

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JOHN DOE,	:	
	:	
	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION
	:	NO. _____
FAYETTE COUNTY CHILDREN AND YOUTH SERVICES; DAVID L. MADISON, ADMINISTRATOR,	:	
	:	
	:	ELECTRONICALLY
	:	FILED
Defendants.	:	
	:	

VERIFIED COMPLAINT

INTRODUCTION

This action is brought on behalf of a father of three young children who has had no contact with his children for almost a year, and has not lived with his children for almost two years. The reason for their estrangement is a series of threats made by the defendants to immediately place the children in foster care if plaintiff lives with or contacts them. Defendants contend that plaintiff is a danger to his children and must be barred from all contact with them because, over a year ago, he engaged in a consensual, sexual relationship with a sixteen-year-old girl, and as a result, was indicated by defendants as a perpetrator of sexual abuse based on a non-adversarial process that involved no judicial proceeding or decision. Police declined to prosecute plaintiff because the relationship was not criminal under Pennsylvania law. Plaintiff appealed the indication in January 2007, but no decision has issued.

Even though plaintiff was never charged criminally, much less convicted, for the relationship with the sixteen-year-old, and neither defendants nor anyone else has ever alleged

that plaintiff has abused or mistreated his *own* children, plaintiff fears that his children will be taken away if he does not comply with defendants' demands. As a result, plaintiff's children have lived with his parents since September 2006 and have had no communication with their father since August 2007. Even parents convicted of abusing their children often are allowed more contact with their children than plaintiff.

Defendants' policy of prohibiting alleged, indicated, and founded perpetrators of sexual abuse from having any contact with their children violates plaintiff's Fourteenth Amendment substantive-due-process right to the custody, care, and control of his children and his First Amendment right to associate with his children. Defendants' failure to provide plaintiff with a hearing — either before or after the children were placed with his parents — infringes on his right to the custody, care, and control of his children in violation of plaintiff's Fourteenth Amendment right to procedural due process. This litigation is brought pursuant to 42 U.S.C. § 1983. Plaintiff seeks declaratory and injunctive relief as well as compensatory damages and attorneys' fees.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343(3) and (4). Declaratory relief is authorized by 28 U.S.C. § 2201 and Federal Rule of Civil Procedure 57. Injunctive relief is authorized by Federal Rule of Civil Procedure 65.

2. This Court has personal jurisdiction over the defendants who are located in the Western District of Pennsylvania.

3. Venue is proper in the Western District of Pennsylvania pursuant to 28 U.S.C. § 1391(a) in that the defendants are subject to personal jurisdiction within the Western District of

Pennsylvania and the events that give rise to this action occurred within the Western District of Pennsylvania.

PARTIES

4. Plaintiff John Doe is a citizen of the United States and is a resident of the Borough of Smithfield in Fayette County in the Commonwealth of Pennsylvania. John Doe is a pseudonym that is being used in this action to protect plaintiff's identity from public disclosure, as such disclosure could cause irreparable harm to his young children and another minor involved in these proceedings.

5. Defendant Fayette County Children and Youth Services ("FCCYS") is a municipal government entity organized under the laws of Pennsylvania, with its main offices located at 130 Old New Salem Road, Uniontown, PA 15401. FCCYS has a legal responsibility to operate according to the laws of the United States and the Commonwealth of Pennsylvania, including, but not limited to, the United States Constitution.

6. Defendant David L. Madison is the administrator of FCCYS and in that position has responsibility for, among other things, FCCYS policy. Defendant Madison is also responsible for supervising all FCCYS caseworkers and caseworker supervisors. As chief administrator for FCCYS, Defendant Madison has enforced the policy at issue in this case and has taken steps to ensure that FCCYS caseworkers comply with that policy. Defendant Madison is named herein in his individual capacity. Defendant Madison is a "person," as that term is defined in 42 U.S.C. § 1983, and at all relevant times has acted under color of state law.

BACKGROUND

7. Plaintiff John Doe is twenty-nine-years old and is the natural father and legal guardian of three minor children, of whom he shares legal custody with their natural mother,

Jane Doe. He is a high school graduate who works as a garbage collector. He is unable to afford a private attorney.

8. Doe Child One is eight-years old and was born on January 28, 2000. Doe Child Two is six-years old and was born on April 21, 2002. Doe Child Three is five-years old and was born on May 31, 2003.

9. Plaintiff married the children's mother, Jane Doe, on July 14, 1999. They separated on or about June 2005, but remain married.

10. Since June 2005, plaintiff has been the primary caregiver for his three children.

11. Jane Doe is currently a psychiatric patient at Torrance State Hospital. She has resided there since February 2008.

12. Plaintiff has never been accused of neglecting or harming his *own* children, and even now, neither defendants nor anyone else has alleged that plaintiff has in any way abused or harmed his own children.

13. Prior to the allegations of abuse presented in this case, plaintiff has never been accused of any sort of child abuse.

DEFENDANTS' INVESTIGATION OF PLAINTIFF

14. In 2006, Plaintiff formed a romantic relationship with K.K., a minor female who was born on September 12, 1990. Plaintiff and K.K. have known each other for a number of years through family connections. K.K. has also been a babysitter for the Doe children.

15. K.K. and Plaintiff deliberately waited until K.K.'s sixteenth birthday to initiate a sexual relationship, as they had called the Crime Victims Center to inquire about the age of consent in the State of Pennsylvania.

16. At that time, K.K. lived with her father and her father's girlfriend. K.K.'s mother learned about her relationship with plaintiff and contacted the police on September 22, 2006, to report it. The police declined to press charges against plaintiff because engaging in a consensual sexual relationship with a sixteen-year-old is not a crime under Pennsylvania law. 18 Pa. Cons. Stat. Ann. § 3122.1.

17. K.K.'s mother then contacted Fayette County Children and Youth Services on September 22, 2006.

18. On September 22, 2006, FCCYS caseworker Brian Davis initiated and assumed control of an investigation into allegations of sexual abuse of K.K. by plaintiff.

19. On September 25, 2006, Davis sent a letter to plaintiff informing him that he was being formally investigated for allegations that he had sexually abused K.K. A redacted copy of that letter is attached as Exhibit 1.¹

20. During the course of his investigation, Davis questioned K.K, who admitted to having a consensual sexual relationship with plaintiff after she turned sixteen. Plaintiff also admitted to Davis that he had a consensual sexual relationship with K.K. after she turned sixteen.

21. After completing the investigation into plaintiff's relationship with K.K., Davis informed plaintiff by letter dated November 17, 2006, that FCCYS "determined that substantial evidence exists to indicate that you have committed sexual abuse upon K.K. pursuant to the Child Protective Service Law (23 Pa. C.S., Chapter 63)."² A redacted copy of that letter is attached as Exhibit 2.

¹ Identifying information related to plaintiff, his parents, and any minor children has been redacted from the exhibits.

² An "indicated report" of child abuse exists "if an investigation by the county agency or the Department of Public Welfare determines that substantial evidence of the alleged abuse exists

22. Plaintiff filed an appeal of that indication of sexual abuse with the Department of Public Welfare in January 2007.

23. Under the Child Protective Services Act, “child abuse” is any recent act or failure to act by a perpetrator that causes nonaccidental serious physical or mental injury to a child under 18 years of age. 23 Pa. Cons. Stat. Ann. §6303(b)(1).

24. The Act defines “sexual abuse or exploitation” as: “The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another individual to engage in sexually explicit conduct.” 23 Pa. Cons. Stat. Ann. § 6303(a).

25. The Act defines a “perpetrator” as: “A person who has committed child abuse and is a parent of a child, a person responsible for the welfare of a child, an individual residing in the same home as a child or a paramour of a child’s parent.” *Id.*

26. Plaintiff has challenged defendants’ determination that he committed child abuse because he disputes both that his relationship with K.K. meets the definition of “sexual abuse or exploitation” and that his conduct meets the definition of “predator” under Pennsylvania law.

27. Plaintiff’s appeal was heard before the Department of Public Welfare on Nov 28, 2007. No decision has yet been issued.

DEFENDANTS’ IMPOSITION OF 9/29/06 SAFETY PLAN

28. Despite the fact that no one, including FCCYS, had alleged that Doe had abused or posed a danger to his *own* children, at the initiation of his investigation into allegations that plaintiff committed sexual abuse of K.K., Caseworker Davis phoned plaintiff at 10:30 p.m. on

based on any of the following: (1) Available medical evidence; (2) The child protective service investigation; (3) An admission of the acts of abuse by the perpetrator.” A “founded report” of child abuse, on the other hand, exists “if there has been any judicial adjudication based on a finding that a child who is a subject of the report has been abused, including the entry of a plea of guilty or nolo contendere or a finding of guilt to a criminal charge involving the same factual circumstances involved in the allegation of child abuse.” 23 Pa. Cons. Stat. Ann. §6303.

September 22, 2006, to inquire if there was anywhere the Doe children could stay for the duration of a sixty-day FCCYS investigation into the allegations.

29. During this phone call, Davis explained to plaintiff that, pursuant to FCCYS policy, if the Doe children continued to reside with plaintiff, FCCYS would immediately place the children in emergency foster care. At no point during the phone call did Davis inform plaintiff that — unless the children were in imminent danger of abuse — defendants would be required by Pennsylvania law to seek a court order before taking his children into state custody and that plaintiff would have the right to a hearing with an attorney before a court order would issue. *See* 23 Pa. Cons. Stat. Ann. § 6315. Nor did Davis inform plaintiff that if his children were in imminent danger of abuse only a state trooper could remove them and that plaintiff would be entitled to a hearing concerning their placement in state custody within seventy-two hours of their removal. *See id.*

30. Plaintiff told Davis that his children could stay with plaintiff's parents. As a result of Davis' threat to remove plaintiff's children, the Doe children left plaintiff's house that night to stay with plaintiff's parents.

31. On September 24, 2006, Davis called plaintiff's father to verify that the Doe children could stay with him and plaintiff's mother for the duration of the FCCYS investigation. During the conversation, Davis informed plaintiff's father that plaintiff was permitted supervised visitation with his children.

32. On September 29, 2006, Doe went to the FCCYS office to meet with Davis. Davis informed plaintiff that he was required to sign a Safety Plan ("9/29/06 Safety Plan") under which plaintiff agreed that he would not have any unsupervised contact with his children, that he would not have any contact with K.K., and that he would not reside in the same house as his

children pending further notice from FCCYS. A redacted copy of the “9/29/06 Safety Plan” is attached as Exhibit 3.

33. During the September 29 meeting, Davis warned Doe that if he violated the terms of the 9/29/06 Safety Plan, FCCYS would have the Doe children placed in foster care. At no point did Davis inform plaintiff about his rights should he refuse to sign the 9/29/06 Safety Plan. At no point did Davis inform plaintiff about his right to an attorney should FCCYS take legal action.

34. Plaintiff had daily supervised visits with his children from the time he signed the 9/29/06 Safety Plan until August 1, 2007. Each day, plaintiff went directly from work to his parents’ house and remained with his children until they fell asleep. Then he would go home.

35. At some point before August 1, 2007, Davis left his position at FCCYS and is no longer employed by FCCYS.

36. At no point between September 2006, when FCCYS insisted on separating Doe from his children, and August 2007 did FCCYS or anyone else allege that plaintiff abused or in any way mistreated his children.

DEFENDANTS’ IMPOSITION OF 8/1/07 SAFETY PLAN

37. At approximately 10:00 p.m. on August 1, 2007, FCCYS caseworker Kim Schuessler, accompanied by two Pennsylvania State Troopers, arrived unannounced at plaintiff’s parents’ house. Schuessler told plaintiff’s mother that she had just discovered that plaintiff was having supervised visitation with his children. Schuessler stated that because plaintiff had been indicated as a perpetrator of sexual abuse, such supervised visitation violated FCCYS policy. Schuessler also warned plaintiff’s mother that if she allowed plaintiff to have contact with his children, FCCYS would remove the children.

38. During the visit by Schuessler and the state troopers, Schuessler threatened to remove the Doe children unless plaintiff's mother signed a new Safety Plan ("8/1/07 Safety Plan"). The new Safety Plan forbade plaintiff's parents from allowing the Doe children to have any contact with the plaintiff. At no time did Schuessler inform plaintiff's mother of her right not to sign the safety plan or the consequences should she choose not to sign the safety plan. At no point during this visit did Schuessler mention plaintiff's right to a hearing and an attorney before the children could be placed in state custody. A redacted copy of the 8/1/07 Safety Plan is attached as Exhibit 4.

39. The next day, August 2, 2008, FCCYS Caseworker Renee Coll phoned plaintiff's mother to inform her that plaintiff would not be permitted to contact his children unless he successfully completed a proscribed sex-offender-treatment program.

40. Plaintiff learned about the visit by Caseworker Schuessler to his parents' house from his mother on August 1, 2007, after Schuessler and the troopers left the house. The following day, August 2, 2007, plaintiff phoned Schuessler to find out why she told his mother that he could no longer have supervised contact with his children. Schuessler transferred plaintiff's call to FCCYS Caseworker Renee Coll. During their phone call, Coll asked plaintiff to orally agree to the terms of the 8/1/07 Safety Plan that his mother signed the previous night. Plaintiff complied. A redacted copy of the "8/2/07 Safety Plan" agreed to by telephone is attached as Exhibit 5. At no point during the call did Coll explain to plaintiff what would happen if he refused to sign the new plan or inform plaintiff of his right to a hearing and an attorney.

41. As it was explained to both plaintiff and plaintiff's mother, the 8/1/07 Safety Plan prohibited plaintiff from having contact of any kind with his children. The prohibited contact includes not only physical contact but also telephone calls, emails, and letters between plaintiff

and his children. Both plaintiff and the children are expressly prohibited from initiating any such contact.

42. The following day, August 3, 2007, plaintiff called FCCYS Caseworker Coll to ask what FCCYS was requiring of him to regain contact his Doe children. Coll told him that the first step was to have an assessment by George Yatsko, a therapist who leads the sex-offender-treatment program. She also told him that he would have to be enrolled in the treatment program to qualify for supervised visitation with his children. Coll provided Yatsko's phone number to plaintiff upon his request.

43. Later that month, on August 22, 2007, Coll visited plaintiff at his home and asked plaintiff to sign a copy of the 8/1/07 Safety Plan, to which he had orally agreed on August 2. During that meeting, Coll explained to plaintiff that plaintiff's previous visitation with his children had violated FCCYS policy and that Caseworker Davis had erred in allowing such visitation. She reiterated that if plaintiff had any contact with his children they would be immediately removed from plaintiff's parents' house and placed in foster care. She also discussed the treatment program with him again but refused to directly answer his questions as to whether he could regain custody of his children if he completed the program.

44. Plaintiff attended one sex-offender-treatment class after his visit with Coll. It was at this session that he learned of the policy requiring participants in the class to admit to being a perpetrator of sexual abuse.

45. Plaintiff refuses to state that he is a perpetrator of sexual abuse, as he disputes defendants' claim that his relationship with K.K. constituted sexual abuse under the law and contests defendants' contention that he is a perpetrator as that term is defined in the Child Protective Services Act. Plaintiff has also been advised by his counsel representing him in his

appeal of the indication of sexual abuse that he should not attend the treatment program because the required admission would adversely impact his appeal.

46. Plaintiff met with Yatsko for an assessment sometime between August 23 and August 28, 2007. Yatsko left a voicemail message for Coll on August 28 stating that he assessed plaintiff at very low risk of sexual abuse with pre-pubescent children.

47. On September 13, 2007, Coll visited the home of plaintiff's parents. Coll assessed the living conditions for the children and determined them to be satisfactory. During this visit, Coll reiterated to plaintiff's parents the requirement that plaintiff participate in the sex-offender-treatment program and explained that plaintiff's regaining contact with his children was contingent upon his successful completion of the program. Coll also asked plaintiff's parents if the Doe children could live with them until plaintiff's appeal of the indication was completed. Coll explained that this could take anywhere from a few months to a few years.

48. Also during this visit, Coll required both of plaintiff's parents to sign a final Safety Plan ("9/13/07 Safety Plan"). Like the 8/1/07 Safety Plan, the 9/13/07 Safety Plan prohibited plaintiff's parents from allowing plaintiff to have any type of contact with his children. A redacted copy of the 9/13/07 Safety Plan is attached as Exhibit 6.

49. At the end of this visit, Coll informed plaintiff's parents that plaintiff's case was officially closed. Plaintiff's parents asked how the case could be closed if plaintiff was still being denied contact with his children. Coll did not respond.

50. In a letter dated September 18, 2007, from Coll to plaintiff informing plaintiff that his case is closed, Coll states that:

Since you are an Indicated Perpetrator of sexual abuse against a child and are not currently participating in a sex offender's program, ***it is our policy that you can have no contact with any child.*** The current safety plan which states that you can

have no contact with [Doe Child 2], [Doe Child 1], and [Doe Child 3] will remain in effect until **further notice** from Fayette County Children and Youth Services.

A redacted copy of that letter (italicized emphasis added, bold emphasis in original) is attached as Exhibit 7.

51. In an almost identical letter dated September 18, 2007, from Coll to plaintiff's parents informing them that the case is closed, Coll states that:

Because [plaintiff] is an Indicated Perpetrator of Sexual Abuse against a Child and is not currently participating in a sex offender's program, *it is our policy that he can have no contact with any child.* The current safety plan which states that [plaintiff] can have **no contact** with [Doe Child 2], [Doe Child 1], and [Doe Child 3] will remain in effect until you hear from Fayette County Children and Youth Services.

A redacted copy of that letter (italicized emphasis added, bold emphasis in original) is attached as Exhibit 8.

52. As a consequence of defendants' policy and actions thereunder, plaintiff has not been able to live with his children for twenty-one months, and has had absolutely no communication with them for nearly a year.

53. Plaintiff has suffered injury as a result of defendants' actions, including but not limited to, financial injury, emotional and psychological pain and suffering, and injury to his reputation.

54. Plaintiff has suffered and will continue to suffer irreparable harm to his right to the care, custody, control, and companionship of his children as a result of defendants' threats to remove his children if he contacts them or lives with them. Plaintiff has no adequate remedy at law to redress the ongoing harm.

55. Injunctive relief is necessary to ensure that plaintiff is able to regain contact with and care of his children.

**FIRST CAUSE OF ACTION
(FOURTEENTH AMENDMENT PROCEDURAL DUE PROCESS)**

56. Plaintiff incorporates by reference the allegations of the preceding paragraphs as though set forth at length herein.

57. Defendants coerced plaintiff into waiving his right to Procedural Due Process under the Fourteenth Amendment concerning the physical custody of and contact with his children by threatening to take his children into state custody if he did not place his children with his parents and desist from communicating with them in any fashion.

58. Defendants did not obtain plaintiff's knowing and voluntary consent to the waiver of his procedural due process rights.

**SECOND CAUSE OF ACTION
(FOURTEENTH AMENDMENT SUBSTANTIVE DUE PROCESS:
PARENTS' RIGHT TO CARE AND CUSTODY OF THEIR CHILDREN)**

59. Plaintiffs incorporate by reference the allegations of the preceding paragraphs as though set forth at length herein.

60. The policy adopted, implemented, and enforced by defendants prohibiting alleged, indicated, and founded perpetrators of sexual abuse from living with or having any contact with their own children pending the successful completion of a sex-offender-treatment program violates the Fourteenth Amendment right to substantive due process on its face because it infringes on the fundamental liberty interest of parents to the custody, care, and control of their children without requiring any individualized finding of abuse or likelihood of abuse.

61. The policy adopted, implemented, and enforced by defendants prohibiting alleged, indicated, and founded perpetrators of sexual abuse from living with or having any contact with their own children pending the successful completion of a sex-offender-treatment

program violates the Fourteenth Amendment right to substantive due process as applied to plaintiff because it infringes on plaintiff's fundamental liberty interest in the custody, care, and control of his children because the infringement is not based on any objectively reasonable suspicion that plaintiff's children have been abused or are in imminent danger of abuse.

62. Defendants' threats to place plaintiff's children in foster care if he lives with them or has any contact with them are so arbitrary that they shock the conscience and violate plaintiff's Fourteenth Amendment substantive-due-process right to family integrity.

**THIRD CAUSE OF ACTION
(FIRST AMENDMENT RIGHT TO FAMILIAL ASSOCIATION)**

63. Plaintiffs incorporate by reference the allegations of the preceding paragraphs as though set forth at length herein.

64. The policy adopted, implemented, and enforced by defendants prohibiting alleged, indicated, and founded perpetrators of sexual abuse from having any contact with their own children pending the successful completion of a sex-offender-treatment program violates the First Amendment right to familial association on its face because it is not narrowly tailored to the state's interest in protecting children.

65. The policy adopted, implemented, and enforced by defendants prohibiting alleged, indicated, and founded perpetrators of sexual abuse from having any contact with their own children pending the successful completion of a sex-offender-treatment program violates the First Amendment right to familial association as applied to plaintiff because it is not narrowly tailored to the state's interest in protecting plaintiff's children.

**FOURTH CAUSE OF ACTION
(FIFTH AMENDMENT PRIVILEGE AGAINST SELF-INCRIMINATION)**

66. Plaintiffs incorporate by reference the allegations of the preceding paragraphs as though set forth at length herein.

67. Defendants' requirement that plaintiff successfully complete a sex-offender-treatment program before being permitted to regain contact with his children violates plaintiff's Fifth Amendment right against self-incrimination because a condition for participating in the sex-offender-treatment program is that plaintiff must admit that he is a perpetrator of sexual abuse, which will adversely affect his pending appeal of the indication of sexual abuse that defendants have lodged against him.

PRAYER FOR RELIEF

WHEREFORE, in light of the foregoing, Plaintiff respectfully requests the following:

- (a) a temporary restraining order and/or a preliminary injunction pursuant to Federal Rule of Civil Procedure 65 prohibiting defendants from threatening to place, or actually placing, plaintiff's children in state custody without a court order;
- (b) a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 and 42 U.S.C. § 1983 declaring the policy adopted and enforced by defendants to prohibit alleged, indicated, and founded perpetrators of sexual abuse from living with or having any contact with their children without any individualized suspicion of abuse or likelihood of abuse to be unconstitutional because it violates the Fourteenth Amendment right to substantive due process and the First Amendment right of familial association;

- (c) a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 and 42 U.S.C. § 1983 declaring that defendants violated plaintiff's Fourteenth Amendment right to procedural due process and his Fifth Amendment right against self-incrimination.
- (d) damages against defendants for violating plaintiff's rights under the United States Constitution;
- (e) an order awarding plaintiff the costs incurred in this litigation including attorney's fees pursuant to 42 U.S.C. § 1988; and
- (f) such other relief as the Court deems just and proper.

Respectfully submitted,

/s/ Sara J. Rose

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