

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
PIKEVILLE

CIVIL ACTION NO. 85-355

LORETTA PARSONS,

PLAINTIFF,

VS:

MEMORANDUM OPINION

RAY FIELDS, ET AL.,

DEFENDANT.

INTRODUCTION

The above-styled action is a civil rights action brought by the plaintiff pursuant to the Constitution of the United States and 42 U.S.C. Sections 1983 and 1985. It is currently before the Court on a motion to dismiss.

FACTS

On July 30, 1985, the plaintiff filed a complaint with the Clerk of this Court, which contained the following allegations:

At all times mentioned herein, the defendant, Ray Fields, was and is Sheriff of Martin County, Kentucky; the defendant, Robert Maynard, was and is a Deputy Sheriff in Martin County, Kentucky; the defendant, Andy Lowe, was and is a Deputy Sheriff in Martin County, Kentucky. Further, at all times material to this complaint, the defendants were properly elected, employed or appointed to their respective job titles and duties and were acting under color of Statutes and Ordinances of the Commonwealth of Kentucky.

During all times mentioned herein, the defendants acted under color and pretense of Statutes, Ordinances, Regulations, Customs and Usages of the Commonwealth of Kentucky, in Martin County, Kentucky. The defendants did further engage in illegal conduct to the injury and detriment of the plaintiff and deprived the plaintiff of the rights, privileges and immunity secured to the plaintiff by the First, Fourth, Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States and the laws of the United States and the Commonwealth of Kentucky.

On or about the 7th day of August, 1983, the defendants did overtly and covertly act outside of the scope of their jurisdiction without authority of law and did act willfully, knowingly, and purposely with the specific intent to deprive the plaintiff of:

(a) Her right to be free from illegal seizure of her person;

- (b) Her right to be free from unlawful arrest and conviction without evidence of support thereof;
- (c) Her right to be free from illegal detention and imprisonment;
- (d) Her right to be free from physical abuse, coercion and intimidation;
- (e) Her right to be free from the use of excessive, unreasonable and unnecessary force in the exercise of any legitimate act by a police officer;
- (f) Her right to medical treatment.

Complaint at 2-3.

According to the statement of fact contained in the plaintiff's preliminary memorandum, the gist of the complaint is that the plaintiff was wrongfully arrested for public intoxication, after the vehicle in which she was a passenger was stopped by the defendants Field and Maynard. Further, she indicated that when she reached the jail, she was subjected to a body search conducted in an improper manner by the defendant Lowe. Thereafter, she was confined to the jail for several hours. No conviction of the plaintiff resulted from the aforementioned charges.

#### APPLICABLE LAW

In reviewing a motion to dismiss on the plaintiff's pleadings, a court is required to treat as true the material facts alleged in the complaint. Duncan v. Leeds, 742 F.2d 989 (6th Cir. 1984). Since the plaintiff essentially admits that the complaint was filed more than a year after the overt conduct which was complained of occurred, the issue now is which of the Kentucky limitations statutes apply to the fact situation. The defendant contends that a dismissal under the terms of the an applicable one-year limitations statute, K.R.S. 413.254, is in order. The plaintiff, in the alternative, suggests that K.R.S. 413.120, providing a five-year period for the bringing of certain actions, applies.

When Congress has not established a time limitation for a federal cause of action, the settled practice has been to adopt a local time limitation as federal law if it is not inconsistent with federal law or policy to do so; this approach has also been specifically adopted in 42 U.S.C. Section 1988 for claims enforceable



under the Reconstruction Civil Rights Acts. Wilson v. Garcia, No. 83-2146 (S. Ct. April 17, 1985). The courts must then determine which is the most appropriate or analogous state limitations period to apply to the claim; the problems of characterization of the claim in order to find that analogous state limitation period is one of federal law. Id. Section 1983 claims, however, are best characterized uniformly as personal injury actions, so that that type of limitations period would apply; it is unlikely that Congress intended to apply the catchall period of limitations for statutory claims that were later enacted by many states. Id.

In the present case, two separate statutes have been put forward by the parties. The statute urged to be applicable by the defendant provides:

Actions for professional service malpractice--Notwithstanding any other prescribed limitation of actions which might otherwise appear applicable, except those provided in KRS 413.140, a civil action, whether brought in tort or contract, arising out of any act or omission in rendering, or failing to render, professional services for others shall be brought within one (1) year from the date of the occurrence or from the date when the cause of action was, or reasonably should have been, discovered by the party injured. Time shall not commence against a party under legal disability until removal of the disability.

KRS 413.245. The term "professional services" is defined by a preceding statute to mean "any service rendered in a profession required to be licensed, administered and regulated as professions in the Commonwealth of Kentucky, except those professions governed by KRS 413.140<sup>1</sup>". KRS 413.243. The only cases construing the statute have applied it in situations involving malpractice by an attorney and one of these indicates that the statute was merely a codification of the rule announced in Louisville Trust Co. v. Johns-Mansville Products, 580 S.W.2d 497 (1979), a medical malpractice case. Graham v. Harlin, Parker and Rudloff, 664 S.W.2d 945, 947 (Ky. App. 1983).

On the other hand, the plaintiff alleges that the five year term in KRS 413.120(7) is applicable. This provision pertains to actions for an injury to the rights of the plaintiff, not arising on contract and not otherwise enumerated. KRS

312.120(7).

Yet another statutory provision, providing for a one year limitation period, applies to personal injury actions as well as actions for malicious prosecution and arrest. KRS 413.140.

DISCUSSION

The Court is of the opinion that the limitations period provided by the last-cited statute should apply in view of the provisions of Wilson, supra.

The issue of the propriety of retroactive application of Wilson has not been briefed by the parties. Accordingly, a separate order will be entered, requiring the parties to submit memoranda on the specific issue and be prepared to argue said issue at the time of the "preliminary conference."

This the \_\_\_\_\_ day of November, 1985.

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G. WIX UNTHANK, JUDGE

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Presumably, this refers to KRS 413.140(e), which applies to actions against a physician, surgeon, or dentist for malpractice or negligence.



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ORDER

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Counsel for the plaintiff having orally advised the Court that he will be unable to attend the preliminary conference which, on the Court's own motion, had recently been continued until November 7, 1985. Accordingly,

IT IS HEREBY ORDERED that:

(1) the preliminary conference is CONTINUED until the hour of 9:30 a.m. on December 13, 1985, and

(2) at least two weeks before the aforementioned date, the parties shall brief the issue of the "retroactive application" of Wilson v. Garcia, No. 83-2146 (S. Ct. April 17, 1985) to the present case; arguments on said issue shall be heard at the time of the preliminary conference.

This the \_\_\_\_\_ day of November, 1985.

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G. WIX UNTHANK, JUDGE