

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADOCivil Action No. 2009cv00309 *MSK-16m*

SUZANNE SHELL

Plaintiff

v.

AFRA, *et al*

Defendants

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

APR 21 2009

GREGORY C. LANGHAM
CLERK**MOTION TO DISMISS Due to Lack of Personal Jurisdiction, and, MOTION TO QUASH SERVICE OF PROCESS**

Comes now Susan Adams Jackson, defendant, *pro se*, to motion in the above captioned lawsuit.

Jackson, respectfully moves the Court to enter an Order pursuant to Fed. R. Civ. P. 12(b)(2) dismissing Plaintiff's claims against her in the Complaint filed with the Court February 13, 2009 for lack of personal jurisdiction, and quashing the service of process upon her. Jackson does not have the minimum contacts necessary to support this Court's exercise of in personam jurisdiction under Colorado's "Long-Arm Statute," Colo. Rev. Stat. § 13-1-124 (1998), and the Due Process Clause of the Fifth Amendment.

In support of this Motion to Dismiss, and, Motion to Quash, Defendant avers the following:

Statement of Facts

1. Jackson neither lives nor works in the state of Colorado, nor does she conduct business or own property in the state of Colorado.
2. Jackson has not solicited business from any person or entity in the state of Colorado.

3. Jackson has not stepped foot in, nor traveled on the roads of, the state of Colorado for over fifteen years, long before she had cause to know of the Plaintiff.
4. Prior to Plaintiff's claim, Jackson did not request protection from the state of Colorado, nor was Jackson reliant upon the state of Colorado or its amenities in any way within statute of limitations as pertains to Plaintiff's claim.
5. Jackson did not sign a waiver of Court jurisdiction as requested by the Plaintiff.
6. Jackson has signed no contract or agreement or stipulation with the Plaintiff.
7. Prior to Plaintiff's claim, Jackson conducted no affairs relative to the Plaintiff's claim with residents known by Jackson to reside in the state of Colorado, and has not satisfied the minimum contacts required to assert personal jurisdiction.
8. Jackson is involved in support of families who are beset by Child Protective Services, nationwide, through internet support groups, and as an appointed unpaid member of the Board of Directors (BOD) of a non-revenueing internet-based association known as American Family Rights Association (AFRA), which has no affiliate "chapters" in the state of Colorado.
9. Jackson has no marketable qualifications in the area of family support, claims no related expertise, and has provided neither related goods nor related services to anyone in the state of Colorado.
10. Effectively, Jackson's role on the AFRA BOD is that of an internet group moderator, keeping the peace on various support groups, and keeping group

members on the discussion topic, and she has no idea if any of the membership hales from Colorado.

Merits

1. The claim is not sufficiently extraordinary to merit overcoming traditional lack of personal jurisdiction.
2. Jackson does not maintain a sufficient connection to the Plaintiff, who resides in and conducts business in the state of Colorado, and so disputes personal jurisdiction solely on the basis of web advertising, if such a term applies, where more active contacts with the state of Colorado do not exist, such as internet sales to the Colorado residents, conducting business in Colorado through significant contacts, or entering into specific arrangements with Colorado residents. *CompuServe, Inc. v. Patterson*, 89 F.3d 1257 (6th Cir. 1996) .
3. Prior to Plaintiff's claim, Jackson conducted no continuous or systematic business or correspondence with a resident or entity known by Jackson to be central to the state of Colorado. *International Shoe Co. v. Washington*, 326 U.S. 310 (1945) held that a court can establish specific jurisdiction over a defendant only if he or she has "certain minimum contacts" with a particular forum such that the exercise of jurisdiction "does not offend traditional notions of fair play and substantial justice." The due process clause does not permit a state to exercise in personam over an individual or corporation with which the state has no contacts, ties or relations.
4. Jackson has held no reasonable expectation of being sued by the state of Colorado, aside from the Plaintiff's continual assertions over the course of perhaps four years that she would not hesitate to litigate against Jackson.

Jackson has not broken a law in the state of Colorado, nor committed an intentional tortious act aimed at, or relative to, the state of Colorado. Calder v. Jones, 465 U.S. 783 (1984) . Dudnikov v. Chalk & Vermilion, 514 F.3d 1063 (10th Cir. 2008) .

Affirmative Defenses

1. Statute of limitations applies. Jackson has neither set foot in, nor driven through the state of Colorado for fifteen years.
2. Jurisdiction applies. The state of Colorado has no existing claims of jurisdiction over Jackson apart from the Plaintiff's claims.
3. Waiver applies. Jackson has not waived her lack of personal jurisdiction defense.

Relief

1. Should affirmative defenses be denied, Jackson requests to be given leave by the Court to amend and re-plead them to include facts sufficient to explain the nature of the defense.
2. Jackson prays the Court to dismiss her from the Plaintiff's claim and claim of action.
3. Jackson prays that the Court will adversely sanction the Plaintiff for an elaborate ruse and injurious claim of personal jurisdiction over Jackson.
4. Jackson prays the Court to ensure that the Plaintiff remunerates Jackson for costs related to Jackson's defense, including attorney fees, costs of printing, mailing, serving, filing and retrieving court documents, and travel to and from the court between Massachusetts and Colorado, and for per diem living costs during stays in, and en route to, Colorado, time spent on preparation for defense, lost wages, plus for any costs that the Plaintiff has reversed to Jackson.

5. Jackson prays the following of the Court:

a. That the Court recognize her as pro se Respondent, and so afford her leniency, and allow for "less stringent standards than formal pleadings drafted by lawyers." *Haines v. Kerner*", 404 U.S. 519 (1972), etc.

b. That the Court further take into consideration the judgments, Acts, and quotes presented below (b2-b13), with regard to pro se appearance:

Liberality in dealing with Pro Se litigants

b2. "The trial judge should inform a pro se litigant of the proper procedure for the action he or she is obviously attempting to accomplish." *Breck v. Ulmer*", 745 P.2d 66, 75 (Alaska 1987)

b3. "Pro Se Litigants pleadings are to be construed liberally and held to less stringent standards than lawyers" *Haines v Kerner* (1972) 404 US 519 (1972)

b4. ".the greatest veneration one can show the rule of law is to keep a watch on it, and to reserve the right to judge unjust laws and the subversion of the function of the law by the state. That vigilance is the most important proof of respect for the law." Nadine Gordimer, *Speak Out: The Necessity of Protest* lecture. [1971]

b5. Defendant appears in this action "In Propria Persona" and asks that his points and authorities relied upon herein, and issues raised herein, must be addressed "on the merits", *Sanders v United States*, 373 US 1, at 16, 17 (1963); and addressed with "clarity and particularity", *McCleskey v Zant*, 111 S. Ct. 1454, at 1470-71

(1991); and afforded " a full and fair" evidentiary hearing, *Townsend v Sain*, 372 U.S.293, at p.1 (1962). See also *Pickering v Pennsylvania Railroad Co.*, 151 F.2d 240 (3d Cir. 1945).

b6. Pleadings of the Defendant SHALL NOT BE dismissed for lack of form or failure of process. All the pleadings are as any reasonable man/woman would understand, "And be it further enacted. That no summons, writ, declaration, return, process, judgment, or other proceedings in civil cases in any of the courts or the United States, shall be abated, arrested, quashed or reversed, for any defect or want of form, but the said courts respectively shall proceed and give judgment according as the right of the cause and matter in law shall appear unto them, without regarding any imperfections, defects or want of form in such writ, declaration, or other pleading, returns process, judgment, or course of proceeding whatsoever, except those only in cases of demurrer, which the party demurring shall specially sit down and express together with his demurrer as the cause thereof. And the said courts respectively shall and may, by virtue of this act, from time to time, amend all and every such imperfections, defects and wants of form, other than those only which the party demurring shall express as aforesaid, and may at any, time, permit either of the parties to amend any defect in the process of pleadings upon such conditions as the said courts respectively shall in their discretion, and by their rules prescribe (a)" Judiciary Act of September 24, 1789, Section 342, FIRST CONGRESS, Sess. 1, ch. 20, 1789.

b7. "Court errs if court dismisses pro se litigant without instructions of how pleadings are deficient and how to repair pleadings." *Plaskey v. CIA*, 953 F .2nd 25

b8. "Nemo prasens nisi inteligat," or "One is not present unless he understands," 2 Bouvier's Law Dic. 136, title Maxims"

b9. HAINES v. KERNER, ET AL. 404 U.S. 519, 92 S. Ct. 594, 30 L. Ed. 2d 652. Whatever may be the limits on the scope of inquiry of courts into the internal administration of prisons, allegations such as those asserted by petitioner, however inartfully pleaded, are sufficient to call for the opportunity to offer supporting evidence. We cannot say with assurance that under the allegations of the pro se complaint, which we hold to less stringent standards than formal pleadings drafted by lawyers, it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957). See Dioguardi v. Durning, 139 F.2d 774 (CA2 1944).

b10. ESTELLE, CORRECTIONS DIRECTOR, ET AL. v. GAMBLE 29 U.S. 97, 97 S. Ct. 285, 50 L. Ed. 2d 251. We now consider whether respondent's complaint states a cognizable 1983 claim. The handwritten pro se document is to be liberally construed. As the Court unanimously held in Haines v. Kerner, 404 U.S. 519 (1972), a pro se complaint, "however inartfully pleaded," must be held to "less stringent standards than formal pleadings drafted by lawyers" and can only be dismissed for failure to state a claim if it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Id., at 520-521, quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

b11. WILLIAM MCNEIL, PETITIONER v. UNITED STATES 113 S. Ct. 1980, 124 L. Ed. 2d 21, 61 U.S.L.W. 4468. Moreover, given the clarity of the statutory text, it is certainly not a "trap for the unwary." It is no doubt true that there are cases in which a litigant

proceeding without counsel may make a fatal procedural error, but the risk that a lawyer will be unable to understand the exhaustion requirement is virtually nonexistent. Our rules of procedure are based on the assumption that litigation is normally conducted by lawyers. While we have insisted that the pleadings prepared by prisoners who do not have access to counsel be liberally construed, see *Haines v. Kerner*, 404 U.S. 519 (1972); *Estelle v. Gamble*, 429 U.S. 97, 106 (1976), and have held that some procedural rules must give way because of the unique circumstance of incarceration, see *Houston v. Lack*, 487 U.S. 266 (1988) (pro se prisoner's notice of appeal deemed filed at time of delivery to prison authorities), we have never suggested that procedural rules in ordinary civil litigation should be interpreted so as to excuse mistakes by those who proceed without counsel. As we have noted before, "in the long run, experience teaches that strict adherence to the procedural requirements specified by the legislature is the best guarantee of evenhanded administration of the law." *Mohasco Corp. v. Silver*, 447 U.S. 807, 826 (1980).

b12. *BALDWIN COUNTY WELCOME CENTER v. BROWN* 466 U.S. 147, 104 S.

Ct. 1723, 80 L. Ed. 2d 196, 52 U.S.L.W. 3751. Rule 8(f) provides that " pleadings shall be so construed as to do substantial justice." We frequently have stated that pro se pleadings are to be given a liberal construction.

b13. *HUGHES v. ROWE ET AL.* 449 U.S. 5, 101 S. Ct. 173, 66 L. Ed. 2d 163, 49 U.S.L.W. 3346. Petitioner's complaint, like most prisoner complaints filed in the Northern District of Illinois, was not prepared by counsel. It is settled law that the allegations of such a complaint, "however inartfully pleaded" are held "to less stringent

standards than formal pleadings drafted by lawyers, see *Haines v. Kerner*, 404 U.S. 519, 520 (1972). See also *Maclin v. Paulson*, 627 F.2d 83, 86 (CA7 1980); *French v. Heyne*, 547 F.2d 994, 996 (CA7 1976). Such a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Haines*, supra, at 520-521. And, of course, the allegations of the complaint are generally taken as true for purposes of a motion to dismiss. *Cruz v. Beto*, 405 U.S. 319, 322 (1972).

6. Jackson prays the Court will provide further relief as the Court deems fit and proper for the circumstances.

Respectfully submitted,



Date: April 17, 2009

Susan Adams Jackson

Deane M Bennett
Exp 5-15-09

Certificate of Service

I hereby certify that on the 17th day of April, 2009, I served a true and correct copy of this Motion to Dismiss Due to Lack of Personal Jurisdiction, and, Motion to Quash Service of Process, upon the Plaintiff and upon each of the Defendants named as follows:

Suzanne Shell [Plaintiff]
14053 Eastonville Road
Elbert, Colorado 80106

via: USPS, with delivery confirmation.

And on the following Defendants:

William O. Tower	American Family Rights Association
Ann Tower	Families at Risk Defense Alliance
Leonard Henderson	Illinois Family Advocacy Coalition
Dorothy Baez-Kernaghan	Georgia Family Rights, Inc.
Cletus Kiefer	National Association of Family Advocates
Francine Renee Cygan	Connecticut DCF Watch
Mark Cygan	Wiseman Studios
Dennis Hinger	CPS Watch, Inc.
Aimee Dutkiewicz	
Thomas Dutkiewicz	
William Wiseman	
Ann Durand	
Brenda Swallow	
Kathy Tilley	
Dee Contreras	
Randall Blair	

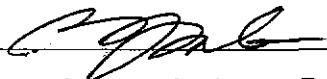
Lloyd Phillips

Ringo Kamens

Cheryl Barnes

Desere' Clabo

via: fax, email, or other mutually agreed upon electronic means.



Susan Adams Jackson, Defendant

Dated: April 17, 2009

Niane M Benoit
EXP 5-15-09