

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

DEBORAH L. DAVIES and KAREN GAHTHAM,

Plaintiffs,

v.

No. 09-CV-559
(GLS/DRH)

ULSTER COUNTY DEPARTMENT OF
SOCIAL SERVICES,

Defendant.

REPORT-RECOMMENDATION

The following appears from the record in this case. Presently pending in Ulster County Family Court is an action to terminate the parental rights of plaintiff Karen Gahtham. On May 13, 2009, plaintiffs Gahtham and her mother, Deborah L. Davies, removed that action to this Court by filing a Notice of Removal. Docket No. 1. Plaintiffs then moved for a restraining order and filed an amended Notice of Removal. Docket Nos. 2, 8. Because of the confusing and unusual posture of this case, defendant Ulster County Department of Social Services (DSS) requested a conference with this Court and a conference was held with both the plaintiffs and with counsel for DSS by telephone on June 18, 2009. From that conference, it appears that plaintiffs rely for jurisdiction on 28 U.S.C. § 1443 which provides for federal jurisdiction over civil rights cases. Plaintiffs contend that this statute provides jurisdiction here because they are being deprived of due process and other constitutional rights in the underlying family court action.

As was explained to plaintiffs during the telephone conference, it appears that this Court lacks subject matter jurisdiction over the family court proceedings. Section 1443 may afford jurisdiction over an action brought by plaintiffs asserting a denial of due process or other

constitutional rights, but the action removed to this Court from family court does not fall within the scope of section 1443. Because this Court lacks subject matter jurisdiction, it is


RECOMMENDED that this action be **REMANDED** to Ulster County Family Court and the action in this Court be **TERMINATED**.

Pursuant to 28 U.S.C. § 636(b)(1), the parties have ten days within which to file written objections to the foregoing report. Such objections shall be filed with the Clerk of the Court.

FAILURE TO OBJECT TO THIS REPORT WITHIN TEN DAYS WILL PRECLUDE

APPELLATE REVIEW. Roldan v. Racette, 984 F.2d 85 (2d Cir. 1993) (citing Small v. Secretary of HHS, 892 F.2d 15 (2d Cir. 1989)); 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72, 6(a), 6(e).

Dated: June 24, 2009
Albany, New York



United States Magistrate Judge