

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JACOB TEITELBAUM,

Plaintiff,

- against -

JUDA KATZ; CHAYA KATZ; JOEL TENNENBAUM;
BLUMA TENNENBAUM; DAVID RUBENSTEIN;
KIRYAS JOEL COMM AMBULANCE CRP; DISTRICT
FAMILY COURT OF ORANGE COUNTY 9TH JUDICIAL
DISTRICT; HON. ANDREW P. BIVONA; ATTY.
MARIA PETRIZIO; CHILDREN'S RIGHTS SOCIETY
OF ORANGE COUNTY; ATTY. KIM PAVLOVIC;
ATTY JOHN FRANCIS X. BURKE; CHILD
PROTECTIVE SERVICES OF ORANGE COUNTY;
CHRISTINE BRUNET; ATTY. STEPHANIE BAZILEOR;
JOHN DOES 1 THROUGH 95; JANE DOES 1-20;

Defendants.

Docket No. 12-CV-2858 (VB)

MEMORANDUM OF LAW

ON BEHALF OF DEFENDANT MARIA A. PATRIZIO, ESQ. S/H/A ATTY.
MARIA PETRIZIO IN OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE
TO AMEND AND SUPPLEMENT THE AMENDED COMPLAINT

Garbarini & Scher, P.C.

Attorneys for Defendant

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PRELIMINARY STATEMENT AND BACKGROUND

This Memorandum of Law is submitted in opposition to plaintiff's motion for an Order pursuant to F.R.C.P. Rule 15(b)(2) and (d) for an Order granting plaintiff leave to amend and supplement the Amended Complaint and serve a Second Amended Complaint.

In and around June 2012, plaintiff *pro se*, JACOB TEITELBAUM, served an Amended Complaint pursuant to 42 U.S.C. §§ 1983 and 1985 alleging violations of civil rights, as well as state claims for negligent and intentional infliction of emotional distress in connection with child neglect proceedings in New York State Family Court.

MARIA A. PATRIZIO, ESQ. s/h/a ATTY. MARIA PETRIZIO (hereinafter "Ms. Patrizio"), a staff attorney with The Legal Aid Society of Orange County, represented plaintiff's wife, Miriam Teitelbaum, in the Family Court proceeding.

On or about July 20, 2012, Ms. Patrizio filed an F.R.C.P. 12(b)(6) motion dismissing the original and Amended Complaint based upon the following grounds: (1) Legal Aid attorneys are private counsel who are not state actors, do not act under "color of state law," and therefore cannot be liable under 42 U.S.C. § 1983; (2) the Complaint and Amended Complaint fail to state a claim for conspiracy under 42 U.S.C. §§ 1983 and 1985; (3) the Court lacks subject matter jurisdiction under the *Rooker-Feldman* doctrine; (4) the *Younger* abstention rule bars plaintiff's claims; and (5) the Complaint and Amended Complaint fail to state a cause of action under state law for negligent or intentional infliction of emotional distress.

On February 11, 2013 the Court issued a Memorandum and Decision granting the Motion to Dismiss on behalf of Ms. Patrizio as well as several co-defendants (*see* Document No. 138). Specifically, the Court dismissed plaintiff's claims against Ms. Patrizio based upon lack of subject

matter jurisdiction under the *Rooker-Feldman* doctrine (*see* Document No. 138, p. 10).

The proposed Second Amended Complaint includes the same allegations, *verbatim*, as made in the Amended Complaint as it relates to Ms. Patrizio. The Second Amended Complaint provides no new allegations as to Ms. Patrizio. The references to Ms. Patrizio in the Second Amended Complaint are at Paragraphs 140 - 142, 146-147, 156-157, 159, and 160-161. These are the same exact allegations as at Paragraphs 136-138, 142-143, 152-153, 155, and 156-157 of the Amended Complaint (*See* Document No. 11). These allegations allege essentially that Ms. Patrizio told plaintiff's wife that she must choose from either separating from plaintiff or giving up her parental rights.

LEGAL ARGUMENT

PLAINTIFF'S REQUEST FOR AN ORDER TO AMEND AND SUPPLEMENT THE AMENDED COMPLAINT AS AGAINST MS. PATRIZIO MUST BE DENIED ON THE GROUNDS OF FUTILITY

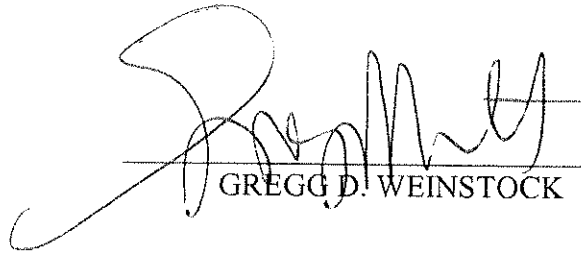
Plaintiff seeks to supplement the Complaint and serve a Second Amended Complaint based upon purported new facts which occurred since the filing of the last Amended Complaint.

Under F.R.C.P. 15(d), plaintiff may seek leave of Court to supplement the previous Complaint to include events that have occurred since the earlier pleading was filed. The principles for granting leave to serve a supplemental pleading under F.R.C.P. 15(d) are essentially the same as those granting leave to amend under F.R.C.P. 15(a). These include undue delay, bad faith, dilatory tactics, undue prejudice to the party to be served with the proposed pleading, or futility. *Astra Aktiebolag v. Andrx Pharmaceuticals, Inc.*, 695 F.Supp.2d 21, 25 (S.D.N.Y. 2010). Leave to amend may be properly denied if the amendment would be futile as when the proposed new pleading fails

to state a claim on which relief may be granted. *Martin v. Dickson*, 100 Fed. Appx. 14 (2d Cir. 2004); *Anderson News, LLC v. American Media, Inc.*, 680 F.3d 162, 185 (2d Cir. 2012).

Clearly, the Court should deny plaintiff's motion to supplement and amend the original Amended Complaint on the grounds of futility. The proposed Second Amended Complaint and original Amended Complaint include the exact same allegations as to Ms. Patrizio, with nothing new in the proposed Second Amended Complaint. As the Court already dismissed the original Amended Complaint as to Ms. Patrizio, clearly, the proposed amendment is futile. Therefore, plaintiff's motion, as to Ms. Patrizio, should be denied outright.

Dated: New York, New York
May 9, 2013



GREGG D. WEINSTOCK