

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

ELIZABETH MORT and ALEX  
RODRIGUEZ,

Civil Action No. 2:10-cv-01438-DSC

Plaintiffs,

JUDGE DAVID S. CERCONE

vs.

LAWRENCE COUNTY CHILDREN  
AND YOUTH SERVICES; LAWRENCE  
COUNTY; CHRISSY MONTAGUE,  
Lawrence County Children and Youth  
Services Caseworker; and  
JAMESON HEALTH SYSTEM, INC.

*Electronically Filed*

**JURY TRIAL DEMANDED**

Defendants.

**MOTION TO DISMISS**

AND NOW, come the defendants, LAWRENCE COUNTY CHILDREN AND YOUTH SERVICES, LAWRENCE COUNTY and CHRISSY MONTAGUE, by and through their undersigned counsel, MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, P.L.L.C., and file the within Motion to Dismiss, averring as follows:

1. This action is based upon the emergency removal of the infant child of the plaintiffs based upon the mother's two positive drug tests for opiates administered by the co-defendant, Jameson Health System, Inc., while the mother was in the hospital for the birth of the child.
2. The plaintiffs contend that their rights secured by the Fourteenth Amendment were violated by the temporary, emergency removal of the child by Lawrence County Children and Youth Services and caseworker Chrissy Montague.
3. The plaintiffs assert two Counts against these defendants, both under 42 U.S.C. §1983.

4. Count I sounds in a violation of the plaintiffs' Fourteenth Amendment Substantive Due Process rights.

5. Count II is a claim against all defendants for an alleged conspiracy to violate the plaintiffs' Fourteenth Amendment rights.

6. Both of the plaintiffs' claims against these defendants must be dismissed.

**A. Absolute and Qualified Immunity of defendant Montague**

7. Chrissy Montague is a caseworker employed by Lawrence County CYS. (Amended Complaint, ¶ 12).

8. Essentially, the plaintiffs claim that Ms. Montague violated their rights by petitioning the Court of Common Pleas of Lawrence County to remove their child from their custody once she received the notification of the mother's positive drug tests without performing what they would consider to be a proper investigation (Amended Complaint, ¶¶ 54-58; 97-98).

9. Defendant Montague enjoys absolute immunity similar to prosecutorial immunity in her petitioning of and presenting evidence to the Court of Common Pleas. Ernst v. Child and Youth Services of Chester County, 108 F.3d 486, 493 (3d. Cir. 2007); Bowser v. Blair County Children and Youth Services, 346 F. Supp.2d 788 (W.D. Pa. 2004).

10. Further, Defendant Montague enjoys qualified immunity as to all claims asserted under the Fourteenth Amendment because her actions did not violate a clearly established constitutional right and her actions were objectively reasonable. Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982).

11. As such, all claims against Chrissy Montague should be dismissed.

**B. Failure to allege claim against the municipal defendants**

12. The plaintiffs assert claims against Lawrence County CYS and Lawrence County.

13. These claims fail because respondeat superior is not an appropriate basis to impose civil rights liability.

14. Further, the plaintiffs plead no facts sufficient to meet their burden of establishing an unconstitutional policy, practice or custom that was the moving force in any violation of his civil rights under the pleading standards of Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007) and Ashcroft v. Iqbal, \_\_\_ U.S. \_\_\_, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009).

15. Accordingly, their claims against Lawrence County CYC and Lawrence County must be dismissed .

**C. Plaintiffs' failure to plead a Substantive Due Process claim**

16. The plaintiffs have failed to allege a claim under the Fourteenth Amendment that the defendants violated their substantive due process rights.

17. The defendants had “reasonable and articulable evidence” that the plaintiffs’ child was in eminent danger of abuse or neglect, specifically the mother’s two positive drug screens for use of opiates, as is required to justify the intervention of CYC. Croft v. Westmoreland County Children & Youth Serv., 103 F.3d 1123, 1125 (3d Cir. 1997).

18. The facts as alleged within the Amended Complaint do not “shock the conscience” which is necessary to impose liability for an alleged substantive due process violation. Miller v. City of Philadelphia, 174 F.3d 368 (3d Cir. 1999).

19. As such, no claim under 42 U.S.C. §1983 has been sufficiently pled and dismissal of the plaintiffs’ claims is appropriate.

**D. Plaintiffs' failure to sufficiently allege a conspiracy**

20. The plaintiffs have failed to plead the elements of a conspiracy with the requisite specificity.

21. Specifically, as set forth above, the plaintiffs have not alleged that their constitutional rights were violated.

22. Further, the plaintiffs have not alleged the necessary elements of a conspiracy.

23. The plaintiffs have not alleged the time frame of the conspiracy, the specific object of the conspiracy, and the specific actions of the conspirators which were taken to achieve the purpose do the conspiracy. Shearin v. E.F. Hutton Group, Inc., 885 F.2d 1162, 1166 (3d Cir.), abrogated on other grounds by Beck v. Purpis, 529 U.S. 494, 120 S.Ct. 1608 (2000).

24. Theses failures are fatal to the plaintiffs's conspiracy claims.

WHEREFORE, it is respectfully requested that the Court grant these defendants' Motion to Dismiss and dismiss plaintiffs' claims against them in their entirety.

MEYER, DARRAGH, BUCKLER,  
BEBENEK & ECK, P.L.L.C.

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the within MOTION TO DISMISS has been served upon all parties either individually or through counsel by:

- \_\_\_\_\_ Hand-Delivery
- \_\_\_\_\_ First-Class Mail, Postage Prepaid
- \_\_\_\_\_ Certified Mail-Return Receipt Requested
- \_\_\_\_\_ Facsimile
- \_\_\_\_\_ Federal Express
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Dated: January 17, 2011

s/Marie Milie Jones  
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