

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

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ALEKSANDRA CICHOWSKI and  
JANINA SEHMANN,

ORDER

Petitioners,

06-C-213-C

v.

USA; STATE OF WISCONSIN; STATE OF WISCONSIN DMV; STATE CAPITOL, Madison, WI; SAUK COUNTY; SAUK COUNTY BUILDING, Baraboo, Wisconsin; HONORABLE JUDGE EVENSON, REYNOLDS and NOWAKOWSKI (petition to review cases 02CV31, 03CV338, 04CV252); SAUK COUNTY COURTHOUSE, 515 Oak St.; and SAUK COUNTY BUILDING, 505 Broadway, Baraboo; DIRECTOR OF COURTS, State Capitol, Madison, Wisconsin; GENERAL CASUALTY INSURANCE; JASON VAN RITE and SANDRA VOMASTIC, One General Drive, Sun Prairie, Wisconsin; COPART AUTO AUCTION; JULIE GHERRTKE; GRETCHEN SCOTT; BRANDY KRAUSE; D. GANON, 5448 Lien Road, Madison, WI, 53704; ROBERT WIXON, 22 East Mifflin St., Suite 702, Madison; DANIEL JUNGEN, 15800 West Bluemound Rd., Brookfield, WI, 53008; FRED HOLLENBECK and TOM CASEY; CURAN HOLLENBECK AND ORTON, S.C.; DEBBIE KING, a/k/a Debra Fitsh, 111 Oak St., Mauston, WI, 54948; THE BANK OF MAUSTON, 503 Hwy. 82 E., Mauston, WI, 53948; ROBERT FAIT; THE BANK OF MAUSTON PRESIDENT; TOM SCHMIDT; THE BANK OF MAUSTON, 503 Hwy. 82 E., Mauston, WI, 53948, Phone 1608 562-5883; KELLY HONNOLD; THE BANK OF MAUSTON, 503 Hwy. 82 E, Mauston, WI, 53948; GENE

WIEGEND; COUNTY COORDINATOR,  
505 Broadway, Baraboo, WI, 53913;  
BRANDT BAILEY, 505 Broadway, Baraboo, WI, 53913;  
WAYNE MAFFEI; CROSS, JENKS, MERCER AND  
MAFFEI, 221 Third Ave., Baraboo, WI, 53913;  
M & I BANK and BANK PRESIDENT; DEBRA KING,  
221 West College Ave., Appleton, WI, 54912; MARK  
L. KRUEGER; GREELHALGH AND KRUEGER, S.C.,  
Lawyers, 123 Second Avenue, Baraboo, WI 53913,

Defendants.

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Petitioner Aleksandra Cichowski and her mother, Janina Sehmman, request leave to proceed in forma pauperis in this civil action against six government agencies or officials, three physical structures (one of which they name twice in the caption of their complaint), three judges, one insurance company, an auto auction enterprise, nineteen individuals, three law firms and two banks and their presidents (one of the banks is named three separate times in the caption). The names of the majority of the respondents are familiar to this court. Petitioner Cichowski sued them in an earlier filed lawsuit, Cichowski v. Hollenbeck, 05-C-262-C. From the affidavits of indigency petitioners submitted, I conclude that petitioner Sehmman is unable to prepay the fees and costs of instituting this lawsuit. Although it is not clear from petitioner Cichowski's affidavit whether she qualifies financially for pauper status, I will assume that she does for the purpose of this order.

In addressing any pro se litigant's complaint, the court must construe the complaint

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). However, if the action is frivolous or malicious, fails to state a claim upon which relief may be granted or seeks monetary relief against a defendant who is immune from such relief, the case must be dismissed promptly pursuant to 28 U.S.C. § 1915(e)(2). For the reasons discussed below, petitioners will be denied leave to proceed in forma pauperis and the case will be dismissed.

Petitioners' pleading in this case is similar to the original pleading petitioner Aleksandra Cichowski filed in case no. 05-C-262-C. It falls well short of compliance with Fed. R. Civ. P. 8(a)(2) and (e). These rules require that allegations in a complaint be "short and plain" or "simple, concise and direct." Petitioners' allegations are neither short and plain nor simple and direct. The complaint is a lengthy dissertation of petitioner Cichowski's view that almost everyone with whom she comes in contact is a participant in a vast conspiracy to cause her and her family members distress and financial harm. Despite the diffuse nature of the pleading, I can make out three general claims. The first is that petitioner Cichowski and her mother were deprived of the use of a car in violation of state law and their constitutional right to due process, when one or more of the respondents conspired to have respondent Department of Motor Vehicles issue a salvage title instead of a sticker allowing petitioners to operate the vehicle on public roads. The second claim

appears to be a repeat of an equal protection claim that petitioner Cichowski and her husband raised in their earlier complaint, which is that they are being treated “differently” because of their accent. Finally, petitioners’ third claim is a rehash of petitioner Cichowski’s vast claim of conspiracy to commit fraud that she raised in case no. 05-C-262-C.

Petitioners’ claim that their due process rights were violated by the alleged wrongful taking of property is legally meritless. As long as state remedies are available, neither intentional nor negligent deprivation of property gives rise to a constitutional violation. Daniels v. Williams, 474 U.S. 327 (1986); Hudson v. Palmer, 468 U.S. 517 (1984). In Hudson, the United States Supreme Court held that an inmate has no due process claim for the intentional deprivation of property if the state has made available to him a suitable post-deprivation remedy. In Daniels, the Court concluded that a due process claim does not arise from a state official's negligent act that causes unintended loss of or injury to property.

The State of Wisconsin provides several post-deprivation procedures for challenging the taking of property. According to Article I, §9 of the Wisconsin Constitution,

Every person is entitled to a certain remedy in the laws for all injuries, or wrongs which he may receive in his person, property, or character; he ought to obtain justice freely, and without being obliged to purchase it, completely and without delay, conformably to the laws.

Sections 810 and 893 of the Wisconsin Statutes provide petitioners with replevin and tort remedies. Section 810.01 provides a remedy for the retrieval of wrongfully taken or detained

property. Section 893 contains provisions concerning tort actions to recover damages for wrongfully taken or detained personal property and for the recovery of the property.

The state has not refused to provide petitioners with a post-deprivation remedy; indeed, it provides means for obtaining remedies. The existence of these remedies defeats any claim petitioners might have that respondents deprived them of their property without due process of law. This is true even if petitioners lost their case in state court. If petitioners believe that respondent Judge Nowakowski erred in deciding the way he did on petitioners' claim, their avenue of relief is to appeal the decision to the Wisconsin Court of Appeals. A remedy does not lie in federal court. Accordingly, petitioners' request for leave to proceed in forma pauperis on their claim that they have been deprived of a car without due process will be denied.

Because I am dismissing petitioners' federal law claim pertaining to the car, I decline to exercise supplemental jurisdiction over petitioners' claims arising under state law.

Petitioners' request for leave to proceed in forma pauperis on their claim that they were treated differently because of their accent will be denied. Petitioners failed to establish an equal protection claim because in their complaint they did not identify any individuals who do not have their accent and received preferential treatment. In any event, I note that in an order entered in case no. 05-C-262-C on January 13, 2006, I allowed petitioner Aleksandra Cichowski to proceed on an equal protection claim against an employee of the

Sauk County Circuit Court because I found in that instance that petitioner had sufficiently pleaded each element of an equal protection claim. To the extent petitioner Cichowski may be attempting to raise the same claim in this lawsuit, it will be dismissed as duplicative.

The remainder of petitioners' complaint will be dismissed because petitioner Cichowski has already litigated her claim of conspiracy to commit fraud in case no. 05-C-262-C. Indeed, with respect to respondents Mark Krueger and Greenhalgh and Krueger, S.C., I granted a motion for imposition of sanctions against petitioner Cichowski and her husband in the amount of \$300, after concluding that they had failed to engage in even minimal research to determine whether they could sue non-state actors for conspiring to commit fraud in federal court, whether they could sue judges for alleged violations of their constitutional rights or whether their constitutional claim of denial of due process had any support under existing law. Despite orders in case no. 05-C-262-C dismissing all but one of petitioner Cichowski's claims against the same respondents she sues in this case, she persists in pursuing the claims a second time in this lawsuit. I can conclude only that she is bringing the claims a second time for the purpose of harassing respondents. Therefore, I will deny petitioners' request for leave to proceed in forma pauperis on their claim of civil conspiracy.

ORDER

IT IS ORDERED that the request of petitioners Aleksandra Cichowski and Janina Sehmman to proceed in forma pauperis in this action is DENIED and petitioners' case is DISMISSED because the claims raised in the complaint are without legal merit, are duplicative or have been brought for the purpose of harassment. The clerk of court is requested to retain the original copy of petitioners' complaint for record purposes and to return to petitioners the remaining duplicate copies of their complaint.

Entered this 2d day of May, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge