

**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.

**REPLY IN SUPPORT OF DEFENDANT CHRISTY RYAN'S
MOTION TO DISMISS**

Pursuant to D.C.COLO.LCivR 7.1C, Defendant Christy Ryan (“Ms. Ryan”) respectfully submits this reply in support of her motion to dismiss (Doc. 25):

I. PLAINTIFF’S INTRODUCTORY ARGUMENTS

In his Response (Doc. 27), the Plaintiff attempts to retreat from or mischaracterize his own allegations and the nature of this lawsuit. Ms. Ryan submits that it would be apparent to a reasonable person (except the Plaintiff) that he is indeed seeking federal court review of state court orders and decisions rendered in the divorce, custody, parenting time, civil, mental health, and restraining order proceedings about which he complains in the First Amended Complaint. With respect to the allegations where Plaintiff claims he is not actually trying to overturn or change those orders and decisions, he is seeking to remedy conduct that is inextricably intertwined with those orders and decisions. The gist of Plaintiff’s alleged grievances is found at the outset of his prolix pleading: “Plaintiff asks the court to examine whether certain [state court] judicial proceedings, which happened to involve a divorce, comported with the federal

constitutional guarantee of due process” (Am. Compl., ¶7); and “[The state court] judgments cited [in the First Amended Complaint] are those that were procured through fraud and deception or were void *ab initio* (not merely voidable), which judgments have no preclusive effect and may be attacked collaterally.” (Am. Compl., ¶8).

Plaintiff initially contends that a twenty-year old jury verdict from Denver District Court, *Hall v. Hall-Stradley*, somehow governs his claims in this Court. (Resp. at pp. 1-2 and Ex. A thereto). Research reveals the only published decisions relating to that state court case have no bearing on the issues this Court has been asked to decide. See, *Hall v. Bornschlegel*, 740 P.2d 539 (Colo. App. 1987) (Rule 54(b) certification of partial summary judgment in favor of defendants was improper); *Hall v. Hall-Stradley*, 776 P.2d 1166 (Colo. App. 1989) (father owing duty of child support could not offset that obligation by garnishing himself).

Plaintiff also relies upon the policy considerations precluding joinder of inter-spousal tort claims or *non-related* contract claims with dissolution of marriage proceedings, as set forth in *Simmons v. Simmons*, 773 P.2d 602 (Colo. App. 1988). (Resp. at p. 2-3). The claims in *Simmons* were brought before the parties’ marriage was dissolved, while here the Plaintiff and Ms. Ryan were divorced in May 2000 and Plaintiff is apparently attempting to assert claims based on conduct occurring thereafter. Moreover, Plaintiff’s contract claims are not *non-related* contract claims as he is seeking to review conduct occurring with respect to stipulated agreements approved by, and made into orders of, the divorce court. His tort claims are all inextricably intertwined with the state court divorce, custody, parenting time, civil, mental health, and restraining order proceedings.

Plaintiff also cites *Casida v. Casida*, 659 P.2d 56 (Colo. App. 1982) for the same proposition as *Simmons*. (Resp. at p.2). The ongoing dispute between ex-husband and ex-wife in *Casida* was examined by this Court in *Casida v. Casida*, 580 F. Supp. 857 (D. Colo. 1984).

There, the ex-husband alleged his ex-wife violated his visitation rights, misled the state court in order to take the child out of state, concealed the whereabouts of the child, engaged in a course of conduct to deny him contact with the child, made false and misleading statements in an effort to deny his rights of visitation, and violated duties imposed by court order and by law. This Court held that the language of the complaint and the history of the case demonstrated that the instant action, in which the ex-husband essentially alleged that the ex-wife had interfered with visitation and his relationship with the child, arose out of continuing domestic disputes, and therefore, under the domestic relations exception to diversity jurisdiction, the state court and not the federal court was the proper forum. *Id.*, 580 F. Supp. at 859.

The argument that Plaintiff should be able to assert his contract and tort claims in a separate civil case (whether in federal court or state court) runs counter to established state law as well. In *Gavrilis v. Gavrilis*, 116 P.3d 1272 (Colo. App. 2005) an ex-wife sued her ex-husband for damages in a separate civil case rather than seeking relief in the divorce proceeding under C.R.C.P. 60(b); the claims asserted were for fraud, outrageous conduct, breach of fiduciary duty, breach of contract, and negligence arising from the ex-husband's conduct in the divorce case. The Colorado Court of Appeals held: "We are persuaded by *Rieger v. Rieger*, *supra*, and decisions in other jurisdictions precluding collateral attacks on dissolution decrees. Thus, we hold that here claim preclusion bars wife's independent damages action for wrongs allegedly committed by husband in the dissolution proceeding." *Id.*, 116 P.3d at 1275. In *Mockelman v. Mockelman*, 121 P.3d 337 (Colo. App. 2005) an ex-husband sued his ex-wife in a separate civil case asserting civil theft and related claims concerning marital assets divided by a divorce court. The ex-husband contended that because the ex-wife's acts occurred subsequent to permanent orders and a contempt ruling in the divorce case, his claims were properly brought as a separate, independent action at law. The Colorado Court of Appeals disagreed: "[H]usband's damages

claims concern property that has been the subject of at least three previous orders of the dissolution court. We conclude that, under these circumstances, policy considerations require that such claims only be pursued in the dissolution court.” *Id.*, 121 P.3d at 339.

Plaintiff also contends that he should be able to bring his claims in federal court because the state court has not yet decided his motion to recuse the judge, therefore, the state court is divested of jurisdiction. (Resp. at pp. 2-3). A recusal motion does not *divest* a state court of jurisdiction, rather, it only *suspends* the proceedings in a particular case until the motion is determined and/or a replacement judge is assigned. See, C.R.C.P. 97. Moreover, Rule 97 does not prohibit the filing of papers with the court while a recusal motion is pending, and the Rule only suspends the power of the particular judge to whom the motion is directed. The power of the court itself is not suspended nor is the court itself divested of jurisdiction. Like most state courts, there are numerous other judicial officers in Jefferson County District Court who are empowered by their position to decide issues raised by the Plaintiff.

Ms. Ryan would also note that the state divorce court possesses *continuing jurisdiction* over its orders and decrees, and such jurisdiction continues not only with respect to the validity of those orders and decrees but also with respect to supervising and modifying the orders and decrees. See, *Short v. Short*, 730 F. Supp. 1037, 1040 (D. Colo. 1990); *Casida v. Casida*, *supra*, 580 F. Supp. at 859. Inasmuch as the Plaintiff is complaining about Ms. Ryan’s conduct in connection with the state divorce court proceedings, he should return there to seek relief under C.R.C.P. 60(b), Colorado’s dissolution of marriage statutes, and other applicable law.

II. PLAINTIFF'S OTHER ARGUMENTS

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

Plaintiff contends his pleading is prolix because of the massive “fraud” committed collectively by numerous Defendants over a span of several years. (Resp. at pp. 5-7).

Notwithstanding Plaintiff’s protestations, Ms. Ryan submits that a fair reading of the First Amended Complaint reveals that it violates the “short and plain statement” and “simple, concise, and direct” requirements of Fed. R. Civ. P. 8(a)(2) and 8(e)(1).

With respect to Ms. Ryan’s argument that the pleading contains allegations in violation of Fed. R. Civ. P. 12(f), the Plaintiff contends that he is entitled to criticize judicial officers as he sees fit. (Resp. at pp. 7-8). With respect to Ms. Ryan, however, the following is a brief sampling of the scandalous matters alleged: (a) the state trial court practice of selective waiver and assumption of jurisdiction was exercised to create an available forum only for Ms. Ryan (Am. Compl., ¶38 and n. 9); (b) Ms. Ryan has used Plaintiff’s mental illness as ammunition for her weapon of choice, the Colorado judicial system (Am. Compl., ¶51); (c) Ms. Ryan manufactured diagnostic information leading to a psychiatric diagnosis supporting Plaintiff’s court-ordered mental health confinement (Am. Compl., ¶53 and n. 17); (d) Ms. Ryan secured an order from the divorce court through deception and fraud (Am. Compl., ¶77); and (e) Ms. Ryan has robbed Plaintiff of his relationship with his daughter through planned abuse of process, fraud, collusion, evasion, and concealment (Am. Compl., ¶96). The courts are no place to air these wild conspiracy theories and paranoid delusions.

B. LACK OF SUBJECT MATTER JURISDICTION/ABSTENTION

Contending that lack of subject matter jurisdiction and abstention are mutually exclusive, Plaintiff argues that Ms. Ryan is seeking impossible relief. (Resp. at pp. 8-9). This argument ignores the proposition that a litigant may seek dismissal on alternative grounds. If the Court

determines that it has jurisdiction over the subject matter of this action, this action may still be dismissed if the Court abstains from exercising jurisdiction based upon the domestic relation exception or the *Younger* abstention doctrine.

1. Rooker-Feldman Doctrine

Plaintiff contends that the Rooker-Feldman doctrine was narrowed by the Supreme Court in *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 125 S. Ct. 1517 (2005). (Resp. at pp. 9-10). The *Exxon* court held that the doctrine is confined to cases of the kind from which the doctrine acquired its name, i.e., cases brought by state court losers complaining of injuries caused by state court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments; the doctrine does not otherwise override or supplant preclusion doctrine or augment the circumscribed doctrines that allow federal courts to stay or dismiss proceedings in deference to state court actions. 125 S. Ct. at 1521-22, 1526-28.

Seeking refuge under *Exxon*, the Plaintiff argues that the Rooker-Feldman doctrine does not apply to the instant case because he is allegedly presenting claims that are “independent” of the state court issues and he did not litigate his claims in state court. (Resp. at pp. 10-11). As Ms. Ryan argued in her motion to dismiss, however, and as reflected in the First Amended Complaint, the Plaintiff’s claims are not “independent” but rather are inextricably intertwined with the orders, decrees, and judgments of the state courts. Plaintiff has simply put new labels on his claims in an effort to circumvent the doctrine.

Plaintiff also contends that the Court should look at the relief he is seeking (monetary damages) in order to determine whether he is attempting to undermine state court judgments. (Resp. at pp. 11-12). That Plaintiff is seeking monetary damages does not end the inquiry, however, as the premise for damages in this case is that the state court orders and judgments

were invalid because of the actions and conduct of all of the Defendants, including Ms. Ryan. It is established that the Rooker-Feldman doctrine precludes the Court from proceeding on Plaintiff's claims under such circumstances. *Kenmen Engineering v. City of Union*, 314 F.3d 468, 476 (10th Cir. 2002) (Rooker-Feldman doctrine bars even claims for monetary damages where they seek to "disrupt or undo" state court decisions). Ms. Ryan would also note that monetary damages are not the only relief that Plaintiff is seeking. He has also requested an injunction to prohibit concealment of the parties' child, a declaratory judgment that he is entitled to seek redress in the state courts, and an injunction prohibiting infringement upon his access to the state courts. (Am. Compl. at p. 93, ¶8 and at p. 94, ¶¶13-14). These matters are within the purview of the state courts, including the divorce court that is handling issues concerning custody and parenting time with the parties' child.

2. Domestic Relations Exception

Plaintiff contends that, where diversity jurisdiction exists, he may bring a "marital and domestic tort case" in federal court. (Resp. at pp. 12-13). This argument initially brings up an important question that Plaintiff has raised in the Response, namely, whether diversity jurisdiction actually exists in this case. To invoke the jurisdiction of this Court, under Fed. R. Civ. P. 8(a)(1) a Complaint must allege *affirmatively* the grounds upon which the Court's jurisdiction depends and in diversity cases the Complaint must allege the State of which *each* party is a citizen. *Robinson v. Brown & Williamson Tobacco Corp.*, 909 F. Supp. 824, 825 (D. Colo. 1995). This rule exists because there is a presumption against diversity jurisdiction and the burden is upon the Plaintiff to affirmatively sustain it; diversity cannot be pled by inference because an inference cannot overcome the presumption. *Id.*, 909 F. Supp. at 826.

The First Amended Complaint contains only a negative averment or inference about Plaintiff's actual residency or citizenship, namely that "Plaintiff is not a resident of Colorado."

(Am. Compl., ¶24 and n. 5). Plaintiff does not allege his current residency or citizenship anywhere in the pleading, rather, he only alleges that he used to reside in Texas (where Ms. Ryan resides) and that he used to reside in Colorado (where the other Defendants reside). (Id.). Plaintiff instead asks the Court to exclude his (un-named) home residency from the purview of the Defendants and subject only to *in camera* review. (Am. Compl. at p. 97, ¶¶27-29). Indeed, the Plaintiff avers that he has engaged in “evasive maneuvers to establish and maintain his anonymity.” (Am. Compl., ¶215).¹ Neither the parties nor the Court should have to guess about the State where Plaintiff actually resides or is a citizen. Until Plaintiff complies with Rule 8(a)(1) and *Robinson*, his arguments about diversity jurisdiction should be disregarded.

Plaintiff also relies upon *Ankenbrandt v. Richards*, 504 U.S. 689 (1992) for the proposition that the domestic relations exception does not permit this Court to decline jurisdiction in this case. (Resp. at pp. 12-13). According to *Ankenbrandt*, however, a domestic relations exception to federal diversity jurisdiction exists as a matter of statutory construction. 504 U.S. at 700. The domestic relations exception does not permit a federal district court to refuse to exercise diversity jurisdiction over a run-of-the-mill tort action for damages, but it *does* encompass cases “involving” divorce and alimony decrees and child custody orders. 504 U.S. at 703. The instant case “involves” both a divorce decree and child custody orders and the state court’s jurisdiction over those matters is continuing as a matter of law. Indeed, that is exactly what the Plaintiff is complaining about throughout his pleading, which pleading is merely part of an ongoing series of disputes centering around the marital relationship and the custody of a child.

It should be noted that two months ago, the Tenth Circuit had occasion to consider *Ankenbrandt* in the context of a case substantially similar to the instant case. *Hunt v. Lamb*, 427

¹ The mailing address provided by Plaintiff in his signature block (Am. Compl. at p. 97) is merely a mail-drop he uses and does not on its face constitute an affirmative allegation of residency or citizenship. See Am. Compl. at App. B, n. 5 concerning mail drop with “Mail Boxes etc.”. Ms. Ryan would also note that in the First Amended

F. 3d 725 (10th Cir. 2005). There, an ex-husband removed a state court post-decree child custody dispute to federal district court. He sought to file a complaint styled as a civil rights action alleging abuse of power and illegal actions by his ex-wife and the state court, as well as restoration of residential custody and a bar from future disturbances with his life, along with damages in the form of lost wages and child support payments. The Tenth Circuit held that because the underlying state court action involved child custody, the ex-husband's suit was subject to the domestic relations exception set forth in *Ankenbrandt* and remand was ordered. 427 F. 3d at 727. The Court also held that remand was required even if the ex-husband sought to vindicate his civil and constitutional rights. *Id.*²

3. Younger Abstention Doctrine

Plaintiff argues that *Younger* abstention is inappropriate because he believes there are no ongoing state court proceedings. (Resp. at pp. 14-15). It is difficult to fathom how Plaintiff could make such an assertion, especially given that his First Amended Complaint cites to various pending state divorce court and state appellate court proceedings. Indeed, Plaintiff complains in his pleading (and in the Proposed Scheduling Order) that the state court judge will not rule on pending motions because of a pending appeal and a pending recusal motion. The decision in *Ankenbrandt v. Richards* is instructive on this point, because there the Court held that *Younger* abstention was inappropriate since no state court proceeding was pending. *Id.*, 504 U.S. at 705. Here, the converse is true as state court proceedings are pending and abstention would therefore be appropriate because important state interests are implicated – not only the paramount interest in custody and parenting time, but the interest in seeing that its orders and decrees are followed.

Complaint and Proposed Scheduling Order, Plaintiff relies upon statutes from Colorado, Massachusetts, Minnesota, and Texas to support his claims for relief. Ms. Ryan frankly has no concrete idea where Plaintiff actually lives.

² The Court in *Hunt v. Lamb* did not discuss or otherwise cite another decision relied upon by the Plaintiff here, namely *Johnson v. Rodrigues (Orozco)*, 226 F. 3d 1103 (10th Cir. 2000). (Resp. at p. 13). Ms. Ryan submits that *Johnson* is inapposite because, unlike the instant case, there the plaintiff was *not* a party to the state court adoption proceedings and he was *not* challenging the merits of a particular state court ruling.

Plaintiff next argues that if there are ongoing state court proceedings (and there are), he has not had and will not have in the future an adequate opportunity to litigate the issues in state court. (Resp. at p. 15). This is tantamount to an admission that the very same issues Plaintiff is suing over have in fact been litigated – Plaintiff simply does not like the outcome and predicts that the future outcome would be the same. Moreover, the First Amended Complaint (and the Proposed Scheduling Order) is replete with allegations about the filing in state court of pleading after pleading, motion after motion, affidavit after affidavit, brief after brief, etc. The fact that Plaintiff is unhappy with the outcome of the state court proceedings (whether divorce and custody proceedings, appeals, etc.) does not transform his position into an inadequate opportunity to litigate. Indeed, a review of the First Amended Complaint makes it apparent that Plaintiff has spent over the last six years (and still spends) a substantial amount of his time litigating issue after issue. The third prong of the *Younger* abstention doctrine is met here.

C. FAILURE TO STATE CLAIMS

Plaintiff contends that Ms. Ryan is a “state actor” because he alleges that she engaged in a conspiracy with one or more state officials to violate his rights. (Resp. at pp. 15-16). However, the First Amended Complaint reveals nothing more than conclusory, bare-bones allegations about a conspiracy between Ms. Ryan, her private divorce lawyer, the divorce court judge’s clerk, and Attorney Regulation Counsel. The conclusory allegations are insufficient to state a claim under 42 U.S.C. §1983. (Mtn. at pp. 10-11).

With respect to the claims under 42 U.S.C. §§ 1985(3) and 1986, Plaintiff contends that he has properly alleged discriminatory animus and a conspiracy. (Resp. at pp. 16-18). On the contrary, Plaintiff’s conclusory allegations are not sufficient to demonstrate the racial or class-based invidiously discriminatory animus required by applicable case law. Moreover, Plaintiff has provided no authority for the proposition that Ms. Ryan may be held liable under these

federal statutes for engaging in conduct in which she has a lawful right to engage as an ex-wife and mother pursuing the best interests of her child.

III. INCORPORATION OF OTHER MOTIONS

Ms. Ryan's motion was filed before the other Defendants' motions to dismiss. In her motion, Ms. Ryan therefore stated an intent to join in and adopt those motions in further support of her request for dismissal. (Mtn. at p. 11). Ms. Ryan accordingly incorporates by reference the following motions to dismiss insofar as those motions apply to her situation: (1) The Fyfe Defendants' Motion to Dismiss filed November 28, 2005 (Doc. 29) at Argument §§ I(A) (Rule 12 Standard), I(B) (Rooker-Feldman Doctrine), I(C) (Domestic Relations Exception), and I(D) (Younger Abstention Doctrine); (2) Motion to Dismiss Plaintiff's First Amended Complaint filed by Defendant Wilson on November 30, 2005 (Doc. 38) at §§ I (Introduction), II (Legal Discussion), II(A) (*Res Judicata*), II(D) (Failure to Plead a Conspiracy), II(E) (Not a State Actor), II(F) (Violation of Rule 8), and II(J) (Lack of Subject Matter Jurisdiction); and (3) State Defendants' Corrected Motion to Dismiss filed December 1, 2005 (Doc. 42) at Argument §§ I (Standard of Review), II (Rooker-Feldman Doctrine), III (Younger Abstention Doctrine), VII (Failure to State a Claim), and XI (Failure to State a Claim). The incorporated sections of said motions refer to dismissal of this action on jurisdictional grounds, abstention, failure to state claims, and failure to comply with the Federal Rules of Civil Procedure, all of which Ms. Ryan has argued are equally applicable to her motion to dismiss.

IV. CONCLUSION

For the reasons stated in the motion to dismiss, this reply, and the incorporated portions of the other Defendants' motions to dismiss, Defendant Christy Ryan reiterates her request that the Court grant her motion and enter an Order dismissing this action.

Dated this 6th day of December, 2005.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 6th, 2005, I electronically filed the foregoing **REPLY** 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; 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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