

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

No. 17-50826
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

May 29, 2018

Lyle W. Cayce
Clerk

JULIETTE FAIRLEY,

Plaintiff - Appellant

v.

PM MANAGEMENT - SAN ANTONIO AL, L.L.C., doing business as
Lakeside Assisted Living by Trisun Healthcare,

Defendant - Appellee

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:17-CV-426

Before DAVIS, CLEMENT, and COSTA, Circuit Judges.

PER CURIAM:*

Before the court are the district court's grants of PM Management d/b/a Lakeside Assisted Living's ("Lakeside") Rules 12(b)(1), 12(b)(6) and 12(b)(7) motions to dismiss. For the reasons below, we AFFIRM.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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I.

Juliette Fairley, a resident of New York, filed this lawsuit as next of friend and advocate of her father, James Fairley, a resident at Lakeside in San Antonio, Texas. Juliette asserts numerous causes of action arising from the treatment of her father at Lakeside, including her own visitation rights.

Prior to the lawsuit, a Texas probate court appointed Sophie Fairley, James's wife, as the permanent guardian of James; Juliette's application to be appointed James's guardian was dismissed. A Texas court of appeals affirmed the appointment. The probate court also determined that James had limited opportunity to visit with Juliette and that special arrangements must be made to facilitate their visits. Personal and telephone contacts between James and Juliette are supervised by a monitor, per court order.

Juliette asserted federal jurisdiction on the existence of diversity and federal questions. Lakeside argued before the district court that Sophie was an indispensable party. Although Lakeside and Juliette are citizens of different states, Sophie—like Lakeside—is a resident of Texas. Juliette further alleged that the probate court orders violate federal law, and that because Lakeside receives Medicare and Medicaid funding, it is a state actor acting under color of law for 42 U.S.C. § 1983 claims. Juliette also alleged claims under the Nursing Home Reform Amendments Act ("NHRA"). Finally, Juliette brought a claim under Title II of the Civil Rights Act of 1964 for alleged discrimination by Lakeside.

The district court determined that Sophie was an indispensable party, and therefore diversity failed to exist. It further determined that just because a nursing home receives federal funding or follows state court orders, it does not become a state actor subject to § 1983 claims. It also determined that any NHRA claim must be made by James's legal guardian—here, Sophie—and not by Juliette. As to the Title II claim, the district court determined Juliette failed

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to state a claim upon which relief could be granted. Accordingly, it dismissed Juliette's lawsuit. She timely appealed.

II.

"We review a district court's decision to dismiss for failure to join an indispensable party [under Rule 19] . . . under an abuse-of-discretion standard." *HS Resources, Inc. v. Wingate*, 327 F.3d 432, 438 (5th Cir. 2003) (internal quotations omitted). "We review de novo the district court's order on a motion to dismiss for failure to state a claim under Rule 12(b)(6)." *In re Katrina Canal Breaches Litig.*, 495 F.3d 191, 205 (5th Cir. 2007).

III.

The district court, having determined that Sophie was an indispensable party, did not abuse its discretion. Juliette specifically raised issues pertaining to the probate court's order on visitation with James. Determining that Sophie, as James's legal guardian, is a necessary party because any claim pertaining to James necessarily implicates Sophie was not an abuse of discretion. And because Sophie and Lakeside are both residents of Texas, if Sophie were joined as a party, the basis for diversity jurisdiction would fail.

Moreover, as to the claims attempted under federal question jurisdiction, the district court did not err in dismissing them for failure to state a claim. Juliette's claim under § 1983 is premised upon Lakeside being a state actor because it follows an—allegedly incorrect—order of a state probate court. This factor does not amount to Lakeside being a state actor for purposes of § 1983 claims, and the district court appropriately dismissed the claims. *See Richard v. Hoechst Celanese Chem. Grp., Inc.*, 355 F.3d 345, 353 (5th Cir. 2003) ("[T]his Court's precedent establishes that even if a court wrongly decides a case, the fact that a private party complies with that wrong decision does not constitute state action."). The district court also dismissed Juliette's attempted NHRA claim, which is seemingly actionable through § 1983 for Medicaid recipients.

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See Steward v. Abbott, 189 F. Supp. 3d 620, 638 (W.D. Tex. 2016) (collecting cases). Any such allowable action must be brought by the beneficiary, however. *See id.* Therefore, even if Lakeside were subject to this claim, Juliette is not the proper party to bring it. Such a claim must be brought by James's legal guardian, Sophie. Finally, the district court properly dismissed the Title II claim because Lakeside is not a place of public accommodation, *see* 42 U.S.C. § 2000a(b), and Juliette failed to carry her burden to establish a plausible claim of discrimination in her complaint, *see Fahim v. Marriott Hotel Servs., Inc.* 551 F.3d 344, 349 (5th Cir. 2008).

AFFIRMED.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JULIETTE FAIRLEY,

Plaintiff,

v.

PM MANAGEMENT - SAN ANTONIO
AL LLC d/b/a LAKESIDE
ASSISTED LIVING by TRISUN
HEALTHCARE,

Defendant.

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CIVIL NO. SA-17-CA-00426-JWP

O R D E R

Juliette Fairley, a resident of New York, filed this lawsuit *pro se* as next friend and advocate of her father, James Fairley, a resident of Lakeside Memory Care at 8627 and 8707 Lakeside Parkway in San Antonio, Texas. Named as defendant is PM Management - San Antonio AL LLC d/b/a Lakeside Assisted Living by Trisun Healthcare ("Defendant" or "Lakeside"), incorrectly identified as Trisun Healthcare, LLC, d/b/a Trisun Care Center Lakeside, Lakeside Assisted Living & Memory Care. Plaintiff asserts numerous causes of action arising from the treatment of her father at Lakeside, as well as her own visitation rights. Lakeside has filed a motion to dismiss (docket nos. 15, 27), to which motion plaintiff, through counsel, has responded. (Docket no. 20). Dr. Sam J. Sugar on behalf of Americans Against Abusive Probate Guardianship

("AAAPG") has filed a motion (docket no. 19) to file an amicus brief in support of plaintiff's amended complaint. The motion is **GRANTED**. Lakeside's motion to dismiss shall also be **GRANTED**. Lakeside's motion to stay (docket no. 29) is **DENIED**.

Background

In IN THE MATTER OF THE GUARDIANSHIP OF James E. FAIRLEY in Probate Court No. 2, Bexar County, Texas, Cause No. 2011PC1068, Mauricette "Sophie" Fairley was appointed as the permanent guardian of James E. Fairley, and the application of his daughter Juliette Fairley to be appointed James's guardian was dismissed. James is an incapacitated person. On January 18, 2017, this Order was affirmed by the Texas Fourth Court of Appeals, cause no. 04-16-00096-CV. A petition for review is pending before the Texas Supreme Court, cause no. 17-0232.

By Order entered February 8, 2016, the Probate Court found that James has limited opportunity to visit with Juliette since she lives out of state, and that special arrangements should be made to facilitate visits between Juliette and James when she is in town. Both personal and telephone contacts between James and Juliette are supervised by a Monitor per Court Order. The Order of February 8, 2016 sets out the terms of the visitation.

In her Amended Complaint (docket no. 7), Juliette contends that "James is being confined to Lakeside without an opportunity to freely visit with his daughter." She "considers herself a

devoted daughter who is responsible for monitoring James' health and wellbeing." Juliette "alleges and would prove that Plaintiff is being prevented from safely visiting with James by Lakeside." She "alleges and would prove that the Monitor snooped through her suitcase." Juliette "would prove that Lakeside is traumatically separating James from Juliette."

Juliette "telephoned the Monitor on April 23, 2017 and expressed her fear of visiting James with the Monitor on the premises of Lakeside without a friend." She "alleges and would prove that Lakeside was motivated to prevent her from visiting and communicating with James due to her vocal advocacy for him and other similarly situated persons including her active concern for his weight loss and malnourishment while residing at Lakeside." "Lakeside, as recently as March 9 2017, denied James nutritious and edible food." Juliette "alleges and would prove that James has lost teeth while residing at Lakeside because he is not only fed candy that creates cavities but because he does not have a toothbrush readily available to him." Juliette brings a cause of action for breach of the Visitation Agreement, various federal laws and regulations, the Constitution, and the Texas Penal Code.

Standard of Review

Lakeside has filed a motion to dismiss pursuant to Rules 12(b)(1), 12(b)(6), and 12(b)(7) of the Federal Rules of Civil

Procedure. Rule 12(b)(1), Fed.R.Civ.P., provides for the filing of a motion to dismiss based upon lack of subject matter jurisdiction. Rule 12(h)(3), Fed.R.Civ.P., provides that whenever it appears that the court lacks jurisdiction of the subject matter, the Court shall dismiss the action. **Ruhrgas AG v. Marathon Oil Co.**, 526 U.S. 574, 583 (1999). A case is properly dismissed for lack of subject matter jurisdiction when the court lacks the statutory or constitutional power to adjudicate the case. **Krim v. Pcorder.com, Inc.**, 402 F.3d 489, 494 (5th Cir. 2005). The party asserting jurisdiction bears the burden of proof on a 12(b)(1) motion to dismiss. **Randall D. Wolcott, M.D., P.A. v. Sebelius**, 635 F.3d 757, 762 (5th Cir. 2011). A trial court may find that subject matter jurisdiction is lacking based on (1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts. **Id.** The Court takes as true all of the allegations of the complaint and the facts set out by the plaintiff. **Ass'n of Am. Physicians & Surgeons, Inc. v. Tex. Med. Bd.**, 627 F.3d 547, 553 (5th Cir. 2010). Federal courts have a duty to consider their subject matter jurisdiction **sua sponte**. **See Gonzalez v. Thaler**, 565 U.S. 134, 141 (2012).

Rule 12(b)(6) of the Federal Rules of Civil Procedure authorizes the filing of a motion to dismiss a case for failure

to state a claim upon which relief can be granted. To survive a Rule 12(b)(6) motion to dismiss, the factual allegations must be sufficient to state a claim to relief that is plausible on its face and to raise a right to relief above the speculative level. **Bell Atlantic Corp. v. Twombly**, 550 U.S. 544, 555, 570 (2007). A claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. **Ashcroft v. Iqbal**, 556 U.S. 662, 678 (2009). While a complaint need not contain detailed factual allegations, it must include more than labels and conclusions or a formalistic recitation of the elements of a cause of action. **Twombly**, 550 U.S. at 555. The mere possibility of misconduct is not sufficient. **Iqbal**, 556 U.S. at 679.

A **pro se** plaintiff's pleadings are to be construed liberally with all well-pleaded allegations taken as true. **Sama v. Hannigan**, 669 F.3d 585, 599 (5th Cir. 2012). However, the Court need not accept plaintiff's legal conclusions as true. **Iqbal**, 556 U.S. at 678. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, will not suffice. **Id.**

Federal Rule of Civil Procedure 12(b)(7) allows dismissal for "failure to join a party under Rule 19." Determining whether to dismiss a case for failure to join an indispensable

party requires a two-step inquiry. *Hood ex rel. Mississippi v. City of Memphis, Tenn.*, 570 F.3d 625, 628 (5th Cir. 2009). Rule 19(a)(1) requires that a person subject to process and whose joinder will not deprive the court of subject-matter jurisdiction be joined if:

(A) in that person's absence, the court cannot accord complete relief among existing parties; or

(B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may: (i) as a practical matter impair or impede the person's ability to protect the interest; or (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

"Rule 19(b) guides the court in deciding whether the suit should be dismissed if that person cannot be joined." *Pulitzer-Polster v. Pulitzer*, 784 F.2d 1305, 1309 (5th Cir. 1986). "If the necessary party cannot be joined without destroying subject-matter jurisdiction, the court must then determine whether that person is 'indispensable,' that is, whether litigation can be properly pursued without the absent party." *Hood*, 570 F.3d at 629. "While the party advocating joinder has the initial burden of demonstrating that a missing party is necessary, after 'an initial appraisal of the facts

indicates that a possibly necessary party is absent, the burden of disputing this initial appraisal falls on the party who opposes joinder.'" *Hood*, 570 F.3d at 628 (quoting *Pulitzer-Polster*, 784 F.2d at 1309)).

Analysis

Plaintiff bases federal jurisdiction on the existence of diversity and federal questions. Lakeside states that, while it and Juliette are citizens of different states, James's guardian, Mauricette "Sophie" Fairley is an indispensable party and is a citizen of Texas. This case revolves around the visitation with and care provided to James Fairley. As Lakeside notes, Sophie, as his legal guardian, has exclusive legal authority to assert claims on behalf of James Fairley. If she is added as a plaintiff, diversity is destroyed.

Juliette responds that the failure to join Sophie Fairley and/or court appointed Monitors is not fatal to her claims. She claims there would be no prejudice to Sophie if she were not joined and that adequate relief can be given without Sophie's participation as a party. Juliette maintains that this Court could give adequate relief by determining that the Orders of the Probate Court are unconstitutional.

The Court disagrees. The matter of legal guardianship for James Fairley and the terms of Juliette's visitation with her father have been specifically litigated in the State probate

Court. The Court finds that Sophie is an indispensable party and in her absence, this litigation cannot be properly pursued. Therefore, diversity jurisdiction cannot form the basis for federal jurisdiction in this case. Additionally, as noted by Lakeside, plaintiff has failed to satisfy the amount in controversy requirement.

Lakeside analyzes each of plaintiff's proposed causes of action to explain why it is subject to dismissal. In response to the motion to dismiss, counsel for plaintiff concedes that some of the statutory claims asserted in the Amended Complaint, which was filed *pro se*, do not apply to her case. He does not explicitly identify which ones. The response agrees that the nature of this case "revolves around Juliette Fairley's efforts to make certain that her father James E. Fairley, a person deemed incapacitated by the lower court, is treated with respect and that his personal needs are met." The response notes that "the Orders entered in [the Probate proceedings] unfairly deprived her of due process." Again, it is alleged that Juliette has a right to assert that Lakeside has denied her fair access to her elderly father. Additionally, she claims a loss of consortium due to this interference of the parent-child relationship by Lakeside.

Plaintiff asserts that Lakeside is subject to the jurisdiction of this federal court as it is a participant in

many governmental programs including payment from the Veteran's Administration for services rendered to James E. Fairley. Additionally, Lakeside participates in Medicare and Medicaid programs. Plaintiff alleges her father has been injured by the actions of Lakeside by depriving him of proper nutrition and proper dental care and by interfering with his parental relationship with his daughter. Juliette claims that the current orders issued by the Probate Court violate the Texas Estates Code, Federal Law, the U.S. Constitution and the Civil Rights Act of 1964. She states the orders of the Probate Court constitute state action for purposes of applicable federal statutes. According to plaintiff, the Court can accord relief to plaintiff by issuing orders for visitation based upon federal law allowing her to freely visit her father. In support of her claims, she cites **Gonzaga University v Doe**, 536 U.S. 273, 284 (2002) and **Blessings v Freestone**, 520 U.S. 329, 341 (1997).

The fact that an entity receives federal funding does not mean that any controversy against that entity can be entertained in federal court. **Paul v. City of San Antonio by and through City Public Service Board (CPS Energy)**, No. SA-16-CA-01119-OLG-ESC, 2017 WL 2223315, at *5 (W.D.Tex. Mar. 17, 2017). **See Sac & Fox Nation of Oklahoma v. Cuomo**, 193 F.3d 1162, 1167 (10th Cir. 1999). Plaintiff attempts to state a claim under 42 U.S.C. § 1983 for a violation of due process, alleging state action by

the Probate Court. Even if a court wrongly decides a case, the fact that a private party complies with that wrong decision does not constitute state action. **Richard v. Hoechst Celanese Chemical Group, Inc.**, 355 F.3d 345, 353 (5th Cir. 2003). Plaintiff seeks to bring a claim against Lakeside under the Nursing Home Reform Amendments Act ("NHRA"), 42 U.S.C. § 1396r. The NHRA creates rights, actionable through § 1983, in Medicaid recipients. **Steward v. Abbott**, 189 F.Supp.3d 620, 638 (W.D.Tex. 2016). However, it does not create rights under § 1983 as to private nursing home defendants who are not state actors. **Id.** In any event, as Juliette Fairley is not James Fairley's legal guardian, she has no standing to enforce those rights. Even if rights exist under 42 C.F.R. § 483.10 for James Fairley, they, too, must be presented by his legal guardian.

Plaintiff seeks to allege a cause of action under 42 U.S.C. § 2000a, Title II of the Civil Rights Act of 1964, which prohibits discrimination based on race, religion, and national origin in places of public accommodations. Section 2000a(a) states that all persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation without discrimination or segregation on the ground of race, color, religion, or national origin. Plaintiff also claims a violation of 42 U.S.C. § 12182(a) which states

that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.

As noted above, James Fairley is an incapacitated person. Both Juliette and James are of African American descent. According to her Amended Complaint, Juliette believes her and James's rights under Federal Law have been violated based on "comments made by Lakeside during father daughter visits, which include an incident in which multiple dogs owned by Lakeside's executive director ferociously jumped, growled and barked at James while Plaintiff and James were walking along Lakeside's back courtyard." Plaintiff states this incident was traumatic for James because it reminded him of growing up in the American South in the 1930s, when Jim Crow Laws were enforced and "enabled with attack dogs that were commanded by their hostile white owners to maul unsuspecting, innocent black people as they walked down the street." Juliette states "upon information" that James and his brothers suffered their fair of share of dog attacks as children.

Plaintiff has failed to state any claim for discrimination under either § 2000a or § 12182(a). Again, if such a claim had

been stated, it would be James Fairley's guardian who would have standing to present it, not Juliette. Secondly, the Amended Complaint includes absolutely no facts suggesting that Lakeside has discriminated against James Fairley in any way because of his race or disability. These claims are subject to dismissal under Rule 12(b)(6).

In **Gonzaga University v Doe**, 536 U.S. 273 (2002), cited by plaintiff in her response to the motion to dismiss, the Supreme Court held that the nondisclosure provisions of the Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g, create no personal rights to enforce under § 1983. In that decision, the Supreme Court stated that plaintiffs suing under § 1983 do not have the burden of showing an intent to create a private remedy because § 1983 generally supplies a remedy for the vindication of rights secured by federal statutes. *Id.* at 284. Once a plaintiff demonstrates that a statute confers an individual right, the right is presumptively enforceable by § 1983. *Id.* The case of **Blessings v Freestone**, 520 U.S. 329, 340-41 (1997), also cited by plaintiff, discusses the three factors used to determine whether a particular statutory provision gives rise to a federal right enforceable under § 1983. Nevertheless, to state a claim under § 1983, a plaintiff must demonstrate state action, an element missing from this case.

Abstention

Having addressed Lakeside's motion to dismiss, the Court shall discuss a matter not raised therein which, to the Court, is a more apparent reason why this case should be dismissed--abstention. The Texas Probate Court has possessed jurisdiction over the guardianship of James Fairley for a number of years in IN THE MATTER OF THE GUARDIANSHIP OF JAMES E. FAIRLEY in Probate Court No. 2, Bexar County, Texas, Cause No. 2011PC1068. By Order entered February 8, 2016, the Probate Court found that James has limited opportunity to visit with Juliette since she lives out of state, and that special arrangements should be made to facilitate visits between Juliette and James when she is in town. Both personal and telephone contacts between James and Juliette are supervised by a Monitor per Court Order. The Order of February 8, 2016 sets out the terms of the visitation.

Attached to plaintiff's Amended Complaint is the transcript of a hearing before the Probate Court on April 21, 2017. Juliette was represented by Jerry Wayne Simoneaux, Jr. Simoneaux stated he wanted to discuss the Order of Visitation because Juliette wants more time with her father, and James wants more time with his daughter. Lakeside's attorney reminded the Probate Court of Juliette's previous allegations that the facility is abusing and starving her father. Court-appointed investigators have assessed these allegations and determined he

is being well taken care of. Counsel for Lakeside indicated the visitation issue has been addressed no less than six times. He stated that Juliette makes visitation demands that cannot be accommodated by Lakeside. Her visitation is causing difficulties with caregivers and other residents. The Probate Court requested that the parties informally discuss the matter to determine if a resolution could be reached.

Under **Burford v. Sun Oil Co.**, 319 U.S. 315, 332 (1943), abstention is proper where the issues "so clearly involve basic problems of [State] policy" that the federal courts should avoid entanglement. In deciding whether to exercise **Burford** abstention, the Court weighs the following factors: "(1) whether the cause of action arises under federal or state law; (2) whether the case requires inquiry into unsettled issues of state law, or into local facts; (3) the importance of the state interest involved; (4) the state's need for a coherent policy in that area; and (5) the presence of a special state forum for judicial review." **Jefferson Community Health Care Centers, Incorporated v. Jefferson Parish Government**, 849 F.3d 615, 623 (5th Cir. 2017) (quoting **Romano v. Greenstein**, 721 F.3d 373, 380 (5th Cir. 2013)).

All of these factors weigh in favor of abstention here. The issues are probate and guardianship, matters typically addressed in state court under state law. The matters in

dispute are whether James Fairley is receiving proper treatment at Lakeside and whether Juliette should be given more frequent or unfettered visitation. These issues not only should be but have been repeatedly raised and addressed in state court. The state interest is the only one involved, despite plaintiff's efforts to implicate the Constitution, federal laws and federal regulations. Undoubtedly, the state has a keen interest in assuring a consistent policy in probate guardianships and neither needs nor desires the interference of federal courts in the matter. In fact, the existence of Probate Courts to address the specific concerns raised by this type of case magnifies the state interest involved. This Court must abstain from interfering with the guardianship proceedings regarding James Fairley. **See Jackson v. Schaffer**, No. 08-4035-CV-C-NKL, 2008 WL 2157071, at *2 (W.D.Mo. May 22, 2008).

Abstention under **Younger v. Harris**, 401 U.S. 37 (1971), applies to suits for injunctive and declaratory relief, in "three 'exceptional' categories" of state proceedings: ongoing criminal prosecutions, certain civil enforcement proceedings akin to criminal prosecutions, and "pending 'civil proceedings involving certain orders ... uniquely in furtherance of the state courts' ability to perform their judicial functions.'" **Google, Inc. v. Hood**, 822 F.3d 212, 222 (5th Cir. 2016) (quoting **Sprint Commc'ns, Inc. v. Jacobs**, --- U.S. ----, 134 S.Ct. 584,

588, 591, 187 L.Ed.2d 505 (2013). If state proceedings fit into one of these categories, a court "appropriately consider[s] ... before invoking **Younger** "whether there is "(1) 'an ongoing state judicial proceeding, which (2) implicates important state interests, and (3) ... provides an adequate opportunity to raise federal challenges.'" *Id.* (quoting **Jacobs**, 134 S.Ct. at 593). Here, plaintiff is seeking actual damages and injunctive relief.

The primary relief plaintiff seeks is modification of the Probate Court's Orders, not actual damages. The state proceedings regarding visitation appear to be ongoing, the proceedings implicate important state interests relating to probate and guardianship, and there is an adequate opportunity in the state proceedings for plaintiff to raise her constitutional challenges. **Rowley v. Wilson**, 200 Fed.Appx. 274, 275, 2006 WL 2233221, at *1 (5th Cir. 2006). *See Freeman v. Texas*, No. H-08-2050, 2008 WL 4155346, at *4 (S.D.Tex. Sep. 2, 2008) (**Younger** abstention surely applies because the litigation involves probate and guardianship matters which are uniquely state concerns). Therefore, abstention is appropriate under **Younger**.

Finally, to the extent the visitation issue is not considered to be ongoing, abstention is appropriate under **Rooker-Feldman**. "Reduced to its essence, the **Rooker-Feldman** doctrine holds that inferior federal courts do not have the

power to modify or reverse state court judgments" except when authorized by Congress. *Truong v. Bank of America, N.A.*, 717 F.3d 377, 382 (5th Cir. 2013). The Supreme Court has explained that the doctrine is a narrow one and "is confined to ... 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). A federal district court lacks jurisdiction "over challenges to state court decisions in particular cases arising out of judicial proceedings." *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 486 (1983).

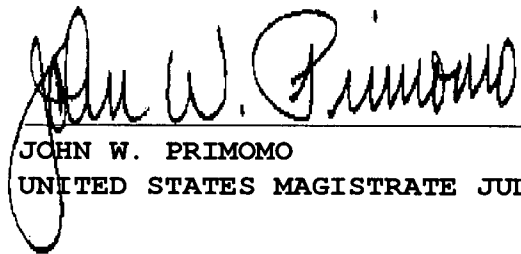
Plaintiff is directly attacking the state court probate orders setting her visitation limitations and is asking a federal court to hold those orders unconstitutional. She alleges that "the Orders entered in said proceeding unfairly deprived her of due process." **Response**, p. 1. Plaintiff contends that "the Orders that eroded Plaintiff's right to be her father's guardian and sue on his behalf are erroneous, unconstitutional, illegitimate and unauthorized under the Texas Rule of Civil Procedure 143." **Id.**, p. 2. "The current orders issued by the Probate Court violate the Texas Estates Code, Federal Law, the U.S. Constitution and the Civil Rights Act of

1964." **Id.**, p. 3. "Plaintiff maintains that certainly the Court could give adequate relief by determining that the Orders of the Probate Court are unconstitutional." **Id.**, p. 6. This Court lacks the authority to do so. **See Fisher v. Nelson**, 606 Fed.Appx. 186, 187 (5th Cir. 2015) (affirming dismissal of § 1983 suit on basis of **Rooker-Feldman** challenging state court probate proceeding).

Defendant's motion to dismiss is **GRANTED**. Abstention is warranted under **Burford**, **Younger** and **Rooker-Feldman**.

It is so **ORDERED**.

SIGNED this August 27, 2017



JOHN W. PRIMOMO
UNITED STATES MAGISTRATE JUDGE

**Additional material
from this filing is
available in the
Clerk's Office.**