

1988 WL 1098718 (D.Conn.) (Trial Pleading)
United States District Court, D. Connecticut.

Leo MCCOY and William McCoy by their parents and guardians Leo & Esther McCoy, Plaintiffs,

v.

Michael BELMONT, individually; and as Superintendent, Southbury Training School; Jean Gino, M.D., individually; and as Medical Director of Southbury Training School; Ofelia Tee King, M.D., individually; Philadelpo Guevarra, M.D. individually; Brian Lensink, Commissioner Connecticut Department of Mental Retardation; Paul Bruch, M.D., individually, Defendants.

Civ. No. H-85-465 (JAC).

September 13, 1988.

ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANTS TO THIRD AMENDED COMPLAINT
Taken from 1988 WL 1098718

1. Paragraphs 1 and 2 are denied.
2. Paragraph 3 is admitted.
3. The first sentence of paragraph 4 is admitted. Defendants are without sufficient knowledge to form a belief as to the truth of the remainder of paragraph 4.
4. Paragraph 5 is denied.
5. Paragraphs 6 and 7 are admitted only to the extent they allege that the plaintiffs have been judicially declared incapable of performing functions assigned to their parents as guardians, appointed in 1976 and 1977. The remainder of paragraphs 6 and 7 are is denied.
6. Paragraph 8 is admitted insofar as it relates to the plaintiff Leo McCoy. It is admitted as to the plaintiff William McCoy only for the time period ending with the commencement of this action. The remainder of paragraph 8 is denied.
7. Paragraph 9 is denied.
8. Paragraph 10 is denied as alleged.
9. Paragraphs 11, 12, 13 and 14 are denied.
10. Paragraph 15 is admitted to the extent of the allegations concerning Michael Belmont. Paragraph 15 is admitted to the extent it alleges that Stephen Staugaitis is the *Director* of the Southbury Training School and to the extent it enumerates responsibilities set forth in [Section 19a-447 of the General Statutes](#) of Connecticut. The remainder of paragraph 15 is denied.
11. Paragraph 16 is admitted to the extent it alleges that Dr. Gino is the Medical Director at the Southbury Training School and, at times, has provided medical care to the plaintiffs. The remainder of paragraph 16 is denied.
12. Paragraph 17 is admitted to the extent it alleges that Dr. Tee King is a physician at the Southbury Training School and that she was assigned to provide routine medical care to the residents of Cottage 34 from 1983 through 1986. The remainder of paragraph 17 is denied.
13. Paragraph 18 is admitted to the extent it alleges that Dr. Guevarra is a physician at the Southbury Training School and that he was assigned to provide routine medical care to the residents of Cottage 34 from approximately 1978 through 1983. The remainder of paragraph 18 is denied.
14. Paragraph 19 is admitted to the extent it alleges that Dr. Bruch was a physician at the Southbury Training School from, approximately 1960 through 1986, and to the extent it alleges that Dr. Bruch had a special interest in orthopedic problems of

residents of the Southbury Training School. The remainder of paragraph 19 is denied.

15. Paragraph 20 is admitted to the extent it alleges that Brian Lensink is the Commissioner of Mental Retardation for the State of Connecticut and to the extent it alleges his responsibilities as set forth in the Connecticut General Statutes. The remainder of paragraph 20 is denied.

16. Paragraph 21 is admitted to the extent it alleges that the Southbury Training School is located in the Town of Southbury in western Connecticut. The remainder of paragraph 21 is denied.

17. Paragraphs 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38 and 39 are denied.

18. Paragraph 40 is admitted only to the extent it alleges that some activities for residents of Cottage 34 are conducted with a group of residents. The remainder of paragraph 40 is denied.

19. The Defendants are without knowledge sufficient to form a belief as to the truth or meaning of the allegations in paragraph 41.

20. Paragraph 42 is admitted to the extent it alleges that the plaintiffs have varying needs, wishes, and abilities. The remainder of paragraph 42 is denied.

21. Paragraphs 43, 44 and 45 are denied.

22. Paragraph 46 is admitted: (1) to the extent it alleges that the plaintiffs are human beings who have feelings, needs and motivations and varying degrees of potential for growth, development and achievement of self-care and self-support; (2) to the extent it alleges that the plaintiffs are capable of benefiting from programs. The remainder of paragraph 46 is denied as alleged.

23. Paragraphs 47, 48(a), (b) and (c), 49, 50, 51, 52(a)-(e), 53, 54, 55(a)-(e), 56, 57, 58 and 59 are denied.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

At all times mentioned in this lawsuit, the defendants acted within the scope of their duties as officers/employees of the State of Connecticut and acted with good faith belief that their actions were lawful, and therefore they are entitled to qualified immunity from monetary damages.

SECOND AFFIRMATIVE DEFENSE

Insofar as this action seeks money damages from the State of Connecticut, or officials of the State of Connecticut in their official capacities, it is barred under the doctrine of sovereign immunity by the Eleventh Amendment to the United States Constitution.

THIRD AFFIRMATIVE DEFENSE

To the extent that allegations in the Complaint relate to claims for which applicable statutes of limitation have run, such claims are barred.

FOURTH AFFIRMATIVE DEFENSE

The Court should decline to exercise pendent jurisdiction over the State law claims expressed or which may be construed from the Third Amended Complaint because such claims would unnecessarily complicate an already complex litigation through the introduction of many state law issues.

FIFTH AFFIRMATIVE DEFENSE

Any and all state law claims expressed or which may be construed from the Third Amended Complaint are barred by the Eleventh Amendment.

SIXTH AFFIRMATIVE DEFENSE

The defendants claim a statutory set-off in the amount of the plaintiffs' liability for their cost of care against any judgment based on the state law tort claims expressed or which may be construed from the Complaint.