

IN THE CIRCUIT COURT
OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA

BRYANT MIDDLETON,
WILLIAM HORNE,
ROGER KISER, and
JIMMY JACKSON, individually and
on behalf of others similarly situated.

Plaintiff,

vs.

THE FLORIDA DEPARTMENT OF
AGRICULTURE, THE FLORIDA
DEPARTMENT OF CHILDREN &
FAMILY SERVICES, THE FLORIDA
DEPARTMENT OF JUVENILE JUSTICE,
THE FLORIDA DEPARTMENT OF
CORRECTIONS, and TROY TIDWELL,

Defendants.

RECEIVED
JAN 22 2009

CASE NUMBER:

**MOTION TO DISMISS, MOTION TO STRIKE
AND MOTION TO DISMISS OR TRANSFER FOR LACK OF JURISDICTION**

The Defendant, Troy Tidwell, by and through counsel, moves to dismiss the Plaintiffs' Complaint and as grounds therefor states as follows:

1. The Plaintiffs have brought a Complaint against these several Defendants, alleging a variety of actions. Counts 1, 2 and 3 allege causes of actions based upon the Florida Constitution and seek damages. None of the cited sections of the Florida Constitution provide a cause of action for damages, and thus, Counts 1, 2 and 3 fail to state a cause of action.

2. Plaintiffs' Complaint is stated in such a manner that each succeeding count re-alleges and re-avers the preceding counts and each preceding paragraph. Such pleading practice is improper and as such, the Complaint fails to state a cause of action.

3. As to Counts 4 and 5, the Plaintiffs have alleged a class action allegation for battery and intentional inflictions of emotional distress, essentially alleging that the Defendant, Troy Tidwell, battered each member of the class, who were subject to alleged beatings and abuse, regardless of who actually committed the abuse

and regardless of where the abuse took place. For example, the Complaint alleges that much of the abusive activity took place in Okeechobee, Florida, but alleges that Mr. Tidwell was employed at Marianna, Florida. Clearly, such cannot logically be pled. The same defense would be equally attributed to Count 5, Intentional Infliction of Emotional Distress Against Troy Tidwell. Both of these counts should be dismissed for failure to state a cause of action.

4. Additionally, Counts 4 and 5 fail to state a cause of action in that they are being brought in a class action manner. Claims such as assault and battery and intentional infliction of emotional distress are individual claims not suited to a class action type proceeding.

5. Defendant, Troy Tidwell, also moves to dismiss Plaintiffs' Complaint on the basis of the Statute of Limitations. The Statute of Limitations for a claim of battery is four (4) years. In the class action proceeding, among other things, it is alleged that the Plaintiffs, or some members of the class, had a repressed memory. While this factor may be valid as it relates to individual complaints and may be used in support of an equitable estoppel argument to thwart a statute of limitation defense, it cannot logically be argued that all of the potential members of the class had repressed memories and thus, some if not the majority, of the Plaintiffs' class claims would be barred by the Statute of Limitations. Further, the Plaintiffs have failed to alleged, with particularity, how the actions of the Defendants, or particularly which actions of Tidwell, prohibited the Plaintiffs from bringing the action within the appropriate period. Again, the central problem with the Plaintiffs Complaint is the attempt to bring the action as a class alleging that highly individualized issues are applicable to the entire group.

MOTION TO STRIKE

The Defendant, Troy Tidwell, by and through counsel, moves to strike Paragraph 7 from the Plaintiffs' Complaint in that it is immaterial, scandalous and not relevant to the proceedings herein, and is merely included to bring a racial component to the action.

WHEREFORE, based upon the foregoing, the Defendant, Troy Tidwell, requests this honorable Court enter its order dismissing the Plaintiffs' Complaint as stated, striking Paragraph 7 of Plaintiffs' Complaint or any further proceedings, and to transfer venue to the appropriate jurisdiction, either Jackson County or Leon County, Florida.

MOTION TO DISMISS OR TRANSFER FOR LACK OF JURISDICTION

The Defendant, Troy Tidwell, by and through counsel, moves this honorable Court to enter its order dismissing Plaintiffs' Complaint for lack of jurisdiction, and as grounds therefore states as follows:

1. Plaintiffs' Complaint contains no allegations as to the basis for venue in Pinellas County, Florida. The Affidavit of Service filed herein reflects that the Defendant, Troy Tidwell, is a resident of Marianna, Jackson County, Florida. Additionally, the agencies of the State of Florida, which comprise the other Defendants, maintain their principal places of business in Tallahassee, Leon County, Florida. Therefore, venue would be appropriate in either Jackson County, Florida, or Leon County, Florida. There is, simply stated, no basis for venue in Pinellas County, Florida.

WHEREFORE, based upon the foregoing, the Defendant, Troy Tidwell, requests this honorable Court enter its order dismissing Plaintiffs' Complaint for lack of jurisdiction, or in the alternative, transferring venue of the matter to Jackson County or Leon County, Florida.

I HEREBY CERTIFY that a copy of the foregoing has been furnished to MARK P. BUELL, ESQ., 303 West Azeele Street, Suite 100, Tampa, Florida 33609, Co-Counsel for Plaintiffs, THOMAS D. MASTERTSON, ESQ., 699 First Avenue North, St. Petersburg, Florida 33701, Co-Counsel for Plaintiffs, and to JAMES D. BEACH, ESQ., Chamber of Commerce Building, 100 Second Avenue North, Suite 350, St. Petersburg, Florida 33701, Co-Counsel for Plaintiffs, by U. S. Mail, postage prepaid, this the 20th day of January, 2009.

BONDURANT & FUQUA, P. A.



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COPY

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CORRECTIONS, and TROY TIDWELL,

Defendants.

MOTION TO ABATE DISCOVERY

The Defendant, Troy Tidwell, by and through counsel, moves to dismiss and abate discovery, until such time as this matter has proceeded and the motions to dismiss have been heard, and as grounds therefor states as follows:

1. The Plaintiffs have brought a complaint against these several Defendants, alleging a variety of actions. A plain reading of the Plaintiffs' complaint reveals that the last of the actions complained of occurred more than 40 years ago. The Plaintiffs have also brought this action as a class action. The Plaintiffs' allegations and manor of pleading are novel.

2. At this stage of the proceedings, the Defendant, Tidwell, is proceeding without the assistance of his former employer and is an eighty-five year old, retired, state employee. Tidwell has filed several motions relating to the Plaintiffs' complaint, with the real possibility that the matter may be dismissed before an answer is required. To abate discovery from Tidwell prior to the Plaintiffs filing a viable claim is within the discretion of this court.

3. Without waiving the foregoing, the Defendant, Tidwell, asserts he has no information sought by the Plaintiffs in their initial request for production of documents.

WHEREFORE, based upon the foregoing, the Defendant, Troy Tidwell, requests this honorable Court enter its order staying discovery until such time as the matters relating to the Plaintiffs' complaint have been addressed by this Honorable Court.

I HEREBY CERTIFY that a copy of the foregoing has been furnished to MARK P. BUELL, ESQ., 303 West Azeele Street, Suite 100, Tampa, Florida 33609, Co-Counsel for Plaintiffs, THOMAS D. MASTERSON, ESQ., 699 First Avenue North, St. Petersburg, Florida 33701, Co-Counsel for Plaintiffs, and to JAMES D. BEACH, ESQ., Chamber of Commerce Building, 100 Second Avenue North, Suite 350, St. Petersburg, Florida 33701, Co-Counsel for Plaintiffs, by U. S. Mail, postage prepaid, this the 20 day of January, 2009.

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