; as so modified, the order is affirmed, without costs or disbursements.

In this action, inter alia, to recover damages for negligence and defamation based on  
a false complaint allegedly made to the New York State Office of Children and Family Services, the  
defendants moved to dismiss the complaint pursuant to CPLR 3211(a)(7) arguing, inter alia, that the  
defendant Helen Wright was immune from liability pursuant to Social Services Law § 419. Any

December 9, 2008

Page 1.

SCHOLZ v WRIGHT

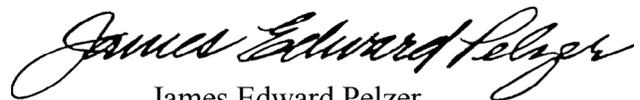
person required to report instances of child abuse and maltreatment under Social Services Law § 413 is immune from liability arising out of the making of such a report provided that the person acted within the scope of his or her employment and in good faith, where good faith will be presumed so long as the person did not engage in “willful misconduct or gross negligence” (Social Services Law § 419; *see Hachman v County of Nassau*, 29 AD3d 952; *Kempster v Child Protective Servs. of Dept. of Social Servs. of County of Suffolk*, 130 AD2d 623, 624).

The plaintiffs made a sufficient allegation of actual malice to state a cause of action alleging defamation against Wright (*see Zornberg v North Shore Univ. Hosp.*, 29 AD3d 986; *Hachman v County of Nassau*, 29 AD3d 952; *Vaz v Sipsas*, 1 AD3d 503; *cf. Escalara v Favaro*, 298 AD2d 552). However, the plaintiffs failed to state a cause of action to recover damages for negligence against St. Peter’s Evangelical Lutheran Church, Inc., and St. Peter’s Nursery School (*see CPLR 3211[a][7]*).

The defendants’ remaining contentions are without merit.

SKELOS, J.P., LIFSON, SANTUCCI and BALKIN, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court