

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

CARRIE WRENCHER,

Petitioner,

v.

RIVER FALLS SCHOOL DISTRICT,
RIVER FALLS POLICE DEPARTMENT,
RIVER FALLS HOUSING AUTHORITY,
JUDY SEQUIN, CHARLES EATON,
ALISON PAGE, DR. DAVID PAULSON,
CHIEF ROGER LEGUE, SERGEANT JANIS BROCK
and ANN ALPINE,

Respondents.

OPINION and ORDER

01-C-0623-C

This is a civil action for monetary relief brought pursuant to 42 U.S.C. § 1983. Petitioner Carrie Wrencher requests leave to proceed in forma pauperis alleging, among other things, that she and her children have been discriminated against on the basis of race by the River Falls school district, police department and housing authority.

Petitioner receives monthly income of \$990 in social security payments for two of her children. She has not been employed since September 2000, has no substantial assets, has ordinary monthly bills and has not incurred any substantial debt other than approximately

\$5,511 in legal expenses. Petitioner lists seven dependents: five sons, one daughter and one godson. In order to calculate whether petitioner is indigent, \$2,820 for each dependent is subtracted from her annual gross income. If the resulting balance is less than \$11,500, petitioner may proceed without any prepayment of fees and costs. In this case, petitioner qualifies for indigent status.

However, 28 U.S.C. § 1915 requires this court to dismiss petitioner's case if (1) the action is frivolous or malicious, (2) it fails to state a claim on which relief may be granted or (3) petitioner seeks damages from a respondent who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B)(i)-(iii). In addressing petitioner's pro se complaint, the court must construe it liberally, Haines v. Kerner, 404 U.S. 519, 521 (1972), and grant leave to proceed if there is an arguable basis for a claim in fact or law. Neitzke v. Williams, 490 U.S. 319 (1989).

Because I find that petitioner has failed to state a claim upon which relief may be granted, she will be denied leave to proceed on her claims of discrimination in violation of the equal protection clause.

In her complaint, petitioner makes the following allegations of fact.

ALLEGATIONS OF FACT

A. Parties

Petitioner resides in Eau Claire, Wisconsin. Respondents River Falls School District,

River Falls Police Department and River Falls Housing Authority are state agencies. The following respondents work in the River Falls School District: respondent Judy Sequin is a teacher; respondent Charles Eaton is the principal; respondent Alison Page is the former president and a current member of the school board; and respondent Dr. David Paulson is the acting superintendent. Respondent Roger Legue is the chief and respondent Janis Brock is a sergeant in the River Falls Police Department. Respondent Ann Alpine is the executive director of the River Falls Housing Authority.

B. River Falls School District

On the first day of school, petitioner's daughter, Danyual, was not given a desk or books and her name did not appear on the wall outside the door like all her other classmates, who were white. Danyual had to stand in front of the class and introduce herself. An unnamed teacher sat on Danyual twice and respondent Paulson threatened petitioner that Danyual must stay in school and in that class. Danyual was not permitted to go to the counselor's or principal's office to report the behavior of fellow students who laughed during a video in which African Americans were being sprayed by fire hoses and bitten by dogs. Respondent Sequin did not stop the video to explain that this behavior was unacceptable.

C. River Falls Police Department

In March 2001, petitioner's son, Edgar, and a friend were taken out to a rural road and jumped by three carloads of boys. Respondent Brock was the police officer called to the scene and was the officer who photographed Edgar's bruises and took their statements. No one was ever reprimanded for the incident. The same boys returned later that evening yelling "come outside you fucking niggers." Petitioner called the police and respondent Brock was dispatched to the scene. When respondent Brock arrived at petitioner's residence, the boys ran into the bushes. Respondent Brock did not try to apprehend the boys. Three or four days later, respondent Brock gave petitioner a citation. Because the police failed to help petitioner, she took matters into her own hands and was reprimanded by the police for doing so.

A young man pointed a gun at petitioner in downtown River Falls. Police responded but no one searched for the young man. This same young man kicked petitioner in the thigh and no action was taken by police.

In downtown River Falls, a white man told petitioner's son that "we don't want niggers here." Petitioner's son reported this to a nearby police officer who did nothing.

The police reported only one incident to the district attorney's office.

D. River Falls Housing Authority

Pursuant to the Housing Authority Admissions Policy, § VII(A), petitioner was denied eligibility for assisted housing because she had been charged and arrested for disorderly conduct and resisting arrest and because such conduct can reasonably be expected to interfere with other residents in such a manner as to diminish their peaceful enjoyment and adversely affect their health, safety or welfare.

OPINION

A. The Children's Claims

I understand petitioner to allege that her children's rights to equal protection have been violated on the basis of race by the school district (against Danyual) and police department (against Edgar). Petitioner has brought this pro se action in her name only, but alleges equal protection violations that have occurred against her daughter and son.

It has long been recognized that an adult litigant in federal court has the right to proceed as his or her own counsel. 28 U.S.C. § 1654 (1994) ("In all courts of the United States the parties may plead and conduct their own cases personally or by counsel . . ."). In contrast, under Fed. R. Civ. P. 17, minors are precluded from determining their own legal actions. Rather, under Rule 17(c), a representative or guardian "may sue or defend on behalf of the infant." Although petitioner is free to represent herself, as a non-lawyer she has no

authority to appear as her daughter or son's legal representative. See Navin v. Park Ridge School District 64, No. 00-4109, slip op. at 2 (7th Cir. Nov. 6, 2001) (non-lawyer father is free to represent himself, but has no authority to appear as child's legal representative); see also Collinsgru v. Palmyra Board of Education, 161 F.3d 225, 231 (3d Cir. 1998); Wenger v. Canastota Central School District, 146 F.3d 123, 124-26 (2d Cir. 1998); Johns v. County of San Diego, 114 F.3d 874, 876-77 (9th Cir. 1997). In other words, petitioner may opt to obtain counsel for her children or let the children wait until they are old enough to pursue their own claims for themselves, but petitioner cannot represent her children because she is not a lawyer. Petitioner may wish to speak to a lawyer at an agency such as Legal Action of Wisconsin, which may be willing to represent petitioner's children free of charge if they determine that the children have viable discrimination claims on the basis of these allegations.

Because I find that petitioner cannot represent her children in this lawsuit, she will be denied leave to proceed on her children's claims of discrimination in violation of the equal protection clause.

B. Petitioner's Claims

I understand petitioner to allege that her right to equal protection has been violated by the police department and housing authority. Petitioner does not allege that the so-called

discrimination was motivated by her race. Rather, petitioner alleges in a vague and conclusory manner that (1) a young man pointed a gun at her and the police did not search for the suspect and (2) that the housing authority denied her assisted housing because she had been charged and arrested for disorderly conduct and resisting arrest. To establish a prima facie case of discrimination under the equal protection clause, petitioner must show that (1) she is a member of a protected class; (2) she was similarly situated to members of the unprotected class; (3) she was treated differently from members of the unprotected class; and (4) respondents acted with discriminatory intent. McNabola v. Chicago Transit Authority, 10 F.3d 501, 513 (7th Cir. 1993). Petitioner has not alleged, among other things, that she was treated differently from members of the unprotected class. For example, petitioner has not alleged that the housing authority does not deny assisted housing to white applicants who were charged and arrested for disorderly conduct and resisting arrest or that the police search for suspects who point guns at white victims under the same circumstances present in petitioner's case.

Because I find that petitioner has failed to state a claim upon which relief may be granted, she will be denied leave to proceed on her claim that she was subjected to discrimination in violation of the equal protection clause.

ORDER

IT IS ORDERED that

1. Petitioner Carrie Wrencher's request for leave to proceed in forma pauperis on her and her children's equal protection claims against respondents River Falls School District, River Falls Police Department, River Falls Housing Authority, Judy Sequin, Charles Eaton, Alison Page, Dr. David Paulson, Chief Roger Legue, Sargent Janis Brock and Ann Alpine is DENIED for failure to state a claim upon which relief may be granted.

2. The clerk of court is directed to enter judgment for respondents and close the file.

Entered this 28th day of November, 2001.

BY THE COURT:

BARBARA B. CRABB
District Judge