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OPINION OF THE COURT OF APPEALS
IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRANDI K. STOKES,

Plaintiff - Appellant

v.

TIMOTHY MARTIN SULAK,

Defendant - Appellee

No. 18-50676

Appeal from the United States District Court for the
Western District of Texas (USDC No. 1:17-CV-1044)

Before REAVLEY, JONES, and HIGGINSON,
Circuit Judges.

PER CURIAM:*

The Judgment of the District Court is affirmed
for the reasons given by the District Judge, the
Magistrate Judge, and the Appellees.

AFFIRMED.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that
this opinion should not be published and is not precedent except
under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

JUDGMENT OF THE COURT OF APPEALS
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Before REAVLEY, JONES, and HIGGINSON,
Circuit Judges.

JUDGMENT

This cause was considered on the record on
appeal and the briefs on file.

It is ordered and adjudged that the judgment of
the District Court is affirmed.

IT IS FURTHER ORDERED that plaintiff-
appellant pay to defendant-appellee the costs on appeal
to be taxed by the Clerk of this Court.

ORDER OF THE TRIAL COURT

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

BRANDI K. STOKES,

Plaintiff

v.

TIMOTHY MARTIN SULAK,

Defendant

No. 1:17-CV-1044-RP

Before PITMAN, District Judge.

ORDER

Before the Court are the motion to dismiss filed by Defendant, the Honorable Timothy Martin Sulak (“Judge Sulak”), (Dkt. 4), the report and recommendation of United States Magistrate Judge Mark Lane filed on June 14, 2018, (Dkt. 7), the objections to the report and recommendation, (Dkt. 9), and the response to those objections, (Dkt. 14). Judge Lane recommends that the Court grant Judge Sulak’s motion to dismiss. (Dkt. 7). After reviewing the briefs, the report and recommendation, and the relevant law, the Court adopts the report and recommendation.

I. BACKGROUND

Plaintiff Brandi Stokes (“Stokes”) brings this action against Judge Sulak, a Texas state district judge. Her claims are grounded in her opposition to Judge Sulak’s decision in a child custody case in which Stokes was a party. The specific factual allegations levied against Judge Sulak by Stokes in her complaint

include: he improperly considered *ex parte* evidence, (*id.* ¶ 13), suggested that he would rule against Stokes regardless of the evidence available, (*id.*), failed to investigate a HIPAA violation allegedly committed by a member of Judge Sulak's staff, (*id.* ¶ 14), failed to investigate the difference between what one litigant said he paid an attorney and what the attorney said he was paid, (*id.* ¶ 16), made rulings on discovery and evidentiary disputes that Stokes disagreed with, (*id.* ¶ 19), and failed to take unspecified investigative steps concerning "dishonest witnesses" and "criminal activity," (*id.* ¶ 20). Stokes seeks relief from this Court in the form of a "finding that all contested rulings and orders entered by Judge Sulak from July 2015, to present date are void." (*Id.* ¶ 23). Stokes also acknowledges in the complaint that she alleges "injuries caused by the actions and non-actions of Judge Sulak, which may include the rendering of the judgment." (*Id.* ¶ 36). In short, Stokes's quarrel is with the outcome of a state court child custody decision, and she asks the Court to reverse that decision. For the reasons explained below, the Court does not have jurisdiction to do so.

II. **LEGAL STANDARD**

A. Federal Magistrates Act

A party may file specific, written objections to the proposed findings and recommendations of the magistrate judge within fourteen days after being served with a copy of the report and recommendation, thereby securing *de novo* review by the district court. 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b).

B. Motion to Dismiss

A defendant may move to dismiss an action for

lack of subject-matter jurisdiction. Fed. R. Civ. P. 12(b)(1). “If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.” *Id.* at 12(h)(3). “A case is properly dismissed for lack of subject matter jurisdiction when the court lacks the statutory or constitutional power to adjudicate the case.” *Home Builders Ass’n of Mississippi, Inc. v. City of Madison, Miss.*, 143 F.3d 1006, 1010 (5th Cir. 1998) (citation omitted). “The burden of proof for a Rule 12(b)(1) motion to dismiss is on the party asserting jurisdiction.” *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001). “Accordingly, the plaintiff constantly bears the burden of proof that jurisdiction does in fact exist.” *Id.* “When a Rule 12(b)(1) motion is filed in conjunction with other Rule 12 motions, the court should consider the Rule 12(b)(1) jurisdictional attack before addressing any attack on the merits.” *Id.*¹

III. DISCUSSION

A. *Objections 1–8 Have No Bearing on the Findings and Recommendations*

The first eight objections, (Objs., Dkt. 9, at 3–14), are to introductory material in the report and recommendation and have no bearing on its outcome. (E.g., Objs., Dkt. 9, at 3 (objecting to the characterization of Judge Sulak as “an elected district court judge in Travis County, Texas” on the ground that “he won the election by running a dishonest campaign”); *id.* at 5–9 (objecting to the magistrate

¹ Because the Court finds that it lacks subject-matter jurisdiction, it does not reach Judge Sulak’s contention that the complaint should also be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief may be granted.

judge's citations to the complaint on the ground that they are incomplete; reproducing large swaths of language from the complaint)). A party may file objections to findings and recommendations submitted by a magistrate judge. Fed. R. Civ. P. 72(b) ("[A] party may serve and file specific written objections to the proposed findings and recommendations."). However, the Federal Rules of Civil Procedure do not require the consideration of objections to the contents of the report and recommendation that do not constitute findings or recommendations. Accordingly, the Court overrules these objections because they do not pertain to the magistrate judge's findings or recommendations.

B. Standard of Review

Stokes objects to the magistrate judge's statement of the standard of review for motions to dismiss. She contends that his "description of the standard of review for the motion before him tends to imply that he has more discretion to dismiss the claim than what the law actually provides." (Objs., Dkt. 9, at 4). Specifically, Stokes takes issue with Judge Lane's paraphrase of Federal Rule of Procedure 12(h)(3). Fed. R. Civ. P. 12(h)(3) ("If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action."). Judge Lane's paraphrase merely reflects the well-established principle, which he quoted in the sentence directly preceding the objected-to sentence, that the lack of subject-matter jurisdiction "may be raised by a party, or by a court on its own initiative, at any stage in the litigation." *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 506 (2006). Seizing on his use of the word "appears," Stokes contends that "Judge Lane's paraphrase of this rule suggest[s] that the mere appearance by suggestion of a party is enough to dismiss a claim," but Judge Lane's accurate recitation

and correct application of the standard demonstrate that Stokes's assumption drawn from this single word is incorrect. "Courts may dismiss for lack of subject matter jurisdiction on any one of three different bases: (1) the complaint alone; (2) the complaint supplemented by undisputed facts in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts." *Clark v. Tarrant Cty., Texas*, 798 F.2d 736, 741 (5th Cir. 1986); *see also Williams v. Wynne*, 533 F.3d 360, 365 (5th Cir. 2008) (the Rule 12(b)(1) standard "permits the court to consider a broader range of materials in resolving the motion" than does the Rule 12(b)(6) standard). Here, Judge Lane found, based on the contents of the complaint, that the Court lacks subject-matter jurisdiction over the dispute. This objection is overruled.

C. The Domestic Relations Exception and the Rooker-Feldman Doctrine

The dual bases the magistrate judge relies upon for finding that this Court does not have subject-matter jurisdiction over Stokes' claim—the domestic relations exception to federal jurisdiction and the *Rooker-Feldman* doctrine—are intertwined. The domestic relations exception concerns "cases involving marital status or child custody." *Rykers v. Alford*, 832 F.2d 895, 899 (5th Cir. 1987). The *Rooker-Feldman* doctrine bars federal courts from modifying or reversing state court judgments. *Truong v. Bank of America, N.A.*, 717 F.3d 377, 382 (5th Cir. 2013). Here, Stokes asks this Court to reverse a state court judgment concerning child custody, so both doctrines are pertinent.

As she states in her objections to the report and recommendation, Stokes seeks "federal court

supervision of all further proceedings in state court regarding Plaintiff and her child.” (Objs., Dkt. 9, at 16). This request falls squarely within the domestic relations exception. *See Rykers*, 832 F.2d at 900 (determining that when deciding if the exception applies, “[t]he decisive factor is not the formal label attached to the claim (tort, contract, etc.), but the type of determination that the federal court must make in order to resolve the case”); *see also id.* (“If the federal court must determine which parent should receive custody, ...or whether a previous court’s determination on these matters should be modified, then the court should dismiss the case.”).

Similarly, it is clear from the face of the complaint that the relief Stokes seeks requires the reversal of a state court judgment, a request that this Court, instructed by the *Rooker-Feldman* doctrine, may not entertain. The doctrine precludes federal district courts from hearing “cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.” *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). The doctrine does not apply to cases in which a plaintiff asserts an independent claim, but that is not the case here—Stokes seeks an order from this Court that would render the state court judgment void.²

² Stokes contends that because her complaint contains allegations of fraud, *Rooker-Feldman* cannot bar her claims. (Objs., Dkt. 9, at 18). This is incorrect. *See, e.g., Truong v. Bank of Am., N.A.*, 717 F.3d 377, 388 n.3 (5th Cir. 2013) (“There is, of course, no general rule that any claim that relies on a fraud allegation is an ‘independent claim’ for *Rooker-Feldman* purposes.”); *see also id.* (citing several Fifth Circuit decisions finding claims asserting

Tellingly, for example, the section of the complaint with the heading immediately preceding Paragraph 23 is titled “Legal Arguments Supporting Complainant’s Position that the Lower Court Proceedings Are Void.” (Compl., Dkt. 1, at 10). The complaint specifically seeks a declaration that “all contested orders and rulings made or signed by Judge Timothy Martin Sulak from July 17, 2015, to the present date [are] void.” (*Id.* ¶ 40). The Court, in accordance with *Rooker-Feldman*, cannot exercise jurisdiction over this action. Accordingly, Stokes’s objections to the findings and recommendations regarding the application of the domestic relations exception and the *Rooker-Feldman* doctrine are overruled.³

IV. CONCLUSION

For the foregoing reasons, the report and recommendation of the magistrate judge, (Dkt. 7), is

³ The Court also finds that Stokes’s remaining miscellaneous objections are without merit. This includes her contention that the Court may not grant a motion to dismiss her claims for want of jurisdiction because there was no such motion on file, (Objs., Dkt. 9, at 22)—there was such a motion on file, (Mot. Dismiss, Dkt. 4), but as explained above, the Court may also dismiss claims for lack of subject-matter jurisdiction *sua sponte*. It also includes Stokes’s objection arising from her argument that the Geneva Conventions prohibit this Court from following its constitutional obligation to ensure that it does not decide cases over which it lacks jurisdiction. (*Id.* at 23).

ADOPTED. Defendant Judge Sulak's motion to dismiss, (Dkt. 4), is **GRANTED**. Because the Court lacks jurisdiction over this case, Stokes's claims are **DISMISSED**. Because this case must be dismissed, Stokes's motion to consolidate, (Dkt. 10), is **MOOT**.

SIGNED on July 13, 2018.

/s/ Robert Pitman
ROBERT PITMAN
UNITED STATES DISTRICT JUDGE

JUDGMENT OF THE TRIAL COURT

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

BRANDI K. STOKES,

Plaintiff

v.

TIMOTHY MARTIN SULAK,

Defendant

No. 1:17-CV-1044-RP

Before PITMAN, District Judge.

FINAL JUDGMENT

Before the Court is the above-entitled action. On July 13, 2018, the Court issued an order granting Defendant's motion to dismiss. (Dkt. 15). Having done so, the Court enters the following Final Judgment pursuant to Federal Rule of Civil Procedure 58.

IT IS ORDERED that all claims and causes of action asserted by Plaintiff in this action are DISMISSED. All relief not expressly granted is DENIED.

IT IS FURTHER ORDERED that all costs shall be taxed to the party incurring same.

IT IS FINALLY ORDERED that the case is CLOSED.

SIGNED on July 26, 2018.

/s/ Robert Pitman

ROBERT PITMAN

UNITED STATES DISTRICT JUDGE