

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

GAYLORD NEAL : CIVIL ACTION
 :
 v. :
 :
 CITY OF PHILADELPHIA, ET AL. : NOS. 99-6352
 : 00-1347

ORDER - MEMORANDUM

AND NOW, this 29th day of March, 2000, the above actions are consolidated, and defendants' motions to dismiss the complaints of plaintiff Gaylord Neal are granted. Fed R. Civ. P. 12(b)(6). Plaintiff may amend by April 18, 2000 if he can do so within the constraints of Fed. R. Civ. P. 11 (claims must be warranted by existing law: otherwise, sanctions may be imposed).

These complaints, filed pro se, do not state a claim on which this court can grant relief. As referenced in the caption of the 1999 action, these are the fifth and sixth actions that plaintiff has filed over a period of nine years involving the same subject matter and against the same defendants or official positions.¹ The prior actions were decided in defendants' favor, the last by summary judgment on the ground of res judicata. Neal v. Summers, Civ. No. 93-2822, 1993 WL 381444 (E.D. Pa. Sept. 28, 1993). The recent actions apparently involve more recent developments.

According to the complaints, on November 1, 1999, plaintiff's daughter was again removed from his custody by the Philadelphia Department of Human

¹ These previous actions are 91-CV-4684, 91-CV-6417, 91-CV-7987, and 93-CV-2822.

Services. Although the allegations are not entirely clear, they appear to say that a protective order was issued by a family court judge barring plaintiff from visiting his daughter. The purported reason was that plaintiff was a “sexual predator” which plaintiff denies.² It is also alleged that plaintiff was not informed of a hearing and was advised that he could not appeal the order without the family court judge’s approval. The complaints assert “14th Amendment due process and equal protection” violations but does not plead any statutory vehicle, such as 42 U.S.C. § 1983.³

Without going into the technicalities of proper pleading, it is apparent that plaintiff needs legal advice as to whether or not he has a claim and, if so, in what court or counts to file it. While he has requested appointment of counsel by this court, there is no pool or panel of volunteer attorneys from which such an appointment can be made. Instead, this court sent plaintiff instructions as to how he might find pro bono or other counsel.

Plaintiff should also be made aware that in family court matters, one can always go back to the family court and file another petition if a serious mistake or a material change in circumstances has occurred. In a case of this type, it should be up to the family court to determine what is in the interest of the child. One of the present complaints suggests that plaintiff, who appears to be

² The same issue was the crux of the prior actions, but what transpired between 1993 and 1999 is a matter of conjecture.

³ Plaintiff’s response to defendants’ 12(b)(6) refers to 42 U.S.C. §§ 1981 & 1985. Defendants move to dismiss the complaint under the Eleventh Amendment and § 1983.

nonwhite, is a victim of a “good old boy” white “conspiracy.” That kind of unsupported accusation does not help plaintiff’s case. It is understandable and no doubt commendable that plaintiff wants to have his daughter re-united with him. But inflammatory charges of race discrimination, unless well founded, will serve only to weaken plaintiff’s position.

Plaintiff should re-double his efforts to find counsel, and if this court finds counsel willing to undertake his representation, it will notify him promptly. If the complaints are not amended by April 18, 2000, these actions will be dismissed.

Edmund V. Ludwig, J.