

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

NOV 19 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

MARSHALL ABBAS KHAN,

Plaintiff-Appellant,

v.

CLARK COUNTY ENFORCEMENT;
et al.,

Defendants-Appellees.

No. 20-17198

D.C. No.
2:20-cv-00873-APG-DJA
District of Nevada,
Las Vegas

ORDER

Before: CLIFTON, IKUTA, and LEE, Circuit Judges.

A review of the record demonstrates that this court lacks jurisdiction over this appeal because the order challenged in the appeal is not final or appealable. *See* 28 U.S.C. § 1291; *In re San Vicente Med. Partners Ltd.*, 865 F.2d 1128, 1131 (9th Cir. 1989) (order) (magistrate judge order not final or appealable); *see also Medhekar v. United States Dist. Court*, 99 F.3d 325, 326 (9th Cir. 1996) (discovery orders not immediately appealable). Consequently, this appeal is dismissed for lack of jurisdiction.

All pending motions are denied as moot.

DISMISSED.

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3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

5 * * *

6 MARSHALL ABBAS KHAN,

7 Plaintiff,

8 v.

9 CLARK COUNTY ENFORCEMENT, et al.,

10 Defendants.

Case No. 2:20-cv-00873-APG-DJA

11 ORDER

12 Presently before the Court is Defendant Aaron Ford's Motion to Stay Requirement to File
13 Proposed Discovery Plan and Scheduling Order (ECF No. 66), filed on October 21, 2020.
14 Defendants Clark County, Steven Wolfson, and Mary-Anne Miller filed a Joinder (ECF No. 69)
15 on October 21, 2020. Plaintiff filed a Motion to Stay Discovery (ECF No. 70) on the same day.
16 The Court finds this matter properly resolved without a hearing. *See* Local Rule 78-1.

17 Courts have broad discretionary power to control discovery. *See, e.g., Little v. City of*
18 *Seattle*, 863 F.2d 681, 685 (9th Cir.1988). In deciding whether to grant a stay of discovery, the
19 Court is guided by the objectives of Rule 1 to ensure a just, speedy, and inexpensive
20 determination of every action. *See Kidneigh v. Tournament One Corp.*, 2013 WL 1855764, at *2
21 (D. Nev. May 1, 2013). "The Federal Rules of Civil Procedure do not provide for automatic or
22 blanket stays of discovery when a potentially dispositive motion is pending." *Tradebay, LLC v.*
23 *eBay, Inc.*, 278 F.R.D. 597, 600 (D. Nev. 2011). However, preliminary issues such as
24 jurisdiction, venue, or immunity are common situations that may justify a stay. *See Twin City*
25 *Fire Ins. v. Employers of Wausau*, 124 F.R.D. 653 (D. Nev. 1989); *see also Kabo Tools Co. v.*
26 *Porauto Indus. Co.*, 2013 WL 5947138, at *1 (D. Nev. Oct. 31, 2013) (granting stay based on
27 alleged lack of personal jurisdiction); *Ministerio Roca Solida v. U.S. Dep't of Fish & Wildlife*,
28 288 F.R.D. 500, 506 (D. Nev. 2013) (granting stay based in part on alleged lack of subject matter

1 jurisdiction). Further, motions to stay discovery pending resolution of a dispositive motion may
2 be granted when: (1) the pending motion is potentially dispositive; (2) the potentially dispositive
3 motion can be decided without additional discovery; and (3) the Court has taken a “preliminary
4 peek” at the merits of the potentially dispositive motion to evaluate the likelihood of dismissal.
5 *See Kor Media Group, LLC v. Green*, 294 F.R.D. 579, 581 (D. Nev. 2013).

6 A party seeking to stay discovery pending resolution of a potentially dispositive motion
7 bears the heavy burden of establishing that discovery should be stayed. *See, e.g., Turner*
8 *Broadcasting System, Inc. v. Tracinda Corp.*, 175 F.R.D. 554, 556 (D. Nev. 1997) (noting that a
9 stay of discovery may be appropriate where the complaint was “utterly frivolous, or filed merely
10 for settlement value.”); *Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th Cir. 1975). When
11 deciding whether to issue a stay, a court must take a “preliminary peek” at the merits of the
12 dispositive motion pending in the case. *Tradebay*, 278 F.R.D. at 602-603. In doing so, a court
13 must consider whether the pending motion is potentially dispositive of the entire case, and
14 whether that motion can be decided without additional discovery. *Id.* This “preliminary peek” is
15 not intended to prejudge the outcome, but to evaluate the propriety of a stay of discovery “with
16 the goal of accomplishing the objectives of Rule 1.” *Id.* (citation omitted). That discovery may
17 involve inconvenience and expense is not sufficient, standing alone, to support a stay of
18 discovery. *Turner Broadcasting*, 175 F.R.D. at 556. An overly lenient standard for granting
19 requests to stay would result in unnecessary delay in many cases.

20 After taking a preliminary peek at the pending Motion to Dismiss (ECF No. 31) and
21 associated briefing, the Court finds that Defendants have carried their heavy burden of
22 establishing that discovery should be stayed. The issues before the Court in the pending motion
23 to dismiss do not require further discovery. Although Plaintiff’s Motion is incredibly difficult to
24 decipher, he appears to agree that a stay of discovery is appropriate. Additionally, discovery is
25 expensive and resolving issues of jurisdiction at the earliest possible stage of litigation is
26 important. The Court is not convinced that Plaintiff will survive Defendant’s jurisdictional
27 challenge, but notes, of course, that its view “may be very different than how the assigned district
28 judge will see the . . . picture.” *AMC Fabrication, Inc. v. KRD Trucking W., Inc.*, 2012 WL

1 4846152, *4 (D. Nev. Oct. 10, 2012). As such, the Court finds this is a case where a temporary
2 stay of discovery will further the goal of judicial economy. The Court will deny Plaintiff's
3 Motion as it includes a number of extraneous issues and his request to stay discovery is not moot.

4 IT IS THEREFORE ORDERED that Defendant Aaron Ford's Motion to Stay
5 Requirement to File Proposed Discovery Plan and Scheduling Order (ECF No. 66) is **granted**.

6 IT IS FURTHER ORDERED that Plaintiff's Motion to Stay Discovery (ECF No. 70) is
7 **denied as moot**.

8 IT IS FURTHER ORDERED that in the event that the motion to dismiss is not granted in
9 full, the parties shall file a stipulated proposed discovery plan and scheduling order no later than
10 14 days after a decision on the pending motion to dismiss (ECF No. 31) is issued by the court.

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12 DATED: October 22, 2020

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15 DANIEL J. ALBREGTS
16 UNITED STATES MAGISTRATE JUDGE
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Appendix iv (i)

Denial decision order of District court.

Containing on 6 pages.

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MARSHALL ABBAS KHAN,

Case No.: 2:20-cv-00873-APG-DJA

Plaintiff

Order

v.

[ECF Nos. 25, 28, 31, 35, 36, 38, 43, 45, 48-56, 59-62, 64, 65, 67, 68, 83]

STEVEN B. WOLFSON, et al.,

Defendants

Plaintiff Marshall Abbas Khan sues various state and county officials. He contends the defendants forced him to pay child support without proving he contractually agreed to do so, failed to provide him due process before suspending his driver's license, and intercepted his tax refund and stimulus payment without his consent. He also contends he was wrongfully arrested and denied medication while in custody. Khan and the defendants have filed numerous motions.

I. Motion to Change Venue (ECF No. 25)

Khan moves to change venue from a "statutory court" to a "court of record" under 28 U.S.C. § 132 and to proceed in accordance with the Seventh Amendment right to a jury trial. ECF No. 25. It is unclear what Khan seeks by this motion. This court is the United States District Court for the District of Nevada, and is the court referred to in § 132(a). Khan chose this court as the venue when he initiated this lawsuit. He does not identify what other venue he seeks. Accordingly, I deny this motion.

II. Motions to Stay Case and Related Motions to Strike (ECF Nos. 35, 36, 38, 43, 45, 48, 49, 52, 54, 55, 62)

Khan has filed multiple motions to stay this case, which prompted defendant Aaron Ford to file numerous motions to strike (rather than simply opposing Khan's motions). I deny Khan's

1 motions to stay because he provides no basis to stay this action. Instead, the motions are a
2 mishmash of quotes from legal citations and excerpts from books and articles, sprinkled with
3 Khan's complaints about the child support enforcement proceeding against him. Because I deny
4 Khan's motions to stay, I deny Ford's motions to strike as moot.

5 **III. Motions to Dismiss (ECF Nos. 28, 31)**

6 Defendants Steven Wolfson and Mary-Anne Miller move to dismiss the claims against
7 them. ECF No. 28. By separate motion, Ford moves to dismiss the claims against him. ECF No.
8 31. All three of these defendants argue that the *Rooker-Feldman* doctrine precludes this court
9 from reviewing the state's actions in imposing child support obligations on Khan. They also
10 argue there are no allegations that any of them personally participated in any of the alleged
11 violations.¹ Alternatively, Wolfson and Miller argue that when acting to enforce child support,
12 they are state actors and therefore are not "persons" subject to suit under 42 U.S.C. § 1983 for
13 any alleged constitutional violations. They also contend that they would be entitled to
14 prosecutorial immunity. Finally, Wolfson and Miller argue Khan cannot sue under various
15 federal criminal statutes because there is no private right of action to enforce them.

16 Khan did not respond to the motions to dismiss. I therefore grant the motions as
17 unopposed. *See* LR 7-2(d).

18 **IV. Motions to Order Defendants to Cease and Desist, Motions to Dismiss or Vacate Child**
19 **Support Order, and Related Motion to Strike (ECF Nos. 50, 51, 53, 56, 59, 60, 64, 65, 67,**
20 **68)**

21 Khan requests an order requiring the defendants to "cease and desist seizing private
22 property without a warrant issued by a court of record." ECF No. 50 at 1. It appears Khan is
23 challenging an income withholding order because it lacks a judicial signature. He also requests

¹ Ford also argues he was not properly served.

1 dismissal of the underlying child support order, claiming that 42 U.S.C. § 666 does not apply
2 because the State of Nevada is not a “state” as defined in 42 U.S.C. § 410(h). Khan also
3 contends he did not enter into a contract to pay child support, so he cannot be in default of a
4 child support obligation. He moves to vacate the support order because it was not signed by a
5 judicial officer, the person who signed the support order cannot be impartial because that person
6 is paid through federal funds that incentivize the collection of child support, and he was denied
7 his right to a jury trial. Finally, Khan requests a hearing regarding his inability to pay the child
8 support due to indigence. Ford again moves to strike one of these motions instead of simply
9 opposing it. \

10 Because I have granted dismissal to Ford, Wolfson, and Miller, these motions are moot as
11 to them. Consequently, I also deny as moot Ford’s motion to strike. The only remaining
12 defendant is Vincent Ochoa, who has not appeared in this action. As to Ochoa, on September
13 23, 2020, the clerk’s office sent Khan a notice of intent to dismiss for failure to file proof of
14 service. ECF No. 39. Khan filed a response showing that a process server delivered the
15 summons and complaint to “JEA, Deniece Lopez.” ECF No. 41 at 1. Based on this response, it
16 does not appear that service on Ochoa was properly accomplished under Federal Rule of Civil
17 Procedure 4(e). Service was not made on Ochoa personally, it was not left at his dwelling or
18 usual place of abode with a person of suitable age and discretion who resides there, and there is
19 no evidence that Lopez is an agent authorized by appointment or law to receive process on
20 Ochoa’s behalf. *See* Fed. R. Civ. P. 4(e)(2). Nor is there evidence that Ochoa was properly
21 served under Nevada law. *See* Fed. R. Civ. P. 4(e)(1); Nev. R. Civ. P. 4.2(a), (d). I therefore
22 order Khan to show cause why his claims against Ochoa should not be dismissed for lack of
23 timely and proper service.

1 Even if I considered Khan's motions as to Ochoa, Khan presents no evidence to support
2 his conclusory assertions. For example, Khan provides no evidence that Ochoa has seized his
3 property, personally participated in the challenged income withholding order, signed the support
4 order, or held him in default or contempt.² Khan's reliance on § 410 is also misplaced. Even if
5 his strained reading of § 410(h) had merit, he cites no authority for the proposition that
6 § 410(h)'s definition applies to § 466. Section 410's definitions apply "[f]or the purposes of this
7 subchapter." Section 466 is in a different subchapter. Likewise, Khan's insistence that he must
8 have agreed to a contract to be liable is erroneous. A parent's obligation to provide for his
9 child's welfare is a statutorily imposed duty. *See* Nev. Rev. Stat. § 125B.020. Because Khan's
10 motions generally lack support and because I cannot discern from Khan's filings what role
11 Ochoa played in his proceedings or whether any order for relief is properly directed at Ochoa, I
12 deny his motions.

13 **V. Motion to Discharge Magistrate (ECF No. 61)**

14 Khan contends he did not consent to Magistrate Judge Albregts' participation in this case.
15 In some of his other documents, Khan states that Judge Albregts' orders are "null and voided
16 without any force or effect." *See* ECF Nos. 64 at 5; 65 at 5.

17 Kahn is incorrect in his assertion that Magistrate Judge Albregts cannot issue valid orders
18 in this case. Magistrate judges may "hear and determine any pretrial matter pending before the
19 court," "conduct hearings, including evidentiary hearings," and submit "proposed findings of fact
20 and recommendations" to the assigned district judge for dispositive matters. 28 U.S.C.
21 § 636(b)(1); *see also* Fed. R. Civ. P. 72 (distinguishing between nondispositive and dispositive
22 pretrial matters); *S.E.C. v. CMKM Diamonds, Inc.*, 729 F.3d 1248, 1259-60 (9th Cir. 2013)

23 ² Khan did not attach any of the orders he challenges.

(district judges “may designate a magistrate judge to hear any nondispositive pretrial matter pending before the court” (quotation omitted)). Magistrate judges may also be assigned additional duties, which may vary from district to district and between district judges. *See* 28 U.S.C. § 636(b)(3), (4). In the District of Nevada, magistrate judges are utilized to the full extent of their statutory authority. They exercise general supervision of civil and criminal calendars; conduct pretrial conferences, proceedings, and settlement conferences in civil and criminal cases; and conduct early neutral evaluations in employment discrimination actions. *See* LR IB 1-7; LR 16-6.

This District has an automatic referral system that determines which motions and proceedings a magistrate judge will hear and decide and which motions and proceedings a district judge will hear and decide. I will hear and decide dispositive motions. Judge Albregts will automatically be referred most motions addressing case management, pretrial nondispositive motions, and discovery related motions. I deny Kahn’s motion to discharge Magistrate Judge Albregts. And I caution Khan that failure to abide by Judge Albregts’ or my orders may result in sanctions, including monetary or case-ending sanctions.

VI. Motion for Relief from Suspension of Driver’s License (ECF No. 83)

Khan moves for relief from an unidentified order that apparently suspended his driver’s license. He contends he did not receive due process of law. Khan has presented no evidence in support of this motion, so I deny it.

VII. Conclusion

I THEREFORE ORDER that the following motions are **DENIED: ECF Nos. 25, 35, 36, 38, 43, 45, 48-56, 59-62, 64, 65, 67, 68, 83.**

1 I FURTHER ORDER that defendants Mary-Anne Miller and Steven Wolfson's motion to
2 dismiss (ECF No. 28) is **GRANTED**.

3 I FURTHER ORDER that defendant Aaron Ford's motion to dismiss (ECF No. 31) is
4 **GRANTED**.

5 I FURTHER ORDER that **by May 14, 2021**, plaintiff Marshall Abbas Khan shall show
6 cause why his claims against defendant Vincent Ochoa should not be dismissed for lack of
7 timely and proper service. If Khan fails to respond to this order by that date and show good
8 cause, I will dismiss the claims against Ochoa without further notice.

9 DATED this 14th day of April, 2021.

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12 ANDREW P. GORDON
13 UNITED STATES DISTRICT JUDGE
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Appendix iv (ii)

Denial order of Writ of Certiorari from Ninth Circuit Court of Appeal.

Containing on 1 page.

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

DEC 16 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

Marshall Abbas Khan, (live life claim')

Plaintiff-Appellant,

v.

CLARK COUNTY ENFORCEMENT; et
al.,

Defendants-Appellees.

No. 20-17198

D.C. No.

2:20-cv-00873-APG-DJA

District of Nevada,
Las Vegas

ORDER

The mandate issued for this appeal on December 11, 2020. Accordingly, the court will take no action on appellant's motion to take judicial notice (Docket Entry No. 7).

This court will take no action on appellant's petition for writ of certiorari (Docket Entry No. 5). To the extent appellant seeks to file a petition for writ of certiorari, he must direct his filing to the Supreme Court of the United States.

This appeal remains closed.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Delaney Andersen
Deputy Clerk
Ninth Circuit Rule 27-7

Appendix iv (iii)

Denial order of (ECF No. 66)

Denial order of (ECF No. 31)

Denial order of (ECF No. 70)

Containing on 3 pages.