

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF VERMONT

_____)	
JANET JENKINS, ET AL.,)	
)	
Plaintiffs,)	
)	Docket No. 2:12-cv-00184
v.)	
)	
KENNETH L. MILLER, ET AL.,)	
)	
Defendants.)	
_____)	

**DEFENDANTS LIBERTY COUNSEL AND RENA M. LINDEVALDSEN’S
MOTION FOR PARTIAL SUMMARY JUDGMENT
AS TO ALL CLAIMS PLAINTIFF JANET JENKINS PURPORTS
TO BRING AS NEXT FRIEND OF ISABELLA MILLER,
AND INCORPORATED MEMORANDUM OF LAW**

Pursuant to Fed. R. Civ. P. 56 and Local Rules 7 and 56, Defendants Liberty Counsel, Inc. (“Liberty Counsel”) and Rena M. Lindevaldsen (“Lindevaldsen”) (collectively “Defendants”), by and through the undersigned counsel, herby move this Court for Partial Summary Judgment as to all claims Plaintiff Janet Jenkins (“Jenkins”) purports to bring on behalf of Isabella Miller (“Isabella”) as her next friend.¹ As shown herein, and in the Statement of Undisputed Material Facts (“SUMF”) and related exhibits filed separately and concurrently herewith, Isabella indisputably reached the age of majority on April 16, 2020. As a matter of settled law, Jenkins has no standing or authority to maintain next friend claims on Isabella’s behalf.

¹ Rule 56 permits Defendants to move for summary judgment as to “each claim or defense” or as to “part of each claim or defense.” Fed. R. Civ. P. 56(a). Liberty Counsel and Lindevaldsen bring the instant motion for summary judgment only as to those claims Jenkins purports to bring on behalf of Isabella, as her next friend. Discovery is still ongoing as to Jenkins’ own claims (*see* dkt. 474), and Defendants will bring dispositive motions as to those claims at the conclusion of discovery.

MEMORANDUM OF LAW IN SUPPORT

Rule 56 dictates that this Court “**shall** grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a) (emphasis added). The moving party may make such a showing by demonstrating that “the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact....” *Cosentino v. N.Y. Office of Mental Retardation and Dev. Disabilities*, 354 F. App’x 466, 467 (2d Cir. 2009). The factual issue must be both “material” (affects the outcome of the litigation) and “genuine” (a reasonable jury could return a favorable verdict for the nonmovant). *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256-57 (1986). If the non-moving party “fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial,” “the plain language of Rule 56(c) **mandates** the entry of summary judgment....” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986) (emphasis added). Indeed, “[i]n such a situation, there can be no genuine issue as to any material fact, since a complete failure of proof concerning an essential element of the nonmoving party’s case necessarily renders all other facts immaterial.” *Id.* at 323. Here, there are no material facts in dispute, and Liberty Counsel and Lindevaldsen are entitled to judgment as a matter of law as to each claim Jenkins purports to bring on behalf of Isabella Miller as her next friend.

I. THERE IS NO GENUINE DISPUTE THAT ISABELLA REACHED THE STATUTORY AGE OF MAJORITY ON APRIL 16, 2020.

From the day she first filed this lawsuit on August 14, 2012, through all of the several iterations of her Complaint, and including in the last, operative Revised Second Amended Complaint (“RSAC”), Jenkins has made it clear that she was purporting to bring next-friend claims on behalf of Isabella solely by virtue of Isabella’s former status as a minor child. (SUMF ¶¶ 1-3).

Jenkins has confirmed this position in her pleadings. (*Id.* at ¶ 4). And this Court has likewise confirmed that Jenkins has brought her claims on behalf of Isabella by virtue of Isabella's then-status as a minor child. (*Id.* at ¶ 5).

In the RSAC, Jenkins purports to bring next friend claims on behalf of Isabella for the intentional tort of kidnapping, conspiracy to commit kidnapping, aiding and abetting kidnapping, and conspiracy to violate civil rights under 42 U.S.C. §1985. (SUMF at ¶ 6). This Court recognized that Jenkins' intentional tort of kidnapping charge was essentially a custodial interference claim, and dismissed Jenkins' purported next-friend claim under that count. (*Id.* at ¶ 7 (citing dkt. 277 at 17, 30-31)). Therefore, the only remaining next-friend claims that Jenkins still purports to bring on behalf of Isabella are conspiracy and aiding and abetting under Vermont law, and conspiracy to violate civil rights under federal law. (*Id.* at ¶ 8).

It is beyond cavil, and there is no genuine dispute, that **Isabella was born on April 16, 2002**. This fact is conclusively established by the documents Jenkins herself has produced in this litigation, by the binding judicial admissions of Jenkins and her counsel, by the findings of several courts, and by the admissions of Defendant Lisa Miller in the custody litigation. *See e.g.*, (SUMF, ¶ 9 and Exh. A (Isabella's birth certificate showing April 16, 2002 date of birth); *id.* at ¶¶ 10-11 and Exhs. B and C (Jenkins and counsel admitting in sworn testimony that Isabella's birthdate is April 16, 2002); *id.* at ¶ 12 and Exhs. D, E, F and G (Vermont courts finding that Isabella's birthdate is April 16, 2002); *id.* at ¶ 13 (Defendant Lisa Miller noting in custody litigation pleadings that Isabella's birthdate is April 16, 2002)).

Also undisputed then, is the fact that **on April 16, 2020, Isabella reached the statutory age of majority (eighteen) under Vermont law**. (SUMF ¶¶15-16).

II. LIBERTY COUNSEL AND LINDEVALDSEN ARE ENTITLED TO JUDGMENT AS A MATTER OF LAW BECAUSE JENKINS' PURPORTED NEXT FRIEND AUTHORITY AND STANDING TO SUE ON BEHALF OF ISABELLA AUTOMATICALLY EXPIRED ON APRIL 16, 2020, WHEN ISABELLA REACHED THE AGE OF MAJORITY.

In Article III courts, the determination of capacity to sue is a matter of state law. *See* Fed. R. Civ. P. 17(b)(1)-(3). *See also Pappas v. Phillip Morris, Inc.*, 915 F.3d 889, 895 (2d Cir. 2019) (“Fed. R. Civ. P. 17(b) provides that capacity to sue is defined by state law” (quoting *Elustra v. Mineo*, 595 F.3d 699, 704 (7th Cir. 2010)); *Hurlburt v. Eno*, 17 F.R.D. 230, 231 (D. Vt. 1955) (same). Rule 17(b) provides that capacity to sue is governed by the state law of the individual’s domicile, or in some instances the law of the state where the court is located, both of which are in Vermont in this instance. *See* Fed. R. Civ. P. 17(b)(1), (3).

Under Vermont law, Isabella reached the age of majority on April 16, 2020, the day she turned eighteen. *See, e.g.*, 1 Vt. Stat. Ann. §173 (“Persons of the age of 18 years shall be considered of age and until they attain that age, shall be minors.”); *Cavallari v. Martin*, 169 Vt. 210, 213 (1999) (statutory age of majority in Vermont is 18).

Since time immemorial, the Vermont Supreme Court has recognized that the authority and standing of a next friend to bring claims on behalf of a minor “**automatically**” expires when that minor reaches the age of majority. *See, e.g., Slaughter v. Savage*, 89 Vt. 352 (1915) (“In August, 1904, Edmund became of age, and **the agency of the next friend ceased automatically.**” (emphasis added)); *Robinson v. Frost*, 54 Vt. 105, 110-11 (1881) (“the father’s rights as natural guardian . . . ceased when the son arrived at full age”). This Court also has recognized that the authority of a next friend to prosecute claims on the minor’s behalf terminates at majority:

Such rights as they [the parent plaintiffs] may have had because of their daughter’s infancy to prosecute an action in her behalf as parents and natural guardians or next friends **clearly ceased when Tamara became of full age.**

Schupp v. Unification Church, 435 F. Supp. 603, 605 (D. Vt. 1977) (emphasis added).

The automatic expiration of a next friend's authority and standing to maintain an action on behalf of a former minor child who reaches adulthood during the litigation is universally recognized in federal and state jurisdictions across the United States. *See, e.g., Stephenson v. McClelland*, 632 F. App'x 177, 181 (5th Cir. 2015) (holding that once a minor plaintiff reaches the age of majority during a pending lawsuit "[h]is parents are therefore no longer his legal representatives and **do not have standing to bring claims** on [the former minor's] behalf" because "the authority of a next friend expires when the minor plaintiff reaches the age of majority." (emphasis added) (internal citations and quotations omitted)); *Administrator-Benefits for Exxon Mobile Savings Plan v. Williams*, 567 F. App'x 97, 100 (3d Cir. 2014) (affirming dismissal of next friend claims because minor reached age of majority and thus authority to represent as next friend terminated); *Petri v. Kestrel Oil & Gas Prop., L.P.*, No. H-10-CV-122, 2013 WL 265973, *5 (S.D. Tex. Jan. 17, 2013) ("the authority of a next friend expires when the minor plaintiff reaches the age of majority" (internal citations and quotations omitted)); *T.P.R. ex rel. Patterson-Rudolph v. Montgomery Pub. Schs.*, No. 2:08-cv-813-WKW, 2010 WL 2489180, *2 (M.D. Ala. May 26, 2010) (dismissing claim brought by next friend on behalf of a minor who subsequently reached age of majority); *Bender v. Metro. Nashville Bd. of Educ.*, No. 3:13-cv-0470, 2013 WL 3777197, *3 (M.D. Tenn. July 18, 2013) (dismissing next friend claims because parents do not have standing to maintain next friend claim for son after he reaches adulthood); *In re Gold*, No. 04-34122-SGJ-13, 2007 WL 2897730, *6 n.9 (N.D. Tex. Sept. 28, 2007) ("A next friend's authority to act in a representative capacity expires when the minor attains capacity by reaching the age of majority") (internal alterations, citations and quotes omitted); *Coleman v. Shelby Cty. Gov't*, No. 08-2265-STA-DKV, 2009 WL 152472, at *6 (W.D. Tenn. Jan. 22, 2009) (dismissing mother's representative claims brought on behalf of child who "was a minor at the time the Complaint was

filed,” because the child “had reached the age of majority.”); *State ex rel. Hill v. Davis*, 488 S.W.2d 305, 310 (Miss. Ct. App. 1972) (“The authority of a guardian ad litem or next friend of an infant to represent him in the conduct of the cause expires with the minority of the infant.”) (internal quotes and citations omitted).

Accordingly, whatever authority or standing Jenkins might have arguably had to bring next friend claims on Isabella’s behalf while Isabella was still a minor child, that purported authority and standing automatically expired on April 16, 2020. Liberty Counsel and Lindevaldsen are therefore entitled to judgment as a matter of law on all claims Jenkins brings as purported next friend of Isabella.

Moreover, “the standing issue goes to this Court's subject matter jurisdiction.” *Plante v. Dake*, 621 F. App'x 67, 69 (2d Cir. 2015). Because Jenkins has no standing to bring any next friend claims on behalf of Isabella, who is now an adult, this Court no longer has subject matter jurisdiction over those next friend claims and must dismiss them. *See Cortlandt St. Recovery Corp. v. Hellas Telecommunications, S.%22a.r.l.*, 790 F.3d 411, 416-417 (2d Cir. 2015). Indeed, this Court, like all “federal courts [is] under an independent obligation to examine [its] own jurisdiction,” and to *sua sponte* dismiss claims which Jenkins lacks standing to bring. *United States v. Hays*, 515 U.S. 737, 742 (1995).²

² The independent obligation to **examine** federal jurisdiction includes the power to **police** it. *See e.g., Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999) (“subject-matter delineations must be policed by the courts on their own initiative”); *Ebrahimi v. City of Huntsville Bd. of Ed.*, 114 F.3d 162, 165 (11th Cir. 1997) (“Federal courts have an independent obligation to police the constitutional **and statutory** limits on our jurisdiction” (emphasis added)).

CONCLUSION

For the foregoing reasons, Defendants' motion should be granted, and all claims which Plaintiff Janet Jenkins purports to bring as next friend on behalf of Isabella Miller should be dismissed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of April, 2020, I caused a true and correct copy of the foregoing to be electronically filed with this Court. Service will be effectuated on all counsel of record via this Court's ECF/electronic notice system.

/s/ Horatio G. Mihet
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