IN THE COURT OF APPEALS OF IOWA

No. 2-009 / 11-0176
Filed March 28, 2012

ROBIN SCOTT EVANS, Individually and as Next Friend of ASHLEY ELAINE EVANS, a Minor Child,
Plaintiff-Appellant,

vs.

RICHARD ADAMS, MELISSA ADAMS and MAHASKA COUNTY, IOWA,
Defendants-Appellees.

Appeal from the Iowa District Court for Appanoose County, Daniel P. Wilson, Judge.

Robin Scott Evans appeals from the summary judgment entered for Richard and Melissa Adams. **AFFIRMED.**

Steven Gardner of Kiple, Denefe, Beaver, Gardner & Zingg, L.L.P., Ottumwa, for appellant.

Carlton G. Salmons of Gaudineer, Comito & George, L.L.P., West Des Moines, for appellees.

Considered by Danilson, P.J., Bower, J., and Miller, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

DANILSON, P.J.

The defendants' response to this case could be, "No good deed goes unpunished."[1] Robin Scott Evans brought this action against Richard and Melissa Adams and Mahaska County,[2] asserting they are liable to him for damages as a result of child stealing, harboring a runaway, false imprisonment, abuse of process, and violation of 42 U.S.C. § 1983. The district court granted summary judgment in favor of the Adamses, and Evans now appeals. Because no genuine issue of material fact remains and the Adamses are entitled to judgment as a matter of law, we affirm.

I. Background Facts and Proceedings.

The district court set forth these undisputed facts, which are viewed in a light most favorable to Evans:

> Plaintiff Robin Evans is married to Yvonne [a/k/a Gabby] Evans. Plaintiff[3] Ashley Evans is Robin's daughter from a previous [relationship]. Ashley was born [in January 1992]. In 2007 during the events pertinent to this case Ashley was age 15 years. Robin is a steel worker and his job requires him to be away from home for long periods. While Robin is away, Yvonne cared for and raised his daughter, Ashley. . . . Yvonne and Ashley's relationship began deteriorating the summer of 2007.
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> Defendants Richard and Melissa Adams both knew Yvonne before the events of this case. They knew Yvonne from her work as the Director of Stephens Animal Shelter in Oskaloosa. Richard is a Deputy Sheriff for Mahaska County and he knew Yvonne because she would make calls to him regarding stray animals. Melissa knew Yvonne because Melissa would stop in at the animal shelter to play with the dogs and bring them dog biscuits. Because

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[1]The phrase has been attributed to many, including Clare Boothe Luce, Oscar Wilde, and Andrew Mellon.

[2] The defendants have filed one brief, and we will refer to them collectively as the Adamses.

[3] We note the record would support a finding that Ashley Evans, since the filing of the petition, has reached the age of majority and has stated she does not wish to be a plaintiff, though defendants' motion to dismiss her as a plaintiff was not ruled on by the district court.

of their frequent contact at the animal shelter, Melissa and Yvonne became friends. When Yvonne and Ashley's relationship began deteriorating, Yvonne confided in and sought advice from Richard and Melissa, as they had raised teenage children themselves.

In the early hours of the morning of November 17, 2007, Yvonne telephoned Richard and Melissa and asked them to come over to her house. Yvonne was upset that Ashley had snuck out of the house the night before and wanted to talk about it. Richard was on duty that day, so he went in uniform and drove his squad car to where Yvonne and Ashley lived. Melissa drove a separate car. Richard, Melissa, and Yvonne discussed Ashley's sneaking out and the stress it caused Yvonne. Yvonne talked about Robin being gone for work and not coming home some weekends, forcing her to bear the brunt of raising Ashley. After their conversation, Yvonne permitted Ashley to go and stay at Richard and Melissa's house for a couple of days so Yvonne could sleep and "cool off." Ashley rode to Richard and Melissa's house in Melissa's car. Later that day, Yvonne called Robin—who was out of town for work—and told him that she had allowed Ashley to stay at the Adamses' house for a couple of days so that she could get some sleep. Yvonne explained to Robin that Ashley went to the Adamses' house because the Adamses did not want Ashley placed in the juvenile system as they thought it would probably make matters worse. As planned, after two days, Ashley returned home to resume living with Yvonne.

The next weekend—November 25, 2007—Yvonne and Ashley were fighting again. Yvonne called Richard and Melissa's cell phone[4] for help once again around noon. About the same time, Ashley called 911 and asked for someone to come and remove her from the residence. When Yvonne called the cell phone, Richard was on break from duty and home for lunch. Melissa rode to Yvonne's house in Richard's squad car. Again, Yvonne asked Richard and Melissa to take Ashley back to their home and stay for a couple of days until Robin returned home from work. Yvonne called Robin that night and told him that Richard and Melissa had again taken Ashley for a couple of days until he was able to come home. That night, . . . Ashley also called Robin and told him where she was staying and that she did not want to leave. After speaking with Ashley, Robin asked to speak to Richard or Melissa and they further explained the situation to him. A couple of days later, while on the phone with Robin, Yvonne told him that she had signed papers for Ashley to transfer schools—from Eddyville-Blakesburg

[4] The call was to Melissa, and Melissa could not remember if it was on her cell phone or the home phone. Richard had also received a call from Yvonne on his cell phone earlier.

> Community School District to North Mahaska Community Schools in New Sharon, Iowa.
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> While staying with Richard and Melissa, Ashley started to share what living with Yvonne was like. Ashley told them about the difficulties she had with Yvonne. Ashley also told them accounts about how her father was a severe alcoholic. Ashley told Melissa how in the preceding week, Yvonne had backhanded Ashley in the car while driving with a blow sufficient to cause Ashley's nose to bleed. Because of Ashley's numerous stories, Melissa consulted an attorney who, upon Ashley's approval, drew up voluntary guardianship papers. After reviewing the papers and considering what was in the best interest of Ashley, Judge Meadows appointed Richard and Melissa Ashley's co-guardians on November 30, 2007.
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> Ashley continued living with Richard and Melissa until late April 2008. Robin filed a "Motion to Set Aside the Guardianship" on February 4, 2008. Richard and Melissa filed a "Resistance . . . ." A hearing on the matter was held on February 22, 2008, before Judge Blomgren. Judge Blomgren ruled on April 29, 2008, that Robin's right to notice under the Fourteenth Amendment was violated when the guardianship was established, requiring the voiding of the case as to Robin.[5] After the ruling, Ashley moved back in with Robin and Yvonne. Ashley continued to live with them until she turned 18 . . . when she moved out.

On November 3, 2008, Evans filed a petition against the Adamses and Mahaska County, asserting the Adamses were liable to him pursuant to 42 U.S.C. § 1983; for child stealing, *see* Iowa Code § 710.5; false imprisonment,

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[5] The guardianship petition was filed pursuant to Iowa Code section 633.557(1) (2007), which states:

> A guardian may also be appointed by the court upon the verified petition of the proposed ward, *without further notice, if the proposed ward is other than a minor under the age of fourteen years*, provided the court determines that such an appointment will inure to the best interest of the applicant. However, if an involuntary petition is pending, the court shall be governed by section 633.634. The petition shall provide the proposed ward notice of a guardian's powers as provided in section 633.562.

(Emphasis added.)

The attorney filing the petition for guardianship argued the statutory provision did not require prior notice to a parent when the proposed ward was age fifteen or older. Judge Blomgren ruled the ex parte appointment of a guardian "in this case denied the father due process." The court stated further, "This does not intend to declare the statute to be unconstitutional on its face but only as applied in these circumstances." Judge Blomgren also ordered the petition "remain on file conditioned upon appropriate service upon the father" and if "not served within 30 days" of April 29, 2008, the petition "shall be deemed dismissed." Judge Blomgren denied Evans' request for sanctions and attorney fees.

see id. § 710.7; harboring a runaway child, *see id.* §§ 710.8, 710.9; and abuse of process.

On May 20, 2010, the Adamses filed a motion for summary judgment and supporting statement of undisputed material facts and exhibits.

On June 1, 2010, Evans filed a general resistance to the motion for summary judgment, as well as a motion for additional time "in which to file supplement to resistance," "memorandum of authorities, and statement of disputed facts." No supplement to Evans' resistance was ever filed.

On June 15, 2010, Evans filed a motion for partial summary judgment, asserting the Adamses, in obtaining an ex parte order appointing them as co-guardians of Ashley, which was "in violation of Plaintiff Robin Evans rights and held . . . to be null and void," were "barred from challenging the validity and constitutionality of the Mahaska County District Court's ruling in the Guardianship Proceedings under the doctrine of res judicata" and thus there was no defense to his 42 U.S.C. § 1983 claim. Defendants' resistance to the motion for partial summary judgment was accompanied by supporting statements and exhibits.

The motions were argued on October 1, 2010.

On October 4, 2010, Evans filed a "Plaintiffs' Response to Defendants' Oral Motion at Summary Judgment Hearing," asserting his failure to file a statement of disputed facts or memorandum of authorities did not bar argument or resistance to the motion for summary judgment.

On November 1, 2010, Evans filed a motion for leave to file a second amended petition. The attached petition asserted a sixth cause of action and alleged Richard Adams and the Mahaska County Sheriff's Department

"knowingly and willfully failed to report the suspected case of child abuse of Ashley Evans."

On November 15, 2010, the defendants filed a supplemental and supported motion for summary judgment "pertaining to Plaintiff Robin Evans' Second Amended Petition." They also filed an answer to the second amended petition.

A. District Court's November 18, 2010 Ruling. On November 18, 2010, the district court filed its ruling on the cross motions for summary judgment. The district court addressed each of Evans' claims.

1. Child Stealing. Child stealing is defined in Iowa Code section 710.5 as follows:

> [W]hen, knowing that the person has no authority to do so, the person forcibly or fraudulently takes, decoys, or entices away any child with intent to detain or conceal such child from its parents or guardian, or other persons or institution having the lawful custody of such child, unless the person is a relative of such child, and the person's sole purpose is to assume custody of such child.

The district court found the claim failed on various levels: "Yvonne's actions show Ashley's departure from Yvonne and Robin's house was not fraudulent or by force"; there was no intent to detain or conceal the child; and since the record did not show any facts that would support a finding of child stealing, it could not be a proximate cause of damages.

2. False Imprisonment. "The tort of false imprisonment involves 'an unlawful restraint on freedom of movement or personal liberty.'" *Ette ex rel. Ette v. Linn-mar Cmty. Sch. Dist.*, 656 N.W.2d 62, 70 (2002) (citation omitted). The "essential elements" of false imprisonment are "(1) detention and restraint

against one's will and (2) the unlawfulness of this detention or restraint." *Id.*; *Zohn v. Menard, Inc.*, 598 N.W.2d 323, 326 (Iowa Ct. App. 1999). The district court concluded because (1) Ashley asked to be removed from her home, (2) Yvonne called the Adamses directly on their cell phones and asked that Ashley be removed, and (3) Ashley chose to leave and stayed willingly at the Adamses, "[t]here was no unlawful restraint on freedom of movement or personal liberty here."

3. Abuse of Process. "The three elements of an abuse-of-process claim are: (1) the use of a legal process; (2) its use in an improper or unauthorized manner; and (3) the plaintiff suffered damages as a result of the abuse." *Fuller v. Local Union No. 106 of United Bhd. of Carpenters & Joiners of Am.*, 567 N.W.2d 419, 421-22 (Iowa 1997).

Evans asserted in his petition that the

> prosecution of the guardian action was made without sufficient cause and in violation of the due process rights of the Plaintiffs and was brought willfully and wantonly, with malice on the part of the defendants and in reckless disregard of the rights of the Plaintiffs.

The summary judgment record, however, contains a letter written by Ashley to the judge in the guardianship proceeding,[6] an attached list of sixty-two items for

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[6] The letter states in part:

> Dear Judge,
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> Please don't make me go back to Gabby and my dad. My dad is an alcoholic and Gabby has anger issues. Gabby, on several occasions, has hit me, slapped me, pulled my hair, grabbed me by the throat, kicked me, and punched me in the stomach. . . . My dad never pays attention to me, he's gone for about 5 weeks at a time . . . . He has chose [sic] alcohol over me . . . . I'm living with Melissa and Richard Adams now. I'm very happy, I'm doing well, I love them, I trust them, I feel safe, and I really don't want to leave. I'm finally in a stable home. I'm really scared to go back to Gabby and my dad for fear of being abused again, ... Please let me stay where I am . . . .

the judge's review, and deposition testimony by Ashley confirming the statements contained in that letter and the attached list. The district court wrote:

> Although this list was not reviewed by the Court at the time of the guardianship hearing, it is reflective of the merits of the guardianship petition. After hearing the facts stated in the letter and about the situations included on the list, Melissa had sufficient reason to speak to Mr. Randy DeGeest, an attorney for advice.
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> On Mr. DeGeest's advice, Melissa talked to Ashley about setting up a voluntary guardianship, naming Richard and Melissa her guardians. Ashley said that is what she wanted, so the appropriate papers were filed. Iowa law 633.557 allows, "[a] guardian may also be appointed by the court upon the verified petition of the proposed ward, without further notice, if the proposed ward is other than a minor under the age of fourteen years, provided the court determines that such an appointment will inure to the best interest of the applicant.''
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> Judge Meadows appointed Richard and Melissa as Ashley's co-guardians. Melissa's primary purpose in filing the "Guardianship Petition" was alleviating the difficulties and traumas that Ashley faced while living with Robin and Yvonne. There is nothing in the record to show that Melissa filed the petition with an improper or unauthorized purpose, rather Melissa was using the process for the purpose it was designed.

The district court concluded there was no material issue of fact and Evans had failed to establish a claim of abuse of process.

4. Harboring a Runaway Child. Iowa Code section 710.9 provides a parent of a runaway child with "a right of action against a person who harbored the runaway child in violation of section 710.8." Section 710.8(1)(c) defines a "runaway child" as "a person under eighteen years of age who is voluntarily absent from the person's home *without the consent of the person's parent, guardian, or custodian.*" (Emphasis added.) The district court, citing the

definition of custodian found in section 600A.2(6),[7] concluded because Yvonne was Ashley's custodian and consented to Ashley's absence from the home, Ashley was not a runaway child. Consequently, the defendants were not harboring a runaway child.

5. Civil Rights Claim.

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1983. To support a claim derived from this statute, a plaintiff "must show (1) the defendant deprived him of a right secured by the constitution and laws of the United States, and (2) the defendant acted under color of state law." *Christenson v. Ramaeker,* 366 N.W.2d 905, 907 (Iowa 1985) (citing *Parratt v. Taylor,* 451 U.S. 527, 535, 101 S. Ct. 1908, 1913, 68 L. Ed. 2d 420, 428 (1981); *Adickes v. S.H. Kress & Co.,* 398 U.S. 144, 150, 90 S. Ct. 1598, 1604, 26 L. Ed. 2d 142, 150 (1970)).

As for the 42 U.S.C. § 1983 claim, the court concluded the Adamses "have committed no constitutional violations or violations of state law," and thus the claim fails. And though unnecessary after this first conclusion, the district court also concluded Evans had failed to establish a material issue of fact as to whether Richard Adams was acting under color of law, as a deputy sheriff of Mahaska County, rather than "assisting a friend who called a personal cell phone

[7] Iowa Code section 600A.2(6) defines a custodian as a "stepparent . . . to a minor child who has assumed responsibility for that child" or "a person appointed by a court . . . having jurisdiction over a child."

and requested his help." The court further observed the guardianship proceedings were sought by Melissa Adams and the petition was signed by Ashley; "Richard, a Deputy for Mahaska County, was not involved in this process other than being listed as a guardian for Ashley and signing the Court Officer's Oath."

The district court wrote further: "As shown above, the Defendants are entitled to summary judgment on all of the causes of action brought by the Plaintiffs." The court denied Evans' partial motion for summary judgment and ruled: "The Petition, as amended, and this cause of action are dismissed." Costs were assessed to Robin Evans.

B. Subsequent Proceedings after Dismissal. On November 29, 2010, Evans filed a statement of disputed facts and "memorandum of authorities in support of resistance to supplemental motion for summary judgment."

On December 28, 2010, the court held a telephonic hearing because counsel for Evans "approached the court on December 27, 2010 indicating that there were pending matters that needed addressed. . . . The primary issue raised at hearing was the resolution of Count VI of the Second Amended Petition." Without either party waiving any defenses or claims, the parties agreed, and the court ordered, a further hearing for January 7, 2011, to specifically address the issue.

On January 5, 2011, the Adamses filed a motion to dismiss for lack of subject matter jurisdiction. They contended the November 18, 2010 ruling dismissed the plaintiffs' case in its entirety. Because plaintiffs did not file an Iowa

Rule of Civil Procedure 1.904(2) motion, the court no longer had jurisdiction of the matter. The motion to dismiss was argued at the January 7 hearing.

On January 14, 2011, the district court filed a "ruling on defendant's supplemental motion for summary judgment (pertaining to plaintiff Robin Evans' second amended petition); motion to dismiss; and concerning the second motion to amend petition."[8] In its ruling, the court noted after the October 1, 2010 hearing on pending summary judgment motions, "[t]he record was not left open for the submission of additional information or argument" and it had ruled on the then-pending motions.

The court went on to address Evans' motion for leave to file a second amended petition, stating the motion had been filed "unbeknownst to the Court at the time of its Ruling," and thus the "proposed sixth claim was not considered" in the ruling. The court ruled the defendants' answer to the second amended petition did not constitute consent to the motion for leave to file an amended petition. The court noted it had considerable discretion in ruling on a motion for leave to amend. *See Rife v. D.T. Corner, Inc.*, 641 N.W.2d 761, 766 (Iowa 2002). The court first observed the proposed amendment was filed almost two years after the petition, four months after the parties had filed the motions for summary judgment, and after the parties had argued the motions, and it had taken the dispositive motions under advisement. The court denied the motion for leave to amend, also concluding the failure-to-report-child-abuse claim was

[8] The November 1, 2010 motion was entitled "Motion for Leave To File Second Amend [sic] Petition at Law and Jury Demand."

"substantially different" from the claims previously raised by the plaintiffs and might require different discovery.

As an alternative ruling, if the defendants' answer was to be considered consent to amend,[9] the court addressed the defendants' supplemental motion for summary judgment and wrote:

> Generally a "person cannot maintain an action if, in order to establish his cause of action, he must rely, in whole or in part, on an illegal or immoral act or transaction to which he is a party." *Cole v. Taylor*, 301 N.W.2d 766, 768 (Iowa 1981). "[N]or may [a] person maintain claim for damages based on his own wrong or caused by his own neglect or base his cause of action, in whole or in part, on violation by himself of criminal or penal laws." *Id.* Here, Robin is claiming damages based on the abuse he and Yvonne inflicted on Ashley. Ashley testified as to multiple instances when Robin was verbally abusive to Ashey─yelling at her and calling her names. Further Ashley testified to numerous times when Yvonne was abusive. . . . Although Yvonne was the abuser in those circumstances, Yvonne usually informed Robin about the happenings after the fact; yet, Robin did nothing to prevent future abuse from Yvonne. It is Robin's own actions for which he is using to try to recover from the Defendants. To maintain this failure to report child abuse, Robin is improperly relying on his o[w]n illegal acts and improper decisions. Robin cannot recover from the Defendants for the abuse he imposed on his daughter.
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> . . . .
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> Further, Ashley became an adult on January 29, 2010. Ashley was an adult when the "Motion for Leave to File Second Amended Petition" was filed on November 1, 2010. "A minor who attains legal majority shall continue as a party in that person's own right." Iowa R. Civ. P. 1.225. Ashley needs to personally bring the lawsuit, not her father as next friend.
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> Based on these facts, there is no material issue of fact and the defendants are entitled to judgment as a matter of law.

Evans now appeals, asserting the court erred in its ruling filed November 18, 2010, in granting summary judgment to the defendants and in

[9] Iowa Rule of Civil Procedure 1.402(4) provides that after a responsive pleading, "a party may amend a pleading only by leave of court or by written consent of the adverse party."

denying his partial motion for summary judgment. No issues are raised in connection with the court's order entered on January 14, 2011.

II. Jurisdiction: Motion to Dismiss—Timeliness of Appeal.

The Adamses contend that this appeal must be dismissed because Evans' appeal was filed more than thirty days after the November 18, 2010 ruling; no rule 1.904(2) motion was filed; and as a result, this appeal was untimely, depriving this court of jurisdiction. *See Hills Bank & Trust Co. v. Converse*, 772 N.W.2d 764, 771 (Iowa 2009) ("A failure to file a timely notice of appeal leaves us without subject matter jurisdiction to hear the appeal."); *Fed. Am. Int'l, Inc. v. Om Nama Shivah, Inc.*, 657 N.W.2d 481, 484 (Iowa 2003) (distinguishing between subject matter jurisdiction and authority to hear a particular case). We reach the merits of this case though the Adamses move to dismiss this appeal as untimely.

Iowa Rule of Appellate Procedure 6.101(*b*) requires a notice of appeal be filed "within 30 days after the filing of the final order or judgment." "A judgment is 'final judgment' if it finally adjudicates the rights of the parties." *Peppmeier v. Murphy*, 708 N.W.2d 57, 64 (Iowa 2005) (internal quotation and citation omitted).

However,

> [a] final order dismissing some, but not all, of the parties or disposing of some, but not all, of the issues in an action may be appealed within the time for appeal from the judgment that finally disposes of all remaining parties and issues to an action, even if the parties' interests or the issues are severable.

Iowa R. App. P. 6.101(1)(*c*).

Here, the hearing on the pending motions for summary judgment was held on October 1. Subsequently, on November 1, but before the court ruled on the motions, Evans filed a motion for leave to file a second amended petition and an

amended petition adding a sixth count. The Adamses did not file a resistance to the motion for leave to amend but rather filed an answer. The answer was filed on November 15. On November 18, the court ruled on the pending motions for summary judgment. In the court's ruling on the motion for leave to amend filed January 14, 2011, the court stated that the motion for leave to amend had been filed "unbeknownst to the Court" at the time of its ruling on the motions for summary judgment and thus the "proposed sixth claim was not considered" in the ruling. Ultimately, the court denied the motion for leave to amend. Because not all of the issues of this action were resolved by the court's ruling on the motions for summary judgment filed November 18, albeit without the court's knowledge, and Evans' notice of appeal was filed within thirty days of the ruling on that motion, we conclude Evans' appeal was timely pursuant to rule 6.101(*c*). In this regard, we do not view the count alleged in the amended petition or the motion for leave to amend as collateral or independent claims separately appealable.[10]

III. Scope and Standard of Review.

We review a district court decision granting a motion for summary judgment for correction of errors at law. *Pavone v. Kirke*, 807 N.W.2d 828, 832 (Iowa 2011). We examine the record in a light most favorable to the nonmoving party. *Id.* If there is no genuine issue of material fact after a review of the entire

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[10] We acknowledge this question presents a close issue as the November ruling stated the petition was "dismissed," and no rule 1.904 motion was filed to extend the time to appeal thus seemingly making the motion to amend moot. *See Bd. of Water Works Trustees v. City of Des Moines*, 469 N.W.2d 700, 702 (Iowa 1991) (concluding the court's ruling on a sanction motion came after the order finally disposing of plaintiff's suit and did not extend the time for plaintiff to appeal the decision disposing of the suit). "Rulings deciding collateral and independent claims are separately appealable as a final judgment and do not act to extend the time limits to appeal earlier decisions on the merits." *Id.*

record, summary judgment is appropriate. *Id.* Accordingly, "[t]his court reviews a summary judgment to determine whether the moving party demonstrated the absence of any genuine issues of material fact and established entitlement to judgment on the merits as a matter of law." *C & J Vantage Leasing Co. v. Outlook Farm Golf Club, L.L.C.,* 784 N.W.2d 753, 756 (Iowa 2010).

IV. Merits.

On appeal, Evans claims the defendants failed to prove there were no genuine issues of material fact as to the claims of harboring a runaway child, false imprisonment, abuse of process, and 42 U.S.C. § 1983. Evans also asserts the district court failed to "give effect to the doctrine of res judicata where by the Defendants are barred from challenging the constitutionality of the court's ruling in the hearing to set aside the guardianship" and thus should have granted Evans' partial motion for summary judgment. We disagree.

A. Harboring a Runaway. With respect to the district court's ruling that Ashley was not a runaway child, and consequently defendants were entitled to judgment as a matter of law on this claim, we find no error. As previously stated, section 710.8(1)(c) defines a "runaway child" as "a person under eighteen years of age who is voluntarily absent from the person's home *without the consent of the person's parent, guardian, or custodian.*" (Emphasis added.) The summary judgment record establishes—and Evans does not contest—(1) Yvonne was Ashley's custodian; (2) Yvonne called the Adamses to take Ashley out of the home; (3) Yvonne consented to Ashley leaving and staying with the Adamses; and (4) signed the paperwork to transfer Ashley to a different school. The

defendants have thus proved as a matter of law Ashley was *not* absent from the home without consent and they were entitled to judgment on this count.

Evans' claim, that reasonable minds could differ on whether Yvonne's consent was limited to the period he was away from home, does not change the result. Even if we assume for the sake of argument Yvonne's consent was so limited, by the time Evans returned home Ashley was under the care of court-appointed guardians.[11] Ashley was not a "runaway."

B. False Imprisonment. To prove false imprisonment, Evans was required to show (1) detention and restraint against one's will and (2) the unlawfulness of this detention or restraint. *Ette*, 656 N.W.2d at 70. Evans does not deny Ashley consented to living with the Adamses, and therefore, there is nothing in this record that suggests Ashley was detained or restrained against her will by the Adamses.

Evans argues, however, that "reasonable minds could differ as to whether Plaintiff Ashley Evans was capable of appreciating the nature, extent, and probable consequences of the conduct consented to." There is nothing in this

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[11] Evans reads too much into the court's ruling, filed several months later, that concluded the statutory provision under which the guardianship was established was unconstitutional as applied in this instance because the father was not served with notice.

The guardianship was granted pursuant to Iowa Code section 633.557, which as that court's ruling observes "has been in effect for many years" and has been interpreted as "[m]anifestly . . . giv[ing] to a minor over fourteen years of age the right to select his guardian subject to the approval of the court." *Hodgen's Executors v. Sproul*, 221 Iowa 1104, 1110, 267 N.W. 692, 695-96 (1936). "Statutes carry a presumption of constitutionality, and the challenger bears a heavy burden to prove otherwise." *Bruns v. State*, 503 N.W.2d 607, 609 (Iowa 1993).

We note the court ordered the petition remain on file conditioned upon appropriate service upon the father. This record is silent as to further proceedings in that action. We know only Ashley returned to her father's home and moved out when she turned eighteen.

record suggesting Ashley was *not* capable of appreciating her consent. The summary judgment record indicates Ashley wished to live with the Adamses, signed a petition having them named as co-guardians, and did not want to have the guardianship terminated. She was asked at deposition and when she had obtained the age of majority, "If things had been done right back then, . . . would you still have chosen to have these folks, Richard and Melissa, as your guardians? A. Yes." The court did not err in dismissing this claim.

C. Abuse of Process. Abuse of process is "the use of legal process, whether criminal or civil, against another primarily to accomplish a purpose for which it was not designed." *Gibson v. ITT Hartford Ins. Co.*, 621 N.W.2d 388, 398 (Iowa 2001). We find no error in the district court ruling the defendants were entitled to summary judgment on the abuse-of-process claim. We repeat only that Yvonne asked the Adamses to take Ashley away and Ashley informed Melissa about instances that raised valid concerns for Ashley's safety when at her father and stepmother's home. The petition to establish a guardianship was not filed for an improper purpose.

D. Civil Rights Claim. Evans argues the district court's summary judgment ruling "failed to recognize Judge Blomgren's order to set aside the guardianship." Again, Evans reads too much into Judge Blomgren's ruling. We acknowledge Judge Blomgren found the *statute*, which allowed a guardianship to be established without notice to the father, denied the father due process and was unconstitutional as applied. However, his ruling did not make a finding that *the Adamses* violated Evans' constitutional or statutory rights. There is no such

showing in this record and we therefore affirm summary judgment for the defendants.

Moreover, the appointment of a guardian by a state court is insufficient to constitute state action, which is a necessary element of a § 1983 claim absent some conspiracy between the state officials and the private individuals, and which is not asserted here. *Taylor v. Gilmartin*, 686 F.2d 1346, 1355 (10th Cir. 1982), *cert. denied*, 459 U.S. 1147, 103 S. Ct. 788, 74 L. Ed. 2d 994 (1983).

These comments apply with equal force to Evans' complaints about the district court's asserted error in failing to grant his partial motion for summary judgment.

We affirm summary judgment in favor of the defendants. Costs are assessed to Evans.

AFFIRMED.