

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

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| MASHA ALLEN, by her Parent and Guardian | : | Hon Joseph H. Rodriguez |
| FAITH ALLEN, | : | |
| | : | |
| Plaintiff, | : | Civil Action No. 08-4614 |
| | : | |
| v. | : | |
| | : | |
| FAMILIES THRU INTERNATIONAL ADOPTION, | : | ORDER |
| INC., CHILD PROMISE, INC., REACHING OUT | : | |
| THRU INTERNATIONAL ADOPTION, INC., and | : | |
| JEANNENE SMITH, | : | |
| | : | |
| Defendants. | : | |

This matter has come before the Court on Defendant Jeannene Smith's second motion to dismiss the Complaint against her under Fed. R. Civ. P. 12. Smith previously argued that Plaintiff's guardian, Faith Allen, lacked standing to pursue this matter because she allegedly is no longer the legal guardian of Masha Allen.

In an affidavit captioned "in support of her motion to dismiss for lack of personal jurisdiction," Jeannene Smith stated that "it was not [her] position to make determinative judgment evaluations as to the suitability of persons to qualify as adoptive parents under the various State licensing requirements. . . . My duties were administerial [sic] in nature only; all of my efforts and work was within the scope of my employment. . . . [Plaintiff's attorney] is completely mistaken . . . that I had any personal involvement in the decision-making process of placing Masha . . . as an adoptive child"

In opposition to the previous motion to dismiss, Plaintiff provided a Certificate of Adoption from Allegheny County, Pennsylvania showing that Faith Allen legally adopted Masha Allen on May 14, 2004. Thus, the Court found that the Complaint made clear that

Faith Allen was the parent and guardian of Masha Allen, and found that that factual allegation must have been taken as true in considering the merits of the previous Rule 12 motion. Further, the Court stated that even if it were to consider the extraneous exhibits attached to the previous motion, they would not have adequately established that the Complaint failed to state a claim, as they did not establish that Faith Allen was an improper representative of Masha Allen, as Smith contended.

Ms. Smith now asserts that on February 2, 2009, she sought to file two motions: one under Rule 12(b)(6) and the other pursuant to Rule 12(b)(2) for lack of personal jurisdiction. Therefore, under the assumption that the Court did not previously consider whether it had personal jurisdiction over her, Ms. Smith filed a motion arguing as much on August 5, 2009.

The Court notes the issues Ms. Smith raises – whether any alleged wrongdoing on her part was as an agent, servant, or employee of other corporate defendants; whether one of those corporate defendants was improperly incorporated or licensed; whether there was an agreement for other corporate defendants to indemnify Ms. Smith and hold her harmless; whether the Complaint contains vague, conclusory allegations; whether respondeat superior is a valid claim, and whether Ms. Smith owed a duty of care – have no bearing on this Court's exercise of personal jurisdiction over her.

Indeed, the Court finds that Ms. Allen is a resident of the State of New Jersey; and all indications are that she is a citizen as well. She filed an Answer to the Complaint on February 27, 2009, failing to assert that this Court lacks personal jurisdiction over her.

There is no viable argument that the Court lacks personal jurisdiction over Ms. Smith. Accordingly,

IT IS ORDERED on this 4th day of January, 2010 that Defendant Jeannene Smith's motion to dismiss the Complaint against her for lack of personal jurisdiction [57] is hereby DENIED.

/s/ Joseph H. Rodriguez
JOSEPH H. RODRIGUEZ
U.S.D.J.