

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

HAROLD L. ROSENBERGER,

Plaintiff,

v.

**1:04-CV-0475
(GLS)**

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

Defendants.

APPEARANCES:

OF COUNSEL:

FOR THE PLAINTIFF:

HAROLD L. ROSENBERGER
Plaintiff, *Pro se*
114 Vista Drive
Highland, NY 12528

FOR THE DEFENDANTS:

HON. ELIOT J. SPITZER, ESQ.
Office of the Attorney General
The Capitol
Litigation Bureau
Albany, NY 12224

LISA ULLMAN, ESQ.
Assistant Attorney General

**Gary L. Sharpe
U.S. District Judge**

DECISION AND ORDER

I. Introduction

Defendants New York State Office of Temporary and Disability Assistance, Robert Doar and Ulster Family Court (Defendants) move to vacate an entry of default and to dismiss the complaint under Fed. R. Civ. P. 12(b)(1) and (6). Plaintiff Harold L. Rosenberger (Rosenberger) cross-moves for entry of default judgment or, in the alternative, to strike the defendants' motion to vacate the default. Opposition and reply briefs have been filed by the parties.

II. Background

On April 29, 2004, Rosenberger filed a complaint alleging that New York's income-based child support guidelines under the Family Court Act (FCA) § 413 and Domestic Relations Law (DRL) § 240 infringe upon "his fundamental right to privacy and property rights protected under the Fourteenth Amendment...." *See Compl.* ¶¶ 1-3, *Dkt. No. 1*. Specifically, Rosenberger contends that the state infringes on his fundamental right of "how much money a parent spends for the care and maintenance of his or her child." *See id.* ¶ 5. Service of a summons and complaint were properly effectuated upon the defendants. *See Dkt. Nos. 4-5*. However, the

defendants did not file a timely answer or otherwise defend against the complaint. See Fed. R. Civ. P. 12(a). On June 22, 2004, the Clerk entered a default against the defendants pursuant to Fed. R. Civ. P. 55(a). See *Dkt. No. 7*. It is undisputed that the clerk's entry of default was proper due to the defendants' failure to timely plead. See Fed. R. Civ. P. 12(a). On June 23, the defendants filed the instant motion seeking to set aside the default along with the supporting affidavit of Assistant State Attorney General David B. Roberts. See *Dkt. No. 9*. In his affidavit, Roberts explained that he did not file a timely answer on behalf of the defendants "due to [his] lapse of memory aggravated by a pressing workload," and the failure "to properly calendar the deadlines." See *Roberts Decl. ¶ 4, Dkt. No. 9*.

Defendants also filed a Rule 12(b)(1) and (b)(6) motion to dismiss. See *Dkt. No. 8*. On July 15, 2004, Rosenberger filed a cross-motion for an entry of default judgment or, in the alternative, to sustain the clerk's entry of default. See *Dkt. No. 10*. On July 19, 2004, Rosenberger filed another cross-motion seeking to strike or, in the alternative, opposing defendants' motion to dismiss. See *Dkt. Nos. 11-12*. Both parties filed their respective opposition and reply briefs to the foregoing motions.

As to the facts in this lawsuit, Rosenberger is the father of three children via his prior marriage with Cynthia B. Cashman (Cashman).¹ See *Compl.* ¶ 37, *Dkt. No. 1*. On June 17, 1999, Rosenberger and Cashman were divorced. As a result, Cashman filed subsequent petitions with the Ulster Family Court seeking child support payments and sole custody of the children. See *id.* ¶¶ 38, 39.

At issue is the Ulster Family Court's January 24, 2002, Findings, Decision and Order (FDO), requiring Rosenberger to pay child support in the amount of \$325.69 per week and 73% of all unreimbursed health expenses. See *Compl. Ex. 2, Dkt. No. 1*. On March 21, 2002, defendant New York State Office of Temporary and Disability Assistance (OTDA)² issued a wage execution against Rosenberger's employer to withhold child support payments. See *id.* ¶ 40.

Accordingly, Rosenberger seeks a declaratory judgment that FCA § 413 and DRL § 240 are unconstitutional because they infringe upon his right to privacy under the Fourth Amendment and the Due Process clause

¹Cynthia Cashman was formerly known as Cynthia Rosenberger and changed her name following her divorce.

²The wage execution for child support payments was issued by the Ulster County Child Support Enforcement unit which is the county arm of the OTDA. See *Compl.* ¶ 40, *Dkt. No. 1*.

under the Fourteenth Amendment. See *Compl.* ¶¶ 41-47, *Dkt. No. 1*.

III. Discussion

A. Defendants' Motion to Vacate Entry of Default

1. *Standard of Review*

Rule 55(a) of the Federal Rules of Civil Procedure provides that a clerk shall enter default when presented with an affidavit stating that a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend. See, e.g., *Enron Oil Corp. v. Diakhura*, 10 F.3d 90 (2d Cir. 1993). “[T]hose [default] rules play a constructive role in maintaining the orderly and efficient administration of justice.” *Id.* at 96.

With these general principles in mind, this court must evaluate the substantive rules for setting aside a default. Rule 55(c) provides: “[f]or good cause shown the court may set aside an entry of default....” See Fed. R. Civ. P. 55(c). In the Second Circuit, “good cause” is construed broadly and “defaults are generally disfavored.” See *Enron*, 10 F.3d at 96; see also, *Meehan v. Snow*, 652 F.2d 274, 277 (2d Cir. 1981).

“The three principal factors to apply in assessing whether good cause has been shown is: (1) whether the default was willful; (2) whether setting aside the default would prejudice the adversary; and (3) whether a

meritorious defense is presented.” *Niepoth v. Montgomery County District Attorney’s Office*, 177 F.R.D. 111, 112 (N.D.N.Y. 1998); *see also, In re Men’s Sportswear, Inc.*, 834 F.2d 1134, 1138 (2d Cir. 1987). “Other relevant equitable factors may also be considered, for instance, whether the failure to follow a rule of procedure was a mistake made in good faith and whether the entry of default would bring about a harsh or unfair result.” *Enron*, 10 F.3d at 96 (citing *Sony Corp. v. Elm State Elecs., Inc.*, 800 F.2d 317, 320 (2d Cir. 1986)).

2. Application of Standard

A. Willfulness

In this case, defendants argue that their failure to timely file an answer was inadvertent rather than willful. *See Def.’s Br. p. 2, Dkt. No. 9.* Specifically, defendants’ counsel asserts that the failure to timely respond was “due to [his] lapse of memory aggravated by a pressing workload....” *See Roberts Decl. ¶ 4, Dkt. No. 9.* Moreover, defense counsel also “failed to properly calendar the deadlines” to file an answer on behalf of the defendants. *Id.* In response, Rosenberger contends that the defendants’ failure to plead was willful since the defendants received ample notice from the court. *See Pl.’s Br. p.4, Dkt. No. 10.* Specifically, Rosenberger refers

to Magistrate Judge David R. Homer's May 7, 2004 compliance order requiring the defendants to file "a formal response ... as provided for in the Federal Rules of Civil Procedure." See *Dkt. No. 3*.

However, Rosenberger overlooks the crucial fact that Judge Homer's May 7 compliance order was not sent to the defendants. *Id.* In fact, the sole purpose of that order was to direct the clerk to issue summonses in the case and to remind Rosenberger as a *pro se* litigant of his responsibilities in pursuing this action. *Id.* Notwithstanding, the record is clear that the defendants undertook immediate steps to vacate the entry of default by filing the within motion upon notice of the entry of default.³ See *Roberts Decl. ¶ 6, Dkt. No. 9*.

Additionally, the Second Circuit has held that there is "no reason to expand [the] willfulness standard to include careless or negligent errors in the default judgment context." *MacEwen Petroleum, Inc. v. Tarbell*, 173 F.R.D. 36, 39-40 (N.D.N.Y. 1997) (quoting *Am. Alliance Ins. Co., Ltd. v. Eagle Ins. Co.*, 92 F.3d 57, 60 (2d Cir. 1996)).

Accordingly, this court finds no reason why such an exception should

³The clerk's entry of default against the defendants was made and simultaneously entered on June 22, 2004. See *Dkt. Nos. 6-7*. The State Attorney General then filed a motion to set aside the clerk's entry of default on June 23, 2004. See *Dkt. No. 9*.

not apply in this case since there is only an entry of default against the defendants. As that is all that is alleged herein, this court declines to find that the default by the defendants was willful.

B. Prejudice

“As to the prejudice the plaintiff would suffer if the default were vacated, it must show more than mere delay if this criteri[on] is to weigh in its favor.” *MacEwen*, 173 F.R.D. at 40. “Rather, it must be shown that delay will ‘result in the loss of evidence, create increased difficulties of discovery, or provide greater opportunity for fraud and collusion.’” *Davis v. Musler*, 713 F. 2d 907, 916 (2d Cir. 1983) (quoting 10C Wright, Miller & Kane, *Federal Practice and Procedure: Civil*, § 2699 at 536-37 (1983)). In other words, the default must cause “some actual harm to [plaintiff’s] ability to litigate the case, such as by diminishing the amount of available evidence, or that [plaintiff] relied to his detriment on the judgment entered.” *Id.* (citing *Feliciano v. Reliant Tooling Co.*, 691 F.2d 653, 657 (3d Cir. 1982)).

Here, Rosenberger contends that his prejudice has been the continued deprivation of his constitutional rights during the interim period of defendants’ default. *See Pl.’s Br. p. 7, Dkt. No. 10.* This, however, is not

the type of actual harm that was contemplated by the “prejudicial” prong of this standard. See *Davis*, 713 F. 2d at 916. The law is clear that the default must cause “actual harm to his ability to litigate his case.” *Id.*

Accordingly, Rosenberger fails to show any prejudice or actual harm.⁴

C. *Meritorious Defense*

“To satisfy the criterion of a ‘meritorious defense,’ the defense need not be ultimately persuasive at this stage. ‘A defense is meritorious if it is good at law so as to give the fact finder some determination to make.’ ” *MacEwen*, 173 F.R.D. at 40, (quoting *Anilina Fabrique de Colorants v. Aakash Chemicals and Dyestuffs, Inc.*, 856 F.2d 873, 879 (7th Cir. 1988)).

In this case, Rosenberger claims that he is challenging the constitutionality of DRL § 740 and FCA § 413 as they pertain to the child support guidelines. In response, the defendants argue that such claims are barred by the *Rooker-Feldman* doctrine and other jurisdictional defenses. See *Dkt. No. 8*; see also, *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); see also, *District of Columbia Court of Appeals v. Feldman*,

⁴Additionally, there has been no entry of default judgment against the defendants in this case to demonstrate any type of detrimental reliance on a judgment entered. See *Davis v. Musler*, 713 F.2d at 916.

460 U.S. 462 (1983). It is clear that the defendants have set forth more than just conclusory denials in supporting their meritorious defenses. See *Dkt. No. 8*; see also, *Roberts Decl., Dkt. No. 9*.

Accordingly, the defendants have demonstrated a meritorious defense for vacating the entry of default.

3. Conclusion

Accordingly, the defendants' motion to vacate the clerk's entry of default is hereby **GRANTED**.

B. Rosenberger's Cross-Motion for Entry of Default Judgment

In response to the defendants' motion to vacate the entry of default, Rosenberger filed a cross-motion seeking default judgment. See *Dkt. No. 10*. Based upon this court's vacatur of the default and for the same reasons stated above, Rosenberger's cross-motion for default judgment is hereby **DENIED** as moot.

C. Rosenberger's Cross-Motion to Strike under Rule 12(f)

Additionally, Rosenberger filed a cross-motion to strike the defendants' defense(s) pursuant to Rule 12(f) of the Federal Rules of Civil Procedure. See *Dkt. No. 11*. Rule 12(f) permits a court to "order stricken from any pleading any insufficient defense or any redundant, immaterial,

impertinent, or scandalous matter.” See Fed. R. Civ. P. 12(f). However, “Rule 12(f) motions are not favored and will not be granted unless it is clear that the allegations in question can have no possible bearing on the subject matter of the litigation.” *Allocco v. Dow Jones & Co., Inc.*, 2002 WL 1484400, at *1 (S.D.N.Y. 2002) (internal quotations omitted); see also, *William Z. Salcer, Panfeld, Edelman v. Envicon Equities Corp.*, 744 F.2d 935, 939 (2d Cir. 1984), *vacated on other grounds*, 478 U.S. 1015 (1986).

In this case, Rosenberger does nothing more than refer to the same arguments for opposing defendants’ motion to vacate default. See *Pl.’s Br.* p. 4, *Dkt. No. 12*. In fact, the defendants have neither filed a responsive pleading to be stricken nor is there anything “immaterial, impertinent, or scandalous” about their proffered defenses. Fed. R. Civ. P. 12(f); see also, *Roberts Decl, Dkt. No. 9*. Accordingly, Rosenberger’s cross-motion to strike under Rule 12(f) is **DENIED**.

D. Defendants’ 12(b)(1) & 12(b)(6) Motion to Dismiss

1. Standards of Review

A. Plaintiff’s Pro Se Status

“District courts should read the pleadings of a *pro se* plaintiff liberally and interpret them to raise the strongest arguments that they suggest.”

Cogswell v. Rodriguez, 304 F. Supp. 2d 350, 355 (E.D.N.Y. 2004) (internal quotations and citations omitted). However, the “[c]ourt is also aware that pro se status ‘does not exempt a party from compliance with relevant rules of procedural and substantive law...’” *Id.* (quoting *Traguth v. Zuck*, 710 F.2d 90, 95 (2d Cir. 1983)). Consequently, the court acknowledges that Rosenberger is proceeding *pro se* and that his submissions should be held “to less stringent standards than formal pleadings drafted by lawyers....” *Haines v. Kerner*, 404 U.S. 519, 520 (1972).

B. Rule 12(b)(1)

When considering a motion to dismiss for lack of subject matter jurisdiction under Rule 12(b)(1), the court must accept as true all material factual allegations in the complaint. *See Shipping Fin. Servs. Corp. v. Drakos*, 140 F.3d 129, 131 (2d Cir. 1998). “But, when the question to be considered is one involving the jurisdiction of a federal court, jurisdiction must be shown affirmatively, and that showing is not made by drawing from the pleadings inferences favorable to the party asserting it.” *Id.* (citing *Norton v. Larney*, 266 U.S. 511, 515 (1925)). The burden of proof to establish federal jurisdiction falls on the party seeking to invoke that jurisdiction. *See Linardos v. Fortuna*, 157 F.3d 945, 947 (2d Cir.1998).

"That party must allege a proper basis for jurisdiction in his pleadings and must support those allegations with 'competent proof' if a party opposing jurisdiction properly challenges those allegations...."⁵ *Id.* (quoting *McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936)).

Where a party has moved for dismissal under Rule 12(b)(1) as well as under Rule 12(b)(6), the court must first consider the Rule 12(b)(1) motion. See *United States ex rel. Kreindler & Kreindler v. United Techs. Corp.*, 985 F.2d 1148, 1155-56 (2d Cir. 1993) (citations omitted). The Court [must consider] the jurisdictional issues first, because a dismissal for lack of jurisdiction renders all other claims moot. *Preston v. New York*, 223 F. Supp. 2d 452, 461 (S.D.N.Y. 2002) (citing *Ruhrgas A.G. v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999) ("Article III generally requires a federal court to satisfy itself of its jurisdiction over the subject matter before it considers the merits of a case.")); *Calero v. Immigration and Naturalization Serv.*, 957 F.2d 50 (2d Cir. 1992); *Da Silva v. Kinsho Int'l Corp.*, 229 F.3d 358 (2d Cir. 2000)).

⁵In resolving a motion to dismiss for lack of subject matter jurisdiction, the court may consider evidence outside the pleadings, such as affidavits and other documents. See *Kamen v. Am. Tel. & Tel. Co.*, 791 F.2d 1006, 1011 (2d Cir. 1986).

2. *The Rooker-Feldman Doctrine*

Although defendants proffer several arguments for dismissal, the court finds defendants' argument as to this court's subject matter jurisdiction dispositive. *See Dkt. No. 8*. "Under the *Rooker-Feldman* doctrine, lower federal courts lack subject matter jurisdiction over claims that effectively challenge state court judgments." *Kropelnicki v. Siegel*, 290 F.3d 118, 128 (2d Cir. 2002) (citing *Feldman*, 460 U.S. at 486-87 and *Rooker*, 263 U.S. at 415-16 (1923)). "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 (2d Cir. 1998).

In *Rooker*, the Supreme Court established that federal district courts lack subject matter jurisdiction over cases if the exercise of their jurisdiction would result in the reversal or modification of state court judgments. *See Rooker*, 263 U.S. at 416. Instead, such appellate jurisdiction over state court judgments rests exclusively with the Supreme Court of the United States. *Id.*

In *Feldman*, the Supreme Court revisited this principle where a plaintiff filed a lawsuit in federal district court alleging that a state court's decision to deny the plaintiff admission to the bar violated his Fifth

Amendment due process rights. See *Feldman*, 460 U.S. at 462. The Supreme Court held that federal district courts do not have subject matter jurisdiction to review challenges to the judicial determinations of state courts, “even if those challenges allege that the state court’s action was unconstitutional.” *Id.* at 486.

Interpreting these cases, the Second Circuit has noted that a federal district court’s jurisdiction “depends in part on whether the state court proceedings were ‘judicial in nature.’” *Hachamovitch v. DeBuono*, 159 F.3d 687, 694 (2d Cir. 1998) (quoting *Feldman*, 460 U.S. at 476). If a plaintiff contests a *non-judicial* act, such as a facial challenge to the constitutionality of a state bar rule, then a federal court would have jurisdiction to review the federal claim. *Id.* (citing *Feldman*, 460 U.S. at 485-86). Accordingly, “[a] federal court would lack jurisdiction over challenges to state court decisions in particular cases arising out of judicial proceedings, even if those challenges allege that the state court’s action is unconstitutional.” *Id.* (citing *Feldman*, 460 U.S. at 486).

Additionally, federal district courts lack subject matter jurisdiction in actions that are “inextricably intertwined” with state court decisions. See *Feldman*, 460 U.S. at 482 n. 16. At a minimum, a federal claim is

“inextricably intertwined” with a state court judgment “if the federal claim succeeds only to the extent that the state wrongly decided the issues before it.” *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 25 (1987). Whether a federal claim is “inextricably intertwined” with a state court judgment varies with the circumstances of a particular case. However, the crucial point is whether the district court is in essence being called upon to review the state-court decision. See *Feldman*, 460 U.S. at 483-84 n.16; see also, *Ritter v. Ross*, 992 F.2d 750, 754 (7th Cir. 1993).

In this case, Rosenberger contends that he is only challenging the constitutionality of FCA § 413 and DRL § 240. See *Pl.’s Br. pp. 6-7, Dkt. No. 12*. Specifically, Rosenberger challenges New York State’s ability to determine “how much money a parent spends for the care and maintenance of his or her child.” See *Compl. ¶ 5, Dkt. No. 1*.⁶ Even assuming that all of these allegations are true, the Court is “in essence being called upon to review the state court decision.” *Fariello v. Campbell*,

⁶Rosenberger also argues that Magistrate Judge David Homer’s May 7, 2004 order demonstrates that he “does not seek to overturn the judgment of the state court...” See *Pl.’s Br. p. 7, Dkt. No. 12; Dkt. No. 3*. Inasmuch as Rosenberger argues that “the law of the case doctrine” should apply in this case, this court finds “major grounds justifying reconsideration,” namely “the need to correct a clear error” and hereby reverses Magistrate Judge Homer’s May 7, 2004 ruling. *Virgin Atl. Airways, Ltd. v. Nat’l Mediation Bd*, 956 F.2d 1245, 1255 (2d Cir. 1992); *DiLaura v. Power Auth. of the State of N.Y.*, 982 F. 2d 73, 76 (2d Cir. 1992).

860 F. Supp. 54, 66 (E.D.N.Y. 1994) (quoting *Feldman*, 460 U.S. at 483 n.16).

First, it is clear that the FCA and DRL statutes are “inextricably intertwined” with Rosenberger’s state court judgment, namely the rulings made by the state court in the FDO. *See Penzoil*, 481 U.S. at 25.

Secondly, it is without question that a determination by this court as to the constitutionality of New York’s FCA § 413 and DRL § 240 certainly has an effect on the validity of Rosenberger’s state court judgment. Thirdly, Rosenberger’s constitutional challenges to FCA § 413 and DRL § 240 were never raised 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. As the Supreme Court noted, “[t]his result is eminently defensible on policy grounds.” *Id.*; *see, e.g., Sumner v. Mata*, 449 U.S. 539, 549 (1981); *Allen v. McCurry*, 449 U.S. 90, 105 (1980); *Swain v. Pressley*, 430 U.S. 372, 383 (1977).

Finally, this court would be outside the bounds of its jurisdiction in addressing subjects of domestic relations which clearly “belong to the laws of the States...” *Neustein v. Orbach*, 732 F. Supp. 333, 339 (E.D.N.Y.

1990) (quoting *Ex parte Burrus*, 136 U.S. 586, 594 (1890)). Such “action[s] must be dismissed because it is an abortive attempt to involve the federal courts in domestic relation matters best left to the states.” *Id.* (citing *Hernstadt v. Hernstadt*, 373 F.2d 316, (2d Cir. 1967)).

In this case, Rosenberger’s constitutional challenges are solely based upon the determination of the amount of his child support payments. See *Compl.* ¶ 5, *Dkt. No. 1*. Specifically, Rosenberger argues that the state cannot mandate “how much money [he must] spend for the care and maintenance of his ... child.” *Id.* A “shifting economic arrangement” issue that the Supreme Court has held to be addressed by the state’s appellate court and not by a district court. *Stanley v. Illinois*, 405 U.S. 645, 651 (1972) (citing *Kovacs v. Cooper*, 336 U.S. 77, 95 (1949)).

3. Conclusion

Rosenberger's claims fall squarely within the *Rooker-Feldman* doctrine. Since a dismissal for lack of jurisdiction renders all other claims moot, this court finds it unnecessary to evaluate the merits of Rosenberger’s claims under Rule 12(b)(6). Accordingly, the Rule 12(b)(1) motion to dismiss is **GRANTED** and the complaint is **DISMISSED**.

IV. Conclusion

After careful review of the record, motion papers and for the reasons stated herein, it is hereby

ORDERED that defendants' motion to vacate entry of default is **GRANTED** and it is further

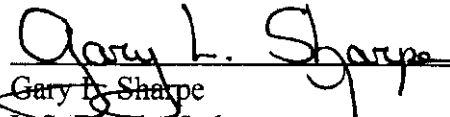
ORDERED that the clerk's entry of default against the defendants be **VACATED**; and it is further

ORDERED that Rosenberger's cross-motions seeking entry of default judgment and to strike are respectively **DENIED** for the reasons stated herein; and it is further

ORDERED that defendants' motion to dismiss the complaint is **GRANTED** and the complaint is hereby **DISMISSED**; and it is further

ORDERED that the Clerk of the Court serve copies of this Memorandum-Decision Order to the parties and close this case.

Dated: December 20, 2004
Albany, NY



Gary L. Sharpe
U.S. District Judge