

FILED-COMMON PLEAS

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MINNIE R. BAILEY, CLERK

IN THE COURT OF COMMON PLEAS
CLINTON COUNTY

Faith Mclemore, et al.,	:	Case No: CV20210332
Plaintiff,	:	Judge J. Patrick Foley III
v.	:	By Assignment
Clinton County Sheriff's Office,	:	DECISION AND FINAL
Defendants.	:	JUDGMENT ENTRY

This matter came before the Court for oral argument in person on May 19, 2022, on four motions.

The first motion is a Motion to Dismiss by Defendants City of Wilmington and related Defendants, filed on January 5, 2022. The motion is based on three points: the Complaint and amended complaint are legal nullities; the plaintiffs failed to state a claim upon which relief can be granted, Civ.R. 12(B)(6); and the Wilmington defendants were not properly served, and no summons was issued or served per Civ.R. 12(B)(5) and (4).

Defendant Marvin Andrew Napier, Jr., one of the plaintiffs in this case, is deceased, and his claim was not brought through the estate of the decedent. The claim should have been filed on behalf of the estate and signed by a lawyer. It was not. So, it is a legal nullity per *Baon v. Fairview Hospital*, 8th District, 2019-Ohio-3371, paragraph 26, and should be stricken.

The plaintiff alleges in the amended complaint that defendants failed to adequately investigate, prosecute, and discipline. She alleges failure to answer phone calls, provide answers, and respond to letters. She alleges that various public officials failed to communicate with her in particular and other plaintiffs. She further alleges with regard to individual defendants, namely, fireman and an EMT, that there was a failure to tell law enforcement what they observed.

JR 116, p. 675-680

As the defendants argued in their memorandum of law and in their oral argument, in order for these allegations to stand, they must fit under a recognized constitutional right, but none of these alleged rights is a recognized constitutional right that would apply in this case to the living plaintiff, Faith Mclemore or to the deceased plaintiff.

Under the *Monell* test, the plaintiffs, in order to sue employees of a municipality under 42 U.S.C section 1983, must point to an established custom, policy, or practice of the municipality that individual defendants followed to commit some constitutional violation. *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690-91 (1978). None has been alleged by plaintiff.

With regard to the insufficient service of process and insufficient process, there is no evidence in the docket showing a return of service, even by certified mail. In addition, no summons was issued let alone served on any of the defendants.

Only plaintiff Faith Mclemore filed a memorandum in opposition to the defendants' motion to dismiss. The other three defendants did not file anything in opposition.

This Motion is GRANTED for the reasons stated above. For lack of signature or signature by an attorney it is STRICKEN.

The Complaint and the Amended Complaint are dismissed as to the City of Wilmington, the Wilmington Fire Department, the Wilmington Police Department, Wilmington City Prosecutor Dave Henry, Wilmington City Law Director Brent Ruddick, Wilmington police Chief Ron Cravens, Wilmington Mayor John Stanforth, Wilmington City Council Members Jonathan McKay, Michael Snarr, Kristi Fickert, Matt Purkey, Kelsey Swindler, Bill Lierman, Nick Eveland, and Mark McKay, and the Wilmington Fire Department.

That part of the first motion, arguing that the complaint and the amended complaint are legal nullities, applies equally to County defendants, the Ohio Victim Justice Center, its

individual defendants, the Clinton County Coroner and its current and former employees, and the Montgomery County coroner. The complaint and amended complaint are as to those defendants as well is STRICKEN.

That part of the first motion, arguing that the complaint and the amended complaint should be dismissed due to insufficiency of process and insufficiency of service of process applies equally to the Montgomery County coroner. The complaint and amended complaint are DISMISSED as to that defendant as well.

That part of the first motion, arguing that the complaint and the amended complaint should be stricken because the three living plaintiffs failed to sign the complaint and the amended complaint, as required by Civil Rule 11, applies equally to the Ohio Victim Justice Center, its individual defendants, and the Montgomery County coroner. The complaint and amended complaint are STRICKEN as to those defendants as well. That part of the first motion, arguing that the complaint and the amended complaint should be stricken for failure to sign applies also to plaintiffs Devin Napier and Mary Napier. Therefore, all the strikings based on this reason are enforced against plaintiffs Faith Mclemore, Devin Napier and Mary Napier.

The second motion was a Motion to Strike on behalf of the Clinton County defendants, filed on January 5, 2022. The defendants' motion is filed under Civil Rule 11, which requires that a party who is not represented by an attorney shall sign the complaint and state the party's address in the complaint and amended complaint; the plaintiff did not do so. The Local Rules of Clinton County do not allow electronic filing of the complaint, even though other documents can be filed by fax. Also, the addresses of none of the four the plaintiffs were stated anywhere in the complaint or amended complaint. Since the complaint and the amended complaint were not

signed, defendants are requesting that the court strike them. *State ex rel. Slater v. Gallagher*, 8th Dist., 2018-Ohio-1742. The Court agrees.

The Motion to Strike the Complaint and Amended Complaint is GRANTED, and the Complaint and Amended Complaint are STRICKEN.

These defendants also argue that they have not been properly served with either with the complaint or the amended complaint and that no summons was issued or served on them. If the complaint and/or amended complaint is subsequently reinstated, the Court hereby rules that the Motion to Dismiss is GRANTED as to these Defendant: Sheriff Ralph Pfizer, Sheriff Deputy Brian Prickett, Deputy Elliot Sylvester, Deputy Thomas Couch, Deputy Terry Meehan, Deputy Morgan Wages, Deputy Doug Eastes, Detective Robert Gates, Maj. Brett Prickett, Prosecutor Andrew McCoy, Assistant Prosecutor John Kasper, Investigator Stephen Payne, Commissioner Kerry Steed, Commissioner Brenda Woods, and Commissioner Mike McCarty.

The third motion, a Motion to Dismiss, was filed by the Ohio Crime Victim Justice Center as well as by the three individually named representatives from that organization, Morgan Kleinholz, Brianna Schulz, and Alexandra Fender. Morgan Kleinholz reviewed the file that Faith Mclemore had put together regarding the death of her father in the custody of Clinton County officials, and then Kleinholz declined to do anything else. Defendants argue that they had no duty to Faith Mclemore or the other plaintiffs to do anything further. Defendants argue there is no cognizable claim stated against the Ohio Crime Victim Justice Center nor against the three individually named representatives from that organization. In addition, the four defendants have not been properly served and no summons was issued or served. The Court agrees.

The Court finds the four defendants' motion well taken and GRANTS the motions, and the four Defendants are DISMISSED.

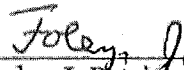
The fourth motion was filed on April 5, 2022 on behalf of defendants Gary Garrison, Marvin Corbin, and Arlene Soto, all of whom are presently or previously employed by the Clinton County coroner's office. It adopts all of the arguments of the Motion filed by the other Clinton County defendants (above). The Motion to Strike the Complaint and Amended Complaint are GRANTED, and the Complaint and Amended Complaint are STRICKEN.

These defendants also argue that they have not been properly served with either the complaint or the amended complaint and that no summons was issued or served on them. If the complaint and/or amended complaint is subsequently reinstated, the Court hereby rules that the Motion to Dismiss is GRANTED as to these Defendant: Gary Garrison, Marvin Corbin, and Arlene Soto.


The court does not have the authority to appoint an attorney for the plaintiffs and declines to do so.

IT IS SO ORDERED.

This is a final appealable order. There is no just reason for delay.



Judge J. Patrick Foley III



Date

PRAECIPE TO CLERK

The Court hereby directs the Clerk, pursuant to Civ.R. 58(B), to serve upon all counsel and unrepresented parties not in default for failure to appear notice of the judgment within three days

of entering the judgment upon the journal. The Clerk shall serve the parties in a manner prescribed by Civ.R. 5(B) and note the service in the appearance docket.



J. Patrick Foley III