UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-2396

THEON SMITH,

Plaintiff - Appellant,

v.

DOMESTIC RELATIONS OF CHARLESTON COUNTY; JUDGE DANA A. MORRIS,

Defendants - Appellees.

Appeal from the United States District Court for the District of South Carolina, at Charleston. David C. Norton, District Judge. (2:18-cv-02297-DCN)

Submitted: January 22, 2019 Decided: January 24, 2019

Before MOTZ, KEENAN, and FLOYD, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Theon Smith, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Theon Smith appeals the district court's order dismissing without prejudice his civil complaint challenging a state court child support order.* The district court referred this case to a magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) (2012). The magistrate judge recommended dismissing the action and advised Smith that failure to file timely, specific objections to this recommendation could waive appellate review of a district court order based upon the recommendation.

The timely filing of specific objections to a magistrate judge's recommendation is necessary to preserve appellate review of the substance of that recommendation when the parties have been warned of the consequences of noncompliance. *Wright v. Collins*, 766 F.2d 841, 845-46 (4th Cir. 1985); *see also Thomas v. Arn*, 474 U.S. 140 (1985). By failing to file specific objections after receiving proper notice, Smith has waived appellate review of the district court's order.

Accordingly, we affirm the judgment of the district court. We deny Smith's motion to transfer this appeal to the Federal Circuit. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

---

* We have jurisdiction over this appeal because the district court dismissed the action for defects that could not be cured by amendment to the complaint. *See Goode v. Cent. Va. Legal Aid Soc'y, Inc.*, 807 F.3d 619, 624 (4th Cir. 2015).

FILED: January 24, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-2396
(2:18-cv-02297-DCN)

THEON SMITH

Plaintiff - Appellant

v.

DOMESTIC RELATIONS OF CHARLESTON COUNTY; JUDGE DANA A. MORRIS

Defendants - Appellees

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Theon Smith, Plaintiff, vs. Domestic Relations of Charleston County; and Judge Dana A. Morris, Defendants.	C/A No.: 2:18-cv-2297 DCN **ORDER**

The above referenced case is before this court upon the magistrate judge's recommendation that this complaint be dismissed without prejudice and without issuance and service of process.

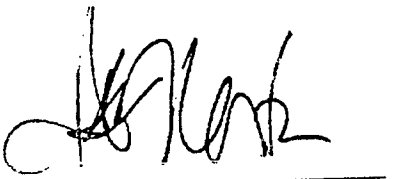
This court is charged with conducting a de novo review of any portion of the magistrate judge's report to which a specific objection is registered, and may accept, reject, or modify, in whole or in part, the recommendations contained in that report. 28 U.S.C. § 636(b)(1). However, absent prompt objection by a dissatisfied party, it appears that Congress did not intend for the district court to review the factual and legal conclusions of the magistrate judge. Thomas v Arn, 474 U.S. 140 (1985). Additionally, any party who fails to file timely, written objections to the magistrate judge's report pursuant to 28 U.S.C. § 636(b)(1) waives the right to raise those objections at the appellate court level. United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984).[1] **Objections to the Magistrate Judge's Report and**

[1]In Wright v. Collins, 766 F.2d 841 (4th Cir. 1985), the court held "that a pro se litigant must receive fair notification of the consequences of failure to object to a magistrate judge's report before such a procedural default will result in waiver of the right to appeal. The notice must be 'sufficiently understandable to one in appellant's circumstances fairly to appraise him of what is required.'" Id. at 846. Plaintiff was advised in a clear manner that his objections had to be filed within ten (10) days, and he received notice of the consequences at the

Recommendation were timely filed on October 26, 2018 by plaintiff.

A de novo review of the record indicates that the magistrate judge's report accurately summarizes this case and the applicable law. Accordingly, the magistrate judge's Report and Recommendation is **AFFIRMED**, and the complaint is **DISMISSED** without prejudice and without issuance and service of process.

AND IT IS SO ORDERED.



David C. Norton
United States District Judge

November 5, 2018
Charleston, South Carolina

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified that any right to appeal this Order is governed by Rules 3 and 4 of the Federal Rules of Appellate Procedure

---

appellate level of his failure to object to the magistrate judge's report.

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH CAROLINA

Theon Smith, Plaintiff, vs. Domestic Relations of Charleston County, Judge Dana A. Morris, Defendants.	C/A: 2:18-2297-DCN-BM **REPORT AND RECOMMENDATION**

This is a civil action filed by the Plaintiff, Theon Smith, pro se, and is before the Court for pre-service review. See 28 U.S.C. § 1915(e)(2)(B); In re Prison Litigation Reform Act, 105 F.3d 1131, 1134 (6th Cir.1997)[pleadings by non-prisoners should also be screened]. Under established local procedure in this judicial district, a careful review has been made of the pro se complaint herein pursuant to the procedural provisions of § 1915, and in light of the following precedents: Denton v. Hernandez, 504 U.S. 25 (1992); Neitzke v. Williams, 490 U.S. 319 (1989); Haines v. Kerner, 404 U.S. 519 (1972); Nasim v. Warden, Maryland House of Corr., 64 F.3d 951 (4th Cir.1995) (en banc); and Todd v. Baskerville, 712 F.2d 70 (4th Cir. 1983).

Section 1915 permits an indigent litigant to commence an action in federal court without paying the administrative costs of proceeding with the lawsuit. However, to protect against possible abuses of this privilege, the statute allows a district court to dismiss the case upon a finding that the action "is frivolous or malicious," "fails to state a claim on which relief may be granted,"

or "seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B). A finding of frivolousness can be made where the complaint "lacks an arguable basis either in law or in fact." Denton v. Hernandez, 504 U.S. at 31. Hence, under § 1915(e)(2)(B), a claim based on a meritless legal theory may be dismissed sua sponte. Neitzke v. Williams, 490 U.S. 319. Further, while this Court is also required to liberally construe pro se documents, holding them to a less stringent standard than those drafted by attorneys, Erickson v. Pardus, 551 U.S. 89, 94 (2007)(quoting Estelle v. Gamble, 429 U.S. 97, 106 (1976)), the requirement of liberal construction does not mean that the Court can ignore a clear failure in the pleading to allege facts which set forth a claim currently cognizable in a federal court. Weller v. Dep't of Soc. Servs., 901 F.2d 387 (4th Cir. 1990). Such is the case here.

Background

Plaintiff is challenging a South Carolina Administrative Process Order of Financial Responsibility (Support Order) entered by the Family Court for the Ninth Judicial Circuit (Charleston County) in January 2015, which ordered Plaintiff to make child support payments for his minor child. See Complaint, ECF No. 1 at 5; see also ECF No. 7-1 at 13-14. On July 30, 2018, a hearing was held before Defendant Judge Dana A. Morris, the Presiding Family Court Judge for the Ninth Judicial Circuit, on Plaintiff's motion for judicial review and Plaintiff's affidavit (which were filed in the family court on June 11, 2018). On August 9, 2018, Judge Morris issued an order in which he noted that the South Carolina Department of Social Services (SCDSS) had provided the family court with a copy of the minor child's birth certificate from the Georgia Department of Community Health, on which Plaintiff was noted as being the minor child's biological father, as well as a sworn and notarized Acknowledgment of Paternity from the state of Georgia which was signed

by both the minor child's mother and Plaintiff within days of the minor's birth (in 2012). It was further noted that an administrative hearing was scheduled on January 20, 2015, at which time Plaintiff signed an acknowledgment of service for the Notice of Financial Responsibility, agreement was reached between the parties regarding all issues raised, the Support Order (which includes findings that Plaintiff is the natural father of the minor child and has the duty to provide financial support to his minor child) was prepared, and Plaintiff signed the Support Order acknowledging his voluntary consent to the Support Order. Judge Morris denied Plaintiff's motion for review, finding that the family court did not have jurisdiction to invalidate or set aside the Georgia Acknowledgment of Paternity, and that the time to appeal the Support Order had long passed. Additionally, Judge Morris noted that he offered to order SCDSS to provide paternity testing services, but that Plaintiff had declined the testing. ECF No. 1-2 at 14-16; ECF No. 7-1 at 15-18.

In his Complaint, Plaintiff alleges that this court has federal question jurisdiction based on 42 U.S.C. § 666 (Requirement of statutorily prescribed procedures to improve effectiveness of child support enforcement) and 45 C.F.R. § 303.101 (Expedited Processes). He asserts that he was deprived of his constitutional right to due process because "Charleston County CSD" did not explain to him the legal consequences of the Title IV-D contract.[1] ECF No. 1 at 5. Plaintiff claims that he was not given notice, both orally or through the use of video or audio equipment as well as in writing, of the legal consequences and rights and responsibilities that arose from signing a

[1]Plaintiff appears to be referring to Subpart IV (Grants to States for Aid and Services to Needy Families with Children and for Child-Welfare Services), Part D (Child Support and Establishment of Paternity) of the Social Security Act, which directs the Secretary of Health and Human Services to oversee states in developing programs to assist custodial parents in locating noncustodial parents, establishing paternity, and obtaining child and spousal support. See 42 U.S.C. §§ 651-669.

p3

voluntary acknowledgment of paternity.[2] See ECF No. 1-1 at 1. As to relief, Plaintiff merely states "see my affidavit for a show of cause hearing." ECF No. 1 at 5. He then attached a rambling affidavit to his Complaint in which it is unclear what relief he is seeking, although he may be asking this Court to rescind his January 2015 consent to the Support Order. See ECF No. 1-1.

Discussion

After careful review of the filings in this case, the undersigned finds that this action is subject to summary dismissal because Plaintiff fails to provide a basis for federal court jurisdiction. Federal courts are courts of limited jurisdiction, see Kokkonen v. Guardian Life Ins. Co. of America, 511 U.S. 375, 377 (1994), and a district court is charged with ensuring that all cases before it are properly subject to such jurisdiction. In re Bulldog Trucking, Inc., 147 F.3d 347, 352 (4th Cir. 1998). Generally, a case can be filed in a federal district court only if there is diversity of citizenship under 28 U.S.C. § 1332, or if there is federal question jurisdiction under 28 U.S.C. § 1331. Plaintiff fails to satisfy either of these requirements.

---

[2]The paternity acknowledgment appears to have occurred shortly after the minor child's birth in 2012 in Georgia, not South Carolina. The Support Order, which was entered in the South Carolina family court and signed by Plaintiff as voluntarily consenting to the order, specifically provides:

> Failure to pay your child support obligations may result in any or all of the following actions: the revocation of any licenses you hold; the reporting of your delinquent status to the credit bureau; the interception of your federal and state income tax refunds; the interception of any other payments due to you from the federal government; and/or an action for contempt of court which may result in punishment by a fine, a public work sentence, imprisonment, or any combination of them. Further a bench warrant may be issued for your arrest.

ECF No. 7-1 at 14.

First, Plaintiff, a South Carolina citizen, has not alleged complete diversity of the parties. See Owen Equipment & Erection Co. v. Kroger, 437 U.S. 365, 372-374 (1978) [Complete diversity of parties means that no party on one side may be a citizen of the same State as any party on the other side]. Further, even if there was diversity, the domestic relations exception applies to diversity cases. The Supreme Court has held that under the domestic relations exception, "'divorce, alimony, and child custody decrees' remain outside federal jurisdictional bounds[.]" Marshall v. Marshall, 547 U.S. 293, 308 (2006) (quoting Ankenbrandt v. Richards, 504 U.S. 689, 703–04 (1992)); see also Wasserman v. Wasserman, 671 F.2d 832, 834 (4th Cir. 1982)["diversity jurisdiction does not include the power to grant divorces, determine alimony or support obligations, or decide child custody rights"]; Raftery v. Scott, 756 F.2d 335, 343 (4th Cir. 1985)[domestic relations exception to federal courts' jurisdiction based on idea that state courts have "a stronger and more direct interest in the domestic relations of its citizens than does the federal court."]. In any event, federal courts generally abstain from hearing child support matters. See Cantor v. Cohen, 442 F.3d 196, 202 (4th Cir. 2006) ["We find additional support for our decision in this case in the long established precedent that federal courts are courts of limited jurisdiction and generally abstain from hearing child custody matters."](citing Cole v. Cole, 633 F.2d 1083, 1087 (4th Cir. 1980)); Capel v. Va. Dep't of Soc. Servs. Div. of Child Support Enf't, 640 F. App'x 257 (4th Cir. 2016) [holding that a federal district court lacked subject-matter jurisdiction to hear a civil complaint challenging the calculation of child support payments].

Even if the domestic relations exception does not apply to federal question jurisdiction,[3] Plaintiff fails to provide a basis for federal question jurisdiction. Although Plaintiff asserts that he brings this action pursuant to 45 C.F.R. § 303.101 and 42 U.S.C. § 666, there is no private right of action under this regulation and statute. See Sheils v. Bucks Cty. Domestic Relations Section, 921 F. Supp. 2d 396, 414- 416 (E.D. Pa. 2013)[no private cause of action under 45 C.F.R. § 303.101 or 42 U.S.C. §666]; see also Malhan v. Tillerson, No. 2:16–cv–08495, 2018 WL 2427121 (D.N.J. May 30, 2018)[noting that other courts have held that § 666 does not create an implied right of action]; Lak v. Cal. Dep't of Child Support Servs., No. 17–1527, 2017 WL 6541922, at *8 (C.D.Cal. Dec. 21, 2017)[holding that "there [was] no private cause of action authorized by any of the statutes" in the plaintiff's complaint, including under 42 U.S.C. § 666(a)(10)]; Evans v. Soc. Sec. Admin., No. 09–1465, 2009 WL 2596647, at *1 (D. Colo. Aug. 20, 2009) ["42 U.S.C. § 666 creates no private right of action."]; Mosier v. Attorney Gen. of Tex., No. 14–4148, 2015 WL 417984, at *3 (W.D. Ark. Jan. 30, 2015) ["There is no private cause of action authorized by [42 U.S.C. § 666]."].

Further, to the extent Plaintiff is attempting to appeal the result of the South Carolina family court action, federal district courts do not hear "appeals" from state court actions. See District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 476-82 (1983)[a federal district court lacks authority to review final determinations of state or local courts because such review can only be conducted by the Supreme Court of the United States under 28 U.S.C. § 1257]; Rooker v. Fidelity

[3]The question of whether the domestic relations exception applies in cases based on federal question jurisdiction is unsettled. See Johnson v. Byrd, No. 1:16cv1052, 2016 WL 6839410, at *9-13 (M.D.N.C. Nov. 21, 2016)[noting that the Fourth Circuit has not ruled on this issue, but concluding that the domestic relations exception applied to the plaintiff's § 1983 claim), adopted, slip op. (M.D.N.C. Jan. 20, 2017), appeal dismissed, 693 F. App'x 219 (4th Cir. 2017).

Trust Co., 263 U.S. 413 (1923). Thus, Plaintiff may not use a civil rights action to challenge the determinations or rulings of the state court. See Anderson v. Colorado, 793 F.2d 262, 263 (10th Cir.1986) ["[l]t is well settled that federal district courts are without authority to review state court judgments where the relief sought is in the nature of appellate review."]; Brinkmann v. Johnston, 793 F.2d 111, 113 (5th Cir. 1986) ["litigants may not obtain review of state court actions by filing complaints about those actions in lower federal courts cast in the form of civil rights suits."]; see also Wise v. Bravo, 666 F.2d 1328, 1333 (10th Cir.1981); Gurley v. Superior Court of Mecklenburg County, 411 F.2d 586, 587–588 & nn. 2–4 (4th Cir. 1969) [holding that federal district courts and United States Courts of Appeals have no appellate or supervisory authority overstate courts].

Additionally, to rule in favor of Plaintiff on his constitutional claim(s) would, necessarily, require this Court to overrule and reverse orders and rulings made in the state court. Such a result is prohibited under the Rooker–Feldman doctrine. Davani v. Virginia Dep't. of Transp.,434 F.3d 712, 719-720 (4th Cir. 2006); see Exxon Mobil Corp. v. Saudi Basic Industries Corp., 544 U.S. 280, 293-294 (2005); Jordahl v. Democratic Party of Va., 122 F.3d 192, 201 (4th Cir. 1997).[4] Thus, this court lacks jurisdiction to hear Plaintiff's claims. See, e.g., Saylor-Marchant v. ACS, No. 2:15-cv-3749-DCN-MGB, 2015 WL 7871230, at *3 (D.S.C. Nov. 4, 2015), adopted by 2015 WL 7854233 (D.S.C. Dec. 3, 2015)[federal district court lacked jurisdiction to review New York family court proceedings]; Bardes v. South Carolina, No. 2:10-cv-559-PMD-RSC, 2010 WL 1498332, at *2 (D.S.C. Mar. 11, 2010), adopted by 2010 WL 1498190 (D.S.C. Apr. 12, 2010)["This federal court does not have jurisdiction to review the various decisions issued by state courts in

[4]The Rooker-Feldman doctrine is jurisdictional, so it may be raised by the Court sua sponte. American Reliable Ins. Co. v. Stillwell, 336 F.3d 311, 316 (4th Cir. 2003).

South Carolina and in North Carolina regarding the plaintiff's child support."]; Weathers v. Pou, No. 2:09-cv-270-JFA-RSC, 2009 WL 1139984, at *2 (D.S.C. Apr. 27, 2009)["To rule in favor of Plaintiff on his constitutional claims would, necessarily, require this Court to overrule (or otherwise find invalid) various orders and rulings made in the Berkeley County Family Court. Such a result is prohibited under the *Rooker–Feldman* Doctrine."](citation omitted); Briggman v. Va., Dep't of Soc. Servs. Div. of Child Support Enf't, 526 F. Supp. 2d 590, 601 (W.D. Va. 2007) [finding Rooker-Feldman doctrine barred federal court jurisdiction where the plaintiff appeared to assert his "claim as a state court loser complaining of injuries caused by the decisions of two state court judges with regard to his child support obligations and [sought] review by this court of those decisions."].

Alternatively, to the extent that the state court action is still pending, the abstention doctrine set forth in Younger v. Harris, 401 U.S. 37, 91 (1971), and its progeny preclude this Court from interfering with the ongoing proceedings, as Plaintiff can raise these issues in the state court proceedings. The Younger doctrine applies to civil proceedings that "implicate a State's interest in enforcing the orders and judgment of its courts." Sprint Commc'ns, Inc. v. Jacobs, 571 U.S. 69, (2013)(internal quotation marks omitted). Thus, to the extent that Plaintiff is seeking injunctive or declaratory relief, his claims are barred under the Younger doctrine, although the abstention principles established in Younger may not require dismissal of a claim for damages. See, e.g., Lindsay v. Rushmore Loan Mgmt., Servs., LLC, No. PWG-15-1031, 2017 WL 167832, at *1, 4 (D. Md. Jan. 17, 2017)["causes of action for damages, such as Plaintiffs', may be stayed but not dismissed on Younger abstention grounds](citing Quackenbush v. Allstate Ins. Co., 517 U.S. 706, 721 (1996)).

To the extent Plaintiff is seeking to enjoin a pending state action by enjoining the execution of the Support Order, the Anti-Injunction Act precludes such an injunction. Section 2283 of Title 28 of the United States Code mandates that except in certain circumstances "[a] court of the United States may not grant an injunction to stay proceedings in a State court...." The Act constitutes "an absolute prohibition against any injunction of any state-court proceedings, unless the injunction falls within one of the three specifically defined exceptions Act." Vendo Co. v. Lektro-Vend Corp., 433 U.S. 623, 630 (1977) (plurality opinion). These three exceptions are injunctions: (1) expressly authorized by statute; (2) necessary to aid the court's jurisdiction; or (3) required to protect or effectuate the court's judgments. Chick Kam Choo v. Exxon Corp., 486 U.S. 140, 146 (1988); Atlantic Coast Line R.R. Co. v. Board of Locomotive Eng'rs, 398 U.S. 281, 287-88 (1970). None of these exceptions applies here.

Additionally although it is unclear who the named Defendant Domestic Relations of Charleston County is, to the extent Plaintiff is referring to a division of the SCDSS, a South Carolina state agency, this Defendant would be entitled to Eleventh Amendment immunity as to any claim for monetary damages. The Eleventh Amendment to the United States Constitution divests this Court of jurisdiction to entertain a suit for damages brought against the State of South Carolina, its integral parts, or its officials in their official capacities, by a citizen of South Carolina or a citizen of another state. See Alden v. Maine, 527 U.S. 706 (1999); College Savs. Bank v. Florida Prepaid Educ. Expense Bd., 527 U.S. 666 (1999); Seminole Tribe of Florida v. Florida, 517 U.S. 44 (1996)(reaffirming Hans v. Louisiana, 134 U.S. 1, 10 (1890) [holding that a citizen could not sue a state in federal court without the state's consent]; Pennhurst State School & Hosp. v. Halderman, 465 U.S. 89 (1984)[although express language of Eleventh Amendment only forbids suits by citizens

of other States against a State, Eleventh Amendment bars suits against a State filed by its own citizens]; Alabama v. Pugh, 438 U.S. 781, 782 (1978); Will v. Michigan Dep't of State Police, 491 U.S. 58, 61-71 (1989); Edelman v. Jordan, 415 U.S. 651, 663 (1974)[stating that "when the action is in essence one for the recovery of money from the state, the state is the real, substantial party in interest and is entitled to invoke its [Eleventh Amendment] sovereign immunity from suit even though individual officials are nominal defendants"](quoting Ford Motor Co. v. Dep't. of Treasury, 323 U.S. 459, 464 (1945)); see also Harter v. Vernon, 101 F.3d 334, 338-39 (4th Cir. 1996); Bellamy v. Borders, 727 F. Supp. 247, 248-50 (D.S.C. 1989); Coffin v. South Carolina Dep't of Social Servs., 562 F. Supp. 579, 583-85 (D.S.C. 1983); Belcher v. South Carolina Bd. of Corrs., 460 F. Supp. 805, 808-09 (D.S.C. 1978). While the United States Congress can override Eleventh Amendment immunity through legislation, Congress has not overridden the states' Eleventh Amendment immunity in § 1983 cases. See Quern v. Jordan, 440 U.S. 332, 343 (1979). Further, although a State may consent to a suit in a federal district court, Pennhurst, 465 U.S. at 99 & n.9, the State of South Carolina has not consented to such actions. To the contrary, the South Carolina Tort Claims Act expressly provides that the State of South Carolina does not waive Eleventh Amendment immunity, consents to suit only in a court of the State of South Carolina, and does not consent to suit in a federal court or in a court of another state. S.C. Code Ann. § 15-78-20(e).

The other named Defendant, Judge Dana A. Morris, is also subject to dismissal as a defendant because he enjoys immunity from suit for all actions taken in his judicial capacity. See Mireles v. Waco, 502 U.S. 9 (1991); Stump v. Sparkman, 435 U.S. 349, 351-64 (1978); Pressly v. Gregory, 831 F.2d 514, 517 (4th Cir. 1987)[a suit by South Carolina inmate against two Virginia magistrates]; Chu v. Griffith, 771 F.2d 79, 81 (4th Cir. 1985)["It has long been settled that a judge

M
P10

is absolutely immune from a claim for damages arising out of his judicial actions."]; see also Siegert v. Gilley, 500 U.S. 226 (1991) [immunity presents a threshold question which should be resolved before discovery is even allowed]; accord Bolin v. Story, 225 F.3d 1234 (11th Cir. 2000)[discussing judicial immunity of United States District Judges and United States Circuit Judges].

Additionally, this action is further subject to summary dismissal because Plaintiff fails to assert a cognizable request for relief. Hence, were this Court to find that Plaintiff's rights have been violated, but order no remedy, it would, in effect, be rendering an advisory opinion; such action is barred by Article III of the Constitution. Preiser v. Newkirk, 422 U.S. 395, 401 (1975); see also Bowler v. Young, 55 F. App'x 187, 188 (4th Cir. 2003); Norvell v. Sangre de Cristo Dev. Co., 519 F.2d 370, 375 (10th Cir. 1975) [federal courts do not render advisory opinions].

Finally, to the extent Plaintiff is attempting to allege claims under South Carolina law, if the Court dismisses Plaintiff's federal claims from this lawsuit, any state law claims Plaintiff has intended to assert will be the only claims remaining, and where federal claims in a lawsuit originally filed in United States District Court are dismissed, leaving only state law causes of action, dismissal of the remaining state law claims without prejudice is appropriate. This will allow Plaintiff to pursue and obtain a ruling as to the viability of his state law claims in a more appropriate forum. See generally, United Mine Workers v. Gibbs, 383 U.S. 715, 726 (1966)["Certainly, if the federal claims are dismissed before trial, ... the state claims should be dismissed as well"]; Carnegie–Mellon v. Cohill, 484 U.S. 343, 350, n. 7 (1988)["[I]n the usual case in which all federal-law claims are eliminated before trial, the balance of factors to be considered under the pendent jurisdiction doctrine

... will point toward declining to exercise jurisdiction over the remaining state law claims."].[5] Further, if the Plaintiff's state law claims were to survive summary judgment, it would be much more appropriate for those claims to be tried by the state courts.

Recommendation

Based on the foregoing, it is recommended that the Court **dismiss** Plaintiff's Complaint without prejudice and without issuance and service of process.

Plaintiffs' attention is directed to the important notice on the next page.

Bristow Marchant
United States Magistrate Judge

October 18, 2018
Charleston, South Carolina

[5]As noted above, Plaintiff has not alleged diversity jurisdiction and even if there is diversity, such claims are barred under the domestic relations exception.

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. "[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
Post Office Box 835
Charleston, South Carolina 29402

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984).

MJ
p13

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Theon Smith, Plaintiff, vs. Domestic Relations of Charleston County, Judge Dana A. Morris, Defendants.	C/A: 2:18-2297-DCN-BM **ORDER**

This is a civil action filed by a pro se litigant. Under Local Civil Rule 73.02(B)(2) of the United States District Court for the District of South Carolina, pretrial proceedings in this action have been referred to the assigned United States Magistrate Judge.

PAYMENT OF THE FILING FEE:

Plaintiff has submitted an Application to Proceed Without Prepayment of Fees and Affidavit (Form AO 240), which is construed as a Motion for Leave to Proceed in forma pauperis. See 28 U.S.C. § 1915. A review of the Motion reveals that Plaintiff should be relieved of the obligation to prepay the full filing fee. Plaintiff's Motion for Leave to Proceed in forma pauperis (ECF No. 4) is **granted**, subject to the court's right to require a payment if Plaintiff's financial condition changes, and to tax fees and costs against Plaintiff at the conclusion of this case if the court finds the case to be without merit. See Flint v. Haynes, 651 F.2d 970, 972–74 (4th Cir. 1981).

MOTION FOR A GOOD CAUSE HEARING:

On October 4, 2018, Plaintiff filed a motion for a good cause hearing, arguing that this court should hold a hearing concerning his child support issues. As it has been recommended that this action be dismissed for lack of jurisdiction, Plaintiff's motion (ECF No. 7) is premature and is, therefore, **denied** without prejudice.

TO THE CLERK OF COURT:

The Clerk of Court is directed not to issue the summonses or forward this matter to the United States Marshal for service of process at this time.

TO PLAINTIFF:

Plaintiff must place the civil action number listed above (C/A: 2:18-2297-DCN-BM) on any document provided to the court pursuant to this order. **Any future filings in this case must be sent**

to the Clerk of Court, Post Office Box 835, Charleston, South Carolina 29402. All documents requiring Plaintiff's signature shall be signed with Plaintiff's full legal name written in Plaintiff's own handwriting. Pro se litigants shall not use the "s/typed name" format used in the Electronic Case Filing System. In all future filings with this court, Plaintiff is directed to use letter-sized (8½ inches by 11 inches) paper only, to write or type text on one side of a sheet of paper only and not to write or type on both sides of any sheet of paper. Plaintiff is further instructed not to write to the edge of the paper, but to maintain one inch margins on the top, bottom, and sides of each paper submitted.

Plaintiff is a pro se litigant. Plaintiff's attention is directed to the following important notice:

You are ordered to always keep the Clerk of Court advised **in writing (Post Office Box 835, Charleston, South Carolina 29402)** if your address changes for any reason, so as to assure that orders or other matters that specify deadlines for you to meet will be received by you. If as a result of your failure to comply with this order, you fail to meet a deadline set by this court, **your case may be dismissed for violating this order.** Therefore, if you have a change of address before this case is ended, you must comply with this order by immediately advising the Clerk of Court in writing of such change of address and providing the court with the docket number of all pending cases you have filed with this court. Your failure to do so will not be excused by the court.

IT IS SO ORDERED.

Bristow Marchant
United States Magistrate Judge

October 18, 2018
Charleston, South Carolina

Plaintiff's attention is directed to the important warning on the next page.

p2

IMPORTANT INFORMATION....PLEASE READ CAREFULLY

WARNING TO PRO SE PARTY OR NONPARTY FILERS

ALL DOCUMENTS THAT YOU FILE WITH THE COURT WILL BE AVAILABLE TO THE PUBLIC ON THE INTERNET THROUGH PACER (PUBLIC ACCESS TO COURT ELECTRONIC RECORDS) AND THE COURT'S ELECTRONIC CASE FILING SYSTEM. **CERTAIN *PERSONAL IDENTIFYING INFORMATION* SHOULD NOT BE INCLUDED IN OR SHOULD BE REMOVED FROM ALL DOCUMENTS *BEFORE* YOU SUBMIT THE DOCUMENTS TO THE COURT FOR FILING.**

Rule 5.2 of the Federal Rules of Civil Procedure provides for privacy protection of electronic or paper filings made with the court. Rule 5.2 applies to ***ALL*** documents submitted for filing, including pleadings, exhibits to pleadings, discovery responses, and any other document submitted by any party or nonparty for filing. Unless otherwise ordered by the court, a party or nonparty filer should not put certain types of an individual's personal identifying information in documents submitted for filing to any United States District Court. If it is necessary to file a document that already contains personal identifying information, the personal identifying information should be "**blacked out**" or **redacted** prior to submitting the document to the Clerk of Court for filing. A person filing any document containing their own personal identifying information **waives** the protection of Rule 5.2(a) by filing the information without redaction and not under seal.

1. Personal information protected by Rule 5.2(a):

(a) Social Security and Taxpayer identification numbers. If an individual's social security number or a taxpayer identification number must be included in a document, the filer may include only the last four digits of that number.

(b) Names of Minor Children. If the involvement of a minor child must be mentioned, the filer may include only the initials of that child.

(c) Dates of Birth. If an individual's date of birth must be included in a document, the filer may include only the year of birth.

(d) Financial Account Numbers. If financial account numbers are relevant, the filer may include only the last four digits of these numbers.

2. Protection of other sensitive personal information – such as driver's license numbers and alien registration numbers – may be sought under Rule 5.2(d)(filings made under seal) and (e) (protective orders).

FILED: February 4, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-2396
(2:18-cv-02297-DCN)

THEON SMITH

Plaintiff - Appellant

v.

DOMESTIC RELATIONS OF CHARLESTON COUNTY; JUDGE DANA A. MORRIS

Defendants - Appellees

STAY OF MANDATE UNDER
FED. R. APP. P. 41(d)(1)

Under Fed. R. App. P. 41(d)(1), the timely filing of a petition for rehearing or rehearing en banc or the timely filing of a motion to stay the mandate stays the mandate until the court has ruled on the petition for rehearing or rehearing en banc or motion to stay. In accordance with Rule 41(d)(1), the mandate is stayed pending further order of this court.

/s/Patricia S. Connor, Clerk

FILED: March 12, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-2396
(2:18-cv-02297-DCN)

THEON SMITH

Plaintiff - Appellant

v.

DOMESTIC RELATIONS OF CHARLESTON COUNTY; JUDGE DANA A. MORRIS

Defendants - Appellees

ORDER

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Motz, Judge Keenan, and Judge Floyd.

For the Court

/s/ Patricia S. Connor, Clerk