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Accession number: 2012ms408

Collection Title: G. Wix Unthank papers

Document id: RR0338

Description: Meadows, Thomas and Meadows, Judy, et al. v. Ky. Department of Human Resources, 79-3455 & 80-3069, medical information about a minor

Date Redacted: 12/21/2017

UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT
MICHIGAN-OHIO-KENTUCKY-TENNESSEE

CHAMBERS OF
CORNELIA G. KENNEDY
CIRCUIT JUDGE
U. S. COURTHOUSE
DETROIT, MICHIGAN 48226

June 16, 1982

RECEIVED
JUN 28 1982
PAUL C. WEICK
Circuit Judge

Honorable Paul C. Weick

Honorable G. Wix Unthank

Re: Nos. 79-3455, 3560, Meadows v. Ky. Dept. of Human Resources
Order: 3/9/82
Petition for Rehearing: 4/23/82

Dear Judges:

I believe we should grant the petition for rehearing in this case and affirm the dismissal of the doctors and deputies. I mistakenly believed that incompetency tolled the statute of limitations so long as that incompetency had occurred before the statute had run. However, Kentucky requires that the incompetency exist at the time the cause of action accrues in order to toll the statute. A subsequent disability does not appear to stop the running of the statute. "When the statute [of limitations] begins to run a subsequent disability does not stop it." Fox v. Hudson's Executrix, 150 Ky. 115, 122, 150 S.W. 49 (1912); see also Kingman's Committee et al. v. First National Bank of Mayfield et al., 246 Ky. 404, 406, 55 S.W.2d 39, 40 (1932). Thus, although there is an issue of fact as to Mrs. Meadows' incompetency in 1972, there is none as to competency when the cause of action against these defendants accrued, and those actions are therefore barred.

We could ask for a response to the petition for rehearing. However, I do not believe we would receive anything beneficial.

I have enclosed a proposed order granting the rehearing and affirming the dismissal of these additional appellees for your consideration and comment.

Sincerely yours,

Cornelia G. Kennedy

6/28/82 Dear Judge Kennedy:
I concur,
Paul C. Weick
Circuit Judge

Enc.

UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT
MICHIGAN-OHIO-KENTUCKY-TENNESSEE

CHAMBERS OF
CORNELIA G. KENNEDY
CIRCUIT JUDGE
U. S. COURTHOUSE
DETROIT, MICHIGAN 48226

July 1, 1982

John P. Hehman, Clerk
United States Court of Appeals
for the Sixth Circuit
USPO & Courthouse Building
Cincinnati, OH 45202

Re: Nos. 79-3455, 79-3560,
Meadows v. Kentucky, etc.
argued 10/16/81

Dear Mr. Hehman:

Enclosed for your signature and entry is an order granting the petition for rehearing and modifying the judgment in the above case.

Judges Weick and Unthank have concurred in the order.

Sincerely yours,

Cornelia G. Kennedy

Enc.

cc: Judge Weick
Judge Unthank

Hon. Cornelia G. Kennedy
U.S. Court of Appeals
744 Federal Building
Detroit, MI 48226

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, $300

DETROIT, MI 48
1 JUL 1982

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Honorable G. Wix Unthank
United States District Court
P.O. Box 278
Pikeville, KY 41501

AMERICAN REVOLUTION BICENTENNIAL 1776-1976

44

Chambers of
G. Wix Unthank
Judge
Pikeville, Kentucky 41501

United States District Court
FOR THE
Eastern District of Kentucky

RECEIVED
FEB 16 1982
PAUL C. WEICK
Circuit Judge

February 16, 1982

Honorable Cornelia G. Kennedy
Circuit Judge, United States Court of Appeals
Sixth Circuit
U. S. Courthouse
Detroit, Michigan 48226

Honorable Paul C. Weick
Circuit Judge, United States Court of Appeals
539 Federal Building
Akron, Ohio 44308

Re: No. 79-3455, Meadows v. Kentucky
Department for Human Resources, et al.
(heard 10/16/81)

My dear Judges:

Enclosed is the revised Order in the subject case with the proposed changes suggested by Judge Kennedy in her letter of February 2, 1982.

Further comments are welcomed.

Very truly yours,

G. Wix Unthank
G. Wix Unthank
Judge

GWU:mem

Encl:

2/16/82
Dear Judge Unthank:
I concur.
Paul C. Weick
copy to Judge Kennedy.

RECEIVED
FEB 16 1982
PAUL C. WEICK
Circuit Judge

UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT
U.S. POST OFFICE & COURTHOUSE BUILDING
CINCINNATI, OHIO 45202

JOHN P. HEHMAN
CLERK

TELEPHONE
(513) 684-2953
FTS 684-2953

March 22, 1982
Date

RECEIVED
MAR 24 1982
CORNELIA G. KENNEDY
U.S. Court of Appeals
Circuit Judge

TO: Judge Kennedy

RE: Case No. 79-3455 Thomas and Judy Henley Meadows, et al v. Kentucky Dept. for Human Resources, et al

Argued/~~Submitted~~ 10/16/81 before: Kennedy, Weick and Unthank

~~Opinion~~/Order/~~Per Curiam~~ filed: 3/9/82

Writing Judge: Kennedy

Enclosed please find:

(X) Motion to extend time to file petition for rehearing until 4/23/82 by appellee.

( ) Response of _____

( ) Bill of Cost

( ) Petition for rehearing en banc

( ) _____

Remarks: Motion granted - March 24, 1982
Ernest B. Kennedy

Informational Copies
Judge Weick
Judge Unthank

Kathy M. Prewitt
Deputy Clerk

6CA-8

UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT
U.S. POST OFFICE & COURTHOUSE BUILDING
CINCINNATI, OHIO 45202

JOHN P. HEHMAN
CLERK

TELEPHONE
(513) 684-2953
FTS 684-2953

March 22, 1982
Date

TO: Judge Kennedy

RE: Case No. 79-3455 Thomas and Judy Henley Meadows, et al v. Kentucky Dept. for Human Resources, et al

Argued/~~Submitted~~ 10/16/81 before: Kennedy, Weick and Unthank

~~Opinion~~/Order/~~Per Curiam~~ filed: 3/9/82

Writing Judge: Kennedy

Enclosed please find:

(X) Motion to extend time to file petition for rehearing until 4/23/82 by appellee.

( ) Response of _____

( ) Bill of Cost

( ) Petition for rehearing en banc

( ) _____

Remarks: _____

Informational Copies
Judge Weick
Judge Unthank

Kathy M. Prewitt
Deputy Clerk

6CA-8

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
No. 79-3455

FILED
MAR 22 1982
JOHN P. HEHMAN, Clerk

THOMAS AND JUDY HENLEY MEADOWS,
MARY ANN MEADOWS, AMON DAVID MEADOWS,
AND THOMAS MEADOWS, JR., PLAINTIFFS-APPELLANTS

VS:

KENTUCKY DEPARTMENT FOR HUMAN
RESOURCES, ET AL., DEFENDANTS-APPELLEES.

VERIFIED MOTION FOR ENLARGEMENT OF TIME

Comes now the appellees, Logan County Hospital, Dr. C. V. Dodson, Dr. Jack B. Holt, Sheriff Morris Kisselbaugh and Robert R. Wilson, jointly, by counsel, and respectfully move the Court for an enlargement of time, to and including April 23, 1982, within which to file their petition for re-hearing.

In support of the foregoing, counsel for said appellees state that it is their intention to file a joint petition for re-hearing and that said enlargement of time is necessary so as to permit counsel and parties to adequately prepare their petition for re-hearing. There are numerous interested parties to this action and counsel has experienced difficulty and delay in notifying them of the ruling of the Court entered March 9, 1982. Further, that counsel did not receive the Order entered March 9,

1982, until several days thereafter and that one of the individuals with whom counsel has been directly communicating has become hospitalized, unavailable, causing further delay.

That the schedule of counsel has been such that counsel has not been able to prepare and file said petition for re-hearing.

This motion for enlargement of time is filed timely and not for purposes of delay. Appellees further state that said enlargement may possibly permit more prompt resolution of this matter. Appellees would rely upon Federal Rules of Appellate Procedure 26(b), 40 and all other applicable authorities.

WHEREFORE, appellees,Logan County Hospital, Dr. C. V. Dodson, Dr. Jack B. Holt, Sheriff Morris Kisselbaugh and Robert R. Wilson, respectfully move the Court for an enlargement of time to and including April 23, 1982, within which to file a petition for re-hearing.

Respectfully submitted,

DONAN & VICK
P.O. Box 349
Greenville, Kentucky 42345

FRED W. GREENE
P.O. Box 266
Clark Building
Russellville, Ky.

Attorneys for Appellees

By: Ralph D. Vick
Ralph D. Vick

VERIFICATION

The undersigned verifies that the statement contained in the foregoing Verified Motion for Enlargement of Time are true and correct to the best of his knowledge and belief.

Ralph D. Vick

Suscribed and sworn to before me by Ralph D. Vick, this the 19th day of March, 1982.

Notary Public, Muhlenberg County, Kentucky

My commission expires:

July 5, 1983

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the foregoing Verified Motion for Enlargement of Time was this day served upon Honorable Roland M. Lowell, 618 United American Bank Building, Nashville, Tenn. 37219; Honorable Robert E. Harrison, P.O. Box 522, Scottsville, Kentucky, attorneys for Plaintiff-Appellants; Honorable Lynn T. Mitchell, 275 East Main Street, 4 West, Frankfort, Kentucky 40601, attorney for Defendant, Kentucky Department for Human Resources, this the 19th day of March, 1982.

Ralph D. Vick

UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT
MICHIGAN-OHIO-KENTUCKY-TENNESSEE

CHAMBERS OF
CORNELIA G. KENNEDY
CIRCUIT JUDGE
U. S. COURTHOUSE
DETROIT, MICHIGAN 48226

June 16, 1982

Honorable Paul C. Weick

Honorable G. Wix Unthank

Re: Nos. 79-3455, 3560, Meadows v. Ky. Dept. of Human Resources
Order: 3/9/82
Petition for Rehearing: 4/23/82

Dear Judges:

I believe we should grant the petition for rehearing in this case and affirm the dismissal of the doctors and deputies. I mistakenly believed that incompetency tolled the statute of limitations so long as that incompetency had occurred before the statute had run. However, Kentucky requires that the incompetency exist at the time the cause of action accrues in order to toll the statute. A subsequent disability does not appear to stop the running of the statute. "When the statute [of limitations] begins to run a subsequent disability does not stop it." Fox v. Hudson's Executrix, 150 Ky. 115, 122, 150 S.W. 49 (1912); see also Kingman's Committee et al. v. First National Bank of Mayfield et al., 246 Ky. 404, 406, 55 S.W.2d 39, 40 (1932). Thus, although there is an issue of fact as to Mrs. Meadows' incompetency in 1972, there is none as to competency when the cause of action against these defendants accrued, and those actions are therefore barred.

We could ask for a response to the petition for rehearing. However, I do not believe we would receive anything beneficial.

I have enclosed a proposed order granting the rehearing and affirming the dismissal of these additional appellees for your consideration and comment.

Sincerely yours,

Cornelia G. Kennedy

Enc.

I Concur
G. Wix Unthank 6/22/82

P.S. See you in Asheville!

Nos. 79-3455
79-3560

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

THOMAS MEADOWS and
JUDY HENLEY MEADOWS,

Plaintiffs-Appellants,

v.

KENTUCKY DEPARTMENT FOR HUMAN RESOURCES, LOGAN COUNTY, KENTUCKY, et al.,

Defendants-Appellees.

ORDER GRANTING PETITION FOR REHEARING AND MODIFYING JUDGMENT

Before: KENNEDY, Circuit Judge; WEICK, Senior Circuit Judge; and UNTHANK, District Judge.*

Upon consideration of the petition for rehearing filed herein by the appellees, the Court concludes that the petition has merit. This Court's order of March 9 vacated the judgment of the District Court insofar as it dismissed the claims against appellees Logan County Hospital, Dr. C.V. Dodson, Dr. Jack B. Holt, then Deputy (now Sheriff) Morris Kisselbaugh, and Deputy Robert R. Wilson on the basis that various statutes of limitations had run as to the claims asserted. We held that there was an issue of fact as to the mental competency of Judy Meadows in May of 1972, after her alleged causes of action against these appellees accrued in 1970 and 1971. We remanded for determination of whether she was in fact incompetent, and whether her incompetency tolled the applicable statutes of limitations.

* The Honorable G. Wix Unthank, United States District Court, Eastern District of Kentucky, sitting by designation.

However, the District Court did not err in holding that there was no material issue of fact as to Mrs. Meadows' competency at the time any cause of action for events in 1970 or 1971 accrued, and that she was competent at those times. "When the statute [of limitations] begins to run a subsequent disability does not stop it." Fox v. Hudson's Executrix, 150 Ky. 115, 122, 150 S.W. 49 (1912); see also Kingman's Committee et al. v. First National Bank of Mayfield et al., 246 Ky. 404, 406, 55 S.W.2d 39, 40 (1932). The District Court was, therefore, correct in holding that the claims which arose in 1970 and 1971 were barred.

As to Mrs. Meadows' claims based on events occurring in 1972, although there is a question of fact regarding her competency at that time, the complaint fails adequately to allege that Logan County Hospital, Dr. Dodson, Dr. Holt, then Deputy Kisselbaugh or Deputy Wilson were involved in any deprivation of her constitutional rights at that time. It, therefore, appears that our order of March 9 was in error insofar as it vacated the judgment of the District Court.

Accordingly, the petition for rehearing is granted, and the order of March 9 vacated. The judgment of the District Court is affirmed for the reasons stated by the District Court, except that as to Mrs. Meadows' claims based on events occurring in 1972, the judgment is affirmed on the ground that the complaint fails to allege that appellees were involved.

ENTERED BY ORDER OF THE COURT

_____

Clerk

THE HONORABLE CORNELIA G. KENNEDY
744 Federal Building & U.S. Court House
Detroit, Michigan 48226

OFFICIAL BUSINESS
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DETROIT, MI
PM
18 JUN
1982

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Honorable G. Wix Unthank
United States District Court
Post Office Box 278
Pikeville, KY 41501

AMERICAN REVOLUTION BICENTENNIAL 1776-1976

44

UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT
MICHIGAN-OHIO-KENTUCKY-TENNESSEE

CHAMBERS OF
CORNELIA G. KENNEDY
CIRCUIT JUDGE
U. S. COURTHOUSE
DETROIT, MICHIGAN 48226

February 2, 1982

Honorable G. Wix Unthank
United States District Judge
Eastern District of Kentucky
Pikeville, KY 41501

Re: No. 79-3455, Meadows v. Kentucky Dept. for Human Resources, et al.
(heard 10/16/81)

Dear Judge Unthank:

Your revised order adopts what I think is the proper course. Judge Johnstone dismissed Drs. Holt and Dodson and the Logan County Hospital for the reasons given by Judge Bratcher, but Judge Bratcher was not faced with the question whether any statute of limitations was tolled. If the statute of limitations was tolled with respect to these parties, then it was tolled with respect to Kisselbaugh and Wilson for the same reason. Ms. Meadows has little hope of prevailing, but summary disposition is inappropriate on this record. I agree also with your treatment of Dr. Byrne, since, as you note, the complaint does not allege that he did anything.

I have a couple of minor suggestions addressed only to the form of the proposed order. Although we cannot affirm the District Court's grant of summary judgment as to all defendants, it might be helpful to let the court know that we are not foreclosing the possibility of disposing of the statute of limitations question summarily -- it just cannot be done on the present record.

Also, on page 1, the order seems to me to recite as facts the allegations contained in the complaint to the effect that defendants improperly terminated plaintiffs' parental rights and illegally committed Ms. Meadows to a state hospital. There has been no finding to this effect by the Kentucky courts. The problem could be corrected by inserting "they claim" or "they allege" in a couple more places, *or* by saying "plaintiffs allege the following facts."

At the top of page 5 the order states:

> The allegations of the complaint and amended complaint with regard to competency are the same. That is, "the plaintiff is now and at all times material herein incompetent."

This would be much more effective if moved to the middle of page 3, so that, beginning with the tenth line, the paragraph would read:

> This Court accepts and adopts the rationale contained in the District Court's Memorandum Opinion, entered 30 March 1979, and thereby affirms the dismissal as to all claims excepting the claims of the plaintiff, Judy Henley Meadows, against the defendants, Logan County Hospital, Dr. C. V. Dodson, Dr. Jack B. Holt, Sheriff Morris Kesselbraugh and Robert R. Wilson. *Both the complaint and amended complaint allege that Ms. Meadows "is now and was at all times material herein, suffering from a mental deficiency, rendering her incompetent...." The panel agrees that the statute of limitations cannnot be the basis for dismissing these claims until the issue of Ms. Meadows' incompetency and whether it tolled the statute of limitations has been resolved.*

Finally, your order implicitly affirms the dismissal of Prosecutor Riley, but his name is not included among those at the bottom of page 5 and top of page 6.

This case was made difficult by the fact that it was such a procedural mess, and you are to be commended for taking the time to sort everything out. With these minor changes, I concur in the proposed order.

Sincerely,

Cornelia G. Kennedy

cc: Honorable Paul C. Weick
Senior Circuit Judge

UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT
MICHIGAN-OHIO-KENTUCKY-TENNESSEE

FILE COPY

CHAMBERS OF
CORNELIA G. KENNEDY
CIRCUIT JUDGE
U. S. COURTHOUSE
DETROIT, MICHIGAN 48226

February 23, 1982

John P. Hehman, Clerk
United States Court of Appeals
for the Sixth Circuit
Cincinnati, OH 45202

Re: No. 79-3455, Meadows v. Kentucky Department for Human Resources
(heard 10/18/81)

Dear Mr. Hehman:

Judge Unthank has asked me to forward the enclosed Order for signature and filing.

Judge Weick and I have concurred in the Order.

Sincerely,

Cornelia G. Kennedy

Enc.

cc: Judge Weick
Judge Unthank

United States District Court
FOR THE
Eastern District of Kentucky

Chambers of
G. Wix Unthank
Judge
Pikeville, Kentucky 41501

February 22, 1982

Honorable Cornelia G. Kennedy
Circuit Judge, United States Court of Appeals
Sixth Circuit
U. S. Courthouse
Detroit, Michigan 48226

Re: 79-2455, Meadows v. Kentucky Department of Human Resources, Logan County, et al
(heard 10/16/81)

My dear Judge Kennedy:

I have revised the proposed order in the subject case to reflect the changes suggested in your letter of February 17, 1982.

Since Judge Weick has given his concurrence, if you find that you agree with the order as submitted, to prevent further delay would you please forward this order to the clerk for entry.

Very truly yours,

G. Wix Unthank
Judge

GWU:mem

Encl: (2)

cc: Honorable Paul C. Weick
Senior Circuit Judge
United States Court of Appeals
539 Federal Building
Akron, Ohio 44308

UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT
MICHIGAN-OHIO-KENTUCKY-TENNESSEE

CHAMBERS OF
CORNELIA G. KENNEDY
CIRCUIT JUDGE
U. S. COURTHOUSE
DETROIT, MICHIGAN 48226

February 17, 1982

Honorable G. Wix Unthank
United States District Court
P.O. Box 278
Pikeville, KY 41501

Re: 79-3455, Meadows v. Kentucky Department for Human Resources, et al. - heard 10/16/81

Dear Judge Unthank:

I have only one small suggestion with respect to your draft of February 10. On page 5, I have a problem with the paragraph which begins, "The record below fails to adequately establish . . . ." Since this case was decided on summary judgment, the question before us is whether there was an issue of fact on the record below. I therefore suggest substituting the following for that sentence:

> Thus on the record below there is an issue of fact of the mental competency of the plaintiff, Judy Henley Meadows, at all material times.

I would suggest that this sentence be added to the previous paragraph. If you can accommodate this concern I concur.

Sincerely yours,

Cornelia G. Kennedy

P.S. Since the order was drafted, Judge Weick has taken senior status and page one should read: KENNEDY, Circuit Judge; WEICK, Senior Circuit Judge; and UNTHANK, District Judge.

cc: Honorable Paul C. Weick

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

THOMAS AND JUDY HENLEY MEADOWS, MARY ANN MEADOWS, AMON DAVID MEADOWS AND THOMAS MEADOWS, JR.	)	
PLAINTIFFS-APPELLANTS	)	
VS:	)	
KENTUCKY DEPARTMENT FOR HUMAN RESOURCES LOGAN COUNTY, KENTUCKY, ET AL.,	)	O R D E R
DEFENDANTS-APPELLEES.	)	

Before: KENNEDY, Circuit Judge; WEICK, Senior Circuit Judge; and UNTHANK, District Judge.*

The plaintiffs, Thomas Meadows and Judy Meadows, husband and wife, allege the followings facts: In 1970, they were brought into Logan County, Kentucky, under the guise of bad check charges; while there the defendants caused an improper termination of their parental rights by falsely charging them with child abuse; subsequently, Judy Meadows had another child which defendants wrongfully caused to be taken from her and she was compelled to undergo a sterilzation operation; thereafter, defendants illegally caused her to be committed to a state mental hospital for observation from which she went absent without leave. It is contended that all these acts were contrary to 28 U.S.C. 1343(d) and 42 U.S.C. 1983.

---

*The Honorable G. Wix Unthank, United States District Court, Eastern District of Kentucky, sitting by designation.

In 1974, plaintiffs filed a complaint against the State of Kentucky, the County of Logan, a local hospital, two doctors and several employees of the State and County as individuals.

On 31 January 1975, the District Judge dismissed the State and County as defendants by reason of the immunities of the Eleventh Amendment. On 23 October 1975, a summary judgment was granted to the defendant hospital and doctors, dismissing the complaint by reason of the Statute of Limitations. No action was taken as to the remaining defendants, the individual State and County employees.

In July 1978, an amended complaint was filed expanding the number of plaintiffs to include the estranged children. The list of defendants was expanded to include an additional doctor, county judge, county attorney and two deputy sheriffs. The amended complaint extended the civil rights basis to encompass 42 U.S.C. 1985 and 1986.

The amended complaint contends the defendants conspired to deny plaintiffs their right to have and bear children; the right to privacy; that the conspiracy was a continuing one in that plaintiffs' children had not been returned. The District Judge dismissed the children as plaintiffs, later reinstated them, but they are not a party to this appeal.

For consideration, on this appeal, is the action of the District Judge: re-dismissing the State of Kentucky and County of Logan under the Eleventh Amendment; re-dismissing the hospital and doctors by reason of the Statute of Limitations;

dismissing the County Judge and County Attorney by reason of judicial and prosecutorial immunity; and dismissing the two Deputy Sheriffs by reason of the Statute of Limitations.

This Court accepts and adopts the rationale contained in the District Court's Memorandum Opinion, entered 30 March 1979, and thereby affirms the dismissal as to all claims excepting the claims of the plaintiff, Judy Henley Meadows, against the defendants, Logan County Hospital, Dr. C. V. Dodson, Dr. Jack B. Holt, Sheriff Morris Kisselbraugh and Robert R. Wilson. Both the complaint and amended complaint allege that Ms. Meadows "is now and was at all times material herein, suffering from a mental deficiency, rendering her incompetent...." The panel agrees that the statute of limitations cannot be the basis for dismissing these claims until the issue of Ms. Meadows' incompetency and whether it tolled the statute of limitations has been resolved.

The records reflects that on or about the 26th day of May, 1972, pursuant to order of the Logan County Court, the plaintiff, Judy Meadows, was committed to the Kentucky Western State Hospital for observation. This proceeding was neither a finding of incompetency nor competency. The plaintiff was discharged on 25 July 1972, without a finding, by reason of an A.W.O.L. status.

The Statutes of Kentucky in an inquest proceeding, which have since been amended, limited the actions of a county judge to petitions properly filed in the Circuit Court in the absence of unavailability of the regular judge. In such instance the County Judge presided as special Circuit Judge.

The records do not reflect if the petition was properly filed but the order is a County Court Order and therefore void. Turpin's Adm'r. v. Stringer, 228 Ky. 32, 14 S.W. 2d 189, 30 A.L.R. 3d 520.

It might be insisted at this point that the proceedings are evidence or conclusive evidence of the fact of the plaintiff's incapacity but, if the proceedings were legal in all respects, it would only be prima facie evidence at the time of a finding to commit for observation. If the proceedings are void, neither presumption would arise and the fact of competency or incompetency must be established by other evidence. Turpin's Adm'r v. Stringer, Id.

There is a presumption of sanity over insanity. The party attempting to overcome this presumption must do so by clear, cogent and convincing evidence. Wilson v. Lehman, 379 SW 2d, 478; Grannum v. Berand, 422 P 2d, 812, 25 A.L.R. 3d 1434.

There has been marked disagreements in the past regarding weight to be given presumptions. The Circuits have treated the question one of three ways:

(1) The "bursting bubble theory", the presumption disappears upon the introduction of evidence to the contrary;

(2) Shifting the burden of persuasion, once the basic facts giving rise to the presumption are established the burden of persuasion shifts; and

(3) The middle ground, the presumption does not disappear upon the introduction of contradicting evidence and the burden of persuasion is not changes.

Rule 301 of the Federal Evidence Rules seems to favor the middle ground approach.

Those parts of the record favorable to the defendants and their presumption are the depositions of several doctors and psychiatrist that the plaintiff, Judy Henley Meadows, was competent.

The proceeding to terminate parental rights, wherein evidence of child abuse was presented, reflect that both parents were not competent to be parents. This was not an inquest proceeding and any findings therefrom to which an argument of inferences may be addressed although entitled to respect are nevertheless Obiter Dictum.

A Dr. Manlivi deposed that Judy Henley Meadows became agitated during the inquest proceedings but was unable to express an opinion as to competency before or after such proceeding. Thus on the record below there is an issue of fact of the mental competency of the plaintiff, Judy Henley Meadows, at all material times.

Accordingly, the judgment of the District Court dismissing the claims of plaintiff, Thomas Meadows, is affirmed; the judgment of the District Court dismissing the claims of the plaintiff, Judy Henley Meadows, against the defendants, Kentucky Department of Human Resources, Logan County Department of Human Resources, Judge Robert R. Brown, Jesse T. Riley and Dr. Byrne is affirmed; the judgment of the District Court dismissing the claims against defendants Sheriff Morris Kisselbraugh, Robert R. Wilson, Doctors Holt and Dodson and the Logan County

Hospital is vacated and the case remanded to the District Court for consideration and ruling upon mental competency of the plaintiff, Judy Henley Meadows, at all material times.

For the reasons stated herein, the opinion of the District Court is affirmed in part, vacated in part, and remanded for further proceedings.

Entered by Order of the Court this ____day of February, 1982.

ENTERED BY ORDER OF THE COURT

_____
CLERK

UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT
MICHIGAN-OHIO-KENTUCKY-TENNESSEE

RECEIVED
FEB 5 1982
PAUL C. WEICK
Circuit Judge

CHAMBERS OF
CORNELIA G. KENNEDY
CIRCUIT JUDGE
U. S. COURTHOUSE
DETROIT, MICHIGAN 48226

February 2, 1982

2/9/82 - Dear Judge Unthank;
I concur in your proposed order with the changes suggested by Judge Kennedy.
Paul C. Weick
cc/pt to Judge Kennedy

Honorable G. Wix Unthank
United States District Judge
Eastern District of Kentucky
Pikeville, KY 41501

Re: No. 79-3455, Meadows v. Kentucky Dept. for Human Resources, et al.
(heard 10/16/81)

Dear Judge Unthank:

Your revised order adopts what I think is the proper course. Judge Johnstone dismissed Drs. Holt and Dodson and the Logan County Hospital for the reasons given by Judge Bratcher, but Judge Bratcher was not faced with the question whether any statute of limitations was tolled. If the statute of limitations was tolled with respect to these parties, then it was tolled with respect to Kisselbaugh and Wilson for the same reason. Ms. Meadows has little hope of prevailing, but summary disposition is inappropriate on this record. I agree also with your treatment of Dr. Byrne, since, as you note, the complaint does not allege that he did anything.

I have a couple of minor suggestions addressed only to the form of the proposed order. Although we cannot affirm the District Court's grant of summary judgment as to all defendants, it might be helpful to let the court know that we are not foreclosing the possibility of disposing of the statute of limitations question summarily -- it just cannot be done on the present record.

Also, on page 1, the order seems to me to recite as facts the allegations contained in the complaint to the effect that defendants improperly terminated plaintiffs' parental rights and illegally committed Ms. Meadows to a state hospital. There has been no finding to this effect by the Kentucky courts. The problem could be corrected by inserting "they claim" or "they allege" in a couple more places, or by saying "plaintiffs allege the following facts."

At the top of page 5 the order states:

> The allegations of the complaint and amended complaint with regard to competency are the same. That is, "the plaintiff is now and at all times material herein incompetent."

United States District Court
FOR THE
Eastern District of Kentucky

Chambers of
G. Wix Unthank
Judge
Pikeville, Kentucky 41501

February 10, 1982

Honorable Cornelia G. Kennedy
Circuit Judge, United States Court of Appeals
Sixth Circuit
U. S. Courthouse
Detroit, Michigan 48226

Honorable Paul C. Weick
Circuit Judge, United States Court of Appeals
539 Federal Building
Akron, Ohio 44308

Re: No. 79-3455, Meadows v. Kentucky
Department for Human Resources, et al.
(heard 10/16/81)

My dear Judges:

Enclosed is the revised Order in the subject case with the proposed changes suggested by Judge Kennedy in her letter of February 2, 1982.

Further comments are welcomed.

Very truly yours,

G. Wix Unthank
Judge

GWU:mem

Encl:

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

THOMAS AND JUDY HENLEY MEADOWS, MARY ANN MEADOWS, AMON DAVID MEADOWS AND THOMAS MEADOWS, JR.	)	
PLAINTIFFS-APPELLANTS	)	
VS:	)	
	)	O R D E R
KENTUCKY DEPARTMENT FOR HUMAN RESOURCES LOGAN COUNTY, KENTUCKY, ET AL.,	)	
DEFENDANTS-APPELLEES.	)	

Before: WEICK and KENNEDY, Circuit Judges; and UNTHANK, District Judge.*

The plaintiffs, Thomas Meadows and Judy Meadows, husband and wife, allege the following facts: In 1970, they were brought into Logan County, Kentucky under the guise of bad check charges; while there the defendants caused an improper termination of their parental rights by falsely charging them with child abuse; subsequently, Judy Meadows had another child which defendants wrongfully caused to be taken from her and she was compelled to undergo a sterlization operation; thereafter, defendants illegally caused her to be committed to a state mental hospital for observation from which she went absent without leave. It is contended that all these acts were contrary to 28 U.S.C. 1343(d) and 42 U.S.C. 1983.

---

*The Honorable G. Wix Unthank, United States District Court, Eastern District of Kentucky, sitting by designation.

In 1974, plaintiffs filed a complaint against the State of Kentucky, the County of Logan, a local hospital, two doctors and several employees of the State and County as individuals.

On 31 January 1975, the District Judge dismissed the State and County as defendants by reason of the immunities of the Eleventh Amendment. On 23 October 1975, a summary judgment was granted to the defendant hospital and doctors, dismissing the complaint by reason of the Statute of Limitations. No action was taken as to the remaining defendants, the individual State and County employees.

In July 1978, an amended complaint was filed expanding the number of plaintiffs to include the estranged children. The list of defendants was expanded to include an additional doctor, county judge, county attorney and two deputy sheriffs. The amended complaint extended the civil rights basis to encompass 42 U.S.C. 1985 and 1986.

The amended complaint contends the defendants conspired to deny plaintiffs their right to have and bear children; the right to privacy; that the conspiracy was a continuing one in that plaintiffs' children had not been returned. The District Judge dismissed the children as plaintiffs, later reinstated them, but they are not a party to this appeal.

For consideration, on this appeal, is the action of the District Judge: re-dismissing the State of Kentucky and County of Logan under the Eleventh Amendment; re-dismissing the hospital and doctors by reason of the Statute of Limitations;

dismissing the County Judge and County Attorney by reason of judicial and prosecutorial immunity; and dismissing the two Deputy Sheriffs by reason of the Statute of Limitations.

This Court accepts and adopts the rationale contained in the District Court's Memorandum Opinion, entered 30 March 1979, and thereby affirms the dismissal as to all claims excepting the claims of the plaintiff, Judy Henley Meadows, against the defendants, Logan County Hospital, Dr. C. V. Dodson, Dr. Jack B. Holt, Sheriff Morris Kisselbraugh and Robert R. Wilson. Both the complaint and amended complaint allege that Ms. Meadows "is now and was at all times material herein, suffering from a mental deficiency, rendering her incompetent...." The panel agrees that the statute of limitations cannot be the basis for dismissing these claims until the issue of Ms. Meadows' incompetency and whether it tolled the statute of limitations has been resolved.

The records reflects that on or about the 26th day of May, 1972, pursuant to order of the Logan County Court, the plaintiff, Judy Meadows, was committed to the Kentucky Western State Hospital for observation. This proceeding was neither a finding of incompetency nor competency. The plaintiff was discharged on 25 July 1972, without a finding, by reason of an A.W.O.L. status.

The Statutes of Kentucky in an inquest proceeding, which have since been amended, limited the actions of a county judge to petitions properly filed in the Circuit Court in the absence of unavailability of the regular judge. In such instance the County Judge presided as special Circuit Judge.

The records do not reflect if the petition was properly filed but the order is a County Court Order and therefore void. Turpin's Adm'r. v. Stringer, 228 Ky. 32, 14 S.W. 2d 189, 30 A.L.R. 3d 520.

It might be insisted at this point that the proceedings are evidence or conclusive evidence of the fact of the plaintiff's incapacity but, if the proceedings were legal in all respects, it would only be prima facie evidence at the time of a finding to commit for observation. If the proceedings are void, neither presumption would arise and the fact of competency or incompetency must be established by other evidence. Turpin's Adm'r v. Stringer, Id.

There is a presumption of sanity over insanity. The party attempting to overcome this presumption must do so by clear, cogent and convincing evidence. Wilson v. Lehman, 379 SW 2d, 478; Grannum v. Berand, 422 P 2d, 812, 25 A.L.R. 3d 1434.

There has been marked disagreements in the past regarding weight to be given presumptions. The Circuits have treated the question one of three ways:

(1) The "bursting bubble theory", the presumption disappears upon the introduction of evidence to the contrary;

(2) Shifting the burden of persuasion, once the basic facts giving rise to the presumption are established the burden of persuasion shifts; and

(3) The middle ground, the presumption does not disappear upon the introduction of contradicting evidence and the burden of persuasion is not changes.

Rule 301 of the Federal Evidence Rules seems to favor the middle ground approach.

Those parts of the record favorable to the defendants and their presumption are the depositions of several doctors and psychiatrist that the plaintiff, Judy Henley Meadows, was competent.

The proceeding to terminate parental rights, wherein evidence of child abuse was presented, reflect that both parents were not competent to be parents. This was not an inquest proceeding and any findings therefrom to which an argument of inferences may be addressed although entitled to respect are nevertheless Obiter Dictum.

A Dr. Manlivi deposed that Judy Henley Meadows became agitated during the inquest proceedings but was unable to express an opinion as to competency before or after such proceeding.

The record below fails to adequately establish the mental competency of the plaintiff, Judy Henley Meadows, at all material times so that this Court may rule upon the application of the Statute of Limitations.

Accordingly, the judgment of the District Court dismissing the claims of the plaintiff, Thomas Meadows, is affirmed; the judgement of the District Court dismissing the claims of the plaintiff, Judy Henley Meadows, against the defendants, Kentucky Department of Human Resources, Logan County Department of Human Resources, Judge Robert R. Brown, Jesse T. Riley and Dr. Byrne is affirmed; the judgment of the District

Court dismissing the claims against defendants Sheriff Morris Kisselbraugh, Robert R. Wilson, Doctors Holt and Dodson and the Logan County Hospital is vacated and the case remanded to the District Court for consideration and a ruling upon mental competency of the plaintiff, Judy Henley Meadows, at all material times.

For the reasons stated herein, the opinion of the District Court is affirmed in part, vacated in part, and remanded for further proceedings.

Entered by Order of the Court this __day of February, 1982.

ENTERED BY ORDER OF THE COURT

_____
CLERK

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

THOMAS AND JUDY HENLEY MEADOWS, MARY ANN MEADOWS, AMON DAVID MEADOWS AND THOMAS MEADOWS, JR.	)	
PLAINTIFFS-APPELLANTS	)	
VS:	)	O R D E R
KENTUCKY DEPARTMENT FOR HUMAN RESOURCES LOGAN COUNTY, KENTUCKY, ET AL.,	)	
DEFENDANTS-APPELLEES.	)	

Before: WEICK and KENNEDY, Circuit Judges; and UNTHANK, District Judge.*

In 1970, plaintiffs, Thomas Meadows and Judy Meadows, husband and wife, allegedly were brought into Logan County, Kentucky, to answer bad check charges. While there, through the guise of child abuse, defendants caused an improper termination of their parental rights. Subsequently, the wife had another child which defendants caused to be taken from her and she was caused to undergo a sterilization operation. Defendants thereafter caused her to be illegally committed to a state mental hospital for observation from which she went absent without leave. All of same were contrary to 28 U.S.C. 1343(3) and 42 U.S.C. 1983.

---

* The Honorable G. Wix Unthank, United States District Court, Eastern District of Kentucky, sitting by designation.

In 1974, plaintiffs filed a complaint against the State of Kentucky, the County of Logan, a local hospital, two doctors and several employees of the State and County as individuals.

On 31 January 1975, the District Judge dismissed the State and County as defendants by reason of the immunities of the Eleventh Amendment. On 23 October 1975, a summary judgment was granted to the defendant hospital and doctors, dismissing the complaint by reason of the Statute of Limitations. No action was taken as to the remaining defendants, the individual State and County employees.

In July 1978, an amended complaint was filed expanding the number of plaintiffs to include the estranged children. The list of defendants was expanded to include an additional doctor, county judge, county attorney and two deputy sheriffs. The amended complaint extended the civil rights basis to encompass 42 U.S.C. 1985 and 1986.

The amended complaint contends the defendants conspired to deny plaintiffs their right to have and bear children; the right to privacy; that the conspiracy was a continuing one in that plaintiffs' children had not been returned. The District Judge dismissed the children as plaintiffs, later reinstated them, but they are not a party to this appeal.

For consideration, on this appeal, is the action of the District Judge: re-dismissing the State of Kentucky and County of Logan under the Eleventh Amendment; re-dismissing the hospital and doctors by reason of the Statute of Limitations;

dismissing the County Judge and County Attorney by reason of judicial and prosecutorial immunity; and dismissing the two Deputy Sheriffs by reason of the Statute of Limitations.

This Court accepts and adopts the rationale contained in the District Court's Memorandum Opinion, entered 30 March 1979, and thereby affirms the dismissal as to all claims excepting the claims of the plaintiff, Judy Henley Meadows, against the defendants, Logan County Hospital, Dr. C. V. Dodson, Dr. Jack B. Holt, Sheriff Morris Kesselbraugh and Robert R. Wilson. It is agreed there is a problem in applying the Statute of Limitations to these claims until there has been a resolution of the issue of mental incompetency.

The records reflect that on or about the 26th day of May, 1972, pursuant to order of the Logan County Court, the plaintiff, Judy Meadows, was committed to the Kentucky Western State Hospital for observation. This proceeding was not a finding of incompetency nor competency. The plaintiff was discharged on 25 July 1972, without a finding by reason of an A.W.O.L. status.

The Statutes of Kentucky in inquest proceedings, which have since been amended, limited the actions of a county judge to petitions properly filed in the Circuit Court in the absence of unavailability of the regular judge. In such instance the County Judge presided as special Circuit Judge. The records do not reflect if the petition was properly filed but the order is a County Court Order and therefore void. Turpin's Adm'r. v. Stringer, 228 Ky. 32,

14 S.W. 2d 189, 30 A.L.R. 3d 520.

It might be insisted at this point that the proceedings are evidence or conclusive evidence of the fact of the plaintiff's incapacity but, if the proceedings were legal in all respects, it would only be prima facie evidence at that time of a finding to commit for observation. If the proceedings are void, neither presumption would arise and the fact of competency or incompetency must be established by other evidence. Turpin's Adm'r v. Stringer, Id.

There is a presumption of sanity over insanity. The party attempting to overcome this presumption must do so by clear, cogent and convincing evidence. Wilson v. Lehman , 379 SW 2d, 478; Grannum v. Berand, 422 P 2d, 812, 25 A.L.R. 3d 1434.

There ~~has~~ been marked disagreements in the past regarding weight to be given presumptions. The Circuits have treated the question one of three ways:

(1) The "bursting bubble theory", the presumption disappears upon the introduction of evidence to the contrary;

(2) Shifting the burden of persuasion, once the basic facts giving rise to the presumption are established the burden of persuasion shifts; and

(3) The middle ground, the presumption does not disappear upon the introduction of contradicting evidence and the burden of persuasion is not changed.

Rule 301 of the Federal Evidence Rules seems to favor the middle ground approach.

Those parts of the record favorable to the defendants and their presumption are the depositions of

several doctors and psychiatrist that the plaintiff, Judy Henley Meadows, was competent.

The allegations of the complaint and amended complaint with regard to competency are the same. That is, "the plaintiff is now and at all times material herein incompetent."

moved to page 3

The proceeding to terminate parental rights, wherein evidence of child abuse was presented, reflect that both parents were not competent to be parents. This was not an inquest proceeding and any findings therefrom to which an argument of inferences may be addressed although entitled to respect are nevertheless Obiter Dictum.

A Dr. Manlivi deposed that Judy Henley Meadows became agitated during the inquest proceedings but was unable to express an opinion as to competency before or after such proceeding.

The record below fails to adequately establish the mental competency of the plaintiff, Judy Henley Meadows, at all material times so that this Court may rule upon the application of the Statute of Limitations.

Accordingly, the judgment of the District Court dismissing the claims of the plaintiff, Thomas Meadows, is affirmed; the judgment of the District Court dismissing the claims of the plaintiff, Judy Henley Meadows, against the defendants, Kentucky Department of Human Resources, Logan County Department of Human Resources, Judge Robert R. Brown,

Jesse T. Riley

and Dr. Byrne is affirmed; the judgment of the District Court dismissing the claims against defendants Sheriff Morris Kisselbaugh, Robert R. Wilson, Doctors Holt and Dodson and the Logan County Hospital is vacated and the case remanded to the District Court for consideration and a ruling upon mental competency of the plaintiff, Judy Henley Meadows, at all material times.

United States District Court
FOR THE
Eastern District of Kentucky

Chambers of
G. Wix Unthank
Judge
Pikeville, Kentucky 41501

January 7, 1981

Honorable Cornelia G. Kennedy
Circuit Judge, United States Court of Appeals
Sixth Circuit
U. S. Court House
Detroit, Michigan 48226

Re: 79-3455, Meadows v. Kentucky Department of Human Resources, Logan County, et al
(Heard 10/16/81)

My dear Judge Kennedy:

Judge Weick concurs with your opinion. Accordingly, a revision is tendered herewith.

If the panel feels more comfortable remanding upon the issue of mental competency, I concur.

It may be noted in the revision the dismissal of Doctor Byrne is affirmed whereas the dismissal of Doctors Holt and Dodson is vacated. The dismissal of Doctor Byrne was by reason of the complaint failing to allege any action on the part of Doctor Bryne and the dismissal of Doctors Holt and Dodson was upon the basis of the Statute of Limitations.

It may be further noted that Judge Johnstone, in Civil Action 79-3455, step docket number 43, memorandum opinion page 5, did make reference to Judge Bratcher's decision on the competency issue. It is conceivable that there may be an arguable issue as to whether this constitutes adoption by reference or whether this was a determination of mental competency at all "material" times.

The decision to remand may well be the better answer.

Very truly yours,

G. Wix Unthank
Judge

GWU:mem

Encl:

cc: Honorable Paul C. Weick
Circuit Judge, United States Court of Appeals
539 Federal Building
Akron, Ohio 44308

1-3-82

UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT
MICHIGAN-OHIO-KENTUCKY-TENNESSEE

CHAMBERS OF
CORNELIA G. KENNEDY
CIRCUIT JUDGE
U.S. COURT HOUSE
DETROIT, MICHIGAN 48226

December 28, 1981

Honorable G. Wix Unthank
United States District Judge
Eastern District of Kentucky
Pikeville, Kentucky 41501

Re: 79-3455, Meadows v. Kentucky Dept. for Human Resources, Logan County, et al.
(Heard 10-16-81)

Dear Judge Unthank:

I find myself unable to concur in full with your proposed disposition in this matter. The District Court simply did not address the question as to whether there was a material issue of fact with respect to Judy Meadows' allegation that she "is now and was at all times material herein, suffering from a mental deficiency, rendering her incompetent ..." Amended Complaint ¶ 13, Appendix 91A. As you note, if Judy Meadows was incompetent the statute of limitations was tolled as to her (Parenthetically if she was incompetent during this entire period her claim that she was wrongfully deprived of the custody of her children must fail since she would not have been competent to care for them). I believe that with respect to Judy Meadows' claims, except those against the judge, the prosecutor, the state and the county, all of whom are immune, that the case must be remanded to the district court with instructions to rule on the incompetency issue. Although Doctors Holt, Byrne, Dodson and Logan County Hospital argue in their brief that the 1975 dismissals as to them were appealed to this Court and that appeal dismissed by this Court on August 8, 1976, we apparently dismissed the appeals because the dismissals of these defendants were as to less than all parties and the order was therefor not appealable. We cannot therefore rely on the earlier decision of Judge Bratcher.

Various defendants may in fact be entitled to a summary judgment on the basis of the statute of limitations because there is no evidence from which a fact finder could find Judy Meadows incompetent during all these years, but I do not see how that result can be reached on the record presently before us and the complete absence of such a finding by the District Court.

I agree with you that the District Court should be affirmed in all respects with regard to the dismissal of the claims of Mr. Meadows.

Sincerely,

Cornelia G. Kennedy
Circuit Judge

CGK/hh

cc: Honorable Paul C. Weick
Circuit Judge
539 Federal Building
Akron, Ohio 44308

UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT
MICHIGAN-OHIO-KENTUCKY-TENNESSEE

CHAMBERS OF
CORNELIA G. KENNEDY
CIRCUIT JUDGE
U.S. COURT HOUSE
DETROIT, MICHIGAN 48226

RECEIVED
DEC 31 1981
PAUL C. WEICK
Circuit Judge

December 28, 1981

12/31/81
Dear Judge Unthank:
I agree with Judge Kennedy. Paul C. Weick
copy to Judge Kennedy

Honorable G. Wix Unthank
United States District Judge
Eastern District of Kentucky
Pikeville, Kentucky 41501

Re: 79-3455, Meadows v. Kentucky Dept. for Human Resources, Logan County, et al.
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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

THOMAS AND JUDY HENLEY MEADOWS, MARY ANN MEADOWS, AMON DAVID MEADOWS AND THOMAS MEADOWS, JR.	)	
PLAINTIFFS-APPELLANTS	)	
VS:	)	O R D E R
KENTUCKY DEPARTMENT FOR HUMAN RESOURCES LOGAN COUNTY, KENTUCKY, ET AL.,	)	
DEFENDANTS-APPELLEES.	)	

Before: WEICK and KENNEDY, Circuit Judges; and UNTHANK, District Judge.*

In 1970, plaintiffs, Thomas Meadows and Judy Meadows, husband and wife, allegedly were brought into Logan County, Kentucky, to answer bad check charges. While there, through the guise of child abuse, defendants caused an improper termination of their parental rights. Subsequently, the wife had another child which defendants caused to be taken from her and she was caused to undergo a sterilization operation. Defendants thereafter caused her to be illegally committed to a state mental hospital for observation from which she went absent without leave. All of same being contrary to 28 U.S.C. 1343(3) and 42 U.S.C. 1983.

---

* The Honorable G. Wix Unthank, United States District Court, Eastern District of Kentucky, sitting by designation.

In 1974, plaintiffs filed a complaint against the State of Kentucky, the County of Logan, a local hospital, two doctors and several employees of the State and County as individuals.

On 31 January 1975, the District Judge dismissed the State and County as defendants by reason of the immunities of the Eleventh Amendment. On 23 October 1975, a summary judgment was granted to the defendants, hospital and doctors, dismissing the complaint by reason of the Statute of Limitations. No action was taken as to the surviving defendants, the individual State and County employees.

In July 1978, an amended complaint was filed expanding the plaintiffs to include the estranged children. The defendants were expanded to include an additional doctor, county judge, county attorney and two deputy sheriffs. The amended complaint extended the civil rights basis to encompass 42 U.S.C. 1985 and 1986.

The amended complaint contends the defendants conspired to deny plaintiffs their right to have and bear children; the right to privacy; that the conspiracy was a continuing one in that plaintiffs' children had not been returned. The District Judge dismissed the children as plaintiffs, later reinstated them, but they are not a party to this appeal.

For consideration, on this appeal, is the action of the District Judge: re-dismissing the State of Kentucky and County of Logan under the Eleventh Amendment; re-dismissing the hospital and doctors by reason of the Statutes of Limitation;

dismissing the County Judge and County Attorney by reason of judicial and prosecutorial immunity; and dismissing the two Deputy Sheriffs by reason of the Statute of Limitation.

This Court accepts and adopts the rationale contained in the District Court's Memorandum Opinion, entered 30 March 1979, and thereby affirms the dismissal as to all claims excepting the claims of the plaintiff, Judy Henley Meadows. It is agreed that there is a problem in applying the Statute of Limitations to the claims of the plaintiff, Judy Meadows, until there has been a resolution of the issue of mental incompetency as to this plaintiff.

The records reflect that on or about the 26th day of May, 1972, pursuant to order of the Logan County Court, the plaintiff, Judy Meadows, was committed to the Kentucky Western State Hospital for observation. This proceeding was not a finding of incompetency nor competency. The plaintiff was discharged on 25 July 1972, without a finding by reason of an A.W.O.L. status.

The Statutes of Kentucky in inquest proceedings, which have since been amended, limited the actions of a county judge to petitions properly filed in the Circuit Court in the absence of unavailability of the regular judge. In such instance the County Judge presided as special Circuit Judge. The records do not reflect if the petition was properly filed but the order is a County Court Order and therefore void. Turpin's Adm'r. v. Stringer, 228 Ky. 32,

14 S.W. 2d 189, 30 A.L.R. 3d 520.

It might be insisted at this point that the proceedings are evidence or conclusive evidence of the fact of the plaintiff's incapacity but, if the proceedings were legal in all respect, it would only be prima facie evidence at that time of a finding to commit for observation. If the proceedings are void, neither presumption would arise and the fact of competency or incompetency must be established by other evidence. Turpin's Adm'r v. Stringer, Id.

There is a presumption of sanity over insanity. The party attempting to overcome this presumption must do so by clear, cogent and convincing evidence. Wilson v. Lehman , 379 SW 2d, 478; Grannum v. Berand, 422 P 2d, 812, 25 A.L.R. 3d 1434.

There has been marked disagreements in the past regarding weight to be given presumptions. The Circuits have treated the question one of three ways:

(1) The "bursting bubble theory", the presumption disappears upon the introduction of evidence to the contrary;

(2) Shifting the burden of persuasion, once the basic facts giving rise to the presumption is established the burden of persuasion shifts; and

(3) The middle ground, the presumption does not disappear upon the introduction of contradicting evidence and the burden of persuasion is not changed.

Rule 301 of the Federal Evidence Rules seems to favor the middle ground approach.

Those parts of the record favorable to the defendants and their presumption are the depositions of

several doctors and a psychiatrist that the plaintiff, Judy Meadows, was competent.

That favorable to the plaintiff, Judy Meadows, is her allegation in her complaint filed 1974, that she is "now and at all times material herein incompetent." However, the complaint is in the name of Judy Henley Meadows and verified by her by acknowledgement before a Notary Public. Cf. Federal Rule of Civil Procedure, #17.

The proceeding to terminate parental rights, wherein evidence of child abuse was presented, reflect that both parents were not competent to be parents. This was not an inquest proceeding and any findings therefrom to which an argument of inferences may be addressed although entitled to respect are nevertheless Obiter Dictum.

A Dr. Manlivi deposed that Judy Henley Meadows became agitated during the inquest proceedings but was unable to express an opinion as to competency before or after such proceeding. For an inference that state of mind remains the same the lapse of time must be brief. Girardi v. Gates RSD, Inc. 325 F.2d 196, 9CA 1963.

Considering the evidence in a light most favorable to the plaintiff's together with the presumptions herein noted, the Court is unable to find sufficient facts to create a genuine issue of fact as to the incompetency of Judy Henley Meadows.

Accordingly, the judgment of the District Court is affirmed.

ENTERED BY ORDER OF THE COURT

_____

Clerk

United States District Court
FOR THE
Eastern District of Kentucky

Chambers of
G. Wix Unthank
Judge
Pikeville, Kentucky 41501

December 21, 1981

The Honorable Cornelia G. Kennedy
Judge, United States Court of Appeals
Sixth Street
744 Federal Building
Detroit, Michigan 48226

Re: Thomas and Judy Henley Meadows, et al v.
Kentucky Department for Human Resources
Logan County, Kentucky, et al
Case No. 79-3455

My dear Judge Kennedy:

In reviewing the proposed order sent to you on December 18, 1981, I found that I needed to revise page 3. I have enclosed a corrected copy of the proposed order for your consideration.

I do hope this doesn't cause you any inconvenience.

Very truly yours,

G Wix Unthank

G. Wix Unthank
Judge

GWU:mem

Encl:

cc: The Honorable Paul C. Weick
Judge, United States Court of Appeals
Sixth Circuit
539 Federal Building & U.S. Post Office
Akron, Ohio 44308

United States District Court
FOR THE
Eastern District of Kentucky

Chambers of
G. Wix Unthank
Judge
Pikeville, Kentucky 41501

December 18, 1981

The Honorable Cornelia G. Kennedy
Judge, United States Court of Appeals
Sixth Circuit
744 Federal Building
Detroit, Michigan 48226

Re: Thomas and Judy Henley Meadows, et al v.
Kentucky Department for Human Resources
Logan County, Kentucky, et al
Case No. 79-3455

My dear Judge Kennedy:

Pursuant to a panel report dated Friday, October 16, 1981, enclosed herewith is a suggested opinion regarding the subject case.

The comments and suggestions of the panel members are invited.

Very truly yours,

G Wix Unthank
G. Wix Unthank
Judge

GWU:mem

Encl:

cc: The Honorable Paul C. Weick
Judge, United States Court of Appeals
Sixth Circuit
539 Federal Building & U.S. Post Office
Akron, Ohio 44308

PLEASE READ & FORWARD:

_____ ~~ANDERSON, TOM~~

_____ BULLOCK, BETTY

__✓__ FOLEY, MARGARET

__✓__ THOMAS, DAVID

~~(RETURN/DO NOT RETURN)~~
~~TO CHAMERS.~~

Information

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PANEL REPORT

DATE: Friday, October 16, 1981, Courtroom No. 1

PANEL: WEICK, KENNEDY and UNTHANK *

NO: 79-3455, Meadows v. Kentucky Dept. for Human Resources, Logan County, et al.
W.D. Kentucky - Johnstone, J.

Appellants Thomas and Judy Meadows appeal the District Court's dismissal of several claims and defendants in this civil rights action.

Appellants are a married couple living in Tennessee. They allege that in May, 1970, they were brought into the County Court of Logan County, Kentucky on the pretense of answering to a bad check charge that had already been resolved. At this proceeding appellants' two children were forcibly removed from them for abuse. Appellees Kisselbaugh and Wilson are alleged to be the deputies who accompanied appellants to court and physically removed the children from their arms. Appellee Riley was the county prosecutor. Appellants allege that he falsely assured them that removal of the children would only be temporary. Appellee Judge Brown was then presiding judge of Logan County Court. Appellee Dr. Byrne allegedly conspired in the removal of the children by filling out a report of suspected child abuse.

Later in the summer of 1970, Judy Meadows again became pregnant. She claims that she was induced to undergo a sterilization operation after this pregnancy in exchange for a promise that her children would be returned to her. The operation was performed in 1971 at appellee Logan County Hospital by appellee Dr. Holt. Appellant was referred to Dr. Holt by appellee Dr. Dodson.

Ms. Meadows also alleges that in May, 1972, she was subpoenaed to appear in Logan County Court in an unnamed case, supposedly on behalf of the Commonwealth of Kentucky. She alleges that Judge Brown gave her oral assurances that the purpose of the subpoena was to talk about returning appellants' children to them, but that in fact, the hearing was used forcibly to remove Ms. Meadows' third child from her and to commit her to

*The Honorable G. Wix Unthank, United States District Court, Eastern District of Kentucky, sitting by designation.

a state mental hospital. Appellee Brown was the judge, and appellee Riley was instrumental in bringing Ms. Meadows before the court.

Appellants filed a complaint in the District Court in 1974. The complaint alleged that Ms. Meadows was deprived of her liberty without due process; that she was denied her due process and equal protection right to have children; that several social worker defendants, who are not appellees here, breached an oral agreement to return her children to her and to pay for her sterilization. The complaint alleged that appellees Dodson and Holt and the Logan County Hospital were negligent in not discovering that Ms. Meadows was incapable of consenting to the sterilization due to mental incompetency. Appellants sued under 42 U.S.C. § 1983, the 5th, 6th, and 14th amendments, and various Kentucky laws. They sought both damages and injunctive relief.

On January 31, 1975, the District Judge dismissed the Commonwealth of Kentucky on the ground that the 11th amendment barred the suit as to it. On October 23, 1975, after giving the parties a change to present their evidence regarding Ms. Meadows' incompetency, the District Judge dismissed Logan County Hospital and Drs. Dodson and Holt on alternative grounds: (1) the Kentucky one-year statute of limitations for cases based on medical negligence had run; (2) even if the statute of limitations had not run, appellants presented no evidence that Ms. Meadows was incompetent at the time the sterilization was performed, nor any evidence that these appellees had any reason to believe that Ms. Meadows might be incompetent.

Nothing further happened in the District Court until July, 1978, when appellants were permitted to file an amended complaint. The amended complaint added defendants Dr. Byrne and Deputies Wilson and Kisselbaugh. The complaint expanded a great deal on the violations of appellants' various rights, now alleging that defendants conspired to deny appellants their right to have and bear children; that defendants denied appellants their right of privacy; and that the conspiracy was a continuing one, in that appellants' children have not yet been returned. The complaint added that the above violated 42 U.S.C. §§ 1985 and 1986, as well as the aforementioned section 1983. A claim for punitive damages was included. The complaint also added appellants' children as plaintiffs, by their next friend.

The District Judge again dismissed the State of Kentucky and the Logan County Department of Human Resources under the 11th amendment. He held that Judge Brown and Prosecutor Riley were absolutely immune from suit. The court ruled that the one-year statute of limitations under sections 1985 and 1986 had run, so dismissed those claims. The court noted that appellees Wilson and Kisselbaugh were not named in the original complaint, and it found that they did not have such notice of the institution of this suit at the time of the original complaint that the amended

complaint could relate back as to them under Fed. R. Civ. P. 15(c). The amended complaint alleged that these appellees were guilty of fraud, to which a 5-year statute of limitations applies. The District Court found that the five years had expired by the time the amended complaint was filed, so it dismissed the complaint as to Wilson and Kisselbaugh. The District Court also dismissed Drs. Dodson and Holt and Logan County Hospital for the reasons stated in the October, 1975 order of dismissal. It dismissed Dr. Byrne because the complaint did not allege that he took any actions of his own. The court also dismissed appellants' children, but later reinstated them, and their participation is not in issue here. The court refused to dismiss the complaint as to the several social workers.

On appeal, appellants argue that it was error to dismiss any of the above parties. This case is something of a procedural quagmire. Judges Weick, Kennedy and Unthank agree that further study is necessary simply in order to sort the case out. Judge Unthank volunteered to undertake the task and to prepare an opinion reflecting his findings.

All three judges agree that the dismissal of Judge Brown and prosecutor Riley should be affirmed and that the dismissal of the deputies can probably be affirmed. They further agree that all of the dismissals on statute of limitation grounds of Mr. Meadows' claims can be affirmed. The problem with affirming the remaining claims is that Mrs. Meadows asserts she is mentally incompetent and the statute of limitations has been tolled.

Cornelia G. Kennedy

cc: All Judges

CALENDAR

OFFICE OF THE CLERK

JOHN P. HEHMAN
CLERK

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
CINCINNATI, OHIO 45202

October 9, 1981
Date

TO: Judges: Weick, Kennedy and Unthank

RE: Case No. 79-3455 Meadows, et al. vs. Ky. Dept. of Human Resources, et al.

Argued/Submitted _____ before: _____

Opinion/Order/Per Curiam filed: _____

Writing Judge: _____

SCHEDULED FOR ORAL ARGUMENT ON OCTOBER 16, 1981, IN COURTROOM #1, AT 9:00 A.M.

Enclosed please find:

( ) Motion to _____

_____

( ) Response of _____

_____

( ) Bill of Cost

( ) Petition for rehearing en banc

(X) Additional citations of appellant

_____

Remarks: _____

_____

_____

Shelley A. Vatzi
Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

CINCINNATI, OHIO 45202

KENNETH A. HOWE, JR.
SENIOR STAFF ATTORNEY

August 21, 1981

Honorable Paul C. Weick
Honorable Cornelia Kennedy
Honorable G. Wix Unthank

Re: Case Nos. 79-3455; 3560
Meadows, et al. v. Ky. Dept.
of Human Resources, et al.

Dear Judges:

Please find enclosed previously written staff attorney memoranda on the above case which is scheduled to be heard on October 16, 1981 in Courtroom No. 1.

Very truly yours,

Kenneth A. Howe

Kenneth A. Howe, Jr.
Senior Staff Attorney

Enclosure

las

STAFF ATTORNEY TRANSMITTAL FORM

FILE COPY

Case No. 79-3455
79-3560

DATE 11/15/79

STAFF ATTY. G. Petty

Re: Thomas Meadows, et al., Plaintiffs-Appellants v. Kentucky Department for Human Resources, et al. Defendants-Appellees

Subject Motion to Dismiss, Motion to Consolidate and to Hold in Abeyance (No. 79-3455); Motion to Dismiss (No. 79-3560)

District & Judge: W.D. Kentucky - Johnstone, J.

Case Type: Civil Rights

Notice of Appeal Filed: 4/26/79 (No. 79-3455); 8/17/79 (No. 79-3560)

Appeal From: Order filed 4/3/79 (No. 79-3455); Order filed 7/31/79 (No. 79-3560)

Criminal Code Violation: N/A

Underlying Conviction: N/A

Attachments

1. Staff Attorney Memorandum dated 11/15/79
2. Proposed Order in No. 79-3455
2A. Proposed Order in No. 79-3560
3. Motion to Dismiss in No. 79-3455 filed 8/2/79
4. Response to Motion to Dismiss in No. 79-3455 filed 8/16/79
5. Reply of Appellees in No. 79-3455 filed 8/21/79
6. Response of Appellants in No. 79-3455 filed 9/4/79
7. Motion to Dismiss in No. 79-3560 filed 9/10/79
8. Response to Motion to Dismiss in No. 79-3560 filed 9/27/79
9. Amended Complaint filed 9/29/78
10. District Court Memorandum Opinion and Order filed 4/3/79
11. Notice of Appeal filed 4/26/79
12. District Court Order filed 7/31/79
13. Notice of Appeal filed 8/17/79
14. Motion to Amend filed 8/17/79
15. District Court Order filed 9/6/79
16. District Court Order filed 11/2/79
17. Motion to Amend filed 6/28/79
18. Current District Court Docket Sheet

19. Clerk's General Docket Sheet in No. 79-3455
20. Clerk's General Docket Sheet in No. 79-3560

2 vols. pleadings (excluding 2 vols. pleadings,
11 vols. transcript)

MEMORANDUM - Cases Nos. 79-3455; 3560 November 15, 1979
Thomas Meadows, et al. v. Kentucky Dept.
for Human Resources, et al.

In this civil rights action brought pursuant to 42 U.S.C. §§1983, 1985, and 1986, plaintiffs have presented three basic claims: first, that defendants improperly caused plaintiffs' parental rights to be terminated; second, that defendants illegally caused Judy Meadows to undergo a sterilization operation; and third, that defendants illegally caused Judy Meadows to be committed to a mental hospital. The original complaint (which proceeded under §1983 alone) was filed on August 18, 1974. Following the dismissal of certain claims, an amended complaint was filed on September 29, 1978. The amended complaint added claims under §§1985 and 1986, and also added new plaintiffs and defendants. See Att. 9.

Upon consideration of defendants' motions to dismiss, the District Court entered an order dismissing all claims except those against defendants Norris, Smart, Gilliam, Woods and Gamble. For purposes of the present motions, it is noted that the claims of plaintiffs Mary Ann Meadows, Amon David Meadows and Thomas Meadows, Jr., by next of friend, Robert Harrison, were dismissed on the ground that Harrison had not filed a representative's affidavit as required by KRS 387.300(1). See Att. 10.

Pursuant to Rule 54(b), Federal Rules of Civil Procedure, the District Court certified that the above order was final and appealable, and that there was no just reason for delay. An appeal was thereafter filed from this decision (No. 79-3455). However, the notice of appeal names only Thomas Meadows and Judy Meadows as the appealing parties. See Att. 11. On this basis, defendants now move to dismiss the appeal as to plaintiffs Mary Ann Meadows, Amon David Meadows, and Thomas Meadows, Jr., by next of friend, Robert Harrison. (Att. 3). Plaintiffs have also moved to consolidate and to hold the motion to dismiss in abeyance. (Att. 4).

In No. 79-3560, plaintiffs are appealing from an order entered by the District Court on July 31, 1979. (Atts. 12 and 13). On June 28, 1979, plaintiffs had moved for leave to file a second amended complaint, to attack the constitutionality of the statute under which the parental rights of Mr. and Mrs. Meadows were terminated. By order entered July 31, 1979, the motion to amend was overruled. Defendants now move to dismiss the appeal on the ground that the July 31 order is non-appealable. (Att. 7).

RECOMMENDATION: In No. 79-3455, it is recommended that defendants' motion to dismiss be granted and that plaintiffs' motion to consolidate and to hold the motion to dismiss in abeyance be denied. In No. 79-3560, it is recommended that defendants' motion to dismiss be granted.

No. 79-3455

It appears that the only appellants in this case are Thomas and Judy Meadows. Rule 3(c), Federal Rules of Appellate Procedure, states in part: "The notice of appeal shall specify the party or parties taking the appeal." The only parties specified in the notice of appeal are Thomas and Judy Meadows. See Att. 11. No other appellants are properly before the Court. Van Hoose v. Eidson, 450 F.2d 746 (6th Cir. 1971).

Plaintiffs do not oppose the motion to dismiss, but rather request that the motion be held in abeyance pending disposition of a motion to amend filed in the District Court. See Att. 4. Robert Harrison, as next of friend, has filed a proper representative's affidavit with the District Court and has moved to reinstate the claims of Mary Ann Meadows, Amon David Meadows, and Thomas Meadows, Jr. See Att. 14. On September 6, 1979, an order was entered denying the motion, and a later motion for reconsideration was also denied. See Atts. 15 and 16.

These rulings have no bearing on the present case. The names of Harrison and the Meadows children must still be stricken from the caption of this appeal. Further, since there are other claims remaining before the District Court, and since the order denying plaintiffs' motion to amend has not been certified for interlocutory appeal, no appeal may be taken. Therefore, it is recommended that defendants' motion to dismiss be granted, and further, that plaintiffs' motion to consolidate and to hold the motion to dismiss in abeyance be denied.

No. 79-3560

Plaintiffs are appealing from an order filed July 31, 1979, which overruled their motion to amend the complaint to assert new claims. See Atts. 12 and 17. Defendants move to dismiss on grounds that the order is non-appealable. (Att. 7). In this regard, various courts have held that an order denying leave to amend a complaint is not a final decision and cannot be appealed absent certification under 28 U.S.C. §1292(b). Wells v. South Main Bank, 532 F.2d 1005, reh. den., 540 F.2d 1087 (5th Cir. 1976); Sackett v. Beaman, 399 F.2d 884 (9th Cir. 1968); DeNubilo v. United States, 343 F.2d 455 (2d Cir. 1965).

Plaintiffs cite Azar v. Conley, 480 F.2d 220 (6th Cir. 1973), for the proposition that where an order denying leave to amend amounts to a final dismissal of the case, and no further steps may be taken to save the action, the order may be viewed as final. See Att. 8. Here, however, an appeal would go counter to the rule against piecemeal litigation. It must be remembered that the District Court has yet to enter a final judgment in the case. When such event occurs, plaintiffs may challenge the propriety of the July 31, 1979 order in an appeal from the final judgment.

Therefore, it is recommended that the motion to dismiss be granted.

Gary Petty

Gary Petty
Staff Attorney

Gary

FILED

No. 79-3455

UNITED STATES COURT OF APPEALS

NOV 8 1979

FOR THE SIXTH CIRCUIT

JOHN P. HEHMAN, Clerk

THOMAS MEADOWS, ET AL.,

Plaintiffs-Appellants,

vs.

O R D E R

KENTUCKY DEPARTMENT FOR HUMAN RESOURCES, ET AL.,

Defendants-Appellees.

Upon consideration of the motion of the appellees' to dismiss the appeal for appellants' failure to designate and file an appendix, an further considering the appellants' response thereto, requesting leave to dispense with the filing of an appendix or in the alternative, an extension of time within which to file the joint appendix and to have the office of the Clerk, U.S. Court of Appeals, provide one copy of the items requested by appellees to be included in the appendix,

It is ORDERED that appellees' motion to dismiss is DENIED. It is further ORDERED that appellants' request for additional time within which to submit the joint appendix is hereby granted. Appellants' brief and joint appendix should be filed within thirty (30) calendar days from the file date of this order. The Clerk is directed to return the record to the District Court for the use of counsel in

preparing his brief and joint appendix.

ENTERED BY ORDER OF THE COURT

John P. Hehman, Clerk

FILE COPY

No. 79-3455

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Gary

FILED

DEC 18 1979

JOHN P. HEHMAN, Clerk

THOMAS MEADOWS, JUDY HENLEY MEADOWS, MARY ANN MEADOWS, AMON DAVID MEADOWS, AND THOMAS MEADOWS, JR., BY NEXT OF FRIEND ROBERT HARRISON,

Plaintiffs-Appellants

v.

KENTUCKY DEPARTMENT FOR HUMAN RESOURCES; LOGAN COUNTY, KENTUCKY DEPARTMENT FOR HUMAN RESOURCES; LOGAN COUNTY HOSPITAL, DR. C. V. DODSON, DR. JACK B. HOLT, DR. W. R. BYRNE, JUDGE ROBERT R. BROWN, SHERIFF MORRIS KISSELBAUGH, ROBERT R. WILSON AND JESSE L. RILEY, JR.,

Defendants-Appellees

O R D E R

BEFORE: MERRITT, BROWN and KENNEDY, Circuit Judges

Upon consideration of defendants-appellees' motion to dismiss the appeal as to plaintiffs-appellants Mary Ann Meadows, Amon David Meadows, and Thomas Meadows, Jr., by next of friend, Robert Harrison, and further considering plaintiffs-appellants' response thereto, requesting leave to consolidate and to hold the motion to dismiss in abeyance pending further proceedings in the District Court, and

It appearing that the only parties specified in the notice of appeal filed April 26, 1979, are Thomas Meadows and Judy Meadows, and that no other appellants are properly before this Court, Van Hoose v. Eidson, 450 F.2d 746 (6th Cir. 1971),

Now therefore, it is ORDERED that defendants-appellees' motion to dismiss be granted. It is further ORDERED that

plaintiffs-appellants' requests to consolidate and to hold the motion to dismiss in abeyance be denied. Appellants' brief and joint appendix should be filed within thirty (30) calendar days from the file date of this order. The Clerk is directed to return the record to the District Court for the use of counsel in preparing his brief and joint appendix.

ENTERED BY ORDER OF THE COURT

John A Helmann
Clerk

STAFF ATTORNEY TRANSMITTAL FORM

FILE COPY

Case No. 79-3455
80-3059

DATE April 30, 1980

STAFF ATTY. G. Petty

Re: Thomas Meadows, et al.,Plaintiffs-Appellants v. Kentucky Department for Human Resources, et al., Defendants-Appellees

Subject Motion to Strike; Motion to Dismiss

District & Judge: W.D. Kentucky - Johnstone, J.

Case Type: 42 U.S.C. §§1983, 1985, 1986

Notice of Appeal Filed: April 26, 1979 (No. 79-3455); November 29, 1979 (No. 80-3059)

Appeal From: Order filed April 3, 1979 (No. 79-3455); Order filed September 6, 1979 (Motion to Reconsider denied November 2, 1979) (No. 80-3059)

Criminal Code Violation: N/A

Underlying Conviction: N/A

Attachments

1. Staff Attorney Memorandum dated April 30, 1980
2. Proposed Order
3. Sixth Circuit docket sheets in Nos. 79-3455, 79-3560 and 80-3059
4. Motion to Strike filed February 7, 1980
5. Motion to Dismiss Appeal filed February 7, 1980
6. Appellants' Reply to Motions to Strike and Dismiss filed February 11,198
7. Appellee Kentucky Department for Human Resources' Response to Motions to Strike and Dismiss filed February 22, 1980
8. District Court docket sheet
9. Amended Complaint filed September 29, 1978
10. District Court Memorandum Opinion and Order filed April 3, 1979
11. Notice of Appeal filed April 26, 1979
12. Motion to Dismiss in No. 79-3455 filed August 2, 1979
13. Sixth Circuit Order filed December 18, 1979
14. District Court Order filed July 31, 1979
15. Notice of Appeal filed August 17, 1979
16. Motion to Dismiss in No. 79-3560 filed September 10, 1979

17. Sixth Circuit Order filed December 18, 1979
18. Motion to Amend filed August 17, 1979
19. District Court Order entered September 6, 1979
20. Motion for Reconsideration served October 11, 1979
21. District Court Order entered November 2, 1979
22. Notice of Appeal filed November 29, 1979

RECORD ON APPEAL

Memorandum - Case Nos. 79-3455, 80-3059 April 30, 1980
Thomas Meadows, et al. v. Kentucky
Department for Human Resources, et al.

In this civil action brought pursuant to 42 U.S.C. §§1983, 1985, and 1986, plaintiffs have presented three basic claims: first, that defendants improperly caused plaintiffs' parental rights to be terminated; second, that defendants illegally caused Judy Meadows to undergo a sterilization operation; and third, that defendants illegally caused Judy Meadows to be committed to a mental hospital. The original complaint (which proceeded under §1983 alone) was filed on August 18, 1974. Following the dismissal of certain claims, an amended complaint was filed on September 29, 1978. The amended complaint added claims under §§1985 and 1986, and also added new plaintiffs and defendants. See Att. 9.

Upon consideration of defendants' motions to dismiss, the District Court on April 3, 1979, entered an order dismissing all claims except those against defendants Norris, Smart, Gilliam, Woods and Gamble. For purposes of the present motions, it is noted that the claims of plaintiffs Mary Ann Meadows, Amon David Meadows and Thomas Meadows, Jr., by next of friend, Robert Harrison, were dismissed on the ground that Harrison had not filed a proper representative's affidavit as required by Section 387.300(1), Kentucky Revised Statutes. See. Att. 10.

Pursuant to Rule 54(b), Federal Rules of Civil Procedure, the District Court certified that the above order was final and appealable, and that there was no just reason for delay. An appeal was thereafter filed from this decision (No. 79-3455). However, the notice of appeal named only Thomas Meadows and Judy Meadows as the appealing parties. See Att. 11. On this basis, defendants moved to dismiss the appeal as to plaintiffs Mary Ann Meadows, Amon David Meadows, and Thomas Meadows, Jr., by next of friend, Robert Harrison. (Att. 12). Upon consideration, the motion appeared to be well-taken, and on December 18, 1979, this Court entered an order granting defendants' motion. (Att. 13).

In No. 79-3560, plaintiffs filed an appeal from an order of the District Court entered July 31, 1979. See Atts. 14 and 15. On June 28, 1979, plaintiffs had moved for leave to file a second amended complaint, to attack the constitutionality of the statute under which the parental rights of Mr. and Mrs. Meadows were terminated. By order entered July 31, 1979, the motion to amend was overruled. (Att. 15). In this Court, defendants moved to dismiss the appeal on the ground that the July 31 order was non-appealable (Att. 16) and on December 18, 1979, an order was entered dismissing the appeal. (Att. 17). Defendants now move to strike from the briefs and arguments of the appellants all references to this appeal. (Att. 4).

On August 17, 1979, plaintiffs filed a motion seeking an amendment to the complaint 1) to add as plaintiff Robert E. Harrison as next friend of the three Meadows children, and 2) to permit reinstatement of all claims previously asserted by Harrison on behalf of the children. (Att. 18). On September 6, 1979, an order was entered adding Harrison (on behalf of the children) as a party; however, the District Court refused to reinstate the claims. (Att. 19). On October 11, 1979, plaintiffs served a motion for reconsideration of the September 6 Order. (Att. 20). By order entered November 2, 1979, the motion to reconsider was denied. (Att. 21). Whereupon, on November 29, 1979, plaintiffs filed a notice of appeal from both the September 6 and November 2 orders. (Att. 22). In this Court, the appeal has

been docketed as No. 80-3059. Defendants now move to dismiss the appeal on grounds that 1) the orders being appealed are non-appealable and 2) the appeal, even if proper, is untimely. (Att. 5). It is noted that plaintiffs have filed a response to the present motions. (Att. 6).

RECOMMENDATION: It is recommended that the motion to strike be denied as moot. It is further recommended that the motion to dismiss the appeal in No. 80-3059 be granted.

Motion to Strike

The briefs and arguments which defendants move to strike relate to plaintiffs' appeal from a District Court Order of July 31, 1979. See Att. 4. That appeal, docketed in this Court as No. 79-3560, was dismissed by order filed December 18, 1979. See Att. 17.

In response to the motion to strike, plaintiffs' counsel states that he did not receive notice of the dismissal until after the briefs had been filed. Counsel asserts that the briefs have now been returned to him. See Att. 6. This Staff Attorney has examined the records of the Court and concludes that all briefs and argument in No. 79-3560 have indeed been purged.

Therefore, it is recommended that the motion to strike be denied as moot.

Motion to Dismiss No. 80-3059

The appeal is taken from an order refusing to allow reinstatement of certain claims and from a subsequent order denying reconsideration. See Atts. 19, 21 and 22. Research discloses that such orders are not final in nature and cannot be appealed absent certification under 28 U.S.C. §1292(b). This was the basis for dismissal in No. 79-3560. See Att. 17. The rule has also been adopted by other courts. See Wells v. South Main Bank, 532 F.2d 1005, reh. den., 540 F.2d 1087 (5th Cir. 1976); Sackett v. Beaman, 399 F.2d 884 (9th Cir. 1968); DeNubilo v. United States, 343 F.2d 455 (2d Cir. 1965).

Plaintiffs have cited Foman v. Davis, 371 U.S. 178 (1962), for the proposition that where an order denying leave to amend amounts to an abuse of discretion, the order is final and reviewable. See Att. 6. Plaintiffs neglect to note, however, that in Foman a final judgment had already been entered and that the subject order was not otherwise reviewable. By contrast, the District Court has yet to enter a final judgment in this action. When such event occurs, plaintiffs may challenge the propriety of the September 6 and November 2 orders in an appeal from the final judgment.

Even if the orders were appealable, the Court would still lack jurisdiction due to plaintiffs' failure to file a timely notice of appeal. The District Court's order of September 6, 1979, denied reinstatement of plaintiffs' claims. See Att. 19. Although a motion to reconsider was served on October 11, 1979 (Att. 20), it was not served within the 10-day period prescribed by Rule 59(e), Federal Rules of Civil Procedure, and did not, therefore, operate to toll the 30-day appeals period. Rule 4(a), Federal Rules of Appellate Procedure. The notice of appeal of November 29,1979 (Att. 22) is clearly untimely and the court lacks jurisdiction over the appeal. Browder v. Director,

Department of Corrections, 434 U.S. 257 (1978).

For these reasons, it is recommended that the motion to dismiss be granted.

Gary Petty

Gary Petty
Staff Attorney

Nos. 79-3455
80-3059

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

THOMAS MEADOWS AND JUDY HENLEY MEADOWS,

Plaintiffs-Appellants

v. No. 79-3455

KENTUCKY DEPARTMENT FOR HUMAN RESOURCES, ET AL.,

Defendants-Appellees

THOMAS MEADOWS, JUDY HENLEY MEADOWS, MARY ANN MEADOWS, AMON DAVID MEADOWS, AND THOMAS MEADOWS, JR.,

Plaintiffs-Appellants

v. No. 80-3059

KENTUCKY DEPARTMENT FOR HUMAN RESOURCES, ET AL.,

Defendants-Appellees.

O R D E R

Upon consideration of defendants-appellees' motion to strike from the records of the Court all briefs and arguments relating to plaintiffs-appellants' appeal in Case No. 79-3560, and

It appearing that on December 18, 1979, the appeal was dismissed for lack of jurisdiction and that, thereafter, the briefs were returned to counsel for the plaintiffs-appellants,

Now therefore, it is ORDERED that the motion to strike be and it hereby is denied as moot.

Upon consideration of defendants-appellees' motion to dismiss the appeal in Case No. 80-3059, and

It appearing that the orders from which the appeal is taken are interlocutory and non-appealable in nature, Wells v. South Main Bank, 532 F.2d 1005, reh. den., 540 F.2d 1087 (5th Cir. 1976);

Sackett v. Beaman, 399 F.2d 884 (9th Cir. 1968); DeNubilo v. United States, 343 F.2d 455 (2d Cir. 1965), and

It further appearing that the notice of appeal was not timely filed under Rule 4(a), Federal Rules of Appellate Procedure,

Now therefore, it is ORDERED that the motion to dismiss the appeal in Case No. 80-3059 be and it hereby is granted.

ENTERED BY ORDER OF THE COURT

_____
Clerk

20.

UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT

TO : Judge Unthank

DATE: Oct. 23, 1981

FROM : GEORGE EDWARDS

SUBJECT : Your assignment of cases - October 1981

Opinions

79-3455 - Meadows v. Kentucky Dept. Human Resources, etc.
Weick, Kennedy, Unthank

George Edwards

JUDGE: You will notice that in the Original Complaint, "John Doe" was named as a defendant, and described within the complaint as "all other individuals, unknown to Plaintiffs, who may be liable in this action to plaintiffs." (¶ 1 of complaint)

In paragraph #5 of the Original Complaint, you will notice that the plaintiffs were requested to accompany "Sheriffs Wilson and Kisenbaugh(sic), Sheriffs of Logan County.... in a patrol car..."

In the Amended Complaint, the plaintiffs try to bring in these Deputies, saying that they were mentioned in the Original Complaint and should have known that suit was being brought against them. Thus, plaintiffs say 15(c) relation back, should allow them to now proceed against these deputies.

I think they are off base for two reasons: 1)"John Doe" repres-ented those other individuals "unknown" to Plaintiffs. Obviously, these Deputies were known to plaintiffs since they were identified in the original complaint by name. 2)In ¶5 of the Original Complaint these Deputies were identified by name, not as "Defendants". In ¶5, the sentence mentioning these deputies ~~also~~ states in relevant part:

> Sheriffs Wilson and Kisenbaugh,.-... and Defendants, Mrs. Doris Smart and Sue Gilliam,....

Thus, it is evident to me that these Deputies were not considered as Defendants in the Original Complaint.

The only problem with this is that the plaintiffs allege in ¶9 that the plaintiff, Mr. Meadows, was threatened with physical harm if he interferred with Mrs. Meadows' commitment. by the "sheriff and others". Now, if sheriff means the sheriffs Wilson and Kisenbaugh (who are actually deputies), then that allegation may have put them on sufficient guard that they were "John Doe". But this is silly since plaintiffs say that "John Doe" represents others Unknown. OBVIOUSLY, Wilson and Kisenbaugh were known. So was Sheriff Johnson, who is mentioned in ¶5 & ¶9 ("the Sheriff"), but not as a defendant.

Recommendation: affirm dismissal of Wilson and Kissenbaugh.

** Judge: Also please note that Ms. Stamps is named in the Original Complaint but there is no mention of her in the body of said complaint. She is a Social worker, but any time the social workers are charged with something in the Complaint, they are named individually and not as a unit. Thus, it appears that the plaintiffs have failed to state a claim against her. But no motion to dismiss has been made by Ms. Stamps, so maybe you should just note it and go on.

dwt

in amended complaint to even show who she is.

7. Sheriff Johnson – not named in the style on the amended complaint; Judge Johnstone doesn't mention him, but his situation appears to be the same as that of the two deputies named for the first time in the amended complaint.

Amended Complaint – Notes

(new Πs: Mr. Meadows, & the kids)
(new Δs: Dr. Burns, Sheriff Johnson, and Deputies Kissenbaugh & Wilson)

1. State DHR – is renamed as a Δ;
District Judge dismisses again.

2. Dr. Burns – not named as Δ, but is
(Byrne?) described in "description of parties" as a Russellville physician.
Complaint never says what he had to do w/ any of this.

3. the Civil Rights Πs claim deprivation of:
   a. privacy
   b. freedom of association
   c. right to maintain family relationship
   d. equal protection
   e. due process

4. Civil Rights Mrs. Meadows claims deprivation of:
   a. all in #3
   +
   b. right to be free from involuntary servitude

5. Civil Rights the kids claim deprivation of:
   a. all in #3
   +
   b. right to their parents' companionship
   c. " " be free from involuntary servitude.

6. Rosalyn Stamps – named as defendant, but never mentioned later in the amended complaint, nothing

(continued)

Dec. 14

FILED
JOHN P. HEHMAN, Clerk
JAN 30 1980

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

LIMITED COPIES

THOMAS AND JUDY HENLEY MEADOWS, MARY ANN MEADOWS, AMON DAVID MEADOWS AND THOMAS MEADOWS, JR.	)	
PLAINTIFFS-APPELLANTS	)	
vs.	)	Case No. 79-3455
KENTUCKY DEPARTMENT FOR HUMAN RESOURCES LOGAN COUNTY, KENTUCKY, ET AL.,	)	
DEFENDANTS-APPELLEES	)	

APPEAL OF ORDER OF THE DISTRICT COURT OF

APRIL 3, 1979

BRIEF AND ARGUMENT ON BEHALF OF APPELLANTS, THOMAS AND JUDY HENLEY MEADOWS MARY ANN MEADOWS, AMON DAVID MEADOWS AND THOMAS MEADOWS, JR.

ROBERT E. HARRISON AND
ROLAND M. LOWELL
ATTORNEYS FOR APPELLANTS

OF COUNSEL:

HARRISON AND GOIN
P. O. BOX 522
SCOTTSVILLE, KY 42164

BUCK BAKER & BAKER
618 UNITED AMERICAN BANK BUILDING
NASHVILLE, TENNESSEE 37219

INDEX

Table of Cases. iii

Statement of Issues Presented for Review. 1

Statement of the Case and Proceedings Below 2

Statement of Relevant Facts 4

Argument. 8

Exceptions for Review

I. Prior to dismissing the claims against Defendants the Court did not consider all causes of action which were stated by Plaintiffs. 9

II. The Court erred in dismissing the complaint against Defendants under 12 (b) (6) while a protective order postponing discovery requested by Plaintiffs was in effect. 13

III. The Court erred in dismissing the Department for Human Resources and the Logan County Department of Human Resources on the basis of the 11th Amendment Bar since the 11th Amendment did not bar prospective injunctive relief. 14

IV. It was an error to dismiss Judge Brown and the county prosecutor, Jesse L. Riley, on grounds of absolute immunity since immunity is not automatic and the judge had no jurisdiction to do the acts committed. 17

V. The Court erred in dismissing Defendants Logan County Hospital, Drs. Dodson, Holt and Byrne by relying on a prior order when that Order does not address the claims presented against Defendants. 20

VI. It was error to dismiss the Deputies, Kisselbaugh and Wilson since unknown Deputies were named in the original Complaint and joinder of these parties may relate back to the time of filing of the original Complaint. . . . 22

VII. It was an error to dismiss the specific causes of action filed by Mrs. Meadows on grounds that the Statute of Limitations had run when Mrs. Meadows was not competent which would toll the Statute of Limitations. 23

I N D E X

VIII. It was an error to dismiss the action for conspiracy to deny civil rights without affording Plaintiffs the opportunity to complete discovery and prove when the action accrued. 24

Conclusion 25

PAGE(S)
MISSING

STATUTES

KRS 413.120 states:
"The following actions shall be commenced within five (5) years after the cause of action accrued:

(1) An action upon a contract not in writing, express or implied.
(2) An action upon a liability created by Statute, when no other time is fixed by the Statute creating the liability.
(7) An action for an injury to the rights of the plaintiff, not arising on contract and not otherwise enumerated.
(12) An action for relief or damages on the ground of fraud or mistake.

KRS 413.140 states:
The following action shall be commenced within one (1) year after the cause of action accrued:
(c) An action for malicious persecution, conspiracy, arrest, seduction, criminal conversation or breach of promise to marry.

KRS 413.160 states:
An action for relief, not provided for by Statute, can only be commenced within ten (10) years after the cause of action accrued.

KRS 202.020 states:
The circuit courts shall have exclusive jurisdiction of all inquests concerning commitment or determination of competency of persons alleged to be mentally ill or mentally defective, except that when no circuit court is in session, such inquests may be held by a circuit judge or by the county court.

KRS 413.70 ·
If a person entitled to bring any action mentioned in 413.090 to 413.160 was at the time the cause of action accrued an infant or of unsound mind, action may be brought within the same number of years after removal of his disability or death of the person whichever happens first, allowed to a person without the disability to bring the action after the right accrued.

IV.

Whether it was error to dismiss Judge Brown and the County Prosecutor, Jesse L. Riley, on the grounds of absolute immunity since immunity is not automatic and the judge had no jurisdiction to do the acts committed.

V.

Whether the Court erred in dismissing Defendants Logan County Hospital, Drs. Dodson, Holt and Byrne by relying on a prior order when that order did not address the claims presented against Defendants.

VI.

Whether it was error to dismiss the Deputies, Kisselbaugh and Wilson since unknown Deputies were named in the original Complaint and joinder of these parties may relate back to the time of filing of the Original Complaint.

VII.

Whether it was error to dismiss the specific causes of action filed by Mrs. Meadows on grounds that the Statute of Limitations had run when Mrs. Meadows was not competent which would toll the Statute of Limitations.

VIII.

Whether it was error to dismiss the action for conspiracy to deny civil rights without affording Plaintiffs the opportunity to complete discovery and prove when the action accrued.

STATEMENT OF THE CASE AND PROCEEDINGS BELOW

This is an appeal to the United States Court of Appeals for the Sixth Circuit, in forma pauperis, from the Order and Judgment of the United States District Court for the Western District of Kentucky, dated April 3, 1979, by which the District Court granted Defendants' Motion to

1. Honorable Edward H. Johnstone presiding.

Dismiss the Complaint, as to Defendants Morris Kisselbaugh, Robert Wilson, Logan County Hospital, Dr. W. R. Byrne, Dr. C. V. Dodson, Dr. Jack B. Holt, Robert Brown, Jesse T. Riley, the Kentucky Department of Human Resources and the Logan County Department of Human Resources and the Logan County Department of Human Resources; dismissal of claims under 42 U.S.C. §1985 and §1986; and claim for wrongful imprisonment. (Appendix 169A)

This appeal is of right under provisions of Rule 3, Federal Rules of Apellate Procedure, seeking reversal of the above Order and Judgment,, and seeking remand of these matters to the District Court for Jury trial, along with trial of the remaining issues and of other Defendants.

In effort to clarify issues and parties involved, Plaintiffs filed two additional amendments to their complaint. The first amendment (Appendix 172A) requested to add a separate account alleging the Kentucky Statute to terminate parental rights KRS 199.600 and 199.011, on its face and as applied was unconstitutional. The Court denied said Motion without giving any reason therefor. (Appendix 173A) Notice of Appeal was filed to this Order and is pending before this Court. (Appendix 174A)

The next amendment requested leave to add Robert E. Harrison as next of friend of the minor parties Plaintiff and to have the minors reinstated as Plaintiffs to all counts. (Appendix 175A) The children were named as parties Plaintiffs, but Defendants objected to the parents standing and counsels' standing to bring suit on behalf of the children because the children were in the custody of the Kentucky Department for Human Resources. On behalf of Plaintiffs, counsel replied that the Department for

Human Resources was a Defendant and could not therefore be expected to represent children as Plaintiffs. The Court granted the motion to add Robert E. Harrison as next of friend, but did not reinstate any counts, causes or Defendants previously dismissed and denied the addition of any new counts. (Appendix 177A). Plaintiffs moved to reconsider. (Appendix 178A). The Court denied the Motion to Reconsider (Appendix 180A). An Appeal was taken (Appendix 181A).

Filed herewith is Plaintiffs' request to consider all three of the above appeals together and Motion to file supplemental briefs on the two later appeals without necessity of filing an additional Appendix.

STATEMENT OF RELEVANT FACTS

I.

By Order of the Logan County Court, Logan County, Kentucky, dated May 18, 1970, (Appendix 92A) two infant children of Thomas and Judy Meadows were taken from their custody and placed with the Logan County Department of Child Welfare. The Order of the Court found both children to be dependent, in that their parents were so limited mentally, that they were unable to give adequate care to these infants. The children were found to be needy, neglected, and dependent children, and one infant was found to have been severely abused and hospitalized. Commitment Orders of Logan County Court attached to answer of Rosalyn Stamps - Filed 4-12-74.

II.

A third child was born to Thomas and Judy Meadows on July 21, 1971. Employees of the Department of Child Welfare, Defendants herein, encouraged and assisted Judy Meadows in arranging for a tubal ligation to prevent further pregnancies. For her consent to this operation, Department personnel,

Defendants herein, promised both Thomas and Judy Meadows the return of their two children taken by the Logan County Court May 18, 1970. A consent was signed by both Judy and Thomas Meadows, and the operation was performed July 23, 1971. (Appendix 93A).

III.

By Order of the Logan County Court dated May 26, 1972, (Appendix 103A) the third child of Thomas and Judy Meadows was taken from their custody and placed with the Department of Child Welfare following allegations of child abuse. Judy Meadows was committed to Western Kentucky Hospital for observation, and following observation, to Logan County Jail. (Appendix 91A).

IV.

On July 18, 1974 Civil Action No. C-74-48B(B), Thomas Meadows and Judy Henley Meadows, Plaintiffs versus Kentucky Department of Human Resources, Logan County, Kentucky, et al, Defendants, was filed in the United States District Court for the Western District of Kentucky. As amended, this is the action which gave rise to the Judgment and Order of the District Court dated April 3, 1979, which is the subject of this appeal. The Complaint, as amended, alleged that Judy Meadows was at all times, and is now, suffering from a mental deficiency, rendering her incompetent. (Appendix 91A). The Complaint further alleges that Judy Meadows was induced to consent to a tubal ligation on the promise of Defendants that the two children taken from them May 18, 1970 would be returned following the operation. (Appendix 92A, 93A).

As amended, the Complaint is divided into five counts. (Appendix Each count incorporates by reference all allegations of the previous counts. Count I seeks redress for deprivation of rights secured to Mrs. Meadows,

among others, constitutional rights, denial and conspiracy to deny civil rights, action for pain and suffering, deceit, and breech of contract resulting from the taking of her children and her sterilization. Count II seeks redress to Mrs. Meadows as a result of her unlawful commitment to Western State Hospital, alleging deprivation of, among others, constitutional rights, denial and conspiracy to deny civil rights, and pain and suffering. Count III seeks to redress a deprivation of rights to all of the children, among others, constitutional rights, denial and conspiracy to deny civil rights, and pain and suffering. Count V requests punitive damages.

V.

By Memorandum and Order of the United States District Court for the Western District of Kentucky, dated January 31, 1975, (Appendix 14A). the Court in this civil action, dismissed the Defendant, Commonwealth of Kentucky, based on constitutional immunity found in the Eleventh Amendment to the United States Constitution.

VI.

The District Court, Hon. Rhodes Bratcher, Judge, entered its Memorandum and Order and Judgment of the Court, dated October 23, 1975, (Appendix 80A) dismissing the Complaint as to Defendants Logan County Hospital, C.J. Dodson, M.D., and Jack B. Holt, M.D.. Two reasons were assigned as the basis for this Judgment. The first was that the Complaint was initiated July 18, 1974, two years after the one year period of limitations would ordinarily bar complaints arising from medical malpractice regarding the operation performed on July 23, 1971. The Court further stated that Plaintiffs had failed "to bring forward any sufficient and

credible evidence which tends to establish that the Plaintiff, Judy Meadows, lacked the requisite mental capacity to voluntarily consent on or about July 23, 1972, to the tubal ligation which she underwent on or about that time." (Appendix 83A)

On July 19, 1978, Plaintiffs tendered an Amended Complaint. (Appendix 86A). By Order of September 29, 1978, the Amended Complaint was filed. (Appendix 107A). Motions requesting a 45 day extension of time to answer the Amended Complaint were filed by and granted to all Defendants except the Department of Human Resources and the individual department workers. (Appendix 108A, 110A) Plaintiffs filed notices to take depositions of Defendants Kisselbaugh, Burn, Wood, Brown, Riley and Dodson on November 1, 1978. (Appendix 113A-116A). Notice to take deposition of Defendant Smart was filed by Plaintiffs on November 13, 1978. (Appendix 116A). The Judge, by telephone consultation, indicated that he would grant said order and the depositions should be postposed. It was counsels' understanding that if Plaintiffs agreed to postpone the depositions then Defendants would file their Answers and make themselves available for depositions as soon as thereafter practical. Defendants then filed a Motion to Dismiss the complaint. No Answers to the Amended Complaint have been filed except by Defendants Norris, Smart, Gilliam, Wood and Gamble. No agreement was reached by the parties to take depositions. By Order of April 3, 1979, the Court dismissed Defendants Brown, Riley, Dodson, Holt, Burn, Kisselbaugh and Wilson. The Court also dismissed all claims under 42 U.S.C. §1985 and §1986 and a claim for wrongful imprisonment. (Appendix 169A)

It is to the Order of April 3, 1979, (Appendix 169A), dismissing the Complaint as to these Defendants and as to the above specified actions which is now the subject of this appeal.

It should be noted that this Appeal is on behalf of the adult Plaintiffs. However, on behalf of the Plaintiffs who are minors, Robert Harrison has been given leave to act as next of friend and have the minors reinstated as Plaintiffs but no reinstatement of counts, causes or Defendants previously dismissed or new counts was allowed. Upon denial of Plaintiffs' Motion to reconsider denial of reinstatement of counts, causes and Defendants, Plaintiffs have filed Notice of Appeal to this Honorable Court and also request that all Appeals be considered together.

A R G U M E N T

The District Court dismissed the various Defendants and counts on motion which was based on 12 (b) (6) of the Federal Rules of Civil Procedure. However, the District Court could only properly dismiss the Defendants and counts if it appeared beyond doubt that the Plaintiffs could prove no set of facts which would entitle them to relief. Plaintiffs set forth in their Complaint a plain statement of the facts upon which relief could be granted against all Defendants. The Court overlooked the causes of action which were not barred by any Statute of Limitations or jurisdiction prohibition upon which relief could be granted against the Defendants dismissed. The Court entered a protective Order postponing discovery requested from Defendants which would counter any 12 (b) (6) motion. The Court dismissed the County Judge and County Prosecutor as Defendants on grounds that they were

absolutely immune from suit, when immunity is not automatic and the County Judge had no jurisdiction over the persons or subject matter. The Court relied on a prior order for dismissal when that prior Order did not address the claims presented by Plaintiffs. The Court dismissed specific causes of action on grounds that the statute of limitations had run when Plaintiff, Mrs. Meadows, was not competent which would toll the statute of limitations. The Court has subsequently denied a motion to amend, adding as an issue constitutionality of the Kentucky Statute providing for termination of parental rights, without giving any justifying reason therefor, and granted reinstatement of the minor parties but denied reinstatement of all counts, causes and Defendants previously dismissed without giving any justifying reason therefor, even though all parties are minors and therefore the statute of limitations would be tolled. These two orders are subject to the separate appeals to this Honorable Court. The Court erred in its Order of April 3, 1979 and Plaintiffs-Appellants take exception to that Order.

EXCEPTIONS FOR REVIEW

I.

PRIOR TO DISMISSING THE CLAIMS AGAINST DEFENDANTS THE COURT DID NOT CONSIDER ALL CAUSES OF ACTION WHICH WERE STATED BY PLAINTIFFS.

The Court evidentally dismissed the claims against Logan County Hospital, Drs. Byrne, Dodson and Holt, Brown and Riley on the basis of Rule 12(b)(6) of the Rules of Federal Procedure. Also, actions against Kisselbaugh and Wilson were dismissed based upon 12(b)(6) because the

Statute of Limitations was alleged to have run. (Appendix 167A, 170A). Appeal is on behalf of the adult Plaintiffs. This Honorable Court has sustained the objection of Defendants-Apellees that only the adult beneficiaries were named in the notice of appeal. The children were not named because by separate motion and upon order of the lower Court, Robert Harrison was allowed to act as next of friend and the children were reinstated as parties, but no counts, causes, or defendants previously dismissed were reinstated even though the statute of limitations was tolled since the children are minors. A separate appeal has been filed with this Honorable Court on this issue and contending that under Forman v. Davis 371 U.S. 178 (1962), failure to grant reinstatement of the counts, causes and Defendants without giving any reason therefor was an abuse of discretion.

A Motion to Dismiss because the Statute of Limitations has run may be utilized to raise that defense without an affirmative defense plea or supporting affidavit where the Complaint discloses that the action had not been brought within the statutory time, in view of the provisions of Rule 9 (f) and Rule 12 (b) (6). Barry v. Chrysler Corp., 150 F.2d 1002 (6th Cir. 1945); Burkhardt v. Liberty, 394 F. Supp. 1296, Aff'd. without op. 530 F.2d 963 (3rd Cir. 1975). Since the claims against Kisselbaugh and Wilson are not of a procedural nature dismissal must have been based on 12 (b)(6). "The basic difference among the various 12 (b) motions is that 12 (b) (6) alone necessitates a ruling on the merits of the claim; the others deal with procedural defects..." Mortenson v. First Federal Sav. & Loan Asso., 549 F. 2d 884 (3rd Cir. 1977). The Court based a dismissal on 12 (b) (6).

The object of motions under 12 (b)(6) is to test the sufficiency of the pleading. Davis H. Elliott Co. v. Caribbean Utilities Co., 513 F. 2d 1176 (6th Cir. 1975). Motions to dismiss for failure to state a claim under Federal Rules of Civil Procedure 12(b)(6) are viewed with marked disfavor and are rarely granted; such motions will not be granted unless it appears beyond doubt that Plaintiff can prove no set of facts in support of his claim which would entitle him to relief. St. Marie & Son, Inc. v. Hartz Mountain Corp., 414 F. Supp. 71 (D.C. Minn. 1976); Harbert v. Rapp, 415 F. Supp. 83 (D.C. Okla. 1976).

12(b)(6) motions will not be granted particularly when the case involved questions of basic human rights such as the instant case involved. "Complaints alleging violations of civil rights should be given close scrutiny to alleged facts since in such cases there is some hesitation toward granting Rule 12(b)(6) motions..." Croy v. Skinner, 410 F. Supp. 117 (D.C. Ga. 1976).

In the instant case, a close scrutiny of the Complaint (Appendix 86A) would have revealed sufficient allegations to entitle Plaintiffs to relief against each Defendant.

The Court overlooked several causes of action asserted other than Section 1983, 1985, and 1986 which were ruled upon by the Court.

The Complaint, (Appendix 86A), in the first paragraph, sets forth that suit was filed to "redress the deprivation of rights, privileges, and immunities secured to Plaintiffs herein by the First, Fourth, Fifth, Sixth, Ninth, Thirteenth and Fourteenth Amendments...and arising under the laws and Constitution of the Commonwealth of Kentucky." These causes of action

derived directly from the United States Constitution. See Bivens v. Six Unknown Fed. Narcotics Agents, 403 U.S. 388 (1971) and Hernandez v. Lattimore, 48 L.W. 2019 (1979). Although the state Statute of Limitations may apply, the Statute of Limitations for actions not enumerated and not arising under contract is five years. KRS 1413.120.

Facts upon which an action for an injury to rights of the Plaintiffs not arising on contract and not otherwise enumerated (S/L five years) under KRS 413.120 were alleged in Paragraphs 1, 2, 4, and 5 of the preliminary statement. (Appendix 86A-88A) Facts sustaining Mrs. Meadows' cause of action for injury to rights not arising under contract were alleged under Count I, under Paragraphs 1, 3 through 15, 17, 18, and under Count II, in Paragraphs 5, 6, and 7. (Appendix 91A-100A) Facts sustaining Mr. Meadows' cause of action were alleged under Count III, Paragraphs 2, 3, and 4. (Appendix 101A, 102A) Facts sustaining the same cause of action for the three children were alleged under Count IV, Paragraphs 1 through 6. (Appendix 102A, 103A). All Plaintiffs alleged facts in the last count, Paragraphs 1 through 6, (Appendix 104A, 105A) for injuries to rights not arising under contract or otherwise enumerated under KRS 413.120.

Among the causes of action not arising under contract or otherwise enumerated are those stemming directly from the First, Fourth, Fifth, Sixth, Ninth, Thirteenth, and Fourteenth Amendments to the Constitution of Kentucky, loss of services, companionship, invasion of privacy, deceit, freedom of association, and right to maintain a family relationship.

All that is required is a short plain statement of facts upon which relief can be granted. Facts upon which relief could be granted in an action to recover for pain and mental anguish under KRS 1413.120 (Statute

of Limitations (S/L) five years) were alleged in Paragraphs 2, 4, 5 of preliminary statement. (Appendix 87A, 88A). Mrs. Meadows; cause of action for pain and suffering were alleged under Count I, Paragraphs 1, 3, 5, 10, 19, 20, and under Count II, Paragraphs 2, 4, and 6, among others. (Appendix 91A-99A) Mr. Meadows' cause of action for pain and suffering were alleged under Count III, Paragraph 2, among other paragraphs. (Appendix 101A) The children's cause of action for pain and suffering were alleged under Count IV, Paragraphs 2 and 4. (Appendix 102A, 103A). Under Count V, Paragraphs 2 and 5, (Appendix 104A), among others, all Plaintiffs cite facts sustaining a cause of action for pain and suffering. See Fergerson v. Utilities Elkhorn Coal Co., 312 S.W.2d 395, 398 (Ky. 1958).

The District Court erred in dismissing the Complaint without addressing the above causes of action against the dismissed Defendants.

II.

THE COURT ERRED IN DISMISSING THE COMPLAINT AGAINST DEFENDANTS UNDER 12(b)(6) WHILE A PROTECTIVE ORDER POSTPONING DISCOVERY REQUESTED BY PLAINTIFFS WAS IN EFFECT.

Upon the Court's own motion, the Court ordered Plaintiffs to tender their proposed Amended Complaint and complete discovery within a specified time. (Appendix 84A). The Plaintiffs filed their Amended Complaint. Defendants moved for additional time to answer the Amended Complaint. (Appendix 108A, 110A). Plaintiffs set depositions of various Defendants. (Appendix 113A-116A) Defendants Drs. Dodson, Holt, Bryne and Logan County Hospital moved for a protective order (without any justifying reason given therefor) so that depositions could not be taken before Defendants filed their Answers. (Appendix 117A, 119A). Defendants filed no Answers but moved to dismiss the Complaint.

That motion to dismiss was granted and Plaintiffs were precluded from taking the discovery requested.

A Motion to Dismiss is premature where the Plaintiffs are not afforded an opportunity to engage in discovery of information in possession of Defendants to contest a 12(b)(6) motion. Re Equity Funding Corp. of America Secur. Litigation, 416 F. Supp. 161 (D.C. Cal. 1976). In this case, Plaintiffs requested to be afforded the opportunity to engage in discovery which would have precluded granting a 12(b)(6) motion. Plaintiffs were not allowed to complete that discovery prior to the Court's granting of this premature motion to dismiss.

Furthermore, it was improper to entertain a Motion to Dismiss prior to filing of the answer. Defendant-Appellees were granted additional time only to file their answer not to interpose other pleadings and thereby prolong the protective order prohibiting Plaintiffs-Appellants from engaging in discovery.

III.

THE COURT ERRED IN DISMISSING THE DEPARTMENT FOR HUMAN RESOURCES AND THE LOGAN COUNTY DEPARTMENT OF HUMAN RESOURCES ON THE BASIS OF THE 11TH AMENDMENT BAR SINCE THE 11TH AMENDMENT DID NOT BAR PROSPECTIVE INJUNCTIVE RELIEF.

The Court dismissed the Department of Human Resources and the Logan County Department of Human Resources on grounds that the Eleventh Amendment was a bar to suit against the state and cited Edelman v. Jordan, 415 U.S. 641 (1974) (Appendix 166A, 169A). However, Edelman does not bar prospective

injunctive relief. In Ex Parte Young, 209 U.S. 123 (1908) it has long been held that a Federal Court, consistent with the Eleventh Amendment may enjoin state officials to confirm their future conduct to the requirements of Federal Law, even though such an injunction may have an ancillary effect on the state treasury. Cited in Quern v. Jordan, 47 L.W. 4241 (7th Cir. 1979).

Plaintiffs intend to request a finding that the Kentucky Statute terminating parental rights is unconstitutional both on its face and as applied. Plaintiffs have requested injunctive relief in their prayer for relief.

The Complaint, as amended, alleged on behalf of the children a denial of rights stemming from the United States Constitution and that each Defendant was liable for all resulting damages including but not limited to loss of protection, companionship and custody of their parents, loss of right to remain in a family relationship... (Appendix 103A). Plaintiffs moved to further amend the Complaint to clarify that the Kentucky Statute providing for termination of parental rights was unconstitutional both on its face and as applied. The lower Court denied that Motion. Plaintiffs have appealed that decision to this Honorable Court by a separate appeal, (Appendix 174A) alleging that the lower Court gave no justifying reason for a denial and therefore denial was an abuse of discretion under Forman v. Davis, 371 U.S. 178 (1962).

At Page 4244, of Quern v. Jordan, the Court reaffirmed Ex Parte Young in that Edelman does not render Section 1983 meaningless insofar as states are concerned. Plaintiffs have requested in Paragraph 4 of their prayer for relief, further and general relief which includes injunctive relief and in Paragraph 2 of the prayer for relief specifically request injunctive relief.

Furthermore, the concurring opinion of Justice Brennon in Quern v. Jordan strongly and logically argues that the state is a person for purposes of Section 1983 and the Eleventh Amendment is not a jurisdictional bar to actions against the state. See also Donaldson v. O'Connor, 493 F.2d 507 (5th Cir. 1974).

There is no question that the Logan County Department of Human Resources is subject to liability under the 14th Amendment of the U. S. Constitution. See Clark v. Ill., 415F. Supp. 149, (N.D. Ill. 1976). Likewise, the county is not immune from equitable relief. See Hogge v. Hendrick, 391F. Supp. 91 (D.C. Va. 1975). Also, Monell v. New York City Dept. of Soc. Serv., 436 U.S. 658, 56 L.Ed. 2d 611, 98 S.Ct. 2018 (1978), left open the question of whether a county is subject to liability under 42 USC 1983.

In addition, jurisdiction lies in the Federal Court under 26 U.S.C. 1331 as alleged in the section of the Complaint entitled jurisdiction and venue. See Fox v. Castle, 441 F. Supp. 411 (M.D. PA 1977). This jurisdiction is independent of the Eleventh Amendment jurisdictional bar to monetary damages under Title 42, U.S.C. This Complaint, in large part, alleges violation of Federal constitutional rights in custody, care and nurture of children and integrity of the family. The integrity of the family has found protection in the due process clause of the Fourteenth Amendment, the equal protection clause of the Fourteenth Amendment, and the Ninth Amendment. Stanley v. Illinois, 405 U.S. 645, 651 (1972). The sanctity of the home and privacies of life are rights so fundamental that they are safeguarded by both right to privacy inherent in the First Amendment and by the Ninth Amendment. Eisenstaat v. Baird, 405 U.S. 438 (1972).

There are facts alleged upon which relief can be granted independently of Section 1983, and derive directly from the constitutional provisions cited. The Eleventh Amendment is not a bar to relief based upon the constitutional provisions.

IV.

IT WAS AN ERROR TO DISMISS JUDGE BROWN AND THE COUNTY PROSECUTOR, JESSE L. RILEY, ON GROUNDS OF ABSOLUTE IMMUNITY SINCE IMMUNITY IS NOT AUTOMATIC AND THE JUDGE HAD NO JURISDICTION TO DO THE ACTS COMMITTED.

The Court dismissed Judge Brown and Mr. Riley on grounds that they are absolutely immune from suit. (Appendix 166A, 169A).

Judge Brown is only immune to suit from civil liability for acts which are judicial as opposed to non-judicial activity. For example police acts are not judicial activity. See Gregory v. Thompson, 500 F.2d 59 (9th Cir. 1974), where a Justice of the Peace was held liable for assault in the courtroom.

Furthermore, judicial acts are immune from civil liability only if (a) the Judge had jurisdiction over the person, and (b) the Judge had jurisdiction over the subject matter, and (c) the Judge had the power to render the particular decision which was rendered. Wade v. Bethesda Hospital, 337, F. Supp. 671 (E.D. Ohio 1971). Smithson v. Ray, 427 F. Supp. 11 (E.D. Tn. 1976), clearly states that only when a Judge has jurisdiction over both the parties and the subject matter is he immune from suit for money damages for deprivations of civil rights.

In this case, the Judge had no personal jurisdiction over the parties. Mr. & Mrs. Meadows were brought before the Court in 1970 on a

charge of writing a check with insufficient funds. No warrant was presented to the Defendants and the charge was dropped. Then the Judge took the Plaintiffs' children for alleged abuse. In 1971, Mr. and Mrs. Meadows were before the Court on a subpoena to testify in an unnamed case. At that proceeding, a third child was separated from the parents, Mr. Meadows was threatened, and Mrs. Meadows was dragged out of the courtroom to a mental institution with orders to jail her upon her release. These acts are totally outside the jurisdiction of the County Judge. No personal jurisdiction existed.

Several specific acts of the Judge were totally outside his subject matter jurisdiction. The commitment to a state hospital was totally outside the jurisdiction of the Judge. See Turpin's Adm'r v. Stringer, 228 KY. 32, 14 S.W.2d 189 (1929), where the Kentucky Court of Appeals stated the Circuit Courts of Kentucky have exclusive jurisdiction regarding inquests of insanity, and held an inquest by a county judge at a regular term of county court to be void for want of jurisdiction; and Croach v. Cameron, 414 S.W.2d 48, 30 A.L.R.3d 320 (Ky 1967), where Kentucky's highest court held the Bath County Court, at the time the circuit court was in session, lacked jurisdiction to entertain an inquest proceeding which resulted in the Plaintiff's commitment to a mental hospital for observation. In the instant case, the Judge was without jurisdiction by Kentucky Statute to hold an inquest into mental competence when the Circuit Court was in session.

If the Judge acts in a manner violative of the Federal Constitution, he is stripped of his official or representative character and subjected in

his individual person to consequences of his individual actions. Ex Parte Young, 209 U.S. at 159-160 (1908). See also O'Brien v. Galloway, 362 F. Supp. 981 (D.C. Del. 1973).

Judge Brown is also alleged to have participated in the conspiracy between the Defendants to deny civil rights of the Plaintiffs. (Appendix 98A,102A) If proven, Judge Brown is liable not only for his own acts but for acts of the co-conspirators. Slaven v. Curry, 574 F.2d 1256 (5th Cir. 1978). Judge Brown clearly is not immune from a civil rights action for equitable or declaratory relief. Slaven v. Curry, Ibid.

Therefore, the Court erred in finding that no set of facts could be shown by Plaintiffs upon which relief could be granted against Judge Brown. Judge Brown lacked personal jurisdiction and subject matter jurisdiction. Non-judicial activity is not immune from suit. No immunity is granted for equitable relief. For acts in violation of the Federal Constitution, the judge is stripped of immunity. Jurisdiction lies under 42 U.S.C. 1442.

Facts could be shown upon which relief could be granted Plaintiffs against Mr. Riley.

It is alleged that Mr. Riley acted both in an official capacity as prosecutor and also as a private citizen as a member of a conspiracy. (Appendix 95A, 98A). Mr. Riley should be granted no derivative immunity from suit as prosecutor, if the Judge was acting without jurisdiction.

Prosecutors are not immune from actions for equitable relief. Slaven v. Curry, Ibid.

Prosecutors are not immune for acts outside the scope of their authority. Safeguard Mut. Ins. Co. v. Miller, 456 F. Supp. 682 (D.C. Pa.

1978. Prosecutors have only qualified immunity for investigatory and administrative functions. Ibid.

In addition, Mr. Riley was alleged to be a member of a conspiracy to deny rights of Plaintiffs. (Appendix 98A). Therefore, it is not sufficient to say that a claim against Mr. Riley may be dismissed because of immunity from liability for his own conduct as additional inquiry is required to determine whether immunity extends to participation in a conspiracy. Slaven v. Curry, 574 F.2d 1256, 1263 (5th Cir. 1978). The Court in the Slaven case cited Imbler v. Pachtman, 424 U.S. 409, 419, 96 S. Ct. 984, 989, 47 L.Ed. 2d 128 (1976), and stated at page 1262, "(D)ismissal without a hearing is seldom appropriate when the defense of immunity is pled."

V.

THE COURT ERRED IN DISMISSING DEFENDANTS LOGAN COUNTY HOSPITAL, DRS. DODSON, HOLT AND BYRNS BY RELYING ON A PRIOR ORDER WHEN THAT ORDER DOES NOT ADDRESS THE CLAIMS PRESENTED AGAINST DEFENDANTS.

The Court dismissed Logan County Hospital, Drs. Dodson and Holt because of "reasons stated in the Order of Dismissal dated October 23, 1975." Appendix 167A,169A) The 1975 Order (appeal was dismissed by this Court for lack of jurisdiction) dismissed the doctors and Logan County Hospital construing the action as one of medical malpractice which was barred by a one year Statute of Limitations. The Court stated that no credible proof of mental incompetency was shown at that time to toll the Statute of Limitations. No other issues as to Defendants Logan County Hospital, Dr. Holt and Dodson were addressed by the Court in that Order.

The Complaint as originally filed, and as amended, alleged numerous counts, other than medical malpractice, against Drs. Holt, Dodson and the

Logan County Hospital. The Complaint alleges all the causes of action previously discussed including, but not limited to, mental and emotional injuries, injury to person by negligent acts of another or his agent, invasion of privacy, deceit, denial of right to maintain a family relationship, those rights stemming directly from the First, Fourth, Fifth, Sixth, Ninth, Thirteenth, and Fourteenth Amendments to the United States Constitution. Denial of civil rights is alleged, including conspiracy to deny civil rights of Plaintiffs Mr. Meadows, Mrs. Meadows and the three children. These causes or theories of action were not addressed nor decided in the Order of 1975 relied upon by the Court to dismiss the actions in the Order subject of appeal.

Dr. Byrne is alleged to have been involved in a conspiracy to deny civil rights of the Plaintiffs Mr. Meadows, Mrs. Meadows, and the three children. (Appendix 95A) The Court stated that no individual acts were alleged against Dr. Byrne and therefore, Dr. Byrne should be dismissed. However, if Dr. Byrne is proven to be a member of the conspiracy, he is liable not only for his own individual acts, but also for the acts of his co-conspirators. Slaven v. Curry, 574 F.2d 125 (5th Cir. 1978).

Also, upon discovery, if Dr. Byrne is the causing factor of some other person denying the civil rights of the Meadows, then Dr. Byrne could be held liable under the Civil Rights Act of 1871.

It was error to dismiss the Logan County Hospital and the doctors because facts were alleged upon which relief could be granted Plaintiffs.

VI.

IT WAS ERROR TO DISMISS THE DEPUTIES KISSELBAUGH AND WILSON SINCE UNKNOWN DEPUTIES WERE NAMED IN THE ORIGINAL COMPLAINT AND JOINDER OF THESE

PARTIES MAY RELATE BACK TO THE TIME OF FILING OF THE ORIGINAL COMPLAINT.

The original Complaint was filed naming John Doe as Defendant. (Appendix 6A, 86A). The Complaint itself referred to deputies whose names were not known at the time of filing as being part of the persons involved. The location of this action is a small community. It is expected to be shown that each deputy had actual knowledge that a suit had been filed. Local newspapers carried articles about the suit. The deputies could reasonably anticipate that they might be the unknown deputies named and joined in suit. Therefore, it was error to dismiss these parties without further hearings to determine these issues. See VII below re Statute of Limitations.

VII.

IT WAS ERROR TO DETERMINE THAT SPECIFIC CAUSES OF ACTION WERE BARRED BY THE STATUTE OF LIMITATIONS WHERE MRS. MEADOWS WAS ALLEGED TO BE INCOMPETENT THEREBY TOLLING THE STATUTE OF LIMITATIONS.

First, allegations of mental incompetency were alleged on behalf of Mrs. Meadows which would toll the Statute of Limitations. (Appendix 91A). Plaintiff-Appellants have presented proof of incompetency and contend that incompetency is a question of fact which the jury must decide. Proof of incompetency was presented by deposition of Dr. Manlavi, who examined Mrs. Meadows in 1972 pursuant to the County Court's commitment of Mrs. Meadows to Western State Hospital. Dr. Manlavi stated that Mrs. Meadows could not tell right from wrong, was not fully aware of the nature and consequences of her acts, was incompetent and a guardian was needed, and was unable to assist counsel. Dr. Ferguson of the Community Mental Health Center, Meharry Medical College found Mrs. Meadows had possible organisity or mental retardation. It should be noted that the County Court based

removal of Tommy and David Meadows from custody of their parents, in part, on grounds that the parents were so limited mentally. Certainly, a factual question of incompetency has been preserved for jury determination.

Allegations were made throughout the Complaint, as amended, that Mrs. Meadows was not competent at the time of the alleged allegations and that this would toll the Statute of Limitations. As to Mrs. Meadows, all causes of action are timely filed.

Defendants will argue that Judge Bratcher's Order is res judica. However, Judge Bratcher's Order shows only that Judge Bratcher dismissed the Logan County Hospital, Drs. Holt and Dodson from an action for medical malpractice. (Appendix 14A) Since that Order, Plaintiffs have been allowed to amend their Complaint, specifically setting out numerous civil rights actions for which there is no Statute of Limitations enumerated under the Kentucky Statutes of Limitations and not arising on contract. Under the Kentucky Statutes, KRS 143.160, these actions may have a ten year statute of limitations. Therefore, it was error to dismiss Logan County Hospital, Drs. Dodson and Holt on the basis of the earlier dismissal for medical malpractice.

In addition, the Defendants will argue that Judge Bratcher's Order found Mrs. Meadows incompetent. However, that Order does not state that the Judge found Mrs. Meadows competent. The Order only stated that as far as medical malpractice was concerned, no credible evidence of mental incompetency had been shown which would toll the Statute of Limitations for medical malpractice.

Kentucky law is long standing as the Kentucky Court of Appeals stated in Cater v. Huffman, 262, S.W.2d 690 (Ky 1953), that statutes of limitations are tolled during mental disability and the existence of mental disability is a question of fact which must be determined by a jury. If the proof shows that Mrs. Meadows was in fact incompetent at the time of incidents subject of this complaint, than as to all remaining counts (all counts other than medical malpractice, which was dismissed) the Statute of Limitations is tolled as to Mrs. Meadows. These counts include, but are not limited to, assault, wrongful confinement, mental anguish, all deprivations of constitutional rights, deceit and conspiracy to deny civil rights.

VIII.

IT WAS ERROR TO DISMISS THE ACTION FOR CONSPIRACY TO DENY CIVIL RIGHTS WITHOUT AFFORDING PLAINTIFFS THE OPPORTUNITY TO COMPLETE DISCOVERY AND PROVE WHEN THE ACTION ACCRUED.

Cause of action for conspiracy to deny civil rights does not expire until one year after the cause of action accrues. See the Statute of Limitations for conspiracy to deny civil rights KRS 413.140. Furthermore, when the cause of action accrues is based upon Federal law. Plaintiffs have not been allowed to complete discovery and prove when the last act of the conspiracy occurred. Plaintiffs have alleged in Paragraph 9, 13, and 15 of Count I, an ongoing conspiracy. (Appendix 94A,96A,97A) Therefore, it was error to dismiss this action since facts were alleged under which the Plaintiff's claims would be entitled to relief. To dismiss this action it

must appear beyond doubt that Plaintiffs can prove no set of facts which would entitle them to relief. Mitchell v. King, 537 F 2d 385 (10th Cir. 1976).

CONCLUSION

Plaintiffs set forth in their Complaint a plain statement of facts upon which relief can be granted against all Defendants. The Court overlooked the causes of action which were not barred by any Statute of Limitations or jurisdictional prohibition, upon which relief could be granted against the Defendants dismissed. The District Court could only properly dismiss the Defendants and causes of action if it appeared beyond doubt that the Plaintiffs could prove no set of facts which would entitle them to relief.

The sanctity of the home and privacies of life are rights so fundamental that they are safeguarded by both right to privacy inherent in the First Amendment and by the Ninth Amendment under Eisenstaat v. Baird, 405 U.S. 438 (1972).

Therefore, Plaintiffs request that the Order of the District Court of April 3, 1979 be reversed, all Defendants reinstated, Plaintiffs be allowed to complete the discovery requested of Defendants, and the case remanded to the District Court for trial.

Respectfully submitted,

HARRISON & GOIN

BY: Robert E. Harrison by RL
ROBERT E. HARRISON

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Attorneys for Plaintiffs-Appellants

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the foregoing Brief and Argument has been forwarded, postage prepaid, to all Parties of Record, this the

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#4
Friday

APPEAL NO. 79-3455

MEADOWS, et al v. KENTUCKY DEPARTMENT FOR HUMAN RESOURCES, et al

* * * * *

THIS IS AN APPEAL FROM AN ORDER DISMISSING VARIOUS DEFENDANTS IN A 1983 ACTION. THE PLAINTIFF-APPELLANT BROUGHT THE ACTION TO REDRESS THE ALLEGED DEPRIVATION OF RIGHTS ARISING OUT OF THE DISMISSED DEFENDANTS' TERMINATION OF PLAINTIFF'S PERENTAL RIGHTS, WRONGFUL STERILIZATION, AND WRONGFUL ADMISSION TO A MENTAL HOSPITAL.

THE EVIDENCE INDICATES THAT THE PLAINTIFFS ARE MENTALL DEFICIENT. IN 1970 TWO INFANT CHILDREN WERE TAKEN FROM PLAINTIFFS UPON THE BASIS THAT THE PLAINTIFFS WERE INCOMPETENT TO CARE FOR THEM. SHORTLY THEREAFTER, A THIRD CHILD WAS BORN TO PLAINTIFFS. SOME OF THE DEFENDANTS ASSISTED THE PLAINTIFF WIFE IN ARRANGING FOR AND RECEIVING A STERILIZATION OPERATION. IT IS ALLEGED THAT THOSE DEFENDANTS PROMISED THE PLAINTIFF THE RETURN OF HER CHILDREN IF SHE WOULD CONSENT TO THE OPERATION. THE CHILDREN WERE NOT RETURNED. THE THIRD CHILD WAS TAKEN FROM PLAINTIFFS IN 1972 UPON ALLEGATIONS OF CHILD ABUSE. THE FEMALE PLAINTIFF WAS OBSERVED IN A MENTAL HOSPITAL, AND THEREAFTER JAILED.

THIS SUIT WAS FILED in 1974 ALLEGING CONSTITUTIONAL DEPRIVATION IN ALL OF THE ABOVE.

JOINED AS DEFENDANTS WERE THE KENTUCKY DHR, VARIOUS INVOLVED SOCIAL WORKERS, THE LOGAN COUNTY HEALTH DEPARTMENT, THE COUNTY PROSECUTOR, THE HOSPITAL, THE DOCTORS, THE JUDGE, AND THE DEPUTY SHERIFFS.

ALTHOUGH THE PLAINTIFF-APPELLANT MENTIONS SEVERAL APPEALS, ONLY THIS PARTICULAR APPEAL IS BEFORE THE COURT.

THE OTHERS WERE DISMISSED AS UNTIMELY. THE ISSUES HEREIN ARE THE ISSUES RELEVANT TO THE DISMISSAL OF THE VARIOUS DEFENDANTS.

THE COUNTY JUDGE AND THE PROSECUTOR WERE DISMISSED UPON THE BASIS OF IMMUNITY; THE DOCTORS AND THE HOSPITAL UPON THE BASIS OF STATUTE OF LIMITATIONS AND FAILURE OF BURDEN OF PROOF; THE STATE UPON XI AMENDMENT; ALL THE REST UPON THE BASIS OF STATUTE OF LIMITATIONS.

ONLY THE SOCIAL WORKERS REMAIN AS DEFENDANTS IN THE DISTRICT COURT.

ISSUES & ARGUMENTS:

1) THE DISTRICT ERRED IN DISMISSING THE DOCTORS, THE HOSPITAL, JUDGE, PROSECUTOR, SHERIFF AND DEPUTIES BECAUSE THE COURT DID NOT CONSIDER ALL POSSIBLE CLAIMS SET UP BY THE COMPLAINT.

THE APPELLANT ARGUES THAT DISMISSAL MUST HAVE BEEN BASED UPON RULE 12(b)(6).

APPELLANT CORRECTLY ASSERTS THAT SUCH DISMISSALS ARE DISFAVORED, AND THAT DISMISSAL IS PROPER ONLY IF THERE IS NO CIRCUMSTANCE POSSIBLY PRESENTED BY THE COMPLAINT WHICH AFFORDS A BASIS FOR RELIEF.

THE APPELLANT GOES AS THE ENUMERATE MANY SPECIFIC BASES OF CONSTITUTIONAL DEPRIVATION.

WH ILE THE ENUMERATION IS ENLIGHTENING, THE THRUST OF THE ARGUMENT IS THAT A FIVE YEAR STATUTE OF LIMITATIONS APPLIES. THE STATUTE REQUESTED BY PLAINTIFF IS KRS 413.120 "injury to rights NOT ARISING ON CONTRACT AND NOT OTHERWISE ENUMERATED (BY STATUTE).

DEFENDANTS ASSERT THAT THE CORRECT s/l is 413.140 "CONSPIRACY", WHICH IS ONE YEAR.

ALTHOUGH THERE ARE NO CASES HOLDING THAT CONSPIRACY IS THE PROPER s/l HEREIN, THE REPORTED CASES DO HOLD THAT THE STATE s/l FOR A CASE MOST ANALOGOUS TO THE 1983 CASE WOULD CONTROL MASON v. OWENS-ILLINOIS, 517 F 2d. 520 (6 CCA 1975). HOWEVER, KRS 413.140 HAS BEEN HELD TO APPLY ONLY TO PERSONAL INJURY ACTIONS SUCH AS TORTS. GARNER v. STEPHEN, 460 F 2d 1144 (6 CCA 1972). IN GARNER, THE FIVE YEAR STATUTE WAS APPLIED TO A CASE INVOLVING A SCHOOL BOARD REGULATION.

HERE, HOWEVER, AS TO THE PLAINTIFF, THE COMPLAINT DOES INVOLVE ALLEGATIONS OF WRONGFUL SURGERY -- A PHYSICAL MATTER, AS OPPOSED TO A MERE VIOLATION OF A RIGHT. FURTHERMORE, THE STATUTE SPECIFICALLY REFERS TO MALPRACTICE AND TO CONSPIRACY. THUS, I BELIEVE THE DISTRICT JUDGE WAS CORRECT IN DISMISSING THE DOCTORS, AND THE HOSPITAL UPON KRS 413-140. LIKEWISE FOR THE SHERIFF AND DEPUTY.

2) COURT ERRED IN RULING ON MOTIONS TO DISMISS BEFORE AFFORDING PLAINTIFF'S AN OPPORTUNITY TO DISCOVER INFORMATION SUFFICIENT TO COUNTER 12 (b)(6) MOTIONS.

THIS ARGUMENT ASSERTS THAT A PROTECTIVE ORDER PROHIBITING DISCOVERY WAS IN EFFECT AT THE TIME THE COURT RULED ON DEFENDANTS' 12(b)(6) MOTIONS. THE PLAINTIFF CITES A CASE FOR PROPOSITION THAT DISCOVERY SHOULD BE ALLOWED A PLAINTIFF IN ORDER TO BUTTRESS THE COMPLAINT WHERE A 12(b)(6) MOTION APPEARS MERITORIOUS. THE CITED CASE, HOWEVER, IS NOT APPLICABLE. THIS ARGUMENT IS OF LITTLE SIGNIFANCE.

3) THE DISTRICT COURT ERRED IN DISMISSING THE STATE AND THE LOGAN COUNTY DHR ON THE BASIS OF THE XI AMENDMENT SINCE THE XI AMENDMENT DOES NOT BAN PROSPECTIVE INJUNCTIVE RELIEF.

THE PLAINTIFF CITES ALL THE RIGHT CASES AND MAKES CORRECT STATEMENTS OF LAW AS FAR AS HE GOES. THE PLAINTIFF CORRECTLY STATES THAT PROTECTIVE INJUNCTIVE RELIEF MAY BE AWARDED AGAINST THE STATE IN EFFECT, BUT THE PLAINTIFF FAILS TO MENTION THAT THE INJUNCTIVE RELIEF IS EFFECTUATED THROUGH THE APPROPRIATE STATE OFFICIAL EX PARTE YOUNG, 209 U.S. 123 (1908).

SINCE NEITHER THE COMPLAINT NOR THE AMENDED COMPLAINT NAME A STATE OFFICIAL, THE SUIT IS IN ACTUALITY DIRECTLY AGAINST THE STATE AND BARRED BY THE XI AMENDMENT.

INCIDENTLY, THE LOCAL AGENCY NAMED BY THE PLAINTIFF DOES NOT EXIST. PERHAPS THE PLAINTIFF INTENDED TO JOIN THE LOGAN COUNTY HEALTH DEPARTMENT. UNFORTUNATELY, THE COMPLAINT DOES NOT SO READ.

4) THE COURT ERRED IN AFFORDING THE COUNTY JUDGE AND THE PROSECUTOR JUDICIAL IMMUNITY.

IT IS WELL RECOGNIZED THAT A JUDGE IS IMMUNE FROM CIVIL SUIT FOR ACTIONS TAKEN IN HIS CAPACITY AS JUDGE AND WITHIN HIS JURISDICTION. LIKEWISE FOR PROSECUTORS. THE PLAINTIFF ARGUES THAT TH THE JUDGE AND PROSECUTOR HEREIN ACTED PERSONALLY AND OUTSIDE THEIR PROTECTION. THE PLAINTIFF CORRECTLY NOTES THAT COMMITTMENT PROCEEDINGS ARE TO BE DONE BEFORE A CIRCUIT COURT. THEREFORE, THE ACTS OF BROWN APPEAR TO BE OUTSIDE HIS IMMUNITY. HOWEVER, THE PLAINTIFF GOES ON TO ACCUSE THE JUDGE OF PARTICIPATION IN A CONSPIRACY. AS ABOVE, THE MOST APPROPRIATE STATUTE OF LIMITATIONS IS FOR CONSPIRACY AND IS ONE YEAR. THE JUDGE IS PROTECTED ANYWAY.

AS TO RILEY, WHO WAS COUNTY ATTORNEY, THE PLAINTIFF HINTS, WITHOUT CITATIONS, THAT HE ACTED OUTSIDE THE SCOPE OF EMPLOYMENT AND IS, THEREFORE, LIABLE. KRS 199.603(7) ALLOWS A COUNTY ATTORNEY TO INSTITUTE SUCH PROCEEDINGS.

AS FOR COMMITTMENT PROCEEDINGS, Ch. 203 SPECIFICALLY MAKES THE COMMONWEALTH ATTORNEY THE PROSECUTING OFFICIAL. THUS, RILEY ACTED OUTSIDE THE SCOPE OF EMPLOYMENT AS FAR AS THE COMMITTMENT PROCEEDING AGAINST WIFE -PLAINTIFF GO. AGAIN, HOWEVER, CONSPIRACY IS ALLEGED - ONE YEAR S/L.

5 4) COURT ERRED IN DISMISSING DISPUTES BECAUSE RELATION BACK MAY TAKE THE ALLEGED WRONGS BACK TO THE TIME THE ORIGINAL COMPLAINT WAS FILED.

Judge, I disagree w/ this clerk's recommendation.

THE PLAINTIFF ALLEGES THAT THERE WAS AN UNNAMED DEPUTY IN THE ORIGINAL COMPLAINT. THEREFORE, THE ALLEGATIONS OF CONSPIRACY SHOULD HAVE PUT THE TWO LATER NAMED DEPUTIES ON NOTICE THAT SUIT WAS IMMINENT AGAINST THEM.

there isn't such an allegation

THE DISTRICT COURT CONCLUDED THAT RULE 15(c) HAD NOT BEEN SATISFIED AND THAT AS TO THE DEPUTIES NO RELATION BACK OCCURRED. AS ASSERTED BY THE PLAINTIFF, RULE 15(c) WAIVES S/L ISSUES IF THE UNNAMED PARTY KNEW OF THE PENDING SUIT AND SHOULD HAVE BEEN EXPECTED TO REALIZE THAT THE NAMED DEFENDANT IS WRONG.

THE DISTRICT COURT MADE NO FINDING IN THIS REGARD. THEREFORE, I BELIEVE HIS MOTION TO DISMISS WAS IMPROPER. THE DEPUTIES SHOULD BE RE-JOINED TO THE SUIT. ALTHOUGH THEIR LIABILITY WOULD BE FAR FETCHED AT BEST, THE PLAINTIFF IS ENTITLED TO TRY TO PROVE THEM LIABLE.

see p. 5 of other analysis

6. THE COURT ERRED IN APPLYING STATUTES OF LIMITATION WHERE THE PLAINTIFF WAS INCOMPETENT DURING THE ENTIRE PERIOD.

THE PLAINTIFF ASSERTS THAT BY PLEADING INCOMPETENCY, THE STATUTE OF LIMITATIONS WAS TOLLED, AND THAT AS TO MRS. MEADOWS, ALL CLAIMS ARE BEFORE THE COURT.

KRS 413.170 ALLOWS AN INCOMPETENT THE SAME NUMBER OF YEARS AFTER REMOVAL OF THE DISABILITY TO BRING AN ACTION. THE QUESTION OF UNSOUNDNESS OF MIND IS A FACTUAL QUESTION. CARTER v. HUFFMAN, 262 S.W.2d 690 (KY 1953). THIS IS THE ONLY CASE OR POINT. THUS, IT APPEARS PLAINTIFF MAY HAVE A GOOD ARGUMENT REGARDING THE CLAIMS OF PLAINTIFF WIFE. INTERESTINGLY, NONE OF THE DEFENDANTS ADDRESS THIS ISSUE. THAT IS USUALLY THE CASE WHEN YOU DON'T HAVE A DEFENSE. THE CLAIMS OF MRS. MEADOWS SHOULD BE REINSTATED AND REMANDED FOR A FACTUAL FINDING REGARDING COMPETENCY.

THERE WAS A PREVIOUS ORDER DEEMING MRS. MEADOWS COMPETENT (Tr. 14A) (Tr. 129A) THAT ORDER WAS DEALING WITH THE STERILIZATION. THE DEFENDANTS ASSERT THAT RES JUDICATA ATTACHES TO PRECLUDE THE PLAINTIFF FROM NOW ASSERTING DISABILITY. CLEARLY, AS TO THE CLAIMS OF PLAINTIFF REGARDING STERILIZATION THE S/L HAS RUN, AND DISMISSAL WAS PROPER. AS TO THE OTHER CLAIMS, I BELIEVE THE ABOVE STATED REMAND IS PROPER.

SUMMARY RECOMMENDATIONS

agree 1) AFFIRM ALL RULINGS EXCEPT THE CLAIMS OF MRS. MEADOWS, AND THE CLAIMS AGAINST THE DEPUTIES.

? AS TO MRS. MEADOWS, THE ALLEGATIONS IN THE COMPLAINT ARE WELL STATED UNTIL A FACTUAL DETERMINATION RE. COMPETENCY IS MADE.

disagree AS TO THE DEPUTIES, RELATION BACK BRINGS THEM IN BEFORE THE S/L.

Judge Unthank ✓

Friday, 10/16/81
Courtroom #1, 9:00 a.m.
Weick, Kennedy, Unthank

To: CGK

From: LH

Re: Meadows v. Kentucky Dep't for Human Resources, et al., No. 79-3455

Plaintiffs Thomas and Judy Meadows appeal the decision by Judge Johnstone of the Western District of Kentucky dismissing several claims and defendants in this civil rights action.

Appellants are a married couple living in Tennessee. They allege that in May, 1970, they were brought into the Logan County, Kentucky court on the pretense of answering for a no longer outstanding bad check charge. At this proceeding appellants' two children were forcibly removed from them on the ground that they were abused children. Appellees Kisselbaugh and Wilson were the deputies who accompanied them to court and removed the children from their arms. Appellee Riley was the county prosecutor, who allegedly assured appellants that removal of the children was only temporary. Appellee Judge Brown was the presiding judge of Logan County Court.

Later that summer Judy Meadows became pregnant. She claims that she was induced to undergo a sterilization operation after this pregnancy in exchange for a promise that her children would be returned to her. The operation was performed in 1971 at appellee Logan County Hospital by appellee Dr. Holt. Appellant was referred to Dr. Holt by appelleer Dr. Dodson.

Ms. Meadows also alleges that in May, 1972, she was subpoenaed to appear in Logan County Court in an unnamed case, on behalf of the Commonwealth of Kentucky. She alleges that Judge Brown gave her oral assurances that the purpose of the subpoena was to talk about returning appellants' children to them, but that in fact, the hearing was used to forcibly remove Ms. Meadows' third child from her and to commit her to a state mental hospital. Appellee Brown was the judge, and appellee Riley had a hand in bringing her before the court.

Appellants filed a complaint in the District Court in 1974. The complaint alleged that Ms. Meadows was deprived of her liberty without due process, that she was denied her due process and equal protection right to have children; that several social worker defendants, who are not appellees here, breached an oral agreement to return her children to her and to pay for her sterilization. The complaint alleged that appellees Dodson and Holt and the Logan County Hospital were negligent in not discovering that Ms. Meadows was incapable of consenting to the sterilization, due to mental incompetency. Appellants sued under 42 U.S.C. § 1983, the 5th, 6th, and 14th amendments, and various Kentucky laws. They sought

both damages and injunctive relief.

The judge at that time was Judge Bratcher. On 1/31/75 he dismissed the Commonwealth of Kentucky on the ground that the 11th amendment barred the suit as to it. On 10/23/75, after giving the parties a chance to present their evidence regarding Ms. Meadows' incompetency, Judge Bratcher dismissed Logan County Hospital and Dodson and Holt on alternative grounds: (1) the Kentucky statute of limitations for cases based on medical negligence had run; (2) even if the statute of limitations had not run, appellants presented no evidence that Ms. Meadows was incompetent at the time the sterilization was performed, nor any evidence that appellees had any reason to believe that Ms. Meadows might be incompetent.

Nothing further appears in the appendix until 7/10/78, when appellants were permitted to file an amended complaint. Meanwhile, in 1976, in a proceeding that appellants do not challenge, appellants' rights as parents were terminated. The Kentucky courts that handled that termination proceeding alluded to "irregularities in the proceedings that appellants are challenging here, so apparently appellants' complaints are not totally unfounded. The Kentucky proceedings are not a part of the appendix.

The amended complaint added additional defendants Dr. Byrne, Wilson, and Kisselbaugh. The complaint also expanded a great deal on the violations of appellants' various rights, now alleging that defendants conspired to deny appellants their right to have and bear children; that defendants denied appellants their right of privacy; and that the conspiracy was a continuing one, in that appellants' children have not yet been returned. The complaint added that the above violated 42 U.S.C. §§ 1985 and 1986, as well as the aforementioned section 1983. The complaint added as plaintiffs appellants' children by their next friend. A claim for punitive damages was also added.

By this time Judge Johnstone was handling the case. He re-dismissed the State of Kentucky and the Logan County Dep't of Human Resources under the 11th amendment. He held Judge Brown and Prosecutor Riley absolutely immune from suit. He ruled that any conspiracy had to have occurred in 1972 or earlier, so the one year statute of limitations under sections 1985 and 1986 had run. Appellees Wilson and Kisselbaugh were not named in the original complaint. Judge Johnstone found that they did not have such notice of the institution of this suit at the time of the original complaint that the amended complaint could relate back as to them under FRCivP 15(c). The complaint alleged that they were guilty of fraud, to which a 5 year statute of limitations applies, and this time had run by the time the amended complaint was filed, so Judge Johnstone dismissed the complaint as to Wilson

and Kisselbaugh. Judge Johnstone also dismissed Drs. Dodson, Holt, and Logan County Hospital "for the reasons stated in [Judge Bratcher's] order of dismissal." He dismissed the complaint as to Dr. Byrne because the complaint did not allege that he took any actions of his own. Judge Johnstone dismissed appellants' children, but ~~that was~~ later reinstated them, and their participation is not in issue here. Judge Johnstone refused to dismiss the complaint as to the several social workers.

On appeal, appellants argue that it was error to dismiss any of the above parties.

Dismissal of Commonwealth of Kentucky Parties

Appellants argue that the 11th amendment is not a bar to injunctive relief against a state. That is the import of Quern v. Jordan, 440 U.S. 332 (1979). Thus, although the 11th amendment clearly and plainly says that ~~the~~ "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, ...," and appellants are citizens of Tennessee who are suing the Commonwealth of Kentucky, their claim should not have been dismissed insofar as it sought prospective relief against the state. Quern involved a suit against the state by a citizen of that state, but ever since Hans v. State of Louisiana, 134 U.S. 1 (1890), the 11th amendment has applied equally to suits against a state by citizens of that state and citizens of other states.

Appellee Kentucky does not even contest this point. The state only argues that insofar as injunctive relief is sought to have the children returned, that is a collateral attack on the 1976 state judgment that permanently deprived appellants of their parental rights, an attack that cannot be brought in the federal courts. I am sure appellee is correct in this point, but appellants sought injunctive relief also against future denials of Ms. Meadows right not to be committed without due process, and the state does not address that question. On the merits, it is clear that appellants are not entitled to injunctive relief against the state, but that is a question better answered by the District Court, since it short-circuited the proceedings on this question by dismissing the claim.

Appellee also notes that although appellants named the Logan County Department of Human Resources as a defendant, there is no such party.

Although appellee does not rely on it, there may be ~~another basis~~ a basis for affirming the District Court's dismissal of the Commonwealth. The Commonwealth was initially dismissed after the first complaint was filed, in 1975. That dismissal was never appealed. Thus, although that dismissal was erroneous for the same reason this one is, perhaps "law of the case" or a form of "res judicata" means that appellants may no longer challenge the dismissal here. Wrong, because the earlier dismissal was never a final order, never having been certified for appeal.

Dismissal of Kissenbaugh and Wilson

The District Court dismissed these parties because the statute of limitations had run as to them. The Court ruled that the deputies did not have knowledge of the original suit, so the amended complaint filed in 1978 did not relate back as to them. Appellants argue that the original complaint referred to "john Doe" and the complaint made a reference to "deputies," and in the small town where this all took place, that is sufficient to put these deputies on notice that they might be involved. This is not a sufficient showing of notice to the deputies to say that Judge Johnstone abused his discretion.

This issue is a little confused by the parties. Both treat it as if the District Court ruled under FRCivP 12(b)(6) that appellants had not stated a claim upon which relief could be granted against the deputies. Appellants argue that they did state a claim against the deputies, without ever addressing the statute of limitations question.

Dismissal of Drs. Holt, Byrne, Dodson, and Logan County Hospital.

The District Court dismissed these parties except Byrne for the reasons stated in the dismissal of them in 1975 by Judge Bratcher. Judge Bratcher dismissed them on the ground that the statute of limitations for claims based on medical negligence had run, and the original complaint only charged these parties with negligence in failing to discover that Ms. Meadows could not give consent to the sterilization. Judge Bratcher alternatively found that appellants had not demonstrated any basis on which any of these parties could be found by a jury to be negligent. According to these appellees, appellants appealed this dismissal in 1975, and the appeal was dismissed by order of this Court on August 8, 1976. However, no one bothered to include the appeal and disposition on appeal in the appendix, if it exists.

Appellants argue that it was error for the District Court to simply rely on the earlier dismissal of these parties, since the amended complaint charges them with conspiracy to deprive appellants of their rights, in addition to the earlier charge of medical negligence. Again misconstruing the basis for the District Court's order, appellants also argue that it was error to dismiss these appellees before appellants had a chance to discover them, to determine whether there were facts to substantiate their claim. Finally, appellants argue that the statute of limitations was tolled as to these appellees (and, I suppose, as to all of the

appellees), because Ms. Meadows was mentally incompetent. ~~Judge~~

Appellees respond that the earlier dismissal as to them is res judicata, since it was certified for appeal and has been dismissed on appeal. Appellants' response is that the ~~of~~ dismissal is not res judicata because it dealt with a different claim--medical negligence, as opposed to conspiracy. However, res judicata applies to all claims that could have been brought as well as to tho-e that were actually brought, so if in fact there was an appeal of Judge Bratcher's order, appellees were properly dismissed here. Note that if there was an appeal of the dismissal of these parties, there may also have been an appeal of the dismissal of the Commonwealth of Kentucky, and that dismissal might also be res judicata.

Assuming the dismissal is not res judicata, appellants are correct that the amended complaint raises new issues that were not dealt with by the original dismissal, namely the conspiracy claims.

As to the tolling of the statute of limitations, the District Court's opinion recognizes that the amended complaint alleges that Ms. Meadows was incompetent at all relevant times. Appellants contend that the complaint also alleges that this incompetency tolls the statute of limitations, but I could not find such an allegation in the complaint. This does not seem unreasonable, however, as that is the type of statement one would normally make in response to a defendant's motion for dismissal based on the statute of limitations. Appellants simply argue that they raised a question of fact for the jury whether Ms. Meadows was incompetent. Judge Bratcher found that appellants presented evidence of incompetency in the hearing he held on the matter after the first complaint was filed, but that none of this evidence related to the time at which the sterilization was performed, so it could not bear on the failure of these appellees to inquire whether Ms. Meadows was competent. Judge Bratcher did not address the question whether the incompetency tolled the statute of limitations. Judge Johnstone does not address this either, and the only conclusion one can draw is that at this stage of the proceedings, there is at least a question as to whether Ms. Meadows was incompetent. In support, Judge Bratcher noted the reports of two psychiatrists, and Ms. Meadows' children were taken from her on the ground that she is incompetent.

Dismissal of Dr. Byrne

The amended complaint added Dr. Byrne as a party and charged him with being a part of the continuing conspiracy to deprive appellants of their rights. The District Court dismissed Dr. Byrne on the ground that the complaint did not allege that he had done anything. Appellant responds that Dr. Byrne need not do anything himself, as if he is a conspirator he is liable for the acts of his co-conspirators. One cannot argue with this statement by appellants. It is possible that Judge Johnstone reasoned that, since Dr. Byrne was accused of conspiring with Drs. Dodson and Holt and the complaint was dismissed as to them, there was no one left for Byrne to conspire with, so the complaint had to be dismissed as to him as well. However, the complaint was not dismissed as to Dodson and Holt because they had not conspired, but because they were protected by the statute of limitations. I think the import of the Supreme Court's decision this term in Dennis v. Sparks, 449 U.S. (1980), is that a conspiracy charge can be brought against one conspirator even though the co-conspirators are immune from suit. In that case, suit was permitted against private parties who conspired to deprive a plaintiff of his rights in conjunction with a corrupt judge, even though the judge was immune from suit. The fact that the judge was immune did not prevent there being state action. Although in Dennis it was alleged that the private parties had taken some action, I cannot see how that is a necessary element. The important point is that the fact that one party may not be sued because of something that does not go to the merits, other parties whose liability depends on the actions of the first party may still be sued.

Dismissal of Judge Brown and Prosecutor Riley

These parties were dismissed because they were entitled to absolute immunity. Appellants argue that this immunity exists unless the court clearly lacks the jurisdiction to take the action it did, and that is the case here. I think appellants have a good argument here.

Judge Brown was the judge of the Logan County Court. Under Kentucky law that I think was in effect at that time (again, this is not something the parties bother to provide), the County Courts did have jurisdiction over juvenile matters, but explicitly did not have jurisdiction over inquiries to determine mental illness. However, the County Court did have jurisdiction to appoint a committee to take care of a mentally ill person. KRS § 202.020; § 208.020; § 387.210 (1962 edition).

The County Court also has jurisdiction over determinations of mental incompetency if the local circuit court is not in session. Appellants claim that at the relevant times, the circuit court was in session in this case. In this case, Judge Brown removed appellants' children from their custody and had Ms. Meadows committed to a mental hospital.

Judges have absolute immunity from § 1983 suits ~~as/long/as~~ unless the court clearly lacked jurisdiction in the matter before it. Stump v. Sparkman, 435 U.S. 349 (1978). In that case a judge in a court of general jurisdiction was held immune from suit by a person for whom the judge had ordered a sterilization. The Supreme Court noted that this was the type of act normally done by a judge. The Court found it significant that there was no state case law or statute at the time of the order indicating that this type of judge did not have the power to issue this type of order. 435 U.S. at 358. By contrast, in this case, there was a clear Kentucky statute that deprived Judge Brown of jurisdiction to commit Ms. Meadows if the circuit court was in session at the time.

Other factors that were important to the Court in Stump include whether what the judge did was an act normally performed by a judge, and whether the parties dealt with the judge in his judicial capacity. Judge Brown was clearly acting judicially under this test. Further, he had jurisdiction over mental commitments at least some of the time. Thus, because it is not good to make judges liable, I think the Court should find that Judge Brown was acting in excess of his jurisdiction, perhaps, but not acting in the clear absence of jurisdiction.

Appellants argue that Riley's immunity can be no broader than Judge Brown's, so if Judge Brown is not immune, Riley is not. Even assuming Judge Brown was not immune, I think Riley would be, although this does sound a little funny. But, Riley was doing a clearly prosecutorial thing, even if he did it in the wrong court, so he should not lose his immunity.

Note that judicial and prosecutorial immunity do not extend to suits for injunctive relief, and one of the things appellants sought against everyone was injunctive relief.

These appellees argue that appellants' suit here is just an attempt to collaterally attack the state court judgment in 1976 depriving them of parental rights. They argue that appellants' civil rights claims relating to the removal of their children should have been brought in that proceeding, and the failure to do so there estops them from doing so here. That is true with respect to the claims relating to Ms. Meadows' children, if the claim could have been raised in the state proceeding. But, since no one bothered to include a copy of that

proceeding here, we have no way of knowing. Also, appellants are ~~also~~ alleging that their civil rights were violated by Ms. Meadows' commitment as well as by the removal of her children. Thus, appellees' argument is not sufficient to get them completely out of court.

Unless I am missing something in their brief, appellants do not challenge the dismissal of their claims based on §§ 1985 and 1986.

Meadows -
to
Reg. Dept. of Human Resources

79-3455

UNITED STATES GOVERNMENT

memorandum

DATE: April 27, 1982

REPLY TO ATTN OF: Kathy M. Preuitt - Team #2

SUBJECT: 79-3455 Thomas Meadows, et al vs. Kentucky Dept. for Human Resources, et al

TO: Judges Kennedy, Weick and Unthank

On April 23, 1982, I transmitted a petition for rehearing to your offices. It has been bought to my attention, Judge Unthank is the authoring Judge and not Judge Kennedy, as the transmittal states.

I have prepared a corrected transmittal sheet which is attached to this memo.

I apologize for any inconvenience this may have caused you.

Thank you,

Kathy M. Preuitt

Kathy M. Preuitt
Deputy Clerk

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

OPTIONAL FORM NO. 10
(REV. 7-76)
GSA FPMR (41 CFR) 101-11.6
5010-112

UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT
U.S. POST OFFICE & COURTHOUSE BUILDING
CINCINNATI, OHIO 45202

JOHN P. HEHMAN
CLERK

TELEPHONE
(513) 684-2953
FTS 684-2953

April 23, 1982
Date

PETITION FOR REHEARING

TO: Judges Kennedy, Weick and Unthank

RE: Case No. 79-3455 Thomas Meadows, et al vs. Kentucky Dept. for Human Resources, et al

Argued/~~Submitted~~ 10/16/81 before: The Above Panel

~~Opinion~~/Order/~~Per Curiam~~ filed: 3/9/82

Writing Judge: Unthank

Enclosed please find:

( ) Motion to _____

( ) Response of _____

( ) Bill of Cost

(X) Petition for rehearing ~~en banc~~ by appellees.

( ) _____

Remarks: This is a corrected transmittal form.

Kathy M. Prewitt
Deputy Clerk

UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT
U.S. POST OFFICE & COURTHOUSE BUILDING
CINCINNATI, OHIO 45202

JOHN P. HEHMAN
CLERK

TELEPHONE
(513) 684-2953
FTS 684-2953

April 23, 1982
Date

PETITION FOR REHEARING

TO: Judges Kennedy, Weick and Unthank

RE: Case No. 79-3455 Thomas and Judy Henley Meadows
v. Kentucky Dept. for Human Resources, et al

Argued/~~Submitted~~ 10/16/81 before: The Above Panel

~~Opinion~~/Order/~~Per Curiam~~ filed: 3/9/82

Writing Judge: Kennedy

Enclosed please find:

( ) Motion to _____

( ) Response of _____

( ) Bill of Cost

(X) Petition for rehearing ~~en banc~~ by appellees.

( ) _____

Remarks: Also attached is a copy of the Court's order.

Sally M. Prewitt
Deputy Clerk

RECEIVED
APR 23 1982
JOHN P. HEHMAN, Clerk

FILED
APR 23 1982
JOHN P. HEHMAN, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
No. 79-3455

THOMAS AND JUDY HENLEY MEADOWS, PLAINTIFFS-APPELLANTS,

VS: PETITION FOR REHEARING

KENTUCKY DEPARTMENT FOR
HUMAN RESOURCES, ET AL. DEFENDANTS-APPELLEES,

DONAN & VICK
P. O. Box 349
Greenville, Kentucky 42345

Attorneys for Appellees,
Logan County Hospital,
Dr. C. V. Dodson and
Dr. Jack B. Holt

FRED W. GREENE
P. O. Box 266
Clark Building
Russellville, Kentucky 42276

Attorney for Sheriff
Morris Kisselbaugh and
Robert R. Wilson

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
No. 79-3455

THOMAS AND JUDY HENLEY MEADOWS, PLAINTIFFS-APPELLANTS,

VS: PETITION FOR REHEARING

KENTUCKY DEPARTMENT FOR
HUMAN RESOURCES,ET AL. DEFENDANTS-APPELLEES,

MAY IT PLEASE THE COURT:

By Order dated March 9, 1982, this Honorable Court affirmed in part and reversed in part the opinion of the District Court entered March 30, 1979. These Appellees respectfully submit that based upon the record, including the facts as set forth by this Court, that the controlling law and authorities requires the affirmance of the opinion dismissing them from this action.

This Court held that the statute of limitations cannot be the basis for dismissing the claim until the issue of Judy Meadows' alleged incompetency and whether it tolled the statute of limitations has been resolved. Accordingly, this action was ordered remanded to the District Court for determination of the issue of the mental competency of Judy Meadows.

However, this issue has been previously adjudicated by the District Court. By its Memorandum and Order dated January 31, 1975, the District Court ordered in part as follows:

> "It appears to the Court, therefore, that a question of fact has been raised in regard to the mental capacity of Mrs. Meadows at the time of her operation and subsequent thereto. If Mrs. Meadows was incompetent at the time the operation was performed, she is entitled to a statutory preservation of her cause of action. If she was not incompetent, then the action shall be barred. The parties are given 30 days from the date of entry of this Order to submit proof on this question." (Memorandum and Order dated January 31, 1975, entered February 4, 1975).

As is reflected in the record herein, extensions of time were granted to the parties so as to provide additional time to secure all desired proof on this issue. It was pursuant to this order that the various doctors' depositions, as well as those of laymen, including the parties, were obtained and filed of record.

The District Court, in its Memorandum and Order entered October 23, 1975, considered all evidence offered by the parties and held as follows:

> "In short, plaintiffs have failed to bring forward any sufficient and credible evidence which tends to establish that the plaintiff, Judy Meadows, lacked the requisite mental capacity to voluntarily consent on or about July 23, 1972, to the tubal ligation which she underwent on or about that time. If anything, the proof tends to establish that the procedure in question was done with both plaintiffs' knowledge beforehand and upon their request and consent at the time." (Memorandum and Order entered October 23, 1975).

Plaintiffs appeal from this Memorandum and Order was subsequently dismissed.

Therefore, these Appellees respectfully submit that the issue of Judy Meadows' incompetency has been resolved by the District Court.

As further grounds and support of the relief sought by these Appellees, the Court's attention is respectfully directed to the Court's Order. As the Court noted, the only evidence placed of record by the Appellants attempting to place in issue the incompetency of Judy Meadows was that of Dr. Manlavi.

Dr. Manlavi testified at her deposition on February 24, 1975, that she could not state with a reasonable degree of medical certainty whether Mrs. Meadows was competent or incompetent during the relevant time. All of the other evidence of record contains expert testimony, as well as lay testimony that Judy Meadows was competent at the relevant times.

Appellees concede that a motion for summary judgment is not a substitute for the trial of disputed fact issues. As is relevant to the case at bar, upon these Apppellees moving the Court for Summary Judgment, the Appellants were not entitled to rely upon the allegations in their pleadings. The record is rather extensive in that numerous depositions have been taken. It is significant that neither the deposition of Judy Meadows or her husband raises a question of fact as to her claim of incompetency. FRCP 56 is designed to pierce the allegation contained in the pleadings and require the trial court to dispose of the case in advance of the trial on the merits when the record establishes there is no genuine issue as to any material fact.

Bryant v. Commonwealth of Kentucky, 490 F 2d 1273 (1974, 6th Cir).

Though relied upon by the Honorable Court in its order, the deposition of Dr. Manlavi fails to place into issue the question of Judy Meadows' competency. As previously indicated, a review of this testimony reveals that Dr. Manlavi was simply unable to render a professional opinion as to this issue. The record is barren of any factual issues relating to the competency of Judy Meadows at the relevant times. There are procedural restraints placed on an opponent of a motion for summary judgment. A material fact which is claimed to be in issue must be presented of record by competent evidence. FRCP 56(e). Appellees do not contend that the alleged incompetency of Judy Meadows is immaterial. However, these Appellees do contend, as was found by the trial court, that Judy Meadows has failed to place any competent evidence of record which would place her competency in issue. Mere speculation as to the possible existence of facts which might toll the statute of limitations is not sufficient to give rise to a genuine issue of material fact. Custer v. United States, 622 F 2d 554 (1980).

The burden shifted to Appellants to place of record factual evidence to support the allegation of incompetency. This was not done and summary judgment was appropriate. Federal Practice and Procedures, Wright & Miller, Volume 10, Sec. 2727.

Assuming arguendo that there is no factual evidence of record to establish Appellant claim of incompetency, the

remaining question for determination is whether her claim is barred by the statute of limitations. This is a question of law and as previously contended by Appellees, her claims are now barred.

In summary, the Order of the Court remands to the District Court for adjudication of the issue of the competency of Judy Meadows. This very issue was adjudicated more than six years ago. The record, as found by the Court is without a genuine issue of a material fact. The opinion of the Trial Court should be affirmed and these Appellees dismissed.

WHEREFORE, Appellees, Logan County Hospital, Dr. C. V. Dodson, Dr. Jack B. Holt, Sheriff Morris Kisselbaugh and Robert R. Wilson, respectfully move the Court to reconsider the prior Order and to affirm the opinion of the District Court dismissing these Appellees from this action.

Respectfully submitted,

DONAN & VICK
P. O. Box 349
Greenville, Kentucky 42345

Attorneys for Appellees,
Logan County Hospital,
Dr. C. V. Dodson, Dr. Jack B.
Holt

FRED W. GREENE
P. O. Box 266
Clark Building
Russellville, Kentucky 42276

Attorney for Sheriff Morris
Kisselbaugh and Robert R. Wilson

By Ralph D. Vick
Ralph D. Vick

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Petition for Rehearing was this day served upon Honorable Roland M. Lowell, 618 United American Bank Building, Nashville, Tennessee 37219; Hon. Robert E. Harrison, P.O. Box 522, Scottsville, Kentucky, attorneys for Plaintiffs-Appellants, this the 22 day of April, 1982.

Ralph D. Vick

APPENDIX

Received Feb. 7, 1975

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
AT BOWLING GREEN

THOMAS MEADOWS and JUDY HENLEY MEADOWS Plaintiffs	)	
v.	)	NO. C-74-48-B(B)
KENTUCKY DEPARTMENT FOR HUMAN RESOURCES, LOGAN COUNTY, KENTUCKY, et al. Defendants	)	

MEMORANDUM AND ORDER

This cause comes before the Court on defendants' motions to dismiss pursuant to Rule 12, Federal Rules of Civil Procedure. Due to the large number of defendants, the Court shall consider their motions together whenever the substantive claim made by plaintiffs and defenses raised form a logical nexus between the defendants.

First to be dealt with is the motion of the defendant, Commonwealth of Kentucky, to dismiss for lack of subject matter jurisdiction. The Court's attention has been directed to the Eleventh Amendment to the Constitution of the United States and Edelman v. Jordan, 94 S.Ct. 1347, 39 L.Ed.2d 662.

The Eleventh Amendment states in part:

> "The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state...."

This clear language confers upon states an absolute immunity against suit by citizens of another state. This view

is forthrightly upheld in Edelman v. Jordan, supra, except in those instances where a state has expressly or impliedly waived its immunity. In setting guidelines for what constitutes a waiver of a state's Eleventh Amendment immunity, the Court stated:

> "In deciding whether a state has waived its constitutional protection under the Eleventh Amendment, we will find waiver only where stated 'by the most express language or by such overwhelming implication from the text as will leave no room for any other reasonable construction.'"

The Court has examined the plaintiff's memorandum, Kentucky Statutes and cases, and finds that no waiver has been effected, except to the extent permitted through the Board of Claims Act. This view was upheld and reinforced by Foley Construction Co. v. Ward, 373 S.W.2d 392 (1963).

The doctrine of sovereign immunity is still very much the law of Kentucky and this Court is without power to disturb it.

Accordingly, judgment shall be entered dismissing this action against the defendant, Commonwealth of Kentucky.

Also before the Court are the motions to dismiss on behalf of defendants, Logan County Hospital, C. V. Dodson and Jack B. Holt. These defendants, a hospital and two physicians, plead as a defense to plaintiff's claim of negligent failure to obtain consent to a sterilization operation, KRS 413.140(1)(e), a statute which provides in part that:

> "An action against a physician or surgeon for negligence or malpractice... shall be commenced within one year after the cause of action accrued."

These defendants have directed the Court's attention to Hackworth v. Hart, 474 S.W.2d 377 (1971), a case which holds that the Statute does not begin to run until:

> "... the date of the discovery of the injury, or from the date it should, in the exercise of ordinary care and diligence, have been discovered." p. 379.

Defendants have also correctly pointed out that malpractice sounds in tort, not contract, citing Guess v. Linton, 236 Ky. 87, 32 S.W.2d 718 (1930).

Plaintiffs, in opposing defendants' motion, argue that KRS 413.170 should be applied herein. This Statute exempts from the one year statutory requirement infants or persons of unsound mind.

Plaintiffs have alleged that Mrs. Meadows "was at all times material herein suffering from a mental deficiency, rendering her incompetent". Complaint, paragraph 2. This allegation appears to be sufficient on its fact to bring plaintiffs within the purview of KRS 413.170. Defendants assert, however, that (1) plaintiff had not been declared incompetent at the time the operation was performed, and (2) plaintiff signed a statement consenting to the operation.

The Court of Appeals has clearly held in Carter v. Huffman, 262 S.W.2d 690 (1953), that:

> "... the existence of mental disability under the Statute (KRS 413.170) is a question of fact and does not depend on legal adjudication following a sanity inquest."

Further, in Holmes v. Powers, 439 S.W.2d 579 (1969), the Court held that a mentally incompetent person has no legal capacity to consent to a sterilization operation.

It appears to the Court, therefore, that a question of fact has been raised in regard to the mental capacity of Mrs. Meadows at the time of her operation and subsequent thereto. If Mrs. Meadows was incompetent at the time the operation was performed, she is entitled to a statutory preservation of her cause of action. If she was not incompetent, then the action shall be barred. The parties are given 30 days from the date of entry of this Order to submit proof on this question.

Next before the Court is the motion to dismiss of defendants, Catherine Norris, Doris Smart, Sue Gilliam, Joseph Lan Wood, Marie Gamble and Rosalyn Stamps.

The thrust of these defendants' motions is a claim of immunity as employees of the Commonwealth of Kentucky, and failure to state a claim upon which relief can be granted.

As to the claim of immunity, this argument is clearly without merit. The very purpose of 42 U.S.C. 1983 was to provide a substantive right of relief in federal court for deprivation of constitutional rights under color of state law. Monroe v. Pape, 365 U.S. 167, 81 S.Ct. 473, 5 L.Ed.2d 492 (1961). Eleventh Amendment immunity was never intended to protect individual employees of state government, who, acting under color of state, deprived individuals of federal constitutional rights. Scheuer v. Rhodes, 94 S.Ct. 1683 (1974). It is therefore the holding ot this Court that defendants Norris, Smart, Gilliam, Wood, Gamble and Stamps are properly before this Court.

Turning to the substantive allegations contained in plaintiff's complaint against these defendants, challenged on the basis that they fail to state a claim upon which relief can be granted, the Court must note that the allegations under attack do appear insubstantial. Except for some vague, conclusory statements, no claim has been stated against them.

However, the power of a court to grant a motion to dismiss for failure to state a claim is very limited. Before granting such a motion is proper, it must appear "beyond doubt that plaintiff can prove no set of facts which would entitle him to relief". Conley v. Gibson, 355 U.S. 41, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957). It would be premature at this time to reach such a conclusion. However, in the event plaintiff's proof fails to establish some cognizable claim for relief, motions for summary judgment will then be available to defendants.

WHEREFORE, IT IS ORDERED AND ADJUDGED that the motion to dismiss of the defendant, Commonwealth of Kentucky, is sustained. The motions to dismiss of all other defendants are hereby overruled. It is further ORDERED that the parties are given thirty (30) days from the entry of this Order to submit proof on the question of plaintiff's competency at the time the operation was performed.

This 31st day of January, 1975.

RHODES BRATCHER
United States District Judge

ENTERED
FEB 4 1975
AUGUST WINKENHOFER JR., CLERK
BY DEPUTY CLERK

Copies to: Counsel of record

Mr. Bryant
Mr. Dover
Mr. Wheeler
Mr. Mitchell

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
AT BOWLING GREEN

THOMAS MEADOWS and JUDY HENLEY MEADOWS Plaintiffs	)	
v.	)	NO. C-74-48-B(B)
KENTUCKY DEPARTMENT FOR HUMAN RESOURCES, LOGAN COUNTY, KENTUCKY, ET AL. Defendants	)	

MEMORANDUM AND ORDER

This matter stands before the Court on motion to dismiss filed by defendants, Logan County Hospital, C. J. Dodson, M.D., and Jack B. Holt, M.D. The Court, having considered proof outside the pleadings, shall treat this motion as one for summary judgment pursuant to Rule 56, Federal Rules of Civil Procedure.

An initial question arises as to whether or not this action is barred by the Kentucky Statute of Limitations, KRS 413.140(1)(e). With respect to the above-named defendants, the incident complained of took place on or about July 23, 1971. This action was initiated on July 18, 1974, approximately two years after the expiration of the period of limitations set out in the Statute, supra. While the Court is of the opinion that KRS 413.140(1)(e) governs, based on the reasons outlined hereinafter, it is also the opinion of the Court that plaintiff has failed to state a legally sufficient

EXHIBIT"A"

claim against the above-named defendants notwithstanding the bar imposed by the Statute of Limitations cited, supra.

Plaintiff, Judy Meadows, maintains her constitutional rights were violated when she was subjected to a tubal ligation procedure by defendants without her consent. Plaintiff admits that she signed a consent form but maintains that she was mentally incompetent at the time of her purported consent, therefore rendering any "consent" she may have given invalid as a matter of law. Plaintiff's husband, Thomas Meadows (and co-plaintiff) also signed the consent form.

There is a presumption of sanity over insanity and the party attempting to overcome this presumption must do so by clear, cogent and convincing evidence. Wilson v. Lehman, 379 S.W.2d 478 (Ky., 1964); Grannum v. Berand, 70 Washington 2d 304; 422 P.2d 812, 25 ALR 3d 1434 (1967). In the absence of evidence showing that the patient was the victim of false representations, his consent to treatment or to an operation will be presumed from the fact that he voluntarily submitted to it. 70 CJS Physicians and Surgeons 62, p. 991.

A great deal of proof has been submitted on the issue of plaintiff's competency at the time of the sterilization procedure. Overwhelmingly, it tends to establish that there was little, if any, reason for defendants to suspect or question plaintiff's competency at the time she signed the consent form nor does the medical evidence establish that plaintiff was, in any reasonable probability, incompetent at the time she signed the consent form.

Plaintiffs rely strongly on the testimony of Thelma Manlavi, M.D., psychiatrist, at Western State Hospital, who

examined plaintiff, Judy Meadows some ten months after the operation in question and very shortly after she had become greatly agitated during proceedings in the Logan County Court. Although her report suggested that plaintiff, Judy Meadows, was incompetent at that time, Dr. Manlavi testified at her deposition on February 24, 1975, that she could not state with a reasonable degree of medical certainty if plaintiff was either competent or incompetent at the time of her purported consent to the operation in question.

Edmon Green, M.D., psychiatrist, examined plaintiff on April 11, 1975. He was deposed on April 14, 1975, and stated his professional opinion that he had found nothing which suggested Mrs. Meadows was not competent at the time she gave consent for the tubal ligation. She indicated to Dr. Green that she understood the purpose of the operation beforehand and that she had no misgivings about it. She stated that she wanted no more children but only wanted the ones she presently has.

In his deposition of February 28, 1975, plaintiff, Thomas Meadows, admitted signing a consent form regarding his wife and he understood that his wife was to be "operated on during the labor of the baby, you know, for not to have no more children by Dr. Dodson (Deposition of Thomas Cleveland Meadows, response to Q. 24).

The depositions of the doctors and hospital personnel who attended Mrs. Meadows during the birth of her last child and the subsequent tubal ligation fail to reveal or establish any erratic or inappropriate behavior patterns which should

have led them to question or evaluate her mental capacity with respect to her ability to voluntarily consent to the tubal ligation.

In short, plaintiffs have failed to bring forward any sufficient and credible evidence which tends to establish that the plaintiff, Judy Meadows, lacked the requisite mental capacity to voluntarily consent on or about July 23, 1972, to the tubal ligation which she underwent on or about that time. If anything, the proof tends to establish that the procedure in question was done with both plaintiffs' knowledge beforehand and upon their request and consent at the time.

WHEREFORE, IT IS ORDERED AND ADJUDGED that with respect to defendants, Logan County Hospital, C. V. Dodson, M.D., and Jack B. Holt, M.D., the complaint herein is dismissed with prejudice.

This 23rd day of October, 1975.

RHODES BRATCHER
United States District Judge

Copies to:

Counsel of record

ENTERED

OCT 23 1975

AUGUST WINKENHOFER, JR., CLERK
BY DEPUTY CLERK

JUDGMENT ON DECISION BY THE COURT CIV 32 (7-63)

United States District Court

FOR THE

WESTERN DISTRICT OF KENTUCKY AT BOWLING GREEN

CIVIL ACTION FILE NO. C-74-48-B(B)

THOMAS MEADOWS AND JUDY HENLEY MEADOWS

vs.

KENTUCKY DEPARTMENT FOR HUMAN RESOURCES, LOGAN COUNTY, KENTUCKY, et al

JUDGMENT

This action came on for determination before the Court, Honorable RHODES BRATCHER, United States District Judge, presiding, and the issues having been duly considered and a decision having been duly rendered,

It is Ordered and Adjudged that the plaintiffs take nothing on their claim against the defendants, Logan County Hospital, C. J. Dodson, M.D., and Jack B. Holt, M. D., and accordingly, ORDERED THAT the complaint be dismissed as to each of the defendants, Logan County Hospital, C. J. Dodson, M. D. and Jack B. Holt, M.D., with prejudice, at plaintiffs' cost.

Dated at Louisville, Kentucky, this 23rd day of October, 19 75.

AUGUST WINKENHOFER, JR.
Clerk of Court

BY: Barbara McGrain
DEPUTY CLERK

COPIES TO ALL COUNSEL

ENTERED
OCT 23 1975
AUGUST WINKENHOFER, JR., CLERK
BY
DEPUTY CLERK
Barbara McGrain

No. 79-3455

FILED

MAR 9 1982

JOHN P. HEHMAN, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

THOMAS AND JUDY HENLEY MEADOWS, MARY ANN MEADOWS, AMON DAVID MEADOWS AND THOMAS MEADOWS, JR.

PLAINTIFFS-APPELLANTS

VS:

KENTUCKY DEPARTMENT FOR HUMAN RESOURCES LOGAN COUNTY, KENTUCKY, ET AL.,

DEFENDANTS-APPELLEES.

O R D E R

Before: KENNEDY, Circuit Judge; WEICK, Senior Circuit Judge; and UNTHANK, District Judge.*

The plaintiffs, Thomas Meadows and Judy Meadows, husband and wife, allege the followings facts: In 1970, they were brought into Logan County, Kentucky, under the guise of bad check charges; while there the defendants caused an improper termination of their parental rights by falsely charging them with child abuse; subsequently, Judy Meadows had another child which defendants wrongfully caused to be taken from her and she was compelled to undergo a sterilzation operation; thereafter, defendants illegally caused her to be committed to a state mental hospital for observation from which she went absent without leave. It is contended that all these acts were contrary to 28 U.S.C. 1343(d) and 42 U.S.C. 1983.

*The Honorable G. Wix Unthank, United States District Court, Eastern District of Kentucky, sitting by designation.

In 1974, plaintiffs filed a complaint against the State of Kentucky, the County of Logan, a local hospital, two doctors and several employees of the State and County as individuals.

On 31 January 1975, the District Judge dismissed the State and County as defendants by reason of the immunities of the Eleventh Amendment. On 23 October 1975, a summary judgment was granted to the defendant hospital and doctors, dismissing the complaint by reason of the Statute of Limitations. No action was taken as to the remaining defendants, the individual State and County employees.

In July 1978, an amended complaint was filed expanding the number of plaintiffs to include the estranged children. The list of defendants was expanded to include an additional doctor, county judge, county attorney and two deputy sheriffs. The amended complaint extended the civil rights basis to encompass 42 U.S.C. 1985 and 1986.

The amended complaint contends the defendants conspired to deny plaintiffs their right to have and bear children; the right to privacy; that the conspiracy was a continuing one in that plaintiffs' children had not been returned. The District Judge dismissed the children as plaintiffs, later reinstated them, but they are not a party to this appeal.

For consideration, on this appeal, is the action of the District Judge: re-dismissing the State of Kentucky and County of Logan under the Eleventh Amendment; re-dismissing the hospital and doctors by reason of the Statute of Limitations;

dismissing the County Judge and County Attorney by reason of judicial and prosecutorial immunity; and dismissing the two Deputy Sheriffs by reason of the Statute of Limitations.

This Court accepts and adopts the rationale contained in the District Court's Memorandum Opinion, entered 30 March 1979, and thereby affirms the dismissal as to all claims excepting the claims of the plaintiff, Judy Henley Meadows, against the defendants, Logan County Hospital, Dr. C. V. Dodson, Dr. Jack B. Holt, Sheriff Morris Kisselbraugh and Robert R. Wilson. Both the complaint and amended complaint allege that Ms. Meadows "is now and was at all times material herein, suffering from a mental deficiency, rendering her incompetent...." The panel agrees that the statute of limitations cannot be the basis for dismissing these claims until the issue of Ms. Meadows' incompetency and whether it tolled the statute of limitations has been resolved.

The records reflects that on or about the 26th day of May, 1972, pursuant to order of the Logan County Court, the plaintiff, Judy Meadows, was committed to the Kentucky Western State Hospital for observation. This proceeding was neither a finding of incompetency nor competency. The plaintiff was discharged on 25 July 1972, without a finding, by reason of an A.W.O.L. status.

The Statutes of Kentucky in an inquest proceeding, which have since been amended, limited the actions of a county judge to petitions properly filed in the Circuit Court in the absence of unavailability of the regular judge. In such instance the County Judge presided as special Circuit Judge.

The records do not reflect if the petition was properly filed but the order is a County Court Order and therefore void. Turpin's Adm'r. v. Stringer, 228 Ky. 32, 14 S.W. 2d 189, 30 A.L.R. 3d 520.

It might be insisted at this point that the proceedings are evidence or conclusive evidence of the fact of the plaintiff's incapacity but, if the proceedings were legal in all respects, it would only be prima facie evidence at the time of a finding to commit for observation. If the proceedings are void, neither presumption would arise and the fact of competency or incompetency must be established by other evidence. Turpin's Adm'r v. Stringer, Id.

There is a presumption of sanity over insanity. The party attempting to overcome this presumption must do so by clear, cogent and convincing evidence. Wilson v. Lehman, 379 SW 2d, 478; Grannum v. Berand, 422 P 2d, 812, 25 A.L.R. 3d 1434.

There has been marked disagreements in the past regarding weight to be given presumptions. The Circuits have treated the question one of three ways:

(1) The "bursting bubble theory", the presumption disappears upon the introduction of evidence to the contrary;

(2) Shifting the burden of persuasion, once the basic facts giving rise to the presumption are established the burden of persuasion shifts; and

(3) The middle ground, the presumption does not disappear upon the introduction of contradicting evidence and the burden of persuasion is not changes.

Rule 301 of the Federal Evidence Rules seems to favor the middle ground approach.

Those parts of the record favorable to the defendants and their presumption are the depositions of several doctors and psychiatrist that the plaintiff, Judy Henley Meadows, was competent.

The proceeding to terminate parental rights, wherein evidence of child abuse was presented, reflect that both parents were not competent to be parents. This was not an inquest proceeding and any findings therefrom to which an argument of inferences may be addressed although entitled to respect are nevertheless Obiter Dictum.

A Dr. Manlivi deposed that Judy Henley Meadows became agitated during the inquest proceedings but was unable to express an opinion as to competency before or after such proceeding. Thus on the record below there is an issue of fact of the mental competency of the plaintiff, Judy Henley Meadows, at all material times.

Accordingly, the judgment of the District Court dismissing the claims of plaintiff, Thomas Meadows, is affirmed; the judgment of the District Court dismissing the claims of the plaintiff, Judy Henley Meadows, against the defendants, Kentucky Department of Human Resources, Logan County Department of Human Resources, Judge Robert R. Brown, Jesse T. Riley and Dr. Byrne is affirmed; the judgment of the District Court dismissing the claims against defendants Sheriff Morris Kisselbraugh, Robert R. Wilson, Doctors Holt and Dodson and the Logan County

Hospital is vacated and the case remanded to the District Court for consideration and ruling upon mental competency of the plaintiff, Judy Henley Meadows, at all material times.

For the reasons stated herein, the opinion of the District Court is affirmed in part, vacated in part, and remanded for further proceedings.

ENTERED BY ORDER OF THE COURT

John A Ihlenfeld

CLERK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT BOWLING GREEN

CIVIL ACTION C-74-0048-BG

THOMAS MEADOWS and
JUDY MEADOWS — PLAINTIFFS

VS. O R D E R

KENTUCKY DEPARTMENT FOR
HUMAN RESOURCES, LOGAN
COUNTY DEPARTMENT FOR
HUMAN RESOURCES, et al. — DEFENDANTS

On the Court's own motion, IT IS ORDERED:

(1) The plaintiff may tender its proposed amended complaint within twenty (20) days from date.

(2) All discovery shall be completed within sixty (60) days from date.

Dated: May 1, 1978

EDWARD H. JOHNSTONE
United States District Judge

Copies to counsel

Mr. Lowell
Mr. Bryant
Mr. Wheeler

Messrs. Moran, Mitchell & Kelly

FILED
MAY 5 1978
JESSE W. SNIDER, CLERK
DEPUTY CLERK

84A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT BOWLING GREEN

THOMAS MEADOWS and
JUDY MEADOWS,
PLAINTIFFS,

v CIVIL ACTION NO. 74-0048-B

KENTUCKY DEPARTMENT FOR
HUMAN RESOURCES,
LOGAN COUNTY DEPARTMENT
FOR HUMAN RESOURCES, et al.,
DEFENDANTS.

O R D E R

Upon motion of plaintiffs Thomas Meadows and Judy Meadows for an extension of time in which to tender their proposed amended complaint and to complete their discovery, and the Court having considered the record and being sufficiently advised,

It is ORDERED:

1. Plaintiffs shall be afforded 20 days from date of entry hereof to tender for the Court's consideration their proposed amended complaint.

2. The parties shall complete discovery within 90 days from date of entry.

3. On or before September 25, 1978, counsel shall jointly or separately prepare and tender to the Court a status report which shall include:

(a) Brief abstracts of all discovery which has been taken;

(b) Statements which concisely describe the legal claims and defenses which each of the parties is asserting;

(c) A summary of the uncontested, substantive facts which can be stipulated.

DATED: June 20, 1978.

Copy to: Mr. Lowell
Mr. Wheeler

Edward H. Johnstone
Judge, United States District Court

JUN 21 ...
JESSE ... CLERK

Messrs. Bonan, McClure & Riley

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7/12/78

IN THE UNITED STATES DISTRICT COURT

OF THE WESTERN DISTRICT OF THE COMMONWEALTH OF KENTUCKY

MR. THOMAS MEADOWS and MRS. JUDY MEADOWS, Plaintiffs, vs. KENTUCKY DEPARTMENT FOR HUMAN RESOURCES, LOGAN COUNTY KENTUCKY DEPARTMENT FOR HUMAN RESOURCES, LOGAN COUNTY HOSPITAL, CATHERINE NORRIS, ROSALYN STAMPS, MRS. DORIS SMART, MRS. SUE GILLIAM, MR. LAN WOODS, MRS. MARIE GAMBLE, DR. C. V. DODSON, DR. JACK B. HOLT, JOHN DOE, Defendants.	)	No. _____

AMENDED COMPLAINT

Come now, Mr. Thomas Meadows, Mrs. Judy Henley Meadows, and Mary Ann Meadows, Amon David Meadows and Thomas Meadows, Jr., by next of friend, Robert Harrison, Plaintiffs and respectfully state to this Honorable Court that:

PRELIMINARY STATEMENT

1. This is an action to redress the deprivation of rights, priviledges and immunities secured to the Plaintiffs herein by the First, Fourth, Fifth, Sixth, Ninth, Thirteenth and Fourteenth Amendments to the United States Constitution; 42 U.S.C. §§ 1983 and 1985 (2)(3), 1986 and arising under the laws and constitution of the Commonwealth of Kentucky. Said rights, priviledges and immunities having been deprived by Defendants conspiring for the purpose of impeding, hindering, obstructing and defeating the due course of justice, due process and equal protection of the laws, while Defendants, acted under color and pretense of statutes, regulations, customs

and use of the Commonwealth of Kentucky, Logan County and the Department for Human Resources and having knowledge of the wrongs conspired to be done, and having power to prevent or aid in preventing same, neglected or refused to do so.

2. Plaintiff, Mrs. Judy Meadows, seeks damages in an amount of $350,000.00 for physical, mental and emotional injuries, suffering, hardship, humiliation and loss of her children and their companionship and services, and ability to bear children, as a result of an involuntary sexual sterilization operation being performed on her, due to Defendants' denial and conspiracy to deny her rights and to deny her custody of her children. These damages are based on grounds of invasion of privacy, deceit, malicious and fraudulent representations, wilful and wanton misconduct, denial of freedon of association, denial of right to maintain a family relationship, custody, companionship of her children, denial of right to equal protection and the due process of law and to be free from involuntary servitude in contravention of the First, Fourth, Fifth, Sixth, Ninth, Thirteenth and Fourteenth Amendments to the Constitution of the United States and the laws and constitution of the Commonwealth of Kentucky.

3. Plaintiff, Mrs. Meadows seeks damages in an additional amount of $350,000.00 as a result of physical, mental and emotional injuries, hardship and humiliation she has suffered due to her unlawful commitment to Western State Hospital and to the Logan County Jail.

4. Plaintiff, Mr. Thomas Meadows, seeks damages in an amount of $350,000.00 for mental and emotional injuries, suffering, hardship, humiliation and loss of his children, their companionship and services, and loss of his wife's services and companionship due to Defendants' denial and conspiracy to deny him rights, privileges and immunities secured to him by the laws and Constitution of the United

States and of the laws and Constitution of the Commonwealth of Kentucky, and to deny him custody of his children. These damages are based on grounds of invasion of privacy, deceit, malicious and fraudulent representations, wilful and wanton misconduct, freedom of association, right to maintain a family relationship, custody, companionship of his children, companionship and services of his wife, right to equal protection and due process of law in contravention of the First, Fourth, Fifth, Sixth, Ninth, Thirteenth, and Fourteenth Amendments to the Constitution of the United States and the laws and Constitution of the Commonwealth of Kentucky.

5. Plaintiffs, Mary Ann Meadows, Amon David Meadows and Thomas Meadows, Jr., seek damages in an amount of $350,000.00 for physical, mental and emotional injuries, hardship, humiliation and loss of companionship of their parents due to Defendants' denial and conspiracy to deny them rights, privileges and immunities. These damages are based on grounds of invasion of privacy, deceit, malicious and fraudulent representations, wilful and wanton misconduct, denial of freedom of association, right to maintain a family relationship, right to companionship of their parents, right to equal protection of law and due process of law and to be free from involuntary servitude in contravention of the First, Fourth, Fifth, Sixth, Ninth, Thirteenth, and Fourteenth Amendments to the Constitution of the United States and the laws and Constitution of the Commonwealth of Kentucky.

JURISDICTION AND VENUE

Jurisdiction of this Court is invoked pursuant to Title 26 U.S.C., §§ 1331[a], 1342 [3] and 1343 [4]. The matter in controversy exceeds the sum of Ten Thousand ($10,000.00) Dollars, exclusive of interests and costs, and therefore jurisdiction is obtained through Title 28 U.S.C., § 1331 [a]. Jurisdiction under Title 28 U.S.C., § 1342[3] is obtained by Defendants' denial of Plaintiffs' equal rights

under the United States Constitution. Jurisdiction under Title 28 U.S.C., § 1343 [4] is obtained by Defendants' deprevation of Plaintiffs' rights by Title 42 U.S.C., §§ 1983, 1985 [2][3], and 1986.

DESCRIPTION OF PARTIES

1. Plaintiffs, Mr. Thomas Meadows and Mrs. Judy Meadows, are husband and wife and are residents and domiciliaries of the State of Tennessee.

2. Plaintiffs, Mary Ann Meadows, Amon David Meadows and Thomas Meadows, Jr. are children of Plaintiffs, Mr. & Mrs. Thomas Meadows.

3. Defendants are residents and domiciliaries of the Commonwealth of Kentucky. Logan County Hospital has its principal place of business in Russellville, Logan County, Kentucky. The sexual sterilization operation was performed upon Mrs. Meadows in Logan County Hospital.

4. The Kentucky Department for Human Resources and Logan County Kentucky Department for Human Resources are a state and county agency respectively, formerly known as the Department of Welfare, Commonwealth of Kentucky, and through which agency, the children were taken from Mr. & Mrs. Meadows.

5. Defendant Catherine Norris is the area administrator for the area including Logan County Kentucky Department for Human Resources and responsible for actions of the Logan County agency.

6. Defendant, Mrs. Doris Smart is the Social Service Supervisor for the Logan County Kentucky Department for Human Resources, and responsible for supervision of caseworkers involved.

7. Defendants, Mrs. Sue Gilliam, is or was an employee and, Mr. Lan Wood (Joseph Lan Wood) and Mrs. Marie Gamble are, or were case workers with the Logan County Kentucky Department for Human Resources, and who were involved with the Meadows and their children.

8. Dr. C. V. Dodson, Dr. W. R. Burns, and Dr. Jack B. Holt are practicing physicians in Russellville, Logan County, Kentucky. Dr. Dodson referred Mrs. Meadows to Dr. Jack B. Holt for the sexual sterilization operation. Dr. Jack B. Holt performed the sexual sterilization operation on Mrs. Meadows at the Logan County Hospital.

9. Judge Robert Brown was the presiding Judge of the Logan County Court herein on May 18, 1970, which committed Mrs. Meadows to Western State Hospital and Logan County Jail and which took custody of the Meadows children from Mr. & Mrs. Meadows.

10. Sheriff James Johnson, deceased, was Sheriff of Logan County and was in charge of deputies, Kissenbaugh and Wilson and others unknown by name to Plaintiffs, but known to James Johnson and other Defendants herein, and that he in his official capacity, and his unnamed deputies at his direction, did assist Defendant Jesse T. Riley, Jr. and Defendant Robert Brown, in bringing Thomas and Judy Meadows before the Logan County Court, physically removed Tommy and Mary Ann from their mother's arms, and physically dragged Mrs. Meadows to a waiting patrol car for transportation to Western State Hospital.

11. Defendant Jesse T. Riley, Jr., is a practicing attorney in Logan County, Kentucky. Mr. Riley was the county attorney for Logan County, Kentucky and was instrumental in bringing Mr. & Mrs. Meadows before Logan County Court and did advise the Logan County Court in his official capacity at the hearings, wherein the three children were taken from Mr.

90A

and Mrs. Meadows, and Mrs. Judy Meadows was committed to Western State Hospital and upon her release to Logan County Jail.

12. Defendant John Doe represents all other individuals, unknown to Plaintiffs, who may be liable in this action to Plaintiffs.

13. Plaintiff, Mrs. Judy Henley meadows, is now, and was at all times material herein, suffering from a mental deficiency, rendering her incompetent, and this fact was known, or should have been known to Defendants.

14. Plaintiffs, Mr. and Mrs. Meadows, are now, and at all times during the time embraced in this Amended Complaint were indigent and unable to meet costs of suit or give security therefor.

STATEMENT OF CLAIMS

COUNT I

1. Plaintiffs allege that Defendants, and each of them, denied and conspired to deny rights, privileges and immunities secured to Mrs. Meadows by the laws and Constitution of the United States and laws and Constitution of the Commonwealth of Kentucky, resulting, principally, in loss of her three children, loss of her right to maintain a family relationship and loss of her ability to bear children, all of which caused Mrs. Meadows permanent disability, pain and suffering, physical, mental and emotional injuries, hardship and humiliation. Plaintiff seeks damages in an amount of $350,000.00.

2. On or about May 16, 1970, Plaintiffs' youngest son, David, age four months, sustained injury when his older brother, Tommy, age eighteen months, pulled him off the bed.

Mrs. Meadows gathered both sons under her arms and ran to a neighbor's home to obtain help and first aid for her child. (She had no telephone or means of transportation). A light rain was falling and as she was hurrying to get help, Mrs. Meadows fell through a foot-bridge spanning a one-lane dirt drive to the neighbor's home. Mrs. Meadows and her older son sustained injury and her younger son sustained further injury. The younger son, David, was hospitalized as a result. These facts were known or should have been known to Defendants.

3. On or about May 18, 1970, Plaintiffs were requested to accompany Sheriff Johnson, deceased, Sheriff of Logan County, Kentucky, and Defendants, Mrs. Doris Smart and Sue Gilliam, in a patrol car to the County Court of Logan County, Kentucky on a "bad check" for five dollars, written to Houchen's Store, even though said check which had been returned for insufficient funds had been discharged prior to May 18, 1970. After presenting evidence of discharge to Judge Brown at the County Court, the matter was dropped; then Sheriff Johnson, deceased, and deputies, Kissenbaugh and Wilson, of Logan County, Kentucky forcibly removed Tommy from the arms of Mrs. Meadows for alleged abuse. Mr. Jesse Riley, County Prosecutor, also present in the court room, assured the Plaintiffs removal of Tommy was only temporary. The younger son, David, still hospitalized, was never returned to the custody of his parents. During this proceeding Plaintiffs were not advised of right to counsel nor afforded legal counsel. Plaintiffs were not advised of the nature of the proceeding and were deliberately deceived as to the nature of the proceeding.

4. About August of 1970, Mrs. Meadows became pregnant with her third child. Various inducements were offered to Mrs. Meadows to undergo sterilization. Defendants, Mrs. Doris Smart and Mr. Lan Wood, orally promised Mr. & Mrs. Meadows that a governmental agency would pay for the operation

and that if Mrs. Meadows underwent the operation, their two boys would be returned to them. At the request of Mrs. Smart, and based upon these promises, Mr. & Mrs. Meadows signed papers to have the operation performed. The Plaintiffs were not afforded legal counsel to advise them or to represent them. Both agreements were breached by Defendants, Smart, Wood, Kentucky Department for Human Resources and Logan County Department for Human Resources. The children have never been returned to Plaintiffs, Mr. & Mrs. Meadows.

5. Defendant, Dr. Dodson, who was in contact with the Department of Welfare, who had treated Mrs. Meadows previously, and who knew or should have known of Mrs. Meadows' physical and mental condition and who knew or should have known that the operation was being performed for no medical reason and that false, deceitful and fraudulent inducements were given Mrs. Meadows to undergo such operation, referred Mrs. Meadows to Defendant, Dr. Jack B. Holt, for the sterilization operation in Logan County Hospital, to be performed shortly after the delivery of her third child. Delivery was on or about July 21, 1971. On or about July 23, 1971, Mrs. Meadows, while under medication, was requested by Defendant, Dr. Holt, to sign a consent statement for the sterilization. Plaintiff recalls only that she signed the paper. Mrs. Meadows was then sterilized by Dr. Holt at Logan County Hospital.

6. Plaintiffs allege liability on the part of Defendants, Dr. Dodson, Dr. Holt and Logan County Hospital in acting in concert with Defendants herein to deprive Mrs. Meadows of her rights, privileges and immunities, failing to obtain the necessary information to be cognizant of Mrs. Meadows' mental condition and failing to obtain proper consent to the sexual sterilization operation performed. In addition, other than negligence in practice of medicine or malpractice, Mrs. Meadows alleges invasion of

privacy against Drs. Dodson, Holt and Logan County Hospital by reason of the operation performed, wilful and wanton misconduct by the same three Defendants in that they knew or are charged with knowing sufficient information which would indicate to an ordinary person that the operation was not being performed for any medical necessity and Defendants Drs. Dodson, Holt and Logan County Hospital knew or are charged with knowing sufficient information which would indicate to an ordinary person that Mrs. Meadows was induced to undergo a sexual sterilization operation by deceit, malicious and fraudulent representations made by the Department of Welfare to Mr. & Mrs. Meadows, thereby denying her right to have and maintain a family, companionship of her children, right of privacy and freedon of association.

7. On or about April 5, 1973, a petition to terminate the parental rights of Plaintiffs was filed in Logan County Circuit Court in Russellville, Kentucky.

8. On or about June 27, 1974, all further visitation rights of Plaintiffs with their children were terminated by letter to Plaintiffs from Defendant, Mrs. Smart, Director of the Logan County Department for Human Resources.

9. Plaintiffs allege that there has been a continuing denial of their civil rights secured by the Fifth and Fourteenth Amendments of the United States Constitution, in that Mrs. Meadows was deprived of her liberty upon being committed to Western State Hospital without due process of law and without just compensation, and denied the equal protection of the laws afforded citizens of the Commonwealth of Kentucky. Plaintiffs allege that there has been a continuing denial of civil rights inasmuch as the children have never been returned to their parents.

10. Plaintiffs allege that Dr. Dodson in furtherance of the conspiracy to deny rights secured to Mr. & Mrs. Meadows

On or about September 1, 1971, knowingly and wilfully or negligently failed to properly read x-rays of Mrs. Meadows and arranged for her confinement in Glasgow, Kentucky Tuberculosis Hospital. Dr. Dodson knew or should have known that improper confinement of Mrs. Meadows could result in loss of custody of her child and would result in further emotional injury, mental stress, hardship and humiliation.

11. Plaintiffs state that Defendants Robert Brown, Jesse T. Riley, Jr., James Johnson, deceased, deputies Kissenbaugh, Wilson and other Defendants known only to Plaintiffs as Deputy Sheriffs, but known by name to the Defendants herein, all ostensibly acted in their official capacities, and in concert with each other, and in concert with members of the staff of the Department for Human Resources, including Defendants Catherine Norris, Doris Smart, Sue Gilliam, Lan Wood, and Marie Gamble; and did further act in concert with Defendants W. R. Burns, C. V. Dodson and Jack B. Holt, and with Defendant Logan County Hospital, all of whom were ostensibly acting in their official capacities as members of the Department for Human Resources or of the staff of Logan County Hospital, and as such were acting under color of law; and that Defendants did individually and in concert with each other, wilfully and under color of state law, specifically Chapters 202 and 208 of Kentucky Revised Statutes, and under the customs and usage of authority vested in any or all of them by law, unlawfully take three children from Thomas and Judy Meadows, and unlawfully commit Judy Meadows to Western State Mental Hospital and Logan County Jail, and unlawfully operate upon the person of Judy Meadows to render her sterile; and did thereby individually and in concert with each other, wilfully deprive Thomas and Judy Meadows and their children of rights and privileges secured by the Constitution and laws of the United States contrary to Title 44 U.S.C. § 1983, § 1985[2][3], and 1986.

12. Plaintiffs state that they were brought before Logan County Court on May 18, 1970, and May 26, 1971, in an unlawful manner, by improper summons, improper service of summons, with lack of due notice, with inadequate notice of the purpose of the hearings, and were in fact deceived as to the true nature of each hearing, were denied the right of counsel at each hearing, were denied the right to confront and cross examine witnesses appearing against them at each hearing, and were denied the right to have an adjudication based on proof beyond a reasonable doubt. Plaintiffs state that such was a denial of due process, a denial of equal protection of law, resulting in a lack of jurisdiction over the persons of Thomas and Judy Meadows, and that such proceedings and the adjudications ensuing therefrom were thereby void at law. Plaintiffs further state that these proceedings complained of were, along with all official actions taken prior thereto, and subsequent thereto, were taken under color of law, and according to the customs of the Logan County Court and its officials named herein, and as such deprived Plaintiffs of constitutional rights secured by the Fifth, Sixth and Fourteenth Amendments, contrary to provisions of Title 42 U.S. Code § 1983, 1985 and 1986.

13. The rights secured to Plaintiffs by the Fifth and Fourteenth Amendments of the United States Constitution were violated and continue to be violated in that Plaintiffs were deprived of the liberty and the property right to have children, without due process of law and without just compensation, that Mrs. Meadows continues to be denied the custody, oompanionship and services of her children as a result of the unlawful acts of Defendants and each of them, and Mrs. Meadows was denied the equal protection of the laws afforded citizens of the Commonwealth of Kentucky.

14. The right of Plaintiffs to be advised of right of counsel, to be represented by counsel, to be

advised of the nature and purpose of the proceeding were not afforded Plaintiffs, in violation of K.R.S. 202.135 and the Sixth Amendment of the United States Constitution.

15. A continuing deprivation of Plaintiffs' rights under Section 1983, 1985 and 1986 of Title 42, United States Code was caused or allowed by Defendants, and each of them, by subjecting and/or causing the subjection of Plaintiffs to deprivation of the aforementioned rights, privileges or immunities secured by the Constitution and laws of the United States.

16. Plaintiffs allege a violation of oral agreements by Defendants, Mrs. Smart and Lan Wood, Kentucky Department for Human Resources and Logan County Department for Human Resources, to obtain funds to pay for Mrs. Meadows' sexual sterilization operation and to return Mr. & Mrs. Meadows' children to their custody.

17. Plaintiffs allege that the actions of Defendants, Catherine Norris, Mrs. Doris Smart, Mrs. Marie Gamble and Mr. Lan Wood, were either outside the scope of their authority or if within the scope were arbitrary, unreasonable, grossly abusing the lawful powers of office and represent a continual deprivation of federal rights by the named Defendants acting under color of state law.

18. Plaintiffs allege a violation of fundamental due process, constitutional and state due process, and violation of Kentucky statutes 202.027 through 202.279, in the manner of commitment and detention of Plaintiff, Mrs. Meadows at Western State Hospital.

19. Plaintiffs allege that the physical and mental condition of Plaintiff, Mrs. Meadows, was aggravated as a result of the mental strain brought about by Defendants' actions.

20. Plaintiffs allege that they have suffered great mental anguish and suffering as a result of the arbitrary, unreasonable, and unlawful actions of Defendants.

21. Defendants, and each of them are liable to Plaintiffs for conspiracy to deny, the denial of and neglect or refusal to prevent denial of rights, privileges, and immunities secured to Mrs. Meadows by the laws and Constitution of the United States and the laws and Constitution of the Commonwealth of Kentucky. In addition, Defendants, and each of them, are liable to Mrs. Meadows for all resulting damages including but not limited to the loss of her children, loss of her right to maintain a family relationship and loss of ability to bear children.

COUNT II

1. Plaintiffs reiterate, affirm and incorporate by reference all the statements made in Count I hereof.

2. Plaintiffs allege an unlawful commitment to Western State Hospital and Logan County Jail. As a result of such unlawful commitment, Mrs. Meadows suffered additional physical, mental and emotional injuries, hardship, humiliation and was unlawfully confined against her will. Plaintiffs seek damages in an additional amount of $350,000.00.

3. On or about May 25, 1972, a subpoena was issued for Plaintiffs, Mr. and Mrs. Meadows, to testify on May 26, 1972, in an unnamed case styled "_____ vs. _____" on behalf of the Commonwealth of Kentucky. Oral assurances were given by Judge Brown of the County Court in Logan County, Kentucky that this was to talk about Plaintiffs' sons coming home.

4. At the hearing on May 26, 1972, in the court room of the County Court of Logan County, the third child, Mary Ann, was forcibly removed by the sheriff from the arms of her mother. Plaintiff, Mrs. Meadows, was physically dragged from the court room to a waiting patrol car for transport to Western State Mental Hospital where she was ordered committed by the Court for treatment and further, that upon release from the hospital she be jailed at the Logan County Jail. Plaintiff, Mr. Meadows, was threatened by the Sheriff and others in the court room with physical harm if he interfered. Mrs. Meadows was confined at Western State Hospital without further proceedings, and discharged July 25, 1972, while on AWOL status. At no time during these proceedings were the Plaintiffs afforded legal counsel or even advised of their rights or of the nature of the proceeding. In fact, the Plaintiffs were deliberately deceived as to the nature of the proceedings.

5. In both hearings pertinent to this action, Defendant Robert Brown was Judge of Logan County Court, and knew or should have known, that the proceedings were unlawful and the Order of the Court was unlawful on its face and as applied, and it was his duty as presiding Judge to afford due process of law, equal protection of the law to Plaintiffs, and to afford all rights and privileges secured to the Meadows by the laws and Constitution of the United States and of the Commonwealth of Kentucky.

6. Defendant, Jesse T. Riley, Jr. was the County Attorney for Logan County, Kentucky, an officer of the Court, and was instrumental in bringing the Meadows before Logan County Court acting ostensibly in his official capacity at the hearings where the three children were taken from their parents and Mrs. Meadows was committed to Western State Mental Hospital and to be jailed in the Logan County Jail upon her release. Defendant Jesse Riley knew or should have known that the

proceedings were unlawful and that the Order suggested to the Court was unlawful on its face and as applied in this case. Defendant, Riley further knew and subsequently admitted that Mrs. Meadows lacked the mental acumen to know and request that she be afforded rights, privileges and immunities due her and it was the duty of Defendant Riley, as an officer of the Court to so advise the Court and the obligation of Defendant Riley, as a private individual to prevent deprivation of rights when he clearly had the power to do so.

7. Plaintiffs state that they were brought before Logan County Court on May 26, 1972, in an unlawful manner, by improper summons, improper service of summons, with lack of due notice, with inadequate notice of the purpose of the hearing, and were in fact deceived as to the true nature of the hearing, were denied the right to counsel at the hearing, were denied the right to confront and cross examine witnesses appearing against them at the hearing, and were denied the right to have an adjudication based on proof beyond a reasonable doubt. Plaintiffs state that such was a denial of due process, a denial of equal protection of law, resulting in a lack of jurisdiction over the persons of Thomas Meadows and Judy Meadows, and that such proceedings and the adjudications ensuing therefrom were thereby void at law. Plaintiffs further state that these proceedings complained of were, along with other official actions taken prior thereto, and subsequent thereto, were taken under color of law, and according to the customs of the Logan County Court and its officials named herein, and as such deprived Plaintiffs of constitutional rights secured by the Fifth, Sixth and Fourteenth Amendments, contrary to provisions of Title 42 U.S. Code, § 1983, § 1985 [2][3], and 1986.

COUNT III

1. Plaintiffs reiterate, affirm and incorporate by reference all statements made in Counts, I and II hereof.

2. Plaintiffs allege that Defendants, and each of them, denied and conspired to deny rights, privileges, and immunities secured to Mr. Meadows by the laws and the Constitution of the United States and the laws and Constitution of the Commonwealth of Kentucky, resulting principally in loss of his children, loss of his right to maintain a family relationship and loss of his wife's services, all of which caused Mr. Meadows mental anguish, emotional injury, hardship and humiliation. Plaintiffs seek damages in an additional amount of $350,000.00.

Mr. Meadows suffered all the deprivation and denial of rights that Mrs. Meadows suffered as enumerated in Count I. Rights secured by the Fifth and Fourteenth Amendments were denied and continue to be denied. Mr. Meadows was denied custody, companionship and services of his three children. The three children were taken from his custody in an unlawful manner, without due process of law, without equal protection of law afforded citizens of the Commonwealth of Kentucky. His wife was sexually sterilized. False promises were made in an attempt to induce both removal of his three children from his custody and to induce his wife to undergo a sexual sterilization operation. His wife was sent to Western State Mental Hospital and ordered to be jailed in the Logan County Jail upon her return. The Defendants conspired together to achieve the unlawful results, and to obstruct justice and the due process of law.

3. As a result of the arbitrary, unreasonable and illegal actions of Defendants, Mr. Meadows suffered medical expenses, traveling expenses, loss of wages, was deprived of the services of his spouse, Mrs. Meadows, and suffered loss of consortium.

4. Defendants, and each of them, are liable to Plaintiff for conspiracy to deny, the denial of and neglect or refusal to prevent denial of rights, privileges and immunities secured to Mr. Meadows by the laws and Constitution of the United States and the laws and Constitution of the Commonwealth of Kentucky. In addition, Defendants, and each of them are liable for all resulting damages including but not limited to loss of his children, loss of his right to maintain a family relationship and loss of his wife's services and ability to bear children.

COUNT IV

1. Plaintiffs reiterate, affirm and incorporate all statements made in Counts I, II and III hereof.

2. Plaintiffs Mary Ann Meadows, Amon David Meadows and Thomas Meadows, Jr. allege that Defendants, and each of them, denied and conspired to deny rights, privileges and immunities secured to them by the laws and Constitution of the United States and the Commonwealth of Kentucky, resulting principally in loss of their parents care, companionship and protection, right to remain in a family relationship, causing the Meadows' children mental and emotional injuries, hardship and humiliation. Plaintiffs seek damages in an additional amount of $350,000.00.

3. On or about May 18, 1970, the parents of Plaintiffs Mary Ann, David and Tommy were picked up in a patrol car on a bad check even though the check had been discharged. The Judge dropped the charge and proceeded for alleged child abuse against Mr. & Mrs. Meadows. There was no testimony, no evidence, no witnesses, no attorney appointed for Mr. & Mrs. Meadows, and they were not advised of their

right to representation. As a result of this hearing, Plaintiffs, were forceably taken from their mother's arms and David and Tommy were taken from custody of their parents. Since that time, visits with their parents have been disallowed, discouraged and limited. They have been forced to live in foster homes away from their parents' protection, companionship and custody.

4. On May 26, 1972, a subpoena was issued for the parents of Plaintiffs Mary Ann, David and Tommy to testify in an unnamed case "_____ vs. _____" on behalf of the Commonwealth of Kentucky. Oral assurances were given to the parents that the Court was to talk about their two boys coming home. Instead, Mary Ann was taken from the arms of her mother, her mother was dragged out of the court room and her father was threatened if he interfered. Again, there was no testimony, no evidence, no witnesses, no attorney appointed and the Meadows were not advised of their right to be represented before the Court.

5. Since that time, Plaintiff, Mary Ann also has been forced to live in foster homes away from her parents protection, companionship and custody. Visits with her parents have been limited, disallowed and discouraged.

6. Defendants, and each of them, are liable to Plaintiffs for conspiracy to deny and the denial of and neglect or refusal to prevent denial of rights, privileges and immunities secured to Mary Ann Meadows, Amon David Meadows and Thomas Meadows, Jr., by the laws and Constitution of the United States and the Commonwealth of Kentucky. In addition, Defendants, and each of them, are liable for all resulting damages including but not limited to loss of the protection, companionship and custody of their parents, loss of right to remain in a family relationship and the resulting mental and emotional injuries.

COUNT V

1. Plaintiffs, and each of them, allege that the actions of Defendants were so malicious, done in utter disregard of Plaintiffs' rights, with such grave consequences resulting that punative damages should be assessed in an additional amount of $500,000.00.

2. As a direct result of the actions and concerted actions of Defendants, and each of them, Mr. & Mrs. Meadows have been separated from David Meadows and Thomas Meadows, Jr., for over six years. Mr. & Mrs. Meadows have been separated from Mary Ann Meadows for over four years. Mrs. Meadows was committed to a mental hospital and upon her release was to be jailed. All three children have been forced to live in foster homes. Visits between the parents and the children have been limited, discouraged and denied.

3. All of the above have come about as Orders of Logan County Court, which were known or should have been known to Defendants to be invalid and illegal on their face. The Meadows were not properly before the Court, no witnesses were presented, no testimony was taken, no attorney was appointed for the Meadows and the Meadows were not advised of their right to be represented before the Court.

4. As a direct result of the actions and concerted actions of Defendants, and each of them, Mrs. Meadows was induced to submit to a sexual sterilization operation. Plaintiffs were promises that if Mrs. Meadows submitted to the operation, that the operation would be paid for by an agency and that their children would be returned to them.

5. The resulting emotional damage to Mary Ann, Amon David and Thomas Meadows, Jr., can probably never be healed. The parents have suffered hardship and extreme

humiliation. The mental condition of Mrs. Meadows was aggravated. Mr. Meadows has suffered loss of companionship of both his children and his wife.

6. The Defendants, and each of them, individual Defendants, Defendants acting in their official capacity and the institutional Defendants knew or should have known of the grave and far reaching consequences of their illegal acts. Punative damages should be assessed as a penalty and deterent to the type of unlawful action taken by Defendants, and each of them.

WHEREFORE, PREMISES CONSIDERED, PLAINTIFFS PRAY:

1. That Plaintiffs be allowed to file this Amended Complaint and the costs and fees be provided for as in Title 28, Section 1915 of the United States Code.

2. That the Defendants, and each of them be permanently enjoined from interfering with, obstructing or denying the civil rights of Plaintiffs.

3. That Plaintiffs have and recover a judgment, against Defendants jointly and severally, in the amount of One Million Four Hundred Thousand ($1,400,000.00) Dollars, compensatory damages and Five Hundred Thousand ($500,000.00) Dollars punitive damages, together with all costs and expenses connected with filing this action, including a reasonable sum for attorneys fees, and demand a jury to hear this action.

4. For other further and general relief as the Court may determine.

BUCK, BAKER & BAKER

Roland M. Lowell

Robert Harrison

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Amended Complaint was mailed postage prepaid to all counsel of record, this the 10th day of July, 1978.

Roland M. Lowell
Attorney for Plaintiffs

Address all pleadings to:

Robert Harrison
Harrison & Goin
945 State Street
Bowling Green, KY 42101

Roland M. Lowell
Buck, Baker & Baker
618 United American Bank Bldg.
Nashville, TN 37219

9/28/78

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT BOWLING GREEN

THOMAS MEADOWS and
JUDY MEADOWS,
PLAINTIFFS,

v. CIVIL ACTION NO. 74-0048 BG

KENTUCKY DEPARTMENT FOR
HUMAN RESOURCES, LOGAN
COUNTY DEPARTMENT FOR
HUMAN RESOURCES, et al,
DEFENDANTS.

ORDER

This matter is before the Court on Plaintiff's motion to file amended complaint, motion for extension of time, Defendants' responses and motions to dismiss.

IT IS ORDERED:

1. The tendered amended complaint shall be filed.

2. The parties are granted 45 days to complete discovery.

3. Compliance with the Court's Order of June 20, 1978, regarding the tendering of a status report is extended to November 20, 1978. The required status report shall also include a statement of the position of each party with regard to settlement possibilities and whether the parties believe further negotiations are necessary or would be helpful and, if so, whether a court settlement conference is required. In the event settlement negotiations are not successful, in order to assist the Court in maintaining the docket control, the Plaintiff is requested to file a motion to assign a trial date.

4. The Defendants' motions for dismissal are held in abeyance pending compliance with this Order.

DATED: September 28, 1978.

Copies to:
Mr. Fowler
Mr. Harrison
Mr. Doran
Mr. Wheeler
Mr. Mitchell
Mr. Riley

Edward H. Johnstone
Judge, United States District Court

SEP 29 1978
JESSE W. SNIDER, CLERK
DEPUTY CLERK

107A

ID/ 19/75

IN THE UNITED STATES DISTRICT COURT

OF THE WESTERN DISTRICT OF THE COMMONWEALTH OF KENTUCKY

MR. THOMAS MEADOWS and MRS. JUDY MEADOWS,	)	
Plaintiffs,	)	
vs.	)	NO. C74-48 BG
KENTUCKY DEPARTMENT FOR HUMAN RESOURCES, LOGAN COUNTY KENTUCKY DEPARTMENT FOR HUMAN RESOURCES, LOGAN COUNTY HOSPITAL, CATHERINE NORRIS, ROSALYN STAMPS, MRS. DORIS SMART, MRS. SUE GILLIAM, MR. LAN WOODS, MRS. MARIE GAMBLE, DR. C. V. DODSON, DR. JACK B. HOLT, JOHN DOE,	)	
Defendants.	)	

MOTION FOR ENLARGEMENT OF TIME PURSUANT TO RULE 6(b) OF THE FEDERAL RULES OF CIVIL PROCEDURE

Comes now the Defendants, Judge Robert R. Brown, Sheriff Morris Kisselbaugh, Robert R. Wilson, Jesse L. Riley, Jr., and the Logan County Hospital, by counsel, and respectfully moves this Court for an enlargement of time in which to file their respective answers to the Complaint filed herein on the grounds that the subject matter of the Complaint is of such complexity and involves such an extended number of years of prior actions and litigations that this attorney has been unable to obtain all proper and necessary document for his review nor has he been able to discuss the subject matter with all the various parties and agencies due to his schedule and the schedule of his clients.

As additional grounds this moveant states that he did not receive the voluminous files compiled in this case until less than two weeks prior to the date the answer was due and that as Prosecutor in the Logan District Court he has had numerous trials and hearings which have made it impossible to adequately review, research and answer the lengthy Complaint filed herein.

The moveant states that this Motion is not made for the purpose of delay. It is respectfully requested that the attorney

ED GREENE
ATTORNEY AT LAW

108A

for the said Defendants be granted 45 additional days in which to file his answer.

Fred Greene
ATTORNEY FOR DEFENDANTS, JUDGE ROBERT R. BROWN, SHERIFF MORRIS KISSELBAUGH, ROBERT R. WILSON, JESSE L. RILEY, JR., and LOGAN COUNTY HOSPITAL

COMMONWEALTH OF KENTUCKY

COUNTY OF LOGAN

Subscribed and sworn to before me, a notary public in and for the state and county aforesaid, by Fred Greene, Attorney-at-Law, to be his voluntary act and deed this October 19, 1978,

Celia Richardson
NOTARY PUBLIC

Commission expires: 10-9-84

This is to certify that a copy of the foregoing Motion was this day mailed to Hon. Roland M. Lowell, Buck, Baker and Baker, 618 United American Bank Building, Nashville, Tennessee, 37219, and Hon. Robert E. Harrison, P.O. Box 522, Scottsville, Kentucky, 42164, Attorneys for the Plaintiffs, this October 19, 1978.

Fred Greene

GREENE
ATTORNEY AT LAW
BUILDING
KENTUCKY

109A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT BOWLING GREEN

THOMAS MEADOWS and JUDY MEADOWS, PLAINTIFFS,

VS: MOTION FOR EXTENSION OF TIME

KENTUCKY DEPARTMENT FOR HUMAN RESOURCES,
LOGAN COUNTY DEPARTMENT FOR HUMAN RESOURCES, DEFENDANTS.
Et al.

Come now the Defendants, C. V. Dodson, M. D., Jack B. Holt, M.D., Logan County Hospital and W. R. Byrne, M.D., improperly sued as Dr. W. R. Burnes, and move for an extension of time in which to file their response to the amended complaint.

Counsel has now been employed to represent Defendants, Logan County Hospital and W. R. Byrne, M.D. and has not had time to review the record in the case of James David Bryant v. Kentucky Department for Human Resources, 548 S.W. 2nd 165 in which case it would appear that many of the issues incorporated in the amended complaint were disposed of. Counsel for these Defendants was out of state during the period October 5 through October 16, 1978; and, therefore, these time restrictions are impossible to meet.

Therefore, these Defendants request that an order be entered extending to 45 days from the date of entry to respond to the amended complaint.of Plaintiffs.

Respectfully submitted,

DONAN & VICK

By: _____
Wm. P. Donan
Attorney for Defendants,
C. V. Dodson, M.D., Jack B.
Holt, M.D., Logan County
Hospital and W. R. Byrne, M.D.

110A

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Motion for Extension of Time has been mailed to Lynn T. Mitchell, 275 East Main Street - 4 West, Frankfort, Kentucky; Jesse L. Riley, Jr., Kirkpatrick Building, Russellville, Kentucky; 42276; Roland M. Lowell, Buck, Baker & Baker, 618 United American Bank Building, Nashville, Tennessee 37219; Joe S. Wheeler, 179 West Fourth Street, Russellville, Kentucky 42276; and Robert Harrison, Harrison & Goin, 945 State Street, Bowling Green, Kentucky 42101, this the 19 day of October, 1978.

Wm. P. Donan

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT BOWLING GREEN, KENTUCKY

THOMAS MEADOWS and JUDY MEADOWS, PLAINTIFFS,

VS: ORDER

KENTUCKY DEPARTMENT FOR HUMAN RESOURCES,
LOGAN COUNTY DEPARTMENT FOR HUMAN RESOURCES,
et al. DEPENDANTS.

Upon motion of Defendants, C. V. Dodson, M.D., Jack B. Holt, M.D., Logan County Hospital, and W. R. Byrne, M.D., for an extension of time in which to file responsive pleadings to the amended complaint, and it appearing to the Court for good cause shown,

It is hereby ordered that Defendants, C. V. Dodson, M.D., Jack B. Holt, M.D., Logan County Hospital, and W. R. Byrne, M.D., should be afforded forty-five (45) days in which to file responsive pleadings to the amended complaint of Plaintiffs.

This the _____ day of Oct _____, 1978.

Judge, United States District
Court for the Western District
of Kentucky

PREPARED AND TENDERED BY:

Wm. P. Donan

112A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT BOWLING GREEN, KENTUCKY

THOMAS MEADOWS & JUDY MEADOWS — PLAINTIFFS

vs — NOTICE OF DEPOSITIONS — No. C74-48 BG

KENTUCKY DEPARTMENT FOR HUMAN RESOURCES, LOGAN COUNTY DEPARTMENT FOR HUMAN RESOURCES, et al. — DEFENDANTS

Notice is hereby given that the Plaintiffs will take depositions on Monday, November 27, 1978, in Room 302, Federal Courthouse, Main & Center Streets, Bowling Green, Kentucky, of the following persons and at the following stated times. Said depositions to continue from day to day until completed.

Sheriff Kissenbaugh	9:00 a.m.
Dr. W. R. Byrne	9:30 a.m.
Mr. Ian Wood	10:00 a.m.
Judge Robert Brown	1:00 p.m. ← 11:00 Will: 2 p.m.

This the 27th day of October, 1978.

Robert E Harrison

ROBERT E. HARRISON
Attorney for Plaintiffs
P. O. Box 522
Scottsville, KY 42164

CERTIFICATION

This is to certify that a copy of the foregoing Notice of Depositions was placed in the U.S. Mail addressed to all parties of record. This the 31 day of October, 1978.

Robert E Harrison

ROBERT E. HARRISON

113A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT BOWLING GREEN, KENTUCKY

THOMAS MEADOWS & JUDY MEADOWS — PLAINTIFFS

vs — NOTICE OF DEPOSITIONS — NO. C74-48 BG

KENTUCKY DEPARTMENT FOR HUMAN RESOURCES, LOGAN COUNTY DEPARTMENT FOR HUMAN RESOURCES, et al. — DEFENDANTS

Notice is hereby given that the Plaintiffs will take depositions Friday, November 17, 1978, in Room 302, Federal Courthouse, Main & Center Streets, Bowling Green, Kentucky, of the following persons and at the following stated times. Said depositions to continue from day to day until completed.

Jesse Riley, Jr. 9:00 a.m.
Mrs. Sue Gilliam 10:00 a.m.
Dr. C. V. Dodson 1:00 p.m.

This the 27th day of October, 1978.

Robert E. Harrison

ROBERT E. HARRISON
Attorney for Plaintiffs
P. O. Box 522
Scottsville, KY 42164

CERTIFICATION

This is to certify that a copy of the foregoing Notice of Depositions was placed in the U.S. Mail addressed to all parties of record. This the 31 day of October, 1978.

Robert E. Harrison

ROBERT E. HARRISON

114A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT BOWLING GREEN, KENTUCKY

THOMAS MEADOWS & JUDY MEADOWS — PLAINTIFFS

vs — AMENDMENT TO NOTICE OF DEPOSITION — NO. C74-48 BG

KENTUCKY DEPARTMENT FOR HUMAN RESOURCES, LOGAN COUNTY DEPARTMENT FOR HUMAN RESOURCES, et al. — DEFENDANTS

Notice is hereby given that the deposition of Sue Gilliam will be taken in Room 302, Federal Courthouse, Main & Center Streets, Bowling Green, Kentucky, on Monday, November 27, 1978, at the hour of 11:00 a.m. instead of on Monday, November 17, 1978, at the hour of 10:00 a.m.

This the 4th day of November, 1978.

Robert E. Harrison

ROBERT E. HARRISON LAW FIRM
Attorneys for Plaintiffs
Public Square, Graves Bldg.
P. O. Box 522
Scottsville, KY 42164

CERTIFICATION

The undersigned hereby certifies that a copy of the foregoing Amendment to Notice of Deposition has been placed in the U.S. Mail addressed to all parties of record. This the 4th day of November, 1978.

Robert E Harrison

ATTORNEY FOR PLAINTIFFS

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT BOWLING GREEN, KENTUCKY

THOMAS MEADOWS & JUDY MEADOWS — PLAINTIFFS

VS

NOTICE TO TAKE DEPOSITION — No. C74-48 BG

KENTUCKY DEPARTMENT FOR HUMAND RESOURCES, LOGAN COUNTY DEPARTMEN FOR HUMAN RESOURCES, et al. — DEFENDANTS

Notice is hereby given that the deposition of Doris Smart will be taken in Room 302, Federal Courthouse, Main & Center Streets, Bowling Green, Kentucky, on Monday, November 17, 1978, at the hour of 10:00 a.m. Said deposition to continue from day to day until completed.

This the 9th day of November, 1978.

Robert E. Harrison

ROBERT E. HARRISON LAW FIRM
Attorneys for Plaintiffs
Public Square, Graves Bldg.
P. O. Box 522
Scottsville, KY 42164

CERTIFICATION

The undersigned hereby certifies that a copy of the foregoing Notice to Take Deposition was placed in the U.S. Mail addressed to all parties of record. This the 9th day of November, 1978.

Robert E. Harrison
ATTORNEYS FOR PLAINTIFFS

UNITED STATED DISTRICT COURT
WESTERN DISTRICT OF THE
COMMONWEALTH OF KENTUCKY
No. C74-48 BG

THOMAS MEADOWS and
JUDY MEADOWS, PLAINTIFFS,

VS: MOTION FOR PROTECTIVE ORDER

DR. C. V. DODSON, DR. JACK B.
HOLT, DR. W. R. BYRNE, and
LOGAN COUNTY HOSPITAL, ET AL., DEFENDANTS.

Come now the defendants, Dr. C. V. Dodson, Dr. Jack B. Holt, Dr. W. R. Byrne and Logan County Hospital, by counsel and move this Court for a Protective Order pursuant to Rule 26(c) of the Rules of Civil Procedure for the United States District Courts on the grounds that there is now pending before this Court a Motion for Extension of Time to file an Answer for the above defendants and that this attorney has not received the Court's Order pertaining to said Motion and that the taking of the said defendants' depositions prior to the filing of their Answer would be oppressive and pose an undue burden or expense upon the said defendants. This Court is specifically requested to enter a Protective Order ordering that the proposed discovery not be had. The Certificate of counsel is attached hereto pursuant to Rule 7(d) of the Rules of the United States District Court for the Western District of Kentucky.

Wm. P. Donan
Attorney for defendants, Dr. C. V. Dodson, Dr. Jack B. Holt, Dr. W. R. Byrne, and Logan County Hospital
DONAN & VICK, Attorneys
P.O. Box 349
Greenville, Kentucky 42345

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Motion for Protective Order was this day mailed to Hon. Roland M. Lowell, Buck, Baker and Baker, 618 United American Bank Building, Nashville, Tenn. 37219; Hon. Robert E. Harrison, P.O. Box 522, Scottsville, Kentucky 42164, Attorneys for plaintiffs; Hon. Fred Greene, Attorney for defendants, Brown, Riley, Wilson and Kisselbaugh, P.O. Box 306, Russellville, Ky. 42276; Hon. Joe S. Wheeler, Jr., W. Fourth St., Clark Building, Russellville, Ky. 42276, Attorney for defendants, Smart, Morris, Gilliam, Wood and Gamble, this 10th day of November, 1978.

Wm. P. Donan

16 :178

IN THE UNITED STATES DISTRICT COURT

OF THE WESTERN DISTRICT OF THE COMMONWEALTH OF KENTUCKY

MR. THOMAS MEADOWS and MRS. JUDY MEADOWS, Plaintiffs, vs. KENTUCKY DEPARTMENT FOR HUMAN RESOURCES, LOGAN COUNTY KENTUCKY DEPARTMENT FOR HUMAN RESOURCES, LOGAN COUNTY HOSPITAL, CATHERINE NORRIS, ROSALYN STAMPS, MRS. DORIS SMART, MRS. SUE GILLIAM, MR. LAN WOODS, MRS. MARIE GAMBLE, DR. C. V. DODSON, DR. JACK B. HOLT, JUDGE ROBERT R. BROWN, JESSE L. RILEY, JR., ROBERT WILSON, MORRIS KISSELBAUGH, AND JOHN DOE, Defendants.	)	NO. C74-48 BG

MOTION FOR PROTECTIVE ORDER

Comes now the Defendants, Judge Robert R. Brown, Jesse L. Riley, Jr., and Morris Kisselbaugh, and move this Court for a Protective Order pursuant to Rule 26(c) of the Rules of Civil Procedure for the United States District Courts on the grounds that there is now pending before this Court a Motion for Extension of Time to file an Answer for the above Defendants and that this attorney has not received the Court's Order pertaining to said Motion and that the taking of the said Defendants' depositions prior to the filing of their Answer would be oppressive and pose an undue burden or expense upon the said Defendants. This Court is specifically requested to enter a Protective Order ordering that the proposed discovery not be had. The Certificate of Counsel is attached hereto pursuant to Rule 7(d) of the Rules of the United States District Court for the Western District of Kentucky.

Fred Greene
ATTORNEY FOR DEFENDANTS, JUDGE
ROBERT R. BROWN, JESSE L. RILEY, JR.,
ROBERT WILSON, MORRIS KISSELBAUGH
P.O. Box 306
Russellville, KY 42276

FRED GREENE
ATTORNEY AT LAW
BANK BUILDING
P.O. BOX 306
RUSSELLVILLE, KENTUCKY
42276

This is to certify that a copy of the foregoing Motion for Protective Order was this day mailed to Hon. Roland M. Lowell, Buck, Baker and Baker, 618 United American Bank Building, Nashville, Tennessee, 37219, Hon. Robert E. Harrison, P.O. Box 522, Scottsville, Kentucky, 42164, Attorneys for Plaintiffs; Hon. William P. Donan, Donan & Vick, 110 East Court Square, Greenville, Kentucky, 42345, Attorney for Defendants Holt and Dodson); Hon. Joe S. Wheeler, Jr., West Fourth Street, Clark Building, Russellville, Kentucky, 42276, Attorney for Defendants Smart, Norris, Gilliam, Wood and Gamble, this November 9th, 1978.

Fred Greene

FRED GREENE
ATTORNEY AT LAW
CLARK BUILDING
P. O. BOX 324
RUSSELLVILLE, KENTUCKY
42276

120A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT BOWLING GREEN

THOMAS MEADOWS and
JUDY MEADOWS, PLAINTIFFS

vs RESPONSE TO PROTECTIVE ORDER No. CV-48 BC

KENTUCKY DEPARTMENT FOR HUMAN
RESOURCES, LOGAN COUNTY DEPARTMENT
FOR HUMAN RESOURCES, et al. DEFENDANTS

Comes now the Plaintiffs, through counsel, and move this Court to deny the Defendants' Motion for Protective Order because at appears that not only have the Defendants not given good cause as required by Rule 26.03 of the Rules of Civil Procedure but that the Defendants are using their prior delay in filing an answer in an attempt to further delay the proceedings by postponing the taking of depositions. It is in keeping with the prior orders of this Court and the desire of the Plaintiffs to bring this case to its just conclusion as soon as possible; that the Plaintiffs have scheduled depositions at the earliest possible time allowed by the Rules of Civil Procedure. For these reasons, it is respectfully submitted the Defendants' motion should be denied.

This the 16th day of November, 1978.

Robert E. Harrison
ROBERT E. HARRISON
Attorney for Plaintiffs
Public Square, Graves Bldg.
P. O. Box 522
Scottsville, KY 42164

CERTIFICATION

The undersigned hereby certifies that a copy of the foregoing was placed in the U.S. Mail addressed to all parties of record. This the 16th day of November, 1978.

Robert E. Harrison
ATTORNEY FOR PLAINTIFFS

121A

11/9/78

IN THE UNITED STATES DISTRICT COURT

OF THE WESTERN DISTRICT OF THE COMMONWEALTH OF KENTUCKY

MR. THOMAS MEADOWS and
MRS. JUDY MEADOWS,

Plaintiffs,

vs.

KENTUCKY DEPARTMENT FOR HUMAN RESOURCES, LOGAN COUNTY
KENTUCKY DEPARTMENT FOR HUMAN RESOURCES, LOGAN COUNTY HOSPITAL,
CATHERINE NORRIS, ROSALYN STAMPS,
MRS. DORIS SMART, MRS. SUE GILLIAM, MRS. LAN WOODS, MRS. MARIE GAMBLE, DR. C. V. DODSON, DR. JACK B. HOLT, JOHN DOE, ET AL

Defendants.

NO. C74-48 BG

Entered 11/13/78

ORDER FOR ENLARGEMENT OF TIME

The attorney for the Defendants, Judge Robert R. Brown, Sheriff Morris Kisselbaugh, Robert R. Wilson, Jesse L. Riley, Jr., and the Logan County Hospital, pursuant to Rule 6(b) of the Federal Rules of Civil Procedure, having filed a Motion for an Enlargement of time in which to file his Answer herein and the Court having reviewed and considered the Motion, it is hereby ORDERED that the said Defendants, Judge Robert R. Brown, Sheriff Morris Kisselbaugh, Robert R. Wilson, Jesse L. Riley, Jr., and the Logan County Hospital, shall have an additional 45 days from the date of this Order in which to file their respective answer herein.

~~Enter~~ Dated this the 9th day of ~~October~~ November, 1978.

/s/ Edward H. Johnstone
EDWARD H. JOHNSTONE
JUDGE, UNITED STATES DISTRICT COURT

FRED GREENE
ATTORNEY AT LAW
[illegible]

122A

WESTERN DISTRICT OF KENTUCKY
AT BOWLING GREEN
CIVIL ACTION C-74-0048-BG

THOMAS MEADOWS, and
JUDY MEADOWS, PLAINTIFFS

VS.

KENTUCKY DEPT. FOR HUMAN RESOURCES, et al. DEFENDANTS

O R D E R

The Court this day held a telephonic conference with Hon. Fred Greene, and Hon. Robert E. Harrison, counsel for certain parties herein, and being advised that the parties have reached an agreement as to the taking of depositions herein. Being sufficiently advised,

IT IS HEREBY ORDERED that depositions scheduled herein for November 17, 1978 and November 27, 1978 be continued and rescheduled pursuant to agreement between the parties herein.

Dated: November 16, 1978

EDWARD H. JOHNSTONE
United States District Judge

Copies to: Fred Greene, counsel
Robert Harrison, counsel
William P. Donan, counsel
Roland M. Lowell, counsel
Joe S. Wheeler, counsel

NOV 20, 1978

U. S. District Court)
Western District of Kentucky) ss.

I hereby certify that the foregoing is a true copy of the original on file in this court and cause.
Jesse W. Grider, Clerk

By Deputy Clerk

Dated: 1-14-80

123A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT BOWLING GREEN
Civil Action No. C-74-48 BG

THOMAS MEADOWS, JUDY HENLEY MEADOWS and ROBERT HARRISON, as next friend for THOMAS MEADOWS, JR., AMON DAVID MEADOWS and MARY ANN MEADOWS, PLAINTIFFS,

VS: MOTION TO DISMISS

KENTUCKY DEPARTMENT FOR HUMAN RESOURCES, ET AL., DEFENDANTS.

Come the Defendants, Dr. C. V. Dodson, Dr. Jack B. Holt and Logan County Hospital, and move the Court to dismiss the Amended Complaint as to these Defendants upon the following grounds:

I.

The Amended Complaint seeks to add new plaintiffs, to-wit: Mary Ann Meadows, Amon David Meadows and Thomas Meadows, Jr. by next friend, Robert Harrison. Only Mr. Thomas Meadows and Mrs. Judy Henley Meadows were plaintiffs in the Complaint. KRS 387.300 (1) provides:

> "No person shall sue as next friend unless he reside in this stated and be free from disability, nor unless he file his own affidavit showing his right to sue as next friend, according to the provisions of this chapter."

Robert Harrison has failed to file the required affidavit. Said infants are now the wards of the Commonwealth of Kentucky; and their care, custody and control are vested in the Department for Child Welfare. Further, Plaintiffs did not obtain leave of Court to add these infants as additional plaintiffs.

II.

The amended complaint fails to state a claim upon which relief may be granted.

III.

Defendants further state that the cause of action, if any, occurred on or about July 21, 1971, and is barred under the provisions of KRS 413.140 (1) (e), to-wit:

> "The following actions shall be commenced within one (1) years after the cause of action accrued:
>
> (e) An action against a physician, surgeon, dentist or hospital licensed pursuant to KRS chapter 216 for negligence or malpractice."

IV.

On October 23, 1975, this honorable Court entered an order dismissing the complaint in which order of the Court stated inter alia:

> "While the Court is of the opinion that KRS 413.140 (1) (E) governs, based on the reasons outlined hereinafter, it is also the opinion of the Court that plaintiff has failed to state a legally sufficient claim against the above-named defendants notwithstanding the bar imposed by the Statute of Limitations cited, supra."
>
> "In short, plaintiffs have failed to bring forward any sufficient and credible evidence which tends to establish that the plaintiff, Judy Meadows, lacked the requisite mental capacity to voluntarily consent on or about July 23, 1972, to the tubal ligation which she underwent on or about that time. If anything, the proof tends to establish that the procedure in question was done with both plaintiffs' knowledge beforehand and upon their request and consent at the time."

The mental capacity was fully adjudicated by this Court.

Said order of October 23, 1975, is attached hereto and made part hereof, marked Exhibit "A".

V.

Plaintiffs filed suit in the Logan Circuit Court, Civil Action No. 5108:62-A and 70-A, styled James David Bryant as next friend for Thomas, Jr., David and Mary Ann Meadows, infants and Thomas and Judy H. Meadows v. Kentucky Department for Human Resources for a Petition for Habeas Corpus together with the affidavit of Thomas Cleveland Meadows and Mrs. Judy Henley Meadows. A copy of said petition and affidavit are attached to the Memorandum filed herewith, marked "A" and "B".

The Findings of Fact, Conclusions of Law and Judgment denying relief and terminating the parental rights of Thomas and Judy H. Meadows are attached to the Memorandum filed herewith, marked "C" and "D".

The judgment was appealed to the Kentucky Court of Appeals and the decision of the Logan Circuit Court was affirmed in an opinion rendered March 4, 1977. Said opinion is published in 545 SW 2d 2nd 165, a copy is attached hereto as part hereof, marked Exhibit "B". The matters set out in the amended complaint were fully adjudicated in said case.

Respectfully submitted,

DONAN & VICK

By _____
Wm. P. Donan, Attorney for
Defendants, Dr. Dodson, Dr. Holt
and Logan County Hospital

NOTICE

Notice is hereby given that the foregoing Motion to Dismiss will be brought on for hearing in the United States District Court in Bowling Green, Kentucky, at the convenience of the Court.

Wm. P. Donan

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Motion to Dismiss was this day mailed to Hon. Roland M. Lowell, Buck, Baker and Baker, 618 United American Bank Building, Nashville, Tennessee 37219; Hon. Robert E. Harrison, P. O. Box 522, Scottsville, Kentucky 42164, Attorneys for Plaintiffs; Hon. Pred Greene, Attorney for Defendants, Brown, Riley, Wilson and Kisselbaugh, P. O. Box 306, Russellville, Kentucky, 42276; Hon. Joe S. Wheeler, Jr., West Fourth Street, Clark Building, Russellville, Kentucky 42276, Attorney for Defendants, Smart, Norris, Gilliam, Wood and Gamble, and Hon. Lynn T. Mitchell, 275 East Main Street, 4 West, Frankfort, Kentucky 40601, Attorney for Kentucky Department for Human Resources, this the 20 day of December, 1978.

Wm. P. Donan

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
AT BOWLING GREEN

THOMAS MEADOWS and JUDY HENLEY MEADOWS Plaintiffs	)	
v.	)	NO. C-74-48-B(B)
KENTUCKY DEPARTMENT FOR HUMAN RESOURCES, LOGAN COUNTY, KENTUCKY, ET AL. Defendants	)	

MEMORANDUM AND ORDER

This matter stands before the Court on motion to dismiss filed by defendants, Logan County Hospital, C. J. Dodson, M.D., and Jack B. Holt, M.D. The Court, having considered proof outside the pleadings, shall treat this motion as one for summary judgment pursuant to Rule 56, Federal Rules of Civil Procedure.

An initial question arises as to whether or not this action is barred by the Kentucky Statute of Limitations, KRS 413.140(1)(e). With respect to the above-named defendants, the incident complained of took place on or about July 23, 1971. This action was initiated on July 18, 1974, approximately two years after the expiration of the period of limitations set out in the Statute, supra. While the Court is of the opinion that KRS 413.140(1)(e) governs, based on the reasons outlined hereinafter, it is also the opinion of the Court that plaintiff has failed to state a legally sufficient

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
AT BOWLING GREEN

THOMAS MEADOWS and JUDY HENLEY MEADOWS Plaintiffs	)	
v.	)	NO. C-74-48-B(B)
KENTUCKY DEPARTMENT FOR HUMAN RESOURCES, LOGAN COUNTY, KENTUCKY, ET AL. Defendants	)	

MEMORANDUM AND ORDER

This matter stands before the Court on motion to dismiss filed by defendants, Logan County Hospital, C. J. Dodson, M.D., and Jack B. Holt, M.D. The Court, having considered proof outside the pleadings, shall treat this motion as one for summary judgment pursuant to Rule 56, Federal Rules of Civil Procedure.

An initial question arises as to whether or not this action is barred by the Kentucky Statute of Limitations, KRS 413.140(1)(e). With respect to the above-named defendants, the incident complained of took place on or about July 23, 1971. This action was initiated on July 18, 1974, approximately two years after the expiration of the period of limitations set out in the Statute, supra. While the Court is of the opinion that KRS 413.140(1)(e) governs, based on the reasons outlined hereinafter, it is also the opinion of the Court that plaintiff has failed to state a legally sufficient

EXHIBIT"A"

claim against the above-named defendants notwithstanding the bar imposed by the Statute of Limitations cited, supra.

Plaintiff, Judy Meadows, maintains her constitutional rights were violated when she was subjected to a tubal ligation procedure by defendants without her consent. Plaintiff admits that she signed a consent form but maintains that she was mentally incompetent at the time of her purported consent, therefore rendering any "consent" she may have given invalid as a matter of law. Plaintiff's husband, Thomas Meadows (and co-plaintiff) also signed the consent form.

There is a presumption of sanity over insanity and the party attempting to overcome this presumption must do so by clear, cogent and convincing evidence. Wilson v. Lehman, 379 S.W.2d 478 (Ky., 1964); Grannum v. Berand, 70 Washington 2d 304; 422 P.2d 812, 25 ALR 3d 1434 (1967). In the absence of evidence showing that the patient was the victim of false representations, his consent to treatment or to an operation will be presumed from the fact that he voluntarily submitted to it. 70 CJS Physicians and Surgeons 62, p. 991.

A great deal of proof has been submitted on the issue of plaintiff's competency at the time of the sterilization procedure. Overwhelmingly, it tends to establish that there was little, if any, reason for defendants to suspect or question plaintiff's competency at the time she signed the consent form nor does the medical evidence establish that plaintiff was, in any reasonable probability, incompetent at the time she signed the consent form.

Plaintiffs rely strongly on the testimony of Thelma Manlavi, M.D., psychiatrist, at Western State Hospital, who

examined plaintiff, Judy Meadows some ten months after the operation in question and very shortly after she had become greatly agitated during proceedings in the Logan County Court. Although her report suggested that plaintiff, Judy Meadows, was incompetent at that time, Dr. Manlavi testified at her deposition on February 24, 1975, that she could not state with a reasonable degree of medical certainty if plaintiff was either competent or incompetent at the time of her purported consent to the operation in question.

Edmon Green, M.D., psychiatrist, examined plaintiff on April 11, 1975. He was deposed on April 14, 1975, and stated his professional opinion that he had found nothing which suggested Mrs. Meadows was not competent at the time she gave consent for the tubal ligation. She indicated to Dr. Green that she understood the purpose of the operation beforehand and that she had no misgivings about it. She stated that she wanted no more children but only wanted the ones she presently has.

In his deposition of February 28, 1975, plaintiff, Thomas Meadows, admitted signing a consent form regarding his wife and he understood that his wife was to be "operated on during the labor of the baby, you know, for not to have no more children by Dr. Dodson (Deposition of Thomas Cleveland Meadows, response to Q. 24).

The depositions of the doctors and hospital personnel who attended Mrs. Meadows during the birth of her last child and the subsequent tubal ligation fail to reveal or establish any erratic or inappropriate behavior patterns which should

have led them to question or evaluate her mental capacity with respect to her ability to voluntarily consent to the tubal ligation.

In short, plaintiffs have failed to bring forward any sufficient and credible evidence which tends to establish that the plaintiff, Judy Meadows, lacked the requisite mental capacity to voluntarily consent on or about July 23, 1972, to the tubal ligation which she underwent on or about that time. If anything, the proof tends to establish that the procedure in question was done with both plaintiffs' knowledge beforehand and upon their request and consent at the time.

WHEREFORE, IT IS ORDERED AND ADJUDGED that with respect to defendants, Logan County Hospital, C. V. Dodson, M.D., and Jack B. Holt, M.D., the complaint herein is dismissed with prejudice.

This 23rd day of October, 1975.

RHODES BRATCHER
United States District Judge

Copies to:
Counsel of record

ENTERED
OCT 23 1975
AUGUST WINKENHOFER, JR., CLERK
BY
DEPUTY CLERK

United States District Court

FOR THE

WESTERN DISTRICT OF KENTUCKY AT BOWLING GREEN

CIVIL ACTION FILE NO. C-74-48-B(B)

THOMAS MEADOWS AND JUDY HENLEY MEADOWS

vs.

KENTUCKY DEPARTMENT FOR HUMAN RESOURCES, LOGAN COUNTY, KENTUCKY, et al

JUDGMENT

This action came on for ~~trial~~ determination before the Court, Honorable RHODES BRATCHER, United States District Judge, presiding, and the issues having been duly ~~tried~~ considered and a decision having been duly rendered,

It is Ordered and Adjudged that the plaintiffs take nothing on their claim against the defendants, Logan County Hospital, C. J. Dodson, M.D., and Jack B. Holt, M. D., and accordingly, ORDERED THAT the complaint be dismissed as to each of the defendants, Logan County Hospital, C. J. Dodson, M. D. and Jack B. Holt, M.D., with prejudice, at plaintiffs' cost.

Dated at Louisville, Kentucky, this 23rd day of October, 19 75.

AUGUST WINKENHOFER, JR.
Clerk of Court

BY: Barbara K. Green
DEPUTY CLERK

COPIES TO ALL COUNSEL

ENTERED
OCT 23 1975
AUGUST WINKENHOFER, JR., CLERK
BY Barbara K. Green
DEPUTY CLERK

dence met the requirements of proof of such claimed consequential damages, there would have been no legal liability under the facts of this case. . . .' That conclusion is in accordance with what we consider to be correct legal premise.

[2] The judgment, which was less than Allstate had offered to settle for, against the appellee entered in Kenton Circuit Court was satisfied by appellee with interest. This is the amount to which appellants are entitled under *Judd* if they can show a breach.

[3] We do not feel that the decision in *Judd* is contrary to the decision in *Service Casualty v. Marcum*, Ky., 386 S.W.2d 474 (1965), or in *Motors Insurance Corporation v. Howard*, Ky., 291 S.W.2d 522 (1956). These cases indicate that under certain circumstances an insurer may be liable for damages to its insured for unreasonable delay in settling a pending claim. It is the opinion of this court that "loss of use" of a vehicle, as was involved in *Howard*, is not to be considered consequential or punitive damages, but more akin to a contractual obligation under the insurance policy. However, should "loss of use" be construed as a consequential damage, then appellants are still not entitled to their alleged damages since this court can find no evidence of unreasonable delay.

[4] In addition, whether the action brought by appellants is characterized as breach of contract, "bad faith" or unreasonable delay, the trial court was correct in granting a summary judgment. Examining the pleadings and affidavit and construing all inferences in favor of appellants leads this court to only one conclusion—there is no genuine issue of fact and appellee was entitled to a judgment as a matter of law.

Judgment affirmed.

All concur.

James David BRYANT, as next friend for Thomas, Jr., David and Mary Ann Meadows, infants, et al., Appellants,

v.

KENTUCKY DEPARTMENT FOR HUMAN RESOURCES and Bureau for Social Services, Russellville, Kentucky, Appellees.

Court of Appeals of Kentucky.

March 4, 1977.

Department of Human Resources brought suit to involuntarily terminate parental rights to two children and parents petitioned for habeas corpus to regain child custody. The Logan Circuit Court, William G. Fuqua, J., ordered the petition for habeas corpus dismissed and terminated parental rights. Parents appealed. The Court of Appeals, White, J., held that the trial judge could properly deny the petition for habeas corpus where it was being used as a vehicle to regain custody of children not illegally detained or imprisoned; that the Department of Human Resources was not required to prove child abuse by the parents before parental rights could be involuntarily terminated; and that the trial judge did not err in directing the involuntary termination of parental rights.

Affirmed.

1. Habeas Corpus ⇐25.3

Trial judge properly denied petition for habeas corpus where it was being used as vehicle to regain custody of children not illegally detained or imprisoned.

2. Appeal and Error ⇐854(2)

Correct decision will not be disturbed on appeal merely because trial court gave wrong or insufficient reason therefore.

3. Infants ⇐16.3

Department of Human Resources was not required to prove child abuse by parents

EXHIBIT "B"

134A

before parental rights could be involuntarily terminated. KRS 199.011(4).

4. Infants ⇐16.8

Evidence, inter alia, that two children suffered injuries for which parents delayed or neglected to seek medical attention, was sufficient to sustain decision of trial court directing involuntary termination of parental rights. KRS 199.011(4).

5. Action ⇐57(1)

Trial court properly consolidated Department of Human Resources' action to involuntarily terminate parental rights with parents' petition for writ of habeas corpus to regain custody of children, in that when full-blown hearing was then held, all claims of immediate entitlement to custody by reason of irregularity in county juvenile court proceedings were merged into award of permanent entitlement to custody. KRS 208.020(7).

6. Infants ⇐16.4

In proceedings to terminate parental rights, it was not in best interests of child for trial court to permit litigants to delay adjudication of custody for more than three years.

James David Bryant, Harlin, Parker & Rudloff, Bowling Green, for appellants.

Lynn T. Mitchell, Office of the Counsel Dept. for Human Resources, Frankfort, for appellees.

Before WHITE, HOGGE and LESTER, JJ.

WHITE, Judge.

This case involves the custody of children born to Thomas and Judy Meadows. As a result of proceedings in Logan County Juvenile Court, all three children are presently in the temporary custody of the Kentucky Department for Human Resources. The Department of Human Resources contends that the Meadows children are needy, neglected, and dependent; and therefore filed an action to involuntarily terminate the Meadows' parental rights. The parents, in their petition for Habeas Corpus, contend they are entitled to the immediate custody of their children because of alleged procedural irregularities in the Juvenile Court proceedings.

The circuit court consolidated the two petitions and held a full-blown hearing on the matter. The court found that the three children were physically abused and mistreated while in the custody of their parents. The circuit court then ordered the petition for Habeas Corpus dismissed and terminated parental rights.

It appears from the evidence that on May 18, 1970, a hearing was held in the Logan County Juvenile Court and Thomas Meadows, Jr., and David Meadows were found to be dependent children and were ordered committed to the Department of Child Welfare (now Human Resources). There is medical testimony that David Meadows, an infant less than four months old, had multiple fractures, several of which were old, untreated fractures, in various stages of healing. There is evidence that Thomas Meadows, Jr., had suffered two untreated fractures prior to his commitment. No summons was issued for this hearing and no attorney was present for the Meadows. The evidence is conflicting as to whether or not the Meadows appeared voluntarily.

On May 26, 1972, a second hearing was held in the Logan County Juvenile Court in which Mary Ann Meadows, a third child of Thomas and Judy Meadows, was found to be a dependent child. The basis for this finding was that there were bruises on the back and buttocks of Mary Ann Meadows which in the examining physician's opinion, were caused by blows. She was then committed to the Department of Child Welfare (now Human Resources). A defective summons was issued before this hearing. The evidence is conflicting as to whether the Meadows were represented by counsel.

There is conflicting evidence as to whether Mr. Meadows agreed to the temporary commitment of all three children. The evidence also is conflicting as to the Meadows' ability and fitness to care for their children.

135A

Appellants now contend that the circuit court erred in 1) dismissing the petition for Habeas Corpus without reaching the merits; and 2) involuntarily terminating the parental rights of the Meadows because such action was contrary to the evidence and to the best interests of the children.

[1, 2] The trial court had dismissed the petition for Habeas Corpus on the grounds that there was a similar suit pending in the Federal District Court. We need not decide whether this was error for there is authority for the trial judge's decision. In *Moore v. Dawson*, Ky., 531 S.W.2d 259 (1975), it was held that a trial judge could properly deny a petition for habeas corpus where it was being used as a vehicle to regain custody of children not illegally detained or imprisoned. We adhere to the rule in this jurisdiction that a correct decision will not be disturbed on appeal merely because the trial court gave a wrong or insufficient reason therefore.

We come now to appellants' second contention that the findings and judgment of the trial court are contrary to the evidence and against the best interests of the children.

Appellant contends in his brief and in oral argument that the findings of fact of the trial court are insufficient. However, appellant has not preserved this error, if any, by a written request or motion pursuant to CR 52.04.

[3, 4] Appellant further contends that the Department for Human Resources must prove child abuse by the parents before parental rights can be involuntarily terminated. We do not accept this interpretation of the statute. Ky.Rev.Stat. § 199.011(4) defines a "neglected child" as any child "who is under such improper parental care and control or guardianship as to injure or endanger the morals, health or welfare of himself or others." We find the evidence amply demonstrated that the three children come within this definition, in that they suffered injuries for which the parents delayed or neglected to seek medical attention. We cannot say that the trial judge erred in directing the involuntary termination of parental rights.

[5] Furthermore, we feel that the trial court's consolidation of these two petitions was permissible under *Galloway v. Pruitt*, Ky., 469 S.W.2d 556 (1971). When, as here, a full-blown hearing is then held, all claims of immediate entitlement to custody by reason of irregularities in the county juvenile court proceedings are merged into an award, if any, of permanent entitlement to custody. Ky.Rev.Stat. § 208.020(7); *Allen v. Dept. for Human Resources*, Ky., 540 S.W.2d 597 (1976).

[6] In this kind of case, the court is also of the opinion that it is not in the best interests of the child for the trial court to permit the litigants to delay the adjudication of custody for more than three years. In both *Galloway v. Pruitt, supra*, and *Moore v. Dawson, supra*, it is stated that "The trial judges will accord priority to proceedings of this nature and will deal with the issues expeditiously, within the framework of due process."

The judgment is affirmed.

All concur.



COMMONWEALTH of Kentucky, DEPARTMENT OF TRANSPORTATION, BUREAU OF HIGHWAYS, Appellant,

v.

GREER BROTHERS AND YOUNG, INC., Appellee.

Court of Appeals of Kentucky.

March 4, 1977.

On appeal from order of the Franklin Circuit Court, Henry Meigs, J., the Court of Appeals dismissed. On motion for rehear-

12/5/78

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT BOWLING GREEN

Civil Action No. C-74-48 BG

THOMAS MEADOWS, JUDY
HENLEY MEADOWS and
ROBERT HARRISON, as next friend
for THOMAS MEADOWS, JR., AMON
DAVID MEADOWS and MARY ANN MEADOWS, PLAINTIFFS,

VS: ORDER FOR FINAL JUDGMENT

KENTUCKY DEPARTMENT FOR HUMAN
RESOURCES, ET AL., DEFENDANTS.

This matter coming on to be heard upon the motion of the Defendant, Dr. W. R. Byrne, to dismiss the Amended Complaint, and the Court being sufficiently advised; it is, therefore ordered and adjudged that the said motion to dismiss is sustained and the Amended Complaint be and the same is hereby dismissed with prejudice.

It is further ordered that the Clerk of the Court enter a final judgment upon the order sustaining the motion to dismiss the Amended Complaint, and the undersigned expressly determines there is no just reason for delay in the entry of final judgment on this order.

Enter this the ___ day of December, 1978.

Edward H. Johnstone
United States District Judge
for the Western District of Kentucky

137A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT BOWLING GREEN

Civil Action No. C-74-48 BG

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HENLEY MEADOWS and
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DAVID MEADOWS and MARY ANN MEADOWS, PLAINTIFFS,

VS: ORDER FOR FINAL JUDGMENT

KENTUCKY DEPARTMENT FOR HUMAN
RESOURCES, ET AL., DEFENDANTS.

This matter coming on to be heard upon the motion of the Defendants, C. V. Dodson, M. D., Jack B. Holt, M. D. and Logan County Hospital, to dismiss the Amended Complaint, and the Court being sufficiently advised; it is, therefore ordered and adjudged that the said motion to dismiss is sustained and the Amended Complaint be and the same is hereby dismissed with prejudice.

It is further ordered that the Clerk of the Court enter a final judgment upon the order sustaining the motion to dismiss the Amended Complaint, and the undersigned expressly determines there is no just reason for delay in the entry of final judgment on this order.

Enter this the ___ day of December, 1978.

Edward H. Johnstone
United States District Judge
for the Western District of Kentucky

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT BOWLING GREEN

Civil Action No. C-74-48 BG

THOMAS MEADOWS, JUDY HENLEY MEADOWS and ROBERT HARRISON, as next friend for THOMAS MEADOWS, JR., AMON DAVID MEADOWS and MARY ANN MEADOWS, PLAINTIFFS,

VS: MOTION TO DISMISS

KENTUCKY DEPARTMENT FOR HUMAN RESOURCES, ET AL., DEFENDANTS.

Comes the Defendant, Dr. W. R. Byrne, and herein as Burns and moves the Court to dismiss the Amended Complaint and as grounds therefore, he states as follows:

I.

The Amended Complaint seeks to add new plaintiffs, to-wit: Mary Ann Meadows, Amon David Meadows and Thomas Meadows, Jr. by next friend, Robert Harrison. Only Mr. Thomas Meadows and Mrs. Judy Henley Meadows were plaintiffs in the Complaint. KRS 387.300 (1) provides:

> "No person shall sue as next friend unless he reside in this stated and be free from disability, nor unless he file his own affidavit showing his right to sue as next friend, according to the provisions of this chapter."

Robert Harrison has failed to file the required affidavit. Said infants are now the wards of the Commonwealth of Kentucky; and their care, custody and control are vested in the Department for Child Welfare. Further, Plaintiffs did not obtain leave of Court to add these infants as additional plaintiffs.

II.

The Amended Complaint fails to state a claim upon which relief may be granted.

III.

Defendant further states that the cause of action, if any, occurred on or about May 18, 1970, and is barred under the provisions of KRS 413.140 (1) (c), to-wit:

> "The following actions shall be commenced within one (1) years after the cause of action accrued:
>
> (c) An action for malicious prosecution, conspiracy, arrest, seduction, criminal conversation or breach of promise of marriage." (Emphasis ours)

And under the provisions of KRS 413.140 (1) (e), to-wit:

> "The following actions shall be commenced within one (1) year after the cause of action accrued:
>
> (e) An action against a physician, surgeon, dentist or hospital licensed pursuant to KRS chapter 216 for negligence or malpractice."

IV.

That on or about the 16th day of May, 1970, he was called to the emergency room at the Logan County Hospital at the request of the Plaintiff, Judy Meadows, to examine the Plaintiff, that Plaintiff, Judy Meadows, signed the consent to treatment, that from the examination, X-rays and tests revealed a fracture of both bones of the forearm, a fracture of the leg, a fractured skull, all of which were consistent with the diagnoses of multiple fractu and battered child syndrome which he made. Copies of the diagnose is attached hereto and made part hereof, marked "F". That

140A

pursuant to KRS 199.335 (3) he made a report to the County Attorney of Logan County for the Department for Human Resources. He further states that KRS 199.335 (6) provides:

> "Anyone acting upon reasonable cause in the making of a report pursuant to this section, sections 530.060, 530.070, subsections (4) and (5) of KRS 208.020 and subsections (4), (5) and (6) of KRS 208.990 shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed. Any such participant shall have the same immunity with respect to participation in any such judicial proceeding resulting from such report."

He pleads and relies upon same as a bar against the allegations set out in the amended complaint.

V.

Plaintiffs filed suit in the Logan Circuit Court, Civil Action No. 5108: 62-A and 70-A styled James David Bryant as next friend for Thomas, Jr., David and Mary Ann Meadows, and Judy E. Meadows, Plaintiffs, v. Kentucky Department for Human Resources, Defendant, for a Petition for Habeas Corpus and attached the affidavit of Thomas Cleveland Meadows and Mrs. Judy Henley Meadows. A copy of said petition and affidavit are attached to this defendant's Memorandum marked as Exhibits "A" and "B". The testimony of Defendant, Dr. W. R. Byrne, is attached hereto as part hereof, marked "E".

The Findings of Fact, Conclusions of Law and Judgment denying relief and terminating the parental rights of Thomas and Judy H. Meadows are attached to this defendant's Memorandum marked "C" and "D".

The judgment was appealed to the Kentucky Court of Appeals, and the decision of the Logan Circuit Court was affirmed in an

opinion rendered March 4, 1977. Said opinion is published in 545 S.W. 2nd 165, a copy of which is attached hereto as part hereof, marked "B". The matters set out in the amended complaint filed herein were fully adjudicated in said case as to the Defendant, Dr. W. R. Byrne.

Respectfully submitted,

DONAN & VICK

By: _____

Wm. P. Donan, Attorney for
Defendant, Dr. W. R. Byrne

NOTICE

Notice is hereby given that the foregoing Motion to Dismiss will be brought on for hearing in the United States District Court in Bowling Green, Kentucky, at the convenience of the Court.

Wm. P. Donan

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Motion to Dismiss was this day mailed to Hon. Roland M. Lowell, Buck, Baker and Baker, 618 United American Bank Building, Nashville, Tennessee 37219; Hon. Robert E. Harrison, P. O. Box 522, Scottsville, Kentucky 42164, Attorneys for Plaintiffs; Hon. Fred Greene, Attorney for Defendants, Brown, Riley, Wilson and Kisselbaugh, P. O. Box 306, Russellville, Kentucky, 42276; Hon. Joe S. Wheeler, Jr., West Fourth Street, Clark Building, Russellville, Kentucky 42276, Attorney for Defendants, Smart, Norris, Gilliam, Wood and Gamble, and Hon. Lynn T. Mitchell, 275 East Main Street, 4 West, Frankfort, Kentucky 40601, Attorney for Kentucky Department for Human Resources, this the 20 day of December, 1978.

Wm. P. Donan

dence met the requirements of proof of such claimed consequential damages, there would have been no legal liability under the facts of this case. . . .' That conclusion is in accordance with what we consider to be correct legal premise.

[2] The judgment, which was less than Allstate had offered to settle for, against the appellee entered in Kenton Circuit Court was satisfied by appellee with interest. This is the amount to which appellants are entitled under *Judd* if they can show a breach.

[3] We do not feel that the decision in *Judd* is contrary to the decision in *Service Casualty v. Marcum*, Ky., 386 S.W.2d 474 (1965), or in *Motors Insurance Corporation v. Howard*, Ky., 291 S.W.2d 522 (1956). These cases indicate that under certain circumstances an insurer may be liable for damages to its insured for unreasonable delay in settling a pending claim. It is the opinion of this court that "loss of use" of a vehicle, as was involved in *Howard*, is not to be considered consequential or punitive damages, but more akin to a contractual obligation under the insurance policy. However, should "loss of use" be construed as a consequential damage, then appellants are still not entitled to their alleged damages since this court can find no evidence of unreasonable delay.

[4] In addition, whether the action brought by appellants is characterized as breach of contract, "bad faith" or unreasonable delay, the trial court was correct in granting a summary judgment. Examining the pleadings and affidavit and construing all inferences in favor of appellants leads this court to only one conclusion—there is no genuine issue of fact and appellee was entitled to a judgment as a matter of law.

Judgment affirmed.

All concur.

James David BRYANT, as next friend for Thomas, Jr., David and Mary Ann Meadows, infants, et al., Appellants,

v.

KENTUCKY DEPARTMENT FOR HUMAN RESOURCES and Bureau for Social Services, Russellville, Kentucky, Appellees.

Court of Appeals of Kentucky.

March 4, 1977.

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Affirmed.

1. Habeas Corpus ⇐25.3

Trial judge properly denied petition for habeas corpus where it was being used as vehicle to regain custody of children not illegally detained or imprisoned.

2. Appeal and Error ⇐854(2)

Correct decision will not be disturbed on appeal merely because trial court gave wrong or insufficient reason therefore.

3. Infants ⇐16.3

Department of Human Resources was not required to prove child abuse by parents

EXHIBIT "B"

144A

before parental rights could be involuntarily terminated. KRS 199.011(4).

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Evidence, inter alia, that two children suffered injuries for which parents delayed or neglected to seek medical attention, was sufficient to sustain decision of trial court directing involuntary termination of parental rights. KRS 199.011(4).

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Trial court properly consolidated Department of Human Resources' action to involuntarily terminate parental rights with parent's petition for writ of habeas corpus to regain custody of children, in that when full-blown hearing was then held, all claims of immediate entitlement to custody by reason of irregularity in county juvenile court proceedings were merged into award of permanent entitlement to custody. KRS 208.020(7).

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In proceedings to terminate parental rights, it was not in best interests of child for trial court to permit litigants to delay adjudication of custody for more than three years.

James David Bryant, Harlin, Parker & Rudloff, Bowling Green, for appellants.

Lynn T. Mitchell, Office of the Counsel Dept. for Human Resources, Frankfort, for appellees.

Before WHITE, HOGGE and LESTER, JJ.

WHITE, Judge.

This case involves the custody of children born to Thomas and Judy Meadows. As a result of proceedings in Logan County Juvenile Court, all three children are presently in the temporary custody of the Kentucky Department for Human Resources. The Department of Human Resources contends that the Meadows children are needy, neglected, and dependent; and therefore filed an action to involuntarily terminate the Meadows' parental rights. The parents, in their petition for Habeas Corpus, contend they are entitled to the immediate custody of their children because of alleged procedural irregularities in the Juvenile Court proceedings.

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Appellants now contend that the circuit court erred in 1) dismissing the petition for Habeas Corpus without reaching the merits; and 2) involuntarily terminating the parental rights of the Meadows because such action was contrary to the evidence and to the best interests of the children.

[1, 2] The trial court had dismissed the petition for Habeas Corpus on the grounds that there was a similar suit pending in the Federal District Court. We need not decide whether this was error for there is authority for the trial judge's decision. In *Moore v. Dawson*, Ky., 531 S.W.2d 259 (1975), it was held that a trial judge could properly deny a petition for habeas corpus where it was being used as a vehicle to regain custody of children not illegally detained or imprisoned. We adhere to the rule in this jurisdiction that a correct decision will not be disturbed on appeal merely because the trial court gave a wrong or insufficient reason therefore.

We come now to appellants' second contention that the findings and judgment of the trial court are contrary to the evidence and against the best interests of the children.

Appellant contends in his brief and in oral argument that the findings of fact of the trial court are insufficient. However, appellant has not preserved this error, if any, by a written request or motion pursuant to CR 52.04.

[3, 4] Appellant further contends that the Department for Human Resources must prove child abuse by the parents before parental rights can be involuntarily terminated. We do not accept this interpretation of the statute. Ky.Rev.Stat. § 199.011(4) defines a "neglected child" as any child "who is under such improper parental care and control or guardianship as to injure or endanger the morals, health or welfare of himself or others." We find the evidence amply demonstrated that the three children come within this definition, in that they suffered injuries for which the parents delayed or neglected to seek medical attention. We cannot say that the trial judge erred in directing the involuntary termination of parental rights.

[5] Furthermore, we feel that the trial court's consolidation of these two petitions was permissible under *Galloway v. Pruitt*, Ky., 469 S.W.2d 556 (1971). When, as here, a full-blown hearing is then held, all claims of immediate entitlement to custody by reason of irregularities in the county juvenile court proceedings are merged into an award, if any, of permanent entitlement to custody. Ky.Rev.Stat. § 208.020(7); *Allen v. Dept. for Human Resources*, Ky., 540 S.W.2d 597 (1976).

[6] In this kind of case, the court is also of the opinion that it is not in the best interests of the child for the trial court to permit the litigants to delay the adjudication of custody for more than three years. In both *Galloway v. Pruitt, supra*, and *Moore v. Dawson, supra*, it is stated that "The trial judges will accord priority to proceedings of this nature and will deal with the issues expeditiously, within the framework of due process."

The judgment is affirmed.

All concur.

WEST KEY NUMBER SYSTEM

COMMONWEALTH of Kentucky, DEPARTMENT OF TRANSPORTATION, BUREAU OF HIGHWAYS, Appellant,

v.

GREER BROTHERS AND YOUNG, INC., Appellee.

Court of Appeals of Kentucky.

March 4, 1977.

On appeal from order of the Franklin Circuit Court, Henry Meigs, J., the Court of Appeals dismissed. On motion for rehear-

146A

DEPOSITION OF WALTER R. BYRNE, M.D.

After first being duly sworn, Walter Byrne, M. D., testified as follows:

DIRECT EXAMINATION BY MR. MITCHELL:

Q. 1 State your name, - please.

A. Doctor Walter R. Byrne, M. D. Walter R. Byrne, M. D.

Q. 2 And where do you live, Dr. Byrne?

A. Russellville, Kentucky.

Q. 3 Do you practice medicine in Russellville?

A. Russell....yes.

Q. 4 Uh, uh, will you tell the court uh, what school or schools you've attended and what degrees, specialities you received?

A. I have a B. S. degree from the University of Kentucky and an M. D. degree from the University of Louisville.

Q. 5 Alright, and approximately how long have you been practicing medicine in....

A. I graduated from the University of Louisville in 1940. I interned at Raleigh, The Rex Hospital in Raleigh, North Carolina. I did post graduate work at New York Poly Clinic Hospital in New York City.

REPORTER: I'm sorry. I didn't catch that. New York....

New York Poly Clinic Hospital. P o l y - c l i n i c.

And Cook County Hospital in Chicago, Illinois.

Q. 6 And after that you went into general practice?

A. I went into the service, Inbetween that after my internship and The Rex Hospital at Raleigh. I went into the service, into the Army and - was stationed in Washington, D. C. for 18 months. Then I went to Flight Training School at Randolph Field and finished my service in the Air Force. I went in as a first Lieutenant and came out a Lieutenant Colonel.

Q. 7 And, then, then did you go into general practice?

A. Yes.

Q. 8 In, in Russellville?

A. In Russellville, Kentucky.

Q. 9 Would that be about, what, 1946?

A. 47.

Q. 10 Alright, do you practice

Yes.

147A

Exhibit "E"

Q. 11 Since then? Directing your time, your attention to sometime in 1970 perhaps uh, May, did you have an occasion to examine the Meadows children? Especially David Meadows?

A. Yes. I saw Amman David Meadows at the - emergency room at the Logan County Hospital.

Q. 12 And do you have the date?

A. On the 16th of May, 1970.

Q. 13 Uh, what were the conditions under which you say Amman, doctor?

A. The - first history I got from the mother when I say the child at the emergency room was that the baby had fallen off a bed and hit the back of head and face.

Q. 14 Did, did the mother bring, the mother and father bring the child in to the....

A. The mother brought the....

Q. 15 Child to the hospital?

A. Yes, the father was gone. I did not see him.

Q. 16 Okay, and what, were you on duty, special duty or were you called or....

A. I was called to see the child at approximately 2:30, 2:15 in the afternoon.

Q. 17 Okay, and from your examination, what did you determine?

A. Well we got x-rays of the child.

Q. 18 Did you order x-rays?

A. Yes

Q. 19 Made of the child?

A. Yes

Q. 20 That afternoon?

A. Yea.

Q. 21 And uh, were those x-rays referred to Dr. Spurgeon?

A. Yes.

Q. 22 For reading? Did you

A. Well, now, they weren't referred to Dr. Spurgeon. Dr. Spurgeon is a radiologist at the hospital and reads all the x-rays.

Q. 23 I see. Uh, did you read the x-rays?

A. Yes.

Q. 24 Could you tell the court what you found from the reading of the x-rays in regard to the injuries?

Well, first, the child was - there was noted swelling of the

right leg. In addition to the injuries about the head. X-ray examination will show a fracture of - of the left arm involving both bones. However, it didn't appear to be a new fracture. The swelling was noted in the right leg as a result of the x-rays revealing an old fracture non-treated with a good callus formation. Generalized x-ray examination of the skull and numerous other bones showed fractures throughout the body, which is typical of a battered child. That's all.

Q. 25 Now, Doctor, uh, before you took the x-rays, could you -was there, was there an appearance of injury to the child?

A. Yes.

Q. Uh, tell, tell the court the nature of, of that appearance of the child.

A. Well the child was injured about the head, uh, some abrasions contusions, and there was pain in the arm and then swelling and pain in the leg. The mother was further questioned and this time, she gave the story completely, and gave a vague story about a swinging bridge having broken and that's the reason the baby fell. The mother, I asked the mother if she was holding the baby and she said she was. She wasn't injured.

MR. LOWELL: Why, why did uh,

Q. 26 Did, did, now did you examine the mother at that time?

A. No.

Q. 27 You didn't. There was, was Amman David the only child you examined?

A. That's right.

Q. 28 Uh, had you ever seen this child before?

A. No. Not to my Knowledge.

Q. 29 Okay. Now Doctor, from your examination both of, uh, physical examination of the injuries, and uh, and examination of the x-rays would, would uh, these x-rays, would these, would these injuries ordinarily caused by small or great force?

A. Great force.

Q. 30 Uh, in your opinion, would a, would a, would a fall uh, uh from a, from relatively short distance of 5 to 10 feet uh, be likely to cause this type injury?

A. This is not any injury. This is multiple injuries. The fractures found in the x-ray on that day were, the child was only 3 months old, but they were in various stages of healing which is, occurred at dates unknown to me prior to the date I saw the child.

Q. 31 Is it your opinion that these, that these injuries occurred at different times?

A. Yes.

Q. 32 From your observation of the....

A. Yes.

Q. 33 Of the injuries themselves and from the observation of the x-rays?

A. That's rights.

Q. 34 And it's your opinion that they could not have uh, is it your opinion that they could or could not have occurred at the same time?

A. They could not have occurred at the same time.

Q. 35 Now, for instance, the head injuries, could the, could the injuries of the head of occurred at the, at one fall, blow, or so forth? If you remember.

A. Uh, the examination of the skull - showed multiple fractures involving the occipital region and some involving the parietal region to the skull. The - there was widening of the suture which indicated to, to uh me that there was some intracranial pressure. This would not have happened in a matter of an hour or so which, uh, was stated in the history.

Q. 36 Okay. Doctor I may have asked you this before but, uh, should these injuries have been obvious to someone caring for the child?

A. Oh, yes. They would have to be.

Q. 37 Very noticeable, right?

A. Well, this child would be in considerable pain. You can't have a fracture in any one child or adult without having pain involved in the fracture.

Q. 38 Would this 3 months old child express this pain or make a noise?

A. It should, by crying. That would be the only way a three months old child could express....

Q. 39 Was the swelling of the leg and the arm noticeable?

A. Yes.

Q. 40 Was there any, anything noticeable uh, which would uh, tip off that the head was injured. That would make known that the....

A. Well, the bruising and contusions and maybe all of the x-rays....

Q. 41 Right. Okay, Doctor, did you notify any, anyone concerning this matter?

A. Yes. I filed the state form, which is provided in cases where - there is suspicion of a battered child syndrome.

Q. 42 You made, you made the so called abuse report.

A. I, I made an abuse report.

Q. 43 Okay,

A. Which was turned in to the, I believe the county attorney.

Q. 44 Okay, I think that's all the questions I have.

CROSS EXAMINATION BY MR. LOWELL:

Q. 1 Dr. Byrnes, uh, did you personally examine David Amman...?

A. Yes. I did.

Q. 2 At that time? Did you ever have occasion to examine him prior to that?

A. No.

Q. 3 Had he ever been treated in your office prior to that?

A. No. Not to my knowledge.

Q. 4 You have stated that there were two injuries that were obvious the leg and the arm.

A. And the head.

Q. 5 And the head. How many, lets refer first of all, to the, uh, head injury. How many injuries of this type have you, seen in your practice?

A. I have never seen a child at the age of 3 months that has been with so many obvious and multiple fractures.

Q. 6 Now, when you say obvious, do you mean to the....

A. To the x-ray.

Q. 7 To the x-ray. Were they obvious at the time you examined the child?

A. They were obvious enough, no. The uh, arm fracture was obvious and the examination of the leg uh, was an obvious defect.

Q. 8 Would you describe?

A. It would be one.

Q. 9 Would you describe the defects?

A. Swelling, hardness, and uh, the presence of a callus formation.

Q. 10 Would uh, in your opinion, what caused the swelling at that time?

A. The old fracture.

Q. 11 Is it possible that swelling was caused by the more recent, a more recent injury to that leg?

A. No. And, and, certainly a recent injury uh there would be no callus formation.

Q. 12 Had, have you ever had occasion to examine this child uh, for anytime subsequent to the examination which was in May of 1970?

A. No. On the 19th of May when I discharged the patient from the

hospital, the patient was picked up by a representative of the Child Welfare Department.

Q. 13 What was....

A. And I am not treating the patient professionally since that time.

Q. 14 So the last date of treatment would be May 19.

A. May 19th.

Q. 15 And that was a discharge.

A. That was discharge, from the hospital.

Q. 16 That would be Logan County Hospital?

A. Logan County Hospital.

Q. 17 What was his condition at that time?

A. Uh, the patient was still crying. Off and on.

Q.18 No, I am talking about, Number 1, what were the obvious uh, and physical noticeable symptoms on the child? Would you be able to state those or would that....

A. No.

Q. 19 Okay.

A. The obvious - findings I can state, but for me to state how the child felt, I couldn't possibly.

Q. 20 No, I'm not talking how the child felt, uh, were there any uh, abrasions left on the child? Uh, cuts?

A. Well, uh, after a period of three days there would certainly be some abrasions left.

Q. 21 That's what I'm asking. Okay, where were those abrasions?

A. About the head and face, primarily.

Q. 22 Were there any other abrasions on any of the other members of the child's body?

A. There were contusions, uh, uh there was a bruised area on the arm at the site of the fracture.

Q. 23 Okay. How about the leg?

A. Uh, the uh, that was old. No evidence stands on the skin, there was a swelling and uh, the typical callus formation which is a fuse formed swelling around the fracture site. That could be felt through the skin.

Q. 24 Okay, could it be felt through the skin, could it be noticed? Without feeling the skin?

A. There was bowing of the leg which was not normal.

Q. 25 Were there, were there any visible signs of the bowing at the, at around this area?

A. What other sign would you like to have?

Q. 26 I am asking you what signs there were, there any puncture wounds, any abrasions, any uh, visible uh, bowing....

A. Yes, there was visible bowing of the leg.

Q. 27 Well, I mean, like when you get hit, you'll have a knot rise on, or anything like that?

A. No, nothing like that.

Q. 28 Okay. So there were no visible signs of those nature in the area at or around the fracture.

A. Well, uh, the fractured arm ,there was some contusions, there was marked swelling of scalp, of the scalp and the scalp area as a result of the fracture of the skull.

Q. 29 Uh, anything on the other leg that was not.

A. No.

Q. 30 Any other marks of noticeable signs in the uh

A. No.

Q. 31 In the chest or abdomen, back?

A. No.

Q. 32 Have you - had occasion to confer with any other doctors in regard to this situation other than Dr. Spurgeon?

A. No.

Q. 33 In your uh, ask first, did you confer with Dr. Spurgeon?

A. Yes.

Q. 34 And was that conference by uh, verbal conference?

A. Yes.

Q. 35 Was there, verbal conference?

A. Yes.

Q. 36 And at that time, what did you in general terms, indicate to Dr. Spurgeon?

A. That uh, the history did not define the incident in any way, shape, nor form and the uh, multiple fractures at different stages of healing.

Q. 37 Did you uh, request that he uh, not only head x-rays taken or did you - was that request made in some one else?

A. I requested the x-rays be made.

Q. 38 Did you request that of Dr. Spurgeon or....

A. Well, no I uh, the x-ray department at the hospital.

Q. 39 And uh, in your conference with Dr. Spurgeon did you give him any of these background on cases?

A. As much as I could gather.

Q. 40 Did you relate uh, or discuss any of the background or case history with Dr. Spurgeon?

A. Well, it was very, I knew nothing of any background. The case history from the time the child came into the emergency room was discussed.

Q. 41 At that time did you give him your prognosis or your uh, opinion of the cause or cause the relationship of the injury?

A. I told Dr. Spurgeon that I had a child in the emergency room who - had multiple fractures. And that apparently, as far as I was concerned, they were of different ages, the fractures, and that I asked his opinion. as a radiologist.

Q. 42 Did he give you any uh, opinions at that time?

A. He did.

Q. 43 What were those?

A. Uh, that would be heresay. Now I believe he has already given his testimony.

Q. 44 Well, I am asking you, at, at that point in time when you first conferred and asked him for x-rays, you gave him the case history and the background of whatever you knew about the case. Did he give you any opinions at that point of time?

A. Yes, he gave me an x-ray report. Which is typed out.

Q. 45 You got a problem there, I asking about the point in time you requested the x-ray reports. He wouldn't have been able to give you an opinion from those reports until he made the x-rays, looked at them, and then came back.

A. Uh, he didn't give me any opinion at all until he looked at the x-rays and came back.

Q. 46 Okay.

A. There would be no reason for him to.

Q. 47 That's what, I, I was trying to bring that out, I thought that possibly it was a case where you didn't understand my question. Uh, have you had, let me ask it this way, how much experience or training or whatever have you had in radiology? And I'm asking now about professional background which we maybe haven't gone into before?

A. I, I have never had any - other than my medical school training. I have never had any special training in radiology.

Q. 48 Do you regularly use uh, Doctor, uh, Dr. Spurgeon or is it Sturgeon or Sturgeon?

A. Spurgeon.

Q. 48 Dr. Spurgeon in your interpreting x-rays?

A. Yes.

Q. 51 Do you ever use any other doctor in, in addition to....

A. Yes.

Q. 51 And who would those doctors be?

A. The - doctor Spurgeon had two associates with him and I'm not sure that, whether they were there in 70 or not but they have been there since. And we have had radiologist at the Logan County Hospital prior to Dr. Dyer, Spurgeon.

Q. 52 Do you ever go on anywhere besides Logan County Hospital?

A. I'm not on the staff of any other hospital.

Q. 53 So in your....

A. I go to other hospitals.

Q. 54 In your practice you use the radiologist at Logan County Hospital.

A. I do.

Q. 55 Okay. In your opinion, could the injury to the head have been caused by a fall? Number 1, a first fall from a height of say 5 or 6 feet elevation and secondly, a second fall from maybe the same height with additional pressure say, the weight of an individual coming on top of that. So you'd have two instances, would that have been the possible way...

A. That would have been possible.

Q. 56 Doctor, in your practice, have you had uh, many cases where you diagnosed that the injuries were a battered child, or neglected child or child abuse?

A. To my knowledge this is the only obvious battled, battered child syndrome that I have reported, I know its the only one I have reported. I have had suspicions but not where there was enough physical findings to substantiate it, in my own mind.

Q. 57 Could the injury to the leg, in your opinion, - have been caused by twisting - of the leg - - rather than an impact?

A. It is possible.

Q. 58 Doctor, were you acquainted with uh, Mrs. Meadows in a capacity either outside your office or uh, before she came in for this treatment

A. No.

Q. 59 Of the child? You were not acquainted ....

Not to my knowledge. It is possible I may have seen her in my office

on other occasions but I don't, I don't recall any and if it was, it was nothing related to the child.

Q. 60 UH, did you know her when she came in your office?

A. She didn't come to my office, to my knowledge.

Q. 61 I mean, strike that. Make it the emergency room. Did, did you know her name....

A. No

Q. 62 Or know her individually?

A. No

Q. 63 Okay, that's what I was getting at.

A. You mean, uh, course I was given a name when I went into the emergency room.

Q. 64 I mean other

A. I mean, I eh, I mean if I would have met her in the hall, would I recognize her, no.

Q. 65 Right, that's my question. Thank you. Uh, had you ever had any reports on her? That is....

A. No. Not to my knowledge.

Q. 66 Okay. Do you remember uh, and in the testimony that you have given now, is there, do you remember pretty fully what the details were at, at the time in the emergency room? I mean, without, well using your record to refresh your memory, is the testimony you have given uh, pretty much complete and full?

A. I think so.

Q. 67 I guess I've asked you this too, if you had, if you had ever uh, treated either of the Meadows or the children, would uh, would you have been uh, able to recall that at the time you treated her in the emergency room? Or been able to recall it now?

A. Well I certainly don't recall it now. Now, I can't tell you whether I....

Q. 68 I guess I'm inquiring in your practice. Do you know....

A. Yes.

Q. 69 All of your patients or don't you?

A. Oh, well I know, I naturally see some patients once or twice while another doctor is out of town, but if a patient were to come in as another doctor's patient, because he is out of town, has a day off, then I'll see him maybe one time in the emergency room. I mean in my office, which obviously, I can't remember.

Q. 70 Was, in your opinion, was there any evidence that the injury to the arm was caused other than a uh, - a fall, or a blow to uh, cause the fracture....

A. The fracture of the arm, on the x-ray report, was at least a week old from the healing callus formation.

Q. 71 I believe my, my question was, was in, in your opinion, was that caused by a blow or a fall or something? It was not caused by say a twisting movement or something of that nature? Is that, could you clarify that?

A. Well, a fracture can be, can happen in any number of reasons. X-ray examination does not tag whether it was a twisting.

Q. 72 Okay, so your uh, opinion then is based on the x-ray report other than some visible signs of, on the arm, to the arm.

A. All fractures are--.

Q. 73 Have you ever had occasion to examine uh, Tommy Meadows? Thomas Jr.?

A. No.

Q. 74 How about Mary Ann Meadows:

A. No. Not to my knowledge.

Q. 75 Were you involved in any of the uh, deliveries to any of these children?

A. No. Not to my knowledge.

Q. 76 No treatment of childhood diseases or anything?

A. Not that I can recall.

Q. 77 How about parents? The same?

A. The same.

Q. 78 I believe that's all.

REDIRECT EXAMINATION BY MR. MITCHELL:

Q. 1 Doctor, just a couple of quick questions and we will let you go.

A. Alright.

Q. 2 Uh, as to the reading of x-rays, although you are not a radiologist, but speciality through your training and experience, are you able to read x-rays?

A. Yes.

Q. 3 Competently. Alright. Now, if uh, Mrs. Meadows and the children had been to your office previously, would you have a record on that?

A. Yes, but I did not check before I came down to see.

CERTIFICATION

I certify that the foregoing is a true and correct transcription of the testimony recorded by me on Thursday, December 6, 1973 in the office of the Department for Human Resources, 288 N. Main Street, Russellville, Kentucky.

Notary Public, State at Large, KY

My commission expires December 11, 1974.

ADMISSION RECORD
LOGAN COUNTY HOSPITAL
RUSSELLVILLE, KENTUCKY

HOSP. NO. 4766

ROOM NO. 236

NAME: Meadows, Ammon David

MAILING ADDRESS: Route # 2
Russellville,Ky.42276

DATE OF BIRTH	AGE	SEX	RACE	CIVIL STATUS	RELIGION
01/22/70	3mos.	M	W	S	---

COUNTY OF RESIDENCE: Logan Co.,Ky.

HOME PHONE: neighbor Samuel Young

EMPLOYER ADDRESS (PATIENT): Infant

PARENT: Judy & Thomas-parents

EMPLOYER ADDRESS: Thomas-Painter-self

NOTIFY IN EMERGENCY NAME	ADDRESS	PHONE	HOW RELATED
Judy Meadows	Rt-2 Russellville,Ky.	same	Mother

BLOOD CR CARD	EXPIRATION DATE	PREV. ADM. DATE	UNDER WHAT NAME	INFORMANT	BROUGHT TO HOSP. BY
--	---	none	--	Mother	Mother

CERT #	GROUP #	PLAN	SERVICE	ADMITTED BY
--	--	--	Medical	Wanda Cooper

OTHER INS ? --- CARD OR POLICY ?
MEDICAL AID ? --- CARD

DATE OF ADMITTANCE	TIME	DATE OF DISCHARGE	TIME
05/16/70	2:35pm	5-19-70	4-15

ADMITTING DOCTOR	SURGEON	NO. OF DAYS STAY	ADMITTING DIAGNOSIS
Dr. W.R.Byrne		3	

FINAL DIAGNOSIS

Battered child syndrome. — 996.8 ✓

Multiple fractures.
- 819 ✓
- 823 ✓
- 804 ✓

SECONDARY DIAGNOSIS OR COMPLICATIONS:

OPERATION:

CONSULTATION: Transferred to Childrens Hospital Louisville - under care of child welfare dept.

RESULTS: ( ) RECOVERED ( ) IMPROVED ( ) NOT IMPROVED ( ) NOT TREATED ( ) DIAGNOSIS ONLY ( ) DIED

CAUSE OF DEATH _____ AUTOPSY: ( )

SIGNED _____ M.D. ATTENDING PHYSICIAN

Exhibit [illegible]

159A

X-RAY REPORT

Family Name	First Name	Middle Name	Room No.	Hosp. No.
Meadows	Ammon		236 A	47664

☐ Treatment ☐ Examination	Name—Part	Sex	Age—Years	X-Ray No.
of	Chest & abdomen, left arm, right leg & skull	M x	3mo~~23~~6	19541

Attending Physician	Date	O.P.D. No.
Dr. W.R. Byrne	5-16-70	

Report: Chest & abdomen:

Examination of the chest and abdomen fails to reveal any fractures involving the rib cage, clavicle or femurs or pelvis. I do not see any fractures involving the lumbar spine. There is demonstrated a fracture involving the head of the left humerus just below the epiphyseal plate. There is another fracture involving the distal end of the right humerus just above the condylar processes of the humerus. There is some callus formation about the fracture of the left upper humerus.

Left arm:

On the left arm there is fracture of both bones of the forearm in mid portion. There is evidence of considerable over riding of the fracture fragments. There is considerable loss of inner osseous space especially produced by the radius. There is evidence of callus formation indicating that the fracture is at least a week old.

Right leg:

Examination of the right tibia shows a bowing fracture of the mid shaft of the tibia with considerable periosteal reaction and early callus formation with almost complete union of this fracture.

Skull:

Examination of the skull reveals what appears to be multiple fractures involving the occipital area and some involving the parietal area of the skull. There is considerable widening of at the site of fractures as well as the suture lines are widened indicating the presence of intercranial pressure. On the occipital view there is also fracture extending out to the foramen magnum of the skull.

M.E. Spurgeon, M.D. /bv

Signature of Roentgenologist

EXHIBIT "F"

160A

Form 745 Briggs Printing Des Moines, Iowa 50311

X-RAY RE

12/1/78

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT BOWLING GREEN
Civil Action File No. C 74-48 BG

THOMAS MEADOWS, JUDY
HENLEY MEADOWS and
ROBERT HARRISON, as next
friend for THOMAS MEADOWS, JR.,
AMON DAVID MEADOWS and
MARY ANN MEADOWS, PLAINTIFFS

VS. MOTION TO DISMISS

KENTUCKY DEPARTMENT FOR
HUMAN RESOURCES, ET AL DEFENDANTS

Come the Defendants, Judge Robert R. Brown, Jesse L. Riley, Jr., Sheriff Morris Kisselbaugh and Robert Wilson and move this Court to dismiss the Amended Complaint filed berein against the said Defendants, on the following grounds:

1. Plaintiffs, Thomas Meadows, Jr., Amon David Meadows and Mary Ann Meadows, by Next of Friend, Robert Harrison, are improperly before the Court and should be dismissed;

2. Plaintiffs' claims fail to state a cause of action against Judge Robert R. Brown, Jesse L. Riley, Jr., Sheriff Morris Kisselbaugh and Robert Wilson;

3. Plaintiffs' claims are barred by Res Judication and/or collateral estoppel;

4. Plaintiffs' claims are barred by the Statute of Limitations.

Fred Greene
P.O. Box 306
Russellville, KY 42276
ATTORNEY FOR DEFENDANTS, ROBERT R. BROWN, JESSE L. RILEY, JR., SHERIFF MORRIS KISSELBAUGH and ROBERT WILSON

NOTICE

Notice is hereby given that the foregoing Motion will be brought before a hearing before the Honorable Judge of the United States District Court for the Western District of Kentucky at Bowling Green, Kentucky, at such time as shall meet with Court's convenience.

Fred Greene
ATTORNEY FOR DEFENDANTS,
ROBERT R. BROWN, JESSE L. RILEY, JR.,
SHERIFF MORRIS KISSELBAUGH and
ROBERT WILSON

This is to certify that a copy of the foregoing Motion to Dismiss and Notice was this day mailed to the following, this being December ____, 1978:

Hon. Roland M. Lowell
618 United American Bank Bldg.
Nashville, TN 37219
Attorney for Plaintiffs

Hon. Robert E. Harrison
P.O. Box 522
Scottsville, KY 42164
Attorney for Plaintiffs

Hon. William P. Donan
110 East Court Square
Greenville, KY 42345
Attorney for Defendants Holt and Dodson

Hon. Joe S. Wheeler, Jr.
West Fourth Street
Clark Bldg.
Russellville, KY 42276
Attorney for Defendants, Smart, Norris, Gilliam, Wood and Gamble

3-30-79

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT BOWLING GREEN

THOMAS MEADOWS AND
JUDY MEADOWS,
PLAINTIFFS,

v.

CIVIL ACTION
NO. 74-48-B

KENTUCKY DEPARTMENT FOR
HUMAN RESOURCES, et al.,
DEFENDANTS.

MEMORANDUM OPINION

This is a civil rights action brought pursuant to 42 U.S.C. §§1983, 1985, and 1986. The thrust of the complaint has three parts: first, that the defendants improperly caused plaintiffs' three children to be taken by the state; second, that the defendants illegally caused Judy Meadows to undergo a sterilization operation; and third, that the defendants illegally caused Judy Meadows to be committed to a mental hospital. The original complaint (which proceeded under §1983 alone) was filed on August 18, 1974. After certain dismissals, an amended complaint was filed on September 29, 1978. This amended complaint added claims under §§1985 and 1986, as well as adding new plaintiffs and new defendants. Various motions to dismiss have been made by the defendants.

The relevant facts in this case begin in May 1970, when Judy Meadows and her two young sons were treated at Logan County Hospital for injuries. Shortly thereafter, proceedings were held in Logan County Juvenile Court whereby temporary custody of the sons was granted to the Kentucky Department

of Human Resources. Plaintiffs allege that they were deceitfully induced to appear by the deputies Kisselbaugh and Wilson and by the social workers Smart and Gilliam. Further they allege that the juvenile court proceedings conducted by Judge Brown and County Attorney Riley were constitutionally unsound.

In July 1971, while in the Logan County Hospital after the birth of her daughter, Judy Meadows underwent a sterilization operation performed by Dr. Holt on referral by Dr. Dodson. Plaintiffs insist that their consent to the operation was fraudulently induced by the promise of the social workers Smart and Wood to return the two sons to plaintiffs' custody. The sons were never returned.

In May 1972, proceedings were again held in juvenile court whereby temporary custody of the daughter was granted to the Kentucky Department of Human Resources. Plaintiffs make the same allegations of deceit and irregularity as in the first proceeding. Further, Judy Meadows alleges that she was illegally committed, in the same proceeding, to Western State Mental Hospital. She was discharged two months later. We note that the complaint alleges that during all relevant periods, the plaintiff Judy Meadows was incompetent.

During the pendency of this action, on June 18, 1976, the Logan Circuit Court terminated the parental rights of the plaintiffs to their three children. This decision came after a full hearing, and there was no allegation of procedural infirmity in those proceedings. The decision was appealed, with the result that the Logan Circuit Court action was affirmed in Bryant v. Kentucky Dept. of Human Resources, 548 S.W.2d 165 (Ky.App. 1977).

Before examining the motions to dismiss various claims and defendants, it may be helpful to indicate what is not before the Court. There is an argument raised by the defendants that this action is merely an attempt to re-litigate the decision of the Kentucky Court of Appeals in Bryant, supra, and that it should be barred by principles of res judicata or collateral estoppel. We note, however, that that appeal decided only the validity of the final termination proceeding. The Kentucky court alluded to certain irregularities in the two juvenile court proceedings for temporary custody, but decided that they were merged into, or mooted by, the valid final proceeding.

Since there is no allegation here of constitutional infirmity in the final proceeding, this case cannot consider the question of final custody. But the Kentucky decision that the juvenile court irregularities were moot for purposes of final custody does not mean that some deprivation of constitutionally protected rights were not occasioned, if only temporarily. Carson v. Flood, 411 F.Supp. 645 (E.D.Va. 1976). This action will proceed to decide whether such a deprivation occurred and who shall be liable for it. Downs v. Sawtelle, 574 F.2d 1 (1st Cir. 1978); Duchesne v. Sugarman, 566 F.2d 817 (2d Cir. 1977).

The defendants first object to claims, raised in the amended complaint, on behalf of the three minor children by the attorney for plaintiffs as next friend. Defendants point out that the relevant Kentucky statute, KRS 387.300(1), requires from one suing as next friend an affidavit showing his right to sue. The care, custody, and control of these infants are vested in the Department for Human Resources.

Absent the required affidavit, the claims of the minor children by Robert Harrison as next friend must be dismissed.

The Kentucky Department of Human Resources and its local office, the Logan County Department of Human Resources, must again be dismissed. Since their original dismissal, the case relied on by the Court, Edelman v. Jordan, 415 U.S. 651, 94 S.Ct. 1347, 39 L.Ed.2d 662 (1974), has been reaffirmed in Quern v. Jordan, ___ U.S. ___, 24 Cr.L.Rep. 3061 (March 14, 1979). See also Alabama v. Pugh, ___U.S. ___, 98 S.Ct. 3057 (1978), in which the state was dismissed from monetary and equitable claims on the basis of Eleventh Amendment immunity.

Although the state agency has not moved to dismiss since the filing of the amended complaint, it previously objected to the filing on just these grounds. In any case, the Eleventh Amendment sufficiently partakes of the nature of a jurisdictional bar that the Court may take notice of it, Edelman v. Jordan, supra, 415 U.S. at 678, 94 S.Ct. at 1363.

As to the defendants Brown and Riley, the law is clear that they are entitled to absolute judicial and prosecutorial immunity, Pierson v. Ray, 385 U.S. 547, 87 S.Ct. 1213, 18 L. Ed.2d 288 (1967); Imbler v. Pachtman, 424 U.S. 409, 96 S.Ct. 984, 47 L.Ed.2d 128 (1976), and they must be dismissed from the action.

It is clear that any acts of conspiracy took place in 1970 and 1972 as to the deceitful inducements to appear at juvenile court proceedings, in 1971 as to the sterilization and inducement therefor, and in 1972 as to confinement in the mental hospital. Therefore, any action under 42 U.S.C. §1985 is barred by the statute of limitations. That statute, KRS 413.140(1)(c), provides that actions for conspiracy must be brought within one year after the cause of action accrued.

Likewise, plaintiff's claim under 42 U.S.C. §1986 is barred by the one-year limitation contained in §1986 itself.

The statute of limitations will also bar plaintiffs' claim for wrongful imprisonment in the mental hospital, since KRS 413.140(1)(c) requires that an action for "arrest" be brought within one year after it accrues.

We are thus left with claims almost identical to those in the original complaint. We conclude that the defendants Logan County Hospital, Dr. Dodson, and Dr. Holt should be dismissed for the reasons stated in the order of dismissal dated October 23, 1975. Since there are no allegations as to Dr. Byrne's individual actions, all claims against him must also be dismissed.

The deputies Kisselbaugh and Wilson are brought in as new defendants under the amended complaint. In light of the above disposition of claims, the only allegation against the deputies is that they by deceit brought the plaintiffs before the juvenile court and thereby caused a deprivation of their constitutional rights to the custody of their children. Such a claim is in the nature of fraud and is governed by a five-year statute of limitations, KRS 413.120(12). See also Garner v. Stephens, 460 F.2d 1144 (6th Cir. 1972). Even so, we note that the acts complained of occurred in 1970 and 1972, and the 1978 filing of the amended complaint is not timely unless the requirements of Fed. R. Civ. P. 15(c) are met. This rule provides that an amended complaint may relate back as to a new defendant only if, besides arising out of the same conduct or occurrence, the new party has received such notice of the institution of the action that he will not be prejudiced and the party knew or should have known that the action

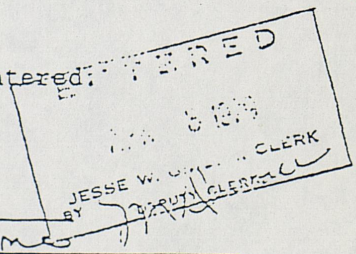
would be brought against him. Absent compliance with Rule 15(c), we must dismiss as to the defendants Kisselbaugh and Wilson.

It appears that this vast action has boiled down to a claim against the social workers Norris, Smart, Gilliam, Wood, and Gamble for their individual acts. The allegations are two-fold. First, it is claimed that they twice, by deceit, caused the plaintiffs to appear at Juvenile Court proceedings and thereby caused a deprivation of their right to be secure in their family relationships. Second, the workers are claimed to have fraudulently induced the plaintiff Judy Meadows to submit to a sterilization operation. Alternatively, they may have breached an oral contract to return the plaintiffs' two boys upon consent to the sterilization. All these claims are in the nature of fraud and breach of oral contract, and are therefore subject to the five-year statute of limitations contained in KRS 413.120. See also Garner v. Stephens, supra. Since all were made defendants in the original complaint of July 18, 1974, the claims were timely brought.

It is not clear that social workers are entitled to the qualified immunity of Wood v. Strickland, 420 U.S. 308, 95 S.Ct. 992, 43 L.Ed.2d 214 (1975). Compare Downs v. Sawtelle, supra, with Duchesne v. Sugarman, supra. In any case, their entitlement to the qualified immunity, and their further establishment of the elements of "good faith", must await further discovery.

An appropriate order has this day been entered.

DATED: March 30, 1979.



Edward H. Johnstone
Judge, United States District Court

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT BOWLING GREEN

THOMAS MEADOWS AND
JUDY MEADOWS,
PLAINTIFFS,

v.

CIVIL ACTION
NO. 74-48-B

KENTUCKY DEPARTMENT FOR
HUMAN RESOURCES, et al.,
DEFENDANTS.

O R D E R

For the reasons in the Court's Memorandum Opinion of this day,

IT IS HEREBY ORDERED that:

(a) The claims of Robert Harrison, suing as next friend of Mary Ann Meadows, Amon David Meadows, and Thomas Meadows be DISMISSED;

(b) The Kentucky Department of Human Resources and Logan County Department of Human Resources be DISMISSED as defendants in all respects;

(c) Robert Brown and Jesse T. Riley be DISMISSED as defendants;

(d) All claims under 42 U.S.C. §1985 and §1986 be DISMISSED:

(e) The claim for wrongful imprisonment be DISMISSED;

(f) Logan County Hospital, Dr. C. V. Dodson, Dr. Jack B. Holt, and Dr. W. R. Byrne be DISMISSED as defendants;

(g) Morris Kisselbaugh and Robert Wilson be DISMISSED as defendants;

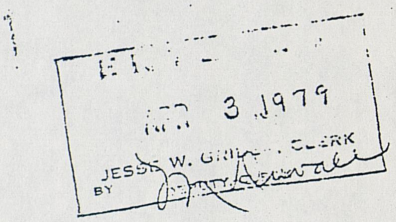
(h) In all respects except those mentioned above, the motions to dismiss by the defendants Norris, Smart, Gilliam, Woods and Gamble are DENIED.

This is a final and appealable order, and there is no just cause for delay.

DATED: March 30, 1979.

Copies to
Mr. Lowell
Mr. Harrison
Mr. Mitchell
Mr. Wheeler
Mr. Doran
Mr. Bruno

Edward H. Johnstone
Judge, United States District Court



4/26/79

FILED
US DISTRICT COURT CLERK
WEST'N DIST. KENTUCKY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT BOWLING GREEN

APR 26 3 02 PM '79

THOMAS MEADOWS AND
JUDY MEADOWS,
PLAINTIFFS,

V

CIVIL ACTION
NO. 74-48-B

KENTUCKY DEPARTMENT FOR
HUMAN RESOURCES, et al.,
DEFENDANTS.

NOTICE OF APPEAL

Notice is hereby given that the Plaintiffs above named, hereby appeal to the United States Court of Appeals for the Sixth Circuit from the Memorandum Opinion and Order dated 30 March 1979, entered on the 3rd day in April, 1979.

Robert E. Harrison

ROBERT E. HARRISON
418 1/2 E. Tenth Street
Bowling Green, KY 42101

Copies to:
Mr. Lowrie
Mr. Harrison
Mr. Mitchell
Mr. Wheeler
Mr. Bowen
Mr. Friend

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF KENTUCKY

AT BOWLING GREEN

THOMAS MEADOWS AND JUDY MEADOWS, PLAINTIFFS	)	
vs.	)	FILE NO. 74-0048
KENTUCKY DEPARTMENT FOR HUMAN RESOURCES, ET AL, DEFENDANTS	)	

MOTION TO AMEND

Come the Plaintiffs, Thomas Meadows and Judy Meadows, and move the Court to permit a second Amendment to the complaint to add as Count VI as follows:

1. "The civil rights of both Plaintiff's parents and Plaintiff's children were violated in that the Kentucky Statute relied upon in the original taking of the Meadows children is unconstitutional both on its face and as applied.

2. KRS 199.600, allowing for the termination of parental rights of a neglected child, in conjunction with KRS 199.011 (which defines the term "neglected child") is unconstitutional and void for vagueness. The language is so vague as to not give a person of ordinary intelligence a reasonable opportunity to know what conduct is prescribed, so that he may act accordingly.

Respectfully submitted,

BUCK, BAKER & BAKER

BY: _____

ROLAND M. LOWELL
6TH FLOOR
UNITED AMERICAN BANK BUILDING
NASHVILLE, TENNESSEE 37219

ROBERT E. HARRISON
949 STATE STREET
BOWLING GREEN, KENTUCKY 42101

ATTORNEY FOR PLAINTIFFS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been mailed to all Parties of Record.

This the _____ day of _____ 1979.

_____

ATTORNEY FOR PLAINTIFF

7/6/79

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF KENTUCKY

AT BOWLING GREEN

THOMAS MEADOWS AND JUDY MEADOWS, PLAINTIFFS	)	
vs.	)	FILE NO. 74-0048
KENTUCKY DEPARTMENT FOR HUMAN RESOURCES, ET AL, DEFENDANTS	)	

ORDER

The Court having considered the Plaintiffs' motion to file a second Amendment petition and the response thereto, and the Court being sufficiently advised, the motion is overruled.

Entered this the 31st day of July, 1979.

EDWARD H. JOHNSTONE
JUDGE, UNITED STATES DISTRICT COURT

July 31, 1979

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been mailed to all Parties of Record.

This the 6th day of July, 1979.

ATTORNEY FOR DEFENDANT

173A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT BOWLING GREEN

THOMAS MEADOWS, JUDY HENLEY MEADOWS AND MARY ANN MEADOWS, AMON DAVID MEADOWS AND THOMAS MEADOWS, JR. — PLAINTIFFS

VS. — NOTICE OF APPEAL

KENTUCKY DEPARTMENT FOR HUMAN RESOURCES, ET AL — DEFENDANTS

Notice is hereby given that the Plaintiffs above named, hereby appeal to the United States Court of Appeals for the Sixth Circuit from the Order denying the Motion to Amend dated July 31, 1979, entered on the 31st day of July, 1979.

This 15 day of August, 1979.

Robert E. Harrison

ROBERT E. HARRISON
Harrison & Goin Law Firm
Public Square, P.O. Box 522
Scottsville, KY 42164

CERTIFICATION OF SERVICE

The undersigned hereby certified that a copy of the foregoing has been mailed to all parties of record.

This 15 day of August, 1979.

Robert E. Harrison

ROBERT E. HARRISON

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF
KENTUCKY AT BOWLING GREEN

FILE NO. 74-0048

THOMAS MEADOWS AND
JUDY MEADOWS, et al, PLAINTIFFS

VS. MOTION TO AMEND

KENTUCKY DEPARTMENT FOR
HUMAN RESOURCES, ET AL DEFENDANTS

Come the Plaintiffs, Thomas Meadows, Judy Meadows, and Robert E. Harrison as next friend of the three children, Mary Ann Meadows, Amon David Meadows, and Thomas Meadows, Jr., and move the Court to permit an Amendment to the Complaint to allow Robert E. Harrison as next friend of the three infant children to file his Affidavit as required by KRS 387.300 and to allow the said infant children to then be reinstated at to all counts as stated in both the original complaint and the requested count six of the complaint.

This 15 day of August, 1979.

Respectively submitted,

Robert E Harrison

ROBERT E. HARRISON
Harrison & Goin Law Firm
Public Square, P.O. Box 522
Scottsville, KY 42164
Attorney for Plaintiffs

175A

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been mailed to all parties of record.

This the 15 day of August, 1979.

Robert E. Hamm

ATTORNEY FOR PLAINTIFFS

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT BOWLING GREEN

THOMAS MEADOWS AND
JUDY MEADOWS,
PLAINTIFFS,

v.

CIVIL ACTION
NO. 74-0048-BG

KENTUCKY DEPARTMENT FOR
HUMAN RESOURCES, ET AL,
DEFENDANTS.

O R D E R

The plaintiffs having moved to amend the complaint to add as plaintiff Robert E. Harrison, as next friend of Mary Ann Meadow, Amon David Meadow, and Thomas Meadows, Jr., and the Court having considered the affidavit of Robert E. Harrison pursuant to K.R.S. 387.300,

IT IS HEREBY ORDERED that:

(1) The complaint be amended to include Robert E. Harrison, as next friend of Mary Ann Meadows, Amon David Meadows, and Thomas Meadows, Jr.,

(2) Said amendment shall not reinstate any counts, causes, or defendants previously dismissed in this case, nor shall it add new counts.

DATED: August 31, 1979.

Edward R. Johnstone
Judge, United States District Court

ENTERED
SEP 6 1979
JESSE W. GRIDER, CLERK
BY DEPUTY CLERK

177A

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF KENTUCKY

AT BOWLING GREEN

THOMAS MEADOWS AND JUDY MEADOWS Plaintiffs vs. KENTUCKY DEPARTMENT OF HUMAN RESOURCES, et al. Defendants	)	CIVIL ACTION NO. 74-0048-BG

MOTION FOR RECONSIDERATION

Plaintiffs have previously moved to amend the complaint to add as Plaintiff, Robert E. Harrison, as the next of friend of Marianne Meadows, Ann and David Meadows, and Thomas Meadows, Jr. The Court has granted that Motion, but has also stated the amendment shall not reinstate any counts, causes or Defendants dismissed in this case, nor shall it add new counts.

Plaintiffs respectfully request the Court to reconsider that portion of the Order stating that the amendment shall not reinstate any counts, causes or Defendants previously dismissed in this case, nor shall it add new counts.

Since the children are not of age of majority, statute of limitations has not expired as to the three children. Therefore, such actions as denial of civil rights, conspiracy to deny civil rights, pain and suffering as well as other causes of actions are not barred by the statute of limitations as to these three Plaintiffs.

In addition to causes of action which are not barred as to the three children Plaintiffs, there are also Defendants which will then of necessity be proper parties to the action, regardless of their status as Defendants. insofar as the suit as been brought by the parents. Since denial of civil rights and conspiracy to deny civil rights has been alleged by the children as well as by the parents, all parties named in the original complaint are

and should be parties defendants insofar as the action concerned brought by the three children. On this ground alone, (without addressing any other grounds), all parties named in the original complaint and as amended, must be retained. Plaintiffs would respectfully request the Court to amend its Order accordingly.

Respectfully submitted,

BUCK, BAKER & BAKER

By: Roland M. Lowell
Roland M. Lowell
Robert E. Harrison

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Motion to Reconsider has been mailed to all Parties of Record, first class mail, postage prepaid.
This the 18 day of Oct. 1979.

Roland M. Lowell
Roland M. Lowell

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT BOWLING GREEN

THOMAS MEADOWS AND JUDY MEADOWS,
PLAINTIFFS,

v.

CIVIL ACTION
NO. 74-0048-BG

KENTUCKY DEPARTMENT OF HUMAN
RESOURCES, ET AL.,
DEFENDANTS.

O R D E R

Plaintiff's motion to reconsider the order herebefore entered with regard to the amendment of the Complaint is DENIED.

DATED: October 31, 1979.

Edward H. Johnstone
Judge, United States District Court

ENTERED
NOV 2 1979
JESSE W. C... CLERK
BY

Copies to:
Mr. Lowell
Mr. Harrison
Mr. Mitchell
Mr. Wheeler
Mr. Dowen
Mr. Greene

180A

C-740048-BG

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT BOWLING GREEN

THOMAS MEADOWS, JUDY HENLEY MEADOWS AND MARY ANN MEADOWS, AMON DAVID MEADOWS AND THOMAS MEADOWS, JR. PLAINTIFFS

VS. NOTICE OF APPEAL

KENTUCKY DEPARTMENT FOR HUMAN RESOURCHES, ET AL DEFENDANTS

Notice is hereby given that the Plaintiffs above named, hereby appeal to the United States Court of Appeals for the Sixth Circuit from the order of the Court denying the Motion to Reconsider dated October 31, 1979, to that portion of the proceeding order of the Court dated August 31, 1979, which denys the reinstatement of counts and causes and Defendants previously dismissed as far as it pertains to Mary Ann Meadows, Amon David Meadows, and Thomas Meadows, Jr., by and through their next of friend, Robert E. Harrison.

This 28th day of November, 1979.

Roland M. Lowell
618 United American Bank Bldg.
Nashville, Tennessee 37219

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been mailed to all parties of record.

This 28th day of November, 1979.

Roland M. Lowell

No. 79-3455

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

NOV 26 1979

JOHN P. HEHMAN, Clerk

THOMAS MEADOWS, ET AL.,

Plaintiffs-Appellants

v.

KENTUCKY DEPARTMENT FOR HUMAN RESOURCES, ET AL.,

Defendants-Appellees

O R D E R

It is ORDERED that the order filed in this case on November 8, 1979, be and it is hereby vacated, and a new order is hereby entered to read as follows:

Upon consideration of the motion of the appellees' to dismiss the appeal for appellants' failure to designate and file an appendix, and further considering the appellants' response thereto, requesting to dispense with the filing of an appendix or in the alternative, an extension of time within which to file the joint appendix and to have the office of the Clerk, U.S. Court of Appeals, provide one copy of the items requested by appellees to be included in the appendix,

It is ORDERED that appellees' motion to dismiss is denied. It is further ORDERED that appellants' request for additional time within which to submit the joint appendix is hereby granted.

Still pending in this case are the appellees' motion to dismiss certain parties from the appeal and appellants' motion

to consolidate this appeal with the appeal in No. 79-3560. At such time as these motions are decided, a briefing schedule will be established and the record will be returned to the District Court.

ENTERED BY ORDER OF THE COURT

John A Helman
Clerk

No. 79-3455

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

DEC 18 1979

JOHN P. HEHMAN, Clerk

THOMAS MEADOWS, JUDY HENLEY MEADOWS, MARY ANN MEADOWS, AMON DAVID MEADOWS, AND THOMAS MEADOWS, JR., BY NEXT OF FRIEND ROBERT HARRISON,

Plaintiffs-Appellants

v.

KENTUCKY DEPARTMENT FOR HUMAN RESOURCES; LOGAN COUNTY, KENTUCKY DEPARTMENT FOR HUMAN RESOURCES; LOGAN COUNTY HOSPITAL, DR. C. V. DODSON, DR. JACK B. HOLT, DR. W. R. BYRNE, JUDGE ROBERT R. BROWN, SHERIFF MORRIS KISSELBAUGH, ROBERT R. WILSON AND JESSE L. RILEY, JR.,

Defendants-Appellees

O R D E R

BEFORE: MERRITT, BROWN and KENNEDY, Circuit Judges

Upon consideration of defendants-appellees' motion to dismiss the appeal as to plaintiffs-appellants Mary Ann Meadows, Amon David Meadows, and Thomas Meadows, Jr., by next of friend, Robert Harrison, and further considering plaintiffs-appellants' response thereto, requesting leave to consolidate and to hold the motion to dismiss in abeyance pending further proceedings in the District Court, and

It appearing that the only parties specified in the notice of appeal filed April 26, 1979, are Thomas Meadows and Judy Meadows, and that no other appellants are properly before this Court, Van Hoose v. Eidson, 450 F.2d 746 (6th Cir. 1971),

Now therefore, it is ORDERED that defendants-appellees' motion to dismiss be granted. It is further ORDERED that

plaintiffs-appellants' requests to consolidate and to hold the motion to dismiss in abeyance be denied. Appellants' brief and joint appendix should be filed within thirty (30) calendar days from the file date of this order. The Clerk is directed to return the record to the District Court for the use of counsel in preparing his brief and joint appendix.

ENTERED BY ORDER OF THE COURT

John A. Helmun
Clerk

★ -- marks claims NOT dismissed by J. Johnstone.

Amended Complaint -

Πs are: Mrs. Meadows
Mr. Meadows
3 Meadows children

Defendants	Cause of Action	Disposition by Judge Johnstone
Smart, Wood, [redacted] & Ky. D.H.R.	★ §1983, §1985, §1986	1-year Statute of Limitations had run.
	★ Breach of Contract	Dismissed - see 1-year Statute of Limitations had run.
re-dismissed, (had already been dismissed from original complaint, but Πs re-named it as Δ in the amended complaint)		
Dr. Dodson	§1983, §1985, §1986	
	[redacted] invasion of privacy, medical malpractice, deceit, fraud, malicious misrepresentation	Dismissed - no evid. that Π was incompetent at time of sterilization, nor that Δ should have doubted her competency - also, time-barred on malpractice (as per Judge Bratcher)
	[redacted] wrongful imprisonment	time barred
[redacted]		
Dr. Burns (Byrne ?)	New Defendant (not named in the original complaint) described as party, but his role never is stated...	Dismissed
Dr. Holt and Logan Co. Hospital	§1983, §1985, §1986	Dismissed - see 1-year Statute of Limitations had run.
	medical malpractice, invasion of privacy, deceit, fraud, malicious misrepresentation	Dismissed - no evid. that Π was incompetent at time of sterilization, nor that Δs should have doubted her competency - also, time-barred on malpractice (as per Judge Bratcher)
other Social Workers (Norris, Gilliam, Gamble)	★ §1983, §1985, §1986	1-year Statute of Limitations had run.
Judge Brown & Co. Atty. Riley	§1983, §1985, §1986	Dismissed - absolutely immune (judicial & prosecutorial immunity) [also, time-barred on §1985 & §1986.
Deputies Wilson & Kissenbaugh	New Defendants (not named in the original complaint) §1983, §1985, §1986	Time-barred - Insufficient notice in 1ST complaint to make amended complaint relate back to the time of the 1ST complaint.
		His situation looks just like that of Deputies Wilson & Kissenbaugh, but he's not mentioned...
Sheriff Johnson	New Defendant ★ §1983, §1985, §1986	1-year Statute of Limitations had run.
Rosalyn Stamps	none stated - - - - She's never mentioned after the style of the case.	
John Doe	§1983, §1985, §1986	Apparently same as named deputies, [redacted] though never mentioned...



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(damages & injunctive relief) { §1983, 5th, 14th, 6th, Ky. Statutes 202. et.seq.

DISTRICT COURT (Judge Bratcher) Amended Complaint →

KY. DEPT. HUMAN RESOURCES — breach of K (¶ 6) → dismissed → KY. DEPT. HR
1) 11th Amendment

LOGAN CO. DEPT. HUMAN RESOURCES — breach of K (¶ 6) → NO SUCH PARTY
same as Comm. of Ky.

SOCIAL WORKERS — (¶ 11) breach of K (¶ 16); §1983 (¶ 17); (¶ 5) (Fraud & False Imprison.) → NOT DISMISSED (No immunity) → This is not being appealed

DR. DODSON, DR. HOLT — medical negligence/malpractice (¶ 18; ¶ 7)

LOGAN CO. HOSPITAL — negligent (¶ 18)

→ dismissed them
1) S/L: med. negligence (1 yr.)
or 2) no evidence of incompetence, not evidence that they (Δs) had reason to believe Π was incompetent.
* If there was a ○ of fact as to Π's competency, dismissal was error.

JOHN DOE → (NOT DISMISSED)

NAMED IN FACTS ("Others") – ¶ 9 – threatened w/ harm

Deputies Wilson & Kisellbaugh — Fraud, False Imprisonment (¶ 5) (d/p ¶ 19)

Judge Brown — ¶ 8, 9 – Fraud, d/p (commitment); Forcible removal of Kids
¶ 5 – Fraud & false imprisonment

Sheriff Johson — ¶ 9 – threatened Π w/ bodily harm
¶ 5 – Forcibly removed Kids.

MR. RILEY — ¶ 5 – Fraud & False Imprisonment

Nothing →