

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

CIVIL ACTION NO. 3:12-CV-00844-H

JOSHUA TINCH

PLAINTIFF

v.

JEFFERSON COUNTY PUBLIC
SCHOOL SYSTEM, *et al.*

DEFENDANTS

MEMORANDUM AND ORDER

On November 27, 2012, Plaintiff filed an action against the Jefferson County Public School System and several of its officials, including, Chris Brands. The complaint alleged state law claims, defamation, invasion of privacy and other related federal claims. Defendants removed to federal court and now one of them, Brands, has moved to dismiss on statute of limitations grounds.

The claims arise from events which occurred between August 29, 2011, and December 8, 2011. No one disputes that the statute of limitations as to these claims is one year. *See* KRS 413.140(d). Defendant argues that because Plaintiff failed to cause summons to be issued and to make a good faith effort to serve it prior to December 8, 2012, his claims against Brands are now barred.

The result here is rather straightforward. After reviewing the full briefing, it seems clear that Plaintiff did not cause a summons to be issued as to Brands or to be served upon him prior to December 8, 2012. Under Kentucky law, a plaintiff must file a complaint and cause issuance of the summons within the statutory time. *See Nanny v. Smith*, 260 S.W.3d 815 (Ky. 2008). Here, Plaintiff did not assure that the summons was either signed or stamped by the Circuit Court

Clerk. As a consequence, service of summons upon Brands did not take place until about a year after the statute had run. Under certain circumstances, Plaintiff cannot merely assume that the summons would somehow be timely issued. The filing of the amended complaint in this Court does not change matters.

Being otherwise sufficiently advised,

IT IS HEREBY ORDERED that the motion of Defendant, Chris Brands, to dismiss is SUSTAINED and the complaint against him is DISMISSED WITH PREJUDICE. All other claims may proceed.

January 2, 2014

A handwritten signature in black ink, appearing to read "John G. Heyburn II", is written over a circular official seal of the United States District Court for the District of Columbia. The seal features an eagle with wings spread, holding an olive branch and arrows, with a shield on its chest. The words "UNITED STATES DISTRICT COURT" and "DISTRICT OF COLUMBIA" are visible around the perimeter of the seal.

**John G. Heyburn II, Judge
United States District Court**

cc: Counsel of Record