

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

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 MCCA 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