

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

Kristen Buxton, Chelsea Joyce, Quincita Fleming, and Kharis McDonald,)	
)	
Plaintiffs,)	Case No. 20 CH 4100
v.)	Hon. Caroline K Moreland
)	Judge Presiding
)	Cal. 10
Illinois Department of Children and Family Services, and Marc D, Smith,)	
)	
Defendants.)	

MEMORANDUM OPINION AND ORDER

Plaintiffs Kristen Buxton, Chelsea Joyce, Quincita Fleming, and Kharis McDonald, (collectively, the “Plaintiffs”) filed a four count complaint seeking a declaration that Defendant Illinois Department of Children and Family Services’ (“DCFS”) Action Transmittal 2020.02, issued on March 25, 2020 (the “Action Transmittal”) violates the Plaintiff’s rights under court orders issued in separate court proceedings and an injunction on enforcement of the Action Transmittal. Further, the Cook County Public Guardian filed a motion to intervene and a motion to dismiss on behalf of the Plaintiffs’ children arguing that this matter should be dismissed pursuant to 735 ILCS 5/2-619(a)(3) because an individual court action already exists to hear Plaintiffs’ claims

I. Background

Plaintiffs each have a pending case in Child Protection Court. As part of their cases each Plaintiff has had an order entered providing for in-person supervised day visits with their child(ren) entered pursuant to 705 ILCS 405/2-10 of the Child Protection Act.. On March 25, 2020, due to Covid-19, DCFS issued their Action Transmittal which suspended all DCFS supervised visitation. The Action Transmittal mandated that DCFS, private staff, and care givers identify other means to allow parental/child interaction including videoconferencing and phone calls.

The individual plaintiffs have each filed a motion to compel visitation in their individual cases in Child Protection Court. Plaintiffs, dissatisfied with the time table the Child Protection Courts are handling their motions, filed their instant complaint on May 6, 2020. Plaintiffs filed their motion for a temporary restraining order on May 11, 2020. The Cook County Public Guardian filed a motion to intervene and a motion to dismiss pursuant to 735 ILCS 5/2-619(a) (3) that same day.

II. Motion to Intervene

The Illinois Code of Civil Procedure provides that, upon timely application, any person shall be permitted to intervene as of right in an action where the representation of the applicant's interest by the existing parties is or may be inadequate and the applicant will or may be bound by an order or judgment in the action. 735 ILCS 5/2-408(a) (2). The Court finds that the Cook County Public Guardian, on behalf of the children, has filed their motion to intervene in a timely matter. Further, the Court finds that the children's interests are not adequately represented by the existing parties. Plaintiff cannot and will not adequately represent the children. While DCFS has an obligation to act in the best interest of the children placed in its custody, DCFS is also balancing the interests, health, and safety of its workforce, the foster parents, and other vital placement resources. The Cook County Public Guardian, whom is already representing the children in the underlying case in the Child Protection Court, is best suited to represent the children in this matter. Therefore the motion to intervene is granted.

III. Motion to Dismiss

The Cook County Public Guardian brought their motion to dismiss pursuant to 735 ILCS 5/2-619 (a) (3). Under this section a party may move to dismiss a complaint with prejudice if there is another cause of action pending between the same parties for the same cause. The statute is designed to avoid duplicative litigation. *Kellerman v. MCI Telecommunications Corp.*, 112 Ill. 2d 428, 447 (1986). Even when the "same cause" and "same parties" requirements are met, the decision to grant or deny a section 2 -- 619(a) (3) motion is discretionary with the Court. *Id.* The central inquiry is whether the two actions arise out of the same transaction or occurrence, and not whether the legal theories or the relief sought materially differ between the two actions. *Terracom Development Group, Inc. v. Westhaven*, 209 Ill. App. 3d 758, 762 (1st Dist. 1991).

Two actions are for the "same cause" when the two actions arise out of the same transaction or occurrence, and not whether the legal theories or the relief sought materially differs between the actions. *Schnitzer v. O'Connor*, 274 Ill. App. 3d 314, 319 (1st Dist. 1995). The same cause element of this section is satisfied when both causes are based on substantially the same underlying facts or issues, and the fact that the legal theories for the causes are not identical does not destroy the same cause element. *Palatine Nat'l Bank v. Guardian Tampa Ltd. Partnership*, 131 Ill. App. 3d 441, 444 (1st Dist. 1985).

Based on the argument presented by Plaintiffs' counsel the Court finds that all of the Plaintiffs have upcoming hearings before the Child Protection Courts on individualized motions to compel DCFS to have in person visitations. Plaintiff Buxton has a pending abuse case in Child Protection Court with a pending emergency motion to enforce visitation hearing on June 3, 2020. Plaintiff Joyce has a pending abuse case in Child Protection Court with a pending emergency motion for enforcement of visitation scheduled for hearing on May 22, 2020. Plaintiff Fleming has a pending abuse case in Child Protection Court with a pending emergency motion to enforce visitation hearing scheduled on May 29, 2020. Finally, Plaintiff McDonald has a pending abuse case in Child Protection Court with a pending emergency motion to enforce visitation set for hearing on May 22, 2020.

In this matter the court is mindful of the concerns for the Plaintiffs' ability to have in person visitations with their children. These parents are named parties with open pending abuse and/or neglect cases before the Child Custody Court. That court and those judges continue to address the very issues presented by this case. This court concludes that that forum is the appropriate one for plaintiffs' grievances.

There, emergency hearings for supervised visitation have already been scheduled. Some of those hearing will occur as soon as next week. It is the Child Custody Court that is best able to assess the rights and responsibilities of the parties. Those judges who have already made rulings in Plaintiffs cases are in a better position to make such evaluations, and enforce their prior court rulings requiring visitation.

Furthermore, the Court finds that there need not be duplicative litigation on these issues. The issue before this Court and the one presented by the individual Plaintiffs in Child Custody Court are identical. Under the prevailing statutory scheme DCFS is allowed to contravene court orders if they believe it is in the best interest of the child. *See* 705 ILCS 405/2-10 (2). Under that section of the Child Protection Act DCFS is allowed to immediately restrict or terminate "parent-child contact or sibling contacts, without either amending the parent-child visiting plan or the sibling contact plan or obtaining a court order, where the Department or its assigns reasonably believe that continuation of the contact, as set out in the plan, would be contrary to the child's health, safety, and welfare." *Id.* Thus Plaintiffs present no unique issues which the Child Protection Courts are unable to handle in their ordinary proceedings. Therefore the Court is granting the Intervenor's motion to dismiss, joined by DCFS.

The Court's decision regarding the motion to dismiss renders the Temporary Restraining Order Moot.

IV. Conclusion

1. The Cook County Public Guardian's motion to intervene on behalf of the children is GRANTED;
2. The children's motion to dismiss pursuant to 735 ILCS 5/2-619 (a) (3) is GRANTED;
3. Plaintiffs' motion for a temporary restraining order is MOOT;
4. This Matter is dismissed with prejudice.

Entered: 
Judge Caroline Kate Moreland