CLOSING

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

WESLEY-KEITH: MULLINGS, ***Plaintiff*,** **v.** **HARRIET ELAINE RAGHNAL, et al.,** ***Defendants*.**	**Civil Action No. 22-01294** **ORDER**

THIS MATTER comes before the Court by way of pro se Plaintiff Wesley-Keith: Mullings's ("Plaintiff") Motion for Final Judgment (the "Motion"), ECF No. 47;

and it appearing that the Motion is unopposed;

and it appearing that this action arises out of a custody dispute concerning Plaintiff's son, see generally Am. Compl., ECF No. 33;

and it appearing that in May 2015, Plaintiff's ex-wife Aisha Margaret Smith ("Smith"), through her attorney Harriet Elaine Raghnal ("Raghnal," and collectively, "Defendants"), was granted adoption of the child, see id. Ex. A;

and it appearing that upon Plaintiff's incarceration in May 2018, Smith obtained temporary custody of the child, see id. ¶¶ 1–4; see also id. Ex. C;

and it appearing that Plaintiff brings this cause of action against Smith, Raghnal, and several other defendants, see generally id.;

and it appearing that on July 10, 2023, the Court dismissed Plaintiff's Amended Complaint with prejudice with respect to the "State and Judiciary Defendants," which included all defendants except Smith and Raghnal, see ECF No. 42 (the "July Order");

and it appearing that the Court did not address Smith and Raghnal in its July Order because on November 15, 2022, the Clerk of the Court entered default against them for failure to plead or otherwise defend, see Docket;

and it appearing that following the July Order, Plaintiff appealed to the United States Court of Appeals for the Third Circuit, see ECF No. 44;

and it appearing that the appellate court dismissed Plaintiff's appeal because, given the status of Smith and Raghnal, there had not yet been a final judgment in this action, see ECF No. 49 ("Since the District Court has not entered an order finally adjudicating claims against Defendants Raghnal and Smith and has not directed the entry of a final judgment pursuant to Federal Rule of Civil Procedure 54(b), we lack jurisdiction and dismiss this appeal.");

and it appearing that Plaintiff now moves for entry of a final judgment pursuant to Federal Rule of Civil Procedure 54(b) and requests that the Court address Plaintiff's remaining claims and the status of Defendants, see Mot.;

and it appearing that, because Smith and Raghnal have not responded to the Amended Complaint and have not opposed the Motion, the Court will treat Plaintiff's Motion as a motion for default judgment;

and it appearing that, before entering a default judgment, the Court must determine whether it has jurisdiction over the action and the parties, see Animal Sci. Prods., Inc. v. China Nat'l Metals & Minerals Imp. & Exp. Corp., 596 F. Supp. 2d 842, 848 (D.N.J. 2008), and whether Plaintiff properly served Defendants, see E.A. Sween Co., Inc. v. Deli Express of Tenafly, LLC, 19 F. Supp. 3d 560, 567 (D.N.J. 2014);

and it appearing that the Court has subject matter jurisdiction because Plaintiff brings claims pursuant to federal statutes 42 U.S.C. §§ 1981, 1985, and 1986, see Am. Compl., and thus there is a federal question before the Court, see 28 U.S.C. § 1331;

and it appearing that the Court has personal jurisdiction over Defendants because they appear to be citizens of New Jersey, see Am. Compl. at 3; see also Affs. of Service, ECF Nos. 24, 28;

and it appearing that venue is proper in the district of New Jersey pursuant to 28 U.S.C. § 1391;

and it appearing that service and notice to Defendant Raghnal was proper per N.J. Ct. R. 4:4-4(a)(1), see ECF No. 24, but service and notice to Defendant Smith was not, see ECF No. 28;[1]

and it appearing that before entering a default judgment, a court must also determine whether the plaintiff's complaint sufficiently pleads a cause of action and whether the plaintiff has proved damages, Chanel, Inc. v. Gordashevsky, 558 F. Supp. 2d 532, 536, 538 (D.N.J. 2008);

and it appearing that first, Plaintiff does not bring a viable 42 U.S.C. § 1981 claim because he has not alleged any contractual relationship with Defendants such that a section 1981 claim would be permissible, see Domino's Pizza, Inc. v. McDonald, 546 U.S. 470, 476 (2006) ("[a]ny claim brought under § 1981 . . . must initially identify an impaired contractual relationship . . . under which the plaintiff has rights.") (internal quotation marks omitted);[2]

[1] The proof of service indicates that the materials were left "at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein." ECF No. 28. However, it does not include the "name . . . [or] description of the individual upon whom service was made" as required by N.J. Ct. R. 4:4-7. Even if Defendant Smith was properly served, Plaintiff does not state any viable claims against her. See infra.

[2] A plaintiff bringing a section 1981 claim must plausibly allege, in addition to a contractual relationship, the following: "(1) [that plaintiff] is a member of a racial minority; (2) intent to discriminate on the basis of race by the defendant; and (3) discrimination concerning one or more of the activities enumerated in the statute[,] which includes the right to make and enforce contracts." Brown v. Philip Morris Inc., 250 F.3d 789, 797 (3d Cir. 2001) (internal quotation marks and citations omitted). Plaintiff does not properly allege these elements.

and it appearing that second, Plaintiff cannot bring a 42 U.S.C. § 1985 claim because Plaintiff does not allege racial or other class-based discriminatory animus to support such a claim, see Farber v. City of Paterson, 440 F.3d 131, 135 (3d Cir. 2006) (explaining "that because § 1985(3) requires the 'intent to deprive of equal protection, or equal privileges and immunities,' a claimant must allege 'some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action,' in order to state a claim.") (quoting Griffin v. Breckenridge, 403 U.S. 88, 102 (1971));

and it appearing that third, Plaintiff's claim under 42 U.S.C. § 1986 cannot survive because he does not properly allege a section 1985 claim, see Brookhart v. Rohr, 385 Fed App'x. 67, 70 (3d Cir. 2010) ("In order to maintain a cause of action under 42 U.S.C. § 1986, a plaintiff must show the existence of a section 1985 conspiracy.");

and it appearing that Plaintiff also asserts a common law intentional infliction of emotional distress claim, see Am. Compl. ¶¶ 17–20;

and it appearing that because the Court dismissed all federal claims, it declines to exercise supplemental jurisdiction over Plaintiff's common law claim, see 28 U.S.C. § 1367(c)(3); see also July Order at 5 ("[T]o the extent any state law claims remain, the Court declines to exercise supplemental jurisdiction where the federal claims have been dismissed.");

IT IS on this 16th day of May, 2024;

ORDERED that Plaintiff's Motion for Final Judgment, ECF No. 47, is **DENIED** insofar as it requests default judgment with respect to Defendants Smith and Raghnal;

ORDERED that Defendants Smith and Raghnal are **DISMISSED**; and it is further;

ORDERED that in light of this Order and the Court's July Order, this action is hereby **CLOSED**.

s/ Madeline Cox Arleo
MADELINE COX ARLEO
UNITED STATES DISTRICT JUDGE