

APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE
SEVENTH CIRCUIT

No. 19-3074

DAVID J. ZAWISTOWSKI, Plaintiff-Appellant,

v.

MICHAEL D. KRAMER, et al., Defendants-Appellees.

[Submitted August 26, 2020*]

Decided September 8, 2020]

ORDER

Before: MICHAEL S. KANNE, ILANA DIAMOND
ROVNER, and AMY C. BARRETT, Circuit Judges.

David Zawistowski is dissatisfied with the outcome of a child-support and child-custody dispute in state court. In this federal suit, his second against the judge who presided over the state court's proceedings, he accuses the judge, a mediator, his children's mother, and both parties' lawyers of conspiring to violate his constitutional rights and several state laws. *See* 42 U.S.C. §§ 1983, 1985. The district court dismissed his complaint, ruling that the judge and mediator were immune from suit and that it lacked jurisdiction over his other claims. We affirm the judgment with one modification.

* Defendants Rhonda Marrs and Morgan & Glazar Law are not participating in this appeal. We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

Zawistowski waged a lengthy child-support and child-custody battle in Illinois state court against Rhonda Marrs, the mother of his children. The two disagreed over child support and, in 2012, decided they no longer could jointly parent their children. After two years, during which Marrs withdrew her petition for sole custody and Zawistowski successfully appealed a child-support ruling, *see Marrs v. Zawistowski*, 2019 IL App (3d) 130924-U, 2014 WL 3811079 (Ill. App. Ct. 2014), Judge Michael Kramer ordered mediation. Zawistowski objected that the mediator had a conflict of interest because she had represented Marrs in a related matter, but the judge rejected that objection. In the end, the parties failed to reach an agreement.

In the meantime, Zawistowski filed his first federal suit against Judge Kramer for conspiring with Marrs and both parties' lawyers to thwart his child-support and child-custody petitions. *See Zawistowski v. Kramer*, No. 2:14-cv-02129 (C.D. Ill. June 2, 2014). The district court dismissed his complaint, ruling 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). Zawistowski did not appeal.

Proceedings continued in state court on Zawistowski's child-support and child-custody petitions. Zawistowski sought to have Judge Kramer recuse himself on grounds of bias toward Marrs, but his request was denied. Later, when the parties signaled in the middle of trial that they agreed on most issues, the judge again ordered mediation. Zawistowski, however, failed to appear for a scheduled hearing, and the judge later dismissed the case for want of prosecution. Zawistowski appealed that ruling, but the Illinois Appellate Court dismissed his appeal as moot because his children by this time had reached the age of

majority. See *Marrs v. Zawistowski*, 2019 IL App (3d) 170731-U, 2019 WL 6313536 (Ill. App. Ct. 2019).

While his state-court appeal was pending, Zawistowski returned to federal court and filed this suit against Judge Kramer, Marrs, her lawyer, the mediator, and his former lawyer. In a lengthy complaint, he alleged that the judge predetermined the result of the proceedings, misapplied domestic-relations law, 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.

Judge Kramer, Marrs, and Zawistowski's former lawyer filed motions to dismiss, contending that the court lacked jurisdiction over Zawistowski's claims and that several were barred by the doctrine of res judicata. Neither the mediator nor Marrs's lawyer joined these motions, though they filed untimely answers after Zawistowski moved for entry of a default judgment against the mediator.

The district court dismissed the complaint. The court ruled that Judge Kramer and the mediator were immune from suit and dismissed the claims against them with prejudice. The court also concluded that 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 against the mediator on grounds that it lacked jurisdiction.

On appeal Zawistowski challenges the district court's application of the domestic-relations exception to his case. He emphasizes that the exception is narrow and asserts that it is inapplicable because he seeks damages for the defendants' wrongful actions, rather than the issuance of any child-support or child-custody orders.

But Zawistowski's federal claims, which attack 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). 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).

We have considered Zawistowski's remaining arguments, and none has merit.

We AFFIRM the district court's judgment, though we modify it to be without prejudice.

APPENDIX B

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION

Case No. 18-cv-2255

DAVID J. ZAWISTOWSKI, Plaintiff,

v.

MICHAEL D. KRAMER, SCOTT N. SLIWINSKI,
EDWARD S. GLAZAR JR., MORGAN & GLAZAR LAW,
KIMBERLEY M. DONALD, RHONDA J. MARRS,,
Defendants.

[September, 30 2019]

ORDER

Before: COLIN S. BRUCE, U.S. District Judge

Plaintiff filed his Complaint (#1) on October 3, 2018. Defendant Marrs filed a Motion to Dismiss (#12) on January 28, 2019; Defendant Sliwinski filed a Motion to Dismiss (#16) on February 7, 2019; Defendant Kramer filed a Motion to Dismiss (#20) on February 11, 2019. Plaintiff filed a Response (#23) to Defendant Marrs' motion on February 12, 2019; and a Response (#30) to Defendant Kramer's motion on February 28, 2019. Defendants Glazar, Morgan & Glazar Law, and Donald did not timely file motions to dismiss or answers to the Complaint; Donald has filed a Motion for Extension of Time to File (#38), and Glazar has filed a Motion for Leave to File Instantly (#40). Also pending is Plaintiff's Motion for Entry of Default (#36) against Defendants Glazar, Morgan & Glazar Law, and Donald. Plaintiff is a disappointed state-court domestic relations litigant. The underlying case in

Kankakee County, Illinois, Circuit Court was filed in 2005. Plaintiff takes issue with various decisions made by Defendant Kramer, the judge who presided over Plaintiff's family case for several years. The other defendants to this suit include Marrs, the mother of the children the state court case relates to, Sliwinski, Plaintiff's former lawyer, Glazar, Marrs' lawyer, and Donald, the court-appointed mediator. Plaintiff brings suit pursuant to 42 U.S.C. §§ 1984 and 1985, alleging violations of his rights under the First, Fifth, Eighth, Ninth and Fourteenth Amendments to the Constitution. All claims for violations of his federal constitutional rights are predicated on a theory that all named defendants conspired with Judge Kramer, a state actor, to deprive him of those rights.

Plaintiff also brings supplemental state law claims. There is no diversity of citizenship among the parties; the alleged basis for jurisdiction in this court is federal question jurisdiction under 28 U.S.C. § 1331 and supplemental jurisdiction under 28 U.S.C. § 1367. Under Rule 8(a)(2) of the Federal Rules of Civil Procedure, a complaint must include "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is Plaintiff also brings supplemental state law claims. There is no diversity of citizenship among the parties; the alleged basis for jurisdiction in this court is federal question jurisdiction under 28 U.S.C. § 1331 and supplemental jurisdiction under 28 U.S.C. § 1367. Under Rule 8(a)(2) of the Federal Rules of Civil Procedure, a complaint must include "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). "To survive a motion to dismiss, 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)). Further, the court "has an obligation to raise sua sponte whether the [c]ourt has subject matter jurisdiction." *Regions Bank v. MMIL Entm't, LLC*, 2019 WL 2375118, at *2 (C.D. Ill. June 5, 2019) (citing *Craig v. Ontario Corp.*, 543 F.3d 872, 875 (7th Cir. 2008)).

There is no question that Judge Kramer is entitled to judicial immunity from suit. See *Cooney v. Rossiter*, 583 F.3d 967, 970 (7th Cir. 2009); *John v. Barron*, 897 F.2d 1387, 1392 (7th Cir. 1990); *Forester v. White*, 484 U.S. 219, 225-29 (1988). All claims against Kramer arise out of his decisions and actions in presiding over Plaintiff's case. Plaintiff argues Kramer is being sued for conduct outside his duties as a judge. The court disagrees. Kramer presided over Plaintiff's family case, Plaintiff was disappointed with many of his rulings, and indeed Kramer erred in some of his rulings,¹ but Kramer's involvement squarely stems from discharging his duties as a judge. All claims against Defendant Kramer are DISMISSED with prejudice.

There is also no question that Donald, the court-appointed mediator, is entitled to immunity as an "arm of the court." See *Cooney*, 583 F.3d at 970 ("Guardians ad litem and court-appointed experts, including psychiatrists, are absolutely immune from liability for damages when they act at the court's direction."). All claims against Defendant Donald are DISMISSED with prejudice.

This court lacks jurisdiction over the remainder of Plaintiff's federal claims because of the domestic relations exception to federal jurisdiction. Plaintiff has had a full opportunity to respond to Defendants'

arguments that this court lacks jurisdiction, and none of his arguments are persuasive.

"[T]he domestic-relations exception to federal jurisdiction blocks federal adjudication of cases involving divorce, alimony, and child custody decrees." *Syph v. Arce*, 772 F. App'x 356, 357 (7th Cir. 2019) (citation omitted). "Ordinarily, this exception applies to assertions of jurisdiction based on diversity of citizenship, but it also applies to assertions of federal-question jurisdiction." *Id.* Plaintiff's allegations squarely relate to the way his state family case played out, and therefore this court does not have jurisdiction to adjudicate his claims.

And, to the extent certain of Plaintiff's claims are challenges to final rulings in the underlying state court case, the *Rooker-Feldman* doctrine divests this court of jurisdiction. See *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923).

Therefore, the court finds that it does not have subject matter jurisdiction over Plaintiff's remaining claims.

Having dismissed all of Plaintiff's federal claims for lack of jurisdiction, the court now, in its discretion, given the early stage of these proceedings, relinquishes jurisdiction over Plaintiff's state law claims, which are dismissed without prejudice. See *RWJ Mgmt. Co. v. BP Prod. N. Am., Inc.*, 672 F.3d 476, 482 (7th Cir. 2012).

Regarding Plaintiff's Motion for Entry of Default, this court cannot enter default judgment where it lacks jurisdiction. See *Syph*, 772 F. App'x at 357. Plaintiff's Motion for Entry of Default is DENIED.

IT IS THEREFORE ORDERED THAT:

- 1) Defendants' Motions to dismiss (#12, #16, #20) are GRANTED. This case is DISMISSED due to

judicial immunity and for lack of subject matter jurisdiction.

- 2) Plaintiff's Motion for Entry of Default (#36) is DENIED.
- 3) Motions (#38, #40) are DENIED as MOOT.
- 4) This case is terminated.

ENTERED this 30th day of September, 2019.

s/ Colin Stirling Bruce

COLIN S. BRUCE
U.S. DISTRICT JUDGE

APPENDIX C

UNITED STATES COURT OF APPEALS FOR THE
SEVENTH CIRCUIT

No. 19-3074

DAVID J. ZAWISTOWSKI, Plaintiff-Appellant,

v.

MICHAEL D. KRAMER, et al., Defendants-Appellees.

[May 13, 2021]

ORDER

Before: MICHAEL S. KANNE, ILANA DIAMOND
ROVNER, Circuit Judges.

No judge of the court having called for a vote on the Petition for Rehearing and Rehearing En Banc, filed by Plaintiff-Appellant on October 21, 2020, and all of the judges on the original panel* having voted to deny the same, IT IS HEREBY ORDERED that the Petition for Rehearing and Rehearing En Banc is DENIED.

* Circuit Judge Barrett was a member of the panel when this case was decided on September 8, 2020; however, she did not participate in the consideration of the petition for rehearing. The petition is resolved by a quorum of the panel pursuant to 28 U.S.C. §46(d).