IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Leicester Bryce Stovell	)	
	)	
Plaintiff,	)	
v.	)	Case No.: 1:10-cv-01059-CKK
	)	
Gloria M. James, et al	)	
	)	
Defendants.	)	

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

Gloria James and LeBron James (collectively "Defendants"), by their attorneys, submit this memorandum of law in support of their motion to dismiss the Complaint of Plaintiff Leicester Stovell ("Stovell") for failure to state a claim upon which relief may be granted.

Preliminary Statement

Each of Stovell's eight asserted causes of action falls woefully short of satisfying threshold pleading requirements. Stovell's claims center on the notion that he is LeBron James' biological father – notwithstanding a DNA paternity test that Stovell admits establishes a 0% probability of paternity. *See* Complaint ¶ 34 [hereinafter "Compl. ¶ __"] While Stovell tries to dismiss the negative paternity result as fraudulent, he comes nowhere close to articulating any facts that, if true, would show how the test was falsified, who falsified it, or that Gloria or LeBron James had anything to do with the alleged falsification. This fatal infirmity – failing to plead facts to support his claims – infects every facet of Stovell's Complaint.

Stovell's damages claims are equally groundless. Stovell's claims for millions of dollars from his putative son and Gloria James are based upon rank speculation – that a man who claims that as a twenty-nine year old lawyer he got a 15-year old girl pregnant during a one-night stand

and who never contributed a penny in child support would earn millions in commercial endorsements by crawling out of the wood-work after the child he never gave a thought to became an NBA star. And courts have squarely rejected Stovell's other theory – a claim for alienation of affection in the parent-child context. *E.g., Hinton v. Hinton*, 436 F.2d 211, 212 (D.C. Cir. 1970).

These are just some of the many fatal infirmities that require dismissal of Stovell's Complaint. But they illustrate why Stovell's fanciful hope for celebrity cannot be brought to life through a court of law.

ARGUMENT

I. The Legal Framework for Evaluating Stovell's Claims.

A Rule 12(b)(6) motion to dismiss tests the "legal sufficiency of a complaint." *Nader v. Democratic Nat'l Comm.*, 590 F. Supp. 2d 164, 167 (D.D.C. 2008) (citing *Browning v. Clinton*, 292 F.3d 235, 242 (D.C. Cir. 2002)). As with any plaintiff, the Court must treat Stovell's factual allegations as true and draw all reasonable inferences in his favor. *Id.* at 168. But the Court "need not accept as true inferences unsupported by facts set out in the complaint or legal conclusions cast as factual allegations." *Id*. (internal citations omitted); *See also, Kowal v. MCI Commc'n Corp.*, 16 F.3d 1271, 1276 (D.C. Cir. 1994) ("the court need not accept inferences drawn by plaintiffs if such inferences are unsupported by the facts set out in the complaint"); *Taylor v. FDIC*, 132 F.3d 753, 761 (D.C. Cir. 1997) ("Dismissal under Rule 12(b)(6) is proper when, taking the material allegations of the complaint as admitted, and construing them in plaintiff's favor, the court finds that the plaintiffs have failed to allege all the material elements of their cause of action.") (internal citations omitted). A plaintiff, moreover, must set forth factual allegations that raise a right to relief above the speculative level. *Bell Atl. Corp. v.*

Twombly, 550 U.S. 544, 555 (2007). When determining whether a plaintiff has properly stated a claim, the Court may grant a motion to dismiss if it is clear that "no relief could be granted under any set of facts that could be proved consistent with the allegations." *Hartline v. Sheet Metal Worker's Nat'l Pension Fund*, 134 F. Supp. 2d 1, 7 (D.D.C. 2000).

A. Stovell's Status as a Nominal *Pro Se* Plaintiff Does Not Relax His Pleading Requirements.

Pro se filings are sometimes held to less stringent standards than formal pleadings drafted by lawyers. *See Wada v. United States Secret Serv.*, 525 F. Supp. 2d 1, 9 (D.D.C. 2007) (internal citations and quotations omitted). But "a pro se complaint, like any other, must present a claim upon which relief can be granted." *Id*. at 9.

While Stovell's Complaint should be dismissed regardless, he should not enjoy any deference. He is a practicing attorney who received his law degree from the University of Chicago. Compl. ¶ 1. *Pro se* plaintiffs who are attorneys are not automatically subject to the less stringent standards because "an attorney is presumed to have knowledge of the legal system and needs less protections from the court." *Richards v. Duke Univ.*, 480 F. Supp. 2d 222, 234-35 (D.D.C. 2007) (holding that since the *pro se* plaintiff was an attorney her *pro se* status would not weigh in favor of denying the defendants' motions to dismiss).

B. District of Columbia Law Applies to Stovell's Claims.

The District of Columbia employs a modified "governmental interest analysis" to determine what law applies in diversity actions. *Long v. Sears Roebuck & Co.*, 877 F. Supp. 8, 10-11 (D.D.C. 1995). Before engaging in that analysis, however, the Court must determine whether a genuine conflict exists between the laws of the involved jurisdictions, or whether there is a "false conflict." *Id.* A false conflict exists when either: (1) the laws of the interested jurisdictions are the same; (2) those laws, though different, produce the same result when applied

to the facts at issue; or (3) when the policies of one state would be advanced by the application of its law and the policies of the other jurisdiction would not. *Id* at 11. If a false conflict exists, the Court can apply the law of the jurisdiction whose policy would be advanced by application of its law or the law of the forum if no jurisdiction's policy would be advanced by application of its law. *Id*. If both jurisdictions have an interest in applying their own laws, the forum's law will control. *Kaiser-Georgetown Community Health Plan, Inc. v. Stutsman*, 491 A.2d 502, 509 (D.C. 1985).

Here, the elements under Ohio and District of Columbia law are the same.[1] Since there is no conflict, the law of the District of Columbia applies to all of Stovell's claims.

II. Stovell's First Cause of Action – For Common Law Fraud/Misrepresentation in Connection with a July 2007 Phone Call – Fails as a Matter of Law

The elements of fraud are: (1) the false representation or willful omission of a material fact; (2) knowledge of the falsity; (3) an intention to induce reliance; (4) action taken in reliance on the representation; and (5) damages suffered as a result of such reliance. *Schiff v. AARP*, 697 A.2d 1193, 1198 (D.C. 1997).

Stovell alleges that Gloria James told him during a July 2007 telephone call that:

(1) She did not meet him in Washington, D.C. in March 1984;

[1] In the District of Columbia. and Ohio, fraud or misrepresentation requires false representation or willful omission of a material fact, knowledge of the falsity, an intention to induce reliance, action taken in reliance on the representation, and damages suffered as a result of such reliance. *See Schiff v. AARP*, 697 A.2d 1193, 1198 (D.C. 1997); *Manning v. Len Immke Buick, Inc.*, 28 Ohio App. 203, 205 (Ohio Ct. App. 1971). Defamation in both D.C. and Ohio requires that the defendant made a false and defamatory statement concerning the plaintiff, the defendant published the statement without privilege to a third party, the defendant's fault in publishing amounted to at least negligence, and the publication caused the plaintiff harm. *See Prins v. International Tel. & Tel. Corp*., 757 F. Supp. 87, 90 (D.D.C. 1991); *Shoemaker v. Cmty. Action Org. of Scioto County, Inc.*, 2007 Ohio 3708, P11 (Ohio Ct. App., 2007). Breach of contract, both in D.C. and Ohio, requires a valid contract, its performance by the plaintiff, and the breach of it by the defendant. *See Eckington & S.H.R. Co. v. McDevitt*, 18 App. D.C. 497, 505 (D.C. Cir. 1901); *Wells Fargo Bank, N.A. v. Sessley*, 2010 Ohio 2902, P32 (Ohio Ct. App., June 24, 2010). Under D.C. and Ohio law, a claim for tortious interference with contract requires the existence of a contract, knowledge of the contract, intentional procurement of a breach of the contract, and damages resulting from the breach. *See Casco Marina Dev., LLC v. D.C. Redevelopment Land Agency*, 834 A.2d 77, 83 (D.C. 2003); *Fred Siegel Co., L.P.A. v. Arter & Hadden*, 85 Ohio St. 3d 171, 176 (Ohio 1999).

(2) She did not have consensual sex with him that one evening;

(3) She did not later return to Washington, D.C. and tell him that she was pregnant; and,

(4) She did not tell him that she was going to name her child LeBron.

Compl. ¶¶ 46-47. Stovell also alleges that Gloria James "implied" during this call that he was not LeBron James' father. *Id*. ¶ 48. Not one of these alleged statements (or "implications") supports Stovell's fraud claim.

Fraud requires reliance. *See, e.g., Alicke v. MCI Communs. Corp.*, 111 F.3d 909, 912 (D.C. Cir. 1997); *Karp v. Roach*, No. 89-1276, 1990 U.S. Dist. LEXIS 17618, at *18 (D.D.C. Dec. 24, 1990) (motion to dismiss fraud claim granted as plaintiff failed to establish any detrimental reliance). A conclusory assertion of reliance is not enough. *Ellipso, Inc. v. Mann*, 460 F. Supp.2d 99, 106 (D.D.C. 2006) ("The failure to identify specific acts in reliance, which can be traced to specific misrepresentations, is fatal to any claim of fraud."). Stovell must plead with factual specificity how he relied and why his reliance was reasonable. *See Alicke*, 111 F.3d at 912. (dismissing Complaint because the alleged fraudulent statement could not as a matter of law mislead a reasonable customer). This Stovell does not do. He merely alleges reliance in the broadest terms. He does not offer facts showing how he relied. Indeed, it is difficult to fathom how Stovell could detrimentally rely on any of the alleged statements given that each of them involves supposed meetings and conversations in which Stovell himself was one of only two alleged participants.

One fact that Stovell alleges illustrates vividly that he did not rely on Gloria James alleged statements in July 2007. Stovell admits that, shortly after his July 2007 telephone conversation with Gloria James, he drove from the District of Columbia to Cleveland to

participate in a DNA test. Compl. ¶ 29. Had Stovell believed and relied on the alleged comments by Gloria James, he would not have driven all the way to Cleveland (and back) to participate in that test.

Lack of reliance is not the only reason why the Court should dismiss Stovell's first cause of action. Stovell has not sufficiently pled facts showing how he was damaged by any of these alleged statements. The best Stovell can do is allege that the statements made in July 2007 precluded him from meeting the Ohio statutory limitations period on actions to establish paternity. Compl. ¶ 52. This demonstrably, and as a matter of law, is not true.

Actions to establish paternity in Ohio must be brought before the putative child turns twenty-three (23).[2] Ohio Rev. Code § 3111.05. LeBron James turned twenty-three on December 30, 2007. *See* Exhibit A to Complaint (LeBron James' Birth Certificate showing he was born on December 30, 1984). Stovell admits that he concluded in December 2007 that he was dissatisfied with the August 2007 DNA test and that he did not believe Gloria James' comments during their July 2007 phone call. Compl. ¶ 38. He therefore contacted "a number of attorneys" in late 2007 in an effort to secure legal representation. *Id*. ¶ 39. Stovell did not file this action until *thirty* months later. *See* Complaint (filed on June 23, 2010). Stovell unquestionably could have brought an action to establish paternity in Ohio before the statutory period expired. No amount of artful advocacy can excuse Stovell's thirty-month delay.

Since Stovell fails to allege facts that would demonstrate both reliance and damages, the first count for common law fraud and misrepresentation should be dismissed as a matter of law.

[2] Stovell also failed to meet the statute of limitations for bringing a paternity proceeding in the District of Columbia, which is shorter than Ohio's statute of limitations. In the District of Columbia, a proceeding to determine parentage must be instituted before the putative child turns twenty-one (21). D.C. Code § 16-2342(b). Therefore, Stovell had until December 30, 2005 to initiate a paternity proceeding in the District of Columbia.

III. Stovell's Second Cause of Action – For Common Law Fraud/Misrepresentation in Connection with the August 2007 DNA Test – Fails as a Matter of Law

Stovell claims that Gloria James and/or LeBron James tampered with the results of an August 2007 DNA test. Compl. ¶ 56. But he comes nowhere close to alleging facts sufficiently detailing the "who, what, when, where, and how" required for every fraud claim. *Poblete v. Rittenhouse Mortg. Brokers*, 675 F. Supp. 2d 130, 135 (D.D.C. 2009) ("Rule 9(b) requires that the pleader provides the who, what, when, where, and how with respect to the circumstances of fraud.") (internal citations and quotations omitted). The best Stovell can do is allege that:

(1) Stovell himself was left unattended in a room with his own DNA sample (Compl. ¶ 31);

(2) The individual who took LeBron James' DNA sample told Stovell that she stood on a chair to swab LeBron James' cheek (¶ 32); and

(3) "[T]he DNA samples apparently remained in Cleveland for 4 days before they were transported to Genetica in Cincinnati." (¶ 34).

None of these allegations comes close to explaining how the DNA test was falsified, when it was falsified, or who falsified it. More importantly, there is nothing to suggest that Gloria or LeBron James had anything to do with the alleged falsification.

Stovell's own allegations, moreover, conclusively establish that he did not rely on the negative results of the DNA test. Stovell alleges that the July 2007 phone call and the DNA test caused him to:

(1) Telephone the attorney for LeBron and Gloria James *within one day of receiving the results of the paternity test* to quip, "Maybe I had the wrong 15 year old Gloria James from Akron who planned to name her son LeBron." (Compl. ¶ 34);

(2) "[R]econsider every aspect of the matter" (Compl. ¶ 35);

(3) Attend a Cavaliers/Wizards game in a seat directly behind the Cleveland bench (Compl. ¶ 35) and, after seeing LeBron James in person, conclude that he should consider legal action. (Compl. ¶ 38);

(4) Contact in late 2007 "a number of attorneys in Ohio in order to obtain legal representation." Compl. ¶ 39.

The negative DNA test did not deter Stovell's quest for celebrity.

The second cause of action fails to meet the heightened pleading requirements for fraud, fails to allege facts sufficient to show reliance or damages, and should therefore be dismissed as a matter of law.

IV. Stovell's Third Cause of Action – For Common Law Fraud/Misrepresentation – Fails as a Matter of Law

Stovell's third cause of action relies on many of the same alleged misrepresentations claimed in the first and second causes of action – *i.e.*, Gloria James allegedly told Stovell that he is not LeBron James' father, and that somehow the August 2007 DNA test was falsified. *See* Compl. ¶ 64. For the reasons already discussed, neither of these allegations gives rise to a cause of action. Stovell, moreover, has no standing to sue Gloria James on behalf of the general public or for supposedly unlawfully collecting Federal Housing Administration or Aid to Families with Dependent Children funds. Comp. ¶ 64, 65. *E.g., Warth v. Seldin*, 422 U.S. 490, 499 (1975) (standing requires a plaintiff to assert his own rights and interests; a plaintiff "cannot rest his claim to relief on the legal rights or interests of third parties") (internal citations omitted).

Stovell also asserts as a basis for his third cause of action that Gloria James misrepresented to the news media that Anthony McClelland was LeBron James' father. Compl. ¶ 65. Stovell does not allege any facts showing how he reasonably relied on what he refers to as

the McClelland misrepresentation. Indeed, Stovell admits that he did not become aware of the statement until late 2006 (Compl. ¶ 20) and that by June 2007 he contacted LeBron James' attorney to discuss the topic of paternity. Compl. ¶ 21. Stovell's so-called McClelland misrepresentation provides no basis for Stovell's fraud claim because he has not shown through factual allegations that this alleged misrepresentation was intended to induce any action or inaction by Stovell and Stovell did not rely on the alleged misrepresentation in any event.

Stovell also fails sufficiently to allege damages. Stovell asserts that the alleged pattern of fraud and misrepresentation injured him in that:

(1) he was deprived of his putative son for more than twenty-five years;

(2) his putative son's (and grandsons') natural affections for him were alienated;

(3) he was prevented from sharing personal information with his putative son that would be in his best interests; and

(4) commercial opportunities were diverted away from Stovell. Compl. ¶ 69.

Beyond the irony of a man suing his putative son for fraud and complaining simultaneously of affections lost, alienation of affection in a parent-child relationship is not a recognized as a cause of action. *See Hinton v. Hinton*, 436 F.2d 211, 212 (D.C. Cir. 1970) ("[A]ncient common law conferred no right of action upon the parent or child for simple alienation of affections, and it has been so held in the District of Columbia."). Stovell's real concern – his alleged loss of commercial opportunities – is hopelessly speculative. He has not identified any specific commercial opportunities from which he was deprived due to any alleged fraud or misrepresentation. Finally, and yet again, Stovell alleges reliance with only a conclusory statement (Compl. ¶ 68), and fails to link any damages suffered with his alleged reliance.

Stovell has unquestionably failed to plead fraud with particularity. The third cause of action should be dismissed as a matter of law.

V. Stovell's Fourth Cause of Action – For Long-Term Fraudulent Concealment – Fails as a Matter of Law

The fourth cause of action attempts to assert that LeBron James was involved in Gloria James' alleged long-term pattern of misrepresentation that is the subject of Count III. In addition to all the reasons why Count III must be dismissed, Stovell has alleged no facts showing that LeBron James has done *anything* to obscure the identity of his father, or that Stovell relied on any actions or inactions of LeBron James. The fourth cause of action should be dismissed as a matter of law.

VI. Stovell's Fifth Cause of Action – For Slander – Fails as a Matter of Law

A plaintiff claiming defamation (either libel or slander) must show that: (1) the defendant made a false and defamatory statement concerning the plaintiff; (2) the defendant "published" the statement without privilege to a third party; (3) the defendant's fault in publishing amounted to at least negligence; and (4) the publication caused the plaintiff harm. *Prins v. International Tel. & Tel Corp.*, 757 F. Supp. 87, 90 (D.D.C. 1991).

Stovell has not alleged the specific, and allegedly slanderous, words. This is fatal to his claim. In order to plead defamation, a plaintiff must allege specific defamatory comments. *Caudle v. Thomason*, 942 F. Supp. 635, 638 (D.D.C. 1996) (internal citations omitted). The plaintiff must plead the "time, place, content, speaker, and listener of the alleged defamatory matter." *Id*. Stovell has alleged the speaker (Gloria James), but nothing else. He claims that the character of LeBron James' father was falsely depicted to "others" (Compl. ¶ 75) but does not mention who specifically heard any slanderous communications. He likewise fails to provide the

time, place, or content of any specific defamatory statements. Stovell's defamation claim is hopelessly vague and fails as a matter of law.

Stovell also failed to alleged how anyone could have linked any allegedly defamatory statements to him. It is true that a "person who is slandered need not be specifically named in the defamatory language." *Harmon v. Liss*, 116 A.2d 693, 695 (D.C. 1995). But "the surrounding circumstances may be such as to leave no doubt in the mind of the hearer as to [the] identity [of the person being slandered]." *Id*. Stovell does not allege that Gloria James mentioned him by name. To the contrary, the best Stovell can do is allege that "she falsely depicted the character of Defendant LeBron James' actual father . . . or has engaged in a course of conduct tantamount to falsely depicting the character of Defendant LeBron James' actual father." Compl. ¶ 75. No listener could possibly have associated such broad sentiments with Stovell. Indeed, Stovell asserts that Gloria James' public statements identified LeBron James' father as another man. *See* Compl. ¶ 20 (claiming that McClelland was asserted to be LeBron James' father). Stovell's fifth cause of action should be dismissed as a matter of law.

VII. <u>Stovell's Sixth Cause of Action – For Slander – Fails as a Matter of Law</u>

Stovell relies on four statements allegedly made by LeBron James:

(1) "I want to be a better father than mine was";

(2) That his mother, Gloria James, is "a good judge of character";

(3) "I owe everything to my mother"; and

(4) "It's all about being there." Compl. ¶ 79.

Each of these statements is both true and a matter of opinion. None of these statements may be the basis for a slander claim. Slander requires a false statement. *See Prins*, 757 F. Supp. at 90; *Benic v. Reuters Am., Inc.*, 357 F. Supp. 2d 216, 221 (D.D.C. 2004) ("Truth is an absolute defense to defamation claims."). Statements of opinion, moreover, are only actionable if they

imply "provably false facts, or rely upon stated facts that are provably false." *Guilford Transp. Indus. v. Wilner*, 760 A.2d 580, 597 (D.C. 2000) (citing *Moldea v. New York Times Co.*, 22 F.3d 310, 313 (D.C. Cir. 1994)). The alleged statements express "a subjective view, an interpretation, a theory, conjecture, or surmise." *Id*. (citing *Haynes v. Alfred A. Knopf, Inc.*, 8 F.3d 1222, 1227 (7th Cir. 1993)). As the statements alleged by Stovell are true and matters of opinion, they are not slanderous as a matter of law.

Count VI also suffers from the same infirmity that is fatal to Count V: No one could possibly have connected the alleged statements to Stovell and there is no factual allegation showing that anyone did. Stovell's sixth cause of action should be dismissed as a matter of law.

VIII. Stovell's Seventh Cause of Action – For Breach of Oral Contract – Fails as a Matter of Law

A breach of contract claim requires a plaintiff to show that the defendant had a contractual obligation and breached it. *See Amin v. Nyack Sch. of Adult & Distance Educ.*, No. 09-1581, 2010 U.S. Dist. LEXIS 44730, at *5 (D.D.C. May 7, 2010). A contract requires an offer and an acceptance, and must be supported by consideration. *See Gharemani v. Uptown Partners, LLC*, No. 05-1270, 2005 U.S. Dist. LEXIS 46348, at *48 (D.D.C. Nov. 13, 2005). Stovell has failed to plead facts demonstrating that a valid contract existed, and, if one did, that the contract was breached.

Stovell alleges that LeBron James' attorney contacted Stovell to tell him that LeBron James had consented to take a DNA paternity test. Compl. ¶ 29. LeBron James' consent to a DNA test does not amount to a valid contract because he received no consideration to take the test and there is no factual allegation showing that LeBron James intended to be legally bound to do so. *See, e.g., New Econ. Capital, LLC v. New Mkts. Capital Group*, 881 A.2d 1087, 1094 (D.C. 2005).

As important, there could be no breach because Stovell concedes that LeBron James did exactly what he said he would do: submit to a DNA test. *See* Compl. ¶ 32. LeBron James was under no legal obligation to do anything more. Stovell's seventh cause of action should be dismissed as a matter of law.

IX. Stovell's Eighth Cause of Action – For Tortious Interference with Contract – Fails as a Matter of Law

The elements of tortious interference with a contract are (1) the existence of a contract, (2) knowledge of the contract, (3) intentional procurement of a breach of the contract, and (4) damages resulting from the breach. *Casco Marina Dev., L.L.C. v. D.C. Redevelopment Land Agency*, 834 A.2d 77, 83 (D.C. 2003).

Stovell claims that Gloria James attempted to interfere with the DNA testing during a July 2007 phone call. Compl. ¶ 87-89. Importantly, Stovell alleges that LeBron James did not agree to a DNA test until after Stovell's alleged July 2007 call with Gloria James. "A few days *after* the telephone conference with Defendant Gloria James, Mr. Nance advised me that Defendant LeBron James had agreed to take a DNA paternity test….." Compl. ¶ 29 (emphasis added). Gloria James' alleged statements during the alleged July 2007 phone call could not, as a matter of law, have interfered with any contract between Stovell and LeBron James because LeBron James had not yet consented to a DNA test.

The alleged contract – for LeBron James to submit to a DNA test – was not breached in any event. LeBron James provided a DNA sample. Compl. ¶ 32. After that, there was nothing more for him to do. As a matter of law, Gloria James did not tortiously interfere with any arguably enforceable contract.

CONCLUSION

Stovell may truly believe that he is the father of LeBron James, even though a DNA test has told him otherwise. Compl. ¶ 34 (result of the DNA test was that there was a 0% probability of paternity). But his delusions do not give rise to a cause of action against either Gloria or LeBron James. For each of his eight causes of action he has failed to plead facts that come anywhere close to supporting a viable cause of action. Gloria and LeBron James therefore respectfully urge the Court to dismiss the Complaint.

Dated: August 30, 2010 Respectfully submitted,

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