

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 21-1596

OLIVER VAUGHN:DOUCE, Al Dey Consul Inpropra Persona, Sui Juris
Appellant

v.

NEW JERSEY DIVISION OF CHILD PROTECTION AND PERMANENCY;
MADELIN F. EINBINDER; KERI POPKIN; MELISA H. RASKA; MICHELE
SCENNA; MORGAN KOWSKY; ALEXIS POLLOCK; KEITH MILLER; CARINA
SHORTINO; PAMELA PETERSON; KENNETH MCTIGUE; DR. PUGLIA; LORI
LESSIN, PSY; DEPARTMENT OF CHILDREN AND FAMILIES; TOMS RIVER
HOSPITAL

On Appeal from the United States District Court
for the District of New Jersey
(D.C. Civil Action No. 3:20-cv-02619)
District Judge: Honorable Michael A. Shipp

Submitted Pursuant to Third Circuit LAR 34.1(a)
August 4, 2021
Before: CHAGARES, PHIPPS, and COWEN, Circuit Judges

JUDGMENT

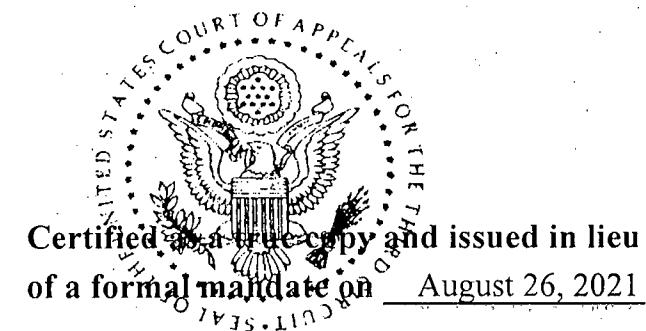
This cause came to be considered on the record from the United States District Court for the District of New Jersey and was submitted pursuant to Third Circuit LAR 34.1(a) on August 4, 2021. On consideration whereof, it is now hereby

ORDERED and ADJUDGED by this Court that the judgment of the District Court entered March 4, 2021, be and the same is hereby affirmed. All of the above in accordance with the opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

DATED: August 4, 2021



Teste: *Patricia S. Dodszuweit*
Clerk, U.S. Court of Appeals for the Third Circuit

NOT PRECEDENTIAL

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(Opinion filed: August 4, 2021)

OPINION*

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

PER CURIAM

Appellant Oliver Vaughn:Douce, proceeding pro se, appeals from the order dismissing his action in the District Court for lack of subject-matter jurisdiction. We will affirm.

Appellant, a New York resident, initiated this action in the District Court by filing a document nominally requesting a writ of habeas corpus pursuant to 28 U.S.C. §§ 2242 and 2243, purportedly on behalf of his minor daughter. He alleged that in June 2019, having not heard from his daughter's mother in over a year, he investigated and learned that the mother had died in October 2018. He then tried to locate his daughter, who was eight years old at the time, and discovered that Defendant New Jersey Division of Child Protection and Permanency ("NJDCPP"), had put her in a temporary living placement. According to Appellant's allegations and filed exhibits, immediately following the mother's death, NJDCPP conducted an investigation and, as part of that investigation, attempted to contact Appellant, but was unsuccessful in those attempts. The investigation noted that efforts would be made to contact him and other available relatives who could be assessed for possible placement for the child. Days after the mother's death, NJDCPP filed a complaint in state court naming both parents as defendants and requesting an order granting NJDCPP care and custody of the child on account of parental neglect. The complaint noted that Appellant's whereabouts were unknown and that NJDCPP was trying to contact him. Appellant eventually became aware of the proceedings and began litigating in state-court, representing himself. Following a January 2020 permanency

hearing, a state court accepted a plan of termination of Appellant's parental rights and determined that adoption was appropriate and acceptable for the child.¹ The order further stated that the child would continue in a placement outside the home, and that by a date in March 2020, NJDCPP should file to terminate Appellant's parental rights, and file for its own kinship legal guardianship or arrange to have the adoption complaint filed with the court by a date certain. Appellant thereafter filed a motion for leave to file an interlocutory appeal, which NJDCPP opposed in February 2020. It is unclear if and how that motion was resolved, or whether the proceedings have concluded. Another exhibit filed by Appellant, dated May 12, 2020, stated that a case management conference in preparation for trial had been scheduled for June 25, 2020.

In this case, which Appellant initiated in March 2020, Appellant alleged that his daughter was being held in an "illegal action for private financial gain" by NJDCPP, which was holding her "for ransom, attempting to use [a] psychologist to fabricate a report to the[ir] benefit to prolong, in order to assure[] the[ir] profit." Appellant appeared to attempt to bring state-law claims, as well as federal constitutional claims. In his initial filing, and subsequent filings, he requested injunctive relief in the form of custody of his daughter. In one filing he also indicated that he was seeking \$20 million in damages.

¹ The state-court order provided by Appellant references a section of the order that provides the rationale for its decision; however, Appellant appears to have omitted the page of the order containing that section.

The District Court screened the case pursuant to 28 U.S.C. § 1915 and dismissed the action for lack of jurisdiction. The District Court held in the alternative that if it did have jurisdiction, the Court would have abstained from hearing the case, pursuant to Younger v. Harris, 401 U.S. 37 (1971).

We have jurisdiction over this appeal pursuant to 28 U.S.C. § 1291, and we exercise plenary review over the District Court's dismissal of Appellant's action for lack of subject-matter jurisdiction, see Freidrich v. Davis, 767 F.3d 374, 377 (3d Cir. 2014), and also exercise plenary review over the question whether the requirements for abstention have been satisfied, see Miller v. Mitchell, 598 F.3d 139, 145-46 (3d Cir. 2010). We may affirm the court's decision on any basis supported by the record. See Murray v. Bledsoe, 650 F.3d 246, 247 (3d Cir. 2011) (per curiam).

As the District Court concluded, to the extent that Appellant sought habeas relief for his daughter, the Court lacked jurisdiction because placement in foster care does not qualify as "custody" for purposes of habeas corpus jurisprudence. Cf. Lehman v. Lycoming Cnty. Children's Servs. Agency, 458 U.S. 502, 510-11 (1982).

The District Court also concluded that, to the extent Appellant brought civil rights claims challenging state-court decisions regarding parental, custodial, and related rights, the Court lacked subject-matter jurisdiction over those claims pursuant to the domestic relations exception. "The Supreme Court has long recognized a domestic relations exception to federal diversity jurisdiction." Matusow v. Trans-County Title Agency, LLC, 545 F.3d 241, 245 (3d Cir. 2008) (citing Ankenbrandt v. Richards, 504 U.S. 689,

693-94 (1992)). This exception encompasses “cases involving the issuance of a divorce, alimony, or child custody decree.” Ankenbrandt, 504 U.S. at 704.

To the extent that these claims were brought under state law and sought to invoke the District Court’s federal diversity jurisdiction, see 28 U.S.C. § 1332, we agree with the District Court that the claims would be barred by the domestic relations exception because Appellant asserted them as a means to challenge child-custody proceedings and decisions in state court, see Matusow, 545 F.3d at 244-45.

However, we have held that, “[a]s a jurisdictional bar, the domestic relations exception does not apply to cases arising under the Constitution or laws of the United States.” See McLaughlin v. Pernsley, 876 F.2d 308, 312-13 (3d Cir. 1989) (internal citation and quotation marks omitted). Thus, to the extent that Appellant’s claims alleged federal constitutional violations, which invoke federal question jurisdiction, see 28 U.S.C. § 1331, the District Court erred in concluding that the claims were barred by the domestic relations exception.

As noted, the District Court alternatively concluded that it would abstain under Younger in light of the ongoing state-court proceedings. Younger abstention dictates that “[w]hen there is a parallel state criminal proceeding, federal courts must refrain from enjoining the state prosecution.” Sprint Commc’ns, Inc. v. Jacobs, 571 U.S. 69, 72 (2013). In Sprint, the Supreme Court noted that Younger has been extended to certain “civil enforcement proceedings,” and cited as an example a case involving “state-initiated proceedings to gain custody of children allegedly abused by their parents”. See id. at 79

(citing Moore v. Sims, 442 U.S. 415, 419-20 (1979)). Because Appellant's allegations and state-court exhibits establish that NJDCPP, a state agency, conducted an investigation and initiated the proceedings by filing a formal complaint against him to terminate his parental rights in favor of NJDCPP as legal guardian for purposes of pursuing adoption for the child, we agree that this case falls within the civil-enforcement-proceedings extension of Younger abstention. Cf. id. at 80 (rejecting the application of Younger and noting that a private corporation, rather than the state, initiated the action, and that no state authority conducted an investigation or lodged a formal complaint).

Therefore, we will affirm.

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On Appeal from the United States District Court
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(D.C. Civil Action No. 3-20-cv-02619)
District Judge: Honorable Michael A. Shipp

SUR PETITION FOR REHEARING

BEFORE: SMITH, Chief Judge, and MCKEE, AMBRO, CHAGARES, JORDAN,
HARDIMAN, GREENAWAY, Jr., SHWARTZ, KRAUSE, RESTREPO,
BIBAS, PORTER, MATEY, PHIPPS, COWEN, Circuit Judges

The petition for rehearing filed by appellant, Oliver Vaughn:Douce, Al Dey
Consul Inpropra Persona, Sui Juris, in the above captioned matter having been submitted
to the judges who participated in the decision of this Court and to all the other available
circuit judges of the Court in regular active service, and no judge who concurred in the
decision having asked for rehearing, and a majority of the circuit judges of the circuit in

regular active service who are not disqualified not having voted for rehearing by the Court en banc, the petition for rehearing by the panel and the Court en banc is denied. Judge Cowen's vote is limited to denying rehearing before the original panel.

BY THE COURT:

s/ Robert E. Cowen
Circuit Judge

DATED: October 1, 2021
Tmm/cc: Oliver Vaughn Douce

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

OLIVER VAUGHN DOUCE,

Plaintiff,

v.

NEW JERSEY DIVISION OF CHILD
PROTECTION AND PERMANENCY, et al.,

Defendants.

Civil Action No. 20-2619 (MAS) (TJB)

MEMORANDUM ORDER

SHIPP, District Judge

This matter comes before the Court upon Plaintiff Oliver Vaughn Douce's ("Plaintiff") *in forma pauperis* application ("IFP Application") under 28 U.S.C. § 1915. (IFP Appl., ECF No.

- 11.) The Court will grant Plaintiff's application pursuant to § 1915, direct the Clerk to file the
- ~ Habeas Corpus Petition (ECF No. 1), but dismiss the Habeas Corpus Petition and deny the
- ~ Emergent Motion for Stay and Injunction (ECF No. 8) for lack of subject matter jurisdiction.

I. BACKGROUND

Plaintiff proceeds *pro se* in this matter. Plaintiff alleges that in late June 2019, he became concerned that he had not heard from the mother of his daughter for over a year. (Habeas Corpus Pet. 3, ECF No. 1; Mot. for Order to Show Cause *3, ECF No. 1-3.)¹ According to Plaintiff, an online search revealed a photo of the mother and an obituary reporting that she had died. (Mot. for Order to Show Cause *3.) Following this discovery, Plaintiff reportedly contacted the state

¹ Page numbers preceded by an asterisk refer to the page number on the ECF header.

court in an effort to locate his daughter, who was then eight to nine years old. (*Id.*) Two weeks later, Plaintiff reportedly received a phone call from a person named Keith Miller, who “claim[ed] [Plaintiff] was missing[.]” (*Id.*) Subsequently, Plaintiff went to court in an effort to determine the status of his daughter, apparently learning “that she was just [in a] temporary place there because she had no family except her father[.]” (*Id.*) Plaintiff further alleges that at some point after he came forward, his daughter was “temporar[ily] held by some Uncle, Kenneth McTigue,” in violation of Plaintiff’s parental rights. (Habeas Corpus Pet. 3.) Plaintiff also takes exception to an alleged court-ordered surgery performed on his daughter without his consent. (*Id.*) Plaintiff maintains that he had informed officials that he “wanted to get [the surgery] done with the doctors in New York[.]” (Mot. for Order to Show Cause *3.) By September 2019, Plaintiff had filed “an interlocutory appeal with a habeas corpus in NJ Appellate Court about September 2019 to stop [D]efendant[s’] fraud[.]” (*Id.*) At the time he filed the current action, Plaintiff had not yet received a response from the appellate court. (*Id.*)

According to documents attached to Plaintiff’s Habeas Petition, on January 23, 2020, the Superior Court of New Jersey, Chancery Division, Family Part, entered an order directing Defendant New Jersey Division of Child Protection and Permanency (the “Division”) to “file to terminate parental rights[.]” (Order *4, Exs. A & B to Habeas Corpus Pet., ECF No. 1-2.) According to the same order, the daughter was to “continue[] in placement outside the home[.]” (*Id.*)

Plaintiff brought the current action seeking a writ of habeas corpus pursuant to 28 U.S.C. §§ 2242, 2243 on March 10, 2020. (ECF No. 1.) Plaintiff alleges that the Defendants have engaged in an “illegal action for private financial gain” with the Division holding Plaintiff’s daughter “for ransom, attempting to use psychologists to fabricate a report to the[ir] benefit to

to prolong, in order to assure[] the[ir] profit." (Habeas Corpus Pet. 3.) Plaintiff further alleges that Defendants are disrupting his relationship with his daughter so that certain individuals can create a "false bond" with his daughter and convert his daughter into a "commodity." (Mot. for Order to Show Cause *3.) Along these lines, Plaintiff alleges that the Defendants have "conspired" to "defraud the U.S.[.] [G]overnment under 4D agency and Social Security funds, with their defendants agent contract and their psychologist in conspiracy a plan [sic] . . . to defame trying to fabricate false adoption scheme in retaliation to take away Plaintiff's] daughter[.]" (*Id.* at *1.) At bottom, Plaintiff seems to allege that the Defendants have violated his and his daughter's constitutional rights by depriving his daughter of a father who will "protect her and show her love with the help of sister and brother plaintiff love his daughter very much and want her now." (*Id.* at *11.) Construing Plaintiff's papers liberally,² it appears that Plaintiff's Habeas Petition and Motion for an Order to Show Cause also seek to bring an action under 42 U.S.C. § 1983 for Defendants' actions under the color of state law to deprive him of familial association with and paternal decision making for his daughter in violation of his constitutional rights. (*Id.* at *6.)³

II. LEGAL STANDARD

Federal courts are courts of limited jurisdiction and may not decide a matter in the absence of federal subject matter jurisdiction. *See Ins. Corp. of Ir., Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 701-02 (1982). "This Court has an independent obligation to satisfy itself

² *Pro se* complaints must be construed liberally. *See Healy v. United States Post Office*, 644 F. App'x 163, 164 (3d Cir. 2016).

³ On June 12, 2020, Plaintiff sought a temporary restraining order against the Defendants. (June TRO Appl., ECF No. 2.) Plaintiff renewed his request for a temporary restraining order against Defendants on August 10, 2020. (Aug. TRO Appl., ECF No. 7.) On September 14, 2020, Plaintiff renewed his requests for relief, filing a Motion for a Stay and Injunction of the family court proceedings. (Motion for Stay & Injunction, ECF No. 8-2.) Finally, Plaintiff filed a letter on October 26, 2020, saying, "I only intervene to get my daughter" and that the Division is "illegally holding now by kidnapping [my] daughter[.]" (Oct. 26, 2020 Correspondence, ECF No. 9.)

that it has subject matter jurisdiction.” *Jackson v. Fererretti*, No. 08-5702, 2009 WL 192487, at *1 (D.N.J. Jan. 26, 2009) (sua sponte dismissing a complaint filed pursuant to 28 U.S.C. § 1915 for lack of subject matter jurisdiction) (citing Fed. R. Civ. P. 12(h)(3) (“If the court determines at any time that it lacks subject matter jurisdiction, the court must dismiss the action.”)). When considering its jurisdiction, a court may consider pleading allegations along with any documents attached thereto. *See Gould Elecs. Inc. v. United States*, 220 F.3d 169, 177 (3d Cir. 2000) (discussing the documents a court may consider when reviewing a facial challenge to subject matter jurisdiction in the context of a Federal Rule of Civil Procedure 12(b)(1) motion).

III. DISCUSSION

Plaintiff’s attempt to bring a habeas corpus petition on behalf of his daughter must be dismissed. Generally, “[a] parent has standing to bring a habeas corpus action on behalf of [their] minor children.” *Jenicek ex rel. J.J. v. Sorenson Ranch Sch.*, No. 14-4422, 2014 WL 7332039, at *2 (D.N.J. Dec. 16, 2014) (first alteration in original) (quoting *Lehman v. Lycoming Cnty. Children's Servs. Agency*, 648 F.2d 135, 138 n.3 (3d Cir. 1981) (plurality opinion), *aff'd*, 458 U.S. 502 (1982)). But even assuming that Plaintiff could proceed as his daughter’s next friend, this Court would lack jurisdiction to hear the claim:

Jurisdiction over a habeas petition brought by a next friend exists only if the litigation *actually involves the concerns of the real party in interest* and not simply the grievances of the next friend. Particularly when a habeas petition is brought by a parent seeking the release of a child . . . , the action may really involve an assertion of the parent’s rights, not the liberty interests of the child.

Id. at 3 (alteration in original!) (emphasis in original) (quoting *Amerson v. State of Iowa, Dept. of Hum. Servs.*, 59 F.3d 92, 93 (8th Cir. 1995)). Notwithstanding Plaintiff’s allegations that Defendants are engaged in a conspiracy to “kidnap[]” his daughter, Plaintiff’s acknowledgment that “I only intervene to get my daughter,” and his objection to Defendants “block[ing] his

visitation rights or connection" with his daughter, (Oct. 26, 2020 Correspondence *1), suggest that he "simply seeks to relitigate, through federal habeas, not any liberty interest of [his daughter], but the interest in [his] own paternal rights." *Lehman*, 458 U.S. at 511. But "federal habeas has never been available to challenge parental rights or child custody." *Id.*

Moreover, even if Plaintiff's pleadings were construed as a habeas petition asserting the daughter's—as opposed to Plaintiff's—rights, the daughter is not "in custody" as that term is defined by habeas jurisprudence. *Colbry v. Pier*, No. 17-003, 2017 WL 639894, at *3 (D.N.J. Feb. 16, 2017). Federal courts have jurisdiction over a petition brought pursuant to 28 U.S.C. § 2241 only where the petitioner "is 'in custody' in violation of the laws, treaties, or Constitution of the United States." *Barry v. Bergen Cnty. Prob. Dept.*, 128 F.3d 152, 159 (3d Cir. 1997). "The Supreme Court, however, has held that a child's being placed into foster care does not involve sufficient restraints on the child's liberty to qualify as being 'in custody' for the purposes of habeas jurisdiction." *Colbry*, 2017 WL 639894, at *3 (citing *Lehman*, 458 U.S. at 509-15). To the extent Plaintiff alleges that his daughter is "in custody" because she has been kidnapped as a part of a child welfare agency's financial scheme to defraud the United States Government of Social Security funds—the Court simply cannot allow such bald, unsupported allegations to expand its jurisdiction beyond the scope permitted by Congress in its creation of the federal habeas statutes.

Finally, to the extent Plaintiff brings civil rights claims on behalf of himself and his daughter challenging the state court's child visitation, custody, and paternal rights orders, those claims also fail. "Although Plaintiff has clothed his complaint in the garb of a civil rights action, the [c]omplaint boils down to a dispute over the custody of his child and the interactions of Plaintiff and Defendants in that custody process." *Foster v. N.J. Div. of Child Prot. & Permanency*, No. 17-13572, 2018 WL 6069632, at *2 (D.N.J. Nov. 20, 2018). But "[t]his Court does not have

jurisdiction over determinations of parental rights and child custody, including those presented in this case, because these are matters within the longstanding exception to federal jurisdiction in matters involving domestic relations of . . . parent and child. *Id.*; see also *Ankenbrandt v. Richards*, 504 U.S. 689, 703 (1992). “To the extent that Plaintiff seeks review of any temporary or permanent child custody or parental rights determinations, his recourse lies in an appeal within the state court system because this federal court lacks jurisdiction to entertain these claims.” *Id.*⁴

Accordingly, for the reasons set forth above, and for other good cause shown,

IT IS on this 4th day of March 2021 ORDERED that:

1. Plaintiff’s application to proceed *in forma pauperis* is hereby GRANTED pursuant to 28 U.S.C. § 1915 (ECF No. 11).
2. The Clerk of the Court shall file the Habeas Corpus Petition (ECF No. 1) without prepayment of fees or security.
3. The Habeas Corpus Petition (ECF No. 1) and the Emergent Motion for Stay and Injunction (ECF No. 8) are DENIED for lack of subject matter jurisdiction.
4. The Clerk of Court shall close this matter.

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MICHAEL A. SHIPP
UNITED STATES DISTRICT JUDGE

⁴ As noted above, by September 2019, Plaintiff had filed “an interlocutory appeal with a habeas [c]orpus in NJ Appellate Court about September 2019 to stop [D]efendant[s’] fraud[.]” (Mot. for Order to Show Cause *3.) At the time he filed the current action, Plaintiff had not yet received a response from the appellate court. (*Id.*) Accordingly, the Court finds that “[e]ven if this Court had federal subject matter jurisdiction over a child custody dispute, which it does not, the *Younger* doctrine of abstention would bar the present action in federal court, since it appears proceedings are still taking place in state court.” *Foster*, 2018 WL 6069632, at *3 (“In general terms, the *Younger* abstention doctrine reflects ‘a strong federal policy against federal-court interference with pending state judicial proceedings absent extraordinary circumstances.’” (quoting *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass’n*, 457 U.S. 423, 431 (1982))).

**Additional material
from this filing is
available in the
Clerk's Office.**