

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

SANDRA MILLER, CORY MILLER, : CIVIL ACTION
THOMAS MILLER, DAKOTA BRADLEY, :
and DAVID L. DERATZIAN :
Plaintiffs :
v. :
CITY OF PHILADELPHIA, :
PHILADELPHIA DEPT. OF HUMAN :
SERVICES, OWEN SCHEER, :
CHILDREN'S HOSPITAL OF : NO. 96-3578
PHILADELPHIA, OFFICER HUTTON, :
and SGT. MARC CARROLL :
Defendants :
:

MEMORANDUM

Yohn, J.

August , 1997

Plaintiffs Sandra Miller, her children, and her attorney, David L. Deratzian, bring various federal and state claims against City of Philadelphia, Philadelphia Department of Human Services (DHS), social worker Owen Scheer, Children's Hospital of Philadelphia (CHOP), and hospital security officers Hudson¹ and Sgt. Marc Carroll. Plaintiffs' claims relate to DHS and Scheer's actions in obtaining custody of Miller's children through an ex-parte temporary child custody order. Miller regained custody of her children after a span of five days, which included a weekend and a two day hearing that resulted in the dismissal of DHS's petition for adjudication of dependency. Plaintiffs contend that Scheer had no probable cause and used

1. Defendant Sheldon L. Hudson is incorrectly named in the complaint as "Officer Hutton."

deceitful means to obtain the temporary custody order, and allege civil rights, conspiracy, malicious prosecution, bodily injury and intentional infliction of emotional distress claims. In addition, plaintiffs bring civil rights claims against City of Philadelphia and DHS independently based on their policy, custom and practice, and failure to adequately train their human services staff.

On January 29, 1997, the court issued an order dismissing plaintiffs' procedural due process claim. At the same time, the court upheld plaintiffs' § 1983 claims against City of Philadelphia, DHS and Scheer, based on the allegations in the complaint, concluding that Scheer has neither absolute nor qualified immunity with respect to plaintiffs' malicious prosecution claim and allegations that Scheer misrepresented information, induced others to falsify records and attempted to suborn perjury. However, the court concluded that Scheer does have absolute immunity against claims relating to his own testimony at the dependency hearing. Similarly, the court held that Scheer is not entitled to immunity under state law for his alleged bad faith conduct and that, regardless of whether Scheer had immunity, plaintiffs' complaint stated claims against City of Philadelphia and DHS because a municipality can be independently liable for the acts of its policymakers.

Presently, defendants Owen Scheer, City of Philadelphia, and DHS have moved for summary judgment on the following claims: plaintiffs' substantive due process and

malicious prosecution claims against Scheer and City of Philadelphia; all plaintiffs' claims against DHS; and plaintiffs' state law claims against Scheer and City of Philadelphia. For the reasons that follow, defendants' motion will be granted.

I. STANDARD OF REVIEW

Upon motion of any party, summary judgment is to be granted "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." Fed. R. Civ. P. 56(c). Where, as here, the nonmovant bears the burden of persuasion at trial, the moving party may meet its burden "by 'showing'--that is, pointing out to the district court--that there is an absence of evidence to support the nonmoving party's case." Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986).

When a court evaluates a motion for summary judgment, "the evidence of the nonmovant is to be believed." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). Furthermore, "in reviewing the record, the court must give the nonmoving party the benefit of all reasonable inferences." Sempier v. Johnson & Higgins, 45 F.3d 724, 727 (3rd Cir. 1995). However, the nonmovant "must present affirmative evidence to defeat a properly supported motion for summary judgment," Anderson v. Liberty Lobby Inc., 477 U.S. at 257, and "the mere existence of a scintilla of

evidence in support of the nonmovant's position will be insufficient." Id. at 252. Indeed, "where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial.'" Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

II. BACKGROUND

The following is an account of the facts as construed in a light most favorable to the nonmoving party, plaintiffs.

On May 17, 1994, Scheer received a report from Ms. Miles of the Tiny Tot day care center concerning her suspicion of possible child abuse of Corey and Thomas Miller.² Miles indicated that she was troubled by bruising on Corey's back.³

2. In the case caption and previous submissions, Corey is spelled Cory. Elsewhere, Thomas Miller is referred to in certain documents by his nickname, Parker.

3. Prior to May, 1994, the DHS had previously investigated reports of child abuse regarding Miller's children. In January, 1990, nine month old Corey Miller was admitted to Bryn Mawr hospital with severe facial injuries, allegedly caused by Schill, who hit Corey in the face with a military helmet. (Plain. Exhib. J at 1.)

In 1993, Scheer's predecessor, Robert Weiss, investigated three separate reports that Corey Miller had been abused. (Plain. Exhib. D.) Weiss did not initiate legal proceedings with respect to those reports.

At some point in the summer of 1993, the DHS assigned Scheer to the Miller case. On August 8, 1993, DHS again received reports of bruises on Corey and on September 2, 1993, Scheer instituted a family service plan for the Millers. (Plain. Memo. in Opp. to S.J. at 6.)

On May 3, 1994, Joseph Bradley, Dakota's father, reported to DHS that Sandra Miller was in violation of the family
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In response, Scheer and a fellow DHS social worker, Reginald Jackson, visited the day care center and interviewed Corey and Thomas. Thomas told Scheer that his mother, Sandra Miller, had hit him and locked him in his room when he misbehaved, that Sandra Miller's boyfriend Derrick Schill lived with the Miller family, and that Schill had hit him. Corey also indicated that he had been hit by his mother and Schill. Scheer also interviewed the owner of the day care center, Vincent Squire, who mentioned previous injuries to the children, and stated that on May 11 and 13, 1994, day care center staff had video taped such injuries.

On May 18, 1994, Scheer and Jackson returned to the day care center with Scheer's supervisor, Carol Franczyk. Again, both Corey and Thomas stated that their mother and Schill had hit them. Upon the request of Franczyk, Scheer had the children transported to CHOP by family members for the purpose of having them examined by a doctor for possible child abuse. (Defend. Exhib. B at 113.) Accordingly, Sandra Miller, Scheer, Jackson, Hilary Cornell (Miller's sister), Amy Frank of the Child Advocate Unit, and Miller attorney David Deratzian presented Corey, Thomas, and their sibling Dakota Bradley at CHOP, where the children were examined by Dr. Fred Henretig.

3. (...continued)
service plan by permitting Schill to be alone with the children. Scheer did not investigate that report, but asked the child advocate social worker assigned to the case, Amy Frank, to investigate Bradley's claim. (Plain. Memo. in Opp. to S.J. at 7.)

Following his investigation, Henretig called Scheer, Jackson, Frank and Deratzian into a conference room and informed them of his conclusions. Henretig found no evidence of injury to Thomas and Dakota, but found bruises on Corey and noted, in particular, that a mark on Corey's back was suspicious. Henretig stated that the mark was fresh and had occurred within 24 hours, but Henretig could not say for certain whether Corey's injuries were or were not caused by abuse, or whether the injuries were the result of an accident.

After hearing Henretig's report, Scheer informed Miller that he would contact "on-call" Assistant City Solicitor Debbie Maser for the purpose of deciding whether the children could go home. (Plain. Exhib. L at 60.) Sheer called Maser and informed her that Henretig had told him that "the bruise on Corey's back, appeared to be consistent with having been hit with a belt or a stick, and was not of an accidental appearance." (Plain. Exhib. E at 107.) Scheer also informed Maser of the following facts: (1) Corey Miller had bruises on his left eye, left and right leg, back and left elbow; (2) Corey told his teachers that the "bogeyman" comes into his room and beats him; (3) Thomas Miller stated that Sandra Miller and Schill had hit him on the head and locked him in his room; (4) the day care center possesses video tape showing Corey and Thomas's bruises; (5) Corey had stated that Schill and his mother had hit him; (6) Thomas and Corey had indicated that Schill lived with them; (7) Schill was an indicted

perpetrator by omission regarding previous injuries sustained by Corey. (Defend. Exhib. E at ¶5.)

Subsequently, Maser petitioned the Honorable Albert Sheppard of the Philadelphia Court of Common Pleas for an order to remove the children from Miller's custody. After one hour, Sheppard issued a restraining order for Corey and Thomas Miller.

At some point subsequent to Scheer's conversation with Maser and prior to Judge Sheppard's issuance of the restraining order, Scheer met with Henretig outside of the presence of Frank and Deratzian. (Plain. Exhib. E at 112.) Thereafter, Henretig issued a report of suspected abuse. (Defend. Exhib. D.)

A dependency hearing was held on Friday May 20, 1994. Toward the close of the hearing, Miller's attorney for the custody proceedings, Michael H. Applebaum, Esq., requested that Thomas Miller be released over the weekend to his mother. Applebaum conceded that with respect to Corey, Scheer's testimony had established a prima facia case. (Defend. Exhib. A at 85.) Presiding Judge Nicholas Cipriani, however, upheld the restraining order, and scheduled further hearings for the following Monday, May 23, 1994. Following a second day of testimony, Judge Cipriani dissolved the restraining order and returned Thomas and Corey to their mother's custody, with the condition that Schill could not live in the house nor have any contact with Miller or the children pending a dependency hearing. (Defend. Exhib. A at 191.)

Subsequently, Scheer was reassigned from the Miller case while DHS continued to pursue a dependency action. At a dependency hearing in September, 1995, DHS withdrew its petition for dependency, only to refile a petition again in October, 1995, and dissolve it in February, 1996.

III. DISCUSSION

A. Plaintiffs' Federal Civil Rights Claims Against Scheer i. Substantive Due Process

In the memorandum and order of January 29, 1997, the Court dismissed plaintiffs' substantive due process claim against Scheer with respect to allegations that Scheer had no probable cause to initiate child custody proceedings because the substantive due process right to familial integrity was not a clearly established constitutional right at the time of the underlying events.⁴ However, the Court concluded that plaintiffs

4. Plaintiffs request the court to reconsider its ruling that prior to the Third Circuit's opinion in Croft v. Westmoreland County Children and Youth Services, 103 F.3d 1123 (3d Cir. 1997), there were no clearly established legal norms regarding the degree of suspicion a child welfare worker must possess before initiating custody proceedings. Plaintiffs argue that the underlying facts in Croft occurred in February, 1993 and, therefore, the rights delineated in Croft were clearly established prior to the events here. However, "whether an official protected by qualified immunity may be personally liable for an alleged unlawful action generally turns on the 'objective legal reasonableness' of the action . . . assessed in light of the legal rules that were 'clearly established at the time it was taken.'" Anderson v. Creighton, 483 U.S. 635, 639 (1987) (quoting Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982)). The court reaffirms its prior holding that the rights enunciated in Croft were not clearly established prior to the Third Circuit's
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could recover on their claims that Scheer misrepresented Henretig's medical report to Maser, induced Henretig to falsify records and attempted to suborn perjury by Henretig because such actions are patently unlawful and a clearly established substantive due process violation.

Defendants argue that plaintiffs have failed to present any evidence that Scheer induced Henretig to falsify records or attempted to suborn his perjury, and that there is insufficient evidence of record to support plaintiffs' allegations that Scheer misrepresented Henretig's report. Defendants argue that in order to prevail against Scheer under a Fourteenth Amendment due process claim, plaintiffs must show that Scheer's conduct was intentional, willful and outrageous. Defendants argue that there is no evidence that Scheer willfully misrepresented Henretig's findings to Maser and, further, that even if Scheer had misrepresented Henretig's findings, plaintiffs were not injured by Scheer's misrepresentation because Maser's decision to seek custody was based on Henretig's initial findings. (Defend. Exhib. E at ¶7.)

The court concludes that plaintiffs' evidence regarding Scheer's alleged mischaracterization of Henretig's report to Maser is legally insufficient because plaintiffs have not established a causal nexus between Scheer's alleged misstatement

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announcement of the Croft decision on January 6, 1997 because the Croft decision broke new ground rather than rely on firmly established constitutional principles.

and their injury. First, plaintiffs acknowledge that there is no claim that Scheer ever spoke to Judge Sheppard. Second, Maser independently questioned Henretig concerning his opinion after speaking to Scheer, and her recollection of Henretig's report coincides with that of Deratzian and Frank. Maser has submitted an affidavit in which she swears that she spoke directly with Henretig, and Henretig informed her that he had discovered bruises on Corey, the bruises were one to two days old, that it was inconclusive as to whether the bruises were caused by accident or abuse, but that one bruise would be very hard to explain. (Defend. Exhib. E at ¶7.) Consequently, because Maser independently ascertained Henretig's opinion, Scheer's alleged misrepresentation had no effect.

Plaintiffs contend that an issue of fact exists regarding whether Maser spoke with Jackson and Henretig. Plaintiffs assert that Maser talked to Scheer alone, and then Maser hung up and called Judge Sheppard. However, plaintiffs present no evidence to support their contention, except to note that Scheer's case progress report makes no mention of Maser's conversation with Henretig. (Plain. Exhib. K at 57-58 of 67.)⁵

5. Deratzian declares in his affidavit, which was submitted in connection with defendant CHOP's earlier motion to dismiss, that Scheer telephoned Maser from the examination area of the emergency ward while plaintiffs were confined to the public waiting area, and that Deratzian was denied access to the telephone for approximately one hour, before being summoned to the telephone and informed that Judge Sheppard had issued a detention order. (Plain. Memo in Opp. to CHOP Motion to Dismiss at ¶¶14-20.)

However, Scheer's report would not be expected to contain such a reference since Scheer did not participate in the conversation between Maser and the doctor. In addition, plaintiffs have not investigated the details of Maser's conversation with Henretig by taking the deposition of either Henretig or Maser. Consequently, Maser's affidavit is uncontradicted and the court will accept the factual averments sworn to therein for summary judgment purposes.

Similarly, there is no evidence that Scheer induced Henretig to falsify his report, or that Scheer attempted to suborn perjury by the doctor. Plaintiffs argue that Henretig found no evidence of abuse, but that Scheer intervened and induced Henretig to falsify his conclusion with respect to Corey Miller, and to file a Report of Suspected Abuse with the Child Protective Services Unit of the County Children and Youth Agency. As proof, plaintiffs note that Scheer, Deratzian, and Frank testify that Henretig initially stated that he could not conclude that Corey's injuries were caused by abuse, (Plain. Exhib. J at 33), that Scheer's deposition testimony indicates that Scheer later met with Henretig outside of the presence of Deratzian, Frank and Jackson and that, following the meeting, Henretig issued his Report of Suspected Abuse. However, plaintiffs have proffered no evidence that Scheer caused Henretig to file his report or that Scheer attempted to suborn perjury.⁶

6. Plaintiffs contend that Scheer attempted to suborn perjury of Henretig. At oral argument, plaintiffs relied on page 33 of the transcript of Scheer's deposition testimony, in which Scheer
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Moreover, the Report of Suspected Abuse filed by Henretig was not inconsistent with Scheer's recollection at the time of his deposition of Henretig's initial findings. At the time in question, the Pennsylvania Child Protective Services law required an examining physician to file a Report of Suspected Abuse when he or she had reason to believe that a child was the victim of abuse.⁷ According to Scheer's deposition testimony, Henretig's initial findings based on his physical examination of Corey Miller were inconclusive; Henretig could not rule out that Corey Miller's injuries were or were not an accident. (Plain.

6. (...continued)
states that Henretig's initial findings were inconclusive. Plaintiffs allege that Scheer persuaded Henretig to falsify his findings and to give false testimony at some future hearing. Plaintiffs' claim is for an attempt to suborn perjury because Henretig did not eventually testify at the dependency hearings. Page 33 of Scheer's deposition does not support any of plaintiffs' allegations.

7. Prior an amendment effective July 1, 1995, the Child Protective Services Law provided:

Persons who, in the course of their employment, occupation or practice of their profession, come into contact with children shall report or cause a report to be made in accordance with section 6313 (relating to reporting procedure) when they have reason to believe, on the basis of their medical, professional or other training and experience, that a child coming before them in their professional or official capacity is an abused child.

23 Pa. Cons. Stat. Ann. § 6311(a) (emphasis added). The 1995 amendment changed the phrase "reason to believe" to "reasonable cause to suspect."

Exhib. J at 33.) That finding and Henretig's later conclusion that he had reason to believe that Corey was the victim of abuse are not incongruent. Although based on his physical examination of Corey, Henretig could not conclude that Corey's bruises were the result of abuse, Henretig's Report of Suspected Abuse indicates that Henretig possessed other information which indicated that Corey may have been abused. In the Report, Henretig stated, "the child said AP beats him all the time." (Id. at 4.) Further, none of the statements made by Henretig in his Report of Suspected Abuse contradicts Scheer's recollection of Henretig's initial findings. Henretig states in the report as follows:

1 of 3 sibs. brought with mother to E.R. by DHS worker for evaluation of alleged abuse, with history of bruises mentioned by day care staff. Mother denied any knowledge of intentional injury. Child described as "hyperactive." Child's [PE?] notable for hyperactivity and difficulty in engaging with examiner, as well as several small bruises on legs, abrasion left elbow . . . [illegible].

(Defend. Exhib. D at 1.) Those statements do not conflict with Henretig's alleged initial findings that he could not conclude from his examination of Corey's bruises whether Corey's injuries were caused by an accident or not.

Consequently, the court will grant defendants summary judgment on plaintiffs' substantive due process claims.

ii. Malicious Prosecution

Plaintiffs have conceded that a dependency proceeding is a civil proceeding and, therefore, such proceedings cannot be the basis for a malicious prosecution claim, which necessarily applies to criminal actions. Consequently, defendants will be granted summary judgment on plaintiffs' § 1983 and state law malicious prosecution claims.⁸

B. Scheer's State Law Immunity

Section 6318 of the Child Protective Services Law grants social workers a good faith immunity from civil liability under state law. 23 Pa. Cons. Stat. Ann. § 6318(a) (Supp. 1996). The good faith of the social worker's actions is statutorily presumed, 23 Pa. Cons. Stat. Ann. § 6318(b), and good faith must be judged on an objective standard. See Brozovich v. Circle C Group Homes, Inc., 548 A.2d 698, 700 n.3 (Pa. Commw. Ct. 1988).

Similarly, under the Political Subdivision Tort Claims Act (PSTCA), municipal employees are immune from suit for acts of negligence that do not fall under any of the exceptions of § 8542(b), but are not immune from suit for acts that constitute a crime, actual fraud, actual malice or willful misconduct. Wade v. City of Pittsburgh, 765 F.2d 405 (3d Cir. 1985).

Here, defendants are entitled to summary judgment on plaintiffs' state law claims against Scheer because no evidence

8. The court has allowed plaintiffs to amend the caption to two counts in the complaint, changing them from malicious prosecution claims to abuse of civil process claims. The court will defer consideration of those claims until a later date.

of record exists to show that Scheer acted with malice; and plaintiffs have submitted no evidence to show that Scheer's report to Maser of Henretig's findings had any effect on Maser's actions or that Scheer induced Henretig to falsify his report or commit perjury.

C. Claims Against DHS

Defendants argue that claims against the DHS must be dismissed because DHS is a department or division of City of Philadelphia and, under Pennsylvania law, no department of the City has a separate corporate existence, and all claims against a department must be brought in the name of City of Philadelphia. 53 Pa. Stat. Ann. § 16257.⁹

In Monell v. Dept. of Social Serv. of New York, 436 U.S. 658 (1978), the Supreme Court held that municipalities and

9. Section 16257 provides:

All bonds, contracts and obligations heretofore executed, judgments entered, claims filed, and suits now pending in the name of any department of said city, formerly having a corporate existence, are declared to be good and valid, and to inure to the use of the city; but no such department shall be taken to have had, since the passage of the act to which this is a supplement, a separate corporate existence, and hereafter all suits growing out of their transactions, and all claims to be filed for removing nuisances, together with all bonds, contracts and obligations, hereafter to be entered into or received by the said departments, shall be in the name of the city of Philadelphia.

53 Pa. Stat. Ann. § 16257.

other local government units are persons within the meaning of § 1983. Id. at 690. However, Federal Rule of Civil Procedure 17(b) states that the capacity to sue or be sued is determined as follows: an individual's capacity is determined by the law of the individual's domicile; a corporation's capacity is determined by the law of the state under which it was organized; and in all other cases, (with two limited exception that do not apply here),¹⁰ "capacity to sue or be sued shall be determined by the law of the state in which the district court is held." Fed. R. Civ. P. 17(b).

Here, because DHS is neither an individual nor a corporation, the capacity of DHS to sue or be sued is governed by the law of the state in which this court sits--Pennsylvania law. Therefore, 53 Pa. Stat. Ann. § 16257 must be given effect, and plaintiffs' claims against DHS must be dismissed. See also Irvin v. Borough of Darby, 937 F. Supp. 446, 450 (E.D. Pa. 1996) (dismissing claims against municipal police department); Agresta v. City of Philadelphia, 694 F. Supp. 117, 119 (E.D. Pa. 1988) (dismissing claims against Philadelphia police department because

10. Fed. R. Civ. P. 17(b) provides the following exception to the rule governing capacity: "a partnership or other unincorporated association, which has no such capacity by the law of the such state, may sue or be sued in its common name for the purpose of enforcing for or against it a substantive right existing under the constitution of the United States[.]" However, nothing in the language of the early case law that led to the adoption of Rule 17, the advisory committee notes to Rule 17, or the case law applying or interpreting Rule 17 indicates that the unincorporated association exception applies to local government subdivisions or departments. Dean v. Barber, 951 F.2d 1210, 1214 n.4 (11th Cir. 1992) (citations omitted).

police department does not have separate corporate existence); Baldi v. City of Philadelphia, 609 F. Supp. 162, 168 (E.D. Pa. 1985) (same). Moreover, at oral argument, plaintiffs agreed that they had no separate claims against DHS. Consequently, defendants will be granted summary judgment on plaintiffs' claims against DHS.

D. Federal Civil Rights Claims Against City Of Philadelphia

Defendants are entitled to summary judgment on plaintiffs' § 1983 claims against City of Philadelphia with respect to the actions of Scheer because, as stated above, there were no underlying violations of plaintiffs' federally protected rights by Scheer.

E. State Law Claims Against City Of Philadelphia

Plaintiffs concede that City of Philadelphia is immune from liability under state law by virtue of the PSTCA. 42 Pa. Cons. Stat. Ann. § 8541. Although § 8550 of the Act provides that municipal employees do not have immunity for acts that constitute a crime, fraud, malice or wilful misconduct, that exception to immunity does not extend to local agency immunity. Marko v. City of Philadelphia, 576 A.2d 1193, 1193 n.2 (Pa. Commw. Ct. 1990); Cooper v. City of Chester, 810 F. Supp. 618,

626 n.8 (E.D. Pa. 1992). Consequently, City of Philadelphia is immune from liability under state law.

IV. CONCLUSION

Defendants will be granted summary judgment on plaintiffs' claims against DHS and plaintiffs' state law claims against City of Philadelphia. Defendants will also be granted summary judgment on plaintiffs' existing § 1983 substantive due process and malicious prosecution and state law claims against Scheer, and plaintiffs' § 1983 substantive due process and malicious prosecution claims against City of Philadelphia to the extent those claims relate to Scheer's actions.

An appropriate order follows.

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

SANDRA MILLER, CORY MILLER,	:	CIVIL ACTION
THOMAS MILLER, DAKOTA BRADLEY,	:	
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CITY OF PHILADELPHIA,	:	
PHILADELPHIA DEPT. OF HUMAN	:	
SERVICES, OWEN SCHEER,	:	
CHILDREN'S HOSPITAL OF	:	NO. 96-3578
PHILADELPHIA, OFFICER HUTTON,	:	
and SGT. MARC CARROLL	:	
Defendants	:	
	:	

ORDER

AND NOW, THIS DAY OF August, 1997, upon consideration of defendants City of Philadelphia, Philadelphia Department of Human Services (DHS), and Owen Scheer's motion for summary judgment, and plaintiffs' response thereto, **IT IS ORDERED** that defendants' motion is **GRANTED** with respect to the following claims:

- (1) plaintiffs' claims against DHS
- (2) plaintiffs' state law claims against City of Philadelphia;
- (3) plaintiffs' § 1983 substantive due process and malicious prosecution and state law claims against Scheer; and
- (4) plaintiff's § 1983 substantive due process and

malicious prosecution claims against City of Philadelphia to the extent those claims relate to Scheer's actions.

BY THE COURT:

William H. Yohn, Jr., Judge