

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

FLORENCE WALLACE, *et al.*,

Plaintiffs,

v.

ROBERT J. POWELL, *et al.*,

Defendants.

CIVIL ACTION
NO. 09-cv-286
(Judge Caputo)

WILLIAM CONWAY, *et al.*,

Plaintiffs,

v.

MICHAEL T. CONAHAN, *et al.*,

Defendants.

CIVIL ACTION
NO. 09-cv-291
(Judge Caputo)

H.T., *et al.*,

Plaintiffs,

v.

MARK A. CIAVARELLA, JR.,
et al.,

Defendants.

CIVIL ACTION
NO. 3:09-cv-357
(Judge Caputo)

2. The Individual Complaint also contains an allegation that certain Defendants entered into a civil conspiracy generally.

3. Plaintiffs claim that, as a result of alleged conduct, Plaintiffs are entitled to, *inter alia*, compensation for costs, fines and fees associated with juvenile adjudications, emotional distress, punitive damages, *etc.*

4. However, the Complaints fail to plead properly Plaintiffs' claims for relief and, as a result, their complaints against the Mericle defendants should be dismissed with prejudice.

5. With respect to Plaintiffs' claims pursuant to 42 U.S.C. § 1983, all of the Plaintiffs have failed to plead the necessary elements to support their claims.

6. Specifically, the Juvenile Plaintiffs, who are seeking monetary damages arising out of their adjudications and/or placements are required to demonstrate a favorable termination consistent with actual innocence and a lack of probable cause in order to seek such an award. However, they have not, and likely cannot, plead such a termination.

7. The Plaintiffs also have failed to properly plead that the injuries they allege to have suffered were caused by the constitutional deprivations they assert and they fail to allege facts for which the Mericle Defendants could be liable pursuant to § 1983.

8. The Parent Plaintiffs, who also seek damages in association with the juvenile adjudications, also fail to properly plead their § 1983 claims.

9. In the Individual Complaint, the Parent Plaintiffs either seek damages that are derivative of the juveniles' claims or for interference with familial relations. As pleaded, the Parent Plaintiffs' claims are not cognizable in this Circuit. Derivative claims are not permissible in this context and interference with familial relations has not been recognized in this Circuit as a basis for recovery absent the complete and irreparable destruction of a family because of the death of a family member.

10. With respect to the RICO claims, Plaintiffs similarly have failed to plead their claims properly.

11. Plaintiffs lack standing to bring the RICO claims, because the alleged RICO violations are not the proximate cause of the harm they allege and the Juvenile Plaintiffs have not alleged an injury that is cognizable under RICO.

12. The Individual Plaintiffs' substantive RICO claim should be dismissed because the alleged RICO enterprise and RICO persons are identical.

13. Plaintiffs' § 1962(c) claim should be dismissed because Plaintiffs have pleaded facts that negate the requirements of an association-in-fact RICO enterprise.

14. The Class Plaintiffs' § 1962(b) claim should be dismissed because Plaintiffs have failed to allege that the Defendants gained control of an enterprise through a pattern of racketeering, and because the Plaintiffs have not alleged how they were harmed by the Defendants allegedly gaining of control of the enterprise.

15. All of the Plaintiffs' RICO conspiracy claims should be dismissed because (1) the Plaintiffs fail to allege a plausible RICO conspiracy to violate their federally-protected rights, (2) they fail to allege properly that any purported conspiracy was the cause of their alleged harm, and (3) the underlying allegations do not set forth a valid claim for a RICO violation.

16. The Individual Plaintiffs' claim for damages arising from a purported civil conspiracy fails because the Plaintiffs have not alleged facts necessary to support the elements of such a claim.

17. All of the Plaintiffs also fail to allege facts concerning the Mericle Defendants that would be necessary to support the elements of a claim for punitive damages and therefore their claims for punitive damages fail as a matter of law.

For the foregoing reasons, as explained more fully in (1) the Joint Memorandum in Support of Certain Defendants' Motions to Dismiss the Complaints Under Fed. R. Civ. P. 12(b)(6) and (2) the Supplemental Memorandum of Robert K. Mericle and Mericle Construction, Inc. in Support of Their Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6), each in support of the instant motion

to dismiss, the Mericle Defendants respectfully request that this Court dismiss claims asserted against the Mericle Defendants, in both the Class Complaint and the Individual Complaints.

Respectfully submitted,

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