UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LALANEA STAR LITTLE,
INDIVIDUALLY AND AS NEXT
FRIEND OF MINOR CHILD, A.L.

Plaintiff,

v.

Case No. 1:20-cv-11857-TLL-PTM
Hon. Thomas L. Ludington

PRESQUE ISLE COUNTY,
DEPARTMENT OF CHILD PROTECTIVE
SERVICES, DR. TIMOTHY STRAUSS,
INDIVIDUALLY AND IN HIS OFFICIAL
CAPACITY, JULIE MCALLISTER LEAZIER,
INDIVIDUALLY AND IN HER OFFICIAL CAPACITY,

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**REPLY BRIEF IN SUPPORT OF DEFENDANT JULIE MCALLISTER LEAZIER'S AMENDED MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(B)(6)**

1. **Plaintiff's claims are time-barred because she is not entitled to tolling by reason of insanity.**

It is undisputed that Plaintiff relinquished her parental rights in 2015, five years before the filing of this action. Plaintiff does not address the arguments raised in Defendant McAllister's Motion to Dismiss regarding her argument for tolling pursuant to M.C.L. § 600.5851. She does not address Defendant McAllister's argument that she is not entitled to tolling by reason of insanity because she was fully aware of her rights at the time she was purportedly insane. Indeed, she made social media posts about her rights, as established by

her Declaration, in 2017. [ECF No. 27-3, PageID 302]. Plaintiff also does not address the argument that she has not established that her purported insanity was continuous. Simply, she does not establish when her purported insanity began or when it was resolved – elements she has the burden of proving. *English v. Bousamra*, 9 F.Supp 2d 803, 808 (W.D.Mich. 1998). To hold otherwise, any purportedly incapacitated plaintiff could simply claim they were incapacitated, without support, in contradiction to their signed declaration, and dismissal would be improper. Most importantly, if Plaintiff was not able to comprehend her rights for five continuous years (the statutory definition for tolling), as she herself is alleging, that proves that she was unable to provide proper care or custody for her children with no reasonable expectation that she would be able to provide such care. M.C.L. § 712A.19b(3).

**2. Plaintiff does not establish a sufficient nexus between Defendant McAllister's actions and the state.**

Plaintiff baldly argues that Defendant McAllister had a sufficient nexus[1] with the state so that her actions are attributed to the state and therefore, Plaintiff can proceed with her § 1983 claim. To support her argument, Plaintiff states that the "four corners of the Complaint plausibly allege a sufficient nexus." [ECF No. 35, PageID 383]. However, she does not identify where the purported nexus is alleged in the First Amended Verified Complaint. Her only allegations that arguably attempt to establish a nexus are that Defendant McAllister worked for MDHHS (which she did not) and that she was a caseworker. [ECF No. 5, PageID

[1] By omission, Plaintiff concedes that both the public function and the state compulsion test cannot be met.

28, ¶ 7].[2] Two cursory references to Defendant McAllister do not establish that she was a state actor because her actions were so intertwined with that of the state. Without more, Plaintiff's First Amended Verified Complaint must fail.

In *Reguli*, the Sixth Circuit, relying in part on *Kirtley v. Rainey*, 326 F.3d 1088, 1095 (9th Cir. 2003), held that a guardian appointed by the state, paid by the state, subject to regulation by the state, and who reports to the court was not a state actor under the nexus test. *Reguli v. Guffee*, 371 F. App'x 590, 601 (6th Cir. 2010). While reporting to the court, the guardian acts as an independent investigator and she occupies a role distinct from the court and, likewise, distinct from state action. *Id*.

Here, Plaintiff does not allege that Defendant McAllister was appointed by the state, paid by the state, regulated by the state, or reported to the court. Even if she had, her allegations would still be insufficient. *Reguli, supra*. Without establishing that the state had coercive power over Defendant McAllister's independent judgment, Plaintiff's § 1983 claim against Defendant McAllister must fail. She has neither tried to allege nor argued in her Response the conditions necessary to establish that Defendant McAllister was a state actor because of a purported nexus with the state. As such, her § 1983 claim against Defendant McAllister must be dismissed.

[2] Plaintiff only refers to Defendant McAllister, individually, one other time throughout the balance of her First Amended Verified Complaint.

**3. Plaintiff does not allege Defendant McAllister's specific actions that are administrative or investigative so that they fall outside the scope of immunity.**

In response to immunity, Plaintiff argues that her actions were administrative and not prosecutorial. [ECF No. 35, PageID 385]. This is not a defense to the absolute immunity provided under Michigan law, an immunity that is broader than the qualified immunity provided under federal law.[3] Federal courts hearing diversity matters should be extremely cautious about adopting "substantive innovation" in state law, and should not adopt interpretations of state law that greatly expand liability. *Estate of Combs v. Intl. Ins. Co.*, 354 F.3d 568, 577-578 (6th Cir. 2004).

Plaintiff's attempts to distinguish *Martin v. Children's Aid Society*, 215 Mich. App. 88; 544 N.W.2d 651 (1996) are unconvincing. In *Martin*, parents brought suit against a private care provider, following their daughter's removal from their custody. To the extent that the

[3] See, e.g. *Wygant v. Strand*, 2011 WL 533865 (E.D. Mich. 2011) (with regard to absolute immunity for social workers, "Michigan law has diverged from its federal roots"); *Braverman v. Hall*, 2005 WL 1123889, unpublished opinion per curiam of the Michigan Court of Appeals, issued 5/12/05 (Docket No. 253619) (social worker immunity under Michigan law not limited to quasi-prosecutorial or quasi-judicial actions); *Herman-Muhammad v. White & White Pharmacy*, *Inc.*, 2007 WL 678645 at 10, unpublished opinion per curiam of the Michigan Court of Appeals, issued 3/6/07 (Docket No. 270987) (*Martin* immunity not limited to the performance of ministerial functions, but rather "to all of the plaintiff's claims, which included negligence, breach of statutory and contractual duties, bad faith, and violation of their constitutional rights"); *Beauford v. Lewis*, 269 Mich. App. 295; 711 N.W.2d 783, 786 (2006) (immunity applies to any action by social worker where parents of the child had an opportunity to contest the social worker's recommendations); *see also Garrett v. Orchards Children's Services*, *Inc.*, 2003 WL 21701536, unpublished opinion per curiam of the Michigan Court of Appeals, issued 7/22/03 (Docket No. 239632) (holding same).

instant Complaint offers any detail about Defendant McAllister's conduct (it does not not), it mirrors the allegations in the *Martin* Complaint that were dismissed at the pleadings stage:

> CAS acted in bad faith by deliberately prolonging Ashley's temporary foster care, ***deliberately preventing meaningful contact between child and parents***, deliberately allowing the foster parents to move 150 miles away, ***and insisting that plaintiffs confess to abusing Ashley as the precondition for her return and as the apparent precondition for any effort to reintegrate Ashley into the Martin home***. [*Id.* at 659 (emphasis added).]

The public policy identified in *Martin* is especially applicable here: **absolute** immunity, not qualified immunity, is necessary to prevent harassing lawsuits from dissatisfied parents like Plaintiff:

> Mere qualified immunity is not enough protection to prevent the chilling effect of a potential suit on the exercise of a social worker's professional judgment and discretion in operating as an arm of the Probate Court to protect abused children. This litigation is vivid proof…[t]he threat of a suit like this one could make any social worker back off from making discretionary decisions that he or she would otherwise believe to be in the child's best interest. [*Id.* at 656 (internal citations omitted).]

**4. Plaintiff's claim that the actions that led up to the removal of her children are not alleged and cannot be relied upon to avoid the *Rooker-Feldman* doctrine.**

To try to circumvent the *Rooker-Feldman* doctrine, Plaintiff argues that she is complaining about the actions that led up the state court's decision. In *McCormick v. Braverman*, 451 F.3d 382 (6th Cir. 2006), the Sixth Circuit ultimately affirmed the order of dismissal, even though the Court found that *some* of the counts were not within the scope of the *Rooker-Feldman* doctrine. *Id*. at 392. In that case, there were independent claims of fraud; declaratory judgment regarding a receivership; fraud, in greater detail;

misrepresentation and abuse of process; and a request for a declaratory judgment that the statute giving jurisdiction to Michigan probate courts was unconstitutional. *Id*. at 388.

Here, in contrast, Plaintiff does not identify the specific actions that purportedly "led up" to the state court decision about which she claims to complain. Further, she does not clarify her requested relief. Instead, she baldly concludes that the earlier actions of the Defendants are at issue, without citing the record. [ECF No. 35, PageID 388]. The reason that she does not cite to her Complaint is because that Complaint does not contain specific allegations that would align this case with *McCormick*.[4] For example, Count II of Plaintiff's First Amended Verified Complaint is illustrative of her claims' lack of reference to any action leading up to the state court decision on which she now relies:

> 22. Defendants conspired by concerted action to accomplish an unlawful deprivation of Plaintiffs' well-established constitutional rights, by unlawful means.
>
> 23. Each of the named Defendants committed willful, overt acts in furtherance of the conspiracy.
>
> 24. The misconduct described in this Complaint was undertaken with malice, willfulness, and reckless indifference to Plaintiffs' rights. [[ECF No. 5, PageID 33].

**5. Plaintiff mentions Defendant McAllister by name only twice and impermissibly uses group pleading.**

In response to Defendant McAllister's group pleading argument, Plaintiff essentially argues that Defendant McCallister and this Court know what was done. [ECF No. 35, PageID

[4] The *McCormick* opinion included 16 paragraphs of background facts across three pages.

390]. Unfortunately for Plaintiff, there is no reference to the First Amended Verified Complaint that only mentions Defendant McCallister by name twice. Plaintiff does not allege specific facts that tie the purportedly violative conduct to the individual Defendants, let alone Defendant McCallister. Plaintiff only claims that the Defendants were "reckless," "baseless," "conflicting, "unreasonable," and "willful." Plaintiff's claims should be dismissed.

WHEREFORE Defendant McAllister respectfully requests that this Court grant this Motion for Dismissal.

Respectfully submitted,
MADDIN, HAUSER, ROTH & HELLER, P.C.

By: */s/ David M. Saperstein*
David M. Saperstein (P49764)
Brian K. Mitzel (P81706)
Attorneys for Defendant Julie McAllister-Leazier
28400 Northwestern Hwy., 2nd Floor
Southfield, MI 48034
(248) 827-1886
dsaperstein@maddinhauser.com
bmitzel@maddinhauser.com

DATED: April 20, 2021

**CERTIFICATE OF SERVICE**

I hereby certify that on the 20th day of April, 2021, I electronically filed the Reply Brief in Support of Defendant Julie McAllister Leazier's Amended Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(B)(6) with the Clerk of the Court using the ECF system, which will send notification of such filing to those who are currently on the list to receive e-mail notices for this case.

MADDIN, HAUSER, ROTH & HELLER, P.C.

By: */s/ David M. Saperstein*
David M. Saperstein (P49764)
28400 Northwestern Hwy., 2nd Floor
Southfield, MI 48034
(248) 351-7010 / (248) 359-7564 fax
dsaperstein@maddinhauser.com
Attorneys for Defendant Julie McAllister Leazier