

APPENDIX

APPENDIX A

UNITED STATES Court OF APPEALS
FOR THE SIXTH CIRCUIT

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VERNON LEE HAVENS II

V

CHIEF JUSTICE MAUREEN O'CONNOR et al,

No. 19-3475

March 20, 2020

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ON APPEAL FROM THE UNITED STATES
DISTRICT Court FOR THE
SOUTHERN DISTRICT Court OF OHIO~

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ORDER

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Before: SILER, DAUGHTREY, and GIBBONS,
CIRCUIT JUDGES

Vernon Lee Havens II, an Ohio resident proceeding pro se, appeals a district Court judgement dismissing his complaint. 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)

Havens filed a complaint under 42 U.S.C. 1983 alleging violations of his right to due process and equal protection when Fayette County Court of Common Pleas Judge Steven Beathard denied his motion to recuse and when Ohio Supreme Court Chief Justice Maureen O'Connor denied his affidavit of disqualification, (automatic under Ohio law), as to Judge Beathard. The defendants then filed motions to

dismiss, which the district Court granted after determining that it lacked jurisdiction pursuant to the *Rooker-Feldman* doctrine. On appeal, Havens argues that the district Court erred in dismissing his complaint.

To avoid dismissal for failure to state a claim, “a complaint must contain 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 Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “[We] may affirm a decision of the district Court for any reason supported by the record, including on grounds different from those on which the district Court relied.” *Stein v. Regions Morgan Keegan Select High Income Fund, Inc.*, 821 F.3d 786 (6th Cir. 2016) (citations omitted).

A judge performing his or her judicial functions is entitled to absolute immunity. *See generally Mireles v. Waco*, 502 U.S. 9 (1991) (per curiam). Absolute judicial immunity can be overcome only where: (1) the judge acted in a non-judicial capacity; or (2) the judge acted in the complete absence of jurisdiction. *Id.* at 11-12. Complete absence of jurisdiction is found “when the matter upon which [a judge] acts is clearly outside the subject matter of the Court over which he preside.” *Brookings v. Clunk*, 389 F3d 614, 623, (6th Cir. 2004) (quoting *Johnson v. Turner*, 125 F.3d 324, 344 (6th Cir. 1997)). Although Havens alleges that Judge Beathard and Chief Justice O’Connor were biased and misrepresented his claims, he has failed to allege facts showing that the defendants acted in a non-judicial capacity or in the complete absence of

jurisdiction. Because Judge Beathard and Chief Justice O'Connor are entitled to absolute judicial immunity, the district Court did not err in dismissing the complaint.

Accordingly, we AFFIRM the judgement of the district Court.

ENTERED BY ORDER OF THE Court

/S/ Deborah S. Hunt, Clerk

APPENDIX B

UNITED STATES DISTRICT Court
For The Southern District of Ohio
Eastern Division.

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HAVENS v. O'CONNOR

Case No. 2:19-CV-481

May 15, 2019

In re: 42 U.S.C. § 1983 Civil Rights Act

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OPINION AND ORDER

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Attorney(s) appearing for the Case:

Vernon Lee Havens, II, Plaintiff, pro se.

Chief Justice Maureen O'Connor, Ohio Supreme
Court, Defendant, represented by Renata Y.
Staff, Ohio Attorney General's Office.

Judge Steven Beathard, Fayette County Court of
Common Pleas, Defendant, represented by
Jeffrey Alan Stankunas, Isaac Wiles Burkholder
& Teetor, LLC.

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EDMUND A. SARGUS, JR., Chief District Judge.

This matter is before the Court on
the Motions to Dismiss (ECF Nos. 6, 10) filed
separately by Defendants Chief Justice Maureen
O'Connor ("Chief Justice O'Connor") and Judge
Steven Beathard ("Judge Beathard") (collectively
"Defendants"). Also before the Court are Plaintiff
Vernon Lee Havens, II's ("Havens") miscellaneous
motions.¹ For the reasons below, the Court
GRANTS Defendants' Motions to Dismiss. (ECF
Nos. 6, 10). The Court DISMISSES as Havens'
motions (ECF Nos. 3, 7, 8, 14, 15, 16).

I.

On February 2, 2019, Havens initiated this lawsuit alleging Judge Beathard and Chief Justice O'Connor violated his Fifth and Fourteenth Amendments rights by refusing to recuse from state Court proceedings to which Havens is a party. Havens also alleges Chief Justice O'Connor violated his constitutional rights by improperly denying his Affidavit of Disqualification as to Judge Beathard. Defendants individually moved this Court to dismiss Haven's claims.

II.

To survive a Rule 12(b)(6) challenge, a complaint "must allege facts that, if accepted as true, are sufficient `to raise a right to relief above the speculative level' and `state a claim for relief that is plausible on its face.'" Hensley Mfg.

ProPride, Inc., 579 F.3d 603, 609 (6th Cir. 2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). A claim is plausible where the factual content "allows the Court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). In making this determination, a Court must "construe the complaint in the light most favorable to the plaintiff, accept its allegations as true, and draw all reasonable inferences in favor of the plaintiff." *Brickerstaff v. Lucarelli*, 830 F.3d 388, 396 (6th Cir. 2016) (quoting *Directv, Inc. v. Treesh*, 487 F.3d 471, 476 (6th Cir. 2007)). A Court need not accept as true any conclusory legal allegations that lack specific facts necessary to establish a claim. *Id.*

III.

Judge Beathard and Chief Justice O'Connor argue that Havens' claims are barred by the Rooker-Feldman doctrine because the allegations directly attack the state-Court's judgment to deny Havens' requests for disqualification. See *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (2005). The Court agrees. The Rooker-Feldman doctrine bars "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). So then, "the pertinent inquiry . . . is whether the source

of the injury upon which plaintiff bases his federal claim is the state Court judgment." *Durham v. Haslam*, 528 Fed. Appx. 559, 563 (6th Cir. 2013) (quotations omitted). If the alleged injury's source is a state-Court decision, then the Rooker-Feldman doctrine prevents the district Court from asserting jurisdiction. *McCormick v. Braverman*, 451 F.3d 382, 393 (6th Cir. 2006). But if there is some other source of injury, such as a third party's actions, then the plaintiff may assert an independent claim. *Id.* To determine the source of the alleged injury, the Court reviews Havens' allegations and requested relief. *Durham*, 528 Fed. Appx. at 563.

In his Complaint, Havens only alleged injuries are Defendants' state-Court judgments, which denied Havens' requests to remove Judge

Beathard from Havens' state-Court proceedings. Moreover, Havens only requests relief that challenges and reverses those state-Court judgments. Therefore, because Havens' claims merely attack state-Court judgments, the Rooker-Feldman doctrine bars this Court from exercising subject-matter jurisdiction over Havens' claims. Accordingly, the Court GRANTS Defendants' Motions to Dismiss. (ECF No. 6, 10).

IV.

For the reasons above, the Court GRANTS Defendants' Motions to Dismiss (ECF Nos. 6, 10), thereby DISMISSING with PREJUDICE Havens' claims. The Court DISMISSES as MOOT Havens' motions. (ECF Nos. 3, 7, 8, 14, 15, 16).

IT IS SO ORDERED.

FootNotes

1. Havens has filed several motions ripe for review, including: Motion for Declaration the Complaint was Timely Filed (ECF No. 3), Motion to Enforce Removal of Case #CA2108-10-020 to Federal Court on Ohio Twelfth (sic) District Court of Appeals (ECF No. 7), Motion to Strike Defendant's Motion to Dismiss as Premature (ECF No. 8), Second Motion to Enforce Removal to Federal Court (ECF No. 14), Motion to Strike Defendant Fyffe's Answer (ECF No. 15), and Motion to Strike & Deny Defendant's Motion for Summary Judgement (sic) (ECF No. 16)

APPENDIX C
CONSTITUTIONAL & STATUTORY
PROVISIONS

First Amendment - "Congress shall make no law ... prohibiting ... the right of the people ... to petition the government for a redress of grievances."

Fifth Amendment - "No person shall be ... deprived of life, liberty, or property, without due process of law."

Fourteenth Amendment - "No state shall make or enforce any law which shall abridge the privileges ... of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny

to any person within its jurisdiction the equal protection of the laws.

Article III - The judicial power of the United States, shall be vested in ... such ... Courts as the Congress may from time to time ordain and establish.

28 U.S.C. Section 1257 - “(a) Final judgments or decrees rendered by the highest Court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a ... statute of the United States is drawn in question ..., or where any ... right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

28 U.S.C. Section 1367 - “(a) Except as provided in subsections (b) and (c) or as expressly provided

otherwise by Federal statute, in any civil action of which the district Courts have original jurisdiction, the district Courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

28 U.S.C. Section 1441(a.) - “(a) Generally.—

Except as otherwise expressly provided by Act of Congress, any civil action brought in a State Court of which the district Courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district Court of the United States for the district and division embracing the place where such action is pending.”

28 U.S.C. Section 1446 Procedure for removal of

civil actions, (d) - "Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State Court, which shall effect the removal and the State Court shall proceed no further unless and until the case is remanded.

42 U.S.C. Section 1983 - "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State ... subjects, or causes to be subjected, any citizen of the United States ... to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except

that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable."

FRCP Rule 42(a.) - (a) Consolidation. If actions before the Court involve a common question of law or fact, the Court may: (1) join for hearing or trial any or all matters at issue in the actions; (2) consolidate the actions; or (3) issue any other orders to avoid unnecessary cost or delay.