

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
AT FRANKFORT

CIVIL ACTION NO. 3:14-CV-00001-GPVT

ELECTRONICALLY FILED

OSCAR ADAMS and MICHAEL KNIGHTS,

PLAINTIFFS

v. **MOTION TO DISMISS ON BEHALF OF GARY BECKSTROM, DON  
BOTTOMS, ALAN BROWN, JANET CONOVER, STEVE HANEY, KATHY  
LITTERAL, JOSEPH MEKO, RAVONNE SIMS, AND STEVE WOODWARD**

COMMONWEALTH OF KENTUCKY, et al.,

DEFENDANTS

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Come Defendants Gary Beckstrom (“Beckstrom”), Don Bottoms (“Bottoms”), Alan Brown (“Brown”), Janet Conover (“Conover”), Steve Haney (“Haney”), Kathy Litteral (“Litteral”), Joseph Meko (“Meko”), Ravonne Sims (“Sims”), and Steve Woodward (“Woodward”), by counsel, pursuant to Fed. R. Civ. P. 12(b)(6) and other applicable law, and move this honorable Court to dismiss the above-styled action for failure to state a claim for which relief may be granted. In support of this motion, Defendants Beckstrom, Bottoms, Brown, Conover, Haney, Litteral, Meko, Sims, and Woodward submit the following:

**INTRODUCTION**

Plaintiffs, Kentucky Department of Corrections inmates who identify themselves as deaf and/or hard of hearing, filed the initial Complaint in this action alleging that their rights have been violated. At the core of their action are complaints regarding accommodations for them as deaf and/or hard of hearing inmates.

Plaintiffs have now filed an Amended Complaint adding several defendants, including Beckstrom (Warden at Eastern Kentucky Correctional Complex), Bottoms (Warden at Northpoint Training Center, Brown (Warden at Green River Correctional Complex), Conover

(Warden at Kentucky Correctional Institute for Women), Haney (Warden at Blackburn Correctional Complex), Litteral (Warden at Bell County Forestry Camp), Meko (Warden at Little Sandy Correctional Complex), Sims (Warden at Roederer Correctional Complex), and Woodward (Warden at Western Kentucky Correctional Complex).<sup>1</sup> In the Amended Complaint, Plaintiffs assert that it is their information and belief that these defendants are Wardens of various Kentucky Department of Corrections Adult institutions, that deaf or hard of hearing inmates are housed at these institutions, and grievances regarding accommodations for deaf and hard of hearing inmates have been filed at these institutions. (DN 42, Amended Complaint, p. 10-14).

### **DISCUSSION**

Beckstrom, Bottoms, Brown, Conover, Haney, Litteral, Meko, Sims, and Woodward are due to be dismissed from this action because Plaintiffs fail to state a claim against them. Specifically, Plaintiffs do not state any factual allegations concerning any of these defendants. Simply being a Warden at an adult institution where deaf and hard of hearing inmates may be housed, where grievances have at some time in the past been filed, does not state a claim against these defendants.<sup>2</sup> At a minimum, to state a claim for relief, Plaintiffs must show how these defendants are accountable because they were personally involved in the acts about which Plaintiffs complain. *See Rizzo v. Goode*, 423 U.S. 362, 375-76 (1976). Plaintiffs never allege any personal involvement by these defendants in the acts about which they complain. Plaintiffs

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<sup>1</sup> Plaintiffs also named Assistant Director of Personnel Bobbie Underwood as a defendant. A motion to dismiss on behalf of Defendant Underwood is already pending before the Court.

<sup>2</sup> Even under these facts, why Defendants Sims and Litteral were named in the Amended Complaints is confusing as last check, which was during the responses to discovery, there were no deaf and/or hard of hearing inmates housed at Bell County Forestry Camp or Roederer Correctional Complex. (See attached response to interrogatory No. 2).

are not housed at the institutions where these defendants are wardens. Plaintiffs do not claim that they filed grievances regarding accommodations for deaf and hard of hearing at the institutions where these defendants are wardens. The only basis for including these defendants is their position as warden as that is an insufficient basis for Plaintiffs claims. Liability under §1983 must be based on active unconstitutional behavior. *Shehee v. Luttrell*, 199 F.3d 295, 300 (6<sup>th</sup> Cir. 1999). Plaintiffs' amended complaint alleges no active unconstitutional behavior or any personal involvement at all in the alleged acts set out in the Complaint.

### CONCLUSION

With Plaintiffs failure to show how Beckstrom, Bottoms, Brown, Conover, Haney, Litteral, Meko, Sims, or Woodward are involved at all in the acts about which they complain, and failure to allege any facts concerning these defendants, Beckstrom, Bottoms, Brown, Conover, Haney, Litteral, Meko, Sims, and Woodward should be dismissed from this action.

WHEREFORE, based on the foregoing, Beckstrom, Bottoms, Brown, Conover, Haney, Litteral, Meko, Sims, and Woodward, by counsel, respectfully moves this Court to dismiss Plaintiffs' claims against them and dismiss them from this action.

Respectfully submitted,

*/s/ Angela T. Dunham*

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ANGELA T. DUNHAM  
J. TODD HENNING  
DEPARTMENT OF CORRECTIONS  
Office of Legal Services  
275 East Main Street  
P.O. Box 2400  
Frankfort, Kentucky 40602-2400  
Telephone: (502) 782-2299  
Fax: (502) 564-8765  
*Counsel for Defendants*

CERTIFICATE OF SERVICE

I hereby certify that on October 30, 2014, I electronically filed this document with the Clerk of the United States District Court, Eastern District of Kentucky by using the CM/ECF system. I further that it is my understanding that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system:

*/s/ Angela T. Dunham*

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COUNSEL FOR DEFENDANTS