

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

GERALD BUSH, KATORA	:	CIVIL ACTION
WILSON AND AATERA	:	
WILSON (DAUGHTER)	:	
	:	
v.	:	
	:	
DEPARTMENT OF HUMAN	:	
SERVICES, CITY OF	:	
PHILADELPHIA	:	NO. 97-7512

MEMORANDUM ORDER

It appears from their allegations that plaintiffs Gerald Bush and Katora Wilson are currently involved in state family court proceedings in an effort to regain custody of their minor daughter Aatera Wilson, who was removed by the Department of Human Services. They complain that the denial by the Philadelphia Housing Authority of their application for public housing complicated their ability to provide a fit home. Mr. Bush complains that he has been required by the Department or the state court to undergo a mental examination and treatment as part of the custody determination. Plaintiffs also complain that the family court declined to act when advised by plaintiffs that they believed the daughter may have been molested "by someone" because of a mark or scar they noticed during a visitation.

Plaintiffs assert that defendants' conduct has been "outrageous" and caused them "severe mental anguish." They reference and appear to assert a claim for "Infliction of

Emotional Distress." They seek \$100,000,000 in damages from defendants.

After first checking boxes for diversity personal injury cases on the designation form, plaintiff Bush checked a box for civil rights cases. No federal claim, however, is pled or discernible.¹

Federal courts have an ever-present obligation to satisfy themselves of their subject matter jurisdiction and to decide the issue sua sponte. Liberty Mut. Ins. Co. v. Ward Trucking Corp., 48 F.3d 742, 750 (3d Cir. 1995). See also American Policyholders Ins. v. Nyacol Products, 989 F.2d 1256, 1258 (1st Cir. 1993) ("a federal court is under an unflagging duty to ensure that it has jurisdiction"); Steel Valley Authority v. Union Switch & Signal Div., 809 F.2d 1006, 1010 (3d Cir. 1987) ("lack of subject matter jurisdiction voids any decree entered in a federal court:"); Wisconsin Knife Works v. National Metal Crafters, 781 F.2d 1280, 1282 (7th Cir. 1986) (federal court should always ensure that federal jurisdiction has been properly alleged).

Plaintiff Bush has filed previous actions in this

¹ There is a reference to the prohibition of "cruel and inhumane" treatment in the Eighth Amendment. The Eighth Amendment, of course, applies only to convicted prisoners. See Ingraham v. Wright, 430 U.S. 651, 671-72 n.40 (1977). The court thus reads this reference as an attempt to analogize or to characterize the effects or severity of the alleged "outrageous" conduct for which plaintiffs seek to hold defendants liable.

district asserting federal constitutional claims and he appears to be capable of doing so. Particularly upon review of plaintiffs' collateral submission "in support" of their action, it appears that they are asserting a claim for intentional infliction of emotional distress over which the court lacks jurisdiction in the absence of diverse citizenship.²

ACCORDINGLY, this day of June, 1998, **IT IS**
HEREBY ORDERED that the above case is **DISMISSED**, without prejudice to plaintiffs to present within thirty days an amended complaint with an identifiable cognizable federal claim if this can be done in good faith or to pursue any appropriate claim for relief in the state courts.

BY THE COURT:

JAY C. WALDMAN, J.

² The court, of course, also lacks subject matter jurisdiction under the Rooker-Feldman doctrine to review a decision of the state court in plaintiffs' custody proceedings, to adjudicate claims inextricably intertwined with such a decision or to take action which would undermine a state court order. FOCUS v. Allegheny County Court of Common Pleas, 75 F.3d 834, 840 (3d Cir. 1996).