

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS
AT TOPEKA**

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|----------------------------------|---|---------------------------------------|
| RAYMOND R. SCHWAB, et al. |) | |
| |) | |
| v. |) | Case No. 2:18-CV-02488-DDC-GEB |
| |) | |
| KRIS KOBACH, et al. |) | |

**DEFENDANT ST. FRANCIS COMMUNITY SERVICES’
REPLY IN SUPPORT OF MOTION TO DISMISS PLAINTIFFS’ COMPLAINT**

COMES NOW Defendant St. Francis Community Services (“Defendant St. Francis”), by and through its counsel, and for its Reply in support of its Motion to Dismiss Plaintiffs Raymond and Amelia Schwab’s Complaint [Doc. 45], states the following:

In their Response [Doc. 70], Plaintiffs openly admit that this litigation and their Complaint all arise out of alleged acts that occurred during the state children in need of care (“CINC”) proceedings involving their children from April of 2015 to May of 2018. Given this admission alone, the Court should dismiss Plaintiffs’ claims pursuant to the *Rooker-Feldman* doctrine because it is undisputed the entirety of Plaintiffs’ claims arise from actions and rulings inextricably intertwined with a state court’s proceedings.

Rather than addressing the primary issue, i.e. whether this Court has jurisdiction over the claims in this case, Plaintiffs instead continue to make general, conclusory allegations that these CINC proceedings were pursued in bad faith, through collusion and in a manner intended to harass them by all named defendants. Plaintiffs continually attack details of the underlying CINC proceedings and the parties involved therein, while failing to address the key jurisdictional issues of applying the *Rooker-Feldman* doctrine.

Even assuming this Court did have jurisdiction, Plaintiffs' response also fails to show how they have sufficiently pled Defendant St. Francis was acting under the color of state law or jointly with any state officials to support Plaintiffs' claims for conspiracy, constitutional right violations, and/or violations under §§ 1983 and 1985. Apart from containing further conclusory statements of opinion, Plaintiffs' response fails to cure the deficiencies inherent to their Complaint for failure to state a claim upon which relief may be granted.

No plausible argument has been presented to contradict that Defendant St. Francis was acting as a private, non-profit organization which would prohibit such claims from being asserted. See, *E.F.W. v. St. Stephen's Indian High School*, 264 F.3d 1297 (10th Cir. 2001) (upholding dismissal of social services agency); *Fuller v. Davis*, 594 Fed. Appx. 935 (10th Cir. 2014) (upholding dismissal of private custody evaluator). Furthermore, "to sufficiently allege joint action, the allegations must evidence a specific goal to violate the plaintiff's constitutional rights by engaging in a particular course of action." *Fisher v. Lynch*, 531 F.Supp.2d 1253, 1264 (D. Kan. 2008).

Plaintiffs' response contains conclusory allegations that Defendant St. Francis committed a "manipulation of the legal process," "interference with services and service providers," "perjury in Court hearings," and refused to "acknowledge the Schwab's had any Constitutional rights or protections through consistently ignoring them." Furthermore, Plaintiffs allege Defendant St. Francis colluded with state actors and the other various defendants by "engaging in secret meetings" and "worked in concert" to present Plaintiffs in a false light. Again, these are nothing but the very same kind of conclusory allegations this Court already previously held cannot support a legitimate cause of action in Plaintiffs' prior attempt to pursue these same claims in *Raymond Schwab, et al. v. State of Kansas, et al.*, Case No. 16-CV-4033-DDC-KGS.

Plaintiffs' assertion that Defendant St. Francis conspired with other defendants to prevent them from regaining child custody are simply too speculative. To plead a conspiracy, "plaintiffs must allege either by direct or circumstantial evidence, a meeting of the minds or agreement among the defendants." *Salehpoor v. Shahinpoor*, 358 F.3d 782, 789 (10th Cir. 2004). Plaintiffs must show there was a "single plan, the essential nature and general scope of which was know [sic] to each person who is to be held responsible for its consequences." *Snell v. Tunnell*, 920 F.2d 673, 702 (10th Cir. 1990). "Conclusory allegations of conspiracy are insufficient to state a valid § 1983 claim." *Hunt v. Bennett*, 17 F.3d 1263, 1266 (10th Cir. 1994); see also, *Henry v. Board of Leavenworth County Commissioners*, 64 F. Supp. 2d 1042, 1058 (D. Kan. 1999).

Plaintiffs' response fails to support how their Complaint sets forth sufficient, specific facts that Defendant St. Francis was acting under the color of state law or that there was ever a meeting of the minds with other defendants to support any of their purported claims. Instead, Plaintiffs continue to reassert generic, legal conclusions of conspiracy all arising from the CINC state proceedings, without any independent factual basis in support that would entitle them to relief they seek and any judgment against Defendant St. Francis.

Ultimately, Plaintiffs' Complaint depicts an implausible conspiracy theory wherein various police officers, therapists, social workers, lawyers, judges, and other organizations all acted in concert in an effort to harass and deprive Plaintiffs of the opportunity to exercise their parental rights. The entirety of Plaintiffs' allegations constitute bare legal conclusions without any plausible, independent factual basis in support entitling them to relief, and therefore Plaintiffs' claims against Defendant St. Francis, if not all defendants, should be dismissed.

WHEREFORE, for the above and foregoing reasons, Defendant St. Francis Community Services respectfully requests that the Court dismiss Plaintiffs' Complaint and all claims

attributed to Defendants St. Francis Community Services in this matter, and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of January 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which sent electronic notification of such filing to all those individuals currently electronically registered with the Court, and that on this same date, I mailed the foregoing via first class U.S. Mail, postage prepaid, addressed to:

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Pro Se Plaintiffs

/s/ Christopher A. Brackman

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