

United States Court of Appeals,
Eleventh Circuit.

No. 95-2138.

In re INFANT FORMULA ANTITRUST LITIGATION, MDL 878; Fleming
Companies, Inc.; State of Louisiana, Plaintiffs-Appellants,

v.

ABBOTT LABORATORIES, Defendant-Appellee.

Dec. 20, 1995.

Appeal from the United States District Court for the Northern
District of Florida. No. 91-MDL-878), Maurice Mitchell Paul, Chief
Judge.

Before EDMONDSON, DUBINA and BARKETT, Circuit Judges.

PER CURIAM:

This is an appeal by class plaintiffs ("Appellants") of an
order denying their motion for a preliminary and permanent
injunction against Locator of Missing Heirs, Inc. ("Appellee"), a
non-party to the pending Antitrust action brought by Appellants
against several manufacturers of infant formula. The district
court denied Appellants' motion for lack of subject matter
jurisdiction. We affirm.

Appellants say the district court has subject matter
jurisdiction over this matter involving a non-party under either
Federal Rule of Civil Procedure 23(d) or the All Writs Act, 28
U.S.C. § 1651. * The district court's conclusion that it lacked
subject matter is a question of law reviewed *de novo*. *Sea Vessel,*

*Appellants propose the All Writs Act as a basis for subject
matter jurisdiction for the first time on appeal. Appellants
never raised this issue at trial and are foreclosed from raising
it now. *Singleton v. Wulff*, 428 U.S. 106, 119-121, 96 S.Ct.
2868, 2877, 49 L.Ed.2d 826 (1976); *Federal Deposit Ins. Corp. v.*
Verex Assurance, Inc., 3 F.3d 391, 395 (11th Cir.1993).

Inc. v. Reyes, 23 F.3d 345 (11th Cir.1994).

The Federal Rules of Civil Procedure do not create federal jurisdiction, see *Owen Equipment & Erection Co. v. Kroger*, 437 U.S. 365, 368-370 & n. 7, 98 S.Ct. 2396, 2400 & n. 7, 57 L.Ed.2d 274 (1978). Rule 23(d) is only a procedural law; it is not a grant of subject matter jurisdiction. The district court lacked subject matter jurisdiction over this matter.

AFFIRMED.