

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

RUTH MORACA,

Plaintiff

No. 3:10cv1349

(Judge Munley)

v.

**CHILDREN AND YOUTH
SERVICES,**

Defendant

MEMORANDUM

Before the court for disposition is Plaintiff Ruth Moraca's request for emergency injunctive relief regarding the custody of her grandchildren. For the reasons that follow, the request will be denied.

Plaintiff is the maternal grandmother of four children. (Doc. 1, Complaint at ¶ 1). She asserts that Defendant Luzerne County Children and Youth Services¹ are taking her grandchildren from their custodian on June 30, 2010. (Doc. 1, Complaint at ¶ 6). She seeks to have the children reside with her. (*Id.*)

Plaintiff avers that the defendant has violated her constitutional rights to due process and equal protection, evidently by not allowing her custody of the children. (*Id.* ¶ 3).

As a federal district court, we do not have authority to overrule a custody decision of this nature. See Marran v. Marran, 376 F.3d 143, 152

¹The complaint does not indicate whether plaintiff seeks to sue the *Luzerne County* Children and Youth Services or a similar agency from another county. For purposes of this motion we will assume she intends to name the Luzerne County agency as she avers that she is a resident of Wilkes-Barre, Pennsylvania, which is located in Luzerne County. Our analysis would be the same regardless of the county.

(3d Cir. 2004) (holding that the Rooker-Feldman doctrine bars relitigation of custody matters in federal court).² Thus, to the extent that the plaintiff seeks custody of her grandchildren, this court is without authority to order the relief that plaintiff seeks.

We may be able to eventually address the issues of the constitutionality of the defendant's actions, but plaintiff's complaint does not establish her standing to raise these issues. The complaint does not allege that she was the custodian of the children in the first instance. In fact it appears that someone else had custody and plaintiff tried to get the children to live with her. (Doc. 1, Complaint at ¶ 6). Thus, it appears that plaintiff does not have standing to assert the claims that she seeks to sue on. We will not, however, dismiss the case at this juncture. We will provide the plaintiff twenty (20) days to file an amended complaint properly asserting this court's jurisdiction and asserting her standing. If no amended complaint is filed within that time, the case will be dismissed.

Additionally, plaintiff seeks to proceed *in forma pauperis*. She has

²The Rooker-Feldman doctrine precludes lower federal courts from reviewing the final decisions of state courts, and a federal district court may not "[exercise] jurisdiction over cases brought by 'state-court losers' challenging 'state-court judgments rendered before the district court proceedings commenced.'" Lance v. Dennis, 546 U.S. 459, 460 (2006) (quoting Exxon Mobil Corp. v. Saudi Basic Industries Corp., 544 U.S. 280, 284 (2005)). "[L]ower federal courts possess no power whatever to sit in direct review of state court decisions.' If the constitutional claims presented to a United States district court are inextricably intertwined with the state court's" decision "then the district court is in essence being called upon to review the state-court decision. This the district court may not do." D.C. Court of Appeals v. Feldman, 460 U.S. 462, 482 n.16 (1983) (quoting Atlantic Coast Line R. Co. V. Locomotive Engineers, 398 U.S. 281, 296 (1970)).

not, however, submitted the proper *in forma pauperis* form. We will reserve ruling on her *in forma pauperis* petition until the proper form is completed. The appropriate form is attached to this memorandum.

Accordingly, plaintiff's request for emergency relief will be denied and plaintiff will be provided an opportunity to file an amended complaint. An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

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Plaintiff

No. 3:10cv1349
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LUZERNE COUNTY
CHILDREN AND YOUTH
SERVICES,
Defendant

ORDER

AND NOW, to wit, this 29th day of June 2010, the plaintiff's motion for emergency injunctive relief is hereby **DENIED**. Plaintiff is granted twenty (20) days from the date of this order to file an amended complaint which properly asserts this court's jurisdiction and plaintiff's standing. Failure to file an amended complaint will result in this case being dismissed. Plaintiff is further directed to complete the *in forma pauperis* form attached to this memorandum.

BY THE COURT:


JUDGE JAMES M. MUNLEY
United States District Court

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

(Plaintiff)

v.

(Defendant)

AFFIDAVIT / DECLARATION
IN SUPPORT OF REQUEST
TO PROCEED
IN FORMA PAUPERIS

I, _____ certify that I am the plaintiff in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my present financial condition I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress.

I further state that the responses which I have made to questions and instructions below are true and correct.

1. Are you presently employed? Yes _____ No _____

a. If the answer is yes, state the amount of your salary or wages per month, and give the name and address of your employer.

b. If the answer is no, state the date of last employment and the amount of the salary and wages per month which you received.

2. Have you received within the past twelve months any money from any of the following sources?

a. Business, profession or form of self-employment? Yes _____ No _____

b. Rent payments, interest or dividends? Yes _____ No _____

c. Pensions, annuities or life insurance payments? Yes _____ No _____

d. Gifts or inheritances? Yes _____ No _____

e. Any other sources? Yes _____ No _____

If the answer to any of the above is yes, describe each source of money and state the amount

received from each during the past twelve months.

3. Do you own any cash, or do you have money in a checking or savings account? Yes _____
No _____ (Include any funds in prison accounts.)

If the answer is yes, state the amount of cash or the present balance in any account.

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4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property, excluding ordinary household furnishings and clothing? Yes _____ No _____

If the answer is yes, describe the property and state its approximate value.

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5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support. In order to comply with the court's privacy policy, only the initials of a minor should be listed below. Also, listing the age of the minor is acceptable; however, only the year of birth may be included. See the court's "Notice of Electronic Availability of Civil and Criminal Case File Information" and Local Rule 5.2 for more information on redaction of personal data identifiers.

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6. List your monthly expenses for:

food
rent
utilities
child care
medical care
other (explain)

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7. List any debts (mortgage, credit card, student loan, etc.) and the monthly fee on those debts:

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I understand that a false statement or answer to any questions in this affidavit/ unsworn declaration will subject me to penalties for perjury.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____
Date

Signature of Plaintiff