

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 04-80669-CIV-ZLOCH

STEWART GREENBERG,

Plaintiff,

vs.

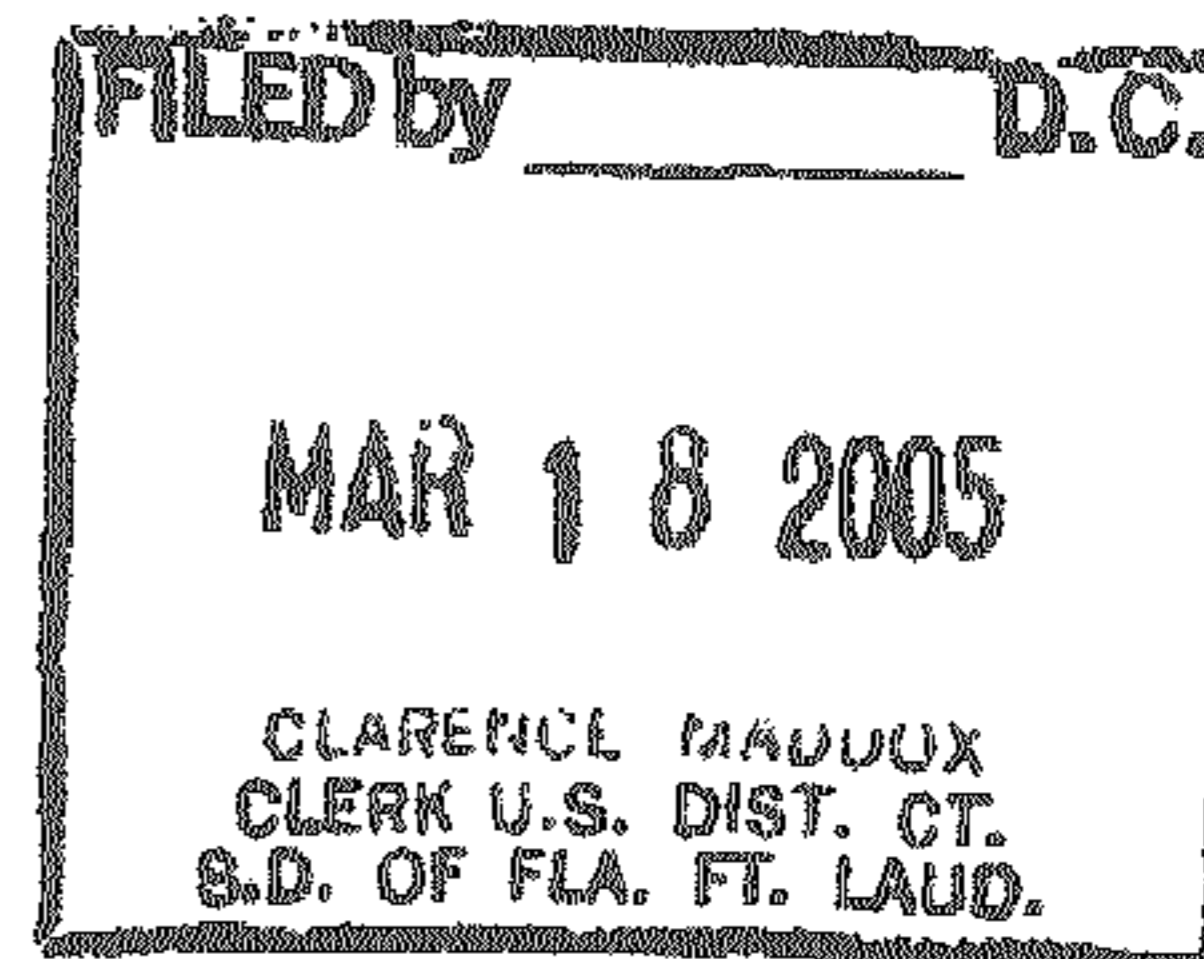
FINAL ORDER OF DISMISSAL

ELAINE GREENBERG, JEFFREY
COLBATH, FIFTEENTH JUDICIAL
CIRCUIT COURT OF FLORIDA, The
Honorable Edward Fine Chief
Judge,

Defendants.

THIS MATTER is before the Court upon Defendant Elaine Greenberg's Motion To Dismiss Plaintiff, Stewart Greenberg's Motion For Injunctive Relief And Notice Of Removal (DE 6). The Court has carefully reviewed said Motion and the entire court file and is otherwise fully advised in the premises.

The Court notes that the above-styled cause arises from dissolution of marriage proceedings initiated by Plaintiff Stewart Greenberg in the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County in December 1998. A Final Judgment of Dissolution of Marriage was entered in those proceedings on April 17, 2000, and Plaintiff subsequently appealed that Final Judgment to the Florida Fourth District Court of Appeals. On July 5, 2001, the Court of Appeals reversed in part the Final Judgment, and remanded the matter to the trial court. See Greenberg v. Greenberg, 793 So.2d 52 (Fla. Dist. Ct. App. 2001). The trial court entered a Final Judgment on Remand on October 15, 2002, and Plaintiff again appealed. Upon this second review, the Court of Appeals upheld in material part the Final Judgment on Remand on November



26, 2003. See DE 6, pp. 1-2.

On June 10, 2004, Defendant Circuit Court Judge Jeffrey Colbath of Florida's Fifteenth Judicial Circuit entered an Order finding Plaintiff in arrears on alimony in the amount of \$99,486.64.¹ See DE 1, Ex. A. Judge Colbath found Plaintiff to be in contempt of that court, and ordered Plaintiff to be incarcerated for such contempt until the arrearage was paid. In that same Order, Judge Colbath provided Plaintiff the opportunity to avoid incarceration if he appeared before that court and established payment of the arrearage by July 6, 2004.

Subsequent to the entry of the aforementioned Order, Plaintiff, acting pro se, initiated the above-styled cause by filing a Verified Complaint, Motion For Injunctive Relief And Notice Of Removal (DE 1). Noting its duty to liberally construe pro se pleadings, but further expressing its inability to construe the aforementioned pleading based on its allegations, the Court entered an Order (DE 18) directing Plaintiff to file a memorandum informing the Court whether he was removing his state dissolution of marriage proceedings or initiating a new action. Plaintiff subsequently filed his Memorandum To Court (DE 21) informing the Court that he intended the aforementioned pleading (DE 1) to be construed as a Complaint initiating a new action.

In said Complaint (DE 1), Plaintiff claims that Judge Colbath's Order (DE 1, Ex. A) evidences Defendants' efforts to act "without regard and respect of basic rights of citizens" and that Judge Colbath's finding of contempt is an attempt to illegally establish a "debtor's

¹ In an earlier order, Judge Colbath had found that Plaintiff had the "present ability" to pay his arrearage. See DE 26, Ex. A.

prison." DE 1, ¶¶ 14 and 16. Plaintiff further alleges that his "due process to challenge contempt or other orders pursuant to Florida's own statutes, [sic] has been taken away," DE 1, ¶ 12, and that this conduct amounts to an "infringement on the U.S. Constitution, 14th and 4th Amendments, Due Process Clause, Right to Privacy, Right to be left alone, inter alia, [sic] pursuant to 42 U.S.C. 1983." DE 1, ¶ 10. In the instant Motion (DE 6), Defendant Elaine Greenberg, also acting pro se, seeks dismissal of the aforementioned Complaint (DE 1) and argues that Plaintiff has engaged in protracted litigation and motion practice in an effort stall enforcement of the Final Judgment entered in the underlying dissolution of marriage proceedings. See DE 6, p. 2. Elaine Greenberg further argues that although Plaintiff has "clearly exhausted his options at both the trial and appellate levels," he has filed this Complaint as an "appeal to new ears" strictly to "tie up matters in the [state] court." See Id.

The Court notes that the federal courts are courts of limited jurisdiction. The presumption, in fact, is that a federal court lacks jurisdiction in a particular case until it has been demonstrated that jurisdiction over the subject matter exists. Fitzgerald v. Seaboard System Railroad, Inc., 760 F.2d 1249 (11th Cir. 1985). In his Complaint (DE 1), Plaintiff invokes this Court's federal question jurisdiction pursuant 28 U.S.C. § 1331 and states claims arising under the Constitution of the United States.² The Court notes, however, that

² The Court notes that Plaintiff also invokes the Court's jurisdiction pursuant to 28 U.S.C. § 1441. § 1441(a), however, provides that the only party to a State court action that may remove the action to federal court is the defendant or defendants.

invocation of the Constitution does not necessarily establish this Court's jurisdiction over a case because "'a United States District Court has no authority to review final judgments of a state court in judicial proceedings. Review of such judgments may be had only in [the United States Supreme Court].'" Powell v. Powell, 80 F.3d 464, 466 (11th Cir. 1996) (quoting Dist. of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482 (1983)). The Court further notes that there are two statutory bases for the aforementioned holding: "(1) 28 U.S.C. § 1257, which limits federal review of state court proceedings to the United States Supreme Court, and (2) 28 U.S.C. § 1331, which provides that federal district courts are courts of original jurisdiction." Id. (citing Rooker v. Fidelity Trust Co., 263 U.S. 413, 415-16 (1923)). This Rooker-Feldman doctrine bars federal district court review not only of "claims actually raised in the state court, but also [of] claims that were not raised in the state court but are inextricably intertwined with the state court's judgment." Id. (interior quotation omitted). The United States Court of Appeals for the Eleventh Circuit has established a limit to the Rooker-Feldman doctrine in holding that the doctrine "can apply only to issues that the plaintiff had a reasonable opportunity to raise" in the state court proceedings. Wood v. Orange County, 715 F.2d 1543, 1547 (11th Cir. 1983).

In the above-styled cause, the Court notes that Plaintiff seeks to

Plaintiff has stated that his initial pleading (DE 1) should be construed as a Complaint. Even if he intended to file a Notice of Removal, however, § 1441 would not provide a jurisdictional basis because Stewart Greenberg is also the Plaintiff in the underlying State dissolution of marriage proceedings, and therefore, he may not remove the action to federal court. See DE 1, § 1 and Ex. 1.

challenge the state court's attempt, by means of holding Plaintiff in contempt and threatening him with incarceration, to enforce a Final Judgment it has entered. Accordingly, the Court finds that Plaintiff asks this Court to review a claim inextricably intertwined with the final judgment of a state court. If Plaintiff had a reasonable opportunity to raise this claim in the state proceedings, therefore, this Court lacks jurisdiction over the above-styled cause pursuant to the Rooker-Feldman doctrine. Upon review of Plaintiff's Complaint (DE 1) and the attached Exhibit, it is clear that Plaintiff did have such an opportunity. Although Judge Colbath's Order was entered on June 10, 2004, Plaintiff had until July 6, 2004 to pay his alimony arrearage and thus avoid incarceration altogether. If Plaintiff felt that he did not owe the aforementioned arrearage, or that incarceration was an unconstitutional method of enforcing a contempt Order, Plaintiff similarly could have raised these claims at or prior to the July 6, 2004 hearing.³ Accordingly, the Court finds that Plaintiff had a reasonable opportunity to raise the claims which form the basis for the above-styled cause during the state proceedings, and that pursuant to the Rooker-Feldman doctrine, this Court is without jurisdiction to consider the same.

Accordingly, after due consideration, it is

ORDERED AND ADJUDGED as follows:

³ Regarding the probable success of Plaintiff's attempt to make these arguments, however, the Court notes that the amount owed by Plaintiff in alimony had twice been reviewed by a court of appeals, and that it is well established in Florida that a party may be imprisoned for contempt following a failure to pay alimony owed. See Williams v. Williams, 277 So.2d 542 (Fla. Dist. Ct. App. 1973).

1. The Clerk's Default (DE 14) entered as to Defendant Fifteenth Judicial Circuit Court of Florida be and the same is hereby **VACATED**, set aside and of no further force and effect;

2. Defendant Elaine Greenberg's Motion To Dismiss Plaintiff, Stewart Greenberg's Motion For Injunctive Relief And Notice Of Removal (DE 6) be and the same is hereby **GRANTED**;

3. The above-styled cause be and the same is hereby **DISMISSED**; and

4. To the extent not otherwise disposed of herein, all pending Motions be and the same are hereby **DENIED** as moot.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida this 18th day of March, 2005.



WILLIAM J. ZLOCH
Chief United States District Judge

Copies furnished:

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