

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION**

ESTATE OF ARTHUR LEE COLEMAN, JR. and
TARLISHA DAVIS, EDDRICH BROWN, TEARA
BROWN, PICOLIA BROWN, MICHI COMER as
Guardian for ARTISHA COLEMAN (a minor) and
GLORIA DAVIS as guardian for ORTON LEWLLYN
COLEMAN (a minor),

Plaintiffs,

v.

CASE NO. 2:10-CV-105-FtM-36SPC

MICHAEL SCOTT, Sheriff of Lee County,
TIMOTHY GALLOWAY, individually and as a
deputy and ROBERT KERBS and TIMOTHY
McCORMACK, individually and as law enforcement
officers, and LEE COUNTY SHERIFF'S OFFICE,
and CITY OF FORT MYERS ["COFM"], FORT
MYERS POLICE DEPARTMENT, and SCOTT LEY,
individually and as a U.S. Marshall and the U.S.
MARSHALL'S OFFICE, a federal agency, and U.S.
MARSHALL'S FUGITIVE TASK FORCE, and
UNKNOWN LAW ENFORCEMENT OFFICERS, and
TIMOTHY KELLY, individually and as a probation
officer, DEPARTMENT OF CORRECTIONS, a State
Agency,

Defendants.

ORDER

THIS CAUSE came on for consideration upon the Report and Recommendation filed by United States Magistrate Judge Sheri P. Chappell on July 20, 2010 (Dkt. 51), recommending that the Court grant the Motion to Strike Punitive Damages Claims filed by Defendants City of Fort Myers, Fort Myers Police Department, Officer Robert Kerbs, and Officer Timothy McCormack on May 26, 2010 (Dkt. 27). Specifically Magistrate Judge Chappell recommended that the punitive

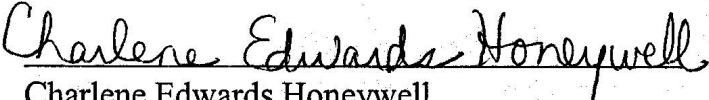
damages claims against Defendants City of Fort Myers, Fort Myers Police Department, Officer Kerbs and Officer McCormack in their official capacities be stricken (Dkt. 51, p. 4). However, the Magistrate Judge recommended that the punitive damages claims against Officer Kerbs and Officer McCormack in their individual capacities remain pending. *Id.* Plaintiffs did not file an objection to the Report and Recommendation, and the time for filing such an objection has expired.

After carefully considering Plaintiffs' Amended Complaint (Dkt. 3), Defendants' Motion, Plaintiffs' Response in opposition (Dkt. 50) and Magistrate Judge Chappell's Report and Recommendation, and undertaking a *de novo* review of the legal determinations recommended therein, the Court concludes that Magistrate Judge Chappell's Report and Recommendation should be confirmed and accepted.

ACCORDINGLY, it is now **ORDERED and ADJUDGED** as follows:

1. The Report and Recommendation of the Magistrate Judge (Dkt. 51) is **ADOPTED, CONFIRMED and APPROVED** in all respects and is made a part of this Order for all purposes, including appellate review.
2. The Motion to Strike Punitive Damages Claims filed by Defendants City of Fort Myers, Fort Myers Police Department, Officer Robert Kerbs, and Officer Timothy McCormack (Dkt. 27) is **GRANTED** in part and **DENIED** in part. The punitive damages claim against Defendants City of Fort Myers, Fort Myers Police Department, Officer Robert Kerbs and Officer Timothy McCormack in their official capacities is stricken. The punitive damages claim against Officer Robert Kerbs and Officer Timothy McCormack in their individual capacities shall remain pending..

DONE AND ORDERED at Ft. Myers, Florida, on August 10, 2010.


Charlene Edwards Honeywell
United States District Judge

COPIES TO:

Magistrate Judge Sheri P. Chappell
Counsel of Record