

Goldberg v City of New York
2022 NY Slip Op 33292(U)
September 29, 2022
Supreme Court, New York County
Docket Number: Index No. 161061/2021
Judge: Judy H. Kim
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JUDY H. KIM PART 05RCP

Justice

-----X

MARK GOLDBERG,

Plaintiff,

- v -

THE CITY OF NEW YORK, NEW YORK CITY
ADMINISTRATION FOR CHILDREN'S SERVICES,
LUTHERAN SOCIAL SERVICES OF NEW YORK

Defendants.

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INDEX NO. 161061/2021

MOTION DATE 05/09/2022, 05/13/2022

MOTION SEQ. NO. 001 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 34, 35, 36, 37, 38, 39, 47, 48

were read on this motion to DISMISS

The following e-filed documents, listed by NYSCEF document number (Motion 002) 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 41, 42, 43, 44, 45, 46

were read on this motion to DISMISS

This action arises from a proceeding in the NYC Family Court, New York County (the "Family Proceeding") which resulted in the termination of Mark Goldberg's parental rights. Plaintiff herein was incarcerated during the course of the Family Proceeding but was represented by counsel. Although the Family Court permitted Mr. Goldberg to appear telephonically, the Federal Bureau of Prisons failed to produce him for four court dates in 2016 and 2017. Plaintiff herein alleges that, at various points throughout the Family Proceeding, his counsel requested adjournments so he could appear telephonically but that these requests were opposed by counsel for defendants therein Administration For Children's Services ("ACS") and Lutheran Social Services of New York ("LSS") (collectively, the "Defendants") and were, in any event, denied by the Family Court judge.

The Family Proceeding eventually resulted in the termination of Mr. Goldberg's parental rights as set forth in the September 5, 2017 order of the Family Court (the "Family Court Order") (NYSCEF Doc. No. 24). On September 28th, 2017, Mr. Goldberg appealed the Family Court Order to the Appellate Division of the Supreme Court, First Department, arguing that his due process rights and equal protection rights were violated by the Family Court's denial of his request to participate in the Family Proceeding (NYSCEF Doc. No. 43 at p. 62 [Pre-Argument Statement]). This motion was denied and the appeal dismissed (NYSCEF Doc. No. 27). Mr. Goldberg subsequently moved for reconsideration of that denial, which the Appellate Division, First Department denied in an order dated October 30, 2018 (NYSCEF Doc. No. 27). He then moved for reconsideration of the Appellate Division, First Department's October 30, 2018 order, which request was denied in an order dated July 23, 2019 (NYSCEF Doc. No. 39 [Plaintiff's Ex. 14]).

Plaintiff was released from prison in June of 2019. On August 23, 2019, Mr. Goldberg filed a Notice of Claim against the City of New York (the "City") (NYSCEF Doc. No. 39 [Plaintiff's Exhibit 15]) and commenced this action on December 9, 2021, asserting causes of action against defendants for violation of Family Court Act §1023 and violation of his due process and equal protection rights under both the New York Constitution and United States Constitution. The gravamen of Plaintiff's complaint is that Defendants violated his rights by failing to inform him of hearing dates in the Family Court proceeding and by opposing his request for an adjournment of the Family Proceedings so he could participate telephonically (NYSCEF Doc. No. 2 [Compl. at ¶¶29, 37]). Mr. Goldberg also asserts that the termination of his parental rights was based, at least in part, on a mental health evaluation relying on records provided by ACS that were inaccurate (Id. at ¶30]).

In motion sequence 001, the City and ACS move to dismiss this action pursuant to CPLR §§3211, arguing, inter alia, that: (1) plaintiff's claims of due process and equal protection violations in the Family Proceeding were raised and addressed in his appeal to the Appellate Division, First Department; (2) plaintiff's claims are barred by his failure to timely file a notice of claim and commence this action within the applicable statute of limitations; and (4) plaintiff's claims are facially insufficient as a matter of law. In motion sequence 002, LSS moves to dismiss this action pursuant to CPLR §§3211 and 3212, reiterating the arguments made by the City, with the exception of the City's notice of claim argument.

Plaintiff opposes both motions and cross-moves to amend his complaint. These motions are consolidated for disposition and are, for the reasons set forth below, granted.

DISCUSSION

As a threshold matter, this action is dismissed as against ACS, as it is undisputed that it is a non-suable entity (NY City Charter, Ch 17, §396).

The motions by the City and LSS to dismiss this action are also granted. The Court agrees with defendants that the proper forum to assert the claims asserted herein was in plaintiff's appeal of the Family Court Order to the Appellate Division, First Department, where they were considered and rejected. That appeal constitutes a final determination of these claims. To the extent plaintiff argues that his appeal concerned the Family Court's decision while the instant claim is directed to the objection by counsel for ACS and LSS to any adjournment, this argument misconstrues Family Court §1023 as well as the obligations of ACS and LSS attorneys under that statute and the New York State and United States Constitutions (See Matter of Eileen R. (Carmine S.), 79 AD3d 1482 [3d Dept 2010] [it is the duty of plaintiff's assigned counsel and the Court to "ensure that the

proceeding is fair and that due process is afforded to an individual whose parental rights may be terminated”]).

Even leaving the foregoing aside, plaintiff’s claims are barred by his failure to commence this action within the three-year statute of limitations set out in CPLR §214(5), which plaintiff does not dispute applies here. Plaintiff’s alleged injury accrued with the termination of his parental rights on September 5, 2017 and the statute of limitations therefore elapsed—after accounting for the tolling period effected by Executive Order 202.8 from March 20, 2020 through November 3, 2020—on April 21, 2021. Plaintiff did not commence the instant action until December 2021 and his claims are therefore time-barred. Plaintiff argues that his time to file the instant action should be extended by this Court for good cause pursuant to CPLR §2004 but that statute “cannot be used to extend the statute of limitations” (Zayed v New York City Dept. of Design and Constr., 157 AD3d 410 [1st Dept 2018] [internal citations omitted]). Finally, plaintiff’s argument, in opposition, that he “felt it prudent to wait for his appeal to the First Department to be fully adjudicated before filing a Complaint against the Defendant” (NYSCEF Doc. No. 37 [Blum Affirm. at ¶¶33-39]), only further underscores fact that the instant proceeding raises issues already addressed in plaintiff’s appeal to the Appellate Division, First Department. Accordingly, defendants’ motions to dismiss are granted. Plaintiff’s cross-motion to amend is denied as the new claims added to this proposed amended complaint suffer from the same deficiencies outlined above.

In light of the foregoing, it is

ORDERED that the motion by defendants the City of New York and Administration For Children's Services to dismiss this action as against it is granted; and it is further

ORDERED that the motion by defendant Lutheran Social Services of New York to dismiss this action as against it is granted; and it is further

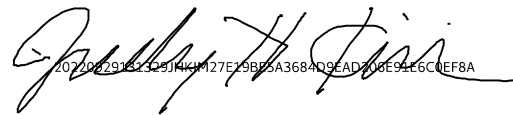
ORDERED that the complaint is dismissed in its entirety; and it is further

ORDERED that plaintiff's cross-motion to amend his complaint is denied; and it is further

ORDERED that defendant the City of New York is directed to serve a copy of this order with notice of entry on plaintiff as well as on the Clerk of the Court (60 Centre St., Room 141B) and the Trial Support Office (60 Centre St., Rm. 119) within ten days from entry; and it is further

ORDERED that such service upon the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh)

This constitutes the decision and order of the Court.



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9/29/2022
DATE

HON. JUDY H. KIM, J.S.C.

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION
 GRANTED IN PART OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT REFERENCE