

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT**

JANET JENKINS, et al.,)	
)	
Plaintiffs,)	
)	
v.)	CIVIL CASE NO. 2:12-cv- 00184-wks
)	
KENNETH L. MILLER, et al.,)	
)	
Defendants.)	

**DEFENDANT LINDA M. WALL’S MOTION TO DISMISS PLAINTIFFS’ REVISED
SECOND AMENDED COMPLAINT**

Defendant Linda M. Wall, by and through counsel, moves this Court for an order dismissing Plaintiffs’ Revised Second Amended Complaint (“the Complaint”) pursuant to Fed. R. Civ. P. 12(b)(2), (3), and (6) because this Court lacks personal jurisdiction over Ms. Wall, venue is improper in this District, and the Complaint fails to state a claim on which relief may be granted. As grounds, Ms. Wall states as follows:

1. Plaintiffs’ Revised Second Amended Complaint (“Complaint”) was filed on May 4, 2017. Dkt. #223.
2. The Complaint states two causes of action, one alleging that Ms. Wall conspired with Lisa Miller to engage in the “intentional tort of kidnapping” Ms. Miller’s daughter, Isabella, and one alleging that Ms. Wall and others conspired to violate Plaintiffs’ civil rights in violation of 42 U.S.C. §1985(3). *See* Compl. at 12.
3. Both causes of action are defective on numerous grounds, which are more fully set forth in the Memorandum of Law submitted simultaneously herewith, as well as in the motions and memoranda filed by Defendants Philip Zodhiates, Victoria Hyden, and Response

Unlimited (dkt #227 and 228), by Defendants Liberty Counsel, Mathew Staver, and Rena Lindevaldsen (dkt #238 and 240), and by Defendant Liberty University (dkt #237), all of which are incorporated herein by reference.

WHEREFORE, Defendant Linda Wall respectfully moves this Court for entry of an Order dismissing Plaintiffs' Revised Second Amended Complaint as against her, and for such other and further relief to which she may be entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Norman C. Smith, Esq., attorney for Defendant Linda Wall, certify that, on June 8, 2017, I served the foregoing Motion to Dismiss Plaintiffs' Revised Second Amended Complaint through the CM/ECF system on the following individuals:

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**DEFENDANT LINDA M. WALL’S MEMORANDUM OF LAW IN SUPPORT OF HER
MOTION TO DISMISS PLAINTIFFS’ REVISED SECOND AMENDED COMPLAINT**

Defendant Linda M. Wall, by and through counsel, submits this Memorandum of Law in support of her motion to dismiss Plaintiffs’ Revised Second Amended Complaint (“Complaint”) pursuant to Fed. R. Civ. P. 12(b)(2), (3), and (6).

INTRODUCTION

After five years and three amendments to their Complaint, Plaintiffs now seek to state a claim for interference with custodial rights – which Plaintiffs insist upon calling an “intentional tort of kidnapping” despite this Court’s explicit instructions to the contrary in its Opinion and Order of October 24, 2013 (dkt #115) – and a “hindrance” claim under 42 U.S.C. §1985(3). Neither claim is valid, and Ms. Wall moves to dismiss them both.

Ms. Wall also moves to dismiss the Complaint on the basis of lack of personal jurisdiction and improper venue, because she has no contacts whatsoever with Vermont and the actions complained of occurred almost exclusively in Virginia, not Vermont.

ARGUMENT

I. THE COMPLAINT SHOULD BE DISMISSED FOR LACK OF PERSONAL JURISDICTION AND/OR FOR IMPROPER VENUE.

The case against Ms. Wall should be dismissed for lack of personal jurisdiction, because she has no contacts with Vermont, is not an agent for any other Defendant, and does not know and has not communicated with most of the other Defendants in this lawsuit. All of her alleged activities as set forth in Plaintiffs' latest Complaint occurred in Virginia, and Ms. Wall neither sent anything into Vermont nor communicated into Vermont. *See* Declaration of Linda Wall (dkt #109-1)¹, previously filed in support of Ms. Wall's prior motions to dismiss on jurisdictional grounds (dkt 109 and 143), all of which are incorporated herein by reference.²

As well, Ms. Wall moves to dismiss for improper venue, in the interests of justice and for the convenience of the parties, because virtually all of the actions complained of took place in Virginia, not Vermont. Ms. Wall incorporates herein by reference her previous arguments in support of her prior motion. *See* Ms. Wall's Motion to Dismiss (dkt #109). Ms. Wall also incorporates by reference the arguments of the Liberty Counsel Defendants. *See* Liberty Counsel Memo at 54-61.

¹ Ms. Wall testified under oath that she has never resided in, vacationed in, or even visited Vermont (¶¶3, 4, and 5); she has never owned, leased or rented property in Vermont (¶6); never transacted or solicited business in Vermont (¶¶7 and 8); and did not know Lisa Miller prior to or during her residency in Vermont (¶19). She further testified that all her communications with Ms. Miller occurred in Virginia (¶22), and that she never advised Ms. Miller to disobey a court order or to flee the country in disobedience of a court order (¶¶24 and 25). Nor did Ms. Wall ever raise money for Ms. Miller for any illicit purposes (¶¶30-35). In short, it is not that Plaintiffs fail to show Ms. Wall has *minimum* contacts with Vermont; they fail to show she has *any* contacts with Vermont. This Court has no jurisdiction over Ms. Wall, and the lawsuit against her should be dismissed forthwith.

² Ms. Wall raises this jurisdictional defense in this motion in order to preserve the issue for appeal.

II. THE COMPLAINT SHOULD BE DISMISSED BECAUSE IT FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.

As set forth in the memorandum of law in support of the motion to dismiss filed by Liberty Counsel, Mathew Staver, and Rena Lindevaldsen (dkt #240), which is incorporated herein by reference, although Fed. R. Civ. P. 8 does not require exhaustive details to support every item in a Complaint, it nevertheless requires “more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.”

Plaintiffs’ allegations against Ms. Wall are not only threadbare, but they arise almost entirely from constitutionally protected expressive conduct. *See generally* Ms. Wall’s Special Motion to Strike and Memorandum in Support thereof, incorporated herein by reference, and esp. pp. 3-7 (detailing allegations against Ms. Wall and refuting same). As Ms. Wall’s sworn Declaration makes clear, her friendship with and support of Lisa Miller stemmed not from any desire to violate the law or assist in the violation of law but merely from a wish to help a struggling single mother who was fighting against all odds to protect her only daughter. To twist Ms. Wall’s benevolent actions into some bizarre conspiracy is to call good evil and evil good, and to put darkness for light and light for darkness.³

A. Plaintiffs’ Custodial Interference Claim Fails to State a Cause of Action.

At the time of her disappearance, Lisa Miller was the lawful custodian of Isabella. While the Vermont Supreme Court has not to date done so, this Court has predicted that Vermont would recognize a claim for custodial interference and so allowed Plaintiffs to pursue such a claim here. As the Liberty Counsel Defendants point out, however, numerous courts have

³ *See* the Bible, Isaiah 5:20 (Eng. Stand. Version), available online at <http://www.biblestudytools.com/esv/isaiah/5-20.html>, last accessed June 8, 2017.

soundly rejected such a claim, noting that an escalation in the warfare between parents or guardians would likely harm children, not help them. *See* Liberty Counsel Memo at 63-66.

At a minimum, given the uncertainty of Vermont's willingness to recognize such a cause of action, this Court should certify the question to the Vermont Supreme Court rather than hastily prognosticate its validity, especially in the context presented here, where Plaintiffs seek to cast a breathtakingly large net of alleged conspiracy by which they attempt to draw numerous defendants from hundreds of miles away by force of law to litigate what is essentially a domestic relations matter in Vermont. Vermont R. of App. P. 14 states that the "Vermont Supreme Court may answer a question of Vermont law certified to it by a federal court if the answer might determine an issue in pending litigation and there is no clear and controlling Vermont precedent." Here, the Vermont Supreme Court's answer to the question whether Vermont recognizes a claim for custodial interference might determine the issue. Moreover, unlike the situation in *Samaha v. Scott's Const., Inc.*, in which this Court declined to certify the question because there was clear precedent, here there is no clear and controlling Vermont precedent, as this Court has already noted in its prior Opinion and Order. *Cf. Samaha v. Scott's Const., Inc.*, 543 F.Supp.2d 341, 342 (D. Vt. 2008).

Moreover, even if such a claim were recognized in Vermont, Jenkins could not maintain it for conduct occurring prior to January 1, 2010 because she did not have a superior claim to custody until that date. *See id.* at 67-70. Critically, *every state* that has considered a Section 700 claim has found that a parent must have lawful and superior custody of the child in order to maintain such a claim. *Id.* at 68 (citing cases). The facts here simply do not support such a claim for Ms. Jenkins until after January 1, 2010 – long after Ms. Wall had anything to do with the matter. *See* Decl. Linda Wall, ¶¶27-29, 31.

In addition, Jenkins' claims on behalf of Isabella fail as a matter of law under this cause of action because such a cause attaches only to the parent, not to the minor child. *See* Liberty Counsel Memo at 76; *see also* Zodhiates Defendants' Memo (dkt #227) at 10-11, incorporated herein by reference. Nor does the Complaint adequately plead the existence of a conspiracy, as shown by the Liberty Counsel Defendants (Memo at 77-81) and the Zodhiates Defendants (Memo at 10-11). Similarly, Plaintiffs have failed to plead a valid claim for aiding and abetting. *See* Liberty Counsel Memo at 81-82. In any event, Plaintiffs' factual recitations, such as they are, fail to adequately establish the requisite elements of this claim as against Ms. Wall. Plaintiffs do not validly allege the existence of any agreement between Ms. Wall and the other Defendants, and even if they had, Ms. Wall has unequivocally refuted them in her sworn Declaration. *See* Decl. Linda Wall, ¶¶36-43 (no relationship with Thomas Road Baptist Church), 44-50 (no relationship with Defendants Kenneth Miller, Timothy Miller, Philip Zodhiates, Victoria Hyden, Christian Aid Ministries, or Response Unlimited).

B. Plaintiffs Fail to State a Claim under Section 1985.

Plaintiffs' Section 1985(3) claim similarly suffers from fatal flaws. Ms. Wall incorporates by reference the arguments of the Zodhiates Defendants (esp. pp. 11-20) as well as the arguments of the Liberty Counsel Defendants (esp. pp. 100-114). Plaintiffs fail to allege any facts concerning the state of mind of Ms. Wall, who in any event acted out of benevolent motives, not animus. As the Zodhiates Defendants pointed out, "the alleged overt actions taken in support of the alleged conspiracy suggest support for one person rather than an intent to harm another." Zodhiates Defendants' Memo at 12-13.

In addition, Plaintiffs' §1985 claim requires, or should require, allegations of force, *see* Zodhiates Memo at 13, as well as state action, *see* Liberty Counsel Memo at 108-112. Plaintiffs'

Complaint fails to sufficiently allege these necessary elements, at least as against Ms. Wall. Consequently, the claims should be dismissed.

Nor have Plaintiffs alleged the commission of any tortious act by Ms. Wall, let alone a tortious act committed as part of any alleged common design or agreement. Ms. Wall neither knew of Ms. Miller's alleged plans to leave the country nor did she provide substantial assistance to Ms. Miller for any such actions. *See* Decl. of Linda Wall, ¶¶26-35.

Additionally, as interpreted and construed by this Court, §1985(3) is unconstitutionally overbroad and vague, as shown by the *Zodhiates* Defendants. *See esp.* *Zodhiates* Memo at 3-10.

CONCLUSION

For all of the foregoing reasons, as well as the reasons set forth in the memoranda incorporated herein by reference, the case against Ms. Wall should be dismissed with prejudice, Ms. Wall should be released from further proceedings, and should be granted such other and further relief to which she may be entitled.

Respectfully submitted,

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