Supreme Court, U.S.
FILED
OCT 08 2021
OFFICE OF THE CLERK

No. 21-548

In The

SUPREME COURT OF THE UNITED STATES

DAVID J. ZAWISTOWSKI,

Petitioner,

v.

MICHAEL D. KRAMER, et el,

Respondents.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The domestic relations exception "divests the federal courts of power to issue divorce, alimony, and child custody decrees." *Ankenbrandt v. Richards,* 504 U.S. 689, 703 (1992). This exception originates from the Supreme Court's decision in *Barber v. Barber,* 21 How. 582 (1859) Justice Ruth Bader Ginsburg revisited the exception; "In view of lower federal court decisions expansively interpreting the two exceptions, this Court reined in the *domestic relations* exception in *Ankenbrandt,* We nevertheless emphasized that the exception covers only "a narrow range of domestic relations issues." *Id.,* at 701. Noting that some lower federal courts had applied the exception "well beyond the circumscribed situations posed by *Barber* and its progeny," ibid., we clarified that only "divorce, alimony, and child custody decrees" remain outside federal jurisdictional bounds, *id.,* at 703, 704." *See Marshall v. Marshall,* 547 U.S. 293 (2006)

Ankenbrandt held that the domestic relations exception was not of constitutional dimension, but rested on Congress' intent in enacting the diversity jurisdiction statute, 28 U.S.C. § 1332. (based mainly on the statute's pre-1948 text, the Court's longstanding interpretation, and stare decisis) *Ankenbrandt* did not address whether the exception applies to the federal question jurisdiction statute, 28 U.S.C. § 1331.

The question presented is:

Does the domestic relations exception apply to federal question jurisdiction under 28 U.S.C. § 1331 or is the exception limited to diversity jurisdiction under 28 U.S.C. § 1332?

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioner David J. Zawistowski was the Plaintiff-Appellant in the court below.

Respondents, who were Defendants-Appellees in the court below, are Michael D. Kramer an Illinois state-court judge, Scott Slawinski, Edward Glazar Jr., Morgan & Glazar Law, Kimberly S. Donald, and Rhonda J. Marrs.

Because Petitioner is not a corporation, a corporate disclosure statement is not required under Supreme Court Rule 29.6

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit.

OPINIONS BELOW

The Seventh Circuit's order is unpublished and reproduced at Pet.A1. The district court order is unpublished and reproduced at Pet.A6.

JURISDICTION

The Seventh Circuit entered judgment on September 8, 2020 and denied rehearing on May 13, 2021. Pet.A11. Pursuant to this Court's order of March 19, 2020, this petition's filing date was extended 150 days; to October 10, 2021. The Court has jurisdiction under 28 U.S.C. §1254(1).

STATEMENT OF THE CASE

A. Zawistowski and Marrs entered into a joint parenting agreement in January 2006, they agreed to share joint custody of their twin sons; they agreed Marrs would have residential custody and Zawistowski paid child support. In 2010 Zawistowski, alleging a change in circumstances, filed a petition to modify the custodial arrangement; the change was denied in state court and affirmed upon appeal. see *R.M. v. D.Z.*, 2013 IL App (3d) 120846-U (Ill. App. Ct. 2013)

Afterwards Zawistowski filed a federal suit against Judge Kramer for conspiring with Marrs and both parties' lawyers to reach a predetermined outcome in child support and child custody petitions. See *Zawistowski v. Kramer*, No. 2:14-cv-02129 (C.D. Ill. June 2, 2014). The district court determined it had

jurisdiction pursuant to 28 U.S.C. §1331, dismissing the complaint the court ruled that the judge was protected by judicial immunity and that no facts plausibly supported the allegations of conspiracy. *See Order*, No. 2:14-cv-02129 (C.D. Ill. Jan. 7, 2015). After filing his federal complaint Zawistowski alleges he was informed by his sons that Marrs had stated the "lawyers" were going to "f-ck him up." D1.50

In May 2012, prior to the conclusion of the 2010 proceedings, Marrs filed a petition to terminate joint custody; Zawistowski filed a counter petition to terminate and a response, both parties requested the termination of joint custody and both sought sole custody. ("2012 custody petitions") D1.7. Pursuant to statute, 750 ILCS 5/610(b), the state court was required to terminate joint custody. D1.8. Zawistowski alleges Judge Kramer, Sliwinski, Zawistowski's attorney, and Glazar, Marr's attorney, were aware of this requirement and that prior to the filing of the 2012 petitions Judge Kramer, Sliwinski, and Glazar had a meeting of the minds where they concocted and agreed upon a plan to "undue" the requirements of 750 ILCS 610(b) and the agreement of the parents to terminate joint custody. D1.9-10. On June 29, 2012 Judge Kramer was formally "informed" of the 2012 petitions to terminate, at which time Glazar "withdrew" Marrs' petition. Judge Kramer, Sliwinski, and Glazar then "pretended" Zawistowski's 2012 petition had not been filed D1.10-11; none of the defendants took any actions on the 2012 custody petitions after that day. D1.13.

On August 20, 2013, while the 2012 custody petitions were still pending, Judge Kramer, while speaking to Zawistowski, stated "you're not entitled to a reduction in your child support or a change in the residential custody of the two boys... That's already been determined." "That has been decided by the Court,

and we don't need to decide it again." D1.15 Marrs and Glazar continued participating in child custody and child support proceedings after Judge Kramer "slip of the tongue." D1.15. At this time petitions to modify child support, filed by both parties in 2010, were pending. D1.15.

At the conclusion of hearings on the 2010 child support petitions Judge Kramer increased Zawistowski's support obligation from $150 a week to $345 a week and found an arrearage. Zawistowski appealed and the Illinois state appellate court reversed holding that Judge Kramer abused his discretion by disallowing evidence that was necessary to determine Zawistowski had a change in income. *see Marrs v. Zawistowski,* 2014 IL App (3d) 130924-U, 2014 WL 3811079 (Ill. App. Ct. 2014) After the mandate was issued Judge Kramer informed the federal court the Illinois appellate court reversed and remanded for more evidence. *See Order*, No. 2:14-cv-02129 (C.D. Ill. Jan. 7, 2015) On January 27, 2016, Judge Kramer admitted the appellate courts order intended Zawistowski's child support obligation return to $150 a week. D1.34

After August 20, 2013 Glazar filed a motion, pursuant to 750 ILCS 610(b), asking the court to dismiss Zawistowski's 2012 custody petition. Instead, Judge Kramer entered an order which "struck" Zawistowski's request for residential custody of his children. Over Zawistowski's objection, Judge Kramer said his order would stand. On June 23, 2015 both Judge Kramer and Glazar reversed their previous positions and both admitted the provisions of 750 ILCS 610(b) didn't apply; Judge Kramer wouldn't answer why he granted the prior motion and entered an order. D1.20.

The complaint gives further details of events occurring in the state court proceedings. Which include

Donald, the mediator and Marr's attorney, filing false mediator reports, Judge Kramer entering rules to show cause when no civil contempt petitions had been filed, Judge Kramer threatening Zawistowski, Glazar and Marrs filing false contempt petitions, etc. D1.

A hearing on the 2012 custody petitions began on October 4, 2016, it did not conclude; after several requests by Zawistowski Judge Kramer refused to schedule a date to finish the hearing, it was repeatedly continued. D1.37 On April 6, 2017, Zawistowski was absent from a status hearing, Judge Kramer knowing Zawistowski didn't receive a notice of the status date, dismissed the 2012 custody petitions and all of Zawistowski's pending petitions. D1.42 Zawistowski appealed, but the Illinois Appellate Court dismissed the appeal as moot because the children had reached the age of majority. *See Marrs v. Zawistowski*, 2019 IL App (3d) 170731-U, 2019 WL 6313536 (Ill. App. Ct. 2019). Pet.A1-2.

On October 3, 2018, while the state appeal was pending, Zawistowski returned to federal court and filed a 17 count complaint, under 28 U.S.C. § 1331, against the defendants. He alleged the judge predetermined the result of the proceedings, knowingly accepted false statements and fraudulent filings, and otherwise conspired with the other defendants to violate his rights to procedural due process and to decide matters about his children's care. Judge Kramer's adverse rulings, he continued, were part of a plot by the defendants to retaliate against him for filing his first federal complaint and appealing a child-support order. Zawistowski also accused Marrs, her lawyer, and the mediator of malicious prosecution and abuse of process under state law, and his former lawyer of legal malpractice. D1, Pet.A3.

Count 1 asserts a due process claim pursuant to 42 U.S.C. § 1983, that the defendants acted under the color of state law through willful participation in joint activity and or willfully conspiring [with] Judge Kramer regarding his 2012 custody petition to terminate. That the defendants willfully and intentionally interfered with Zawistowski's due process right of having judgement rendered only after a reasonable inquiry and after a meaningful trial. (i.e. the outcome was predetermined) For damages, Zawistowski claimed if not for the defendants' actions he would have enjoyed sole custody of his minor children, would have received child support and had his child support obligation terminated. (i.e. he would have prevailed) Zawistowski also claimed he has suffered emotional distress and the loss of his children's society. Count 2 asserts the same due process claim as Count 1 but applies the violation to Marrs's 2012 custody petition to terminate. Count 3 asserts a constitutional violation pursuant to 42 U.S.C. § 1983, the fundamental right to make parental decisions concerning the care, custody and control of one's children. (Zawistowski claims the defendants violated both his and Marrs's right to make determinations regarding the best interest of their children.) Count 4 asserts a claim for unlawful intimidation of a party pursuant to 42 U.S.C. § 1985(2) clause one. Count 5 asserts a due process claim pursuant to 42 U.S.C. § 1983 regarding the 2010 child support petitions. Counts 6-11 assert first amendment retaliation claims pursuant to 42 U.S.C. § 1983 D1.53-64.

The remaining counts are Illinois state claims; Count 12 is a claim for legal malpractice against Sliwinski; counts 13-15 are claims for abuse of process and counts 16-17 are claims for malicious prosecution. D1.65-71

B. The district court ruled that Judge Kramer and the mediator, Donald, were immune from suit and dismissed the claims against them with prejudice. The court also concluded Zawistowski's remaining federal claims were barred by the domestic relations exception to federal jurisdiction, which divests federal courts of power to hear divorce, alimony, and custody matters. See *Ankenbrandt v. Richards*, 504 U.S. 689, 692 (1992). To the extent some of his claims challenged a final state court judgment, the court added, those were barred by the Rooker-Feldman doctrine. *See District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923). Having dismissed Zawistowski's federal claims, the court relinquished jurisdiction over his state-law claims and denied his motion for entry of a default judgment on grounds that it lacked jurisdiction. Pet.A8-9.

C. On appeal Zawistowski challenged the district court's application of the domestic-relations exception. Zawistowski emphasized the exception is narrow and asserted it was inapplicable because he sought damages for the defendants' wrongful actions, rather than the issuance of any child-support or child-custody orders. Pet.A4.

The Seventh circuit ruled Zawistowski's federal claims, which attacked the defendants' actions during family-court proceedings, all fall within the exception. Unlike a plaintiff whose case merely "touch[es] on the subject" of children or marriage, see *Arnold v. Villareal*, 853 F.3d 384, 387 n.2 (7th Cir. 2017), Zawistowski wants the federal court to intervene in a contested domestic-relations matter that has been reserved to the state court. Struck v. Cook Cty. Pub. Guardian, 508 F.3d 858, 860 (7th Cir. 2007). In his complaint, he details the parties' procedural missteps in state court and

Judge Kramer's purported errors while presiding over the case, but nowhere does he allege any conduct or injuries outside of the child-support and child-custody proceedings. An adjudication of his request for damages would require the district court to re-evaluate the merits of those proceedings. See *Allen v. Allen*, 48 F.3d 259, 261–62 (7th Cir. 1995). Pet.A4.

However, dismissal of a complaint for lack of subject-matter jurisdiction—as is the case here—should be without prejudice. See FED. R. CIV. P. 12(b)(1); Lewert v. P.F. Chang's China Bistro, 819 F.3d 963, 969 (7th Cir. 2016). We modify the judgment accordingly.

Because the district court lacked subject-matter jurisdiction, we do not consider Zawistowski's other contentions that the district court erred in determining immunity, in dismissing his state-law claims, and in refusing to enter a default judgment against the mediator who filed her answer in untimely fashion. See *Jones v. Brennan*, 465 F.3d 304, 308 (7th Cir. 2006) ("[I]mmunity is a defense rather than a jurisdictional defect."); *Mains v. Citibank*, N.A., 852 F.3d 669, 679 (7th Cir. 2017) (addressing supplemental jurisdiction over state-law claims); see *Swaim v. Moltan Co.*, 73 F.3d 711, 716 (7th Cir. 1996) (addressing the relationship between subject-matter jurisdiction and entries of default judgment). Pet.A5.

REASONS FOR GRANTING THE WRIT

The Court should grant certiorari to address whether the domestic relations exception applies to federal question jurisdiction under 28 U.S.C. § 1331 because the lower federal courts are deeply divided on the issue. The issue arises frequently and is critical to the federal courts proper exercise of jurisdiction, and the Seventh Circuit decided it incorrectly.

I. The lower federal courts of appeals are divided on the question presented.

1. Since *Ankenbrandt*, application of the domestic relations exception has caused confusion among the lower courts. "[I]n truth, the domestic relations exception to federal jurisdiction is not the most coherent of doctrines... Not surprisingly, the lower courts have disagreed on the precise nature of the doctrine." *Catz v. Chalker*, 142 F.3d 279, 290 (6th Cir. 1998) The lower courts continue to diverge widely on both the application and scope of the exception.

2. The domestic relations exception is applied only as a judicially implied limitation on diversity jurisdiction. *Ankenbrandt*, 504 U.S. 689, 700-01 (1992) (observing that the exception is grounded in traditional construction of the diversity statute and has no constitutional foundation)

Some circuits recognize the exception applies only to diversity jurisdiction and not federal question jurisdiction. *See Atwood v. Fort Peck Tribal Court Assiniboine*, 513 F.3d 943, 947 (9th Cir. 2008) ("We therefore join the Fourth and Fifth Circuits in holding that the domestic relations exception applies only to the diversity jurisdiction statute."); *United States v. Williams*, 121 F.3d 615, 620 (11th Cir. 1997) (rejecting defendant's constitutional challenge to the Child Support Recovery Act on several grounds, the court stated that the defendant's attempt to invoke the domestic relations exception was not relevant, because the exception applied only in diversity cases); *United States v. Bailey*, 115 F.3d 1222, 1231 (5th Cir. 1997) ("Because this case clearly arises under this Court's federal question jurisdiction, the domestic relations exception presents no bar."); United States v. Johnson, 114 F.3d 476, 481 (4th Cir. 1997) ("The 'jurisdictional exception,' in the first place, is applied only as a

judicially implied limitation on the diversity jurisdiction; it has no generally recognized application as a limitation on federal question jurisdiction."); *Williams v. Lambert*, 46 F.3d 1275, 1283 (2d Cir. 1995) (stating that "the general policy that federal courts should abstain from deciding cases that involve matrimonial and domestic relations issues is not applicable here [in federal-question cases]").

The First, Sixth, Seventh, Eighth, and Circuits recognize the exception lies within both diversity and federal question jurisdiction. *See Catz v. Chalker*, 142 F.3d 279, 291 (6th Cir. 1998) (holding that the exception applies to federal questions only in "core" domestic relations cases); *See Allen v. Allen*, 48 F.3d 259, 260-61 (7th Cir. 1995) (applying domestic relations exception to non-diversity dispute).

The Tenth Circuit has declined to apply the exception in federal question cases. *See Johnson v. Rodrigues*, 226 F.3d 1103, 1111-12 (10th Cir. 2000) (reserving judgment on whether the domestic relations exception applies to proceedings involving an exercise of federal question jurisdiction).

3. The domestic relations exception encompasses "a narrow range of domestic relations issues" namely, those "involving the issuance of a divorce, alimony, or child custody decree." *Ankenbrandt v. Richards*, 504 U.S. 689, 701, 704 (1992); This Court has also re-emphasized "that the [domestic-relations] exception covers only 'a narrow range of domestic relations issues,'" *Marshall v. Marshall*, 547 U.S. at 307, 126 S.Ct. 1735 (quoting *Ankenbrandt*)

The First, Third, Fourth, Fifth, and Sixth Circuits adhere to the narrow range and apply a core approach to the exception. *See Norton v. McOsker*, 407 F.3d 501, 505 (1st Cir. 2005) ("The domestic relations exception 'divests the federal courts of power to issue divorce,

alimony, and child custody decrees.'" (quoting *Ankenbrandt*)); *Matusow v. Trans-Cty. Title Agency, LLC*, 545 F.3d 241, 246 (3d Cir. 2008) (explaining that the plaintiff did "not seek the modification of a divorce decree, and the narrow domestic relations exception [did] not divest the federal court of jurisdiction over her claims"); *Reale v. Wake Cty. Human Servs.*, 480 F. App'x 195, 197 (4th Cir. 2012) ("[T]he domestic relations exception encompasses only cases involving the issuance of a divorce, alimony, or child custody decree." (quoting *Ankenbrandt*)); *United States v. Bailey*, 115 F.3d 1222, 1231 (5th Cir. 1997) ("Federal courts have long divested themselves of jurisdiction over only the issuance of divorce, alimony, and child custody decrees ..."); *Chevalier v. Estate of Barnhart*, 803 F.3d 789, 795 (6th Cir. 2015) ("The message from *Ankenbrandt* and *Marshall* is clear: the domestic relations exception is narrow, and lower federal courts may not broaden its application.")

The Second and Seventh Circuits have rejected this narrow range and recognize a core and penumbra approach which expands *Ankenbrandt* by attempting to account for cases involving abuse, neglect, guardianship, and adoption. Although the Court did recognize abstention principles, it was nothing more than dicta. See *Ankenbrandt*, 504 U.S. at 705 (noting that it may be appropriate for courts to abstain from exercising subject matter jurisdiction "in a case involving elements of the domestic relationship even when the parties do not seek divorce, alimony, or child custody"). *See Friedlander v. Friedlander*, 149 F.3d 739, 740 (7th Cir. 1998) (In addition to divorce, alimony, and custody cases, the domestic relations exception includes a penumbra of ancillary cases.) Although, the Second Circuit doesn't use the label "core and penumbra," they assess claims using the same

process. *See Keane v. Keane*, 549 F. App'x 54, 55 (2d Cir. 2014) ("[I]t may be appropriate for courts to abstain from exercising subject matter jurisdiction 'in a case involving elements of the domestic relationship even when the parties do not seek divorce, alimony, or child custody.'" (quoting *Ankenbrandt*))

The Eighth Circuit recognizes an inextricably intertwined approach, by examining whether the federal court's remedy or inquiry will overlap with that of a state court. *See Kahn v. Kahn*, 21 F.3d 859, 861 (8th Cir. 1994); *Wallace v. Wallace*, 736 F.3d 764, 767 (8th Cir. 2013) The Eleventh Circuit applies a factor based approach using abstention principles in which the court evaluates identified factors to determine if the exception applies. *See Crouch v. Crouch*, 566 F.2d 486, 487 (5th Cir. 1978)

Intra-circuit splits regarding the exception exist in at least the Second, Third, Sixth, Seventh, Eighth, and Ninth Circuits. The obscurity of the lower courts' case law represents the domestic relations exception and its scope continues to be unclear in spite of this Courts limitations set forth in *Ankenbrandt*.

II. The case presents an issue of national importance.

The importance of ensuring similarly situated litigants receive similar jurisdictional determinations cannot be understated. If our federal courts relinquish their constitutional duties to adjudicate cases within their subject matter jurisdiction, the controlling doctrine should be abundantly clear. That way individuals like Zawistowski wouldn't receive two different results on identical same claims from the same court.

This Court has repeatedly admonished lower courts that they "have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is

not given." *Cohens v. Virginia*, 6 Wheat. 264, 404 (1821), quoted in *Marshall v. Marshall*, 547 U.S. 293, 298-99 (2006). The Court has found it necessary from time to time to correct far-reaching interpretations of judicially created jurisdictional exceptions, reining in the "domestic relations exception" in *Ankenbrandt v. Richards*, 504 U.S. 689 (1992), and the "probate exception" in *Markham v. Allen*, 326 U.S. 490 (1946), and again in *Marshall*.

It's not a matter of should this question presented be addressed by the Court it's a matter of when. "I would leave for another day consideration of whether any domestic relations cases necessarily fall outside of the jurisdiction of the federal courts and of what, if any, principle would justify such an exception to federal jurisdiction." Ankenbrandt, 504 U.S. at 718 (Stevens, J., concurring).

III. The Seventh Circuit decision is incorrect.

Zawistowski also argued the district court erred applying the Rooker-Feldman doctrine against his claims; the Seventh Circuit didn't address the briefing in their order. C7.11.

The doctrine comes from two cases: *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923), and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983). If a state court judgment itself is the cause of the injury, the Rooker Feldman doctrine prevents jurisdiction. To determine whether a claim is barred by the doctrine, the key inquiry is whether the plaintiff seeks to have the state court judgment set aside. *See Exxon Mobile Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005) (Rooker-Feldman doctrine is confined to "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" (emphasis added)) The doctrine does not prevent state-court losers from presenting independent claims to a federal district court, even if the new claims involve questions related to those in the original state court proceedings. *Skinner v. Switzer,* 562 U.S. 521, 522 (2011) C47.8.

The Seventh Circuit used the Rooker-Feldman doctrine as proxy for expanding the domestic relations exception; The Seventh Circuit stated, "An adjudication of his request for damages would require the district court to re-evaluate the merits of those proceedings. *See Allen v. Allen*, 48 F.3d 259, 261-62 (7th Cir. 1995)."

Zawistowski cannot show injury from his alleged conspiracy unless the decision in the state court was erroneous. Assuming that although there was this nefarious conspiracy Zawistowski would not have prevailed had there been no conspiracy. Then the alleged conspiracy did him no harm and without harm there is no tort, *Niehus v. Liberio,* 973 F.2d 526, 531-32 (7th Cir. 1992), a principle as applicable to constitutional torts as to common law torts. *Buckley v. Fitzsimmons,* 20 F.3d 789, 796 (7th Cir.1994). c47.10.

To show harm and keep the present suit alive, Zawistowski is required to show the state-court decision was erroneous. While it may appear the Rooker Feldman doctrine bars him from doing so, but the doctrine is not that broad. If Zawistowski claimed the decision of the state court was incorrect, even if it denied him some constitutional right, Rooker Feldman would indeed bar his claim. By claiming the person involved in the decision violated an independent right of his, such as not having a decision predetermined, Zawistowski can sue to vindicate that right and show as part of his claim for damages the violation caused the decision to be adverse to him and thus did him

harm. *Nelson v. Murphy,* 44 F.3d 497, 503 (7th Cir. 1995) Otherwise there would be no federal remedy for a violation of federal rights whenever the violator so far succeeded in corrupting the state judicial process as to obtain a favorable judgment. *See Dennis v. Sparks,* 449 U.S. 24, (1980). C47.10.

Here, Zawistowski didn't claim the Illinois court judgements were incorrect, the Seventh Circuit made that conclusion, or that they were in violation of the Constitution. Instead, Zawistowski claimed that a judge involved in the decision and private individuals acting jointly with the judge violated some independent right," the right not to have a decision predetermined. *Nesses v. Shepard,* 68 F.3d at 1005 (7th Cir. 1995) The alleged agreement to reach a predetermined outcome in a case would itself violate constitutional rights independently of the state court decisions. C7.12, C47.11.

Regardless of the merits of the Illinois court decisions, if Zawistowski could prove the existence of a conspiracy to reach a predetermined outcome in state court, he could recover nominal damages for this due process violation. *Carey v. Piphus,* 435 U.S. at 262-64, 266 (1979). Zawistowski's entitlement to such damages could be assessed without any analysis of the state-court judgments. To recover for more than the alleged due process violation, Zawistowski would have to show that the adverse state-court decisions were entered erroneously. *See Nesses,* 68 F.3d at 1005. C47.11.

Zawistowski may, "as part of his claim for damages," show "that the constitutional violation caused the decision[s] to be adverse to him and thus did him harm." *Id,* 68 F.3d at 1005. A finding by the district court the state court decisions were erroneous and thus injured Zawistowski would not result in overruling the judgments of the Illinois courts.

Pursuant to *Exxon Mobil,* a federal plaintiff may not seek "review and rejection" of state-court judgments. See *Exxon*, 544 U.S. at 284. Here, while Zawistowski's claim for damages may require review of state-court judgments and even a conclusion that they were erroneous, those judgments would not have to be rejected or overruled for him to prevail. Accordingly, the review and rejection requirement of the Rooker-Feldman doctrine is not met. C47.8-11.

This is where the Seventh Circuit invokes the domestic relations exception, "An adjudication of his request for damages would require the district court to re-evaluate the merits of those proceedings." The domestic relations exception does not extend to independent civil actions. *See Lloyd v. Loeffler*, 694 F.2d 489, 491 (7th Cir. 1982). This is true even if the independent civil action is, in an abstract sense, a continuation of a custody battle resolved in state court. *See id.* at 491. C47.12.

"Adjudication of plaintiff's alleged civil rights violation, to the extent she seeks damage relief (a claim which is not yet ripe), would not require the court to exercise jurisdiction over or resolve state law matters within the scope of the domestic relations exception." *Sipka v. Soet*, 761 F. Supp. 761 - Dist. Court, D. Kansas 1991. See also *Catz v. Chalker*, 142 F.3d 279 (6th Cir. 1998) see also *Hooks v. Hooks*, 771 F.2d 935, 942 (6th Cir. 1985) ("adjudication of the alleged civil rights violation to the extent it seeks damages does not require the court to exercise jurisdiction over or resolve any of those state law matters within the scope of the domestic relations exception"). C47.12.

Zawistowski's claims present the same scenario, he isn't requesting the federal courts to exercise jurisdiction or resolve state matters or for the entry of a decree or relief normally reserved for state court

domestic relations. Again, as this Court has noted, the decisions establishing the doctrine "did not intend to strip the federal courts of authority to hear cases arising from the domestic relations of persons unless they seek the granting or modification of a divorce or alimony decree." *Ankenbrandt v. Richards*, 504 U.S. 689, 701-02 (1992). C47.

The Seventh Circuit's reliance upon *Allen* is misplaced; in *Allen* the court found no federal jurisdiction in an action brought by a husband against his wife's ex-husband and state-court judge alleging that granting ex-husband visitation rights violated husband's federal constitutional rights. *Allen* sought relief in the form of an altered custody decree. See *Allen v. Allen*, 48 F.3d 259, 261 (7th Cir. 1995) Here, Zawistowski seeks no such remedy. C.47.

Lastly, the Seventh Circuit knew the children had reached the age of majority and their custodial status as well as the custodial rights of the parents were no longer relevant or at issue.

CONCLUSION

This Court should grant certiorari.

Respectfully submitted,

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October 2021