

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
OHIO, WESTERN DIVISION AT DAYTON

Mark Anthony Newberry v. Montgomery County Children Services,
et al.

Newberry · No. 3:25-cv-175 · Decided March 4, 2026

SUMMARY

The United States District Court for the Southern District of Ohio grants pro se Plaintiff Mark Anthony Newberry leave to amend his complaint and substitute a proper party. The Court requires him to file a third amended complaint by March 23, 2026, and denies as moot and without prejudice the pending motions to dismiss filed by Montgomery County Children Services and the City of Dayton.

CASE DETAILS

COURT	United States District Court for the Southern District of Ohio, Western Division at Dayton
WRITING FOR THE COURT	Michael J. Newman
JURISDICTION	United States District Court for the Southern District of Ohio, Western Division at Dayton
DECIDED	March 4, 2026
DOCKET	3:25-cv-175
DISPOSITION	other
PROCEDURAL POSTURE	The court considered Defendants' Rule 12(b)(6) motions to dismiss and Plaintiff's request, made in responsive briefing, for leave to amend the complaint and substitute a proper party.
STANDARD OF REVIEW	At the motion-to-dismiss stage, the court accepts a pro se plaintiff's allegations as true and liberally construes pro se filings. Motions to dismiss were rendered moot by the order permitting amendment.
PRECEDENTIAL VALUE	Unknown; district court order with no reported citation
PARTIES	Mark Anthony Newberry v. Montgomery County Children Services, City of Dayton, Ohio

TOPICS

- motion to amend
- motions to dismiss
- pleadings
- section 1983
- civil procedure

PRACTICE AREAS

civil procedure

civil rights

QUESTIONS PRESENTED

1. Whether Plaintiff's request in his opposition brief should be construed as a motion for leave to amend the complaint and substitute a proper party.
2. Whether leave to amend and substitute a proper party should be granted under Federal Rule of Civil Procedure 15(a)(2).
3. Whether Defendants' Rule 12(b)(6) motions should remain pending after leave to amend was granted.

HOLDINGS

1. Because Plaintiff was proceeding pro se, the court liberally construed his request in the responsive briefing as a motion for leave to amend the complaint and substitute a proper party.
2. Leave to amend the complaint and substitute a proper party was granted.
3. The Rule 12(b)(6) motions filed by Montgomery County Children Services and the City of Dayton were denied as moot and without prejudice because Plaintiff was required to file a new amended complaint.

KEY QUOTATIONS

“construe[s] filings by pro se litigants liberally.” (Order)

“leave to amend the complaint must be “freely” given “when justice so requires.”” (Order)

FACTUAL BACKGROUND

Mark Anthony Newberry, proceeding pro se, alleged that Montgomery County Children Services and the City of Dayton violated his constitutional rights. He brought the claims under 42 U.S.C. § 1983. In opposing the defendants' Rule 12(b)(6) motions, he requested leave to amend and substitute a proper party.

PROCEDURAL HISTORY

Plaintiff filed a second amended complaint alleging constitutional violations under 42 U.S.C. § 1983 against Montgomery County Children Services and the City of Dayton. Both defendants moved to dismiss under Federal Rule of Civil Procedure 12(b)(6). While opposing the motions, Plaintiff requested leave to amend and substitute a proper party. The court construed that request as a motion for leave to amend and granted it, required a third amended complaint by March 23, 2026, and denied both dismissal motions as moot and without prejudice.

DISPOSITION

other

CASES CITED

- Owens v. Keeling, 461 F.3d 763, 776 (6th Cir. 2006)

OPINION

Newberry

PER CURIAM.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF OHIO

WESTERN DIVISION AT DAYTON

MARK ANTHONY NEWBERRY,

Plaintiff, Case No. 3:25-cv-175 vs. MONTGOMERY COUNTY District Judge Michael J. Newman
CHILDREN SERVICES, et al., Magistrate Judge Caroline H. Gentry Defendants.

ORDER: (1) GRANTING PLAINTIFF'S PRO SE REQUEST (HERE CONSTRUED AS A MOTION) FOR LEAVE TO AMEND THE COMPLAINT AND SUBSTITUTE A PROPER PARTY (Doc. No. 40); (2) REQUIRING PLAINTIFF TO FILE HIS THIRD AMENDED COMPLAINT BY MARCH 23, 2026; AND (3) DENYING AS MOOT AND WITHOUT PREJUDICE DEFENDANTS' TWO MOTIONS TO DISMISS (Doc. Nos. 36, 39)

Plaintiff Mark Anthony Newberry brings this case pro se alleging violations of his rights under the United States Constitution, pursuant to 42 U.S.C. § 1983, against Defendants Montgomery County Children Services ("MCCS") and the City of Dayton, Ohio ("City of Dayton"). Doc. No. 26. The case is before the Court on Defendant City of Dayton's Fed. R. Civ. P. 12(b)(6) motion to dismiss (Doc. No. 36) and Defendant MCCS's motion to dismiss also filed under Rule 12(b)(6) (Doc. No. 39). Plaintiff filed a memorandum in opposition to both motions. Doc. Nos. 37, 40. In his response to Defendant MCCS, Plaintiff requested leave to amend or substitute the proper party. Doc. No. 40 at PageID 209. Defendants thereafter each filed a reply. Doc. Nos. 41, 42. The motions are now ripe for review. At the motion to dismiss stage, the Court accepts a pro se plaintiff's allegations as true and "construe[s] filings by pro se litigants liberally." *Owens v. Keeling*, 461 F.3d 763, 776 (6th Cir. 2006). Additionally, leave to amend the complaint must be "freely" given "when justice so requires." Fed. R. Civ. P. 15(a)(2). Liberally construing Plaintiff's filings in his favor as a pro se litigant, the Court interprets Plaintiff's request in his responsive briefing as a motion for leave to amend the complaint and substitute a proper party. Doc. No. 40 at PageID 209. For the reasons stated, Plaintiff's request—for leave to amend, and to substitute a party—is GRANTED. Accordingly, the Court REQUIRES Plaintiff to file his third amended complaint by March 23, 2026. Finally, given that a new complaint will be filed soon, the motion to dismiss filed by Defendant MCCS is DENIED AS MOOT AND WITHOUT PREJUDICE, and the motion to dismiss filed by Defendant City of Dayton is also DENIED AS MOOT AND WITHOUT PREJUDICE. IT IS SO ORDERED. March 4, 2026 s/Michael J. Newman Hon. Michael J. Newman United States District Judge

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