

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

ANDRE ANTHONY WASHINGTON,

Petitioner,

v.

Civil Action No. 3:13CV649

CHESTERFIELD DEPARTMENT OF SOCIAL SERVICES,

Respondent.

MEMORANDUM OPINION

Andre Anthony Washington, proceeding pro se, submitted this petition for a writ of habeas corpus under 28 U.S.C. § 2241 (“§ 2241 Petition”). Washington is not in custody. Instead, Washington seeks to use his § 2241 Petition to challenge the decision of the Chesterfield Juvenile and Domestic Relations Court to remove Washington’s child, “Baby Boy Thorne,” from Washington’s home and place the child in foster care. (§ 2241 Pet. 8.) Washington requests, inter alia, that “the Federal Court [] take my son Baby Boy Thorne from The Custody of CHESTERFIELD DEPARTMENT OF SOCIAL SERVICES” (Id. at 9.)

In order to bring a petition for a writ of habeas corpus under 28 U.S.C. § 2241,¹ the petitioner must be “in custody.”

¹ That statute provides, in pertinent part:

(c) The writ of habeas corpus shall not extend to a prisoner unless—

The "in custody" requirement is jurisdictional. See Maleng v. Cook, 490 U.S. 488, 490 (1968). The Supreme Court made clear that children in foster care are not "in custody" within the meaning of 28 U.S.C. § 2241(c) and the federal habeas statutes fail to confer jurisdiction over child custody matters. Lehman v. Lycoming Cnty. Children's Servs. Agency, 458 U.S. 502, 510-16 (1982); see Carpenter v. West Virginia Dep't of Human Servs., No. 88-1148, 1988 WL 138473, at *1 (4th Cir. Dec. 21, 1988) (admonishing that where a habeas petition sought to challenge the removal of the petitioners' children from the petitioners' home "the district court should not have entertained the . . . petition in any fashion for want of jurisdiction"). Accordingly, the § 2241 Petition (ECF No. 1) will be dismissed without prejudice for want of jurisdiction.

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- (1) He is in custody under or by color of the authority of the United States or is committed for trial before some court thereof; or
 - (2) He is in custody for an act done or omitted in pursuance of an Act of Congress, or an order, process, judgment or decree of a court or judge of the United States; or
 - (3) He is in custody in violation of the Constitution or laws or treaties of the United States

28 U.S.C. § 2241(c) (1)-(3) (emphasis added).

