

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

SELENA UNDERWOOD, on her own
behalf and on behalf of her minor children
WILLIAM UNDERWOOD and
NA'DAYJA UNDERWOOD CARTER,

Plaintiffs,

v.

BEAVER COUNTY CHILDREN &
YOUTH SERVICES, VICTOR
COLONNA, DAVID TRUESH,
THOMAS J. BOND, MICHELLE
HUBBARD, STEVE SOCCI, JEFFREY
R. SMALL, JOSEPH M. SPRATT, and
John Doe and others as yet unknown,

Defendants.

Civil Action No.

JURY TRIAL DEMANDED

COMPLAINT

This case arises from the unlawful seizure of two infant children from the care and custody of their mother, Selena Underwood, and the efforts to permanently separate Ms. Underwood from her children. The seizure of the children – in one case separating a new born infant from her mother while both were in the hospital recovering from delivery – was the beginning of Selena Underwood and her children's ordeal. Almost two years after Defendants took her first child, Ms. Underwood's family has yet to be reunited. The seizures of William Underwood and Na'Dayja Underwood Carter, and the prolonged and continuing separation of the Underwood family, was without prior judicial authorization, and without any basis to believe the children were abused, neglected or in imminent threat of harm. This action is brought, inter alia, to redress Defendants' arbitrary and malicious abuse of government power.

Plaintiff, Selena Underwood, on her own behalf and on behalf of her minor children William Underwood and Na'Dayja Underwood Carter, by and through her counsel, Kirkpatrick & Lockhart LLP, Wilder & Mahood, P.C. and the Greater Pittsburgh Chapter of the American Civil Liberties Union, therefore, brings this action for deprivation of constitutional rights under color of law, 42 U.S.C. § 1983, and supplemental state law claims.

Plaintiff alleges as follows:

PARTIES

1. Plaintiff Selena Underwood is a resident of Pennsylvania, residing at 71 Pleasantview Homes, Beaver Falls, Pennsylvania.
2. Plaintiff William Underwood (William) is a minor. He is the son of Selena Underwood. He is currently in the custody of Defendant Beaver County Children & Youth Services (BCCYS).
3. Plaintiff Na'Dayja Underwood Carter (Na'Dayja) is a minor. She resides with her mother Selena Underwood at 71 Pleasantview Homes, Beaver Falls, Pennsylvania.
4. Defendant Beaver County Children & Youth Services (BCCYS) is an agency of the County of Beaver located at 1080 Eighth Avenue, Beaver Falls, Pennsylvania.
5. Defendant Victor L. Colonna is an individual and, at all times relevant to this complaint was the Executive Director of Defendant BCCYS located at 1080 Eighth Avenue, Beaver Falls, Pennsylvania. Defendant Colonna is sued in his individual and official capacity.
6. Defendant David Truesh is an individual and, at all times relevant to this complaint, was a Casework Manager of Defendant BCCYS located at 1080 Eighth Avenue, Beaver Falls, Pennsylvania. Defendant Truesh is sued in his individual and official capacity.

7. Defendant Thomas J. Bond is an individual and, at all times relevant to this complaint, was a Supervisor and employee of Defendant BCCYS located at 1080 Eighth Avenue, Beaver Falls, Pennsylvania. Defendant Bond was the Supervisor assigned to the cases involving the alleged dependency of Ms. Underwood's children. Defendant Bond is sued in his individual capacity.

8. Defendant Michelle Hubbard is an individual and, at all times relevant to this complaint, was a caseworker and employee of Defendant BCCYS located at 1080 Eighth Avenue, Beaver Falls, Pennsylvania. Defendant Hubbard was the caseworker assigned to Ms. Underwood's case from June 2001 until, approximately, June 2003. Defendant Hubbard is sued in her individual capacity.

9. Defendant Steve Socci is an individual and, at all times relevant to this complaint, was a caseworker and employee of Defendant BCCYS located at 1080 Eighth Avenue, Beaver Falls, Pennsylvania. Defendant Socci was the caseworker initially assigned to Ms. Underwood's case. Defendant Socci is sued in his individual capacity.

10. Defendants BCCYS, Colonna, Truesh, Bond, Hubbard, and Socci are hereinafter referred to collectively as the Beaver County Defendants.

11. Defendant Jeffrey R. Small is an individual. Defendant Small was Ms. Underwood's court appointed attorney from June 12, 2001 until February 27, 2003. Defendant Small is a resident of Pennsylvania, whose business office is located at 475 Brady Ridge Road, Beaver, Pennsylvania.

12. Defendant Joseph M. Spratt is an individual. Defendant Spratt was Ms. Underwood's court appointed attorney from February 27, 2003 until on or about April 2003.

Defendant Spratt is a resident of Pennsylvania, whose business office is located at 300 Ninth Street, Conway, Pennsylvania.

13. Defendants John Doe and others unknown to Plaintiff are individuals and, at all times relevant to this complaint, were employees of Defendant BCCYS located at 1080 Eighth Avenue, Beaver Falls, Pennsylvania and/or employees of Beaver Falls Police Department located at 715 Fifteenth Street, Beaver Falls, Pennsylvania. Defendants Doe and others unknown are sued in their individual capacities, except as to unknown supervisory employees of BCCYS who are sued in both their official and individual capacities.

JURISDICTION & VENUE

14. This action arises under the Constitution and laws of the United States and under the Constitution and laws of the Commonwealth of Pennsylvania. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343 and supplemental jurisdiction over Plaintiffs' state claims pursuant to 28 U.S.C. § 1376.

15. This action arose from actions and occurrences, which took place in Beaver County, Pennsylvania. Venue in this Court is proper pursuant to 28 U.S.C. § 1391(b).

FACTUAL BACKGROUND

A. BCCYS Seized Custody of William without Prior Judicial Authorization and Without Any Basis to Believe that William was Abused, Neglected or in Any Danger of Imminent Harm.

16. William Underwood was born on February 3, 2001.

17. Medical records indicate that shortly after he was born, William developed a bowel blockage that prevented him from absorbing nutrition and gaining weight. Ms. Underwood repeatedly sought medical care for William to respond to the symptoms of his medical condition, but William's physicians repeatedly failed to properly diagnose his medical condition and attributed

William's failure to thrive, first, to the formula he was provided, and, subsequently, to parental neglect.

18. On May 31, 2001 Defendant BCCYS, through Defendant Socci, filed a "dependency" petition alleging parental neglect. Under Pennsylvania law, a "dependent child" is "a child who is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his physical, mental, or emotional health, or morals." 42 Pa. C.S.A. s. 6335.

19. Also on May 31, 2001, at Ms. Underwood's insistence, William was transferred to Children's Hospital of Pittsburgh where physicians diagnosed and surgically removed the blockage that was responsible for William's failure to gain weight. In order to be closer to William, who was admitted to Children's Hospital of Pittsburgh on May 31, Ms. Underwood moved from Beaver County to her mother's home in Braddock, Pennsylvania in Allegheny County.

20. Defendants BCCYS and Socci were immediately informed that William's problems were related to his medical condition, and not the result of parental neglect, yet Defendants nevertheless continued to pursue a finding that William was dependent in order to force Ms. Underwood "to cooperate with [this] agency."

21. Although BCCYS knew that William's failure to thrive was not the result of neglect, BCCYS used the threat of a dependency adjudication and removal of William to impose its supervision and control on Ms. Underwood's family. Defendant BCCYS thus wrongfully insinuated itself into Ms. Underwood and William's parent-child relationship by pursuing accusations of neglect against Ms. Underwood, which had no factual or legal basis. On June 20, 2001, based on Defendant Socci's allegations, the dependency complaint as to William was

continued for two months on the condition that Ms. Underwood “accept services and undergo parenting evaluation.”

22. During July and August 2001, Defendant Hubbard and other representatives of Defendant BCCYS visited Ms. Underwood’s aunt’s home in Beaver County seven times and met with Ms. Underwood there on three or four occasions. BCCYS records reflect that Defendants criticized Ms. Underwood’s attitude during these visits. There is no indication, however, that BCCYS had any concern with the condition of Ms. Underwood’s aunt’s residence in Beaver County, or with Ms. Underwood’s mental health, or any concern that Ms. Underwood was drug or alcohol dependent – “concerns” that BCCYS would later claim as justification for removing William from Ms. Underwood’s custody and refusing to reunite mother and son.

23. In fact, the BCCYS records reflect that Ms. Underwood had provided medical care and supervision to William, and that William was “OK” or “doing fine” during this time period.

24. On August 15, 2001, Juvenile Services Intake Officer Colleen Tittinger informed Defendant Hubbard that the dependency petition brought with respect to William would no longer be continued because there was insufficient evidence on which to proceed. On August 20, 2001, the two-month continuance of BCCYS’s dependency complaint expired.

25. On August 21, 2001 Defendant Hubbard solicited Ms. Underwood’s consent to BCCYS’s continued supervision of her relationship with William. Ms. Underwood refused to consent. Even if there had been a legal or factual basis for Defendants’ interference in Ms. Underwood’s family prior to August 2001 -- which Plaintiff strongly disputes -- no such justification existed upon expiration of the June 20, 2001 continuance, at which time BCCYS had received notice that its dependency petition with respect to William would be dismissed, and Ms.

Underwood refused to consent to BCCYS's involvement in her custody and care of William. BCCYS did not, however, cease and desist its interference in the relationship between Ms. Underwood and her infant son William.

26. Instead, on August 16, 2001, Defendant Hubbard began a surreptitious campaign to have Ms. Underwood's aunt's residence subjected to a code inspection. Between August 16 and September 20, 2001, Defendant Hubbard contacted the Beaver Falls Code Enforcement Office on at least four separate occasions, seeking to persuade that Office to undertake a code enforcement inspection of Ms. Underwood's aunt's home.

27. Despite meeting with Ms. Underwood on at least three occasions during this same time period, Defendant Hubbard failed to disclose to Ms. Underwood any concern with the suitability of Ms. Underwood's aunt's residence. Nor did Defendant Hubbard offer Ms. Underwood any available services to remedy any alleged issues with Ms. Underwood's aunt's residence.

28. BCCYS records reflect that it learned on October 2, 2001 that the water at Ms. Underwood's aunt's residence, which Ms. Underwood and William frequently visited, was scheduled to be turned off on October 3, 2001. Defendant Hubbard did not attempt to inform Ms. Underwood that the water at her aunt's residence would be turned off.

Under state law, emergency housing services to resolve any water or other housing problems were readily available, but BCCYS did not request these services, or inform Ms. Underwood of their availability. Instead, Defendant Hubbard contacted the Beaver Falls Code Enforcement Office again requesting an inspection of Ms. Underwood's aunt's residence, only to be told to call back after the water services had been terminated.

29. On October 4, 2001, Defendant Hubbard, a representative of the Beaver Falls Code Enforcement Office, the Beaver Falls fire chief and four Beaver Falls police officers (Defendant Does 1-4) made an unannounced visit to Ms. Underwood's aunt's residence. Although Ms. Underwood and William resided with Ms. Underwood's mother in Allegheny County -- and had resided in Allegheny County since May 31, 2001 when Ms. Underwood moved there to be closer to William who was, at the time, being treated at Children's Hospital -- they were at Ms. Underwood's aunt's residence on October 4, 2001 because Ms. Underwood had stopped there on her way to a doctor's appointment for William.

30. Informing Ms. Underwood for the first time of alleged deficiencies in Ms. Underwood's aunt's residence, Defendant Hubbard demanded that Ms. Underwood relinquish custody of William. Defendant Doe Beaver Falls police officers threatened Ms. Underwood with physical restraint, arrest and imprisonment if she did not relinquish custody of William.

At no time between August 16, 2001, when Defendant Hubbard commenced efforts to have Ms. Underwood's aunt's residence subjected to code inspection, and October 4, 2001, when she took physical custody of William, did Defendant BCCYS or its employee Defendants make any referral or offer Ms. Underwood any assistance to obtain housing nor did they ever seek judicial authorization for the investigation of Ms. Underwood, the interference in the relationship between Ms. Underwood and William or the removal of William from Ms. Underwood's custody.

31. Defendants refused Ms. Underwood's request to return with William to her home in Braddock, Allegheny County and refused Ms. Underwood's request to transfer temporary custody of William to her cousin, Darcell Slappy, who was present and willing to accept custody. Yet, other minor children then permanently residing in Ms. Underwood's aunt's residence and present at the time of the seizure of William were not removed.

32. Defendant Hubbard seized William on October 4, 2001 without prior judicial authorization, without any factual basis to believe that William had been abused, neglected or was in danger of imminent harm, and without permitting less restrictive means to alleviate any threat that the alleged condition of Ms. Underwood's aunt's residence constituted to William's health and safety.

B. Ms. Underwood and William Were Denied a Meaningful Hearing to Contest the Seizure of William.

33. On October 9, 2001, Ms. Underwood attended a "hearing" which violated the provisions of Pennsylvania's Juvenile Act, 42 Pa. C.S.A. §§ 6301-6365 in numerous respects, including that Ms. Underwood was not represented by counsel, no testimony was taken, and no record was maintained. As a matter of practice, no record of any "detention hearings" are created or maintained, and parents at such proceedings are not afforded an opportunity for representation. Nevertheless, this "hearing" resulted in an Order of Detention "authorizing" Defendant BCCYS to maintain custody of William.

34. On October 23, 2001, a dependency adjudication hearing was held. Ms. Underwood was represented at the dependency adjudication by Defendant Attorney Jeffrey Small, who had been appointed on June 12, 2001 to represent Ms. Underwood in matters brought by BCCYS concerning William. Despite having been appointed to represent Ms. Underwood four months earlier, Defendant Attorney Small first met Ms. Underwood only minutes before the October 23, 2001 hearing

35. Attorney Small failed to conduct any factual investigation of the case, including a failure to inquire of his client as to the factual basis of the pending hearing. Nevertheless, Defendant Attorney Small advised Ms. Underwood to remain silent throughout the proceedings and

to agree to dependency and removal of William. Attorney Small did not advise Ms. Underwood as to the factual and legal significance of a finding of dependency.

36. The Master at the October 23, 2001 hearing did not conduct any colloquy to determine Ms. Underwood's understanding and acceptance of the required factual and legal predicates for a finding of dependency or placement or their legal significance. No evidence was offered at the October 23, 2001 hearing. No transcript of the October 23, 2001 hearing was preserved. Ms. Underwood's stipulation to dependency was unknowing and unintelligent in that neither the Master nor Attorney Small explained the legal significance of such a stipulation, no facts were presented on the record from which Ms. Underwood could determine the consequence of such a stipulation and Ms. Underwood was not otherwise aware of the consequences.

37. Neither factual nor legal grounds sufficient to justify finding William dependent or removing him from Ms. Underwood's custody existed on October 23, 2001 or at any time thereafter.

C. BCCYS Imposed Unlawful, Irrelevant and Onerous Conditions on the Reunification of Ms. Underwood and William

38. After the October 23, 2001 hearing, rather than take steps to correct the alleged housing problem as it was required to do, BCCYS erected numerous arbitrary barriers to parent-child reunification. Despite the fact that the asserted ground of dependency was related to a housing issue, and that BCCYS records from that time indicate that Ms. Underwood's supervision of William was not an issue, the agency preconditioned Ms. Underwood's reunification with her child on completion of a parenting program, a drug and alcohol assessment, and a mental health assessment. The first two conditions are completely unrelated to the

asserted ground of dependency, and the third violates a Pennsylvania Supreme Court decision. Defendants had no factual basis to impose any of these preconditions to reunification.

39. Following the finding of dependency and the imposition of improper and irrelevant conditions to reunification, Defendant BCCYS failed to identify, provide and supervise services to Ms. Underwood to assist her reunification with William as required by statute. In fact, BCCYS withheld from Ms. Underwood and William supportive services that it made available to others to assist reunification.

40. Defendant BCCYS imposed visitation arrangements on Ms. Underwood that were contrary to the best interests of William, destructive of the relationship between Ms. Underwood and William and contrary to statutory requirements. Specifically, BCCYS permitted Ms. Underwood only two one-hour visits per month with William, and all visits were scheduled at BCCYS's office, which was a significant distance from Ms. Underwood's home. BCCYS threatened Ms. Underwood with legal proceedings should she attempt to visit with William outside of the location and times authorized by BCCYS. No effort was made by any of the Beaver County Defendants to alleviate visitation difficulties even though such supportive services were provided to others similarly situated to Ms. Underwood.

41. Beginning in February 2002, Defendants began pursuing the termination of Ms. Underwood's parental rights and the permanent separation of mother and child. In July 2002 and January 2003, Defendants Hubbard and Bond recommended that William be placed for adoption. Defendants based their recommendation that William be adopted on Ms. Underwood's alleged failure to secure adequate housing, to secure a mental health assessment, and to complete parenting classes. Because of Defendants' deliberate or reckless failure to investigate and assess readily available information that both supported the immediate reunification of Ms. Underwood

and William and showed numerous alternatives to adoption, the information on which these recommendations were based was false and materially incomplete. Ms. Underwood had, in fact, secured safe and suitable housing, completed the parenting classes unlawfully and unnecessarily required of her, and even attempted to comply with BCCYS's unlawful and arbitrary requirement of a mental health assessment.

42. On January 27, 2003 the Court of Common Pleas of Beaver County accepted the recommendation of BCCYS and changed William's placement plan from reunification to adoption. Defendant Attorney Small did not appear to represent Ms. Underwood at the January 27, 2003 hearing. Following the January 27, 2003 order, Defendant Hubbard and BCCYS sought and obtained entry of a separate order terminating Ms. Underwood's visitation with William.

43. William remains under the custody of BCCYS to this day.

D. BCCYS Seized Na'Dayja Underwood Carter without Prior Judicial Authorization and Without Any Basis to Believe that Na'Dayja was Abused, Neglected, or in Imminent Danger of Harm.

44. As early as July 2002, BCCYS records reflect that it had actual knowledge that Ms. Underwood was pregnant with her second child. During Ms. Underwood's visits with William in January and February 2003, Defendants Hubbard and Bond noted that "it [was] clearly visible that Ms. Underwood was pregnant," and that she "will give birth any day now." Despite knowing for over six months that Ms. Underwood was pregnant, Defendant BCCYS did not seek judicial authorization to take custody upon the birth of Ms. Underwood's child.

45. Na'Dayja Underwood Carter was born on February 19, 2003.

46. On February 19, 2003, Defendant Hubbard was notified of Na'Dayja's birth, and, without any factual investigation, Defendants Hubbard and Bond decided to remove Na'Dayja from the care and custody of her mother. When Na'Dayja was one day old, without prior judicial

authorization, Defendant Hubbard removed Na'Dayja from her mother's custody and care and placed Na'Dayja in foster care. The seizure took place in the hospital at which Na'Dayja had been born the previous day. At the time that Defendant Hubbard took custody of Na'Dayja, Na'Dayja was healthy and safe and had not been abused or neglected in any respect.

47. Defendants filed an allegation for dependency for Na'Dayja contending that because Ms. Underwood had not cooperated with BCCYS and because her son William had earlier been found dependent, Na'Dayja should also be declared dependent. Although the reason for William's alleged dependency was an alleged lack of suitable housing, the Beaver County Defendants had made no effort to ascertain the adequacy of Ms. Underwood's housing at Na'Dayja's birth. In fact, Ms. Underwood had moved into her own clean, safe and structurally sound apartment, and BCCYS had been specifically informed that Ms. Underwood resided in new housing.

48. Because Defendants deliberately or recklessly failed to investigate the factual basis of their petition for dependency, they made allegations that were materially false and incomplete, including that Ms. Underwood had not completed parenting classes, that she was at risk for drug and alcohol abuse, and that she had not sought mental health counseling. Tellingly omitted from Defendants' petition for dependency was any allegation that Na'Dayja had been abused or neglected or was in danger of imminent harm. The allegations in Defendants' petition for dependency, even if substantiated, were legally insufficient to justify the seizure of Na'Dayja and the separation of Ms. Underwood from her infant daughter.

49. On February 24, 2003, Ms. Underwood attended a "hearing" which, in numerous respects, violated the provisions of the Juvenile Act. Ms. Underwood was not

represented by counsel, no testimony was taken, and no record was maintained at this “hearing” all in violation of the Juvenile Act. As a matter of practice, no record of any “detention hearing” is created or maintained, and parents at such proceedings are not afforded an opportunity for representation. Nevertheless, this “hearing” resulted in an Order of Detention “authorizing” Defendant BCCYS to maintain custody of Na’Dayja.

50. On March 6, 2003, a dependency adjudication hearing regarding Na’Dayja was held. Defendant Attorney Joseph Spratt represented Ms. Underwood at that hearing. Although Defendant Attorney Spratt had conducted no investigation of the alleged factual or legal basis of dependency, he nevertheless instructed Ms. Underwood to stipulate to findings of both dependency and placement. Attorney Spratt did not advise Ms. Underwood as to the factual and legal significance of a finding of dependency.

51. The Master at the March 6, 2003 hearing did not conduct any colloquy to determine Ms. Underwood’s understanding and acceptance of the required factual and legal predicates for a finding of dependency or placement or their legal significance. BCCYS offered no evidence to establish dependency or justify placement as required by law, and Defendant Attorney Spratt did not demand that BCCYS provide any such evidence at the March 6, 2003 hearing. Ms. Underwood’s stipulation to dependency and placement was unknowing and unintelligent in that neither the Master nor Attorney Spratt explained the legal significance of such a stipulation and no facts were presented on the record from which Ms. Underwood could determine the consequences of such a stipulation.

52. Neither factual nor legal grounds sufficient to justify finding Na’Dayja dependent or removing her from Ms. Underwood’s custody existed on February 20, 2003 or at any time thereafter.

53. Following the finding of dependency, Defendant BCCYS and Defendants Hubbard and Bond imposed improper preconditions to Ms. Underwood's reunification with Na'Dayja. These conditions had no factual predicate, legal relevancy, or legitimate relation to the alleged basis of dependency. The asserted grounds for dependency for Na'Dayja wrongfully referred to the dependency of William, which under Pennsylvania law is not material to Na'Dayja's alleged dependency. Moreover, with no factual basis and against legal authority, BCCYS unlawfully required, as a condition of reunification, that Ms. Underwood have a mental health evaluation.

54. Following the finding of dependency and the imposition of improper and irrelevant conditions to reunification, Defendant BCCYS failed to identify, provide and supervise services to Ms. Underwood to assist her reunification with Na'Dayja as required by statute and as provided to others similarly situated to Ms. Underwood. Defendant BCCYS imposed visitation arrangements for Ms. Underwood that were contrary to the best interests of Na'Dayja, destructive of the relationship between Ms. Underwood and Na'Dayja and contrary to statutory requirements. Specifically, BCCYS permitted Ms. Underwood two one-hour visits per month with Na'Dayja.

55. Following entry of the appearance of successor counsel, Ms. Underwood obtained a *de novo* hearing to contest BCCYS's claim of Na'Dayja's dependency, which hearing commenced on May 27, 2003. Prior to the conclusion of the May 27, 2003 hearing, Defendant BCCYS agreed to the entry of an order which returned Na'Dayja to Ms. Underwood's care and custody on May 29, 2003. On July 15, 2003, an Order was entered dismissing the Petition alleging dependency of Na'Dayja.

E. Defendants Colonna, Truesh and Doe BCCYS Supervisors Failed to Train and Supervise the Defendant Employees of BCCYS.

56. On information and belief, Defendants Colonna, Truesh and Doe BCCYS Supervisors failed to properly or adequately train and supervise Defendant employees of BCCYS about the federal and state Constitutional and federal and Pennsylvania statutory restrictions on their authority to separate children from their parents.

57. On information and belief, Defendants Colonna, Truesh and Doe BCCYS Supervisors knew or should have known that Defendant employees of BCCYS had violated the constitutional and statutory rights of Plaintiffs and others, yet Defendants did not require appropriate training or re-training of the Defendant employees under their supervision and control. Defendants Colonna, Truesh and Doe knew or should have known that failure to provide appropriate training or re-training would result in future deprivations of Constitutional and statutory rights.

F. Policy and Practice Allegations

58. On information and belief, Defendant BCCYS developed and maintained unconstitutional policies and customs exhibiting willful disregard of the constitutional and other rights of parents and children, including the following policies or customs, which proximately caused damages to Ms. Underwood and her minor children:

a. inadequately and improperly investigating allegations of abuse or neglect;

- b. inadequately supervising and training its caseworkers, including Defendants Socci, Hubbard, and Bond;
- c. seeking dependency orders for children who do not meet the statutory requirement of being without parental control or supervision;
- d. failing to allege, with the specificity required by law, facts that form the basis of dependency
- e. stipulating to dependency without providing record evidence sufficient to justify such a finding;
- f. imposing arbitrary, onerous, unlawful and irrelevant preconditions to the reunification of parents with their children;
- g. arbitrarily withholding mandated and available services that would alleviate dependency and/or placement and/or achieve reunification;
- h. requiring mental health evaluations as a condition of reunification of parents and children;
- i. seeking separation of parents from their children despite the fact that the statutory requirement that there be no feasible alternatives to separation is not met;
- j. seeking retribution against parents and others who lawfully question and/or oppose the illegitimate actions and conduct of the Beaver County Defendants;

k. acting with intentional and/or reckless disregard of the Constitutional and statutory rights of individuals, including all Plaintiffs herein and those similarly situated;

l. arbitrarily discriminating against the Constitutional and statutory rights of individuals, including all Plaintiffs herein and those similarly situated with either or both intent to discriminate or through improper execution of its duties.

COUNT I
VIOLATION OF CIVIL RIGHTS UNDER 42 U.S.C. § 1983 AND THE 14TH AMENDMENT
TO THE CONSTITUTION OF THE UNITED STATES

PROCEDURAL DUE PROCESS – SEIZURE OF WILLIAM

59. Plaintiffs incorporate by reference, as if fully set forth herein, each and every one of the foregoing paragraphs.

60. Defendant Hubbard and Defendant Doe Police Officers acted under color of state law when they seized William on October 4, 2001.

61. Neither Defendant Hubbard nor Defendant Doe Police Officers sought, or received, prior judicial authorization for the seizure of William.

62. Defendant Hubbard and Defendant Doe Police Officers seized William without any reason to believe he was abused, neglected or in danger of imminent harm.

63. It is the policy, custom or practice of Defendant BCCYS to seize minor children from their parents without prior judicial authorization; and without any reasonable basis to believe such seizure is necessary to protect the child from imminent harm.

64. Defendant Hubbard acted pursuant to this policy, custom or practice of Defendant BCCYS when she seized William on October 4, 2001.

65. Defendant Hubbard and Defendant Doe Police Officers' actions in seizing William were willful, wanton and malicious.

66. By their subsequent conduct, Defendant BCCYS and all known and unknown supervisory employees of BCCYS, Defendants herein, ratified the wrongful conduct of Defendants Hubbard and Doe Police Officers intentionally and/or recklessly or through improper discharge of their duties to oversee and supervise.

67. As a result of the above described acts, Plaintiff Selena Underwood was deprived of rights and liberties secured to her by the United States Constitution. Specifically, Selena Underwood was deprived of the care, custody and companionship of her infant child without due process of law in violation of the Fourteenth Amendment to the United States Constitution.

68. As a result of the above described acts, Plaintiff William Underwood was deprived of rights and liberties secured to him by the United States Constitution. Specifically, William Underwood was deprived of the protection and companionship of his natural mother without due process of law in violation of the Fourteenth Amendment to the United States Constitution.

COUNT II
VIOLATION OF CIVIL RIGHTS UNDER 42 U.S.C. § 1983 AND THE 4TH AMENDMENT
TO THE CONSTITUTION OF THE UNITED STATES

UNREASONABLE SEARCH AND SEIZURE – SEIZURE OF WILLIAM

69. Plaintiffs incorporate by reference, as if fully set forth herein, each and every one of the foregoing paragraphs.

70. Defendant Hubbard and Defendant Doe Police Officers acted under color of state law when they seized William on October 4, 2001.

71. Defendant Hubbard and Defendant Doe Police Officers' seizure of William was without a warrant, without probable cause and was unreasonable under all of the circumstances.

72. It is the policy, practice or custom of Defendant BCCYS to seize minor children without warrant, probable cause or a reasonable basis to believe they have been abused, neglected or in danger of imminent harm.

73. Defendant Hubbard acted pursuant to this policy, practice or custom when she seized William Underwood on October 4, 2001.

74. Defendant Hubbard and Defendant Doe Police Officers' actions in seizing William were willful, wanton and malicious.

75. By their subsequent conduct, Defendant BCCYS and all known and unknown supervisory employees of BCCYS, Defendants herein, ratified the wrongful conduct of Defendants Hubbard and Doe Police Officers intentionally and/or recklessly or through improper discharge of their duties to oversee and supervise.

76. As a result of the above described acts, Plaintiff William Underwood was deprived of rights and liberties secured to him by the United States Constitution. Specifically, William Underwood was deprived of the right to be free of unreasonable searches and seizures in violation of the Fourth and Fourteenth Amendments to the United States Constitution.

COUNT III
VIOLATION OF CIVIL RIGHTS UNDER 42 U.S.C. § 1983 AND THE FOURTEENTH
AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

SUBSTANTIVE DUE PROCESS

77. Plaintiffs incorporate by reference, as if fully set forth herein, each and every one of the foregoing paragraphs.

78. The Beaver County Defendants and Defendant Doe Police Officers acted under color of state law when they investigated Selena Underwood, separated William from Selena Underwood and deprived Selena Underwood of sole custody of William from October 4, 2001 to the present.

79. The continued investigation of Selena Underwood after Defendants knew that William suffered from a medical condition for which Ms. Underwood had sought and secured immediate medical care was without any factual or legal basis, and constituted an arbitrary and unconscionable abuse of government authority.

80. The separation of Selena Underwood from her infant child, William, was without any factual or legal basis and constituted an arbitrary and unconscionable abuse of government authority.

81. The imposition of unlawful, onerous and irrelevant preconditions to the reunification of Ms. Underwood and William was intended to or was reasonably likely to destroy the sacred bond between mother and child and constituted an arbitrary and unconscionable abuse of government authority.

82. Defendants' attempt to terminate Ms. Underwood's parental rights with respect to William based on their own willful failure to investigate and assess the factual basis underlying the allegations of dependency was an arbitrary and unconscionable abuse of government authority.

83. Defendants' conduct in separating William and Selena Underwood, imposing unlawful, irrelevant and onerous preconditions to the reunification of the Underwood family; and attempting to permanently terminate Ms. Underwood's parental rights was willful, wanton and malicious and shocks the conscience.

84. It is the policy, practice or custom of Defendant BCCYS to fail to investigate the factual basis of dependency; to impose unlawful, onerous and irrelevant conditions on reunification of mother and child; and to seek termination of parental rights without sufficient factual or legal basis.

85. It is the policy, practice and custom of Defendant BCCYS to fail to identify and make referral to available community resources that would alleviate claimed grounds of dependency and placement so as to unlawfully continue its claimed basis of authority over individuals such as, and including, Ms. Underwood and William.

86. Defendants Socci, Hubbard, and Bond acted pursuant these policies, practices or customs of Defendant BCCYS when they investigated Selena Underwood, initiated and continued dependency proceedings and separated William from Selena Underwood and deprived Selena Underwood of sole custody of William from October 4, 2001 to the present.

87. By their subsequent conduct, Defendant BCCYS and all known and unknown supervisory employees of BCCYS, Defendants herein, ratified the wrongful conduct of Defendants Hubbard, Socci and Bond intentionally and/or recklessly or through improper discharge of their duties to oversee and supervise.

88. As a result of the above described acts, Plaintiffs Selena and William Underwood were deprived of rights and liberties secured to them by the United States Constitution. Specifically, Selena and William Underwood were deprived of the right to familial integrity and association protected by the substantive component of the due process clause of the Fourteenth Amendment to the United States Constitution.

COUNT IV
VIOLATION OF CIVIL RIGHTS UNDER 42 U.S.C. § 1983 AND THE FOURTEENTH
AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

PROCEDURAL DUE PROCESS – SEIZURE OF NA'DAYJA

89. Plaintiffs incorporate by reference, as if fully set forth herein, each and every one of the foregoing paragraphs.

90. Defendants Hubbard and Bond acted under color of state law when, on February 19, 2003, they conspired to seize Na'Dayja. Defendant Hubbard acted under color of state law when she seized Na'Dayja on or about February 20, 2003.

91. Defendants Hubbard, Bond and BCCYS neither sought nor received prior judicial authorization for the seizure of Na'Dayja.

92. Defendants Hubbard and Bond had no basis to believe that Na'Dayja had been abused or neglected or was in danger of imminent harm.

93. Defendants Hubbard and Bond's actions in seizing Na'Dayja were willful, wanton, and malicious.

94. It is the policy, custom or practice of Defendant BCCYS to seize minor children from their parents without prior judicial authorization, and without any reasonable basis to believe such seizure is necessary to protect the child from imminent harm.

95. Defendants Hubbard and Bond acted pursuant to this policy, practice or custom of Defendant BCCYS when they conspired to separate, and did in fact separate, Na'Dayja from the care and custody of her mother on or about February 20, 2003.

96. By their subsequent conduct, Defendant BCCYS and all known and unknown supervisory employees of BCCYS, Defendants herein, ratified the wrongful conduct of Defendants Hubbard and Bond intentionally and/or recklessly or through improper discharge of their duties to oversee and supervise.

97. As a result of the above described acts, Plaintiff Selena Underwood was deprived of rights and liberties secured to her by the United States Constitution. Specifically, Selena Underwood was deprived of the care, custody and companionship of her infant child without due process of law in violation of the Fourteenth Amendment to the United States Constitution.

98. As a result of the above described acts, Plaintiff Na'Dayja Underwood Carter was deprived of rights and liberties secured to her by the United States Constitution. Specifically, Na'Dayja Underwood Carter was deprived of the protection and companionship of her natural mother without due process of law in violation of the Fourteenth Amendment to the United States Constitution.

COUNT V
VIOLATION OF CIVIL RIGHTS UNDER 42 U.S.C. § 1983 AND THE FOURTEENTH
AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

UNREASONABLE SEARCH AND SEIZURE –SEIZURE OF NA'DAYJA

99. Plaintiffs incorporate by reference, as if fully set forth herein, each and every one of the foregoing paragraphs.

100. Defendants Hubbard and Bond acted under color of state law when, on February 19, 2003, they conspired to seize Na'Dayja. Defendant Hubbard acted under color of state law when she seized Na'Dayja on or about February 20, 2003.

101. Defendant Hubbard's seizure of Na'Dayja was without a warrant, without probable cause and was unreasonable under all of the circumstances.

102. Defendant Hubbard and Bond's actions in conspiring to seize, and seizing Na'Dayja were willful, wanton and malicious.

103. It is the policy, practice or custom of Defendant BCCYS to seize minor children without warrant, probable cause or a reasonable basis to believe they have been abused, neglected or in danger of imminent harm.

104. Defendants Hubbard and Bond acted pursuant to a policy or practice of Defendant BCCYS when they conspired to separate, and did in fact separate Na'Dayja from the care and custody of her mother on or about February 20, 2003.

105. By their subsequent conduct, Defendant BCCYS and all known and unknown supervisory employees of BCCYS, Defendants herein, ratified the wrongful conduct of Defendants Hubbard and Bond intentionally and/or recklessly or through improper discharge of their duties to oversee and supervise.

106. As a result of the above described acts, Plaintiff Na'Dayja Underwood Carter was deprived of rights and liberties secured to her by the United States Constitution. Specifically, Na'Dayja Underwood Carter was deprived of the right to be free of unreasonable searches and seizures in violation of the Fourth and Fourteenth Amendments to the United States Constitution.

COUNT VI
VIOLATION OF CIVIL RIGHTS UNDER 42 U.S.C. § 1983 AND THE FOURTEENTH
AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

SUBSTANTIVE DUE PROCESS

107. Plaintiffs incorporate by reference, as if fully set forth herein, each and every one of the foregoing paragraphs.

108. Defendants Hubbard and Bond acted under color of state law when they separated Na'Dayja from Selena Underwood and deprived Selena Underwood of sole custody of Na'Dayja from on or about February 20, 2003 until on or about July 16, 2003.

109. The separation of Selena Underwood from her infant child, Na'Dayja, was without any factual or legal basis and constituted an arbitrary and unconscionable abuse of government authority.

110. The imposition of onerous and irrelevant preconditions to the reunification of Selena Underwood and Na'Dayja was intended to destroy the sacred bond between mother and child and constituted an arbitrary and unconscionable abuse of government authority.

111. Defendants' conduct in seizing Na'Dayja from the hospital where she was born only one day earlier; imposing unlawful, irrelevant and onerous preconditions to the reunification of the Underwood family; and attempting to permanently terminate Ms. Underwood's parental rights to Na'Dayja was willful, wanton and malicious and shocks the conscience.

112. It is the policy, practice or custom of Defendant BCCYS to fail to investigate the factual basis of dependency and to impose unlawful, onerous and irrelevant conditions on reunification of Na'Dayja to the care and custody of Selena Underwood was willful, wanton and malicious and shocks the conscience..

113. Defendants Hubbard and Bond acted pursuant to this policy, practice or custom of Defendant BCCYS when they separated Na'Dayja from Selena Underwood and deprived Selena Underwood of sole custody of Na'Dayja from on or about February 20, 2003 until on or about July 16, 2003.

114. By their subsequent conduct, Defendant BCCYS and all known and unknown supervisory employees of BCCYS, Defendants herein, ratified the wrongful conduct of Defendants Hubbard and Bond intentionally and/or recklessly or through improper discharge of their duties to oversee and supervise.

115. As a result of the above described acts, Plaintiffs Selena Underwood and Na'Dayja Underwood Carter were deprived of rights and liberties secured to them by the United States Constitution. Specifically, Selena Underwood and Na'Dayja Underwood Carter were deprived of the right to familial integrity and association protected by the substantive component of the due process clause of the Fourteenth Amendment to the United States Constitution.

COUNT VII

VIOLATION OF CIVIL RIGHTS UNDER 42 U.S.C. § 1983 AND THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

EQUAL PROTECTION

116. Plaintiffs incorporate by reference, as if fully set forth herein, each and every one of the foregoing paragraphs.

117. Defendant BCCYS and its employee Defendants above described conduct in withholding and refusing to provide available and mandated services that would have prevented dependency and/or placement and/or effected reunification amount to unlawful discrimination.

118. Defendants conduct was vindictive, intentionally treated Plaintiffs differently without rational basis both as individuals and as distinguished from those similarly situated to all Plaintiffs. Defendants conduct was either motivated by ill-will or was undertaken with the intent to deprive Plaintiff Selena Underwood of her rights or with reckless disregard of those rights.

119. Defendants conduct as above set forth was wholly unrelated to any legitimate governmental objective and was irrational and wholly arbitrary or otherwise constituted arbitrary discrimination through improper execution of its legal obligations effecting a denial of equal protection of the laws guaranteed to the Plaintiffs under the 14th Amendment to

the United States Constitution.

COUNT VIII
VIOLATION OF THE PENNSYLVANIA CONSTITUTION, ARTICLE I, SECTION 1

DUE PROCESS

120. Plaintiffs incorporate by reference, as if fully set forth herein, each and every one of the foregoing paragraphs.

121. As a result of Defendants' acts as described above in Counts I, III, IV, and VI, Plaintiffs Selena Underwood, William Underwood and Na'Dayja Underwood Carter were deprived of rights and liberties secured to them by the Pennsylvania Constitution. Specifically, Selena Underwood, William Underwood and Na'Dayja Underwood Carter were deprived of the right to familial integrity and association protected by Article I, Section 1 of the Pennsylvania Constitution.

COUNT IX
VIOLATION OF THE PENNSYLVANIA CONSTITUTION, ARTICLE I, SECTION 8

UNREASONABLE SEARCH AND SEIZURE

122. Plaintiffs incorporate by reference, as if fully set forth herein, each and every one of the foregoing paragraphs.

123. As a result of Defendants' acts as described above in Counts II and V, Plaintiffs William Underwood and Na'Dayja Underwood Carter were deprived of rights and liberties secured to them by the Pennsylvania Constitution. Specifically, William Underwood and Na'Dayja Underwood Carter were deprived of the right to be free from unreasonable searches and seizures protected by Article I, Section 8 of the Pennsylvania Constitution.

COUNT X
VIOLATION OF THE PENNSYLVANIA CONSTITUTION, ARTICLE I, SECTION 26

EQUAL PROTECTION

124. Plaintiffs incorporate by reference, as if fully set forth herein, each and every one of the foregoing paragraphs.

125 Defendant BCCYS and its employee Defendants above described conduct in withholding and refusing to provide available and mandated services that would have prevented dependency and/or placement and/or effected reunification amount to unlawful discrimination in violation of the equal protection component of the Constitution of the Commonwealth of Pennsylvania.

COUNT XI
FALSE IMPRISONMENT

126. Plaintiff incorporates by reference, as if fully set forth herein, each and every one of the foregoing paragraphs.

127. Plaintiff William Underwood was unlawfully detained by Defendants on October 4, 2001 and thereafter.

128. Plaintiff Na'Dayja Underwood Carter was unlawfully detained by Defendants on or about February 20, 2003.

129. Defendants detained William and Na'Dayja intentionally.

130. William and Na'Dayja suffered damage as a proximate cause of their unlawful and intentional detention.

COUNT XII

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

131. Plaintiff incorporates by reference, as if fully set forth herein, each and every one of the foregoing paragraphs.

132. The conduct of Defendants, as described above, was intentional, extreme, outrageous, without privilege or justification and transcended all bounds of decency.

133. Defendants intended by their conduct to inflict emotional distress upon Plaintiffs Selena Underwood, William Underwood, and Na'Dayja Underwood Carter or knew or should have known that emotional distress was the certain consequence of such illegal, reckless, unwarranted, extreme and outrageous actions.

134. Defendants actions described above did actually and proximately cause Plaintiffs to suffer extreme emotional distress.

135. Said conduct, described above, constitutes intentional infliction of emotional distress to Plaintiffs for which Defendants are liable under the laws of the Commonwealth of Pennsylvania for the damages caused to Plaintiffs.

**COUNT XIII
ABUSE OF PROCESS**

136. Plaintiff incorporates by reference, as if fully set forth herein, each and every one of the foregoing paragraphs.

137. Defendants used civil legal processes for purposes for which they were not designed resulting in the seizure of William and Na'Dayja and the prolonged separation of William and Na'Dayja from their mother.

138. Defendants' wrongful conduct constitutes abuse of process, which caused

damage to Plaintiffs and for which Defendants are liable under the laws of the Commonwealth of Pennsylvania.

COUNT XIV
WRONGFUL USE OF CIVIL PROCEEDINGS

139. Plaintiff incorporates by reference, as if fully set forth herein, each and every one of the foregoing paragraphs.

140. Defendants took part in the procurement, initiation, and continuation of civil proceedings against Selena Underwood. Specifically, Defendants sought an order of dependency with respect to Ms. Underwood's minor child, Na'Dayja.

141. Defendants acted without probable cause and primarily for a purpose other than that of securing the proper discovery, or adjudication of the claim in which the proceedings were based.

142. The proceedings have terminated in favor of Ms. Underwood.

143. Defendants' wrongful conduct constitutes wrongful use of civil proceedings, which caused damage to Plaintiffs and for which Defendants are liable under the laws of the Commonwealth of Pennsylvania. .

COUNT XV
INVASION OF PRIVACY

144. Plaintiff incorporates by reference, as if fully set forth herein, each and every one of the foregoing paragraphs.

145. Defendants intentionally intruded on the solitude or seclusion of Selena Underwood, and her minor children William and Na'Dayja.

146. Defendants' intrusion into the private affairs of the Ms. Underwood and her minor children was substantial and highly offensive to a reasonable person.

147. Defendants' wrongful conduct constitutes invasion of privacy, which caused damage to Plaintiffs and for which Defendants are liable under the laws of the Commonwealth of Pennsylvania.

COUNT XVI

LEGAL MALPRACTICE

148. Plaintiff incorporates by reference, as if fully set forth herein, each and every one of the foregoing paragraphs.

149. Defendant Small was Ms. Underwood's attorney from June 12, 2001 until February 27, 2003.

150. Defendant Spratt was Ms. Underwood's attorney from February 27, 2003 until on or about April 2003.

151. Defendant Small failed to exercise ordinary skill and knowledge in his representation of Ms. Underwood with respect to William's dependency proceedings and thereafter.

152. Defendant Spratt failed to exercise ordinary skill and knowledge in his representation of Ms. Underwood with respect to Na'Dayja's dependency proceedings and thereafter.

153. Defendants Small and Spratt's failure to exercise ordinary skill and knowledge was the proximate cause of damage to Ms. Underwood.

COUNT XVII

ASSAULT

154. Plaintiff incorporates by reference, as if fully set forth herein, each and every one of the foregoing paragraphs.

155. Defendant Doe Police Officers entered up on the premises of Ms. Underwood's aunt's residence without warrant or legal authority.

156. Defendant Doe Police Officers unlawfully interfered with Ms. Underwood's parent-child relationship with William and intentionally threatened her with physical restraint, unlawful touching without her consent, battery and arrest, all of which caused Ms. Underwood to be in immediate fear and apprehension of an immediate battery upon her person.

157. Defendants' wrongful conduct constitutes assault, which caused damage to Plaintiffs and for which Defendants are liable under the laws of the Commonwealth of Pennsylvania.

COUNT XVIII
PUNITIVE DAMAGES

158. Plaintiff incorporates by reference, as if fully set forth herein, each and every one of the foregoing paragraphs.

159. Defendants actions, as described above, were willful, wanton, malicious and outrageous.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment in their favor and the following relief against Defendants:

- a. award Plaintiffs compensatory damages;
- b. award Plaintiffs punitive damages against the individual Defendants;
- c. award Plaintiffs reasonable attorney's fees, costs and expenses;
and
- d. award Plaintiffs such further relief as this Court deems just and appropriate.

Dated: October 2, 2003

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing Complaint being served, via **first class mail**, this 2nd day of October 2003 upon the following:

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David Truesh
Thomas J. Bond
Michelle Hubbard
Steve Socci
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Beaver Falls, PA

Jeffrey R. Small
475 Brady Ridge Road
Beaver, Pennsylvania

Joseph M. Spratt
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