

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

CARROL DOMAN and JAMES DUBE,	:	
	:	
Plaintiff,	:	
	:	CIVIL ACTION
v.	:	
	:	NO. 99-6543
STATE OF PENNSYLVANIA	:	
DEPARTMENT OF PUBLIC WELFARE;	:	
CITY OF PHILADELPHIA DEPARTMENT	:	
OF HUMAN SERVICES; MICHAEL RICE	:	
and ELIZABETH LITVIN,	:	
	:	
Defendants.	:	

MEMORANDUM

BUCKWALTER, J.

March 16, 2000

Presently before the Court is the Defendant State of Pennsylvania, Department of Public Welfare’s Motion to Dismiss (“DPW”). For the reasons stated below, the Motion is Granted.

I. FACTUAL BACKGROUND

Plaintiffs Carrol Doman (“Doman”) and James Dube (“Dube” and collectively, “Plaintiffs”) filed a *pro se* Complaint on December 21, 1999. The substance of their complaint is that Defendants¹ have violated Plaintiffs’ rights under the equal protection clause pursuant to 42 U.S.C. § 1983. Plaintiffs allege that a baseless report of suspected child abuse was filed against

1. The Defendants include DPW, the City of Philadelphia’s Department of Human Services (“DHS”) and two DHS employees, Michael Rice and Elizabeth Litvin. The present motion is only involves DPW.

Mr. Dube. The Complaint appears to allege that their non-traditional family has been treated in a discriminatory manner. Plaintiffs also complain that Defendants have harassed them to the point of interfering with their ability to remain gainfully employed. Additionally, Plaintiffs were denied access to certain relevant files.

II. LEGAL STANDARD

When deciding to dismiss a claim pursuant to Rule 12(b)(6) a court must consider the legal sufficiency of the complaint and dismissal is appropriate only if it is clear that "beyond a doubt ... the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." McCann v. Catholic Health Initiative, 1998 WL 575259 at *1 (E.D. Pa. Sep. 8, 1998) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). The court assumes the truth of plaintiff's allegations, and draws all favorable inferences therefrom. See, Rocks v. City of Philadelphia, 868 F.2d. 644, 645 (3d. Cir. 1989). However, conclusory allegations that fail to give a defendant notice of the material elements of a claim are insufficient. See Sterling v. SEPTA, 897 F.Supp. 893, 895 (E.D. Pa.1995). The pleader must provide sufficient information to outline the elements of the claim, or to permit inferences to be drawn that these elements exist. Kost v. Kozakiewicz, 1 F.3d 176, 183 (3d. Cir. 1993). The Court must determine whether, under any reasonable reading of the pleadings, the law allows the plaintiff a remedy. See, Nami v. Fauver, 82 F.3d 63, 65 (3d. Cir. 1996). While a *pro se* complaint must be liberally construed and held to a less stringent standard than formal pleadings drafted by lawyers, that standard applies only to the *pro se* plaintiff's factual allegations, and not to his legal theories. See Nietzke v. Williams, 490 U.S. 319, 330 n. 9 (1989).

III. DISCUSSION

The Eleventh Amendment bars a suit against a state in federal court, regardless of the relief sought. See Seminole Tribe of Florida v. Florida, 116 S.Ct. 1114, 1124 (1996).

Eleventh Amendment immunity applies to suits against department or agencies of the state having no existence apart from the state. Mt. Healthy City Board of Education v. Doyle, 429 U.S. 274, 280 (1977); Dill v. Comm'w of Pa., 3 F.Supp. 2d 583, 586 (E.D. Pa. 1998). It also exists with regard to state officials acting within their official capacity. See Kentucky v. Graham, 473 U.S. 159, 166 (1985).

The principle of sovereign immunity expressed in the Eleventh Amendment is a constitutional limit on federal judicial power. See Pennhurst State School and Hospital v. Halderman, 465 U.S. 89, 98 (1984). Federal courts do not have jurisdiction to entertain claims against states, absent a waiver of sovereign immunity. Id. at 99, n. 8. While sovereign immunity may be abrogated by Congress or waived by the state, the Supreme Court has held that §1983 does not abrogate the Eleventh Amendment. Ouern v. Jordan, 440 U.S. 332 (1979). By statute, Pennsylvania has specifically withheld consent to suit in federal courts: “Nothing contained in this subchapter shall be construed to waive the immunity of the Commonwealth from suit in Federal courts guaranteed by the Eleventh Amendment to the Constitution of the United States.” 42 Pa.C.S.A. § 8521(b).

In this case, Defendant DPW is an agency that does not have an existence apart from the state. Therefore, DPW is entitled to the sovereign immunity granted to the Commonwealth of Pennsylvania by the Eleventh Amendment. Accordingly, this Court does not have subject matter jurisdiction over Plaintiffs’ claim against the DPW.

IV. CONCLUSION

Since this Court is not authorized to exercise jurisdiction over claims against Defendant DPW, all claims against DPW are dismissed.

An appropriate Order follows.

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	:	
Defendants.	:	

ORDER

AND NOW, this 16th day of March, 2000, upon consideration of Defendant Department of Public Welfare's Motion to Dismiss (Docket No. 12), and the Plaintiffs' Response thereto (Docket No. 13), it is hereby **ORDERED** that the Motion is **GRANTED**.

BY THE COURT:

RONALD L. BUCKWALTER, J.