

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

JAN 14 2011

GREGORY C. LANGHAM
CLERK

Civil Action No. 11-cv-00083-BNB

JOHN M. HENTGES, *Pro Se*, individually and in behalf of my five children: B.W.H.,
T.J.H., N.A.H., C.M.H., and A.N.H.,

Plaintiff,

v.

UNITED STATES, et al.,
MARCIA S. KRIEGER, individually and in her official capacity as Federal Judge,
PHILIP A. BRIMMER, individually and in his official capacity as Federal Judge,
MATTHEW J. MCPHILLIPS, individually and in his official capacity as Federal Agent,
THOMAS O'ROURKE, in his official capacity as U.S. Attorney,
JAMES ALLISON, in his official capacity as Assistant U.S. Attorney,
GREGORY C. LANGHAM, in his official capacity as Federal Clerk,
ELIZABETH SHUMAKER, individually and in her official capacity as Tenth Circuit Clerk,
LARA SMITH, individually and in her official capacity as Counsel to the Clerk, and
CHRISTINE VAN CONEY, individually and in her official capacity as Counsel to the
Clerk,

Defendants.

ORDER DIRECTING PLAINTIFF TO CURE DEFICIENCY

On January 11, 2011, Plaintiff, John M. Hentges, submitted, *pro se* and on behalf of his children, B.W.H., T.J.H., N.A.H., C.M.H., and A.N.H., a Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915, and a "Verified Complaint." He also submitted four documents (document numbers 2, 3, 4, and 5) purporting to be orders of this Court.

As part of the Court's review pursuant to D.C.COLO.LCivR 8.1, the Court has determined that the submitted documents are deficient as described in this order.

As he previously was informed in *Hentges v. Girl Scouts of the U.S.A.*, No. 10-

cv-02072-ZLW (D. Colo. Sept. 23, 2010) (document no.2), Mr. Hentges lacks standing to represent his minor children in this action. **See *Meeker v. Kercher***, 782 F.2d 153, 154 (10th Cir. 1986) (per curiam). Under Fed. R. Civ. P. 17(c) and 28 U.S.C. § 1654, a minor child "cannot bring suit through a parent acting as next friend if the parent is not represented by an attorney." *Id.*; **accord *Osei-Afriyie ex rel. Osei-Afriyie v. Medical College of Pa.***, 937 F.2d 876, 882-83 (3d Cir. 1991); ***Cheung v. Youth Orchestra Found. of Buffalo, Inc.***, 906 F.2d 59, 61 (2d Cir. 1990). Mr. Hentges' children are not represented by an attorney. Therefore, Mr. Hentges may not represent his minor children in this action. The minor children, B.W.H., T.J.H., N.A.H., C.M.H., and A.N.H., will be dismissed as parties to this action.

Plaintiff will be directed to cure the following if he wishes to pursue his claims.

Any papers which the Plaintiff files in response to this order must include the civil action number on this order.

Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915:

- (1) is not submitted
- (2) is not on proper form (must use the court's current form)
- (3) is missing original signature by Plaintiff
- (4) is missing affidavit
- (5) affidavit is incomplete
- (6) affidavit is not notarized or is not properly notarized
- (7) names in caption do not match names in caption of complaint, petition or application
- (8) An original and a copy have not been received by the court.
Only an original has been received.
- (9) other: _____

Complaint or Petition:

- (10) is not submitted
- (11) is not on proper form (must use the court's current form)
- (12) is missing an original signature by the Plaintiff
- (13) is incomplete

- (14) X uses et al. instead of listing all parties in caption
- (15) — An original and a copy have not been received by the court. Only an original has been received.
- (16) — Sufficient copies to serve each defendant/respondent have not been received by the court.
- (17) — names in caption do not match names in text
- (18) — other _____

Accordingly, it is

ORDERED that the minor children, B.W.H., T.J.H., N.A.H., C.M.H., and A.N.H., of Plaintiff, John M. Hentges, are dismissed as parties to this action. It is

FURTHER ORDERED that the Plaintiff cure the deficiencies designated above **within thirty (30) days from the date of this order**. Any papers which the Plaintiff files in response to this order must include the civil action number on this order. It is

FURTHER ORDERED that the clerk of the Court mail to the Plaintiff, together with a copy of this order, copies of the following forms: Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 and Complaint. It is

FURTHER ORDERED that, if the Plaintiff fails to cure the designated deficiencies **within thirty (30) days from the date of this order**, the complaint and the action will be dismissed without further notice. The dismissal shall be without prejudice. It is

FURTHER ORDERED that document numbers 2, 3, 4, and 5, purporting to be orders of this Court, are stricken.

DATED at Denver, Colorado, this 14th day of January, 2011.

BY THE COURT:

s/Lewis T. Babcock
LEWIS T. BABCOCK
Senior Judge, United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO


CERTIFICATE OF MAILING

Civil Action No. 11-cv-00083-BNB

John M. Hentges
827 Commerce Street
Le Sueur, MN 56058

I hereby certify that I have mailed a copy of the **ORDER and two copies of the Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 and the Complaint forms** to the above-named individuals on January 14, 2011.

GREGORY C. LANGHAM, CLERK

By:  _____
Deputy Clerk