COMMONWEALTH OF MASSACHUSETTS

Supreme Judicial Court

WORCESTER, SS. NO. SJC-13666

JAKLIN SUZETH GOTAY & OTHERS,
Plaintiffs-Appellees,

v.

JULIANN CREEN, ROXANNA JOHNSON-CRUZ, BREANNE PETERSON AND CATHERINE VARIAN,
Defendants-Appellants.

ON INTERLOCUTORY APPEAL FROM AN ORDER OF THE SUPERIOR COURT FOR WORCESTER COUNTY

REPLY BRIEF OF THE DEFENDANTS-APPELLANTS

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INTRODUCTION

Both principal briefs in this appeal illustrate the varied and sometimes contradictory expressions of what substantive due process might require of social workers who provide services to children in foster homes. The most common articulation of the test—and the one most consistent with dicta on substantive due process made by Massachusetts courts—has been whether the social worker showed deliberate indifference to a known harm or substantial risk of harm in a manner that shocks the conscience. No appellate court, however, has allowed liability based on an *unknown* risk of harm. The record here is undisputed that the individual social worker defendants ("Social Workers") had no knowledge that Samara Gotay ("Samara") and Alessa Sepulveda ("Alessa") were at substantial risk of harm, let alone at risk of the gross neglect to which Samara was subjected by her foster mother in August 2015. The Social Workers are therefore entitled to qualified immunity as a matter of law.

ARGUMENT

I. The Social Workers Are Entitled to Qualified Immunity Because the Law on Substantive Due Process Did Not Clearly Establish That Individual Social Workers Could Be Liable for a Failure to Detect an Unknown Risk of Harm.

To overcome qualified immunity, Plaintiffs must point to authority that would clearly establish to a reasonable person, with a high degree of specificity, that the Social Workers' actions violated substantive due process. *Dist. of*

Columbia v. Wesby, 583 U.S. 48, 63 (2018). Plaintiffs' own briefing makes clear that they cannot overcome this prong of the qualified immunity analysis because the law did not clearly establish—either through controlling authority or a robust consensus of persuasive authority, *see Penate v. Sullivan*, 73 F.4th 10, 18 (1st Cir. 2023)—that a failure to detect an unknown risk of harm would rise to the level of a substantive due process violation.

A. No Controlling Authority Has Identified the Standard of Conduct That Substantive Due Process Requires of Social Workers.

As Plaintiffs themselves acknowledge, no Massachusetts appellate or U.S. Supreme Court case has defined the standard of conduct by which to hold social workers accountable for constitutional deprivations in foster homes. Pls. Br. 24-26. And as to Massachusetts appellate authorities, remarkably, Plaintiffs provide no meaningful discussion of this Court's decision in *Sheila S. v. Commonwealth*, which found that a "*failure to detect* signs of sexual abuse" was not a substantive due process violation. 57 Mass. App. Ct. 423, 431-32 (2003) (emphasis added), *cited in* Defs. Br. 27, 46. Instead, Plaintiffs cite *Sheila S.* only in a parenthetical, attempting to distinguish the case by claiming that there, "defendants did not see signs of sexual abuse" and then tried to remove the child "after learning" that the caregiver had lied about the circumstances in the home. Pls. Br. 34. But the facts of *Sheila S.* actually support the Social Workers: as in *Sheila S.*, these Social Workers "did not see signs" of abuse, and did not learn that the foster parent's

boyfriend was living in the home and providing childcare. *See* Defs. Br. 15-21; Pls. Br. 34. *Sheila S.* thus would have conveyed to the Social Workers that their actions did not run afoul of substantive due process.

Plaintiffs further agree that the First Circuit has not defined the standard of conduct for social workers. Pls. Br. 19. Plaintiffs attempt to distinguish *J.R. v. Gloria*, 593 F.3d 73 (1st Cir. 2010), which rejected a substantive due process claim against social workers, *id.* at 79-80; *see* Pls. Br. 23-24, but they do not deny that the cases share critical features: the social workers had received some information about the foster home, did not have complete information regarding the conditions in the foster home, and could have obtained more information that might have alerted them to a risk of harm.[1] *See J.R.*, 593 F.3d at 76-78. Nothing in *J.R.* would lead a reasonable person to believe that the variation in the facts here would rise to a constitutional violation.

The absence of controlling authority on the substantive due process test that would govern the conduct of these Social Workers in this case is uncontested.

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[1] The fact patterns are remarkably similar, but there are distinctions. For instance, in *J.R.*, the social worker knew of multiple concerns and reports of physical abuse in the foster home and knew that an unauthorized individual was living in the home and providing childcare. *See J.R.*, 593 F.3d at 76-79. Here, the Social Workers knew of one allegation of abuse (deemed unsupported), had received information about Mallett's criminal record and about his visiting the home, but the foster parent actively hid his residence in the home and told them he was not living there. Defs. Br. 12-19.

B. No Consensus of Persuasive Authority Establishes That a Social Worker Can Be Liable for Failure to Detect an Unknown Risk of Harm.

Given the absence of controlling authority, to overcome qualified immunity, Plaintiffs must demonstrate a "robust consensus" of persuasive authority that clearly establishes the governing standard. *Penate*, 73 F.4th at 18 (citation omitted); Defs. Br. 26. But, as their brief makes abundantly clear, whatever consensus of authority exists indicates that *knowledge*—of harm itself, or of a substantial risk of harm—is a requirement for substantive due process liability.

In fact, none of the federal appellate decisions cited by Plaintiffs, *see* Pls. Br. 20-24, has allowed liability based on an unknown risk of harm. Rather, as the Social Workers have acknowledged, *see* Defs. Br. 27-30, a plurality of federal appellate courts has articulated variations of a test based on *known* harm or substantial risk of harm. *See, e.g.*, *Miller v. Philadelphia*, 174 F.3d 368, 375-76 (3d Cir. 1999); *Lintz v. Skipski*, 25 F.3d 304, 306-07 (6th Cir. 1994); *K.H. through Murphy v. Morgan*, 914 F.2d 846, 854 (7th Cir. 1990); *Tamas v. Dept. of Soc. & Health Servs.*, 630 F.3d 833, 844 (9th Cir. 2010); *Ray v. Foltz*, 370 F.3d 1079, 1083 (11th Cir. 2004); *see also Doe v. NYC Dept. of Soc. Servs.*, 649 F.2d 134, 145 (2d Cir. 1981) (requiring "a known injury, a known risk, or a specific duty"); *Hernandez ex rel. Hernandez v. Texas Dept. of Protective & Regul. Servs.*, 380 F.3d 872, 881 (5th Cir. 2004) (requiring deliberate indifference to "known severe

physical abuses"); *James ex rel. James v. Friend*, 458 F.3d 726, 730 (8th Cir. 2006) (considering whether defendants "actually drew" an inference that a substantial risk of serious harm existed).[2]

As the Social Workers have already explained, *see* Defs. Br. 30-31, these authorities demonstrate that it is not clearly established that a social worker violates substantive due process by failing to detect an unknown risk of harm.

C. Plaintiffs' New Argument for a Standard Based on an "Absence of Professional Judgment" Is Waived, and in Any Event Further Illustrates the Lack of Clearly Established Law.

Plaintiffs argue, for the first time on appeal, that a social worker who provides foster care support violates a child's right to substantive due process when the social worker demonstrates an "absence of professional judgment." Pls. Br. 30-33. Not only is this argument waived, but it further underscores that such a standard was not clearly established as a basis for a substantive due process claim.

Plaintiffs did not argue below that the substantive due process test for social workers is based on whether they showed an absence of professional judgment. RA.I/239-62; RA.IV/122-56. Rather, Plaintiffs argued below that the standard of conduct for social workers, if it applied, was whether they were aware of likely

[2] As discussed *infra* 11-12, only one circuit, the Tenth, has included considerations of whether the defendant failed to exercise "professional judgment" as to the danger in the foster home. *Schwartz v. Booker*, 702 F.3d 573, 581-82 (10th Cir. 2012).

injury or abuse and acted with deliberate indifference to it. RA.I/247-49. The argument in favor of a professional judgment standard has been waived and should not be considered for the first time in this appeal. *Cariglia v. Bar Counsel*, 442 Mass. 372, 379 (2004).

To the extent the Court is inclined to reach the issue of whether a professional judgment standard applies to substantive due process obligations for social workers, based on the Superior Court's references to the *Youngberg* standard in the decision below, RA.IV/181, those references combined with Plaintiffs' argument only serve to highlight the lack of clearly established law in this context. Indeed, Plaintiffs themselves never clearly articulate what the "professional judgment" standard for individual liability would be. As for the degree of deviation from professional judgment that could give rise to liability, Plaintiffs describe it in turns as a failure to follow "best practice," Pls. Br. 13, a "failure[] to follow established … standards," *id.* at 20, a "failure to exercise professional judgment," *id.* at 29, an "absence" of professional judgment, *id.* at 30, and an "abdication" of professional judgment, *id*. at 28. The First Circuit, however, in *J.R.*, essentially rejected at least some of these formulations when it concluded that a failure to follow state law does not amount to inherently egregious conduct. 593 F.3d at 81.

Plaintiffs point to only three jurisdictions that have adopted the professional judgment standard—Washington and Wisconsin state courts and the Tenth Circuit—and recommend that "this Court *should* follow" these jurisdictions' lead and "apply the professional judgment standard." Pls. Br. 31 (emphasis added).[3] But, first of all, these three jurisdictions are far from the "'robust consensus of persuasive authority'" required "in order to show that the law was clearly established" for purposes of qualified immunity. *Penate*, 73 F.4th at 18 (quoting *Escalera-Salgado v. United States*, 911 F.3d 38, 41 (1st Cir. 2018)). Second, the authorities cited by Plaintiffs are outliers. The Washington Supreme Court's decision in *Braam v. State*, 150 Wash.2d 689, 81 P.3d 851 (2003), *cited in* Pls. Br. 29, involved claims seeking injunctive relief on behalf of a class against the State of Washington, not monetary damages against individual social workers. The court underscored that—unlike those courts that applied a deliberate indifference standard to monetary damages claims—it was considering the standard that would be appropriate for "deciding the standard for injunctive relief" and "well suited for analyzing the claims of the class." *Braam*, 150 Wash.2d at 702-03, 81 P.3d at 856.

[3] Plaintiffs suggest incorrectly that the Seventh Circuit has applied a professional judgment standard. Pls. Br. 30 (citing *K.H.*, 914 F.2d 846). Instead, the Seventh Circuit considered the exercise of professional judgment to be an affirmative defense, a "secure haven" from liability for knowledge of harm or risk of harm. *K.H.*, 914 F.2d at 854.

Similarly, the Wisconsin Supreme Court applied a professional judgment standard to the county and its "public officials," without discussion of that standard as to individual social workers. *See Kara B. by Albert v. Dane Cnty.*, 205 Wis.2d 140, 160, 555 N.W.2d 630, 638 (1996), *cited in* Pls. Br. 29-30.[4] And the Tenth Circuit appears to be the only federal Court of Appeals adopting some version of the professional judgment standard. *Schwartz*, 702 F.3d at 581-82; *see supra* 9 n.2.

Because the law did not clearly establish that a social worker could be liable for a failure to detect the unknown risk of harm in Kimberly Malpass's foster home, the Social Workers are entitled to qualified immunity from these claims.

II. The Social Workers Are Entitled to Qualified Immunity Because Plaintiffs Have Failed to Identify Actions by Any of the Social Workers That Would Violate Substantive Due Process.

Plaintiffs also make clear that they cannot satisfy the second prong for overcoming qualified immunity because the record does not contain any actions that violated substantive due process. *Penate*, 73 F.4th at 18. To the extent that there is any clearly established law on the substantive due process standard for social workers, the facts in the summary judgment record are undisputed, and it is therefore undisputed that the Social Workers did not show deliberate indifference

[4] The Wisconsin Supreme Court diverged from Seventh Circuit precedent in adopting a professional judgment standard. Like Plaintiffs, *Kara B.* suggested incorrectly that the Seventh Circuit has applied a professional judgment standard. *See* 205 Wis.2d at 160 n.5; *supra* 11 n.3.

to known harm or substantial risk of harm in the foster home in a manner that shocks the conscience.

A. Plaintiffs Identify No Facts in the Summary Judgment Record Suggesting That the Social Workers Knew Samara or Alessa Were at Substantial Risk of Harm.

Most importantly, the summary judgment record contains no facts suggesting that any of the Social Workers knew Samara and Alessa were at substantial risk[5] of harm, acting in a way that shocks the conscience. *See* Defs. Br. 41-53.

1. Plaintiffs Adduced No Evidence That the Social Workers Knew the Foster Parent's Boyfriend Was Living in the Home and Posed a Substantial Risk of Harm to Samara and Alessa.

Plaintiffs do not dispute that DCF received only one allegation regarding treatment of children in the foster home before the August 2015 events: a March 2015 allegation by a young foster child in the home that Malpass had a boyfriend (Anthony Mallett) living there and that he had hit the child on the head. Pls. Br. 9-10. Plaintiffs do not dispute that those allegations were fully and robustly investigated by a DCF investigator, who reported Mallett's criminal history and conducted seventeen interviews over a two-week investigation, including separate interviews with the foster parent (Malpass) and the man who was alleged to be

[5] Plaintiffs do not claim that either Samara or Alessa were in fact harmed prior to August 14, 2015. Pls. Br. 7-17.

living in the home (Mallett). *Id.* at 10-14; Defs. Br. 38. Plaintiffs do not dispute that the investigator concluded that the children in the home had not been subject to abuse or neglect, and did not conclude that Mallett was living in the home. RA.II/190-206; Pls. Br. 10-14.

Plaintiffs point out that the Social Workers had access to the March 2015 51B report, and either read it or should have read it, *see* Pls. Br. 33 n.7—but Plaintiffs fail to acknowledge the investigator's own conclusions that Malpass was simply confused about DCF's rules on visitors and would comply in the future:

> [Malpass] was not certain of who DCF needed to be approved to be around the foster children .... Investigator will note that this is a common problem within DCF where Foster Parents are not fully aware of who needed to be checked ….
>
> Ms. Malpass is fully aware of what is expected and was told to contact to her [family resource worker] with any questions about who needs to be approved. She was told that she cannot have anyone around the foster children on a frequent basis, who has not been approved by DCF.

RA.II/205-06. Plaintiffs provide no account of how these assurances would have put a reasonable person on notice that Malpass's relationship with Mallett had placed the children at substantial risk.

As for events after the March 2015 51B report, Plaintiffs do not dispute that Creen told Malpass that her boyfriend was not permitted to be in the home, or that Malpass actively hid her boyfriend's presence in the home, or that Peterson looked for evidence of Mallett living in the home and found none. Defs. Br. 19, 50; Pls.

Br. 14; RA.II/11-20 (documenting Creen's visits to the home before and after the investigation); RA.III/75 (describing Peterson's efforts after the investigation to find evidence of the boyfriend's presence). Plaintiffs do not dispute that the supervisor defendants, Johnson-Cruz and Varian, did not know the boyfriend was living in the home or that Malpass would not comply with DCF rules once the investigator and Creen had reiterated them to Malpass. Pls. Br. 10-14.

Instead, Plaintiffs attempt to make a colorable claim based on what appears to be a failure to discern that the boyfriend was living in the home. Plaintiffs assert, for instance, that the Social Workers "failed to follow through" with a "plan to ensure weekly visits" to the home after the DCF investigator concluded his March 2015 investigation. Pls. Br. 26. They also claim that the Social Workers could have contacted the local police department to inquire about the number of contacts with the home, but did not do so. *Id.* at 10. These assertions fall squarely in line with ways in which a defendant "should have seen signs" that the child was in harm's way—but a claim based on such allegations is barred by qualified immunity. *Sheila S.*, 57 Mass. App. Ct. at 432; *see also Hernandez*, 380 F.3d at 883-84 (qualified immunity bars where the defendant could have "conducted a more thorough inquiry").

Plaintiffs also misleadingly characterize the record in several ways. For instance, they claim that "Defendants violated state laws," but identify no such

laws or how they were purportedly violated. Pls. Br. 32. They assert that at the March 2015 case conference, the clinical team discussed Malpass's "safety plan" with the police department, suggesting that this was a red flag about the safety of the *children*—but the safety plan involved the safety of *Malpass* from allegedly harassing behavior by the mother of the foster child who had made the March 2015 allegation. *Id.* at 10; RA.II/18. Plaintiffs also assert that at the March 2015 case conference, a "decision was made" to remove a separate child from the foster home, Pls. Br. 26, but the child was relocated with a family member after, inter alia, reports of threatening behavior by the child's mother toward Malpass. Defs. Br. 16-17; RA.II/18, 186. Plaintiffs also assert incorrectly that the Social Workers decided that "the other foster children would remain in the home," Pls. Br. 10, and that the Social Workers "did nothing" in response to the March 2015 allegations, *id.* at 23. On the contrary, the clinical team (including the four Social Workers) agreed to screen in those allegations for investigation, and the clinical team only decided that the rest of the children will remain in the home "*pending the outcome of the 51A investigation*," RA.II/18 (emphasis added), which then found the allegations unsupported.[6]

[6] Although not relevant to these events, Plaintiffs assert that in 2014, the year before these events, Creen "went months" without contacting Malpass—a statement with no support in the record. Pls. Br. 8; RA.II/14-16.

2. Plaintiffs Adduced No Evidence That the Social Workers Knew Samara Would Be Subjected to Gross Neglect by Malpass.

Even if the Social Workers had known that Mallett was living in the foster home, of which there is no evidence, *see supra* at Part II.A.1, it would not follow that they knew Samara was at substantial risk of the kind of event that occurred—gross neglect by the foster mother in placing Samara in a dangerous physical environment and failing to attend to her.

There is no dispute that the 51B report described the allegation that Mallett had hit one of the foster children, and summarized Mallett's concerning criminal history. Nor is there a dispute as to what actually occurred five months later, on the evening of August 14 and following morning: Samara reached the thermostat from her crib, bringing the bedroom to a dangerously hot temperature, and the foster mother, after returning from an evening out, left Samara and the other child, Avalena, in the bedroom without checking on them. Nothing in the March 2015 report five months prior—even if the allegation had been found supported, which it was not—would have made any of the Social Workers aware of the risk of the foster mother's gross neglect on August 14 and 15. On the contrary, the foster mother consistently received positive evaluations for her attentive care of the children. Defs. Br. 15.

Plaintiffs' contention instead seems to be that once the 51A report was filed—raising red flags that were ultimately found unsupported but that might have warranted additional layers of subsequent inquiries—the Social Workers became individually liable for any subsequent adverse event that occurred in the foster home. In other words, Plaintiffs' claim is not that the Social Workers knew of a substantial risk of harm, but that they failed to detect the risk. Substantive due process does not provide such grounds for individual liability. Instead, the individual defendant's action must be a "proximate cause" of the injury to the plaintiff, *Doe*, 649 F.2d at 145, and have an "affirmative link" to the injury, *Johnson ex rel Estate of Cano v. Holmes*, 455 F.3d 1133, 1143 (10th Cir. 2006). Because Plaintiffs have adduced no evidence that the Social Workers had knowledge that Malpass would abdicate her own responsibilities as a foster parent and allow Samara to remain unattended in a dangerous bedroom, Plaintiffs have identified no such proximate cause or affirmative link between the March 2015 report (which had little bearing on this issue) and the events of August 2015.

3. Plaintiffs Have Adduced No Evidence to Support a Claim That the Social Workers' Conduct Shocks the Conscience.

In order to survive summary judgment, Plaintiffs were required to adduce evidence of not only deliberate indifference to a known harm or substantial risk of harm, but also of conduct that shocks the conscience. Nothing in the summary judgment record suggests the type of egregious conduct that would shock the

conscience. "Whether conduct shocks the conscience is a question of law." *Kingsley v. Lawrence Cnty., Missouri*, 964 F.3d 690, 701 (8th Cir. 2020) (citation and quotations omitted); *see also Armstrong v. Squadrito*, 152 F.3d 564, 581 (7th Cir. 1998). Here, at most, the record may indicate a dispute of fact as to whether the Social Workers failed to detect a risk that Malpass would in the future engage in gross misconduct in her care of the children. *See* Defs. Br. 45-53. Plaintiffs have cited no authority to suggest that such actions shock the conscience as a matter of law. *See* Pls. Br. 33-37.

B. Plaintiffs Fail to Provide an Individualized Review of Each Defendant's Conduct.

The law of qualified immunity is clear that each individual defendant must be reviewed individually, as to that defendant's conduct and the particular circumstances before her. Defs. Br. 44; *Wesby*, 583 U.S. at 63; *Lipsett v. Univ. of Puerto Rico*, 864 F.2d 881, 902 (1st Cir. 1988). That review is absent from Plaintiffs' principal brief. Pls. Br. 31-33.

As to Juliann Creen, Plaintiffs do not dispute that their claim is based on the actions and omissions identified in the Social Workers' own principal brief, including certain omissions at the licensing stage for Malpass (e.g., not verifying Malpass's medications or whether her utilities were in an adult name); recording three home visits during Malpass's six-month probationary period in 2014, after Malpass was licensed; and telling Malpass that her boyfriend should not be living

in the home, without asking more probing questions that might have revealed Malpass's deceit. Defs. Br. 47-50; Pls. Br. 7-8, 14. Plaintiffs identify no authority for their assertion that Creen's actions either showed a deliberate indifference to a known substantial risk of harm or shock the conscience.

As to Breanne Peterson, Plaintiffs' claim seems to be that Peterson violated substantive due process by not making unannounced visits to the home and to the extent that she did not increase the frequency of her visits to the home. Defs. Br. 50-51; Pls. Br. 14. No authority cited by Plaintiffs has found or would support a substantive due process violation based on such purported decisions.

As to Roxanna Johnson-Cruz, Creen's supervisor, Plaintiffs claim that Johnson-Cruz helped formulate a plan for three social workers to make weekly visits to the home, but did not "ensure" that the plan was implemented and did not conclude that Malpass was a "frequent visitor" to the home such that DCF approval was required. Defs. Br. 51-52; Pls. Br. 14, 17. Neither of these actions could reasonably be considered conscience-shocking, deliberate indifference to a known substantial risk of harm.

As to Catherine Varian, Peterson's supervisor, Plaintiffs' only assertion of misconduct seems to be that she attended the March 2015 case conference and had access to the March 2015 51B report, but did not recall discussing with Peterson the frequency of her visits to the Malpass foster home. Defs. Br. 52-53; Pls. Br.

14. These facts, even if true, could not establish that Varian was deliberately indifferent to a known substantial risk of harm. None of the cases cited in Plaintiffs' brief come close to finding a substantive due process violation based on similar conduct, and nothing would have put Varian on notice that she was violating Samara's or Alessa's rights to substantive due process by not discussing the frequency of Peterson's visits to the foster home.

C. Plaintiffs Identify No Constitutional Deprivation Suffered by Alessa.

In their principal brief, the Social Workers showed that the substantive due process claims brought on behalf of Alessa, Samara's sister, should be dismissed because the summary judgment record contains no evidence that Alessa experienced a constitutional deprivation caused by actions of the Social Workers. Defs. Br. 53. Plaintiffs' response shows the defects both in the lack of a constitutional deprivation and the lack of causation. *See* Pls. Br. 37-38.

First, Plaintiffs do not identify how Alessa was harmed in the home. Plaintiffs suggest that Alessa was hospitalized due to "less serious injuries than Samara," but do not identify those injuries. Pls. Br. 37; *see also id.* at 16. On the contrary, Plaintiffs have admitted that Alessa was sent to the hospital "for observation" only. RA.III/150; Defs. Br. 20-21. Plaintiffs suggest that Alessa experienced "lasting" "medical … effects" of her "experience and her resulting separation from her sister," without identifying those effects. Pls. Br. 37.

Second, as to proximate cause, Plaintiffs mistakenly suggest that a constitutional deprivation can occur from subsequent mental distress (such as that manifested by nightmares) that is related in some way to a chain of events following harm to a different child in the foster home. Plaintiffs cite no authority for this proposition. Pls. Br. 38. On the contrary, substantive due process claims require that the defendant's failure in the face of risk or injury "was a proximate cause of plaintiff's deprivation of rights." *Doe*, 649 F.2d at 145, *cited in* Pls. Br. 22; *see also Johnson ex rel Estate of Cano*, 455 F.3d at 1143, *cited in* Pls. Br. 32 (requiring an "affirmative link" between defendant's conduct and plaintiff's injury). The cases cited by Plaintiffs illustrate that same limiting principle of causation because they involve children who were themselves allegedly abused in the foster home. *See, e.g.*, *M.D. v. Abbott*, 152 F. Supp. 3d 684, 696 (S.D. Tex. 2015) (reviewing claims of emotional and sexual abuse of plaintiffs by foster parents), *cited in* Pls. Br. 38. Plaintiffs do not claim any such abuse of Alessa.

CONCLUSION

For the foregoing reasons and for those set forth in the Social Workers' principal brief, the order denying the Social Workers' motion for summary judgment should be reversed, and the claims against them dismissed.

Respectfully submitted,

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Date: August 29, 2024

CERTIFICATE OF COMPLIANCE

I, Katherine B. Dirks, hereby certify that the foregoing brief complies with all of the rules of court that pertain to the filing of briefs, including, but not limited to, the requirements imposed by Rules 16 and 20 of the Massachusetts Rules of Appellate Procedure. The brief complies with the applicable length limit in Rule 20 because it contains 4,478 words in 14-point Times New Roman font (not including the portions of the brief excluded under Rule 20), as counted in Microsoft Word (version: Word 2016).

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CERTIFICATE OF SERVICE

I, Katherine B. Dirks, hereby certify that on September 24, 2024, I filed with the Supreme Judicial Court and served the attached Reply Brief of Defendants-Appellants, Juliann Creen, Roxanne Johnson-Cruz, Breanne Peterson and Catherine Varian, in *Gotay et al. v. Department of Children and Families et al.*, No. SJC-13666, through the electronic means provided by the clerk on the following registered users:

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