

UNPUBLISHED

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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BETTY M. RUSMISELL; ANN  
RUSMISELL,

*Plaintiffs-Appellants,*

v.

GERALD LOCKE SMITH; JOHN BUSCH;  
The law firm of Busch & Talbott,  
L.C.; JIMMIE L. GREEN; R. MARK  
HARPER; WILLIAM E. MCKNIGHT;  
THOMAS KEADLE, Honorable; JAMES  
D. LAROSA; ANKER ENERGY  
CORPORATION; SPRUCE FORKS COAL;  
JOHN T. HASKINS; RAYMOND F.  
PHILLIPS; BASS ENERGY,  
INCORPORATED; JOHN M. BOWERS;  
EUGENE C. SUDER; NORMAND HALE;  
MIKE ROSS, Senator; MIKE ROSS,  
INCORPORATED; VIRGIL MILLER; JAMES  
DANIEL MOODY; JEFFREY ST. CLAIR;  
MAGISTRATE COURT OF UPSHUR  
COUNTY; CIRCUIT COURT OF Upshur  
County; SUPREME COURT OF  
APPEALS OF WEST VIRGINIA; JAMES  
ROSS; TROY BRADY; GREG ANDREWS;  
LARRY MARSH; UNKNOWN FEMALE  
EMPLOYEE OF SHERIFF; CHARLIE  
MCCOURT; JUANITA ADAMS; JAMES  
WOODY; DALE WOODY; M. HUGH  
HEFNER; STEPHEN A. HOLMES; LAURA  
RUSMISELL; DEAN EVERETT;  
MARGARETE GROSE,

*Defendants-Appellees,*

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No. 00-1243

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and

AUBREY A. WILSON,

*Defendant.*

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BETTY M. RUSMISELL; ANN  
RUSMISELL,

*Plaintiffs-Appellants,*

v.

GERALD LOCKE SMITH; JOHN BUSCH;  
The law firm of Busch & Talbott,  
L.C.; JIMMIE L. GREEN; R. MARK  
HARPER; WILLIAM E. MCKNIGHT;  
THOMAS KEADLE, Honorable; JAMES  
D. LAROSA; ANKER ENERGY  
CORPORATION; SPRUCE FORKS COAL;  
JOHN T. HASKINS; RAYMOND F.  
PHILLIPS; BASS ENERGY,  
INCORPORATED; JOHN M. BOWERS;  
EUGENE C. SUDER; NORMAND HALE;  
MIKE ROSS, Senator; MIKE ROSS,  
INCORPORATED; VIRGIL MILLER; JAMES  
DANIEL MOODY; JEFFREY ST. CLAIR;  
MAGISTRATE COURT OF UPSHUR  
COUNTY; CIRCUIT COURT OF Upshur  
County; SUPREME COURT OF  
APPEALS OF WEST VIRGINIA;

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No. 00-1479

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JAMES ROSS; TROY BRADY; GREG  
 ANDREWS; LARRY MARSH; UNKNOWN  
 FEMALE EMPLOYEE OF SHERIFF;  
 CHARLIE MCCOURT; JUANITA ADAMS;  
 JAMES WOODY; DALE WOODY; M.  
 HUGH HEFNER; STEPHEN A. HOLMES;  
 LAURA RUSMISELL; DEAN EVERETT;  
 MARGARETE GROSE,  
     *Defendants-Appellees,*  
     and  
 AUBREY A. WILSON,  
     *Defendant.*

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Appeals from the United States District Court  
 for the Northern District of West Virginia, at Elkins.  
 Robert Earl Maxwell, Senior District Judge.  
 (CA-98-23-2)

Submitted: September 29, 2000

Decided: October 20, 2000

Before WILKINS, LUTTIG, and TRAXLER, Circuit Judges.

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No. 00-1243 affirmed and No. 00-1479 affirmed in part and vacated  
 and remanded in part by unpublished per curiam opinion.

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### COUNSEL

Betty M. Rusmisell, Ann Rusmisell, Appellants Pro Se. John Everett  
 Busch, BUSCH & TALBOTT, Elkins, West Virginia; Daniel C. Cooper,  
 Robert Eugene Gifford, Michael S. Garrison, James Douglas Gray,  
 Michael Kozakewich, Jr., STEPTOE & JOHNSON, Clarks-

burg, West Virginia; Harold Stanford Yost, Bridgeport, West Virginia; James A. Walls, Morgantown, West Virginia; John M. Bowers, French Creek, West Virginia; Ellen R. Archibald, KESNER, KESNER & BRAMBLE, Charleston, West Virginia; Normand Hale, Buckhannon, West Virginia; William Tracey Weber, Jr., WEBER & WEBER, Weston, West Virginia; Norman Thomas Farley, WEST & JONES, Clarksburg, West Virginia; Terry D. Reed, HYMES & COONTS, Buckhannon, West Virginia; Laura Rusmisell, Buckhannon, West Virginia; Dean Everett, Buckhannon, West Virginia; T. Keith Gould, WILSON & BAILEY, Weston, West Virginia, for Appellees.

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Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

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## OPINION

### PER CURIAM:

In No. 00-1243, Betty M. Rusmisell and Ann Rusmisell appeal the district court's orders denying relief in an action filed pursuant to 42 U.S.C.A. § 1983 (West Supp. 2000) and various other federal statutes and denying their motion for reconsideration. We have reviewed the record and the district court's orders and find no reversible error. Specifically, the district court correctly found that the Plaintiffs had failed to state a claim for conspiracy, discrimination, deprivation of due process and property, abridgement of the right to free speech, and denial of access to the courts. Nor did they state a claim under the Americans with Disabilities Act.

Further, summary judgment was correctly entered for the various "law enforcement defendants" on claims including the excessive use of force, malicious prosecution, false arrest, and denial of medical attention. The record reveals that the force used to restrain Ann Rusmisell was reasonable and necessary under the circumstances, *see Taylor v. McDuffie*, 155 F.3d 479, 483 (4th Cir. 1998). Further, with

regard to the Fourth Amendment claims of malicious prosecution and false arrest, Ann cannot show that the underlying proceedings, which resulted in convictions, terminated on terms favorable to her. *See Lambert v. Williams*, 223 F.2d 257, 2000 WL 1099953 at \*12 (4th Cir. Aug. 7, 2000) (No. 99-1819). Finally, because Ann admits that she failed to complain about a purported injury to her hand, and no injury was apparent, her claim for inadequate medical care had no merit. *See Miltier v. Beorn*, 896 F.2d 848, 851-53 (4th Cir. 1990).

In short, there was no merit to any of the allegations in this action. We therefore affirm the district court's decision in No. 00-1243.

In No. 00-1479, the Rusmisells appeal the district court's order awarding \$64,831.93 in attorney's fees under 42 U.S.C. § 1988(b) (1994). The district court did not abuse its discretion in finding the lawsuit to be frivolous and initiated because the Plaintiffs desired revenge for a partition action brought in West Virginia state court. However, because the district court did not apply the factors identified in *Johnson v. Georgia Highway Express*, 488 F.2d 714 (5th Cir. 1974), in setting the amount of the fee award, it is impossible to determine whether the amount awarded was an abuse of discretion. Therefore, we must vacate the fee award and remand for application of the *Johnson* factors. *See EEOC v. Service News Co.*, 898 F.2d 958, 965 (4th Cir. 1990); *Barber v. Kimbrell's, Inc.*, 577 F.2d 216, 226 n.28 (4th Cir. 1978).

We accordingly affirm the decision in No. 00-1243. The decision in No. 00-1479 is affirmed with respect to the decision that attorney's fees should be awarded but vacated and remanded with respect to the amount of fees. The various motions to strike the Appellants' briefs are denied. The motion to strike Aubrey Wilson as a party to the appeal is granted. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

No. 00-1243 - *AFFIRMED*  
NO. 00-1479 - *AFFIRMED IN PART;*  
*VACATED AND REMANDED IN PART*