EV 02-0024-C M/H Thomas v EV-Vanderburgh School
Judge Larry J. McKinney Signed on 11/4/04

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

THOMAS, DEBRA L, Plaintiff, vs. EVANSVILLE VANDERBURGH SCHOOL CORPORATION - DEFT & CNTRCLM-PLTF, LOGE, PAT - DEFT & CNTRCLM-PLTF, HIGGS, THOMAS - DEFT & CNTRCLM-PLTF, KIVETT, SALLY - DEFT & CNTRCLM-PLTF, TRADER, JIM - DEFT & CNTRCLM-PLTF, TURPIN, SHARON - DEFT & CNTRCLM-PLTF, EVANSVILLE VANDERBURGH SCHOOL CORPORATION BOARD OF SCHOOL TRUSTEES, Defendants.	CAUSE NO. EV02-0024-C-M/H

π Verdelski V Miller
P O Box 754
Newburgh, IN 47629-0754

Patrick A Shoulders
Ziemer Stayman Weitzel & Shoulders
P O Box 916
Evansville, IN 47706

Dirck H Stahl
Ziemer Stayman Weitzel & Shoulders
P O Box 916

Evansville, IN 47706-0916

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

DEBRA L. THOMAS, Plaintiff,	)	
vs.	)	EV02-24-C M/H
EVANSVILLE-VANDERBURGH SCHOOL CORPORATION, *et al.*, Defendants.	)	

ORDER ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

This matter is before the Court on the motion of defendants, Evansville-Vanderburgh School Corporation ("EVSC"); Evansville-Vanderburgh School Corporation Board of Trustees ("Board"); and Pat Loge, Thomas Higgs, Sally Kivett, Jim Trader and Sharon Turpin (the "Individual Defendants") (collectively "Defendants") for summary judgment on the claims brought against them by the plaintiff, Debra L. Thomas ("Thomas"). For the reasons stated herein, Defendants' motion is **GRANTED**.

I. BACKGROUND

This case involves the sensitive matter of a school's responsibilities to and relationship with a troubled student and her family. The Court recognizes Thomas' concerns that Defendants developed a relationship with her young daughter without Thomas' knowledge. The Court also recognizes the school's desire to protect its students and to provide academic and moral support to students in need. That being said, the facts of the case in the light most favorable to Thomas are as follows.

Tom Higgs ("Higgs") was a Lodge Elementary School counselor during the time relevant to this

case. Affidavit of Thomas E. Higgs ("Higgs Aff.") ¶ 3. Higgs' responsibilities as a school counselor included home visits, group problem solving, "Crisis committee," pre-court conferences, and safety patrol. Higgs Ans. to Ints., No. 1. Higgs counseled Thomas' daughter, Marteisha Mosley, to address her academic performance and functioning, based on referrals from teachers and administrators. Higgs Aff. ¶ 8.

Sally Kivett ("Kivett") was employed by EVSC as a Special Concerns School Counselor during the time relevant to this case. Kivett Ans. to Ints., No. 1. Kivett was responsible for problem solving, crisis management, conflict resolution, crisis counseling, attendance problems, self-esteem issues and home visits. *Id.* It is EVSC policy for all school counselors, including Special Concerns Counselors, to keep their communications with students confidential unless a report is necessary. *Id.*, No. 5. It is EVSC's policy to contact parents when a student's communications with a school counselor reveal suicidal tendencies or "potentially damaging statements." *Id.* Kivett meets with students who EVSC teachers and administrators refer to her based on academic difficulties. Kivett *Id.*, No. 1.

Pat Loge ("Loge"), the principal of Lodge Elementary School, authorized Kivett to meet with Marteisha, based on referrals from Higgs, the school nurse, and teachers at Lodge Elementary School. Kivett Ans. to Ints., No. 6. It is EVSC's policy that school counselors do not need parental consent to call a student out of class. *Id.*; Trader Ans. to Ints. Nos. 17, 18. Jim Trader was Director of Student Services and Counseling for EVSC during the time relevant to this case. Trader Ans. to Ints., No. 1.

Kivett maintains records of her counseling sessions with student for one school year. Kivett Ans. to Ints., No. 10. Kivett has not retained any records of the dates on which she met with Marteisha. *Id.*,

No. 23. Kivett asserts that her meetings with Marteisha (the "counseling sessions") were academic in nature and intent, and that she did not solicit any personal information from Marteisha beyond that necessary for the academic nature of the counseling sessions. Affidavit of Sally Kivett ("Kivett Aff.") ¶ 7. Thomas, however, asserts that Kivett took Marteisha out of class for the counseling sessions every Tuesday while she was in the second, third, fourth and fifth grades. Affidavit of Marteisha Mosley ("Mosley Aff.") ¶ 13. Thomas also alleges that Kivett asked Marteisha personal questions, encouraged Marteisha to reveal personal and intimate family information, and urged Marteisha not to tell her mother about the counseling sessions. *Id.*; Third Am. Compl. ¶ 13. It is undisputed that Thomas did not know about the counseling sessions until February, 2000.

Kivett has testified that in December, 1998, she discussed with Thomas some problems arising from Marteisha's attitude and behavior in school, including an altercation with a classmate. Kivett Ans. to Ints., No. 7. Also present at the alleged meeting were Marteisha's biological father, the school nurse, Loge and Higgs. *Id.* Thomas says this meeting did not occur. Affidavit of Debra Thomas ("Thomas Aff.") ¶ 8; Supplemental Affidavit of Debra Thomas ("Supp. Thomas Aff.") ¶ 1. The same EVSC individuals met with Thomas in February, 2000, concerning "escalating inappropriate behavior being displayed by Marteisha." Kivett Ans. to Ints., No. 7. At this second metting, Kivett related to Thomas that Marteisha had said her mother called her a "bitch" and threatened that if Marteisha "did bad" Thomas would hit her "like a nigger in the street." *Id.*, No. 17.

On January 22, 1998, Debra Kasacavage, a Lodge Elementary School teacher, signed a Child Abuse and Neglect Form that stated Marteisha had told Kasacavage that Thomas had struck her with an extension cord because of Marteisha's "bad grades." Affidavit of Debra Kasacavage ¶ 4; Attachment to

Trader Ans. to Ints.

On March 25, 1998, Marilyn Wright, a nurse at Lodge Elementary School, signed a Child Abuse and Neglect Form reporting that Marteisha had stated that Thomas whipped her with an extension cord. Affidavit of Marilyn Wright ("Wright Aff.") ¶ 4; Attachment to Trader Ans. to Ints. Wright also reported finding blueish-purple raised marks on Marteisha's right arm. *Id.* On November 20, 1998, Wright signed another Child Abuse and Neglect Form, reporting that Marteisha had come to the nurse's office that morning complaining of a sore back as a result of Thomas whipping her. Wright Aff. ¶ 6; Attachment to Trader Ans. to Ints. Wright did not see any physical evidence of a whipping, and reported this on the Child Abuse and Neglect Form. *Id.* Wright signed a third Child Abuse and Neglect Report on December 8, 1998, reporting the appearance of two reddish raised marks on Marteisha's right thigh, consistent with Marteisha's statement that her mother had whipped her with an extension cord the prior evening. Wright Aff. ¶ 5; Attachment to Trader Ans. to Ints.

Loge signed a Child Abuse and Neglect Form on April 30, 1998, reporting that Marteisha rode the city bus to her babysitter's house. Lodge Ans. to Ints., No. 14; Attachment to Trader Ans. to Ints. Higgs signed a Child Abuse and Neglect Form on May 13, 1999, reporting that Marteisha told him Thomas had struck her in the face that morning. Attachment to Trader Ans. to Ints. Higgs also reported that he did not see any marks on Marteisha's face. *Id.* On May 17, 1999, Higgs signed another Child Abuse and Neglect Form stating that Marteisha told him Thomas had punched her in the back and slapped her in the face that morning. *Id.*

On January 3, 2000, Sharon Turpin, a Lodge Elementary School teacher, reported to Loge that Marteisha had stated that the previous weekend Thomas had Marteisha take of all her clothes except her

underwear and paddled Marteisha with a belt, for opening a can of soup after Thomas told her not to. Turpin Ans. to Ints., No. 4. Turpin signed a Child Abuse and Neglect Form regarding the alleged incident. Attachment to Trader Ans. to Ints. Loge also signed the January 3, 2000, Child Abuse and Neglect Form. Attachment to Trader Ans. to Ints.

On February 22, 2000, Higgs signed another Child Abuse and Neglect Form to report that Marteisha stated her mother had slapped her and choked her the previous day at the babysitter's house. *Id.* On March 1, 2000, Loge signed another Child Abuse and Neglect Form, reporting that Thomas called Loge and stated that she did not want Marteisha in the house and that she was afraid she would kill Marteisha. Loge Ans. to Ints., No. 14; Attachment to Trader Ans. to Ints. Thomas denies the conversation occurred. Supplemental Thomas Aff. ¶¶ 5, 8.

Thomas did not know about any of the Child Abuse and Neglect Forms until late 2001, except for the December 8, 1998, allegation. Thomas Aff. ¶¶ 4, 5. Marteisha denies making any of the statements to Kasacavage, Higgs, Turpin, Wright or Loge, that are contained in the Child Abuse and Neglect Form. *See* Mosley Aff. ¶¶ 4-12.

EVSC does not investigate child abuse allegations. Trader Ans. to Ints., No. 4. It is EVSC policy to forward Child Abuse and Neglect Forms to Child Protective Services ("CPS"). *Id.* CPS, which is a division of the Vanderburgh County Office of Family and Children, investigates child abuse reports. Affidavit of Shirley Starks ¶¶ 3, 4. Of the reports regarding Marteisha and Thomas, CPS found the March 26, 1998, and December 8, 1998, reports "substantiated." *Id.* ¶ 5.

Thomas filed her Third Amended Complaint on November 12, 2003, alleging that: EVSC, the Board, Kivett, Loge, and Higgs failed to obtain her consent for the counseling sessions in violation of

Indiana Code Section 20-10.1-4-15(b) (Count I); Defendants invaded her privacy and placed her in a false light by way of making false child abuse reports (Count II); Defendants negligently and intentionally inflicted emotional distress upon Thomas by counseling Marteisha without Thomas' permission and filing false child abuse reports (Counts III and V); Loge defamed Thomas by telling a third party that Thomas hit Loge, threatened to kill Marteisha, and that Marteisha was at "Hillcrest"[1] (Count IV); Defendants violated Thomas' right to equal protection of the law, pursuant to the Fourteenth Amendment to the United States Constitution, by treating her differently than other similarly situated parents with regard to making child abuse reports (Count VI)[2]; Loge, Kivett, Higgs, and Turpin violated Thomas' Fourteenth Amendment right to equal protection through intentional racially hostile acts, and by being deliberately indifferent to Thomas' equal protection rights (Count VII); EVSC and the Board have an established policy or custom that resulted in the violation of Thomas' equal protection rights (Count VIII); Trader is liable for the unconstitutional acts of his subordinates, Kivett and Higgs (Count IX); and EVSC and the Board retaliated against Thomas in violation of her First Amendment rights when they manufactured false child abuse reports and refused to allow Thomas' other children back into Lodge Elementary School, after Thomas complained about or filed suit regarding the counseling sessions (Count X).

Defendants filed their motion for summary judgment on April 8, 2004. Thomas, by counsel, filed a Response to Defendants' Motion for Summary Judgment ("Response"). With the Court's permission, Thomas also filed, *pro se*, a supplemental response ("Supplement"). The Court has considered both the

---

[1]This apparently is a reference to Hillcrest Washington Youth Home, a shelter in Evansville for children in crisis. *See* Defendants' Brief in Support of Summary Judgment at 7, n.3.

[2]Thomas is African-American. Third Am. Compl. ¶¶ 58, 64, 72, 80.

Response and the Supplement in its decision.

II. STANDARD

Summary judgment is granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). An issue is genuine only if the evidence is such that a reasonable jury could return a verdict for the opposing party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A disputed fact is material only if it might affect the outcome of the suit in light of the substantive law. *Id.*

The moving party has the initial burden to show the absence of genuine issues of material fact. *See Schroeder v. Barth*, 969 F.2d 421, 423 (7th Cir. 1992). This burden does not entail producing evidence to negate claims on which the opposing party has the burden of proof. *See Green v. Whiteco Indus., Inc.*, 17 F.3d 199, 201 & n.3 (7th Cir. 1994). The party opposing a summary judgment motion bears an affirmative burden of presenting evidence that a disputed issue of material fact exists. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986); *Scherer v. Rockwell Int'l Corp.*, 975 F.2d 356, 360 (7th Cir. 1992). The opposing party must "go beyond the pleadings" and set forth specific facts to show that a genuine issue exists. *See Hong v. Children's Mem'l Hosp.*, 993 F.2d 1257, 1261 (7th Cir. 1993), *cert. denied*, 511 U.S. 1005 (1994). This burden cannot be met with conclusory statements or speculation, *see Weihaupt v. American Med. Ass'n*, 874 F.2d 419, 428 (7th Cir. 1989), but only with appropriate citations to relevant admissible evidence. *See* Local Rule 56.1; *Brasic v. Heinemann's Inc., Bakeries*, 121 F.3d 281, 286 (7th Cir. 1997); *Waldridge v. American Hoechst*

Corp., 24 F.3d 918, 923-24 (7th Cir. 1994). Evidence sufficient to support every essential element of the claims on which the opposing party bears the burden of proof must be cited. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

In considering a summary judgment motion, a court must draw all reasonable inferences "in the light most favorable" to the opposing party. *Spraying Sys. Co. v. Delavan, Inc.*, 975 F.2d 387, 392 (7th Cir. 1992). If a reasonable fact finder could find for the opposing party, then summary judgment is inappropriate. *Shields Enters., Inc. v. First Chi. Corp.*, 975 F.2d 1290, 1294 (7th Cir. 1992). When the standard embraced in Rule 56(c) is met, summary judgment is mandatory. *Celotex Corp.*, 477 U.S. at 322-23; *Shields Enters., Inc.*, 975 F.2d at 1294.

III. DISCUSSION

A. EQUAL PROTECTION CLAIMS

Count VI of Thomas' Third Amended Complaint alleges that Defendants concealed the counseling sessions from Thomas and filed false child abuse reports because of her race. Third Am. Compl. ¶ 59. Thomas also alleges, in Count VII, that Loge, Higgs, Kivett and Turpin intentionally committed racially hostile acts toward Thomas. *Id.* ¶ 67. She alleges in Count IX that Trader, as a supervisor, is liable for the discriminatory acts of Kivett and Higgs. *Id.* ¶¶ 81-82. Thus, Thomas has brought her claims under 42 U.S.C. § 1983, for violation of the Equal Protection Clause of the Fourteenth Amendment. *Id.* ¶¶ 60, 66-67.

To establish liability for racial discrimination, Thomas must show that Defendants acted with a

discriminatory purpose, and that their conduct had a discriminatory effect. *See Chavez v. Illinois State Police*, 251 F.3d 612, 635-36 (7th Cir. 2001); *Nabozny v. Podlesny*, 92 F.3d 446, 453 (7th Cir. 1996). An equal protection violation requires a showing that a "decision maker singled out a particular group for disparate treatment and selected his course of action at least in part for the purpose of causing its adverse effects on the identifiable group." *Shango v. Jurich*, 681 F.2d 1091, 1104 (7th Cir. 1982). To prove that a defendant's conduct had a discriminatory effect, a plaintiff must show that she is a member of a protected class, is similarly situated to members of an unprotected class, and was treated differently than those similarly situated individuals. *Chavez*, 251 F.3d at 636.

An African-American, Thomas clearly belongs to a protected class. However, Thomas has not shown that Defendant's conduct towards her had either a discriminatory purpose or effect. Thomas has no evidence that she was treated any differently than any other similarly situated parent. Neither the Response nor the Supplement refer to Thomas' race as a motive for Defendants' action, or even address Thomas' equal protection claim. Accordingly, Defendants are entitled to judgment on Thomas' equal protections claims, Counts VI, VII and IX.

B. CLAIMS AGAINST EVSC AND THE BOARD

Thomas cannot succeed on her federal claims against EVSC and the Board because she cannot establish that her alleged deprivation of rights resulted from an established custom or policy. Thomas alleges in Count VIII of her Third Amended Complaint that EVSC and the Board had established policies or customs of racial discrimination that deprived Thomas of equal protection of the law. Third Am. Compl. ¶¶ 75-76. She alleges in Count X that EVSC and the Board refused to allow her children to attend Lodge

School, and filed false child abuse reports, in retaliation for Thomas' complaints about the counseling sessions. *Id.* ¶¶ 91-92.

To hold EVSC or the Board liable under 42 U.S.C. § 1983, Thomas must prove that EVSC's or the Board's policy or custom caused her alleged constitutional deprivation. *See Monell v. Department of Soc. Servs.*, 436 U.S. 658, 694 (1978). There are three ways in which a political subdivision's policy or custom can cause the entity to be liable: (1) an express policy that, when enforced, causes a constitutional deprivation; (2) a widespread practice that, although not an official policy of the political subdivision, is permanent enough to constitute a custom with the force of law; or (3) the constitutional deprivation was caused by a person with "final policymaking authority." *Baxter v. Vigo County Sch. Corp.*, 26 F.3d 728, 734-35 (7th Cir. 1994) (*abrogated on other grounds, as recognized in McNeal v. Cook County Sheriff's Dept.*, 282 F.Supp.2d 865, 869 (N.D.Ill. 2003)) (citations and internal quotations omitted).

Thomas has not identified an express policy of EVSC or the Board that could have caused a constitutional deprivation, nor has she alleged a person with "final policymaking authority" caused her constitutional deprivation. To establish the second area of liability, that a widespread practice or custom is discriminatory, "considerably more proof than the single incident will be necessary in every case to establish both the requisite fault on the part of the municipality, and the causal connection between the 'policy' and the constitutional deprivation." *City of Oklahoma v. Tuttle*, 471 U.S. 808, 824 (1985). A plaintiff must show a specific pattern or series of incidents to support the allegation that a custom exists. *Henry v. Farmer City State Bank*, 808 F.2d 1228, 1237 (7th Cir. 1986). *See also Palmer v. Marion County*, 327 F.3d 588, 596 (7th Cir. 2003) ("When a plaintiff chooses to challenge a municipality's

unconstitutional policy by establishing a widespread practice, proof of isolated acts of misconduct will not suffice; a series of violations must be presented to lay the premise of deliberate indifference."); *Gable v. City of Chicago*, 296 F.3d 531, 538 (7th Cir. 2002) (finding that three incidents in four years did not establish a practice or custom).

Thomas' July 21, 2004, affidavit states that she has "personal knowledge of other similarly situated African-American parents whose children are or were enrolled in Lodge Elementary School that have experienced similar, if not the exact, improper and illegal conduct of the defendants." Thomas Aff. ¶ 7. This appears to be Thomas' attempt to demonstrate EVSC and the Board had a widespread practice or custom of discrimination. Defendants want the statement stricken on the basis that it is inadmissible hearsay. Defendants' Motion to Strike, filed September 24, 2004. However, even considering the statement, it does not establish a custom or practice because it contains no evidence of such. Whether Thomas has "personal knowledge" of discrimination is irrelevant if she does not share that knowledge with the Court in the form of testimony or documents. *See Palmer*, 327 F.3d at 595 (finding that inmate's affidavit stating he "personally observed" practice did not establish that practice existed). Conclusory affidavits cannot establish a claim entitling a party to relief. *Id.* at 596.

Thomas offers no other evidence to prove a series of incidents that would establish a pattern or custom. Without specific evidence that EVSC and the Board persistently treated other parents in the same manner they treated Thomas, the Court cannot find a pattern of behavior that would establish a widespread

practice or custom. Thomas has not met her burden to demonstrate a genuine issue of fact as to whether EVSC and the Board had a custom or practice of discrimination.

C. DUE PROCESS ARGUMENT

Although not specifically articulated in her Third Amended Complaint, Thomas asserts in her Response and Supplement that Defendants violated her right to due process. Thomas bases this allegation on Defendants' alleged interference with her "fundamental right . . . to make decisions concerning the care, custody, and control" of Marteisha. *See, e.g.*, Response at 7 citing *Stanley v. Illinois*, 405 U.S. 645, 651 (1972). Thomas focuses on Defendants' conduct of removing Marteisha from class for the counseling sessions, without Thomas' notice or permission. *See* Response at 10-11 and Supplement. Defendants are not subject to Thomas' due process claim because they are qualifiedly immune.

Government actors generally are granted qualified immunity from damages suits so long as their conduct was objectively reasonable in light of clearly established constitutional rights of which a reasonable person would have known. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). The Court must examine Thomas' claim in two steps. First: Does the conduct Thomas alleges violate a constitutional right? Second: Was the constitutional right clearly established by law at the time of the alleged violation? *See Donovan v. City of Milwaukee*, 17 F.3d 944, 947 (7th Cir. 1994). A constitutional right cannot be "clearly established" on general terms. A constitutional right has been clearly established only if the law is such that a potential defendant would be on notice that his conduct is probably unlawful. *Azeez v. Fairman*, 795 F.2d 1296, 1301 (7th Cir. 1986). The law must have been clear in light of the specific facts facing the

public actor at the time he acted. *Colaizzi v. Walker*, 812 F.2d 304, 308 (7th Cir. 1987).

The Court recognizes that Thomas has a fundamental liberty interest in the "companionship, care, custody, and management" of Marteisha. *See Stanley v. Illinois*, 405 U.S. 645, 651 (1972). It is also clear that Thomas has a fundamental liberty interest in directing Marteisha's education without unreasonable interference from the government. *See Meyer v. Nebraska*, 262 U.S. 390, 400 (1923). What is unclear, however, is that the Individual Defendants unreasonably interfered with a specific right for Thomas to be notified of, or to consent to, her daughter being counseled at school. It does not appear to be established in the law that Thomas has that right as part of her right to due process.

Thomas is upset her daughter was being counseled without Thomas' knowledge, that Thomas had never met the counselors, and that the counselors no longer have records of the counseling sessions or their subject-matter. However, with the specific facts facing the Individual Defendants at the time of the counseling sessions, it was not clear that the law prevented their conduct. The evidence submitted to the Court demonstrates that the counseling sessions were aimed at problem-solving, based on references from Marteisha's teachers and administrators. *See* Higgs Aff. ¶ 8; Trader Aff. ¶ 7. The Individual Defendants were aware that Marteisha showed signs of physical abuse, struggled in the classroom, and had trouble getting along with other students. Kivett Ans. to Ints., No. 7; Wright Aff. ¶ 5.

To defeat qualified immunity, Thomas must show that reasonable counselors and administrators in the Individual Defendants' positions would have known that their conduct of counseling Marteisha without her mother's consent or knowledge would violate one of Thomas' clearly established constitutional rights. The law does not support Thomas' proposition. Thus, Defendants are entitled to qualified immunity on Thomas' due process claim.

D. STATE LAW CLAIMS

Thomas also has brought state law claims for a state statutory violation, invasion of privacy, defamation, and intentional and negligent infliction of emotional distress. Because the Court has granted summary judgment on Thomas' federal claims, original jurisdiction is now lacking and the Court may – pursuant to 28 U.S.C. § 1367(c)(3) – properly dismiss Thomas' remaining state law claims. "In the ordinary case of supplemental jurisdiction, the presumption is in favor of relinquishment when the claim that is within the original jurisdiction of the district court was dismissed before trial." *Brazinski v. Amoco Petroleum Additives Co.*, 6 F.3d 1176 (7th Cir. 1993). *See also Alonzi v. Budget Constr. Co.*, 55 F.3d 331, 334 (7th Cir. 1995). The Court chooses to exercise its discretion under 28 U.S.C. § 1367(c)(3), and hereby **DISMISSES** without prejudice Thomas' remaining state law claims.

IV. CONCLUSION

For all of the reasons discussed herein, Defendants' motion for summary judgment is **GRANTED**. Thomas' state law claims are dismissed without prejudice.

IT IS HEREBY ORDERED this _____ day of November, 2004.

_____
LARRY J. MCKINNEY, CHIEF JUDGE
United States District Court
Southern District of Indiana

Distributed to:

Verdelski V. Miller
P. O. Box 754
Newburgh, Indiana 47629-0754

Patrick A. Shoulders
Ziemer Stayman Weitzel & Shoulders
P. O. Box 916
Evansville, Indiana 47706

Dirck H. Stahl
Ziemer Stayman Weitzel & Shoulders
P. O. Box 916
Evansville, Indiana 47706-0916