

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 18-cv-02190-GPG

RAYMOND R. SCHWAB, and
AMELIA D. SCHWAB,

Plaintiffs,

v.

KRIS KOBACH, in his individual and official capacity,
KANSAS DEPARTMENT OF CHILDREN AND FAMILIES,
KIM YOXELL, in her individual and official capacity,
ANGIE SUTHER, in her individual and official capacity,
PHYLISS GILMORE, in her individual and official capacity,
THERESA FREED, in her individual and official capacity,
KENDRA BAKER, in her individual and official capacity,
RANDY DEBENHAM, in his individual and official capacity,
BLAKE ROBINSON, in his individual and professional capacity,
ANDREW VINDUSKA, in his individual and professional capacity,
MIRANDA JOHNSON, in her individual and professional capacity,
LORA INGLES, in her individual and professional capacity,
BARRY WILKERSON, in his individual and professional capacity,
BETHANY FIELDS, in her individual and professional capacity,
RILEY COUNTY POLICE DEPARTMENT,
CARLA SCHWARTZ, in her individual and professional capacity,
JULIA GOGGINS, in her individual and professional capacity,
KVCA, 501c3 Nonprofit Organization,
RHONDA EISENBAREGER, in her individual and professional capacity,
DEJA JACKSON, in her individual and professional capacity,
PATHWAYS FAMILY SERVICES, LLC,
PAWNEE MENTAL HEALTH SERVICE,
SUNFLOWER CASA PROJECT, 501c3 nonprofit entity,
ST. FRANCIES COMMUNITY SERVICES, a 501c3 nonprofit entity,
KATHY BOYD, in her individual and professional capacity,
LAURA PRICE, in her individual and professional capacity,
KAYLEE POSSEN, in her individual and professional capacity,
ANTHONY ALLISON, in his individual capacity,
MICHELLE ALLISON, in her individual capacity,
AMANDA ALLISON-BALLARD, in her individual capacity, and
DOES 1-10 INCLUSIVE,

Defendants.

ORDER TO TRANSFER

On August 27, 2018, Plaintiffs, who reside in Loveland, Colorado, initiated this action by filing, *pro se*, an Initial Complaint (ECF No. 1) asserting claims under 42 U.S.C. § 1983 and the Kansas Tort Claims Act, K.S.A. §75-6101, *et seq.* Each Plaintiff also filed an Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form) (ECF Nos. 2 and 3). In response to the Court's Order Directing Plaintiffs to Cure Deficiency and to Show Cause (ECF No. 5), Plaintiffs filed a Response (EC No. 6) and Amended Complaint (ECF No. 7) on September 5, 2018.

The Court must construe Plaintiffs' filings liberally because they are not represented by an attorney. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). However, the Court should not be an advocate for a *pro se* litigant. *See id.* For the reasons set forth below, the Court will transfer this action pursuant to 28 U.S.C. §§ 1406(a) and 1631.

Pursuant to 28 U.S.C. § 1391(b), a civil action may be brought in:

- (1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located;
- (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or
- (3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action.

The Court finds that the District of Colorado is not the proper venue to adjudicate Plaintiff's claims against Defendants, who are Kansas residents, and concern state child dependency and neglect proceedings in Kansas. Indeed, Plaintiffs request that the Court transfer this action to the District of Kansas. See ECF No. 6.

"A court may *sua sponte* cure jurisdictional and venue defects by transferring a suit under the federal transfer statutes, 28 U.S.C. §§ 1406(a) and 1631, when it is in the interest of justice." *Trujillo v. Williams*, 465 F.3d 1210, 1222 (10th Cir. 2006). Pursuant to § 1406(a), "[t]he district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought."

The Court finds that Plaintiffs' claims could have been brought in a federal district court in Kansas, and that it would be in the interest of justice to transfer this action to the United States District Court for the District of Kansas. Accordingly, it is

ORDERED that the Complaint and action will be transferred to the United States District Court for the District of Kansas, at the Robert J. Dole United States Courthouse, 500 State Avenue, Room 259, Kansas City, KS 66101, pursuant to 28 U.S.C. § 1406(a).

It is

FURTHER ORDERED that the pending motions are denied as moot.

DATED at Denver, Colorado, this 10th day of September, 2018.

BY THE COURT:

s/Lewis T. Babcock
LEWIS T. BABCOCK, Senior Judge
United States District Court