

FILED

OCT - 5 2011

Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

Andre Adgerson and Zakiya White
(by her parent Andre Adgerson)
2000 Gaither Street
Temple Hills, MD 20748

Sam Wilson and Neihema Brown
(by her parent Sam Wilson)
6302 Elmhurst St.
District Heights, MD 27047

Plaintiffs,

vs.

District of Columbia
Vincent Gray, Mayor of the District of Columbia,
Debra Porchia-Usher, Interim Director of the Child
and Family Services Agency

Defendants.

Case. 1:11-cv-01772
Assigned To : Wilkins, Robert L.
Assign. Date : 10/5/2011
Description: Civil Rights-Non-Employ.

**JURY
ACTION**

Case No. _____

JURY TRIAL DEMANDED

COMPLAINT FOR INJUNCTION, DECLARATORY RELIEF,

AND DAMAGES

This is a civil rights case brought in part under 42 U.S.C. §1983 for declaratory and injunctive relief and damages to correct and obtain compensation for violations by Defendants of the rights of parents and their minor children under the due process and equal protection provisions of the Fifth and Fourteenth Amendments to the Constitution,

and for relief due to violations of 42 U.S.C. §671, and DC Code §4-1301.09a, §16-2310, and §16-2311 under this Court's supplemental jurisdiction.

1. The District of Columbia ("DC"), through its Child and Family Services Agency ("CFSA"), purporting to rely upon the Interstate Compact on the Placement of Children ("ICPC" or "Compact") and the corresponding District statute, DC Code §4-1421 *et seq.*, has followed a policy and practice under which it refuses to grant custody of a child it previously took into temporary care to a fit non-resident parent of that child, until (a) CFSA has requested an investigation of that parent by the state where the parent resides - known as the "receiving state," (b) the receiving state has completed such investigation, (c) the receiving state has recommended to CFSA that it release the child to the parent, and (d) CFSA has acted on the recommendations. References to CFSA in this Complaint shall include the District of Columbia and other Defendants unless otherwise stated.

2. During the investigation by the receiving state (also called a "home study"), CFSA keeps the child in its custody or in foster care and the parent's request for custody is denied. This investigation (or "home study") may take several months or longer to complete. In the meantime, the child remains in foster care, deprived of parental care and family integrity, and the parent is deprived of his right to care for his child. As a result, the child and parent may suffer emotional and psychological injury.

3. If the receiving state deems the home study of the parent to be unsatisfactory – even if there is no finding of parental unfitness and no determination that the child's best interests would be served by living apart from her parent – CFSA denies

the parent and child the right to family integrity, the child remains in foster care, and the child and parent suffer continued emotional and psychological injury.

4. By contrast, if the parent seeking custody resides in DC instead of any other state, he or she is not subjected to the indignity, delay and possible adverse impact of an ICPC investigation. In these situations, CFSA conducts its own investigation, which often includes inviting the resident parent to participate in a Family Team Meeting with CFSA. If CFSA does not find the resident parent unfit, CFSA will release the child to her parent – usually within 72 hours.

5. There is no basis in law for CFSA to treat non-resident parents differently than it treats resident parents who seek custody of their own children. The decision of CFSA to rely on the ICPC and §4-1421 *et seq.* and impose a receiving state investigation requirement on non-resident parents who seek custody of their own children is contrary to the provisions of the ICPC and its implementing DC statute, §4-1421 *et seq.* The relevant language of the Compact and the statute *does not* apply to parents seeking custody. Those laws do *not* apply to parents at all. Indeed, the term “parent” is *not* part of the operative section of the ICPC and the DC statute, and appears only in CFSA’s Policy Statement.¹ The operative language of §4-1422 (and of Article III of the ICPC) establish preconditions for the interstate placement of children exclusively for purposes

¹ See CFSA Program Policy on the Interstate Compact on the Placement of Children (ICPC), July 2, 2010 (“CFSA Policy Statement”), *available at* <http://cfsa.dc.gov/DC/CFSA/About+CFSA/Policy/CFSA+Policy+Manual+Table+of+Contents/Program+Policies/Program+-+Interstate+Compact+on+Placement+of+Children+%28ICPC%29> [hereinafter CFSA Policy Statement].

of *foster care* and preliminary to *adoptions* – not for securing parental custody. In addition, the Compact (Article VIII(1)) and DC statute (§4-1422) expressly *exempt* parents who send or bring their own children into a receiving state. Despite the plain language of the statute and the Compact limiting their application to instances of foster care and pre-adoptive placements, CFSA misapplies these laws to limit the right of non-resident *parents* to obtain physical *custody* of their own minor children.

6. The relevant provision of §4-1422 which is taken verbatim from Articles III (a) and (b) and Article VIII of the ICPC states:

(a) No sending state [*e.g.*, DC] shall send, bring, or cause to be sent or brought into any other party state a child for placement *in foster care or prior to a possible adoption*, unless the sending state complies with each requirement set forth in the Compact and applicable laws of the receiving state that govern the placement of the children.

(b) Prior to sending, bringing or causing a child to be sent or brought into a receiving state for placement *in foster care or prior to a possible adoption*, the sending state shall furnish the appropriate authority -- the receiving state -- written notice of the intention to send, bring or place the child in the receiving state.

(Emphasis added.)

And,

This Compact shall not apply if:

(1) A child is sent or brought into a receiving state by his parent....

7. Since the ICPC and §4-1422 are limited to placements in foster care or for possible adoption, parental rights to custody of their own children fall outside their scope.

8. The legislative history of the 1989 DC Council adoption of the ICPC does not even refer to the potential application of the Compact or §4-1421 *et seq.* to non-

resident parents.² While DC has issued several regulations relating to standards of placement, care, and services provided by child-placing agencies, it has issued only one addressing the ICPC. That regulation *only* addresses interstate cooperation “for foster or adoptive placement.” *See* D.C. Mun. Regs. Tit. 29, §1635 (1990).

9. Acting without authorization, CFSA has arbitrarily added the word “parent” to that part of its Policy Statement that purports to implement Article III of the ICPC and §4-1421 *et seq.* CFSA’s position as documented in its Policy Statement first declares that CFSA “shall adhere to the provisions of the ... ICPC as codified in DC Code §4-1421,” but then contradicts the Compact and the DC statute by declaring that the ICPC applies to “Placements with a *parent*” . CFSA Policy Statement, *supra* note 1, at 2 (emphasis added). *See also, id.* at 5-8, 12-13 (Procedures B and F). As noted above, the ICPC and §4-1422, which CFSA Policy Statement purports to implement, say no such thing. Simply put, CFSA has altered the meaning of the ICPC and the DC Statute by bootstrapping the word “parent” into their operative sections. CFSA’s Policy Statement is unlawful because:

- a) Its application to non-resident parents violates the Constitutional rights of affected parents and children under the Fifth and Fourteenth Amendments;
- b) It extends far beyond what is permitted by the language of the ICPC, and DC’s statute and alters their meaning; and
- c) CFSA Policy Statement’s application to non-resident parents conflicts with other provisions of DC’s law. *See infra* Count V.

² *See* Vol. 36 D.C. Reg. 6966 (Oct. 6, 1989)

10. As a consequence of CFSA's Policy Statement and practice, CFSA keeps children in state custody and places them in institutions or in the homes of strangers rather than releasing them to their fit parents.

11. In addition, CFSA has followed a policy and practice of disregarding the ICPC in other areas pertaining to child custody. On information and belief, there were 110 District of Columbia foster care children in the "ICPC backlog" as of December 31, 2010. The "backlog" refers to children placed in foster homes, not with their parents, without ICPC approval.³ That is, CFSA has placed more than 100 children in foster homes outside of the District of Columbia without appropriate ICPC approval – in cases when the ICPC indisputably does apply – while simultaneously refusing to release children to their fit, non-resident parents, in cases when the ICPC does not apply.

JURISDICTION AND VENUE

12. This action is brought pursuant to 42 U.S.C. §1983 for violations by Defendants of the Fifth and Fourteenth Amendments of the Constitution and federal law, and for declaratory judgment under 28 U.S.C. §2201.

13. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§1331, 1343(a)(3) and 1343(a)(4).

14. This action is also brought pursuant to 28 U.S.C. §1367 as Plaintiffs assert other claims that are related to claims in this action within this Court's original

³ See Report of Court Appointed Monitor, Center for the Study of Social Policy, LaShawn A. v. Gray Progress Report for the Period July 1- December 31, 2010 at 43, LaShawn A. et. al. v. Fenty, 701 F.Supp.2d 84, Case No. 89-CV-01754, Doc. No. 1083 (D.D.C. May 2, 2011).

jurisdiction that form a part of the same case or controversy under Article III of the Constitution.

15. Venue is proper in this District pursuant to 28 U.S.C. §1391(b).

PARTIES

16. Plaintiff Andre Adgeron, is a resident of Maryland. He is the father of his minor child, Plaintiff Zakiya White.

17. Plaintiff Sam Wilson is a resident of Maryland. He is the father of his minor child, Plaintiff Neihema Brown.

18. Plaintiff Zakiya White, now a resident of Maryland, is the minor daughter of Andre Adgeron who brings this suit on her behalf.

19. Plaintiff Neihema Brown currently resides with her father. She is the minor child of Sam Wilson who brings this suit on her behalf.

20. As used herein, the term "Plaintiff parents" shall mean Plaintiffs Andre Adgeron and Sam Wilson, collectively.

21. As used herein the term "Plaintiff children" shall mean Plaintiffs Zakiya White and Neihema Brown, collectively.

22. The District of Columbia is made a defendant. CFSA is an agency of the Defendant, the District of Columbia.

23. Defendant Vincent Gray, is the Mayor of the District of Columbia. He is sued in his official capacity.

24. Defendant Debra Porchia-Usher is the Interim Director of CFSA. She is sued in her official capacity.

25. Defendants Gray and Porchia-Usher (and their respective predecessors in their official capacities) jointly, directly and indirectly control and have controlled and are responsible for the policies and practices of Defendants as alleged in this Complaint.

26. Actions by Defendants alleged herein were under color of law. Defendants have acted or failed to act in a manner generally applicable to the allegations contained herein, and have caused injury to Plaintiffs described in this Complaint making declaratory, injunctive, and compensatory relief appropriate and necessary.

FACTUAL BACKGROUND

Plaintiffs Andre Adgerson and Zakiya White

27. Prior to July 7, 2010, Plaintiff Zakiya White was in the shared custody of her father, Andre Adgerson, who resided in Maryland, and her mother who resided in the District of Columbia. In the weeks prior to July 7, 2010, Mr. Adgerson spent nights at the District of Columbia home of Zakiya's mother to supervise Zakiya while her mother worked overnight. On or about July 7, 2010, when Mr. Adgerson was not present, CFSA removed Zakiya White from her mother's custody.

28. Upon being notified of CFSA's action on or about July 7, 2010, Mr. Adgerson requested custody of Zakiya from CFSA. On or about July 8, 2010, CFSA held a Family Team Meeting ("FTM"), which Andre Adgerson attended. Mr. Adgerson again requested custody of Zakiya from CFSA.

29. CFSA refused to provide immediate custody of Zakiya to Mr. Adgerson. CFSA informed Mr. Adgerson that, because he resided outside the District of Columbia, CFSA would have to apply the ICPC before his child could be placed with him.

30. CFSA placed Zakiya into foster care, and she remained separated from her father for approximately one month. Mr. Adgeron was initially allowed to have overnight visits with Zakiya. Effective July 13, 2010, however, he was allowed no visitation with Zakiya, except for limited, supervised visitation at her maternal aunt's DC residence. Zakiya's separation from her father caused emotional and psychological distress.

31. After Maryland authorities completed initial background checks on Mr. Adgeron, but had not yet begun a full "home study," a DC Family Court judge ordered Zakiya released into Mr. Adgeron's custody. CFSA's actions unlawfully caused the delay between the time Mr. Adgeron requested custody of Zakiya, and the time he finally received custody. Mr. Adgeron is a fit and loving parent and at no time did CFSA find or claim that he was unfit.

32. Defendants' actions alleged herein have injured Andre Adgeron and Zakiya White in amounts to be determined at trial.

Plaintiffs Sam Wilson and Neihema Brown

33. Prior to the events of November and December 2010 described herein, Sam Wilson shared custody of his child Neihema with her mother who lived in the District of Columbia with her. He saw his child on most weekends and occasionally during the week at the mother's home in DC or at his home in Maryland.

34. On information and belief, on or about November 6, 2010, CFSA received a report that the child's mother used the drug PCP and had neglected the child. Following an initial investigation, CFSA and the mother cooperatively developed a plan that the mother would keep custody of Neihema subject to supervision by family

members. CFSA became aware that Mr. Wilson was Neihema's father, and that he shared custody and frequently visited his child.

35. At a Family Team Meeting ("FTM") held on or about November 15, 2010, the mother agreed to seek assistance through a residential drug treatment program. On information and belief, Mr. Wilson, who works full-time, was not informed of the FTM in time to attend.

36. On or about December 9, 2010, the mother was admitted into the Second Genesis drug treatment program, located in Maryland, with the plaintiff child, a second child named S.B., and third child named J.S., who remained in her custody. Mr. Wilson visited Neihema frequently while they were at Second Genesis.

37. On or about December 21, 2010, CFSA removed the children from the mother's custody and placed them at St. Ann's Infant and Maternity Home, a former orphanage and currently a congregate care institution located in Hyattsville, Maryland. At the time, Neihema Brown was 3 years and 11 months old.

38. On or about December 22, 2010, a CFSA social worker called Mr. Wilson and informed him that CFSA had removed his child and placed her in foster care. Mr. Wilson responded that he would do whatever was in his power to obtain custody of his child.

39. A shelter care hearing was held on or about December 23, 2010. On information and belief, Mr. Wilson was not served with notice of the shelter care hearing.

40. A second FTM was held by CFSA on or about January 13, 2011. Mr. Wilson attended and asked that his child Neihema be placed with him. CFSA did not give custody of his child to Mr. Wilson.

41. On or about January 21, 2011, CFSA moved Neihema from St. Ann's to a non-kinship foster home in Springdale, Maryland.

42. On or about January 25, 2011, Mr. Wilson attended a hearing at the DC Family Court, a division of DC Superior Court ("Family Court"). CFSA and Neihema's mother were also present. On information and belief, the parties recognized at the hearing that placement of Neihema with Mr. Wilson would be in her best interest. However, Mr. Wilson was informed at that hearing that he would need to complete the ICPC process before Neihema could be placed with him. He was told that the State of Maryland would have to approve him before DC would grant him custody of his child. The Family Court judge said the ICPC investigation would probably take a couple of months - even if the investigation was expedited. Meanwhile, Neihema would remain in foster care.

43. On February 2, 2011 Mr. Wilson, through counsel, again asked the Family Court for reunification with his child. By that time, even CFSA agreed that Neihema should be placed with Mr. Wilson, but felt constrained to follow the ICPC process. However, CFSA had not even initiated an ICPC investigation by sending a request to Maryland. As the Family Court then observed, CFSA had wasted a whole week since the earlier hearing. The Family Court stated that it would be great if Neihema could be placed with Mr. Wilson, but even if CFSA started immediately the ICPC process would take several months to complete.

44. Also on or about February 2, 2011, CFSA ordered Neihema into continued foster care. Mr. Wilson was accorded visitation rights and visited Neihema frequently while she was in foster care.

45. CFSA did not submit an ICPC referral to Maryland respecting Mr. Wilson's request for custody until on or about February 4, 2011.

46. During February and/or March 2011, a Maryland social worker visited Mr. Wilson's home.

47. In late April 2011, Mr. Wilson was informed by the Maryland authorities that the processing of his ICPC application was proceeding.

48. In late May or early June 2011, Maryland authorities requested more information from Mr. Wilson.

49. In June 2011, CFSA informed parties in Mr. Wilson's case that Maryland authorities had approved his ICPC request.

50. On or about June 23, 2011 - more than 6 months after Mr. Wilson had requested custody - Neihema was conditionally placed in Mr. Wilson's legal and physical custody.

51. While Neihema was in foster care, Mr. Wilson observed that she was agitated and unhappy. He saw that Neihema acted tense, bit her nails and was having difficulty at school.

52. Mr. Wilson is a fit and loving parent and at no time did CFSA find or claim that he was unfit.

53. Defendant's actions alleged herein have injured Sam Wilson and Neihema Brown in amounts to be determined at trial.

CAUSES OF ACTION

Count I

VIOLATIONS OF 42 U.S.C. § 1983

Substantive Due Process Under the Fifth and Fourteenth Amendments to the United States Constitution: Rights of Parents to Maintain Custody and Control of Their Children, and Rights of Children to Live With Their Fit Parents

54. Plaintiffs repeat and incorporate the allegations of all the preceding paragraphs as if fully set forth here.

55. Acting under color of law Defendants have deprived Plaintiffs of their rights, privileges and immunities secured by the Fifth and Fourteenth Amendments of the Constitution and laws thereunder in violation of 42 U.S.C. §1983 as here alleged.

56. Under the Due Process Clauses of the Fifth and Fourteenth Amendments, the Plaintiff parents have a protected liberty interest in the care, custody and control of their children. *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (“the interest of parents in the care, custody, and control of their children is perhaps the oldest of the fundamental liberty interests recognized by this Court.”); *see also Stanley v. Illinois*, 405 U.S. 645 (1972) (under Due Process clause the State of Illinois could not take a child from his/her father unless it could prove him unfit). The Plaintiff children have a reciprocal right to live with their fit parents. *Franz v. United States*, 707 F.2d 582, 595 (D.C. Cir. 1983) (“[A]bove all, it [the constitutional right to family integrity] is manifested in the reciprocal rights of parent and child to one another’s ‘companionship.’”). *See also, Wallis ex rel. Wallis v. Spencer*, 202 F.3d 1126, 1136 (9th Cir. 1998); *cf. Santosky v. Kramer*, 455 U.S. 745, 760 (1982) (“[U]ntil the State proves parental unfitness, the child and his parents share a vital interest in preventing erroneous termination of their natural relationship.”).

57. Due Process protects parental interests of Plaintiff parents because parents are presumed to be the best parties suited to raise and care for their own children.

Parham v. J.R., 442 U.S. 584, 602 (1972).

58. The Due Process Clauses of the Fifth and Fourteenth Amendments to the Constitution also protect Plaintiff children from being deprived of liberty interests without due process of law. *Franz*, 707 F.2d at 599 (“A child’s corresponding right to protection from interference in the [parent/child] relationship derives from the psychic importance to him of being raised by a loving, responsive, reliable adult.”).

59. Defendants have violated the foregoing rights of Plaintiffs by promulgating and following a policy requiring ICPC application to Plaintiff parents and other non-resident fit parents, which denied those Parents and their children their Constitutional rights to live together in family relationships. Defendants’ policy and practice resulted in substantive deprivations of fundamental rights accorded to Plaintiffs.

In particular,

- a) CFSA’s policy and practice resulted in Plaintiff parents and other parents similarly situated being denied custody of their children while an agency of a different state conducted a so-called home study;
- b) CFSA’s policy and practice resulted in Plaintiff parents and other parents similarly situated being deprived of custody of their children for the duration of ICPC processing or longer;
- c) CFSA’s policy and practice has denied the Plaintiffs and others similarly situated of the presumption that parents are the rightful custodians of their minor children; and
- d) CFSA’s policy and practice has interfered with the Plaintiffs’ and other non-resident parents and their children’s right to live as a family of parents with their own children and of children with their own parents.

60. Defendants' actions described herein threaten to cause and have caused irreparable harm to the parent-child relationship of Plaintiffs and others similarly situated, and to the emotional and psychological health of the Plaintiffs. Defendants' policy and practice of remitting children to foster care when loving and fit parents request custody violates the Plaintiff children's right to the care of their parents.

Count II

Violation of 42 U.S.C. §1983

Procedural Due Process Under the Fifth and Fourteenth Amendments to the United States Constitution: Rights of Parents and Children to Procedural Protections of Their Fundamental Rights

61. Plaintiffs repeat and incorporate the allegations of all the preceding paragraphs as if fully set forth here.

62. The facts described above violate the Plaintiffs' procedural due process rights under the Fifth and Fourteenth Amendments. In the absence of an emergency, Defendants may not lawfully presume parents are unfit, require parents to prove their fitness, or deprive parents of custody of their children before a meaningful opportunity for a hearing that focuses on the parents' fitness. *Santosky*, 455 U.S. at 760 ("the State cannot presume that a child and his parents are adversaries [until a]fter the State has established parental unfitness at [an] initial proceeding..."). Likewise, Defendants may not deprive children of their right to a relationship with their parents. *Id.*

63. With respect to the events described in this Complaint, there was no emergency or extraordinary circumstance that justified Defendants in failing to provide

or delaying Plaintiff parents a meaningful opportunity for a hearing and custody of their children upon their requests for custody.

64. Defendants disregarded and violated the procedural due process protections of the Fifth and Fourteenth Amendments as to Plaintiffs, have reversed the presumption of Plaintiff parents' entitlement to custody of their children, and have unlawfully placed the burden on fit parents to prove that they are entitled to custody.

65. Defendants' policy and actions described in this Complaint resulted in the Plaintiff parents and other parents similarly situated not being provided any meaningful opportunity to a hearing *before* the deprivation of their parental rights to custody of their children, and of plaintiff children's rights to be united with their parents.

66. Any hearing that may have been granted while the ICPC process was pursued has unlawfully focused on the ICPC not on Plaintiff parents' fitness, reversed the parental presumption of fitness, and required parents to shoulder the burden of proving themselves fit before they could regain custody of their children.

Count III
Violation of 42 U.S.C. §1983

Equal protection rights under the Fifth and Fourteenth Amendments

67. Plaintiffs repeat and incorporate the allegations of all the preceding paragraphs as if fully set forth here.

68. Defendants have violated Plaintiffs' Equal Protection rights under the Fifth and Fourteenth Amendments.

69. Defendants acting under color of law impose different legal and factual standards on non-resident parents who seek custody of their children compared to parents who reside in the District of Columbia. Non-resident parents such as Plaintiff parents are

subject to the constraints, delays, inconvenience, expense and often frustration of being subjected to the ICPC process, §4-1422, and CFSA Policy Statement; whereas, resident parents are exempt from these requirements. Among other things, the Defendants provide custody of minor children to fit parents who reside in the District of Columbia without requiring a “home study” investigation performed by another state’s official. In contrast, a fit parent who resides outside the District, including Plaintiff parents in this case, are subject to the delay, indignity, expense and often frustration of an investigation connected with a “home study” performed by an official of another state, and to court proceedings and possible denial of custody based on that “home study.” The required home study in the case of non-resident Plaintiff parents denies them equal protection under law. Nor is that requirement justified by Article III of the ICPC or the relevant District Statute, § 4-1422, because Article III and §1422 do not apply to Plaintiff parents. The discriminatory standards applied by Defendants are based solely on the parent’s place of residence and are not the result of other exceptional circumstances that might in theory justify the discrimination.

Count IV
Violation of 42 U.S.C. §1983

Deprivation of Rights Provided Under Federal Statutes

70. Plaintiffs repeat and incorporate the allegations of all the preceding paragraphs as if fully set forth here.

71. Plaintiffs sue under 42 U.S.C. §1983 for violations of their rights under 42 U.S.C. §671.

72. The Social Security Act, as amended by the Adoption Assistance and Child Welfare Act (“AACWA”), and the Safe and Timely Interstate Placement of Foster

Children Act (“STIPFC”) provides that in exchange for receipt of federal funding, the District of Columbia shall develop a plan that:

- a) “[P]rovides that the State shall consider giving preference to an adult relative over a non-related caregiver when determining a placement for a child.” 42 U.S.C. § 671(a)(19) (2010).
- b) “[P]rovide that the State shall have in effect procedures for the orderly and timely interstate placement of children.” 42 U.S.C. § 671(a)(25)(2010).

73. The District of Columbia has developed a plan to comply with 42 U.S.C. § 671 and receives tens of millions of dollars in annual federal funding.

74. Defendants breached their duty to Plaintiffs to provide preference to relative placements under 42 U.S.C. § 671(a)(19), which they failed to do through the erroneous reliance on CFSA’s Policy Statement and the ICPC. Any preference, even if reflected within a recommended placement plan, is rendered meaningless if, as in this case, that placement plan is substantially delayed, denied, or made nugatory through application of the ICPC or eventual subjective disqualification of a natural parent.

75. Defendants breached their duty to Plaintiffs to timely process interstate placements under 42 U.S.C. § 671(a)(25). This statutory provision requires a State to *timely and orderly* effect interstate placements. CFSA’s processing of ICPC cases falls well short of that statutory mandate.

76. Defendants breach of duty to Plaintiffs as here alleged caused injuries which resulted in damages in amounts to be established at trial.

Count V

Deprivation of Rights Accorded Under DC’s Statutes & Law

77. Plaintiffs repeat and incorporate the allegations of all the preceding paragraphs as if fully set forth here.

78. Plaintiffs invoke the supplemental jurisdiction of the Court pursuant to 28 U.S.C. §1367. Defendants have breached their duties to Plaintiffs and have violated the District of Columbia's own laws under which:

a) Defendants are required to release a child "with all reasonable speed" to a non-offending parent under DC Code Ann. §16-2311(a)(1) and §16-2311(b)(1) whenever the statutory criteria for shelter care are not met. The statutory criteria for "shelter care" under DC Code Ann. §16-2310(b) are not met where a "parent, guardian, custodian, or other person" is available to provide care for the child; and

b) Defendants must undertake "reasonable efforts" to "preserve and reunify the family" under DC Code Ann. §4-1301.09a.

79. Defendants have violated the laws cited in the preceding paragraph causing injury to each of the Plaintiffs. In particular, Defendants have violated their obligation to release a child "with all reasonable speed" to a non-offending parent under DC Code Ann. §16-2311(a)(1) and §16-2311(b)(1), unless shelter care is required, even before any initial hearing. By applying the ICPC, Defendants have ignored these requirements.

80. Defendants also breached their duties to Plaintiffs to undertake "reasonable efforts" to "preserve and reunify the family" under DC Code Ann. §4-1301.09a. Defendants have violated their obligation to undertake "reasonable efforts" by requiring investigation of non-resident parents that result in unnecessary delays, and, in the case of Sam Wilson and Neihema Brown, by failing to involve Mr. Wilson in planning for his child's custody and safety in the time between the November 2010 neglect report and December 21, 2010 removal.

81. Defendants breach of duty to Plaintiffs as here alleged caused injuries which resulted in damages in amounts to be established at trial.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs respectfully request that this Honorable Court:

- a) Assert jurisdiction over this action pursuant to 42 U.S.C. §1983; 28 U.S.C. §§1331, 1343(a)(3); 1343(a)(4); and the supplemental jurisdiction of this Court; 28 U.S.C. §1367.
- b) Declare unconstitutional and unlawful pursuant to Rule 57 of the Federal Rules of Civil Procedure:
 - (i) Defendants' application of the ICPC and DC Code Ann. §4-1421 *et. seq.*, to requests by non-resident parents for custody of their minor children;
 - (ii) Defendants' violation of Plaintiffs' rights provided under DC Statutes;
- c) Declare that Defendants have unlawfully interfered with and delayed Plaintiff Andre Adgerson from obtaining custody of his minor child Zakiya by subjecting them to the ICPC and DC Code §4-1421 *et seq.*
- d) Declare that Defendants have unlawfully interfered with and delayed Zakiya White from being reunited with her father Andre Adgerson by subjecting them to the ICPC and DC Code §4-1421 *et seq.*
- e) Declare that Defendants have unlawfully interfered with and delayed Plaintiff Sam Wilson from obtaining custody of his minor child Neihema Brown by subjecting them to the ICPC and DC Code §4-1421 *et seq.*
- f) Declare that Defendants have unlawfully interfered with and delayed Neihema Brown from being reunited with her father Sam Wilson by subjecting her to the ICPC and DC Code §4-1421 *et. seq.*
- g) Declare that Defendants have violated 42 U.S.C. § 671.

- h) Declare that Defendants have violated DC Code Ann. §§4-1301.09a, 16-2310, and 16-2311; and
- i) Permanently enjoin Defendants:
 - i. from applying the ICPC and §4-1421 *et seq.* to interstate parental placements;
 - ii. from denying non-resident parents the presumption that they are entitled to custody of their minor children;
 - iii. from denying children of non-resident parents the benefits of their parent-child relationships by denying those parents custody of their minor children.
- j) Order such further relief as may be appropriate to ensure Defendants' compliance with their legal obligations to Plaintiffs and other persons similarly situated;
- k) Order Defendants to make the following notification:

All persons who, during the period starting 10 years prior to the date of filing this complaint, were non-resident parents who sought custody of their minor children, and who at CFSA's (or its predecessor's) request, were subject to an investigation by another state under the ICPC shall be sent notice of this litigation to their current or last known address and informed that Defendants have been ordered to discontinue requesting such investigations as a pre-condition of parental custody and that the recipients may qualify for appropriate relief from Defendants if they or their child have been subjected to such investigation and have suffered injury.
- l) That Plaintiffs be awarded damages in amounts to be decided by a jury.

- m) That Plaintiffs be awarded the costs and expenses incurred in the prosecution of this action, including reasonable attorneys' fees and expert witness fees pursuant to 42 U.S.C. §1988 and 28 U.S.C. §1920.
- n) That the Court retain jurisdiction to protect Plaintiffs and others similarly situated from further harm by Defendants.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all issues so triable in this action.

Dated: Washington, DC
October 5, 2011

Respectfully submitted,

ARNOLD & PORTER LLP



Jack Lipson
555 Twelfth Street, N.W.
Washington, D.C. 20004
(202) 942-6399
Jack.Lipson@aporter.com
DC Bar #25585

Candida Harty
(202) 942-6378
Candida.Harty@aporter.com
DC Bar #495747

Jillian Robinson
(202) 942-6541
Jillian.Robinson@aporter.com
DC Bar #500165

Lisa Adelson
(202) 942-5325
Lisa.Adelson@aporter.com
DC Bar #489784

THE CHILDREN'S LAW CENTER

Sharra E. Greer
616 H Street, NW
Suite 300
Washington, DC 20001
(202) 467-4900 ext. 565
SGreer@ChildrensLawCenter.org
DC Bar #476427

Josh Gupta-Kagan
(202) 467-4900 ext. 585
JGupta-Kagan@ChildrensLawCenter.org
DC Bar #496202

Attorneys for Plaintiffs