

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

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KEVIN L. GUIBORD,

Petitioner,

v.

HECTOR L. ACOSTA, personally and  
in his official capacity as a Probation  
Agent for the State of Wisconsin,

Respondent.  
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OPINION AND ORDER

01-C-0673-C

This is a civil action for monetary relief brought pursuant to 42 U.S.C. § 1983. Petitioner Kevin L. Guibord requests leave to proceed in forma pauperis, alleging that his rights to privacy were violated when respondent Hector L. Acosta, a probation officer, disclosed to the woman petitioner was living with, Betty Larson, (with whom petitioner also has a daughter, Lacey) that he had a son with another woman, Holly Berg. In reviewing the proposed complaint to determine whether it stated a claim, as I am required to do under 28 U.S.C. § 1915, I could not tell whether the information respondent allegedly disclosed was information that was confidential and protected from disclosure. It seemed unlikely that parentage would fall into that category when it is so often a matter of public record or

general knowledge. Therefore, on January 30, 2002, I stayed petitioner's leave to proceed on his rights to privacy claim so that he could provide this court with further information.

I find now that the information that respondent allegedly disclosed was not arguably confidential. For that reason, I will deny petitioner's leave to proceed on his rights to privacy claim for failure to state a claim upon which relief can be granted.

### ADDITIONAL ALLEGATIONS

Petitioner provided the following additional allegations in response to this court's request for further information.

1. Did petitioner have a legal right to visit his daughter, Lacey J. Guibord, at the time of the alleged events? If so, how did that right arise? (According to petitioner's financial affidavit he does not have any dependents.)

ANSWER: "When Lacey Guibord was born petitioner was present and was immediately noted on the application for birth certificate as her father. Further, petitioner has maintained an ongoing presence in her life since her birth as her father."

2. Who told petitioner that he could not visit his daughter while he was on probation and in what circumstances was he told?

ANSWER: "Several days after respondent had issued the no contact order regarding petitioner and Betty Larson, respondent advised p[e]titioner that such no contact also

applied to his daughter, Lacey Guibord. This was told to this petitioner during a scheduled probation office visit.”

3. Was petitioner listed as the father on Berg’s son’s birth certificate?

ANSWER: “Petitioner was not listed as the father of Trace Berg until after April 24, 2000. Trace Berg was born on March 22, 2000.”

4. Other than petitioner and Berg, what individuals knew that petitioner was the father of Berg’s son before respondent allegedly revealed that fact?

ANSWER: “Other than petitioner and [Berg], the only other individuals that knew he was the father of Bergs child were her mother, her mothers husband, and respondent.”

5. What were the circumstances in which petitioner revealed to respondent that he was the father of Berg’s son?

ANSWER: “During an office visit in August of 1999, petitioner advised respondent that [Berg] was going to have his child the following March and that as the father he was going to stay with Berg to raise said child.”

### OPINION

To prove that his privacy rights were violated, petitioner is required to demonstrate that respondent disclosed confidential information about him, that he had a reasonable expectation of privacy in the information that was disclosed and that his privacy interest in

that information is greater than the government's interest in disclosure. See Kimberlin v. United States Dept. of Justice, 788 F.2d 434, 438 (7th Cir. 1986); Plante v. Gonzalez, 575 F.2d 1119, 1132-37 (5th Cir. 1978). Petitioner's own allegations show that the information that respondent allegedly disclosed was not confidential for two independent reasons. First, petitioner told respondent that he was the father of Berg's child. Thus, petitioner's own act of voluntary disclosure rendered the information non-confidential. Petitioner alleges that he advised respondent that he was the father of Berg's child and these were the entire circumstances surrounding the disclosure. Second, petitioner alleges that he was added as the father to Trace Berg's birth certificate on April 24, 2000. However, according to petitioner's complaint, respondent did not allegedly disclose the fact that he was the father of Berg's child until four days later, on April 28, 2000. Therefore, at the time that respondent allegedly disclosed the information to Larsen, petitioner's parentage was a matter of public record that Larson could have discovered herself. See Wis. Stat. § 69.20. Petitioner had no reasonable expectation of privacy in that information.

#### ORDER

IT IS ORDERED that petitioner Kevin L. Guibord's request for leave to proceed in

forma pauperis is DENIED for failure to state a claim upon which relief can be granted.

Entered this 11th day of March, 2002.

BY THE COURT:

BARBARA B. CRABB  
District Judge