

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
SAM BIRD, JUDGE

DIVISION IV

CA07-882

MAY 14, 2008

PATRICK J. POWERS
APPELLANT

APPEAL FROM THE WASHINGTON
COUNTY CIRCUIT COURT
[NO. CV-06-2614]

V.

HON. MARK LINDSAY, JUDGE

CONNIE WILLIAMS, JIM ROLLINGS
and SPRINGDALE SCHOOL
DISTRICT

APPELLEES

AFFIRMED

Appellant Patrick Powers appeals the trial court's dismissal of his complaint and denial of his motion to recuse. We find no error and affirm.

In 2003, Powers's minor daughter, EP, confided to her high-school counselor, appellee Connie Williams, that Powers was acting inappropriately around her. Williams suspected that Powers was sexually abusing EP and referred her to a psychotherapist, who reported the matter to the child-abuse hotline. Thereafter, Powers's wife filed for divorce, and Powers attempted suicide on several occasions. He subsequently lost his job, and the Washington County prosecutor filed felony incest charges against him. Williams provided shelter for EP when she moved away from home during this time.

In February 2004, Powers and his former wife were divorced. The court found that Powers had molested EP and, months later, Powers pled guilty to two counts of incest.

Powers stated a factual basis for his plea and admitted at the sentencing hearing that he had engaged in sexual acts with his daughter many times.

In 2006, Powers filed a pro se complaint against appellees Connie Williams; school superintendent Jim Rollins (whom he designated as “Jim Rollings”); and the Springdale School District (SSD) for outrage, negligence, and conspiracy. Powers primarily accused Williams of unduly influencing EP to make allegations of sexual abuse and of “creating criminal allegations” against him. The trial court dismissed Powers’s complaint on several grounds, including failure to state facts upon which relief can be granted and the doctrine of judicial estoppel. Powers now appeals pro se from that ruling and from the trial court’s refusal to recuse.

Powers argues first that the trial court erred in failing to recuse. We affirm the trial court’s decision not to recuse for the same reasons stated in *Powers v. Powers*, CA 07-880, a related opinion handed down today. The trial court simultaneously heard recusal motions on both cases and made the same ruling on each. Powers’s brief in this appeal presents no new arguments of merit.

Next, Powers argues that the trial court erred in dismissing his complaint. In reviewing the trial court’s grant of a motion to dismiss, we liberally construe the complaint, treating all factual allegations as true, and viewing them in a light most favorable to the plaintiff. See *Fleming v. Cox Law Firm*, 363 Ark. 17, 210 S.W.3d 866 (2005). Applying this standard, we agree with the trial court’s decision to dismiss. The complaint does not mention Jim Rollins except in the caption. The only allegations that SSD acted independently or through any employees other than Williams to cause Powers’s damages are conclusory rather than factual.

Therefore, as to Rollins and SSD, the complaint fails to state facts upon which relief can be granted. See Ark. R. Civ. P. 12(b)(6); *Martin v. Equitable Life Assur. Soc.*, 344 Ark. 177, 40 S.W.3d 733 (2001) (holding that our rules require fact pleading, and a complaint must state facts, not mere conclusions, in order to entitle the pleader to relief).

Regarding Williams, the complaint contains long narratives pertaining to her and to other persons, and it is difficult to ascertain from the many accusations what conduct of hers Powers cites as the cause of his particular harm.¹ As best we can understand, Powers essentially alleges that Williams is responsible for all the misfortunes that befell him after EP accused him of sexual abuse—getting divorced, attempting suicide, being charged with incest, pleading guilty, losing his job, and being declared mentally disabled. He claims that Williams created “illusory impressions of sex abuse”; conversed with EP’s therapist; and subjected EP to undue influence and “overwhelming personal attention.” We agree with the trial court that Powers’s claims are patently inconsistent with the positions he has taken in other cases and are therefore barred by the doctrine of judicial estoppel.

The elements of a prima facie case for judicial estoppel are 1) a party must assume a position clearly inconsistent with a position taken in an earlier case, or with a position taken in the same case; 2) a party must assume the inconsistent position with the intent to manipulate the judicial process to gain an unfair advantage; 3) a party must have successfully maintained the position in an earlier proceeding such that the court relied upon the position taken; and 4) the integrity of the judicial process of at least one court must be impaired or

¹ To cite an example, Powers asserts that Williams violated her statutory duty by *not* reporting EP’s allegations of sexual abuse.

injured by the inconsistent positions taken. *Dupwe v. Wallace*, 355 Ark. 521, 140 S.W.3d 464 (2004). While Powers alleges in this case that Williams influenced his daughter to make false accusations of sexual abuse and conspired to create the “illusion” that he molested his child, he acknowledged in prior cases the truth of the abuse allegations. The divorce court found that Powers sexually abused EP, and Powers did not challenge that ruling on appeal. See *Powers v. Powers*, CA04-641 (Feb. 2, 2005) (not designated for publication). The criminal court relied on his voluntary plea of guilty to two counts of incest, and Powers testified unequivocally at the sentencing hearing that he had engaged in sexual conduct with EP on numerous occasions. Powers’s posture in the divorce and criminal cases therefore directly contradicts his current claim that Williams was responsible for inducing and creating the sexual-abuse charges. Powers obviously means to manipulate the judicial process to cast blame on others for his admitted incestuous conduct, and it is plain that, were he allowed to do so, it would impair the integrity of all courts involved.

Powers’s brief contains numerous additional accusations of wrongdoing or misconduct by the trial court or by the parties to this case or other cases. Those arguments, including that the court erroneously dismissed his complaint with prejudice, are either not sufficiently developed, not supported by authority, or are manifestly untenable.

Affirmed.

PITTMAN, C.J., and VAUGHT, J., agree.