

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

HAROLD L. ROSENBERGER,

Plaintiff,

-against-

04-CV-0475

NEW YORK STATE OFFICE OF TEMPORARY AND
DISABILITY ASSISTANCE; ROBERT DOAR,
Commissioner, in his official capacity; and ULSTER
COUNTY FAMILY COURT,

(GLS)(DRH)

Defendants.

**MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANTS' MOTION TO DISMISS THE COMPLAINT**

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PRELIMINARY STATEMENT

The plaintiff alleges he is a divorced father of three and that he is a respondent in a Family Court proceeding in Ulster County, in which he was declared the non-custodial parent. (Complaint, ¶ 38). He alleges that the Family Court conducted a hearing that resulted in an order on January 24, 2002, requiring that he contribute \$325.69 per week toward his children's support, and that he pay 73% of all reimbursed health expenses incurred by his children. (Complaint, ¶ 39; Exhibit 2). He alleges that the Ulster County Child Support Enforcement Unit, the county arm of the Office of Temporary and Disability Assistance, thereafter issued a wage execution dated March 21, 2002. (Complaint, ¶ 40; Exhibit 3). The plaintiff claims that he has a constitutional "Right to Privacy" in making parenting decisions that can be overridden only by a compelling state interest. (Complaint, ¶ 25). "The plaintiff asserts that the amount of spending by a parent for his or her child, i.e. child support, is a parenting decision. There is only a minimum amount of child support that the State can justify to prevent harm to the child. Any amount over that minimum is unconstitutional because it intrudes in the Right of Privacy to Parenting and strips property rights from the parent." *Id.*

The defendants herein are the New York State Office of Temporary and Disability Assistance ("OTDA") the agency's Commissioner, Robert Doar, and the Ulster County Family Court. The Complaint seeks a declaratory judgment that New York State Family Court Act §413 and Domestic Relations Law § 240 are unconstitutional in that they infringe the plaintiff's right to privacy under the first amendment and the due process clause of the fourteenth amendment.

STATUTORY AND REGULATORY FRAMEWORK

In New York State, the parents of a child under 21 years of age are chargeable with the support of their child, and, if the parents do not comprise a single household, the custodial parent is entitled to child support payments from the non-custodial parent. See Family Court Act § 413; Social Services Law § 101. An obligation to pay child support is established initially by Court Order (Family Court Act § 443). Federal and State law authorizes state and local administrative agencies to enforce child support debts. See 42 U.S.C. § 651 et. seq. and Social Services Law § 111-b.

The New York State Office of Temporary and Disability Assistance, through its Division of Child Support Enforcement, supervises the administration of the State child support enforcement program under Title IV-D of the Social Security Act (42 U.S.C. § 651 et. seq.). See Social Services Law § 111-b(1); 45 CFR § 302.10, 302.12; 18 NYCRR § 346.1(a). Under the New York State child support enforcement program, each local social services district, through a Support Collection Unit (“SCU”), is required to take all steps necessary to establish, collect and enforce child support orders. See Social Services Law §§ 111-c and 111-h.

After a court order is entered, the SCU establishes an account to collect, account for and disburse funds paid pursuant to any order of child support. See Social Services Law § 111-h(1); 18 NYCRR § 346.1(a)(1). The account is made part of the statewide Child Support Management System and the SCU maintains child support case files which include all information relating to the case. See 18 NYCRR § 347.3(a)(2) and 347.18. Past due support is treated as a judgment by operation of law (42 U.S.C. § 666[a][9][A]), and is enforceable in the same manner as a judgment. (CPLR Rule 5101).

Where a custodial parent receives public assistance for the child named in the child support order, the State and local social services district are assigned the right to the child support payments owed, and child support that is collected is payable to the social services district that furnished the public assistance benefits to the child as reimbursement for that expense. (Social Services Law § 111-b[2]). Custodial parents not receiving public benefits may also request services from and enforcement by the SCU. (Social Services Law § 111-g.)

The methodology employed by New York to calculate support obligations of non-custodial parents, which this plaintiff asks the court to invalidate through the grant of a declaratory judgment, has been in place since 1989. The federal government has mandated that as a condition of providing federal matching funds to the States’ child support enforcement programs under part D of Title IV of the Federal Social Security Act (“Title IV-D”), as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (“PRWORA”), 42 U.S.C. §§ 651 et seq., the States

must “establish guidelines for child support award amounts within the state.” 42 U.S.C. § 667. See In re Dutchess County Dept of Social Services v. Day, 96 N.Y.2d 149, 152 (2001) (discussing federal mandate for States to comply with title IV-D); Bast v. Rossoff, 91 N.Y.2d 723, 728 (1998). In addition, the States’ compliance with the Title IV-D requirements is a condition for receipt of federal funds under the Federal Temporary Assistance to Needy Families (“TANF”) block grant. See 42 U.S.C. §§ 602(a)(2); 609(a)(8).

In 1989, the Legislature enacted the Child Support Standards Act (“CSSA”), FCA § 413, replacing the prior needs-based discretionary system for calculating child support obligations “with a precisely articulated, three-step method for determining child support.” Cassano v. Cassano, 85 N.Y.2d 649, 652 (1995). The statute:

was the Legislature’s response to the Federal Government’s mandate that States establish mandatory guidelines for determining child support (Matter of Graby v. Graby, 87 N.Y.2d 605, 608 (1996)). This statute replaced a discretionary system and was enacted to “create greater uniformity, predictability and equity in fixing child support awards, while at the same time maintaining a degree of judicial discretion necessary to address unique circumstances.” (Matter of Cassano v. Cassano, 85 N.Y.2d at 652).

Bast v. Rossoff, 91 N.Y.2d 723, 728 (1998).

For the reasons set forth below, the Court should disallow the plaintiff’s effort to dismantle New York’s child support methodology, and this action should be dismissed.

POINT I

THIS COURT LACKS SUBJECT MATTER TO REVIEW PLAINTIFF’S CLAIM, WHICH COLLATERALLY ATTACKS FAMILY COURT ORDERS AND JUDGMENTS.

The plaintiff alleges that he “is not requesting that a State court judgment be overturned, altered, or modified in any way by this Court. (Complaint, ¶ 12). However, it is apparent that the entire thrust of the complaint is to collaterally attack a Family Court child support order, based on a constitutional challenge to the statutes upon which the order was based. This Court lacks subject matter jurisdiction to review decisions rendered by the Family Court. “The jurisdiction possessed by the District Courts is strictly original.” Rooker v. Fidelity Trust Company, 263 U.S. 413, 416

(1923). As such, the District Court has no power to review state court proceedings. The only permissible review is by the superior state court and/or the Supreme Court. See 28 U.S.C.A. §§ 1257, 2101 and 2103. See also District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482-84 and n.16 (1983), citing Atlantic Coast Line R. Co. v. Brotherhood of Locomotive Engineers, 398 U.S. 281, 296 (1970) ("Lower federal courts possess no power whatever to sit in direct review of state court decisions."). Accord, Tang v. Appellate Division of the New York Supreme Court, First Department, 487 F.2d 138, 141-143 (2d Cir. 1973), cert. denied, 416 U.S. 906 (1974).

In Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923), the Supreme Court considered an action brought to have "a judgment of a circuit court of Indiana, which was affirmed by the Supreme Court of the state, declared null and void." 263 U.S. at 414. The Court observed that the "grounds advanced for resorting to the District Court are that the judgment was rendered and affirmed in contravention of..."certain constitutional provisions, including the Due Process and Equal Protection Clauses of the Fourteenth Amendment. 263 U.S. at 414-15. The Supreme Court did not consider the nature of the harms alleged by the plaintiffs, holding that:

If the constitutional questions stated in the bill actually arose in the cause, it was the province and duty of the state courts to decide them; and their decision, whether right or wrong, was an exercise of jurisdiction. If the decision was wrong, that did not make the judgment void, but merely left it open to reversal or modification in an appropriate and timely appellate proceeding. Unless and until so reversed or modified, it would be an effective and conclusive adjudication.

263 U.S. at 415. After determining that the challenged judgment was rendered in a cause over which the state court had jurisdiction, the Supreme Court then determined that the federal action had to be dismissed. To allow the action to continue -- whatever the nature of the actual claims plaintiffs sought to raise -- "would be an exercise of appellate jurisdiction. The jurisdiction possessed by the District Courts is strictly original." 263 U.S. at 416. The Court therefore affirmed dismissal of the federal proceeding.

Under the Rooker- Feldman Doctrine, "federal district courts lack jurisdiction to review state court decisions whether final or interlocutory in nature," Gentner v. Shulman, 55 F.3d 87, 89 (2d Cir.1995), and "federal review, if any, can occur only by way of a certiorari petition to the Supreme

Court,” Moccio v. New York State Office of Court Admin., 95 F.3d 195, 197 (2d Cir.1996). “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).

This doctrine also prohibits a district court review of state court judgments to claims that are “inextricably intertwined” with a state court’s determinations. Kropelnicki v. Siegel, 290 F.3d 118, 128 (2d Cir.2002). A claim is inextricably intertwined when “at a minimum, ... a federal plaintiff had an opportunity to litigate a claim in a state proceeding (as either the plaintiff or defendant in that proceeding), ... [and] the claim ... would be barred under the principles of preclusion.” Id. (internal quotations and citation omitted). On the other hand, “where the claims were never presented in the state court proceedings and the plaintiff did not have an opportunity to present the claims in those proceedings, the claims are not ‘inextricably intertwined’ and therefore not barred by Rooker-Feldman.” Id. at 118 (internal quotations and citation omitted).

Plaintiff’s purported due process and parental privacy claims arise from the Ulster Family Court’s determinations regarding child support, and are inextricably intertwined with the state court’s determinations and could have been raised in state court, either in the Family Court or on appeal. Cogswell v. Rodriguez, 304 F.Supp.2d 350. 355-56 (EDNY 2004).

The Rooker-Feldman doctrine was applied by Judge Scullin in Rogers-Fink v. Cortland County Dept. of Social Services, 855 F. Supp. 45 (NDNY 1994), to dismiss a § 1983 action against a family court judge, among others, that was “founded on allegations that New York State family court decisions were incorrect.” See also Fay v. South Colonie Central School District, 802 F.2d 21, 31 (2d Cir. 1986) (“the Federal Courts have historically been reluctant to resolve family disputes that could be far more efficiently and appropriately resolved by the State Courts.”). Similarly, in Neustein v. Orbach, 732 F. Supp. 333, 339 (EDNY 1990), the Court held that “where constitutional claims arising out of a domestic relations dispute are frivolous the action must be dismissed because it is an abortive attempt to invoke the federal courts in domestic relations matters best left to the states. In McArthur v. Bell, 768 F. Supp. 706, 709 (EDNY 1992), the Court reiterated this principle:

In the instant case, McArthur does not request this Court to alter the state court's child support modification determination. Nevertheless, all of his allegations regarding violations of his constitutional rights and all of his alleged property damages are directly related to the aforementioned modification proceedings. As in Neustein, to decide the instant case, this Court would be forced to re-examine and re-interpret all the evidence brought before the state court in the domestic relations proceedings. This is the role of the Appellate Division. It is not the role of this Court. See Anderson v. State of Colo., 793 F.2d 262, 264 (10th Cir. 1986)(dismissing § 1983 claim which, despite “[plaintiff’s] protestations to the contrary” essentially sought in a federal review of a state court custody decision); Wise v. Bravo, 666 F.2d 1328, 1333 (10th Cir. 1981)(“§ 1983 should not be viewed as a vehicle to resolve a dispute involving visitation rights-privileges”); Tonti v. Petropoulos, 656 F.2d 212, 216 (6th Cir. 1981)(“[t]he Civil Rights Act was not designed to be used as a substitute for the right of appeal...” (quotation omitted)).

Here, plaintiff invites this Court to review and set aside decisions and orders rendered by the Ulster County Family Court. The declaratory relief plaintiff seeks would effectively require vacatur or reversal of state court orders relating to custody and child support. However, this Court lacks subject matter jurisdiction to do so. To permit plaintiff's attempted collateral attack on the New York State court orders would violate the principles of federal-state jurisdiction as enunciated in Rooker and Feldman and discredit the judicial authority of the state courts. Even though plaintiff purports to assert constitutional claims that the Family Court proceedings violated rights secured to him under the first amendment due process clause, these alleged claims are “inextricably intertwined” with the merits of orders rendered in the state courts. As such, “the district court is in essence being called upon to review the state court decision. This a district court may not do.” District of Columbia Court of Appeals v. Feldman, 460 U.S. at 483-484 n. 16. Accordingly, the complaint must be dismissed pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction.

Closely related to the Rooker-Feldman doctrine are the preclusion principles of res judicata and collateral estoppel. When determining the reach of the Rooker-Feldman doctrine, the Second Circuit has recognized that claims are “inextricably intertwined” under a Rooker-Feldman analysis if the latter- asserted claim would be barred by state law principles of res judicata and collateral estoppel. Thus, the Second Circuit has stated that Rooker- Feldman's application is, at least,

co-extensive with state law preclusion principles. See Moccio v. New York State Office of Court Administration, 95 F.3d 195, 199-200 (2d Cir.1996); see also Hachamovitch v. DeBuono 159 F.3d 687, 696 (2d Cir.1998). Thus, it is appropriate to consider such principles when determining the reach of the Rooker-Feldman doctrine. Id.

Res judicata bars re-litigation of a claim actually raised as well as a claim that might have been raised in a prior proceeding. New York courts hold that where claims arise from the same “factual grouping” they are deemed to be part of the same cause of action and a later claim will be barred without regard to whether it is based upon different legal theories or seeks different or additional relief.” Davidson v. Capuano, 792 F.2d 275, 278 (2d Cir.1986), citing, Smith v. Russell Sage College, 54 N.Y.2d 185, 192-93, 445 N.Y.S.2d 68, 429 N.E.2d 746 (1981). Thus, res judicata bars re-litigation of claims actually raised in a prior proceeding as well as those that could have been litigated. Quartararo v. Catterson, 917 F.Supp. 919, 944 (E.D.N.Y.1996).

Collateral estoppel, also known as issue preclusion, will preclude re-litigation of an issue if the issue sought to be precluded is identical to the issue in the second proceeding and is one which has necessarily been decided in an earlier proceeding in the context of a full and fair opportunity to litigate. Colon v. Coughlin, 58 F.3d 865, 869 (2d Cir.1995); Caridi v. Forte, 967 F.Supp. 97, 100 (S.D.N.Y.1997). The party seeking preclusion bears the burden of showing the identity of issues while the party against whom collateral estoppel is asserted bears the burden of showing the absence of a full and fair opportunity to litigate. Colon, 58 F.3d at 869; Quartararo, 917 F.Supp. at 944. Collateral estoppel is applied to protect litigants from multiple lawsuits and to conserve judicial resources. The doctrine “fosters reliance on judicial action by minimizing the possibility of inconsistent decisions.” Remington Rand Corp. v. Amsterdam-Rotterdam Bank, N.V., 68 F.3d 1478, 1485 (2d Cir.1995).

Despite the plaintiff's protests to the contrary, it is clear that the complaint herein is an attempt to overturn, at least in part, the decision of the state court regarding the amount of child support that he has to provide to his children. While Plaintiff states that he does not wish to have the

support award overturned, there is no question but that Plaintiff seeks to reduce his obligation to pay for his children's support, and should be rejected under the Rooker-Feldman doctrine and principles of res judicata. Elmasri v. England, 111 F. Supp. 2d 212, (2000).

In addition to being barred by the Rooker-Feldman doctrine, jurisdiction over this matter is barred by the domestic relations exception to the jurisdiction of the federal courts. This doctrine "divests the federal courts of power to issue divorce, alimony and child custody decrees." Ankenbrandt v. Richards, 504 U.S. 689, 703 (1992); see Mitchell-Angel v. Cronin, 101 F.3d 108 (2d Cir.1996); American Airlines v. Block, 905 F.2d 12, 14 (2d Cir.1990). Applying this exception to jurisdiction, courts will dismiss civil rights actions aimed at changing the results of domestic proceedings, including orders of child custody. See, e.g., Abidekun v. New York City Bd. of Education, 1995 WL 228395 *1 (E.D.N.Y. April 6, 1995); Fariello, 148 F.R.D. at 675; *221 McArthur v. Bell, 788 F.Supp. 706, 708 (E.D.N.Y.1992); Neustein v. Orbach, 732 F.Supp. 333, 339 (E.D.N.Y.1990).

Plaintiff here seeks relief he did not obtain in the Family Court, respecting the amount of child support he is obligated to pay. While Plaintiff states that he does not wish to revisit the support award, adjudication of his claims would force this court to "re-examine and re-interpret all the evidence brought before the state court" in the earlier state proceedings. McArthur, 788 F.Supp. at 709. As such, this action is barred by the domestic relations exception to this court's jurisdiction. See also Neustein, 732 F.Supp. at 339 (action barred by domestic relations exception if, "in resolving the issues presented, the federal court becomes embroiled in factual disputes concerning custody and visitation matters ...").

POINT II

THE CASE DOES NOT PRESENT A JUDICIABLE "CASE OR CONTROVERSY".

As set forth in the preceding point, the plaintiff has (or had) a full and fair opportunity in State Family Court proceedings, to present any constitutional arguments that he may wish to assert with respect to his support obligations, in the context of his own case. Insofar as he seeks to pursue

a parallel litigation in this forum, seeking a broad declaration that New York's child support laws are unconstitutional, his claim should be dismissed for lack of jurisdiction. Article III of the U.S. Constitution limits the jurisdiction of the federal courts to "Cases" and "Controversies." U.S. Const. Art. III, § 2. See, e.g., Friends of the Earth, Inc. v. Laidlaw Evtl. Servs. (TOC), Inc., 528 U.S. 167, 180 (2000); Steel Co. v. Citizens for a Better Environment, 523 U.S. 83, 94-95 (1998) ("The requirement that jurisdiction be established as a threshold matter springs from the nature and limits of the judicial power of the United States and is inflexible and without exception." (internal quotations omitted)).

To satisfy Article III's standing requirements, a plaintiff must show: "(1) he has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." Friends of the Earth, 528 U.S. at 180-181. "The burden to establish standing rests on the party asserting its existence." Miller v. Silbermann, 951 F.Supp. 485, 489 (S.D.N.Y.1997). At the pleading stage, the plaintiff bears the burden of "clearly ... alleg[ing] facts demonstrating that [he] is a proper party to invoke judicial resolution of the dispute." Bd. of Education v. New York State Teachers Ret. Sys., 60 F.3d 106, 109 (2d Cir.1995) (quoting FW/PBS, Inc., v. City of Dallas, 493 U.S. 215, 231 (1990)).

In the complaint, plaintiff attempts to meet the "case or controversy" requirement through perfunctory allegations that he is subject to the challenged laws, has been injured, and continued to be injured by these statutes, and he must obey the state's child support laws or suffer sanctions. (Complaint, ¶ 9). The conclusory allegations of paragraph 9 are insufficient to establish that the plaintiff has standing, such that the Court may address his purported claim in the context of a concrete dispute, rather than an abstract claim that New York's income based child support statutes are unconstitutional.

POINT III

THE COURT SHOULD ABSTAIN FROM EXERCISING JURISDICTION OVER THIS ACTION.

The complaint should also be dismissed on the basis of the doctrine of abstention. Younger v. Harris, 401 U.S. 37 (1971). This doctrine, which was made applicable to civil proceedings in Huffman v. Pursue, Ltd., 420 U.S. 592 (1975), counsels against a Federal Court's involvement in areas that are committed to the jurisdiction of state bodies, and is derived from fundamental principles of federalism and comity. See also Pennzoil Co. v. Texaco Inc., 481 U.S. 1, 12-13 (1987). The doctrine urges "federal courts to abstain from jurisdiction whenever federal claims have been or could be presented in ongoing state judicial proceedings..." Hawaii Housing Authority v. Midkiff, 467 U.S. 229, 237 (1984). Abstention is warranted here, because state courts have continuing jurisdiction over issues of support and custody.

As is evident from the allegations in the complaint, the plaintiff is a party to a proceeding in the Ulster County Family Court. In that forum, the plaintiff has a full and fair opportunity to present argument regarding alleged constitutional deficiencies in the state statutes applied by the Court, or by local Support Collection Units in enforcing the Court's support orders, and he may seek further review before the Appellate Division if he is dissatisfied with the outcome of the pending proceedings. In the interest of judicial economy and Federal-State comity, this Federal Court should decline the plaintiff's invitation to intercede in the Family Court proceeding. The complaint does not directly request that this Court enjoin pending State Family Court proceedings. However, the broad declaratory relief he seeks would purport to override any contrary holding in the Family Court, and would have the same practical effect as an injunction against the Family Court. .

In Younger v. Harris, 401 U.S. 37 (1971), the Supreme Court addressed the question whether a Federal Court should enjoin the Courts of a State from proceeding with a pending criminal prosecution to enforce an allegedly unconstitutional statute. The court noted that the criminal defendant was not entitled to Federal injunctive relief, as he had an adequate remedy at law in the

pending State proceeding; he could raise his Federal constitutional issues in that forum. This, and considerations of Federal-State comity, led the Court to vacate the injunction that had been issued by a three-judge panel. The plaintiff in Younger claimed that the challenged criminal statute violated the First Amendment, and he faced potential imprisonment if convicted; similarly, here, the plaintiff claims that he faces potential incarceration if he is held in contempt of court for failing to comply with allegedly illegal Family Court orders. The Court in Younger held that such alleged injury is "solely 'that incidental to every criminal proceeding brought in good faith' . . . and . . . [plaintiff] is not entitled to injunctive relief even if such statutes are unconstitutional.'" 401 U.S. at 49.

In Moore v. Sims, 422 U.S. 415 (1979), two parents brought a § 1983 claim for injunctive relief, seeking to enjoin a State Family Court proceeding for emergency protection of children who were allegedly battered. The Supreme Court vacated the injunction, holding that the District Court should have abstained from exercising jurisdiction. The Court recognized that the field of domestic relations is one traditionally reserved to the States. 422 U.S. at 435. Since the plaintiffs in Moore were already parties in a pending Family Court proceeding, and were capable of raising objections to the constitutionality of the Court's procedures in that forum, and were not at risk of great, immediate and irreparable harm in the absence of Federal intervention, the District Court had committed reversible error in declining to abstain.

The Second Circuit has established a three-part test for determining when Younger abstention should be applied. The Court must determine "(1) whether there is an ongoing state proceeding; (2) whether an important state interest is involved; and (3) whether the federal plaintiff has an adequate opportunity for judicial review of his constitutional claims during or after the proceeding." Christ the King Regional High School v. Culvert, 815 F.2d 219, 224 (2d Cir.), cert den 484 U.S. 830 (1987). All three elements are satisfied in this case.

In Canny v. Ray, 1991 WL 268692, (NDNY 1991), Judge McCurn applied the three-part test enunciated by the Second Circuit in Christ the King, and abstained from exercising jurisdiction over an action similar to the case at bar, holding:

[S]tate court proceedings exist in which plaintiffs may litigate the constitutionality of the challenged Family Court practices. This court is unwilling to conclude that these state forums are inadequate to protect plaintiffs' constitutional interests. Therefore, the court concludes that because this case presents a "sensitive area of social policy upon which the federal courts ought not to enter unless no alternative to its adjudication is open," it should abstain from exercising its jurisdiction in this matter. Accordingly, the court dismisses this complaint pursuant to the doctrine of Younger abstention. (citations deleted).

Id. pp. 4-5. (Slip opinion attached hereto as Appendix A). See also Donkor v. City of New York Human Resources Administration, 673 F.Supp. 1221, 1226 (SDNY 1987) (applying the Younger abstention doctrine and dismissing action, holding that the Family Court provides an adequate forum "to raise federal [Constitutional] issues"); Neustein v. Orbach, 732 F.Supp. 333, 341-42 (EDNY 1990); Remhardt v Commonwealth of Massachusetts Department of Social Services, 715 F.Supp. 1253 (SDNY 1989); Anthony v. Council, 316 F.3d 412 (3rd Cir. 2003); Tindall v. Wayne County Friend of the Court, 269 F.3d 533 (6th Cir. 2001).

The Court accordingly should dismiss the action pursuant to the doctrine of abstention.

POINT IV

THE COMPLAINT FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.

Insofar as the complaint purports to allege a due process claim that the plaintiff is entitled to a notice and hearing before he may be required to pay support for his children, it fails to state a claim upon which relief can be granted. The allegations in the complaint, the exhibits annexed thereto, and the challenged provisions of the Family Court Act and Domestic Relations Law, demonstrate that the plaintiff was afforded all of the process that was due, before the order of support was entered. Marisol A. v. Giuliani, 929 F.Supp. 662, 676-80 (S.D.N.Y.1996), *aff'd*, 126 F.3d 372 (2d Cir.1997); Rodriguez v. McLoughlin, 49 F.Supp.2d 186, 203 (S.D.N.Y.1999). Plaintiff's claim of a constitutional violation fails to transform his child support proceeding into a proper federal case. See Anderson v. Bowen, 881 F.2d 1, 5 n. 10 (2d Cir.1989) (citing Hagans v. Lavine, 415 U.S. 528, 536-37 (1974)). Additionally, plaintiff cannot establish that he did not have any adequate pre- or post-deprivation remedies. Rather, these remedies were available to him in the procedures allowing

him to commence proceedings in state court and to appeal decisions of the Family Court. Where plaintiff has an adequate post-deprivation remedy, he is barred from maintaining a claim for violation of due process pursuant to 42 U.S.C. § 1983, as the existence of such a remedy provides the process that is due. See Parratt v. Taylor, 451 U.S. 527 (1981), overruled on other grounds, Daniels v. Williams, 474 U.S. 327 (1986).

The plaintiff purports to assert that New York's child support laws infringe his fundamental right as a parent to raise his children. The Supreme Court has held that the Fourteenth Amendment's Due Process Clause "provides heightened protection against government interference with certain fundamental rights and liberty interests." Troxel v. Granville, 120 S. Ct. 2054, 2059-60 (2000) (quoting Washington v. Glucksberg, 521 U.S. 702, 719-20, 117 S.Ct. 2258 (1997)). The sorts of parental interests that have been accorded this heightened due process protection includes the right of parents to "establish a home and bring up children" and "to control the education of their own." Meyer v. Nebraska, 262 U.S. 390, 399, 401, 43 S.Ct. 625, 67 L.Ed. 1042 (1923). In Pierce v. Society of Sisters, 268 U.S. 510, 534-535, 45 S.Ct. 571, 69 L.Ed. 1070 (1925), the Court again held that the "liberty of parents and guardians" includes the right "to direct the upbringing and education of children under their control." See also Prince v. Massachusetts, 321 U.S. 158, 64 S.Ct. 438, 88 L.Ed. 645 (1944) (same); Wisconsin v. Yoder, 406 U.S. 205, 232, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972) ("The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition"); Quilloin v. Walcott, 434 U.S. 246, 255, 98 S.Ct. 549, 54 L.Ed.2d 511 (1978) ("We have recognized on numerous occasions that the relationship between parent and child is constitutionally protected"); Parham v. J. R., 442 U.S. 584, 602, 99 S.Ct. 2493, 61 L.Ed.2d 101 (1979) ("Our jurisprudence historically has reflected Western civilization concepts of the family as a unit with broad parental authority over minor children. Our cases have consistently followed that course"); Santosky v. Kramer, 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982) (discussing "[t]he fundamental liberty interest of

natural parents in the care, custody, and management of their child”). Members of families have a constitutional interest in familial integrity, or put more plainly, a right not to be forcibly separated without due process. Quilloin v. Walcott, 434 U.S. 246, 255, 98 S.Ct. 549, 54 L.Ed.2d 511 (1978); Duchesne v. Sugarman, 566 F.2d 817, 824-125 (2d Cir.1977).

A notable case in this line of decisions is Stanley v. Illinois, 405 U.S. 645, 651, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972), from which the following language was quoted in the complaint in this action:

The private interest here, that of a man in the children he has sired and raised, undeniably warrants deference and, absent a powerful countervailing interest, protection. It is plain that the interest of a parent in the companionship, care, custody, and management of his or her children “come[s] to this court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements.” Id. (Complaint, unnumbered paragraph preceding ¶ 25).

The Stanley decision makes clear that support orders - which implicate “mere[] ... shifting economic arrangements” - stand on a different constitutional footing from the parental liberty interest in bringing up their children, molding the moral, religious, educational, and cultural values of their offspring. There is a fundamentally different interest at stake, when a parent’s custodial rights are being terminated or curtailed, than when a minimum support obligation is being established. The plaintiff’s interest in paying as little as possible to support his children is not entitled to the same deference as his interest in raising his children within a particular religious faith.

Aside from the obvious benefit that support payments confer on the children of divorced parents, the State (and the taxpaying public) have a compelling interest in assuring that the plaintiff (and similarly-situated non-custodial parents) pay for the reasonable maintenance of their children. In the event of non-payment of support, or payment of less than sufficient support to meet actual costs, the State may end up meeting these needs. Rynecki v. State of Conn. Dept. of Social Services, 742 F.2d 65, 66-67 (2d Cir. 1984) (“Whether the Connecticut practice that appellant alleges to exist is sound or fair as a matter of policy, we agree with the district court that it is simply not violative of appellant's constitutional rights. The cases supporting rights of privacy and personhood cannot be read so broadly. The state, after all, has a financial interest in seeing to it that children who could

be supported by their parents do not become public charges.”).

Because the plaintiff was afforded all the process to which he was entitled when he was required to pay for the support of his children, the complaint should be dismissed pursuant to Rule 12(b)(6).

CONCLUSION

THE COMPLAINT SHOULD BE DISMISSED WITH PREJUDICE.

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