
UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Case No: 18-cv-1091-WMW-BRT

Dwight D. Mitchell,
Individually and on behalf of
his children XM, AM, and Bryce Mitchell;
and Stop Child Protection Services from Legally
Kidnapping,

Plaintiffs,

**REPLY IN SUPPORT OF THE
DAKOTA COUNTY
DEFENDANTS' MOTION
TO DISMISS PLAINTIFFS'
AMENDED CORRECTED
COMPLAINT**

v.

Dakota County Social Services; et al,

Defendants.

I. INTRODUCTION

Despite Plaintiffs' 149 page pleading, and 43 pages of briefing with little to no legal authority cited¹, Plaintiffs'² have failed to state a claim for relief for

¹ To the extent Plaintiffs' have failed to cite any legal authority to support their argument, it is waived, "it is not this court's job to research the law to support [an] argument." *Molasky v. Principal Mut. Life Ins. Co.*, 149 F.3d 881, 885 (8th Cir.1993)(citations omitted); see also *Judge v. Susee*, 2006 WL 46534 at *7 (D. Minn. Feb 24, 2006)(quoting *Nw. Nat'l Ins. Co. v. Baltes*, 15 F. 3d 660, 662-63 (7th Cir. 1994).

² The abbreviations set forth in the County Defendants' principal brief (ECF Doc. 19) are adopted and incorporated herein for efficiency's sake.

which relief can be granted that is plausible. The parties ask the Court to draw two very different inferences from the ACC about why the Mitchell children were removed from Mitchell's care. One is plausible. The other belies common sense.

The County Defendants contend, and the Complaint and its exhibits support, that the children were removed from Mitchell's home because of a reasonable belief X.M. and A.M. were at risk of harm. Plaintiffs' contend that the children were removed because of their race and the Individual County Defendants conspiracy with Campos to transfer custody to her in Spain. There were visible injuries on the children when they were removed by the police and Mitchell pled guilty to two counts of malicious punishment of a child – admitting sufficient evidence existed that he used unreasonable or excessive force or cruel discipline under the circumstances to be found guilty beyond a reasonable doubt. *See* ACC ¶¶76, Exhibit 7, COMPL000022; 184, Exhibit 25.

II. Plaintiffs federal claims fail.³

Dakota County Defendants rely on the arguments already set forth in their principle brief (ECF No. 16) related to Plaintiffs' federal claims.

³ Assuming *arguendo* that Minnesota's child protection statutes are unconstitutional, the County Defendants have qualified or good faith immunity. *See Harlow v. Fitzgerald*, 457 US 800, 815, 102 S.Ct. 2727, 2736 (1982); *Elwood v. Rice County*, 423 N.W.2d 671 (Minn. 1988).

A. Procedural and substantive due process claims fail.

At the outset, the Plaintiffs expend significant effort attempting to bootstrap their §1983 claims to the Individual County Defendants alleged violation of the UCCJEA. This is a red herring because the UCCJEA is immaterial to the analysis of Plaintiffs' constitutional claims and any violation of the UCCJEA cannot support a § 1983 claim. *See Slaven v Engstrom*, 848 F. Supp. 2d 994, 1002 (D. Minn. 2012). The UCCJEA establishes an administrative process by which interjurisdictional custody disputes are resolved. *See generally* Minn. Stat. 518D.101 *et seq.* In this instance the children were removed under exigent circumstances by the police and an emergency protection hearing was held on Feb. 20, 2014. ⁴ *See* Minn. Stat. 206C.175 subd. 1, (2). The state court exercised jurisdiction over the proceedings starting with the EPC hearing on Feb. 20, 2014. *Id.*⁵ Plaintiffs' procedural and substantive due process claims fail.

B. Equal Protection and Class-of-One Claims fail.

Plaintiffs purport to state an equal protection claim. Their conclusory allegations that the CHIPS matter was motivated by racial animus

⁴ *See* Exhibit 1 of the Affidavit of Helen R. Brosnahan ("Brosnahan Affidavit") ECF Doc. 17.

⁵ To the extent Plaintiffs' request this court to review the decision of the state court exercising jurisdiction this Court lacks subject matter jurisdiction to entertain such challenges. *P.G. v Ramsey Cnty*, 141 F. Supp. 2d, 1229-30 (D. Minn. 2001)(citing *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923)); *District of Columbia v. Feldman*, 460 U.S. 1462 (1983).

notwithstanding (ACC ¶481), the ACC is bereft of any facts that possibly support an inference they were treated differently than similarly situated non-African-American families on account of intentional racial discrimination.

C. Plaintiffs' associational rights claims fail.

Any interference with Mitchell's associational rights occurred in the context of on-going child-protection matters in which the state's interests in protecting children outweighed Plaintiffs' right to association. See *Youngberg v. Romeo*, 457 U.S. 307, 321 (1982).

III. Plaintiffs' State law claims fail

Plaintiffs also attempt to bootstrap their state-law claims on the County's alleged failure to follow the UCCJEA. The County Defendants rely on the arguments already set forth in their principle brief (ECF No. 16) related to Plaintiffs' state law claims.

A. False Imprisonment

As to Plaintiffs' false imprisonment claims, notwithstanding any limitations tolling, Plaintiffs' claims fail because there was a reasonable belief of harm to support removal of the children. The existence of a reasonable belief of harm to remove them is analogous to the existence of probable cause to arrest defeating a false arrest claim. See *Kurtz v. City of Shrewsbury, Mo.*, 245 F.3d 753, 758 (8th Cir. 2001), *Anderson v. Franklin Cnty, Mo.*, 192 F.3d 1125, 1132 (8th Cir.

1999)(Where probable cause exists no false imprisonment lies). Similarly, the continued placement of the children outside the home cannot constitute false imprisonment. County officials retained custody of the children pursuant to court order. *K.D. ex rel. Deason v. Cnty of Crow Wing*, No. CIV. 03-6466 DWF/RLE, 2005 WL 958393. Further, the continued placement of the children outside the home cannot constitute false imprisonment when it is the result of Plaintiffs' own conduct. *See* ACC Exhibit 13 COMPL 000062.⁶ This claim must be dismissed.

B. Negligent Infliction of Emotional Distress (NIED) claim fails.

Plaintiffs now allege the resulting injury required for a NIED claim is based upon their Intentional Infliction of Emotional Distress (IIED) claim constitutes a "replacement" for the zone of danger requirement of an NIED claim. Plaintiffs cite no authority for this position. Even assuming IIED can constitute a "replacement" to the zone of danger requirement, Plaintiffs must plead a viable IIED claim. Plaintiffs have provided nothing but conclusory statements to support their IIED claim. *See Schimming v. Equity Services of St. Paul, Inc.*, 2012 WL 1380395, at *4 (Minn. Ct. App. Apr. 23, 2012) (Complaint with conclusory statements that offered nothing more than evidence of therapy, depression, anxiety, and financial difficulties typical for a person who recently lost her job insufficient to support heavy burden of IIED claim). Similarly,

⁶ *See also*, Exhibit 2 attached to the Brosnahan Affidavit (ECF Doc. 19).

Plaintiffs' ACC only contains conclusory statements related to a family involved in a criminal prosecution for child abuse along with the parallel CHIPS proceeding. Plaintiffs have failed to allege sufficient facts that either there was a direct invasion of their rights or that the County Defendants placed them within the zone of danger as required to support a claim for NIED. *See Bohdan v. Alltool Mfg., Co.*, 411 N.W.2d 902, 907 (Minn. Ct. App. 1987). These claims must fail.

C. Malicious Prosecution an abuse of process.

Plaintiffs' again attempt to bootstrap these claims to the alleged violation of the UCCJEA. At the time the Mitchell children were removed, there was an emergency situation involving the physical welfare of those children in Minnesota. The CHIPS proceeding was supported by probable cause. The state court exercised jurisdiction. Plaintiffs' conduct prolonged the proceedings. Plaintiffs have failed to identify any act by the County Defendants that was outside the scope of the CHIPS proceedings. *See Young v. Klass*, 776 F. supp. 2d 916, 922-925 (D. Minn. 2011)

IV. CONCLUSION

For the reasons set forth in this reply and their principal brief, the County Defendants respectfully request this Court dismiss all of Plaintiffs' claims against them.

Dated: July 31, 2018

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