UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

S.J., by and through her next friend, S.S.; et al.,	)	
Plaintiffs.	)	
v.	)	Civil Action No. 20-cv-4036
JENNIFER TIDBALL, in her official capacity as Acting Director of Missouri Department of Social Services, and MISSOURI DEPARTMENT OF SOCIAL SERVICES,	)	
Defendants.	)	

PLAINTIFFS' RESPONSE IN OPPOSITION TO
DEFENDANTS' MOTIONS TO STRIKE AND FOR MORE DEFINITE STATEMENT

Plaintiffs oppose Defendants' Motion to Strike and Motion for More Definite Statement, in which Defendants simultaneously argue that Plaintiffs' Complaint is both too detailed and not detailed enough. As set forth below, the Complaint—which asserts claims under three federal statutes on behalf of nine individual children and one organizational plaintiff—includes relevant allegations, and important context and background to the suit; and is sufficiently detailed that Defendants can determine the issues they must address and prepare an answer. Defendants' disfavored motions must thus be denied.

STANDARD OF REVIEW

A district court "may strike from a pleading . . . any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). While a district court has broad discretion to determine

whether to grant a motion to strike, Rule 12(f) motions to strike are "viewed with disfavor and infrequently granted." Stanbury Law Firm v. I.R.S., 221 F.3d 1059, 1063 (8th Cir. 2000) (finding district court abused its discretion, as stricken information provided "important context and background"). "Because Rule 12(f) motions are viewed with disfavor and sometimes used as a delay tactic, courts generally agree 'that they should be denied unless the challenged allegations have no possible relation or logical connection to the subject matter of the controversy.'" Am. Cas. Co. of Reading, Pennsylvania v. Chang, No. 14-00494-CV-W-BP, 2014 WL 12535303, at *2 (W.D. Mo. Nov. 26, 2014) (quoting Khamis v. Bd. Of Regents, Se. Mo. Stat. Univ., No. 1:09-cv-145RWS, 2010 WL 1936229, at *1 (E.D. Mo. May 13, 2010)).

Under Rule 12(e), "[a] party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response." Fed. R. Civ. P. 12(e). "In light of the liberal standards of notice pleading and the availability of extensive discovery, courts disfavor motions for more definite statement." Diamond Resorts Holdings, LLC v. Diamond View Soc. House, LLC, No. 17-3208-CV-S-BP, 2017 WL 9854545, at *2 (W.D. Mo. Oct. 6, 2017); Thrasher v. Mo. State Hwy. Comm'n, 534 F. Supp. 103, 106 (E.D. Mo. 1981), aff'd, 691 F.2d 504 (8th Cir. 1982). Courts appropriately grant Rule 12(e) motions when a complaint is so ambiguous that the defendant cannot determine the issues it must meet and the complaint is thus unanswerable. Allstate Indem. Co. v. Dixon, 304 F.R.D. 580, 582 (W.D. Mo. 2015).

ARGUMENT

I. Defendants' Rule 12(f) Motion to Strike Must be Denied Because Plaintiffs' Allegations are Clear, Pertinent, and Material to this Suit.

Defendants assert that 97 paragraphs of the Complaint should be stricken as they are "immaterial and impertinent to any claims" asserted. Doc. 38 at 3.[1] Defendants acknowledge these 97 paragraphs contain allegations that describe the individual Plaintiff Children's complex medical needs, their personal lives and activities, their families' efforts to secure private duty nursing (PDN) services and—in the absence of Medicaid-provided PDN—to provide nursing care themselves, and the stress their families experience from the lack of nursing services provided to the Plaintiff Children. Id. at 3-9. Each of the 97 challenged paragraphs has a clear, logical connection to Plaintiffs' claims that they are being harmed by the Defendants' failure to arrange for private duty nursing services in violation of the Medicaid Act, 42 U.S.C. § 1396a(a)(43)(C); or to their claims that the Plaintiff Children are at serious and imminent risk of institutionalization due to the Defendants' violation of the integration mandate imposed by the Americans with Disabilities Act, 42 U.S.C. §§ 12101-12132, and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794. Because Defendants have not shown that these 97 paragraphs have "no possible relation or logical connection" to Plaintiffs' claims, the Rule 12(f) motion to strike must be denied. Am. Cas. Co. of Reading, Pennsylvania, 2014 WL 12535303, at *2; see also United States v. Paskon, No. 4:07-cv-1161-CEJ, 2008 WL 824264, at *2 (E.D. Mo. Mar. 26, 2008) (denying Fed. R. Civ. P. 12(f) motion to strike when moving party failed to show that challenged provisions had "no relation or logical connection to the subject matter of the controversy").

Defendants assert several of the allegations related to Plaintiff C.T. should be stricken as "scandalous" because they contain the opinion of C.T.'s father G.T., a maintenance technician, that C.T.'s repeated re-hospitalizations were caused by the Defendants' failure to arrange for

private duty nursing services. Doc. 38 at 5. These allegations do not reflect on the moral character of or cast a derogatory light on anyone, and do not use repulsive language; they cannot be considered scandalous under Rule 12(f). See Nelson v. Banks, No. 4:15-cv-0605, 2016 WL 5496406, at *11 (E.D. Ark. Sept. 28, 2016) (an allegation is scandalous under Rule 12(f) if it "improperly casts a derogatory light on someone"); Pigford v. Veneman, 215 F.R.D. 2, 4 (D.D.C. 2003) (for purposes of Rule 12(f) "scandalous" means "any allegation that unnecessarily reflects on the moral character of an individual or states anything in repulsive language that detracts from the dignity of the court" or casts a "cruelly derogatory light" on another party). Plaintiffs note that the Court can evaluate and accord appropriate weight to these factual allegations regarding the cause of C.T.'s hospitalizations. Thus, even if they could be construed as scandalous, striking them is unwarranted. Chavez-Nelson v. Dayton, No. 17-cv-4098, 2018 WL 7133725, at *14 (D. Minn. Aug. 2, 2018) (denying Rule 12(f) motion in part because case would proceed without jury trial and challenged allegations would not prejudice movant); U.S. ex rel. Kraxberger v. Kansas City Power & Light Co., No. 4:11-cv-0590-FJG, 2012 WL 3961228, at *1 (W.D. Mo. Sept. 10, 2012) (Rule 12(f) motion would not be granted in the absence of prejudice to moving party).

Finally, the challenged paragraphs, which describe the circumstances and lives of the individual Plaintiff Children and their families, provide important context and background for this action, and thus cannot be stricken. Stanbury Law Firm, 221 F.3d at 1063; Holt v. Quality Egg, LLC, 777 F. Supp. 2d 1160, 1169 (N.D. Iowa 2011) (matters that are "not strictly relevant" to claim at issue should not be stricken if they provide "important context and background" to claims asserted or are relevant to some object of the pleader's suit).

II. Defendants' Rule 12(e) Motion for a More Definite Statement Must be Denied Because Plaintiffs' Complaint is Clear and Answerable.

Defendants acknowledge that paragraphs 12 to 20 contain the Plaintiffs' descriptions of the parties to this action, but assert nonetheless that these paragraphs are insufficient because they do not contain allegations regarding the amount of PDN services the individual Plaintiff Children "actually receive" and do not allege reasons for why these medically necessary services are "not being received." Doc. 38 at 10. Plaintiffs have clearly alleged that the individual Plaintiff Children are not receiving the approved PDN services because Defendants have failed to arrange them. Doc. 1 at ¶¶ 5-6, 73-92. Plaintiffs have also made allegations regarding the amount of care that each of the Plaintiff Children has received. See, e.g., Doc. 1 at ¶¶ 104-105, 118-119, 130, 145, 161, 173, 181, 208, 220-222. More importantly, Defendants—as the single state Medicaid agency—not only authorize the amount of these PDN services for the Plaintiff Children but also pay for them and maintain records regarding services that are actually delivered. (Doc. 1 at ¶¶ 27-29, 43.) Defendants thus already know exactly how many hours of private duty nursing services each Plaintiff Child needs and has received under the Missouri Medicaid program.

Instead of establishing as required by Rule 12(e) that the Complaint is unanswerable, Defendants only argue that Plaintiffs' allegations "cannot support declarative relief." Doc. 38 at 10. Such an argument—which fails on the merits as Plaintiffs set forth in their response to the dismissal motion—is inapposite to a Rule 12(e) motion. Because Defendants have failed to show that the Complaint is so ambiguous as to make it unanswerable and have offered no argument as to why they are incapable of answering, their Rule 12(e) motion for a more definite statement must be denied. Allstate Indem. Co., 304 F.R.D. at 582; see also Batten v. Fairway Capital Recover, LLC, No. 2:12-cv-4224-NKL, 2012 WL 5866564, at *2 (W.D. Mo. Nov. 19, 2012) (denying Fed.

R. Civ. P. 12(e) motion when movant presented no argument as to why it was "incapable of admitting or denying the allegations in the complaint without causing itself prejudice").

CONCLUSION

Plaintiffs' Complaint contains allegations that are necessary and pertinent and that clearly set forth their claims for relief. Defendants' Motions to Strike and for a More Definite Statement lack merit and accordingly must be denied.

Respectfully submitted,

/s/ Joel Ferber
Joel Ferber # 35165
Lisa J. D'Souza # 65515
Lucas Caldwell-McMillan # 61345
Jamie Rodriguez # 64323
Legal Services of Eastern Missouri
4232 Forest Park Avenue
St. Louis, Missouri 63108
(314) 534-4200
jdferber@lsem.org
ljdsouza@lsem.org
lfcaldwell-mcmillan@lsem.org
jlrodriguez@lsem.org

/s/ Jane Perkins
Jane Perkins (*admitted pro hac vice)*
Sarah Grusin (*admitted pro hac vice)*
National Health Law Program
200 N. Greensboro St., Ste. D-13
Carrboro, NC 27510
(919) 968-6308
perkins@healthlaw.org
grusin@healthlaw.org

Counsel for the Plaintiffs

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Plaintiffs' Response in Opposition to Defendants' Motions to Strike and for More Definite Statement was served by means of the Court's electronic filing system upon Defendants' Counsel of Record on May 8, 2020.

/s/ Joel Ferber

Joel Ferber