

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with Fed. R. App. P. 32.1

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

Submitted June 28, 2019*

Decided July 16, 2019

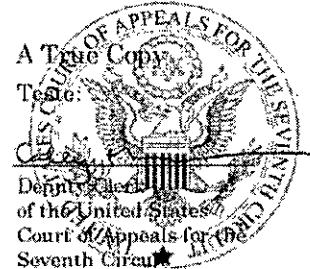
Before

JOEL M. FLAUM, *Circuit Judge*

DIANE S. SYKES, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

CERTIFIED COPY



No. 18-3185

EDWARD A. WEINHAUS,
Plaintiff-Appellant,

Appeal from the United States District
Court for the Northern District of Illinois,
Eastern Division.

v.

No. 18 C 2471

NATALIE B. COHEN, et al.,
Defendants-Appellees.

Rebecca R. Pallmeyer,
Chief Judge.

ORDER

Edward Weinhaus sued his ex-relatives and the state of Illinois over provisions in a state-court custody judgment that required Weinhaus to exercise his parenting time outside Illinois. He contends that this requirement violates his constitutional right to travel and that the custody proceedings generally violate his right to due process. The district court granted the defendants' motions to dismiss. Because it rightly concluded

* We have agreed to decide the case without oral argument because the appeal is frivolous and oral argument would not significantly aid the court. See FED. R. APP. P. 34(a)(2)(A).

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that it lacked subject-matter jurisdiction under the domestic-relations exception to federal jurisdiction and the *Rooker-Feldman* doctrine, we affirm.

Weinhaus and Natalie Cohen filed for divorce in 2012 in the Circuit Court of Cook County, Illinois. (We recite the factual allegations and draw all reasonable inferences in favor of Weinhaus. *See Evers v. Astrue*, 536 F.3d 651, 656 (7th Cir. 2008).) Later, they agreed to a joint-custody judgment that addressed the care of their five children. Under that judgment, Cohen is the primary residential parent and resides in Illinois with the children. Weinhaus, a resident of Missouri, may conduct his parenting time outside of Illinois on specified weekends and school breaks. In 2016, Weinhaus and Cohen agreed to a modified judgment. One modification provided that Weinhaus's parenting time on certain weekends and school breaks "shall" be exercised outside of Illinois. The following year, Weinhaus moved to modify the judgment to remove the requirement that he "shall" exercise parenting time outside of Illinois.

A month before the hearing on his motion to modify, Weinhaus turned to federal court, invoking 42 U.S.C. §§ 1983 and 1985(3) to sue Cohen, her new husband, her parents ("the Cohen defendants"), and the state of Illinois. He contends that, because the custody judgment requires that he spend his time with his children outside of Illinois, and the defendants interpret the judgment that way, they have violated his right to travel within Illinois with his children. He argues also that they have violated his right to due process because the order was entered without proper procedures, without considering the best interests of the children, without recognizing that he was under duress, and after interfering with his right to self-representation.

The district court granted the defendants' motions to dismiss under Federal Rule of Civil Procedure 12(b)(1) and (6). The judge concluded that both the domestic-relations exception to federal jurisdiction and the *Rooker-Feldman* doctrine barred the court's review of the case. *See District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923). (The judge also ruled that the custody order did not violate Weinhaus's right to travel and that the state was immune under the Eleventh Amendment.) Because there was "no possibility that [Weinhaus's] allegations can support a good faith claim within this court's jurisdiction," the judge declined to allow him leave to amend the complaint. We review Weinhaus's appeal of the dismissal *de novo*. *See Kowalski v. Boliker*, 893 F.3d 987, 994 (7th Cir. 2018).

Weinhaus contends that the domestic-relations exception to federal jurisdiction does not block this suit, but the district judge correctly ruled that it does. The exception

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precludes federal review of state-court decisions “involving the granting of divorce, decrees of alimony,’ and child custody orders.” *Kowalski*, 893 F.3d at 995 (quoting *Ankenbrandt v. Richards*, 504 U.S. 689, 701–02 (1992)). Weinhaus argues that the domestic-relations exception applies only to diversity-jurisdiction cases, not to federal-question cases, like his. But it applies in both types of suits. *Kowalski*, 893 F.3d at 995; *Jones v. Brennan*, 465 F.3d 304, 306–07 (7th Cir. 2006). The reason is that state courts, which “have developed a proficiency in core probate and domestic-relations matters,” *Struck v. Cook Cty. Pub. Guardian*, 508 F.3d 858, 860 (7th Cir. 2007), may also decide issues of federal law, so “confining a class of federal-law cases to state courts does not deprive litigants of their federal rights,” *Jones*, 465 F.3d at 307.

To avoid the exception, Weinhaus suggests three possible end-runs, but they are all unavailing. First, he relies on *Kowalski* to contend that the exception does not apply because he is merely attacking a third party’s “tortious interference” with a family-law case. *See* 893 F.3d at 995–96. In *Kowalski*, the plaintiff alleged that defendants corruptly tried to influence how a judge decided a divorce suit. Because that claim—undue influence—was not based on family law, we ruled that the domestic-relations exception did not apply (though we decided for other reasons that the plaintiff failed to state a claim). *Id.* Weinhaus’s claim is different. He complains that his ex-relatives are using the custody judgment itself to restrict access to his children in Illinois, so the claim depends entirely on domestic-relations law. Second, Weinhaus contends that the exception does not apply because the state court “lacked jurisdiction” after it deprived him of his procedural rights and failed to consider the best interests of the children. But these are arguments for a direct appeal in state court; they are not grounds for federal courts to exercise jurisdiction. *See id.* Third, Weinhaus observes that he and Cohen are now divorced and the circuit court has awarded custody, so no domestic-relations case is pending there. But this lawsuit is a dispute over child custody, a matter under the continuing supervision of state courts, so the domestic-relations exception applies.

Based on Weinhaus’s last contention—that the domestic-relations case is over—the *Rooker-Feldman* doctrine also precludes our review. The doctrine prevents federal district and appellate courts from deciding cases by litigants complaining of injuries from state-court judgments rendered before the federal suit commenced and seeking federal review and reversal of those judgments. *See Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). Weinhaus’s alleged injury comes from the provisions in the custody judgment requiring him to exercise his parenting time outside of Illinois. The state court entered that judgment and modified it before Weinhaus sued in federal court for review and relief from that judgment, so *Rooker-Feldman* applies.

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Weinhaus raises two arguments that the *Rooker-Feldman* doctrine is inapplicable, but they are as meritless as his contentions about the domestic-relations exception. The doctrine does not preclude our review, he first submits, because the modified judgment is "void." It is void, he says, because he agreed to it under duress, the state court failed to consider the best interests of the children, and the court lacked authority to require him to raise his children outside of Illinois. But the doctrine precludes federal jurisdiction "no matter how erroneous or unconstitutional the state court judgment may be" because the Supreme Court of the United States is the only federal court with jurisdiction to review a state-court judgment. *Remer v. Burlington Area Sch. Dist.*, 205 F.3d 990, 996 (7th Cir. 2000). Second, he argues that he does not challenge only the state-court judgment; he also contests the defendants' procedural tactics in court (such as allegedly preventing him from having a hearing and criticizing his self-representation) that led to the adverse custody judgment. But there is no "procedural exception" to the doctrine—it applies to "the procedures used by state courts to reach decisions" where, as here, "[n]o injury occurred until the state judge ruled against" the federal plaintiff. *Harold v. Steel*, 773 F.3d 884, 886 (7th Cir. 2014).

Because the district court lacked jurisdiction, we do not reach Weinhaus's remaining arguments. Therefore, we affirm the district court's dismissal, though the judgment is modified to be for lack of subject-matter jurisdiction.

A final matter remains: the Cohen defendants moved for sanctions under Rule 38 of the Federal Rules of Appellate Procedure, to which Weinhaus has responded in opposition. Sanctions are indeed warranted. The suit is plainly blocked by the domestic-relations exception and the *Rooker-Feldman* doctrine. To avoid the jurisdictional problem, Weinhaus contends that the state-court judgment violates his rights to due process and to travel interstate. But his arguments do not circumvent the impediments to jurisdiction, and they ignore our case law and the arguments raised by the Cohen defendants and the state of Illinois. Thus, the Cohen defendants' motion is GRANTED, and they may file, within 14 days of this order, a statement of the attorneys' fees and other expenses reasonably incurred in defending this appeal. Weinhaus shall file any response no later than 21 days after the Cohen defendants file their statement.

AFFIRMED AS MODIFIED, WITH SANCTIONS
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**UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6.2.2
Eastern Division**

Edward A. Weinhaus

Plaintiff,

v.

Case No.: 1:18-cv-02471

Honorable Rebecca R. Pallmeyer

Natalie B. Cohen, et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Friday, September 14, 2018:

MINUTE entry before the Honorable Rebecca R. Pallmeyer: Ruling held on 9/14/2018. Plaintiff's allegations do not satisfy the court that the agreed order entered by the state courts violates his constitutional right to travel. In any event, the State of Illinois enjoys Eleventh Amendment immunity. The domestic relations exception to this court's jurisdiction is applicable here, and the Rooker-Feldman doctrine applies to bar federal court review of the state courts' orders. For these reasons, Natalie B. Cohen's, Steven Cohen's, Barry Chernawsky's, and Adrienne Chernawsky's motion to dismiss complaint pursuant to Rule 12(b)(6) [10], and State of Illinois' Rule 12(b)(1) motion to dismiss [14] are granted. Because the court perceives no possibility that Plaintiff's allegations can support a good faith claim within this court's jurisdiction, the court declines to allow leave to amend. Dismissal is with prejudice to the case in this court. Judgment will enter. Mailed notice. (etv,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

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IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF ILLINOIS

Edward A. Weinhaus,

Plaintiff,

v.

Natalie B. Cohen, Steven Cohen, Barry
Chernawsky, The State of Illinois ,

Defendants.

Case No. 18 C 2471
Judge Rebecca R. Pallmeyer

JUDGMENT IN A CIVIL CASE

Judgment is hereby entered (check appropriate box):

in favor of plaintiff(s)
and against defendant(s)
in the amount of \$,
which includes pre-judgment interest.
 does not include pre-judgment interest.

Post-judgment interest accrues on that amount at the rate provided by law from the date of this judgment.

Plaintiff(s) shall recover costs from defendant(s).

in favor of defendant(s)
and against plaintiff(s)

Defendant(s) shall recover costs from plaintiff(s).

other: Motions to dismiss are granted. Case is dismissed with prejudice.

This action was (check one):

tried by a jury with Judge presiding, and the jury has rendered a verdict.
 tried by Judge without a jury and the above decision was reached.
 decided by Judge Rebecca R. Pallmeyer on motions to dismiss.

Date: 9/14/2018

Thomas G. Bruton, Clerk of Court

Ena T. Ventura , Deputy Clerk
Appendix B

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

September 23, 2019

Before

JOEL M. FLAUM, *Circuit Judge*

DIANE S. SYKES, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

No. 18-3185

EDWARD A. WEINHAUS,
Plaintiff-Appellant,

Appeal from the United States District
Court for the Northern District of Illinois,
Eastern Division.

v.

No. 18-CV-02471

NATALIE B. COHEN, et al.,
Defendants-Appellees.

Rebecca R. Pallmeyer,
Chief Judge.

ORDER

On July 16, 2019, this court affirmed the judgment of the district court and determined that the appeal was frivolous. *Weinhaus v. Cohen*, 773 F. App'x 314, 317 (7th Cir. 2019). Because appellant Edward Weinhaus's appeal satisfied the standard for sanctions under Rule 38 of the Federal Rules of Appellate Procedure, we granted the appellees' motion for sanctions and ordered the appellees to file with the court a statement of the attorneys' fees and other expenses reasonably incurred in defending the appeal. They did so, and Weinhaus responded. We have reviewed the parties' submissions, and we conclude that, under a state-court order, Weinhaus has already paid any fees that might be awarded under Rule 38. *In re Weinhaus*, No. 12 D 008800 (Ill. Cir. Ct. Apr. 8, 2019) (ordering appellant to pay \$23,500 in appellee's attorney's fees under 750 ILCS 5/508); see also *Blixseth v. Yellowstone Mountain Club, LLC*, 854 F.3d 626,

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631 (9th Cir. 2017); *Sun-Tek Indus., Inc. v. Kennedy Sky-Lites, Inc.*, 865 F.2d 1254, 1255 (Fed. Cir. 1989). We therefore award no additional fees under Rule 38.

Weinhaus represented to this court that he waives his right to appeal the state court's April 8, 2019, fee award. We have relied on that representation in deciding not to award any further fees pursuant to Rule 38. See *New Hampshire v. Maine*, 532 U.S. 742, 750–51 (2001); *Seymour v. Collins*, 39 N.E.3d 961, 973 (Ill. 2015). We also direct the clerk of this court to forward a copy of this order and our July 16 order to the State Bar of California.

Appendix C