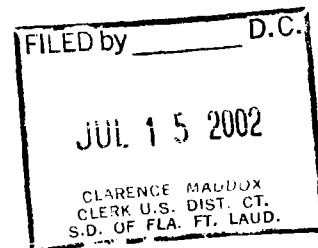


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 00-7545-CIV-ZLOCH



RICHARD COTTONE, as
Personal Representative of
the Estate of PETER ANTHONY
COTTONE, JR., and PETER
COTTONE, SR.,

Plaintiffs,

vs

ORDER

KENNETH C. JENNE, II,
individually and in his
official capacity as Sheriff
of Broward County, Florida, et
al.,

Defendants.

THIS MATTER is before the Court upon the Defendants, Andrew Perfilio, M.D., and Maurice Waldman, M.D.'s Motion To Dismiss Amended Complaint (DE 106), and Defendant, Elma McKenzie's Motion To Dismiss Amended Complaint (DE 104). The Court has carefully reviewed said Motions and the entire court file and is otherwise fully advised in the premises.

The Court notes that only a generalized statement of facts needs to be set out to comply with the liberal Federal Rules of Pleading. A classic formulation of the test often applied to determine the sufficiency of the Complaint was set out by the

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United States Supreme Court in Coney v. Gibson, 355 U.S. 41, 45-46 (1957), wherein the Court stated:

. . . In appraising the sufficiency of the Complaint we follow . . . the accepted rule that a Complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.

The Court adds that a Complaint may not be dismissed because the plaintiff's claim does not support the legal theory he relies on since the Court must determine if the allegations provide relief on any possible theory. See, Robertson v. Johnston, 376 F.2d 43, 44-45 (5th Cir. 1967).

The Court further notes that the legal issues raised by the aforementioned motions to dismiss may be more properly addressed in a Motion For Summary Judgment.

Accordingly, after due consideration, it is

ORDERED AND ADJUDGED as follows:

1. The Defendants, Andrew Perfilio, M.D. and Maurice Waldman, M.D.'s Motion To Dismiss Amended Complaint (DE 106) be and the same is hereby **DENIED**;

2. The Defendant, Elma McKenzie's Motion To Dismiss Amended Complaint (DE 104) be and the same is hereby **DENIED**; and

3. The Defendants, Andrew Perfilio, M.D., Maurice Waldman, M.D., and Elma McKenzie, shall file their Answer to the Plaintiffs'

Amended Complaint within fifteen (15) days of the date of this Order.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 15th day of July, 2002.



WILLIAM J. ZLOCH
Chief United States District Judge

Copies furnished:

Jodi C. Page, Esq.
Barbara A. Meyer, Esq.
Michael Piper, Esq.
James Rowlee, Esq.