1991 WL 268692
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United States District Court, N.D. New York.

Martin W. **CANNY** and Gary D. Oziemina,
Plaintiffs,
v.
Honorable Herbert B. **RAY**, Broome County Family Court Judge, Defendant.

No. 91-CV-773.

Dec. 11, 1991.

Ronald R. Benjamin, Binghamton, N.Y., for plaintiffs.

Robert Abrams, Attorney General of the State of New York, Albany, N.Y. (David B. Roberts, Ass't. Attorney General, of counsel), for defendant.

MEMORANDUM-DECISION AND ORDER

McCURN, Chief Judge.

I.
INTRODUCTION

***1** Plaintiffs commenced this section 1983 action to challenge a practice of the Broome County Family Court whereby the court dismisses custody petitions brought while neglect proceedings are ongoing and *sua sponte* makes those non- offending parent-petitioners intervenors in the neglect proceeding. *See* Plaintiffs' Complaint, Preliminary Statement. Plaintiffs contend that this practice denies them access to the courts, due process of law, and their liberty interest in being united with their infant children in violation of the United States Constitution, specifically the First and Fourteenth Amendments. *See* Plaintiffs' Complaint, Preliminary Statement.

Although defendant has styled his motion as one to dismiss the complaint for lack of subject matter jurisdiction pursuant to Fed.R.Civ.P. 12(b)(1), in effect he seeks to have this court abstain from exercising its jurisdiction pursuant to the doctrine of *Younger* abstention. In the alternative, defendant argues that even if the court decides to exercise its jurisdiction, it should dismiss plaintiffs' allegations of due process violations for failure to state a claim pursuant to Fed.R.Civ.P. 12(b)(6). Plaintiffs oppose this motion and in addition cross-move for summary judgment pursuant to Fed.R.Civ.P. 56.

II.
BACKGROUND

Plaintiffs are involved in three separate pending state proceedings in the Broome County Family Court. [FN1] The Broome County Department of Social Services commenced these state court proceedings pursuant to Article 10 of the New York Family Court Act ("Article 10") due to the alleged neglect of the children's natural mothers. As a result of the practice challenged in this action, plaintiff, Oziemina, is presently an intervenor in a neglect proceeding in Broome County Family Court. This neglect proceeding has proceeded through a fact-finding hearing in which the child's natural mother was adjudicated a neglectful parent. A dispositional hearing will be held sometime in the future. Mr. Oziemina is also the petitioner in a writ of habeas corpus proceeding in Broome County Family Court in which he sought the return of his son. The court granted the writ and directed the Department of Social Services to return his child to him. The Department of Social Services has filed a Notice of Appeal in the Appellate Division, Third Department challenging this decision. Determination of this appeal is still pending. Until a final decision has been rendered, the child has been placed in the custody of Mr. Oziemina's sister.

Mr. Canny also commenced a writ of habeas corpus proceeding in the Broome County Family Court after the Broome County Department of Social Services charged his wife with neglect and took temporary custody of their child pursuant to its emergency removal powers. Then acting Family Court Judge, Patrick H. Matthews, dismissed the petition for custody and made Mr. Canny an intervenor in the pending neglect proceeding. The child has since been returned to Mr. Canny's custody. Subsequently, the Department of Social Services added Mr. Canny as a respondent in its petition alleging neglect against the child's natural mother. To date, no fact-finding hearing has been scheduled in this neglect proceeding. The purpose of Article 10 is to protect children from injury or

mistreatment and to safeguard their well- being. To this end, it sets forth procedural safeguards for determining when the Family Court may intervene against the wishes of a parent on behalf of a child. *See* N.Y.Fam.Ct. Act § 1011 (McKinney 1983). Non-custodial parents, like plaintiffs, have a right to intervene and to participate in all aspects of the proceeding from remand to dispositional hearing and to be heard on all issues relative to temporary and permanent custody. In addition, they may seek temporary and permanent custody of their children. *See* N.Y.Fam.Ct. Act § 1035(d) (McKinney 1983).

***2** Plaintiffs contend that the Family Court's practice of dismissing non- custodial parents' writs of habeas corpus and limiting their participation to that of intervenors in the pending Article 10 proceedings is unconstitutional. Consequently, they commenced this suit pursuant to section 1983 seeking injunctive relief to require the Family Court to discontinue this practice.

III. DISCUSSION

A. Abstention

Federal courts have an obligation to hear cases that fall within their jurisdictional sphere. Thus, it has become a well-settled principle that abstention from the exercise of such jurisdiction is a narrow exception, not the rule. *CECOS Int'l Inc. v. Jorling,* 895 F.2d 66, 70 (2d Cir.1990) (citing *Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp.,* 460 U.S. 1, ----, 103 S.Ct. 927, 936, 74 L.Ed.2d 765, ---- (1983); *Colorado River Water Conservation Dist. v. United States,* 424 U.S. 800, ----, 96 S.Ct. 1236, 1244, 47 L.Ed.2d 483, ---- (1976)). The Supreme Court has recognized four unique types of abstention, the prerequisites for which it has set forth in *Younger v. Harris,* 401 U.S. 800, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971); *Louisiana Power & Light Co. v. City of Thibodaux,* 360 U.S. 25, 79 S.Ct. 1070, 3 L.Ed.2d 1058 (1959); *Burford v. Sun Oil Co.,* 319 U.S. 315, 63 S.Ct. 1098, 87 L.Ed. 1424 (1943); and *Railroad Comm'n of Texas v. Pullman Co.,* 312 U.S. 496, 61 S.Ct. 643, 85 L.Ed. 971 (1941). More recently, the Court articulated a residuary category of abstention, to be applied only in extraordinary circumstances, premised on promoting the effective disposition of litigation. *See Colorado River Water Conservation Dist. v. United States,* 424 U.S. 800, 96 S.Ct. 1236, 47 L.Ed.2d 483 (1976).

After analyzing the appropriate circumstances in which each of these doctrines applies, this court concludes that the principles of *Younger* abstention are pertinent to the disposition of this motion. [FN2] *Younger* abstention derives from the recognition that a pending state proceeding, in all but unusual cases, would provide the federal plaintiff with the necessary vehicle for vindicating his constitutional rights, and, in that circumstance, the restraining of an ongoing [state proceeding] would entail an unseemly failure to give effect to the principle that state courts have the solemn responsibility, equally with the federal courts to guard, enforce, and protect every right granted or secured by the Constitution of the United States.

Temple of Lost Sheep Inc. v. Abrams, 930 F.2d 178, 183 (2d Cir.1991) (quoting *Steffel v. Thompson,* 415 U.S. 452, 460-61, 94 S.Ct. 1209, 1216, 39 L.Ed.2d 505, ---- (1974) (citation omitted)).

Thus, federal courts may properly invoke *Younger* abstention when there are two pending proceedings that give rise to the possibility that maintenance of the federal action will either result in duplicative legal proceedings or a disruption of the state proceedings. *See id.* at 182. As such it "contemplates the outright dismissal of the federal suit, and the presentation of all claims, both state and federal, to the state courts." *Id.* (quoting *Gibson v. Berryhill,* 411 U.S. 564, ----, 93 S.Ct. 1689, 1697, 36 L.Ed.2d 488, ---- (1973)).

***3** In *Christ The King Regional High School v. Culvert,* 815 F.2d 219 (2d Cir.), *cert. denied,* 484 U.S. 830, 108 S.Ct. 102, 98 L.Ed.2d 63 (1987), the Second Circuit adopted a three-prong test for determining the applicability of *Younger* abstention. In order for the court to properly invoke *Younger* in any given situation, each of the following questions requires an affirmative response: (1) is there an ongoing state proceeding; (2) is an important state interest implicated; and (3) does the plaintiff have an avenue open for review of constitutional claims in the state court? *Id.* at 224 (applying *Ohio Civil Rights Comm'n v. Dayton Christian Schools,* 477 U.S. 619, 106 S.Ct. 2718, 91 L.Ed.2d 512 (1986)).

1. Ongoing State Proceeding

For purposes of *Younger* abstention, "a state proceeding is considered 'ongoing' ... where it has not been fully completed." *CECOS Int'l Inc. v. Jorling,* 706 F.Supp. 1006, 1016 (N.D.N.Y.1989), *aff'd,* 895 F.2d 66 (2d Cir.1990). In the present case, plaintiffs concede that there are three ongoing state proceedings: two neglect proceedings in Broome County Family Court and a writ of habeas corpus proceeding on appeal to the Third Department. *See* Plaintiffs' Memorandum of Law at 5. Under similar circumstances, this court has held that "the *Younger* doctrine *requires* that federal courts abstain when a state proceeding is pending and the state appellate procedure has not been exhausted."

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CECOS, 706 F.Supp. at 1015 (quoting DeSpain v. Johnston, 731 F.2d 1171, 1177 (5th Cir.1984) (emphasis added)).

2. Important State Interest

Courts in this circuit have repeatedly recognized that questions of family relationships, especially those involving custody and child abuse, are traditionally an area of state concern. *See Neustein v. Orbach,* 732 F.Supp. 333 (E.D.N.Y.1990) (and cases cited therein); *Reinhardt v. Commonwealth of Mass. Dep't of Social Servs.,* 715 F.Supp. 1253, 1258 n. 7 (S.D.N.Y.1989) (and cases cited therein). Thus, there can be no dispute that the Family Court's proper disposition of child neglect and child custody proceedings is a significant state interest to all concerned.

3. Avenue for Judicial Review of Constitutional Claims

Although there is no requirement that plaintiffs exhaust their state remedies before commencing a section 1983 action in federal court, *Younger* does impose such a requirement if there is a state proceeding pending when the federal plaintiff files his federal suit. *See Neustein v. Orbach,* 732 F.Supp. 333 (E.D.N.Y.1990) (citing *Monroe v. Pape,* 365 U.S. 167, 183, 81 S.Ct. 473, 481, 5 L.Ed.2d 492, ---- (1961) and *Huffman v. Pursue, Ltd.,* 420 U.S. 592, 608, 95 S.Ct. 1200, 1210, 43 L.Ed.2d 482, ---- (1975)). As the Supreme Court stated in *Huffman,* "the considerations of comity and federalism which underlie *Younger* permit no truncation of the exhaustion requirement merely because the losing party in the state court ... believes that his chances of success on appeal are not auspicious." *Neustein,* 732 F.Supp. at 341 (quoting *Huffman,* 420 U.S. at 608, 95 S.Ct. at 1211, 43 L.Ed.2d at ----). Moreover, the Supreme Court has held that "[w]hen a litigant has not attempted to present his federal claims in related state court proceedings, a federal court should assume that state procedures will afford an adequate remedy, in the absence of unambiguous authority to the contrary." *Reinhardt,* 715 F.Supp. 1257 (quoting *Pennzoil Co. v. Texaco, Inc.,* 481 U.S. 1, ----, 107 S.Ct. 1519, 1528, 95 L.Ed.2d 1, ---- (1987)). Applying this principle to the Family Court setting, the *Reinhardt* court held that "[c]learly the Family Court ... is bound by the Federal Constitution. Thus, notions of comity and federalism compel the assumption that the Family Court is competent to hear and thoughtfully consider the plaintiff's constitutional challenges." *Reinhardt,* 715 F.Supp. at 1257 (citing *Pennzoil Co. v. Texaco, Inc.,* 481 U.S. 1, ----, 107 S.Ct. 1519, 1528, 95 L.Ed.2d 1, ---- (1987)).

***4** Although plaintiffs concede that they are involved in pending state court actions, they argue that because they are seeking only declaratory relief, *Younger* should not apply. Plaintiffs cite *Gerstein v. Pugh,* 420 U.S. 103, 95 S.Ct. 854, 43 L.Ed.2d 54 (1975), for the proposition that the court need not abstain where the relief sought does not implicate the state court proceedings, such as where plaintiff seeks only prospective relief. This argument, however, is foreclosed by several decisions including the Supreme Court's holding in *Moore v. Sims,* 442 U.S. 415, 99 S.Ct. 2371, 60 L.Ed.2d 994 (1979). In *Moore,* the court explained that "the teaching of *Gerstein* was that the federal plaintiff must have an opportunity to press his claim in the state courts ..." *Id.* at 2381. If such an opportunity is present, the court should abstain even if the relief sought is prospective. The Sixth Circuit reached the same conclusion in *Parker v. Turner,* 626 F.2d 1 (6th Cir.1980). In that case, plaintiffs, who also sought prospective declaratory and injunctive relief, argued that because the relief sought was prospective *Younger* abstention should not apply. *Id.* at 4. The court disagreed and held that *Younger* did apply to claims for declaratory relief. The court stated that this result was mandated by the Supreme Court's holding in *Samuels v. Mackell,* 401 U.S. 66, 91 S.Ct. 764, 27 L.Ed.2d 688 (1971). In *Samuels* the Court held that *Younger* federalism principles barred federal courts from issuing declaratory relief when a state criminal proceeding was pending. *Parker,* 626 F.2d at 3 n. 5. Relying on this principle, the Sixth Circuit concluded that constitutional violations in state trial settings must first be handled within the state system. *Id.* at 10.

In this case, plaintiffs have not only one but possibly two avenues of state court review. They may, of course, continue to challenge the Family Court's practice either in the pending neglect proceedings or in an appeal of any adverse decision which may result from this practice. In addition, plaintiffs may commence an Article 78 proceeding to challenge the judicial action itself. *See* N.Y.Civ.Prac.L. & R. 7801 (McKinney 1981). Such a proceeding would not only permit inquiry into "whether a determination was made in violation of lawful procedure ..." but also would permit plaintiffs to raise their federal constitutional claims. *Reinhardt,* 715 F.Supp. at 1256 (quoting N.Y.Civ.Prac.L. & R. 7803(3) (McKinney 1981) and citing *University Club v. City of New York,* 842 F.2d 37, 40 (2d Cir.1988)). Finally, the court concludes that there is no evidence to suggest that either the Family Court or the Article 78 proceeding would be an inadequate forum to afford plaintiffs the remedy they seek.

B. Exceptions to Younger Abstention

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Even if all three-prongs of the *Younger* abstention test are met, as they are here, there are circumstances under which the court may decline to abstain. For example, the court should not abstain if the state court proceeding is being pursued in bad faith or with the purpose of harassing the federal plaintiffs. Nor should the court abstain if extraordinary circumstances exist. *See* *Reinhardt,* 715 F.Supp. at 1259. In this instance, plaintiffs do not contend that the Family Court is pursuing its policies in bad faith. Therefore, this court should abstain only if extraordinary circumstances exist. Plaintiffs have presented no evidence, however, to demonstrate that such circumstances exist here. For example, plaintiffs do not challenge the constitutionality of a statute but rather challenge certain Family Court practices used in Article 10 proceedings. Moreover, even if they were challenging the constitutionality of Article 10 per se, they have not demonstrated that the statute is flagrantly and patently unconstitutional. *See* *Huffman,* 420 U.S. at 611, 95 S.Ct. at 1211, 43 L.Ed.2d at ----.

***5** In *Moore,* the Supreme Court was faced with a similar situation. There the plaintiffs sought a declaration that parts of Title 2 of the Texas Family Code unconstitutionally infringed on family integrity. *Moore,* 442 U.S. at ----, 99 S.Ct. at 2375, 60 L.Ed.2d at ----. Notwithstanding the fact that the constitutionality of a state statute was at issue, the Court held that a federal court should not exert its jurisdiction if plaintiffs "had an *opportunity* to present their federal claims in the state proceedings." *Moore,* 442 U.S. at 425, 99 S.Ct. at 2378, 60 L.Ed.2d at ---- (quoting *Juidice v. Vail,* 430 U.S. 327, 337, 97 S.Ct. 1211, 1218, 51 L.Ed.2d 376, ---- (1977) (emphasis in the original)). The Court went on to say that abstention was appropriate unless state law clearly barred the imposition of constitutional claims. *Moore,* 442 U.S. at 430-31, 99 S.Ct. at 2381, 60 L.Ed.2d at ----. Under the facts presented in *Moore,* the Court was unwilling to conclude that state processes were unequal to the task of accommodating various interests and deciding constitutional questions that might arise in child-welfare litigation. *Moore,* 442 U.S. at ----, 99 S.Ct. at 2379-83, 60 L.Ed.2d at ----.

Courts in this circuit have likewise invoked the doctrine of *Younger* abstention in situations involving Article 10 and Family Court proceedings. In *Danker v. City of New York Human Resources Admin.,* 673 F.Supp. 1221 (S.D.N.Y.1987), the court held that Article 10 furthers the State's "compelling interest in child-custody disputes ...," and that the Family Court provides an adequate forum "to raise federal [Constitutional] issues." *Id.* at 1226-27. Likewise, the court in *Neustein* dismissed a constitutional challenge to procedures applied in neglect proceedings pursuant to Article 10. Although this decision was premised partially on a finding that the District Court lacked subject matter jurisdiction, the court also held that dismissal was required by *Younger* abstention. *Id.* at 339-42.

As stated above, state 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. *Reinhardt,* 715 F.Supp. at 1259 (quoting *Railroad Comm'n v. Pullman Co.,* 312 U.S. 496, 498, 61 S.Ct. 643, 644, 85 L.Ed. 971, ---- (1941)). Accordingly, the court dismisses this complaint pursuant to the doctrine of *Younger* abstention.

C. Other Motions

Having concluded that under the facts of this case the court must abstain from exercising its jurisdiction pursuant to *Younger,* it would be inappropriate for the court to consider either defendant's alternative grounds for dismissal or plaintiffs' cross-motion for summary judgment.

IV.
CONCLUSION

***6** Since the facts of this case satisfy *Culvert's* three-prong test, the court concludes that *Younger* requires that this court abstain from exercising its jurisdiction over this matter. Accordingly, with due respect for the state court's competence to adjudicate plaintiffs' constitutional claims, the court grants defendant's motion to dismiss the complaint pursuant to the doctrine of *Younger* abstention and denies plaintiffs' cross-motion for summary judgment.

IT IS SO ORDERED.

FN1. In addition, plaintiff, Canny, is involved in another action pending in the Northern District captioned *Canny v. Broome County,* 91-CV- 796. As of the present time, there are no motions pending in this case.

FN2. Although *Younger* was a criminal case,

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its principles have been extended to state civil and administrative proceedings in which the state court provides a means of reviewing constitutional claims. *See CECOS Int'l Inc. v. Jorling,* 895 F.2d 66, 70 (2d Cir.1990) (citing *Ohio Civil Rights Comm'n v. Dayton Christian Schools, Inc.,* 477 U.S. 619, ----, 106 S.Ct. 2718, 2722-23, 91 L.Ed.2d 512, ---- (1986); *Middlesex County Ethics Comm. v. Garden State Bar Ass'n,* 457 U.S. 423, ----, 102 S.Ct. 2515, 2521-22, 73 L.Ed.2d 116, ---- (1982); *Huffman v. Pursue, Ltd.,* 420 U.S. 592, 95 S.Ct. 1200, 43 L.Ed.2d 482 (1975)).

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