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6

FILED
JUL 24 2019
SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTH DISTRICT OF CALIFORNIA

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Pa
147

7 **UNITED STATES DISTRICT COURT**
8 **NORTHERN DISTRICT OF CALIFORNIA**
9 **SAN FRANCISCO DIVISION**

10
11 **ANDREA C. WOOD**

12 **Plaintiff**
13

14 **v.**

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16
17
18 **EDYTH WILLIAMS and**
19 **COUNTY OF CONTRA COSTA**
20

21 **Defendant**

22 **JURY TRIAL DEMANDED**
23

CASE NO.

CV 19-4247 EMC

COMPLAINT

24 **COMPLAINT FOR VIOLATION OF 42 U.S.C. §1983,**
25 **FOURTEENTH AMENDMENT, and NEGLIGENCE**
26

27 **JURISDICTION**

28 1. This is an action for relief, proximately the result of conduct engaged in by
29 the Edyth Williams, and County of Contra Costa in violation of 42 U.S.C.
30 §1983, Fourteenth Amendment, and Negligence.

31
32 2. This Court has personal jurisdiction over the Defendants because all factual
33 allegations derive from violations of 42 U.S.C. §1983 and Fourteenth
34 Amendment and for the sake of judicial expediency, this Court has
35 supplemental jurisdiction over all other claims, brought now or ever, that are
36 so related to claims in the actions of the parties within such original
37 jurisdiction that they form part of the same dispute pursuant to 28 U.S.C.
38 §1367.

39
40 3. This Court has subject matter jurisdiction over this dispute pursuant to 28
41 U.S.C. §1331 and 1338 (federal question jurisdiction). Jurisdiction is
42 premised upon the Federal defendants' violation of 42 U.S.C. §1983 and
43 Fourteenth Amendment.

44 VENUE

45 4. Venue is proper in this district pursuant to 28 U.S.C. §§1391 and 1400 because
46 the bulk of Plaintiff's business is transacted in the County of Contra Costa,
47 California, and for the Defendants that do not, and for the sake of judicial
48 expediency, this Court has supplemental jurisdiction over the Defendants that

are so related to claims in the actions of the parties within such original jurisdiction that they form the Court's jurisdiction is invoked pursuant to 28 U.S.C. §§1331, 1343.

THE PARTIES

5. Plaintiff, Andrea C. Wood (hereinafter "Plaintiff"), is a *sui juris* resident of Orinda, Cal. residing at:

40 Hilldale Court
Contra Costa County
Orinda, California
+1 (415) 375-1686

6. Federal defendant Edyth Williams (hereinafter "Williams"), sued in her individual capacity, is a *sui juris* resident of places unknown and is a Social Worker at Contra Costa County Family and Child Services with a principal place of business at:

500 Ellinwood Way
Contra Costa County
Pleasant Hill, California

Federal defendant County of Contra Costa (hereinafter "County") is a county in the U.S. State of California, covering an area of 716 square miles, consisting of a population of 1.1 million residents with a principal place of business at:

72 751 Pine Street
73 Contra Costa County
74 Martinez, California 94553
75 (925) 313-1180

76
77 **STATEMENT OF FACTS**
78

- 79 7. On August 17, 2017, TP (age 14), HP (age 12), and KP (age 7) were removed
80 from Plaintiff's, the biological mother's, home entering without an Access
81 Order, without warrant, no authorization to enter, and without an Order of
82 Temporary Removal all in violation of §340(b) of the Juvenile Dependency
83 Law ("JDL") – forceable entry; there was no imminent danger present.
- 84 8. The biological father of TP, HP, and KP, Jeremy Packwood passed away in
85 2007.
- 86 9. In March 2018, seven (7) months after the removal, Plaintiff began to have
87 regular visitation with KP, which is contrary to the very purpose of the JDL
88 (2018) but is par for the course in Child and Family Services ("CFS") in
89 Contra Costa County. The Federal defendants denied Plaintiff her rights to
90 Due Process under the Fourteenth Amendment and under the legal standard
91 of negligence had a duty of care to ensure that such does not occur.
- 92 10. At most visitations, Plaintiff would walk into the building with bag full of
93 toys, shoes, and clothes and KP would later say that such items were "shared

94 away” from her and given to other children or, upon information and belief,
95 sold at flea markets. The Federal defendants denied Plaintiff her rights to Due
96 Process under the Fourteenth Amendment and under the legal standard of
97 negligence had a duty of care to ensure that such does not occur.

98 11.Placement for KP continued to worsen, where KP’s pediatrician, who has
99 cared for KP since her birth, became alarmed at the spike in her cholesterol
100 levels attached herein as Exhibit “A”; Plaintiff noticed that KP was gaining
101 weight. The Federal defendants denied Plaintiff her rights to Due Process
102 under the Fourteenth Amendment and under the legal standard of negligence
103 had a duty of care to ensure that such does not occur.

104 12.Regular weekly visitations proceeded in 2018, until in December 2018, CFS
105 arbitrarily determined that visitation will henceforth takes place biweekly.
106 The Federal defendants denied Plaintiff her rights to Due Process under the
107 Fourteenth Amendment and under the legal standard of negligence had a duty
108 of care to ensure that such does not occur.

109 13.Were that not damaging enough for KP, on a July 8, 2019 visit, KP began
110 reporting that he was being hit by other children in her placement home. The
111 Federal defendants denied Plaintiff her rights to Due Process under the
112 Fourteenth Amendment and under the legal standard of negligence had a duty
113 of care to ensure that such does not occur.

114 14. Were par. 9 to par. 13 not enough, on July 8, 2019 KP revealed that she was
115 not being taken to school, that she had to repeat a grade and was entering the
116 4th grade rather than the 5th grade. This action was taken without parental
117 notice, without parental consent, and without a court order. The Federal
118 defendants denied Plaintiff her rights to Due Process under the Fourteenth
119 Amendment and under the legal standard of negligence had a duty of care to
120 ensure that such does not occur that reluctantly leads to this Complaint.

121 15. While, Grade retention refers to the practice of keeping a child in the same
122 grade for more than one year, typically because of poor school performance.
123 In most cases, parents and educators retain students because they have not
124 mastered the skills needed to be successful at the next grade level. This was
125 not the case with KP as her paternal grandfather was a graduate of Harvard
126 Business School and amassed a fortune as the most well known stock picker
127 since handed over to Warren Buffet. This was not the case with KP as
128 Plaintiff, her homework goddess, owns and operates a real estate empire in
129 the United States and Canada. The Federal defendants denied Plaintiff her
130 rights to Due Process under the Fourteenth Amendment and under the legal
131 standard of negligence had a duty of care to ensure that such does not occur.

132 **42 U.S.C. 1983 -- LEGAL STANDARD**

133 16. 42 U.S.C. §1983 provides in pertinent part:

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

The elements of a §1983 claim are:

- a. a “person”;
- b. acted under “color of law”; and
- c. deprived another person of a constitutional right.

17.A State is not a person under 42 U.S.C. §1983, but a City is a person under the law (*Will v. Michigan Department of State Police* 49 US 58 109 S. Ct. 2304 105 394 L. Ed 2d 45 [1989]).

18.State or City officials acting in their official capacities are not persons under 42 U.S.C. §1983, but State or City officials acting in their individual capacities are persons under the law.

19.Federal defendants Williams and County are persons.

20.Federal defendant Williams and County are persons who acted “under color of state law” when they failed to ensure KP was taken to school.

Compulsory Education Laws require children to attend a public or state-accredited private school for a certain period of time. Virtually all states have mandates for when children must begin school and how old they must be before dropping out. Typically, children must start school by the age of 6

and remain enrolled until they are at least 16. The Federal defendants violated Compulsory Education Laws, denied Plaintiff her rights to Due Process under the Fourteenth Amendment and under the legal standard of negligence had a duty of care to ensure that such does not occur..

21. Thus, Plaintiff maintains that liability under §1983 has been established as:

- a. Federal defendants Williams and County were on duty;
- b. Federal defendants Williams and County hold themselves out as public officials;
- c. Federal defendants Williams invoked the authority of their office and in their individual capacities when they failed to arrange taking KP to school.

FOURTEENTH AMENDMENT – LEGAL STANDARD

22. Section One of the Fourteenth Amendment to the United States Constitution provides:

[N]or shall any State deprive any person of life, liberty, or property, without due process of law.

23. In the past thirty-five years, the case law reads and is authority that:

- a. It is well settled that parents have a substantive due process right to the custody of their children and, except in emergency circumstances, a procedural due process right to a pre-deprivation child custody hearing.
- b. The Fourteenth Amendment imposes a requirement that except in emergency circumstances, judicial process must be accorded both parent and child before removal of the child from his or her parent's custody may be effected.

- 184
- 185 c. “[A] parent may . . . bring suit under a theory of violation of his or her
- 186 right to substantive due process . . . Parents have a ‘substantive right
- 187 under the Due Process Clause to remain together [with their children]
- 188 without the coercive interference of the awesome power of the state.’”)
- 189 (quoting *Tenenbaum v. Williams*, 193 F.3d 581, 600 (2d Cir. 1999)
- 190 (second alteration in original)); *Cox v. Warwick Valley Cent. Sch. Dist.*,
- 191 654 F.3d 267, 275 (2d Cir. 2011); and
- 192
- 193 d. “The interest of natural parents ‘in the care, custody, and management
- 194 of their child’ is a ‘fundamental liberty interest protected by the
- 195 Fourteenth Amendment.’” (quoting *Santosky v. Kramer*, 455 U.S. 745,
- 196 483 753 (1982)).
- 197

198 24. In stating a claim of a violation of procedural due process, Plaintiff

199 alleges:

200 (1) the existence of a property or liberty interest that was deprived (the

201 biological Mother of the retained KP because she was rarely taken to school)

202 and (2) deprivation of that interest without due process as a result of shocking,

203 arbitrary, and egregious failures to take KP to school in flagrant violation of .

204 Compulsory Education Laws.

205 25. In stating a claim of a violation of substantive due process, Plaintiff alleges

206 that: (1) she had a valid property or liberty interest (the biological mother of

207 the wrongly retained KP), and (2) that interest was infringed upon in an

208 arbitrary or irrational manner (the arbitrary failure to take KP to school in

209 flagrant violation of Compulsory Education Laws).

210 26. Further, Plaintiff maintains that, quoting *Tenenbaum*, that violation of
211 Compulsory Education Laws in the case of KP “was ‘so shocking, arbitrary,
212 and egregious that the Due Process Clause would not countenance it even
213 where it accompanied by full procedural protection.’” *Cox v. Warwick Valley*
214 *Cent. Sch. Distr.*, 654 F.3d 267, 275 (2d Cir. 2011) (quoting *Tenenbaum*, 193
215 F.3d at 600):

- 216
- 217 **a.** So shocking in that KP’s lineage exhibits strong educational and
218 professional accomplishment presently not afforded to KP;
- 219
- 220 **b.** So arbitrary as school days were handled routinely for other children in
221 the foster home but, upon information and belief, not for KP; and
- 222 **c.** So egregious in the glaring, flagrant actions of Federal defendants, the
223 research says that students are more negatively impacted by grade
224 retention than they are positively affected by it. Grade retention can also
225 have a profound impact on a student’s socialization, a student who has
226 been separated from their friends could become depressed and develop
227 poor self-esteem, student who are retained are likely physically bigger
228 than their classmates because they are a year older (KP’s pediatric
229 claims that he is on track to reach the height of 6 feet at physical
230 maturity, often causing the child to be self-conscious. Students who are

retained sometimes develop serious behavior issues, especially as they
age.

27. As a result, by a. to c. above, Plaintiff has suffered the shock of her conscience
that persists to this day.

28. Plaintiff had single handedly raised the minor child KP since birth after the
death of Jeremy Packwood, her husband and KP's father.

29. Upon information and belief, the once happy-go-lucky KP suffers high
cholesterol, poor diet, and a fascination with the make believe.

NEGLIGENCE -- LEGAL STANDARD

30. In these instances, Federal defendants Edyth Williams and the County of
Contra Costa portray themselves as unrepentant, recidivist, and perpetrators
of personal injury that amounts to at least negligence.

31. In this action for negligence, Plaintiff positions the following four elements to
show that the Federal defendants acted negligently:

- a. Duty - The Federal defendants Williams and County
owed a duty to Plaintiff under the circumstances as upon
information and belief, Williams is required to meet with
KP once per month, and consistent with the training of a
social worker, Williams should have asked questions
that elicited responses that evidenced KP was not being

252 taken to school;

253 b. Breach - Federal defendants Williams and County

254 breached that legal duty by acting or failing to act in a

255 certain way; Causation - It was the Federal defendants'

256 Williams and County actions and inactions that actually

257 caused Plaintiff's injury as "next friend" to KP. The term

258 "next friend" is derived from case law construction of

259 the statute which provides that "[a]pplication for a writ

260 of habeas corpus shall be ... verified by the person for

261 whose relief it is intended or by someone acting in his

262 behalf" (see 28 U.S.C. § 2242) and

263 c. Damages – Plaintiff is harmed as a result of the Federal

264 defendants' Williams and County's actions and inactions.

265 32.The Federal defendants Williams and County owed Plaintiff a legal duty of

266 care. The circumstances between Plaintiff and the Federal defendants

267 Williams and County create a legal duty in that a duty of care is a legal

268 obligation which is imposed on an individual requiring adherence to a

269 standard of reasonable care while performing any acts that could foreseeably

270 harm Plaintiff.

271 33.The Federal defendants Williams and County breached this duty by doing

something that a "reasonably prudent person" would not do under similar circumstances. The term "reasonably prudent person" refers to a legal standard that represents how the average person would responsibly act in a certain situation:

d. Federal defendants Williams and County breached their legal duty of care when they failed to elicit responses from KP that she was not being taken to school and had been retained in third grade as a result.

FEDERAL DEFENDANTS EDYTH WILLIAMS IS NOT ENTITLED TO QUALIFIED IMMUNITY

34. The United States Supreme Court has stated that qualified immunity is the norm, absolute immunity is the exception (*Harlow v. Fitzgerald*, 457 U.S. 800, 807, 810-11 (1982)).

35. In Balcerzak, Stephanie E. "Qualified Immunity for Government Officials: The Problem of Unconstitutional Purpose in Civil Rights Litigation. Vol. 95, No. 1 (Nov. 1985) pp. 126-147. The Yale Law Journal, the author stated:

In *Harlow*, the Supreme Court fundamentally altered the qualified immunity defense available to an official charged with a constitutional violation in a civil rights action for damages. Under *Harlow*, an official is entitled to immunity unless his conduct violates a "clearly established" constitutional right (emphasis supplied).

36. All constitutional rights are expressly stipulated and written in the U.S. Constitution, which is the supreme law of the land, meaning that any other laws which are in contradiction with it are considered unconstitutional and thus regarded as invalid.

37. The Fourteenth Amendment to the U.S. Constitution provides:

[N]or shall any State deprive any person of life, liberty, or property, without due process of law.

38. Then, while not a constitutional right, but important nonetheless, there is:

42 U.S.C. §1983 which provides in pertinent part:

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

39. In *Mirales v. Wako* 502 U.S. 9 (1991), the U.S. Supreme Court stated "...our cases make clear that the immunity is overcome in only two sets of circumstances. First, a judge is not immune from liability for nonjudicial actions, i.e., actions not taken in the judge's judicial capacity. *Forrester v. White*, 484 U.S., at 227 -229; *Stump v. Sparkman*, 435 U.S., at 360 [502 U.S. 9, 12] Second, a judge is not immune for actions, though judicial in nature,

taken in the complete absence of all jurisdiction. *Id.*, at 356-357; *Bradley v. Fisher, 13 Wall., at 351.*”

CONCLUSION

40. What Is the Process for a Student to be Retained? Each school district typically has its own retention policy. Some districts may oppose retention altogether. For districts that do not oppose retention, teachers need to make themselves familiar with their district’s policy. Regardless of that policy, there are several things a teacher needs to do to make the retention process much easier throughout the year.

41. Identify struggling students within the first few weeks of school.

42. Create an individualized intervention plan to meet that student's individual learning needs.

43. Meet with the parent within a month of initiating that plan. Be straightforward with them, provide them with strategies to implement at home, and be sure you let them know that retention is a possibility if significant improvements aren’t made over the course of the year.

44. Adapt and change the plan if you are not seeing growth after a few months.

45. Continuously update the parents on their child’s progress.

46. Document everything, including meetings, strategies used, results, etc.

47.If you do decide to retain, then follow all school policies and procedures dealing with retention. Be sure to monitor and comply with dates concerning retention as well.

48.In the matter of KP, none of the suggested strategies were followed, and KP was allowed to wallow, and the Federal defendants failed in their duty of care.

COUNT ONE

VIOLATION OF 42 U.S.C 1983 (Federal Defendants Edyth Williams)

1. Plaintiff repeats and realleges each and every allegation contained in paragraph “18” through “48” as though fully set forth herein.
2. As a result of the Defendants’ acts, Plaintiff now suffers and will continue to suffer injury and monetary damages, and that Plaintiff is entitled to damages sustained to date and continuing in excess of the amount of **FIFTY MILLION DOLLARS (\$50,000,000)** as well as punitive damages, costs, and attorney’s fees.

COUNT TWO

VIOLATION OF FOURTEENTH AMENDMENT (Federal Defendants Edyth William and County of Contra Costa)

3. Plaintiff repeats and realleges each and every allegation contained in paragraph “18” through “48” as though fully set forth herein.

4. As a result of the Defendants' acts, Plaintiff now suffers and will continue to suffer injury and monetary damages, and that Plaintiff is entitled to damages sustained to date and continuing in excess of the amount of **FIFTY MILLION (\$50,000,000)** as well as punitive damages, costs, and attorney fees.

COUNT THREE

NEGLIGENCE

(Federal Defendants Edyth William and County of Contra Costa)

1. Plaintiff repeats and realleges each and every allegation contained in paragraph "18" through "48" as though fully set forth herein.

2. As a result of the Defendants' acts, Plaintiff now suffers and will continue to suffer injury and monetary damages, and that Plaintiff is entitled to damages sustained to date and continuing in excess of the amount of **FIFTY MILLION (\$50,000,000)** as well as punitive damages, costs, and attorney fees.

WHEREFORE, a judgment is respectfully demanded:

a. Awarding against the individually named Federal defendant such punitive damages as the jury may impose, but not less than **ONE HUNDRED AND FIFTY MILLION DOLLARS (\$150,000,000)**;

b. Awarding against the individually named Federal defendant such compensatory damages as the jury may determine, but not less than such punitive damages as the jury may impose, but not less

380 than **ONE HUNDRED AND FIFTY MILLION DOLLARS**
381 **(\$150,000,000);**
382

383 c. Permanently enjoining the Federal defendants Edyth Williams
384 from further violation of 42 U.S.C. §1983 and violation of the
385 Fourteenth Amendment;
386

387 d. Awarding reasonable attorney's fees and costs; and,
388

389 e. Granting such other and further relief as this Court deems just
390 and proper.

391 **JURY TRIAL IS DEMANDED**

392 Plaintiff demands a trial by jury on all claims so triable.

393 **Dated: July 23, 2019**

394 **Orinda, Cal.**

395 **For Plaintiff:**
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399 **Andrea C. Wood**
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EXHIBIT “A”