

2021 WL 5121146

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United States District Court, S.D. Indiana, Evansville
Division.

ASHLEY W., et al., Plaintiffs,
v.
Eric HOLCOMB, et al., Defendants.

No. 3:19-cv-00129-RLY-MPB

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Signed 09/29/2021

Attorneys and Law Firms

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ENTRY DENYING PENDING MOTIONS AND CERTIFYING ORDER FOR INTERLOCUTORY APPEAL

RICHARD L. YOUNG, JUDGE

*1 Plaintiffs in this case are all foster children in the State of Indiana's custody. They have brought this proposed class action against Eric Holcomb, Terry Stigdon, and Indiana's Department of Child Services ("DCS") alleging Defendants have violated their substantive due process rights by failing to protect them. A subclass of plaintiffs has also brought claims against Defendants under the Americans with Disabilities Act.

Defendants previously moved to dismiss this case arguing abstention was appropriate under *Rooker-Feldman* and

Younger. The court denied that motion. (Filing No. 105, Entry Denying Motion to Dismiss). Defendants now ask the court to (1) reconsider that decision, (2) dismiss this case for lack of standing, or (3) certify this case for appeal under 28 U.S.C. § 1292(b). As will be explained, Defendants' motion to dismiss and motion for reconsideration are **DENIED**. Defendants' motion to certify is **GRANTED**.

The court addresses Defendants' motions in the following order: (I) Motion for Reconsideration, (II) Motion to Dismiss for Lack of Standing, and (III) Motion for Certification under 28 U.S.C. § 1292(b). Additional facts will be added where necessary.

I. Motion for Reconsideration

"Motions for reconsideration serve a limited function: to correct manifest errors of law or fact or to present newly discovered evidence." *Caisse Nationale De Credit Agricole v. CBI Indus.*, 90 F.3d 1264, 1269 (7th Cir. 1996) (internal quotations and citations omitted). They may be appropriate when the court has patently misunderstood a party, ruled on an issue outside the adversarial process, or made an error of apprehension. *Bank of Waunakee v. Rochester Cheese Sales, Inc.*, 906 F.2d 1185, 1191 (7th Cir. 1990). They are not appropriate, however, for rearguing previously rejected arguments. *Caisse Nationale*, 90 F.3d at 1269.

Defendants' motion for reconsideration does not present any newly discovered evidence or point out any errors beyond disagreement with the court's legal analysis. Though couched in terms of misapprehension, the crux of Defendants' motion is that the court's decision is just wrong. That is not proper grounds for reconsideration. See *Caisse Nationale*, 90 F.3d at 1269.

The court also stands by its original decision. Plaintiffs are not asking the court to regulate the day-to-day conduct of state-court CHINS proceedings, evaluate the constitutionality of state-court CHINS proceedings, or assess the merits of state-court CHINS determinations. See *Alexander v. Rosen*, 804 F.3d 1203, 1207 (6th Cir. 2015). They are asking the court to assess the constitutionality of DCS's actions and failures to address systematic deficiencies within the foster care system. See *K.H. v. Morgan*, 914 F.2d 846, 848 (7th Cir. 1990) (permitting child's § 1983 lawsuit against department of child services employees to proceed despite pending juvenile-court proceeding); see also *M.D. v. Abbott*, 907

F.3d 237, 267 – 68 (5th Cir. 2018) (holding state violated children’s substantive due process rights by not taking any reasonable steps to correct systematic deficiencies that posed a serious risk of harm to foster children). Abstention is therefore not appropriate. *See also* *Bowens v. Quinn*, 561 F.3d 671, 676 (7th Cir. 2009) (“Federal courts have run prisons, school systems, police and fire departments, and other state and local agencies found to have engaged in unconstitutional conduct.”); *see also* *Thana v. Bd. of License Comm’rs for Charles Cnty.*, 827 F.3d 314, 321 (4th Cir. 2016) (“State Administrative decisions, even those that are subject to judicial review by state courts, are beyond doubt subject to challenge in an independent federal action commenced under the jurisdiction explicitly conferred by Congress.”).

*2 Accordingly, Defendants’ motion for reconsideration is **denied**.

II. Motion to Dismiss for Standing

The U.S. Constitution authorizes federal courts to decide all “Cases” and “Controversies” that arise under federal law. U.S. Const. art. III, § 2. But this authorization comes with limitations. One of these is standing. *Big Shoulders Capital, LLC v. San Luis & Rio Grande Railroad, Inc.*, — F.4th —, No. 19-3234, 2021 WL 4005884, at *4 (7th Cir. Sep. 3, 2021) (“The standing doctrine is rooted in the constitutional requirement that the judicial power extends only to ‘cases’ and ‘controversies.’”). A party must satisfy Article III’s standing requirements throughout every stage of the litigation. *Hollingsworth v. Perry*, 570 U.S. 693, 705 (2013).

To demonstrate standing, plaintiffs must show an injury in-fact that is caused by the defendant’s conduct and redressable by a court ruling. *Big Shoulders*, 2021 WL 4005884 at *4; *Casillas v. Madison Avenue Associates, Inc.*, 925 F.3d 329, 333 (7th Cir. 2019).

Here, plaintiffs have satisfied all three elements. First, they have alleged an injury-in-fact:

--Ashley W. and Betty W. allege DCS failed to protect them from sexual abuse, failed to remove them from a home with violence, and failed to place them in a safe environment. Ashley W. is in her seventeenth foster home and is only four years old. (See Filing No. 16, Amended Class Action Complaint (“Complaint”) ¶¶ 60 – 86).

--Milo S. and Thomas M. allege DCS failed to provide

them necessary services, failed to monitor the family, and failed to protect them from neglect and abuse. (*Id.* at ¶¶ 87 – 105).

--Jaidyn R. and James M. allege DCS failed to substantiate and investigate reports of child abuse and neglect and failed to place them in homes that adequately addressed their medical and physiological needs. (*Id.* ¶¶ 106 – 130).

--Logan S. alleges DCS failed to protect him from physical abuse. (*Id.* ¶¶ 131 – 155).

--Sara O. alleges DCS failed to protect her from sexual abuse and failed to place her in an appropriate home to address her needs. Sara O. alleges she has been placed in seventeen different places since becoming a ward of the state. (*Id.* ¶¶ 156 – 169).

--Desmond C. alleges DCS failed to place him in homes that adequately provided for his medical needs, failed to adequately prepare his foster families for his needs, and failed to provide him with appropriate services. (*Id.* ¶¶ 170 – 191).

--Braxton F. alleges DCS failed to place him in an appropriate residential setting and failed to provide him services for the emotional and psychological harm he has suffered. (*Id.* ¶¶ 192 – 206).

Second, Plaintiffs have adequately alleged Defendants’ actions caused their injuries. They allege Defendants ignored widespread and systematic deficiencies within the foster care system. (*E.g.* ¶ 86). They allege Defendants knew about these problems from reports by a former DCS Director, a well-respected child welfare consulting group, and various regulatory agencies. (*See id.* ¶¶ 3 – 13, 207 – 228). Despite these reports and other complaints, Defendants failed to take actions to protect plaintiffs. (*See id.*); *see also* *K.H.*, 914 F.2d at 851 (“*Youngberg v. Romeo* [457 U.S. 307 (1982)] made clear ... that the Constitution requires the responsible state officials to take steps to prevent children in state institutions from deteriorating physically or psychologically.”). Third, Plaintiffs sufficiently allege these harms are redressable by equitable relief. (*Id.* at 81 – 84). The court believes Plaintiffs’ have adequately satisfied standing—at least at this stage of the litigation.

*3 And that point—“at this stage of the litigation”—is worth underscoring. Rule 8 requires only a short and plain statement of the grounds for the court’s jurisdiction and a short and plain statement of the claim showing that the pleader is entitled to relief. Fed. R. Civ. P. 8(a)(1) and (2). Time and again, the Seventh Circuit has explained that

complaints need not spell out every detail or plead around possible defenses. *See e.g. Koger v. Dart*, 950 F.3d 971, 974 – 75 (7th Cir. 2020) (“Complaints plead *grievances*, not legal theories ... What rule of law, if any, [the defendants’] acts violated [is] a subject to be explored in other papers such as motions, memoranda, and briefs.”) (emphasis in original); *Richards v. Mitcheff*, 696 F.3d 635, 638 (7th Cir. 2012) (“Judges should respect the norm that complaints need not anticipate or meet potential affirmative defenses.”); *see also Taylor v. JP Morgan Chase Bank, N.A.*, 958 F.3d 556, 572 (7th Cir. 2020) (Hamilton, J. dissenting) (“A viable legal theory and factual allegations that track the theory are enough to survive a motion under Rule 12 in federal court.”).

That remains true even when defendants challenge a plaintiff’s standing to bring the case. *Doe v. County of Montgomery*, 41 F.3d 1156, 1158 (7th Cir. 1994) (“At the pleading stage, general factual allegations of injury resulting from the defendant’s conduct are sufficient to overcome a motion to dismiss, for on a motion to dismiss the court presumes that ‘general allegations embrace those specific facts that are necessary to support the claim.’”) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992)).

As the court previously said with respect to abstention, (Entry Denying Motion to Dismiss at 12), defendants may raise this issue again at summary judgment. And it is possible the result could be different. But for now, the court finds Plaintiffs have adequately alleged standing. *See, e.g., B.K. v. Snyder*, 922 F.3d 957, 967 (9th Cir. 2019) (upholding district court’s determination that child in Arizona’s foster care system had standing to challenge Arizona’s state-wide foster care policies and practices that violated her constitutional rights); *M.D. v. Abbott*, 152 F. Supp. 3d 684, 773 (S.D. Tex. 2015) (same with respect to Texas’s statewide policies), *aff’d in part, rev’d in part*, 907 F.3d 237 (5th Cir. 2018) (not addressing plaintiffs’ standing to sue); *Connor B. ex rel. Vigurs v. Patrick*, 771 F. Supp. 2d 142, 152 (D. Mass. 2011) (same with respect to Massachusetts); *A v. Nutter*, 737 F. Supp. 2d 341, 353 (E.D. Pa. 2010) (same with respect to Pennsylvania). Defendant’s motion to dismiss for lack of standing is **denied**.

III. Motion for Certification under 28 U.S.C. § 1292(b)

28 U.S.C. § 1292(b) governs interlocutory appeals:

When a district court judge, in

making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, [the district judge] shall so state in writing such order.

That section essentially requires four findings before certification is appropriate: (1) there must be a question of law; (2) the question must be controlling; (3) the question must be contestable; and (4) the resolution of such question must speed up the litigation. *Ahrenholz v. Bd. of Trustees of Univ. of Illinois*, 219 F.3d 674, 675 (7th Cir. 2000).

All four of those criteria are met here. First, whether the court should abstain in this case turns on the application of *Younger* abstention to Plaintiffs’ amended complaint. That is a legal question. *See Minnesota Living Assistance, Inc. v. Peterson*, 899 F.3d 548, 541 (8th Cir. 2018) (whether *Younger* abstention is appropriate a question of law); *Tindall v. Wayne County Friend of Court*, 269 F.3d 533, 538 (6th Cir. 2001) (same); *Communications Telesystems Intern. v. California Public Utility Com’n*, 196 F.3d 1011, 1015 (9th Cir. 1999) (same).

*4 Second, the question is controlling. If *Younger* abstention is appropriate, then Plaintiffs’ complaint must be dismissed. *E.g. Nicole K. v. Stigdon*, 990 F.3d 534, 539 (7th Cir. 2021).

Third, the question is contestable. Courts are split as to whether *Younger* applies in these sort of circumstances. *Compare LaShawn A. v. Kelly*, 990 F.2d 1319, 1324 (D.C. Cir. 1993) (*Younger* abstention inappropriate), and *Connor B. v. Patrick*, 771 F.Supp.2d 142, 157 (D. Mass. 2011) (same), and *Tinsley v. McKay*, 156 F.Supp.3d 1024, 1035 (D. Az. 2015) (collecting cases holding the same), with *31 Foster Children v. Bush*, 329 F.3d 1255, 1282 (11th Cir. 2003) (*Younger* abstention appropriate); *J.B. ex rel. Hart v. Valdez*, 186 F.3d 1280, 1293 (10th Cir. 1999) (same); *see also M.D. v. Abbott*, 907 F.3d 237, 267 – 68 (5th Cir. 2018) (holding state violated children’s substantive due process rights by not taking any reasonable steps to correct systematic deficiencies that posed a serious risk of harm to foster children).

Equally important, the Seventh Circuit has yet to address this question, and there are decisions that lend support to both parties' positions. *Compare K.H.*, 914 F.2d at 848 (permitting child's § 1983 lawsuit against department of child services employees to proceed despite pending juvenile-court proceeding); *Brokaw v. Weaver*, 305 F.3d 660, 662 (7th Cir. 2002) (*Rooker-Feldman* abstention not applicable to a claim brought against state actors and agencies involving the removal of a child from her parent's custody because plaintiff was challenging the actions of the defendants not the state court proceedings); *with Milchtein v. Chisholm*, 880 F.3d 895, 899 (7th Cir. 2018) (*Younger* requires a federal court to abstain when the state initiates proceedings against children); *Nicole K.*, 990 F.3d at 539 (*Younger* abstention appropriate in children's challenge to state's decision denying them counsel in CHINS proceedings).

On top of that, *Younger* is also becoming increasingly more difficult to apply. *Compare Milchtein*, 880 F.3d at 899 ("Younger prevents a federal judge from resolving isolated legal issues that might matter to proceedings already before a state agency or judge."), *with Mulholland v. Marion Cnty. Election Bd.*, 746 F.3d 811, 815 – 16 (7th Cir. 2014) ("Outside [three] 'exceptional' situations, *Younger* abstention is not appropriate even when there is a risk of litigating the same dispute in parallel and redundant state and federal proceedings.").

Finally, the question will materially advance the litigation. Similar to the second point, if abstention is appropriate the litigation is over. If abstention is not

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appropriate, than Defendants will have to defend on the merits which may help with a settlement.

For those reasons, certification is appropriate. Defendants' motion will be **granted**.

IV. Conclusion

For those reasons, Defendants' motion to dismiss for lack of standing, (Filing No. 110), is **DENIED**. Defendants' motion for reconsideration and to certify order for interlocutory appeal, (Filing No. 109), is **GRANTED in part** and **DENIED in part**. The motion is **DENIED** with respect to Defendants' request for reconsideration. The motion is **GRANTED** with respect to Defendants' request to certify the court's previous order for appeal. Defendants' motion for oral argument, (Filing No. 155), is **DENIED as moot**.

*5 The court now **CERTIFIES** its previous Order, Filing No. 105, for **IMMEDIATE APPEAL**.

SO ORDERED this 29th day of September 2021.

All Citations

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