



MacElree.<sup>2</sup> During the pendency of the action, the parties agreed that primary custody of their two sons would reside in plaintiff. In February, 1995, however, Pamela Hughes left the marital home and took the couple's two sons with her. In accordance with Chester County Court of Common Pleas procedure, an emergency custody conciliation was held on February 14, 1995. The conciliator, JoAnne Peskov, issued a temporary custody order at that time (instituting a cycle wherein the children spent eight nights with the plaintiff and six nights with Pamela Hughes) and recommended that a full custody evaluation of the parties be performed. On March 15, 1995, Judge MacElree ordered the defendant Lynn E. Long to perform the custody evaluation.

In total, three defendants took part in that evaluation: (1) Lynn E. Long, M.S.W., the social worker who conducted the six-month evaluation of plaintiff and his wife; (2) Kathleen Lacey, M.A., who administered certain psychological tests to the Hughes as part of the evaluation process; and (3) Patrick J. McHugh, Ph.D., the psychologist who reviewed the test results and whom plaintiff alleges became involved in the case only after Long's custody evaluation report was completed.

After performing the evaluation, Long issued her report recommending joint custody on October 6, 1996. She did not include in her report the psychological testing data which had been used to evaluate plaintiff and his wife. Plaintiff

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<sup>2</sup> This court dismissed plaintiff's complaint with prejudice as to Judge MacElree on August 4, 1997, on immunity grounds.

subsequently obtained a court order requiring that Long turn over the test results. He avers that, at this point, defendants Long, McHugh, and Lacey embarked upon a scheme to deprive plaintiff of primary custody of his children by: (1) readministering the test to Pamela Hughes and coaching her on how to take the test so as to appear more psychologically fit; (2) altering and misconstruing test results in favor of Pamela Hughes and against plaintiff; (3) withholding or destroying test results and reports; and (4) misrepresenting facts and events relating to the testing and other matters significant to the case. At a hearing on May 22, 1996, plaintiff attacked the credibility of Long's custody evaluation by presenting the above-mentioned issues to Judge MacElree. Judge MacElree, however, rejected plaintiff's conspiracy arguments and issued an order granting joint custody to both plaintiff and his wife.

Plaintiff filed a notice of appeal to the Pennsylvania Superior Court on July 9, 1996. On July 18, 1996, William J. Litvin, plaintiff's attorney for the child custody proceeding, received a phone call from Judge MacElree informing him that if plaintiff appealed the custody order, Judge MacElree would write a "highly unflattering opinion" about plaintiff which would remain with him "for a long time because the children were so young." 2d Am. Compl. ¶ 63. Plaintiff states that Judge MacElree's "voicing objections to Hughes' list of Matters Complained of on Appeal" was permissible under the rules

governing appeal to Pennsylvania's Superior Court.<sup>3</sup> 2d Am. Compl. ¶ 69. In any event, as a result of Judge MacElree's phone call, plaintiff withdrew his Superior Court appeal on July 31, 1996.

Plaintiff maintains in the first count of his complaint that the employees of Chester County's Custody Evaluation Program deprived him of his "federally guaranteed rights" by their misconduct. In his second count, plaintiff invokes 42 U.S.C. § 1983, alleging that defendants Long, Lacey, and McHugh altered and distorted their evaluations of his parental fitness in violation of his 14th Amendment right to due process.

Plaintiff's remaining four counts are supplemental state law claims against Long, Lacey, and McHugh for: (1) abuse of legal process and wrongful use of civil proceedings; (2) defamation and false light invasion of privacy; (3) civil conspiracy; and (4) fraud.

## **II. Discussion**

Defendants Long and McHugh have moved to dismiss plaintiff's Second Amended Complaint on a number of grounds. However, it is not necessary to address these grounds because the complaint on its face shows that the court lacks subject matter jurisdiction. Issues relating to jurisdiction may be considered by the court

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<sup>3</sup> Plaintiff apparently refers to Pennsylvania Rule of Appellate Procedure 1925, which requires the trial judge to forthwith file a statement of the reasons for the order appealed from. Pa. R. Appellate P. 1925.

sua sponte before reaching the merits of plaintiff's claim.<sup>4</sup> Mt. Healthy City School Dist. Bd. of Educ. v. Doyle, 429 U.S. 274, 278 (1977); Doctor's Assocs., Inc. v. Distajo, 107 F.3d 126, 137 (2d Cir. 1997) ("A challenge to a federal court's subject matter jurisdiction under the Rooker-Feldman doctrine 'may be raised at any time by either party or sua sponte by the court.'"); Ritter v. Ross, 992 F.2d 750, 752 (7th Cir. 1993).

Under the Rooker-Feldman doctrine, "federal district courts lack subject matter jurisdiction to review final adjudications of a state's highest court or to evaluate constitutional claims that are inextricably intertwined with the state court's proceeding." Guarino v. Larsen, 11 F.3d 1151, 1156 (3d Cir. 1993). The doctrine also applies to final decisions of lower state courts. Port Auth. Benevolent Ass'n v. Port Auth. of New York and New Jersey, 973 F.2d 169, 177 (3d Cir. 1992). Rooker-Feldman comes into play in cases where, in order to grant the relief sought, a federal court must either determine that a state court's judgment was erroneously entered or must take action that would render that judgment ineffectual. FOCUS v. Allegheny County Ct. of Common Pleas, 75 F.3d 834, 840 (3d Cir. 1996). A federal court may hear general constitutional challenges to state rules if those claims are not "inextricably intertwined" with claims previously asserted in state court -- i.e., the relief requested

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<sup>4</sup> "Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action." Fed. R. Civ. P. 12(h)(3).

in the federal action cannot require a determination "that the state court decision is wrong or would void the state court's ruling." Id. Accordingly, a complaint which essentially appeals a final state court decision must be dismissed for lack of subject matter jurisdiction. See Kirby v. City of Philadelphia, 905 F. Supp. 222, 225 (E.D. Pa. 1995).

In the present case, plaintiff alleges that in performing their child custody evaluation, defendants Long, Lacey, and McHugh entered into a conspiracy to prevent plaintiff from receiving primary custody of his children. These allegations go directly to the credibility of the child custody report used by the Chester County Court in making its order of joint custody. Thus, the argument that defendants Long, Lacey, and McHugh violated plaintiff's 14th Amendment right to due process is premised upon the assumption that the Chester County Court wrongly decided the merits of his child custody case. To make that determination, the court would have to perform an appellate-style review of the state court custody order. The Rooker-Feldman doctrine clearly prohibits such action.<sup>5</sup>

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<sup>5</sup> Federal courts have consistently applied Rooker-Feldman to decline evaluating the merits of state court rulings in divorce and child custody proceedings. See Datka v. Kennedy, 53 F.3d 333, No. 94-1466, 1995 WL 26-1119, at \*1 (7th Cir. 1995)(unpublished disposition); McKinnis v. Morgan, 972 F.2d 351, No. 91-1946, 1992 WL 17459 at \*1 (7th Cir. 1992)(unpublished disposition); Hale v. Harney, 786 F.2d 688, 690-91 (5th Cir. 1986); Thompson v. McFatter, 951 F. Supp. 221, 223-25 (M.D. Ala. 1996); Johnson v. State of Illinois, No. 95 C 1281, 1996 WL 672251, at \*3 (N.D. Ill. Nov. 4, 1996), aff'd, 124 F.3d 204 (7th Cir. 1997); Tidik v. Ritsema, 938 F. Supp. 416, 424 (E.D. Mich. 1996); Brooks-Jones v. Hones, 916 F. Supp. 280, 281 (S.D.N.Y.

The same reasoning applies to plaintiff's non-specific federal claim against Chester County. Plaintiff states, "Chester County employees and agents established a pervasive custom, practice and usage through the repeated acts of misconduct perpetrated by Long as a Chester County choice of Chester County employee Peskov." 2d Am. Compl. ¶ 200. If Long did not act inappropriately, then logically there can be no wrongdoing on the part of Chester County or Peskov. Therefore, if the court were to consider the merits of the claim against Chester County, it would ultimately be forced to review the propriety of Long's conduct in performing her child custody evaluation. That issue was already adjudicated by the Chester County Court in its May 22, 1996 hearing and joint custody order. As a result, plaintiff's claim against Chester County is inextricably intertwined with the Chester County Court's earlier custody determination. Under the Rooker-Feldman doctrine, this court lacks subject matter jurisdiction to review that ruling.

In light of the court's conclusion that it has no original jurisdiction over plaintiff's federal claims, the court will also decline to exercise jurisdiction over plaintiff's supplemental

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1996); Moyer v. Rudolph, Civ. A. No. 96-2539, 1996 WL 243647, at \*2-3 (E.D. Pa. May 6, 1996); Perlberger v. Cirillo, No. Civ. A. 96-6243, 1996 WL 684313, at \*2-3 (E.D. Pa. Nov. 26, 1996), aff'd, 114 F.3d 1173 (3d Cir. 1997); Behr v. Snider, 900 F. Supp. 719, 724-25 (E.D. Pa. 1995); Rogers-Fink v. Cortland County Dept. Of Social Servs., 855 F. Supp. 45, 46-47 (N.D.N.Y. 1994); Johnson v. Lancaster County Children and Youth Social Service Agency, No. Civ. A. 92-7135, 1993 WL 245280, at \*4-5 (E.D. Pa. July 2, 1993); Fuller v. Harding, 699 F. Supp. 64, 66-67 (E.D. Pa. 1988), aff'd, 875 F.2d 310 (1989).

state law claims. See 28 U.S.C. § 1367(c)(3).

### **III. Conclusion**

In consideration of the foregoing, defendants' Motions to Dismiss are GRANTED as to all claims and all parties. An appropriate order follows.