

FILED: January 14, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-1797
(1:18-cv-01249-AJT-IDD)

JAMAAL GITTENS

Plaintiff - Appellant

v.

TRANSFORCE, INC.

Defendant - Appellee

O R D E R

The court denies the petition for rehearing.

Entered at the direction of the panel: Judge Keenan, Judge Diaz, and Senior
Judge Shedd.

For the Court

/s/ Patricia S. Connor, Clerk

UNPUBLISHED**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 19-1797

JAMAAL GITTENS,**Plaintiff - Appellant,****v.****TRANSFORCE, INC.,****Defendant - Appellee.**

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Anthony John Trenga, District Judge. (1:18-cv-01249-AJT-IDD)

Submitted: November 21, 2019**Decided: November 25, 2019**

Before KEENAN and DIAZ, Circuit Judges, and SHEDD, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Jamaal Gittens, Appellant Pro Se. Joseph Erwin Schuler, JACKSON LEWIS PC, Reston, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Jamaal Gittens appeals the district court's order denying his motion to amend and denying relief on his 42 U.S.C. § 1983 (2012) complaint. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *Gittens v. TransForce, Inc.*, No. 1:18-cv-01249-AJT-IDD (E.D. Va. July 16, 2019). 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

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

JAMAAL GITTENS,)
v. Plaintiff,)
TRANSFORCE,) Civil Action No. 1:18-cv-1249 (AJT/IDD)
Defendant.)

)

ORDER

Pro se Plaintiff Jamaal Gittens brings this action pursuant to 42 U.S.C. § 1983 against Defendant TransForce, Inc. for “unlawfully garnishing wages without a valid court order.” Defendant seeks the dismissal of the amended complaint [Doc. No. 4] for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1) [Doc. No. 9] (the “12(b)(1) Motion”) or, alternatively, for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6) [Doc. No. 12] (the “12(b)(6) Motion”) (collectively, the “Motions to Dismiss”). Also pending before the Court is Plaintiff’s Motion to Amend [Doc. No. 26] (the “Motion to Amend”), in which he seeks to amend his complaint for a second time to state a negligence claim against the Defendant rather than a Section 1983 claim. Upon consideration of the Motions to Dismiss, the Motion to Amend, and the responses thereto, the Court concludes that it lacks subject matter jurisdiction over Plaintiff’s claims pursuant to the *Rooker-Feldman* doctrine. Accordingly, the 12(b)(1) Motion is GRANTED; the 12(b)(6) Motion is DENIED as moot; the Motion to Amend is DENIED; and this action is DISMISSED.

Plaintiff’s status as a *pro se* litigant entitles his amended complaint to liberal construction, *see, e.g., Erickson v. Pardus*, 551 U.S. 89, 94 (2007), but it cannot excuse a clear

failure in the pleadings to allege a federally cognizable claim, *see Weller v. Dep't of Soc. Servs.*, 901 F.2d 387, 390–91 (4th Cir. 1990). Here, liberally construed, Plaintiff alleges that the Defendant began withholding from his pay pursuant to a garnishment order in September 2018. [Doc. No. 4] at 2. It is clear on the face of that garnishment order, which is included as an attachment to Plaintiff's original complaint, that it was issued on September 3, 2018 by a judge of the Commonwealth of Pennsylvania, County of Erie, in Pennsylvania Automated Child Support Enforcement System (“PACSES”) Case Number 657116451, Docket Number NS20170042, Elizabeth McDonald v. Jamal A. Gittens. *See* [Doc. No. 2-2]. Plaintiff alleges that the “so called order” is void under the Constitution and laws of the United States because it violates (1) separation of powers, because the issuing court is an Article II entity and not an Article III court; and (2) 28 U.S.C. § 1691, which provides that “[a]ll writs and process issuing from a court of the United States shall be under the seal of the court and signed by the clerk thereof.” [Doc. No. 4] at 1–2. On that basis, Plaintiff seeks (1) a declaration that the garnishment order is unconstitutional;¹ and (2) damages against TransForce for its “negligence” in adhering to the allegedly unconstitutional order and garnishing Plaintiff's wages pursuant to it. *Id.* at 3.

On a motion to dismiss for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1), the party claiming subject matter jurisdiction bears the burden of demonstrating that such jurisdiction exists. *Evans v. B.F. Perkins Co.*, 166 F.3d 642, 647 (4th Cir. 1999). If a motion “challenges the existence of the Court's subject matter jurisdiction . . . the Court may look beyond the jurisdictional allegations of the complaint and view whatever evidence has been

¹ Plaintiff has also filed in this case a Petition and Complaint in the Nature of for Deprivation of Federally Protected Rights Motion Challenging Constitutionality of the Uniform Interstate Family Support Act 42 U.S.C. 666 [Doc. No. 123], which makes clear that the relief he seeks is a declaration that the state court garnishment order is unconstitutional.

submitted on the issue to determine whether in fact subject matter jurisdiction exists.” *Virginia v. United States*, 926 F. Supp. 537, 540 (E.D. Va. 1995) (internal quotations omitted).

A federal district court lacks subject matter jurisdiction over “cases where a plaintiff, under the auspice of bringing a constitutional claim, seeks ‘review of, or relief from, a state action or proceeding that is essentially judicial in nature.’” *Oliver v. Virginia Board of Bar Examiners*, 312 F. Supp. 3d 515, 523 (E.D. Va. 2018) (quoting *Suarez Corp. Indus. v. McGraw*, 125 F.3d 222, 228 (4th Cir. 1997)). This is pursuant to the *Rooker-Feldman* doctrine, as established in *D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983), and *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923), and as further articulated in *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). “The *Rooker-Feldman* [d]octrine is jurisdictional in nature and strips the federal district courts of jurisdiction over the case.” *Rodriguez v. Doe*, 2013 WL 1561012, at *4 (E.D. Va. Apr. 12, 2013), *aff’d*, 549 F. App’x 141 (4th Cir. 2013). Thus, its applicability must be determined before turning to the merits of the case. *Smalley v. Shapiro & Burson, LLP*, 526 F. App’x 231, 235 (4th Cir. 2013) (citing *Friedman’s, Inc. v. Dunlap*, 290 F.3d 191, 195–96 (4th Cir. 2001)).

Fourth Circuit precedent establishes that “the controlling question in the *Rooker-Feldman* analysis is whether a party seeks the federal district court to review a state court decision and pass upon the merits of that state court decision, not whether the state court judgment is presently subject to reversal or modification.” *Id.* at 235–36. “Put another way, if in order to grant the federal plaintiff the relief sought, the federal court must determine that the [state] court judgment was erroneously entered or must take action that would render the judgment ineffectual, *Rooker-Feldman* is implicated.” *Jordahl v. Democratic Party of Va.*, 122 F.3d 192, 202 (4th Cir. 1997) (internal quotation marks and citation omitted). This is clearly the case here, where the Plaintiff

seeks a declaration that the state court garnishment order is unconstitutional and damages against TransForce for its alleged negligence in adhering to it. *See* [Doc. No. 4] at 3. Accordingly, this Court lacks subject matter jurisdiction over Plaintiff's claim pursuant to the *Rooker-Feldman* doctrine.

Plaintiff also seeks to amend his complaint for a second time to state a negligence claim against the Defendant rather than a Section 1983 claim. *See* [Doc. No. 26]. Denial of leave to amend should occur "when . . . the amendment would be futile." *Johnson v. Oroweat Foods Co.*, 785 F.2d 503, 509 (4th Cir. 1986). Amendment is considered futile "when the proposed amendment is clearly insufficient or frivolous on its face," such that the amended claim would fail to survive a motion to dismiss. *Id.* at 510; *Perkins v. United States*, 55 F.3d 910, 917 (4th Cir. 1995). Here, Plaintiff's proposed amendment would not cure the complaint's deficiencies, as the second amended complaint would still seek this Court's review of a state court order, thus implicating the *Rooker-Feldman* doctrine and depriving the Court of subject matter jurisdiction. Accordingly, it is hereby

ORDERED that Defendant's Motion to Dismiss Plaintiff's Complaint for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1) [Doc. No. 9] be, and the same hereby is, GRANTED; and this action is DISMISSED; and it is further

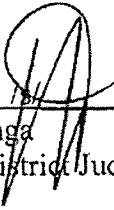
ORDERED that Defendant's Motion to Dismiss Plaintiff's Complaint for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6) [Doc. No. 12] be, and the same hereby is, DENIED as moot; and it is further

ORDERED that Plaintiff's Motion to Amend [Doc. No. 26] be, and the same hereby is, DENIED; and it is further

ORDERED that the final pretrial conference in this matter currently scheduled for Thursday, July 18, 2019 at 10:00 a.m. be, and the same hereby is, CANCELED.

This is a Final Order for purposes of appeal. To appeal, Plaintiff must file a written notice of appeal with the Clerk's Office within thirty (30) days of the date of this Order as required by Rules 3 and 4 of the Federal Rules of Appellate Procedure. A written notice of appeal is a short statement stating a desire to appeal this Order along with the date of the Order plaintiff wants to appeal. Plaintiff need not explain the grounds for appeal until so directed by the court.

The Clerk is directed to forward copies of this Order to all counsel of record and to the *pro se* Plaintiff at the address provided.



Anthony J. Trenga
United States District Judge

July 16, 2019
Alexandria, Virginia