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IN THE
SUPREME COURT OF THE UNITED STATES

ARTIS ANDERSON,

PETITIONER,

Vs.

VANESSA M. DICKSON, *et al.*,

RESPONDENTS.

APPENDIX

UNITED STATES COURT OF APPEALS FOR THE
SIXTH CIRCUIT, NO. 16-6290

PETITION FOR WRIT OF CERTIORARI

ARTIS ANDERSON, Petitioner, *pro se*
225 Pearl Dr., # 19
Somerset, KY 42503

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

File Name: 17a0593n.06

No. 16-6290

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

Oct 27, 2017

DEBORAH S. HUNT, Clerk

ARTIS ANDERSON.

Plaintiff-Appellant.

v.

VANESSA M. DICKSON, Individually as
Kentucky District Court Judge, et al.,

Defendants-Appellees.

)
)
)
) ON APPEAL FROM THE UNITED
) STATES DISTRICT COURT FOR
) THE EASTERN DISTRICT OF
) KENTUCKY
)
)
)

Before: COLE, Chief Judge; DAUGHTREY and DONALD, Circuit Judges.

MARTHA CRAIG DAUGHTREY, Circuit Judge. Artis Anderson, a Kentucky resident proceeding pro se, appeals the district court's judgment dismissing his civil rights complaint filed pursuant to 42 U.S.C. §§ 1981, 1983, and 1985. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

In February 2016, Anderson filed a complaint against Kentucky District Court Judge Vanessa M. Dickson, Kentucky Cabinet for Health and Family Services ("CHFS") employees Patricia Wiley and Patricia Biggerstaff, City of Versailles Police Officer J. Costigan, Woodford County Paramedics Rankin and Ford, assisted-living facility Council Oaks, Council Oaks employee John Short, Dr. Thomas Quisenberry, Dr. Thomas Coburn, Robert Horn, and Benny Sowder. The complaint arose from a May 18, 2015, incident during which Rankin, Ford, and Costigan were called to the home of Mary Ellen Reynolds, a woman in her 70's who was suffering from some form of dementia and whom Anderson had married just one week earlier. Ultimately, Reynolds was transported to Saint Joseph Hospital and kept overnight for

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observation. Reynolds's daughter later petitioned a Kentucky state court to name her as Reynolds's guardian. During the course of the state-court proceedings, CHFS was appointed as Reynolds's guardian, and Reynolds's marriage to Anderson was annulled. Anderson asserted claims under §§ 1981, 1983, and 1985, alleging that the defendants, both individually and in conspiracy with one another, violated his due process rights, unlawfully interfered in his marriage, and impeded contracts that he had made with Reynolds. He also alleged that the defendants engaged in human trafficking and violated various state laws.

• Anderson moved for a preliminary injunction, and several defendants moved to dismiss the complaint. Anderson then filed an amended complaint, adding Jessamine County Family Court Judge Jeff Moss and Nicholasville Police Officer Jacob Edwards as defendants. Anderson alleged that Judge Moss violated Kentucky law and his Fourteenth Amendment due process rights when he annulled his marriage and that Edwards violated his "constitutional rights to enjoy his spousal rights" when he threatened to arrest Anderson, who was attempting to visit Reynolds at Council Oaks. A number of the defendants moved to dismiss the amended complaint as well.

The district court denied Anderson's motion for a preliminary injunction; granted the defendants' motions to dismiss; dismissed with prejudice all claims asserted under §§ 1981, 1983, and 1985 against all defendants; and dismissed without prejudice all state-law claims. The district court denied leave to proceed in forma pauperis on appeal, concluding that any appeal would be frivolous. Anderson has since paid the appellate filing fee.

On appeal, Anderson argues that the district court erred by denying his motion for a preliminary injunction and dismissing his complaint. Several defendants have filed motions to recover damages and costs and impose sanctions, and Anderson has filed a motion asking us to refer his case to the United States Department of Justice.

We review de novo a district court's dismissal of a complaint under Federal Rule of Civil Procedure 12(b)(6). *Casias v. Wal-Mart Stores, Inc.*, 695 F.3d 428, 435 (6th Cir. 2012). To survive dismissal under Rule 12(b)(6), "a complaint must contain sufficient factual matter,

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accepted as true, to "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The district court may consider "exhibits attached [to the complaint], public records, items appearing in the record of the case and exhibits attached to defendant's motion to dismiss so long as they are referred to in the complaint and are central to the claims contained therein" without converting a motion to dismiss into a summary judgment motion. *Rondigo, L.L.C. v. Twp. of Richmond*, 641 F.3d 673, 681 (6th Cir. 2011); (quoting *Bassett v. Nat'l Collegiate Ass'n*, 528 F.3d 426, 430 (6th Cir. 2008)). Although a pro se litigant is entitled to a liberal construction of his pleadings, we "need not accept as true legal conclusions or unwarranted factual inferences." *Montgomery v. Huntington Bank*, 346 F.3d 693, 698 (6th Cir. 2003) (quoting *Morgan v. Church's Fried Chicken*, 829 F.2d 10, 12 (6th Cir. 1987)).

Claims Brought Under 42 U.S.C. §§ 1981 and 1985

Anderson sought to bring claims against the defendants under §§ 1981, 1983, and 1985. The district court properly dismissed Anderson's claims under §§ 1981 and 1985 because his complaint contained no allegations that the defendants engaged in racial or other class-based discrimination, or that the defendants conspired to prevent federal officers from performing their duties or to obstruct justice or intimidate parties, witnesses, or jurors. See 42 U.S.C. §§ 1981, 1985; *Bass v. Robinson*, 167 F.3d 1041, 1050 (6th Cir. 1999); *Ana Leon T. v. Fed. Reserve Bank of Chi.*, 825 F.2d 928, 931 (6th Cir. 1987).

Official Capacity Claims

The district court properly dismissed claims against the defendants in their official capacities, because Anderson failed to allege that the defendants acted pursuant to governmental policies or customs. *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690-91 (1978); *Matthews v. Jones*, 35 F.3d 1046, 1049 (6th Cir. 1994).

Claims Against Judges Dickson and Moss

The district court properly concluded that Judges Dickson and Moss were entitled to absolute judicial immunity, because Anderson's claims against them were based solely on

actions that the judges took in their judicial capacities. See Mireles v. Waco, 502 U.S. 9, 11-12 (1991); Stump v. Sparkman, 435 U.S. 349, 355-56 (1978). Anderson argues on appeal that Judges Dickson and Moss acted "in the complete absence of all jurisdiction," which, if true, would be sufficient to overcome judicial immunity. Mireles, 502 U.S. at 11-12. Specifically, Anderson contends that Judge Dickson lacked jurisdiction to hold a guardianship hearing and to appoint CHFS as Reynolds's guardian, because the evidence showed that Reynolds was not disabled and because Kentucky Revised Statute § 387.510(8)(b) states that a guardianship hearing "cannot be predicated on isolated incidents." Although presented as jurisdictional challenges, Anderson's arguments, at their core, are challenges to the merits of Judge Dickson's decision to appoint CHFS as Reynolds's guardian. In fact, contrary to Anderson's assertion, Kentucky Revised Statute § 387.510(8)(b) does not restrict a judge's authority to hold a guardianship hearing, but rather sets forth the standard that judges should apply when determining if an individual is disabled. Ky. Rev. Stat. § 387.510(8).

Anderson alleged that Judge Moss acted without jurisdiction because a different judge dismissed a different case on improper-venue grounds, and he argues on appeal that guardians and offspring lack authority to seek the annulment of a marriage. These claims are unavailing. First, the fact that a different judge dismissed a different case on improper-venue grounds has no impact on Judge Moss's jurisdiction over the annulment proceeding. Second, Kentucky law states that an annulment may be sought "by the legal representative of [a] party who lacked capacity to consent," and Judge Moss found that Reynolds lacked such capacity. Ky. Rev. Stat. § 403.120(2)(a). The annulment petition was filed by Wiley, a representative of CHFS, which was appointed as Reynolds's guardian eleven days before the annulment petition was filed. Because Anderson failed to set forth sufficient factual allegations to support his claims that Judges Dickson and Moss acted "in the complete absence of all jurisdiction," the district court properly dismissed Anderson's claims against them. *pat/v unwhite, 58005*

Claims Against Wiley

Most of Anderson's allegations against Wiley gave rise to only state-law claims, which, for the reasons discussed below, were properly dismissed without prejudice. At most, the allegations can be construed to raise two constitutional claims: (1) Wiley conspired with Horn and Short to deprive Anderson of his constitutional right to freely associate with his wife; and (2) Wiley conspired with Sowder to interfere with Anderson's constitutional right to enter into contracts.

With respect to Anderson's claim regarding the infringement of his right to freely associate with his wife, Anderson failed to identify any specific action that Wiley took to prevent him from communicating with or visiting Reynolds, and his conclusory legal claims do not state a claim for relief. See *New Albany Tractor, Inc. v. Louisville Tractor, Inc.*, 650 F.3d 1046, 1050 (6th Cir. 2011). Although Wiley petitioned to have Reynolds's marriage to Anderson annulled, the *Rooker-Feldman* doctrine bars review of the order granting the annulment. See *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). Finally, under Kentucky law, "[a] decree annulling a marriage is a declaration or finding . . . that no valid marriage ever existed." *Knott v. Garriott*, 784 S.W.2d 603, 605 (Ky. Ct. App. 1989). Because a valid marriage never legally existed, Anderson cannot now assert a claim for interference with his marital rights.

Anderson also failed to state a due process claim with respect to Wiley's alleged interference with his right to contract. The Due Process Clause of the Fourteenth Amendment prohibits a state actor from depriving an individual of life, liberty, or property without due process of law. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 541 (1985); *Bailey v. Floyd Cty. Bd. of Educ.*, 106 F.3d 135, 140-41 (6th Cir. 1997). Liberty interests include "the right of the individual to contract." *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 572 (1972). Here, Anderson summarily alleged that Wiley interfered with a contractual agreement for him to have control of Reynolds's farms. He set forth no allegations detailing specific actions that Wiley took, nor did he allege that the interference occurred in the absence of adequate procedural protections. Anderson therefore failed to state a claim for a violation of his procedural due

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process rights. See *EJS Props., LLC v. City of Toledo*, 698 F.3d 845, 855 (6th Cir. 2012). To the extent that Anderson sought to allege a substantive due process claim, “[t]he substantive Due Process Clause is not concerned with the garden variety issues of common law contract,” but instead focuses on “‘fundamental’ interests.” *Charles v. Baesler*, 910 F.2d 1349, 1353 (6th Cir. 1990). Anderson has not alleged such an interest.

Claims Against Biggerstaff

Anderson has waived any challenge to the district court’s dismissal of his claims against Biggerstaff, because he did not address the dismissal of these claims in his initial appellate brief. See *Radvansky v. City of Olmstead Falls*, 395 F.3d 291, 310–11 (6th Cir. 2005). In any event, Anderson’s allegations that Biggerstaff authored false reports, relied on hearsay to support her reports, withheld her reports from him, and failed to document a complaint that he made against Reynolds’s daughter give rise to state-law claims only. For the reasons discussed below, the district court properly declined to exercise supplemental jurisdiction over Anderson’s state-law claims.

Claims Against Council Oaks, Short, Dr. Quisenberry, Dr. Coburn, Horn, and Sowder

The district court dismissed Anderson’s claims against Council Oaks, Short, Dr. Quisenberry, Dr. Coburn, Horn, and Sowder, because Anderson failed to allege that any of these defendants “were government officials or were otherwise working under color of state law.” Anderson has waived any challenge to this dispositive finding by failing to address it in his initial appellate brief. See *id.*

Anderson argues in his reply brief that Council Oaks, Short, and Dr. Coburn could be held liable under § 1983 because they conspired with state actors. Again, Anderson waived this argument by failing to raise it in his initial appellate brief. *Marks v. Newcourt Credit Grp., Inc.*, 342 F.3d 444, 462 (6th Cir. 2003). Even if these arguments were properly preserved, however, Anderson could not prevail. Private parties who conspire with a state actor to commit offensive conduct may be found liable under § 1983. See *Cooper v. Parrish*, 203 F.3d 937, 952 n.2 (6th Cir. 2000). But Anderson’s conclusory allegations were insufficient to state a conspiracy claim

under § 1983. See *Gutierrez v. Lynch*, 826 F.2d 1534, 1538 (6th Cir. 1987). In particular, Anderson did not identify any specific overt act taken by any of the defendants in furtherance of the alleged conspiracies. See *Revis v. Meldrum*, 489 F.3d 273, 290 (6th Cir. 2007).

Claim Against Edwards

In his amended complaint, Anderson alleged that Edwards “violated [his] constitutional rights to enjoy his spousal rights” by “threaten[ing] [him] with arrest for trespassing and claim[ing] that he was trespassing on Council Oaks’ property by visiting his wife.” The Supreme Court has held “that one type of constitutionally protected freedom of association is the right ‘to enter into and maintain certain intimate human relationships [which] must be secured against undue intrusion by the State.’” *Sowards v. Loudon Cty.*, 203 F.3d 426, 432 (6th Cir. 2000) (quoting *Roberts v. United States Jaycees*, 468 U.S. 609, 617-18 (1984)). “The right of association is violated if [an] action constitutes an undue intrusion by the state into the marriage relationship.” *Id.* at 433 (quoting *Adkins v. Bd. of Educ. of Magoffin Cty.*, 982 F.2d 952, 956 (6th Cir. 1993)). However, Anderson’s marriage to Reynolds was annulled. As noted previously, under Kentucky law, “[a] decree annulling a marriage is a declaration or finding . . . that no valid marriage ever existed.” *Knott*, 784 S.W.2d at 605. Because a valid marriage never legally existed, Anderson cannot show that Edwards unduly intruded upon his marital relationship.

Claims Against Rankin and Ford

The district court properly dismissed Anderson’s claims against paramedics Rankin and Ford, finding that even if they knew that Reynolds did not require emergency care when they transported her to the hospital, as alleged, this conduct did not violate Anderson’s constitutional rights. In his complaint, Anderson alleged that Rankin and Ford’s actions interfered with his “constitutional rights to be ‘let alone.’” Even assuming the existence of a general “constitutional right to be let alone,” see *Gibson v. Fla. Legislative Investigation Comm.*, 372 U.S. 539, 570 (1963) (Douglas, J., concurring); *Pub. Utils. Comm’n of D.C. v. Pollak*, 343 U.S. 451, 468 (1952) (Douglas, J., dissenting), transporting *Reynolds* to the hospital did not infringe

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Anderson's rights. Anderson therefore lacked standing to assert his claim, because he did not suffer "an 'injury in fact.'" *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992); see *Lynch v. Leis*, 382 F.3d 642, 647 (6th Cir. 2004).

Claim Against Costigan

Anderson alleged in his complaint that Costigan violated his constitutional rights by secretly recording his conversation with Reynolds while performing a welfare check. But, as the district court found, Anderson alleged no facts to suggest that he had a reasonable expectation that his conversation with Reynolds would be private, as Costigan was present when the conversation occurred. See *United States v. Riley*, 858 F.3d 1012, 1017 (6th Cir. 2017).

Not On appeal, Anderson also argues that Costigan falsified a report that stated that Reynolds was able to resist when she was taken to the hospital. At most, this would amount to a violation of state law. For the reasons discussed below, the district court properly declined to exercise supplemental jurisdiction over Anderson's state-law claims.

State-Law Claims

We review for an abuse of discretion a district court's decision to decline to exercise supplemental jurisdiction over state-law claims. *Gamel v. City of Cincinnati*, 625 F.3d 949, 951 (6th Cir. 2010). "An abuse of discretion exists only when the court has the definite and firm conviction that the district court made a clear error of judgment in its conclusion upon weighing 'relevant factors.'" *Id.* (quoting *Gaeth v. Hartford Life Ins. Co.*, 538 F.3d 524, 528-29 (6th Cir. 2008)). Because the district court properly dismissed all of Anderson's federal claims, it did not abuse its discretion when it declined to exercise supplemental jurisdiction over his state-law claims and dismissed those claims without prejudice. See 28 U.S.C. § 1367(c)(3).

Denial of Motion for a Preliminary Injunction

We review a district court's denial of a preliminary injunction for an abuse of discretion. *Certified Restoration Dry Cleaning Network, L.L.C. v. Tenke Corp.*, 511 F.3d 535, 540 (6th Cir. 2007). The district court must balance four factors in determining whether to grant preliminary injunctive relief: "(1) whether the movant has a strong likelihood of success on the merits;

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(2) whether the movant would suffer irreparable injury absent the injunction; (3) whether the injunction would cause substantial harm to others; and (4) whether the public interest would be served by the issuance of an injunction." *Bays v. City of Fairborn*, 668 F.3d 814, 818-19 (6th Cir. 2012).

The district court did not abuse its discretion by denying injunctive relief. First, for the reasons discussed above, Anderson failed to show that he had a strong likelihood of success on the merits or that he would suffer irreparable injury absent the injunction. In fact, most of the injuries alleged by Anderson, such as the spending of Reynolds's money, Reynolds's placement in an assisted-living facility, and the appointment of a guardian had no legal impact on Anderson, since his marriage to Reynolds had been annulled. Furthermore, the issuance of an injunction could cause substantial harm to others, namely, Reynolds, who was deemed incompetent to make informed decisions about her personal affairs. Finally, Anderson failed to show that the public's interests would be served by the issuance of an injunction.

Not
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Pending Motions for Sanctions

Dr. Quisenberry, Council Oaks, Short, and Horn have filed motions to recover damages and costs under Federal Rule of Appellate Procedure 38 and 28 U.S.C. § 1912 as a sanction against Anderson for filing a frivolous appeal.

Rule 38 allows the court to assess "just damages and single or double costs" in response to a frivolous appeal. Fed. R. App. P. 38. Generally, an appeal is frivolous if "it is obviously without merit and is prosecuted for delay, harassment, or other improper purposes." *Barney v. Holzer Clinic, Ltd.*, 110 F.3d 1207, 1212 (6th Cir. 1997) (quoting *NLRB v. Cincinnati Bronze, Inc.*, 829 F.2d 585, 591 (6th Cir. 1987)). Because Anderson seeks to prevail on the merits, there are no indications that he has brought this appeal for the sake of harassment or delay. See *id.* at 1213. But an appeal also is frivolous when it is filed out of "sheer obstinacy"—when the only issues in the case clearly have been resolved against the appellant. *Lawrence v. United States*,

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229 F.3d 1152, 2000 WL 182452, at *3 (6th Cir. 2000) (table decision); *see also Martin v. Comm'r.*, 756 F.2d 38, 41 (6th Cir. 1985).

Because the record supports our conclusion that this appeal has been filed out of sheer obstinacy, it is frivolous. Anderson's litigation over his relationship with Reynolds has included four separate cases brought in the federal court alone. In addition to this case, Anderson has sought injunctive relief and millions of dollars in damages against Kentucky officials, organizations, and state employees (*see* 5:15-cv-00207-KKC); he has sought removal of one of his multiple state-court cases (*see* 5:17-cv-00202-JBC); and he even has sought habeas corpus relief (*see* 5:16-cv-00034-DCR). Each time he has filed a new case, the district court has dismissed the claims. And each time that he has appealed, this court has affirmed the dismissal.

Moreover, Anderson's obstinacy has real harms. Every new case or new appeal uses the courts' finite resources. And when the defendants have to respond to pleadings, motions, or briefs, they have to pay lawyers to defend against legal claims that are not only meritless, but that have been rejected multiple times before. Yet no matter how many times a court informs Anderson that he has no claim or that state court is the proper venue for him to litigate the issues, he continues to file new cases and new appeals, and he continues to demand millions of dollars in damages. This case is no exception; the district court warned Anderson that his case was frivolous and that he had no grounds for an appeal. Anderson appealed anyway.

Anderson has had more than his day in court. The defendants should not be forced to pay to defend these continuing and meritless claims. For that reason, we grant in part the motions for fees and costs. Because the defendants did not seek any specific amount, we must remand for the district court to determine the appropriate damages and costs, as well as Anderson's ability to

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pay the sanction. *See Smith v. Capots*, 78 F.3d 585, 1996 WL 99322, at *3 (6th Cir. 1996) (table decision).

In addition, to ensure that Anderson does not continue to file frivolous claims, the district court is directed to enter an order requiring leave of court before Anderson files any new claims.

"A district court has the authority to issue an injunctive order to prevent prolific litigants from filing pleadings without first obtaining court approval to do so." *Marbly v. Kay*, 238 F.3d 422, 2000 WL 1127783, at *1 (6th Cir. 2000) (table decision). This kind of order "is the proper method for handling the complaints of prolific litigators." *Filipas v. Lemons*, 835 F.2d 1145, 1146 (6th Cir. 1987). violated

This court does not take lightly the sanctioning of litigants, especially those who are *pro se*. But we have a duty to ensure that parties do not have to defend themselves in perpetuity simply because a litigant like Anderson refuses to take no for an answer. And we have a duty to keep the court system free of repeat litigation so that every litigant gets the same opportunity for a fair decision that Anderson has abused. Not until the / eos
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Finally, we note that Anderson has filed a motion requesting us to refer this case to the Department of Justice for investigation. We have no authority to do so.

For the reasons set out above, we AFFIRM the judgment of the district court and REMAND the case for the district court's determination of sanctions.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION – LEXINGTON

ARTIS ANDERSON,
Plaintiff,

V.

VANESSA M. DICKSON,
Defendants.

CIVIL ACTION NO. 5:16-71-KKC

OPINION AND ORDER

This matter is before the Court on various motions filed by the parties.

I. Background

Plaintiff Artis Anderson is proceeding pro se but he has considerable experience in filing federal actions, having filed eight federal actions in this Court since 1994. This is at least his fourth federal action involving allegations that state officials interfered with his marriage and his third such action that involves his marriage to Mary Ellen Reynolds. See *Anderson v. Conway*, No. 6:12-cv-70-GFVT (E.D. Ky. filed April 2, 2012); *Anderson v. Wiley*, No. 5:16-cv-34-DCR (E.D. Ky. filed Feb. 1, 2016); *Anderson v. Beshear*, No. 5:15-cv-207-KKC (E.D. Ky. filed July 20, 2015) (*Anderson I*).

In brief, with this action, Anderson alleges that various individuals, including government workers and officials, conspired to have the Kentucky Cabinet for Health and Family Services appointed as his wife's guardian and to have his marriage annulled. He asserts that on May 18, 2015, two paramedics took his wife, Mary Ellen, to the hospital. He came to the hospital the following morning to pick her up but was informed she had been admitted for observation. On May 21, Mary Ellen's late daughter filed a petition in Woodford District Court seeking to be named Mary Ellen's guardian. Woodford District Court Judge Vanessa Dickson entered an order appointing the Cabinet as Mary Ellen's

legal guardian. Later, Jessamine Family Court Judge Jeff Moss signed an order annulling Anderson's marriage to Mary Ellen. Anderson alleges that, since the Cabinet became Mary Ellen's legal guardian, the state has stolen \$250,000 from his wife and violated his constitutional rights.

In a prior action based on substantially the same allegations, Anderson sued the former Kentucky governor and attorney general, the two then unnamed paramedics who took his wife to the hospital, an individual Cabinet employee who he asserted was appointed as his wife's guardian, and the assisted-living facility where his wife received healthcare services. *See Anderson v. Beshear, et al.*, No. 5:15-cv-207-KKC (E.D. Ky. filed July 20, 2015). The Court dismissed that action, finding that all of the plaintiff's claims lacked the legal plausibility necessary for subject matter jurisdiction.

With this action, the plaintiff sues various additional individuals including Kentucky state court Judges Dickson and Moss; another Cabinet employee who Anderson identifies as Mary Ellen's court-appointed guardian; a social worker employed by the Cabinet who Anderson asserts falsely reported that he abused his wife; two police officers; the two now-named paramedics who Anderson alleges took Mary Ellen to the hospital knowing that she did not need emergency medical care; the assisted-living facility where Mary Ellen currently resides and its manager; and two doctors.

In his complaint, Anderson appears to assert that these individuals conspired to violate his constitutional right to marry. As to defendant J. Costigan, who is a police officer with the city of Versailles, Kentucky police department, Anderson may also allege that the officer violated his rights under the Fourth Amendment to be free from unreasonable searches. Anderson seeks a total of more than \$500 million in compensatory and punitive damages.

By prior opinion, this Court dismissed the claims against Judges Dickson and Moss. The Court now reviews the claims against the remaining defendants.

II. Analysis

The Court will first address the possible Fourth Amendment claim against Officer Costigan. Anderson asserts that Officer Costigan came to his residence to conduct a welfare check on Mary Ellen and then “secretly recorded communications” between him and his wife.

“[T]he Fourth Amendment protects people, not places; [w]hat a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection.” *Katz v. United States*, 389 U.S. 347, 351 (1967). Anderson could not have had a reasonable expectation of privacy in a conversation that took place in the officer’s presence. Thus, Officer Costigan’s recording of those events could not have violated Anderson’s rights under the Fourth Amendment because Anderson made no effort to keep that interaction private. *See On Lee v. United States*, 343 U.S. 747, 753–54 (1952) (“Petitioner was talking confidentially and indiscreetly with one he trusted, and he was overheard ... [w]e find no violation of the Fourth Amendment here.”) Accordingly, this claim must be dismissed.

As to Anderson’s claim that all of the defendants conspired to violate his constitutional right to marry, this claim must also be dismissed. Throughout his complaint Anderson invokes 42 U.S.C. §§ 1981, 1983, and 1985. Section 1981 “prohibits racial discrimination in the making and enforcing of private contracts.” *Noble v. Brinker Int’l, Inc.*, 391 F.3d 715, 720 (6th Cir. 2004). The statute is, “by its very terms, limited to acts of racial discrimination.” *Brady v. Bristol Meyers, Inc.*, 459 F.2d 621, 623 (8th Cir. 1972). Anderson has not pled sufficient facts to state a claim under Section 1981. Moreover, Section 1983 is the exclusive damages remedy for violations of rights guaranteed by Section

1981. *Grinter v. Knight*, 532 F.3d 567, 576 (6th Cir. 2008); *McCormick v. Miami Univ.*, 693 F.3d 654, 661 (6th Cir. 2012). Accordingly, any claim asserted by Anderson under 42 U.S.C. § 1981 will be dismissed.

As to any claim under Section 1985, that statute prohibits three particular kinds of conspiracies: conspiracies to prevent a federal officer from performing his duties, 42 U.S.C. § 1985(1); conspiracies to obstruct justice or intimidate a party, witness, or juror, 42 U.S.C. § 1985(2); and conspiracies to deprive a person of equal protection of the laws on the basis of a racial or other class-based discriminatory animus, 42 U.S.C. § 1985(3). Subsection 3 requires that a claimant establish “some racial, or perhaps otherwise class-based, invidiously discriminatory animus.” *Bartell v. Lohiser*, 215 F.3d 550, 559-60 (6th Cir. 2000) (quoting *United Brotherhood of Carpenters and Joiners of America v. Scott*, 463 U.S. 825, 829 (1983)). Anderson does not make allegations sufficient to state a claim under any of these provisions. Accordingly, the Court will dismiss any claim under Section 1985.

As to his constitutional claim against the individual defendants under 42 U.S.C. § 1983, that statute prohibits “actions ‘under color of state law’ which deprive an individual of a right secured by the U.S. Constitution or a federal statute.” *Cherrington v. Skeeter*, 344 F.3d 631, 644 (6th Cir. 2003). “Thus, before a defendant may be held liable under section 1983, that defendant must first possess power by virtue of state law, then *misuse* that power in a way that violates federal constitutional rights.” *Id.* (quoting *Christian v. Belcher*, 888 F.2d 410, 414 (6th Cir.1989)).

Anderson does not make any allegations that defendants Council Oaks, John Short, Thomas Quisenberry, Thomas Coburn, Robert Horn, or Benny Sowder were government officials or were otherwise working under color of state law. Accordingly, any § 1983 claim against these defendants must be dismissed.

As to Officers Edwards, Anderson alleges only that “he violated the Plaintiff’s constitutional rights to enjoy his spousal rights while acting under color of state law.” (DE 36, First Amended Complaint ¶ 3.) This single, conclusory allegation is insufficient to state a claim. “[A] plaintiff’s obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal citations omitted). Accordingly, the constitutional claim against Officer Edwards will be dismissed.

As to paramedics Rankin and Ford, Anderson alleges only that these defendants took Mary Ellen to the hospital knowing that she did not require emergency care. Even if these allegations were true, these actions are not sufficient to state a claim for violation of Anderson’s right to marry.

As to the § 1983 claim against defendants Wiley and Biggerstaff – and as to all defendants – any claim that the guardian appointment or annulment violated Anderson’s constitutional rights must be dismissed.

In *Anderson I*, this Court ruled that the appointment of a guardian does not infringe upon the right to marry. *Anderson v. Beshear*, No. 5:15-CV-207-KKC, 2015 WL 4717200, at *2 (E.D. Ky. Aug. 7, 2015). *Anderson I* was based on the state court’s emergency order *temporarily* appointing the Cabinet for Health and Family Services as Mary Ellen’s guardian (DE 26-5, Order.) Since that decision, a jury trial was conducted in state court and the jury found that Mary Ellen was wholly disabled in managing her personal affairs and financial resources. (DE 26-6, Disability Judgment.) In accordance with the jury’s finding, Judge Dickson entered an order *permanently* appointing the Cabinet as Mary Ellen’s guardian. (DE 26-6, Order.) The Court’s prior finding that the appointment of a guardian

does not infringe the right to marry applies equally to the permanent guardianship.

More importantly, however, Anderson's challenges to the state court orders appointing the Cabinet as Mary Ellen's guardian and annulling the couple's marriage are barred under the *Rooker-Feldman* doctrine which "provides that federal district courts generally lack jurisdiction to review and determine the validity of state court judgments, even in the face of allegations that 'the state court's action was unconstitutional.'" *Carr v. Spencer*, 13 F. App'x 296, 298 (6th Cir. 2001) (quoting *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 486 (1983)). "Instead, review of final determinations in state judicial proceedings can be obtained only in the United States Supreme Court." *Id.* (citing 28 U.S.C. § 1257 and *Feldman*, 460 U.S. at 476). The finding in *Carr* is equally applicable here. Anderson's complaint "merely reflects [his] dissatisfaction with the state court's guardianship [and annulment] judgment[s] and is essentially an attempt to obtain unauthorized federal review of [those] judgment[s]." *Id.* Accordingly, any claim that any defendant violated Anderson's constitutional rights by obtaining the guardianship or annulment orders must be dismissed.

Anderson may also assert claims against the state and county employees in their official capacities. "An official capacity claim filed against a public employee is equivalent to a lawsuit directed against the public entity which that agent represents." *Claybrook v. Birchwell*, 199 F.3d 350, 355 n. 4 (6th Cir.2000). Thus, any claim against Wiley or Biggerstaff in their official capacities is the same as a claim against the state. Section 1983 provides that any "person" acting under color of state law who deprives another of his constitutional rights is liable to that individual. 42 U.S.C. § 1983. A state, however, "not a person within the meaning of § 1983." *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 64 (1989). Accordingly, any claims against Biggerstaff and Wiley in their official capacities

must be dismissed.

As to Officers Costigan and Edwards, Anderson alleges that Officer Costigan is employed by the city of Versailles, Kentucky and that Officer Edwards is employed by the city of Nicholasville, Kentucky. He alleges that paramedics Rankin, and Ford are employed by Woodford County. Any official capacity claim against these defendants is actually a claim against the county or city that employs them. "Unlike states . . . local governments, municipalities, and counties are considered 'persons' within the meaning of 42 U.S.C. § 1983." *Alkire v. Irving*, 330 F.3d 802, 814 (6th Cir. 2003). Nevertheless, "[a] municipality or county cannot be liable under § 1983 absent an underlying constitutional violation by its officers." *Blackmore v. Kalamazoo Cty.*, 390 F.3d 890, 900 (6th Cir. 2004). This Court has determined that any constitutional claims against Officers Costigan and Edwards and paramedics Rankin and Ford in their individual capacities must be dismissed. Accordingly, any claim against Officers Costigan and Edwards and paramedics Rankin and Ford in their official capacities must also be dismissed.

Anderson may also assert certain state-law claims. For example, he asserts that Wiley has stolen from Mary Ellen and has failed to protect her assets and that other defendants have interfered with certain contracts between Mary Ellen and him. The Court does not interpret these claims to assert any constitutional violation. Further, these claims do not appear to form part of the same case or controversy as the constitutional claims which are based on the guardianship and annulment judgments and the recording of Anderson's conversation with Mary Ellen. Accordingly, the Court cannot exercise supplemental jurisdiction over these claims. 28 U.S.C. § 1367(a).

Further, the Court has dismissed all of Anderson's federal claims. The supplemental jurisdiction statute explicitly allows district courts to dismiss pendent state law claims if all

federal claims have been dismissed. 28 U.S.C. § 1367(c)(3). “[G]enerally, ‘if the federal claims are dismissed before trial . . . the state claims should be dismissed as well.’” *Taylor v. First of America Bank-Wayne*, 973 F.2d 1284, 1287 (6th Cir.1992) (quoting *United Mine Workers v. Gibbs*, 383 U.S. 715, 726 (1966). “A district court should consider the interests of judicial economy and the avoidance of multiplicity of litigation and balance those interests against needlessly deciding state law issues.” *Landefeld v. Marion Gen. Hosp., Inc.*, 994 F.2d 1178, 1182 (6th Cir. 1993)

This matter is at its initial stages. Any state-law claims are based on different factual assertions than the constitutional claims. Accordingly, the Court concludes that, even if it could exercise jurisdiction over any state-law claims, it should decline to do so. Pursuant to 28 U.S.C. § 1367(c)(3), this Court will exercise its discretion and will dismiss any state-law claims that Anderson may assert.

III. Conclusion

For all these reasons, the Court hereby ORDERS as follows:

- 1) the motions to dismiss filed by Thomas Quisenberry (DE 11, 17, 47), Council Oaks and John Short (DE 14, 42), J. Costigan (DE 18, 51), Patricia Biggerstaff and Patricia Wiley (DE 26, 44) are GRANTED;
- 2) all claims asserted under 42 U.S.C. §§ 1981, 1983 and 1985 against all defendants are DISMISSED with prejudice; and
- 3) any state-law claims asserted by the plaintiff are DISMISSED without prejudice.

Dated July 26, 2016.



Karen K. Caldwell
KAREN K. CALDWELL, CHIEF JUDGE
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION
AT LEXINGTON

ARTIS ANDERSON,
Plaintiff,

V.

VANESSA M. DICKSON,
Defendants.

CIVIL ACTION NO. 5:16-71-KKC

OPINION AND ORDER

*** **

This matter is before the Court on various motions filed by the parties.

I. Background

Plaintiff Artis Anderson is proceeding pro se but he has considerable experience in filing federal actions, having filed eight federal actions in this Court since 1994. This is at least his fourth federal action involving allegations that state officials interfered with his marriage and his third such action that involves his marriage to Mary Ellen Reynolds. *See Anderson v. Conway*, No. 6:12-cv-70-GFVT (E.D. Ky. filed April 2, 2012); *Anderson v. Wiley*, No. 5:16-cv-34-DCR (E.D. Ky. filed Feb. 1, 2016); *Anderson v. Beshear*, No. 5:15-cv-207-KKC (E.D. Ky. filed July 20, 2015).

In brief, with this action, Anderson alleges that various individuals, including government workers and officials, conspired to have the Kentucky Cabinet for Health and Family Services appointed as his wife's guardian and to have his marriage annulled. He asserts that on May 18, 2015, two paramedics took his wife, Mary Ellen, to the hospital. He came to the hospital the following morning to pick her up but was informed she had been admitted for observation. On May 21, Mary Ellen's late daughter filed a petition in

Woodford District Court seeking to be named Mary Ellen's guardian. Woodford District Court Judge Vanessa Dickson entered an order appointing the Cabinet as Mary Ellen's legal guardian. Later, Jessamine Family Court Judge Jeff Moss signed an order annulling his marriage to Mary Ellen. Anderson alleges that, since the Cabinet became Mary Ellen's legal guardian, the state has stolen \$250,000 from his wife and violated his constitutional rights.

In a prior action based on substantially the same allegations, Anderson sued the former Kentucky governor and attorney general, the two then unnamed paramedics who took his wife to the hospital, an individual Cabinet employee who he asserted was appointed as his wife's guardian, and the assisted-living facility where his wife received healthcare services. *See Anderson v. Beshear, et al.*, No. 5:15-cv-207-KKC (E.D. Ky. filed July 20, 2015). The Court dismissed that action, finding that all of the plaintiff's claims lacked the legal plausibility necessary for subject matter jurisdiction.

With this action, the plaintiff sues various additional individuals including Kentucky state court Judges Dickson and Moss; another Cabinet employee who he identifies as Mary Ellen's court-appointed guardian; a social worker employed by the Cabinet who he asserts falsely reported that he abused his wife; two Versailles, Kentucky police officers; the two now-named paramedics who he alleges took Mary Ellen to the hospital knowing that she did not need emergency medical care; the assisted-living facility where Mary Ellen currently resides and its manager; and two doctors.

He asserts that these individuals violated certain of his constitutional rights. Constitutional claims against state or local officials must be brought under 42 U.S.C. § 1983. *See Thomas v. Shipka*, 818 F.2d 496, 500, 502–03 (6th Cir.1987), *vacated on other grounds*, 488 U.S. 1036 (1989) (“[I]t is unnecessary and needlessly redundant to imply a

cause of action arising directly under the Constitution where Congress has already provided a statutory remedy of equal effectiveness through which the plaintiff could have vindicated her constitutional rights.”) *See also Jordan v. Moore*, No. 99–3489, 2000 WL 145368, at *1 (6th Cir.2000) (“[T]his circuit does not recognize direct constitutional claims against local officials and municipalities.”); *Sanders v. Prentice–Hall Corp.*, No. 97–6138, 1999 WL 115517, at *1, n. 2 (6th Cir.1999)(“This circuit has held that constitutional violations by state officials are not cognizable directly under the constitution ... because 42 U.S.C. § 1983 provides the exclusive remedy for such constitutional violations.”); *Paulman v. Kentucky*, No. 1:11–CV–96–M; 2012 WL 122593, at *2 (January 17, 2012).

Anderson seeks a total of more than \$500 million in compensatory and punitive damages.

This matter is now before the Court on multiple motions filed by the parties.

II. Anderson's motion to recuse (DE 64)

As an initial matter, Anderson has moved for “disqualification” of the undersigned, which the Court interprets as a motion for recusal. Such motions are committed to the discretion of the district court deciding the motion. *Youn v. Track, Inc.*, 324 F.3d 409, 422 (6th Cir. 2003). Pursuant to 28 U.S.C. ' 455(a), a judge shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.@28 U.S.C. ' 455(a). The Sixth Circuit has explained that section 455(a) requires a judge to recuse herself Af a reasonable, objective person, knowing all of the circumstances, would have questioned the judge’s impartiality.@*Hughes v. United States*, 899 F.2d 1495, 1501 (6th Cir. 1990); *Liteky v. United States*, 510 U.S. 540, 548 (1994) (Aq]uite simply and quite universally, recusal . . . [is] required whenever impartiality might reasonably be questioned.@

Subsection (b) of the statute mandates disqualification in certain other circumstances which indicate actual bias.¹ 28 U.S.C. ' 455(b).

Anderson does not state which provision of the statute he believes requires the undersigned's recusal. He primarily argues that the undersigned should recuse because he disagrees with the Court's dismissal of his prior case. He states that he will soon file a motion to vacate that dismissal order. "A bias sufficient to justify recusal must be a personal bias as distinguished from a judicial one, arising out of the judge's background and association and not from the judge's view of the law." *United States v. Story*, 716 F.2d 1088, 1090 (6th Cir. 1983) (quotations and citation omitted). Accordingly, the undersigned's dismissal of Anderson's prior action is not grounds for recusal in this action.

Anderson also argues that the undersigned should recuse because the Court has not entered a preliminary injunction as he requested. As will be discussed, however, in his motion Anderson does not show that he is entitled to the injunction. Furthermore, the undersigned's failure to enter the requested injunction would not cause any person to question the undersigned's impartiality.

¹ 28 U.S.C. § 455(b) provides that a judge must disqualify himself in the following circumstances:

1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

(3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

(4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person: (i) Is a party to the proceeding, or an officer, director, or trustee of a party; (ii) Is acting as a lawyer in the proceeding; (iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding; (iv) Is to the judge's knowledge likely to be a material witness in the proceeding. 28 U.S.C. ' 455(b)(1)-(5).

Anderson has presented no reason that any reasonable, objective person would question the undersigned's impartiality in this case. "A judge has as strong a duty to sit when there is no legitimate reason to recuse as he does to recuse when the law and facts require." *Bryce v. Episcopal Church in the Diocese of Colorado*, 289 F.3d 648, 659 (10th Cir. 2002) (quotations and citation omitted). Accordingly, the motion to recuse will be denied.

III. Motion for Preliminary Injunction (DE 3)

Anderson has filed a motion for preliminary injunction in which he asks that all of the defendants be enjoined from violating any of Anderson's constitutional rights; that certain defendants be enjoined from spending any of Mary Ellen's money on anything but medical care; that certain defendants be enjoined from impeding any contracts Mary Ellen and Anderson entered into or that Mary Ellen entered into with tenants at certain property she owns; that all persons be enjoined from complying with Judge Dickson's guardianship order; that defendant Robert Horn be enjoined from having any contract with Mary Ellen; and that certain defendants be enjoined from keeping Mary Ellen confined in any institution against Anderson's will.

This motion will be denied. When deciding whether to issue a temporary restraining order or preliminary injunction, the district court must consider the following four factors:

- (1) whether the movant has demonstrated a strong likelihood of success on the merits;
- (2) whether the movant would suffer irreparable harm;
- (3) whether issuance would cause substantial harm to others; and
- (4) whether the public interest would be served by issuance.

See Suster v. Marshall, 149 F.3d 523, 528 (6th Cir. 1998). These "are factors to be balanced, not prerequisites that must be met." *In re DeLorean Motor Co.*, 755 F.2d 1223, 1229 (6th Cir. 1985). Anderson does not address any of these factors in his motion. Further, at this time the Court has no basis to find that any of these factors warrant granting the requested

preliminary injunction. Accordingly, Anderson's motion for preliminary injunction will be denied.

IV. Anderson's motion for Grand Jury Referral (DE 4)

Anderson has also filed a motion in which he demands that this matter be referred to the grand jury for investigation. Even assuming that this Court has authority to do so, it sees no grounds at this time to refer any matter for criminal investigation.

V. Motions to join in motions to dismiss (DE 25, 53)

Defendant Robert Horn moves to join (DE 25) the motion to dismiss filed by defendants Council Oaks, John Short, and Thomas Quisenberry M.D. In addition, defendant Thomas Coburn moves to join (DE 53) the motion to dismiss filed by Thomas Quisenberry, M.D. These motions will be granted.

VI. Motion to stay discovery (DE 61)

Defendants Council Oaks and John Short move to stay discovery in this action until the Court has ruled on the pending motions to dismiss. This motion will be granted. No discovery should take place in this action until a Scheduling Order has been issued. The Scheduling Order will not be issued until after the Court rules on all the pending motions to dismiss.

VII. Motions to Dismiss by Judges Dickson and Moss (DE 19, 58)

As to Judge Dickson, Anderson asserts that, when appointing the state as Mary Ellen's legal guardian, Judge Dickson violated his constitutional right to due process under the 14th Amendment to the United States Constitution. Similarly, he asserts that Judge Moss violated his constitutional rights by signing an order annulling his marriage to Mary Ellen. These claims must be dismissed because both judges are immune from suit.

As the Sixth Circuit has explained:

It is well-established that judges enjoy judicial immunity from suits arising out of the performance of their judicial functions. *Pierson v. Ray*, 386 U.S. 547, 553–54, 87 S.Ct. 1213, 18 L.Ed.2d 288 (1967); *Mann v. Conlin*, 22 F.3d 100, 103 (6th Cir.1994) (A judge performing his judicial functions is entitled to immunity from a suit seeking monetary damages.). The Supreme Court has specifically held that state judges are absolutely immune from liability under 42 U.S.C. § 1983. *Briscoe v. LaHue*, 460 U.S. 325, 334, 103 S.Ct. 1108, 75 L.Ed.2d 96 (1983); *Pierson*, 386 U.S. at 554–55, 87 S.Ct. 1213.67 In fact, judicial immunity applies to acts performed maliciously and corruptly as well as acts performed in bad faith or with malice as has been alleged in this case. *Pierson*, 386 U.S. at 554, 87 S.Ct. 1213; *see also Mireles v. Waco*, 502 U.S. 9, 11, 112 S.Ct. 286, 116 L.Ed.2d 9 (1991).

Brookings v. Clunk, 389 F.3d 614, 617 (6th Cir. 2004)

Judicial immunity does not apply in two circumstances: where the judge's activities were “non-judicial” in nature and where the judge's actions are performed without any jurisdiction to do so. *Id.*

The signing of judicial orders appointing a legal guardian and annulling a marriage are judicial acts. As to the judges' jurisdiction to perform these acts, “[t]he Supreme Court has held that the term ‘jurisdiction’ is to be broadly construed to effectuate the purposes of judicial immunity.” *Id.* at 623. “As such, a judge acts in the clear absence of all jurisdiction only when the matter upon which he acts is clearly outside the subject matter of the court over which he presides.” *Id.* (quotation and citation omitted.) State district courts have exclusive jurisdiction over guardian appointments. KRS 387.520(1). Family Courts have jurisdiction over cases involving the dissolution of marriage. KRS 23A.100(1)(a).

Accordingly, the motions to dismiss filed by Judges Dickson and Moss will be granted.

VIII. Conclusion

For all these reasons, the Court hereby ORDERS as follows:

- 1) Anderson's motion to recuse (DE 64), motion for preliminary injunction (DE 3), and motion for grand jury referral (DE 4) are DENIED;
- 2) defendant Robert Horn's motion (DE 25) to join the motion to dismiss filed by defendants Council Oaks, John Short, and Thomas Quisenberry M.D. is GRANTED;
- 3) defendant Thomas Coburn's motion to join (DE 53) the motion to dismiss filed by Thomas Quisenberry, M.D. is GRANTED;
- 4) the motion to stay discovery by defendants Council Oaks and John Short (DE 61) is GRANTED. No party is permitted to conduct discovery until a Scheduling Order has been issued. The Scheduling Order will not be issued until after the Court rules on all the pending motions to dismiss; and
- 5) the motions to dismiss filed by Judges Dickson and Moss (DE 19, 58) are GRANTED and all claims against those defendants are hereby DISMISSED.

Dated July 21, 2016.



Karen K. Caldwell

KAREN K. CALDWELL, CHIEF JUDGE
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY

**Additional material
from this filing is
available in the
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