UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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.	**MEMORANDUM DECISION** 12 CV 2858 (VB)

Briccetti, J.:

Pending before the Court is non-party Ben Friedman's motion to be appointed plaintiff's next friend (Doc. #162). Mr. Friedman is not a lawyer and he is not represented by counsel. For the following reasons, his motion is DENIED.

In his affidavit in support of his motion, Mr. Friedman claims plaintiff is incompetent to litigate this case because, among other things, he does not speak English and other individuals within plaintiff's community have pressured plaintiff to cease communicating with Mr. Friedman regarding this case. Accordingly, Mr. Friedman seeks to be appointed plaintiff's next friend pursuant to Fed. R. Civ. P. 17(c).

Rule 17(c)(2) provides: "an incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The court must appoint a

guardian ad litem – or issue another appropriate order – to protect . . . [an] incompetent person who is unrepresented in an action."

As a threshold matter, because Mr. Friedman is not a lawyer and is not represented by counsel, the Court cannot appoint him as plaintiff's next friend. In federal court, "parties may plead and conduct their own cases personally or by counsel." 28 U.S.C. § 1654. "This provision authorizes only two types of representation: that by an attorney admitted to the practice of law by a governmental regulatory body and that by a person representing himself." Berrios v. N.Y.C. Hous. Auth., 564 F.3d 130, 132 (2d Cir. 2009) (internal quotation marks omitted). "Although § 1654 thus recognizes that an individual generally has the right to proceed pro se with respect to his own claims or claims against him personally, [t]he statute does not permit unlicensed laymen to represent anyone else other than themselves." Id. (internal quotation marks omitted).

Section 1654 applies "equally with respect to non-attorneys' attempts to bring suit on behalf of adults who are not competent to handle their own affairs." Id. at 133. The fact that an incompetent person must be represented by a next friend or guardian ad litem thus does not alter the general rule that a non-lawyer may not represent another individual in federal court. "If the representative of the . . . incompetent person is not himself an attorney, he must be represented by an attorney in order to conduct the litigation. '[W]ithout ... counsel, the case will not go forward at all.'" Id. at 134 (quoting Wenger v. Canastota Cent. Sch. Dist., 146 F.3d 123 (2d Cir. 1998)).

As the Second Circuit has explained: "The law contains so many esoteric pitfalls for an untrained advocate . . . that the risk of inadvertent waiver or abandonment of an issue is too high for us to allow a pro se litigant to represent another person. This rule exists to serve not only the interests of the represented party but also the interests of the adversaries and the court, because

the entire judicial system benefits from the professional knowledge of practicing attorneys." Guest v. Hansen, 603 F.3d 15, 20 (2d Cir. 2010).

Accordingly, because Mr. Friedman is not a lawyer and is not represented by counsel, his request to be appointed plaintiff's next friend is denied.

The Court also finds that neither Mr. Friedman's application nor the Court's own experience with plaintiff supports a finding that plaintiff is incompetent to litigate his case. Although plaintiff does not appear to speak English, he has effectively communicated with the Court with Mr. Friedman acting as his interpreter, and Mr. Friedman has not indicated an unwillingness to continue assisting plaintiff in that manner. Further, the fact that plaintiff has ceased communicating with Mr. Friedman about this case at the behest of other individuals in the community is not credible evidence of plaintiff's incompetence. To the contrary, it would seem more likely that plaintiff may have simply been convinced – quite reasonably – to stop pursuing a case that has already been dismissed as to most defendants, and which has greatly affected his family and community.

Therefore, without a further showing that plaintiff is unable effectively to represent himself in this action, the Court finds it is not obligated to appoint plaintiff a next friend or guardian ad litem pursuant to Rule 17(c), nor is the Court obligated to sua sponte conduct a further inquiry into plaintiff's competence. See Ferrelli v. River Manor Health Care Ctr., 323 F.3d 196, 203 (2d Cir. 2003).

CONCLUSION

Mr. Friedman's motion to be appointed plaintiff's next friend is DENIED.

The Clerk is instructed to terminate the motion. (Doc. #162).

Plaintiff's time to file a second amended complaint solely with respect to defendants Kiryas Joel EMS, Rubenstein, Juda Katz, Chaya Katz, Joel Tennenbaum, and Bluma Tennenbaum is extended to May 2, 2013. The other deadlines set forth in the Court's Order dated February 28, 2013 (Doc. #156) shall remain in effect.

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: April 2, 2013
White Plains, NY

SO ORDERED:

Vincent L. Briccetti
United States District Judge