App A

NOT RECOMMENDED FOR PUBLICATION

No. 22-1615

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Jun 22, 2023
DEBORAH S. HUNT, Clerk

SHAWNA KARNES; JEFF GLASER, Plaintiffs-Appellants, v. TIFFINY MONTENGO; CHILD PROTECTIVE SERVICES, Defendants-Appellees.	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN

ORDER

Before: COLE, McKEAGUE, and NALBANDIAN, Circuit Judges.

Shawna Karnes and Jeff Glaser, proceeding pro se, appeal the district court's dismissal of their complaint challenging a state court order in a child protective proceeding and move for the appointment of counsel. 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). For the reasons set forth below, we affirm.

In their complaint, Karnes and Glaser challenged a decision of the Cass County Circuit Court ordering the removal of two minor children from their home. The complaint provided few facts and merely summarized the state court judge's reasons for ordering the children's removal and Karnes and Glaser's "rebuttal." As relief, Karnes and Glaser sought the return of the children to their home. Attached to the complaint was a partial copy of the state court order placing the children in protective custody, police reports, polygraph reports, medical records, photographs, and an April 22, 2022, Michigan Supreme Court order.

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Upon initial screening under 28 U.S.C. § 1915(e)(2), a magistrate judge recommended that the complaint be dismissed, concluding that the district court lacked jurisdiction over Karnes and Glaser's claim under the *Rooker-Feldman* doctrine, *see D.C. Ct. of Appeals v. Feldman*, 460 U.S. 462 (1983); *Rooker v. Fid. Trust Co.*, 263 U.S. 413 (1923), and that the complaint failed to state a cognizable claim for relief. The magistrate judge's report and recommendation notified Karnes and Glaser of their right to file objections within 14 days and warned that failure to object could result in a waiver of their right to appeal. Karnes and Glaser did not object, apparently because they did not receive a copy of the report and recommendation. After the time for filing objections had expired, the district court adopted the report and recommendation and dismissed the complaint.

Karnes and Glaser now appeal. They reiterate their challenges to the state court's decision and ask us to "reverse" certain state court rulings.

Karnes and Glaser's failure to file objections to the report and recommendation and their failure to file an adequate appellate brief that addresses the district court's reasons for dismissal have arguably resulted in a forfeiture of their right to appeal. *See Thomas v. Arn*, 474 U.S. 140, 142 (1985); *Geboy v. Brigano*, 489 F.3d 752, 767 (6th Cir. 2007); *Radvansky v. City of Olmsted Falls*, 395 F.3d 291, 310-11 (6th Cir. 2005); *Miller v. Currie*, 50 F.3d 373, 380 (6th Cir. 1995). But forfeiture notwithstanding, Karnes and Glaser have no arguable basis for challenging the district court's ruling.

The district court properly determined that Karnes and Glaser's complaint is barred by the *Rooker-Feldman* doctrine and subject to dismissal under § 1915(e)(2)(B). The *Rooker-Feldman* doctrine bars "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." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). "[T]he pertinent inquiry after *Exxon* is whether the 'source of the injury' upon which plaintiff bases his federal claim is the state court judgment . . . ." *Kovacic v. Cuyahoga Cnty. Dep't of Child. & Fam. Servs.*, 606 F.3d 301, 309 (6th Cir. 2010) (quoting *McCormick v. Braverman*, 451 F.3d 382, 394 (6th Cir. 2006)). "If the source of the plaintiff's injury is the state-

court judgment itself, then *Rooker-Feldman* applies." *VanderKodde v. Mary Jane M. Elliott, PC*, 951 F.3d 397, 402 (6th Cir. 2020).

Here, the complaint was devoted solely to challenging the Cass County Circuit Court's order removing two minor children from Karnes and Glaser's home. The complaint challenged the state court's jurisdiction and the sufficiency of the evidence supporting the court's ruling and expressly sought reversal of the order. And Karnes and Glaser reiterate these arguments on appeal. Clearly, then, the source of Karnes and Glaser's injury is a state court order. Because resolution of Karnes and Glaser's claims—to the extent any such claims can be discerned—would require the district court to review and reject the state-court removal order, the district court properly concluded that their claims are barred by the *Rooker-Feldman* doctrine.

Finally, Karnes and Glaser move for the appointment of counsel, but they have failed to show the existence of exceptional circumstances that would warrant granting such a request. *See Lavado v. Keohane*, 992 F.2d 601, 606 (6th Cir. 1993).

For these reasons, we **AFFIRM** the district court's judgment. The motion for the appointment of counsel is **DENIED**.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
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No. 22-1615

SHAWNA KARNES; JEFF GLASER,

Plaintiffs-Appellants,

v.

TIFFINY MONTENGO; CHILD PROTECTIVE SERVICES,

Defendants-Appellees.

Before: COLE, McKEAGUE, and NALBANDIAN, Circuit Judges.

JUDGMENT

On Appeal from the United States District Court
for the Western District of Michigan at Grand Rapids.

THIS CAUSE was heard on the record from the district court and was submitted on the briefs without oral argument.

IN CONSIDERATION THEREOF, it is ORDERED that the judgment of the district court is AFFIRMED.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

App B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SHAWNA KARNES, et al.,

Plaintiffs,

v.

TIFFANY MONTENGO, et al.,

Defendants.
_____/

Case No. 1:22-cv-453

Hon. Hala Y. Jarbou

ORDER

On June 6, 2022, Magistrate Judge Phillip J. Green issued a Report and Recommendation (R&R) recommending that Plaintiffs' complaint be dismissed (ECF No. 8). The R&R was duly served on the parties. No objections have been filed, and the deadline for doing so expired on June 21, 2022. On review, the Court concludes that the R&R correctly analyzes the issues and makes a sound recommendation.

Accordingly,

IT IS ORDERED that the R&R (ECF No. 8) is **APPROVED** and **ADOPTED** as the opinion of the Court.

IT IS FURTHER ORDERED that the Court **CERTIFIES** that an appeal would not be taken in good faith. 28 U.S.C. § 1915(a)(3).

A judgment will issue in accordance with this order.

Date: June 28, 2022

/s/ Hala Y. Jarbou
HALA Y. JARBOU
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SHAWNA KARNES, et al.,

Plaintiffs,

v.

TIFFANY MONTENGO, et al.,

Defendants.
_____/

Case No. 1:22-cv-453

Hon. Hala Y. Jarbou

JUDGMENT

In accordance with the Order entered this date:

IT IS ORDERED that Plaintiffs' complaint is **DISMISSED.**

Dated: June 28, 2022

/s/ Hala Y. Jarbou
HALA Y. JARBOU
UNITED STATES DISTRICT JUDGE

App C

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SHAWNA KARNES, et al.,

Plaintiffs,

v.

TIFFANY MONTENGO, et al.,

Defendants.
_____/

Hon. Hala Y. Jarbou

Case No. 1:22-cv-0453

REPORT AND RECOMMENDATION

Plaintiffs Shawna Karnes and Jeff Glaser initiated this action *pro se* apparently seeking to reverse the decision of the Cass County Circuit Court to remove two minor children from their home. (ECF No. 1). The complaint is hardly a model of clarity. It names a Tiffany Montengo and "CPS" as defendants, without further identifying them. The undersigned has been unable to discern any factual allegations against them. The undersigned has determined, however, that there is a Tiffiny Montengo who serves as the Chief Assistant Prosecutor for Cass County.[1] It would appear that Plaintiffs intended to name her, but misspelled her first name. The undersigned assumes that "CPS" is a reference to Children's Protective Services, a program run by the Michigan Department of Health and Human Services, which is responsible for investigating allegations of child abuse and neglect.[2]

[1] *See* www.casscoprosecutor.com/Contact-Us (last viewed June 2, 2022).

[2] *See* www.michigan.gov/mdhhs/adult-child-serv/abuse-neglect/childrens (last viewed June 2, 2022).

Plaintiffs have been permitted to proceed as paupers. (ECF Nos. 6, 7). Accordingly, the Court has reviewed the complaint pursuant to 28 U.S.C. § 1915(e)(2) to determine whether it is frivolous, malicious, or fails to state a claim upon which relief can be granted. Pursuant to 28 U.S.C. § 636(b)(1)(B), the undersigned recommends that Plaintiffs' complaint be dismissed.[3]

The gravamen of the complaint appears to be Plaintiffs' disagreement with the decision of the Cass County Circuit Court to remove two minor children from their home. Plaintiffs seek a "[r]ebuttal to order to take children into protective custody." (ECF No. 1, PageID.2). This Court lacks jurisdiction to review the decision of the Cass County Circuit Court. In addition, the complaint fails to include any factual allegations that would support a cognizable claim.

ANALYSIS

I. The Court Lacks Subject Matter Jurisdiction.

Unlike state courts, which are courts of general jurisdiction, the federal courts are courts of limited jurisdiction. A significant limitation upon the jurisdiction of the federal district courts is that such courts are precluded from reviewing judgments of the state courts. As the Supreme Court has long recognized, the jurisdiction of the federal district courts is "strictly original" and, therefore, only the United States Supreme Court

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[3] The complaint includes photographs of the minor children, along with their names and other personal information, which should not have been placed on the public record. Accordingly, the Court has placed the complaint under restricted access.

can "entertain a proceeding to reverse or modify" a judgment entered by a state court. *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-16 (1923).

The *Rooker-Feldman* doctrine is "a narrow rule based on the idea that federal appellate jurisdiction over a state court decision lies exclusively with the Supreme Court, and not lower federal courts." *Durham v. Haslam*, 528 Fed. Appx. 559, 563 (6th Cir., June 13, 2013) (citations omitted). This doctrine applies where a litigant "initiates an action in federal court, complaining of injury caused by a state court judgment, and seeks review and rejection of that judgment." *Berry v. Schmitt*, 688 F.3d 290, 298-99 (6th Cir. 2012).

Rooker-Feldman applies where the state court judgment is the source of a litigant's injury, but does not apply where the state court judgment is simply "intertwined with" the state court judgment. *Durham*, 528 Fed. Appx. at 563. To determine which category Plaintiff's complaint falls into, the Court must assess "whether the state court decision caused [Plaintiff's] injury," and the court "cannot determine the source of the injury without reference to [Plaintiff's] request for relief." *Ibid.*

Again, while the allegations in Plaintiff's complaint are difficult to discern, the relief Plaintiff seeks is quite clear. Plaintiff expressly asks this Court to "rebut" the Cass County Circuit Court's "order to take children into protective custody." (ECF No. 1, PageID.2). As such, Plaintiffs' claim is precisely the type that is precluded by the *Rooker-Feldman* doctrine. Having determined that the Court lacks subject matter jurisdiction over the claim, the undersigned recommends that it be dismissed.

II. The Complaint Fails to State a Cognizable Claim.

Plaintiffs appear to contest the findings of the Cass County Circuit Court that Plaintiff Jeff Glaser sexually abused one of the minor children, which formed, in part, the basis for its decision to remove the children from the home. (*See* ECF No. 1, PageID.2-6). As noted above, the complaint is devoid of any allegation against either defendant, one of whom (Ms. Montengo) is a county prosecutor, who enjoys immunity,[4] and the other (CPS) a program, not a party.[5] As such, even if this Court had subject-matter jurisdiction, the complaint must be dismissed for failure to state a cognizable claim.

A claim must be dismissed for failure to state a claim on which relief may be granted unless the "[f]actual allegations [are] enough to raise a right for relief above the speculative level on the assumption that all of the complaint□s allegations are true." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 545 (2007). As the Supreme Court has held, to avoid dismissal, 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, 677-78 (2009). This plausibility standard "is not akin to a 'probability

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[4] Under common law, prosecutors enjoy absolute immunity for acts committed during the performance of their duties as advocates for the state. *See Garber v. Deisch,* Case No. 1:16-cv-00455-PJG, 2018 WL 1477580 at *8 (W.D. Mich. March 27, 2018) (citing *Yaselli v. Goff*, 12 F.2d 396, 406 (2d Cir. 1926)).

[5] To the extent Plaintiffs intended to sue the Michigan Department of Human Services, that state agency enjoys sovereign immunity under the Eleventh Amendment. *See, e.g., Harnden v. Michigan Dep't Human Servs*, Case No. 16-cv-13906, 2107 WL 3224969 at *4 (E.D. Mich. July 31, 2017).

requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." If the complaint simply pleads facts that are "merely consistent with" a defendant's liability, it "stops short of the line between possibility and plausibility of 'entitlement to relief.'" *Id.*

For the reasons discussed above, the complaint in this case falls well short of this standard.

CONCLUSION

For the reasons articulated herein, the undersigned recommends that the complaint be dismissed and this action terminated. For the same reasons the undersigned makes these recommendations, the undersigned finds that an appeal of such would be frivolous. *Coppedge v. United States*, 369 U.S. 438, 445 (1962). Accordingly, the undersigned further recommends that an appeal of this matter by Plaintiffs would not be in good faith.

OBJECTIONS to this Report and Recommendation must be filed with the Clerk of Court within fourteen days of the date of service of this notice. 28 U.S.C. § 636(b)(1)(C). Failure to file objections within the specified time waives the right to appeal the District Court's order. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir.1981).

Respectfully submitted,

Date: June 6, 2022

/s/ Phillip J. Green
PHILLIP J. GREEN
United States Magistrate Judge

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