APPENDIX 1

20-3117
Koger v. Richardson

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

Rulings by summary order do not have precedential effect. Citation to a summary order filed on or after January 1, 2007, is permitted and is governed by Federal Rule of Appellate Procedure 32.1 and this court's Local Rule 32.1.1. When citing a summary order in a document filed with this court, a party must cite either the Federal Appendix or an electronic database (with the notation "summary order"). A party citing a summary order must serve a copy of it on any party not represented by counsel.

At a stated term of the United States Court of Appeals for the Second Circuit held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 4th day of June, two thousand twenty-one.

PRESENT: Guido Calabresi,
Barrington D. Parker,
Steven J. Menashi,
Circuit Judges.

FREDERICK S. KOGER, ROSLYN O. DREW,
AMANDA Z. KOGER, MEGAN E. KOGER,
Plaintiffs-Appellants,

v. No. 20-3117

JUDGE CLARK V. RICHARDSON,
CHIEF JUDGE JANET DIFIORE,
Defendants Appellees.[*]

For Plaintiffs-Appellants:
Frederick S. Koger, Roslyn O. Drew,
Amanda Z. Koger, Megan E. Koger, pro se,
Chicago, IL.

For Defendants Appellees:
No appearance.

Appeal from a judgment of the United States District Court for the Southern District of New York (Ramos, J.).

Appellants Frederick Koger, Roslyn Drew, Amanda Koger, and Megan Koger, pro se, appeal from the district court's orders dismissing their complaint as frivolous and denying their motion for reconsideration. We assume the parties' familiarity with the underlying facts, the procedural history of the case, and the issues on appeal.

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[*] The Clerk of Court is directed to amend the caption as shown above.

Pro se submissions are reviewed with "special solicitude," and "must be construed liberally and interpreted to raise the strongest arguments that they suggest." *Triestman v. Fed. Bureau of Prisons,* 470 F.3d 471, 474-75 (2d Cir. 2006) (internal quotation marks and emphasis omitted). We construe the appellants' complaint as asserting due process and defamation claims and seeking monetary and injunctive relief. The appellants assert that, in 2019, they found a decision online dated June 28, 2005, and signed by Judge Clark Richardson. In that decision, due to the failure of Frederick Koger and Drew to appear before the court, Judge Richardson held a factfinding hearing by inquest and found by a preponderance of the evidence that the parents had committed educational neglect. The appellants argue that this order was defamatory and that it was entered without any appropriate due process. They request monetary damages and injunctive relief in the form of removing the opinion from the internet.

Monetary damages against judges are barred by judicial immunity. "It is well settled that judges generally have absolute immunity from suits for money damages for their judicial actions." *Bliven v. Hunt,* 579 F.3d 204, 209 (2d Cir. 2009). Nor can judges be liable for defamation because "judges of courts of superior or general jurisdiction are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction, and are alleged to have been done maliciously or corruptly." *Bradley v. Fisher,* 80 U.S. 335, 351 (1871); RESTATEMENT (SECOND) OF TORTS § 585 (JUDICIAL OFFICERS) (1977) ("A

judge or other officer performing a judicial function is absolutely privileged to publish defamatory matter in the performance of the function if the publication has some relation to the matter before him").

The plaintiffs also seek injunctive relief in the form of removal and retraction of the family court order. While judicial immunity disposes of their suit for damages, judges are not immune from suit for injunctive relief. *See Heimbach v. Village of Lyons,* 597 F.2d 344, 347 (2d Cir. 1979) (per curiam); *see also Pulliam v. Allen,* 466 U.S. 522, 536-37 (1984) ("[J]udicial immunity is not a bar to prospective injunctive relief against a judicial officer acting in her judicial capacity"); *Wood v. Strickland,* 420 U.S. 308, 314 n. 6 (1975) ("[I]mmunity from damages does not ordinarily bar equitable relief"); *Hili v. Sciarrotta,* 140 F.3d 210, 215 (2d Cir. 1998).

We affirm the district court's dismissal on the ground that the plaintiffs' claims were untimely. *See Leon v. Murphy,* 988 F.2d 303, 308 (2d Cir. 1993) ("We may affirm ... on any basis for which there is a record sufficient to permit conclusions of law, including grounds upon which the district court did not rely"). "Section 1983 actions filed in New York are ... subject to a three-year statute of limitations." *Hogan v. Fischer,* 738 F.3d 509, 517 (2d Cir. 2013). A § 1983 claim "accrues when the plaintiff knows or has reason to know of the harm." *Eagleston v. Guido,* 41 F.3d 865, 871 (2d Cir. 1994) (internal quotation marks omitted). The plaintiffs filed their complaint on September 30, 2019. Therefore, their § 1983 claims must have

accrued on September 30, 2016, or later to be timely.[1] But the plaintiffs complain of an act that occurred in 2005, namely Justice Richardson's neglect finding. Although the plaintiffs claim that they were unaware of the 2005 order until 2019, this claim is belied by the date of the order–June 28, 2005–and the fact that three of the plaintiffs previously sued Justice Richardson for issuing that order.[2] For the same reasons, we affirm the dismissal of the defamation claims. In New York, a defamation claim has a one-year statute of limitations. N.Y. C.P.L.R. § 215(3). The plaintiffs' defamation claim therefore must have accrued on September 30, 2018, or later. As noted above it did not, and the defamation claim is untimely.

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[1] Although Amanda and Megan Koger were minors in 2005, this does not affect the timeliness of their complaint. New York tolls the statute of limitations only until the minor in question turns 18, after which she has three years to commence an action. N.Y. C.P.L.R. § 105(j) (defining "infant" as a person under 18 years of age), *id.* § 208(a) (stating that a person who is considered disabled due to infancy has three years from the date of their majority status to commence an action that accrued during their infancy). Amanda turned 18 on August 29, 2010, and Megan turned 18 on August 15, 2013. The latest dates these plaintiffs could bring § 1983 claims were August 29, 2013, and August 15, 2016, respectively.

[2] We may take judicial notice of the district court decisions dismissing the 2008 and 2013 complaints brought by Frederick, Amanda, and Megan Koger and the related court filings. *See Kramer v. Time Warner Inc.*, 937 F.2d 767, 774 (2d Cir. 1991) ("[C]ourts routinely take judicial notice of documents filed in other courts, again not for the truth of the matters asserted in the other litigation, but rather to establish the fact of such litigation and related filings").

We also affirm the district court's denial of reconsideration. We review a district court decision granting or denying a Federal Rule of Civil Procedure 60(b) motion for abuse of discretion. *Molchatsky v. United States*, 713 F.3d 159, 162-63 (2d Cir. 2013). "A district court abuses its discretion if it bases 'its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence.'" *Ins. Co. of N. Am. v. Pub. Serv. Mut. Ins. Co.*, 609 F.3d 122, 127 (2d Cir. 2010) (quoting *Transaero, Inc. v. La Fuerza Aerea Boliviana*, 162 F.3d 724, 729 (2d Cir. 1998)). The plaintiffs did not show that the district court had overlooked any facts or controlling decisions and the district court had already considered all the arguments and evidence they raised in their motion. Because the plaintiffs sought reconsideration based on issues already determined by the district court, the district court did not abuse its discretion by denying the motion. *See Shrader v, CSX Transp., Inc.*, 70 F.3d 255, 257 (2d Cir. 1995) ("[A] motion to reconsider should not be granted where the moving party seeks solely to relitigate an issue already decided").

We have considered the appellants' remaining arguments, which we conclude are without merit. For the foregoing reasons, we **AFFIRM** the judgment of the district court.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court

APPENDIX 2

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FREDERICKS. KOGER, ROSLYN O. DREW, AMANDA Z. KOGER, and MEGAN E. KOGER,
Plaintiffs,

-against-

CLARK V. RICHARDSON, and JANET DIFIORE,
Defendants.

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DA TE FILED: August 5, 2020

OPINION AND ORDER
19 Civ. 9053 (ER)

RAMOS, D.J.:

Pending before this Court is *pro se* Plaintiffs' motion for reconsideration. On October 10, 2019, the

Court dismissed Plaintiffs' fourth action in this district *sua sponte* with prejudice on the basis that the action was frivolous. *Koger v. Richardson,* No. 19 Civ. 9053 (ER), 2019 WL 5080008 at *2 (S.D.N.Y. Oct. 10, 2019). The case arises out of a June 28, 2005 decision by the Honorable Clark V. Richardson, a justice of New York County Family Court, which entered a finding of educational neglect against Frederick Koger and Roslyn Drew, the parents of Amanda and Megan Koger. Plaintiffs allege that Judge Richardson's finding against the parents was based on "defective petitions and lack of subject matter jurisdiction" and that Janet DiFiore, in her capacity as the Chief Judge of the New York Court of Appeals, failed to "mind the store." For the reasons set forth below, Plaintiffs' motion for reconsideration is DENIED.

I. BACKGROUND

a. Factual Background

Plaintiffs' motion for reconsideration is based on a cause of action that is substantially the same as that of the complaint Amanda and Megan Koger filed in this district on November 8, 2013 (the "2013 Complaint"). Plaintiffs had previously filed other actions in this district based on the same underlying New York Family Court proceeding, the facts and procedural history of which are detailed in Judge Engelmayer' s opinion dismissing the 2013 Complaint on July 31, 2014. *See Koger v. New York,* No. 13 Civ. 7969 (PAE), 2014 WL 3767008 (S.D.N.Y. July 31, 2014).

On December 20, 2002, City of New York Administration for Children's Services (ACS) caseworker Darlene Jackson brought two petitions before Bronx County Family Court Judge Maureen McLeod, now retired, to commence educational neglect proceedings against the Koger parents. *Id.* at * 1. The petitions stated that Amanda and Megan Koger had missed a significant amount of school, and that their parents had failed to attend required meetings regarding the absences and to follow the correct procedures for home-schooling. *Id.* On January 10, 2003, Judge McLeod entered two orders directing temporary removal of the Koger children from their parents into ACS custody, pending further proceedings. *Id.* at * 1-2. The children were returned to their parents eleven days later. *Id.* On June 28, 2005, Judge Richardson found by a preponderance of the evidence that the parents had committed educational neglect. Plaintiffs argue that Judge Richardson's finding is flawed because the petitions submitted by ACS were jurisdictionally defective in absence of stamps or dates from the Clerk of the Family Court. *Id.* at *5. Judge Engelmayer dismissed the complaint finding that Judge Richardson was entitled to judicial immunity and that the allegations did not adequately allege a jurisdictional defect to deprive Judge Richardson of judicial immunity. *Id.* at *6.

In the instant Complaint, Plaintiffs ask the court to apply a 'but for' test: "But for the erroneous prejudicial assessment of retired Judge McLeod, who permitted unlawfully commenced defective petitions to

be initiated and filed by an ACS agent" the case would not have taken place. Doc. 1 at 9.

b. Procedural Background

Plaintiffs filed the instant action on September 30, 2019, and on October 10, 2019, this Court dismissed it *sua sponte* as frivolous. This Court found that Plaintiffs' action was based on a meritless legal theory because judges generally have absolute immunity from suits for money damages for their judicial actions. *See Bliven v. Hunt*, 579 F.3d 204, 209 (2d Cir. 2009). The Court previously found that nothing in the Plaintiffs' complaint indicated any possibility of a valid claim against either Judge Richardson or Chief Judge DiFiore. This Court did not grant leave to amend because it was already Plaintiffs' second bite at the apple, and because the law is so clear with respect to judicial immunity. *See Tapp v. Champagne,* 164 Fed. Appx. 106 (2d Cir. 2006) (summary order) (affirming *sua sponte* dismissal of claims against judges protected by judicial immunity).

II. LEGAL STANDARD

Motions for reconsideration are governed by Local Civil Rule 6.3 and Rule 60(b) of the Federal Rules of Civil Procedure. Fed. R. Civ. P. 60(b).[1] The standard for granting a motion for reconsideration is

[1] Although Plaintiffs did not cite to Local Civil Rule 6.3 in their motion, the Court will consider it because of the leniency allowed to *pro se* plaintiffs.

"strict, and reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked." *Analytical Surveys, Inc. v. Tonga Partners, L.P.*, 684 F.3d 36, 52 (2d Cir. 2012) (citation omitted) (addressing a Rule 59 motion). "A motion for reconsideration should be granted only when the [party] identifies an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice." *Kolel Beth Yechiel Mechil of Tartikov, Inc. v. YLL Irrevocable Trust,* 729 F.3d 99, 104 (2d Cir. 2013) (citation and internal quotation marks omitted); *Shrader v. CSX Transp., Inc.*, 70 F .3d 255, 257 (2d Cir. 1995). It is "not a vehicle for relitigating old issues, presenting the case under new theories, securing a rehearing on the merits, or otherwise taking a second bite at the apple." *Analytical Surveys,* 684 F.3d at 52 (citation omitted). The decision to grant or deny the motion for reconsideration is within "the sound discretion of the district court." *Aczel v. Labonia,* 584 F.3d 52, 61 (2d Cir. 2009).

Pro se litigants' submissions "are held 'to less stringent standards than formal pleadings drafted by lawyers.'" *Hughes v. Rowe,* 449 U.S. 5, 9 (1980) (per curiam) (quoting *Haines v. Kerner,* 404 U.S. 519, 520 (1972)); *see also Young v. New York City Dep't of Educ.*, No. 09 Civ. 6621, 2010 WL 2776835, at *5 (S.D.N.Y. July 13, 2010) (noting that the same principles apply to briefs and opposition papers filed by *pro se* litigants). Although "*pro se* status 'does not exempt a party from compliance with relevant rules of procedural and substantive law,'" *Triestman v. Fed.*

Bureau of Prisons, 470 F.3d 471, 477 (2d Cir. 2006) (quoting *Traguth v. Zuck,* 710 F.2d 90, 95 (2d Cir. 1983)), courts read the pleadings and opposition papers submitted by *pro se* litigants "liberally and interpret them 'to raise the strongest arguments that they suggest,'" *McPherson v. Coombe,* 174 F.3d 276, 280 (2d Cir. 1999) (quoting *Burgos v. Hopkins,* 14 F.3d 787, 790 (2d Cir. 1994)).

III. DISCUSSION

Plaintiffs argue that reconsideration is appropriate because they believe "evidence would shed new light on the case" and give it a "different interpretation." Doc. 12 at 2. Plaintiffs submitted an additional supporting statement in their motion, but new facts cannot be considered on a motion for reconsideration. *See Mikol v. Barnhart,* 554 F. Supp. 2d 498, 500 (S.D.N.Y. 2008) (noting that new facts cannot be considered on a motion for reconsideration). In their statement in support of their motion, Plaintiffs suggest that this Court mistakenly did not apply the 'but for' test to show that but for the acceptance by Judge McLeod of petitions from ACS to start a proceeding for educational neglect, Judge Richardson would not have entered a finding of educational neglect. Doc. 1 at 9; Doc. 12 at 1. This Court has previously rejected this argument. *See Koger,* 2019 WL 5080008 at *2-3; *see also Associated Press v. U.S. Dep't of Def,* 395 F. Supp. 2d 17, 19 (S.D.N.Y. 2005) (noting that a motion for reconsideration is not "an occasion for repeating old arguments previously rejected"). Aside from

emphasizing the flawed 'but for' test that they wish the Court to consider, Plaintiffs do not suggest that the Court overlooked any factual or legal issues. *See* Doc. 12. Thus, Plaintiffs have failed to advance any basis on which reconsideration could conceivably be granted and their request for this remedy is therefore denied.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs' motion for reconsideration is DENIED. The Clerk of the Court is respectfully directed to terminate the motion, Doc. 12.

It is SO ORDERED.

Dated: August 5, 2020
New York, New York

/s/
Edgardo Ramos, U.S.D.J.

APPENDIX 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FREDERICKS. KOGER, ROSLYN O. DREW, AMANDA Z. KOGER, and MEGAN E. KOGER,
Plaintiffs,

-against-

CLARK V. RICHARDSON, and JANET DIFIORE,
Defendants.

OPINION AND ORDER
19 Civ. 9053 (ER)

RAMOS, D.J.:

Pending before this Court is the fourth action brought in this district by *pro se* plaintiffs Frederick S. Koger, Roslyn O. Drew (the "Koger Parents"), Amanda Z. Koger, Megan E. Koger (the "Koger Children", and with the Koger Parents, the "Plaintiffs") pursuant to

42 U.S.C. § 1983 challenging a New York State Family Court proceeding. Clark V. Richardson, a justice of New York County Family Court, entered a finding of educational neglect against the Koger Parents in 2003. Plaintiffs allege that Justice Richardson's finding against the Koger Parents was based on "defective petitions and lack of subject matter" and that Janet DiFiore, in her capacity as the Chief Judge of the New York Court of Appeals, failed to "mind the store." Plaintiffs have paid the requisite filing fee to bring this action, but the Court concludes that the instant action is frivolous and therefore *sua sponte* DISMISSES the complaint for the reasons set forth below.

I. BACKGROUND

Plaintiffs' cause of action here is substantially the same as that of the complaint the Koger Children filed on November 8, 2013 in this district (the "2013 Complaint"). Plaintiffs had previously filed two other actions in this district based on the same underlying New York Family Court proceeding, the facts and procedural history of which are detailed in Judge Engelmayer's opinion dismissing the 2013 Complaint on July 31, 2014. *See Koger v. New York,* No. 13 Civ. 7969 (PAE), 2014 WL 3767008 (S.D.N.Y. July 31, 2014). In the 2013 Complaint, Plaintiffs similarly challenged Justice Richardson's finding of educational neglect on the basis that the petitions submitted by the City Of New York Administration for Children's Services were jurisdictionally defective in absence of stamps or dates from the Clerk of the Family Court. *See id.* at * 5. Judge Engelmayer dismissed that

complaint in its entirety finding, *inter alia,* that Judge Richardson was entitled to judicial immunity and that allegations regarding the "jurisdictional defective petitions" did not adequately allege a jurisdictional defect to deprive Judge Richardson of judicial immunity. *Id.* at 6.[1]

II. DISCUSSION

"A district court has the inherent authority to dismiss an action that 'lacks an arguable basis either in law or in fact,' regardless of whether the *[pro se]* plaintiff has paid the filing fee." *MacKinnon v. City of New York/Human Res. Admin.,* 580 Fed. App'x 44, 45 (2d Cir. 2014) (citing *Fitzgerald v. First E. Seventh St. Tenants Corp.,* 221 F.3d 362, 363-64 (2d Cir. 2000). An action lacks an arguable basis in law when "the claim is based on an indisputably meritless legal theory." *Livingston v. Adirondack Beverage Co.,* 141 F.3d 434 437 (2d Cir. 1998) (internal quotations omitted). "It is well settled that judges generally have absolute immunity from suits for money damages for their judicial actions." *Bliven v. Hunt,* 579 F.3d 204, 209 (2d Cir. 2009). Here, Plaintiffs repeat much of the same allegations that they made in the 2013 Complaint, which Judge Engelmayer squarely rejected. For example, they reiterate that "the petitions" were

[1] In the same opinion, Judge Engelmayer, applying the New York law tolling the statute of limitations in § 1983 actions where the plaintiff is under 18 at the time of the cause of action, also found that Plaintiffs' § 1983 claims expired, at the latest, on August 15, 2016. *Id.* at 5.

defective as they were "unstamped or dated by the clerk of the [sic] of the family court." Doc. 1 at 9.

Additionally, even construing their allegations liberally, Plaintiffs' attempt to tag on Chief Judge DiFiore based on a skewed theory of *respondeat superior* in two sentences fails as a matter of law. *See id.; see also Ashcroft v. Iqbal,* 556 U.S. 662, 676 (2009) ("Government officials may not be held liable for the unconstitutional conduct of their subordinates under a theory of respondeat superior."). Therefore, nothing in the complaint indicates any possibility of a valid claim against either Justice Richardson or Chief Judge DiFiore. Accordingly, Plaintiffs' claims are hereby dismissed as frivolous because the defendants are entitled to judicial immunity. *See Fitzgerald,* 221 F.3d at 363-64 (affirming *sua sponte* dismissal of frivolous *pro se* complaint where *pro se* plaintiff had paid the filing fee); *see also Tapp v. Champagne,* 164 Fed. Appx. 106 (2d Cir. 2006) (summary order) (affirming *sua sponte* dismissal of claims against judges protected by judicial immunity). As this is already Plaintiffs' second bite at the apple, and because the law is so clear with respect to judicial immunity, the Court finds it would be futile to grant leave to amend.

III. CONCLUSION

For the foregoing reasons, the instant complaint is hereby DISMISSED with prejudice. Although Plaintiffs have paid the filing fee to commence this action, the Court certifies, pursuant to 28 U.S.C. § 1915 (a)(3), that any appeal from this order would not

be taken in good faith and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962). The Clerk of Court is respectfully directed to close the case.

It is SO ORDERED.

Dated: October 10, 2019
New York, New York

/s/
Edgardo Ramos, U.S.D.J.

APPENDIX 4

F.C.A.§§ 1017, 1033-b, 1040, 1044, 1046, 1051, 1052, 1053, 1054, 1055, 1057, 1059

10-10 2/2001

PRESENT: Hon. Clark V. Richardson

In the Matter of

At a term of the Family Court of the State of New York, held in and for the County of Bronx, at 900 Sheridan Avenue, Bronx, NY 10451, on June 28, 2005

Amanda Koger (DOB: 8/29/1993),
Megan Koger (DOB: 8/15/1995),

Children under Eighteen Years of Age Alleged to be Neglected by

Roslyn Drew,
Frederick Koger,
Respondents.

File #: 11240
Docket #: NN-21787-02
NN-21788-02
CPS #: 05224891

ORDER OF FACT-FINDING AND DISPOSITION

NOTICE: WILLFUL FAILURE TO OBEY THE TERMS AND CONDITIONS OF THIS ORDER MAY RESULT IN COMMITMENT TO JAIL FOR A TERM NOT TO EXCEED SIX MONTHS.

PLACEMENT OF YOUR CHILD IN FOSTER CARE MAY RESULT IN YOUR LOSS OF YOUR RIGHTS TO YOUR CHILD. IF YOUR CHILD STAYS IN FOSTER CARE FOR 15 OF THE MOST RECENT 22 MONTHS, THE AGENCY MAY BE REQUIRED BY LAW TO FILE A PETITION TO TERMINATE YOUR PARENTAL RIGHTS AND TO COMMIT GUARDIANSHIP AND CUSTODY OF YOUR CHILD TO THE AGENCY FOR THE PURPOSES OF ADOPTION. IN SOME CASES, THE AGENCY MAY FILE BEFORE THE END OF THE 15 MONTH PERIOD. IF SEVERE OR REPEATED CHILD ABUSE IS PROVEN BY CLEAR AND CONVINCING EVIDENCE, THIS FINDING MAY CONSTITUTE THE BASIS TO TERMINATE YOUR PARENTAL RIGHTS AND TO COMMIT GUARDIANSHIP AND CUSTODY OF YOUR CHILD TO THE AGENCY FOR THE PURPOSES OF ADOPTION.

The petition of Admin. for Children's Services-Bronx under Article 10 of the Family Court Act, having been filed in this Court on December 20, 2002 alleging that the above-named Respondents neglected the above-named children; and

Notice having been duly given to the Respondents pursuant to section 1036 or 1037 of the Family Court Act; and

Respondents having not appeared; and Counsel for the Respondents having not appeared before this Court to answer the petition; and

Respondents having failed to appear and the matter having duly come on for a fact-finding hearing by inquest before this Court;

The Court, after having hearing the proofs and testimony offered in relation to the case, including school records of the children and having found by a preponderance of the evidence that Respondents committed the following acts constituting child neglect: The Court makes a finding of educational neglect and draws a negative inference against both Respondent's for failure to appear in Court;

And the matter having thereafter duly come on for a dispositional hearing before the Court,

NOW therefore, upon findings made in the fact-finding and dispositional hearings; and upon all proceedings had herein, it is

ADJUDGED that facts sufficient to sustain the petition herein have been established, in that: **A Finding of Neglect is entered against the Respondent Mother; A Finding of Neglect is entered against the Respondent Father;** and it is

hereby

ADJUDGED that the above-named children are neglected children. as defined in section 1012 of the Family Court Act; and it is further

ORDERED **that the children are released to the custody of the Respondents with supervision of the Administration For Children's Services for a period of 6 months upon the following terms and conditions to be met by Respondents: The Respondents are to cooperate with referrals as made by the Administration For Children's Services and/or the Department of Education;** and it is further

ORDERED that

1) The Administration For Children's Services is directed to perform a mental health evaluation on the children and offer any appropriate services;

2) The Department of Education is directed to perform appropriate evaluations of the child Amanda and make appropriate referrals.

PURSUANT TO SECTION 1113 OF THE FAMILY COURT ACT, AN APPEAL FROM THIS ORDER MUST BE TAKEN WITHIN 30 DAYS OF RECEIPT OF THE ORDER BY APPELLANT IN COURT, 35 DAYS FROM THE DATE OF MAILING OF THE ORDER TO APPELLANT BY THE CLERK OF COURT, OR 30 DAYS AFTER SERVICE BY A PARTY

OR THE LAW GUARDIAN UPON THE APPELLANT, WHICHEVER IS EARLIEST.

Dated: June 28, 2005 ENTER

[stamped signature]

Hon. Clark V. Richardson

Check applicable box:
☐ Order mailed on [specify date(s) and to whom mailed]: _____

APPENDIX 5

At a term of the Family Court
of the State of New York,
held in and for the City of
New York, County of Bronx,
900 Sheridan Avenue, on
February 7, 2005.

PRESENT:

HON. GAYLE P. ROBERTS,
J.F.C.

In the Matter of

AMANDA KOGER and
MEGAN KOGER

Children Under Eighteen Years of Age Alleged
to be Neglected by

FREDERICK KOGER and
ROSLYN DREW
Respondents.

Docket No. N-21787/02
DECISION AND ORDER
ON MOTION TO DISMISS

ROBERTS, J.:

On January 18, 2005, Respondents Frederick Koger and Roslyn Drew filed a motion to dismiss neglect petitions filed against them by Petitioner ACS on December 20, 2002.

On January 28, 2005, the Law Guardian filed an Affirmation in Opposition to the Respondents' motion.

On January 28, 2005, Petitioner ACS filed an Affirmation in Opposition to the Respondents' motion and Cross-Motion for Sanctions.

Many of the arguments contained in the Respondents' lengthy motion and its attachments are similar or identical to the arguments made in the Respondents' January 23, 2004 motion to dismiss. As explained in this Court's March 11, 2004 decision denying the earlier motion, the Respondents' claim that the petitions fail to state a cause of action or make out a prima facie case of neglect is without merit. See Decision and Order on Motion to Dismiss dated March 11, 2004. The Appellate Division affirmed this order denying the Respondent's dismissal motion on December 16, 2004. In re Amanda K., – AD2d –, 786 NYS2d 171.

The Respondents' remaining claims are without merit or are not properly addressed to a motion to dismiss to this Court.

The Petitioner's cross motion for sanctions is denied without prejudice to renewal should the Respondents continue to file motions on issues

previously addressed by this Court.

Respondent's motion to dismiss denied.

Petitioner's cross-motion for sanctions is denied without prejudice.

ENTER:

/s/_____
GAYLE P. ROBERT, J.F.C.

APPENDIX 6

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NY Code

§ 340.2. Presiding judge. 1. The judge who presides at the commencement of the fact-finding heading shall continue to preside until such hearing is concluded and an order entered pursuant to section 346:1 unless a mistrial is declared.

2. The judge who presides at the fact-finding hearing or accepts an admission pursuant to section 321.3 shall preside at any other subsequent hearing in the proceeding, including but not limited to the dispositional hearing.

3. Notwithstanding the provisions of subdivision two, the rules of the family court shall provide for the assignment of the proceeding to another judge of the court when the appropriate judge cannot preceeding to

(a) by reason of illness, disability, vacation or no longer being a judge of the court in that county; or

(b) by reason of removal from the proceeding due to bias, prejudice similar grounds; or

(c) because it is not practicable for the judge to

preside.

4. The provisions of this section shall not be waived.

NY Code

APPENDIX 6a

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FAMILY COURT ACT (HTTPS://CODES.FINDLAW.COM/NY/FAMILY-COURT-ACT/) § 340.2

New York Consolidated Laws, Family Court Act - FCT § 340.2. Presiding Judge

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1. The judge who presides at the commencement of the fact-finding hearing shall continue to preside until such hearing is concluded and an order entered pursuant to section 345.1
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unless a mistrial is declared.

2. The judge who presides at the fact-finding hearing or accepts an admission pursuant to section 321.3 (https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000093&refType=LO&originatingDoc=Id9477bc0d5ce11e8804aa3117fd00
shall preside at any other subsequent hearing in the proceeding, including but not limited to the dispositional hearing.

3. Notwithstanding the provisions of subdivision two, the rules of the family court shall provide for the assignment of the proceeding to another judge of the court when the appropriate judge cannot preside:

(a) by reason of disability, vacation or no longer being a judge of the court in that county, or

(b) by reason of removal from the proceeding due to bias, prejudice or similar grounds; or

(c) because it is not practicable for the judge to preside.

4. The provisions of this section shall not be waived.

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APPENDIX X

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Matthew Lyons
Chief Talent

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Chicago IL, 60612
Telephone (773) 553-4748 * Fax (773) 553-1113
Hr4u.cps.edu

June 16, 2020

To whom it may concern:

The following information is being provided to you from the Chicago Public Schools regarding verification of employment.

Employee Name:	Frederick S. Koger
Position/ Title:	Regular Teacher
Service Dates:	September 02, 2004 through August 31, 2008
	Regular Teacher August 25, 2014 through August 31, 2015
	Regular Teacher

September 09, 2016 through
March 14, 2019

Sincerely,

/s/

[STAMP]
Talent Office
Employee Records
This is to certify that this
information is being provided by
Chicago Public Schools

Employee Records Processor
Human Resources-Office of Talent

This information is not a recommendation or letter of good standing. Please contact employeerecords@cps.edu for a reference check.

Nancy B. Jefferson Alternative School

1100 South Hamilton Avenue, Chicago, IL 60612
Phone: 312.433.7110 Fax: 312.433.4442
www.jefferson.cps.edu Dr. Leonard Harris,
Principal

May 2,
2019

To Whom It May
Concern:

It is with great confidence that I recommend Scott Kroger to the University Of Miami Frost School Of Music Program. During the academic school years of 2014 through 2016, I had the distinct opportunity to supervise Scott Kroger in the capacity of a Music teacher at Corliss Early College STEM High School. During that time he unselfishly shared his experiences and knowledge of music with me, as well as with the entire team.

The administration and his peers were extremely impressed with the level of commitment he demonstrated at all times, with regards to maximizing our student's educational growth and knowledge of music. Mr. Kroger epitomized someone who went well beyond the call of duty, as he diligently worked to ensure that all of his students were provided with rigorous instruction that was aligned to the Common Core State Standards.

Mr. Scott Kroger is a very analytical person who seeks to proactively make things better, because striving for excellence is what I have learned defines him. He is never satisfied with mediocrity or the status quo if indeed things can be improved.

Mr. Scott Kroger is a professional, responsible, and resolute individual. I strongly recommend Scott Kroger for admittance to the University Of Miami Frost School Of Music Program.

If I can be of further assistance please feel free to call me 312-433-5212 or email me at Lharris5@cps.edu.

Sincerel
y,

Dr. Leonard Harris
Leonard Harris
Principal Chicago
Public Schools

[Chicago Public Schools logo and letterhead]

Barton Elementary School
7650 South Wolcott Avenue Chicago, Illinois 60620
Telephone: 773-535-3260 | Fax: 773-535-3271
www.bartonschoolchicago.org

Augusta Smith
Principal

Chase James
Assistant Principal

Date: July 10th, 2015

To Whom It May Concern:

Mr. Frederick Koger was a teacher at Barton Elementary School for the duration of the 2014- 2015 academic year. He was responsible for teaching all students in Kindergarten through 8th grade. He taught general music and was able to teach the class with minimal resources. He was responsible for writing weekly lesson plans, maintaining an accurate grade book, and managing the classroom. Mr. Koger also volunteered his time to help with starting our after school band program in conjunction with Merit Music.

If you have any questions regarding Mr. Frederick Koger's tenure at Barton Elementary School, please feel free to reach out to me via the information below.

Chase James
Assistant Principal
Barton Elementary School

chjames1@cps.edu
6-6854

APPENDIX 7

Community School District Seven
The City of New York Department of Education

Community School Board President
Hon. Richard Izquierdo

Myrta Rivera, *Superintendent*
Bernice Moro-Reyes, Ph.D., *Deputy Superintendent*
Elvira Barone, *Assistant Superintendent*

January 17, 2003.

Bronx Family Court
Sheridan Ave. Bronx, N.Y.

To whom it may concern: Amanda Koger - 8/29/92
Elizabeth Koger - 8/15/95

Mr. Frederick Koger and Mrs. Rosyln Drew, parents of the above referenced students provided Home schooling services during the school year 2001 - 2002. Parents submitted the required letter of intention and the Individualized Home Instruction Plan according to Commissioner's regulation 100.0. As part of the required documentation they also submitted on time their children 1st and 2nd quarterly report. The parents also met the assessment requirements for the past school year.

Our records indicate that the family moved on May

APPENDIX 8

FAMILY COURT OF THE STATE OF NEW YORK
CITY OF NEW YORK - COUNTY OF BRONX
UNIFIED TERM - ASSIGNMENT PART 5

In the Matter of

AMANDA KOGER
MEGAN KOGER

Children Under Eighteen Years of
Age Alleged to be Neglected by

ROSLYN DREW
FREDERICK KOGER
Respondents

DOCKET NUMBERS
N-21787/02
N-21788/02

900 Sheridan Avenue
Bronx, New York 10451
December 20, 2002

B e f o r e :

HONORABLE MAUREEN A. MCLEOD
Judge

Appearances:

SPECIAL ASST. CORPORATION COUNSEL;
BY JACQUELINE SAED, ESQ.
Standing in for JENNIFER LEVINE, ESQ.
For the Commissioner

LEGAL AID SOCIETY
BY VICKI LIGHT, ESQ.
Appearing for the Children

Present:
DARLENE JACKSON, Child Protective Specialist,
for A.C.S.

A. Carlton Ajaye
Official Court Reporter

* * *

THE COURT: Well, she's going to need to come into court and tell me that.

Now where are the children?

MS. LEVINE: They're still remaining with the parents.

THE COURT: What's going on with them?

MS. LEVINE: Well, we haven't been granted access to see the children. They keep refusing to allow us to interview them.

THE COURT: What are you prepared to do about that?

MS. LEVINE: We'd like to give them another chance to see if we can speak to them.

THE COURT: Why?

MS. LEVINE: They seem to be complying somewhat at the moment.

THE COURT: With what?

MS. LEVINE: With given them home schooling.

THE COURT: How do you know that?

MS. LEVINE: They did send in an intent to enroll the children in home schooling, as is required by the education office.

COURT OFFICER: Ma'am remain standing.

DARLENE JACKSON IS DULY SWORN:

COURT OFFICER: Please state your name, title, and affiliation?

MS. JACKSON: Darlene Jackson, A.C.S.

COURT OFFICER: Thank you. Please be seated.

MS. EGAON: Special Asst. Corporation Counsel, by Grace Egan, appearing for the Commissioner of Children's Services.

THE COURT: Miss Egan, am I missing something here?

MS. EGAN: Your Honor, just give me one second. From what I'm hearing it would appear that what we're telling you is that we have not been able to get inside the household although it appears to be an educational neglect case.

THE COURT: That appears to be perhaps the tip of the iceberg.

MS. EGAN: Your Honor, it appears that

A.C.S. is requesting that if the Court gives A.C.S. one more opportunity to get access into the home –

THE COURT: Well, that means today.

MS. EGAN: And, Your Honor –

THE COURT: So you folks are going to come back tomorrow.

MS. EGAN: And I understand that the Court is Colloquy 7 expecting A.C.S. to make an application tomorrow should the parents not grant A.C.S. access into the home.

THE COURT: And I believe that I told you folks, and you can get the transcript, that I wanted the children enrolled in school. I was not interested in their intent to do much of anything. I wanted the children in school. I wanted other sets of eyes on this family. I thought I was real explicit, and I thought I was real explicit about remanding the children if there wasn't compliance. So I don't know why A.C.S. is sitting back and sort of taking a passive view on it.

MS. LIGHT: Judge, I think you said that if there was an approved home schooling.

THE COURT: No, that's not what I said.

MS. EGAN: That's what Miss Levine's notes reflect also, Your Honor.

THE COURT: No, I said I wanted them in school, and then we could talk about an approved school plan. Because they had stated sending some document off, but I wanted to know what's going on. There seemed to be some other issues there.

MS. BENEZEAU: Your Honor, I realize that the

* * *