UNPUBLISHED

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION

WILLIAM ELLIS VANCE ET AL.,	)	
	)	
Plaintiffs,	)	Case No. 1:03CV00136
	)	
v.	)	**OPINION**
	)	
BOB KEARY WILLIAMS, ET AL.,	)	By: James P. Jones
	)	Chief United States District Judge
Defendants.	)	

William Ellis Vance and Bobbie Jean Vance, pro se plaintiffs; J. Jasen Eige, Assistant Attorney General, Richmond, Virginia, for Defendants Keary R. Williams and Henry A. Vanover; Monroe Jamison, Abingdon, Virginia, for Defendant Henry A. Barringer; Thomas P. Walk, Altizer, Walk and White, Tazewell, Virginia, for Defendant Thomas P. Walk; Nicholas Compton, Compton & Compton, P.C., Lebanon, Virginia, for Defendants C. Eugene Compton and R.D. Snead.

In this § 1983 action, the defendants have filed motions to dismiss pursuant to Fed. R. Civ. P. 12(b), on the grounds that this court lacks subject matter jurisdiction over the claims and that the plaintiffs have failed to state a claim for which relief can be granted. After reviewing the pertinent authority, I find that this court does have subject matter jurisdiction but that the plaintiffs have failed to properly plead a claim for which relief is available.

I

This case stems from prior divorce litigation between Bobbie Jean Vance and her former husband Ernest Vance, and an associated property dispute case between the Vances and a neighboring landowner. The pro se plaintiffs, dissatisfied with the outcomes of those two cases,[1] have filed the present case for monetary damages against Keary R. Williams, the judge in the divorce case; Henry A. Vanover, the judge in the land dispute matter; Thomas P. Walk, their counsel in the property dispute; Henry A. Barringer, Bobbie Jean Vance's divorce attorney; C. Eugene Compton, Ernest Vance's divorce attorney; and R.D. Snead, an auctioneer who was appointed by the court to sell a marital real property asset.[2] In addition to making various requests that the defendants "account" for certain actions (Compl. ¶¶ 27-53), the plaintiffs allege that the defendants conspired to deny them of their Fourteenth Amendment rights to due process.

The defendants have filed pre-answer motions to dismiss for lack of subject matter jurisdiction and for failure to state a claim for which relief can be granted. *See*

[1] It appears that the land dispute case has concluded but that the final divorce decree in the divorce proceeding has not yet been entered. (Williams/Vanover Mot. Dismiss Mem. 3.)

[2] The defendants' correct and complete names appear to be incorrectly listed on the complaint filed by the plaintiffs. I reference here the corrected names as supplied by each of the defendants.

Fed. R. Civ. P. 12(b)(1), (6). The plaintiffs have responded to the motions, and they are now ripe for decision.[3]

II

As a preliminary matter, I will deny each defendant's motion to dismiss for lack of subject matter jurisdiction. It is true that the plaintiffs have not specifically asserted the proper basis of jurisdiction in this court and that the substantive allegations are ambiguous. However, pro se complaints are to be construed liberally. *See Lee v. Hodges*, 321 F.2d 480, 483-84 (4th Cir. 1963). The plaintiffs substantively rely upon the due process clause of the Fourteenth Amendment, and I will consider that the action is brought pursuant to 42 U.S.C.A. § 1983 (West 2003). Subject matter jurisdiction in this court is therefore proper. *See* 28 U.S.C.A. § 1331 (West 1993).

III

The defendants' motions to dismiss for the plaintiffs' failure to state a claim that would entitle them to relief must be granted only if it appears from the complaint

[3] I will dispense with oral argument because the facts and allegations are adequately presented in the materials before the court, and argument would not significantly aid the decisional process.

that the plaintiffs can prove no set of facts in support of their claim which would entitle them to relief. In considering the motions, I am bound to accept all well-pleaded allegations as true and to view the complaint in a light most favorable to the plaintiffs. *See Franks v. Ross*, 313 F.3d 184, 192 (4th Cir. 2002). In the context of a § 1983 claim, the plaintiffs may withstand these motions to dismiss by sufficiently alleging that they were deprived of a federally protected right by individuals acting under color of state law. *See Gomez v. Toledo*, 446 U.S. 635, 640 (1980). Even where a plaintiff successfully alleges that a defendant is a state actor and was acting within the scope of her official duties, a claim may still be dismissed if the state actor carries her burden of demonstrating that she is entitled to certain established immunities from suit. *See Dennis v. Sparks*, 449 U.S. 24, 29 (1980).

As to Defendants Compton, Barringer, and Walk, all privately retained attorneys, the plaintiffs have not sufficiently alleged that they were acting under color of state law. It is well settled that an attorney representing a client in court does not act under color of state law merely by virtue of her position. *See Polk County v. Dodson*, 454 U.S. 312, 318 (1981). A privately retained attorney in a civil case also does not become a joint actor with the state by simply utilizing or relying upon state or local court procedures to secure relief for a client. *See Whittington v. Milby*, 928 F.2d 188, 193 (6th Cir. 1991); *Hoai v. Vo*, 935 F.2d 308, 313 (D.C. Cir. 1991).

Likewise, state regulation of attorneys by way of licensing is alone not sufficient to deem an attorney's conduct to be under color of state law. *See Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 52 (1999).

In order to properly allege this element of their claim, the plaintiffs must allege by more than mere conclusions that the state participated in, coerced, or significantly encouraged the attorneys' conduct. *See Jackson v. Metro. Edison Co.*, 419 U.S. 345, 357 n.17 (1974). Although the plaintiffs allege that the attorneys conspired with the courts to deprive them of their due process rights, they do not allege any facts, other than mere dissatisfaction with the actions, to show that the parties acted in concert. *See Ciambriello v. County of Nassau*, 292 F.3d 307, 324 (2d Cir. 2002). Likewise, the mere fact that the attorneys had procedural interactions with the judicial system is not sufficient to show that the state significantly encouraged any conduct by the attorneys that was detrimental to the plaintiffs. Thus, the plaintiffs have failed to allege that Defendants Compton, Barringer, and Walk were acting under color of state law, and the motions to dismiss filed by these three defendants are granted for the plaintiffs' failure to plead a claim for which relief can be granted.

The plaintiffs' allegations against Defendant Snead are similarly deficient. The plaintiffs have not alleged any facts to show that Snead acted in concert with the state or that the state coerced or significantly encouraged any constitutionally offensive

conduct by Snead. Again, the mere fact that Snead was appointed to execute a judicially mandated sale of marital assets does not by itself show that any alleged misconduct engaged in by Snead in connection with that sale was also judicially endorsed. Therefore, the plaintiffs have not shown that Defendant Snead was acting under color of state law, and his motion to dismiss for failure to state a claim is also granted.

As to Defendants Williams and Vanover, both are state court judges and are therefore acting under color of state law when acting within their official capacities. However, the plaintiffs' claims against these defendants are also flawed because, under § 1983, judges are absolutely immune from monetary liability for any actions taken within their official judicial capacity. *See Pierson v. Ray*, 386 U.S. 547, 553-54 (1967). Judges are shielded, even against allegations of malice or corruption, in order to permit them to exercise completely and diligently the discretion entrusted to them without fear of being subject to repeated and irksome lawsuits. *Id.* at 554. Thus, the plaintiffs' only remedy for any allegedly wrong actions taken by a judge within her official capacity is by appeal to the appropriate state appellate court. *See Steinpreis v. Shook*, 377 F.2d 282, 283 (4th Cir. 1967). Because the actions taken by Defendants Williams and Vanover, and alleged by the plaintiffs to be in violation of their due process rights, were taken within the defendants' official capacity as judges,

they enjoy absolute immunity for such actions. Thus, these defendants' motions to dismiss for failure to state a claim are also granted.

IV

For the foregoing reasons, the defendants' motions to dismiss for lack of subject matter jurisdiction are denied. However, their motions to dismiss for failure to state a claim are granted, and the claims against all defendants will be dismissed. An appropriate Order will be entered herewith.

DATED: May 14, 2004

/s/ JAMES P. JONES
Chief United States District Judge