

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 05-cv-01858-EWN-MJW

SEAN HARRINGTON,

Plaintiff,

v.

MADELINE WILSON, et al.,

Defendants.

DEFENDANT CHRISTY RYAN'S MOTION TO DISMISS

Defendant Christy Ryan (“Ms. Ryan”) moves to dismiss the First Amended Complaint on various grounds.¹ As discussed herein, the Plaintiff has failed to comply with the Federal Rules of Civil Procedure with respect to his pleading, the Court lacks subject matter jurisdiction over this action and/or should abstain from exercising jurisdiction, and Plaintiff has failed to state claims upon which relief may be granted.

I. INTRODUCTION

The genesis of Plaintiff’s grievance is a bitterly contested dissolution of marriage proceeding between Plaintiff and his ex-wife, Ms. Ryan. These parties were divorced in May 2000 but they are (and have been for years) involved in an ongoing custody/parenting time dispute concerning their minor child. The dispute is pending in the District Court for Jefferson County, Colorado and the Colorado Court of Appeals. (Am. Compl. at App. A, B, and E). Plaintiff is unhappy about his parenting time and seeks to collaterally attack various orders and

¹ Plaintiff’s original Complaint was filed September 23, 2005. He filed a First Amended Complaint (hereinafter “Amended Complaint”) on October 28, 2005 before any responsive pleadings were filed. (Doc. 22). Ms. Ryan is therefore treating the Amended Complaint as the operative pleading for purposes of this motion to dismiss.

judgments entered in the state court proceedings, as well as decisions rendered and actions taken by state agencies. Indeed, Plaintiff acknowledges in the Amended Complaint that this case is a “collateral action” and the state court judgments “may be attacked collaterally.” (Am. Compl., ¶¶4, 8). Plaintiff claims this Court is the appropriate court in which to redress his grievances because the Colorado judiciary (at both the trial court and appellate court levels) has done nothing to remedy or acknowledge his claim of “parental alienation” and other claims. (See e.g., Am. Compl. at ¶¶17, 35, 43, 105).

The Amended Complaint alleges misconduct by a variety of parties and non-parties spanning the time period from December 1999 or September 2000 to the present. (Am. Compl., ¶¶3, 34). Plaintiff seeks to invoke the jurisdiction of this Court pursuant to 28 U.S.C. §1331 (federal question), 28 U.S.C. §1332 (diversity of citizenship), 28 U.S.C. §1343 (civil rights action), and 28 U.S.C. §1367 (supplemental jurisdiction). (Am. Compl., ¶23). A reasonable and liberal reading of the Amended Complaint reveals that this action should be dismissed for a variety of reasons.

II. PARTIES/CLAIMS AGAINST MS. RYAN

Plaintiff is suing his ex-wife (Ms. Ryan), her divorce lawyer, a Special Advocate appointed in the divorce case, a parent-child counseling center, the divorce court judge’s clerk from the Jefferson County District Court, the Jefferson County Combined Court itself, the ADA Coordinator and the Court Administrator for the First Judicial District of Colorado, the Director of the Colorado Civil Rights Commission, and an Assistant Regulation Counsel and the Chief Regulation Counsel for the Colorado Supreme Court.² It appears the only person involved in state matters concerning the Plaintiff that he is not suing is the divorce court judge herself, whom

² For reasons known only to the Plaintiff, he has alleged that “even the federal magistrate ... in the case at bar is directly accountable to” the Attorney Regulation Counsel in Colorado. (Am. Compl., ¶90).

the Plaintiff has designated as “a civil-equivalent of an unindicted co-conspirator.” (Am. Compl., p. 92 at n. 60).

Despite the improper nature of the Amended Complaint (see §IV (A) *infra*), one may discern that the Plaintiff is attempting to assert the following eleven claims for relief against Ms. Ryan, eight of which are state common law claims and three of which are alleged federal civil rights violations:

- (a) That Ms. Ryan and her divorce lawyer negligently inflicted emotional distress upon Plaintiff by allegedly depriving him of an appropriate relationship with their daughter, contrary to the divorce court’s order (Am. Compl., ¶¶94-106);
- (b) That Ms. Ryan and her divorce lawyer conspired to conceal the parties’ daughter from Plaintiff, contrary to agreement, divorce court order, and dissolution of marriage statutes (Am. Compl., ¶¶107-112);
- (c) That Ms. Ryan and her divorce lawyer negligently inflicted emotional distress upon Plaintiff by allegedly violating an agreement, divorce court order, and state rules of civil procedure (Am. Compl., ¶¶113-133);
- (d) That Ms. Ryan, her divorce lawyer, and the divorce court judge’s clerk conspired to deny Plaintiff access to the state court (Am. Compl., ¶¶134-152);
- (e) That Ms. Ryan, her divorce lawyer, and the divorce court judge’s clerk engaged in extreme and outrageous conduct towards Plaintiff in some unspecified manner, apparently by allegedly alienating the affections between Plaintiff and the parties’ daughter (Am. Compl., ¶¶153-158);

- (f) That Ms. Ryan and her divorce lawyer breached contracts (stipulated agreements) entered into with Plaintiff in the divorce/parenting time proceedings and approved by the divorce court (Am. Compl., ¶¶159-176);
- (g) That Ms. Ryan and her divorce lawyer breached the covenant of good faith and fair dealing with respect to various contracts entered into with the Plaintiff in connection with the divorce/parenting time proceedings (Am. Compl., ¶¶177-183);
- (h) That Ms. Ryan and her divorce lawyer engaged in abuse of process in connection with the divorce/parenting time proceedings, state civil restraining order proceedings, and state mental health proceedings (Am. Compl., ¶¶184-209);
- (i) That Ms. Ryan, her divorce lawyer, and the divorce court judge's clerk deprived Plaintiff of meaningful access to the state courts in violation of the First Amendment and contrary to 42 U.S.C. §1983 (Am. Compl., ¶¶226-239);
- (j) That Ms. Ryan, her divorce lawyer, and the divorce court judge's clerk violated 42 U.S.C. §1985(3) because of religious differences with the Plaintiff and by allegedly denying him access to the state court (Am. Compl., ¶¶240-250); and
- (k) That Ms. Ryan, her divorce lawyer, the divorce court judge's clerk, *and* the Attorney Regulation Counsel violated 42 U.S.C. §1986 by allegedly conspiring to conceal the parties' daughter from Plaintiff and by denying him meaningful access to the state courts (Am. Compl., ¶¶305-308).

As discussed below, these claims have no place in federal court and the action should be dismissed on one or more grounds.

III. STANDARDS FOR DECISION

Ms. Ryan reserves the right to challenge the accuracy of any of the allegations in the Amended Complaint. However, for purposes of reviewing this motion to dismiss, the Court must consider as true all material facts that are well pled. *Tri-Crown, Inc. v. American Fed. Sav. & Loan Ass'n.*, 908 F.2d 578, 582 (10th Cir. 1990). Nonetheless, conclusory allegations should not be accepted as true and the Court is not bound by unwarranted inferences or legal conclusion. *Hackford v. Babbitt*, 14 F. 3d 1457, 1465 (10th Cir. 1994); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991).

The Court may construe *pro se* pleadings liberally. *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Riddle v. Mondragon*, 83 F. 3d 1197, 1201 (10th Cir. 1993). However, this does not mean that the Court is a *pro se* litigant's advocate, *Hall v. Bellmon*, 935 F. 2d at 1110, nor will the Court construct legal theories which assume facts not pleaded. *Dunn v. White*, 880 F. 2d 1188, 1197 (10th Cir. 1989).

IV. GROUNDS FOR DISMISSAL

Ms. Ryan submits that there are various grounds warranting dismissal of this action. The Plaintiff has violated the Federal Rules of Civil Procedure with respect to his pleading, the Court lacks subject matter jurisdiction over this action and/or should abstain from exercising jurisdiction, and the Plaintiff has failed to state claims upon which relief may be granted.

A. VIOLATION OF FED. R. CIV. P. 8(a)(2), 8(e)(1), AND 12(f)

Even though a *pro se* litigant's pleadings may be construed liberally, he is required to follow the rules of procedure. *Ogden v. San Juan County*, 32 F. 3d 452, 455 (10th Cir. 1994). Pursuant to Fed. R. Civ. P. 8(a)(2), a complaint shall contain "a short and plain statement of the

claim showing that the pleader is entitled to relief.” Moreover, pursuant to Fed. R. Civ. P. 8(e)(1) the averments in a pleading are to be simple, concise, and direct. It is appropriate to dismiss a *pro se* complaint where, as here, it does not meet the pleading requirements of Rule 8. *Carpenter v. Williams*, 86 F. 3d 1015, 1016 (10th Cir. 1996).

The Amended Complaint is rambling, frequently nonsensical, and especially prolix. The pleading consists of 98 pages of text with 438 paragraphs of allegations, 60 footnotes, 27 claims for relief, and 29 prayers for relief, followed by 8 appendices consisting of 76 pages of single-spaced text with a plethora of additional allegations and footnotes. Plaintiff makes a series of personal attacks on all of the Defendants and other persons, including judicial officers in state trial courts and state appellate courts. The attacks are too numerous to list in a motion but are contrary to the admonitions of Fed. R. Civ. P. 12 (f) (the court may strike any “redundant, immaterial, impertinent, or scandalous matters” from a pleading).

Even liberally construed, the Amended Complaint fails to comply with at least the above-cited Federal Rules of Civil Procedure and should be dismissed on that basis alone. The Court may, alternatively, issue an order directing the Plaintiff to show cause why this action should not be dismissed for his failure to comply with the Federal Rules of Civil Procedure. See, D.C. COLO. LCivR 41.1.

B. LACK OF SUBJECT MATTER JURISDICTION/ABSTENTION

A motion to dismiss for lack of subject matter jurisdiction may be made by motion pursuant to Fed. R. Civ. P. 12(b)(1). Indeed, an action shall be dismissed “whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter.” Fed. R. Civ. P. 12(h)(3). This is because federal courts are courts of limited jurisdiction, *Kokkenen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994), federal courts may exercise jurisdiction only when specifically authorized to do so, *Castaneda v. INS*, 23 F. 3d 1576, 1580

(10th Cir. 1994), and actions must be dismissed when jurisdiction is lacking. *Basso v. Utah Power & Light Co.*, 495 F.2d 906, 909 (10th Cir. 1974).

Rooker-Feldman Doctrine

This action implicates the Rooker-Feldman doctrine, so named for two seminal U.S. Supreme Court cases that first described its contours. *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983). The doctrine has its roots in 28 U.S.C. §1257(a), pursuant to which “final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari.” Implicit in this grant of jurisdiction is the denial of authority to lower federal courts to review state court judgments. This limitation on federal subject matter jurisdiction applies to all state court judgments, by whatever court issued, whether temporary or final. *Kenmen Engineering v. City of Union*, 314 F.3d 468, 473-75 (10th Cir. 2002). The doctrine applies regardless whether the federal plaintiff had an opportunity to litigate his claims in state court. *Kenmen*, 314 F.3d at 478-80.

Simply stated, the Rooker-Feldman doctrine constrains “a party losing in state court ... from seeking what in substance would be appellate review of [a] state judgment in a United States district court, based on a losing party’s claim that the state judgment itself violates the loser’s federal rights.” *Johnson v. DeGrandy*, 512 U.S. 997, 1005-06 (1994). The doctrine applies equally to claims that were actually decided by the state court as to claims that are “inextricably intertwined” with the state court judgment. *Kenmen*, 314 F.3d at 473, 476. A federal plaintiff may not circumvent the rule of Rooker-Feldman simply by cloaking his complaints in the mantle of the federal civil rights statutes. See, *Facio v. Jones*, 929 F.2d 541, 544 (10th Cir. 1991); *Roman-Nose v. New Mexico Department of Human Services*, 967 F.2d 435, 437 (10th Cir. 1992); *Anderson v. State of Colorado*, 793 F.2d 262, 263 (10th Cir. 1986). Because

jurisdiction under the federal civil rights statutes is not exclusive, *see Feldman, supra*, a federal plaintiff may raise his constitutional challenges in the state court proceedings to which he is a party. *See Anderson*, 793 F.2d at 263.

In this action, the Plaintiff seeks monetary damages and other relief allegedly attributable to Ms. Ryan's conduct in state court proceedings. Plaintiff attacks virtually every order, judgment, and action taken in the state court proceedings in which Plaintiff and Ms. Ryan have been involved. Plaintiff's unhappiness with those proceedings, and his disagreement with Ms. Ryan's conduct in and related to the proceedings, is not a sufficient basis upon which to seek federal court review of the state courts. It is only within the context of orders and judgments denying or restricting Plaintiff's contact with the parties' child that Ms. Ryan's alleged actions give rise to the claims asserted in this action. In other words, Plaintiff's "federal claim succeeds only to the extent that the state court wrongly decided the issues before it." *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 25 (1987) (Marshall, J., concurring).

State court orders and judgments caused, actually and proximately, the alleged injuries for which Plaintiff seeks redress in this action. As a result, federal subject matter jurisdiction is lacking. *See Anderson*, 793 F.2d at 263-264 (affirming dismissal of civil rights action where father alleged that state and judges violated his rights by engaging in a discriminatory practice of awarding custody to the mother in a child custody dispute); *Roman-Nose*, 967 F.2d at 436-37 (affirming dismissal of civil rights action where mother alleged that several persons involved in state termination of parental rights proceeding breached various duties and violated her constitutional rights); *Hunt v. Lamb*, 427 F.3d 725, 727 10th Cir. 2005) (case involved removal of custody proceeding in which father alleged abuse of power and illegal actions by his ex-wife and the state court; exercise of federal jurisdiction inappropriate even if father was seeking to vindicate his civil and constitutional rights).

Abstention Under Domestic Relations Exception

The federal courts have long recognized that “the whole subject of the domestic relations of husband and wife, parent and child, belong to the laws of the States and not to the laws of the United States.” *Ex Parte Burrus*, 136 U.S. 586, 594 (1890). *See also, Ankenbrandt v. Richards*, 504 U.S. 689, 703 (1992). The domestic relations exception is founded on the state interest in domestic matters, as well as to avoid the possibility of conflicting state and federal decrees in matters under the state’s continuing jurisdiction and to avoid the unnecessary cluttering of federal dockets. *Short v. Short*, 730 F. Supp. 1037, 1040 (D. Colo. 1990); *Casida v. Casida*, 580 F. Supp. 857, 858 (D. Colo. 1984); *Tuerffs v. Tuerffs*, 117 F.R.D. 674, 675 (D. Colo. 1987).

Plaintiff’s allegations and claims in this action, in one form or another, have been presented and/or are currently an issue in ongoing state court proceedings – Plaintiff so admits throughout the Amended Complaint. He simply wants this Court to reevaluate issues and evidence presented and addressed in the state court proceedings. Indeed, as noted in Section I above, the Plaintiff alleges that this Court should hear his grievances because the state trial and appellate courts allegedly have done nothing to remedy or acknowledge his claims. The state courts possess continuing jurisdiction to supervise and modify their orders, judgments, and decrees and it is inappropriate for this Court to intervene. Abstention under the domestic relations exception is appropriate here.

Younger Abstention Doctrine

The *Younger* abstention doctrine is based upon *Younger v. Harris*, 401 U.S. 37 (1971) and requires a federal court to abstain from hearing a case where three criteria are met: (1) state judicial proceedings are ongoing; (2) state proceedings implicate an important state interest; and (3) the state proceedings offer an adequate opportunity to litigate federal constitutional issues. *Seneca-Cayuga Tribe of Okla. v. Okla. ex rel. Thompson*, 874 F.2d 709, 711 (10th Cir. 1989).

An instructive case is *Oltremari by McDaniel v. Kansas Social & Rehabilitative Service*, 871 F. Supp. 1331 (D. Kan 1994). There, a child through her mother sued the father, father's counsel, a county attorney, guardian *ad litem*, and the state department of social services under various civil rights statutes for violations of her constitutional rights in connection with a custody dispute. The Court noted that *Younger* abstention has been extended to pending child custody proceedings, and it then abstained from exercising jurisdiction over the case. *Oltremari*, 875 F. Supp at 1355-57.

Here, the allegations in the Amended Complaint reveal that state judicial proceedings are ongoing, the only difference being that Plaintiff has chosen to put different labels on his claims for purposes of this action. Plaintiff's attempt to proceed simultaneously in both state and federal court is simply an improper attempt to circumvent state court procedures and legal principles and avoid a forum he perceives as hostile to him. The pending state court litigation centers around domestic relations, namely custody and parenting time with the parties' child. Colorado of course has a strong interest in the matter because it is traditionally of state concern – that interest may be fairly characterized as a paramount if not exclusive interest in such matters. The state courts can readily determine if Plaintiff's constitutional rights, civil rights, and other rights are being adequately protected in the course of their proceedings, and those courts can address and remedy any of the violations and claims that Plaintiff alleges. *Younger* abstention is appropriate with respect to this action.

C. FAILURE TO STATE CLAIMS

Fed. R. Civ. P. 12(b)(6) provides that the Court may dismiss a claim where, as here, the Plaintiff has failed to state a claim upon which relief can be granted. Without conceding that Plaintiff has stated claims for relief with respect to his state common law claims, Ms. Ryan would note that Plaintiff has failed to state a claim for relief with respect to his claims under 42

U.S.C. §1983, 42 U.S.C. §1985(3), and 42 U.S.C. §1986. (Am. Compl., Claims 11, 12, and 17, ¶¶226-250 and ¶¶305-309).

Claims under 42 U.S.C. §§1983, 1985, and 1986 require facts demonstrating that a “state actor”, acting alone or in concert with others, deprived a plaintiff of his civil rights. See, e.g., *Blum v. Yaretsky*, 457 U.S. 991, 1009 (1982); *Lugar v. Edmonson Oil Co.*, 457 U.S. 922, 924 (1981). A private actor acts under color of state law when the private actor is a willful participant in joint activity with the state or its agents. *Montgomery v. City of Ardmore*, 365 F.3d 926, 942 (10th Cir. 2004). Conclusory allegations of joint action with the state are insufficient to state a claim under these federal statutes, rather, there must be evidence or well-pled allegations showing how a defendant acted in concert with and/or conspired with the state or a state actor. *See id.*

Ms. Ryan is not a state actor and there is no cognizable allegation that about that matter. She is simply an ex-wife and mother pursuing the best interests of her daughter through state court proceedings. The best that Plaintiff has offered in his pleading is a series of conclusory allegations that Ms. Ryan conspired with her divorce lawyer, a judge or judges, a court clerk, and regulatory counsel to deprive Plaintiff of his civil rights. This is insufficient under applicable law and there is no legal basis for Plaintiff to haul Ms. Ryan into federal court based on unfounded allegations about being a “state actor.”

V. CONCLUSION

Ms. Ryan requests that the Court grant this motion and enter an order dismissing this action with prejudice. It should be noted that the other Defendants will be filing motions to dismiss this action as well, and Ms. Ryan intends to join in and adopt those motions in further support of her request for dismissal.

Dated this 18th day of November, 2005.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 18, 2005, I electronically filed the foregoing **MOTION** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses: esoxlucios@msn.com; bhuff@wsteele.com; dyun@jalegal.com; and ck.wilkinson@state.co.us; and I hereby certify that I have served the document to the following non-CM/ECF participants in the manner indicated by the non-participant's name:

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