No.13-30176

In the

United States Court of Appeals

for the Fifth Circuit

BELVA WEBB; FAITH WEBB,
Plaintiffs - Appellants

v.

PATRICK LASALLE, individually and in his official capacity as the Chief of Police of the Patterson Police Department; POLICE DEPARTMENT OF PATTERSON; POLICE DEPARTMENT OF MORGAN CITY; JOHN DOE, Officer with the Morgan City Police Department; JOSEPH P. MORELLA, Judge; SCHOOL BOARD OF ST. MARY PARISH; KENNETH LOCKETT; NIKI FRYOU, Principal; BOURGEOIS MEDICAL CLINIC, L.L.C.; DR. MELVIN G. BOURGEOIS; DR. JOHN DOE; X Y Z INSURANCE COMPANY; ROBERT M. BOURGEOIS, M.D.,
Defendants - Appellees

On Appeal from the United States District Court for the Western District of Louisiana, Civil Action No. 6:12-cv-897, Honorable Richard Haik, Presiding

BRIEF ON BEHALF OF APPELLEES ST. MARY PARISH SCHOOL BOARD, NIKI FRYOU AND KENNETH LOCKETT

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NO. 13-30176

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BELVA WEBB, ET AL

versus

PATRICK LASALLE, ET AL

CERTIFICATE OF INTERESTED PERSONS

Undersigned counsel certifies that the following listed persons and entities as described in Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

1. Plaintiffs-Appellants Belva and Faith Webb.
2. Martin E. Regan, Jr. and Daniel G. Abel, counsel for the Webbs.
3. Defendant-Appellee Patrick LaSalle.
4. Defendant-Appellee Joseph P. Morella.
5. James L. Pate, James Huey Gibson, and Sara Rodrigue, counsel for LaSalle and Morella.
6. Defendant-Appellee Morgan City Police Department.

7. David Clay Clarke, counsel for Morgan City Police Department.

8. Defendant-Appellee Bourgeois Medical Clinic.

9. Defendant-Appellee Dr. Robert Bourgeois.

10. Defendant-Appellee Dr. Melvin Bourgeois

11. Harvey Joseph Grodsky, counsel for Bourgeois Medical Clinic, Dr. Robert Bourgeois and Dr. Melvin Bourgeois.

12. Defendant-Appellee St. Mary Parish School Board, a political subdivision of the State of Louisiana.

13. Defendant-Appellee Niki Fryou, a St. Mary Parish School Board school principal.

14. Defendant-Appellee Kenneth Lockett, a St. Mary Parish School Board administrator.

15. Alvin J. Bordelon, Jr., counsel for St. Mary Parish School Board, Fryou and Lockett.

/s/ Alvin J. Bordelon, Jr.
ALVIN J. BORDELON, JR.
Counsel for St. Mary Parish School Board,
Principal Niki Fryou and Supervisor
Kenneth Lockett

STATEMENT REGARDING ORAL ARGUMENT

Appellants Belva and Faith Webb, plaintiffs in the district court, have appealed Rule 12(b)(6) dismissal of their complaint. Appellees, St. Mary Parish School Board, Principal Niki Fryou and Supervisor of Child Welfare Kenneth Lockett, consider oral argument unnecessary for the following reasons:

1. This matter was authoritatively and properly decided by the district court based on a reasoned dissection of the complaint and a sound exposition of the applicable law.
2. As will be explained in the body of appellees' submission, plaintiffs' suit was vexatious and frivolous, and their appeal is vexatious and frivolous.

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STATEMENT OF JURISDICTION

Using 42 U. S. C. Sec. 1983 as a procedural vehicle, and also citing 42 U. S. C. Secs. 15 and 16, the Webbs sued St. Mary Parish School Board, Principal Niki Fryou and Child Welfare Supervisor Kenneth Lockett, appellees represented by undersigned counsel. The Webbs claimed that Fryou and Lockett conspired with a municipal police chief (LaSalle), an attorney (Morella), two physicians (Drs. Robert and Melvin Bourgeois), an unidentified Bourgeois Clinic staff physician ("Dr. John Doe), and an unidentified local, Morgan City police officer ("Officer John Doe), to violate their Fourth, Fifth, Eighth and Fourteenth Amendment rights. The Webbs also asserted a bevy of Louisiana state law claims.

The district court had original jurisdiction over the Webb's federal claims pursuant to 28 U. S. C. Sec. 1343 and supplemental jurisdiction over their state law claims. The district court dismissed the Webb's federal claims under Rule 12(b)(6) with prejudice and declined supplemental jurisdiction over their state law claims. The Webbs timely filed a Notice of Appeal. Pursuant to Rules 3 and 4 of the Federal Rules of Civil Procedure, the Webbs have an appeal as of right to this Court.

STATEMENT OF THE ISSUE

Whether the district court erred in dismissing the Webbs' complaint against St. Mary Parish School Board, Principal Niki Fryou and Child Welfare Supervisor Kenneth Lockett pursuant to Rule 12(b)(6).

STATEMENT OF THE CASE

This is a tale of two vexatious lawsuits filed by Belva and Faith Webb. The Webbs filed their first suit, *Webb v. Morella, 6:10-cv-01557,* on October 12, 2010, alleging that Joseph Morella, an attorney and part-time city judge, assaulted them with racial slurs and physical threats in his law office after a real estate between Police Chief Patrick LaSalle and the Webbs went sour. To justify proceeding under 42 U.S.C. Section 1983, the Webbs claimed that Morella, who had served as closing attorney on LaSalle's behalf, was a "state actor" who had violated their constitutional rights and committed "hate crimes."[1] Morella responded with a Rule 12(b)(6) motion to dismiss and a motion for sanctions under Rule 11.

On April 16, 2012, three days before the hearing on Morella's motions, the Webbs filed their second suit, *Webb v. LaSalle*. This suit alleged that Chief LaSalle

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[1]Although the alleged slurs and assault had taken place in Morella's private law office and had arisen in connection with a private, commercial transaction, the Webbs sued Morella under 42 U. S. C. Sec. 1983, alleging that Morella had acted under color of law in denying them due process and equal protection. In short, the Webbs theory was that Morella was a state actor 24-7, in all aspects of his affairs, because he was a part-time municipal judge who, ostensibly, never shed his robe.

and "Judge" Morella had orchestrated a wide ranging conspiracy to violate the Webbs' civil rights and had successfully enrolled Principal Fryou, Supervisor Lockett, Drs. Robert and Melvin Bourgeois, Dr. "Jon Doe, a Bourgeois clinic staff physician and Morgan City police officer "John Doe" in their unlawful scheme. This suit was allotted randomly to Judge Rebecca Dougherty of the Western District, but Judge Dougherty subsequently transferred the suit to Judge Haik as a case related to *Webb v. Morella*.[2]

On May 8, 2012, three weeks later, the district court dismissed *Webb v. Morella*, the first Webb suit, and granted Morella's motion for sanctions. The Webbs filed a Notice of Appeal, and *Webb v. Morella* was lodged in this Court as Case No. 12-30617. On April 12, 2013, this Honorable Court disposed of *Webb v. Morella* in an unpublished *per curiam,* affirming the district court's dismissal and imposition of sanctions.

Webb v. LaSalle, the second Webb suit, met the same end in the district court as did *Webb v. Morella*. On November 30, 2012, the district court dismissed *Webb v. LaSalle* pursuant to Rule 12(b)(6). The district court again imposed Rule 11 sanctions. Noting that *Webb v. Lasalle* had been filed three days before the court heard motions

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[2]In their appeal brief, the Webbs contend that Judge Haik "*...had this second matter, transferred from the judge randomly assigned the case, back to Judge Haik....*" [Appellants' Brief, page xi]

and dismissed Webb v. Morella, the district court ruled that Webb v. LaSalle set forth "*...baseless, conclusory allegations contrary to the Rule 11 certifications made to the Court,*" that there had been no reasonable inquiry into the facts and law prior to filing suit and that "*Plaintiffs only purpose in bringing the suit was to harass defendants.*" [USCA5 400]

St. Mary Parish School Board, Principal Fryou and Supervisor of Child Welfare Lockett submit that this Court should affirm dismissal of all of the Webbs' claims.

STATEMENT OF THE FACTS RELEVANT TO THE ISSUE SUBMITTED FOR REVIEW

When presented with a Rule 12(b)(6) motion, a district court must examine the complaint along with any exhibits to the complaint, and determine whether there are sufficient, well-pled facts to support a plausible claim for relief. Speculation, legal conclusions, and legal conclusions masquerading as factual conclusions must be discounted. Appellate review of a district court's 12(b)(6) dismissal is *de novo,* requiring the same judicial exercise.

The Webbs alleged that they "*...had been the targets of personal attacks by Judge Joseph Morella and his client, Patterson Police Chief Patrick LaSalle...,*" a claim which was the catalyst for the now discredited Webb v. Morella lawsuit. [USCA5 17] To get even for the Webb v. Morella litigation, the Webbs alleged that Chief LaSalle and Morella hatched a wide ranging conspiracy, enrolling numerous co-

conspirators "*...to accuse Belva Webb of criminal drug use...for the purpose of charging Mr. Webb with crimes, discrediting Mr. Webb, firing him from his position with the St. Mary Parish Schools District and otherwise humiliating him....*" [USCA5 17] Another alleged LaSalle and Morella motive was that "*...of discrediting thereby gaining an advantage in a pending federal civil rights and hate crimes action*" – i.e., the Webb v. Morella lawsuit. [USCA5 17]

The roll call of alleged, compliant conspirators is long and includes individuals, public bodies, and a private LLC: (1) Patterson Police Chief Patrick LaSalle, (2) the Patterson Police Department, (3) the Morgan City Police Department, (4) Morgan City Police Officer "*John Doe,*" (5) Joseph Morrella, referred to as "*Judge*" Joseph Morella, (6) St. Mary Parish School Board, (7) Kenneth Lockett, the school district's Supervisor of Child Welfare, (8) Niki Fryou, a school district principal, (9) Bourgeois Medical Clinic, LLC, (10) Dr. Robert Bourgeois, the medical clinic manager, (11) Dr. Melvin Bourgeois, the founder and a member of the Bourgeois LLC, and (12) "*Dr. John Doe,*" a Bourgeois Medical Clinic staff physician. [USCA5 14-16] Nothing in the lawsuit explains, or attempts to explain, why these numerous, alleged co-conspirators, none of whom had anything to do with the sour real estate deal involving the Webbs, LaSalle and Morella, threw their hats in the ring and agreed to commit an unlawful act.

What do the Webbs say in their complaint about how the conspiracy was formed and conducted? The Webbs allege that LaSalle "*...personally asked officials with the St. Mary Parish School Board to have Belva Webb sent for drug screening.*" [USCA5 18] However, the Webbs do not identify the conspiring "*officials.*" Nor do they allege that LaSalle painted even the sketchiest outline of his unlawful plan when he spoke to the unnamed "officials," such as telling them that if they sent Webb to the Bourgeois Medical Clinic for a drug test, a staff physician at the clinic would falsify the results. Nor is there any allegation that LaSalle told the "officials" to fire Webb using the false results as their rationale.

Agreement to commit an unlawful act is a fundamental element of a conspiracy. Where, then, do the Webbs plead facts in their complaint even remotely suggesting that school "officials," much less principal Fryou and Supervisor Lockett, the two, named school district defendants, knew anything about LaSalle's alleged, nefarious plan and agreed to go along with it? The answer is "nowhere."

The Webbs do not pretend that they were privy to the alleged phone call LaSalle placed to the "officials." Other than claiming that LaSalle placed the call in order to ask the "officials" to send Belva Webb for a drug test, they do not pretend to know if LaSalle said anything beyond that. Thus, at the alleged conspiracy's first

stirring, the Webbs plead no facts to suggest that anything unlawful was discussed, much less agreed upon by the unnamed "officials."

Perhaps recognizing this basic flaw in their claim, the Webbs attempt to paper over it by engaging in mind reading. They allege that the "officials" expressed concern, because "*...if Chief LaSalle had information about possible drug use by Webb, why didn't he or the police arrange for the drug screen themselves?"* [USCA5 18] In other words, why did LaSalle need the school officials unless he was up to no good? The Webbs then answer their own question with pure speculation. "*Had Chief LaSalle done so, using the authority of his department, the ulterior motive of discrediting Webb with fabricated drug tests results would have been <u>immediately</u> apparent * * * and the issue of fabricating the drug test results for these ulterior motives would have caused even the most naive to demand an investigation."* [USCA5 18] And upon that speculation, the Webbs draw a baseless conclusion: "*...having learned of LaSalle's involvement in the demand and insistence on having Webb's employer the school board demand a drug screen, the real purpose of the drug screen became apparent."* [USCA5 18] In short, the Webbs divine that the unnamed, school officials knew LaSalle was up to no good, and knew *"the real purpose of the drug screen*," because LaSalle wanted them to order a test he could have ordered himself, and the school "officials" blithely went along with the plan.

The Webbs did not make the unnamed school "officials" parties to their suit, giving them the same "John Doe" monikers they applied to the unnamed "Dr. John Doe" and the unnamed Morgan City Police Officer "John Doe." Rather, they named Principal Fryou and Supervisor Lockett as co-conspirators. However, the Webbs do not allege that Chief LaSalle had any communication with Fryou or Lockett, or that Fryou or Lockett even suspected, much less knew, that they were to send Webb for a drug screen where a licensed physician would violate medical ethics and falsify the results.

The frivolous nature of the Webbs complaint is further exposed by exhibits the Webbs themselves attached to their complaint. One exhibit shows that Belva Webb attended a meeting on February 16, 2012 with Principal Fryou, Supervisor Lockett and others. What transpired was memorialized and signed by all who participated, including Belva Webb. The memo states: "*Parent concerns were addressed to school officials and district personell (sic). Concerns of being under the influence. Incident will be turned over to Mr. Armelin,"* a Human Resources officer. [USCA5 34]

After this meeting, the school district sent Webb for a drug screen, presumably to be conducted by the Bourgeois clinic physician who was prepared to falsify Webb's test results. Who is this key conspirator? He is "*Dr. John Doe*" who falsified results to reflect that Webb was on *"'heroin,' 'opiates,' 'cocaine,' alcohol' and other illegal*

drugs."[3] [USCA5 21] Dr. Doe then allegedly phoned "*Officer John Doe*" of the Morgan City Police Department who "*...showed up almost instantly,"* whereupon Dr. Doe told Officer Doe that Webb was a drug user. [USCA5 20]

There are no facts pled in the complaint to suggest that Fryou or Lockett had any communication with "*Dr. John Doe"* regarding the alleged falsification of test results. Moreover, another exhibit the Webbs attach to their complaint shows that no false results were reported to the school district. [4] The first is a February 23, 2012 letter from Lockett to Belva Webb, which states:

> *On February 17, 2012, my office was contacted with concerns about you appearing unstable while crossing children in the safety zone. An investigation was conducted and a decision was made to send you for a drug screening. The results that came from the doctor is that the medication you have been prescribed is 'safety sensitive' and you should not be performing work duties at this time. With this information and concerns please do not return to work until further notice effective immediately."* USCA5 36]

The second exhibit is a February 28, 2012 letter from Lockett in which he amended his February 17 letter, advising Webb that he should not return to work

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[3]One would think that Webb, who allegedly went to the Bourgeois clinic knowing that he was being set up by LaSalle, who allegedly arranged to protect himself by having independent tests taken before and after his visit to Bourgeois, and who allegedly arranged to have his counsel hear what transpired at Bourgeois in real time with the speaker feature on his cell phone, would have gotten the good doctor's name.

[4]The Court may consider exhibits attached to a complaint in ruling upon a Rule 12(b)(6) motion. *U. S. Ex Rel Williard v. Humana Health Plan of Texas, Inc.*, 336 F. 3d 375, 379 (5th Cir. 2003).

"*...until written notification from your physician releasing you to perform your crossing guard duties."* [USCA5 37]

Further exposing the preposterous nature of the Webb's conspiracy allegations, the Webbs themselves express uncertainty in their complaint about critical aspects of the conspiracy plan. In paragraph 25 of their complaint, after reiterating that "*Dr. John Doe,"* falsified the test results and immediately phoned "Officer John Doe" of the Morgan City Police Department, the Webbs assert that this "*...calls into question the extent of this conspiracy and the number and identities of all persons involved*." The Webbs go on to state: "*...as the test results were fabricated, it begs the question: who contacted the Bourgeois Clinic and its doctors to make certain that the results would be POSITIVE?"* [USCA5 21]

Sufficient support for a conspiracy claim would require the Webbs to plead, as a matter of fact, exactly who spoke with the Bourgeois clinic and arranged for the false test. The Webbs do not allege that Fryou or Locket made such a call. And as stated above, although the Webbs claim that the results were fabricated, no one reported fabricated results to Fryou or Lockett. If the Webbs admittedly do not know who spoke to the Bourgeois clinic to arrange for the alleged drug test fabrication, where is their case for conspiracy? There are no well-pled facts to remotely

substantiate that any of the defendants engaged in a conspiracy, much less Principal Fryou and Supervisor Lockett.

SUMMARY OF THE ARGUMENT

Rule 12(b)(6) places a looking glass within the folds of a complaint to discern whether sufficient facts have been pled to support a plausible claim for relief. This requires a court to consider the legal elements of a claim and determine whether there are factual allegations, which if proven, would satisfy those elements.

The Webbs' Section 1985 and 1986 Claims

The Webbs invoke 42 U. S. C. Secs. 1985 and 1986, claiming a wide-ranging conspiracy to violate their civil rights. The only portion of Section 1985 relevant to the Webbs' claim is Subsection (3). To succeed, the Webbs must allege facts demonstrating: (1) a conspiracy, (2) for the purpose of depriving a person of equal protection of the law, and (3) an act in furtherance of the conspiracy (4) which causes injury to a person or deprivation of any right or privilege of a citizen of the United States. The Webbs must also plead that the conspiracy was motivated by racial animus or by some other immutable, class characteristic. *Locket v. New Orleans, City*, 607 F. 3d 992, 1001 (5th Cir. 2010); *Rodriguez v. Neely*, 169 F. 3d 220, 222 (5th Cir. 1999).

There are no well-pled facts in the Webbs' complaint to support the claim that principal Fryou or Supervisor Lockett agreed with LaSalle, Morella, Dr. John Doe or anyone else to commit an illegal act and thus deprive either Belva Webb or Faith Webb of their constitutional rights. There is no assertion that racial animus motivated the conspirators. To the contrary, the alleged motive underscoring the conspiracy was to discredit Belva Webb and gain an advantage for Morella in the first Webb suit and retaliate against the Webbs for filing the suit. Left unsaid is why school officials, licensed physicians and a police officer, who had nothing to do with the first Webb suit, would willingly go along with such a plan.

When plaintiffs fail to state a claim under 42 U.S.C. sec. 1985, they concomitantly fail to state a claim under 42 U.S.C. sec 1986 for negligent failure to prevent a conspiracy. *Hamilton v. Chaffin*, 506 F. 2d 904, 913-914 (5th Cir. 1975); *Hagardon v. I. F. Hingle, et al*, 2003 U.S. Dist. LEXIS 16493 (E.D. La.). It goes without saying that unless a conspiracy is properly alleged, sec. 1986 is not triggered.

The Webbs' Section 1983 Claims

Using 42 U. S. C. Section 1983 as a procedural vehicle, the Webbs sued school district employees Fryou and Lockett individually, claiming that Fryou and Lockett acted under color of law in violating their Fourth, Fifth, Eighth and Fourteenth amendment rights. The Webbs also sued the St. Mary Parish School Board, a political subdivision of the State of Louisiana.

"*Municipal liability arises only when the execution of a local government's policy or custom causes the constitutional injury*." *Monell v. New York City Dept. Of Social Services*, 436 U.S. 658, 690-91 (1978). There is no allegation that St. Mary Parish School Board violated any of plaintiffs rights through an unconstitutional ordinance, regulation, policy, custom or practice.

As for Fryou and Lockett, school district individuals who allegedly acted under color of law, the Webbs merely allege that these individuals sent Belva Webb to a reputable medical clinic for a drug test Webb alleges he agreed to take. Even if Fryou and Lockett did so at the request of Chief LaSalle, this hardly bespeaks any violation of Fourth, Fifth or Eighth Amendment rights. Neither Fryou nor Lockett, school personnel, subjected Webb to unlawful search, seizure or detention as prohibited by the Fourth Amendment. Neither Fryou nor Lockett were in a position to deprive Webb of any Fifth Amendment rights, such as his right of due process and right against self-incrimination. Neither of the Webbs were arrested or charged with any crime. Lockett and Fryou are not correctional personnel or jailers and neither of the Webbs were prisoners. There is no allegation the Webbs were subjected to cruel and unusual punishment by anyone, much less by Lockett or Fryou.

As for the Webb's Fourteenth Amendment claim that Fryou and Lockett violated their substantive due process rights, such a claim requires conduct that "*can be properly characterized as arbitrary, or conscience shocking in a constitutional*

sense." County of Sacramento v. Lewis, 523 U. S. 833, 847 (1998); *Doe ex rel Magee v. Covington County School District ex rel. Keys*, 675 F. 3d 849, 867-868 (5th Cir. 2012). Sending , does not meet this standard.

STANDARD OF REVIEW

The courts of appeal review Rule 12(b)(6) dismissals *de novo,* using the same standard as the district courts. *Davis v. Tarrant Centy.*, 565 F. 3d 214, 217 (5th Cir. 2009); *Steadman et al v. The Texas Rangers*, 179 F. 3d 360 (5th Cir. 1999); *Michalik v. Hermann*, 422 F. 3d 252, 257 (5th Cir. 2005); *Oscar Renda Const., Inc. v. City of Lubbock*, 463 F. 3d 378 (5th Cir. 2006). All well-pled facts contained in the complaint must be accepted as true and construed most favorably to plaintiff. However, to survive dismissal, the allegations must set forth sufficient factual matter, when accepted as true, to state a claim that is plausible on its face. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. It follows that where the well-pled facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged- but it has not shown- that the pleader is entitled to relief. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 554-55,127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 1949-50, 173 L. Ed. 2d 868 (2009).

Moreover, "*[C]onclusory allegations or legal conclusions masquerading as factual conclusions will not suffice to prevent a motion to dismiss*." *Fernandez-Montes v. Allied Pilots Ass'n*, 987 F. 2d 278, 284 (5th Cir. 1993); *Taylor v. Books A* Million, 296 F. 3d 376, 378 (5th Cir. 2002).

ARGUMENT

A. The Webbs Failed to State 42 U.S.C. Sec. 1985 and 1986 Claims

42 U.S.C. 1985, subsection (3) requires, *inter-alia*, proof of a conspiracy and an act in furtherance of the conspiracy. "...[T]here must be allegations that the defendants had directed themselves toward an unconstitutional action by virtue of a mutual understanding." *Sparkman v. McFarlin*, 601 F.2d 261,268 (7th Cir. 1979). Plaintiffs must establish "*...the existence of (1) an agreement to do an illegal act and (2) an actual constitutional deprivation." Cinel v. Connick*, 15 F. 3d 1338, 1343 (5th Cir. 1994); *Tebo v.* Tebo,550 F. 3d 492, 496 (5th Cir. 2008). Another essential prerequisite is that the conspiracy must be motivated by racial animus or by some other immutable, class characteristic. *Locket v. New Orleans, City*, 607 F. 3d 992, 1001 (5th Cir. 2010).

As expressed in the Statement of Facts and Summary of Argument, there are no well-pled facts in the Webbs' complaint suggesting that any of the alleged conspirators were motivated to violate the Webbs' rights because the Webbs are black citizens. Rather, the Webbs plead that Morella and LaSalle wanted to get even with,

or retaliate against, Belva Webb for suing Morella over a real estate deal. Although implausible on its face, this is what allegedly motivated others who had nothing to do with the Webb-Morella dispute to commit an illegal act.

With regard to the Section 1985(3) prerequisite for an "agreement" among conspirators to commit an illegal act, nothing in the complaint remotely suggests that Fryou or Lockett agreed with LaSalle, Morella, the Bourgeois Clinic, any of its physicians or with any police authorities to order Belva Webb to take a drug test when they knew the results would be falsified. The Webbs own complaint exhibits indicate that the school administrators sent Belva Webb for a drug test after parents expressed concern about his performance as a crossing guard. The complaint asserts that Webb had no problem with taking the test. He consented. The test results provided to the school district were that Webb was impaired by prescription medication, not illegal drugs. Another aspect of the alleged conspiracy was for the school district to use the fabricated test results as a rationale for firing Belva Webb. However, Webb was not fired. He was simply told that he could not return to his safety-sensitive job until cleared to do so by his physician.

When plaintiffs fail to state a claim under 42 U.S.C. sec. 1985, they concomitantly fail to state a claim under 42 U.S.C. sec 1986 for negligent failure to prevent a conspiracy. *Hamilton v. Chaffin*, 506 F. 2d 904, 913-914 (5th Cir. 1975);

Hagardon v. I. F. Hingle, et al, 2003 U.S. Dist. LEXIS 16493 (E.D. La.). It goes without saying that unless a conspiracy is properly alleged, sec. 1986 is not triggered

B. The Webbs Failed to State a Section 1983 Claim against St. Mary Parish School Board

To prevail against St. Mary Parish School Board under Section 1983, plaintiffs must show that they were victimized by an unconstitutional St. Mary ordinance, regulation, policy, custom or practice. "*Municipal liability arises only when the execution of a local government's policy or custom causes the constitutional injury*." *Bedford v. The City of Mandeville*, 1999 U.S. App. LEXIS 38869 [5th Cir.]; *Baker v. Putnal*, 75 F.3d 190, 200 (5th Cir. 1996); *Monell v. New York City Dept. Of Social Services*, 436 U.S. 658, 690-91 (1978). There is no allegation that St. Mary Parish School Board violated any of plaintiffs' rights through an unconstitutional ordinance, regulation, policy, custom or practice.

C. The Webbs Failed to State a Section 1983 Claim Against Lockett and Fryou

Section 1983 is a procedural vehicle through which plaintiffs may assert claims for violations of constitutional and other federally protected rights. Here, the Webbs use Section 1983 to claim violations of their Fourth, Fifth, Eighth and Fourteenth Amendments. They take a broad brush approach. The Webbs' complaint repeatedly alleges that all defendants violated all of their rights, without providing any specifics regarding any particular defendant.

For example, although the Webbs' complaint asserts that the "defendants" violated their Fourth Amendment rights, their complaint pleads no facts supporting the notion that Principal Fryou or Supervisor Lockett violated anyone's Fourth Amendment rights. Setting well-pled fact aside, the complaint doesn't even conclude that Fryou or Lockett subjected Belva Webb to any unreasonable search, seizure or detention. The Webbs merely allege that these defendants asked Belva Webb to take a drug test, and that Webb consented to taking the test– tantamount to consenting to a search.

The Webbs' complaint against Fryou and Lockett does not implicate the Fifth Amendment. The Webbs were not charged with any crime and were not prosecuted. Even if they had been, Fryou, a school principal, and Lockett, a school supervisor, are not connected in any way to the judicial system. They are not in a position to protect, afford or violate Fifth Amendment rights. Similarly, Lockett and Fryou are not in a position to violate Eighth Amendment rights. The Eighth Amendment protects against the cruel and unusual punishment of convicted prisoners. Lockett and Fryou are not jailers, and the Webbs are not convicts. The Webbs pled no facts supporting a claim of cruel and unusual punishment, and even if they did, they can have no Eighth Amendment claim against Fryou or Lockett.

The Fourteenth Amendment guarantees both procedural and substantive due process. There is no allegation in the complaint that Fryou or Lockett violated any of the Webbs' Fourteenth Amendment rights, much less that their conduct was "*...arbitrary, or conscious shocking in a constitutional sense." Doe ex rel. Magee v. Covington County School District ex rel. Keys*, 675 F. 3d 849, 867-868 (5th Cir. 2012). The complaint alleges that Fryou and Lockett sent Belva Webb for a drug test after hearing parental concerns regarding his ability to perform as a school crossing guard. Belva Webb alleges that he consented to the test. This hardly satisfies the "conscious shocking" requirement for a Fourteenth Amendment, substantive due process violation.

Overarching is the fact that Fryou and Lockett have qualified immunity, not merely from liability, but from suit itself. To uphold the qualified immunity defense, a complaint must be judicially screened under the "heightened pleading" standard. Heightened pleading requires a fact-specific Complaint which rests on more than "*mere conclusions*." *Schultea v. Wood*, 47 F.3d 1427 (5th Cir. 1995); *Morin, et al v. Caire*, 77 F.3d 116 (5th Cir. 1996); *Arsenaux v. Roberts*, 726 F.2d 1022 (5th Cir. 1982); *Johnson v. Wells*, 566 F.2d 1016 (5th Cir. 1978); *Elliott v.* Perez, 751 F.2d 1472, 1479 (5th Cir. 1985). In the case at bar, the Webbs' complaint does not pass muster under

the most elementary standard of fact pleading, much less a heightened pleading standard.

CONCLUSION

The district court properly called this litigation frivolous and vexatious. The district court's Rule 12(b)(6) dismissal should be affirmed in every respect.

Respectfully submitted this the____ day of May, 2013.

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CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that he has served the foregoing brief on all counsel of record by ECF or e-mail, this the 10th day of May, 2013.

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Undersigned counsel certifies that:

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This the10th day of May, 2013.

/s/ Alvin J. Bordelon, Jr