NOT RECOMMENDED FOR PUBLICATION

No. 22-5614

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

CASSANDRA MCGUIRE, Plaintiff-Appellant, v. STATE OF TENNESSEE; JUDGE ALLEN KERN, Magistrate Judge; Attorney General Office; LAUREN KISNER, District Attorney, Defendants-Appellees.	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE

ORDER

Before: SILER, COLE, and DAVIS, Circuit Judges.

Cassandra McGuire, proceeding pro se, appeals the district court's dismissal of her second amended complaint for lack of subject-matter jurisdiction. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* FED. R. APP. P. 34(a). Although the district court erred in finding subject-matter jurisdiction lacking, we affirm because McGuire's second amended complaint was subject to dismissal on other grounds.

Factual Background

McGuire sued the State of Tennessee, juvenile-court magistrate judge Allen Kern, and district attorney Lauren Kisner, asserting federal-question jurisdiction and bringing claims under 42 U.S.C. § 1983. She alleges that Judge Kern—in the absence of jurisdiction—has "forced" her to comply with prior orders from another juvenile-court judge that require her to pay child support even though those orders were "vacated" or "voided" by the state appellate court in 2010. According to McGuire, despite the child support orders being void, Judge Kern and a non-party

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assistant district attorney have "pursue[d] child support payments against" her to the point of harassment. In addition, McGuire alleges that she has been found in contempt four times for "willfully refusing to pay child support, which is impossible since the [state appellate court] had set aside child support in September 2010." McGuire asserts claims under § 1983 for violations of her procedural and substantive due process rights and for fraud upon the court, treason, and abuse of process. She requests monetary damages and injunctive relief, including an order directing Judge Kern to comply with the state appellate court's order.

Upon review of McGuire's second amended complaint, the district court concluded that the "domestic relations exception" precluded the exercise of subject-matter jurisdiction. It therefore dismissed McGuire's second amended complaint without prejudice. Thereafter, the district court denied McGuire's motion for reconsideration, which it construed as a motion to alter or amend the judgment.

In this timely appeal, McGuire argues that the domestic relations exception to federal jurisdiction is inapplicable, claiming that this "is not a domestic relations case" and "asking for relief regarding" Judge Kern, who "act[ed] on voided orders" and "out of jurisdiction," in violation of her "substantive and procedural" due process rights.

Standard of Review

We review de novo a district court's dismissal of a complaint for lack of subject-matter jurisdiction. *Wisecarver v. Moore*, 489 F.3d 747, 749 (6th Cir. 2007). The plaintiff has the burden of proving that the federal court has subject-matter jurisdiction. *Id.* We may affirm the district court's judgment "on any grounds supported by the record even if different from the reasons of the district court." *Abercrombie & Fitch Stores, Inc. v. Am. Eagle Outfitters, Inc.*, 280 F.3d 619, 629 (6th Cir. 2002).

Subject-Matter Jurisdiction

We are faced with a threshold question: whether the domestic relations exception applies to federal-question cases such as this one.

In *Ankenbrandt v. Richards*, 504 U.S. 689, 700-04 (1992), the Supreme Court traced the domestic relations exception to Congress's intent in enacting and amending the diversity jurisdiction statute and held that it precludes federal courts from hearing cases that "involv[e] the issuance of a divorce, alimony, or child custody decree." Later, in *Alexander v. Rosen*, 804 F.3d 1203 (6th Cir. 2015), we stated that "we have not addressed" whether, post-*Ankenbrandt*, "the [domestic relations] exception applies only to diversity (rather than federal question) cases," and we declined to do so there. *Id.* at 1205. At least one circuit, post-*Ankenbrandt*, has applied the exception in federal-question cases. *See Kowalski v. Boliker*, 893 F.3d 987, 995 (7th Cir. 2018) (holding that the exception applies "to both federal-question and diversity suits"). Several others, however, have not. *See e.g.*, *Deem v. Dimella-Deem*, 941 F.3d 618, 623 (2d Cir. 2019) (collecting cases holding that the exception applies to diversity suits only).

But we need not decide the matter today because the domestic relations exception, even if it applies to federal-question actions, did not preclude the district court from exercising subject-matter jurisdiction over McGuire's suit.

The Supreme Court has emphasized that "the [domestic relations] exception covers only 'a narrow range of domestic relations issues,'" *Marshall v. Marshall*, 547 U.S. 293, 307 (2006) (quoting *Ankenbrandt*, 504 U.S. at 701), and we have held that it will deprive a federal court of jurisdiction only when "'a plaintiff positively sues in federal court for divorce, alimony, or child custody,' or seeks to modify or interpret an existing divorce, alimony, or child-custody decree." *Chevalier v. Estate of Barnhart*, 803 F.3d 789, 797 (6th Cir. 2015) (quoting *Catz v. Chalker*, 142 F.3d 279, 292 (6th Cir. 1998), *overruled on other grounds by Coles v. Granville*, 448 F.3d 853, 859 n.1 (6th Cir. 2006)). This case involves none of those forms of relief: McGuire did not sue for divorce, alimony, or child custody or to modify a decree involving the same. It therefore does not fall into the narrow range of cases to which the domestic relations exception applies.

To illustrate the point, compare McGuire's case to others where we have declined to apply the exception. Take, for example, *Catz v. Chalker*, where the plaintiff sued his ex-wife and her attorneys, alleging that they violated his due process rights in a state-court divorce proceeding and

asking the federal courts to void the divorce decree. 142 F.3d at 283-84. We held that the exception is inapplicable where a plaintiff is simply asking a federal court "to examine whether certain judicial proceedings, which happened to involve a divorce, comported with the federal constitutional guarantees of due process." *Id.* at 291-92. Like the plaintiff in *Catz*, McGuire "is not asking the district court to involve itself in the sort of questions attendant to domestic relations that are assumed to be within the special expertise of the state courts." *Id.* at 291. Rather, she asks the district court to determine whether Judge Kern violated her federal constitutional rights—i.e., non-domestic-relations matters—with respect to the manner in which her child support obligations have been handled in the juvenile court. *See id.* at 292; *see also Chevalier*, 803 F.3d at 795 (declining to apply the domestic relations exception where the plaintiff raised contract and tort claims to recover money that she had loaned her ex-wife during their marriage "[b]ecause none of the claims or remedies requires a federal court to dissolve the marriage, award alimony, monitor [her] need for maintenance and support, or enforce [the ex-wife's] compliance with a related court order") (citing *Ankenbrandt*, 504 U.S. at 703-04).

Consider also *Alexander*. There, the plaintiff alleged that a federal judge, a state court judge, and several state employees engaged in racketeering and a conspiracy against him by imposing a child support award against him; he asked federal courts to abate the child support payments. 804 F.3d at 1205-06. We found the domestic relations exception inapplicable because the plaintiff "does not request that we issue a 'divorce, alimony, or child custody' decree or that we 'modify or interpret an existing' decree" but "instead requests that we apply federal law" to assess "whether the officials overseeing his child support case conspired against him—an inquiry that does not require us to apply Michigan child custody law, question the state's calculation of child support payments, or otherwise address the merits of the underlying dispute." *Id.* (quoting *Chevalier*, 803 F.3d at 797). We noted that "[w]e may thus resolve [the plaintiff's racketeering and conspiracy] claims without entangling ourselves in difficult questions of state family law." *Id.* at 1206. Similarly, here, McGuire's federal claims can be resolved without delving into any state laws regarding child support. Determining whether Judge Kern violated McGuire's due process

rights and committed treason, an abuse of process, and fraud upon the court does not require us to interpret state law governing McGuire's child support obligations. In short, McGuire's case, like the foregoing ones, raises claims that only incidentally involve or happen to arise out of a domestic relations matter.

"The message from [the Supreme Court] is clear: the domestic-relations exception is narrow, and lower federal courts may not broaden its application." *Chevalier*, 803 F.3d at 795. And we decline to do so here. This means that subject-matter jurisdiction is present, and we may turn to the merits.

Dismissal Warranted on Alternative Grounds

McGuire's second amended complaint, though, was subject to dismissal for the reasons set forth below.

First, all claims against the State of Tennessee were subject to dismissal because the State is protected by sovereign immunity, *see Pennhurst St. Sch. & Hosp. v. Halderman*, 465 U.S. 89, 98-101 (1984), and, furthermore, it is not a "person" who might be subject to liability under § 1983, *see Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989).

Second, all claims against district attorney Kisner were subject to dismissal because McGuire's second amended complaint asserted no allegations against her. *See Gilmore v. Corr. Corp. of Am.*, 92 F. App'x 188, 190 (6th Cir. 2004); *Whiting v. Wash. Twp.*, No. 20-3449, 2020 U.S. App. LEXIS 37322, at *8-9 (6th Cir. Nov. 25, 2020) ("Merely listing names in the caption of the complaint and alleging constitutional violations in the body of the complaint are not enough to sustain recovery under § 1983.") (citing *Flagg Bros. v. Brooks*, 436 U.S. 149, 155-57 (1978)).[1]

Finally, all claims against Judge Kern were subject to dismissal because he is entitled to judicial immunity. The doctrine of judicial immunity "operates to protect judges . . . from suit in both their official and individual capacities." *Dixon v. Clem*, 492 F.3d 665, 674 (6th Cir. 2007). Judicial immunity can be overcome only where a judge's acts are not taken in his judicial capacity

[1] McGuire does raise allegations against another assistant district attorney, Stephen Powers, but she did not name Powers as a defendant.

or are taken where there is a complete lack of jurisdiction. *Barnes v. Winchell*, 105 F.3d 1111, 1115-16 (6th Cir. 1997).

McGuire claims that Judge Kern "overstepped his boundaries when he ignored the [state appellate court's] order to set aside child support [and] recalculate child support" and that he "lacked jurisdiction to act further in the [child-support] case" after the state appellate court issued its order. "[T]he scope of the judge's jurisdiction must be construed broadly where the issue is the immunity of the judge. A judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority." *Stump v. Sparkman*, 435 U.S. 349, 356 (1978). Rather, "he will be subject to liability only when he has acted in the 'clear absence of all jurisdiction.'" *Id.* at 356-57 (quoting *Bradley v. Fisher*, 80 U.S. 335, 351 (1871)).

Here, as a magistrate judge of the Dickson County juvenile court, Judge Kern is vested with "*exclusive* original jurisdiction of . . . [p]roceedings in which a child is alleged to be delinquent, unruly, or *dependent* and neglected." TENN. CODE ANN. § 37-1-103(a)(1) (emphases added); *see* TENN. CODE. ANN. § 37-1-107; *see also Hance v. Hance*, No. E2017–01419–COA–R3–CV, 2018 WL 2113814, at *2 (Tenn. Ct. App. May 8, 2018) ("[C]hild support determinations are a component of dependency and neglect proceedings pursuant to Tenn[essee] Code Ann[otated] § 37-1-151."). At some point, an order was entered in the juvenile court that required McGuire to make child support payments. That order was appealed to the state appellate court, which, in July 2010, remanded the case, stating that the "child support determination should be set aside and recalculated based on the earning abilities of the parties." *In re Drake L.*, No. M2008-02757-COA-JV, 2010 WL 2787829, at *9 (Tenn. Ct. App. July 13, 2010).

Now, McGuire's case is premised on her allegation that Judge Kern ignored the state appellate court's order to set aside the prior order requiring her to make child support payments. But as explained, Judge Kern has *exclusive jurisdiction* over these types of proceedings. This therefore is not a case where a judicial officer is divested of immunity because "he knows that he lacks jurisdiction[] or acts despite a clearly valid statute or case law expressly depriving him of jurisdiction." *Mills v. Killebrew*, 765 F.2d 69, 71 (6th Cir. 1985). At most, Judge Kern's alleged

failure to set aside the prior child support order and to recalculate the child support determination as directed by the state appellate court amounts to a neglect to use the jurisdiction with which he is vested—not use of jurisdiction that is clearly lacking. *See Stump*, 435 U.S. at 356. The same can be said of Judge Kern's alleged failure to afford McGuire a fair hearing. And Judge Kern's act of holding McGuire in contempt for her failure to pay child support was within his statutorily prescribed jurisdiction. *See* TENN. CODE ANN. §§ 37-1-158, 37-1-107. McGuire's insistence that these acts and omissions were done without jurisdiction is nothing but a legal conclusion, and "legal conclusions masquerading as factual allegations" are insufficient to avoid dismissal. *Phila. Indem. Ins. v. Youth Alive, Inc.*, 732 F.3d 645, 649 (6th Cir. 2013) (quoting *Terry v. Tyson Farms, Inc.*, 604 F.3d 272, 275-76 (6th Cir. 2010)). Judge Kern therefore is entitled to absolute judicial immunity.

For the foregoing reasons, we **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

United States Court of Appeals for the Sixth Circuit

U.S. Mail Notice of Docket Activity

The following transaction was filed on 03/17/2023.

Case Name: Cassandra McGuire v. TN, et al
Case Number: 22-5614

Docket Text:
ORDER filed : We AFFIRM the district court's judgment. Decision not for publication, pursuant to FRAP 34(a)(2)(C). Mandate to issue. Eugene E. Siler, Jr., Circuit Judge; R. Guy Cole, Jr., Circuit Judge and Stephanie Dawkins Davis, Circuit Judge.

The following documents(s) are associated with this transaction:
Document Description: Order

Notice will be sent to:

Ms. Cassandra McGuire
27 E. Chandler Avenue
Apartment B
Evansville, IN 47713

A copy of this notice will be issued to:

Ms. Lynda M. Hill

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

CASSANDRA MCGUIRE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**No. 3:22-cv-00275**
	)	
STATE OF TENNESSEE, et al.,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

Plaintiff Cassandra McGuire filed a pro se Amended Complaint ("Complaint") against the State of Tennessee, Judge Alan Kern, and Lauren Kisner under 42 U.S.C. § 1983 and state law. (Doc. No. 13). Before proceeding, however, the Court must address whether it has jurisdiction over the Complaint. "Federal courts are courts of limited jurisdiction." Home Depot U.S.A., Inc. v. Jackson, 139 S. Ct. 1743, 1746 (2019) (quoting Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375, 377 (1994)). The Court has original subject-matter jurisdiction over cases that arise under federal law, known as federal-question jurisdiction, or cases between citizens of different states in which the amount in controversy exceeds $75,000, known as diversity-of-citizenship jurisdiction. Id. at 1746 (citing 28 U.S.C. §§ 1331, 1332(a)). The Court must dismiss without prejudice any case in which the plaintiff fails to establish subject-matter jurisdiction. Kokkonen, 511 U.S. at 377; Ernst v. Rising, 427 F.3d 351, 366 (6th Cir. 2005); Fed. R. Civ. P. 12(h)(3).

However, "[u]nder the domestic relations exception, federal courts are precluded from exercising jurisdiction over cases whose substance is primarily domestic relations." Chambers v. Michigan, 473 F. App'x 477, 478 (6th Cir. 2012) (citing Barber v. Barber, 62 U.S. (21 How.) 582, 584 (1858)); see also Firestone v. Cleveland Tr. Co., 654 F.2d 1212, 1215 (6th Cir. 1981) ("Even

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when brought under the guise of a federal question action, a suit whose substance is domestic relations generally will not be entertained in a federal court."); Chambers, 4734 F. App'x at 479 (explaining that a suit to "determine the amount of alimony owed" was subject to the exception despite being "couched as a constitutional violation"). Specifically, the exception applies when "a plaintiff positively sues in federal court . . . to modify or interpret an existing divorce, alimony, or child-custody decree." Alexander v. Rosen, 804 F.3d 1203, 1205 (6th Cir. 2015) (quoting Chevalier v. Estate of Barnhart, 803 F.3d 789, 797 (6th Cir. 2015)); Ankenbrandt v. Richards, 504 U.S. 689, 704 (1992)). The enforcement of child support "falls squarely under the domestic relations exception." Lawrence v. Maryland, No. 3:18-CV-00304, 2019 WL 4723073, at *10 (E.D. Tenn. Sept. 26, 2019) (citing Chevalier, 803 F.3d at 794-95); see also Christian v. Reynolds-Christian, No. 3:19-CV-00133, 2019 WL 2724063, at *3 (M.D. Tenn. June 28, 2019), report and recommendation adopted, No. 3:19-cv-00133, 2019 WL 3208019 (M.D. Tenn. July 16, 2019) (concluding that the plaintiff's request for readjudication of child support payments fell "squarely within the domestic relations exception"); Steele v. Steele, No. 3:10-CV-40-KSF, 2011 WL 2413400, at *3-4 (E.D. Ky. June 10, 2011) (explaining that claims concerning "matters of child support, custody and/or maintenance" are subject to the domestic relations exception); Surface v. Dobbins, No. 3-87-01479, 1993 WL 1318609, at *2-3 (S.D. Ohio Sept. 23, 1993) (explaining that "[t]he viability and propriety of [a] child support order" is subject to the domestic relations exception).[1]

[1] Conversely, claims that do not require application of state domestic relations law are not subject to the domestic relations exception. See Farmer v. Upchurch, No. 1:21-cv-153-TAV-SKL, 2021 WL 5622104, at *5 (E.D. Tenn. Nov. 20, 2021) (explaining that the domestic relations exception would not apply to a federal conspiracy claim that "does not . . . question the state's calculation of child custody payments or otherwise address the merits of the underlying dispute") (citing Alexander, 804 F.3d at 1205-06).

The ultimate inquiry in determining the applicability of the domestic relations exception focuses on the remedy sought by the plaintiff. Chevalier, 803 F.3d at 797. The instant Complaint arises from a decade-long child support dispute. (See Doc. No. 12). Therein, McGuire alleges that she has become "consumed with child support allegations"; been subjected to invalid child support orders; been made to pay improper child support; been "taken to court numerous times" based on these child support disputes; and been found in contempt for "willfully refusing" to pay child support. Id. As relevant here, the Complaint seeks to "set aside" an existing child support order; end McGuire's child support obligations; and provide for recalculation of child support in the underlying state-court matter. Id. At bottom, therefore, McGuire brings a domestic relations action to set aside, modify, or interpret an existing state-law child support order. The domestic relations exception is "designed to prevent" the Court from becoming "entangl[ed]" in precisely "such difficult questions of state family law." Alexander, 804 F.3d at 1206. Because the exception applies, McGuire's request for relief is "outside the jurisdiction of the federal courts."[2] Chevalier, 803 F.3d at 797 (citing Catz v . Chalker, 142 F.3d 279, 292).

Accordingly, pursuant to the domestic relations exception, the Complaint is **DISMISSED WITHOUT PREJUDICE**. This form of dismissal allows McGuire to file a new case regarding

[2] Because the domestic relations exception applies in this case, the Court does not consider whether McGuire's claims related to the outcome of state child support proceedings are also subject to dismissal under the Rooker-Feldman doctrine. See VanderKodde v. Mary Jane M. Elliott, P.C., 951 F.3d 397, 402 (6th Cir. 2020) (explaining that Rooker-Feldman precludes federal court consideration of "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") (quoting Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280 (2005)).

these or other matters, subject to all applicable rules and time limitations.

IT IS SO ORDERED.

WAVERLY D. CRENSHAW, JR.
CHIEF UNITED STATES DISTRICT JUDGE