

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,

OPINION AND ORDER

07-C-464-C

v.

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

Respondents.

This is a proposed civil action for monetary and injunctive relief. Petitioner Lawrence James Foster, who is acting pro se, seeks leave to proceed without prepayment of fees and costs or providing security for such fees and costs, pursuant to 28 U.S.C. § 1915. (I refer to this petitioner only because he is the only named petitioner who signed the complaint. A party representing himself does not have the authority to represent other parties. King v. Frank, 328 F. Supp. 2d 940, 950 (W.D. Wis. 2004).) From the affidavit of indigency accompanying petitioner's proposed complaint, I conclude that petitioner is unable to

prepay the fees and costs of instituting this lawsuit.

In addressing any pro se litigant's complaint, the court must construe the complaint liberally. Haines v. Kerner, 404 U.S. 519, 521 (1972). However, if the action is frivolous or malicious, fails to state a claim upon which relief may be granted or seeks monetary relief against a defendant who is immune from such relief, the case must be dismissed promptly pursuant to 28 U.S.C. §1915(e)(2).

After reviewing petitioner's complaint, I conclude that it must be dismissed for lack of subject matter jurisdiction. In his complaint, petitioner discusses an incident in which his infant daughter ingested his morphine. He alleges that employees of the various respondents "grossly lied" about the incident, which "resulted in having our children taken."

Although I agree with petitioner that his situation is very unfortunate, I cannot grant him any relief. Domestic relations, including custody disputes, are the primary responsibility of state courts. Ex Parte Burrus, 136 U.S. 586, 593-94 (1890) ("[T]he whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States."). Recognizing this, the Supreme Court has held that federal courts lack jurisdiction over domestic relations cases where the relief sought would "involv[e] the issuance of a divorce, alimony, or child custody decree." Ankenbrandt v. Richards, 504 U.S. 689, 703 (1992). This "domestic relations" exception to subject matter jurisdiction applies to such cases even when constitutional claims are involved. Allen

v. Allen, 48 F.3d 259, 261-62 (7th Cir. 1995).

Because it appears that petitioner is attempting to challenge the loss of custody of his children, the domestic relations exception prohibits this court from exercising jurisdiction over petitioner's case. Ankenbrandt, 504 U.S. at 703. If petitioner is dissatisfied with a child custody ruling, his remedy is to appeal the decision through the proper state court channels. His complaint in this case must be dismissed for lack of subject matter jurisdiction.

Several days after petitioner filed his complaint, he filed a document titled "Motion to Amend," in which he says that the scheduling of a surprise meeting "caused me to be rushed on writing my complaint." He asks for the opportunity to amend his complaint "to include more brevity and clarity." Petitioner does not seek to add another claim but only to include additional facts for the same claim. Because more detail cannot save petitioner's claim, this motion will be denied as futile.

ORDER

IT IS ORDERED that

1. Petitioner Lawrence James Foster's "motion to amend" is DENIED.
2. This case is DISMISSED for lack of subject matter jurisdiction.

3. The clerk is directed to close the file.

Entered this 17th day of September, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge