

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

TARA M., by the Guardian of her Estate	:	
NANCY KANTER	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	NO. 97-1041
	:	
	:	
CITY OF PHILADELPHIA, et al.	:	
Defendants.	:	

MEMORANDUM-ORDER

GREEN, S.J.

August 6, 1998

Presently before the court is Defendants Department of Public Welfare (DPW) and Houston's Motion for Judgment on the Pleadings, Plaintiff's Response, and Defendants' Reply. Plaintiff, Tara M., by her child advocate, Nancy Kanter, Esquire, and through her counsel, brought this action against Defendants DPW and Houston, who is the Secretary of the DPW, asserting two claims under 42 U.S.C. § 1983 and a civil state conspiracy claim. For the following reasons, Defendant DPW's Motion for Judgment on the Pleadings is granted and Defendant Houston's Motion for Judgment on the Pleadings is granted.

Defendant argues that all claims against the DPW are barred by the Eleventh Amendment, and Plaintiff concedes in her Response that the Eleventh Amendment does bar all claims against the DPW. Thus, Defendant DPW's Motion for Judgment on the Pleadings will be granted. With regard to Defendant Houston, Defendant argues that all state-law claims are barred by the Eleventh Amendment and that Plaintiff may only seek prospective injunctive relief for the federal claims. Plaintiff states in her Response that she has agreed to drop her state-law conspiracy claim against Defendant Houston. Plaintiff also asserts that in her federal claims against Defendant Houston, she is, in fact, only seeking declaratory and prospective injunctive

relief.

Thus, the only claims that remain as to the moving Defendants are the federal claims against Defendant Houstoun seeking declaratory and prospective injunctive relief. Defendant Houstoun argues these claims should also be dismissed because the present case is duplicative of a class action suit which is currently pending before Judge Robert Kelly in the United States District Court for the Eastern District of Pennsylvania. The action was brought on behalf of various children against then Governor Robert P. Casey and then DPW Secretary, John White, now captioned Baby Neal, et al. v. Thomas P. Ridge, et al., at No. 90-2343 (“Baby Neal litigation”).

The Baby Neal litigation challenges the administration of the Philadelphia child welfare system and seeks prospective injunctive relief for children in DHS’ custody. (Baby Neal Am. Compl. ¶ 226; Def.’s Mem. Supp. J. on Pleadings at 5). It is alleged that the defendants deprived the plaintiffs of rights conferred by the First, Ninth and Fourteenth Amendments to the United States Constitution. (Baby Neal Am. Compl. ¶ 223). The allegations include: the right not to be deprived of a family relationship absent compelling reasons; the right not to be harmed -- physically, emotionally, developmentally, or otherwise -- while in state custody; the right to protection from harm once a special relationship with the defendants has been created; the right to placement in the least restrictive, appropriate placement; the right to treatment; the right to care that is consistent with competent professional judgment; and the right not to be deprived of state or federally created liberty or property rights without due process of law. (Baby Neal Am. Compl. ¶ 223).

On April 13, 1992, Plaintiff in this action, Tara M., and thirteen other children were

granted the right to intervene in the Baby Neal litigation. The complaint of the intervenors was filed April 28, 1992 and repeated the allegations of the Baby Neal Amended Complaint. (See Def.'s Exs. "C" and "F"). On April 6, 1995, the court in the Baby Neal litigation issued an order which granted plaintiffs' motion for class certification and certified the class on behalf of the named plaintiffs and all other children who are or in the future will be in the custody of the DHS, or who are or become known to the DHS because of a report of abuse or neglect. (See Ex. "C", docket entry 204). The nature of the relief sought against the Commonwealth defendants in the Baby Neal litigation, of which Tara M. is a named plaintiff and class representative, is for declaratory and prospective injunctive relief. (See Compl., at ad damnum clause, subparagraph (a) and (b), at p. 37).

Plaintiffs may not maintain two separate actions involving the same subject matter at the same time in the same court and against the same defendant. Walton v. Eaton Corp., 563 F.2d 66, 70 (3d Cir. 1977) (citations omitted). For an action to be deemed duplicative, there must be the same parties, or at least such as represent the same interest; there must be the same rights asserted and the same relief prayed for; the relief must be founded upon the same facts; and the essential basis of the relief sought must be the same. United States v. Haytian Republic, 154 U.S. 118, 124 (1894).

In both the present case and the Baby Neal litigation, Plaintiff and Defendant Houstoun are involved as parties, Plaintiff asserts the same rights, and Plaintiff seeks the same relief. Although Defendant Houstoun is not expressly named as a defendant in the Baby Neal litigation, Defendant Houstoun, the present Secretary of the DPW, represents the same interests as named Defendant John F. White, Jr., the former Secretary of the DPW. In the remaining claims in the

present case, Plaintiff seeks a declaratory judgment that Defendant Houstoun violated her rights under the United States Constitution and the Adoption Assistance and Child Welfare Act.

Plaintiff also seeks prospective injunctive relief enjoining Defendant Houstoun from interfering with her rights and requiring Defendant Houstoun to take actions which would assure Plaintiff the most appropriate care and treatment. In the Baby Neal litigation, Plaintiff seeks declaratory and injunctive relief for violating her rights under the Adoption Assistance and Child Welfare Act, the United States Constitution, and the Child Abuse and Treatment Act.

Plaintiff has set forth additional facts in the present case in order to seek redress against individual defendants for their alleged misconduct. However, these facts represent the same types of facts in the Baby Neal litigation which attempt to demonstrate a systematic course of conduct on the part of the defendants, and presumably these facts would have been included in the Baby Neal litigation as part of that alleged continuing course of conduct had they occurred prior to the filing of the Complaint. Thus, although the specific acts of misconduct alleged in the present case occurred after the commencement of the Baby Neal litigation, as these facts relate to Defendant Houstoun, they do not state a cause of action different from the cause of action stated against the Secretary of the DPW in the Baby Neal litigation. Therefore, because all of the requirements for an action to be rendered duplicative are met in the present case, this court will grant Defendant Houstoun's Motion for Judgment on the Pleadings as to the remaining claims against Defendant Houstoun.

An appropriate Order follows.

