

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

STACEY W. BRACKENS,	)	
	)	
Plaintiff,	)	<b>CIVIL ACTION</b>
	)	
v.	)	No. 06-1166-MLB
	)	
AMY McCLELLAN and	)	
EDWARD SIMS,	)	
Defendants	)	
_____	)	

MEMORANDUM AND ORDER

Before the court are the following:

1. Plaintiffs' pro se "Complaint Class Action" (Doc. 1);<sup>1</sup>
2. Defendants' pro se motion to dismiss (Doc. 7);
3. Plaintiffs' Answer to Defendants' Motion to Dismiss (Doc. 11).

For the following reasons, defendants' motion is denied, without prejudice.

Background

Since 2002, plaintiff has filed 14 cases in this court, six of which have been filed in 2006. In each of the 2006 cases, including this case, he has been granted leave to proceed in forma pauperis.<sup>2</sup>

---

<sup>1</sup>According to the complaint, the class consists of ". . . all persons within the Brackens families who . . . have been treated in such a like fashion as Stacey . . . and Christian Brackens."

<sup>2</sup>Brackens v. Stewart and Brackens, Case No. 06-2241, purports to be a suit over a will. Brackens v. Texas Health and Human Services Commission, Case No. 06-2320, purports to be an ADA and civil rights action alleging harassment, selective prosecution, public humiliation and breach of contract. Brackens v. Shield, Case No. 06-2405, purports to be a medical negligence case. Brackens v. J. Enterprises, Case No. 06-1205, purports to be a class action against a furniture rental company alleging race discrimination, breach of contract,

The present case is the latest in a series of cases Brackens has filed against Amy McClellan, who was described by the Tenth Circuit as "Mr. Brackens's next-door neighbor with whom he and his wife have been feuding for over three years." Brackens v. Best Cabs, Inc., 151 Fed.Appx. 659 (10th Cir. 2005). The number of times Brackens has sued McClellan, or mentioned her in one of his other suits, is somewhat difficult to ascertain. Nevertheless, as will be apparent from the following excerpts, the claims against McClellan, as well as against Sims, arise out of a convoluted and irrational scenario which Brackens claims to be a conspiracy involving such diverse and unrelated parties as a state court judge, the Kansas Department of Social and Rehabilitative Services and Walgreens Pharmacy, among others.

In Brackens v. State of Kansas, Case No. 04-1033, Brackens made the following allegations which are more or less pertinent to this case:

I bring suite against Amy Mcclellan and Edward Sims at 3235 S. Euclid Wichita, KS 67217 FOR REASONS NAMED A. making false complaint for stalking B. deformation of person for C. stilling wagon D. daughter coat E. stilling \$70.00 in jury F. cutting a hole in canapé. G. ongoing harassment, H. false imprisonment, I. stress causing kiddy's to fail. I assert the claim of \$45,000.00 in damages.

\* \* \*

Concerning Judge Pilshaw please see attachments it give some past history about my neighbor and judge Pilshaw. I

---

extortion, strong arming, public humiliation and mental anguish, all arising out of a dispute over a dining room set. Brackens v. Best Cabs, Case No. 06-1283, dismissed by Memorandum and Order filed October 24, 2006.

Although the cases involve different parties and factual scenarios, each complaint features a rambling recitation of claims similar in tone, if not content, to those in this case.

made a complaint with the judicial board but I never heard back from them. In short Judge PILSHAW picked up a contempt stalking charge that the DA's office passed on. Judge Pilshaw tricked me into coming to court then she denied me a lawyer denied me a continuance and illegally put me in jail for 60 days. After serving 24 days I was then giving a lawyer who filed reconsideration and I was released. That still doesn't change the fact that I spent a total of 30 days wrongfully in jail thanks to Judge Pilshaw and my two neighbors Mrs. Amy McClellan and Edward Sims. Again please see attachments.

Now concerning my dialysis before I went to jail I saw a kiddy doctor who pointed out that I had some concerns but all was well, so much that he didn't even give me a return visit. But after spending 24 days in jail my kiddy's quickly failed and I was placed on dialysis. I believe that because of all of the stress that I was put under with jail started by the lie that Best cab got one of their drivers to tell which was my first stalking case, that lead me to be arrested three times caused high blood pressure that caused my kiddy's to fail. I believe that Best Cab Inc. Amy McClellan, Edward Sims SRS, Walgreen's are all computable in this I will show at trial and prove that they are.

\* \* \*

Now this lady who I don't even know who stands and accuses me of stalking her. In her statement she never states why I was seeking her full name. I believe that Miss. Denise works for the state, maybe S.R.s and that she ahs been giving out information about myself and my wife to my neighbor Mrs. McClellan who I am now in a civil litigations with. And they together are bringing this stalking lie against me, and the person who kelp calling Denise's job I believe was in fact Mrs. McClellan's husband who is also black. I went to Walgreens's once and only once seeking information on Denise and she was right there. Well I went back the next day and spoke to the manger ok twice. But I never called there nor did I talk to anyone about Denise. The reason why I believe that Denise and Mrs. McClellan and her husband are plotting inthis together is because, early this summer I made a statement to Mrs. McClellan and her husband when I said that I had been to prison and I'm not afraid to go back. I never made that statement to anyone elseand I for sure never made it to Miss Denise, yet she wrote in herstatement that I had said it as if I had said it to her. And she's telling this lie while riding on the back of Walgreen's. I know that I'm making my case but that's only because I won't get to make it with Judge Pilshaw she has already made her judgment.

\* \* \*

This is nothing more than a four way conspiracy brought on by Mrs. McClellan and her husband, Miss. Denise, and Judge Pilshaw. Mrs. McClellan and her husband in that they don't want me to have knowledge of there case with the State, lest I should use it as a weapon. Also they would love to play this conspiracy out by waiting a few days after the Judge upholds the stalking charge and having Mrs. McClellan's husband start calling Walgreen's asking questions about Denise believing that they will think that it's me at which time she'll call the police just all undone and in fear for her safety and they will arrest me for violating the stalking order.

Brackens voluntarily dismissed Case No. 04-1033 ten days after it was filed "mainly for health reasons . . . " (Doc. 3).

Six months after dismissing Case No. 04-1033, Brackens sued McClellan, Sims and numerous other parties<sup>3</sup> alleging a much expanded, but still bizarre conspiracy (Case No. 04-1259). In his complaint, Brackens made the following allegations regarding defendants Sims and McClellan:

When I arrived at the hearing I noticed that things where odd. Mr. Sims was there for one. He had no pending case before the Court. It is my contentions that he was there to see the side show, that Judge Pilshaw had promised his Wife Mrs. McClellan, which was violating my Civil Rights and putting me in jail.

I have to say that October 23, 2003 was the most embarrassing day of my life. To have my neighbors and their friend not only conspire with a Judge in putting me in jail, but also to have them present when it was done.

\* \* \*

It is the Plaintiff's contentions that Mrs. McClellan got a hole of my news letters that I was passing out, and in that did she then get the ideal to file a stalking complaint of her own. I believe that Mrs. McClellan knew that if she filed a complaint that I once again would have to stand before judge Pilshaw. This turned out to be a win

---

<sup>3</sup>The other defendants were Best Cabs, Inc., Walgreens Pharmacy, Wesley Medical Center, Board of County Commissioners of Sedgwick County, Kansas, Gary Steed, Sheriff, Judge Rebecca Pilshaw and the State of Kansas.

win for Judge Pilshaw, because by now it was clear that she had a score to settle with me, for picketing just outside of her Court room, not to mention that I was passing out news letters which stated that she was unfit for service.

. . .

After passing out the news letter about Mrs. McClellan around the neighbor hood, I was that same day arrested for a lie that Mrs. McClellan and her sisters told. . . . I want the truth to some how come out, so I filed a civil case against Mrs. McClellan and her live in husband Mr. E Sims, in small claims Court. The only reply that Mrs. McClellan had to the case was that I had no proof. The judge thought that I should not be suing my neighbor and dismissed the case. I then appeal by paying \$106.00. Before that case was to go to trial I once again was served with another stalking complaint. This time it was one of Mrs. McClellan and Mr. Sims female friends one Denise Fleming B.

After I filed the appeal against Mr. Sims and his wife, I went to Walgreen's where Mrs. Fleming worked and sought her name, so I could call her to Court. It is my belief that Mrs. Fleming was giving out personal information about myself and my wife to Mr. Sims and his wife. Mrs. Fleming also works for the state of Kansas in addition to Walgreen's.

\* \* \*

On October the 23rd of 2003 I arrived at the hearing for the third and last stalking order, only to find out that I was being plotted against by Judge Pilshaw, Mrs. Fleeting/Walgreen's, Mrs. McClellan, and her husband Mr. Sims. It was clear that a conspiracy was in the working and I was the last to know.

\* \* \*

On December 18 of 2003 I was placed as a Patient in Wesley Medical Hospital for End Stage Renal Disease (ESRD). On my first day at Wesley Hospital, later that evening Mr. Sims walked into my room looked at me smiled and walked out. That was the first and last time that I saw Mr. Sims while staying at Wesley. Mr. Sims is not a nurse he had no reason for being in my room, I believe that he saw my name either on the board or on the computer and came to see if it was indeed me. It is my contentions that if he was inquisitive enough to leave his assigned place to see if it was me, than it is also my belief that he also checked to see why I was there. I ask the Court to keep in mind that he and his wife and myself and my wife have been having an ongoing battle, for at that time, more than two years, not to mention the stalking order that was in affect by his

wife against myself.

I said all of that to say this. On July the 19th 2004, Mr. Sims and I had some heated words where he spoke of my being on "Dialysis". On July 22of 2004, I also had headed words with a friend of Mr. Sims and his wife who lives across the street from the both of us. A man who knows nothing about me, and who I only spoke to twice before that day. In that heated exchange he also talked about the access coming out of my stomach, and he said that he believed that I had Aids. I believe that it was Mr. Sims who told his friend that I had been at Wesley Hospital and that my Kidney's failed. And I believe and I will show that the four of them took it upon themselves to draw the conclusion that they probably fail due to drug usage. And that they all together or this friend on his own made me to have Aids.

Mr. Sims took personal medicinal information regarding myself that he acquired at his job, twisted it, and passed it on among his friends within the neighbor hood.

Mr. Sims is also employed at Wesley Medical hospital and they are responsible for his action with regard to company policies/ patient confidentiality.

\* \* \*

For the past three years I have endured one assault after another brought on by Mrs. McClellan and Mr. Sims. Just recently someone from their home came over to my driveway got a rock out of their garden, and thru it on the hood of my car. Cost \$287.00 in damages. The harassment started with Mrs. McClellan calling S.R.S., each phone call was about me doing something wrong to my oldest son who happens to be white. S.R.S. came out after the third call and concluded that the complaint was brought on only in retaliation. After her efforts with S.R.S. failed, Mrs. McClellan and Mr. Sims began to do some of everything. Things like defacing my home with mud, stilling my son's wagon as well other things. (See news letter exhibit-C) that I wrote about Mrs. McClellan back in 2003, after, Judge Pilshaw upheld her stalking order. I can't began to talk about all that these people have done to me and my family over the past three years. But I can say this, other than the news letter that I wrote and passed out around the neighborhood, other than that, I have never Retaliated in any way against Mrs. McClellan or Mr. Sims nor any member of their family, yet they continue to this day to cause me stress.

Case No. 04-1259 was dismissed pursuant to 28 U.S.C. § 1915(e) for

failure to state a claim and the Court of Appeals affirmed in its Order and Judgment of October 12, 2005, supra.

#### The Allegations In This Case

Brackens' factual allegations in this case, in their entirety, are as follows:

My family and myself moved into the home located at 3241 S. Euclid right next door to the defendants and their children. Shortly after moving in the harassment started, headed up by Mrs. McClellan and strongly supported by Mr. Simms. I want to stop right here to say that I am not filing this case for any other of the things that Mr. Simms and Mrs. McClellan did to myself and my family before 1/1/2005 but only the things that happened after the named date. In May of 2005 Amy McClellan and her live in husband had friends of Amy's oldest daughter after I was forced to put up cameras around my home after Amy had her daughters boyfriend one MARUEST INGRAM call me out to beat my "so called ass", then about a week later the same young man ran up to my wife and scared her to the point that she ran in to the home crying, after the nearly assault that he engaged against her. He also began to beat on our van and called her all manner of names, that I will not belittle myself in repeating. All that Mr. Ingram did was asked and encouraged by Mr. Simms and his wife Mrs. McClellan. After this I was forced to place three cameras around my home, in response to these incidents. On or about the morning of May the 29th there about three men at 1:00am in the morning dressed in black clothes with masks came and put out two of the tires on my wife's van and then came around to the front of my home and broke out all of the windows in my 1989 Camry. (see exhibit A-3) On or about a week to a week in a half later while my 4 year old son Christian was playing in our fenced in back yard, again Amy's daughter boyfriend Mr. Ingram and Amy's TWO DAUGHTERS got on something that caused them to stand over their 8 foot fence at which time seeing my son Christian playing in his own back yard, Amy's daughter boyfriend Mr. Ingram thru a what we now believe to be a mud rock hitting Christian in his left eye. (see exhibit A-2). This led to him needing and having two surgeries and being hospitalized twice in one week. (see exhibit A-4) (great pain and suffering). While he was still in the hospital I spoke to Amy to tell her that Christian was in surgery and she replied (I hope that he loses that eye) then while he was in the hospital, for some unknown reason Mrs. McClellan was leaving the same hospital when I was going to visit with my son, this was alarming to me so much that we had to put Christian in an unmarked room so no one could know as to his place of stay

while in the hospital, I was concern for his safty. The harassment that my family suffered by way of Amy and her live in husband was so great expanding over more than three years that even if I could tell all that I remember it still would not cover all that they did. That's right for more than three years Amy McClellan and Edward Simms did a number of wicked things to my whole family even after we moved out. After Christian got assaulted by Amy's daughters boyfriend, being concerned for the rest of my family's safety I was forced to move. At the time I could only find a place about 4 blocks away and the harassment still continued Mrs McCLELLAN would ride by with her kids in the car and shout insults at me or my wife and even my kids. If I could get everything that I'm asking in this suit it still would not even come close to all that is owed to me and my family for all that Amy and her husband did to us over more that three years. Why did Amy and her husband do these things to us well, that question I may never really know but what I do know is that one reason why this was done was to get us to move from 3241 S Euclid. Amy and her husband made a promise that they would make us move and when the little things and the lies didn't work they resulted to violance.

#### Subject Matter Jurisdiction

Brackens bases subject matter jurisdiction in this case on diversity of citizenship. He has contended in another case, Brackens v. Best Cabs, Inc., Case No. 06-1283 (his fourth suit against Best Cabs) that because Best Cabs successfully defended itself in two earlier cases, he was "forced to flee" Kansas and move to Texas, where he now resides. McClellan and Sims presumably are Kansas residents.

#### Defendants' Motion

Defendants have filed a pro se motion to dismiss on the following grounds: (1) lack of sufficient evidence; (2) the case is based entirely upon beliefs, assumptions and speculations; (3) Stacey Brackens has shown history of disrespect for the court system by repeatedly filing meritless law suits; (4) none of the defendants Brackens has sued were ever arrested; (5) Brackens' claims of conspiracy, outrageous conduct and harm are false; and (6) Brackens'



lawsuits against Amy McClellan and Best Cabs have been dismissed.

Construed liberally, defendants are seeking dismissal pursuant to 28 U.S.C. § 1915(e)(2)(B), as amended by Pub. L. 104-134, on the grounds that the present suit is frivolous or malicious and fails to state a claim upon which relief may be granted. (Doc. 7). Brackens' response is that: "As this court well knows this is not a criminal case but a civil case. I may never prove all the allegations happened, what it comes down to is it more likely than not that the defendants did cause bodily harm to Christian or aided in the act." Brackens also believes, quite wrongly, that because he has been granted leave to proceed in forma pauperis, the court lacks the authority to dismiss the case. See Fogle v. Pierson, 435 F.3d 1252, 1257-58 (10th Cir. 2006) and 28 U.S.C. § 1915(e)(2)(B)(i)(ii).

#### Discussion

The court has given serious consideration to defendants' motion but believes that granting the motion at this stage of the case will not be in the interests of justice. Accordingly, the motion is denied but without prejudice to reassertion, either as a motion to dismiss or as a motion for summary judgment. The case is transferred to the U.S. magistrate judge for further handling.

IT IS SO ORDERED.

Dated this 30th day of October 2006, at Wichita, Kansas.

s/ Monti Belot  
Monti L. Belot  
UNITED STATES DISTRICT JUDGE