

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KRISTINA VELLAFANE, a minor : CIVIL ACTION
by and through her parent and :
natural guardian, BONNIE FIELDS :
and BONNIE FIELDS, in her own :
right :
 :
 :
v. :
 :
 :
FOUNDATIONS BEHAVIORAL HEALTH, :
et al. : NO. 03-1019

MEMORANDUM AND ORDER

Fullam, Sr. J. December , 2003

Most of the 13 defendants in this lawsuit have filed motions to dismiss plaintiffs' complaint, for failure to state a valid claim, under Federal Rule of Civil Procedure 12(b)(6). Accepting as true the allegations of the complaint, the facts are as follows:

The minor plaintiff, Kristina Vellafane, was adjudicated to be a dependent child and was placed by the court in the custody of the defendant Bucks County Children and Youth Social Services Agency (herein referred to as "the County"). The County had a contract with the defendant Concern Professional Services for Children and Youth ("Concern") to arrange a suitable placement in a foster home. Concern placed the minor plaintiff in the foster care of the defendants John and Sandra Herb.

While minor plaintiff was living with the Herbs, she

was sexually molested and assaulted by their son-in-law, the defendant Marc Hagood.

When the misconduct came to light, Kristina Vellafane was removed from the Herb household and returned to the custody of her mother. Shortly thereafter, because of psychological trauma and other consequences of her mistreatment, Kristina was placed in a mental health facility conducted by the defendant Foundations Behavioral Health ("Foundations"). While in that institution, Kristina was again sexually assaulted, this time by a staff member of that agency, the defendant Sam Kraft.

Plaintiffs (Kristina and her mother) are suing everyone having any conceivable involvement in the chain of events recited above: the County agency and two of its employees, Robert Cosner and Tracey L. Murphy; Concern and three of its employees, Glenn J. Hillegass, Karen Krohnemann and Amy Hummel; Foundations and its CEO, Ronald Bernstein; Mr. and Mrs. Herb; and the two alleged assailants, Marc Hagood and Sam Kraft. Plaintiffs' complaint contains 19 counts, and extends to 32 pages. It was filed initially in the Philadelphia Court of Common Pleas, and was removed here because it includes a § 1983 claim. The two alleged assailants, Marc Hagood and Sam Kraft have not responded to the complaint and, presumably, either have been or will be defaulted.

The pending motions to dismiss stress several valid points: (1) § 1983 liability can be imposed only upon defendants

acting under color of state law; (2) defendants who did not actually participate in the alleged assaults cannot be held liable under § 1983 unless they had some special relationship with the minor plaintiff such that they had a measure of responsibility for her safety, and only if they are chargeable with having acted willfully or in reckless disregard of plaintiff's welfare; (3) the assaults did not give rise to *respondeat superior* liability on the part of any of the defendants; (4) there can be no punitive damages liability on the part of the County agency or its employees in their official capacities; and (5) the Pennsylvania Tort Claims Act, 42 Pa. Cons. Stat. Ann. § 8541 provides immunity from money damages for the defendant Bucks County and its employees, Robert Cosner and Tracey L. Murphy.

Given the sweeping allegations of plaintiffs' complaint, which can be read as charging every one of the defendants with reckless endangerment and conduct warranting awards of punitive damages (at least in individual capacities), I cannot now dismiss the complaint under Federal Rule of Civil Procedure 12(b)(6). On the other hand, it seems highly probable that, after a reasonable period of discovery, plaintiffs' counsel will wish to consider whether pursuing all of the claims against all of the defendants would be consistent with his Rule 11 obligations. An Order will therefore be entered directing that

plaintiffs pursue discovery for a period not exceeding 90 days, at the conclusion of which plaintiffs will file an amended complaint, setting forth only those claims which can be substantiated. In the amended complaint, plaintiffs will have an opportunity to clarify the nature and basis of any claims being asserted on behalf of the adult plaintiff. After the amended complaint is filed, the defendants then remaining will have an opportunity to press for summary judgment, if the facts warrant.

An Order follows.

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ORDER

AND NOW, this day of December 2003, upon
consideration of the pending motions to dismiss plaintiffs'
complaint under Federal Rule of Civil Procedure 12(b)(6), and
defendants' response, IT IS ORDERED:

1. The pending motions to dismiss are DENIED
without prejudice.
2. Plaintiffs shall pursue discovery, for a period
not in excess of 90 days, whereupon plaintiffs will file an
amended complaint in accordance with the views set forth in the
accompanying Memorandum.
3. If such amended complaint is filed, the then-
remaining parties may pursue summary judgment if appropriate.

John P. Fullam, Sr. J.