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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
10 AT TACOMA

11 CHRISTOPHER L. SMITH,

12 Plaintiff,

13 v.

14 RACHEL BROWN, *et al.*,

15 Defendants.

CASE NO. C10-5296BHS

ORDER

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17 This matter has been referred to United States Magistrate Judge J. Richard Creatura  
18 pursuant to 28 U.S.C. § 636(b)(1)(A) and 636 (b)(1)(B), and Local Magistrate Judge's Rule  
19 MJR3 and MJR4.

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21 Plaintiff brings this §1983 civil rights complaint for alleged wrongful termination of his  
22 parental rights.

23 Plaintiff's complaint alleges that while he was incarcerated on multiple charges,  
24 including rape, his wife lost custody of their daughter. Plaintiff alleges, "I never terminated  
25 rights against my wishes – Appeal Order 9-29-09." Plaintiff further states that defendants  
26 Rachel Brown and Christal Davis, both social service workers, never offered that "She mis [sic]

1 Rachel Brown never came to see me concerning my baby. I've cried [sic] five years. She stated  
2 there is no remedy for you." Complaint at 3. Plaintiff argues that the defendants failed to  
3 provide him services required under state statute when a petition to terminate parental rights is  
4 filed with the state court.

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6 The Complaint is deficient for several reasons. First, it is not clear that plaintiff's  
7 parental rights were terminated. Plaintiff alleges his wife's rights were terminated, but does not  
8 specifically allege that his rights were terminated by way of a petition and court order. The court  
9 cannot assume facts not alleged. Plaintiff may be confused between conditions of his rape  
10 conviction and termination of parental rights. The court could assume that a condition of a rape  
11 conviction would likely include a restriction on plaintiff from any contact with any minor  
12 children, including his own, but that type of condition is not the same as termination of parental  
13 rights. If this is the case, plaintiff is collaterally challenging a fact or condition of his criminal  
14 conviction, which is prohibited in a civil rights action. See Heck v. Humphrey, 512 U.S. 477,  
15 489 (1994)(A §1983 cause of action for damages attributable to an unconstitutional conviction or  
16 sentence does not accrue until the conviction or sentence has been invalidated).

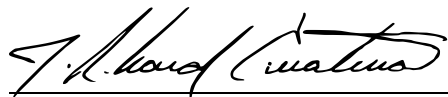
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18 Second, the appropriate statute of limitations for a § 1983 claim is the forum state's  
19 statute of limitations for tort actions. Wilson v. Garcia, 471 U.S. 261, 269 (1985). Washington  
20 provides a three-year statute of limitations for tort claims. RCW 4.16.080(2). Accordingly, the  
21 statute of limitations applicable to plaintiff's § 1983 claim is three years. See, e.g., Joshua v.  
22 Newell, 871 F.2d 884, 886 (9<sup>th</sup> Cir. 1989). Here, plaintiff's complaint states he was aware of the  
23 alleged wrongful conduct on or about October 22, 2006 -- more than three years before filing this  
24 matter. Therefore, the claim is barred by the applicable statute of limitations.  
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1 Finally, the complaint is deficient because plaintiff is asking for monetary damages, in  
2 the amount of five-million dollars (\$5,000,000.00) for emotional injury. Under 42 U.S.C. §  
3 1997(e), no federal civil action may be brought by a prisoner for mental or emotional injury  
4 suffered while in custody without a prior showing of physical injury. Siglar v. Hightower, 112  
5 F.3d 191, 193 (5<sup>th</sup> Cir. 1997). Plaintiff is in custody and is seeking a claim of damages based on  
6 emotional damages, without any associated physical injury. Therefore, plaintiff's claim for  
7 emotional injury is barred by §1997(e).

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9 Based on the forgoing findings, it is hereby ORDERED that **by no later than June 30,**  
10 **2010**, plaintiff shall either file an amended complaint, curing, if possible, the above noted  
11 deficiencies, or show cause why this matter should not be summarily dismissed. If an amended  
12 complaint is not timely filed or if plaintiff fails to adequately respond, the Court will recommend  
13 dismissal of this action as frivolous pursuant to 28 U.S.C. § 1915, and such dismissal will count  
14 as a "strike" under 28 U.S.C. § 1915(g).

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16 The Clerk is directed to send plaintiff a copy of this Order and the General Order

17 DATED this 17th day of May, 2010.

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20 J. Richard Creatura  
21 United States Magistrate Judge  
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