

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

JENNIFER STONE,
 Plaintiff,

v.

HOLLY BRENNAN, et al.,
 Defendants.

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CIVIL NO. 06-CV-468

MEMORANDUM OPINION & ORDER

RUFE, J.

April 19, 2007

Presently before the Court in this civil-rights action is Defendants’ Motion for Summary Judgment, which was filed on March 1, 2007. Plaintiff, who is litigating this action *pro se*, has failed to respond to the Motion in any manner, even though the Court specifically ordered her to do so by Order dated March 2, 2007. For the reasons that follow, Defendants’ Motion will be granted and Plaintiff’s claims will be dismissed.

I. FACTUAL BACKGROUND

Plaintiff Jennifer Stone is the mother of three minor children: K.A.W.S., whose father is Craig Miller; J.P., whose father is Mark Petro; and K.S., whose father is Michael Bowman.¹ During the time period directly relevant to this action, K.S. was not living in Plaintiff’s home.²

Sometime in 2003, Plaintiff began a romantic relationship with Craig Miller. At the outset of their relationship, Miller informed Plaintiff that he had previously pleaded guilty to a

¹ To protect the identities of Plaintiff’s minor children, the Court will use their initials to identify them throughout this Memorandum Opinion.

² See Defs.’ Supp. Filing, Stone Dep. at 73, 94 [Ex. A], Feb. 16, 2007 [hereinafter Stone Dep.] Apparently, K.S. was spending her summer vacation in Florida with her paternal grandparents and, thereafter, lived with her biological father. See *id.*

corruption-of-minors charge stemming from allegations that he had sexually assaulted his stepdaughter.³ Because the terms of Miller’s probation explicitly prohibited his having any unsupervised contact with minor children, Plaintiff was required to meet with Miller’s probation officer(s) several times to ensure that she understood the terms of his probation.⁴ Plaintiff was specifically told that Miller was prohibited from spending the night at her home, living in the home with her minor children, or caring for the children alone.⁵

Sometime in 2004, Miller impregnated Plaintiff. Their son, K.A.W.S., was born on March 17, 2005. The next day, the Lancaster County Children and Youth Social Service Agency (“LCC&Y”) began an investigation of Plaintiff because she had tested positive for marijuana at the time of K.A.W.S.’s birth.⁶ She had previously tested positive for marijuana twice during her pregnancy with K.A.W.S.⁷ LCC&Y caseworker Holly Brennan was assigned to investigate these allegations of drug use. While Brennan was conducting the investigation, Plaintiff informed Brennan that Miller was living in her home and helping to support her financially.⁸ Plaintiff also informed Brennan of Miller’s guilty plea and the terms of his ensuing probation.⁹ As a result, Brennan conducted a background check of Miller. After confirming the conditions of Miller’s probation, Brennan reminded Plaintiff that Miller was prohibited from having any unsupervised

³ See Stone Dep. at 26–31.

⁴ See *id.* at 28–29, 30–31.

⁵ See *id.* at 28.

⁶ Defs.’ Supp. Filing, Pet. for Custody [Ex. A], ¶ A [hereinafter Pet. for Custody].

⁷ *Id.*

⁸ See *id.*

⁹ See *id.* ¶ B.

contact with Plaintiff's children.¹⁰ Plaintiff advised Brennan that Miller would not have any such contact.¹¹ At that point, LCC&Y closed its investigation with the understanding that Plaintiff would not permit Miller to reside in her home or have unsupervised contact with her children.¹²

On June 26, 2005, Plaintiff noticed bruises on her son J.P.'s back after he returned from a visit with his father.¹³ Plaintiff questioned her son about the bruises, then reported the alleged abuse to the East Earl Township Police Department, who sent an officer to her home to photograph the bruises.¹⁴ After photographing the bruises, the officer reported the incident to LCC&Y.¹⁵

On June 28, 2005, a representative from LCC&Y called Plaintiff to ask if caseworkers could come to her home to interview J.P. about the allegations of abuse.¹⁶ Plaintiff agreed to permit such a visit, and Defendants Brennan and Steven Wiker went to Plaintiff's home later that day.¹⁷ Both Plaintiff and Miller were at the home when Brennan and Wiker arrived.¹⁸ They conducted the interview in J.P.'s and K.A.W.S.'s bedroom, outside of the presence of Plaintiff and Miller.¹⁹ During the interview, J.P. told the caseworkers that Miller was living in Plaintiff's home with the

¹⁰ See id.

¹¹ Id.

¹² Id.

¹³ Compl. at 2, ¶ J.

¹⁴ Id.

¹⁵ Id.

¹⁶ Id. at 2, ¶ K.

¹⁷ Id.

¹⁸ Stone Dep. at 52–53.

¹⁹ Compl. at 2, ¶ K.

children.²⁰ While at the home, Brennan also observed a variety of men's clothing in Plaintiff's bedroom;²¹ when asked about the clothing, Plaintiff claimed that it had been given to her by a friend of her family.²² Brennan also found a pair of dirty adult male underwear, which Plaintiff admitted belonged to Miller.²³ Plaintiff's daughter, K.S., had previously informed Brennan that Miller was living at the home.²⁴

The next day, June 29, 2005, Brennan returned to Plaintiff's residence where she found Plaintiff, Miller, J.P., and K.A.W.S.²⁵ Based on her belief that Miller was living at the residence with the children and that he posed a potential threat to the children's well-being, Brennan instructed Stone to make alternate living arrangements for the children, or LCC&Y would be forced to petition for custody.²⁶ Consequently, Plaintiff made alternate living arrangements for K.A.W.S. and J.P. K.A.W.S. went to stay with Plaintiff's friends, Dennis and Rose Johnson, who lived nearby.²⁷ J.P. went to stay with Plaintiff's mother, Lynne Crimaldi.²⁸

On July 26, 2005, LCC&Y informed Plaintiff that it believed that ongoing services

²⁰ Pet. for Custody, ¶ C.

²¹ See Stone Dep. at 64–66.

²² See id. at 65–66.

²³ Id. at 79–80.

²⁴ Id. at 86–87; Pet. for Custody, ¶ E.

²⁵ See Stone Dep. at 72–74.

²⁶ See id. at 76. Plaintiff acknowledged during her deposition that Brennan had told her to make alternate living arrangements for her children or “she [Brennan] was going to see to it that a petition for custody was filed.” See id. at 76:6–10.

²⁷ Id. at 76–77.

²⁸ Id. at 77–78.

were necessary to improve Plaintiff's ability to provide for her children in a number of areas, including supervision and protection from physical, sexual, or emotional harm.²⁹ In the letter informing her of this decision, LCC&Y advised Plaintiff that she could appeal the decision within 45 days.³⁰

Soon thereafter, on August 2, 2005, caseworker Brennan filed a petition seeking custody of J.P. and K.A.W.S. By court order, a hearing on the petition was set for August 12, 2005, Plaintiff was ordered to appear with the two juveniles at the hearing, an attorney was appointed to serve as guardian *ad litem* to the boys, and an attorney was appointed to represent Plaintiff at the proceeding.³¹

On August 12, 2005, the Lancaster County Court of Common Pleas, Juvenile Division, considered the petitions to remove J.P. and K.A.W.S. from Plaintiff's custody.³² Plaintiff was present and represented by her appointed counsel, Linda Gerencser, Esq.³³ Craig Miller did not appear at the hearing.³⁴ After the hearing, the court determined the following:

- (1) that J.P. should be entrusted to the care of his father;³⁵
- (2) that K.A.W.S. should be considered a dependent child and continued in the

²⁹ Compl. at Ex. B.

³⁰ Id.

³¹ Pet. for Custody, Attachment.

³² Defs.' Supp. Filing, Order dated Aug. 25, 2005 [Ex. C], at 1.

³³ See id. at 4 ("Parties present: Jennifer Stone").

³⁴ Id. at 2, 3.

³⁵ Defs.' Mem. in Support of Mot. to Set Aside Default [Doc. # 9], at Ex. B, Order dated Aug. 25, 2005.

care, custody, and control of LCC&Y;³⁶

- (3) that the children could not be considered abused because LCC&Y had failed to establish by clear and convincing evidence that either child was actually subjected to physical or sexual abuse;³⁷ and
- (4) that the Child Permanency Plan, with a goal of reunifying Plaintiff with K.A.W.S. in the future, was approved.³⁸

These determinations were included in court orders dated August 25, 2005, which were mailed to Plaintiff and her appointed counsel.

Five months later, Plaintiff filed the instant action in this Court. In her Complaint, she names a multitude of defendants, who, she claims, have violated her constitutional due-process rights by removing her children without a hearing or court order.³⁹ She claims that when Brennan asked her to make alternate living arrangements for J.P. and K.A.W.S., her children were removed from her custody illegally.⁴⁰ Specifically, she claims that she was not given a hearing within 72 hours of the date she placed her children with friends and relatives, June 29, 2005.⁴¹ She demands injunctive relief, as well as compensatory and punitive damages of \$5,000,000. While Plaintiff does not specifically state the statutory authority under which she brings her claims, the Court construes

³⁶ Id. at 1.

³⁷ See id. at 1–2.

³⁸ Id. at 2–3.

³⁹ In addition to LCC&Y and the caseworkers that are alleged to have acted directly in this matter, Brennan and Wiker, Plaintiff names Dale Latimer, Karen Rice, Shea Kinsey, Shea Newman, and Reed Reynolds. Plaintiff includes no allegations of any action taken by any of these named individual defendants.

⁴⁰ Compl. at 1, ¶¶ 1–3.

⁴¹ Id. at 1, ¶ 3.

her allegations as claims brought under 42 U.S.C. § 1983.⁴²

After a period of discovery, Defendants filed a motion for summary judgment under Federal Rule of Civil Procedure 56(b). The motion argues that summary judgment for Defendants is appropriate because Plaintiff's due-process rights were not violated, the individual defendants are entitled to qualified immunity, and no claims have been made out against Defendants Reynolds, Latimer, Rice, Kinsey,⁴³ or LCC&Y. Plaintiff has failed to respond to the motion for summary judgment, in spite of the Court's Order directly requiring her to do so.⁴⁴ In light of Plaintiff's failure to respond in accordance with the Court's policies and procedures for Rule 56(b) motions, Defendants have filed supplemental exhibits to support their motion. The motion is now ready for review.

II. STANDARD OF REVIEW

Disposition upon motion for summary judgment is appropriate if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law."⁴⁵ Summary judgment should be entered against a party who, after adequate time for discovery, "fails to make a showing sufficient to establish the existence of an

⁴² The Court "must construe complaints of *pro se* litigants liberally." Smith v. Mensinger, 293 F.3d 641, 647 (3d Cir. 2003).

⁴³ While Plaintiff's Complaint technically names "Shea Newman" as an additional defendant, it appears that this is nothing more than an alleged alias for Defendant Shea Kinsey. For the purposes of the Court's disposition of this case, it is assumed that "Shea Newman" and "Shea Kinsey" are one and the same. Therefore, the Court will refer only to Defendant Kinsey in its discussion of Plaintiff's claims.

⁴⁴ Order dated Mar. 2, 2007 [Doc. # 23].

⁴⁵ Fed. R. Civ. P. 56(c).

element essential to that party's case, and on which that party will bear the burden of proof at trial."⁴⁶ To survive a summary-judgment motion, the nonmoving party is required "to go beyond the pleadings and by her own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'"⁴⁷ If the nonmoving party fails to respond to a motion for summary judgment, summary judgment should be granted "if appropriate."⁴⁸ As the Third Circuit has held, "[w]here the moving party does not have the burden of proof on the relevant issues, this means that the district court must determine that the deficiencies in the opponent's evidence designated in or in connection with the motion entitle the moving party to judgment as a matter of law."⁴⁹

III. DISCUSSION

A. Claims Against Defendant Brennan

While Plaintiff's Complaint is quite vague in its allegations, it appears that her claims are directed primarily against Defendant Brennan, the caseworker who requested that she make alternate living arrangements for her children on June 29, 2005.⁵⁰ The Court interprets Plaintiff's

⁴⁶ Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

⁴⁷ Id. at 324 (quoting Fed. R. Civ. P. 56(e)); see also Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986).

⁴⁸ Fed. R. Civ. P. 56(e).

⁴⁹ Anchorage Assocs. v. V.I. Bd. of Tax Review, 922 F.2d 168, 175 (3d Cir. 1990) (citing Celotex, 477 U.S. 317).

⁵⁰ The Court has expended significant effort in trying to comprehend and articulate Plaintiff's actual claims in the absence of detailed allegations or a response to the motion for summary judgment. The Court interprets Plaintiff's claims to be founded primarily on Brennan's request and the failure to hold a hearing within 72 hours of Plaintiff's compliance with the request. The Plaintiff did not take the opportunity presented by the motion for summary judgment to more appropriately articulate her claims, or provide evidence in support of those claims. Thus, the Court is forced to make its best effort to interpret the Complaint, and then render a decision based on that interpretation.

Complaint to assert that Brennan violated her Fourteenth Amendment substantive- and procedural-due-process rights by “removing” her children from her custody on June 29, 2005, without a hearing or court order.⁵¹ In their motion for summary judgment, Defendants argue that Plaintiff’s due-process rights were not violated by anyone, including Brennan. Alternatively, Defendants argue that Brennan is immune from liability under the doctrine of qualified immunity.

1. Substantive Due Process

Parents have a constitutionally protected liberty interest in the custody, care, and management of their children.⁵² This interest is not absolute, however: it is “limited by the compelling governmental interest in the protection of children—particularly where the children need to be protected from their own parents.”⁵³ Specifically, there is no due-process right to remain free from child-abuse investigations.⁵⁴

Under the Due Process Clause of the Fourteenth Amendment, the government may interfere with familial relationships only if it “adheres to the requirements of procedural and substantive due process.”⁵⁵ The substantive-due-process principles of the Fourteenth Amendment are intended to protect against arbitrary governmental action.⁵⁶ Consequently, if the governmental actions affecting a plaintiff’s right to familial integrity are undertaken unreasonably or arbitrarily,

⁵¹ See Compl. at 1, ¶¶ 1–3.

⁵² Lehr v. Robertson, 463 U.S. 248, 258 (1983).

⁵³ Croft v. Westmoreland County Children & Youth Servs., 103 F.3d 1123, 1125 (3d Cir. 1997).

⁵⁴ Id.

⁵⁵ Id.

⁵⁶ Miller v. City of Philadelphia, 174 F.3d 368, 374 (3d Cir. 1999).

then the plaintiff's Fourteenth Amendment substantive-due-process rights may be implicated.⁵⁷

Conversely, if the government acts reasonably and not arbitrarily, then the plaintiff's substantive-due-process rights are not violated.⁵⁸

Moreover, "only the most egregious official conduct can be said to be arbitrary in the constitutional sense."⁵⁹ In order to establish a substantive-due-process claim against a social worker acting to separate parent and child, a plaintiff must establish that the caseworker acted with a "level of gross negligence or arbitrariness that indeed 'shocks the conscience.'"⁶⁰ If the government acts on the basis of "some reasonable and articulable evidence giving rise to a reasonable suspicion that a child has been abused or is in imminent danger of abuse," the state has an interest in protecting the child.⁶¹

In this case, after considering the meager allegations in Plaintiff's Complaint, and in light of the total lack of response to the motion for summary judgment, the Court cannot find that Plaintiff has effectively alleged or sufficiently supported a violation of her substantive-due-process rights.⁶² As noted above, it is well settled that a parent's custodial rights are not absolute or unqualified. When presented with reasonably convincing evidence that a child faces the danger of

⁵⁷ See id.

⁵⁸ See id.

⁵⁹ Id. at 375.

⁶⁰ Id. at 375–76.

⁶¹ Croft, 103 F.3d at 1126.

⁶² As the United States Supreme Court has instructed, and the Third Circuit has confirmed, the Court must first determine whether a constitutional violation has been alleged before making other determinations, such as whether qualified immunity is available. See Miller, 174 F.3d at 374 (citing Siegert v. Gilley, 500 U.S. 226, 232 (1991)).

physical or sexual abuse, the government's interest in protecting the child outweighs a parent's rights, and the parent's rights may be infringed. Here, Brennan did not act arbitrarily by attempting to separate J.P. and K.A.W.S. from Miller, a convicted sexual predator, who was living in Plaintiff's home and likely violating his probation by having unsupervised contact with the children.⁶³ Brennan acted on reasonable and articulable evidence giving rise to a reasonable suspicion that the children were in imminent danger of abuse: (1) it was undisputed that Miller had previously pleaded guilty to sexually abusing his step-daughter and that a condition of his probation was not to have unsupervised contact with minor children; (2) Plaintiff's children had informed LCC&Y caseworkers that Miller was living in Plaintiff's home; and (3) there was objective evidence that Miller was living in the home, including Miller's presence at Plaintiff's home whenever Brennan visited the home, the presence of various adult male clothing in Plaintiff's bedroom, and the presence of previously worn male underwear.

Based on this evidence, Brennan appropriately sought to separate the children from Miller since his presence in the home subjected the children to potential harm.⁶⁴ The decision to request alternate living arrangements was based on Brennan's reasonable suspicion that Miller would abuse the children should he be left with them without supervision. Furthermore, Plaintiff has offered no evidence or argument to rebut the evidence offered by Defendants establishing that they acted reasonably and not arbitrarily by asking Plaintiff to make alternate living arrangements for the children on June 29, 2005. Accordingly, the uncontested facts demonstrate that Brennan acted based

⁶³ See Defs.' Supp. Filing, Order dated Aug. 25, 2005 [Ex. C], at 1-2 ("Mr. Miller probably had unsupervised contact with one or both of the children . . .").

⁶⁴ Even if Plaintiff were somehow able to prove that Miller, in fact, was *not* living in the home, the evidence available to Brennan in June 2005 indicating that Miller *was* living with Plaintiff was sufficient to form a reasonable basis for Brennan's actions.

on a reasonable suspicion that Miller's presence in the home posed a potential danger to the children.

Moreover, given the substantial evidence that Miller was almost certainly living in Plaintiff's home, it is clear that Brennan's attempt to protect the children—by requesting that Plaintiff make alternate living arrangements for the children—does not constitute gross negligence that “shocks the conscience.” Even if Plaintiff were able to prove that Brennan acted somewhat unreasonably, she could not establish that Brennan's conduct “shocks the conscience.” Regardless, it is clear that Brennan acted based on a reasonable suspicion founded on reasonably reliable evidence that Miller was living in Plaintiff's home. Her request that Plaintiff make living arrangements for the children that did not involve cohabitation with Miller was reasonable under the circumstances, and therefore Plaintiff's substantive-due-process rights were not violated in this case. Consequently, the Court finds that Plaintiff has not adequately asserted or demonstrated an ability to establish a violation of her Fourteenth Amendment substantive-due-process rights. Accordingly, Defendant Brennan is entitled to judgment as a matter of law on this claim.

2. Procedural Due Process

When the government acts to interfere with a parent's substantive-due-process right to the custody, care, and management of his or her children, it must do so in accord with the dictates of procedural due process.⁶⁵ In Pennsylvania, a statute establishes the procedure required when the government assumes protective custody over a child.⁶⁶ While the Third Circuit has never directly addressed the constitutional adequacy of this procedure, it is well settled in this District that the Commonwealth of Pennsylvania's statutory procedure satisfies the procedural-due-process

⁶⁵ See Croft, 103 F.3d at 1125.

⁶⁶ 23 Pa. Cons. Stat. Ann. § 6315 (West 2001); 42 Pa. Cons. Stat. Ann. § 6324 (West 2000).

requirements of the Fourteenth Amendment.⁶⁷

Under the Pennsylvania Child Protective Services Law, a child may be taken into protective custody pursuant to a court order.⁶⁸ A child also may be taken into protective custody without a court order, but the child shall not remain in protective custody longer than 72 hours without an informal hearing to determine whether the protective custody should be continued.⁶⁹ This “72 hour” rule requires a hearing only if the Commonwealth has taken “actual physical custody over a child.”⁷⁰ If the government does not take actual physical custody over a child, but rather the child is living with a relative or friend of the family, a hearing is not required.⁷¹

In this case, Plaintiff claims that her procedural-due-process rights were violated when Brennan requested that she make alternate living arrangements for her children or LCC&Y would file a petition for custody. At the time Brennan made this request and after Plaintiff complied with the request, however, the children were not in LCC&Y’s protective custody. J.P. stayed with his maternal grandmother, and K.A.W.S. stayed with Plaintiff’s friends. Brennan did not remove the children from Plaintiff’s home or take protective custody over them; if Plaintiff chose not to

⁶⁷ See, e.g., Miller v. City of Philadelphia, 954 F. Supp. 1056, 1061 (E.D. Pa. 1997); Callahan v. Lancaster-Lebanon Intermediate Unit 13, 880 F. Supp. 319, 333 (E.D. Pa. 1994); Fanning v. Montgomery County Children & Youth Servs., 702 F. Supp. 1184, 1189 (E.D. Pa. 1988); Roman v. Appleby, 558 F. Supp. 449, 460–61 (E.D. Pa. 1983).

⁶⁸ 23 Pa. Cons. Stat. Ann. § 6315(a) (West 2001) (citing to 42 Pa. Cons. Stat. Ann. § 6324).

⁶⁹ Id. § 6315(d).

⁷⁰ Brown v. Daniels, No. 03-CV-4242, 2006 WL 2060647, at *3 (E.D. Pa. June 15, 2006) (quoting Puricelli v. Houston, No. 99-CV-2982, 2000 WL 760522, at *11 (E.D. Pa. June 12, 2000)).

⁷¹ See id. (“The testimony in the Plaintiff’s case-in-chief clearly established that [the child] was living with his grandmother, and not in the custody of BCCYS or Defendant Daniels. Because [the child] was not in custody, Plaintiff was not entitled to a hearing and as a result, she could not establish a procedural due process violation.”); Puricelli, 2000 WL 760522, at *11 (holding that no hearing was required when child stayed with relatives and government never had physical custody over child).

comply with the request, the children would have been physically removed only after a petition for custody was filed and a court order obtained. Furthermore, Plaintiff always had the option to remove Miller from her home or to include herself in the alternate living arrangements, so that she and the children would not be separated. Brennan's request was intended only to promote a living situation for the children that did not include Miller; it was not an effort to assume protective custody over the children, and such custody was not obtained on June 29, 2005. Thus, Plaintiff's procedural-due-process rights were not violated when a hearing was not held immediately thereafter.

Judges of this Court have previously addressed similar situations and determined that the plaintiff parents' due-process rights were not violated because their children had not been taken into protective custody. In Puricelli v. Houston, while investigating allegations of abuse, a Bucks County Children and Youth Services ("BCCYS") caseworker told the allegedly abused child's mother that BCCYS would be forced to take her child into protective custody if she did not voluntarily remove the child from his stepfather's presence.⁷² As a result, the mother left her home with both of her children, and went to stay with her parents.⁷³ Later, she filed a § 1983 claim based on a violation of her procedural-due-process rights, arguing that the caseworker's ultimatum constituted removal without court approval or a subsequent hearing within 72 hours.⁷⁴ After considering this argument in response to the defendants' motion for summary judgment, the Court held that because the caseworkers did not take actual physical custody over the child, the plaintiff

⁷² 2000 WL 760522, at *1.

⁷³ Id.

⁷⁴ Id. at *3, *11.

was not entitled to a hearing, and her procedural-due-process rights were not violated.⁷⁵

In Brown v. Daniels, a child was removed from his home by his maternal aunt and taken to Berks County Children and Youth Services where he was interviewed and examined for bruises or other injuries, of which several were found.⁷⁶ The child was then taken to his maternal grandmother's home for his protection, and his parents were thereafter notified of his whereabouts by telephone message.⁷⁷ Several months later, the child's mother filed a lawsuit in which she claimed, among other things, that her procedural-due-process rights were violated when her child was removed from her home and placed with his maternal grandmother without a hearing.⁷⁸ After the mother presented her case-in-chief at trial, the Court granted a motion for a directed verdict made by the defendant caseworker.⁷⁹ The Court held that while the child was living with his grandmother, he was not in the protective custody of the municipal agency or the defendant caseworker.⁸⁰ Since he was not actually "in custody," the plaintiff was not entitled to a hearing and, therefore, could not establish a procedural-due-process violation.⁸¹

After considering the facts of the instant case, Plaintiff's bare-bones Complaint and complete failure to respond to the motion for summary judgment, and the previous decisions of this

⁷⁵ Id. at *11.

⁷⁶ 2006 WL 2060647, at *1.

⁷⁷ Id.

⁷⁸ Id. The complaint was actually filed by the mother and her husband, who was not a natural or adoptive parent of the child. Id. The husband was subsequently dismissed from the case because he lacked standing to bring the claims remaining for trial. Id. at *2 n.1.

⁷⁹ Id. at *3.

⁸⁰ Id.

⁸¹ Id.

Court when presented with factually similar scenarios, the Court finds that Brennan is entitled to judgment as a matter of law on Plaintiff's procedural-due-process claims. Plaintiff has presented no evidence demonstrating an ability to bear her burden of proving at trial that her due-process rights were violated by Defendant Brennan. As such, summary judgment is appropriate, and Plaintiff's procedural-due-process claims will be dismissed.⁸²

B. Claims Against LCC&Y

Additionally, Plaintiff has named LCC&Y as a Defendant, claiming that the agency's "sanctions, policies, and practices" have violated and continue to violate her civil rights. The Court assumes, therefore, that Plaintiff is attempting to assert a § 1983 claim against LCC&Y. Plaintiff has not, however, included allegations or provided any evidence concerning the policies and practices that she claims resulted in the violation of her rights.

A municipal agency's liability under § 1983 may not lie upon a theory of vicarious liability or *respondeat superior*.⁸³ A municipal agency "can only be liable when the alleged constitutional transgression implements or executes a policy, regulation or decision officially adopted by the governing body or informally adopted by custom."⁸⁴ Accordingly, a plaintiff asserting a § 1983 claim against a municipal agency must establish that the alleged violations of his

⁸² Additionally, the Court notes that Plaintiff's Complaint also may have attempted to assert that her due-process rights were violated because she was effectively prohibited from appealing LCC&Y's July 26, 2005 decision that Plaintiff should receive ongoing services. Because Plaintiff has not alleged any facts in support of this claim and has not presented any evidence that Brennan or LCC&Y took any action to prevent an appeal of that decision, the Court does not consider this claim in detail. It is sufficient for the Court to note that no evidence has been presented that any Defendant acted to prevent Plaintiff from appealing that decision.

⁸³ Natale v. Camden County Corr. Facility, 318 F.3d 575, 583-84 (3d Cir. 2003).

⁸⁴ Beck v. City of Pittsburgh, 89 F.3d 966, 971 (3d Cir. 1996) (citing Monell v. N.Y. City Dept. of Social Servs., 436 U.S. 658 (1978)); see also Natale, 318 F.3d at 583-84.

or her constitutional rights were caused by the agency's policies, practices, or customs.⁸⁵

In this case, Plaintiff has failed to identify the relevant policy, practice, or custom that she believes was implemented by Brennan when she allegedly violated Plaintiff's due-process rights. Moreover, Plaintiff has wholly failed to provide any evidence that the agency has adopted an unconstitutional policy or custom. Since LCC&Y cannot be held liable under a theory of *respondeat superior*, and because there is no evidence before the Court establishing any unconstitutional policy or custom on the part of the agency, Plaintiff's purported claims against the agency cannot survive summary judgment. Based on the facts and evidence before the Court at this time, LCC&Y is entitled to judgment as a matter of law and summary judgment in its favor is appropriate.

C. Claims Against Wiker, Latimer, Rice, Kinsey, or Reynolds

Finally, Plaintiff's Complaint names several other LCC&Y employees as Defendants without specifying their role in the alleged constitutional violations. The Complaint does nothing more than identify the positions at LCC&Y in which these additional Defendants serve: Defendant Steven Wiker is a senior caseworker who had some interaction with J.P.; Defendant Dale Latimer is a supervisor who oversees Defendant Brennan; Defendant Karen Rice is an intake supervisor who oversees Defendant Wiker; Defendant Shea Kinsey is a placement caseworker; and Defendant Reed Reynolds is a supervisor who oversees Defendant Kinsey. The Complaint does not identify or allege any actions by these Defendants that directly violated her due-process rights. Additionally, Plaintiff has failed to present any evidence in response to the motion for summary judgment establishing their involvement in any alleged wrongdoing. It is well-settled law that liability under § 1983 is "personal in nature and can only follow personal involvement in the alleged wrongful conduct, shown through

⁸⁵ See Natale, 318 F.3d at 583–84; Beck, 89 F.3d at 971.

specific allegations of personal direction.”⁸⁶ Due to the complete lack of allegations or evidence against these Defendants, it is clear that Plaintiff has neither stated nor supported any claims against them, and summary judgment in their favor is appropriate.⁸⁷

IV. CONCLUSION

It is always disheartening when the Court sees the familial bond between a parent and her children disrupted or disturbed. But when that disruption is reasonably necessary to protect the children and is effected in accordance with due process, the parent’s constitutional rights have not been violated, and this Court can provide no recourse. In this case, Defendants did not violate Plaintiff’s constitutional rights and, therefore, Plaintiff is not entitled to the relief requested. On the uncontested facts and evidence before this Court, Defendants are entitled to judgment as a matter of law, and summary judgment is appropriate.

An appropriate Order follows.

⁸⁶ Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir. 1988).

⁸⁷ The Court also notes that even if the Court were to infer § 1983 claims against the supervisors based on their supervisory duties, such claims would not survive Defendants’ summary-judgment motion. Liability under § 1983 may not lie upon a theory of vicarious liability or *respondeat superior*. Natale, 318 F.3d at 583–84. Supervisors Latimer, Rice, and Reynolds could not, therefore, be held liable based solely on their supervision of Brennan, Wiker, and Kinsey.

**IN THE UNITED STATES DISTRICT COURT
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CIVIL NO. 06-CV-468

ORDER

AND NOW, this 19th day of April 2007, upon consideration of Defendants' Motion for Summary Judgment [Doc. # 22], Defendants' Supplemental Filing in Support thereof [Doc. # 26], and Plaintiff's failure to respond to the Motion, and for the reasons stated in the foregoing Memorandum Opinion, it is hereby **ORDERED** that the Motion is **GRANTED**.

It is **FURTHER ORDERED** that Plaintiff's claims are **DISMISSED** without prejudice, and the case shall be **REMOVED** from the May trial pool.

It is **FURTHER ORDERED** that the Clerk of Court shall **CLOSE THIS CASE**.

It is so **ORDERED**.

BY THE COURT:

CYNTHIA M. RUFÉ, J.