IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 90-1008-CIV-KEHOE

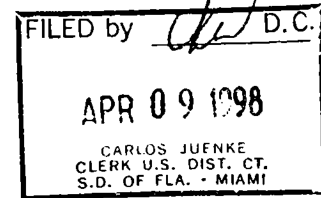
45,828 X

M.E., by and through his next friend,
Jenine Silverman, et al.

Plaintiffs,

-vs-

LAWTON CHILES, in his official capacity
as Governor of the State of Florida, et al.
Defendants.



RECEIVED
APR 20 1998
NATIONAL

ORDER

This cause came before this Court on Defendants' Amended Motion to Abstain dated February 19, 1996 (D.E. 176), and Plaintiffs' Response in Opposition to Defendants' Amended Motion to Abstain (D.E. 190). Upon consideration of the parties' legal memoranda and oral arguments, the Court denies Defendants' Amended Motion because neither the Younger abstention doctrine nor the Rooker-Feldman doctrine are applicable here.

Younger Abstention

A court should not abstain from hearing federal statutory and constitutional claims under the Younger doctrine unless three conditions are satisfied. First, the court must find that there are ongoing state proceedings involving the same plaintiffs with which the federal litigation will interfere. Second, the state proceeding must implicate important state interests. Third, the state proceedings must afford the plaintiffs an adequate opportunity to raise their federal statutory and constitutional challenges. Middlesex County Ethics Comm. v. Garden State Bar Ass'n, 457 U.S. 423 (1982).

The Younger doctrine is inapplicable here because the first and the third requirements for Younger abstention have not been satisfied. This litigation will not interfere with the reviews conducted for dependent children by Florida Circuit Courts under Chapters 39 and 394 of the Florida statutes. See Baby Neal v. Casey, 821 F. Supp. 320 (E.D. Pa. 1992), rev'd on other mounds, 43 F.3d 48 (3d Cir. 1994)(class action litigation in federal court addressing systemic problems with foster care system would not interfere with periodic "review hearings" of the plaintiffs' cases in which a state court reviewed the appropriateness of the placement or services provided). In addition, the limited reviews conducted pursuant to those chapters do not afford the Plaintiffs an adequate opportunity to raise the federal and constitutional claims that are the subject of this case. See LaShawn A. v. Kelly, 990 F.2d 1319, 1322 (D.C. Cir. 1993)("The notions of comity underlying Younger abstention do not compel federal courts to refrain from hearing federal statutory and constitutional claims when the pending state proceeding is an inadequate or inappropriate forum for pursuing this claim."); Hospital Council of Western Pa. v. City of Pittsburgh, 949 F.2d 83 (3d Cir. 1991)(abstention inappropriate where plaintiffs' equal protection challenge to the state's taxing system could not be raised in ongoing state proceedings before the state boards of assessment). Thus, the Younger abstention doctrine poses no bar to this lawsuit.

Rooker-Feldman Abstention

This Court also rejects Defendants' argument that the Rooker-Feldman doctrine deprives this Court of jurisdiction. The doctrine only applies if the plaintiffs had a "reasonable opportunity" to raise their federal claims in state proceedings. Wood v. Orange County, 715 F.2d 1543, 1546 (11th Cir. 1983). No such "reasonable

opportunity" existed in this case where a state Circuit Court presiding over an individual Plaintiffs case could never provide the system-wide relief sought by the Plaintiffs. A number of federal courts have similarly declined to abstain in cases such as this one that seek systemic relief in child welfare systems for violations of federal constitutional and statutory laws. See Marisol A. v. Guiliani, 929 F. Supp. 662,687~89 (S.D. N.Y. 1996); Baby Neal v. Casey, 821 F. Supp. 320, 332 (E.D. Pa. 1992), rev'd on other grounds, 43 F.3d 48 (3d Cir. 1994). See also LaShawn A. Kellv, 990 F.2d 1319 (D.C. Cir. 1993) ("no pending judicial proceeding in [D.C.] ... could have served as an adequate forum for the class of children in this case to present its multifaceted request for broad-based injunctive relief."). Accordingly, this Court refuses to abstain from hearing Plaintiffs' claims under the Rooker-Feldman doctrine.

For the foregoing reasons, it is ORDERED that Defendants' Amended Motion to Abstain is hereby DENIED.

DONE AND ORDERED this 9th day of June 1998, in Chambers in Miami, Florida.

HON. JAMES W. KEHOE

cc: counsel of record

MIA4-604915