

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals**For the Seventh Circuit****Chicago, Illinois 60604**

Submitted July 24, 2024*

Decided July 26, 2024

*Before*ILANA DIAMOND ROVNER, *Circuit Judge*AMY J. ST. EVE, *Circuit Judge*JOHN Z. LEE, *Circuit Judge*

No. 23-3432

JAMIE LYNN NICOLAI,
*Plaintiff-Appellant,**v.*CHILDREN'S HOSPITAL OF
WISCONSIN, INC.,
*Defendant-Appellee.*Appeal from the United States District
Court for the Eastern District of
Wisconsin.

No. 21-CV-414

Nancy Joseph,
*Magistrate Judge.***ORDER**

Jamie Lynn Nicolai appeals the summary judgment disposing of her claims against a Wisconsin hospital, which allegedly caused the wrongful separation of her family. Because a jury could not reasonably conclude that any hospital employee removed Nicolai's children from her custody, we affirm.

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

We recite the facts in the light most favorable to Nicolai, the party opposing summary judgment. *See Hernandez v. Foster*, 657 F.3d 463, 473 (7th Cir. 2011).

In May 2017, Milwaukee's Child Protective Services agency ("CPS") received notice—from whom, the record is unclear—that Nicolai could no longer manage the stress of caring for her two children. The following month, the children's day-care provider notified CPS that Nicolai was unavailable to take her infant daughter, who was experiencing an asthma attack that did not respond to medication, to the hospital. Nicolai disputes that she was unavailable, but she does not dispute that the day-care provider reported the incident to CPS. An ambulance took the infant to Wisconsin Children's Hospital, where Nicolai and Nicolai's three-year-old son joined her.

While at the hospital, Nicolai's children were removed from her custody. Shortly thereafter, a state court found that continued residence at Nicolai's home would be contrary to the children's welfare and ordered that the children be placed into the temporary custody of foster families. In August 2017, the state court returned the children to Nicolai's custody, contingent upon her compliance with a consent decree. In November 2017, the state court ordered that the children be temporarily removed from Nicolai's custody again. After a hearing in May 2021, the state court concluded that Nicolai was unfit to regain custody of the children and terminated her parental rights.

Meanwhile, Nicolai, acting pro se, filed this lawsuit against Wisconsin, the state's Department of Children and Families (of which Milwaukee CPS is a division), and "CPS-Children's Hospital." After the two state defendants were dismissed, Nicolai filed an amended complaint alleging that CPS-Children's Hospital had a contract with the state to provide child-custody case management services and had wrongfully interfered with her family's constitutional right to remain together. According to Nicolai, case managers "wrongly accused [her] of having unmanaged mental health needs" and fabricated "invalid reasons to keep the family apart." She sought \$100 million in damages and to have custody restored. Children's Hospital of Wisconsin filed an answer denying all allegations of misconduct and asserting several defenses.

After the close of discovery, the hospital filed a statement of proposed material facts, *see* E.D. Wis. R. 56(b)(1)(c), and moved for summary judgment. The hospital argued that Nicolai had not offered any evidence to show that its employees or representatives were involved in removing the children from her custody. (The hospital explained that a distinct legal entity, Children's Service Society of Wisconsin, had provided case management services to Nicolai's family. The hospital and the Service Society were both wholly owned by Children's Hospital and Health System, Inc. Yet,

the Service Society was not served with process and did not appear in the case.) The hospital also argued that it was entitled to qualified immunity, the *Rooker-Feldman* doctrine barred Nicolai's attempt to relitigate the final custody decision of the Wisconsin state court, and Wisconsin issue-preclusion law prohibited relitigation of issues decided in the state custody proceedings. The hospital properly notified Nicolai of her right to respond to the summary-judgment motion and the consequences of failing to do so.

Despite receiving this notice, Nicolai did not file a response brief or properly respond to the hospital's statement of facts. *See* E.D. Wis. R. 56(b)(2)(A)–(B). Instead, she filed a cross-motion for summary judgment. In support of that motion, she generally argued that she was entitled to summary judgment because, in her view, there was no evidence to support the conclusion that she was an unfit parent. Nicolai's evidence included notices she had received prior to the June and November 2017 hearings that resulted in her temporary loss of custody. Those notices did not identify the basis the state was relying on to keep the children in its custody.

The district court granted summary judgment for the hospital. Because Nicolai filed her cross-motion well after the deadline for such motions, the court construed her filing as a response brief. Still, the court explained, Nicolai had not properly contested the hospital's proposed facts; therefore, the court deemed the hospital's facts admitted. Further, none of Nicolai's evidence could convince a reasonable jury that hospital employees had participated in removing the children from her custody.

On appeal, Nicolai reprises her argument that the hospital had no evidence to show that she was an unfit parent. She infers from this purported lack of evidence that hospital employees fabricated the information that led her to lose custody and insists that her children be returned to her. But this argument does not engage with the district court's reasoning and, thus, cannot justify the result Nicolai seeks. *See Klein v. O'Brien*, 884 F.3d 754, 757 (7th Cir. 2018).

Nicolai also argues that the district court wrongly concluded that no hospital employee was involved in the removal of her children. In support, she points to signatures on the documents that notified her of the 2017 custody hearings and asserts that these signatures belong to hospital employees. But there is no evidence that the signatures do, in fact, belong to hospital employees, and the hospital provided evidence showing the opposite. Nicolai suggests, on the other hand, that the signatures belong to employees of Children's Service Society—the other entity owned by Children's Hospital and Health System, Inc.—but this too is unsupported. And regardless, the Service

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Society is not a party in this case, because, even after Nicolai learned that the Service Society was a separate legal entity from the hospital, she never moved to add it as a defendant.

AFFIRMED