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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

STANLEY BRADFORD CLARKE,)
)
Plaintiff,)
)
v.)
)
SANDRA UPTON; AMPARO WILLIAMS;)
DEPARTMENT OF SOCIAL SERVICES;)
and COUNTY OF MADERA,)
)
Defendants.)
)

1:07-cv-0888 OWW SMS
SCHEDULING CONFERENCE ORDER
Discovery Cut-Off: 6/24/11
Non-Dispositive Motion
Filing Deadline: 7/11/11
Non-Dispositive Motion
Hearing Date: 8/12/11 9:00
Ctrm. 7
Dispositive Motion Filing
Deadline: 7/25/11
Dispositive Motion Hearing
Date: 8/29/11 10:00 Ctrm. 3
Settlement Conference Date:
6/29/11 10:30 Ctrm. 7
Pre-Trial Conference Date:
10/3/11 11:00 Ctrm. 3
Trial Date: 11/1/11 9:00
Ctrm. 3 (JT-5 days)

I. Date of Scheduling Conference.
July 28, 2010.
II. Appearances Of Counsel.
Stanley Bradford Clarke, Plaintiff, appeared in pro se.
Emerson, Corey, Sorensen, Church & Libke by Rayma Church,

1 Esq., appeared on behalf of Defendants.

2 III. Summary of Pleadings.

3 Plaintiff's Factual Contentions.

4 1. Plaintiff contends that on September 16, 2005, at the
5 hearing of an ex parte application on a family law matter in the
6 Madera County Superior Court, Defendant Sandra Upton failed to
7 disclose exculpatory evidence which would have indicated that the
8 Plaintiff did not exchange his child with his ex-wife, only upon
9 being instructed by law enforcement officers not to do so.

10 Plaintiff contends that the failure to disclose this evidence
11 resulted in Plaintiff being deprived of custody and visitation
12 rights relative to his minor son. Plaintiff contends that Sandra
13 Upton was acting as an employee of the County of Madera,
14 Department of Social Services, at the time of the hearing.

15 2. Plaintiff contends that Sandra Upton conspired with
16 Amparo Williams, another employee of the Department of Social
17 Services, and others, to deprive the Plaintiff of his right to be
18 with his son, in part due to Plaintiff's ancestry and his gender.

19 Plaintiff's Legal Contentions.

20 3. Plaintiff contends that the failure to disclose
21 exculpatory evidence violated Plaintiff's civil rights and that
22 he is entitled to recovery from the Defendants under § 1983. He
23 also contends that the conspiracy is actionable under § 1985.
24 Plaintiff seeks recovery upon a state law theory of the
25 infliction of emotional distress. Plaintiff seeks recovery
26 against the County of Madera and the Department of Social
27 Services because of policies and procedures concerning the use of
28 trickery, duress, fabrication and/or false testimony of evidence,

1 and the failure to disclose exculpatory evidence. Also Plaintiff
2 contends that there was a failure to adequately train County
3 employees relative to certain Constitutional rights.

4 Relief Sought by Plaintiff.

5 4. Plaintiff is seeking general damages according to the
6 proof, special damages according to the proof, including medical
7 expenses, compensatory damages for violation of Plaintiff's civil
8 rights, and costs of suit.

9 Defendants' Factual Contentions.

10 5. Defendants contend there was a factual controversy
11 relative to the circumstances preceding the ex parte application.
12 Defendants contend the hearing was requested by the son's
13 attorney, and other ex parte relief was requested by the son's
14 mother. At the time of the hearing, an order was in force which
15 required the child to be exchanged at pre-arranged times and
16 without incident. The Superior Court had already found that both
17 the Plaintiff and the mother were not acting in the best
18 interests of the child, and had declared the child to be a ward
19 of the court. The father had been found to have been overly
20 suspicious of the mother and to have been manipulating his son
21 against the mother.

22 6. Defendants contend that Plaintiff had failed to comply
23 with the exchange order on several occasions. While Plaintiff
24 contends that police officers told him not to exchange his child
25 with mom, police officers subsequently questioned son and
26 determined that no abuse had occurred and that there was no
27 justification for the scheduled exchange not to take place.
28 Defendants contend that the Plaintiff was repeating behavior in

1 which he was falsely accusing the mother, or exaggerating the
2 circumstances. Plaintiff did not at any time explain to any
3 employee of the Department of Social Services why he would not be
4 exchanging the child per the court's order.

5 7. Defendants contend that Plaintiff's counsel, at the
6 time, requested an evidentiary hearing for a later date, a month
7 after the hearing of the ex parte application.

8 8. On state law claims, Plaintiff did not timely file his
9 complaint after having been given notice of the rejection of his
10 claim.

11 Defendants' Legal Contentions.

12 9. Defendants contend that they have not violated
13 Plaintiff's civil rights and that they are not liable for
14 decisions of the judge of the Superior Court. The Plaintiff
15 himself, or his previous attorney, are responsible for the
16 outcome of the previous litigation.

17 10. Defendants also contend that, relative to the civil
18 rights claims, either the absolute or qualified privilege
19 applies.

20 11. As to the state law claims, Plaintiff has failed to
21 comply with the California Government Claims Act and cannot seek
22 recovery against the Defendants. Otherwise, he cannot show that
23 the Defendants engaged in extreme or outrageous conduct, or would
24 have owed a duty to Plaintiff to prevent him suffering emotional
25 distress.

26 IV. Orders Re Amendments To Pleadings.

27 1. The Court, with Plaintiff's consent, has dismissed
28 without prejudice, the Department of Social Services, as that is

1 not a public entity that can be liable under the circumstances of
2 this case.

3 2. The parties do not anticipate amending the pleadings at
4 this time, except the Plaintiff has agreed that Madera Department
5 of Social Services is dismissed without prejudice.

6 3. The Defendants shall file their answer to the most
7 recent amended complaint on or before January 31, 2011.

8 V. Factual Summary.

9 A. Admitted Facts Which Are Deemed Proven Without Further
10 Proceedings.

11 1. The parties do not dispute that Defendants Sandra
12 Upton and Amparo Williams were the employees of the County of
13 Madera and were acting in the course and scope of employment at
14 the time of the pertinent events.

15 2. It is not disputed that Plaintiff was the father
16 of the child identified in the pleadings.

17 3. It is not disputed that on or about November 24,
18 2004, the Kern County Superior Court held a hearing. The judge
19 ordered supervised visitation for the mother and that she would
20 not sleep in the same bed as the minor. The court ordered the
21 minor child be evaluated by Jay Fisher, Ph.D.

22 4. It is not disputed that in January of 2005, Dr.
23 Jones, a pediatrician, noted signs of physical abuse and injuries
24 on the minor child's body and that Dr. Jones' notes relate that
25 the child's mother had inflicted these injuries when hitting the
26 child with a wooden spoon. On January 10, 2005, the minor child
27 was placed in the temporary placement and care of the CPS by
28 court order, and that the child was later placed in foster care.

1 5. A CSART interview of the minor child was completed
2 on early 2005, with the Deputy District Attorney present, as well
3 as a Madera Police Department Detective, and a District
4 Attorney's Office investigator. The interview was conducted
5 without Plaintiff or any relative present.

6 6. On February 21, 2005, Dr. Fisher, a child
7 psychologist, issued a report of a psychological examination.
8 The report indicated that the minor was very intelligent. Dr.
9 Fisher concluded that the mother appeared to have hurt her son
10 and placed him in a position where he was injured and/or
11 physically abused. Dr. Fisher recommended that the minor be
12 returned to the custody of his dad. Dr. Fisher recommended that
13 the mother should have supervised visits with the child, obtain
14 psychotherapy for her and her child, and take an anger management
15 course.

16 7. A dependency hearing was held on April 11, 2005,
17 which was contested.

18 8. On or about June 10, 2005, Judge Thomas Bender
19 reached a decision in the dependency case. Judge Bender found
20 that there was one incident of physical abuse by the mother.
21 Judge Bender ordered the minor to become a dependent of the
22 court. The parents would have alternating visitation consisting
23 of custodial time with both parents.

24 9. Dr. Napolitano made a report to Pam Ogella at
25 Madera CPS on August 23, 2005.

26 10. Plaintiff arrived at the Madera City Police
27 Department on September 15, 2005, with his minor child and met
28 with Sgt. Wiles and Defendant Upton.

1 11. Plaintiff later complained to the supervisors and
2 management of the Department of Social Services and asked that
3 Defendant Upton be removed from the case.

4 12. Plaintiff retained joint physical and legal
5 custody of the minor on September 18, 2007.

6 B. Contested Facts.

7 1. The child could not be given over to the custody
8 of the Plaintiff until the court conducted a dependency hearing.

9 2. On January 10, 2005, the minor child was placed in
10 temporary placement in care of CPS. It is disputed as to the
11 date the court order issued. The child was later placed in
12 foster care.

13 3. Whether Dr. Susan Napolitano reported to Defendant
14 Upton, the family maintenance service worker, representations
15 that the minor had made to Dr. Napolitano. Dr. Napolitano was
16 referred to CPS to make a report.

17 4. Plaintiff and his attorney attended the ex parte
18 hearing on September 16, 2005. It is disputed whether Defendant
19 Upton arrived late to the dependency case hearing and was only
20 present for part of the hearing on September 16, 2005.

21 Dependency Ruling.

22 5. The underlying dependency matter was fully tried
23 in the Madera County Superior Court. The Court issued its
24 decision on the dispositional hearing on June 10, 2005. The
25 Reporter's transcript indicates that the court, Hon. Judge Bender
26 presiding, considered the Department's evidence, the
27 jurisdictional hearing report, the addendum report, the
28 dispositional hearing report, the delivered service logs, as well

1 as the mother's evidence, and the father's evidence. The court
2 considered Mr. Clark's testimony, the testimony of the mother,
3 the social worker testimony, and numerous psychologists. The
4 court watched tapes of the child interacting with the parents.

5 6. In a very personal decision, Judge Bender
6 expressed deep concern for the interest of the minor, and found
7 both his parents were acting against the boy's interests. The
8 court took jurisdiction over the case. It found that Stanley
9 Bradford Clarke had credibility problems, as did the mother, and
10 others involved.

11 7. The court found that there was no sexual abuse.
12 The court found that Mr. Clarke had abused the child's mother in
13 front of the son, and had made derogatory statements about her in
14 front of the minor child. The court determined that Mr. Clarke
15 was constantly interrogating his son, and coaching him and
16 rehearsing with him what to say about the mother. Mr. Clarke was
17 found to be forum shopping between Kern County and Madera County.

18 8. Judge Bender opined that both the mother and the
19 father had to stop blaming the other person for the child's sake.
20 The minor child was made a dependent of the court. The parents
21 were ordered to make the exchanges easy on their son. The minor
22 child was to be under some degree of supervision by Child Welfare
23 Services. Judge Bender specified again that he did not want any
24 problems at the exchanges.

25 Failure to Exchange.

26 9. Plaintiff was scheduled to exchange the child with
27 the mother on September 14, 2005, in accordance with the court's
28 orders. Plaintiff did not do so. No explanation was given by

1 Plaintiff to Defendants, before or on the day of the exchange, as
2 to why Plaintiff did not comply with the scheduled exchange.
3 Plaintiff contends that he was told by police officers not to
4 exchange the child, after Plaintiff communicated his suspicion
5 that the mother was sexually abusing the child.

6 Request for Modification.

7 10. On September 15, 2005, the child's appointed
8 attorney, Ronald Nissila, moved the court to modify the June 10,
9 2005 order, for reasons that Stanley Bradford Clark was acting
10 detrimentally to the child. On September 16, 2005, the court
11 heard the matter with all parties present. The matter was
12 submitted by Mr. Nissila on the moving papers. William Smith,
13 appearing for the County Counsel, submitted nothing more, but
14 supported the requested relief. The mother's attorney likewise
15 submitted the matter.

16 11. Mr. Clark's attorney requested an evidentiary
17 hearing. Plaintiff's attorney requested that the child be
18 returned to his father, that a SART interview be conducted, and
19 that results be considered relative to a temporary custodial
20 arrangement for the child. Plaintiff's attorney requested that
21 the child be taken to a doctor for further evaluation concerning
22 the allegations of sexual abuse. Plaintiff's counsel reiterated
23 his request for an evidentiary hearing. The court denied the
24 request for a return of the child to the father, and for a second
25 SART interview. The court also denied the request to have the
26 mother take the child to a doctor for further evaluation.

27 12. The court granted the application for modification
28 made pursuant to California Welfare and Institutions Code § 388,

1 and removed the child from the care of his father. Plaintiff
2 would have supervised visitation upon further psychological
3 evaluation. The court specified that the order was temporary and
4 that an evidentiary hearing on the petition would be set.

5 13. Plaintiff's attorney requested "a minimum of a
6 couple of weeks..." to prepare for the hearing, which was then
7 set for October 11, 2005. By that time, Mr. Clarke was no longer
8 represented by an attorney, and the matter was set out again.
9 That date was continued three times, eventually to February 6,
10 2006.

11 VI. Legal Issues.

12 A. Uncontested.

13 1. Jurisdiction exists under 28 U.S.C. § 1331 and 42
14 U.S.C. § 1983.

15 2. Venue is proper under 28 U.S.C. § 1391.

16 3. The substantive law of the State of California
17 governs the supplemental claims.

18 4. It is not contested that the minor's records and
19 information should be protected from disclosure. It may be
20 necessary to redact some matters from the public records;
21 Plaintiff has not been represented by counsel through most of
22 this litigation, and stated the name of the child in previously
23 filed documents.

24 B. Contested.

25 1. Defendants dispute that the Department of Social
26 Services may be sued as a party distinct from the County of
27 Madera.

28 2. Defendants dispute that Plaintiff may name Doe

1 Defendants in a complaint filed in federal court relative to
2 federal claims.

3 3. The Defendants dispute liability as to each claim
4 in the complaint.

5 4. The Defendants dispute that there has been any
6 civil rights violations, and dispute the claims under state law.
7 VII. Consent to Magistrate Judge Jurisdiction.

8 1. The parties have not consented to transfer the
9 case to the Magistrate Judge for all purposes, including trial.

10 VIII. Corporate Identification Statement.

11 1. Any nongovernmental corporate party to any action in
12 this court shall file a statement identifying all its parent
13 corporations and listing any entity that owns 10% or more of the
14 party's equity securities. A party shall file the statement with
15 its initial pleading filed in this court and shall supplement the
16 statement within a reasonable time of any change in the
17 information.

18 IX. Discovery Plan and Cut-Off Date.

19 1. The Rule 26 disclosures shall be made simultaneously on
20 or before Monday, August 30, 2010.

21 2. The parties are ordered to complete all non-expert
22 discovery on or before April 4, 2011.

23 3. The parties are directed to disclose all expert
24 witnesses, in writing, on or before April 25, 2011. Any rebuttal
25 or supplemental expert disclosures will be made on or before May
26 25, 2011. The parties will comply with the provisions of Federal
27 Rule of Civil Procedure 26(a)(2) regarding their expert
28 designations. Local Rule 16-240(a) notwithstanding, the written

1 designation of experts shall be made pursuant to F. R. Civ. P.
2 Rule 26(a)(2), (A) and (B) and shall include all information
3 required thereunder. Failure to designate experts in compliance
4 with this order may result in the Court excluding the testimony
5 or other evidence offered through such experts that are not
6 disclosed pursuant to this order.

7 4. The parties are ordered to complete all discovery,
8 including experts, on or before June 24, 2011.

9 5. The provisions of F. R. Civ. P. 26(b)(4) shall
10 apply to all discovery relating to experts and their opinions.
11 Experts may be fully prepared to be examined on all subjects and
12 opinions included in the designation. Failure to comply will
13 result in the imposition of sanctions.

14 Further Discovery Limits.

15 6. There does not seem to be any reason to vary the limits
16 provided by the Federal Rules of Civil Procedure. If any issue
17 develops at counsel's meet and confer and if they cannot resolve
18 the matter between them, they will seek the court's assistance.

19 Protective Order(s).

20 7. As the case progresses, it may be necessary for the
21 court to issue a protective order relative to the juvenile
22 records of Plaintiff's son, which must remain private and
23 confidential. The parties have already agreed previously to
24 preserve against such disclosure, and this does not appear to be
25 a contested issue. Defense counsel will have with him copies of
26 the order concerning the release of the records concerning the
27 underlying dependency proceedings. The Madera County Superior
28 Court ordered that the parties not disclose the matters contained

1 in the record to any other person, save for presentation as
2 evidence in this court proceeding. The Madera County Superior
3 Court ordered that the disclosed records should be filed
4 confidentially.

5 Proposals re timing, etc.

6 8. Defendants do not anticipate any issues relating to
7 timing, sequencing, phasing, etc. of discovery. However, since
8 Plaintiff is prosecuting this case pro se, there may be some
9 difficulty.

10 Foreign Discovery.

11 9. No foreign discovery is anticipated by the parties.

12 Video Depositions.

13 10. The parties may conduct videotaped depositions upon
14 written notice in a timely served deposition notice.

15 Electronic Discovery.

16 11. It is not anticipated that electronic discovery in this
17 case will be extensive. It is possible that either Plaintiff or
18 Defendants, or Defendants' employees, used e-mail to communicate
19 about the underlying matter in the Superior Court. The parties
20 will endeavor to locate such communications upon request. At the
21 time of this report, Defendants are unable to determine whether
22 any of the communications may have been lost due to the normal
23 retention policies and the passage of time, or due to any change
24 of personnel or data storage or locating systems. Counsel will
25 confer regarding any searches of the pertinent computer systems
26 when it becomes necessary.

27 X. Pre-Trial Motion Schedule.

28 1. All Non-Dispositive Pre-Trial Motions, including any

1 discovery motions, will be filed on or before July 11, 2011, and
2 heard on August 12, 2011, at 9:00 a.m. before Magistrate Judge
3 Sandra M. Snyder in Courtroom 7.

4 2. In scheduling such motions, the Magistrate
5 Judge may grant applications for an order shortening time
6 pursuant to Local Rule 142(d). However, if counsel does not
7 obtain an order shortening time, the notice of motion must comply
8 with Local Rule 251.

9 3. All Dispositive Pre-Trial Motions are to be
10 filed no later than July 25, 2011, and will be heard on August
11 29, 2011, at 10:00 a.m. before the Honorable Oliver W. Wanger,
12 United States District Judge, in Courtroom 3, 7th Floor. In
13 scheduling such motions, counsel shall comply with Local Rule
14 230.

15 XI. Pre-Trial Conference Date.

16 1. October 3, 2011, at 11:00 a.m. in Courtroom 3, 7th
17 Floor, before the Honorable Oliver W. Wanger, United States
18 District Judge.

19 2. The parties are ordered to file a Joint Pre-
20 Trial Statement pursuant to Local Rule 281(a)(2).

21 3. Counsel's attention is directed to Rules 281
22 and 282 of the Local Rules of Practice for the Eastern District
23 of California, as to the obligations of counsel in preparing for
24 the pre-trial conference. The Court will insist upon strict
25 compliance with those rules.

26 XII. Motions - Hard Copy.

27 1. The parties shall submit one (1) courtesy paper copy to
28 the Court of any motions filed. Exhibits shall be marked with

1 protruding numbered or lettered tabs so that the Court can easily
2 identify such exhibits.

3 XIII. Trial Date.

4 1. November 1, 2011, at the hour of 9:00 a.m. in Courtroom
5 3, 7th Floor, before the Honorable Oliver W. Wanger, United
6 States District Judge.

7 2. This is a jury trial.

8 3. Counsels' Estimate Of Trial Time:

9 a. 5 days.

10 4. Counsels' attention is directed to Local Rules
11 of Practice for the Eastern District of California, Rule 285.

12 XIV. Settlement Conference.

13 1. A Settlement Conference is scheduled for June 29, 2011,
14 at 10:30 a.m. in Courtroom 7 before the Honorable Sandra M.
15 Snyder, United States Magistrate Judge.

16 2. Unless otherwise permitted in advance by the
17 Court, the attorneys who will try the case shall appear at the
18 Settlement Conference with the parties and the person or persons
19 having full authority to negotiate and settle the case on any
20 terms at the conference.

21 3. Permission for a party [not attorney] to attend
22 by telephone may be granted upon request, by letter, with a copy
23 to the other parties, if the party [not attorney] lives and works
24 outside the Eastern District of California, and attendance in
25 person would constitute a hardship. If telephone attendance is
26 allowed, the party must be immediately available throughout the
27 conference until excused regardless of time zone differences.
28 Any other special arrangements desired in cases where settlement

1 authority rests with a governing body, shall also be proposed in
2 advance by letter copied to all other parties.

3 4. Confidential Settlement Conference Statement.

4 At least five (5) days prior to the Settlement Conference the
5 parties shall submit, directly to the Magistrate Judge's
6 chambers, a confidential settlement conference statement. The
7 statement should not be filed with the Clerk of the Court nor
8 served on any other party. Each statement shall be clearly
9 marked "confidential" with the date and time of the Settlement
10 Conference indicated prominently thereon. Counsel are urged to
11 request the return of their statements if settlement is not
12 achieved and if such a request is not made the Court will dispose
13 of the statement.

14 5. The Confidential Settlement Conference
15 Statement shall include the following:

16 a. A brief statement of the facts of the
17 case.

18 b. A brief statement of the claims and
19 defenses, i.e., statutory or other grounds upon which the claims
20 are founded; a forthright evaluation of the parties' likelihood
21 of prevailing on the claims and defenses; and a description of
22 the major issues in dispute.

23 c. A summary of the proceedings to date.

24 d. An estimate of the cost and time to be
25 expended for further discovery, pre-trial and trial.

26 e. The relief sought.

27 f. The parties' position on settlement,
28 including present demands and offers and a history of past

1 settlement discussions, offers and demands.

2 XV. Request For Bifurcation, Appointment Of Special Master,
3 Or Other Techniques To Shorten Trial.

4 1. The issue of punitive damages, as to amount, if any,
5 shall be tried in a second phase in a continuous trial before the
6 same jury.

7 XVI. Related Matters Pending.

8 1. Plaintiff has appealed the underlying Superior Court
9 matter and has also filed an action against his attorney in the
10 Superior Court matter.

11 XVII. Compliance With Federal Procedure.

12 1. The Court requires compliance with the Federal
13 Rules of Civil Procedure and the Local Rules of Practice for the
14 Eastern District of California. To aid the court in the
15 efficient administration of this case, all counsel are directed
16 to familiarize themselves with the Federal Rules of Civil
17 Procedure and the Local Rules of Practice of the Eastern District
18 of California, and keep abreast of any amendments thereto.

19 XVIII. Effect Of This Order.

20 1. The foregoing order represents the best
21 estimate of the court and counsel as to the agenda most suitable
22 to bring this case to resolution. The trial date reserved is
23 specifically reserved for this case. If the parties determine at
24 any time that the schedule outlined in this order cannot be met,
25 counsel are ordered to notify the court immediately of that fact
26 so that adjustments may be made, either by stipulation or by
27 subsequent scheduling conference.

28 2. Stipulations extending the deadlines contained

1 herein will not be considered unless they are accompanied by
2 affidavits or declarations, and where appropriate attached
3 exhibits, which establish good cause for granting the relief
4 requested.

5 3. Failure to comply with this order may result in
6 the imposition of sanctions.

7
8 IT IS SO ORDERED.

9 Dated: July 29, 2010

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE

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