IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-01469-CMA-KLM

DAVID E. WILKENSON,
Plaintiff,

v.

STATE OF COLORADO, et al.,
MESA COUNTY, COLORADO, et al.,
Defendants.

REPLY IN SUPPORT OF
"MESA COUNTY"'S MOTIONS TO DISMISS PURSUANT TO
FED.R.CIV.P. 12(b)(2), 12(b)(5) AND 12(b)(6)

COMES NOW "Mesa County," by and through Alan N. Hassler of The Hassler Law Firm, P.C., and replies to Plaintiff's Response (Doc 19, 08/05/2013) to its Motions to Dismiss (Doc 17, 07/25/2013), as follows:

1. Plaintiff's Response does not address in any way Plaintiff's failure to properly identify parties in the Complaint (Doc 14, 07/10/2013) ("FAC" herein). Without identification of actors, there are no plausible factual allegations from which the Court can draw reasonable inferences that there is a violation of constitutional rights by any defendant, or even sufficient allegations to lead to a conclusion that relief would be available. The FAC does not meet the identification and allegations requirements of *Robbins v. Oklahoma ex rel. Dep't of Human Servs.*, 519 F.3d 1242, 1248 (10th Cir. 2008), and fails to state a claim.

2. Response ¶ 7 asserts that Plaintiff must have discovery, requests for admission and additional information to identify specific responsible individuals. However, Plaintiff's submission to the Court are replete with names, almost all of whom were specifically identified in Judge Matsch's Order dismissing Case No. 98M1939 (Exh. A to State's Motion to Dismiss, Doc 15-1, 07/23/2013).

3. The FAC and the Response are liberally sprinkled with assertions and explanations of discovery of the injuries, the acts, and the actors, that were complete by no later than 2003. The Response does not offer any information to indicate that Plaintiff was not fully aware of all elements of any claims by any date later than 2003, or that any action accrued within the two years preceding the filing of this case.

4. The identification of a new actor, "MCDHS-CSEU attorney Stuart Jones" does not cure the FAC. Jones was allowed to withdraw from Title 14 dissolution case on June 10, 1997 (FAC ¶ 108) and he reentered the case in 2003 (FAC ¶ 109). In fact, the FAC description of the commencement of child support collection activities in 2003 further demonstrates the bar of the statute of limitation grounds for dismissal.

5. Plaintiff repeatedly asserts (*e.g.* FAC ¶ 2) that C.R.S. § 19-1-104(6) denied jurisdiction to the state court to enter the May 6, 1997 child support order in the Title 19 child protection case, in the face of the preexisting Title 14 divorce case with child support and custody issues. As such, according to Plaintiff, the child support order was a "prima facie [*sic*] violation of an express legislative prohibition of

jurisdiction, and was therefore a nullity," so that he never had to obey the support order first entered in the Title 19 case. This is not correct.

6. C.R.S. § 19-1-104(6) was enacted in the 1997 legislative session and reported at Session Laws p. 516, Section 3, effective July 1, 1997. *See* page 3 of the attached attached Appendix A, "Session Laws of Colorado 1997, First Regular Session, 61st General Assembly, Chapter 138." C.R.S. § 19-1-104(6) was an entirely new jurisdictional limit on the courts. The so-called "nullity order" was effective because it entered before the new statute took effect.

7. Plaintiff also cites *Everett v. Barry*, 127 Colo. 34, 252 P.2d 826 (1953), and Colorado Rules of Juvenile Procedure, Rule 4.4, to claim lack of jurisdiction for the child support order. Neither provide authority supporting the position. *Everett v. Barry* predated the 1987 repeal and re-enactment of the entire Children's Code. Juvenile Rule 4.4 imposes certification of *custody* issues between Title 14 and Title 19 cases, while the FAC asserts the problem is a *child support* issue.

8. Response ¶ 12 asserts that a child support obligation is still being assessed seven months after the subject child turned 19 years of age. Plaintiff has provided no authority to show at what age child support was supposed to stop under the child support order, or information about his efforts to use existing state law procedure to have the child support obligation changed. The FAC does not state a violation of constitutional rights, but rather a failure by plaintiff to use the procedures available to him.

9. Plaintiff has made no attempt to presently correct his pleading errors. Even had he done so, the information at hand demonstrates that it is not possible to identify any actor and any specific acts alleged that were violations of Plaintiff's constitutional rights that occurred only within the last two years preceding the filing of the suit. The FAC is still barred by the statute of limitation (Mesa County's Motions to Dismiss (Doc 17), pp. 9–12), and the FAC fails to state a claim of violation of constitutional rights.

WHEREFORE, dismissal with prejudice of the claims and case is respectfully requested.

SUBMITTED this 12th day of August, 2013.

s/ Alan N. Hassler
Alan N. Hassler
The Hassler Law Firm, P.C.
2829 North Avenue, Suite 205
Post Office Box 40386
Grand Junction, Colorado 81504
(970) 243-2952
E-mail anhassler@hasslerlawpc.com
Attorney for Mesa County

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of August, 2013, I electronically filed the foregoing **REPLY IN SUPPORT OF "MESA COUNTY"'S MOTIONS TO DISMISS PURSUANT TO FED.R.CIV.P. 12(b)(7), 12(b)(5) and 12(b)(6)**, with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following email addresses:

fred.haines@state.co.us

and I hereby certify that I have mailed or served the document or paper to the following on non-CM/EMF participants in the following manner (mail, hand-delivery, etc.) indicated by the non-participant's name:

David E. Wilkenson (U.S. First Class Mail, First Class Postage Prepaid)
236 Red Mesa Heights
Grand Junction, Colorado 81507

s/ Alan N. Hassler

Alan N. Hassler
The Hassler Law Firm, P.C.
2829 North Avenue, Suite 205
Post Office Box 40386
Grand Junction, Colorado 81504
(970) 243-2952
E-mail anhassler@hasslerlawpc.com

Attorney for Mesa County