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**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ELIZABETH MORT and ALEX)
RODRIGUEZ,)
)
Plaintiffs,)

v.)

Civil Action No. 2:10-cv-01438-DSC

LAWRENCE COUNTY CHILDREN AND)
YOUTH SERVICES; LAWRENCE)
COUNTY; CHRISSY MONTAGUE,)
Lawrence County Children and Youth)
Services Caseworker; and JAMESON)
HEALTH SYSTEM, INC.,)
)
Defendants.)

**MEMORANDUM IN SUPPORT OF
MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT**

Plaintiffs Elizabeth Mort and Alex Rodriguez (“Plaintiffs”), by and through their undersigned counsel, submit this Memorandum in Support of Motion for Leave to File Second Amended Complaint pursuant to Rule 15(a), Fed. R. Civ. Pro. For the reasons that follow, this Court should grant the Plaintiffs’ Motion for Leave to File Second Amended Complaint (“Motion”).

I. INTRODUCTION

On October 28, 2010, the Plaintiffs filed a four-count Complaint against Defendants Lawrence County Children and Youth Services, Chrissy Montague and Jameson Health System, Inc. (“Jameson”) On December 1, 2010, the Plaintiffs filed an Amended Complaint adding Defendant Lawrence County. On December 30, 2010, Jameson filed a Motion to Dismiss Plaintiffs’ Amended Complaint. On January 17, 2011, Defendants Lawrence County, Lawrence County Children and Youth Services (collectively referred to as “LCCYS”) and Chrissy

Montague (collectively referred to as the “Lawrence County Defendants”) also filed a Motion to Dismiss the Plaintiffs’ Amended Complaint. After briefing by the parties, on August 31, 2011, this Court entered an Order granting in part and denying in part Defendants’ Motions to Dismiss.¹ On October 10, 2011, the Defendants filed Answers to the Plaintiffs’ Amended Complaint. Pursuant to the Court’s August 3, 2011 Order, the deadline to amend the pleadings and/or add new parties is October 22, 2011.²

A. The Facts and Issues Raised in the Amended Complaint as Filed.

As currently filed, the Amended Complaint states claims for violation of the Plaintiffs’ Fourteenth Amendment right to substantive due process against the Lawrence County Defendants (Count I) and conspiracy to violate Plaintiffs’ civil rights against all Defendants (Count II). In discovery, the parties have exchanged Rule 26(a) Disclosures and the Plaintiffs have served the Defendants with Requests for Production of Documents. The Plaintiffs have also obtained additional information through their deposition of Defendant Montague.

B. The Proposed Amendment.

Based on additional information learned during discovery, the Plaintiffs seek to amend their Amended Complaint to add two additional Defendants: Lawrence County Children and Youth Services (“CYS”) Director Jane Gajda (“Ms. Gajda”) and Intake Supervisor Sandy Copper (“Ms. Copper”). Specifically, during the course of discovery it has become evident that Ms. Gajda, as the Director of CYS, is responsible for implementing and approving CYS’s

¹ The Court’s Order dismissed the Plaintiffs’ claims for negligence (Count III) and invasion of privacy (Count IV) against Jameson.

² Because the deadline falls on a weekend, it is extended to the first day the Clerk’s Office is accessible or Monday, October 24, 2011. *See* Rule 6(a)(3), Fed. R. Civ. Pro.

policies and practices, including the policy at issue in this case. Therefore, the Plaintiffs seek leave to amend the Amended Complaint to add Ms. Gajda as a defendant to Counts I and II.

Additionally, it has been uncovered that Ms. Copper was the individual notified by Jameson that Plaintiff Elizabeth Mort's ("Plaintiff Mort") confirmation test results were positive for opiates. Further, it has been discovered that it was at the instruction of Ms. Copper that Defendant Montague sought a court order on April 30, 2010, permitting CYS to take baby Isabella Rodriguez into emergency protective custody solely on the basis of Jameson's report to Defendant Copper that Plaintiff Mort had tested positive for opiates. As a result, the Plaintiffs also seek leave to amend their Amended Complaint to add Ms. Copper as a defendant to Counts I and II.

II. ARGUMENT

In accordance with Federal Rule of Civil Procedure 15(a), leave to amend "shall be freely given when justice so requires." Fed. R. Civ. P. 15(a). Moreover, the Third Circuit has noted that courts should exercise "strong liberality" in allowing amendments under Rule 15(a), *Heyl & Patterson Int'l, Inc. v. D.F. Rich Housing*, 663 F.2d 419, 425 (3d Cir. 1981), and has "held consistently that leave to amend should be freely granted." *Dole v. Arco Chemical Co.*, 921 F.2d 484, 486 (3d Cir. 1990). Given this standard, the procedural posture of the case, and the amendment sought, the Plaintiffs request that their motion be granted.

The proposed amendment will not result in any prejudice to any party and will not unduly delay this case. There is still ample time left for discovery in this case, as the Plaintiffs intend to file a motion to extend the deadline to conduct discovery shortly. Further, the two additional Defendants had notice of the claims in this case as employees of one of the originally named Defendants, CYS. Finally, the amendment has been made within the time allowed for

amendments in this case and would not result in either “substantial” prejudice to the Defendants or unduly delay the case.

III. CONCLUSION

For the reasons set forth above, the Plaintiffs respectfully request that their Motion for Leave to Amend be granted and that they be permitted to file an Amended Complaint substantially in the form of Exhibit 1 attached to Plaintiffs’ Motion for Leave to File Second Amended Complaint.

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing Memorandum in Support of Motion for Leave to File Second Amended Complaint was served this 24th day of October, 2011, via the Court's electronic transmission facilities pursuant to Fed. R. Civ. P. 5(b)(3) and Local Rule 5.5 upon the following:

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