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OLU S. ABIDEKUN, et al., Plaintiffs, -against- NEW YORK CITY BOARD OF EDUCATION, et al., Defendants.

Case No. 94 CV 4308 (FB)

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

1995 U.S. Dist. LEXIS 22210

**April 6, 1995, Decided
April 14, 1995, Filed**

DISPOSITION: [*1] Plaintiff's request for injunctive relief denied.

LexisNexis(R) Headnotes

COUNSEL: Olu S. Abidekun, Plaintiff, Pro Se, Brooklyn, NY.

Norma Kerlin, Esq., Randy Monkarsh, Esq., Of Counsel, Paul A. Crotty, Esq., Corporation Counsel of the City of New York, New York, NY, for Defendants.

JUDGES: FREDERIC BLOCK, United States District Judge.

OPINIONBY: FREDERIC BLOCK

OPINION:

MEMORANDUM AND ORDER

BLOCK, District Judge:

Plaintiff Olu Abidekun ("plaintiff"), *pro se*, has requested that this Court issue an order restraining defendant New York City Department of Social Services ("DSS") from removing two of plaintiff's children from his home.

On February 21, 1995, the Court issued an Order to Show Cause directing DSS to show cause why the Court should not issue an order pursuant to *Rule 65 of the Federal Rules of Civil Procedure* enjoining DSS from removing the two children from plaintiff's custody. After hearing oral argument by both parties on February 27, 1995 and reviewing their written submissions, the Court finds that plaintiff's request for injunctive relief must be

denied.

In accordance with *Rule 52(a) of the Federal Rules of Civil Procedure*, the following are the Court's findings of fact and conclusions [*2] of law.

FINDINGS OF FACT

1. In 1990, the New York State Family Court ordered that plaintiff's four children -- Kemi, Tokumbo, Bayo and Ayodeji -- be placed in foster care, upon the court's finding that plaintiff was guilty of abusing and/or neglecting them. The foster care placement of the children has been continuous from this time through the present.

2. Shortly before February 21, 1995, Kemi and Tokumbo ran away from their foster homes and returned to plaintiff's residence.

3. At some time after February 21, but prior to February 27, 1995, Kemi and Tokumbo were removed from plaintiff's custody and placed back into their foster homes, where they presently remain.

4. Plaintiff is currently involved in ongoing state court proceedings concerning the custody and foster care placement of his children: (a) the Family Court has ordered the extension of the foster care placement through December 27, 1995; (b) the Family Court has issued orders of protection against plaintiff and his wife, concerning their contact with the children, which orders are currently outstanding and effective through December 27, 1995; (c) DSS has recently petitioned the Family Court concerning plaintiff's [*3] violation of the outstanding orders of protection.

CONCLUSIONS OF LAW

Plaintiff's request for injunctive relief must be

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denied because this Court lacks jurisdiction to interfere with the ongoing state court proceedings concerning the custody and care of his children. *See Ex parte Burrus*, 136 U.S. 586, 594, 34 L. Ed. 500, 10 S. Ct. 850 (1890) ("The whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the states, and not to the laws of the United States."); *Neustein v. Orbach*, 732 F. Supp. 333, 339 (E.D.N.Y. 1990) ("If ... in resolving the issues presented, the federal court becomes embroiled in factual disputes concerning custody and visitation matters, the action must be dismissed."); *Lhotan v. D'Elia*, 415 F. Supp. 826, 827 (E.D.N.Y. 1976) ("Federal courts do not adjudicate cases involving the custody of minors or right of visitation. That is the function of the States.").

CONCLUSION

Therefore, plaintiff's request for injunctive relief is denied.

SO ORDERED:

FREDERIC BLOCK,

United States District Judge

Dated: Brooklyn, New York

April 6, 1995