NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 18-3004

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

MOSES MCCORMICK; MARK MCCORMICK, Plaintiffs-Appellants, v. KIM A. BROWNE, Judge; BRYAN K. ELLIOTT, Magistrate, Defendants-Appellees.	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO

ORDER

(Filed Sep. 18, 2018)

Before: KEITH, GRIFFIN, and LARSEN, Circuit Judges.

Moses McCormick and Mark McCormick, Ohio residents proceeding pro se, appeal the district court's judgment dismissing their civil rights action against Judge Kim A. Browne and Magistrate Bryan K. Elliott, filed pursuant to 42 U.S.C. § 1983. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

This case arises out of custody proceedings, in the Franklin County (Ohio) Court of Common Pleas,

Domestic Relations and Juvenile Division, over which Browne and Elliott presided. The McCormicks allege that Elliott issued a custody order requiring Moses to place his children in daycare, which cost $634 per week, and that Browne upheld the order. They further allege that Elliott "allowed motions for psychological evaluations without any legal grounds." The McCormicks also allege that Browne threatened Moses by telling him "you know we can have that trigger pulled at anytime right?" and "I can deem you a vexatious litigator." According to the McCormicks, these unfavorable rulings effectively denied the McCormicks access to Moses's children and were orchestrated by Moses's estranged wife via bribery as leverage for the divorce proceedings.

In July 2017, the McCormicks filed a complaint under 42 U.S.C. § 1983 against Browne and Elliott in their official and personal capacities. They claimed that the adverse custodial orders violated Moses's and Mark's rights to spend time with Moses's children, that Browne and Elliott committed a fraud upon the court, and that Browne's language put Moses in fear of his life. The McCormicks asked for Browne and Elliott to be removed from their positions and for $166,633,366.13 in monetary damages.

Browne and Elliott moved to dismiss the complaint, arguing that they were entitled to absolute judicial immunity, the action was barred under the

Rooker-Feldman doctrine,[1] and that Mark lacked standing. The McCormicks responded and requested leave to amend the complaint to cure any deficiencies.

The district court dismissed the complaint pursuant to Federal Rule of Civil Procedure 12(b)(6), finding that Browne and Elliott were entitled to absolute judicial immunity because they were acting entirely within their capacity as judges, and their actions were within their jurisdiction as judges for the Domestic Relations Court. It denied the request for leave to amend, finding that any amendment to the complaint would be futile.

On appeal, the McCormicks argue that state judges are not entitled to judicial immunity against constitutional claims brought under § 1983.

"We review de novo the district court's dismissal under Rule 12(b)(6)." *Crosby v. Univ. of Ky.*, 863 F.3d 545, 551 (6th Cir. 2017), *cert. denied*, 138 S. Ct. 741 (2018). Because the McCormicks "appeal[] from the dismissal of [their] claims under Rule 12(b)(6) ' . . . we construe the complaint in the light most favorable to the plaintiff[s], accept all well-pleaded factual allegations in the complaint as true, and draw all reasonable inferences in favor of the plaintiff[s].' " *Id.* at 549 (quoting *Courtright v. City of Battle Creek*, 839 F.3d 513, 518 (6th Cir. 2016)).

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[1] *D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 486 (1983); *Rooker v. Fid. Tr. Co.*, 263 U.S. 413, 416 (1923).

The district court properly dismissed the complaint. Judges are immune from suit for monetary damages unless the actions for which they are being sued were non-judicial in nature or were taken in the complete absence of jurisdiction. *See Mireles v. Waco*, 502 U.S. 9, 11-12 (1991) (per curiam). This applies to constitutional claims brought under § 1983. *See id.* The McCormicks requested monetary damages in connection with custody-related orders and statements made by the judges presiding over Moses's custody proceedings. These actions are clearly those "normally performed by a judge." *Id.* at 12. And, as officers of the Domestic Relations Court, Browne and Elliot had jurisdiction over the custody proceedings. Furthermore, "judicial immunity is not overcome by allegations of bad faith or malice." *Id.* at 11; *Brookings v. Clunk*, 389 F.3d 614, 617 (6th Cir. 2004). Any injunctive relief they may have asked for is barred because the McCormicks failed to allege that Browne and Elliott violated a declaratory decree or that declaratory relief was unavailable. *See* § 1983.

Accordingly, we **AFFIRM** the district court's judgment.

ENTERED BY ORDER
OF THE COURT

/s/ Deborah S. Hunt
Deborah S. Hunt, Clerk

Case No. 18-3004

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ORDER

(Filed Sep. 18, 2018)

MOSES MCCORMICK; MARK MCCORMICK

Plaintiffs - Appellants

v.

KIM A. BROWNE, Judge;
BRYAN K. ELLIOTT, Magistrate

Defendants - Appellees

Upon consideration of appellants' motion for emergency injunctive relief pending appeal,

It is **ORDERED** that the motion is **DENIED** as moot since there was a previous order filed this date affirming the district court's judgment.

ENTERED PURSUANT TO RULE 45(a), RULES OF THE SIXTH CIRCUIT
Deborah S. Hunt, Clerk

Issued:
September 18, 2018 /s/ Deborah S. Hunt

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Moses McCormick, et al.,

Plaintiffs,

v.

Judge Kim A. Browne, et al.

Defendants.

Case No: 2:17-cv-595

Judge Graham

Opinion and Order

(Filed Dec. 27, 2017)

Plaintiffs Moses McCormick and his brother Mark McCormick, both proceeding *pro se*, bring this action for monetary damages under 42 U.S.C. 1983 against Judge Kim A. Browne and Magistrate Bryan K. Elliot of the Franklin County Court of Common Pleas, Domestic Relations and Juvenile Division. Plaintiff Moses McCormick alleges that Magistrate Elliot issued a child custody order on December 6, 2016 which allegedly lacked "probably cause" and deprived McCormick "of the right to keep my children out of daycare." (Doc. 1 at p. 4). Judge Browne allegedly upheld the Magistrate's order against a challenge by McCormick and ruled in his ex-wife's favor even though "she was not [a] credible" witness. (*Id.* at p. 5). Magistrate Elliot is also alleged to have ruled unfavorably to McCormick regarding a psychological evaluation. Apparently, defendants' custody-related rulings have allegedly deprived

plaintiff Mark McCormick of an opportunity to spend time with his brother's children.

This matter is before the court on defendants' motion to dismiss. When considering a motion under Rule 12(b)(6) to dismiss a pleading for failure to state a claim, a court must determine whether the complaint "contain[s] sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A court should construe the complaint in the light most favorable to the plaintiff and accept all well-pleaded material allegations in the complaint as true. *Iqbal*, 556 U.S. at 679; *Erickson v. Pardus*, 551 U.S. 89, 93-94 (2007); *Twombly*, 550 U.S. at 555-56.

Defendants argue that this action must be dismissed because they are entitled to absolute judicial immunity. The court agrees. "It is a well-entrenched principle in our system of jurisprudence that judges are generally absolutely immune from civil suits for money damages. . . . The passage of 42 U.S.C. § 1983 did nothing to change this ancient understanding." *Bright v. Gallia Cty., Ohio*, 753 F.3d 639, 648-49 (6th Cir. 2014) (internal citations and quotation marks omitted). This immunity is overcome "only in two instances: 'First, a judge is not immune from liability for nonjudicial actions, i.e., actions not taken in the judge's judicial capacity. Second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction.'" *Id.* at 649 (quoting *Mireles v. Waco*, 502 U.S. 9, 9 (1991)).

The complaint makes clear that this suit is based on actions taken by the defendants in their judicial roles – Magistrate Elliot in his role of issuing a child custody order and ordering a psychological evaluation, and Judge Browne in her role of adopting the Magistrate's orders and recommendations. *See* Ohio R. Civ. P. 53. It is equally clear that defendants' actions in the course of the divorce and child custody proceedings fall squarely within their jurisdiction as judges for the Domestic Relations Court. *See* O.R.C. Title 31.

Plaintiffs request leave to amend the complaint "to cure any deficiencies." (Doc. 5 at p. 13). The court finds that any amendment would be futile. *See Yuhasz v. Brush Wellman, Inc.*, 341 F.3d 559, 569 (6th Cir. 2003) ("[L]eave to amend may be denied where the amendment would be futile."). The deficiency of the complaint is not a lack of factual allegations; it is that plaintiffs complain of conduct for which defendants are absolutely immune.

Accordingly, the motion to dismiss (doc. 4) is granted.

s/ James L. Graham
JAMES L. GRAHAM
United States District Judge

DATE: December 27, 2017