

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ELSA MALDONADO, et al.,

Plaintiffs,

v.

CITY OF SAN LEANDRO, et al.,

Defendants.

No. C 09-0470 PJH

**ORDER GRANTING SUMMARY
JUDGMENT**

Before this court is defendant Stanislaus County, and individual defendants Beth Morrison, Erin Cary, Nichole Cunningham, Richard Allen, and Bryan Hixson's (collectively "defendants") motion for summary judgment. Pro se plaintiffs, despite engaging in recent litigation activity before the court since the filing of defendants' summary judgment motion, have failed to oppose the motion. Having read the moving parties' papers and considered the relevant legal authority, and in view of both plaintiffs' failure to file an opposition to the motion and the absolute nature of the defense presented in defendants' papers, the court hereby GRANTS defendants' motion for summary judgment, for the following reasons.

Plaintiffs have asserted three claims against defendants: (1) violation of 42 U.S.C. § 1983 (against Stanislaus County only); (2) conspiracy alleged pursuant to 42 U.S.C. § 1985 (against all defendants); and (3) civil rights violations under 42 U.S.C. §§ 1985 et seq. See Civil Complaint, ¶¶ 20-22, 25-33. As defendants correctly note, all three claims are barred by the applicable two year statute of limitations. See, e.g., Wilson v. Garcia, 471 U.S. 261 (1985)(forum state's statute of limitations for personal injury torts sets forth appropriate period for determining statute of limitations under sections 1983 and 1985), superseded by statute on other grounds, as stated in Jones v. R.R. Donnelley & Sons Co., 541 U.S. 369

1 (2004); see also Cal. Civ. Proc Code § 335.1 (establishing two year limitation for the filing
2 of civil claims alleging personal injury).

3 Plaintiffs allege that defendants' unlawful conduct consisted of failing to conduct an
4 independent investigation of the dependency proceedings undertaken by Alameda County
5 prior to plaintiffs' relocation to Stanislaus County. Complaint, ¶¶ 17-18. While plaintiffs do
6 not allege any specific date ranges for the conduct of the Stanislaus County defendants,
7 each Stanislaus County defendant has submitted declarations demonstrating that no
8 defendant had any contact or involvement with plaintiffs since October 31, 2006. See
9 Declaration of Richard Allen, ¶ 4 (no involvement in plaintiffs' case since October 31,
10 2006); Declaration of Nichole Cunningham, ¶ 4 (no involvement since October 31, 2006);
11 Declaration of Bryan Hixson, ¶ 5 (no involvement since June 1, 2006); Declaration of Beth
12 Morrison, ¶ 5 (no involvement since June 1, 2006); Declaration of Erin Webster, ¶¶ 5-6
13 (assigned to case from December 19, 2005 through May 5, 2006; no involvement since
14 June 1, 2006). Moreover, as plaintiffs do allege, their claims against the Stanislaus County
15 defendants arise from the dependency proceedings that resulted in the termination of
16 plaintiffs' parental rights. This termination took place on September 26, 2006. See
17 Declaration of Carrie Stephens, ¶ 7.

18 Construing plaintiffs' complaint liberally, even if the court were to utilize the
19 September 26, 2006 termination date as the outside date triggering the statute of
20 limitations for purposes of plaintiffs' claims against defendants, plaintiffs' claims are time-
21 barred. In order to be timely, plaintiffs would have needed to file their complaint against the
22 instant defendants no later than September 26, 2008. Plaintiffs' complaint was instead filed
23 on February 2, 2009 – nearly 5 months too late.

24 This deficiency is fatal to plaintiffs' claims against defendants, particularly as
25 plaintiffs have not pled the existence of any tolling. Accordingly, and on this basis alone,
26 the court hereby GRANTS defendants' motion for summary judgment against plaintiffs.

27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The court having previously dismissed the Country of Alameda and City of San Leandro municipal defendants from the action, there are no defendants remaining in the case. Accordingly, a judgment shall also be entered contemporaneously with the filing of this order, and the action shall be terminated.

IT IS SO ORDERED.

Dated: December 17, 2010



PHYLLIS J. HAMILTON
United States District Judge