

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

MARVIN BELSER, SR., ET AL.,

Plaintiff,

Case Number: 2:16-cv-13296
HON. ARTHUR J. TARNOW

v.

DR. WILLIAM BORGERDING, ET AL.,

Defendants.

ORDER OF SUMMARY DISMISSAL

I. Introduction

Plaintiff Marvin Belser, Sr., a state inmate currently incarcerated at the Carson City Correctional Facility in Carson City, Michigan, has filed a *pro se* complaint under 42 U.S.C. § 1983. He names forty-three defendants, all employees of the Michigan Department of Corrections (MDOC). Plaintiff challenges the MDOC's handling of information related to a Child Protective Services (CPS) case concerning custody of Plaintiff's children. He states that information regarding the CPS case is available to MDOC employees and fellow inmates through the MDOC's computer system. He claims that availability of this information has caused prison employees to retaliate against him by refusing him access to a wheelchair and denying him necessary medical care. He also alleges that defendants have failed to protect him from assaults by other inmates. Plaintiff seeks declaratory and monetary relief. The complaint will be dismissed because it is duplicative of another case pending in the United

States District Court for the Western District of Michigan.

II. Additional Plaintiffs

In addition to Marvin Belser, Sr., the complaint names five additional plaintiffs: P.R.B., M.B., Latrina M. Belser, Genesis Underwood, and Elijah Underwood. However, Belser, Sr., is the only plaintiff to have signed the complaint and the only plaintiff to have submitted an application to proceed *in forma pauperis*. There is no indication that any of the additional plaintiffs were even aware of Belser's intent to file this case. These plaintiffs, therefore, are dismissed without prejudice.

III. Discussion

Plaintiff previously filed a civil rights complaint in the United States District Court for the Western District of Michigan raising essentially the same claims raised in this petition and concerning conduct occurring over the same period of time as the conduct at issue in this complaint. *See Belser v. Woods, et al.*, No. 2:16-134. That matter remains pending in the Western District of Michigan.

Plaintiffs generally have “no right to maintain two separate actions involving the same subject matter at the same time in the same court and against the same defendants.” *Cummings v. Mason*, No. 11-649, 2011 WL 2745937 (W.D. Mich. July 13, 2011), *quoting Walton v. Eaton Corp.*, 563 F.2d 66, 70 (3d Cir.1977). As part of its inherent power to administer its docket, a district court may dismiss a suit that is duplicative of another federal court suit. *Cummings*, 2011 WL 2745937 at *1, *citing Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976); *Adams v. Cal. Dep't of Health Serv.*, 487 F.3d

684, 688 (9th Cir. 2007); *Smith v. SEC*, 129 F.3d 356, 361 (6th Cir.1997). The power to dismiss a duplicative lawsuit is meant to foster judicial economy and the “comprehensive disposition of litigation,” *Kerotest Mfg. Co. v. C-O-Two Fire Equip. Co.*, 342 U.S. 180, 183 (1952), and to protect parties from “the vexation of concurrent litigation over the same subject matter.” *Adam v. Jacobs*, 950 F.2d 89, 93 (2d Cir.1991).

A complaint is duplicative and subject to dismissal if the claims, parties and available relief do not significantly differ from an earlier-filed action. *See Serlin v. Arthur Andersen & Co.*, 3 F.3d 221, 223 (7th Cir. 1993). Although complaints may not “significantly differ,” they need not be identical. Courts focus on the substance of the complaint. *See Bailey v. Johnson*, 846 F.2d 1019, 1021 (5th Cir. 1988) (holding that a complaint was duplicative although different defendants were named because it “repeat[ed] the same factual allegations” asserted in the earlier case). Here, there is overlap of parties between this case and the case pending in the Western District of Michigan. The complaints in both cases raise essentially the same claims and arise from the same set of facts. The Court concludes that the present complaint is duplicative of the earlier-filed case pending in the United States District Court for the Western District of Michigan.

For the reasons stated, the Court DISMISSES Plaintiffs P.R.B., M.B., Latrina M. Belser, Genesis Underwood, and Elijah Underwood without prejudice

In addition, pursuant to the Court's power to manage its docket and to avoid duplicative litigation, the Court DISMISSES the complaint.

SO ORDERED.

S/Arthur J. Tarnow
Arthur J. Tarnow
Senior United States District Judge

Dated: November 30, 2016

I hereby certify that a copy of the foregoing document was served upon parties/counsel of record on November 30, 2016, by electronic and/or ordinary mail.

S/Catherine A. Pickles
Judicial Assistant