

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

MONICA GRIFFIN;)	
SHABRE RINGGOLD;)	Civil Action
ISAIAH BOYER;)	No. 10-cv-05740
D.C., JR.;)	
C.C.; and)	
E.C.,)	
)	
Plaintiffs)	
)	
vs.)	
)	
BERKS COUNTY HOUSING AUTHORITY;)	
SANDRA MILLER;)	
BENNO RUHNKE;)	
TANYA NELSON; and)	
DEIDRE DURHAM,)	
)	
Defendants)	

* * *

APPEARANCES:

MONICA GRIFFIN
SHABRE RINGGOLD
ISAIAH BOYER
D.C., JR.
C.C.
E.C.
Plaintiffs pro se

S. WHITNEY RAHMAN, ESQUIRE
On behalf of Defendants

* * *

O P I N I O N

JAMES KNOLL GARDNER,
United States District Judge

This matter is before the court on Defendants' Motion to Dismiss the Complaint and/or for Summary Judgment, which motion was filed together with a memorandum of law in support on February 11, 2011. Plaintiffs' Opposition to Defendants' Motion to Dismiss the Complaint and/or for Summary Judgment ("Plaintiffs' Opposition") was filed together with a memorandum

of law in support on May 31, 2011 ("Plaintiffs' Memorandum"¹). For the reasons articulated below, I grant in part and deny in part defendants' motion to dismiss.

Specifically, I dismiss all claims of pro se plaintiffs "D.C., Jr.", "E.C." and "C.C." ("minor plaintiffs") for violations of Title VI of the Civil Rights Act of 1964 and the Fair Housing Act of 1968. Further, I dismiss the claims of pro se plaintiffs Monica Griffin, Shabre Ringgold and Isaiah Boyer ("adult plaintiffs") for violations of Title VI. I deny defendants' motion to dismiss the adult plaintiffs' Fair Housing Act claims.

In addition, I give the adult plaintiffs the opportunity to secure counsel to represent the minor plaintiffs and for counsel to re-plead the claims of plaintiff Griffin as parent and natural guardian on behalf of the minor plaintiffs, if appropriate, by filing an amended complaint by November 30, 2011. Further, I give the adult plaintiffs until November 30, 2011 to file an amended complaint concerning their Title VI claims against defendant Berks County Housing Authority, in accordance with this Opinion.

Finally, I deny the motion to dismiss the adult plaintiffs' claims for violations of the Fair Housing Act against all defendants, and accordingly all of the adult plaintiffs' FHA

¹ The complete title of Plaintiffs' Memorandum is Plaintiffs' Memorandum in Opposition of [sic.] Defendants' Motion to Dismiss and/or for Summary Judgment.

claims remain in this civil action. However, pursuant to Federal Rule of Civil Procedure 12(e), I direct the adult plaintiffs to file an amended complaint by November 30, 2011 to provide a more definite statement of their FHA claims against the four individual defendants, Sandra Miller, Benno Ruhnke, Tanya Nelson and Diedre Durham.

Because I conclude, as discussed below, that defendants' motion can appropriately be decided as a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), I dismiss as moot defendants' alternative motion for summary judgment pursuant to Federal Rule of Civil Procedure 56.

JURISDICTION

Jurisdiction in this case is based upon federal question jurisdiction pursuant to 28 U.S.C. § 1331.

VENUE

Venue is proper pursuant to 28 U.S.C. § 1391(b) because the events giving rise to plaintiff's claims allegedly occurred in Berks County, Pennsylvania, which is located within this judicial district.

PROCEDURAL HISTORY

Plaintiffs initiated this action on November 15, 2010 by filing a three-count Complaint against defendants.²

² Although plaintiffs' Complaint does not name specific defendants in the caption of each individual count, plaintiffs allege generally in the last paragraph of each count that "the Defendants" violated the various federal statutes at issue. Complaint, ¶¶ 50, 62, and 72. Accordingly, I will consider each count to be asserted against all defendants.

Plaintiff's claims arise from discriminatory actions allegedly taken by defendants in connection with the plaintiffs' participation in the Section 8 Housing Choice Voucher program³ and in connection with their residence at 608 Tuckerton Avenue, Temple, Pennsylvania.⁴

Each of the three counts in plaintiffs' Complaint alleges that defendants violated Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d to 2000d-7, and the Fair Housing Act of 1968, as amended, 42 U.S.C. §§ 3601-3619,⁵ by discriminating against plaintiffs on the basis of their race (African-American). However, each count is based on different factual allegations.

Count 1 arises from actions allegedly taken in connection with various inspections of plaintiffs' residence unit at 608 Tuckerton Avenue in Temple, Pennsylvania, and from plaintiffs being required to move from that unit. Count 2 arises from an alleged miscalculation of plaintiffs' child support payments which resulted in higher rent. Count 3 arises from defendants' alleged failure to provide plaintiffs with the proper utility reimbursement allowance.

³ See 24 C.F.R. §§ 982.1-982.624.

⁴ Each count of the Complaint is headed "Discriminatory Terms/Conditions/Privileges/or Services of Rental Property[:] Race - Discrimination".

⁵ Although plaintiffs' Complaint also separately alleges that defendants violated Title VIII of the Civil Rights Act of 1968 in addition to the Fair Housing Act, I note that Title VIII and the Fair Housing Act are alternative names for the same statute. See Pondexter v. Allegheny County Housing Authority, 2007 U.S. Dist. LEXIS 78532, at *41 (W.D.Pa. Oct. 23, 2007). Therefore, for simplicity I refer to these claims as claims under the Fair Housing Act throughout this Opinion.

On February 11, 2011 defendants filed the within motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, or in the alternative for summary judgment pursuant to Rule 56.⁶ Plaintiffs filed their response in opposition on May 31, 2011. Hence this Opinion.

STANDARD OF REVIEW

A claim may be dismissed under Federal Rule of Civil Procedure 12(b)(6) for "failure to state a claim upon which relief can be granted." Fed.R.Civ.P. 12(b)(6). A Rule 12(b)(6) motion requires the court to examine the sufficiency of the complaint. Conley v. Gibson, 355 U.S. 41, 45, 78 S.Ct. 99, 102,

⁶ Defendants move in the alternative for summary judgment because they submitted exhibits in support of their motion to dismiss which were not attached to plaintiffs' Complaint, specifically, redacted copies of birth certificates for plaintiffs "D.C., Jr.", "C.C.", and "E.C.". Defendants attach these documents in support of their contention that these plaintiffs' claims must be dismissed because they are minors.

Ordinarily, if matters outside the pleadings are presented to and not excluded by the court, a Rule 12(b)(6) motion must be treated as a motion for summary judgment under Rule 56. Fed.R.Civ.P. 12(d). However, when deciding a Rule 12(b)(6) motion, the court may also consider matters of public record or indisputably authentic documents submitted by defendants. See Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d 1380, 1385 (3d Cir. 1994); Spruill v. Gillis, 372 F.3d 218, 223 (3d Cir. 2004). Defendants contend that the birth certificates may be considered without converting their motion into a motion for summary judgment.

I conclude that I may properly consider these birth certificates as matters of public record. Moreover, plaintiffs do not dispute the certificates' authenticity. Even were I to exclude the certificates from consideration, plaintiffs admit in paragraph 5 of their opposition to the within motion that plaintiffs D.C., Jr., C.C. and E.C. are minors.

Plaintiffs also attached several exhibits to their opposition to the within motion which were not attached to their Complaint. These exhibits appear to be various documents and correspondence relating to plaintiffs' grievances with defendants. However, plaintiffs have not explained why any of these exhibits may properly be considered in the context of a motion to dismiss, nor explained why they were not attached to their Complaint. Therefore, these exhibits are matters outside the pleadings and I do not consider or rely upon them in my analysis of the within motion.

Accordingly, I will dispose of the within motion using the standard of review for a motion to dismiss under Rule 12(b)(6), described in the next section of this Opinion.

2 L.Ed.2d 80, 84 (1957) (abrogated in other respects by Bell Atlantic Corporation v. Twombly, 550 U.S. 544, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)).

Generally, in ruling on a motion to dismiss, the court relies on the complaint, attached exhibits, and matters of public record, including other judicial proceedings. Sands v. McCormick, 502 F.3d 263, 268 (3d Cir. 2008).

Except as provided in Federal Rule of Civil Procedure 9, a complaint is sufficient if it complies with Rule 8(a)(2), which requires "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed.R.Civ.P. 8(a)(2). Rule 8(a)(2) "[does] not require heightened fact pleading of specifics, but only enough facts to state a claim to relief that is plausible on its face." Twombly, 550 U.S. at 570, 127 S.Ct. at 1974, 167 L.Ed.2d at 949.⁷

In determining whether a plaintiff's complaint is sufficient, the court must "accept all factual allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading,

⁷ The Supreme Court's Opinion in Ashcroft v. Iqbal, ___ U.S. ___, ___, 129 S.Ct. 1937, 1953, 173 L.Ed.2d 868, 887 (2009), states clearly that the "facial plausibility" pleading standard set forth in Twombly applies to all civil suits in the federal courts. Fowler v. UPMC Shadyside, 578 F.3d 203, 210 (3d Cir. 2009). This showing of facial plausibility then "allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged," and that the plaintiff is entitled to relief. Fowler, 578 F.3d at 210 (quoting Iqbal, ___ U.S. at ___, 129 S.Ct. at 1949, 173 L.Ed.2d at 884). As the Supreme Court explained in Iqbal, "[t]he plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that the defendant acted unlawfully." Iqbal, ___ U.S. at ___, 129 S.Ct. at 1949, 173 L.Ed.2d at 884.

the plaintiff may be entitled to relief.” Fowler, 578 F.3d at 210 (quoting Phillips v. County of Allegheny, 515 F.3d 224, 233 (3d Cir. 2008)).

Although “conclusory or ‘bare-bones’ allegations will [not] survive a motion to dismiss,” Fowler, 578 F.3d at 210, “a complaint may not be dismissed merely because it appears unlikely that the plaintiff can prove those facts or will ultimately prevail on the merits.” Phillips, 515 F.3d at 231. Nonetheless, to survive a 12(b)(6) motion, the complaint must provide “enough facts to raise a reasonable expectation that discovery will reveal evidence of the necessary element[s].” Id. (quoting Twombly, 550 U.S. at 556, 127 S.Ct. at 1965, 167 L.Ed.2d at 940) (internal quotation omitted).

The court is required to conduct a two-part analysis when considering a Rule 12(b)(6) motion. First, the factual matters averred in the complaint, and any attached exhibits, should be separated from legal conclusions asserted therein. Fowler, 578 F.3d at 210. Any facts pled must be taken as true, and any legal conclusions asserted may be disregarded. Id. at 210-211.

Second, the court must determine whether those factual matters averred are sufficient to show that the plaintiff has a “plausible claim for relief.” Id. at 211 (quoting Iqbal, ___ U.S. at ___, 129 S.Ct. at 1950, 178 L.Ed.2d at 884).

Ultimately, this two-part analysis is “context-specific” and requires the court to draw on “its judicial

experience and common sense" to determine if the facts pled in the complaint have "nudged [plaintiff's] claims" over the line from "[merely] conceivable [or possible] to plausible." Iqbal, __ U.S. at __, 129 S.Ct. at 1950-1951, 178 L.Ed.2d at 884-885 (internal quotations omitted).

A well-pleaded complaint may not be dismissed simply because "it strikes a savvy judge that actual proof of those facts is improbable, and that a recovery is very remote and unlikely." Twombly, 550 U.S. at 556, 127 S.Ct. at 1965, 167 L.Ed.2d at 940-941.

FACTS

Based upon the well-pled averments in plaintiffs' Complaint, which I must accept as true under the above standard of review, the pertinent facts are as follows.

Plaintiffs Monica Griffin, Shabre Ringgold, Isaiah Boyer, "D.C., Jr.", "E.C." and "C.C." are African-Americans and participants in the "Section 8 ['Voucher'] program."⁸ In 2002, plaintiffs moved into a three-bedroom unit at 608 Tuckerton Avenue, Temple, Pennsylvania 19560.⁹ The ages of plaintiffs' five children ranged between 2½ to 22 years old.¹⁰

⁸ Complaint, ¶¶ 20, 47.

⁹ Complaint, ¶¶ 5, 21.

¹⁰ Complaint, ¶ 21. Although unclear from the Complaint, the parties' motion papers indicate that all agree that plaintiff Monica Griffin is the mother of the other five plaintiffs. Her children-plaintiffs are Shabre Ringgold, Isaiah Boyer (both adults), Darrin Cooper ("D.C. Jr." on the Complaint), Chandler Clemons ("C.C." on Complaint) and Emiah Clemons ("E.C." on Complaint) (all three are minors). Plaintiffs Griffin, Ringgold and Boyer are referred to as "adult plaintiffs" in this Opinion and plaintiffs D.C., Jr., C.C. and E.C. are referred to as "minor plaintiffs." See Defendants' Memorandum at page 1; Plaintiffs' Memorandum at page 3; and Complaint at ¶¶ 54, 68.

The applicable Administrative Plan of defendant Berks County Housing Authority provides that all units will have an annual inspection to determine if the unit continues to meet Housing Quality Standards (HQS).¹¹ In 2002, the unit passed the initial Housing Quality Standards inspection, although severe material violations were evident.¹²

In 2003, defendant Benno Ruhnke, a housing inspector for defendant Berks County Housing Authority, conducted the second annual HQS inspection of the unit and failed the unit, citing several deficiencies.¹³ The unit was re-inspected by defendant Ruhnke on September 26, 2003 and passed inspection, even though some of the deficiencies (involving a window, chipped and peeling paint, bird's nest, and screen door) were never corrected during this re-inspection.¹⁴

Defendant Ruhnke conducted his third annual HQS inspection of the unit in 2004, and the unit again failed the

¹¹ Complaint, ¶ 35.

¹² Complaint, ¶ 6.

¹³ Complaint, ¶¶ 7, 32. The cited deficiencies included: "Kitchen—burner not working, missing handle; Bathroom—receptacle needs to be replaced with GFI, covers are needed for the light fixtures, and the door knob is loose; Bedroom—Receptacle not installed properly and does not work; Bedroom—Receptacle loose and window falls out when opened; Bedroom—Missing and broken covers plates; Basement—Needs J-Box at wire connection; Exterior—Missing handrail, missing gutter and chipped and peeling paint; Windows—chipped and peeling paint, large gaps in wood trim, and bird's nest; Screen Doors—Front not installed properly, rear screen needs repair and no handle." Id. at ¶ 7.

Defendant Benno Ruhnke is described as the inspector for defendant Berks County Housing Authority in paragraph 32 of the Complaint. He is also referred to as "housing inspector" or "inspector" in paragraphs 9, 11, 14, 15, 16, 22, 24, 25, 26, 28 and 31 of the Complaint.

¹⁴ Complaint, ¶¶ 8, 24.

inspection because of several deficiencies.¹⁵ Defendant Ruhnke conducted a re-inspection on October 15, 2004, and the unit passed inspection.¹⁶ The unit should not have passed that inspection because the bird's nest, screen door, and chipped and peeling paint were still "an issue."¹⁷

Defendant Ruhnke conducted a fourth annual HQS inspection on September, 12, 2005 and a fifth annual HQS inspection on September 11, 2006.¹⁸ The unit passed inspection on both occasions, and no deficiencies were cited, although "issues" from the previous years still existed.¹⁹ On September 10, 2007, defendant Ruhnke performed a sixth annual HQS inspection, and the unit failed because of several deficiencies.²⁰ The unit was re-inspected on November 8, 2007 and passed, although material violations still existed.²¹

On September 3, 2008, defendant Ruhnke performed his seventh annual HQS inspection, and the unit failed because of

¹⁵ Complaint, ¶¶ 9-10. The cited deficiencies included: "replace batteries for the smoke detector, loose hinges on the kitchen door, damaged screen door, missing handrail, broken door knob on bathroom door, leaking spigot in bathroom sink, hole in the wall at curtain rod, missing knob for faucet, need to repair window in bedroom that did not operate properly, and the need to check the burner on the stove." Id. at ¶ 10.

¹⁶ Complaint, ¶ 11.

¹⁷ Complaint, ¶ 25.

¹⁸ Complaint, ¶ 12.

¹⁹ Complaint, ¶¶ 12, 26.

²⁰ Complaint, ¶ 13. The cited deficiencies included: "Kitchen-possible leak in ceiling from bathroom, mold[-]like substance on walls; Bathroom-loose toilet, wash basin spigots do not work properly; Bedroom, light fixture loose; Bedroom, broken window glass; Building exterior-porch roof leaks also paint, gutters missing or damaged." Id.

²¹ Complaint, ¶¶ 13, 27.

several deficiencies.²² Defendant Ruhnke did not return to do a follow-up inspection thirty days later, or to see if the 24-hour emergency repairs were made.²³

The unit never should have passed previous inspections performed by defendant Ruhnke in 2003 through 2008, because the unit still displayed material violations.²⁴ On numerous occasions, defendant Ruhnke omitted and altered items that needed to be reported or fixed on the inspection report.²⁵

Plaintiffs continuously complained to defendant Berks County Housing Authority about the unit and their concerns went unreciprocated.²⁶ Specifically, plaintiffs contacted defendant Ruhnke in December 2008 and on April 14, 2009 about the conditions at the property.²⁷

During the telephone conversation on April 14, 2009, plaintiffs reminded defendant Ruhnke that the property failed inspection on September 3, 2008, and that "the plaintiffs

²² Complaint, ¶¶ 14, 28. The cited deficiencies included: "living room wall damage, kitchen outlet not secured properly, countertop at kitchen sink decomposing, rear door off hinges, kitchen ceiling buckling and shows sign of water leak, broken handle on toilet, missing handle on wash basin, missing handle on tub/shower unit, electrical hazards in bedroom, and unacceptable wall condition in bedroom." Id. at ¶ 14.

²³ Complaint, ¶¶ 15, 28.

²⁴ Complaint, ¶¶ 22-23.

²⁵ Complaint, ¶ 16.

²⁶ Complaint, ¶ 29.

²⁷ Complaint, ¶ 30.

youngest daughter" had been exposed to lead poisoning.²⁸

Defendant Ruhnke told the plaintiffs that the matter had "slipped through the cracks", and hung up the telephone.²⁹ Defendants did not attempt to resolve plaintiffs housing issues after this telephone call.³⁰

Plaintiffs contacted attorney Michael P. Giles, Esquire to assist the family with the situation regarding defendant Berks County Housing Authority and the severe conditions of the rental unit.³¹ On May 1, 2009, Attorney Giles sent a letter to defendants regarding the plaintiffs's concerns.³² After defendants received the letter from Attorney Giles, then and only then did they respond to the plaintiffs' housing issues.³³

On May 4, 2009, defendant Sandra Miller, Section 8 Housing Choice Voucher Coordinator, called the plaintiffs and told them "it was urgent" and that the Executive Director, defendant Tanya Nelson, needed to inspect the property on May 5, 2009 at 11:00 a.m.³⁴ Plaintiffs complied, and during the

²⁸ Complaint, ¶ 31. Although unclear, a reasonable reading of the Complaint indicates that this allegation refers to plaintiff E.C., the minor child of plaintiff Griffin. See Complaint at page 12 of 13, section IV.

²⁹ Complaint, ¶ 32.

³⁰ Complaint, ¶ 33.

³¹ Complaint, ¶ 34.

³² Complaint, ¶ 36.

³³ Complaint, ¶ 37.

³⁴ Complaint, ¶¶ 38-39. Defendant Sandra Miller is described as "Section 8 Housing Choice Voucher Coordinator" in paragraphs 38 and 39 of the Complaint. Defendant Tanya Nelson is described as "Executive Director" in paragraphs 39, 40 and 41. Although the Complaint does not specify, it infers, that these are positions in defendant Berks County Housing Authority.

inspection, defendant Nelson took pictures of the unit and threatened plaintiffs.³⁵ Defendant Nelson informed plaintiffs that "She was going to force Plaintiffs out of the property", "so get to packing", "you're moving".³⁶

Defendants terminated the Section 8 contract with plaintiffs' landlord Jeffery Bickel after defendant Nelson's visit on May 5, 2009.³⁷ The family was required to move from the unit on June 30, 2009, which resulted in the family being homeless and separated until November 1, 2009.³⁸ "The defendants" continued to provide Mr. Bickel with housing assistance payments (HAP) from September 2008 through June 2009, although plaintiffs' unit did not meet the Housing Quality Standards.³⁹

In June 2009, plaintiffs contacted Mr. Santo Duca who works for "HUD", and tried to seek emergency shelter through his department.⁴⁰ Mr. Duca contacted defendant Berks County Housing Authority on behalf of plaintiffs' family, and defendants at the Housing Authority informed Mr. Duca that plaintiffs were not

³⁵ Complaint, ¶¶ 39-40.

³⁶ Complaint, ¶ 41.

³⁷ Complaint, ¶ 42.

³⁸ Complaint, ¶ 43.

³⁹ Complaint, ¶ 48.

⁴⁰ Complaint, ¶¶ 44-45. Although the Complaint does not specify, "HUD" apparently refers to the United States Department of Housing and Urban Development.

entitled to emergency shelter because they had a "Section 8 Voucher".⁴¹

On November 8, 2009, "Plaintiffs" had a re-certification appointment with defendant Sandra Miller, and informed her that "she [Monica Griffin] was no longer receiving child support payments for her son, [plaintiff] Isaiah Boyer."⁴² Rather than plaintiff's portion of her rental payment decreasing because of loss of income, it increased from \$26.00 per month to \$59.00 per month.⁴³

On February 13, 2009, defendant Deidre Durham sent plaintiffs a letter (i.e., e-mail) stating "Once I've received acceptable documentation to verify the termination of support or loss of support for more than 60 days (support is based on a yearly amount not month to month)- an adjustment will then be done and a rent notice sent out for you to review."⁴⁴

On March 23, 2009, plaintiffs provided defendant Durham a printout of her child support payments which indicated that she was no longer receiving child support payments, or that a loss of

⁴¹ Complaint, ¶¶ 46-47.

⁴² Complaint, ¶¶ 53-54. Although unclear from the Complaint, it appears that "she" refers to plaintiff Monica Griffin. The parties' motion papers indicate that all agree that plaintiff Griffin is the mother of the other five plaintiffs, including plaintiff Boyer. See Defendants' Memorandum at page 1; Plaintiffs' Memorandum at page 3. Paragraph 54 of the Complaint describes plaintiff Isaiah Boyer as "her son". Paragraph 64 refers to "son, Isaiah Boyer".

⁴³ Complaint, ¶ 55.

⁴⁴ Complaint, ¶ 56.

child support payments occurred.⁴⁵ Defendant Durham did not send out a notice of rent adjustment as promised, and plaintiffs' adjustments were never made.⁴⁶

The "financial transaction log" did reveal a loss in support payments, for more than 60 days and eventually support payments ceased.⁴⁷ Defendant Durham calculated plaintiffs' yearly child support payments higher than what was actually being received, which resulted in the rent being higher and the HAP payment lower. Defendants actually owed the plaintiffs money rather than plaintiffs owing rent.⁴⁸

Plaintiffs did not receive their "refund or utility reimbursement allowance", which is in the form of a check issued each month by defendants.⁴⁹ Instead, plaintiffs' refund was being withheld because the defendants at the Berks County Housing Authority refused to calculate plaintiffs' income correctly.⁵⁰

⁴⁵ Complaint, ¶ 57.

⁴⁶ Complaint, ¶ 58. The Complaint does not identify defendant Diedre Durham's position or employer. Construing the Complaint in the light most favorable to plaintiffs, as I am required to do by the applicable standard of review, I conclude that defendant Durham was employed in some relevant capacity by defendant Berks County Housing Authority.

⁴⁷ Complaint, ¶ 59. The Complaint does not further describe the "financial transaction log". However, construing the Complaint in the light most favorable to plaintiffs, as required by the applicable standard of review, I conclude that this was a log kept by defendant Berks County Housing Authority.

⁴⁸ Complaint, ¶ 60.

⁴⁹ Complaint, ¶ 66.

⁵⁰ Complaint, ¶ 67.

Plaintiffs were harmed and injured by defendants' actions.⁵¹ Other similarly-situated people not in plaintiffs' protected class are treated more favorably.⁵² Plaintiff E.C., a minor child who is disabled, was treated for lead poisoning.⁵³ Plaintiff Monica Griffin's other children suffered emotionally as a result of the pain and suffering they endured for seven years, and plaintiff Griffin, their mother, suffers emotionally as she "seeks justice for herself and her family."⁵⁴

CONTENTIONS OF THE PARTIES

Defendants' Contentions

First, defendants contend that all claims of plaintiffs D.C, Jr., C.C. and E.C. should be dismissed against all defendants because these plaintiffs are minors. Specifically, defendants contend that minors cannot represent themselves pro se, and that a pro-se plaintiff who is not an attorney may not represent minor children.

Second, defendants contend that all claims for violations of the Fair Housing Act of 1968 (FHA) contained in Counts 1, 2, and 3 should be dismissed against all defendants because the FHA does not apply to claims by Section 8 Housing

⁵¹ Complaint, ¶ 19.

⁵² Complaint, ¶¶ 49, 61, 71.

⁵³ Complaint at page 12 of 13, section IV. Although unclear from the Complaint, plaintiffs' memorandum in opposition to the within motion identifies plaintiff E.C. as Emiah Clemons, the child named on page 12 of 13, section IV of the Complaint who was treated for lead poisoning. See Plaintiffs' Memorandum at page 3.

⁵⁴ Complaint at page 12 of 13, section IV.

Choice Voucher participants against a public housing authority or its employees.

Specifically, defendants contend that Third Circuit caselaw suggests that the FHA does not apply to suits against public housing authorities who provide disabled persons with vouchers for housing assistance. Defendants further contend that the statutory language in the FHA prohibiting discrimination based on disability is similar to the language prohibiting discrimination based on race. Therefore, defendants argue that the FHA is also inapplicable to suits by voucher recipients against public housing authorities when the claims, as plaintiffs allege here, are for race discrimination.

Third, defendants contend that all claims for violations of Title VI of the Civil Rights Act of 1964 (Title VI) contained in Counts 1, 2 and 3 should be dismissed against defendants Miller, Ruhnke, Durham and Nelson (hereinafter "the individual defendants") because Title VI does not impose liability on individuals. Defendants contend that a cause of action under Title VI can only be asserted against a program or activity receiving federal financial assistance.

In addition, defendants contend that the Title VI claims must be dismissed against all defendants, including the Berks County Housing Authority, because plaintiffs have not alleged that any defendant received federal financial assistance.

Fourth, defendants contend that Count 1 should be dismissed in its entirety against defendants Miller and Durham.

Regarding defendant Miller, defendants contend that the only allegation in Count 1 against defendant Miller is that she called the plaintiffs and scheduled a time for defendant Nelson to inspect their property, and that plaintiffs have alleged no facts suggesting how this action could violate Title VI or the FHA.

Regarding defendant Durham, defendants contend that Count 1 contains no allegations against defendant Durham, and therefore nothing ties her to any of the activities alleged to be discriminatory in that count.

Finally, defendants contend that Counts 2 and 3 should be dismissed in their entirety against defendants Nelson and Ruhnke. Specifically, defendants contend that there are no allegations in these counts suggesting that defendants Nelson and Ruhnke were involved in the alleged failure to properly calculate plaintiffs' rent and utility allowance.

Plaintiffs' Contentions

In response to defendants' initial contention that the claims of plaintiffs D.C., Jr., C.C., and E.C. must be dismissed because they are minors, plaintiffs admit that these three plaintiffs are minors. Plaintiffs do not directly address defendants' argument that minors cannot represent themselves pro se. However, plaintiffs do aver that "Plaintiff Monica Griffin does not and never intended to represent her minor children; they are a part of this action."⁵⁵

⁵⁵ Plaintiffs' Opposition, ¶ 5.

Regarding defendants' second contention that the FHA does not apply to claims by Section 8 Housing Choice Voucher participants against a public housing authority or its employees, plaintiffs' response, construed liberally as required when plaintiffs are pro se⁵⁶, generally avers that the FHA would apply here. However, plaintiffs do not substantively address defendants' argument that the statutory language of the FHA and Third Circuit caselaw suggests that the FHA would not apply in this case.

Regarding defendants' third contention, plaintiffs do not address defendants' argument that Title VI does not impose liability on individuals, but do address the issue of receiving federal financial assistance. Plaintiffs aver in their memorandum in response (but not in their Complaint) that "the Defendants', who are recipients of Federal funds violated [Title VI]...."⁵⁷

Plaintiffs do not respond in detail to defendants' remaining two contentions regarding the lack of specific allegations against defendants Miller and Durham in Count 1 and against defendants Nelson and Ruhnke in Counts 2 and 3. Plaintiffs generally aver that the allegations in the Complaint are sufficient enough to proceed.

⁵⁶ See Haines v. Kerner, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972).

⁵⁷ Plaintiffs' Memorandum at 5.

DISCUSSION

Claims of the Minor Plaintiffs

Minor children lack the capacity to bring an action in federal court on their own behalf, and must sue through a representative or "next friend", which can be a parent. See Fed.R.Civ.P. 17(c); Osei-Afriyie v. Medical College of Pennsylvania, 937 F.2d 876, 883 (3d Cir. 1991). However, a non-lawyer suing on behalf of minor children may not represent the minor children pro se in place of an attorney. Osei-Afriyie, 937 F.2d at 883.

Here, defendants contend that all claims of plaintiffs D.C., Jr., C.C. and E.C. must be dismissed because these plaintiffs are minors. Defendants attach to the within motion copies of redacted birth certificates for these plaintiffs, which show that these plaintiffs are minors. Specifically, the certificates show a birth year of 1994 for plaintiff D.C., Jr. (indicating a maximum age of seventeen), a birth year of 2000 for plaintiff C.C. (indicating a maximum age of eleven), and a birth year of 2006 for plaintiff E.C. (indicating a maximum age of five).⁵⁸

As discussed in footnote 6 above, in the context of a 12(b)(6) motion to dismiss, I may consider the birth certificates as matters of public record, although they were not attached to the Complaint. See Oshiver v. Levin, Fishbein, Sedran & Berman,

⁵⁸ Defendants' Motion, Exhibits A, B, and C.

38 F.3d 1380, 1385 (3d Cir. 1994). In addition, plaintiffs do not dispute the certificates' authenticity. Moreover, even were I to exclude the certificates from consideration, plaintiffs admit in paragraph 5 of their opposition to the within motion that plaintiffs D.C., Jr., C.C. and E.C. are minors.

Because these plaintiffs are minors, they may not bring this action in their own behalf. Moreover, unless plaintiff Griffin is an attorney, she is required to retain counsel to represent her minor children if she wishes to sue on their behalf as their parent and natural guardian. Similarly, plaintiffs Shabre Ringgold and Isaiah Boyer (plaintiff Griffin's adult children), unless they are attorneys, cannot represent minor children in place of counsel. Oseyi-Afriyie, 937 F.2d at 883. The Complaint contains no indication that plaintiffs Griffin, Ringgold or Boyer are attorneys.

Therefore, it is inappropriate to address the claims of the minor plaintiffs on the merits at this time. See id. at 883-884. Accordingly, without determining whether the allegations in plaintiffs' Complaint state any viable claims on behalf of the minor plaintiffs, I dismiss all claims of plaintiffs D.C. Jr., C.C. and E.C. contained in all counts of the Complaint against all defendants. This dismissal is without prejudice for any adult plaintiff to secure counsel to represent the minor plaintiffs and for counsel to re-plead the claims of plaintiff Griffin as parent and natural guardian on behalf of

the minor plaintiffs, if appropriate, by filing an amended complaint by November 30, 2011. See id. at 883.

In the alternative, plaintiffs D.C, Jr., C.C. and E.C may reassert their claims on their own behalf, if appropriate, within the relevant statute of limitations when they reach the age of majority. Should they utilize this option, their claims will not accrue for purposes of the relevant statute of limitations until they reach eighteen years of age, or sooner if they become emancipated minors. See Perlberger v. Perlberger, 34 F.Supp.2d 282, 285 (E.D.Pa. 1998) (Padova, J.) (citing Oseyi-Afriyie, 937 F.2d at 883).

Fair Housing Act Claims

A. Applicability of the Fair Housing Act

Defendants contend that all claims for violations of the Fair Housing Act of 1968 (FHA) contained in Counts 1, 2 and 3 should be dismissed against all defendants because the FHA does not apply to claims of race discrimination by Section 8 Housing Choice Voucher participants against a public housing authority or its employees.

As pertinent here, the Fair Housing Act provides:

[I]t shall be unlawful--

- (a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.

- (b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.

42 U.S.C. § 3604(a)-(b).

Defendants contend that Third Circuit caselaw interpreting 42 U.S.C. § 3604(f), a textually-similar provision of the FHA which prohibits discrimination on the basis of disability, suggests that the FHA does not apply to suits against public housing authorities who provide disabled persons with vouchers for housing assistance. Therefore, defendants contend that the FHA would also not apply to such suits where, as here, the claims are for discrimination based on race.

In Growth Horizons, Inc. v. Delaware County, 983 F.2d 1277 (3d Cir. 1993), the United States Court of Appeals for the Third Circuit was assessing claims of disability-based discrimination under 42 U.S.C. § 3604(f) arising from the failure of defendant Delaware County to assume leases for certain sites to be occupied by mentally disabled individuals. Section 3604(f) provides, in relevant part:

[I]t shall be unlawful-

...

- (f) (1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap....

- (2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling because of a handicap....

42 U.S.C. § 3604(f) (1)-(2).

The Third Circuit held there was no viable FHA claim under § 3604(f) (1), explaining:

[T]he purpose of this statute is to protect the housing choices of handicapped individuals who seek to buy or lease housing and of those who seek to buy or lease housing on their behalf. The conduct and decision-making that Congress sought to affect was that of persons in a position to frustrate such choices—primarily, at least, those who own the property of choice and their representatives.

Growth Horizons, 983 F.2d at 1283.

The Court thought it “highly unlikely” that the statute “was intended to impose liability on those who purchase or lease housing on behalf of handicapped persons, one of the classes of persons the section was designed to protect.” Id. The Court further explained:

Nothing in the text or legislative history of § 3604(f) (1) suggests to us that Congress intended to regulate and thereby subject to judicial review the decision-making of public agencies which sponsor housing for the handicapped. This is not to say that the decision of such agencies cannot be tainted by bias against the handicapped. But that problem, if it exists, is far different from and presumably less serious than the problem of biased sellers and lessors Congress here addressed.

Id. at 1283-1284.

A subsequent decision of this court, Speith v. Bucks County Housing Authority, 594 F.Supp.2d 584 (E.D.Pa. 2009) (Brody, J.), dismissed claims of disability-based discrimination under § 3604(f) against a public housing authority. The Speith court interpreted Growth Horizons as suggesting that the FHA does not apply to suits against public housing authorities who provide disabled persons with vouchers for housing assistance, and was not intended to impose liability on those who purchase or lease housing on behalf of handicapped persons. Speith, 594 F.Supp.2d at 592 (quoting Growth Horizons, 983 F.2d at 1283).

Although Growth Horizons and Speith dealt with claims of disability-based discrimination, the text of 42 U.S.C. § 3604(a) and (b), the provisions prohibiting race-based discrimination, are substantially similar (although not identical) to the provisions prohibiting disability-based discrimination, § 3604(f)(1) and (2). Therefore, defendants contend that Growth Horizons and the interpretation of that case by Speith suggest that the FHA does not apply to claims of race discrimination by Section 8 Housing Choice Voucher participants against a public housing authority or its employees, who, like defendants, provided plaintiffs with vouchers for housing assistance.

However, I do not read Growth Horizons to apply as broadly as defendants do, that is, to suggest that the FHA never applies to claims of discrimination by Section 8 Housing Choice Voucher participants against a public housing authority or its

employees. The above-quoted language from that case cited by defendants was part of the Court's analysis of the plaintiff's claim under only § 3604(f)(1). Growth Horizons, 983 F.2d at 1283-1284. However, the plaintiff had also relied upon § 3604(f)(2), which prohibits discrimination "in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such a dwelling". Id. at 1284 n.12 (quoting 42 U.S.C. § 3604(f)(2)) (emphasis added).

In discussing plaintiff's § 3604(f)(2) claim, the Third Circuit Court in Growth Horizons does not hold that there can never be a viable FHA claim of discrimination under that subsection against those who seek to buy or lease housing on behalf of handicapped individuals. Id. at 1284 n.12. Rather, the Court merely notes that the allegedly discriminatory action of the defendant (the failure to assume leases for certain sites to be occupied by mentally handicapped individuals) "plainly does not involve 'the terms, conditions, or privileges of sale or rental'; nor does it involve 'the provision of services or facilities in connection with...a dwelling'". Id. (quoting 42 U.S.C. § 3604(f)(2)). Therefore, I read Growth Horizons as implying that plaintiff's claim under § 3604(f)(2) might have been viable under a different set of facts.

As discussed above, the language of § 3604(f)(2) prohibiting disability-based discrimination is substantially

similar to the language of § 3604(b) prohibiting race-based discrimination. In a decision of a federal district court within the Third Circuit, decided subsequently to Growth Horizons, the court analyzed a plaintiff's FHA race-discrimination claim under § 3604(b) against a public housing authority, where plaintiff alleged that the public housing authority had wrongfully terminated his Section 8 Voucher. Pondexter v. Allegheny County Housing Authority, 2007 U.S. Dist. LEXIS 78532, at *41-42 (W.D. Pa. Oct. 23, 2007), aff'd, 324 Fed. Appx. 169 (3d Cir. 2009).

In Pondexter, the district court analyzed this claim on its merits, without questioning whether a § 3604(b) claim was permitted against a public housing authority who provides vouchers to Section 8 participants. Id. at *41-45.

I therefore conclude that Growth Horizons does not apply as broadly as defendants suggest to bar all of plaintiffs' claims under the FHA for race-based discrimination against a public housing authority and its employees. Although plaintiffs' Complaint does not clearly state which subsection of the FHA they rely on in support of their claims, I construe each count of the pro-se Complaint liberally⁵⁹ as bringing claims under the second clause of § 3604(b) for race-based discrimination "in the provision of services or facilities in connection [with a dwelling]". 42 U.S.C. § 3604(b).⁶⁰

⁵⁹ See Haines v. Kerner, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972).

⁶⁰ Plaintiffs do not allege that defendant Berks County Housing Authority or the individual defendants sold or rented their housing unit

(Footnote 60 continued):

As discussed above, caselaw within this circuit indicates that an FHA claim against a public housing authority may be brought under § 3604(b). See Pondexter, supra. Accordingly, I do not dismiss these claims based on defendants' contention that the FHA does not apply to claims of race discrimination by Section 8 Housing Choice Voucher participants against a public housing authority or its employees, who, like defendants, provided plaintiffs with vouchers for housing assistance.⁶¹

(Continuation of footnote 60):

to them, and therefore plaintiffs do not appear to rely on § 3604(a), which prohibits race-based discrimination in the sale or rental, or negotiations for sale or rental of a dwelling. Nor do they appear to rely on the first clause of § 3604(b), which prohibits race-based discrimination in the terms, conditions, or privileges of sale or rental of a dwelling.

Construing plaintiffs' allegations liberally, I conclude they may be read to involve the "provision of services or facilities" in connection with their Section 8 housing unit. Specifically, in Count 1 plaintiffs allege discrimination based on the various inspections of their unit, which plaintiffs allege should not have passed the inspection on several occasions because material violations still existed; that they were forced to move out of the unit because defendants terminated the Section 8 contract with their landlord; and that defendants continued to give housing assistance payments to the landlord even though the unit did not meet Housing Quality Standards. In Count 2, plaintiffs allege that child support payments were miscalculated, which resulted in higher rent. In Count 3, plaintiffs allege that they were not provided with the proper utility reimbursement allowance.

⁶¹ Defendants move to dismiss the FHA claims against all defendants based upon their argument (which I have rejected) that the FHA does not apply in this context. Defendants' motion does not address the elements of a discrimination claim under the FHA, nor move to dismiss these claims on the basis that plaintiffs have not alleged sufficient facts to satisfy such elements. Accordingly, I do not address that issue at this time, and the adult plaintiffs' FHA claims against the four individual defendants and the Berks County Housing Authority remain in this lawsuit.

However, as more fully discussed in the next subsection of this Opinion, I find it appropriate to direct a more definite statement of the adult plaintiffs' FHA claims against the individual defendants pursuant to Federal Rule of Civil Procedure 12(e).

B. Lack of Specific Allegations

Defendants also contend that Count 1 should be dismissed against defendants Miller and Durham because of the lack of specific allegations against them, and that Counts 2 and 3 should be dismissed in their entirety against defendants Nelson and Ruhnke for the same reason.

Plaintiffs' response does not meaningfully address these contentions. Therefore, I could grant this portion of defendants' motion as unopposed. See Local Rule 7.1(c); Saxton v. Central Pennsylvania Teamsters Pension Fund, 2003 U.S. Dist. LEXIS 23983, at * (E.D. Pa. Dec. 9, 2003) (Van Antwerpen, J.) (citing Toth v. Bristol Township, 215 F. Supp. 2d 595, 598 (E.D. Pa. 2002) (Joyner, J.)). However, because plaintiffs are pro se and their Complaint does generally aver in each Count that "the Defendants" violated the FHA⁶², I will address these contentions on their merits.

In Count 1, plaintiffs' allegations largely concern the various inspections of their unit by defendant Ruhnke, and a single re-inspection on May 5, 2009 by defendant Nelson, during which defendant Nelson allegedly told plaintiffs they would have to move.

I agree with defendants that the only allegation in Count 1 against defendant Miller is that she called the plaintiffs and scheduled a time for defendant Nelson to inspect

⁶² Complaint, ¶¶ 50, 62, 72.

their property⁶³, and that plaintiffs have alleged no facts suggesting how this action could violate the FHA.

Regarding defendant Durham, I agree that Count 1 contains no specific allegations against defendant Durham, and therefore nothing ties her to any of the activities alleged to be discriminatory in that count.

In Counts 2 and 3, plaintiffs' allegations concern certain actions taken by defendants Miller and Durham in connection with the alleged failure to correctly calculate plaintiffs' rent (Count 2) and utility reimbursement allowance (Count 3) because of the miscalculation of plaintiff Griffin's child support payments.⁶⁴ I agree with defendants that there are no allegations in these Counts suggesting that defendants Nelson and Ruhnke were involved in the alleged failure to properly calculate plaintiffs' rent and utility allowance.

A party may move for a more definite statement pursuant to Federal Rule of Civil Procedure 12(e) where a pleading "is so vague or ambiguous that the party cannot reasonably prepare a response." Fed.R.Civ.P. 12(e). Although defendants here have

⁶³ Complaint, ¶¶ 38-39.

⁶⁴ I note that Count 2 mentions defendants Miller and Durham by name, but Count 3 does not. However, defendants do not move to dismiss Count 3 against defendants Miller and Durham on that basis. Moreover, a reasonable reading of Count 3 indicates that the alleged failure to provide plaintiffs with the proper utility reimbursement allowance is related to the miscalculation of plaintiff Griffin's child support payments. Count 2 clearly alleges that defendants Miller and Durham were involved in the process of accounting for the child support payments, and in paragraph 63 (in Count 3) plaintiffs incorporate by reference paragraphs 1 through 62 (which include Count 1 (which also mentions defendant Miller) and Count 2 (which mentions both defendants Miller and Durham)).

not so moved, the court has discretion to direct more specific factual allegations sua sponte in appropriate circumstances. See Thomas v. Independence Township, 463 F.3d 285, 289 (3d Cir. 2006).

Because plaintiffs are pro se, and because they do generally aver in each count that "the Defendants" violated the FHA⁶⁵, I will not dismiss the FHA claims in Count 1 against defendants Miller and Durham or the FHA claims in Counts 2 or 3 against defendants Nelson and Ruhnke at this time. Rather, because I find that these claims, as pled, are "vague or ambiguous" as to the defendants not specifically named in each respective count, it is appropriate to direct a more definite statement. See Thomas, 463 F.3d at 289.

Accordingly, I direct plaintiffs Griffin, Ringgold and Boyer to file an amended complaint by November 30, 2011 to (1) provide a more definite statement of their FHA claims in Count 1 against defendants Miller and Durham, specifically, to allege facts supporting a conclusion that defendants Miller and Durham were involved in the allegedly discriminatory actions enumerated in that count; and (2) provide a more definite statement of their FHA claims in Counts 2 and 3 against defendants Nelson and Ruhnke, specifically, to allege facts supporting a conclusion that defendants Nelson and Ruhnke were involved in the allegedly discriminatory actions enumerated in those counts.

⁶⁵ Complaint, ¶¶ 50, 62, 72.

Title VI Claims

Defendants contend that all Title VI claims contained in Counts 1, 2 and 3 should be dismissed against the four individual defendants because Title VI does not impose liability on individuals. Defendants contend that a cause of action under Title VI can only be asserted against a program or activity receiving federal financial assistance, and that individual defendants do not fall into this class.

Title VI provides, in relevant part:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

42 U.S.C. § 2000d.⁶⁶

⁶⁶ "Program or activity" is defined as

[A]ll of the operations of--

- (1) (A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or
- (B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;
- (2) (A) a college, university, or other postsecondary institution, or a public system of higher education; or
- (B) a local educational agency..., system of vocational education, or school system;
- (3) (A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship-

(Footnote 66 continued):

The United States Court of Appeals for the Third Circuit has not addressed in a precedential opinion the issue of whether Title VI imposes liability on individual defendants. However, in a non-precedential decision, the Third Circuit agreed with the reasoning of precedential decisions of the Eleventh Circuit and the Sixth Circuit which held that "because Title VI forbids discrimination only by recipients of federal funding, individuals cannot be held liable under Title VI." Shannon v. Lardizzone, 334 Fed.Appx. 506, 508 (3d Cir. 2009) (per curiam) (citing Shotz v. City of Plantation, 344 F.3d 1161, 1169 (11th Cir. 2003); Buchanan v. City of Bolivar, 99 F.3d 1352, 1356 (6th Cir. 1996)). The Shannon court thus affirmed the district court's grant of summary judgment on plaintiff's Title VI claim

(Continuation of footnote 66):

- (i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or
- (ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or
- (B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or
- (4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3);

any part of which is extended Federal financial assistance.

42 U.S.C. § 2000d-4a.

in favor of three individual defendants. Shannon, 334 Fed.Appx. at 508.

Moreover, the recent decision of a federal district court within the Third Circuit agreed with the holdings of Shotz and Buchanan that "individual defendants are not proper defendants under Title VI, because they are not programs or activities receiving federal financial assistance." Sand Hill Band of Lenape & Cherokee Indians v. Corzine, 2010 U.S.Dist.LEXIS 66605, at *59-60 (D.N.J. June 30, 2010) (citing Shotz, 344 F.3d at 1169; Buchanan, 99 F.3d at 1356).

The court therefore dismissed Title VI claims against individual state officials because "those defendants do not fall within the statute's scope." Sand Hill, 2010 U.S.Dist.LEXIS at *60. See also Lyons v. City of Philadelphia, 1998 U.S.Dist.LEXIS 17281, at *11-12 (E.D.Pa. Nov. 4, 1998) (Newcomer, J.), a decision of older vintage in which this court held the same, also citing Buchanan.

Following the guidance of the unpublished decisions in Shannon, Sand Hill and Lyons, which are consistent with the precedential decisions of the Eleventh Circuit in Shotz and the Sixth Circuit in Buchanan, I conclude that plaintiffs' Title VI claims may not be brought against the four individual defendants in this action. Accordingly, I dismiss with prejudice all claims of plaintiffs Griffin, Ringgold and Boyer for violations of Title VI against defendants Miller, Ruhnke, Nelson and Durham.

I now address the remaining Title VI claims against defendant Berks County Housing Authority. Defendants also contend that the Title VI claims must be dismissed because plaintiffs have failed to allege that defendants are a "program or activity receiving federal financial assistance." 42 U.S.C. § 2000d. To the extent that defendant Berks County Housing Authority may fall into this definition, plaintiffs have failed to so allege in their Complaint.

Accordingly, I dismiss all claims of plaintiffs Griffin, Ringgold and Boyer for violations of Title VI against defendant Berks County Housing Authority, without prejudice for plaintiffs to file an amended complaint by November 30, 2011 to re-plead facts supporting a conclusion that defendant Berks County Housing Authority is a program or activity receiving federal financial assistance.

CONCLUSION

For the forgoing reasons, I grant in part and deny in part defendants' motion to dismiss. Specifically, I grant the motion regarding all claims of the pro se minor plaintiffs D.C., Jr., C.C. and E.C., and dismiss all their claims for violations of the Fair Housing Act and Title VI against all defendants. In addition I give plaintiffs Monica Griffin, Shabre Ringgold, and Isaiah Boyer the opportunity to secure counsel to represent the minor plaintiffs and for counsel to re-plead the claims on behalf of plaintiff Griffin as a parent and natural guardian on behalf

of the minor plaintiffs, if appropriate, by filing an amended complaint by November 30, 2011. In the alternative, plaintiffs D.C, Jr., C.C. and E.C may reassert their claims on their own behalf, if appropriate, within the relevant statute of limitations when they reach the age of majority.

Further, I grant defendants' motion to dismiss the claims of plaintiffs Griffin, Ringgold and Boyer for violations of Title VI against the four individual defendants, Sandra Miller, Benno Ruhnke, Tanya Nelson and Diedre Durham, and dismiss these claims with prejudice. Additionally, I grant the motion of defendant Berks County Housing Authority to dismiss the claims of plaintiffs Griffin, Ringgold and Boyer against it for violations of Title VI. I dismiss these claims without prejudice for plaintiffs to file an amended complaint by November 30, 2011 to re-plead these claims in accordance with this Opinion.

Next, I deny defendants' motion to dismiss the claims of plaintiffs Griffin, Ringgold and Boyer for violations of the Fair Housing Act against all defendants. However, as discussed above, I direct plaintiffs Griffin, Ringgold and Boyer to file an amended complaint by November 30, 2011 to (1) provide a more definite statement of their FHA claims in Count 1 against defendants Miller and Durham; and (2) provide a more definite statement of their FHA claims in Counts 2 and 3 against defendants Nelson and Ruhnke.

Finally because I have determined that defendants' motion could appropriately be decided as a motion to dismiss

pursuant to Federal Rule of Civil Procedure 12(b)(6)⁶⁷, I dismiss as moot defendants' motion in the alternative for summary judgment pursuant to Federal Rule of Civil Procedure 56.

⁶⁷ See footnote 6, supra.

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

MONICA GRIFFIN;)	
SHABRE RINGGOLD;)	Civil Action
ISAIAH BOYER;)	No. 10-cv-05740
D.C., JR.;)	
C.C.; and)	
E.C.,)	
)	
Plaintiffs)	
)	
vs.)	
)	
BERKS COUNTY HOUSING AUTHORITY;)	
SANDRA MILLER;)	
BENNO RUHNKE;)	
TANYA NELSON; and)	
DEIDRE DURHAM,)	
)	
Defendants)	

O R D E R

NOW, this 24th day of September, 2011, upon consideration of the following documents:

- (1) Defendants' Motion to Dismiss the Complaint and/or for Summary Judgment, which motion was filed February 11, 2011 (Document 7); together with

Defendants' Memorandum in Support of Their Motion to Dismiss the Complaint, and/or for Summary Judgment, which memorandum was filed February 11, 2011 (Document 7-2); and

- (2) Plaintiffs' Opposition to Defendants' Motion to Dismiss the Complaint and/or for Summary Judgment, which opposition was filed May 31, 2011 (Document 17); together with

Plaintiffs' Memorandum in Opposition of Defendants' Motion to Dismiss and/or for Summary Judgment, which memorandum was filed May 31, 2011 (Document 17),

upon review of plaintiffs' Complaint filed November 15, 2010, (Document 3); and for the reasons expressed in the accompanying Opinion,

IT IS ORDERED that defendants' motion to dismiss the Complaint is granted in part and denied in part.

IT IS FURTHER ORDERED that the motion to dismiss is granted to the extent it seeks dismissal of all claims of the minor plaintiffs "D.C., Jr.", "C.C." and "E.C." against all defendants for violations of Title VI of the Civil Rights Act of 1964 and the Fair Housing Act of 1968; and seeks dismissal of all claims of plaintiffs Monica Griffin, Shabre Ringgold and Isaiah Boyer against all defendants for violations of Title VI.

IT IS FURTHER ORDERED that all claims of minor plaintiffs D.C., Jr., C.C. and E.C. for violations of Title VI and the Fair Housing Act are dismissed against all defendants, without prejudice for the remaining plaintiffs Griffin, Ringgold and Boyer to secure counsel to represent the minor plaintiffs and for counsel to re-plead the claims of plaintiff Griffin as parent and natural guardian on behalf of the minor plaintiffs, if appropriate, by filing an amended complaint by November 30, 2011. In the alternative, plaintiffs D.C., Jr., C.C. and E.C. may reassert their claims on their own behalf, if appropriate, within the relevant statute of limitations when they reach the age of majority.¹

IT IS FURTHER ORDERED that all claims of plaintiffs Griffin, Ringgold and Boyer for violation of Title VI are

¹ As noted in the accompanying Opinion, if plaintiffs D.C., Jr., C.C. and E.C. elect to reassert their claims on their own behalf, their claims will not accrue for purposes of the relevant statute of limitations until they reach eighteen years of age, or sooner if they become emancipated minors. See Perlberger v. Perlberger, 34 F.Supp.2d 282, 285 (E.D.Pa. 1998) (Padova, J.) (citing Oseyi-Afriyie v. Medical College of Pennsylvania, 937 F.2d 876, 883 (3d Cir. 1991)).

dismissed with prejudice against defendants Sandra Miller, Benno Ruhnke, Tanya Nelson and Dierdre Durham.

IT IS FURTHER ORDERED that all claims of plaintiffs Griffin, Ringgold and Boyer against defendant Berks County Housing Authority for violation of Title VI, are dismissed without prejudice for plaintiffs to file an amended complaint by November 30, 2011 to re-plead these claims in accordance with the accompanying Opinion.

IT IS FURTHER ORDERED that defendants' motion to dismiss the Complaint is denied to the extent it seeks to dismiss the claims of plaintiffs Griffin, Ringgold and Boyer against all defendants for violations of the Fair Housing Act.

IT IS FURTHER ORDERED that plaintiffs Griffin, Ringgold and Boyer shall have until November 30, 2011 to file an amended complaint to provide a more definite statement of their Fair Housing Act claims against the four individual defendants, Sandra Miller, Benno Ruhnke, Tanya Nelson and Dierdre Durham, in accordance with the accompanying Opinion. In the event plaintiffs fail to comply, these claims may be dismissed for vagueness or ambiguity pursuant to Federal Rule of Civil Procedure 12(e).

IT IS FURTHER ORDERED that defendants' alternative motion for summary judgment is dismissed as moot.

BY THE COURT:

/s/ James Knoll Gardner
James Knoll Gardner
United States District Judge