

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ELIZABETH MORT and ALEX RODRIGUEZ,

Plaintiffs,

vs.

LAWRENCE COUNTY CHILDREN
AND YOUTH SERVICES; LAWRENCE
COUNTY; CHRISSY MONTAGUE,
Lawrence County Children and Youth
Services Caseworker; and
JAMESON HEALTH SYSTEM, INC.

Defendants.

Civil Action No. 2:10-cv-01438-DSC

JUDGE DAVID S. CERCONE

Electronically Filed

JURY TRIAL DEMANDED

**MEMORANDUM IN OPPOSITION TO PLAINTIFFS'
MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT**

I. INTRODUCTION

This claim arises from the emergency removal of the plaintiffs' infant child from their care following Jameson Hospital's reporting of the mother's positive urine drug screen for the presence of opiates prior to the child's birth. On October 28, 2010, the plaintiffs filed an original four count Complaint against Lawrence County Children and Youth Services, Caseworker Chrissy Montague, and Jameson Health System, Inc. Thereafter, on December 1, 2010, the plaintiffs filed an Amended Complaint adding Lawrence County as a defendant.

Following the Court's disposition of Motions to Dismiss on behalf of all defendants, the defendants filed their Answers on or about October 10, 2011. On October 24, 2011, the plaintiffs filed a Motion for Leave to File a Second Amended Complaint. Within the Motion and

Memorandum of Law in support, the plaintiffs seek to add as defendants Jane Gajda, the Director of Lawrence County Children and Youth Services, and Intake Supervisor Sandy Copper.

With respect to Director Gajda, the plaintiffs premise liability upon the alleged responsibility of Ms. Gajda for implementing and approving CYS' policies and practices, including the policy at issue in this case. (Motion for Leave to File Second Amended Complaint, ¶ 3). With respect to Ms. Copper, the plaintiffs contend that she is liable because, "It has been discovered that it was at the instruction of Ms. Copper that Defendant, Chrissy Montague sought a court order on April 30, 2010, permitting CYS to take baby Isabella Rodriguez into emergency protective custody" (Motion for Leave to File Second Amended Complaint, ¶ 4).

II. ISSUE

SHOULD THE COURT PERMIT THE PLAINTIFFS TO AMEND THEIR COMPLAINT A SECOND TIME TO ADD AS DEFENDANTS DIRECTOR GAJDA AND INTAKE SUPERVISOR COPPER?

SUGGESTED ANSWER: NO.

III. ARGUMENT

While certainly under Federal Rule of Civil Procedure 15(a)(2) "[t]he court should freely give leave [to amend] when justice so requires," in this case, only injustice and needless use of the court's resources would be served by allowing the plaintiffs to amend for a second time. Accordingly, the plaintiffs' Motion for Leave to File a Second Amended Complaint should be denied.

Director Jane Gajda

The plaintiffs seek to add as a defendant LCCYS Director Jane Gajda. The only allegations contained within the proposed Second Amended Complaint filed as an Exhibit to the Motion for Leave that address Ms. Gajda are set forth at paragraphs 12 and 95. Paragraph 12 states:

Defendant Jane Gajda is, and at all relevant times here mentioned was, the Director of LCCYS. As Director, she is responsible for implementing and approving LCCYS' policies and practices.

(Proposed Second Amended Complaint, ¶ 12.)

Paragraph 95 states:

Upon information and belief, Defendant Gajda, as director of LCCYS, adopted, implemented, and/or enforced LCCYS' custom, pattern, practice and/or policy requiring caseworkers to seek court orders to take infants into protective custody based solely on a report from a hospital or other medical professional that the infant's mother tested positive for use of an illicit substance while pregnant.

(Proposed Second Amended Complaint, ¶ 95.)

The balance of the proposed 113 paragraph Second Amended Complaint is utterly silent with respect to any acts of Ms. Gajda which allegedly violated any right of the plaintiffs.

It is significant to note that the plaintiffs have already named as defendants both Lawrence County and Lawrence County Children and Youth Services. As is clear from the original Complaint and the First Amended Complaint, the plaintiffs contend that these entities are liable to them based upon the existence and enforcement of the policy, practice or procedure which resulted in the emergency removal of their child from their custody. (See, Complaint, ¶¶ 93, 94, and 99; Amended Complaint, ¶¶ 95, 96, and 101).

As is well-settled, a suit against a governmental official in his or her official capacity is treated as a suit against the entity itself. Hafer v. Melo, 502 U. 21, 25, 112 S.Ct. 358, 116 L.Ed.2d 301 (1991); A.M. ex rel. J.M.K. Luzerne County Juvenile Detention Center, 372 F.3d 572, 580 (3d Cir. 2004). Because the only allegations against Ms. Gajda are that, in her capacity as Director of LCCYS, she simply approved and implemented the policy at issue, such a claim is essentially duplicative of those against Lawrence County and Lawrence County Children and Youth Services. No actual rationale exists as to why Ms. Gajda should be a defendant in this action where the municipal entities have already been named.

Further, Ms. Gajda and her status are not newly revealed information. She was the Director at all relevant times and this information was surely available to her learned counsel. In fact, Ms. Gajda is no longer employed by LCCYS. As such, there is no justification for seeking to add her as a defendant at this late date. No new facts have come to light which would suggest that she is somehow liable.

Again, justice will not be served by allowing the plaintiffs to amend their Complaint for a second time to simply name Ms. Gajda based upon her position as the Director of Lawrence County CYS when Lawrence County CYS and Lawrence County are already defendants. Adding Ms. Gajda may well result in another round of Motions to Dismiss and the further use of this court's resources, compounding the fact that the plaintiffs draw no real benefit from having Ms. Gajda as a defendant. Accordingly, the Court should deny this request.

Intake Supervisor Sandy Copper

The plaintiffs also seek to add LCCYS Intake Supervisor Sandy Copper as a defendant. In support of this request, the plaintiffs allege that Ms. Copper is liable to them because she was informed by Jameson Hospital of the Elizabeth Mort's positive drug screens, failed to request the concentration levels from Jameson Hospital and, subsequently, instructed Caseworker Chrissy Montague to seek a Court Order permitting LCCYS to take the child into emergency protective custody. (Proposed Amended Second Amended Complaint, ¶¶ 47, 48, 56.)

It is significant to note that the claims already made by the plaintiffs against Ms. Montague arise from her alleged decision to proceed with petitioning the Lawrence County Court for the emergency removal of the child. (See, Complaint, ¶¶ 52, 87, and 95; Amended Complaint, ¶¶ 54, 89, and 98). Now, the plaintiffs seek to add Intake Supervisor Copper based upon their position that it was she who directed Ms. Montague to obtain the Order. If, in fact, this is the plaintiffs' position, logically, Ms. Montague should be dismissed as a defendant in that she did not make the decision to proceed with the petition but, rather, simply followed a directive from her supervisor. If the supervisor, in this case Ms. Copper, is responsible, then the subordinate simply following the directive should be relieved of responsibility.

Further, in these defendants' Motion to Dismiss the Amended Complaint, it was argued that Ms. Montague was entitled to absolute prosecutorial immunity for petitioning the court for the removal of the plaintiffs' child. The plaintiffs opposed this motion by arguing that it was Ms. Montague's actions in not properly investigating the circumstances of the positive drug screen of the plaintiff, Elizabeth Mort. (See, Brief in Opposition to Motion to Dismiss of Lawrence County Defendants, pp. 5-9). Based upon this argument, the court determined that

absolute immunity would not apply to the claims against Ms. Montague. (See, Opinion of Court disposing of Motions to Dismiss dated August 31, 2011, pp. 20-21).

It would now appear that the plaintiffs contend that Ms. Montague was instructed to petition the Court of Common Pleas of Lawrence County to have the child removed. If this is the plaintiff's contention, it may well be appropriate to revisit the immunity issue as applied to Ms. Montague. Specifically, the plaintiffs argued that Ms. Montague did not enjoy absolute immunity because the claims against her focused on her investigation and not on her petitioning of the Court. Now, the plaintiffs contend that it was Ms. Copper who directed Ms. Montague to file the Petition. As such, it appears that any investigation as to the decision to proceed was not that of Ms. Montague. Accordingly, if the plaintiffs are seeking to impose liability upon Ms. Copper for the investigation, then it is entirely appropriate to revisit the claim against Ms. Montague in order to determine whether she is entitled to immunity and should be dismissed as a defendant.

On the other hand, if the plaintiffs contend that Ms. Copper simply received the information from the hospital and directed Ms. Montague to investigate and then petition the Court, it may very well be the case that Ms. Copper has no liability. If this is the plaintiffs' position, then it will be necessary to examine the immunity and/or liability of Ms. Copper by way of dispositive motion. In either event, it is an unnecessary inconvenience for the Court in that adding Ms. Copper does nothing to enhance the plaintiffs' claims and there is no legitimate purpose for such an amendment. Accordingly the Motion for Leave should be denied.

IV. CONCLUSION

This Court should deny the plaintiffs' request for leave to file a Second Amended Complaint. With respect to Director Gajda, any claim against her would simply be duplicative as to the claims already pending against Lawrence County Children and Youth Services and Lawrence County. With respect to the claim against Ms. Copper, if that claim is permitted to go forward, the claim against Ms. Montague should be dismissed in that it is apparent that the plaintiffs are now seeking to impose liability for the investigation and the ultimate decision to remove the child on Ms. Copper. Alternatively, it may be necessary for the Court to address the potential immunity available to Ms. Copper at this stage. This unnecessary effort occasioned by the requested second amendment should be avoided by denying the Motion for Leave.

JonesPassodelis, PLLC

BY: s/Marie Milie Jones

MARIE MILIE JONES, ESQUIRE

PA I.D. No. 49711

E-Mail: mjones@jonespassodelis.com

JEFFREY COHEN, ESQUIRE

PA I.D. No. 76512

E-Mail: jcohen@jonespassodelis.com

Gulf Tower, Suite 3510

707 Grant Street

Pittsburgh, PA 15219

Telephone: (412) 315-7272

Facsimile: (412) 315-7273

Counsel for Defendants,
LAWRENCE COUNTY CHILDREN AND YOUTH
SERVICES, LAWRENCE COUNTY and CHRISSY
MONTAGUE, Lawrence County Children and
Youth Services Caseworker

