

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JACOB TEITELBAUM, individually and as :
father to CHILD A and CHILD B, :
Plaintiff, :
: :
v. :
: :
JUDA KATZ; CHAYA KATZ; JOEL :
TENNENBAUM; BLUMA TENNENBAUM; :
DAVID RUBENSTEIN; KIRYAS JOEL :
COMM. AMBULANCE CRP; ATTY. MARIA :
PETRIZIO; CHILDREN’S RIGHTS SOCIETY :
OF ORANGE COUNTY; ATTY. KIM :
PAVLOVIC; ATTY. JOHN FRANCIS X. :
BURKE; CHILD PROTECTIVE SERVICES :
OF ORANGE COUNTY; CHRISTINE :
BRUNET; ATTY. STEPHANIE BAZILEOR; :
JOHN DOES 1 THROUGH 95; JANE DOES 1 :
THROUGH 20, :
Defendants. :
-----X

MEMORANDUM DECISION

12 CV 2858 (VB)

Briccetti, J.:

Pro se plaintiff Jacob Teitelbaum brings this civil rights action pursuant to 42 U.S.C. §§ 1983 and 1985. This memorandum decision resolves the following motions currently pending before the Court:¹

- (1) Defendant John Francis X. Burke’s motion to dismiss the amended complaint, filed February 25, 2013 (Doc. #147);
- (2) Plaintiff’s motion for a “protective order & appointment of next friend,” filed April 29, 2013 (Doc. ##173, 174); and

¹ Also pending before the Court are plaintiff’s motions “to amend & supplement” his complaint and “for leave to file a modified second amended and supplemental complaint,” (Doc. ##171, 172, 211), as well as motions to dismiss filed by defendants Kiryas Joel Community Ambulance Corp. and David Rubenstein (Doc. ##190, 198, 208). The Court is not deciding those motions at this time.

- (3) Plaintiff's "motion to revert position & preserve justice," filed April 29, 2013 (Doc. ##175, 176).

For the following reasons, Burke's motion is GRANTED and plaintiff's motions are DENIED.

DISCUSSION

Familiarity with the facts of this case – which were set forth in detail in the Court's February 11, 2013, memorandum decision, Teitelbaum v. Katz, 2013 WL 563371 (S.D.N.Y. Feb. 11, 2013) (the "February 11 Decision") – is presumed.

I. Burke's Motion to Dismiss

Defendant Burke was plaintiff's court-appointed counsel for the family court proceedings during which plaintiff lost custody of his children. Burke contends plaintiff's claims against him should be dismissed pursuant to the Rooker-Feldman doctrine for the same reasons the Court dismissed plaintiff's claims against the other attorneys involved in the family court proceedings in the February 11 Decision. The Court agrees.

The Rooker-Feldman doctrine bars federal courts from hearing claims "brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." Hoblock v. Albany Cnty. Bd. of Elections, 422 F.3d 77, 85 (2d Cir. 2005) (quoting Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284 (2005)). Four requirements must be met for the doctrine to apply: (1) the federal court plaintiff must have lost in state court, (2) the plaintiff must complain of injuries caused by a state court judgment, (3) the plaintiff must invite district court review and rejection of that judgment, and (4) the state court judgment must have been rendered before the district court proceedings commenced. Id. at 85.

As the Court previously found with respect to plaintiff's claims against the other attorneys involved in the relevant family court proceedings, all four of the Rooker-Feldman requirements are met with respect to plaintiff's claims against Burke. Specifically, (1) plaintiff lost in family court by admitting to neglecting his children and consequently losing custody of them; (2) plaintiff's injuries (i.e., violation of his alleged constitutional right to have custody of his children and to raise them as he sees fit) were caused by the family court's judgment; (3) plaintiff now asks this Court to reconsider the merits of the family court's determinations; and (4) the family court decision was rendered before this action was commenced. Therefore, plaintiff's claims against Burke based on defendants' alleged violation of plaintiff's constitutional right "to raise his children in a manner that he deems proper" and to have "custody and reasonable and unfettered access to his children," are dismissed for lack of subject matter jurisdiction. See Yapi v. Kondratyeva, 340 F. App'x 683, 684 (2d Cir. 2009); Phifer v. City of N.Y., 289 F.3d 49, 57 (2d Cir. 2002) ("This court may not review the family court's determinations regarding custody, neglect and visitation, as those issues were decided by the family court after providing [plaintiff] a full and fair opportunity to litigate those issues.").

To the extent plaintiff asserts a Section 1983 or 1985 conspiracy claim against Burke, plaintiff has failed to allege facts giving rise to a plausible claim that Burke conspired with others to deprive plaintiff of his constitutional rights, or that Burke was motivated by "invidious discriminatory animus." See Mian v. Donaldson, Lufkin & Jenrette Sec. Corp., 7 F.3d 1085, 1087 (2d Cir. 1993) (to establish Section 1985 claim, plaintiff must establish defendants conspired against plaintiff for the purpose of depriving plaintiff of his constitutional rights, and defendants motivated by "invidious discriminatory animus").

Therefore, Burke's motion to dismiss the amended complaint is granted, and plaintiff's claims against Burke are dismissed with prejudice.

II. Plaintiff's Motion for Protective Order and Appointment of Next Friend

For a third time, plaintiff has requested that non-party Ben Friedman be appointed plaintiff's next friend. (Doc. ##173, 174). That motion is denied for the reasons stated in the Court's memorandum decisions dated April 2, 2013 (Doc. #166), and April 17, 2013 (Doc. #168).

III. Plaintiff's Motion to Revert Position and Preserve Justice

Finally, plaintiff has filed a motion in which he asks the Court to "revert its position back to neutral," as the Court "is currently biased and shifted away to side with the Defendants, and took part in their conspiracy against the Plaintiff." (Doc. #176). As a basis for the motion, plaintiff cites Canons 2 and 3 of the Code of Conduct for United States Judges and 18 U.S.C. § 144.

Contrary to plaintiff's contentions, the Court has at all times remained neutral in this matter and is not biased for or against plaintiff or any other party. Quite to the contrary, the Court has carefully considered each of plaintiff's numerous submissions in this case, and has afforded plaintiff substantial latitude as a pro se litigant. The Court has not violated any code of judicial conduct, and recusal pursuant to 18 U.S.C. § 144 is unwarranted because the Court does not have "personal bias or prejudice either against [plaintiff] or in favor of any adverse party." Therefore, plaintiff's motion is denied.

CONCLUSION

Defendant Burke's motion to dismiss is GRANTED and plaintiff's motions are DENIED.

The Clerk is instructed to terminate the motions. (Docs. ##147, 173, 174, 175, 176).

The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore in forma pauperis status is denied for the purpose of an appeal. See Coppedge v United States, 369 U.S. 438, 444-45 (1962).

Dated: May 28, 2013
White Plains, NY

SO ORDERED:

A handwritten signature in black ink, appearing to read "Vincent L. Briccetti", written over a horizontal line.

Vincent L. Briccetti
United States District Judge