

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

_____ At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 21st day of September, two thousand five.

PRESENT: HONORABLE ROGER J. MINER,
HONORABLE REENA RAGGI,
Circuit Judges,
HONORABLE KENNETH M. KARAS,
*District Judge.*¹

HAROLD L. ROSENBERGER,
_____ *Plaintiff-Appellant,*

v.

No. 05-0592

NEW YORK STATE OFFICE OF TEMPORARY
AND DISABILITY ASSISTANCE, ROBERT DOAR,
Commissioner, Office of Temporary and Disability
Assistance, in his official capacity, ULSTER COUNTY
FAMILY COURT,
_____ *Defendants-Appellees.*

APPEARING FOR APPELLANT:

HAROLD L. ROSENBERGER, *pro se,*
Highland, New York.

¹ The Honorable Kenneth M. Karas, of the United States District Court for the Southern District of New York, sitting by designation.

APPEARING FOR APPELLEES:

JULIE LOUGHRAN, Assistant Solicitor General (Michelle Aronowitz, Deputy Solicitor General, *on the brief*), for Eliot Spitzer, Attorney General of the State of New York, New York, New York.

Appeal from the United States District Court for the Northern District of New York (Gary L. Sharpe, *Judge*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the district court's judgment of dismissal, dated December 20, 2004, and entered on December 21, 2004, is hereby AFFIRMED.

Plaintiff-appellant Harold L. Rosenberger, whose wages are presently being garnished to satisfy a New York state court judgment ordering him to pay child support, see Rosenberger v. Cashman, 301 A.D.2d 717, 752 N.Y.S.2d 911 (3d Dep't), aff'd 99 N.Y.2d 651, 760 N.Y.S.2d 103 (2003), filed this lawsuit in federal court for a judgment declaring unconstitutional the New York statutes authorizing the support judgment, see N.Y. Fam. Ct. Act § 413; N.Y. Dom. Rel. Law § 240. He now appeals the district court's dismissal of the action for lack of subject matter jurisdiction pursuant to Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923), and District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983) (the "Rooker-Feldman doctrine").

We review de novo a district court's dismissal of a complaint on jurisdictional grounds. See Celestine v. Mount Vernon Neighborhood Health Ctr., 403 F.3d 76, 79-80 (2d Cir. 2005). In considering Rosenberger's challenge, we are mindful that the district court

ruled without the benefit of the Supreme Court’s recent clarification of the scope of the Rooker-Feldman doctrine in Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 125 S. Ct. 1517, 1527 (2005), and of our application of Exxon Mobil in Hoblock v. Albany County Bd. of Elections, Nos. 04-5876, 04-5993, 2005 U.S. App. LEXIS 19071 (2d Cir. Sept. 2, 2005). No matter. We can affirm dismissal on any basis for which there is sufficient support in the record, including grounds not relied on by the district court. See, e.g., EEOC v. J.B. Hunt Transp., Inc., 321 F.3d 69, 73-74 (2d Cir. 2003). We assume the parties’ familiarity with the record, which we reference only as necessary to explain our decision to affirm.

1. The Institutional Defendants

The New York State Office of Temporary and Disability Assistance and the Ulster County Family Court assert that, without regard to Rooker-Feldman, a jurisdictional dismissal in their favor was required by the Eleventh Amendment. See U.S. Const., amend. XI. That Amendment “render[s] states and their agencies immune from suits brought by private parties in federal court,” In re Charter Oak Assocs., 361 F.3d 760, 765 (2d Cir. 2004), regardless of “whether the relief sought is legal or equitable,” Papasan v. Allain, 478 U.S. 265, 276 (1986). Rosenberger concedes this immunity, as he must given the lack of any state waiver of immunity or unequivocal abrogation by Congress. See In re Charter Oak Assocs., 361 F.3d at 765. Accordingly, we affirm the judgment of dismissal as against these defendants on Eleventh Amendment grounds.

2. Robert Doar

The Eleventh Amendment does not bar Rosenberger’s declaratory judgment action against Robert Doar, who is sued in his official capacity as Commissioner of the State Office of Temporary and Disability Assistance. See Ex parte Young, 209 U.S. 123 (1908); Santiago v. New York State Dep’t of Corr. Servs., 945 F.2d 25, 32 (2d Cir. 1991). Whether a jurisdictional dismissal in Doar’s favor is nevertheless required by Rooker-Feldman admits no easy answer. Rosenberger cannot avoid that doctrine “simply by clever pleading – by alleging that actions taken pursuant to a court order violate his rights without ever challenging the order itself.” Hoblock v. Albany County Bd. of Elections, 2005 U.S. App. LEXIS at *23-24. On the other hand, Doar arguably cannot invoke the doctrine without showing that he is in privity with Rosenberger’s party opponent in the state court action. Id. at *27 (holding that “the parties in the state and federal suits must be the same” to apply Rooker-Feldman). We need not resolve these issues, however, because the record reveals another ground that compels dismissal: Rosenberger lacks standing to pursue the declaratory relief demanded.²

It is beyond question that “[a] federal court cannot pronounce any statute, either of a state or of the United States, void, because irreconcilable with the Constitution, except as it

² We note this court’s recent affirmance, inter alia on standing grounds, of the dismissal of another of Rosenberger’s declaratory judgment challenges to the New York laws supporting a state court judgment with respect to the custody of his children. See Rosenberger v. Pataki, 117 Fed. Appx. 796 (2d Cir. Jan. 11, 2005) (affirming the dismissal of a challenge to the constitutionality of N.Y. Dom. Rel. Law §§ 70(a), 240(1)(a)).

is called upon to adjudge the legal rights of litigants in actual controversies.” Baker v. Carr, 369 U.S. 186, 204 (1962) (internal quotation marks and citations omitted); see also Jenkins v. United States, 386 F.3d 415, 417 (2d Cir. 2004) (“[A] mere demand for [declaratory] relief does not by itself establish a case or controversy necessary to confer subject matter jurisdiction.”) (internal quotation marks omitted). Article III of the Constitution requires, at an “irreducible constitutional minimum,” that a plaintiff “allege, and ultimately prove, that he has suffered an injury-in-fact that is fairly traceable to the challenged action of the defendant, and which is likely to be redressed by the requested relief.” Id. (quoting Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992)). Moreover, a plaintiff must demonstrate such “standing for each claim and form of relief sought.” Baur v. Veneman, 352 F.3d 625, 642 n.15 (2d Cir. 2003).

In this case, the injury Rosenberger asserts is the garnishment of his wages to satisfy a child support judgment entered pursuant to purportedly unconstitutional New York laws. Rosenberger asserts that a declaratory judgment in his favor “will prevent the enforcement of the statute against [him].” Appellant’s Br. at 8. But, in challenging the Rooker-Feldman dismissal, he clarifies that he seeks only prospective relief “aimed at creating new laws and procedures which would subsequently be used by the New York State family courts to determine child support.” Id. at 12 (emphasis added). He emphasizes that, if he were to secure the relief he seeks in this action, “the impact on the Appellant’s current state court judgment would be nil.” Id. Taking Rosenberger at his word, we conclude that the relief he

seeks cannot redress his alleged present injury because, as long as the state court judgment stands, it may be enforced, whether by garnishment or such other means as state law provides. Rosenberger has not shown that he will likely find himself in future child support litigation under the challenged statutes that could expose him to a different judgment and further enforcement measures by Doar. See Lee v. Board of Governors, 118 F.3d 905, 912 (2d Cir. 1997) (“With respect to future injury, the Court has held that the prospect of such harm must be ‘certainly impending’ and ‘real and immediate’ . . . [to] support a finding of the ‘actual or imminent’ injury that the Court’s [standing] cases require.”) (internal alterations and citations omitted). Because Rosenberger’s declaratory judgment action presents no present case or controversy, the case was properly dismissed for lack of subject matter jurisdiction.

The district court’s judgment of dismissal, entered December 21, 2004, is hereby
AFFIRMED.

FOR THE COURT:
ROSEANN B. MACKECHNIE, CLERK

BY

DATE