

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

**JAMES T. KETCHUCK and JASON A.
KETCHUCK,**

Plaintiffs,

-against-

3:10-CV-0870 (TJM/DEP)

**DAVID FERRIS, W.T. MOULTON and
BRAD A. BOYER,**

Defendants.

**THOMAS J. McAVOY,
Senior United States District Judge**

DECISION & ORDER

I. INTRODUCTION

This *pro se* action brought pursuant to 42 U.S.C. § 1983 was referred to the Hon. David E. Peebles, United States Magistrate Judge, for a Report and Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c). *Pro se* plaintiffs James T. and Jason A. Ketchuck, who are father and son, respectively, assert claims arising from two separate incidents during which each was arrested. The Report and Recommendation was issued to address two matters. The first concerned a request by plaintiff James Ketchuck for an extension of time to serve defendants Moulton and Ferris. The second related to whether the claims in this action were properly joined.

On the first issue, Magistrate Judge Peebles determined that James Ketchuck should be granted an extension of time to accomplish service and should be granted court-authorized service by alternative means upon Moulton and the issuance of a subpoena upon Ferris' former employer in order to obtain his home address.

On the second issue, Magistrate Judge Peebles determined that the case involves two separate claims, stemming from two unrelated occurrences and arrests made by two different agencies and that, therefore, the plaintiffs' claims were not properly joined in one action. Magistrate Judge Peebles recommended that the claims of plaintiff James Ketchuck against defendants David Ferris and W.T. Moulton be severed from the claims of plaintiff Jason Ketchuck against defendant Brad A. Boyer. He further recommended that the Clerk be directed to open a new civil action in the name of plaintiff James T. Ketchuck against defendants David Ferris and W.T. Moulton, and that James T. Ketchuck be directed to either pay the required filing fee of \$350 or submit an application for leave to proceed *in forma pauperis* in the new action. In addition, he recommended that Plaintiff James T. Ketchuck and defendants David Ferris and W.T. Moulton be dismissed as parties from this action and the caption be reformatted to reflect that it involves claims only of Jason A. Ketchuck against defendant Brad A. Boyer, provided, however that for statute of limitations purposes plaintiff James T. Ketchuck's claims against defendants David Ferris and W. T. Moulton be deemed to relate back to the filing of this action.

No objections to the Report-Recommendation and Order dated March 31, 2011 have been filed, and the time to do so has expired. After examining the record, this Court has determined that the Report-Recommendation and Order is not subject to attack for plain error or manifest injustice. Furthermore, the Clerk has advised the Court that a new

complaint has been filed by James T. Ketchuck against Ferris and Moulton, and the filing fee has been paid in this action. See Ketchuck v. Ferris, 3:11-cv-424 (TJM/DEP). The docket in this new action indicates that Defendant Moulton has appeared through counsel.

II. CONCLUSION

Accordingly, the Court adopts the Report-Recommendation and Order for the reasons stated therein. It is, therefore, **ORDERED** that:

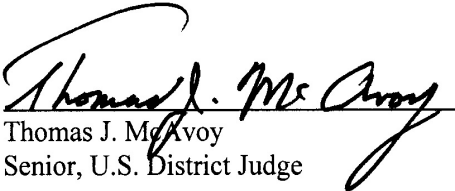
1) The claims of plaintiff James Ketchuck against defendants David Ferris and W.T. Moulton are **SEVERED** from the claims of plaintiff Jason Ketchuck against defendant Brad A. Boyer;

2) Plaintiff James T. Ketchuck and defendants David Ferris and W.T. Moulton are **DISMISSED** as parties from this action and the caption is to be reformatted to reflect that it involves claims only of Jason A. Ketchuck against defendant Brad A. Boyer. For statute of limitations purposes, any claims asserted by plaintiff James T. Ketchuck against defendants David Ferris and W. T. Moulton in Ketchuck v. Ferris, 3:11-cv-424 (TJM/DEP) which are the same as claims asserted in this action are deemed to relate back to the filing of this action; and

3) Plaintiff James T. Ketchuck's application regarding service of process, Dkt. # 11, is **GRANTED as to defendant Ferris and DENIED as moot as to defendant Moulton**. The Clerk is **DIRECTED** to issue a subpoena for service by plaintiff James T. Ketchuk in Ketchuck v. Ferris, 3:11-cv-424 (TJM/DEP) directing that the Town of Owego and/or its agents and employees release and deliver to plaintiff James T. Ketchuk the last known address of the residence of David Ferris.

IT IS SO ORDERED

Dated: August 22, 2011


Thomas J. McAvoy
Senior, U.S. District Judge