IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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D, by his next friend, KURTIS B.,
JENNIFER B. and KURTIS B.,

OPINION and ORDER

Plaintiffs,

11-cv-773-bbc

v.

JAMES KOPP, JAN MORAVITS,
LISA RINIKER, GRANT COUNTY
and GRANT COUNTY DEPT. OF SOCIAL SERVICES,

Defendants.

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This is a case involving plaintiffs who have a sympathetic story but are still searching for a viable legal theory. Plaintiff D and his parents, Kurtis B. and Jennifer B., are suing several public officials for events arising out of an accusation that D, a six-year-old boy, sexually assaulted a five-year-old girl while "playing doctor." Plaintiffs' amended complaint includes nine counts: (1) "First Amendment violations"; (2) "deprivation of due process and abuse of process"; (3) "retaliation, abuse of process and deprivation of due process"; (4) "Chap. 938.01(2) violates the United States Constitution"; (5) "abuse of process (under Wisconsin law)"; (6) "negligent infliction of emotional distress on plaintiff D (under

Wisconsin law)"; (7) "abridgement of the 4th Amendment Rights of D"; (8) "violation of 42 U.S.C. 1983 by Grant County Department of Social Services"; and (9) "violation of 42 U.S.C. 1983 by Grant County."

Defendants Lisa Riniker and defendants James Kopp, Jan Moravits, Grant County and Grant County Department of Social Services have filed motions for judgment on the pleadings under Fed. R. Civ. 12(c). Because I agree with defendants that plaintiffs' complaint does not state a claim upon which relief may be granted in its current form, I am granting their motions. However, I will give plaintiffs leave to replead if they believe they can remedy the problems identified in this opinion.

OPINION

A. State Court Proceedings

In their motions, defendants argued that this court was required to abstain from hearing plaintiffs' claims because of juvenile proceedings against D pending in state court. Green v. Benden, 281 F.3d 661, 666 (7th Cir. 2002) (abstention is required if (1) there is an ongoing state proceeding that is judicial in nature; (2) the state proceeding implicates important state interests; (3) the parties have an adequate opportunity in the state court proceeding to raise the constitutional challenge presented in the federal claims; and (4) no extraordinary circumstances render abstention inappropriate). In response to defendants'

argument, plaintiffs abandoned their request for injunctive relief, stating that "there is no longer a pending state case against Plaintiff D." Plts.' Br., dkt. #37, at 11. However, they did not explain further or cite any evidence to support this allegation, which contradicted the amended complaint. Dkt. #10, ¶ 15 ("The case as to First Degree Sexual Assault is now pending."). In their reply brief, defendants disputed plaintiffs' new allegation, again without citing any evidence. Dkt. #43, at 3.

To resolve this discrepancy, I directed the parties to file supplemental materials from the record of the state court proceedings to show the status of those proceedings. In response, the parties have agreed that the state court proceedings have concluded as the result of the expiration of a consent decree, so no abstention is required. Dkt. ## 47 and 50. In addition, the parties agree that plaintiffs' claims do not implicate the Rooker-Feldman doctrine or the Anti-Injunction Act because plaintiffs are not challenging any state court rulings. Accordingly, I conclude that I have jurisdiction to consider defendants' other arguments.

B. Defendant Riniker: Absolute Immunity

Plaintiffs allege that defendant Riniker is an assistant district attorney in Grant County who charged D with "first degree sexual assault." Riniker seeks dismissal of all of plaintiffs' claims against her on the ground that she is entitled to absolute immunity. It is

well established that "prosecutors are absolutely immune from liability in § 1983 lawsuits" for acts that are "intimately associated with the judicial phase of the criminal process." Van de Kamp v. Goldstein, 555 U.S. 335, 340-343 (2009). For example, "immunity applies when a prosecutor prepares to initiate a judicial proceeding or appears in court to present evidence in support of a search warrant application," but it "does not apply when a prosecutor gives advice to police during a criminal investigation, when the prosecutor makes statements to the press or when a prosecutor acts as a complaining witness in support of a warrant application." Id. at 343 (citations omitted). In other words, prosecutors have immunity when they are engaged in the duties of a prosecutor. Thomas v. City of Peoria, 580 F.3d 633, 638-39 (7th Cir. 2009). The Wisconsin courts have applied the same standard to state law claims. E.g., Ford v. Kenosha County, 160 Wis. 2d 485, 506, 466 N.W.2d 646, 654 (1991); Riedy v. Sperry, 83 Wis. 2d 158, 168, 265 N.W.2d 475 (1978).

Plaintiffs acknowledge these general principles and they admit that Riniker is entitled to immunity for anything she did after she initiated the judicial process. Plts.' Br., dkt. #37, at 7. However, they argue that she is not entitled to immunity for any acts that occurred before then because, at that time, she was performing "investigative functions unrelated to judicial proceedings." Plts.' Br., dkt. #37, at 4. In particular, they say that defendant Riniker "collaborated with [the other defendants] during the pre-process and pre-trial investigation." Id. at 7.

The problem with this argument is that plaintiffs included no allegations in their complaint about any actions by defendant Riniker that occurred before D was charged. Although much of plaintiffs' amended complaint is difficult to follow, the repeated theme is that Riniker violated D's rights by charging him with sexual assault and then attempting to obtain a conviction. Am. Cpt., dkt. #10, at 1 ("[T]he Grant County District Attorney (Defendant Lisa Riniker) . . . charged . . . 6 year-old D, with a Class B Felony, namely "'1st Degree Sexual Assault.'"); id. at 2 ("As a result of the Class B Felony charge, D has suffered greatly."); id. at 5 ("D was charged by Grant County District Attorney Lisa Riniker, with 1st Degree Sexual Assault because while playing doctor with a 5 year-old girl and her 5 year-old brother, he (D) allegedly inserted his finger into her anal cavity."); id. at 12 ("Defendant Riniker states she is not prosecuting a criminal action against D [but] her action and the actions of the other Defendants show otherwise."); id. at 13 ("Defendants have undertaken a criminal process or quasi criminal process against D."); id. at 14 ("The prosecutor, Defendant Riniker, did not act reasonably when she charged a 6 year-old with a Class B Felony, namely First Degree Sexual Assault.").

In particular, plaintiffs' theory seems to be that Riniker targeted D because his alleged victim was the daughter of "a well known political figure in Grant County." Id. at 2, 5, 15. (Although plaintiffs do not include a claim under the equal protection clause, another theme of the complaint is that the alleged victim's brother committed a similar act, but was not

charged. Id. at 5-6.) Plaintiffs include the following allegations about Riniker in their amended complaint:

- she attempted to coerce D to sign a consent decree;
- she sent correspondence relating to the judicial proceedings to D rather than his parents in an attempt to harass him;
- she "initiated baseless actions against D since and because the child that D allegedly assaulted is the daughter of a popular political figure";
- she "seized" D unreasonably "by both a criminal and judicial process launched by all Defendants";
- she filed a motion for a gag order in the judicial proceeding.

All of these actions were "intimately associated" with the judicial proceedings in state court. Plaintiffs do not identify any acts by Riniker that could be classified reasonably as "investigative" or "administrative."

In their brief, plaintiffs refer vaguely to "advice" Riniker allegedly gave the other defendants "as to the situation and the allegations . . . against D." Plts.' Br., dkt. #37, at 6. However, plaintiffs do not include any allegations in their amended complaint about advice Riniker gave or *any* concerted activity between Riniker and the other defendants. Even in their brief, plaintiffs do not identify what the "advice" was or how it contributed to a constitutional violation. In any event, even if I assume that defendant Riniker could be held

liable for advice she gave to the other defendants that caused them to violate plaintiffs' rights, this claim fails because plaintiffs have not identified any rights that the other defendants violated. I will discuss plaintiffs' claims against those other defendants in a later section.

In a footnote, plaintiffs suggests that it is "premature" to decide whether defendant Riniker is entitled to absolute immunity in the context of a motion for judgment on the pleadings. Plts.' Br., dkt. #37, at 4 n.1. They cite Dunsworth v. Lane, 1988 WL 56181, *2 (N.D. Ill. 1988), in which the court stated, "[f]or an attorney to raise [a qualified immunity] defense in a motion to dismiss is to flirt with sanctions under Rule 11 of the Fed. R. Civ. P. The Supreme Court long ago held that qualified immunity is an affirmative defense that cannot be raised in a motion to dismiss under Rule 12(b)(6) of the Fed. R. Civ. P."

Plaintiffs' reliance on Dunsworth is misguided. First, that case involved a qualified immunity defense, not absolute immunity, and the court was considering a pre-answer motion to dismiss under Fed. R. Civ. P. 12(b)(6), not a motion for judgment on the pleadings under Fed. R. Civ. P. 12(c). In any event, neither the Supreme Court nor the Court of Appeals for the Seventh Circuit has held that a defendant may not raise an immunity defense before discovery. In fact, both courts have concluded in numerous cases that public officials were entitled to absolute immunity in the context of a motion under Rule 12(b)(6) or 12(c). E.g., Van de Kamp, 555 U.S. 335; Butz v. Economou, 438 U.S. 478

(1978); Heyde v. Pittenger, 633 F.3d 512, 517-18 (7th Cir. 2011); Dawson v. Newman, 419 F.3d 656, 660 (7th Cir. 2005).

Of course, if a plaintiff alleges enough facts to suggest that the prosecutor violated the plaintiff's constitutional rights outside her prosecutorial function, then dismissal would be inappropriate. However, a defense of absolute immunity does not have to wait to be resolved until the summary judgment stage in every case. Because all the actions by defendant Riniker that plaintiffs identify occurred in the context of the state judicial proceedings, I must grant Riniker's motion for judgment on the pleadings.

C. Wis. Stat. § 938.01(2)

One of plaintiffs' claims is that Wis. Stat. § 938.01(2) is unconstitutional because it "fails to designate an age or ages at which a person, namely a small child can or cannot be charged with violations of Wisconsin criminal law." Plts.' Br., dkt. #10, at 18. Surprisingly, § 938.01(2) is *not* the statute under which plaintiffs say that D was charged. Rather, it is a statement of legislative intent regarding the juvenile justice code. It lists a number of "equally important purposes" for the code, but it does prohibit any conduct.

Because D was never found to be delinquent and no party suggests there is a significant risk that he will be at another time, a constitutional challenge to *any* part of the juvenile code is not justiciable at this point. Davis v. Federal Election Commission, 554 U.S.

724, 734 (2008) (party does not have standing unless "threatened injury is real, immediate, and direct"); Texas v. United States, 523 U.S. 296 (1998) ("A claim is not ripe for adjudication if it rests upon'contingent future events that may not occur as anticipated, or indeed may not occur at all.") (internal quotations omitted). Even if plaintiffs could show that a future charge of some kind was likely, I agree with defendants that plaintiffs could not challenge § 938.01(2) because it would be impossible for D to be charged under that statute.

Plaintiffs do not deny any of this in their response brief. Their only argument is that defendant Riniker does not have standing to object to this claim because it "does not apply to defendant Riniker. It applies to the State of Wisconsin." Plts.' Br., dkt. #37, at 2. Plaintiffs have filed a motion to "strike" the portion of Riniker's brief devoted to this issue.

Plaintiffs' argument is an odd one, if only because they did not name the state as a defendant and could not have done so. Will v. Michigan Dept. of State Police, 491 U.S. 58, 65-66 (1989) (states cannot be sued under § 1983 because they are not "persons" within meaning of statute). Rather, the Supreme Court established long ago in Ex Parte Young, 209 U.S. 123 (1908), that the proper party to sue when challenging a state statute is the official charged with enforcing it.

Regardless whether defendant Riniker is the proper party to be sued on this claim, federal courts have an independent obligation to insure that subject matter jurisdiction is present, Rhodes v. Johnson, 153 F.3d 785, 787 (7th Cir. 1998), which includes the

requirement that a real controversy exists. Arizona Christian School Tuition Organization v. Winn, 131 S. Ct. 1436, 1441-42 (2011). Because there is no possibility that plaintiff D could be prosecuted under § 938.01(2), plaintiffs cannot meet this requirement.

D. Defendants Kopp and Moravits

Plaintiffs allege that defendant Jan Moravits is an employee of "Grant County Social Services Juvenile Court Intake" and that defendant James Kopp is an "investigator and sworn law enforcement officer for Grant County." Am. Cpt., dkt. #10, at 4. These defendants argue that all the federal claims against them should be dismissed on the ground that plaintiffs failed to plead enough facts to state a plausible claim for relief, as required by Fed. R. Civ. P. 8 and discussed in Ashcroft v. Iqbal, 556 U.S. 662 (2009), and Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007). I agree.

Plaintiffs include most of the allegations against defendants Moravits and Kopp under "Count I," which they identify as their First Amendment claim. Some of these allegations are simply conclusions without any factual context. For example, plaintiffs allege that "[d]efendant Moravits interfered with D's right to assert his innocence" and that "[d]efendants' Moravits and Kopp did interfere and interrupt Plaintiffs' J and KB's exercise of their First Amendment rights guaranteed by the U.S. Constitution." Am. Cpt., dkt. #10, at 8. Allegations like these give defendants no notice of what plaintiffs believe defendants

did to violate their rights, so they cannot satisfy Rule 8. Bissessur v. Indiana University Bd. of Trustees, 581 F.3d 599, 602-04 (7th Cir. 2009) ("[B]are legal conclusions, even under notice pleading standards, [are] not enough to survive a Rule 12(b)(6) motion.") (internal quotations omitted).

Plaintiffs' allegations are a bit more specific elsewhere in this count. First, they allege that "[b]oth Defendant Moravits and Defendant Kopp made unreasonable inferences that D was guilty of First Degree Sexual Assault simply because D would not admit guilt for the crime of First Degree Sexual Assault; and because D['s] parents insisted that D needed a lawyer." Id. at 9. Although this allegation is more specific, it does not state a claim upon which relief may be granted under the First Amendment. To begin with, it makes no sense. If plaintiffs are alleging that defendants determined that D was guilty because he refused to admit guilt, it suggests that they would have determined that he was innocent if he had admitted wrongdoing. What plaintiffs seem to be alleging is that defendants refused to believe D's claim of innocence because they already had made up their minds, not that they are retaliating against D because of his speech. In any event, drawing an inference is not a First Amendment violation; defendants have a right under the First Amendment to think whatever they like. Griswold v. Connecticut, 381 U.S. 479, 482 (1965) ("The right of freedom of speech and press includes . . . freedom of thought").

Second, plaintiffs allege that "[d]efendant Moravits demanded that D make an

admission of guilt." Am. Cpt., dkt. #10, at 10. Plaintiffs do not explain what they mean by "demanded" and they do not explain how this alleged act could violate their First Amendment rights. Again, defendants have their own First Amendment rights to attempt to influence the speech of another person. If this allegation were enough to state a claim, it would mean that every interrogation by a public official would be a violation of free speech.

Plaintiffs cite In re Gault, 387 U.S. 1 (1967), for the proposition that "D has a right to not be coerced to speak or write a confession." Although plaintiffs include this citation in the section of their amended complaint devoted to their First Amendment claim, they acknowledge that this is a Fifth Amendment issue. Regardless, because plaintiffs do not allege that D ever incriminated himself, much less that any of D's statements were used against him in a court proceeding, plaintiffs do not have a viable claim under the Fifth Amendment. Hanson v. Dane County, Wisconsin, 608 F.3d 335, 339-40 (7th Cir. 2010).

Third, plaintiffs allege that, when D refused to admit guilt, "[d]efendant Moravits implied that the Plaintiff parents may have been witness tampering; that the parents are unfit (Fit parents would cause a child to admit guilt); that D needs to placed on Wisconsin's Sexual Predator List; that the children in the B home need to be removed from the home; and that D is guilty of the acts." Am. Cpt., dkt. #10, at 10. Again, this is simply more alleged speech by Moravits. Defendants do not allege that Moravits took any action to have

D placed on a list for sex offenders, removed any children from their homes or punished the parents for alleged witness tampering. Plaintiffs do allege that "[d]efendant Moravits unreasonably implied to the District Attorney that the silence of D represented that his parents may have been tampering with [a] witness," id., but they do not allege that the district attorney charged the parents with witness tampering.

Finally, plaintiffs allege that, "[w]hen Defendant Kopp learned that Plaintiffs had retained legal counsel, Defendant Kopp retaliated against Plaintiffs with an amplified campaign of harassment. By example, Defendant Kopp went onto D's school property, without first contacting D's parents, seeking D and his school records." Id. This allegation seem to implicate the Sixth Amendment right to counsel, not the First Amendment. Presumably, plaintiffs' claim is that defendant Kopp retaliated against them for exercising their right to counsel by "seeking D and his school records," though they do not describe what they mean by this.

Again, this allegation makes no sense. Why would defendant Kopp care that D had a lawyer? And if he did care, why would he "retaliate" by going to D's school? Without additional facts, this claim does not cross the threshold of plausibility necessary to state a claim upon which relief may be granted. After all, plaintiffs allege that Kopp was the investigator assigned to D's case, so it is hardly surprising that he was seeking information. Further, even if it were reasonable to infer that Kopp took these actions because D exercised

his right to counsel, I am not persuaded that simply "seeking" someone or his records is a sufficiently adverse action to deter a person from exercising his right to counsel. Surita v. Hyde, 665 F.3d 860, 878 (7th Cir. 2011) (alleged retaliation does not provide basis for lawsuit under § 1983 unless it "would likely deter a person of ordinary firmness from continuing to engage in protected activity"). Cf. Hanson, 608 F.3d at 338 ("[N]o decision of which we are aware holds that parents have a fundamental right to prevent police from questioning their children. The public has a right to every person's evidence. Courts regularly find no constitutional problem in posing questions to minors over their parents' opposition."). Plaintiffs do not even allege that Kopp actually spoke to D at school, much less that Kopp tried to intimidate D in some way.

Throughout their other counts, plaintiffs evoke various constitutional provisions, including the Fourth Amendment and the due process clause, but they never identify what defendants Moravits or Kopp did to violate any of these rights. Plaintiffs do not even mention defendant Kopp in any of their other counts. In several counts, they allege that "[d]efendant Moravits, did not act reasonably when she accused D of being a sexual predator," Am. Cpt., dkt. #10, at 13, 16 and 20, but that allegation adds nothing to what plaintiffs alleged in the context of the First Amendment claim and it does not state a claim under any federal or state law.

The pleading standard under Rule 8 is liberal, but it does not allow plaintiffs to rely

on conclusory allegations or "a mere speculative possibility" that the plaintiff is entitled to relief. Abcarian v. McDonald, 617 F.3d 931, 937-38 (7th Cir. 2010). Because "[t]he amended complaint fails to show that it is at all plausible, rather than perhaps theoretically possible" that defendants Moravits or Kopp violated plaintiffs' rights, I am granting defendants' motion for judgment on the pleadings as it relates to these two defendants.

E. Municipal Liability under § 1983

Plaintiffs' claims against the county and the department rest on allegations that these defendants failed to stop the constitutional violations of the individual defendants. Because I have concluded that plaintiffs have failed to state a claim against the individuals, this means necessarily that plaintiffs' claims against the municipal defendants must fail as well. Houskins v. Sheahan, 549 F.3d 480, 493-94 (7th Cir. 2008).

F. State Law Claims

There are additional reasons to dismiss plaintiffs' state law claims for abuse of process and negligent infliction of emotional distress. First, defendant Riniker argues that plaintiffs failed to comply with Wis. Stat. § 893.82(3), which requires plaintiffs suing state employees to serve the attorney general a notice of claim within 120 days of the event giving rise to the claim. The other defendants argue that plaintiffs failed to comply with Wis. Stat. §

893.80(1)(a), which requires plaintiffs suing municipalities and their employees to serve a "written notice of the circumstances of the claim" and § 893.80(1)(b), which requires the same plaintiffs to file a "claim containing the address of the claimant and an itemized statement of the relief sought."

In response, plaintiffs do not argue that they complied with these requirements. Instead, they point to a sentence in § 893.80(1)(a), which excuses failure to comply with that provision if the municipality had "actual notice" of the claim and the failure to serve written notice was not prejudicial. They argue that defendants had actual notice from "news stories and blog entries" as well as the criminal case. Plts' Br., dkt. #37, at 12.

Plaintiffs' argument does not apply to defendant Riniker. As an assistant district attorney, she is a state employee, Wis. Stat. § 978.12, which means that § 893.82 rather than § 893.80 governs the claim against her. Unlike § 893.80(1)(a), "§ 893.82, Stats., is not simply an actual notice statute that permits procedural defects. Rather, strict compliance with [§ 893.82] is a condition precedent to pursuing a claim against the state." Kellner v. Christian, 188 Wis. 2d 525, 533, 525 N.W.2d 286, 290 (Ct. App. 1994).

With respect to the other defendants, plaintiffs' argument ignores the requirements of § 893.80(1)(b). "To fall under the actual notice exception, the claimant must also meet the requirements in Wis. Stat. § 893.80(1)(b). To satisfy § 893.80(1)(b), the claim must have (1) identified the claimant's address, (2) itemized the relief sought, (3) been submitted

to the proper County representative, and (4) been disallowed by the County." Ecker Bros. v. Calumet County, 2009 WI App 112, ¶ 9, 321 Wis. 2d 51, 59, 772 N.W.2d 240, 244. Although substantial compliance is sufficient, id., plaintiffs do not allege that they complied with § 893.80(1)(b) in any respect.

Plaintiffs' state law claims would fail on the merits as well. In Wisconsin, public officials are entitled to immunity for "any act that involves the exercise of discretion and judgment." Lodl v. Progressive Northern Insurance Co., 2002 WI 71, ¶ 21, 253 Wis. 2d 323, 646 N.W.2d 314. Currently, there are four narrow categories of nondiscretionary acts to which immunity does not apply: "(1) ministerial duties imposed by law, (2) duties to address a known danger, (3) actions involving professional discretion, and (4) actions that are malicious, willful, and intentional." Scott v. Savers Property and Casualty Insurance Co., 2003 WI 60, ¶ 16, 262 Wis. 2d 127, 663 N.W.2d 715.

Citing Wis. Stat. § 48.981 and Baumgardt v. Wausau School District Bd. of Education, 475 F. Supp. 2d 800, 811 (W.D. Wis. 2007), plaintiffs argue that defendants Kopp, Moravits and Grant County had a nondiscretionary duty to "report the alleged sexual conduct of the male 5 year-old reported by D and his parents." Plts.' Br., dkt. #38, at 8. Presumably, plaintiffs are referring to allegations about another child who was involved in the "playing doctor" incident.

This is another argument with multiple problems. The first question is: to whom

were defendants required to make a report? Plaintiffs do not say. The statute plaintiffs cite requires certain individuals to report suspected child abuse to "the county department," Wis. Stat. § 49.981(3), suggesting that plaintiffs believe defendants should have reported the alleged conduct to themselves. Even if I assume that defendants breached a duty under § 49.981, plaintiffs' argument fails because their claims have nothing to do with the alleged breach. They are not alleging that defendants failed to protect D from abuse by the other child, so it is not clear how a failure to report could help plaintiffs overcome an immunity defense. To the extent plaintiffs mean to allege that defendants somehow violated state law by investigating plaintiff D and not the other child, that is obviously a matter that requires an exercise of judgment and plaintiffs identify no exception to immunity that would apply.

G. Leave to Replead

When district courts dismiss a complaint for failing to state a claim, the general rule is to allow the plaintiffs to file an amended complaint in an attempt to fix the deficiencies. Foster v. DeLuca, 545 F.3d 582, 584 (7th Cir. 2008). In this case, it seems highly unlikely that plaintiffs can save their claims with additional allegations, but I cannot say that it would be impossible for them to do so. Accordingly, I will dismiss the complaint without prejudice to plaintiffs refiling a corrected version.

However, if plaintiffs choose to file another amended complaint, they should consider

carefully whether they can survive another motion to dismiss. With respect to any new claims against defendant Riniker, they will have to identify more clearly alleged constitutional violations that were not part of the judicial proceedings. With respect to the claims against all defendants, plaintiffs will have to identify the particular conduct of each defendant that violated their rights. With respect to plaintiffs' state law claims, it would seem to be futile to include these again in light of my conclusion that plaintiffs failed to comply with the notice of claim requirements.

ORDER

IT IS ORDERED that

1. The motion to "strike" filed plaintiffs D, Jennifer B. and Kurtis B., dkt. #37, is DENIED.

2 The motions for judgment on the pleadings filed by defendant Lisa Riniker, dkt. #24, and defendants Jan Moravits, James Kopp, Grant County and Grant County Department of Social Services, dkt. #31, are GRANTED. Plaintiffs' amended complaint is DISMISSED WITHOUT PREJUDICE.

3. Plaintiffs may have until May 2, 2012, to file a second amended complaint. If plaintiffs do not respond by that date, the clerk of court is directed to enter judgment in

favor of defendants and close this case.

Entered this 11th day of April, 2012.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge