

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DISTRICT

MICHAEL BURNS,)
)
Petitioner,)
)
and)
)
GRACE GOCON, ET AL.,)
)
Respondent.)

Case No. 04 C 5486

FILED
JAN 18 2005
MICHAEL W. NEWMAN
CLERK, U.S. DISTRICT COURT

**MEMORANDUM AT LAW IN SUPPORT OF
DEFENDANT'S MOTION TO DISMISS**

Now Comes the Defendant, GRACE GOCON, (hereinafter referred to as "Grace") by and through her attorney, A. MARCY NEWMAN, and pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, moves this Honorable Court to Dismiss the Complaint. In further support thereof, Defendant states as follows:

FACTUAL SUMMARY

In essence, this case involves a disgruntled Father-Defendant in a child support action who is unhappy with the results from said case. Consequently, he filed suit against, among others, the mother of his child. Plaintiff claims that the Illinois child support guidelines "impermissibly" infringe on his property rights and therefore violates the Constitution. *Complaint* pg. 2. He alleges that because Judge Drella Savage entered a child support Order that increased Plaintiff's monthly payment amount and "allowed Defendant Grace Gocon to remove Plaintiff's minor child from Illinois, Plaintiff's Constitutional rights were violated". *Complaint* pgs. 29, 66 and 67.

Plaintiff further alleges that he was ordered to pay child support when it did not also Order Defendant Gocon to do likewise.

Plaintiff seeks remedies including, costs, fees, declaratory judgment that the 750 ILCS 5/602 and 750 ILCS 5/505 are unconstitutional, a decree that the Defendant has violated his civil rights, and unspecified damages.

Plaintiff's Complaint should be dismissed because this Court lacks subject matter jurisdiction over the matter due to the Rooker-Feldman Doctrine.

STANDARD FOR RULE 12(b)(6) MOTIONS TO DISMISS

A Motion to Dismiss under Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6) challenges the sufficiency of the Complaint for failure to state a claim upon which relief may be granted. **General Elec. Capital Corp. v. Lease Resolution Corp.**, 128 F.3d 1074, 1080 (7th Cir. 1997). Dismissal is appropriate only if it appears beyond a doubt that the Plaintiff can provide no set of facts in support of its claim that would entitle it to relief. **Conley v. Gibson**, 355 U.S. 41, 45-46 (1957); **Kennedy v. Nat'l Juvenile Det. Assoc.**, 187 F.3d 690, 695 (7th Cir. 1999). In ruling on the motion, the Court accepts as true, all well-pleaded facts alleged in the Complaint, and it draws all reasonable inferences from those facts in the Plaintiff's favor. **Dixon v. Page**, 291 F.3d 485, 486 (7th Cir. 2002); **Jackson v. E.J. Brach Corp.**, 176 F.3d. 971, 977 (7th Cir. 1999).

In order to withstand a Motion to Dismiss, the Plaintiff's Complaint must allege operative facts upon which each claim is based. **Kyle v. Morton High School**, 144 L.Ed 448, 444-45 (7th Cir. 2002). The Plaintiffs are not required to allege all of the facts, and they may plead conclusions, but even the conclusions must "provide the defendant with at least minimal notice of the claim" and federal pleading requirements are not met if the plaintiffs merely attach "bare legal conclusions to facts which outline the bases of [their] claim". **Perkins v. Silverstein**, 939, F.2d, 463, 466-67 (7th Cir. 1991).

Finally, the Court may take judicial notice of matters of public record without converting a

motion to dismiss into one for summary judgment. Henson v. CSC Credit Services, 29 F.3d 280, 284 (7th Cir. 1984), Doherty v. City of Chicago, 75 F. 3d. 318 (7th Cir. 1996).

The Rooker-Feldman Doctrine Precludes This Federal Court from Hearing The Case.

Under Rooker-Feldman, a lower federal court does not have subject matter jurisdiction over claims seeking review of state court judgments. See Rooker v. Fidelity Trust Co., 263 U.S. 413, 415-16, (1923); District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482-86 (1983). The doctrine applies to claims previously raised, and those that are "inextricably intertwined" with the state court determination. *Id.* 486. Further, a federal court cannot exercise jurisdiction over a claim that would require it to review a final judgment of a state court. See Berman v. Young, 291 F.3d. 976, 983 (7th Cir. 2002). When an individual incurs an injury based on a state court decision, that decision "may not be challenged in later litigation, rather the injured party must "pursue all remedies through the state system and then seek certiorari under 28 U.S.C. 1257." Durgins v. City of East St. Louis, 272 F.3d. 841, 844 (7th Cir. 2001) (citations omitted). The appropriate question, therefore, is "whether the injury resulted from the state court judgment itself or is distinct from the Judgment". Long v. Shorebank Development Corp., 182 F.3d 548, 555 (7th Cir. 1999) (citations omitted).

Here, Plaintiff's claims are inextricably intertwined with those issues and claims from the state court matter. Plaintiff alleges that Judge Evans and Judge Savage, by granting orders to Defendant, Grace Gocon, Plaintiff's rights were violated during those state court proceedings. Consequently, the Complaint should be dismissed pursuant the Rooker-Feldman Doctrine.

WHEREFORE, for the foregoing reasons, the Defendant, GRACE GOCON, respectfully requests that this Honorable Court dismiss this Complaint against her with prejudice and

such further relief as this Court deems just and proper.

RESPECTFULLY SUBMITTED,

GRACE GOCON

BY: A. MARCY NEWMAN