

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

KAREN HOLCOMB, M.Ed., Christian,

Petitioner,

v.

JOHN FORD, Felon,
Served 2 year in Fl. Prisons,

Respondent.

ORDER

05-C-077-C

Petitioner has filed a pleading styled as a petition for a writ of habeas corpus and has paid a \$5 filing fee. However, the allegations in the body of her petition do not match her characterization of the action. See Gleash v. Yuswak, 308 F.3d 758, 761 (7th Cir. 2002) (courts give effect to substance of document, not its caption). If petitioner were alleging that the state or federal government is holding her in illegal custody, her habeas corpus action would be proper. It appears, however, that petitioner is challenging the decision of a state court judge in Florida to award custody of her 13-year-old child to respondent, who is alleged to be the child's "unmarried ex-stepparent." As relief, petitioner asks that this court "return the . . . child . . . back to her biological mother" and "set aside the Collier Circuit Court March 11, 2002, order. . . ."

Generally, federal courts have the power to hear two types of cases: (1) cases in which a plaintiff alleges a violation of his or her constitutional rights or rights established under federal law and (2) cases in which a citizen of one state alleges a violation of his or her rights established under state law by a citizen of another state *and* the amount in controversy exceeds \$75,000. See 28 U.S.C. § 1331-32; see also Wild v. Subscription Plus, Inc., 292 F.3d 526 (7th Cir. 2002) (court has independent obligation to insure jurisdiction exists). Although petitioner alleges that she was deprived of due process and equal protection of the law in the proceedings relating to her child's custody, her claims in this court are barred by the general rule that family law matters are outside the jurisdiction of federal courts. See Hisquierdo v. Hisquierdo, 439 U.S. 572, 581 (1979). If petitioner is dissatisfied with the child custody ruling of the Florida state court judge, her remedy is to appeal the decision through the proper Florida state court channels. Her petition in this court is improper and must be dismissed pursuant to Fed. R. Civ. P. 12(h)(3) on the court's own motion for lack of jurisdiction.

ORDER

IT IS ORDERED that petitioner's pleading, styled as a petition for a writ of habeas

corpus, is DISMISSED for lack of subject matter jurisdiction.

Entered this 10th day of February, 2005.

BY THE COURT:

BARBARA B. CRABB
District Judge