

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

LAWRENCE JAMES FOSTER,
JESSICA MARIE FOSTER,
LAWRENCE JAMES II and
LILLYANA MARIE FOSTER,

Petitioners,

v.

MERITER HOSPITAL,
U.W. HOSPITAL,
DANE COUNTY HUMAN SERVICES and
UNIVERSITY OF WISCONSIN POLICE DEPT.,

Respondents.

ORDER

07-C-464-C

In an order dated September 17, 2007, I dismissed this case because the claim raised by petitioner Lawrence James Foster (who was proceeding pro se and was the only petitioner to sign the complaint) appeared to be challenging the loss of the custody of his children. In particular, petitioner alleged that employees of the various respondents “grossly lied” about an incident in which one of his children ingested petitioner’s morphine, which “resulted in having our children taken.” Under controlling Supreme Court precedent, federal courts do not have jurisdiction over such disputes. E.g., Ankenbrandt v. Richards, 504 U.S. 689, 703

(1992).

Now petitioner has filed a motion for reconsideration, which I construe as a motion to alter or amend the judgment under Fed. R. Civ. P. 59. In his motion, petitioner appears to be making two arguments. First, he says that this court has jurisdiction because he is alleging that respondents discriminated against him because of his race and disability. Petitioner is correct that in some circumstances federal law prohibits the type of discrimination he describes. But the family law exception to federal jurisdiction applies even when a party is alleging a violation of federal law. Courts may not resolve child custody dispute questions regardless of the reason a party believes a custody decision is invalid, even if there is an allegation of a constitutional violation. Allen v. Allen, 48 F.3d 259, 261-62 (7th Cir. 1995).

Alternatively, petitioner argues that he is not challenging a child custody order; he is only challenging the treatment he received leading up to that decision. But this is splitting hairs; there is no way to separate the treatment he received from the loss of custody of his children because that is the only injury he alleges in his complaint. The discriminatory treatment of which petitioner complains, “lies,” “refus[ing] to allow [petitioner] to get the upper hand” and treating petitioner rudely is certainly unfortunate, but none of it violates federal law in and of itself. E.g., DeWalt v. Carter, 224 F.3d 607, 612 (7th Cir.2000) (“use of racially derogatory language, while unprofessional and deplorable, does not violate the

Constitution”)

As I told petitioner in the September 17 order, if he wishes to challenge an order regarding the custody of his children, his remedy is to file an appeal in state court, not to file a new lawsuit in federal court.

ORDER

IT IS ORDERED that petitioner Lawrence James Foster’s motion to alter or amend the judgment is DENIED.

Entered this 26th day of September, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge