

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

CRAIG HUSKINS : CIVIL ACTION
vs. :
COMMONWEALTH OF PENNSYLVANIA : NO. 97-3951

M E M O R A N D U M

DUBOIS, J.

JUNE 20, 1997

Raymond Huskins initiated this action against the Commonwealth of Pennsylvania as legal guardian of Craig Huskins who, according to the Complaint, has been diagnosed as having Pervasive Developmental Disorder (autism). The Complaint fails to set forth any facts relating to the liability of the Commonwealth of Pennsylvania.

With his Complaint, plaintiff filed a request for leave to proceed in forma pauperis. As it appears he is unable to pay the cost of commencing this action, leave to proceed in forma pauperis will be granted.

There is absolutely nothing in the Complaint which even suggests to the Court the basis for liability on the part of the Commonwealth of Pennsylvania. Moreover, the Commonwealth has sovereign immunity pursuant to the Eleventh Amendment to the Constitution of the United States and none of the exceptions to sovereign immunity set forth in 42 Pa. Cons. Stat. Ann. § 8522 appear to be applicable. Accordingly, the Complaint will be dismissed without prejudice under 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim upon which relief can be granted.

In dismissing the complaint under 28 U.S.C. § 1915 the Court decided that the screening process provided under § 1915(e)(2) is applicable both to non-prisoners and prisoner cases McGore v. Wrigglesworth, ___ F.3d ___, No. 97-1165, 1997 WL 309600, at *5-6 (6th Cir. June 11, 1997); see also Hughey V. Equal Employment Opportunity Commission, No. CIV.A.97-1469, 1997 WL 117012, at *2 (E.D. Pa. Mar. 12, 1997), Hughey v. Equal Employment Opportunity Commission, No. CIV.A.96-4695, 1996 WL 547396, at *2 (E.D. Pa. Sept. 25, 1996). This conclusion was based on the language of § 1915(e)(2), which does not differentiate between cases filed by non-prisoners and cases filed by prisoners. McGore, 1997 WL 309600, at *6. Under the statute, a complaint is subject to review the moment it is filed, and must be dismissed if it falls within the provisions of § 1915(e)(2) when filed. Id. This case will be dismissed under that provision because the Complaint fails to state a claim upon which relief can be granted.

An appropriate order follows.

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O R D E R

AND NOW, to wit, this 20th day of June, 1997, upon consideration of plaintiff's Complaint and Request to Proceed In Forma Pauperis, **IT IS ORDERED** that:

1. Leave to Proceed in forma pauperis is **GRANTED**;
2. In accordance with the accompanying Memorandum, this action is **DISMISSED WITHOUT PREJUDICE** pursuant to 28 U.S.C. § 1915 (e)(2)(B)(ii) for failure to state a claim upon which relief can be granted; and,
3. There is no probable cause for appeal.

BY THE COURT:

JAN E. DUBOIS, J.