

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS,
RIK WAYNE MUNSON

Plaintiffs

vs.

CANDACE KUNZ-FREED, et al.,

Defendants

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CASE NO. 4:16-cv-01969

BOBBIE G. BAYLESS’ MOTION TO DISMISS
FOR FAILURE TO STATE A CLAIM

TO THE HONORABLE UNITED STATES DISTRICT COURT:

COMES NOW Bobbie G. Bayless (“Bayless”), one of the Defendants in the above entitled and numbered cause, and files her Motion to Dismiss for Failure to State a Claim, and in support thereof would respectfully show the Court as follows:

1. Plaintiffs filed an Original Complaint (“Complaint”) purporting to assert causes of action against Bayless and numerous other Defendants for what Plaintiffs describe as: (1) violations of the Racketeer Influenced Corrupt Organization Act, 18 U.S.C. §1962(c); (2) conspiracy to violate 18 U.S.C. §1962(c); (3) conspiracy to violate due process rights; (4) conspiracy to deny equal protection of law; (5) conspiracy to deprive plaintiffs of an impartial forum; (6) breach of the public trust; (7) aiding and abetting public and private fiduciary breaches; (8) aiding and abetting fiduciary misapplications; and (9) claims allowed by 42 U.S.C. §1988(a), 18 U.S.C. §1964(c) and Rule 10b-5 Securities Exchange act of 1934 (17 C.F.R. §240.10b-5), including the right of private claims implied therefrom.

2. This case is related to a case pending in Harris County Probate Court Number 4 in Cause No. 412.249-401, styled *Carl Henry Brunsting, et al. v. Anita Kay Brunsting, et al.* in which Bayless represents Carl Henry Brunsting who is the brother of Plaintiff, Candace Louise Curtis. The action in the Harris County Probate Court involves disputes concerning a trust created by the parents of the five Brunsting siblings. Plaintiffs' Complaint in this Court, which even names the judge, associate judge, and a visiting court reporter of Harris County Probate Court Number 4, was filed days before a mediation was scheduled in the **probate proceeding**. The allegations, though difficult to follow, leave little question that the goal of this proceeding is to avoid that probate court mediation and the jurisdiction of Harris County Probate Court Number 4 over this dispute.¹

3. The allegations relating to Bayless are minimal. The information identifying Bayless as a defendant is contained in paragraphs 21, 49, and 50 of the Complaint.² Paragraph 55 of the Complaint alleges that Bayless is an attorney who has practiced law in the Harris County Probate courts. Paragraph 56 alleges, without any facts to support it, that Bayless and the other named parties have engaged in a criminal enterprise somehow being conducted through Harris County Probate Court Number 4. Paragraph 59 makes a similar allegation, again without one shred of factual support. Bayless' name only otherwise appears at paragraph 124 of the Complaint, where an undefined conspiracy to alter the course of justice is alleged, and paragraph 131 of the Complaint, which contains only the factual basis for Plaintiffs' claim against Bayless. That so-called claim is one, however, which fails on its face.

¹ See paragraphs 113-115 of the Complaint which specifically complain about mediation being required in the **probate proceeding**.

² Paragraph 21 names Bayless as a Defendant. Paragraph 49 alleges the law firm of Bayless & Stokes to be an enterprise and a "legal entity associated with Harris County Probate Court..."

4. Plaintiffs' entire claim, as articulated in paragraph 131 of the Complaint, is based on Bayless' postponement of a hearing on the Motion for Partial Summary Judgment Bayless filed in the probate proceeding on behalf of her client, Carl Brunsting. That action is not wrongful and can not support a cause of action which can be asserted by these Plaintiffs under any circumstances. Nevertheless, that is Plaintiffs' only factual assertion supporting Plaintiffs' claims against Bayless. Bayless' postponement of the hearing on her own motion is not something that has any relationship to the Plaintiffs³, and Plaintiffs have no standing to even complain about it. Nor have Plaintiffs alleged any causal relationship between any alleged injury, which they do not bother to define, and Bayless' postponement of the hearing on her own motion.

5. Bayless certainly did postpone the hearing on her own Motion for Partial Summary Judgment, but Plaintiffs have no right to even complain about Bayless' actions in representing her client, Carl Brunsting, much less sue Bayless for it. Thus, Plaintiffs' attempts to allege facts to support a claim against Bayless fall woefully short. Pursuant to Fed. R. Civ. P. 12(b)(6), Bayless asks this Court to dismiss Plaintiffs' action against her because it fails to state a claim upon which relief can be granted. Thus, even though Bayless admits she postponed her own hearing, Plaintiffs have no right to relief based on that fact. *Crowe v. Henry*, 43 F.3d 198, 203 (5th Cir. 1995).

6. Indeed, this Court could dismiss this entire case on its own initiative because Plaintiffs can not possibly prevail on what has been asserted, and it does not appear to be something that can be cured by a new pleading. *Carroll v. Fort James Corp.*, 470 F.3d 1171, 1177 (5th Cir. 2006). Plaintiffs who are pro se parties have long and loudly made their disdain for lawyers known.

³ The allegation is even more amazing in light of the fact that one of the Plaintiffs has no relationship whatsoever to the Brunsting probate proceeding.

But that disdain does not support these outlandish claims. Plaintiffs have not provided one single fact to support their apparent position that Bayless is a person who is engaged in a pattern of racketeering activity connected to the acquisition, establishment, conduct, or control of an enterprise, and that Bayless participated in the operation or management of that enterprise. The fact that Bayless practices law and, in the course of her practice has represented another party involved in litigation with one of the Plaintiffs in Probate Court Number 4, does not even come close to supporting any cause of action, even if Plaintiffs do not like actions taken by Bayless in the course of her representation of her client, Carl Brunsting.

WHEREFORE, PREMISES CONSIDERED, Bayless prays that this motion be in all things granted and sustained; that the Court dismiss this action for failure to state a claim upon which relief can be granted; and that Bayless have such other and further relief, both general and special, legal and equitable, to which she may show herself entitled.

Respectfully submitted,

BAYLESS & STOKES

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing instrument has been served on this 7th day of September, 2016 via Telecopier or U.S. First Class Mail as follows:

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/s/ Bobbie G. Bayless
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