

STATE OF NORTH CAROLINA
COUNTY OF WAKE

2008 SEP 11 AM 4:30
IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
08 CVD 12310
WAKE COUNTY, C.S.C.

GARRY D. RENTZ, DONNA A. RENTZ, BY)
KRISTA C. LISTER)

v.)

BRADLEY COOPER)

) DEFENDANT'S MOTION TO DISMISS
) PLAINTIFF'S CLAIMS FOR TEMPORARY
) AND PERMANENT CUSTODY PURSUANT TO
) RULE 12(b)(6) and MOTION FOR RULE 11
) SANCTIONS AND ATTORNEY FEES

NOW COMES the Defendant, by and through counsel, and respectfully moves this Court pursuant to North Carolina Rules of Civil Procedure, Rule 12(b)(6) to Dismiss Plaintiffs' claims for custody:

MOTION TO DISMISS PURSUANT TO 12(b)(6)

1. Defendant Bradley Cooper is a resident of Wake County, North Carolina, and has been for more than six (6) months prior to the filing of this action.

2. Plaintiffs Garry and Donna Rentz are citizens and residents of Alberta, Canada. Plaintiff Krista Lister is a citizen and resident of Ontario, Canada.

3. Defendant is the biological father of the minor children, Isabella Cooper ("Bella") born on February 23, 2004, and Gabriella Cooper ("Katie") born on July 23, 2006.

4. Plaintiffs Garry and Donna Rentz are the biological grandparents, and Krista Lister is the maternal aunt of the minor children.

5. On July 16, 2008, Plaintiffs filed this action seeking an *Ex Parte* Temporary Emergency Custody Order for custody of the minor children based on unsupported allegations that the minor children were in physical danger, and that Defendant is unfit and has behaved inconsistently with his constitutionally protected status as a parent.

6. There is no ongoing custody proceeding concerning these minor children, and the minor children are in an intact family.

7. Defendant is a fit and proper parent to have the care, custody and control of his minor children. Defendant has not acted in any manner inconsistent with his status

as a parent and therefore has not compromised his constitutionally-protected right to the care, custody and control of his children.

8. Plaintiffs do not have standing to initiate a custody proceeding seeking visitation or custody unless there exists an ongoing custody proceeding or the minor children are not in an intact family. See McIntyre v. McIntyre, 341 NC 629, 461 S.E. 2d 745 (1995); McDuffie v. McDuffie, 155 N.C. App. 587, 573 S.E. 2d 606 (2002); and Eakett v. Eakett, 157 N.C. App. 550, 579 S.E. 2d 486 (2003).

9. The intact family rule protects the parents' constitutional rights to the care, custody and control of their minor children and their right to determine with whom their children shall associate. Troxel v. Granville, 530 U.S. 57, 147 L.Ed 29 (2000); Price v. Howard, 346 N.C. 68, 484 S.E. 2d 528 (1997).

10. On or around April 2008, three months prior to Plaintiffs' filing of this action, Plaintiff's attorney Alice Stubbs and Nancy Cooper, the biological mother of the minor children, provided documentation that they believed the defendant to be a fit parent. (See Separation Agreement Draft, attached hereto and incorporated herein by reference)

11. Plaintiffs' allegations of Defendant's actions in numbers 12, 13, 14 and 17 allege behavior prior to April 2008, during which time Plaintiffs' attorney Alice Stubbs and biological mother, Nancy Cooper, considered Defendant to be a fit parent and offered joint physical and legal custody of the minor children via a separation agreement.

12. Plaintiff's allegations in numbers 8, 9, 10, 12, 14, 15, 17, 23, 24, 25 and 26 do not have any bearing on the welfare of the minor children or on Defendant's fitness as a parent.

13. Plaintiff's allegations in numbers 9, 12, 13, 14, 15, 16, 17, 23, 24, 25 and 26 are based on "information and belief" and/or they are allegations which, even if accepted as true, do not support any finding of unfitness or harm to the minor children and are insufficient to support a claim upon which relief may be granted.

14. Plaintiffs' allegations in numbers 9, 12, 13, 15, 16, 18, 29, and 32 are unwarranted deductions or assumptions. For the purpose of a motion to dismiss, the well-pleaded, material allegations of the complaint are taken as admitted; but conclusions of law or unwarranted deductions of fact are not admitted. See Lloyd v. Babb, 296 N.C. 416, 251 S.E.2d 843 (1979); Hoover v. Liberty Mut. Ins. Co., 84 N.C. App. 549, 353 S.E. 2d 284 (1987); and Hill v. Perkins, 84 N.C. App. 644, 353 S.E. 2d 686 (1987).

15. Plaintiff's allegations in numbers 12, 13, 15, 17 and 32 (regarding Defendant's emotional stability) are not based on any first-hand knowledge and are plainly false. The allegations have been refuted by persons with first-hand knowledge. (See Affidavits of Terry Cooper, Scott Heider, Michael Morewick, Bradley Cooper, Mike

Hiller, Chris Wall, and Carol Cooper, attached hereto and incorporated herein by reference.)

16. Plaintiffs based their allegations on gossip, unwarranted deductions, assumptions, and hearsay and not on first-hand knowledge, as evidenced by Plaintiffs' complaint and Plaintiff's filed affidavits. (See Rebuttal Affidavits of Scott Heider and Bradley Cooper, attached hereto and incorporated herein by reference)

17. The North Carolina Court of Appeals has consistently upheld dismissal when the plaintiff's complaint "merely reaches conclusions rather than alleging facts to sustain a cause of action." Hoover v. Liberty Mut. Ins. Co., 84 N.C. App. 549 at 551, 353 S.E. 2d 284 at 250 (1987).

18. Even though only notice pleading is required, the complaint must satisfy the requirements of the substantive law giving rise to the claim for relief. If the Plaintiff has failed to state enough factual allegations so that he does not satisfy the substantive elements of his claim, the complaint must be dismissed. See Sutton v. Duke, 277 N.C. 94, 176 S.E. 2d 161, (1970).

19. In an action for emergency custody, Section 50-13.5(3) limits the court's authority in ex parte temporary orders requesting a change in the living arrangements of a child or a change in custody. This can only be done when the complaint alleges sufficient facts to satisfy a finding that there is a substantial risk of bodily injury or sexual abuse, or a substantial risk that the child may be removed from the state to evade the jurisdiction of the North Carolina courts.

20. In addition, if the plaintiffs are not biological parents of the minor children, as in this case they are not, the allegations must raise facts sufficient to support a finding of unfitness, abuse, neglect or other conduct inconsistent with the parent's protected status.

21. A finding that a biological parent is unfit or has acted inconsistently with his status as a parent must be proven by clear and convincing evidence. See Adams v. Tessener, 354 N.C. 57, 550 S.E.2d 499 (2001).

22. Plaintiffs have not provided sufficient allegations that would support a finding that by CLEAR, COGENT and CONVINCING evidence, Defendant is unfit or has acted inconsistently with his status as a parent.

22. Furthermore, Plaintiffs' complaint does not make any allegations of fact that the children are subject to a substantial risk of bodily injury or sexual abuse, or any facts sufficient to support that the children may be removed from the state to evade jurisdiction of the North Carolina courts. Plaintiffs merely re-state the requirement and do not provide facts with which to support it.

23. Plaintiffs' complaint does not raise sufficient facts and does not provide sufficient clear and convincing evidence that would support a finding of Brad's unfitness, abuse of the children, neglect of the children, or other conduct affecting the health and welfare of the children that would be sufficient to overcome his constitutionally-protected right to care and custody of his children. Therefore Plaintiffs do not have standing to pursue this action.

24. Plaintiffs filed this action knowing or having reason to know that they had no factual basis, no legal basis, and for the improper purpose to persecute Defendant because of their unfounded and unproven suspicions against him.

25. Defendant has been required to retain the services of counsel as a result of necessary court appearances and preparation of his defense of these meritless accusations.

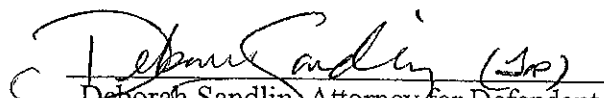
26. Defendant is without sufficient funds to defray the costs of this frivolous action, and moves the Court to order sanctions pursuant to Rule 11 to reimburse Defendant the reasonable costs and expenses associated with defending this action, including reasonable attorneys' fees.

WHEREFORE, Defendant respectfully moves that the Court:

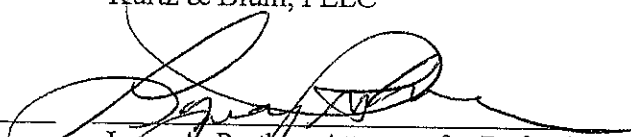
1. Dismiss the Plaintiffs' complaint;
2. Order Plaintiffs to immediately return custody of the minor children to Defendant;
3. Vacate and strike all orders entered in this action;
4. Order Plaintiffs to immediately return all personal belongings of the minor children to Defendant, including their passports;
5. Order Sanctions for reimbursement of costs and attorneys' fees to Defendant;
6. Order such other relief as the Court deems just and proper.

This is the 11 day of September, 2008.

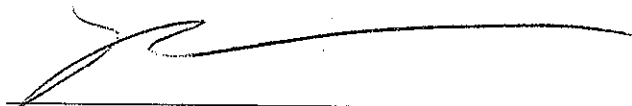
Sandlin & Davidian, PA


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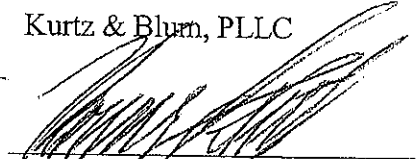
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CERTIFICATE OF SERVICE

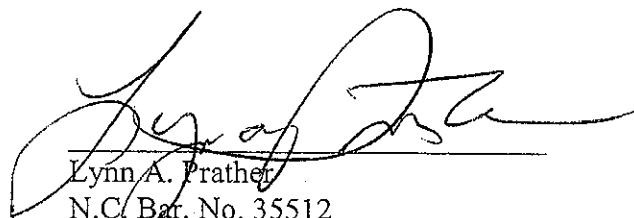
This is to certify that a copy of the foregoing document was duly served this day on all parties to this action by placing

A copy thereof in a postage-paid envelope deposited in the United States Mail, addressed as follows:

Alice C. Stubbs
Wade M. Smith
Tharrington Smith, LLP
PO Box 1151
Raleigh, North Carolina 27602-1151

FILED
2008 SEP 11 PM 4:52
BY
WAKE COUNTY, C.S.C.

This the 12 of September, 2008.



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