



UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA

UNITED STATES COURTHOUSE AND FEDERAL BUILDING

2110 First Street

Divisional Office - Room 2-194

Ft. Myers, Florida 33901

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REMARKS: _____

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

MICHAEL S. GOGOLA,

Plaintiff,

vs.

Case No. 2:04-cv-417-FtM-29DNF

JAMES ZINGALE, Chairman, Executive
Director Florida Department of
Revenue, in his official capacity,
and FLORIDA DEPARTMENT OF REVENUE,¹

Defendants.

OPINION AND ORDER

_____ This matter comes before the Court on defendants' James Zingale (Zignale) and the Florida Department of Revenue ("FDR"), Motion to Dismiss Amended Verified Complaint (Doc. #15), filed on October 13, 2004. Plaintiff's Cross Motion to Deny Motion to Dismiss (Doc. #19) was filed on October 29, 2004, and is construed as a response to defendants' motion to dismiss.

I.

In deciding a motion to dismiss, the Court must accept all factual allegations in a complaint as true and take them in the light most favorable to the plaintiff. Christopher v. Harbury, 536 U.S. 403, 406 (2002); Hill v. White, 321 F.3d 1334, 1335 (11th Cir. 2003). A complaint should not be dismissed unless it appears

¹All other defendants were dismissed pursuant to plaintiff's Notice of Voluntary Dismissal. (Docs. #17, 18, 21).

beyond doubt that plaintiff can prove no set of facts that would entitle him to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957) (footnote omitted); Marsh v. Butler County, Ala., 368 F.3d 1014, 1022 (11th Cir. 2001) (en banc). To satisfy the pleading requirements for Fed.R.Civ.P. 8, a complaint must simply give the grounds upon which it rests. Swierkiewicz v. Sorema N.A., 534 U.S. 506, 512 (2002). However, dismissal is warranted under Fed.R.Civ.P. 12(b)(6) if, assuming the truth of the factual allegations of plaintiff's complaint, there is a dispositive legal issue which precludes relief. Neitzke v. Williams, 490 U.S. 319, 326 (1989); Brown v. Crawford County, Ga., 960 F.2d 1002, 1009-10 (11th Cir. 1992). The Court need not accept unsupported conclusions of law or of mixed law and fact in a complaint. Marsh, 268 F.3d at 1036. Because plaintiff is proceeding pro se, his pleadings are held to a less stringent standard than pleadings drafted by an attorney and will be liberally construed. Hughes v. Lott, 350 F.3d 1157, 1160 (11th Cir. 2003).

II.

The Amended Verified Complaint (Doc. #11)² sets forth the following facts, which at this stage of the proceedings are assumed

²The Amended Verified Complaint (Doc. #11) is the operative pleading in this case. Plaintiff filed a second Amended Complaint (Doc. #20) without leave of court which is identical to the Amended Verified Complaint. The Amended Complaint (Doc. #20) will therefore be stricken as redundant, although it will remain in the file for record purposes.

to be true. Plaintiff and Sandra S. Gogola ("Sandra") were married on November 6, 1969 and had three children within the marriage. (Doc. #11, ¶84). On May 9, 1999, the Twentieth Judicial Circuit Court in and for Lee County, Florida entered a Final Judgment of Dissolution of Marriage. (Doc. #11, ¶84 and Exhibit 2). This Final Judgment ratified, approved, confirmed, and adopted by reference a Marital Settlement Agreement and ordered the parties to comply with its terms. (Doc. #11, Exhibit 2, ¶2). In accordance with Fla. Stat. Chapter 61, Fla. Stat. § 61.075, the state circuit court conducted an equitable distribution of their property and ordered plaintiff to pay alimony to Sandra until one of the parties dies, or until Sandra remarries. (Doc. #11, ¶¶ 86-89). On occasion plaintiff has failed to make these payments, and several orders of contempt have been entered against him. (Doc. #11, ¶91). Plaintiff filed a motion in state court seeking a declaratory judgment that the Florida alimony statute was unconstitutional for a number of reasons, including a violation of the Due Process Clause of the United States Constitution, but on July 25, 2002, the circuit judge entered an Order denying relief. (Doc. #11, Exhibit 3). Plaintiff's appeal to the Second District Court of Appeal was dismissed because it was from a nonappealable order. (Doc. #11, Exhibit 3).

Plaintiff's seven-count Verified Amended Complaint (Doc. #11) seeks a declaratory judgment that the alimony provisions of Chapter

61 of the Florida Statutes violate three provisions of the United States Constitution, three provisions of the Florida Constitution, and Florida precedent and public policy. Plaintiff alleges that the Florida alimony statute contravenes the Equal Protection and Due Process clauses of the Fourteenth Amendment and violates the Thirteenth Amendment's prohibition against involuntary servitude. Plaintiff also contends that the Florida alimony statute violates the Florida Constitution's rights of privacy, equal protection, and "inalienable basic rights". Finally, plaintiff alleges that the Florida alimony statute violates Florida Supreme Court precedent and Florida public policy.

III.

Defendants assert that pursuant to the Rooker-Feldman doctrine³ this court has no subject matter jurisdiction to entertain plaintiff's challenges to the Florida alimony statutes. The Rooker-Feldman doctrine "places limits on the subject matter jurisdiction of federal district courts and courts of appeal over certain matters related to previous state court litigation." Goodman v. Sipcs, 259 F.3d 1327, 1332 (11th Cir. 2001). In essence, the Rooker-Feldman doctrine prevents any federal court other than the United States Supreme Court from reviewing the final judgments of state courts. The doctrine extends not only to

³See District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923).

constitutional claims presented or adjudicated by a state court, but also to claims that are "inextricably intertwined" with a state court judgment if plaintiff had a reasonable opportunity to raise his federal claims in the state proceedings. Goodman, 259 F.3d at 1332; Siegel v. LePore, 234 F.3d 1163, 1172 (11th Cir. 2000) (en banc); Amos v. Glynn County Board of Tax Assessors, 347 F.3d 1249, 1266 n.11 (11th Cir. 2003) (internal citations omitted). A claim is inextricably intertwined with the state court adjudication when federal relief can only be predicted upon a finding that the state court was wrong. Goodman, 259 F.3d at 1332.

Here, plaintiff in essence seeks to reverse a state court's order concerning the payment of alimony. Plaintiff asserts that he did not raise any of the federal issues in state court. (Doc. #11, ¶92). All the federal claims, and also the state law claims, could have been presented to the state court during the dissolution proceedings. Plaintiff had a reasonable opportunity to do so, but simply failed to do so and instead entered into the Marital Settlement Agreement which was incorporated into the Final Judgment. The issues of whether Chapter 61 is unconstitutional for any of the reasons now stated by plaintiff were inextricably intertwined with the issue of whether the state court could award alimony in the manner it did. The Court concludes that the Rooker-Feldman doctrine bars a federal court from entertaining plaintiff's claim that the Florida alimony statutes are unconstitutional or a

violation of Florida law. Powell v. Powell, 80 F.3d 464, 466-68 (11th Cir. 1996).

Plaintiff also asserts that his case is a "general challenge" to the constitutionality of the alimony statutes used against him, and is not a direct challenge to the results of the alimony proceeding itself, and therefore the court has jurisdiction. (Doc. #11, ¶¶ 14-16). However, plaintiff has no standing to raise such a general challenge. Doe v. Pryor, 344 F.3d 1282, 1286-87 (11th Cir. 2003).

Accordingly, it is now

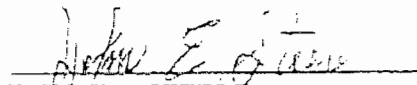
ORDERED:

1. Defendants' Motion to Dismiss plaintiffs' "Amended Verified Complaint" (Doc. #13) is **DENIED** as moot.

2. Defendants' Motion to Dismiss plaintiffs' "Amended Verified Complaint" (Doc. #15) is **GRANTED**, and this cause is hereby **DISMISSED** with prejudice for lack of subject matter jurisdiction over the remaining defendants.

3. The Clerk of the Court is directed to enter an amended judgment accordingly, to terminate all pending motions, and to close the file.

DONE AND ORDERED at Fort Myers, Florida, this 16th day of December, 2004.



JOHN E. STEELE
United States District Judge

Copies:
Counsel of Record
Plaintiff
DCCD