John Doe v. State of Tennessee, et al.

Appendix to Petition for Writ of Certiorari

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No. 24-5280
United States Court of Appeals for the Sixth Circuit
Filed October 28, 2024
John Doe v. State of Tennessee, et al.,
O R D E R

Before: Norris, Griffin, and Larsen, Circuit Judges.

Pro se Tennessee plaintiff John Doe appeals the district court's judgment dismissing his Americans with Disabilities Act (ADA) claims as barred by Eleventh Amendment sovereign immunity. 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). We affirm the district court's judgment for the following reasons.

In February 2018, Doe was hospitalized for four days for major depression and suicidal ideation. Doe informed his wife that he wanted a divorce soon after his discharge. On March 2,2018, Doe's wife, Corrine Oliver, filed a complaint for a protective order against Doe in the Dickson County, Tennessee, General Sessions Court. In her complaint, Oliver described incidents in which Doe was allegedly physically abusive to her and their minor children and showed up at her separate residence without notice. Judge Craig Monsue issued an ex parte order that prohibited Doe from having contact with Oliver and their children.

On March 8, Doe filed for a divorce from Oliver in the Dickson County Chancery Court. On March 16, Oliver's attorney, Kirk Vandivort, filed a proposed shared-parenting plan that would have limited Doe to supervised visitation with his children only after Doe underwent a psychological evaluation and a report was filed with the court.

On March 21, Judge Monsue held a hearing in General Sessions Court on Oliver's complaint for a

protective order. During the hearing, Vandivort argued that Doe's mental health diagnoses and medications made him unpredictable, "like a potentially rabid dog you would not want to let back in the house until you were sure he had been checked out." At the conclusion of the hearing, Judge Monsue found that the domestic-abuse allegations had been proved by a preponderance of the evidence and ordered Doe to have no contact with Oliver or their children. Judge Monsue deferred to the Chancery Court for decisions as to child custody and visitation, however. Doe then filed motions in the Chancery Court to review Judge Monsue's protective order, for a protective order against Oliver, and for temporary custody and visitation of the children.

On April 9, Doe filed a notice of disability under the ADA in the Chancery Court, asking the court not to discriminate against him in his divorce case. On April 24, the divorce case came before Judge David Wolfe for a hearing on temporary visitation. Doe claimed that, during the hearing, Judge Wolfe and Vandivort had a "seemingly mocking exchange" about his ADA notice and request for protection. After an adjournment, Judge Wolfe accepted Oliver's proposal to limit Doe to two hours of supervised visitation with his children every two weeks. Additionally, Judge Wolfe ordered Doe to undergo a mental health evaluation under Tennessee Rule of Civil Procedure 35 at his own expense.

The Rule 35 evaluation was completed and filed around July 3 and stated that Doe's medication and treatment mitigated his anger and depression. On July 19, Doe moved for a temporary visitation hearing, which Judge Wolfe held on August 10. During the hearing, Judge Wolfe allegedly stated that the ADA did not apply in the proceedings until

"some other Tennessee Court says it applies." Further, Judge Wolfe allegedly said that he would consider Doe's mental health in determining whether visitation should be supervised, waived the Rule 35 evaluation around, and said that Doe's diagnoses concerned him and that Doe would have to prove that he was not a danger to the children. Additionally, when Oliver objected to Doe's offer of proof, Judge Wolfe allegedly said, "It's okay, I'm not listening to him anyway." Judge Wolfe then continued the hearing pending the receipt of a family evaluation, which he stated would give him another potential recommendation on Doe's mental health.

During the pendency of these state-court proceedings, Doe had only 10 total hours of supervised visitation with his children, compared to having no contact with them for 113 days.

In October 2018, Doe filed an amended complaint against the State of Tennessee, the Tennessee Governor, the Tennessee Attorney General, the Tennessee Court Administrator, Oliver, Vandivort and his law firm, Judge Monsue, Judge Wolfe, the Dickson County Chancery Court, and the Dickson County General Sessions Court, asserting claims for violations of the Fourteenth Amendment, the ADA, and state law. As is relevant here, Counts 6 and 7 alleged that the State of Tennessee, Judge Monsue, Judge Wolfe, the Dickson County Chancery Court, and the Dickson County General Sessions Court violated Title II of the ADA by depriving Doe and his children of their right to visitation and contact based on stereotypical fears and stigmas about Doe's mental health disability. The district court dismissed Doe's federal claims without prejudice under Federal Rule of Civil Procedure 12(b)(1) pursuant to the domestic-relations exception to federal jurisdiction. *See Chevalier v. Est. of*

Barnhart, 803 F.3d 789, 794 (6th Cir. 2015). Lastly, the court declined supplemental jurisdiction over Doe's state-law claims and dismissed them without prejudice.

Doe appealed, and we affirmed the district court's judgment except for its dismissal of counts 6 and 7. Because Doe sought money damages for the alleged ADA violations, we concluded that the district court erred in ruling that the domestic-relations exception barred these claims. We stated that sovereign immunity might bar Doe's ADA claims, however, because he had sued the State of Tennessee, two state courts, and state officials acting in their official capacities. We observed further that Congress had validly abrogated State sovereign immunity for some Title II violations. *See Babcock v. Michigan,* 812 F.3d 531, 534–35 (6th Cir. 2016).

Accordingly, we vacated the district court's dismissal of counts 6 and 7 and remanded the case for the court "to consider in the first instance whether Counts 6 and 7 fall within the scope of the ADA's valid abrogation of sovereign immunity." *Doe, 18-471 v. Tennessee,* No. 19-6019, 2020 WL 13563746, at *4 (6th Cir. Sept. 18, 2020). We also authorized the district court to "consider whether any other 'threshold grounds for denying audience to these claims on the merits' apply." *Id.* (cleaned up) (*quoting Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 585 (1999)).

On remand, the district court referred the case to a magistrate judge for a report and recommendation on the sovereign-immunity question. The magistrate judge denied Doe's motions to appoint a guardian ad litem for his children and for leave to file a second amended complaint because they were outside the scope of our remand order. Additionally, the magistrate judge concluded that

Doe's proposed amended complaint encompassed claims that the district court had properly dismissed and that a guardian ad litem would be unnecessary if sovereign immunity barred his ADA claims.

After supplemental briefing, the magistrate judge issued a report and recommendation that concluded that each of the defendants was a state actor for purposes of sovereign immunity. Then, relying on guidance issued by the Department of Justice and the Department of Health and Human Services, the magistrate judge determined that Title II permits states to consider an individual's mental health in making a child-custody decision as long as the decision is not based on stereotypes and generalizations about persons with mental-health disabilities. And here, the defendants' decisions were not based on stereotypes and generalizations, the magistrate judge concluded, because they relied on Doe's individualized Rule 35 evaluation. Accordingly, the magistrate judge concluded that Doe failed to state a Title II violation and therefore that Congress had not validly abrogated the State's sovereign immunity. The magistrate judge thus recommended that the district court dismiss counts 6 and 7 as barred by sovereign immunity.

Doe filed timely objections to the report and recommendation. But the district court concluded that they were not proper objections under Federal Rule of Civil Procedure 72(b) because Doe had only rebriefed his merits arguments instead of identifying any specific factual or legal error by the magistrate judge. Accordingly, the court concluded that Doe had not invoked de novo review, adopted the report and recommendation, and dismissed counts 6 and 7 without prejudice for lack of subject-matter jurisdiction. The court denied Doe's motion to alter or amend and for relief from the judgment.

On appeal, Doe argues that the district court erred by (1) referring the case to a magistrate judge for a report and recommendation, (2) ruling that he had not properly objected to the report and recommendation, (3) denying his motion to appoint a guardian ad litem, (4) concluding that the defendants were entitled to sovereign immunity, and (5) denying his motion to amend. Doe also argues that we should order the reassignment of this case on remand because of the assigned district judge's alleged mismanagement and unreasonable delay in reaching the merits of his claims.

We first address Doe's argument that the district court erred by referring the case to a magistrate judge for a report and recommendation.

"The mandate rule binds a district court to the scope of the remand issued by the court of appeals." *Monroe v. FTS USA, LLC*, 17 F.4th 664, 669 (6th Cir. 2021). In this case, we issued a limited remand that required the district court to determine whether sovereign immunity barred Doe's ADA claims. *See id.* But nothing in our order purported to restrict the manner in which the district court undertook this inquiry. And a district court has both inherent authority to manage its cases, *see In re Prevot*, 59 F.3d 556, 566 (6th Cir. 1995), and statutory authority under the Magistrate Judge Act to refer matters, even dispositive ones, to a magistrate judge for a report and recommendation, see 28 U.S.C. § 636(b)(1)(B); *Carter v. Hickory Healthcare Inc.*, 905 F.3d 963, 967 (6th Cir. 2018). Accordingly, we conclude that the district court did not violate our remand order or abuse its discretion in requesting a report and recommendation from the magistrate judge.

We now turn to the merits of that issue and review the district court's order de novo. *Josephson v. Ganzel*, 115 F.4th 771, 782 (6th Cir. 2024).*

Title II of the ADA prohibits a "public entity" from excluding disabled persons from participating in, or denying them the benefits of, its "services, programs, or activities" due to their disabilities. 42 U.S.C. § 12132. "Public entity" includes a state government and "any department, agency, special purpose district, or other instrumentality of a State." 42 U.S.C. § 12131(1). A private citizen may bring a suit for money damages for a Title II violation. *See* 42 U.S.C. § 12133. And Congress has stated that it intended the ADA to abrogate the States' Eleventh Amendment sovereign immunity from suit. See 42 U.S.C. § 12202. But Congress did not validly abrogate State sovereign immunity for all Title II violations. *See United States v. Georgia,* 546 U.S. 151,157–59 (2006). Instead, a private suit against a State for a Title II violation may proceed only if the State's conduct also violated the Fourteenth Amendment. *See id.* at 159; *Mingus v. Butler,* 591 F.3d 474, 482 (6th Cir. 2010).†

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* FN1The parties dispute whether Doe properly objected to the report and recommendation and consequently whether he has forfeited appellate review of the district court's judgment. *See Berkshire v. Dahl*, 928 F.3d 520, 530 (6th Cir. 2019). The forfeiture rule is not jurisdictional, however. *See Carter v. Mitchell*, 829 F.3d 455, 472 (6th Cir. 2016). We choose to excuse any forfeiture and proceed to the merits of the sovereign-immunity question because "the issue is presented with sufficient clarity" and "resolving the issue would promote the finality of litigation in the case." *Id.* (*quoting Henson v. Warden, London Corr. Inst.*, 620 F. App9x 417, 420 (6th Cir. 2015)).

† FN2 The State of Tennessee and the Governor and Attorney General are undoubtedly arms of the State for purposes of Eleventh Amendment sovereign immunity. *See Ernst v. Rising*, 427 F.3d 351, 355 (6th Cir. 2005); *see also Skatemore, Inc. v.*

Accordingly, to determine whether Congress validly abrogated state sovereign immunity, the Supreme Court established a three-part test that must be applied on a "claim-by-claim basis." *Georgia,* 546 U.S. at 159. The court must determine

> (1) which aspects of the State's alleged conduct violated Title II; (2) to what extent such misconduct also violated the Fourteenth Amendment; and (3) insofar as such misconduct violated Title II but did not violate the Fourteenth Amendment, whether Congress's purported abrogation of sovereign immunity as to that class of conduct is nevertheless valid.

Id. If the court determines at the first step that there was no Title II violation, then the State is entitled to

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Whitmer, 40 F.4th 727, 732–33 (6th Cir. 2022). And we conclude that the Dickson County General Sessions Court and the Dickson County Chancery Courts, and by extension Judges Monsue and Wolfe in their official capacities, are arms of the State of Tennessee because (1) the courts were created by the Tennessee Legislature, (2) state law controls the selection and removal of lower-court judges, and (3) the Tennessee Supreme Court supervises the "inferior courts" of the State. *See Valentine v. Gay*, No. 3:23-cv-00204, 2023 WL 6690934, at *2–5 (M.D. Tenn. Oct. 12, 2023), report and recommendation adopted, 2023WL 7930049 (M.D. Tenn. Nov. 16, 2023); *see also Montgomery v. Smith*, No. 3:23-cv-00275, 2024 WL 4143407, at *16 (M.D. Tenn. Aug. 19, 2024). Additionally, "the provision of judicial services [is] an area in which local governments are typically treated as 'arms of the State' for Eleventh Amendment purposes. *Lane,* 541 U.S. at 527 n.16 (*quoting Mt. Healthy City Bd. of Ed. v. Doyle,* 429 U.S. 274, 280 (1977) (cleaned up)); see also *Ernst,* 427 F.3d. at 361 (stating that the judiciary is "one of three essential branches of state government"). In the sovereign-immunity analysis, the strength of these factors outweighs the county courts' potential liability for any money judgment. *See Pucci v. Nineteenth Dist. Ct.*, 628 F.3d 752, 761–64 (6th Cir. 2010).

sovereign immunity without further inquiry into the second and third steps. *See Babcock,* 812 F.3d at 539; *Zibbell v. Mich. Dep't of Hum. Servs.*, 313 F. App'x 843, 847–48 (6th Cir. 2009).

Doe's Title II claims arise out of his state-court divorce and child-custody proceedings. Title II prohibits States from denying disabled persons access to the courts. *Tennessee v. Lane,* 541 U.S. 509, 533–34 (2004); *Popovich v. Cuyahoga Cnty. Ct. of Common Pleas,* 276 F.3d 808, 814–15 (6th Cir. 2002) (en banc). But here, Doe's amended complaint shows that the defendants did not deny him access to the courts because of his disability. He was able to physically access the state courtrooms, *cf. Lane,* 541 U.S. at 513–14 (the plaintiffs, who were paraplegics, were unable to access courtrooms because the courthouses did not accommodate their wheelchairs), file motions, and participate in the proceedings without any accommodations, *cf. Popovich,* 276 F.3d at 817 (the hearing-impaired plaintiff was unable to meaningfully participate in his state child-custody proceedings because the trial court denied him a reasonable hearing accommodation).

Further, Doe's amended complaint does not show that the defendants presumptively denied him custody and visitation because of his mental-health disability or because of stereotypes and generalizations about persons with mental health disabilities. *See Finley v. Huss*, 102 F.4th 789, 823 (6th Cir. 2024) (holding that Title II requires the plaintiff to prove that his disability was the "but-for cause" of the defendant's discriminatory behavior).

First, in making child-custody decisions, Tennessee law does not create a presumption either for or against a parent with a mental health disability. Instead, state law allows courts to consider a parent's mental fitness as but one factor

in determining child custody. See Tenn. Code Ann. § 36-6-106(a)(1)-(16); see also § 36-6-106(a)(8) (stating that the court must consider "[t]he moral, physical, mental and emotional fitness of each parent as it relates to their ability to parent the child"). And the court must consider all of § 36-6-106(a)'s 16 factors in making this decision. *See Grissom v. Grissom,* 586 S.W.3d 387, 393 (Tenn. Ct. App. 2019). Doe concedes that the ADA does not prohibit state courts from considering a parent's mental health in making custody decisions.

Second, Doe's amended complaint does not show that Judge Monsue based his decisions on stereotypes and generalizations about Doe's mental health disability. Although Oliver and Vandivort were concerned that Doe presented a threat because of his alleged mental instability, Judge Monsue based his protection and no-contact order on the conclusion that Doe committed domestic abuse, not because of any disability. *Cf. Finley,* 102 F.4th at 824–25 (holding that prison officials did not violate Title II for disciplining a mentally ill inmate for possessing a contraband razorblade, even though the inmate's mental illness likely motivated the misconduct). Although Doe denies that he committed domestic abuse, we do not have jurisdiction to review Judge Monsue's contrary finding. See *Kitchen v. Whitmer,* 106 F.4th 525, 535 (6th Cir. 2024). Otherwise, Judge Monsue deferred to Judge Wolfe to make the ultimate custody and visitation decisions.

Third, Doe's complaint does not demonstrate that his mental health disability was the "but-for cause" of Judge Wolfe's custody and visitation decisions or that his decisions were based on stereotypes about disabled persons. We accept as true Doe's allegations that Judge Wolfe made dismissive comments about the applicability of the

ADA in state court and stated that Doe would have to prove that he was not a danger to the children. But in the end, Judge Wolfe ordered two Rule 35 evaluations of Doe and stated that he was going to reserve a final custody decision until he received the second report because it would further enable him to assess Doe's mental health. Under those circumstances, Doe failed to plead a Title II violation against Judge Wolfe.

Accordingly, the district court correctly concluded that the defendants were entitled to sovereign immunity on Doe's Title II claims. Because the ADA claims of Doe's children were derivative of his own barred ADA claims, the district court did not abuse its discretion in concluding that the appointment of a guardian ad litem for Doe's children was unnecessary. *Cf. Block v. Koch Transfer Co.*, No. 87-3841, 1988 WL 117155, at *2 (6th Cir. Nov. 4, 1988) (holding that an estate administrator adequately represented the decedent's minor children because of their similar interest in obtaining a money judgment against the defendant).

Finally, we affirm the district court's denial of Doe's motion to file a second amended complaint as outside the scope of our limited remand to determine whether sovereign immunity or some other threshold issue barred claims 6 and 7 of Doe's first amended complaint. *See Monroe*, 17 F.4th at 669 ("[A] limited remand 'constrains' the district court's authority to the issue or issues specifically articulated in the appellate court's order." (*quoting United States v. Moore,* 131 F.3d 595, 598 (6th Cir. 1997)).

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

ENTERED BY ORDER OF THE COURT
/s Kelly L. Stephens, Clerk

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE JOHN DOE, v STATE OF TENNESSEE, et al., NO. 3:18-cv-00471

ORDER

Pending before the Court is the Magistrate Judge's Report and Recommendation (Doc. No.156). In response, Plaintiff filed an "Appeal from Report and Recommendation" (Doc. No. 157). Defendants filed a response. (Doc. No. 159).

Under 28 U.S.C. § 636(b)(1) and Local Rule 72.02, a district court reviews de novo any portion of a report and recommendation to which a specific objection is made. *United States v. Curtis,* 237 F.3d 598, 603 (6th Cir. 2001). General or conclusory objections are insufficient. *See Zimmerman v. Cason,* 354 F. Appx. 228, 230 (6th Cir. 2009). Without specific objections, "[t]he functions of the district court are effectively duplicated as both the magistrate and the district court perform identical tasks." *Howard v. Sec. of Health & Human Servs.,* 932 F.2d 505, 509 (6th Cir.1991). Thus, "only those specific objections to the magistrate's report made to the district court will be preserved for appellate review." *Id.* (*quoting Smith v. Detroit Fed'n of Teachers*, 829 F.2d 1370, 1373 (6th Cir. 1987)). In conducting the review, the court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. §636(b)(1)(C).

The Court has reviewed Plaintiff's filing. (Doc. No. 157). It is clear from those objections that Plaintiff disagrees with the findings and recommendations of the Magistrate Judge. However, Plaintiff fails to provide a basis to reject or modify the R&R because his objections do not identify

any specific factual or legal error made by the Magistrate Judge. Instead, Plaintiff essentially rebriefs his entire merits argument. This is insufficient to invoke de novo review. Objections that do not identify an error are meritless. *See Howard*, 932 F.2d at 509; *Drew v. Tessmer*, 36 F. App'x 561, 561 (6th Cir. 2002) ("The filing of vague, general, or conclusory objections does not meet the requirements of specific objections and is tantamount to a complete failure to object.").

Having reviewed the Report and Recommendation and considered Plaintiff's filing, the Court concludes that the Report and recommendation (Doc. No. 156) should be adopted and approved. For the reasons stated therein, this case is DISMISSED without prejudice for lack of jurisdiction.

It is so ORDERED.

/s/ WILLIAM L. CAMPBELL, JR.
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE
JOHN DOE, 18-471 et al. Plaintiffs, v. STATE OF TENNESSEE, Defendants.
Case No. 3:18-cv-00471

To: The Honorable William L. Campbell, Jr., District Judge

REPORT AND RECOMMENDATION

Pro se Plaintiff John Doe's claims in this action arise out of his divorce and child custody proceedings in Tennessee state courts. (Doc. No. 23.) This Court previously found that it lacked jurisdiction to consider Doe's claims under the domestic-relations exception to federal question jurisdiction and dismissed each of the ten counts of Doe's amended complaint. (Doc. Nos. 112, 117.) Doe appealed, and the United States Court of Appeals for the Sixth Circuit affirmed dismissal of Counts 1–5 and 8–10, but vacated dismissal of Counts 6 and 7, which are claims for injunctive relief and monetary damages under Title II of the Americans with Disabilities Act (ADA). (Doc. Nos. 23, 126.) The Sixth Circuit dismissed the requests for injunctive relief in Counts 6 and 7 as moot and remanded Doe's requests for monetary damages for the limited purpose of determining whether Eleventh Amendment sovereign immunity or any other threshold ground bars the award of damages against Defendants the State of Tennessee; the Chancery Court of Dickson County, Tennessee (the Chancery Court); Chancellor David Wolfe; the General Sessions Court of Dickson County, Tennessee (the General Sessions Court); and General Sessions Judge Craig Monsue. (Doc. No. 126.) The parties have filed supplemental briefing on this question (Doc. Nos. 140, 142, 151, 153) and the issue is ripe for the Court's review.

For the reasons that follow, the Magistrate Judge will recommend the Court find that sovereign immunity bars Doe's claims for monetary damages in Counts 6 and 7 and dismiss those claims without prejudice for lack of jurisdiction.

I. Relevant Background

The Court has discussed the factual and procedural background of this action in prior orders and will summarize the background relevant to Counts 6 and 7 here.

A. Factual Background

Doe alleges that he was hospitalized for depression and suicidal thoughts in February 2018. (Doc. No. 23.) Following his hospitalization, he informed his then-wife Jane Doe that he wanted a divorce. *(Id.)* Jane Doe filed a petition in the General Sessions Court seeking a protective order against Doe on behalf of herself and the couple's children. *(Id.)* Her petition detailed episodes of violence by Doe and described Doe's mental health and recent hospitalization. (*Id.;* Doc. No. 23- 1.) Based on Jane Doe's petition, Monsue issued an ex parte order prohibiting Doe from having any contact with Jane Doe or their three minor children pending an evidentiary hearing on the petition. (Doc. No. 23.)

Monsue held an evidentiary hearing on the petition approximately three weeks after it was filed. (Id.) During the hearing, witnesses for Jane Doe testified about Doe's mental health, and Jane Doe's counsel argued "that[,] because of John Doe's mental health diagnosis and medications, no one could know for sure if [he] was safe to be around the children . . . ." (Id. at PageID# 252– 53, ¶ 39.) After the hearing, Monsue found that Jane Doe had proven her allegations of abuse by a preponderance of the evidence and issued a protective order prohibiting Doe from having any contact with Jane Doe or the

children. (Doc. No. 23.) Doe appealed the protective order to the Case 3:18-cv-00471 Document 156 Filed 08/15/22 Page 2 of 36 PageID #: 1007 3 Chancery Court and moved for his own protective order against Jane Doe. *(Id.)* According to Doe, the Chancery Court took no action regarding his appeal or his motion for a protective order. *(Id.)*

While Jane Doe's petition for a protective order was pending in the General Sessions Court, Doe filed for divorce in the Chancery Court. *(Id.)* Jane Doe filed a proposed parenting plan, and Doe filed a motion for a temporary custody and visitation order. *(Id.)* Doe also filed "a notice of disability under the Americans with Disabilities Act," informing the Chancery Court that he had been diagnosed with major depression and "asking the court not to discriminate against" him because of that diagnosis. (Id. at PageID# 255, ¶ 52.)

Wolfe held a hearing in the divorce proceedings regarding temporary visitation, among other legal issues. (Doc. No. 23.) Doe alleges that Jane Doe's counsel and Wolfe mocked Doe's notice of disability in the hearing. (Id.) Wolfe ordered the appointment of a guardian ad litem for the children and adjourned the hearing to allow the guardian time to become familiar with the case. (Id.) He declined to rule on Doe's pending motions and "directed the parties to the hallway to negotiate supervised visitation." (Id. at PageID# 255, ¶¶ 55, 56.) Wolfe also ordered Doe to undergo a mental-health evaluation as authorized by Tennessee Rule of Civil Procedure 35 and ordered the Does and their children to undergo a family evaluation. (Doc. No. 23.) As a result of the parties' negotiations, Doe was allowed to visit his children for two hours every other week while supervised by Jane Doe's sister and brother-in-law. (Id.) Jane Doe's sister and brother-in

law later informed the Chancery Court that they would not continue supervising Doe's visits with his children, and Wolfe ordered Doe to hire a professional visitation supervisor at his own expense. (Id.)

Doe's mental-health evaluation was completed and filed with the Chancery Court in early July 2018. (Id.) The report stated that treatment and medication were mitigating Doe's anger and depression. (Id.) Doe filed another motion for a temporary custody and visitation order soon thereafter alleging that, during a hearing, Wolfe had stated that the ADA did not apply to divorce and custody proceedings and expressed concern about Doe's mental health and the Rule 35 evaluation. (Id.) Doe further states that Wolfe was openly dismissive of Doe, refused to hear from Doe's witnesses, and adjourned the hearing pending the results of the family evaluation. (Id.) Doe alleges that, as of the date of filing his amended complaint, he "spent 69 days with no contact with his minor children," then received only 10 hours of supervised visitation over a 7- week period, then went another "44 days with no contact." (Id. at PageID# 258, ¶ 73.)

B. Procedural History

Doe initiated this action on May 18, 2018 (Doc. No. 1), while his divorce was ongoing (Doc. No. 23). Doe's amended complaint asserts a variety of claims on behalf of Doe and his minor children. (Doc. No. 23.) As relevant here, Count 6 claims that Defendants the State of Tennessee, the Chancery Court, Wolfe, the General Sessions Court, and Monsue deprived Doe of "fundamental parenting rights" under the United States Constitution in violation of Title II of the ADA "based on the prohibited rationale of stereotypical and unspecified fear relative to his mental health diagnosis." (Id. at

PageID# 267.) Count 7 alleges that the same defendants violated Doe's children's rights under the ADA by "depriving them of visitation and contact with their father, an activity constituting a fundamental liberty interest." (Id. at PageID# 268.) Doe seeks injunctive relief and monetary damages for both counts. (Doc. No. 23.)

The defendants moved to dismiss Doe's amended complaint arguing that the Court lacked jurisdiction to consider Doe's claims and, in the alternative, that Doe had failed to state any claims for which relief could be granted. (Doc. Nos. 34, 83, 100.) Doe did not object to the dismissal of his claims against Jane Doe but otherwise opposed the defendants' motions. (Doc. Nos. 53, 99, 102.) The Court granted the defendants' motions to dismiss, finding that it lacked subject-matter jurisdiction over Doe's federal claims because his amended complaint, at its core, sought to modify the state courts' child-custody orders, and that the Court should decline to exercise jurisdiction over any state-law claims. (Doc. Nos. 112, 117.)

Doe appealed (Doc. No. 122), and the Sixth Circuit affirmed this Court's dismissal of Counts 1–5 and 8–10 but vacated the Court's dismissal of Counts 6 and 7 (Doc. No. 126). The Sixth Circuit held that Doe's requests for injunctive relief in Counts 6 and 7 were moot, that Doe "retain[ed] a legally cognizable interest in Counts 6 and 7 because of his request for money damages[,]" and that this Court "erred in holding that the domestic-relations exception [to federal question jurisdiction] barred these claims . . . [for] money damages . . . ." (Id. at PageID# 796.) However, the Sixth Circuit further held that

> sovereign immunity may bar consideration of Counts 6 and 7. Because Doe seeks relief in these counts against the state of Tennessee,

> two state courts, and state officials acting in their official capacities, sovereign immunity would ordinarily deprive the district court of jurisdiction. Congress, however, has validly abrogated state sovereign immunity for some violations of Title II of the ADA. *See Babcock v. Michigan,* 812 F.3d 531, 534–35 (6th Cir. 2016). We think it best for the district court to consider in the first instance whether Counts 6 and 7 fall within the scope of the ADA's valid abrogation of sovereign immunity.

(Id. at PageID# 797.) The Sixth Circuit therefore remanded Counts 6 and 7 for consideration of the sovereign immunity question and further instructed that, "[o]n remand, the district court should also consider whether any other 'threshold grounds for denying audience to [these claims] on the merits' apply." (Id. (second alteration in original) (quoting *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 585 (1999)).)

On remand, this Court ordered the parties to file supplemental briefs addressing the question posed by the Sixth Circuit—"whether sovereign immunity or other threshold reasons bar this Court's consideration of the claims for monetary damages in Counts 6 and 7 of the amended complaint." (Doc. No. 136, PageID# 890.) The State, the Chancery Court, and Wolfe argue that they are entitled to Eleventh Amendment sovereign immunity from Doe's monetary damages claims in Counts 6 and 7 because, under the three-part test established by *United States v. Georgia*, 546 U.S. 151, 159 (2006), Congress has not validly abrogated state sovereign immunity with respect to Doe's or his children's Title II claims. (Doc. No. 140.) Relying on the Supreme Court's opinion in *Tennessee v. Lane,* 541 U.S. 509 (2004), and the Sixth Circuit's opinion in *Popovich v.*

Cuyahoga County Court of Common Pleas, 276 F.3d 808 (6th Cir. 2002) (en banc) *(Popovich I)*, Doe responds that Congress has validly abrogated state sovereign immunity with respect to the violations of fundamental rights protected by the Due Process Clause of the Fourteenth Amendment that he asserts in Counts 6 and 7. (Doc. No. 142.) The State, the Chancery Court, and Wolfe did not file a reply.

The General Sessions Court and Monsue argue that they are considered arms of the state for purposes of sovereign immunity, that the claims against them are therefore duplicative of Doe's claims against the State of Tennessee, and that they are entitled to sovereign immunity because, under the Georgia test, Congress has not validly abrogated state sovereign immunity with respect to Title II claims. (Doc. No. 151.) Doe argues that the General Sessions Court and Monsue should not be considered arms of the state and are not entitled to sovereign immunity. (Doc. No. 153.) Alternatively, Doe argues that the General Sessions Court and Monsue waived any sovereign immunity argument by failing to raise it in their motion to dismiss his amended complaint and that Congress validly abrogated state sovereign immunity with respect to the Title II claims in Counts 6 and 7. (Id.) The General Sessions Court and Monsue also did not file a reply.

II. Legal Standard

Federal courts are courts of limited jurisdiction and can adjudicate only the claims that the Constitution or an act of Congress has authorized them to hear. *Chase Bank USA, N.A. v. City of Cleveland*, 695 F.3d 548, 553 (6th Cir. 2012). Whether a court has subject-matter jurisdiction is a "threshold" question in any action, Am. *Telecom Co. v. Republic of Leb.*, 501 F.3d 534, 537 (6th Cir. 2007), and one that courts may raise sua sponte, *In re*

Lewis, 398 F.3d 735, 739 (6th Cir. 2005). This reflects the fundamental principle that "'[j]urisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause.'" *Steel Co. v. Citizens for a Better Env't,* 523 U.S. 83, 94 (1998) (*quoting Ex parte McCardle,* 74 U.S. (7 Wall.) 506, 514 (1868)).

A challenge to subject-matter jurisdiction "may either attack the claim of jurisdiction on its face or it can attack the factual basis of jurisdiction." *Golden v. Gorno Bros., Inc.*, 410 F.3d 879, 881 (6th Cir. 2005). "A state's assertion of sovereign immunity constitutes a factual attack." *Hornberger v. Tennessee*, 782 F. Supp. 2d 561, 564 (M.D. Tenn. 2011). In resolving assertions of sovereign immunity, no presumption of truth applies to the plaintiff's factual allegations, and the "court must weigh the conflicting evidence to arrive at the factual predicate that subject-matter does or does not exist." *Gentek Bldg. Prods., Inc. v. Sherwin-Williams Co.*, 491 F.3d 320, 330 (6th Cir. 2007). District courts reviewing factual attacks on jurisdiction have "wide discretion to allow affidavits, documents and even a limited evidentiary hearing to resolve disputed jurisdictional facts." *Ohio Nat'l Life Ins. Co. v. United States,* 922 F.2d 320, 325 (6th Cir. 1990).

An entity asserting Eleventh Amendment sovereign immunity "has the burden to show that it is entitled to immunity, i.e., that it is an arm of the state." *Gragg v. Ky. Cabinet for Workforce Dev.,* 289 F.3d 958, 963 (6th Cir. 2002); *see also Nair v. Oakland Cnty. Cmty. Mental Health Auth.*, 443 F.3d 469, 474 (6th Cir. 2006) (quoting id.).

III. Analysis

The Eleventh Amendment to the United States Constitution provides that "[t]he Judicial power of

the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." U.S. Const. amend. XI. "Although by its terms the Amendment applies only to suits against a state by citizens of another state, the Supreme Court has extended it to suits by citizens against their own states." *Babcock*, 812 F.3d at 533 *(citing Bd. of Trs. of the Univ. of Ala. v. Garrett,* 531 U.S. 356, 363 (2001)). Eleventh Amendment "immunity applies only to lawsuits against the State or 'an arm of the State,' not to those against political subdivisions like counties." *Laborers' International Union, Local 860 v. Neff*, 29 F.4th 325, 330 (6th Cir. 2022) (*quoting Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 280 (1977)*); see also Ernst v. Rising,* 427 F.3d 351, 358 (6th Cir. 2005). As relevant here, the Supreme Court has held that Congress may abrogate states' Eleventh Amendment immunity under certain circumstances and that it has done so with respect to some Title II ADA claims. *Lane*, 541 U.S. at 517; *Georgia*, 546 U.S. at 159.

The Court will therefore analyze whether the Chancery Court, Wolfe, the General Sessions Court, and Monsue are arms of the State of Tennessee for purposes of Eleventh Amendment immunity before determining whether Doe's and his children's claims for monetary damages in Counts 6 and 7 fall within the scope of the ADA's valid abrogation of sovereign immunity.

A. The Arm of the State Analysis

Doe sues Wolfe in his official capacity as a chancellor and Monsue in his official capacity as a judge. (Doc. No. 23.) "[F]or the purpose of sovereign immunity[,] 'individuals sued in their official capacities stand in the shoes of the entity they

represent.'" *S.J. v. Hamilton Cnty.*, 374 F.3d 416, 420 (6th Cir. 2004) (*quoting Alkire v. Irving*, 330 F.3d 802, 810 (6th Cir. 2003)). Thus, the relevant inquiry is whether the Chancery Court and General Sessions Court are considered arms of the State of Tennessee for purposes of the Eleventh Amendment. The Sixth Circuit directs courts to apply four factors in making that determination:

> (1)the State's potential liability for a judgment against the entity; (2) the language by which state statutes and state courts refer to the entity and the degree of state control and veto power over the entity's actions; (3) whether state or local officials appoint the board members of the entity; and (4) whether the entity's functions fall within the traditional purview of state or local government.

Ernst, 427 F.3d at 359 *(citing Hess v. Port Auth. Trans-Hudson Corp.,* 513 U.S. 30, 44–45 (1994)). The analysis is made based on the law of the state in question.

The first factor is "generally . . . the most important one, . . . [but] it is not 'the sole criterion for determining whether an [entity] is a state entity for sovereign immunity purposes.'" *Id.* (quoting S.J., 374 F.3d at 421). This is especially so when the entities in question are state courts. *See Pucci v. Nineteenth Dist. Ct.,* 628 F.3d 752, 761 (6th Cir. 2010) (holding that district court erred "[i]n concluding that potential financial liability is the only determinative factor—or the near determinative factor—in establishing whether a state court is an arm of the state for purposes of Eleventh Amendment sovereign immunity"); *Laborers' International Union, Local 860*, 29 F.4th at 333 ("That the State has delegated some funding responsibility to a local government does not cancel out the State's extensive authority

over the Juvenile Court."). The "need to inquire beyond the issue of financial liability relates back to the Supreme Court's emphasis that the Eleventh Amendment incorporates 'twin reasons' for granting states sovereign immunity: the desire not to infringe either a state's purse or its dignity." *Pucci,* 628 F.3d at 761 (*quoting Hess,* 513 U.S. at 47); see also id. ("Sovereign immunity . . . 'does not exist solely in order to prevent federal-court judgments that must be paid out of a State's treasury; it also serves to avoid the indignity of subjecting a State to the coercive process of judicial tribunals at the instance of private parties.'" (quoting Seminole Tribe v. Florida, 517 U.S. 44, 58 (1996))).

1. The Chancery Court

The Sixth Circuit held that sovereign immunity barred Doe's claim for injunctive relief against the Chancery Court and Wolfe in Count 10 because "[t]he Chancery Court is an arm of the [S]tate of Tennessee." (Doc. No. 126, PageID# 795 (citing Pucci, 628 F.3d at 762).) Although the Sixth Circuit did not directly address the Ernst factors, applying those factors to Tennessee law directs this Court to the same conclusion.‡

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‡ FN1 Doe has not contested the conclusion that the Chancery Court and Wolfe are arms of the state. The State, the Chancery Court, and Wolfe argue in a footnote that chancery courts are arms of the state for Eleventh Amendment purposes, but do not address the Ernst factors. (Doc. No. 140.) Instead, these defendants rely on the Sixth Circuit's opinion in *Howard v. Virginia,* 8 F. App'x 318, 319 (6th Cir. 2001), for the general principle that "[a] state court, such as the chancery court here, 'is an arm of the state, entitled to Eleventh Amendment immunity.'" (Id. at PageID# 916 n.6.) *In Howard,* the Sixth Circuit upheld a district court's finding that the Commonwealth of Virginia 12th Judicial District Court was entitled to Eleventh Amendment immunity. 8 F. App'x at 319. Howard cited the Sixth Circuit's opinion in *Mumford v. Basinski,* 105 F.3d 264,

First, Tennessee law provides that chancellors are officers of the state whose salaries and expenses are paid out of the state treasury. Tenn. Code Ann. §§ 8-23-103, 8-23-104, 8-26-101. Thus, Tennessee is potentially liable for judgments against chancellors in their official capacities, and the first Ernst factor therefore weighs in favor of finding that chancery courts are arms of the state entitled to Eleventh Amendment sovereign immunity. *See Ernst*, 427 F.3d at 359 ("[I]t is the state treasury's potential legal liability for the judgment, not whether the state treasury will pay for the judgment in that case, that controls the inquiry[.]" (*citing Regents of the Univ. of Cal. v. Doe*, 519 U.S. 425, 431 (1997))).

The Sixth Circuit has held that the second Ernst factor—"the language by which state statutes and state courts refer to the entity and the degree of state control and veto power over the entity's actions," *Ernst,* 427 F.3d at 459—weighs in favor of sovereign immunity when states treat their courts

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267–70 (6th Cir. 1997), a pre-Ernst decision that analyzed Ohio law and held that the Lorain County Common Pleas Court Domestic Relations Division was an arm of the State of Ohio entitled to sovereign immunity. Id. The Sixth Circuit has applied the Ernst factors in cases addressing the status of state courts in Michigan and Ohio and held, based on Michigan and Ohio law, that Michigan's trial-level district courts and the juvenile divisions of Ohio's courts of common pleas are considered arms of the state for sovereign immunity purposes. *See Pucci,* 628 F.3d at 761–64 (Michigan trial-level district courts are arms of the state entitled to Eleventh Amendment immunity); *Laborers' International Union, Local 860,* 29 F.4th at 330–34 (Ohio courts of common pleas juvenile divisions are arms of the state entitled to Eleventh Amendment immunity). The Sixth Circuit has not yet examined the Ernst factors with respect to Tennessee's laws governing its chancery and general sessions courts.

"as segments of state government." *Laborers' International Union, Local 860*, 29 F.4th at 330. *In Pucci* and *Laborers' International Union, Local 860*, the Sixth Circuit considered, among other things, that Michigan law and Ohio law create unified state judicial systems under the control of the states' supreme courts and vest the states' judicial power in their lower courts. Pucci, 628 F.3d at 762–63; *Laborers' International Union, Local 860*, 29 F.4th at 330–31. The same is true of Tennessee.

The Tennessee General Assembly has "granted and clothed" "the supreme court" "with general supervisory control over all the inferior courts of the state" "[i]n order to ensure the harmonious, efficient and uniform operation of the judicial system of the state[.]" Tenn. Code Ann. § 16-3-501. It has also empowered the Tennessee Supreme Court to "[d]irect the administrative director of the courts to provide administrative support to all of the courts of the state[.]" Id. § 16- 3-502(3). Like the Michigan Constitution and the Ohio Constitution, the Tennessee Constitution vests "[t]he judicial power of this State . . . in one Supreme Court and in such Circuit, Chancery and other inferior Courts as the Legislature shall from time to time, ordain and establish" and "in the Judges thereof[.]" Tenn. Const. art. 6, § 1. Tennessee law further provides that "[t]he judicial power of the state is vested in judges of the . . . chancery courts," among "other courts created by law." Tenn. Code Ann. § 16-1-101. In Laborers' International Union, Local 860, the Sixth Circuit also found significant that the judges of the state court at issue have the "authority to serve temporarily throughout Ohio's lower court system if circumstances require" and "take an oath to support the Ohio Constitution." 29 F.4th at 331, 333 (first citing Ohio Const. art. IV, § 5(A)(3); and

then *citing* Ohio Rev. Code Ann. § 3.23). Similarly, the Tennessee Supreme Court may "[d]esignate and assign temporarily any judge or chancellor to hold or sit as a member of any court, of comparable dignity or equal or higher level, for any good and sufficient reason." Tenn. Code Ann. § 16-3-502(3)(A). And, "[b]efore entering upon the duties of office, every judge and chancellor" must "take an oath or affirmation to support the constitutions of the United States and" of the State of Tennessee. Id. § 17-1-104. The second Ernst factor favors finding the Chancery Court to be an arm of the state. *Ernst,* 427 F.3d at 459; see also Pucci, 628 F.3d at 762–63; *Laborers' International Union, Local 860*, 29 F.4th at 330–31.

The third *Ernst* factor asks "whether state or local officials appoint the board members of the entity[.]" *Ernst*, 427 F.3d at 459. The State of Tennessee exercises considerable control over the selection and removal of chancellors. In Pucci and Laborers' International Union, Local 860, the Sixth Circuit considered that Michigan law and Ohio law provide that, even though judges of the courts at issue were elected locally, state officials held removal power and the power to fill judicial vacancies. *Pucci,* 628 F.3d at 763; *Laborers' International Union, Local 860,* 29 F.4th at 331. The Sixth Circuit also considered that the Ohio Constitution "dictates standards controlling the election, residency, tenure, compensation, and eligibility of every . . . judge." *Laborers' International Union, Local 860*, 29 F.4th at 331 (*quoting Mumford v. Basinski, 105* F.3d 264, 268 (6th Cir. 1997)). Tennessee law provides that chancellors are elected by voters in the judicial districts where they sit and are subject to age, residency, and professional qualifications set by state law. Tenn. Const. art. 6, § 4; Tenn. Code Ann. §§ 17-1-101–17-1-107. Chancellors may only be removed by

a two-thirds vote of both houses of the state legislature. Tenn. Const. art. 6, § 6. If a chancellor vacancy occurs "by death, resignation, retirement, or otherwise," state law provides that "the governor shall fill the vacancy by appointing one (1) of three (3) persons nominated by the [trial court vacancy] commission." Tenn. Code Ann. § 17-4-308(a). The third Ernst factor weighs in favor of finding that the Chancery Court is an arm of the state. *Ernst*, 427 F.3d at 459; *see also Pucci,* 628 F.3d at 763–64; *Laborers' International Union, Local 860*, 29 F.4th at 331.

The fourth Ernst factor is easily met. "[S]tate courts quintessentially fall within the 'traditional purview of state government.'" *Laborers' International Union, Local 860*, 29 F.4th at 331 (quoting Pucci, 628 F.3d at 764). The Sixth Circuit has held that "[t]he state judiciary is 'one of three essential branches of state government'" and that "state courts serve as the State's 'adjudicative voice.'" Id. (first quoting Ernst, 427 F.3d at 361; and then quoting S.J., 374 F.3d at 421). "If any entity qualifies as an arm of the State, a state court does." Id.; see also Lane, 541 U.S. at 527 n.16 ("[T]he provision of judicial services[is] an area in which local governments are typically treated as 'arm[s] of the State' for Eleventh Amendment purposes[.]" (third alteration in original) *(quoting Mt. Healthy City Bd. of Ed.*, 429 U.S.at 280)). All four Ernst factors thus direct the Court to find the Chancery Court to be an arm of the State of Tennessee for Eleventh Amendment purposes. Cf. *Pucci,* 628 F.3d at 764; *Laborers' International Union, Local 860,* 29 F.4th at 331–32 (collecting cases holding "that the courts in a State's third branch of government count as arms of the State").

2. The General Sessions Court

The Sixth Circuit did not address whether the Court of General Sessions is considered an arm of the state for purposes of Eleventh Amendment sovereign immunity and, on remand, parties have not addressed how the Ernst factors apply to Tennessee's general sessions courts.§ The Court of General Sessions and Monsue argue (Doc. No. 151) that general sessions courts are arms of the state for purposes of Eleventh Amendment immunity because the Supreme Court held in Lane that "the provision of judicial services" is "an area in which local governments are typically treated as 'arm[s] of the State' for Eleventh Amendment purposes, and thus enjoy precisely the same immunity from unconsented suit as the States." *Lane,* 541 U.S. at 527 n.16 (alteration in original) *(quoting Mt. Healthy City Bd. of Ed.*, 429 U.S.at 280). Doe argues that "[t]he General Sessions Court is a county entity under state law" that is not entitled to Eleventh Amendment immunity and, in the alternative, that these defendants have waived sovereign immunity by failing to raise it in their motion to dismiss Doe's amended complaint. (Doc. No. 153, PageID# 991.)

The defense of sovereign immunity is subject to waiver. *Wis. Dep't of Corr. v. Schacht*, 524 U.S. 381, 389 (1998). However, even if the General Sessions Court and Monsue waived that defense by failing to raise it in their motion to dismiss, it is well established that courts may consider Eleventh Amendment sovereign immunity sua sponte. See, *e.g., S & M Brands, Inc. v. Cooper,* 527 F.3d 500, 507 (6th Cir. 2008*); Nair*, 443 F.3d at 474. In this case, the Sixth Circuit has directed this Court to consider

§ FN2 The Sixth Circuit did, however, characterize the General Sessions Court as a "state court[ ]" and Monsue as a "state official[ ][.]" (Doc. No. 126, PageID# 797.)

whether sovereign immunity bars Doe's and his children's Title II claims for monetary damages against the General Sessions Court and Monsue. (Doc. No. 126.)

Tennessee laws governing general sessions courts differ slightly from its laws concerning chancery courts. The primary difference, for purposes of the *Ernst* factors, is how the courts are funded. While Tennessee law sets a base salary for general sessions judges, Tenn. Code Ann. § 16- 15-5003, counties are responsible for paying general sessions judges' salaries and for funding the general sessions courts, id. §§ 16-15-102, 16-15-50006. The first *Ernst* factor therefore weighs against finding that general sessions courts are arms of the state. *Pucci*, 628 F.3d at 761–62, 764; *Laborers' International Union, Local 860,* 29 F.4th at 330, 331–32.

Turning to the second factor, the State of Tennessee treats general sessions courts as segments of state government. As explained, Tennessee law creates a unified state judicial system under the control, supervision, and administration of the Tennessee Supreme Court. See Tenn. Code Ann. § 16-3-501. ("In order to ensure the harmonious, efficient and uniform operation of the judicial system of the state, the supreme court is granted and clothed with general supervisory control over all the inferior courts of the state."). The Tennessee Legislature created general sessions courts and retains the sole authority to abolish them. Tenn. Code Ann. § 16-15-101(a)– (b). Tennessee law vests the state's judicial power in the general sessions courts and general sessions judges. Tenn. Const. art. 6, § 1; Tenn. Code Ann. § 16-1-101. General sessions judges take the same oath as chancellors, swearing to uphold the United States Constitution and Tennessee Constitution. Tenn. Code Ann. §§ 16-15-

203, 17-1-104. And the Supreme Court may temporarily assign a general sessions judge to "sit as a member of any court" in the state. Id. § 16-3-502; *see also Laborers' International Union, Local 860,* 29 F.4th at 331 (Ohio juvenile court judges are "judge[s] of the State, complete with authority to serve temporarily throughout Ohio's lower court system if circumstances require"). The second Ernst factor therefore favors finding the General Sessions Court to be an arm of the state. *See Pucci,* 628 F.3d at 762–63; *Laborers' International Union, Local 860,* 29 F.4th at 330–31.

Like chancellors, general sessions judges are elected subject to qualifications set by state law, Tenn. Code Ann. §§ 16-15-201, 16-15-202, 17-1-106, and may only be removed by a two thirds vote of both houses of the state legislature, Tenn. Const. art. 6, § 6; see also *In re Murphy,* 726 S.W.2d 509, 510–11 (1987) (holding that Tennessee Constitution vests power of removal of general sessions judges exclusively in Tennessee Legislature). However, state law provides that county legislative bodies fill vacancies on the general sessions courts. Tenn. Code Ann. § 16-15- 210. Even considering this difference, however, the third Ernst factor tips in favor of finding that general sessions courts are arms of the state.

For the reasons explained above, the fourth factor—whether the entity's actions fall within the traditional purview of state or local governments—weighs heavily in favor of finding that general sessions courts are arms of the state for Eleventh Amendment purposes, as it does for all state courts. *See Laborers' International Union, Local 860,* 29 F.4th at 331 ("[S]tate courts quintessentially fall within the 'traditional purview of state government.'"

(*quoting Pucci,* 628 F.3d at 764)); id. ("If any entity qualifies as an arm of the State, a state court does.").

Considering the four Ernst factors, the Court finds that the fact that counties may be liable for judgments against general sessions courts "is outweighed by the integrated role of" the general sessions courts within Tennessee's judiciary, "the degree of supervision and control that the [Tennessee] Supreme Court and legislature exercise over those courts," the role state actors play in selecting and removing general sessions judges, and the traditional state function the general sessions courts carry out. *Pucci,* 628 F.3d at 764; *see also Laborers' International Union, Local 860,* 29 F.4th at 333 ("That the State has delegated some funding responsibility to a local government does not cancel out the State's extensive authority over the Juvenile Court. The courts of common pleas remain creatures of the Ohio Constitution and state statute and remain the third branch of state government."). This Court should therefore find that the Court of General Sessions is an arm of the state for purposes of Eleventh Amendment sovereign immunity.**

** FN3 One federal court in Tennessee reached the opposite conclusion. In Culbertson v. Sullivan County Sheriff's Department, 2:20-CV-00083, 2020 WL 6365437 (E.D. Tenn. Oct. 29, 2020), the court observed that "counties are responsible for general sessions courts" and therefore found that "a general sessions court would not be an arm of the state, and the general sessions judge would be a county office, not a state official." Id. at *3 (citation omitted). But the Culbertson court did not consider the second, third, and fourth Ernst factors in making this finding and, as explained above, these factors outweigh the counties' financial responsibility for the general sessions courts. Further, the Culbertson court's finding was dicta. See id. ("But regardless of this technical difference, it does not change the conclusion. Plaintiff has not alleged anything improper anyone with the 'Kingsport City Courts' did to violate his constitutional

Because the Chancery Court and General Sessions Court—and Wolfe and Monsue acting in their official capacities—are arms of the State of Tennessee for purposes of the Eleventh Amendment, the Court must determine whether sovereign immunity bars Doe's and his children's Title II claims for monetary damages against these defendants.

B. The ADA's Abrogation of Sovereign Immunity

Congress may abrogate Eleventh Amendment sovereign immunity where it (1) unequivocally expresses its intent to abrogate state sovereign immunity; and (2) acts pursuant to a valid grant of constitutional authority. *See, e.g., Lane,* 541 U.S. at 517 (collecting cases). The first requirement is not at issue in this case. The ADA provides that "[a] State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in [a] Federal or State court of competent jurisdiction for a violation of this chapter." 42 U.S.C. § 12202 (footnote omitted). The Supreme Court has held that this provision unequivocally expresses Congress's intent to abrogate states' Eleventh Amendment sovereign immunity for any claims brough under the ADA. *Garrett,* 531 U.S. at 363–64; *Lane,* 541 U.S. at 518 (same)

As for the second requirement, "Congress can abrogate a State's sovereign immunity when it does so pursuant to a valid exercise of its power under § 5 of the Fourteenth Amendment to enforce the substantive guarantees of that Amendment." *Lane,* 541 U.S. at 518 (*discussing Fitzpatrick v. Bitzer,* 427

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rights. Aside from the immunity issues, he simply has not stated a claim under Section 1983 for which relief can be granted.")

U.S. 445, 456 (1976)). Section 5 of the Fourteenth Amendment provides that "Congress shall have power to enforce, by appropriate legislation, the provisions of this article." U.S. Const. amend. XIV, § 5. Section 1 provides the following substantive guarantees:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Id. § 1. The Supreme Court has held that, "[w]ith only 'a handful' of exceptions, . . . the Fourteenth Amendment's Due Process Clause incorporates the protections contained in the Bill of Rights, rendering them applicable to the States." *Timbs v. Indiana*, 139 S. Ct. 682, 687 (2019) (*quoting McDonald v. City of Chicago,* 561 U.S. 742, 764–65 (2010)). Congress's power to enforce these rights is broad but not unlimited. *Lane,* 541 U.S. at 520. "While Congress must have a wide berth in devising appropriate remedial and preventative measures for unconstitutional actions, those measures may not work a 'substantive change in the governing law.'" Id. (*quoting City of Boerne v. v. Flores,* 521 U.S. 507, 519 (1997)). The Supreme Court has therefore held that "Section 5 legislation is valid if it exhibits 'a congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end.'" *Id. (quoting City of Boerne,* 521 U.S. at 520).

1. Title II of the ADA

Title II addresses discrimination on the basis of disability in the provision of public services. 42 U.S.C. §§ 12131–12165. It provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." Id. § 12132. The ADA defines "disability" as "a physical or mental impairment that substantially limits one or more major life activities of [an] individual;" "a record of such an impairment; or" "being regarded as having such an impairment . . . ." 42 U.S.C. § 12102(1)(A)–(C). Title II defines a "qualified individual with a disability" as

> an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

Id. § 12131(2). A public entity is "any State or local government" and "any department, agency, special purpose district, or other instrumentality of a State or States or local government[.]" Id. § 12131(1)(A)–(B). This includes "the legislative and judicial branches of State and local governments." 28 C.F.R. pt. 35, app. B. Title II does not define "services," "programs," or "activities," but the Sixth Circuit has held that these terms are to be construed broadly and "encompass[ ] virtually everything that a public entity does." *Johnson v. City of Saline,* 151 F.3d 564, 569 (6th Cir. 1998). Further, the Sixth Circuit has held that "Title II . . . encompass[es] a prohibition

against associational discrimination[.]" *Popovich v. Cuyahoga Cnty. Ct. of Common Please, Domestic Rels. Div.*, 150 F. App'x 424, 426 (6th Cir. 2005) (Popovich II); *see also MX Grp., Inc. v. City of Covington,* 293 F.3d 326, 334–35 (6th Cir. 2002). Title II's implementing regulations provide that "a public entity shall not exclude or otherwise deny equal services, programs, or activities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association." 28 C.F.R. § 35.130(g).

In *Tennessee v. Lane*, the Supreme Court considered whether Title II is a valid exercise of Congress's § 5 enforcement power with respect to the particular claims presented in that case. Id. at 522. The plaintiffs in Lane were individuals who used wheelchairs for mobility; they "claimed that they were denied access to, and the services of, the state court system by reason of their disabilities." Id. at 513. Specifically, one plaintiff "alleged that he was compelled to appear to answer a set of criminal charges on the second floor of a county courthouse that had no elevator." Id. He "crawled up two flights of stairs to get to the courtroom" for his first appearance, but "refused to crawl again or to be carried by officers to the courtroom" for a second appearance and "was arrested and jailed for failure to appear." Id. at 514. A second plaintiff, who was "a certified court reporter, alleged that she ha[d] not been able to gain access to a number of county courthouses, and, as a result, ha[d] lost both work and an opportunity to participate in the judicial process." Id. In addressing these plaintiffs' claims, the Supreme Court considered "whether Congress had the power under § 5 to enforce the constitutional right of access to the courts." Id. at 531. After

considering Congressional findings regarding pervasive disability discrimination in state services and programs—including evidence "that many individuals in many States across the country, were being excluded from courthouses and court proceedings by reason of their disabilities" id. at 527—the Court held "that inadequate provision of public services and access to public facilities was an appropriate subject for prophylactic legislation" id. at 529. It therefore "concluded that Title II, as it applies to the class of cases implicating the fundamental right of access to the courts, constitutes a valid exercise of Congress' § 5 authority to enforce the guarantees of the Fourteenth Amendment." Id. at 533–34.

"The holding in *Lane* was fairly narrow: that 'Title II unquestionably is valid § 5 legislation as it applies to the class of cases implicating the accessibility of judicial services.'" *Meeks v. Schofield, 10* F. Supp. 3d 774, 793 (M.D. Tenn. 2014) (quoting *Lane,* 541 U.S. at 531). While the Supreme Court recognized that Title II "seeks to enforce a variety of other basic constitutional guarantees," it did not determine in Lane whether Congress's abrogation of sovereign immunity in the ADA is valid with respect to other constitutional rights. *Lane,* 541 U.S. at 522; see also *Georgia,* 546 U.S. at 161 (Stevens, J., concurring) (*"Lane* . . . identified a constellation of 'basic constitutional guarantees' that Title II seeks to enforce and ultimately evaluated whether Title II was an appropriate response to the 'class of cases' at hand." (*quoting Lane,* 541 U.S. at 522, 531)).

Approximately two years after deciding *Lane,* the Supreme Court again considered the validity of the ADA's abrogation of state sovereign immunity for particular Title II claims in *United States v. Georgia.* 546 U.S. at 157–60. The plaintiff in Georgia was an

individual incarcerated in a Georgia prison who alleged claims against the state and state officials under 42 U.S.C. § 1983 for violations of his Eight Amendment rights and under Title II of the ADA for disability-related discrimination. Id. at 154–55. The district court dismissed the plaintiff's § 1983 claims for failure to state a claim on which relief could be granted and found that sovereign immunity barred the plaintiff's Title II claims for monetary damages. Id. at 155. The United States Court of Appeals for the Eleventh Circuit reversed the district court's dismissal of the plaintiff's § 1983 claims, holding that the plaintiff "had alleged actual violations of the Eighth Amendment by state agents . . .[,]" but "affirmed the District Court's holding that [the plaintiff's] Title II claims for money damages against the State were barred by sovereign immunity." Id. at 156, 157.

In the Supreme Court, the plaintiff argued, and the state did not dispute, that his Title II claims were based on the same conduct that gave rise to his Eighth Amendment claims. Id. at 157. The Supreme Court observed that "it is quite plausible that the alleged deliberate refusal of prison officials to accommodate [the plaintiff's] disability-related needs in such fundamentals as mobility, hygiene, medical care, and virtually all other prison programs constituted" violations of the Eighth Amendment and Title II of the ADA. Id. The Supreme Court therefore held that the plaintiff's "claims for money damages against the State under Title II were evidently based, at least in part, on conduct that independently violated the provisions of § 1 of the Fourteenth Amendment" because "the Due Process Clause of the Fourteenth Amendment incorporates the Eighth Amendment's guarantee against cruel and unusual punishment[ ]." Id. (*citing Louisiana ex*

rel. Francis v. Resweber, 329 U.S. 459, 463 (1947)). The Supreme Court continued:

> While the Members of this Court have disagreed regarding the scope of Congress's 'prophylactic' enforcement powers under § 5 of the Fourteenth Amendment, no one doubts that § 5 grants Congress the power to 'enforce . . . the provisions' of the Amendment by creating private remedies against the States for actual violations of those provisions.

Id. (second alteration in original) (citations omitted).

The Supreme Court therefore held that, "insofar as Title II creates a private cause of action for damages against the States for conduct that actually violates the Fourteenth Amendment, Title II validly abrogates state sovereign immunity." *Id.* at 159. The Supreme Court found that the lower courts would "be best situated to determine" what, if any, actual Fourteenth Amendment violations the plaintiff had alleged. *Id.* To aid the lower courts, the Supreme Court articulated a three-part test for determining whether the ADA's abrogation of sovereign immunity is valid with respect to a plaintiff's Title II claims. *Id.* Under that test, courts must "determine . . . , on a claimby-claim basis":

> (1)which aspects of the State's alleged conduct violated Title II; (2) to what extent such misconduct also violated the Fourteenth Amendment; and (3) insofar as such misconduct violated Title II but did not violate the Fourteenth Amendment, whether Congress's purported abrogation of sovereign immunity as to that class of conduct is nevertheless valid.

Id. The Sixth Circuit has adopted the Georgia test for "assessing whether the Eleventh Amendment

proscribes an ADA Title II claim[.]"[††] *Babcock*, 812 F.3d at 534. This Court must therefore determine the nature of the conduct that gives rise to the claims Doe alleges in Counts 6 and 7.

Count 6 of Doe's amended complaint alleges that the State, the General Sessions Court, Monsue, the Chancery Court, and Wolfe "violat[ed] Title II of the Americans with Disabilities Act" because they "deprived John Doe of his fundamental parenting rights, protected by § 5 of the 14th Am[endment] of the U.S. Constitution, based on the prohibited rationale of stereotypical and unspecified fear relative to his mental health diagnosis." (Doc. No. 23, PageID# 267.) Count 7 alleges that the same defendants

> violated the rights of [the Doe children] solely because they are related to John Doe, a qualified individual with a disability, specifically depriving them of visitation and contact with their father, an activity constituting a fundamental liberty interest, protected by § 5 of the 14th Amendment to the Constitution, Title II of the ADA, and 28 C.F.R. § 35.130(g).

(Id. at PageID# 268.) Doe argues that the Court need not apply the *Georgia* test to these claims because the Supreme Court in Lane and the Sixth Circuit in *Popovich I* have already held that "Title II of the ADA abrogates state sovereign immunity to

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[††] FN 4 The Sixth Circuit has also held that "an alleged violation of the Equal Protection Clause based on heightened scrutiny as a member of a suspect class, as opposed to an alleged Due Process Clause violation, cannot serve as a basis for Title II liability." *Babcock*, 812 F.3d at 534 (first *citing Popovich* I, 276 F.3d at 812; and *then citing Mingus v. Butler*, 591 F.3d 474, 483 (6th Cir. 2010)).

protect the fundamental rights involved in child custody cases." (Doc. No. 142, PageID# 935.)

But the cases on which Doe relies do not reach that conclusion. The Supreme Court's holding in *Lane* was limited "'to the class of cases implicating the accessibility of judicial services.'" Meeks, 10 F. Supp. 3d at 793 (emphasis added) (*quoting Lane*, 541 U.S. at 531); *see also Lane,* 541 U.S. at 533–34 ("Title II, as it applies to the class of cases implicating the fundamental right of access to the courts, constitutes a valid exercise of Congress' § 5 authority to enforce the guarantees of the Fourteenth Amendment."). Doe has not alleged that he or his children were denied access to state courts because of Doe's disability.

The claims raised in *Popovich I* also concerned plaintiff's ability to participate fully in court proceedings. See 276 F.3d at 811. The plaintiff in *Popovich I* was "a hearing-impaired person [who] brought an action in federal court under Title II against a state court for allegedly failing to provide him with adequate hearing assistance in his child custody case." *Id.; see also id.* at 813 ("The general claim is that the state court in a child custody proceeding denied the partially deaf plaintiff a reasonable way to participate meaningfully in the proceeding so that he could assert his child custody rights."). The Sixth Circuit, sitting en banc, concluded that the ADA's abrogation of sovereign immunity was valid with respect to the plaintiff's Title II claim because "a father seeking to force the state to provide him with hearing assistance for use in a state judicial proceeding determining his custody rights with respect to his daughter" "raises obvious due process concerns which Congress has the authority to address under Section 5." *Id.* at 815. Again, however, Doe has not claimed that he or his children were denied the right to meaningfully

participate in child custody proceedings because of Doe's disability.

Doe's claims are that state actors discriminated against him—and, by association, his children—on the basis of his diagnosed depression in the substantive decisions made in the course of his child custody proceedings and deprived him and his children of fundamental rights on that basis. (Doc. No. 23.) Neither *Lane* nor *Popovich I* dictates that the ADA's abrogation of sovereign immunity is valid in this context. The Court therefore must apply the Georgia test to determine whether Congress has validly abrogated Tennessee's sovereign immunity from these claims against Monsue, the General Sessions Court, Wolfe, the Chancery Court, and the State.

2. Doe's Claims Against Monsue and the General Sessions Court

Monsue and the General Sessions Court argue, as a threshold matter, that Monsue's alleged actions fall outside the scope of the ADA. (Doc. No. 151.) They cite two state court opinions to support this conclusion, one from the Supreme Court of South Dakota, *Arneson v. Arneson,* 670 N.W.2d 904, 911 (S.D. 2003) ("[N]o authority supports the extension of the ADA into parental custody disputes."), and one from the Court of Appeals of Mississippi, *Curry v. McDaniel,* 37 So.3d 1225, 1233 (Miss. Ct. App. 2010) ("[W]e find no persuasive authority which supports the proposition that the ADA applies or was intended to apply to child-custody determinations." *(citing Arneson*, 670 N.W.2d at 911)). (Doc. No. 151.) These decisions carry little weight in this Court's analysis. Federal courts are not required to accord any deference to state courts' interpretations of federal law. *First Am. Title Co. v. Devaugh*, 480 F.3d 438, 455 (6th Cir. 2007). Rather, state courts' decisions on

issues of federal law are "at most non-binding, persuasive authority, which [federal courts] are free to follow or to reject, depending on [their own] interpretation of . . . federal law." *Commodities Export Co. v. Detroit Int'l Bridge Co.*, 695 F.3d 518, 528 (6th Cir. 2012).

Arneson's and *Curry's* holdings regarding the scope of the ADA are unpersuasive on their merits. First, the Sixth Circuit applied the ADA to state-court child custody proceedings in Popovich I. 276 F.3d at 815. Second, the ADA's accompanying regulations expressly provide that "Title II coverage . . . includes activities of the . . . judicial branches of State and local governments." 28 C.F.R. pt. 35, app. B. And the Sixth Circuit has broadly construed "the phrase 'services, programs, or activities'" as used in Title II to "encompass[ ] virtually everything that a public entity does." *Johnson,* 151 F.3d at 569; Babcock, 812 F.3d at 540 (quoting id.). Further, as Doe argues, the U.S. Department of Justice (DOJ) and Department of Health and Human Services (HHS) take the position that Title II's prohibition on discrimination in services, programs, activities of public entities "extend[s] to child welfare hearings, custody hearings, and proceedings to terminate parental rights." U.S. Dep't of Health and Hum. Servs., Off. for Civ. Rights Admin. for Child. and Families & U.S. Dep't of Just., Civ. Rights Div. Disability Rights Section, *Protecting the Rights of Parents & Prospective Parents with Disabilities: Technical Assistance for State and Local Child Welfare Agencies and Courts under Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act* at 3 (Aug. 2015), https://www.hhs.gov/sites/default/files/disability.pdf.

At step one of the Georgia analysis, the Court must "determine which aspects, if any, of defendants'

alleged conduct violated Title II."[##]Babcock, 812 F.3d at 535. Doe's amended complaint alleges that, on Jane Doe's petition, Monsue issued an ex parte protective order prohibiting Doe from any contact with Jane Doe or the Doe children pending a hearing. (Doc. No. 23.) Jane Doe's petition, an excerpt of which Doe attached as an exhibit to his amended complaint, states that Doe "threw [their] son across his bedroom onto his bed following a discipline altercation"; "slapped one of [their] children hard enough to leave marks on his face"; and "threw a bi-fold door at [Jane Doe] and grabbed [her] by the collar nearly lifting [her] off [her] feet." (Doc. No. 23-1, PageID# 274.) The petition also mentions "[o]ther violence," including Doe throwing Jane Doe to the ground and "placing his arm against [her] neck"; that "[t]he escalation of violence" was

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[##] FN5 5 Monsue and the General Sessions Court argue that Doe has not satisfied the first step of the Georgia test—whether Doe has alleged state conduct that violates Title II—because he has not established a prima facie case of discrimination. (Doc. No. 151.) But the Supreme Court has held that "[t]he prima facie case . . . is an evidentiary standard, not a pleading requirement" and "it should not be transposed into a rigid pleading standard for discrimination cases." *Swierkiewicz v. Sorema* N.A., 534 U.S. 506, 510, 512 (2002); *see also Morgan v. St. Francis Hosp.*, No. 19-5162, 2019 WL 5432041, at *1 (6th Cir. Oct. 3, 2019) ("A claimant need not . . . allege facts establishing a prima facie case of disability discrimination to survive a motion to dismiss under Rule 12(b)(6)."). The Court thus applies "the ordinary rules for assessing the sufficiency of a complaint" under Federal Rule of Civil Procedure 8, *Swierkiewicz*, 534 U.S. at 511, and determine whether the factual allegations underlying Doe's Title II claims are "sufficient to give notice to the defendant[s] as to what claims are alleged" and contain "'sufficient factual matter' to render the legal claim[s] plausible, i.e., more than merely possible" *Fritz v. Charter Twp. of Comstock*, 592 F.3d 718, 722 (6th Cir. 2010) *(quoting Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

"reported to [their] marriage counselor" who recommended that the couple separate; and that, "[a]fter being separated for approximately 1 week, [Doe] threatened suicide." (Id.) Jane Doe called 911 and Doe "was ultimately taken to a[n] inpatient psychiatric hospital . . . ." (Id.) After Doe was released, he told Jane Doe that he was "on new medication including Lithium [and] Trazadone." (Id.) The petition alleges that Doe's "behavior ha[d] begun to escalate again becoming unpredictable" and he had shown up at her and the children's residence without notice and entered without permission. (Id.) Jane Doe stated that she was "fearful for [her] children and [herself]" because she "d[id] not know if/when he w[ould] show up at [her] residence and cause harm to [her] and/or [her] children, especially given his recent mental health instability . . . " and that Doe "ha[d] begun calling [their] son[s'] daycare and school to see if they [we]re present" and Jane Doe was "fearful he w[ould] show up . . . , check them out[,] and cause harm to them due to his mental instability." (Id. at PageID# 275.) Jane Doe further stated that, if Doe received notice of the petition before the General Sessions Court issued a no contact order, she was afraid that his "erratic behavior [and] violence w[ould] occur/escalate." (Id.)

Doe's amended complaint alleges that, during the hearing on the petition before Monsue, Jane Doe's attorney repeatedly mentioned Doe's "mental health diagnosis and medications," compared Doe's depression to "a potentially rabid dog you would not want to let back in the house until you were sure he had been checked out[,]" and called three witnesses to testify about Doe's mental health. (Id. at PageID# 253, ¶ 39.) Doe alleges that, "at the conclusion of the protective order hearing, . . . Monsue found the domestic abuse allegations proven by a

preponderance of the evidence[ ] and ordered John Doe to have no contact with Jane Doe" and their children. (Id. at PageID# 253, ¶ 43.) "Monsue explicitly stated that he was not making any custody or visitation determinations, deferring to the Chancery Court." (Id.)

The General Sessions Court and Monsue do not contest that Doe's depression is a disability within the meaning of the ADA or that Doe has sufficiently alleged a disability for purposes of his ADA claims. These defendants argue, however, that Doe has not adequately alleged that Monsue's actions entering the ex parte no-contact order, holding an evidentiary hearing, and granting Jane Doe's petition for a protective order were discriminatory based on Doe's mental health in violation of Title II. (Doc. No. 151.) Doe responds that Jane Doe's petition cited, and her attorney argued, "John Doe's mental health as THE reason she was scared and needed a protective order." (Doc. No. 153, PageID# 991.) He also argues that "the discriminatory 'no contact' order" was the source of the children's Title II injury. (Doc. No. 142, PageID# 938.)

Construing the amended complaint's allegations in the light most favorable to Doe, the Court finds that Doe has not plausibly alleged that Monsue discriminated against him or his children on the basis of disability. Jane Doe's petition for a protective order alleged physical abuse by Doe against her and the children and referred to Doe's suicide attempt, psychiatric hospitalization, and "mental instability" in relation to those acts and Jane Doe's fear of future harm. (Doc. No. 23-1, PageID# 275.) Doe alleges in the amended complaint that Monsue granted the petition for a protective order because Jane Doe proved her allegations of domestic abuse during the evidentiary hearing. While Doe has also alleged that

Jane Doe's lawyer repeatedly argued about and introduced evidence regarding Doe's mental health at the hearing, those allegations do not support a reasonable inference that Monsue discriminated against Doe on the basis of disability in issuing his orders.

The fact that Monsue considered evidence regarding Doe's depression in making his determinations, without more, does not support a finding that Monsue violated Title II. A state court's consideration of a plaintiff's disability in determining custody, "standing alone, is not a violation of the ADA." *Schweitzer v. Crofton,* 935 F. Supp. 2d 527, 553 (E.D.N.Y. 2013), aff'd 560 F. App'x 6 (2d Cir. 2014). As the DOJ and HHS guidance that Doe attached to his amended complaint recognizes, courts have an obligation "to ensure the safety of children" and, "in some cases, a parent . . . with a disability may not be appropriate for child placement because he or she poses a significant risk to the health or safety of the child that cannot be eliminated by a reasonable modification." DOJ & HHS, Protecting the Rights of Parents & Prospective Parents with Disabilities at 5. The critical distinction is that "[p]ersons with disabilities may not be treated on the basis of generalizations or stereotypes." Id. at 4. Title II requires that courts determining whether a parent's disability is relevant to the child's health and safety make individualized assessments based on objective facts regarding the nature, duration, and severity of the risk, the probability that a child will actually be injured, and whether any reasonable modifications can mitigate the risk. Id.; *see also* 28 C.F.R. § 35.139(b).

Doe has not plausibly alleged that Monsue's actions—issuing the ex parte no contact order based on Jane Doe's petition, holding an evidentiary

hearing, and granting Jane Doe's petition for a protective order—were based on generalizations or stereotypes about Doe's depression or otherwise violated Title II. To the contrary, Doe has alleged that Monsue based his actions on individualized considerations, including Jane Doe's allegations and evidence of Doe's physical abuse. Because Doe has not plausibly alleged that Monsue discriminated against him or his children or excluded them from participation in or denied them the benefits of the services, programs, or activities of the General Sessions Court by reason of Doe's disability in violation of Title II, the remaining claims in Counts 6 and 7 against Monsue and the General Sessions Court do not satisfy step one of the Georgia analysis.

If a court determines that a plaintiff "failed to state an ADA claim" at step one of the Georgia analysis, "it need not" "and should not" consider the constitutional questions posed by steps two and three—whether the alleged conduct also violates the Fourteenth Amendment and, if the conduct violates Title II but not the Fourteenth Amendment, whether Congress's abrogation of sovereign immunity is nevertheless valid with respect to the plaintiff's claims. *Zibbell v. Mich. Dep't of Hum. Servs.*, 313 F. App'x 843, 847 (6th Cir. 2009); see also id. at 847–48 ("[U]nder *Georgia,* the constitutional question—abrogation of Eleventh Amendment immunity—will be reached only after finding a viable claim under Title II." (*quoting Haas v. Quest Recovery Servs.,* Inc., 247 F. App'x 670, 672 (6th Cir. 2007))). Failure to identify conduct that violates Title II at step one of the Georgia analysis is dispositive because, "[w]ithout identifying ADA-violating conduct," a court cannot find "that Congress abrogated the states' sovereign immunity by a valid exercise of its power under § 5 of the Fourteenth Amendment."

Babcock, 812 F.3d at 539. Further, although the General Sessions Court and Monsue argued that Doe's and his children's claims in Counts 6 and 7 also fail to satisfy the second and third steps of the Georgia test (Doc. No. 151), Doe has not responded to these arguments.

For these reasons, the Court finds that Congress has not validly abrogated sovereign immunity with respect to Doe's and his children's Title II claims for monetary damages against Monsue and the General Sessions Court in Counts 6 and 7. Sovereign immunity therefore bars the Court's consideration of these claims.

3. Doe's Claims Against Wolfe, the Chancery Court, and the State

The State, the Chancery Court, and Wolfe argue that Wolfe's actions fall outside the scope of the ADA, relying on the South Dakota Supreme Court's decision in Arneson and the Mississippi Court of Appeals's decision in Curry. This argument is unpersuasive for the reasons stated above. The Court must therefore consider whether Wolfe's alleged conduct violated Title II under the first step of the Georgia analysis.[§§]

The amended complaint alleges that, after filing for divorce in the Chancery Court, Doe petitioned the Chancery Court to review the General Sessions Court's protective order and moved for his own protective order, but the Chancery Court and Wolfe took no action on those filings. (Doc. No. 23.) Jane Doe filed a proposed parenting plan that would require Doe to undergo "'a full psychological

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[§§] FN6 Like the General Sessions Court and Monsue, the State, the Chancery Court, and Wolfe also argue that Doe has not satisfied the first step of the Georgia test because he has not established a prima facie case of discrimination. (Doc. No. 140.) This argument fails for the reasons already stated.

evaluation'" and "'disclos[e] to [Jane Doe] and the [Chancery] Court [ ] all treatment, diagnoses, medications, and documentation pertaining to [Doe's] physical and mental health'" before allowing Doe supervised visitation with the Doe children. (Id. at PageID# 252, ¶ 38.) Doe moved for a temporary custody and visitation order and filed a notice of disability under the ADA informing the Chancery Court that he had been diagnosed with major depression and asking the Chancery Court and Wolfe not to discriminate against him. (Doc. No. 23.) Doe attached the DOJ and HHS guidance regarding application of the ADA to state-court custody proceedings to the notice. (Doc. Nos. 23, 23-1.) Doe alleges that Wolfe held a hearing in the Chancery Court on April 24, 2018, at which the parties discussed temporary visitation, among other things. (Doc. No. 23.)

Doe alleges that Wolfe and Jane Doe's attorney "had an odd, seemingly mocking exchange regarding [Doe's] notice of disability and request for protection under the ADA." (Id. at PageID# 255, ¶ 53.) "Wolfe, without ruling, . . . set aside John Doe's motion challenging the appropriateness, under state law, of the 'no contact' provision affecting the minor children and the A.D.A. notice." (Id. at PageID# 255, ¶ 55.) "[T]he parties were ready to proceed with an evidentiary temporary visitation hearing . . . ," but Wolfe ordered the appointment of a guardian ad litem and adjourned the hearing to allow the guardian "to become familiar with the case[.]" (Id. at PageID# 255, ¶ 54.) "Wolfe then directed the parties to the hallway to negotiate supervised visitation." (Id. at PageID# 255, ¶ 56.)

As a result of these negotiations, "Jane Doe's sister and brother-in-law were designated the supervisors" for Doe's two-hour visits with his

children every other week. (Id.) "John Doe tried to object, when the case was recalled, asking [Wolfe] to appoint neutral supervisors" because "Jane Doe's sister had testified against [Doe] at the protective order hearing[,]" but Wolfe said that the Chancery Court was not going to make a visitation decision that day "and that John Doe was only going to get . . . visitation by agreement of the parties." (Id. at PageID# 255–56, ¶¶ 56, 57.) "Wolfe then ordered a Rule 35 mental health evaluation for John Doe and a family evaluation as well." (Id. at PageID# 256, ¶ 57.)

Doe underwent a mental health evaluation at Vanderbilt University Medical Center at his own expense, and the evaluation report was filed with the Chancery Court in early July 2018. (Doc. No. 23.) Doe alleges that the evaluation concluded that "Doe's medication and treatment should be mitigating anger and depression issues, and recommended that [ ] Doe not consume alcohol, especially given the medications [ ] Doe [was] taking." (Id. at PageID# 256–57, ¶ 62.) Doe moved for another temporary visitation hearing, and Wolfe held a hearing on August 10, 2018. (Doc. No. 23.) Doe alleges that, during the hearing, Wolfe "stated his disregard of the Americans with Disabilities Act, as it applies to [divorce and custody] proceedings, until some 'other Tennessee Court says it applies.'" (Id. at PageID# 257, ¶ 65.) Wolfe also "waived the Rule 35 Mental Health evaluation around and said John Doe's diagnoses concerned him and indicated John Doe would have to show he was not a danger to the children." (Id. at PageID# 257, ¶ 67.) Doe states that Wolfe was openly dismissive of Doe, refused to hear from Doe's witnesses, and adjourned the hearing pending the results of the family evaluation "so he [would] ha[ve] another potential recommendation

regarding John Doe's mental health[.]" (Id. at PageID# 257–58, ¶¶ 66, 68, 70.) Wolfe also ordered Doe to hire a professional visitation supervisor at his own expense. (Doc. No. 23.) From these allegations, Doe asserts that Wolfe and the Chancery Court acted "based on the prohibited rationale of stereotypical and unspecified fear relative to his mental health diagnosis," violating his and his children's rights under Title II. (Id. at PageID# 267–268.) The State, the Chancery Court, and Wolfe do not contest that Doe is disabled within the meaning of the ADA because of his depression or that Doe has sufficiently alleged a disability for purposes of his Title II claims. Instead, these defendants argue that Doe has not sufficiently alleged that he is a qualified individual with a disability, as required by Title II, because he has not alleged that he met the essential eligibility requirements for Wolfe to enter Doe's proposed temporary custody and visitation order. (Doc. No. 140.)

The State, the Chancery Court, and Wolfe further argue that Doe has not sufficiently alleged that Wolfe improperly considered Doe's mental health in determining custody and visitation or otherwise discriminated against Doe or his children on the basis of Doe's depression. (Id.) Doe argues that he has sufficiently alleged a Title II violation because, "in light of Doe's disability," Wolfe "would not restore" his contact with his children "with a temporary order and would not even provide Doe a proper temporary hearing." (Doc. No. 142, PageID# 937.)

Doe's amended complaint alleges that, because Jane Doe did not file a proposed temporary parenting plan, Wolfe and the Chancery Court should have entered Doe's proposed plan by default under Tennessee Code Annotated § 36-6-403(2). (Doc. No.

23.) The Court liberally construes this as an allegation that Doe was otherwise qualified for entry of his proposed temporary order. However, as the State, the Chancery Court, and Wolfe argue in their supplemental brief (Doc. No. 140), § 36-6-403(2) provides that

> [i]f only one (1) party files a proposed temporary parenting plan in compliance with this section, that party may petition the court for an order adopting that party's plan by default, upon a finding by the court that the plan is in the child's best interest.

Tenn. Code Ann. § 36-6-403(2). Doe has not alleged that Wolfe or the Chancery Court found that Doe's proposed temporary order was in his children's best interest. The statute thus does not provide a basis for finding that Doe was otherwise qualified for entry of the parenting plan.

More importantly, the amended complaint does not plausibly allege that Wolfe's consideration of Doe's depression violated Title II. Again, the ADA does not impose a blanket prohibition on considering a parent's disability in making child custody determinations. *See Schweitzer*, 935 F. Supp. 2d at 553. Under the DOJ and HHS guidance on which Doe relies, courts making child custody determinations may consider a parent's disability so long as they do so "on a case-by-case basis consistent with facts and objective evidence" and not "on the basis of generalizations and stereotypes." DOJ & HHS, Protecting the Rights of Parents and Prospective Parents with Disabilities at 4.

The amended complaint alleges that Wolfe allowed Doe temporary supervised visitation with his children as negotiated by the parties. (Doc. No. 23.) It further alleges that Wolfe ordered Doe to undergo a Rule 35 mental health evaluation and ordered the

Does and their children to undergo a family evaluation. (Id.) After reviewing Doe's mental health evaluation, Wolfe stated that he was still concerned about Doe's diagnoses, that Doe would have to show he was not a danger to the children, and that Wolfe would wait until the family evaluation was completed before deciding visitation and custody because he wanted additional information about Doe's mental health. (Id.) These facts do not plausibly allege that Wolfe treated Doe on the basis of generalizations and stereotypes. Quite the opposite. Wolfe ordered two individualized assessments—the Rule 35 mental evaluation and the family evaluation—to assist him in making his decision. That Wolfe remained concerned about the effect of Doe's depression on the children after reading the mental health evaluation and sought additional information from the family evaluation does not lead to a plausible inference that Wolfe acted on the basis of generalizations or stereotypes about Doe's mental health. ***

Doe has not plausibly alleged that Wolfe discriminated against him or his children or excluded them from participation in or denied them the benefits of the services, programs, or activities of the Chancery Court by reason of Doe's mental health disability in violation of Title II. Doe's claims against Wolfe, the Chancery Court, and the State in Counts 6 and 7 thus do not satisfy step one of the Georgia analysis. Congress has not validly abrogated sovereign immunity with respect to Doe's and his children's Title II claims for money damages against Wolfe, the Chancery Court, and the State in Counts

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*** FN7 Doe's amended complaint does not include any allegations regarding the results of the family evaluation.

6 and 7, and sovereign immunity therefore bars the Court's consideration of these claims.

IV. Recommendation

For these reasons, the Magistrate Judge RECOMMENDS that the Court find that sovereign immunity bars consideration of Doe's and his children's claims for monetary damages in Counts 6 and 7 of the amended complaint against each of the remaining defendants and that these claims be DISMISSED WITHOUT PREJUDICE.

Any party has fourteen days after being served with this Report and Recommendation to file specific written objections. Failure to file specific objections within fourteen days of receipt of this report and recommendation can constitute a waiver of appeal of the matters decided. *Thomas v. Arn*, 474 U.S. 140, 155 (1985); *Cowherd v. Million,* 380 F.3d 909, 912 (6th Cir. 2004). A party who opposes any objections that are filed may file a response within fourteen days after being served with the objections. Fed. R. Civ. P. 72(b)(2).

Entered this 15th day of August, 2022.

/s ALISTAIR E. NEWBERN
United States Magistrate Judge

No. 19-6019

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Filed September 18, 2020

JOHN DOE v. STATE OF TENNESSEE, et al.,

O R D E R

Before: NORRIS, GRIFFIN, and LARSEN, Circuit Judges.

John Doe, a Tennessee resident proceeding pro se, appeals a district court judgment dismissing his civil action filed under 42 U.S.C. § 1983; Title II of the Americans with Disabilities Act ("ADA"); and the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq. Doe also appeals an order denying his post-judgment motion for recusal. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

In May 2018, Doe sued the State of Tennessee, Governor William Edward Haslam, Attorney General Herbert H. Slatery III, Administrator of State Courts Deborah Taylor Tate, the Dickson County Chancery Court, and Chancellor David Wolfe (collectively referred to as the "State defendants"); the Dickson County General Sessions Court, and Judge Craig Monsue (collectively referred to as the "County defendants"); and Doe's wife, Jane Doe. In October 2018, Doe filed an amended complaint that named Kirk Vandivort and Reynolds, Potter, Ragan & Vandivort, PLC as additional defendants. The amended complaint alleges that the defendants violated Doe's rights during his state-court divorce and child-custody proceedings.

Doe alleged that, in February 2018, he was hospitalized for depression and suicidal ideation.

Thereafter, in March 2018, his wife filed for an order of protection for herself and their children in the Dickson County General Sessions Court based on Doe's mental health and because he was allegedly violent with them. The General Sessions court entered an ex parte no-contact order and, after an evidentiary hearing, ordered that Doe have no contact with his wife and children.

Meanwhile, Doe filed for divorce in the Dickson County Chancery Court. In March 2018, Doe petitioned the Chancery court for de novo review of the protection order issued by the General Sessions court and moved for a protection order for himself. He also moved the Chancery court for temporary custody of his children and visitation. And he filed a "notice of disability" in the Chancery court, alleging that he had been discriminated against based on his diagnosis with major depression.

After a hearing in the divorce proceeding, the Chancery court: (1) appointed a guardian ad litem for the children; (2) set aside Doe's motion challenging the protection order issued by the General Sessions court; (3) ordered that Doe could visit his children for two hours every other week under the supervision of his wife's sister; (4) ordered Doe to submit to a mental-health evaluation authorized by Rule 35 of the Tennessee Rules of Civil Procedure; and (5) ordered the parents and the children to undergo a family evaluation. The hearing was adjourned pending the family evaluation, and, because his wife's sister no longer wished to supervise Doe's visits, the court ordered Doe to hire a professional visitation supervisor at his own expense. After completion of his mental-health evaluation, Doe again moved for custody of his children and visitation, arguing that the Chancery court had

exhibited a disregard for his rights under the ADA and improperly declined to hear from his witnesses.

In his federal complaint, Doe claimed that: (1 and 2) the defendants violated his rights and his children's rights by causing the issuance of a no-contact order in violation of Tennessee law and Fourteenth Amendment due process, and he sought declaratory and injunctive orders modifying the no-contact order and restoring their parent-child rights; (3 and 4) the State and County defendants violated his rights under the ADA by relying on Tennessee Code § 36-6-106 when issuing the no-contact order based in part on his mental health, and he sought declaratory and injunctive orders voiding the no-contact order and restoring his parental rights; (5) the State and County defendants violated his rights under the ADA because he was ordered to pay for a mental-health evaluation and for a professional visitation supervisor, and he sought declaratory and injunctive orders that the state courts improperly ordered him to pay for those services; (6) the State and County defendants violated his rights under the ADA by discriminating against him based on his mental health diagnosis, and he sought monetary damages as well as declaratory and injunctive orders entitling him to entry of the terms set forth in his second temporary parenting plan filed with the Chancery court; (7) the State and County Defendants violated Doe's children's rights by denying Doe visitation privileges, and he sought monetary damages as well as declaratory and injunctive orders entitling him to entry of the terms set forth in his second temporary parenting plan filed with the Chancery court; (8) Jane Doe and her attorneys violated his and his children's fundamental right to a parent-child relationship, and he sought monetary damages; (9) Jane Doe and her attorneys engaged in

the state tort of abuse of process during the proceedings below in order to obtain an ex parte no-contact order against Doe, and he sought monetary damages; and (10) the State defendants violated his Fourteenth Amendment rights by failing to ensure that all court proceedings were recorded verbatim and provided to him at no cost, impairing his ability obtain meaningful appellate review of the state court actions, and he sought declaratory and injunctive orders that such proceedings be recorded and provided to parties at no cost.

The defendants moved to dismiss the case pursuant to Federal Rule of Civil Procedure 12(b)(1), (2), (4), and (5) for lack of personal and subject-matter jurisdiction. Doe did not object to the dismissal of Jane Doe.

A magistrate judge filed a report recommending that the district court dismiss the complaint without prejudice, reasoning that the court lacked subject-matter jurisdiction over Doe's purported federal claims because his complaint, at its core, sought modification of state-court domestic relations orders. The magistrate judge also recommended that the district court decline to exercise supplemental jurisdiction over Doe's state-law claims. The district court overruled Doe's objections, adopted the magistrate judge's recommendation, and dismissed the complaint. After the judgment was entered, Doe moved for reconsideration and for the district court judge to recuse himself from the case. The district court denied the motions.

On appeal, Doe argues that the domestic-relations exception to federal subject-matter jurisdiction does not apply here because he asserted federal claims and did not seek orders granting a divorce, custody, or the award of alimony or child

support. He also argues that the district court judge should have recused himself because the judge's wife is employed by the state and provides legal counsel to the Tennessee General Assembly. II. We review de novo a district court's dismissal of a complaint for lack of subject-matter jurisdiction under Rule 12(b)(1). *Amburgey v. United States*, 733 F.3d 633, 636 (6th Cir. 2013). We may affirm the district court's ruling that it lacked subject-matter jurisdiction on any ground supported by the record, including one "not stated by the district court." *Haines v. Fed. Motor Carrier Safety Admin.*, 814 F.3d 417, 428–29 (6th Cir. 2016). If we determine that the district court erroneously dismissed a count of Doe's complaint for lack of jurisdiction, we may still affirm the dismissal if the count fails to state a claim. *Alexander v. Rosen*, 804 F.3d 1203, 1205 (6th Cir. 2015).

A.

We affirm the district court's dismissal of Counts 1–5 and 8–9 without addressing whether the district court correctly decided that Doe's federal claims fell within the domestic-relations exception to federal subject-matter jurisdiction. Doe's first four claims are moot. In those claims, Doe seeks the restoration of his parental rights by a declaratory judgment voiding the General Sessions Court's no-contact order. But, as Doe now acknowledges, that order is no longer in effect. See Appellant Br. at 6. This means he no longer has a "'legally cognizable interest' at stake in the outcome" of these claims, "and we must dismiss [them] as moot." *Radiant Glob. Logistics, Inc. v. Furstenau*, 951 F.3d 393, 395–96 (6th Cir. 2020) (per curiam) (*quoting Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 71 (2013)).

Doe lacks standing to raise Count 5 of his complaint. Doe alleges in Count 5 that the

defendants violated the ADA when he was ordered to pay for a mental-health evaluation and for a professional visitation supervisor during divorce proceedings in state court. He does not seek damages for this purported violation, however. Instead he seeks a declaratory judgment that it violates the ADA for a state court to order a disabled or potentially disabled individual to pay for these things. "[T]he fact that a harm occurred in the past 'does nothing to establish a real and immediate threat that' it will occur in the future, as is required" to establish standing "for injunctive relief" or "for declaratory relief." *Kanuszewski v. Mich. Dep't of Health & Human Servs.*, 927 F.3d 396, 406 (6th Cir. 2019) (quoting *City of Los Angeles v. Lyons*, 461 U.S. 95, 106 (1983)). Because Doe does not allege that he is likely to be ordered to pay for an evaluation or supervisor in the future, he does not have standing to raise Count 5.

Doe has abandoned Counts 8 and 9. He expressly abandons Count 8 on appeal. See Appellant Br. at 6 ("John Doe intends to abandon Claim #8 ..."). He brought Count 9 against Jane Doe, her attorney, and her law firm. Doe concedes that "[c]laims brought against Jane Doe's former lawyer and law firm were dismissed by agreement." Id. He likewise consented to Jane Doe's dismissal below. See R. 99, PageID 646 ("John Doe stands mute as to the issue of whether the summons issued and served upon Jane Doe represents sufficient process and allows that she be dismissed as a party without prejudice."). Because he has agreed to dismiss all three defendants from the claim, Doe has abandoned Count 9 as well.

The district court thus properly dismissed Counts 1–5 and 8–9 of Doe's complaint.

B.

The district court erred in ruling that it lacked subject-matter jurisdiction over Count 10 as to the officer defendants. We nevertheless affirm the dismissal of this count because Doe fails to state a claim on the merits.

Doe does have a legally cognizable interest as to Count 10. He seeks in this count a declaratory judgment that the Due Process Clause of the Fourteenth Amendment requires state courts to provide parties with free recordings or transcripts of all proceedings and for injunctive relief necessary to effectuate the declaratory judgment. John and Jane Doe remain in divorce proceedings, which will necessarily require appearances in state court, so John Doe has an imminent threat of injury that can be redressed by the relief he seeks.

Nor was the district court correct in ruling that this claim fell within the domestic-relations exception. That exception applies only when "a plaintiff positively sues in federal court for divorce, alimony, or child custody." *Chevalier v. Estate of Barnhart*, 803 F.3d 789, 795 (6th Cir. 2015) (*quoting Catz v. Chalker*, 142 F.3d 279, 292 (6th Cir. 1998), abrogated on other grounds by Exxon Mobil *Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280 (2005)). It "does not apply when the parties do not ask the federal court to perform these status-related functions—issuing a divorce, alimony, or child-custody decree—even if the matter involves married or once-married parties." Id. at 797. Doe does not seek any of these three remedies in Count 10 of his complaint; instead he seeks recordings or transcripts of state court proceeding. Accordingly, the domestic-relations exception did not bar the district court from assuming jurisdiction over Count 10. Doe raises Count 10 against the Dickinson County Chancery Court and against several state officers. The

Chancery Court is an arm of the state of Tennessee. *See Pucci v. Nineteenth Dist. Court,* 628 F.3d 752, 762 (6th Cir. 2010). Sovereign immunity thus bars Doe from seeking an injunction against the court itself. *Lawson v. Shelby County.*, 211 F.3d 331, 335 (6th Cir. 2000). But sovereign immunity does not prevent Doe from seeking injunctive relief against state officers for constitutional violations. Id. The district court therefore had jurisdiction over Count 10 as to the officer defendants. Nevertheless, Doe fails to state a claim on the merits of this count, because "the Federal Constitution does not forbid the charging of a fee for a transcript of a civil matter." *Clanton v. Mich. 54B Judicial Dist. Court,* 86 F.3d 1155, 1996 WL 272378, at *1 (6th Cir. 1996) (table decision); see Hill v. Michigan, 488 F.2d 609, 610 (6th Cir. 1973) (per curiam) (holding that an action "claiming a denial of [the plaintiff's] federal constitutional rights through the State Courts' refusal to provide him with a free transcript" was frivolous); *cf. Rickard v. Burton,* 2 F. App'x 469, 470 (6th Cir. 2001) (holding there is "no constitutional right to a transcript to prepare for a post-conviction proceeding"); *United States v. Akrawi,* 98 F.3d 1342, 1996 WL 583369, at *1 (6th Cir. 1996) (table decision) (observing that a "a defendant does not have a constitutional right to a free transcript in a [28 U.S.C.] § 2255 proceeding").

The district court therefore properly dismissed Count 10 of Doe's complaint as well.

C.

We are unable to say at this point that the district court lacked jurisdiction over Counts 6 and 7 of Doe's complaint. We therefore vacate dismissal of these claims and remand them for further consideration.

Doe alleges in Counts 6 and 7 that the state defendants deprived him and his children of their fundamental parental-relationship rights in violation of Title II of the ADA. He seeks both injunctive relief restoring his parental rights and money damages. As with Counts 1–4, Doe's requests for injunctive relief are moot with the expiration of the no-contact order, but Doe retains a legally cognizable interest in Counts 6 and 7 because of his request for money damages. Moreover, the district court erred in holding that the domestic-relations exception barred these claims. Because money damages are not "a divorce, alimony, or child-custody decree," Doe's request for money damages in these counts does not fall within the scope of the exception. *Chevalier,* 803 F.3d at 797.

Nevertheless, sovereign immunity may bar consideration of Counts 6 and 7. Because Doe seeks relief in these counts against the state of Tennessee, two state courts, and state officials acting in their official capacities, sovereign immunity would ordinarily deprive the district court of jurisdiction. Congress, however, has validly abrogated state sovereign immunity for some violations of Title II of the ADA. *See Babcock v. Michigan,* 812 F.3d 531, 534–35 (6th Cir. 2016). We think it best for the district court to consider in the first instance whether Counts 6 and 7 fall within the scope of the ADA's valid abrogation of sovereign immunity. We therefore vacate the dismissal of Counts 6 and 7 and remand these claims to the district court. On remand, the district court should also consider whether any other "threshold grounds for denying audience to [these claims] on the merits" apply. *Ruhrgas AG v. Marathon Oil Co.,* 526 U.S. 574, 585 (1999). The district court may, if it wishes, address whether an alternative threshold ground applies

before considering the issue of sovereign immunity. See id.

III.

We affirm the district court's denial of Doe's post-judgment motion for recusal. We review a district court's denial of a motion for recusal for abuse of discretion. *Decker v. GE Healthcare Inc.*, 770 F.3d 378, 388 (6th Cir. 2014). Pursuant to 28 U.S.C. § 455(a), "a judge must disqualify himself 'where a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned.'" *Burley v. Gagacki*, 834 F.3d 606, 616 (6th Cir. 2016) (*quoting United States v. Adams*, 722 F.3d 788, 837 (6th Cir. 2013)). The judge need not recuse himself under § 455(a) based on the subjective view of a party. *Id.* at 615–16. Doe's argument that recusal was warranted because the judge's wife is employed by the state and provides legal counsel to the Tennessee General Assembly does not establish that the judge's impartiality might reasonably be questioned.

Accordingly, we AFFIRM the district court's order denying the post-judgment motion for recusal, AFFIRM the dismissal of Counts 1–5 and 8–10, VACATE the dismissal of Counts 6 and 7, and REMAND the case for further proceedings.

ENTERED BY ORDER OF THE COURT

/s Deborah S. Hunt, Clerk

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE

John Doe, et al. v. State of Tennessee, et al.,

NO. 3:18-cv-00471

ORDER

Pending before the Court is the Magistrate Judge's Report and Recommendation (Doc. No.112), recommending the Court grant the defendants' motions to dismiss (Doc. Nos. 34, 83, 100), and dismiss this action for lack of subject matter jurisdiction. The Report and Recommendation is ADOPTED for the reasons set forth below. Also pending before the Court is Plaintiff's Motion for Leave to File Under Seal: Dickson County Chancery Court Divorce Findings Transcript Excerpt (Doc. No. 115). The Motion is GRANTED.

In the Report, the Magistrate Judge determined the Court lacks subject matter jurisdiction of Plaintiff John Doe's claims because the claims are, at their core, requests to modify the protective and child custody orders issued by the state court in his divorce and child custody proceedings, and therefore, fall within the "domestic relations exception" to subject matter jurisdiction. The Magistrate Judge also recommends the Court decline supplemental jurisdiction over Plaintiff's state law abuse-of-process claim.

Plaintiff has filed Objections (Doc. No. 114) to the Report and Recommendation. Under 28 U.S.C. § 636(b)(1) and Local Rule 72.02, a district court reviews de novo any portion of a report and recommendation to which a specific objection is made. *United States v. Curtis*, 237 F.3d 598, 603 (6th Cir. 2001). General or conclusory objections are insufficient. *See Zimmerman v. Cason,* 354 F. Appx. 228, 230 (6th Cir. 2009). Thus, "only those specific objections to the magistrate's report

made to the district court will be preserved for appellate review." Id. (quoting Smith v. Detroit Fed'n of Teachers, 829 F.2d 1370, 1373 (6th Cir. 1987)). In conducting the review, the court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C).

As his first objection, Plaintiff argues the Report and Recommendation contains several factual errors: Plaintiff is not a lawyer; the "no contact" order was not a custody order; Plaintiff did not abandon the state court action; Plaintiff is not seeking to modify a state court order; and Plaintiff is not seeking free transcripts in state court. (Doc. No. 114, at 1-3). Having reviewed Plaintiff's claims, the Court agrees with the Magistrate Judge's conclusion that they involve, at their core, requests to modify state court divorce and child custody orders. Plaintiff has not demonstrated the Report contains the alleged factual errors listed by Plaintiff, or that the alleged factual errors undermine the Report's conclusion.

Next, Plaintiff argues the domestic relations exception does not apply here because his case is not based on diversity jurisdiction. The Sixth Circuit has not limited the exception to diversity cases, however, as the case law cited by the Magistrate Judge reveals. *See, e.g., Danforth v. Celebrezze,* 76 Fed. Appx 615, 616 (6th Cir. 2003). Plaintiff also argues the Report expands the domestic relations exception beyond its limited reach, *citing Catz v. Chalker*, 142 F.3d 279, 289 (6th Cir. 1998), *overruled on other grounds by Coles v. Granville*, 448 F.3d 853 (6th Cir. 2006), and *Chevalier v. Estate of Barnhart,* 803 F.3d 789 (6th Cir. 2015). In both *Catz* and *Chevalier*, the Sixth

Circuit held the domestic relations exception did not apply because the plaintiffs in those cases did not seek the issuance, or alteration, of an order of divorce, alimony, or child custody. In the Report, the Magistrate Judge recognized the holdings of these cases, and in the Court's view, applied them correctly. For example, the Magistrate Judge pointed out that Plaintiff's Amended Complaint specifically requests modifications to the orders of the state court regarding visitation and child custody. (Report (Doc. No. 112), at 9; Amended Complaint (Doc. No. 23), at 15, 17, 18, 20, 22).

Plaintiff contends the Report misconstrues his claims under the Americans With Disabilities Act, 42 U.S.C. §§ 12131, et seq. ("ADA") in applying the domestic relations exception. The Court disagrees. In the Amended Complaint, Plaintiff specifically alleges, in connection with the ADA claims, that he is "entitled to immediate entry of his proposed 2nd Amended Temporary Parenting Plan . . ." (Doc. No. 23, at 18, 20, 22). If granted, that relief would require alteration of the state court's visitation and child custody orders.

Plaintiff argues the Magistrate Judge also erred in concluding the procedural due process claim in Count 10 is subject to the domestic relations exception. In Count 10, Plaintiff claims he is deprived of his due process rights by the failure of the Dickson County Chancery Court to provide him with a contemporaneous record of proceedings. (Doc. No. 23, at 25-26). Plaintiff alleges that parties must provide their own court reporters, at costs of $200 to $400 for each court appearance, in order to obtain a verbatim record of proceedings. (Id.) The Magistrate Judge concluded this claim, like Plaintiff's other federal claims, fell within the domestic relations exception, pointing out

Plaintiff's allegation that the deprivation prevented him from presenting the federal court with transcripts or recordings of the state court divorce proceedings. (Id., at 13; Doc. No. 112, at 10). The Court is not persuaded the Magistrate Judge erred in her conclusion that the "core" of Plaintiff's claim involves the state court's visitation and child custody orders.

Even if the Magistrate Judge erred and the Court has subject matter jurisdiction over Count 10, however, Plaintiff has failed to state a viable procedural due process claim, as the State Defendants point out. (Doc. No. 35, at 17-18). Plaintiff has not alleged the deprivation is of constitutional significance by claiming, for example, he is indigent and cannot afford the costs of appellate review of a decision terminating his parental rights. *See M.L.B. v. S.L.J.,* 519 U.S. 102, 117 S. Ct. 555, 136 L.Ed.2d 473 (1996) (striking down state statute requiring indigent party to pay $2,000 in record preparation fees to appeal parental termination rights; and distinguishing "other domestic relations matters such as divorce, paternity, and child custody" proceedings). Nor has Plaintiff alleged he is an indigent criminal defendant seeking to appeal a conviction. *See Griffin v. Illinois,* 351 U.S. 12, 76 S. Ct. 585, 100 L.Ed. 891 (1956) (holding state must provide "a record of sufficient completeness" (not necessarily a verbatim transcript) to indigent criminal defendant seeking to appeal his conviction in a felony case); *Mayer v. City of Chicago,* 404 U.S. 189, 92 S. Ct. 410, 30 L.Ed.2d 372 (1971) (holding state must provide "a record of sufficient completeness" (not necessarily a verbatim transcript) to indigent criminal defendant seeking to appeal his conviction

in a nonfelony case). In the absence of such special circumstances, as the Sixth Circuit has explained, "the Federal Constitution does not forbid the charging of a fee for a transcript of a civil matter." *Clanton v. Michigan* 54B Judicial District Court, 86 F.3d 1155, at *1, 1996 WL 272378 (6th Cir. May 21, 1996) (citing Hill v. State of Michigan, 488 F.2d 609, 610 (6th Cir. 1973)).

Finally, Plaintiff argues that abstention based on *Younger v. Harris*, 401 U.S. 37 (1971) does not apply in this case. The Report does not rely on Younger abstention in reaching its conclusion. Thus, this objection is without merit.

For the reasons described above, Plaintiff's objections fail to state viable grounds to challenge the Magistrate Judge's conclusions, nor do they otherwise provide a basis to reject or modify the Report and Recommendation. Thus, having fully considered Plaintiff's objections, the Court concludes they are without merit, and that the Report and Recommendation should be adopted and approved. Accordingly, the defendants' motions to dismiss (Doc. Nos. 34, 83, 100) are GRANTED, and this case is DISMISSED, without prejudice. All other pending motions are denied as moot.

This Order shall constitute the final judgment in this case pursuant to Fed. R. Civ. P. 58.

It is so ORDERED.

/s WILLIAM L. CAMPBELL, JR.
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE

John Doe, et al. v. State of Tennessee, et al Case No. 3:18-cv-00471

To: The Honorable William L. Campbell, Jr., District Judge

REPORT AND RECOMMENDATION

The Doe family has been living through difficult times, as the parents divorce, navigate mental-health issues, and litigate custody of their three children. As part of that process, pro se Plaintiff John Doe 18-471 (Doe) has been afforded limited supervised visitation with his children pursuant to state-court child custody and protective orders. Rather than contest these orders in state forums, Doe, who is an attorney, has filed this action alleging that various state, county, and individual defendants have violated his and his children's federal rights under the United States Constitution and Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. § 12131, et seq. Doe's amended complaint asks this Court to remedy those violations by modifying the protective and custody orders issued by the state court.+

Defendants Jane Doe, the State of Tennessee, Governor William Edward Haslam, Attorney General Herbert H. Slatery, III, Administrator of State Courts Deborah Taylor Tate, the Dickson County Chancery Court, and Chancellor David Wolfe (the State Defendants), and the Dickson County General Sessions Court, and Judge Craig Monsue (the County Defendants) have filed Case motions to dismiss Doe's amended complaint.††† (Doc. Nos. 34,

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††† FN1 Defendants Kirk Vandivort and Reynolds, Potter, Ragan & Vandivort, PLC (Reynolds Potter) also filed a motion to dismiss (Doc. No. 68), then filed a joint stipulation of dismissal

83, 100.) Because the federal courts are not an appropriate forum for actions seeking modification of child custody orders, and for the reasons explained below, the Magistrate Judge will recommend that the defendants' motions to dismiss be granted and that this action be dismissed without prejudice for lack of subject-matter jurisdiction.

I. Factual and Procedural Background‡‡‡

A. State-Court Divorce and Custody Proceedings

This action arises out of Doe's divorce and child custody proceedings in the General Sessions and Chancery Courts of Dickson County, Tennessee. Doe states that he was hospitalized for depression and suicidal thoughts in February 2018. (Doc. No. 23.) Following his release, he informed his then-wife, Jane Doe, that he wanted a divorce. (Id.) Jane Doe filed a motion in Dickson County General Sessions Court seeking a protective order against Doe on behalf of herself and the couple's children. (Id.) Her motion detailed episodes of violence against her and

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with Doe regarding all of Doe's claims against them (Doc. No. 110). The Court dismissed Defendants Vandivort and Reynolds Potter on April 24, 2019 (Doc. No. 111). This Report and Recommendation therefore does not address their motion to dismiss. To the extent the amended complaint asserts claims on behalf of Doe's minor children, Doe lacks the authority to stipulate to dismissal of his children's claims with prejudice. See Shepherd v. Wellman, 313 F.3d 963, 970 (6th Cir. 2002) (holding that "a minor's personal cause of action is [his or] her own and does not belong to [his or] her parent or representative"). However, to the extent that the amended complaint asserts claims against Vandivort and Reynolds Potter on behalf of Doe's children, the Court lacks subject-matter jurisdiction over those claims and will recommend dismissing them without prejudice.

‡‡‡ FN2 These facts are drawn from Doe's amended complaint and attachments.

the children and referenced Doe's mental-health issues and recent hospitalization. (Id.; Doc. No. 23-1.) General Sessions Judge Craig Monsue held a hearing on the motion for a protective order at which witnesses testified about Doe's mental health and Jane Doe's counsel Kirk Vandivort argued "that because of John Doe's mental health diagnosis and medications, no one could know for sure if [he] was safe to be around the children . . . ." (Id. at PageID# 252–53.) Judge Monsue found that Jane Doe had proven her allegations of abuse by a preponderance of the evidence and issued an order prohibiting Doe from having any contact with Jane Doe or their children. (Id.) Doe appealed that order to the Dickson County Chancery Court and moved for his own protective order against Jane Doe. (Id.) According to Doe, the Chancery Court took no action regarding his appeal or his motion for a protective order. (Id.)

While Jane Doe's motion for a protective order was still pending in General Sessions Court, Doe filed for divorce in Dickson County Chancery Court. (Id.) Doe and Jane Doe filed competing proposals regarding a child custody plan. (Id.) Doe also filed "a notice of disability under the Americans with Disabilities Act," informing the Chancery Court that he had been diagnosed with major depression and "asking the court not to discriminate against" him because of that diagnosis. (Id. at PageID# 255.)

Chancery Court Judge David Wolfe held a hearing in the divorce proceedings regarding, among other issues, Doe's motion for temporary custody and visitation. Jane Doe was again represented by Vandivort. Doe alleges that Vandivort and Judge Wolfe "had an odd, seemingly mocking exchange regarding [Doe's] notice of disability and request for protection under the ADA." (Id.) During the hearing, Judge Wolfe ordered the appointment of a guardian

ad litem for the Doe children, "set aside John Doe's motion challenging the appropriateness, under state law, of the 'no contact' provision" of the General Sessions Court's protective order, and "directed the parties to the hallway to negotiate supervised visitation." (Id.) Ultimately, Judge Wolfe ordered that Doe visit his children for two hours every other week while supervised by Jane Doe's sister and brother-in-law; that Doe undergo a mental-health evaluation as authorized by Rule 35 of the Tennessee Rules of Civil Procedure; and that the Does and their children undergo a family evaluation. (Id.) Jane Doe's sister and brother-in-law later informed the Court that they would not continue supervising Doe's visits with his children. (Id.)

Doe's mental-health evaluation was completed in early July 2018 and Doe filed another motion for a temporary custody and visitation order soon thereafter. (Id.) Doe alleges that, during a hearing on the motion, Judge Wolfe "stated his disregard of the Americans with Disabilities Act," expressed concern over the results of Doe's mental-health evaluation, and told Doe he would have to prove that he was not a danger to his children. (Id. at PageID# 257.) Doe further states that Judge Wolfe was openly dismissive of Doe, refused to hear from Doe's witnesses, and adjourned the hearing pending the results of the family evaluation. Judge Wolfe also ordered Doe to hire a professional visitation supervisor at his own expense. (Id.) Doe states that he "would like to present the Court with transcripts or recordings of these divorce proceedings," but explains that "Dickson County Chancery Court proceedings are not recorded and a court reporter is not present unless hired by the parties." (Id. at PageID# 259.)

B. Doe's Amended Complaint

Doe initiated this action on May 18, 2018 (Doc. No. 1), while his divorce was ongoing (Doc. No. 23). Doe's amended complaint (Doc. No. 23) includes a variety of claims on behalf of Doe and his minor children, all of which arise out of the divorce and custody proceedings.3 §§§3 v

Counts 1 and 2—brought on behalf of all plaintiffs against all defendants—assert that the no-contact order issued by Judge Monsue violates Tennessee law or, in the alternative, the Fourteenth Amendment's guarantee of due process. Doe asks this Court to void the no-contact order and declare that John Doe may contact his children. Counts 3 and 4—brought by Doe against the State and County Defendants—claim that Tennessee Code § 36-6-106, which instructs state courts to consider each parent's "moral, physical, mental and emotional fitness" when making custody determinations, Tenn. Code Ann. § 36-6-106, violates Title II of the ADA or, in the alternative, must be narrowly construed in light of the ADA. Under either theory, Doe asks this Court to declare that he "is entitled to immediate entry of his proposed 2nd Amended Temporary Parenting Plan, by default under state law." (Id. at PageID# 264, 266.)

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§§§ FN3 As Defendant Jane Doe points out in her motion to dismiss, parents may not assert claims on behalf of their minor children while proceeding pro se. (Doc. Nos. 83, 84.) See Shepherd, 313 F.3d at 970 (holding that "parents cannot appear pro se on behalf of their minor children"). Doe has separately filed a motion for the Court to appoint a guardian ad litem to represent his children in this case. (Doc. No. 30.) Because a finding that this Court lacks subject-matter jurisdiction over the children's claims would moot Doe's motion to appoint a guardian ad litem, *see Avoki v. Ferebee*, No. 3:15-CV-136, 2016 WL 1092307, at *5 (W.D.N.C. Mar. 21, 2016), this Report and Recommendation does not reach that issue

Count 5—brought by Doe against the State and County Defendants—asserts that Judge Wolfe's orders that Doe pay for a mental-health evaluation and pay for a visitation supervisor violate Title II of the ADA, and asks the Court for corresponding declaratory and injunctive relief.

Count 6 claims that the State and County Defendants deprived Doe of "fundamental parenting rights" in violation of Title II of the ADA and the U.S. Constitution "based on the prohibited rationale of stereotypical and unspecified fear relative to his mental health diagnosis." (Id. at PageID# 267.) Doe seeks monetary damages and declaratory and injunctive relief, again requiring entry of Doe's proposed temporary parenting plan.

Count 7 alleges that the State and County Defendants violated Doe's children's rights by "depriving them of visitation and contact with their father, an activity constituting a fundamental liberty interest . . . ." (Id. at PageID# 268.) Doe requests monetary damages on their behalf and declaratory and injunctive relief requiring entry of Doe's proposed temporary parenting plan.

Count 8 asserts Doe's claim that Jane Doe, Vandivort, and Vandivort's law firm deprived Doe and the children of fundamental federal rights under color of state law and seeks monetary damages. Count 9 asserts a state-law claim for abuse of process against the same defendants and seeks further monetary damages.

Count 10 seeks a declaratory judgment against the State Defendants that the Fourteenth Amendment requires state courts to "take immediate action to ensure all hearings in courts of record are contemporaneously recorded verbatim" and provided to the parties at no cost. (Id. at PageID# 272.)

C. The Defendants' Motions to Dismiss

On October 24, 2018, the State Defendants filed a motion to dismiss arguing that this Court lacks jurisdiction to hear Doe's claims or his children's claims and, in the alternative, that the amended complaint fails to state any claims against the State Defendants on which relief can be granted. (Doc. Nos. 34, 35.) Doe filed a timely opposition to the State Defendants' motion. (Doc. No. 53.)

On November 19, 2018, Jane Doe filed a notice of special appearance and a motion to dismiss the amended complaint, arguing that defects in Doe's service of process deprive the Court of personal jurisdiction over her and that Doe lacks capacity to assert claims on behalf of the couple's minor children while proceeding pro se. (Doc. Nos. 83, 84.) Doe responded that he does not object to dismissal of Jane Doe as a defendant and that he has moved for the appointment of a guardian ad litem to advocate for the children's interests. (Doc. No. 99.)

On December 20, 2018, the County Defendants filed a motion to dismiss, arguing that this Court lacks subject-matter jurisdiction over the amended complaint, that insufficient service of process deprives the Court of personal jurisdiction over the County Defendants and, in the alternative, that the amended complaint fails to state viable claims against the County Defendants. (Doc. Nos. 100, 101). Doe filed a timely response in opposition on January 3, 2019. (Doc. No. 102.)

II. Legal Standard

Whether a court has subject-matter jurisdiction is a "threshold determination" in any action. *Am. Telecom Co. v. Republic of Lebanon*, 501 F.3d 534, 537 (6th Cir. 2007). "The requirement that jurisdiction be established as a threshold matter 'spring[s] from the nature and limits of the judicial power of the United States' and is 'inflexible and

without exception.'" *Steel Co. v. Citizens for a Better Env't,* 523 U.S. 83, 94–95 (1998) (alteration in original) (*quoting Mansfield, C. & L.M. Ry. Co. v. Swan,* 111 U.S. 379, 382 (1884)). This reflects the fundamental principle that "[j]urisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." Id. at 94 (quoting *Ex parte McCardle,* 74 U.S. (7 Wall.) 506, 514 (1868)); *see also Wayside Church v. Van Buren Cty.*, 847 F.3d 812, 816 (6th Cir. 2017) (explaining that courts are "bound to consider [a] 12(b)(1) motion first, since [a] Rule 12(b)(6) challenge becomes moot if th[e] court lacks subject matter jurisdiction" *(quoting Moir v. Greater Cleveland Reg'l Transit Auth.,* 895 F.2d 266, 269 (6th Cir. 1990))). The party asserting subject-matter jurisdiction bears the burden of establishing that it exists. *Ammons v. Ally Fin., Inc.,* 305 F. Supp. 3d 818, 820 (M.D. Tenn. 2018).

Because the Magistrate Judge finds that this Court lacks subject-matter jurisdiction over the amended complaint, the Court will not address the defendants' additional arguments in favor of dismissal.

III. Analysis

Doe asserts that this Court has subject-matter jurisdiction over his and his children's federal claims under 28 U.S.C. §§ 1331 and 1343. Section 1331 provides district courts with jurisdiction over cases involving federal questions—i.e., "all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. Section 1343 confers federal jurisdiction to hear certain civil-rights actions, including actions brought under 42 U.S.C. § 1985; actions to redress deprivations, under color of state law, of equal rights guaranteed by

federal law; and actions for damages, equitable relief, or other relief under "any Act of Congress providing for the protection of civil rights, including the right to vote." 28 U.S.C. § 1343(a)(4); id. § 1343(a)(1)– (3).

"The presence or absence of federal-question jurisdiction is governed by the 'well-pleaded complaint rule,' which provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint." *Hudgins Moving & Storage Co. v. Am. Express Co.*, 292 F. Supp. 2d 991, 1002 (M.D. Tenn. 2003*) (quoting Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987)). While this rule focuses on the plaintiff's allegations, "it allows a court to look past the words of a complaint to determine whether the allegations, no matter how the plaintiff casts them, ultimately involve a federal question." *Ohio ex rel. Skaggs v. Brunner,* 549 F.3d 468, 475 (6th Cir. 2008). Claims asserted under the Constitution or federal statutes that "clearly appear[ ] to be immaterial and made solely for the purpose of obtaining jurisdiction or . . . claim[s that are] wholly insubstantial and frivolous" are insufficient to confer federal subject matter jurisdiction. Bell v. Hood, 327 U.S. 678, 682–83 (1946); *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 279 (1977); *Gentek Bldg. Prods., Inc. v. Sherwin-Williams Co.*, 491 F.3d 320, 332 (6th Cir. 2007).

It is well established that "[f]ederal courts have no jurisdiction to resolve domestic relations disputes involving child custody or divorce." *Partridge v. State of Ohio*, 79 F. App'x 844, 845 (6th Cir. 2003) (*citing Ankenbrandt v. Richards,* 504 U.S. 689, 703 (1992)); *see also Johnson v. Collins, Civil No. 15-31*, 2015 WL 4546794, at *3 (E.D. Ky. July 28, 2015) ("Federal courts lack jurisdiction to issue child

custody decrees."). Moreover, "a plaintiff may not seek a reversal of a state court judgment simply by casting his complaint in the form of a civil rights action." *Hagerty v. Succession of Clement,* 749 F.2d 217, 220 (5th Cir. 1984); *see also Coogan v. Cincinnati Bar Ass'n,* 431 F.2d 1209, 1211 (6th Cir. 1970) ("The Civil Rights Act was not designed to be used as a substitute for the right of appeal, or to collaterally attack [state court judgments] . . . ."). Thus, to determine subject-matter jurisdiction, "[i]t is incumbent upon the district court to sift through the claims of the complaint to determine the true character of the dispute to be adjudicated." *Chevalier v. Estate of Barnhart,* 803 F.3d 789, 796 (6th Cir. 2015) *(quoting Firestone v. Cleveland Trust Co.,* 654 F.2d 1212, 1216 (6th Cir. 1981)). In actions like this one, the "key question is whether the case is 'a core domestic relations case, seeking a declaration of marital or parental status, or a constitutional claim in which it is incidental that the underlying dispute involves a [domestic relations dispute]." Johnson, 2015 WL 4546794, at *3 (alteration in original) (quoting Catz v. Chalker, 142 F.3d 279, 291 (6th Cir. 1998), abrogated on other grounds by Coles v. Granville, 448 F.3d 853, 859 n.1 (6th Cir. 2006)).

Turning first to the amended complaint's purported federal causes of action, Doe casts his and his children's claims as seeking relief under the ADA and the Constitution, but at the core of each and every claim is a request that this Court modify the protective and child-custody orders issued in his state-court divorce and custody proceedings. This is particularly apparent in Counts 1 through 7, all of which expressly request modifications of state-court orders. While the amended complaint also requests money damages in conjunction with Counts 6 and 7, awarding such damages would require a finding that

the underlying state-court orders were unlawful. The same is true of the damages requested in Count 8, which are premised on finding the violations alleged in Counts 1, 2, or 7. (Doc. No. 23, PageID# 269, ¶ 138.) Even Count 10—Doe's claim that the Dickson County Chancery Court's failure to provide litigants with free transcripts of hearings violates constitutional due process—stems from Doe's desire "to present th[is] Court with transcripts or recordings of [his] divorce proceedings" in support of his other claims. (Id. at PageID# 259, ¶ 78.)

Because this case is, at heart, Doe's attempt to modify the state court's child-custody orders, this Court lacks subject-matter jurisdiction over it under either 28 U.S.C. §§ 1331 or 1343. *See Partridge*, 79 F. App'x at 845 (holding that district court lacked jurisdiction where plaintiff "attempt[ed] to assert civil rights claims," but "essentially raise[d] domestic relations issues by challenging [state] court child custody and divorce decisions and by seeking relief in the form of shared custody of his children"); Johnson, 2015 WL 4546794, at *3 ("Even when a plaintiff raises other claims, federal courts do not have jurisdiction when the 'core' issue is one of domestic relations, meaning that the plaintiff seeks a divorce, alimony, or child custody decree."); *SanchezPreston v. Luria*, No. CV-96-2440, 1996 WL 738140, at *3 (E.D.N.Y. Dec. 17, 1996) ("Because plaintiff's § 1983 claim arises out of an allegedly erroneous or unconstitutional judicial proceeding in the New York Family court, no valid predicate for jurisdiction lies with this Court."). Doe's assertion that "this case is predominately a federal question issue, not a core issue of marital or parental relations" is belied by the amended complaint's allegations. (Doc. No. 53, PageID# 430.) For example, Doe's claim that "the state courts are ill-equipped to resolve this matter in

a timely fashion" implies that he has chosen this forum for perceived efficiency, not because he raises core federal-law issues. (Doc. No. 23, PageID# 258, ¶ 75.) The same is true of his allegation that "[t]his case presents nothing short of a family hostage crisis . . . . The Tennessee legal system is broken and all Defendants must be held to account. Most importantly and most urgently, this Court must free the hostages." (Id. at PageID# 250, ¶ 25.) It appears that Doe has invoked the ADA and the Constitution solely for the purpose of protesting the outcome of his divorce and child-custody proceedings in this Court. But federal jurisdiction cannot be created in that way. *See Gentek Bldg. Prods., Inc.*, 491 F.3d at 332 ("Where the plaintiff's claims are 'clearly immaterial, made solely for the purpose of obtaining jurisdiction or are wholly unsubstantiated and frivolous . . ., the court should dismiss the claim.'" (alteration in original) *(quoting Lawrence v. Dunbar*, 919 F.2d 1525, 1530 n.7 (11th Cir. 1990))); *Danforth v. Celebrezze*, 76 F. App'x 615, 616 (6th Cir. 2003) (explaining that "federal courts lack jurisdiction where the [federal cause of] action is a mere pretense and the suit is actually concerned with domestic relations issues"); *cf. Chevalier,* 803 F.3d at 795–96 ("[A] plaintiff may not artfully cast a suit seeking to modify or interpret the terms of a divorce, alimony, or child-custody decree as a state-law contract or tort claim in order to access the federal courts.")

With respect to Count 9—claiming abuse of process under Tennessee state law—the amended complaint cites 28 U.S.C. § 1367(a) as a basis for supplemental jurisdiction. (Doc. No. 23.) That statute provides district courts with discretion to decline to exercise supplemental jurisdiction over state law claims when it "has dismissed all claims over which it has original jurisdiction[.]" 28 U.S.C. § 1367(c)(3).

In exercising that discretion, courts "consider and weigh several factors, including the 'values of judicial economy, convenience, fairness, and comity.'" *Gamel v. City of Cincinnati,* 625 F.3d 949, 951–52 (6th Cir. 2010) (*quoting Carnegie-Mellon Univ. v. Cohill,* 484 U.S. 343, 350 (1988)). Where, as here, all federal claims have been dismissed before trial, these factors usually weigh in favor of dismissing the state law claims. Id.; *see also Ismaiyl v. Brown,* No. 16-4308, 2018 WL 2273671, at *2 (6th Cir. Mar. 22, 2018) (holding that district court "properly declined to exercise supplemental jurisdiction" over plaintiff's state-law claims after dismissing plaintiff's federal claims stemming from a child-custody dispute); *Beverly v. Beverly,* No. 17-3919, 2018 WL 1176508, at *1 (6th Cir. Jan. 30, 2018) (same). There is no reason to depart from the general rule in this case. The values of judicial economy and comity weigh especially heavily here, as it appears from the amended complaint that the state proceedings regarding child custody are still pending. *See Ankenbrandt,* 504 U.S. at 703 ("As a matter of judicial economy, state courts are more eminently suited to work of this type than are federal courts, which lack the close association with state and local government organizations dedicated to handling issues that arise out of conflicts over divorce, alimony, and child custody decrees."); id. (noting "the special proficiency developed by state tribunals over the past century and a half in handling issues that arise in the granting of such decrees").

IV. Recommendation

For these reasons, the Magistrate Judge RECOMMENDS that the defendants' motions to dismiss (Doc. Nos. 34, 83, 100) be GRANTED and that all claims in this action be DISMISSED WITHOUT PREJUDICE for lack of subject-matter

jurisdiction. Any party has fourteen days after being served with this report and recommendation to file specific written objections.

Failure to file specific objections within fourteen days of receipt of this report and recommendation can constitute a waiver of appeal of the matters decided. *Thomas v. Arn*, 474 U.S. 140, 155 (1985); *Cowherd v. Million*, 380 F.3d 909, 912 (6th Cir. 2004). A party who opposes any objections that are filed may file a response within fourteen days after being served with the objections. Fed. R. Civ. P. 72(b)(2).

Entered this 17th day of June, 2019.

/s/ ALISTAIR E. NEWBERN
United States Magistrate Judge