

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

<b>KERRY L. FISHER, Minor By His</b>	:	<b>CIVIL ACTION</b>
<b>Mother and Next Best Friend, and</b>	:	
<b>CARMENCITA M. PEDRO</b>	:	
<b>Plaintiffs,</b>	:	<b>NO. 04-5669</b>
	:	
<b>vs.</b>	:	
	:	
<b>KEVIN M. DOUGHERTY THE HONORABLE,</b>	:	
<b>COMMONWEALTH OF PENNSYLVANIA,</b>	:	
<b>COURT OF COMMON PLEAS IN THE CITY</b>	:	
<b>AND COUNTY OF PHILADELPHIA,</b>	:	
<b>FAMILY COURT DIVISION, JUVENILE</b>	:	
<b>BRANCH, ET AL, ROBERT A. AVERSA,</b>	:	
<b>ESQ., THE CITY OF PHILADELPHIA</b>	:	
<b>DEPARTMENT OF HUMAN SERVICES,</b>	:	
<b>THE CITY OF PHILADELPHIA LAW</b>	:	
<b>DEPARTMENT, KIMBERLY CAPUTO, ESQ.,</b>	:	
<b>THE SCHOOL DISTRICT OF</b>	:	
<b>PHILADELPHIA, and WALTER PHILLIPS,</b>	:	
<b>ESQ.</b>	:	
<b>Defendants.</b>	:	

**DUBOIS, J.**

**DECEMBER 10, 2004**

**MEMORANDUM**

**I. INTRODUCTION**

This case arises out of a matter pending in the Common Pleas Court of Philadelphia County, Family Court Division, Juvenile Branch. Plaintiff, Carmencita M. Pedro (“Pedro”), seeks relief on behalf of Kerry L. Fisher, Jr. (“Kerry”), her son. In the Complaint she asks this Court to reverse the Order of Judge Kevin M. Dougherty, Supervising Judge, dated November 17, 2004, compelling plaintiff Pedro to execute consent form under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) which provided for release of her son’s personal history information, and revoke the HIPAA consent forms executed by plaintiff Pedro and sent to the various covered entities pursuant to Judge Dougherty’s Order. The Complaint

also seeks an order “. . . that any/or recipients of the PHI [personal history information] appertaining to Kerry L. Fisher, Jr. acquired as a result of Judge Dougherty’s Order of 17 November 2004 be required to surrender such information to this plaintiff [Pedro], and take measures to ensure that it [the entity] does not have in its possession and custody any information acquired as a result of Judge Dougherty’s Order of 17 November 2004.”

## **II. BACKGROUND**

The Complaint alleges the following facts:

On October 10, 2002, the School District of Philadelphia (“District”) identified Kerry as a Protected Handicapped Student (“PHS”), pursuant to 22 Pa. Code § 15, and related statutes. In doing so, the District stated that Kerry had disabilities “. . . that substantially limited a major life activity, in particular, learning.”

The District determined that Kerry was eligible for benefits under § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 791, *et seq.*, in that he was diagnosed with “. . . Attention Deficit Disorder; Attention Deficit Hyperactivity Disorder; Post-Traumatic Stress Disorder; Major Depressive Disorder; Mood Disorder NOS (not otherwise specified); and Anxiety Disorder NOS. Subsequently he has also been diagnosed with functional abdominal pain syndrome, chronic headaches, Somatization Disorder, Depression, Generalized Anxiety Disorder, Sexual Disorder (Rule-out), Oppositional Defiant Disorder, as well as a left patella sleeve fracture (for which surgery was required to repair in June 2003). Kerry also has a history of multiple psychiatric hospitalizations for suicidal and homicidal ideations, thoughts, and plans. The above disabilities singularly, or in combination, have substantially limited Kerry’s ability to fully access, and/or adequately participate in the School District of Philadelphia’s educational program.”

2. On or about February 4, 2004, the District filed a truancy petition against plaintiff Pedro in which it was alleged that Kerry was a truant. Subsequent to the filing of the truancy petition, on or about March 24, 2004, a Dependant Petition was filed by the City of Philadelphia on the basis of alleged truancy pursuant to the Juvenile Act of Pennsylvania, 42 Pa.C.S. § 6301 *et seq.*

Approximately eight hearings have been held in the dependency matter since March 16, 2004. At the October 22, 2004 hearing, Judge Dougherty ordered the release of all personal history information pertaining to Kerry. On or about October 28, 2004, defendant, Kimberly Caputo, Esquire, Assistant General Counsel for the District, and Robert A. Aversa, Esquire, Assistant City Solicitor, asked Judge Dougherty to compel plaintiff Pedro to execute forty (40) HIPAA consent forms authorizing eleven (11) specific covered entities to release personal history information on Kerry and surrender copies of the personal history information to the Court, Mr. Aversa, Ms. Caputo and Walter Phillips, Esquire, Court-appointed counsel for Kerry. The Court also ordered that copies of Kerry's personal history information be released to plaintiff Pedro. The eleven (11) covered entities to which the consent forms were sent are identified in the Complaint.

On November 12, 2004, plaintiff Pedro submitted a motion for reconsideration of the October 22, 2004 Order to Judge Dougherty. A hearing on this motion was held on November 17, 2004, at which time Judge Dougherty denied the Motion and ordered plaintiff to execute the HIPAA consent forms and directed that the forms be sent to the eleven (11) specified covered entities.

Plaintiff executed the HIPAA consent forms but added the following text - "I executed this consent form by order of the Order of the Court under protest. I request to inspect and

review the records prior to release.” The Court ordered the destruction of all the HIPAA consent form on which the above text was written and ordered plaintiff Pedro to execute another set of HIPAA consent forms without marking the face of the forms. The Court also told plaintiff that “the act of such defacement would result in the Court holding this plaintiff in contempt of Court for obstruction of justice and incarcerating this plaintiff.” Plaintiff Pedro thereupon executed the forty (40) sets of HIPAA consent forms pursuant to Judge Dougherty Order “under duress.”

Plaintiff Pedro also alleges in the Complaint that Kerry’s mental health condition is aggravated by his anxiety related to the possibility that Judge Dougherty may remove him from the care of his mother. For that additional reason she alleges that she signed the HIPAA consent forms under protest for fear that, had she not done so, Judge Dougherty would have removed Kerry from her care.

Plaintiff contends in the Complaint that Judge Dougherty’s Order directing the execution of the HIPAA consent forms “represents reversible error” by reason of the following:

1. HIPAA provides that the subject of the personal history information or his legally authorized representative may, in writing, or verbally, if unable to write, give voluntary and informed consent to release the personal information of the subject to other parties. HIPAA does not permit forced execution of consent forms; and,

2. A court may issue an order to covered entities directing them to release personal history information without the consent of the subject of the personal history information or his legally authorized representative. Plaintiff alleges that such an order was not issued by Judge Dougherty and that he should have issued his order directly to the covered entities.

### **III. DISCUSSION**

With the Complaint, plaintiff file a Motion to Proceed *In Forma Pauperis*. As it appears

plaintiff is unable to prepay the costs of commencing this suit, leave to proceed *in forma pauperis* granted. However, for the reasons which follow, the Complaint is dismissed as legally frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B).

The gravamen of plaintiff's Complaint is her disagreement with the Order of Judge Kevin M. Dougherty dated November 17, 2004. In essence, she is appealing Judge Dougherty's Order to this Court.

A federal district court is one of original jurisdiction; as such, it lacks subject matter jurisdiction to entertain appeals from state courts. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413, 415-16 (1923). The Rooker-Feldman doctrine, which reflects these principles, is transgressed if the claim before the district court has already been determined by the state court or is "inextricably intertwined" with a prior state court decision. Marks v. Stinson, 19 F.3d 873, 886 n.11 (3d Cir. 1994). The Third Circuit recently summarized the Rooker-Feldman doctrine in Exxon Mobil Corp. et al. v. Saudi Basic Industries Corp., 364 F.3d 102 (3d Cir. 2004):

The Rooker-Feldman doctrine, derived from two Supreme Court cases—Rooker v. Fidelity Trust, 263 U.S. 413, 416 (1923) and District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983)—prevents lower federal courts from “sit[ting] in direct review of the decisions of a state tribunal. Because Congress has conferred jurisdiction to review a state court’s decision only on the Supreme Court, lower federal courts lack the power to decide claims in which ‘the relief requested . . . requires determining that the state court’s decision is wrong or . . . void[ing] the state court’s ruling.’ As we recently explained, ‘a claim is barred by Rooker-Feldman under two circumstances: first, if the claim was actually litigated’ in state court prior to the filing of the federal action or, second, if the claim is ‘inextricably intertwined’ with [the] state adjudication.’

Id. at 104 (citations omitted); see also ITT Corp. et al v. Intelnet Int’l Corp et al, 366 F.3d 205.

Rooker-Feldman does not “permit a disappointed state court plaintiff to seek review of a state court decision in the federal court by masquerading his complaint in the form of a federal

civil rights action.” Logan v. Lillie, 965 F. Supp. 695, 698 (E.D. Pa. 1997). “If it were otherwise, any person dissatisfied with a state . . . award could seek review in the district court under the guise of a federal civil rights violation.” Id. Under the Rooker-Feldman doctrine, this Court lacks subject matter jurisdiction to adjudicate such claims, and the Complaint against Judge Dougherty is dismissed for lack of subject matter jurisdiction.

Plaintiff Pedro fails to allege in the Complaint any conduct of the remaining defendants that is actionable. In essence, plaintiff complains that the remaining defendants contributed in different ways to the issuance of Judge Dougherty’s Order of November 17, 2004, with which she disagrees. Such allegations fail to state a claim upon which relief can be granted.

The Court notes in conclusion that plaintiff’s disagreement with Judge Dougherty’s Order places form over substance. Plaintiff admits in the Complaint that Judge Dougherty could have issued an order to the covered entities directing the release of the very same personal history information on Kerry without obtaining the consent of plaintiff Pedro or Kerry.

Plaintiff may or may not have claims which can be asserted on Kerry’s behalf under statutes other than HIPAA. This Memorandum and attached Order address only those claims asserted by plaintiff Pedro under HIPAA in her Complaint.

An appropriate order follows:

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**THE SCHOOL DISTRICT OF** :

**PHILADELPHIA, and WALTER PHILLIPS, :**  
**ESQ. :**  
**Defendants. :**

**ORDER**

**AND NOW**, this 10<sup>th</sup> day of December, 2004, upon consideration of *pro se* plaintiff's Complaint and Motion for Leave to Proceed *In Forma Pauperis* (Document No.1, filed December 7, 2004), for the reasons set forth in the accompanying Memorandum, all of which are incorporated herein by reference, **IT IS ORDERED** as follows:

1. Leave to proceed *in forma pauperis* is **GRANTED** pursuant to 28 U.S.C. § 1915;
2. Plaintiff's claims against defendants Honorable Kevin M. Dougherty; Robert A. Aversa, Esquire; City of Philadelphia, Department of Human Services; City of Philadelphia Law Department; Kimberly Caputo, Esquire; The School District of Philadelphia; and, Walter Phillips, Esquire, are **DISMISSED AS LEGALLY FRIVOLOUS** under 28 U.S.C. § 1915(e)(2)(B); and,
3. The Clerk of Court shall **MARK** the case **CLOSED** for **STATISTICAL PURPOSES**.

**BY THE COURT:**

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**JAN E. DUBOIS, J.**