

Patrick Mullen and Alba Martinez, employees of DHS sued in their individual and official capacities; (2) the Pennsylvania Department of Welfare, Division of Children Youth and Families (“PDCYF”) and Anne Shenberger, Sylvia Wright and John Petula, employees of the PDCYF sued in their official capacities; (3) Rachael Holtzman, Esquire, of the Defenders Association; (4) Robert Rebstock¹ and Flora Wolf, Judges of the Court of Common Pleas of Philadelphia County, Family Division; and (4) David Bromberg and Robert Hall of the ATA.²

Plaintiff asserts the following claims in her Complaint:

- Count I - violation of the First and Fourteenth Amendments against Trevor Hanniford for severing contact between Ms. Smith and Emmitt Smith;
- Count II - violation of the First and Fourteenth Amendments against Trevor Hanniford, Maria Davila, Elizabeth Stein, Helen Dow, Honorable Robert Rebstock and Honorable Flora Wolf for failure to provide adequate supervision of Emmitt Smith after he was placed in foster care;
- Count III - violation of due process under the Fourteenth Amendment for not permitting plaintiff to “face one’s accusers and in adjudicating Emmitt dependant on the state” against Trevor Hanniford, Alba Martinez, Sylvia Wright, Anne Shenberger, John Petulla and Honorable Flora Wolf;
- Count IV - failure to adequately supervise DHS employees against Alba Martinez, Patrick Mullen, Murray Sklar, Helen Dow, Elizabeth Stein, Maria Davila, Anne Sheinberger, Sylvia Wright, John Petulla, Philadelphia County Children and Youth,³ Honorable Robert Rebstock and Honorable Flora Wolf;
- Count V - interfering with the constitutional rights of vulnerable families against

¹ Judge Rebstock’s name is misspelled as “Redstock” in the Complaint.

² Plaintiff asserts claims against David Bromberg and Robert Hall of ATA in the Complaint but fails to name them as defendants in the caption and has not done anything to effect service of process on them.

³ In Count IV of the Complaint, plaintiff asserts a claim against “the Philadelphia County Children and Youth” but fails to name it as a defendant in the caption and has not done anything to effect service of process.

Trevor Hanniford Maria Davila, Elizabeth Stein, Helen Dow, Patrick Mullen, Murray Sklar, Alba Martinez, the Department of Health and Human Services and Honorable Flora Wolf;

- Count VI⁴ - intentional infliction of emotional distress against Trevor Hanniford, Alba Martinez, Rachel Holtzman, David Bromberg, Robert Hall and the Philadelphia Department of Human Services; and,
- Count VII⁵ - intentional interference with parental rights against Trevor Hanniford, Alba Martinez, Rachel Holtzman, David Bromberg and Robert Hall, Honorable Robert Rebstock, Honorable Flora Wolf and the Philadelphia DHS.

Plaintiff seeks the following relief:

- damages for Ms. Smith's loss of two years with her son;
- damages for the emotional harm to Ms. Smith resulting from the removal of her son;
- an injunction preventing DHS agents from withholding the case file from Ms. Smith;
- an injunction preventing DHS agents from withholding or removing documents from Ms. Smith's case file;
- an injunction removing Ms. Smith's name from the sex abuser's registry; and,
- an order returning custody of Emmitt to Ms. Smith, and compensatory and punitive damages.

II. PROCEDURAL HISTORY

By Order dated August 23, 2004, this Court granted *pro se* plaintiff's Motion for Leave to Proceed *In Forma Pauperis*, but dismissed plaintiff's claims against the Honorable Robert Rebstock, the Honorable Flora Wolf, and Rachael Holtzman, Esquire, as legally frivolous. Additionally, all claims of minor plaintiff, Emmitt Smith, were dismissed. The Court permitted plaintiff's claims against the remaining defendants to proceed.

Presently before the Court are two motions to dismiss. The Pennsylvania Division of

⁴Plaintiff's Complaint mistakenly entitles Count Six as "Fifth Cause of Action."

⁵Plaintiff's Complaint mistakenly entitles Count Seven as "Sixth Cause of Action."

Children, Youth, and Families, and its employees, Anne Shenberger, Sylvia Wright, and John Petulla (collectively, “Commonwealth defendants”), filed a Motion to Dismiss on the grounds that plaintiff’s claims are barred by the Eleventh Amendment and that plaintiff has failed to state a claim upon which relief can be granted. The Pennsylvania DHS and its employees, Trevor Hanniford, Maria Davila, Elizabeth Stein, Helene Dow, Murray Sklar, Patrick Mullen, and Alba Martinez (Collectively, “DHS defendants”), filed a Motion to Dismiss arguing that (1) plaintiff’s claims are barred under Rooker-Feldman; (2) plaintiff has failed to state a claim upon which relief can be granted; (3) defendants are entitled to absolute immunity; and (4) plaintiff’s state law claims are barred under Pennsylvania state law. The Court will address these motions in turn.

III. STANDARD OF REVIEW

A. Federal Rule of Civil Procedure 12(b)(1)

The Court will treat defendants’ Rooker-Feldman and Eleventh Amendment arguments as motions to dismiss for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1). Plaintiff has the burden of establishing subject matter jurisdiction. Carpet Group Int’l v. Oriental Rug Imp. Ass’n, 227 F.3d 62, 69 (3d Cir. 2000) (citing Mortensen v. First Fed. Sav. & Loan Ass’n, 549 F.2d 884, 891 (3d Cir. 1977)). The Supreme Court has held that “[w]ithout jurisdiction the court cannot proceed at all in any cause.” Steel Co. v. Citizens for a Better Env’t, 523 U.S. 83, 94-95 (1998) (internal quotations omitted).

B. Federal Rule of Civil Procedure 12(b)(6)

Defendants remaining arguments implicate Federal Rule of Civil Procedure 12(b)(6). In considering a motion to dismiss under Rule 12(b)(6), a court must take all well-pleaded facts in

the complaint as true and view them in the light most favorable to the plaintiff. See Jenkins v. McKeithen, 395 U.S. 411, 421 (1969). Therefore, the facts alleged in plaintiff’s Complaint are accepted as true in deciding this motion. The Court, however, is mindful that *pro se* plaintiffs are not held to as high a pleading standard as other litigants and *pro se* pleadings must be construed liberally. Haines v. Kerner, 404 U.S. 519, 520 (1972).

Under Rule 12(b)(6), a complaint should be dismissed if “it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.” Hishon v. King & Spalding, 467 U.S. 69, 73 (1984).

IV. DISCUSSION

A. Motion to Dismiss filed by the PDCYF and Defendants Anne Shenberger, Sylvia Wright, and John Petulla

The Eleventh Amendment bars a suit against a state in federal court regardless of the relief sought by a plaintiff.⁶ See Seminole Tribe of Florida v. Florida, 517 U.S. 44, 58 (1996). Eleventh Amendment immunity extends to entities that are arms of the state – i.e., those departments or agencies “having no existence apart from the state.” Laskaris v. Thornburgh, 661 F.2d 23, 25 (3d Cir. 1981). This immunity, however, may be abrogated by Congress if it has “unequivocally expresse[d] its intent to” do so and acted “pursuant to a valid exercise of power.” Seminole Tribe, 517 U.S. at 55 (quoting Green v. Mansour, 474 U.S. 64, 68 (1985)). States may

⁶The Court notes that the Eleventh Amendment does not preclude suits against state officers for prospective injunctive relief against state officials for ongoing violations of federal law. See Ex parte Young, 209 U.S. 123 (1908). However, plaintiff does not request injunctive relief from the PDCYF or Commonwealth defendants.

also waive their immunity and consent to be sued. See Alden v. Maine, 527 U.S. 706, 755 (1999).

The PDCYF, a division of the Pennsylvania Department of Public Welfare, does not have an existence apart from the state and is thus entitled to Eleventh Amendment protection. See 71 PA. STAT. ANN. § 61; Nelson v. Pennsylvania Dept. of Public Welfare, 244 F. Supp. 2d 382, 390 (E.D. Pa. 2002) (“state agencies like the DPW are entitled to Eleventh Amendment immunity”); Doman v. Pennsylvania Dept. of Public Welfare, 2000 WL 283848, at *2 (E.D. Pa. Mar. 16, 2000). Moreover, Pennsylvania, by statute, has explicitly reserved its right to immunity from suit in federal court. See 42 PA. CONS. STAT. ANN. § 8521(b).⁷

Plaintiff’s claims against Shenberger, Wright, and Petulla in their official capacities are treated as claims against the state itself and therefore are also barred by the Eleventh Amendment. Christy v. Pennsylvania Turnpike Comm’n, 54 F.3d 1140, 1143 (3d Cir. 1995) (suit against individual defendants in their official capacities is the same as a suit against state agency); Arizonans for Official English v. Ariz., 520 U.S. 43, 68-69 (1997) (Eleventh Amendment bars § 1983 actions against a state).

Plaintiff asserted only official capacity claims against defendants Anne Shenberger, Sylvia Wright, and John Petulla of PDCYF. For the foregoing reasons, all such claims and the claims against PDCYF are dismissed.

⁷ That section provides: “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. CONS. STAT. ANN. § 8521(b).

B. Motion to Dismiss filed by the Philadelphia DHS and Defendants Trevor Hanniford, Maria Davila, Elizabeth Stein, Helene Dow, Murray Sklar, Patrick Mullen, and Alba Martinez

1. Claims against the Philadelphia DHS

All claims brought against the DHS are dismissed on the ground that the DHS is not a separate legal entity, and as such, cannot be sued under § 1983. See 53 P.S. § 16257; Burton v. City of Philadelphia, 121 F. Supp. 2d 810, 812 (E.D. Pa. 2000) (claims against DHS dismissed because DHS has no independent corporate existence from the City of Philadelphia).

2. Claims against DHS Defendants

a. *Plaintiff's Official Capacity Claims*

Plaintiff's claims against Hanniford, Davila, Stein, Dow, Sklar, Mullen, and Martinez in their official capacities are barred by the Eleventh Amendment. See Christy, 54 F.3d at 1143; Arizonans for Official English, 520 U.S. at 68-69.

b. *Rooker-Feldman Doctrine*

With respect to plaintiff's claims against DHS defendants in their individual capacities, DHS defendants argue that this Court lacks subject matter jurisdiction under the Rooker-Feldman doctrine. 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), *cert. granted* (U.S. Oct. 12, 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 (3d Cir. 2004). "A claim is inextricably intertwined with the state court adjudication when federal relief can only be predicated upon a conviction that the state court was wrong." Marran v. Marran, 376 F.3d 143, 150 (3d Cir. 2004) (citations omitted).

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.

To the extent that plaintiff seeks to modify the result of the state dependency proceedings, plaintiff's claims are barred under Rooker-Feldman. The Court finds that plaintiff's claims in Counts I, II, III, IV, V, and VII are inextricably intertwined with her state court dependency proceedings in the Philadelphia County Court of Common Pleas. If plaintiff prevailed on these claims, it would necessarily require a finding that the state court was wrong and "would render that judgment ineffectual." FOCUS v. Allegheny County Court of Common Pleas, 75 F.3d 834 (3d Cir. 1996); Marran, 376 F.3d at 154. Therefore, under the Rooker-Feldman doctrine, this Court lacks subject matter jurisdiction to adjudicate the claims contained in Counts I, II, III, IV, V, and VII.

Count VI of plaintiff's Complaint alleges that defendant Hanniford "knowingly falsified a report that Ms. Smith was guilty of child abuse, and [b]ecause of this fabrication, he caused her name to be put in the registry of child sexual abusers." (Compl. ¶ 167). In other words, plaintiff

contends that notwithstanding that fact that she was cleared of all charges of child abuse, Hanniford filed a false report that she was found guilty of sexually abusing her son (Id.).

The Third Circuit decision in Ernst v. Child & Youth Services of Chester County, 108 F.3d 486 (3d Cir. 1996), is instructive on the issue of whether Rooker-Feldman bars plaintiff's claims in Count VI. In Ernst, the plaintiff alleged that Child and Youth Services violated her right to substantive due process when they had improperly formulated and made recommendations to the state court regarding her granddaughter's dependency. Id. at 491. The Third Circuit held that:

“The Rooker-Feldman doctrine did not preclude the district court from deciding those claims, because a ruling that the defendants violated Ernst's rights to substantive due process by making recommendations to the state court out of malice or personal bias [during a dependency proceeding] would not have required the court to find that the state court judgments made on the basis of those recommendations were erroneous.”

Id. at 491-92. Similarly, in this case, a finding that Hanniford violated plaintiff's substantive due process rights by filing a false report that plaintiff was found guilty of sexually abusing her son would not require this Court to find that the state court judgment was erroneous. See FOCUS, 75 F.3d at 840. It appears that claim was never decided by the state court because adjudication in a dependency proceeding would not ordinarily involve the question whether Hanniford, a DHS caseworker, filed a false report. See Ernst, 108 F.3d at 492.⁸ Because plaintiff's allegations against Hanniford do not “involve[] the invalidation of any conclusion or judgment reached by the state court,” the Court concludes that Rooker-Feldman is not implicated with respect to Count VI. See id.

⁸In the event there is evidence that this claim was adjudicated in state court, defendants will be granted an opportunity to present such evidence to the Court.

c. *Failure to State a Claim*

Defendants also argue that plaintiff's claims fail as a matter of law because plaintiff cannot establish that defendants violated a constitutionally protected right. See Nicini v. Morra, 212 F.3d 798, 806 (3d Cir. 2000) (plaintiff must demonstrate a violation of a right protected by the Constitution to establish a claim under 42 U.S.C. § 1983).

The Court addresses this argument only with respect to Count VI, as the remaining counts are barred by Rooker-Feldmen. Count VI alleges a claim of intentional infliction of emotional distress against Bromberg, Hall, Martinez, and Hanniford.⁹

The Court concludes that Bromberg and Hall are not parties to this action. Plaintiff has failed to name Bromberg and Hall in the caption of the Complaint and has not attempted to effect of service of process on them. Accordingly, all claims against Bromberg and Hall are dismissed.

Plaintiff's only claim against Martinez in Count VI is failure to exercise control over her employees. This allegation, viewed in the light most favorable to the plaintiff, fails to "establish that a person, acting under the color of state law, deprived [her] of a constitutional right." Everett v. Gould, 94 Fed. Appx. 954, 955 (3d Cir. 2004). Therefore, plaintiff's claim against Martinez in Count VI is dismissed.

With respect to plaintiff's claims against Hanniford, reading plaintiff's Complaint liberally, the Court will construe Count VI, which states a claim for intentional infliction of emotional distress, as also alleging a violation of plaintiff's Fourteenth Amendment right to substantive due process arising out of the allegations that Hanniford filed a false report stating that plaintiff was found guilty of sexually abusing her son.

⁹ The Court notes that Count VI also includes claims against Holtzman. These claims were previously dismissed as legally frivolous by Order dated August 23, 2004.

Parents have a fundamental liberty interest in the care, custody and management of their children. Santosky v. Kramer, 455 U.S. 745, 753 (1982); Miller v. City of Philadelphia, 174 F.3d 368, 347 (3d Cir. 1999). However, the right to familial integrity is not absolute and does not include a right to remain free from child abuse investigations. Croft v. Westmoreland County Children and Youth Servs., 103 F.3d 1123, 1125 (3d Cir. 1997). In order to justify the removal of a child from his parent, the state must have evidence giving rise to a reasonable, articulable suspicion that a child has been abused or is in imminent danger of abuse. Id. at 1126. “Absent such reasonable grounds, governmental intrusions of this type are arbitrary abuses of power.” Id.

"The touchstone of due process is the protection of the individual against arbitrary action of government." Miller, 174 F.3d at 375 (quoting Wolff v. McDonnell, 418 U.S. 539, 558 (1974)). In Miller, the Third Circuit held that when abusive government action is alleged, “only the most egregious official conduct can be said to be arbitrary in the constitutional sense.” Id. at 375 (quoting County of Sacramento v. Lewis, 523 U.S. 833, 846 (1998)). Applying this standard, an official will be liable if his or her actions are “so ill-conceived or malicious that it ‘shocks the conscience.’” Id.

Viewing the facts alleged in the light most favorable to the plaintiff, Hanniford filed a false report stating that plaintiff was found guilty of sexually abusing her son. The Court concludes that Hanniford’s conduct, accepted as true for the purposes of deciding this motion, without a doubt, “shocks the conscience.” See Croft, 103 F.3d at 1123 (actions of social worker “shocked the conscience” and, therefore, violated plaintiff’s substantive due process rights where social worker ordered father out of home based on an anonymous tip regarding possible abuse);

see also Miller 174 F.3d at 376.¹⁰ Accordingly, Count VI states a viable substantive due process claim against Hanniford.

In light of the Court's determination that plaintiff's Complaint alleges a constitutional violation against Hanniford, the Court will exercise supplemental jurisdiction over plaintiff's state law tort claim against Hanniford for intentional infliction of emotional distress. 28 U.S.C. § 1367. Tort liability of employees of the City of Philadelphia is governed by the Political Subdivision Tort Claims Act (the "Act"). 42 Pa. Cons. Stat. Ann. §§ 8541-8564. The Act does not shield an employee from liability where his conduct constitutes a "crime, actual fraud, actual malice, or willful misconduct." See 42 PA. CONS. STAT. § 8550; Kuzel v. Krause, 658 A.2d 856 (Pa. Commw. Ct. 1995). Accepting plaintiff's allegations against Hanniford as true, Hanniford is not immune from liability. Accordingly, plaintiff's state law claim for intentional infliction of emotional distress against Hanniford will be permitted to proceed.

V. CONCLUSION

For the foregoing reasons, the Motion to Dismiss filed by the PDCYF and defendants Anne Shenberger, Sylvia Wright, and John Petulla is granted and all plaintiff's claims against the

¹⁰ The Court rejects defendants' argument that defendants are entitled to absolute immunity for their actions. Absolute immunity protects child social workers involved in dependency proceedings "for their actions on behalf of the state in preparing for, initiating, and prosecuting dependency proceedings." See Ernst v. Child & Youth Svcs., 108 F.3d at 494-95. In Ernst, the Third Circuit reasoned that "the functions performed by [child social workers] in dependency proceedings are closely analogous to the functions performed by prosecutors in criminal proceedings." Id. However, the court held that absolute immunity does not extend to investigative or administrative acts. Id. at 497 n.7; Miller, 174 F.3d at 376 n.6. In this case, the Court is "unwilling to accord absolute immunity" to Hanniford's "actions taken outside the context of a judicial proceeding." Id. Consequently, absolute immunity does not protect Hanniford from liability for his alleged conduct in filing a false report stating that plaintiff was found guilty of sexually abusing her son.

PDCYF and defendants Shenberger, Wright, and Petulla are dismissed. The Motion to Dismiss filed by the Philadelphia DHS and defendants Trevor Hanniford, Maria Davila, Elizabeth Stein, Helene Dow, Murray Sklar, Patrick Mullen, and Alba Martinez is granted with respect to Counts I, II, III, IV, V, VII, and the claims against Alba Martinez in Count VI. Plaintiff is not granted leave to amend her Complaint on the ground that, based on what plaintiff alleges in the Complaint, any amendment would be futile. See In re NAHC, Inc. Sec. Litig., 306 F.3d 1314, 1332 (3d Cir. 2002) (plaintiff should not be granted leave to amend if amendment would be futile).

Defendants Motion to Dismiss plaintiff's claims in Count VI against Trevor Hanniford is denied. This claim against Hanniford is the only remaining claim.

An appropriate Order follows.

- (a) The Motion to Dismiss is **GRANTED WITHOUT LEAVE TO AMEND** as to all claims against the Philadelphia Department of Human Services and Maria Davila, Elizabeth Stein, Helene Dow, Murray Sklar, Patrick Mullen, and Alba Martinez and the Complaint is **DISMISSED WITH PREJUDICE** as to those defendants; and
- (b) The Motion to Dismiss plaintiff's claims in Count VI is **DENIED** as to defendant Trevor Hanniford and those claims are **ALLOWED TO PROCEED**.

2. The Motion to Dismiss filed by the Pennsylvania Division of Children, Youth, and Families, and Defendants Anne Shenberger, Sylvia Wright, and John Petulla (Doc. No. 9) is **GRANTED WITHOUT LEAVE TO AMEND** and the Complaint is **DISMISSED WITH PREJUDICE** as to those defendants.

IT IS FURTHER ORDERED that the caption of the case is **AMENDED** so as to **REMOVE** the Pennsylvania Division of Children, Youth, and Families, Anne Shenberger, Sylvia Wright, John Petulla, the Pennsylvania Department of Human Services, Maria Davila, Elizabeth Stein, Helene Dow, Murray Sklar, Patrick Mullen, Alba Martinez, David Bromberg, Robert Hall, Rachel Holtzman, Robert Rebstock, and Flora Wolf as defendants, leaving Trevor Hanniford as the only defendant.

IT IS FURTHER ORDERED that the caption of the case is **AMENDED** so as to **REMOVE** Emmitt Smith, a minor, as a plaintiff.

IT IS FURTHER ORDERED that a Preliminary Pretrial Conference will be scheduled in due course.

BY THE COURT:

JAN E. DuBOIS, J.