

No. HHB CV 23-5034470 S : SUPERIOR COURT
GREGORY JOHNSON : JUDICIAL DISTRICT
v. : OF NEW BRITAIN
ANGEL QUIROS, ET AL : MAY 14, 2024

Judicial District of New Britain
SUPERIOR COURT
FILED
MAY 14 2024

**MEMORANDUM OF DECISION RE:
DEFENDANTS' MOTION TO DISMISS**

CYNTHIA A. SKORZEWSKI
CHIEF CLERK

FACTUAL AND PROCEDURAL BACKGROUND:

The plaintiff is an inmate. He has filed this action against twenty-three employees of the Connecticut Department of Corrections. The complaint is seventy-nine paragraphs with claims of medical mistreatment, claims that corrections personnel have assaulted and mistreated him, claims of assault by other inmates, claims concerning interactions with persons external to correctional facilities, claims of food tampering, claims of denial of access to legal materials, claims of exposure to persons seeking to do him harm and claims of placement in facilities in which he has, or should have, profiles with other inmates.

The plaintiff has nine currently pending actions. Two are actions filed in the habeas court. Three are filed in the Hartford Judicial District. Two are filed in the New London Judicial District. Three are filed in the New Britain Judicial District. None of the defendants in the subject action appear to have any ties with the New Britain Judicial District. It remains in this

5/14/2024 - copies sent via JONVO to Plaintiff Gregory Johnson, and Atty
DeAnn Varunes, AG. 5/14/2024
J. Emce, ATC

judicial district because the plaintiff has given the defendants the address of the Department of Corrections, located in Wethersfield Connecticut.

The defendants have cumulatively filed a motion to dismiss pursuant to the prior pending action doctrine. Additionally, two of the defendants, “Dr. Grande Health Services Unit” and “Tara Hood Health Services Unit” move to dismiss for lack of service of process. The motion was filed on November 6, 2023. Pursuant to Practice Book § 10-31, the plaintiff had until December 6, 2023 to file an opposition to the motion. The motion was heard on May 13, 2024, one hundred and eighty-nine days after filing. No opposition was filed by the plaintiff. At the hearing, counsel for the defendants stood on her motion and memorandum. The plaintiff was offered an opportunity to respond to the merits of the allegations. Although he did not decline, he did not address such merits.

LEGAL STANDARD OF REVIEW:

“A motion to dismiss . . . properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court. . . . A motion to dismiss tests, inter alia, whether, on the face of the record, the court is without jurisdiction.” (Citation omitted.) *Conboy v. State*, 292 Conn. 642, 650, 974 A.2d 669 (2009).

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inter alia, whether, on the face of the record, the court is without jurisdiction.” (Internal quotation marks omitted.) *Beecher v. Mohegan Tribe of Indians of Connecticut*, 282 Conn. 130, 134, 918 A.2d 880 (2007); *Pedro v. Miller*, 281 Conn. 112, 116, 914 A.2d 524 (2007).

“When a trial court decides a jurisdictional question raised by a pretrial motion to dismiss on the basis of the complaint alone, it must consider the allegations of the complaint in their most favorable light. . . . In this regard, a court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader.”(Citations omitted; internal quotation marks omitted.) *Conboy v. State*, supra, 292 Conn. 651.

ANALYSIS:

I. Prior pending action doctrine

The defendants assert that the claims in the case at bar are the same as those made in the following pending actions: KNL-CV23-5024371 S, *Johnson v. Quiroa, et al*; HHB-CV23-5033963, *Johnson v. Mangiafico, et al*; KNL-CV23-5024449 S, *Johnson v. Milling, et al*. Although the defendants are not the same, they are all employees of, or officials with the Department of Corrections.

“[T]he prior pending action doctrine permits the court to dismiss a second case that raises issues currently pending before the court. The pendency of a prior suit of the same character, between the same parties, brought to obtain the same end or object, is, at common law,

good cause for abatement. It is so, because there cannot be any reason or necessity for bringing the second, and, therefore, it must be oppressive and vexatious. This is a rule of justice and equity, generally applicable, and always, where the two suits are virtually alike, and in the same jurisdiction.” *Kleinman v. Chapnick*, 140 Conn. App. 500, 505, 59 A.3d 373 (2013). “[T]he prior pending action doctrine is properly raised via a motion to dismiss The doctrine does not, however, truly implicate the court’s subject matter jurisdiction.” (Citations omitted; internal quotation marks omitted.) *Id.*, 503 n.5.

When analyzing the application of the prior pending action doctrine, our Supreme Court has said that the prior pending action doctrine “is a rule of justice and equity, generally applicable, and always, where the two suits are virtually alike, and in the same jurisdiction.” (Internal quotation marks omitted.) *Bayer v. Showmotion, Inc.*, 292 Conn. 381, 396, 973 A.2d 1229 (2009).

The issue is whether the subject action is similar to the three other actions. Our Supreme Court has considered the “end or object” of the actions in the determination of whether the prior pending action doctrine applies. See *Larobina v. McDonald*, 274 Conn. 394, 409, 876 A.2d 522 (2005); *Cumberland Farms, Inc. v. Groton*, 247 Conn. 196, 216, 719 A.2d 465 (1998).

While the plaintiff may be a serial lawsuit filer, the court must examine the actions which the defendants assert the plaintiff has made similar claims. The first is KNL-CV23-5024371 S, *Johnson v. Quiros*, et al. That action was dismissed on the date of the hearing of the subject action. *Id.*, 108.05, Spallone, J.) The court did not reach the merits on that action. That action is

no longer currently pending. The second, HHB-CV23-5033963 S, *Johnson v. Mangiafico, et al*, was dismissed by this court on March 11, 2024. (106.01, Young, S.J.). The basis for the dismissal was mootness. That action is no longer currently pending. The last action is KNL-CV23-5034470-S, *Johnson v. Milling, et al*. That action was dismissed on May 7, 2024 (109.01, Spallone, J.) for failure to timely return process. The court did not reach the merits on that action. That action is no longer currently pending.

As none of the three cases asserted by the defendants to be prior pending actions were currently pending as of the date of argument of the subject motion to dismiss, the prior pending action doctrine is no longer applicable, and the motion is denied on that ground. As an alternative ground for denial of the motion, the court has examined the claims of each action. Each contained allegations which were distinguishable from the subject action. As the prior actions were neither actually nor virtually alike, the court has no discretion to dismiss the subject action on this ground. *Bayer v. Showmotion, Inc.*, supra, 292 Conn. 393–94.

II. *Insufficiency of service of process*

Two of the defendants, “Dr. Grande Health Services Unit” and “Tara Hood Health Services Unit” move to dismiss for lack of service of process, pursuant to General Statutes § 52-57 (a). Section 52-57 (a) provides, “Except as otherwise provided, process in any civil action shall be served by leaving a true and attested copy of it, including the declaration or complaint, with the defendant, or at his usual place of abode, in this state.” While the return of service states service was made on the other defendants, no service was made on these two individuals. The motion to

dismiss is granted as to defendants "Dr. Grande Health Services Unit" and "Tara Hood Health Services Unit."

ORDER:

The motion to dismiss (103.00) is granted as to "Dr. Grande Health Services Unit" and "Tara Hood Health Services Unit" only. The motion to dismiss is denied as to the remaining defendants.



Robert E. Young, Senior Judge