

FILED
03-11-2020
CIRCUIT COURT
DANE COUNTY, WI
2020CV000454

STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

JOHN DOE 1, et al.

Plaintiffs,

Case No.: 20-CV-454

The Honorable Frank D. Remington

v.

MADISON METROPOLITAN
SCHOOL DISTRICT,

Defendant.

MOTION TO DISMISS AND TO MODIFY SCHEDULE

The Madison Metropolitan School District (“MMSD”), through undersigned counsel, hereby moves to dismiss the Complaint in this action pursuant to Wis. Stat. § 802.06(2)(a)1, 6, and 7. Plaintiffs lack standing to pursue the asserted claims: They have not alleged an actual or impending injury-in-fact to a legally protected interest and do not have a cognizable stake in the outcome of the proceeding. Plaintiffs therefore lack the capacity to sue and fail to state a claim upon which relief can be granted. The Complaint also fails to identify the Plaintiffs’ names and addresses in the caption as required by Wis. Stat. § 802.04(1)(a). By using fictitious names instead of identifying themselves, Plaintiffs fail to join all parties necessary for a just and complete adjudication as required by Wis. Stat. § 803.03; and this action is not being prosecuted in the name of the real party in interest, in violation of Wis. Stat. § 803.01.

On February 18 and 19, 2020, Plaintiffs moved to proceed using pseudonyms and for a temporary injunction. On March 3, 2020, this Court issued a Notice of Briefing Schedule, setting April 2, 2020 as the deadline for response briefs, April 17, 2020 for reply briefs, and May 5 at 8:30 a.m. for oral argument. Plaintiffs will submit a brief in support of this Motion to Dismiss by the

date listed for response briefs. Standing and the request to proceed using pseudonyms are threshold issues that this Court should decide before turning to the merits. Therefore, MMSD requests that briefing and consideration of the temporary injunction motion be postponed until the Court decides whether Plaintiffs have standing and whether they may proceed anonymously. Alternatively, if this Court maintains the current briefing schedule, MMSD asks for clarification that no evidence will be taken at oral argument and that an evidentiary hearing would be scheduled later, if one is deemed necessary for the temporary injunction motion.

Finally, MMSD requests that this Court reschedule the oral argument date, because counsel for MMSD has a bench trial set to begin on May 4, 2020 in Cook County that is expected to last at least two days.

DATE: March 11, 2020

Respectfully submitted,

BOARDMAN & CLARK LLP

By

Electronically signed by Barry J. Blonien _____

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