

ALD-126

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **22-1130**

SCOTT JAMES REPELLA, Appellant

VS.

LUZERNE COUNTY CHILDREN & YOUTH SERVICES, ET AL.

(M.D. Pa Civ. No. 3-19-cv-00469)

Present: JORDAN, RESTREPO, and SCIRICA, Circuit Judges

Submitted are:

- (1) Appellant's request for a certificate of appealability under 28 U.S.C. § 2253(c)(1);
- (2) By the Clerk for Possible Dismissal Under 28 U.S.C. 1915(e)(2) or Possible Summary Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6;
- (3) Appellant's Response;
- (4) Appellee's Response to Appellant's request for a certificate of appealability; and
- (5) Appellant's Reply to Response

in the above-captioned case.

Respectfully,

Clerk

ORDER

To the extent that Appellant needs a certificate of appealability to proceed with this appeal, his request for a certificate of appealability is denied. 28 U.S.C. § 2253(c)(1)(A). Jurists of reason would not debate the District Court's decision to dismiss Appellant's filing for lack of habeas jurisdiction. See Lehman v. Lycoming Cty. Children's Servs.

Agency, 458 U.S. 502, 511 (1982). To the extent that a certificate of appealability is not required for this appeal, we will summarily affirm the District Court's judgment of January 5, 2022, because no substantial issue is presented on appeal. See Murray v. Bledsoe, 650 F.3d 246, 247 (3d Cir. 2011) (per curiam); 3d Cir. L.A.R. 27.4; 3d Cir. I.O.P. 10.6. Appellant's attempt to obtain the reversal of a prior state court judgment is barred by the Rooker-Feldman doctrine. See Great W. Mining & Min. Co. v. Fox Rothschild LLP, 615 F.3d 159, 163 (3d Cir. 2010) (explaining that district courts lack jurisdiction over cases where "(1) the federal plaintiff lost in state court; (2) the plaintiff complains of injuries caused by the state-court judgments; (3) those judgment were rendered before the federal suit was filed; and (4) the plaintiff is inviting the district court to review and reject the state judgments").

By the Court,

s/ L. Felipe Restrepo
Circuit Judge

Dated: April 22, 2022
Cc: All counsel of record

OFFICE OF THE CLERK

PATRICIA S. DODSZUWEIT

CLERK



UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT
21400 UNITED STATES COURTHOUSE
601 MARKET STREET
PHILADELPHIA, PA 19106-1790

Website: www.ca3.uscourts.gov

TELEPHONE
215-597-2995

April 22, 2022

Romilda P. Crocamo, Esq.
Luzerne County Office of District Attorney
200 North River Street
Wilkes-Barre, PA 18711

John G. Dean, Esq.
Elliott Greenleaf
201 Penn Avenue
Suite 202
Scranton, PA 18503

Scott James Repella
P.O. Box 513
Wilkes-Barre, PA 18703

Shanna W. Williamson, Esq.
Elliott Greenleaf
201 Penn Avenue
Suite 202
Scranton, PA 18503

RE: Scott Repella v. Luzerne County C&Y Services, et al
Case Number: 22-1130
District Court Case Number: 3-19-cv-00469

ENTRY OF JUDGMENT

Today, **April 22, 2022** the Court issued a case dispositive order in the above-captioned matter which serves as this Court's judgment. Fed. R. App. P. 36.

If you wish to seek review of the Court's decision, you may file a petition for rehearing. The procedures for filing a petition for rehearing are set forth in Fed. R. App. P. 35 and 40, 3rd Cir. LAR 35 and 40, and summarized below.

Time for Filing:

14 days after entry of judgment.

45 days after entry of judgment in a civil case if the United States is a party.

Form Limits:

3900 words if produced by a computer, with a certificate of compliance pursuant to Fed. R. App. P. 32(g).

15 pages if hand or type written.

Attachments:

A copy of the panel's opinion and judgment only.

Certificate of service.

Certificate of compliance if petition is produced by a computer.

No other attachments are permitted without first obtaining leave from the Court.

Unless the petition specifies that the petition seeks only panel rehearing, the petition will be construed as requesting both panel and en banc rehearing. Pursuant to Fed. R. App. P. 35(b)(3), if separate petitions for panel rehearing and rehearing en banc are submitted, they will be treated as a single document and will be subject to the form limits as set forth in Fed. R. App. P. 35(b)(2). If only panel rehearing is sought, the Court's rules do not provide for the subsequent filing of a petition for rehearing en banc in the event that the petition seeking only panel rehearing is denied.

Please consult the Rules of the Supreme Court of the United States regarding the timing and requirements for filing a petition for writ of certiorari.

Very truly yours,
Patricia S. Dodszuweit, Clerk

By: s/Alicia
Case Manager
267-299-4948

THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

SCOTT JAMES REPELLA, on behalf of :
A.R., a minor, : CIVIL ACTION NO. 3:19-CV-469

Petitioner, : (JUDGE MARIANI)

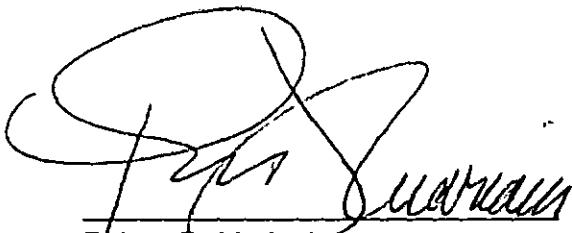
v. :

LUZERNE COUNTY C & Y SERVICES, :

Respondent. :

ORDER

AND NOW, THIS 4th DAY OF JANUARY 2022, upon consideration of Petitioner's Application for Certificate of Appealability (Doc. 22), the Court having previously determined that there was no basis for the issuance of a certificate of appealability (see Doc. 21 at 2 ¶ 5; see also Doc. 17 at 3) and finding no basis to alter that determination, IT IS HEREBY ORDERED THAT Petitioner's Application for Certificate of Appealability (Doc. 22) is DENIED.


Robert D. Mariani
United States District Judge

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

SCOTT JAMES REPELLA, on
behalf of A.R., a minor,

Petitioner,

v.

LUZERNE COUNTY C&Y
SERVICES,

Respondent.

CIVIL ACTION NO. 3:19-cv-00469

(MARIANI, J.)
(SAPORITO, M.J.)

REPORT AND RECOMMENDATION

On March 15, 2019, the petitioner, Scott James Repella, filed a *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. (Doc. 1.) The petition was filed on behalf of his biological minor child, A.R., whom he alleged was being illegally detained in the custody of the respondent, Luzerne County Children and Youth Services (“Luzerne CYS”). The petition challenged a state court judgment terminating his parental rights, allegedly without due process, and vesting custody of the minor child in Luzerne CYS pending further proceedings. *See In re A.R.*, No. A-7139 (Luzerne Cty. (Pa.) C.C.P. Aug. 12, 2009), *aff'd*, 996 A.2d 564 (Pa. Super. Ct. Mar. 22, 2010) (table decision), *allocatur denied*, 12 A.3d 369 (Pa. May 20, 2010) (table decision). The present location and status

of A.R. was allegedly unknown to the petitioner at the time of filing.

On May 10, 2019, the respondent filed a motion to dismiss the petition for lack of subject matter jurisdiction or, in the alternative, for failure to state a claim upon which relief can be granted, together with a brief and exhibits in support. (Doc. 13; Doc. 14.) On May 13, 2019, the petitioner filed a brief in opposition to the motion to dismiss. (Doc. 15.)

In support of its motion to dismiss, the respondent has submitted an affidavit by the deputy director of Luzerne CYS, Deanna German, in which Ms. German has attested that the petitioner's parental rights were terminated by court order on August 12, 2009, and A.R. was officially adopted on December 16, 2010. (Doc. 13-1.) The motion papers make it clear, in no uncertain terms, that A.R. has not been in the custody of Luzerne CYS since December 16, 2010, at the latest. Under these circumstances, we clearly lack subject matter jurisdiction in this matter.

See Lehman v. Lycoming Cty. Children's Servs. Agency, 458 U.S. 502, 510–12 (1982) (no federal habeas jurisdiction where children are in the "custody" of foster or adoptive parents).

The petitioner does not dispute the fact of A.R.'s adoption nine years ago. His only response is a request that we make an exception to this

jurisdictional rule based on the egregiousness of the alleged constitutional violations asserted in the petition. But federal courts have “no authority to create equitable exceptions to jurisdictional requirements.” *See Bowles v. Russell*, 551 U.S. 205, 214 (2007); *see also Gutierrez v. Gonzales*, 125 Fed. App’x 406, 412 (3d Cir. 2005) (“It is without dispute that § 2241(c)’s custody requirement is jurisdictional. . . . [T]he District Court’s powers in equity cannot be used to cure a jurisdictional defect . . . ”).

Based on the foregoing, it is recommended that the respondent’s motion to dismiss (Doc. 13) be **GRANTED** and the petition (Doc. 1) be **DISMISSED for lack of subject matter jurisdiction**. It is further recommended that the Court decline to issue a certificate of appealability, as the petitioner has failed to demonstrate “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); *see also Buck v. Davis*, 137 S. Ct. 759, 773–75 (2017); *Miller-El v. Cockrell*, 537 U.S. 322, 335–36 (2003); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Dated: May 13, 2019

s/Joseph F. Saporito, Jr.
JOSEPH F. SAPORITO, JR.
United States Magistrate Judge

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

SCOTT JAMES REPELLA, on
behalf of A.R., a minor,

Petitioner,

v.

LUZERNE COUNTY C&Y
SERVICES,

Respondent.

CIVIL ACTION NO. 3:19-cv-00469

(MARIANI, J.)
(SAPORITO, M.J.)

NOTICE

NOTICE IS HEREBY GIVEN that the undersigned has entered the foregoing Report and Recommendation dated May 13, 2019. Any party may obtain a review of the Report and Recommendation pursuant to Local Rule 72.3, which provides:

Any party may object to a magistrate judge's proposed findings, recommendations or report addressing a motion or matter described in 28 U.S.C. § 636(b)(1)(B) or making a recommendation for the disposition of a prisoner case or a habeas corpus petition within fourteen (14) days after being served with a copy thereof. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. The briefing requirements set forth in Local Rule 72.2 shall apply. A judge shall make a de novo

determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need conduct a new hearing only in his or her discretion or where required by law, and may consider the record developed before the magistrate judge, making his or her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions.

Failure to file timely objections to the foregoing Report and Recommendation may constitute a waiver of any appellate rights.

Dated: May 13, 2019

s/Joseph F. Saporito, Jr.
JOSEPH F. SAPORITO, JR.
United States Magistrate Judge

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

SCOTT JAMES REPELLA, on behalf of :

A.R., a minor, : CIVIL ACTION NO. 3:19-CV-469

Petitioner, : (JUDGE MARIANI)
(Magistrate Judge Saporito)

v. :

LUZERNE COUNTY C & Y SERVICES, :

Respondent. :

ORDER

Background of This Order

Here the Court considers Magistrate Judge Joseph Saporito's Report and Recommendation ("R&R") (Doc. 17) in which he recommends that Respondent Luzerne County Children & Youth Services' Motion to Dismiss Petitioner Scott Repella's Petition for Writ of Habeas Corpus, Filed on Behalf of A.R., a Minot (Doc. 13) be granted and the Petition be dismissed for lack of subject matter jurisdiction (Doc. 17 at 3). He also recommends that the Court decline to issue a certificate of appealability because Petitioner "has failed to demonstrate 'a substantial showing of the denial of a constitutional right.'" (*Id.* (quoting 28 U.S.C. § 2253(c)(2); citing *Buck v. Davis*, 137 S. Ct. 759, 773-75 (2017); *Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003); *Slack v. Daniel*, 529 U.S. 473, 484 (2000)).)

Magistrate Judge Saporito's recommendation is based on his finding that the 28 U.S.C. § 2254 Petition alleging that A.R. was being illegally detained by the Luzerne County

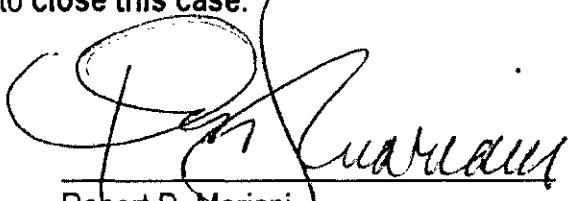
Children & Youth Services (“Luzerne CYS”) challenges the state court judgment terminating Petitioner Repella’s parental rights and, because A.R. has not been in the custody of Luzerne CYS since December 16, 2010, at the latest, this Court lacks subject matter jurisdiction in this matter. (Doc. 17 at 1-2 (*citing Lehman v. Lycoming Cty. Children’s Servs. Agency*, 458 U.S. 502, 510-12 (1982) (no federal jurisdiction where children are in the “custody” of foster or adoptive parents.)).) To Petitioner’s assertion that the facts of this case warrant an exception to the jurisdictional rule, Magistrate Judge Saporito found that “federal courts have ‘no authority to create equitable exceptions to jurisdictional requirements.’” (Doc. 17 at 2-3 (quoting *Bowles v. Russell*, 551 U.S. 205, 214 (2007); citing *Gutierrez v. Gonzales*, 125 Fed. App’x 406, 412 (3d Cir. 2005) (“It is without dispute that § 2241(c)’s custody requirement is jurisdictional. . . . [T]he District Court’s powers in equity cannot be used to cure a jurisdictional defect”)).)

With Petitioners [sic] Objections to the Report and Recommendation to Dismiss (Doc. 18), he attempts to distinguish the Supreme Court’s holding in *Lehman* with reference to dissenting opinions in the Third Circuit case which was under consideration. (*Id.* at 2 (*citing Lehman v. Lycoming Cty. Children’s Servs. Agency*, 648 F.2d 135, 163, 177 (3d Cir. 1981))). Petitioner’s reliance on the appellate court dissenting opinions of Judge Rosen and Judge Gibbons is unavailing in that the United States Supreme Court unequivocally held that “§ 2254 does not confer federal-court jurisdiction” allowing consideration of collateral challenges to state-court judgments terminating parental rights. 458 U.S. at 515-

16. Thus, Magistrate Judge Saporito properly found that this Court lacks jurisdiction to consider Petitioner's present action.

ACCORDINGLY, THIS 18 DAY OF FEBRUARY 2020, IT IS HEREBY ORDERED THAT:

1. The R&R (Doc. 17) is **ADOPTED** for the reasons set forth therein;
2. Petitioner's objections to the R&R (Doc. 18) are **overruled**;
3. Respondent Luzerne County Children & Youth Services' Motion to Dismiss Petitioner Scott Repella's Petition for Writ of Habeas Corpus, Filed on Behalf of A.R., a Minot (Doc. 13) is **GRANTED**;
4. The 28 U.S.C. § 2254 Petition is **DISMISSED WITH PREJUDICE**;
5. There is no basis for the issuance of a certificate of appealability.
6. The Clerk of Court is directed to **close this case**.


Robert D. Mariani
United States District Judge

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. **22-1130**

SCOTT JAMES REPELLA,
Appellant

v.

LUZERNE COUNTY C&Y SERVICES; LUZERNE COUNTY SOLICITOR'S OFFICE

No. **3-19-cv-00469**

SUR PETITION FOR REHEARING

Before: CHAGARES, *Chief Judge*, McKEE, AMBRO, JORDAN, HARDIMAN, GREENAWAY, JR., SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS, and *SCIRICA *Circuit Judges*.

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

s/ L. Felipe Restrepo
Circuit Judge

Date: June 30, 2022
Amr/cc: All counsel of record

*Judge Scirica's vote is limited to panel rehearing only.