

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

JAMES R. BLACKSTON and)
BRADLEY W. BARBER,)
)
Plaintiffs,)
)
v.) CIVIL ACTION NO. 2:04cv348-T
)
STATE OF ALABAMA, *et al.*,)
)
Defendants.)

RECOMMENDATION OF THE MAGISTRATE JUDGE

I. INTRODUCTION

In this pro se 42 U.S.C. § 1983 action, James R. Blackston (“Blackston”) and Bradley W. Barber (“Barber”) claim that the defendants violated their constitutional rights as well as state law by failing to adhere to the terms of a 2003 settlement agreement which terminated a previous case they had filed in this court. The plaintiffs name as defendants Gorman Houston, former Acting Chief Justice of the Alabama Supreme Court; L.E. Gosa, Chairman of the Alabama Supreme Court Advisory Committee on Child Support Guidelines and Enforcement (“the Advisory Committee”); Randy Helms, Director of the Administrative Office of Courts; Alex Jackson, staff attorney for the Alabama Supreme Court; Bob Maddox, an employee of the Administrative Office of Courts; and the State of Alabama. The court has jurisdiction of the plaintiffs’ federal claims pursuant to 28 U.S.C. § 1331 and the plaintiffs’ state law claims pursuant to 28 U.S.C. § 1367. Presently before the court for resolution is the defendants’ motion to dismiss (doc. # 23) supported by their brief (doc. #

24) as well as the plaintiffs' response in opposition to the motion to dismiss (doc. # 27). For the reasons which follow, the court concludes that the plaintiffs' claims should be dismissed, some with prejudice and some without prejudice.

II. STANDARD OF REVIEW

“When a federal court reviews the sufficiency of a complaint, before the reception of any evidence either by affidavit or admissions, its task is necessarily a limited one.” *Scheuer v. Rhodes*, 416 U.S. 232 (1974). “The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims. Indeed it may appear on the face of the pleadings that a recovery is very remote and unlikely but that is not the test.” *Id.* “Moreover, it is well established that, in passing on a motion to dismiss, whether on the ground of lack of jurisdiction over the subject matter or for failure to state a cause of action, the allegations of the complaint should be construed favorably to the pleader.” *Id.*

In appraising the sufficiency of the complaint, courts follow the well-established rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond a doubt that the plaintiffs can prove no set of facts in support of their claims which would entitle them to relief. *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)(footnote omitted); *see also Gardner v. Toilet Goods Assn.*, 387 U.S. 167, 172 (1967). The threshold for a complaint to survive a motion to dismiss is “exceedingly low.” *Ancata v. Prison Health Services, Inc.*, 769 F.2d 700, 703 (11th Cir. 1985).

III. FACTS¹ and PROCEDURAL HISTORY

A. General Background

In 1986, the Chief Justice of the Alabama Supreme Court established the Alabama Supreme Court Advisory Committee on Child Support (“the Advisory Committee”) to study and make recommendations to the state courts on issues concerning the child support guidelines. The plaintiffs are divorced fathers and active members of the National Congress for Fathers and Children. As advocates of this group, the plaintiffs have attended committee meetings and filed lawsuits challenging the Advisory Committee’s determinations regarding the method of calculating the amount of child support payments that non-custodial parents are required to pay as well as challenging the manner in which the committee meetings are conducted.

B. The Initial Lawsuit

In 1993, the plaintiffs filed in this court a lawsuit against the State of Alabama and members of the Advisory Committee, alleging civil rights violations arising from a March 1993 committee meeting. They claimed that the defendants engaged in a conspiracy and

¹On a motion to dismiss, the court must take the facts as stated in the complaint as true. Of course, the same is not true with respect to the legal conclusions asserted in the complaint.

violated 42 U.S.C. § 667² by holding “secret meetings” which deprived non-custodial fathers of equal protection in developing the Alabama Child Support Guidelines. *See Blackston v. State of Alabama*, No. 2:93cv623-H (M.D. Ala. 1996). Judge Truman M. Hobbs concluded that the conspiracy claim was not cognizable and that 42 U.S.C. § 667 did not create a federal right that the plaintiffs could enforce in federal court. The court also dismissed the plaintiffs’ remaining claims under FED.R.CIV.P. 12(b)(6).

On appeal, the Eleventh Circuit Court of Appeals affirmed that decision with one exception: the dismissal of the plaintiffs’ First Amendment claim concerning the tape recording of proceedings.³ *See Blackston v. State of Alabama*, 30 F.3d 117, 120 (11th Cir. 1994). In December 1995, the parties entered into a “Release and Settlement Agreement.” (Pls’ Ex. A.) As part of the agreement, the defendants agreed to assign Blackston to the Advisory Committee as a representative of the National Congress for Fathers and Children.⁴

²This statute, 42 U.S.C. § 667, requires as a condition of receipt of federal funds each state to “establish guidelines for child support award amounts within the State.”

³ The Court specifically determined the following:

Judge Durrough did not deny the plaintiffs access to the Committee meeting and its deliberations, and did not prohibit them from communicating what they observed to others. However, his attempt to prohibit them from recording the proceedings did have some impact on how they were able to obtain access to and present information about the Committee and its proceedings. Thus, Judge Durrough’s actions touched on expressive conduct protected by the Free Speech Clause of the First Amendment.

Blackston v. State of Alabama, 30 F.3d 117, 120 (11th Cir. 1994).

⁴ In addition, the parties agreed that the agreement “is enforceable as if a contract between the parties” and that “a violation of the agreement may be used as grounds for a lawsuit for breach of contract in state or federal court.” (Pls’ Ex. A at 6.)

(continued...)

(*Id.* at 5.)

C. The Second Lawsuit

Unfortunately, the plaintiffs were dissatisfied with the way the Advisory Committee continued to conduct its meetings and believed that the defendants were violating the terms of the 1995 settlement agreement, the plaintiffs filed another lawsuit in this court against the State of Alabama and several members of the Advisory Committee on March 25, 1999. *See Blackston v. State of Alabama*, No. 2:99cv295 (M.D. Ala. 2003). In this second lawsuit, the plaintiffs asserted that the defendants violated the First Amendment by entering into a contract agreement with Policy Studies, Inc.⁵ (“Policy Studies”) without consulting other committee members. The plaintiffs further contended that the defendants violated their constitutional rights by asking Blackston and other members to participate in committee activities by mailing comments about Policy Studies’ report to the Administrative Office of Courts rather than having in-person meetings. The plaintiffs also claimed that the defendants violated state and federal law by breaching several terms of the settlement agreement, misappropriating federal funds, engaging in a conspiracy and pattern of racketeering activities, and committing mail and wire fraud. The court granted the defendants’ motion to dismiss all of the plaintiffs’ claims, except the plaintiffs’ state law claims for breach of

⁴(...continued)

⁵ Policy Studies, Inc., is a business hired by the State of Alabama to update and report on the schedule of child support obligations.

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