

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JACOB TEITELBAUM, individually and as father to
CHILD A and CHILD B,

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; DEPARTMENT OF SOCIAL SERVICES OF
ORANGE COUNTY; CHRISTINE BRUNET; ATTY.
STEPHANIE BAZILEOR, JOHN DOES 1 THROUGH 95,
JANE DOES 1 THROUGH 20,

12 CV 02858 (VB)

Defendants.
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**MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S
MOTION FOR LEAVE TO AMEND THE AMEND COMPLAINT
ON BEHALF OF DEFENDANTS' CHILDREN'S RIGHTS
SOCIETY OF ORANGE COUNTY AND ATTY KIM PAVLOVIC**

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PRELIMINARY STATEMENT AND BACKGROUND

This memorandum of law is submitted in opposition to plaintiff's motion, pursuant to FRCP 15(b)(2) and (d), for an order granting plaintiff leave to amend and supplement the Amended Complaint and serve a Second Amended Complaint.

Plaintiff filed a *pro se* Amended Complaint on June 20, 2012 asserting causes of action under 42 U.S.C. § 1983 and § 1985 alleging violations of his civil rights, as well as asserting state law claims for intentional infliction of emotional distress and negligent infliction of emotional distress in connection with child neglect proceedings in Orange County Family Court, State of New York. Kim Pavlovic, an attorney with the Children's Rights Society, Inc, is the court-appointed attorney for the children in the Family Court proceeding (see Document No. 11).

On or about July 19, 2012, Children's Rights Society and Ms. Pavlovic filed a motion to dismiss the Amended Complaint pursuant to FRCP 12(b)(6) upon the following grounds: 1) the Court lacks subject matter jurisdiction under *Rooker-Feldman* over plaintiff's First and Second causes of action to the extent they seek relief from the Family Court proceedings and judgment; 2) defendants are entitled to quasi-judicial immunity; 3) defendant Pavlovic is not a state actor for purpose of liability under §1983; 4) there is no vicarious liability under §1983; 5) plaintiff fails to state a claim of conspiracy under §1983 or §1985; 6) plaintiff fails to state a claim for negligent infliction of emotional distress.

On February 11, 2013, this Court issued a Memorandum and Decision granting the motion of Children's Rights Society and Ms. Pavlovic, as well as several co-defendants (see Document No. 138). Specifically, the Court dismissed plaintiff's claims against Children's Rights Society and Ms. Pavlovic based upon lack of subject matter jurisdiction under the *Rooker-Feldman* doctrine (see Document No. 138, p. 10).

In its February 11, 2013 and April 2, 2013 decisions, the Court also granted plaintiff permission to file a motion for leave to file a second amended complaint solely with respect to defendants Kiryas Joel EMS, Rubenstein, Juda Katz, Chaya Katz, Joel Tennenbaum, and Bluma Tennenbaum (see Document No. 138, p. 12; Document No. 166, p. 4).

On or about April 29, 2013, plaintiff filed his motion for leave to amend and supplement his complaint. The proposed “modified second amended complaint” continues to assert causes of action against Children’s Rights Society and Ms. Pavlovic despite this Court’s orders dismissing the complaint as against them and restricting the second amended complaint to the individuals above. Additionally, the proposed Second Amended Complaint includes the same allegations, *verbatim*, as made in the Amended Complaint as it relates to Children’s Rights Society and Ms. Pavlovic (compare Document No. 11, ¶¶ 17, 144, and 145 to Document No. 172 ¶¶21, 148, and 149). These allegations allege essentially that Ms. Pavlovic proposed that the children be returned to plaintiff’s wife on the condition that plaintiff would be evicted from the home.

LEGAL ARGUMENT

PLAINTIFF’S MOTION FOR LEAVE TO AMEND THE AMENDED COMPLAINT SHOULD BE DENIED AS FUTILE

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

Under FRCP 15(d), plaintiff may seek leave of Court to supplement the Amended Complaint to include events that have occurred since the earlier pleading was filed. The principles for granting leave to serve a supplemental pleading under FRCP 15(d) are essentially the same as those granting leave to amend under FRCP 15(a). A district court has discretion to deny leave for good reason, including futility, bad faith, undue delay, or undue prejudice to the

opposing party (see Foman v Davis, 371 U.S. 178, 182 [1962]; Astra Aktiebolag v. Andrx Pharmaceuticals, Inc., 695 F.Supp.2d 21, 25 [S.D.N.Y. 2010]). An amendment is deemed futile where it could be dismissed for failure to state a claim upon which relief may be granted (see Milanese v Rust-Oleum Corp., 244 F.3d 104, 110 [2d Cir. 2001]). Therefore, in order for an amended pleading to be deemed meritorious, it must “plead enough facts to state a claim that is plausible on its face” (Ruotolo v City of New York, 514 F.3d 184, 188 [2d Cir. 2008] [citation omitted]).

Defendants respectfully submit that the Court should deny the motion for leave to amend the Amended Complaint as this Court has previously dismissed the complaint as against Children’s Rights Society and Ms. Pavlovic for lack of subject matter jurisdiction, and the proposed Second Amended Complaint fails to allege any new facts which would overcome this jurisdictional defect. Therefore, plaintiff’s motion, as to Children’s Rights Society and Ms. Pavlovic, should be denied in its entirety as the any amendment as to them would be futile.

Dated: Newburgh, New York
May 10, 2013


REBECCA B. MANTELLO (RM-1911)