

Order Form (01/2005)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Wayne R. Andersen	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	04 C 5486	DATE	July 13, 2005
CASE TITLE	Burns v. Gocon, et al.		

DOCKET ENTRY TEXT:

The Court grants defendant's motion to dismiss (# 19-1). All other pending motions (## 10, 13, 19-2, 19-3, 23, 25, 28) are denied as moot.

■ [For further details see text below.]

Docketing to mail notices.

STATEMENT

Before the Court is the motion of defendant, Grace Gocon, to dismiss plaintiff's complaint pursuant to Federal Rules of Civil Procedure ("Rule") 12(b)(1) and 12(b)(6). For the following reasons, the motion to dismiss is granted.

Plaintiff, Michael Burns, has filed a complaint challenging the constitutionality of two Illinois child support statutes and naming defendant Gocon and others in a conspiracy to violate his constitutional rights. On August 13, 2000, the Circuit Court of Cook County issued an order finding Burns to be the father of Vincent Gocon, a child born on June 3, 1999 to defendant Gocon. *See* Circuit Court of Cook County Uniform Order of Support, No. 01 D 79553. On March 5, 2004, Burns was ordered to pay \$400 per month in child support. On August 23, 2004, Burns filed a two-count *pro se* complaint in this Court.

In the first count, plaintiff "requests a declaratory judgment that 750 ILCS 5/602 'Best interest of the child' and 750 ILCS income-based child support statutes impermissibly infringe the 14th Amendment Due Process Right to Privacy in the Privacy Protected Zone of Parenting of all single, separated, divorced and unmarried parents in Illinois." Compl. ¶ 58. In his second count, Burns asserts he is entitled to relief under 42 U.S.C. § 1983 for a violation of his constitutional rights alleging defendant Gocon, the Circuit Court of Cook County, and the presiding judge conspired to take his income and "to deny Plaintiff his Right to Privacy in the Privacy Protected Zone of Parenting by classifying him as a 'non-custodial' parent," and by limiting his access to his son. *Id.* ¶¶ 72-73.

Burns names in the complaint numerous defendants, including the Circuit Court of Cook County, Judge Drella Savage, presiding judge of the child custody proceeding, Barry Maram, director of the Illinois Department of Public Aid, the Illinois Department of Public Aid, and ten John Does, in addition to defendant Gocon. On December 13, 2004, plaintiff voluntarily dismissed all defendants with the exception of defendant Gocon. *See Burns v. Gocon*, No. 04 C 5486 (N.D. Ill. Sept. 13, 2004).

The Court must now determine whether it has subject matter jurisdiction under Rule 12(b)(1) or, alternatively, whether plaintiff has failed to state a claim upon which relief can be granted under Rule 12(b)(6). In ruling on a motion to dismiss, the Court must construe the allegations of a complaint in the light most favorable to the plaintiff. *Rueth v. United States Environmental Protection Agency*, 13 F.3d 227, 229 (7th Cir. 1993). A court will grant a motion to dismiss only if it is impossible for the plaintiff to prevail under any set of facts that could be proven consistent with the allegations. *Forseth v. Village of Sussex* 199 F.3d 363, 368 (7th Cir. 2000).

STATEMENT

In the motion to dismiss, defendant Gocon argues that plaintiff's complaint is barred under the *Rooker-Feldman* doctrine. Under *Rooker-Feldman*, federal district courts do not have subject matter jurisdiction to review state court decisions. *Rooker v. Fid. Trust Co.*, 263 U.S. 413, 416 (1923); *D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 482 (1983). "Such jurisdiction is lacking because within the federal system, only the Supreme Court may review a state court judgment." *Hachamovitch v. DeBuono*, 159 F.3d 687, 693 (2nd Cir. 1998).

To determine if *Rooker-Feldman* applies, the Court must find that plaintiff's federal case is "inextricably intertwined with [a] state-court judgment [such that] the federal claim succeeds only to the extent that the state court wrongly decided the issues before it." *Edwards v. Ill. Bd. of Admissions to the Bar*, 261 F.3d 723, 729 (7th Cir. 2001). The central question is "whether the injury alleged by the federal plaintiff resulted from the state court judgment itself or is distinct from that judgment." *Rizzo v. Sheahan*, 266 F.3d 705, 713 (7th Cir. 2001).

In this case, we find that plaintiff's federal claims are inextricably intertwined with his child support case in the Circuit Court of Cook County and are not distinct. In fact, in his complaint, plaintiff states "[t]his action arises because . . . he has been ordered to pay a certain amount of money to Defendant Grace Gocon . . . through the use of unlawful court orders . . ." Compl. ¶ 3. Because these claims are inextricably intertwined, we grant defendant's motion to dismiss the declaratory judgment action because we lack subject matter jurisdiction.

Under a § 1983 claim, a plaintiff must show (1) a deprivation of a right secured by the constitution or laws of the United States, (2) caused by an action taken under color of state law. *Hernandez v. City of Goshen*, 324 F.3d 535, 537 (7th Cir. 2003)(citation omitted). If this federal district court were to determine that a § 1983 violation occurred and that plaintiff had been ordered to pay child support in violation of his constitutionally protected right to privacy, the result would be to declare a state court judgment (the child support order) invalid, which is precisely what *Rooker-Feldman* forbids. If this Court were to grant plaintiff's declaratory judgment action, finding 750 ILCS § 5/505 and § 5/602 unconstitutional, the result would be the same. Because any determination by this Court as to the constitutionality of § 5/505 and § 5/602 would certainly have an effect on the validity of the state court judgment ordering Burns to pay child support, we grant defendant's motion to dismiss the § 1983 claim because we lack subject matter jurisdiction.

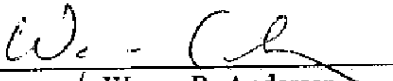
Even if the Court found plaintiff's claims distinct from the state court actions, we would deny his request for relief because he failed to raise his constitutional challenges to § 5/505 and § 5/602 at the state court level. "By failing to raise his claims in state court[,] a plaintiff may forfeit his right to obtain review of the state court decision in any federal court." *Feldman*, 460 U.S. at 483, n. 16.

Additionally, federal courts do not have subject matter jurisdiction to interfere with ongoing state court litigation when the plaintiff has an adequate opportunity to raise his constitutional claims. *Younger v. Harris*, 401 U.S. 37, 43-46 (1971); *Green v. Bender*, 281 F.3d 661, 666 (7th Cir. 2002). The *Younger* doctrine is particularly applicable in child custody disputes, which is entirely a matter of state law. See, e.g., *Ankenbrand v. Richards*, 504 U.S. 689, 703 (1992); *Barichello v. McDonald*, 98 F.3d 948, 954 (7th Cir. 1996).

In this case, plaintiff is engaged in an active state court contempt proceeding regarding his child support obligations. In Illinois, a child support order, unlike a final judgment, "is always modifiable" and state courts, like federal courts, are obligated to follow the Constitution. See *In re Marriage of Letsinger*, 748 N.E.2d 812, 817 (Ill. App. Ct. 2001). Thus, plaintiff should present his constitutional claims to the state court and if they are meritorious, the state court may modify his child support obligations. If plaintiff is dissatisfied with the state court's adjudication of his constitutional claims, plaintiff's sole avenue for appellate review is the Illinois Appellate Court, then the Illinois Supreme Court, and finally the U.S. Supreme Court.

For the foregoing reasons, we grant defendant's motion to dismiss (# 19-1). All other pending motions (## 10, 13, 19-2, 19-3, 23, 25, 28) are denied as moot. This is a final and appealable order.

It is so ordered.


Wayne R. Andersen
United States District Judge

Dated: July 13, 2005