

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

REVEREND LISA MARIA MURRAY,)

Plaintiff,)

vs.)

CURTIS M. CARLSON, JULIA C. CATONE,)
CLARK COUNTY SHERIFF'S)
DEPARTMENT, and BEHAVIORAL)
HEALTH CENTER OF CLARK MEMORIAL)
HOSPITAL,)

Defendants.

4:11-cv-42- SEB-TAB

ENTRY ON PENDING MATTERS AND
ORDER TO SHOW CAUSE

I. MOTIONS TO DISMISS

(Docket Nos. 50, 52 & 58)

Now before the Court are: (1) Defendant Behavioral Health Center's Motion to Dismiss; (2) Defendant Julia C. Catone's Motion to Dismiss; and (3) Defendant Clark County Sheriff Department's Motion to Dismiss. Plaintiff has not responded to any of these motions and the time for her to do so under Local Rule 7-1 and Fed. R. Civ. P. 6(d) has long ago expired.

Because we are persuaded that all three motions are clearly meritorious on their face, and because Plaintiff has not opposed them, all three motions are GRANTED. Accordingly, Plaintiff's claims in this action against the Behavioral Health Center, Julia C. Catone, and the Clark County Sheriff's Department are DISMISSED WITH PREJUDICE. A separate judgment pursuant to Fed. R. Civ. P. 54(b) shall issue.

II. ORDER TO SHOW CAUSE

All of the defendants having been dismissed, save one, Curtis M. Carlson, Plaintiff's ex-husband, is now the sole remaining defendant in this cause.¹ According to Plaintiff's Amended Complaint, Mr. Carlson resided with Plaintiff, began a relationship with her, and under false pretenses, persuaded her to marry him – all because he wanted to have her declared mentally incompetent and involuntarily committed to a mental health facility so that he could obtain her land and convert it for his own benefit. [First Amended Complaint, p. 3 - 4 at ¶¶ 1 & 2 (Dkt. No. 32).] To that end, she claims, he conspired with the now dismissed defendants and “wrongfully obtained an emergency detention order.” [Id., p. 4 at ¶ 2.] Based on these “facts,” Plaintiff contends that Mr. Carlson violated her federal constitutional rights and discriminated against her on the basis of her disability.² She asserts that he is liable to her for money damages under both 42 U.S.C. § 1983 and the Americans with Disabilities Act (ADA). [Id., p. 2 at ¶ A & p. 8.]

Accepting the facts alleged by Plaintiff as true, Plaintiff's Amended Complaint nonetheless fails to indicate any way in which Mr. Carlson's actions occurred “under the color of law” or constituted “state action,” which is an essential element for liability to accrue under 42 U.S.C. § 1983. See Hallinan v. Fraternal Order of Police of Chicago, 570 F.3d 811, 815 (7th Cir. 2009) (observing the circumstances under which the conduct of a private actor can constitute state action) and Ryan v. Mary Immaculate Queen Center, 188 F.3d 857, 860 (7th Cir. 1999) (recognizing that the bare allegation of a conspiracy does not satisfy Rule 8). Likewise, her Amended Complaint fails to specify how Mr. Carlson's alleged discrimination against her based on her disability arose in the

¹ Mr. Carlson has appeared and is proceeding *pro se*.

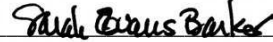
² According to Plaintiff's Amended Complaint, Plaintiff “suffers from a multitude of mental and physical illnesses that impair her ability to function.”

context of employment, public services, public accommodations, or telecommunications, which is a necessary predicate for liability to liability under the ADA.

Without such factual allegations, Plaintiff's Amended Complaint fails to state any federal claims against Mr. Carlson upon which relief can be granted. Plaintiff shall have through and including August 2, 2013 to support the continuation of this litigation against Mr. Carlson or to explain why Mr. Carlson should not immediately be dismissed as a defendant in this action.

IT IS SO ORDERED.

Date: 07/23/2013



SARAH EVANS BARKER, JUDGE
United States District Court
Southern District of Indiana

Copies to:

Michael J. Adler
ADLER LAW LLC
michael@adlerlawonline.com

J. Allen Johnson
everybodyrights112@gmail.com

R. Jeffrey Lowe
KIGHTLINGER & GRAY, LLP-New Albany
jlowe@k-glaw.com

Christine Marie Riesner
MCNEELY STEPHENSON THOPY &
HARROLD
crbond@msth.com

Derrick H. Wilson
MATTOX MATTOX & WILSON
dhw@mattoxwilson.com

CURTIS M. CARLSON
3462 Concetta Way
Sacramento, CA 95821