No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

TIMOTHY DASLER

Respondent,

V.

JENNIFER KNAPP(F.K.A DASLER)

Petitioner,

On petition for Writ of Certiorari
to the Supreme Court of Vermont

APPENDIX FOR PETITION FOR WRIT OF CERTIORARI

Timothy Dasler,
pro se, petitioner
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UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

TIMOTHY DASLER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 2:21-cv-135
	)	
JENNIFER KNAPP,	)	
	)	
Defendant.	)	

ENTRY ORDER
DENYING PLAINTIFF'S MOTION
TO AMEND COMPLAINT AND DISMISSING CASE
(Doc. 29)

Plaintiff Timothy Dasler, representing himself, brings this action against his former wife, Defendant Jennifer Knapp. On September 10, 2021, the court granted Plaintiff's application to proceed *in forma pauperis* and simultaneously dismissed a number of his claims. On August 25, 2022, the court granted Defendant's motion to dismiss for lack of subject matter jurisdiction and granted Plaintiff permission to file a motion for leave to file an Amended Complaint on or before September 16, 2022. After filing a motion for reconsideration, which was denied; an interlocutory appeal, which was subsequently held in abeyance; and a motion for extension of time, which was granted, on January 30, 2023, Plaintiff moved to amend his Complaint.[1] (Doc. 29.) Defendant has not responded to the motion.

I. Procedural History.

This case arises from the divorce of Plaintiff and Defendant, who are the parents of minor child, T.D. On August 16, 2018, Defendant was granted primary parental rights

[1] Plaintiff requests the court "[c]orrect the date of filing [of the original complaint] to correspond to the date the complaint was delivered[.]" (Doc. 29 at 1.) The Complaint is deemed "filed" on September 10, 2021, following the Magistrate Judge's review pursuant to 28 U.S.C. § 1915. *See* Doc. 2. The request to amend the filing date to the date of delivery is therefore DENIED.

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in a Final Divorce Order and Order for Final Parental Rights and Parent Child Contact issued by the Vermont Superior Court (the "Family Court").[2] Plaintiff and Defendant have remained involved in state court proceedings since their divorce. Plaintiff's claims in this action arise from a series of alleged events involving the parties and related to their child custody disputes. Plaintiff asks this court, among other things, to issue a series of declaratory judgments that would alter the Family Court's rulings.

On September 10, 2021, at initial review under 28 U.S.C. § 1915(e)(2)(B), the Magistrate Judge dismissed Plaintiff's claims under 42 U.S.C. § 1983; for malicious prosecution and abuse of process; for stalking, false imprisonment, and kidnapping; for assault; for fraud; and for slander and libel. The claims surviving initial review were state-law claims for intrusion upon seclusion, for tortious interference with custodial rights, and for intentional infliction of emotional distress ("IIED"). In so ruling, the Magistrate Judge observed that:

> To the extent it is ultimately determined that the [c]ourt may properly exercise diversity jurisdiction over Plaintiff's state-law claims, the "domestic relations" exception may nevertheless bar the [c]ourt's jurisdiction in this matter. The Supreme Court has long held that "[t]he whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the states, and not to the laws of the United States." *Ex parte Burrus*, 136 U.S. 586, 593-94 (1890); *see also Ankenbrandt v. Richards*, 504 U.S. 689, 703 (1992).

(Doc. 2 at 24.)

On October 21, 2021, Plaintiff filed an emergency motion for a preliminary injunction seeking to enjoin Defendant "from (1) using Vermont State Courts to impede this court's jurisdiction over Plaintiff's civil suits, and (2) obstructing his asserted

[2] The Family Court proceedings are referred to extensively in each version of Plaintiff's Complaint. As a result, although Plaintiff has not attached Family Court rulings to either his Complaint or Amended Complaint, the court considers them because they are integral to both. *See DiFolco v. MSNBC Cable LLC*, 622 F.3d 104, 111 (2d Cir. 2010) ("[A] district court may consider the facts alleged in the complaint, documents attached to the complaint as exhibits, and documents incorporated by reference in the complaint. Where a document is not incorporated by reference, the court may never[the]less consider it where the complaint relies heavily on its terms and effect, thereby rendering the document integral to the complaint.") (citations and internal quotation marks omitted).

parental rights." (Doc. 11 at 1) (internal quotation marks and brackets omitted). The same day, the case was transferred to the undersigned. On October 22, 2021, the court denied Plaintiff's emergency motion because he failed to show immediate and irreparable harm and ordered him to show cause why the court should not dismiss the case for lack of subject matter jurisdiction or on abstention grounds. On October 28, 2021, Defendant moved to dismiss the case for lack of subject matter jurisdiction, and on November 5, 2021, Plaintiff timely filed his response to the Order to Show Cause. On May 11, 2022, Plaintiff moved for a declaratory judgment, seeking a declaration from this court relieving Plaintiff of the need to comply with unconstitutional and fraudulently obtained Family Court Orders and prohibiting their enforcement.

In an Opinion and Order ("O & O") dated August 25, 2022, the court granted Defendant's motion to dismiss Plaintiff's claims for lack of subject matter jurisdiction under the domestic relations exception to diversity jurisdiction because Plaintiff's allegations primarily arose from disputes that were also being litigated in Family Court. The court further determined that, even if the domestic relations exception did not apply, the *Younger* abstention doctrine, *see Younger v. Harris*, 401 U.S. 37 (1971), required dismissal of Plaintiff's requests for declaratory relief included in his Complaint. Plaintiff filed a motion for declaratory judgment that the court construed as a motion for leave to amend his Complaint to add additional requests for declaratory judgments. The court denied the motion for failure to comply with Fed. R. Civ. P. 15 and because it was filed more than twenty-one days after Defendant filed her motion to dismiss. In seeking to amend his Complaint, Plaintiff failed to obtain the opposing party's consent or the court's leave to amend.

Although Plaintiff's claims were dismissed, in light of his self-represented status and Plaintiff's asserted desire to submit an amended pleading, Plaintiff was granted until September 16, 2022 to file a motion for leave to file another Amended Complaint. In filing such a motion, the court instructed Plaintiff to "explain[] why his claims are not futile[.]" (Doc. 20 at 11.) Rather than do so, Plaintiff filed a motion for reconsideration of the court's August 25, 2022 O & O.

On December 22, 2022, the court issued an Entry Order granting in part and denying in part Plaintiff's motion for reconsideration. The court denied Plaintiff permission to file an interlocutory appeal and granted him an extended deadline until January 16, 2023 to file a motion for leave to file an Amended Complaint. Plaintiff was warned that "FAILURE TO TIMELY FILE SHALL RESULT IN THE DISMISSAL OF THIS CASE." (Doc. 24 at 6-7.)

On January 5, 2023, Plaintiff filed a notice of interlocutory appeal of the court's December 22, 2022 Entry Order and the August 25, 2022 O & O. The index of the case was transmitted to the Court of Appeals on January 12, 2023. On January 16, 2023, Plaintiff moved for a third extension of time, which the court granted, allowing Plaintiff until January 31, 2023 to file a motion for leave to file an Amended Complaint. On January 30, 2023, Plaintiff filed the pending motion to amend his Complaint while his interlocutory appeal was pending.

The court was recently informed that the Second Circuit Court of Appeals issued an Order granting in part Plaintiff's motion to clarify and motion to stay or dismiss his interlocutory appeal. The Second Circuit stated: "Because this Court generally has jurisdiction over only final district court decisions, *see* 28 U.S.C. § 1291, . . . this appeal is held in abeyance pending the district court's decision on Appellant's motion to amend." *Dasler v. Knapp*, Case 23-33, slip op. at 1 (2d Cir. Mar. 10, 2023).

II. Judicial Notice of Family Court Docket.

As it did in its December 22, 2022 Entry Order, the court takes judicial notice of the forty-nine-page Family Court docket in *Jennifer Knapp (Dasler) v. Timothy Dasler*, 74-6-17 Oedm, Windsor Unit. *See* Doc. 24 at 4 (quoting Fed. R. Evid. 201(b)); *see also Mangiafico v. Blumenthal*, 471 F.3d 391, 398 (2d Cir. 2006) (explaining "docket sheets are public records of which [a] court [can] take judicial notice"). The docket reveals that Family Court proceedings have been pending between Defendant and Plaintiff since June 2017 and have continued notwithstanding the entry of a Final Order on August 17, 2018. Cross-motions for contempt were filed less than a month thereafter. On July 29, 2022, the Family Court judge entered an Order for referral for parent coordination. On September

19, 2022, the Parent Coordination Interview Outcome was entered on the docket. Motion practice concerning the parental coordinator continued through December 2022.

On March 24, 2023, Plaintiff filed a motion for emergency relief before the Family Court as well as a motion to recuse the Family Court judge based on the judicial misconduct claims he filed against her. The recusal motion was referred to a Superior Court judge who denied it and denied the subsequent motion to reconsider. The motion for emergency relief pertained to the exchange of T.D. for holidays. It was denied initially and on reconsideration.

On April 5, 2023, Plaintiff filed a motion, styled as a motion to enforce, asking the Family Court to revisit its decision not to hold a hearing on prior emergency motions he filed relating to summer camp information and a late parenting exchange. The motion was denied initially and on reconsideration with the Family Court stating:

> In the instant motion, Father moves this court to reconsider that order. Father's request is denied for two reasons. First, Father's motion effectively asks this court to reconsider issues it has already reconsidered. Father's Motion to Enforce was an attempt to relitigate issues already decided and it asked the court to take up the issues posed in his emergency motions. The court declined to do so. His motion, here, asks for the same relief. The court declines to endlessly engage in the reconsideration process when it has already reviewed the orders at issue.
>
> Second, Father advances no new theories, legal authorities, or facts not considered by this court in the previous orders. Instead, Father attempts to appeal to hyperbole and improper tactics to persuade this court to change directions. See Father's Mot. To Recons, ¶ 1 ("It may come as a surprise to this court, however, summer is an event that occurs every year[.]"); *id.*, ¶ 4 ("Then again, Judge Gray's disregard for reason, statute, rule, and a right to a fair hearing are well established at this point"); *id.*, ¶ 25 ("These bizarre parodies of motions, disregard for statutes, rules, and reason are simply digging a hole that requires Mr. Dasler to renew his Judicial Conduct Complaint")[.] . . . Neither is a valid basis for reconsideration. *See Aviles v. Charles S[ch]wab & Co.*, [] 2010 WL 1433369, at *4 (S.D. Fla. Apr. 9, 2010) ("The instant Motion for Reconsideration [] is ri[f]e with indignant hyperbole. However, Plaintiff's unprofessional tone and generous use of bold font and underlining do nothing to strengthen his argument.").

Knapp (Dasler) v. Dasler, 74-6-17 Oedm, Entry Regarding Motion (Vt. Super. Ct. July 21, 2023) (footnote omitted).

Plaintiff's May 21, 2023 motion for contempt was dismissed, and his motion to complete the record of the same date was scheduled for a hearing on October 5, 2023. From the Final Order until the present, there have generally been monthly, often weekly, and even daily filings in the Family Court case, including several appeals to the Vermont Supreme Court, which has thrice affirmed the Family Court's rulings. On August 8, 2023, Plaintiff filed another appeal to the Vermont Supreme Court.

Plaintiff's most recent motions were filed on September 19, 2023, and included a motion for contempt, a motion for summary judgment, and a motion to strike. Numerous responses were filed by both parties in advance of a hearing before the Family Court. On October 2, 2023, Defendant filed a motion for an Order restricting abusive litigation pursuant to 15 V.S.A. § 1184(a), seeking a court order finding that Plaintiff engaged in abusive litigation against Defendant and imposing prefiling restrictions on Plaintiff applicable to any future litigation against Defendant. The Family Court conducted a hearing on October 5, 2023, at which Plaintiff's motion for summary judgment was denied as moot and his May 21 motion to complete the record was granted. Defendant's motion seeking an Order restricting abusive litigation remains pending.

III. Allegations of Plaintiff's Proposed Amended Complaint.

Plaintiff's proposed Amended Complaint is comprised of over three hundred paragraphs. As required, Plaintiff has submitted a red-lined version of his proposed Amended Complaint highlighting the differences between it and his dismissed Complaint. *See* Doc. 29-1. The majority of the Amended Complaint describes Family Court proceedings, events during Plaintiff's and Defendant's marriage and parenting exchanges, Defendant's alleged fraud on the Family Court, Defendant's interference in Plaintiff's parental rights, and criminal proceedings in which Plaintiff was forced to defend himself against Defendant's accusations. The factual allegations include events that took place in 2017 up to the present.

To the previously dismissed claims, Plaintiff adds new claims of breach of contract, "breach of duty," and civil conspiracy. The breach of contract and "breach of duty" claim is based on allegations of Defendant's failure to abide by the parties'

mediation and parenting plan agreements filed by the parties in Family Court and adopted as orders by the Family Court.

Plaintiff's conspiracy claim concerns Defendant's alleged actions with her parents and Dalene Washburn, T.D.'s therapist, "to unlawfully obstruct [Plaintiff's] parental rights." (Doc. 29-1 at 43, ¶ 314.)[3] Plaintiff asserts "fraud upon the court" and "battery" claims, although the factual allegations that support those claims are not set forth below these headings. *See id.* at 34, 37. To his claim for malicious prosecution and abuse of process, Plaintiff adds an allegation that Defendant's actions on February 25, 2018, resulted in legal expenses and a one-hour delay in the parent-child exchange.

To his intrusion upon seclusion claim, Plaintiff includes an allegation that in 2020 Defendant placed a GPS tracker on T.D. to track Plaintiff during his vacation. Plaintiff amends his prior IIED claim by alleging that Defendant "confined" him during his visitation with T.D. *Id.* at 39, ¶ 272.

To his claim for slander and libel, Plaintiff adds allegations that Defendant told Plaintiff's family and friends that Plaintiff was "abusive" and "dangerous" and told Plaintiff's sister that when Plaintiff "saw what [Defendant] had done to his shop [Plaintiff] would 'retaliate against' [Defendant] and [T.D.]." *Id.* at 42, ¶ 298. He alleges Defendant's "false allegations" were reported in local news, causing damage to Plaintiff's business. *Id.* ¶ 300.

Plaintiff's 42 U.S.C. § 1983 claim is based upon violations of the Fourth, Fifth and Fourteenth Amendments. As he did in his initial Complaint, Plaintiff alleges that on May 15, 2017, Defendant obtained a temporary ex parte order depriving him of parental rights. He asserts:

> The statute, practice, and precedent in Vermont bound the lower court such that [Defendant's] restriction of [Plaintiff's] rights result[ed] in a default change of status irrespective of the merits of that temporary restriction of rights. [] [Defendant] also vetoed shared parental rights . . . . As a result of [Defendant's] usurpation of court authority[, the court] was neither able to preserve [Plaintiff's] rights, nor could it require [Defendant] to meet any

[3] Plaintiff has filed a separate lawsuit against T.D.'s therapist in this court. *See Dasler v. Washburn*, Case No. 2:21-cv-194.

> burden of proof . . . . Because of [Defendant's] pre-trial ex-parte action[,] the burden shifted to [Plaintiff] to prove it was harmful for [Defendant] to retain custody rather than requiring that she justify the restriction of his rights. Through her fraudulent accusations and ex-parte action[,] she was able to deprive [Plaintiff] of an opportunity to have a fair hearing.

(Doc. 29-1 at 27, ¶¶ 164-67.) Plaintiff alleges he:

> was compelled to elect between 14[th] and 5[th] Amendment [r]ights while neither stay[] nor immunity were available to prevent prejudice and proving his innocence would not restore his rights. [Defendant] was able to exert [control] over both civil and criminal processes including influence over plea agreements, ability to obtain ex-parte seizure of [Plaintiff's] property and parental rights, and ability to award herself the role of primary caregiver (and change [Plaintiff's] status without the ability to contest his change of status)[.] . . . [Defendant] is now that gatekeeper of [Plaintiff's] parental rights and is granted the ability to obstruct those rights without a hearing. [] [Defendant's] discretion is backed by state power and there is no available recovery in Vermont Family Court for the deprivation.

Id. at 28, ¶¶ 168-70 (internal citation omitted).

Plaintiff asserts this court has federal question subject matter jurisdiction under 28 U.S.C. § 1331. As federal statutes at issue in this case, he identifies 42 U.S.C. § 1983 and § 1985 based upon the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution; the Declaratory Judgment Act ("DJA"), codified at 28 U.S.C. § 2201(a) and § 2202;[4] and the Fourteenth Amendment because he challenges the constitutionality of Vermont statutes and Family Court practices. Plaintiff asserts the court has "supplemental jurisdiction over state law claims pursuant to 28 U.S.C. § 1387[.]" (Doc. 29-1 at 3.) As it has previously, the court construes the reference to § 1387 as a reference to 28 U.S.C. § 1367, which provides that if the court has original federal jurisdiction, it "shall have supplemental jurisdiction over all other claims that are

[4] The Declaratory Judgment Act ("DJA") does not create a cause of action, it merely provides a remedy. *See Chevron Corp. v. Naranjo*, 667 F.3d 232, 244-45 (2d Cir. 2012) ("The DJA is procedural only and does not create an independent cause of action.") (internal quotation marks and citations omitted); *see also Nat'l Union Fire Ins. Co. of Pittsburgh v. Karp*, 108 F.3d 17, 21 (2d Cir. 1997) ("The DJA . . . merely offers an additional remedy to litigants.") (emphasis omitted).

so related to claims in the action within such original jurisdiction that they form part of the same case or controversy[.]" 28 U.S.C. § 1367(a).

Plaintiff asserts the court has diversity jurisdiction under 28 U.S.C. § 1332 because he is a citizen of New Hampshire and Defendant is a citizen of Vermont. To satisfy the amount in controversy request, Plaintiff alleges that "damages to be determined at trial will exceed $75,000 which include lost business, lost reputation, costs in defending against malicious prosecution and abuse of process, unconstitutional deprivation of civil rights, and intentional torts[.]" (Doc. 29-1 at 4.)

In addition to multiple declaratory judgment requests, Plaintiff seeks compensatory and punitive damages, legal fees, costs, and "[r]elief from enforcement of [u]nconstitutional and fraudulently obtained custody order." *Id.* at 47.

IV. Conclusions of Law and Analysis.

A. Plaintiff's Motion to Amend.

"A party may amend its pleading once as a matter of course within: (A) 21 days after serving it, or (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b) . . . , whichever is earlier." Fed. R. Civ. P. 15(a)(1). Because Plaintiff seeks to amend his Complaint outside the time period for amendments as a matter of course, he is required to obtain the opposing party's written consent or leave of the court, which the court "should freely give . . . when justice so requires." Fed. R. Civ. P. 15(a)(2). The court, however, need not grant leave to amend where the party's proposed amendments would be futile, including where such amendments "could not withstand a motion to dismiss pursuant to [Rule] 12(b)(6)." *Lucente v. Int'l Bus. Machs. Corp.*, 310 F.3d 243, 258 (2d Cir. 2002).

Plaintiff's motion to amend is a single-page document that fails to explain why his claims are not futile. Instead, Plaintiff merely "request[s] that the court . . . [a]ccept [his] [A]mended [C]omplaint[.]" (Doc. 29 at 1.) A district court must dismiss a case if it determines the court lacks subject matter jurisdiction. Fed. R. Civ. P. 12(h)(3) ("If the court determines at any time that it lacks subject-matter jurisdiction, the court must

dismiss the action."). Federal courts "have an independent obligation to consider the presence or absence of subject matter jurisdiction[.]" *Joseph v. Leavitt*, 465 F.3d 87, 89 (2d Cir. 2006). "[S]ubject matter jurisdiction is not waivable and may be raised at any time by a party or by the court *sua sponte*." *Lyndonville Sav. Bank & Tr. Co. v. Lussier*, 211 F.3d 697, 700 (2d Cir. 2000). The party "asserting [federal] subject matter jurisdiction has the burden of proving by a preponderance of the evidence that it exists." *Fountain v. Karim*, 838 F.3d 129, 134 (2d Cir. 2016). Generally, "federal courts have subject matter jurisdiction either on the basis of substance, where there is a federal question, or on the basis of citizenship, where the requirements for diversity jurisdiction are satisfied." *Gottlieb v. Carnival Corp.*, 436 F.3d 335, 337 n.3 (2d Cir. 2006); *see also Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) ("Federal courts are courts of limited jurisdiction").

Courts afford pleadings filed by self-represented parties "special solicitude." *See Ceara v. Deacon*, 916 F.3d 208, 213 (2d Cir. 2019) (internal quotation marks omitted). The court is required to read a self-represented plaintiff's complaint liberally and to hold it "to less stringent standards than formal pleadings drafted by lawyers[.]" *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (internal quotation marks and citation omitted). Nevertheless, a self-represented plaintiff must allege subject matter jurisdiction. *See* Fed. R. Civ. P. 8(a)(1) (requiring that a pleading "contain[] a short and plain statement of the grounds for the court's jurisdiction"); *see also Caidor v. Onondaga Cnty.*, 517 F.3d 601, 605 (2d Cir. 2008) (holding that self-represented litigants must comply with procedural rules).

B. Federal Claims Alleged in Proposed Amended Complaint.

Plaintiff seeks to bring a claim under 42 U.S.C. § 1983 in his Amended Complaint alleging Defendant was acting under color of state law through her participation in state court proceedings and through the Family Court's alleged delegation of its authority to her.

As the Second Circuit has explained, Congress enacted § 1983 to provide a statutory remedy for violations of the Constitution and federal laws. The statute is "not

itself a source of substantive rights" but rather provides "a method for vindicating federal rights elsewhere conferred[.]" *Patterson v. Cnty. of Oneida*, 375 F.3d 206, 225 (2d Cir. 2004) (internal quotation marks omitted). To state a claim under § 1983, a plaintiff "must allege (1) 'that some person has deprived him of a federal right,' and (2) 'that the person who has deprived [the plaintiff] of that right acted under color of state . . . law.'" *Velez v. Levy*, 401 F.3d 75, 84 (2d Cir. 2005) (quoting *Gomez v. Toledo*, 446 U.S. 635, 640 (1980)) (second alteration in original). Because the statute requires that "the conduct at issue must have occurred under color of state law[,] . . . liability attaches only to those wrongdoers who carry a badge of authority of a State and represent it in some capacity[.]" *NCAA v. Tarkanian*, 488 U.S. 179, 191 (1988) (internal quotation marks omitted). Accordingly, private actors are not proper § 1983 defendants when they do not act under color of state law. *See Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 49-50 (1999) ("[T]he under-color-of-state-law element of § 1983 excludes from its reach merely private conduct, no matter how discriminatory or wrongful.") (internal quotation marks omitted).

Plaintiff cites *Roberson v. Dakota Boys & Girls Ranch*, 42 F.4th 924, 926 (8th Cir. 2022), for the proposition that "characterization as a state actor is appropriate where an otherwise private actor performed a traditional, exclusive public function." (Doc. 29-1 at 28, ¶ 170.) In that case, the Eighth Circuit noted "[t]his may occur when the government has outsourced one of its constitutional obligations to a private entity." *Roberson*, 42 F.4th at 929 (internal quotation marks omitted).

Although Plaintiff alleges that Defendant was acting under the color of state law because the Vermont Family Court has made her "gatekeeper" of his parental rights and her "discretion is backed by state power[,]" *see* Doc. 29-1 at 28, ¶¶ 169-70, the Amended Complaint fails to cite any Family Court Order that granted Defendant these rights. It is therefore not plausible that the Family Court did so. *See Ciambriello v. Cnty. of Nassau*, 292 F.3d 307, 323-24 (2d Cir. 2002) (requiring a plaintiff to allege that a private party's "challenged conduct constitutes state action" or that "the private entity acted in concert with the state actor to commit an unconstitutional act") (internal quotation marks

omitted). The Amended Complaint therefore fails to state a claim for which relief may be granted under 42 U.S.C. § 1983.

Plaintiff fares no better with regard to his claim of subject matter jurisdiction under 42 U.S.C. § 1985. Section 1985(3) applies to conspiracies to violate civil rights laws by private individuals as well as state actors. *See Ziglar v. Abbasi*, 137 S. Ct. 1843, 1866 (2017). The statute creates no substantive rights, but, instead, solely provides a remedy for the deprivation of rights guaranteed by the United States Constitution. *Great Am. Fed. Sav. & Loan Ass'n v. Novotny*, 442 U.S. 366, 372 (1979). Plaintiff has failed to allege a plausible claim of a violation of his constitutional rights as part of a conspiracy between a Vermont Family Court judge and Defendant or otherwise.

For the reasons stated above, Plaintiff fails to plausibly allege federal question subject matter jurisdiction.

C. Whether the Domestic Relations Exception to Diversity Jurisdiction Applies.

As an alternative to federal question jurisdiction, Plaintiff asserts that the court has diversity jurisdiction over this case because he is a New Hampshire resident and Defendant is a Vermont resident and the amount in controversy exceeds $75,000, exclusive of interest and costs. *See* 28 U.S.C. § 1332(a). Before exercising diversity jurisdiction, however, the court must consider whether the domestic relations exception applies and whether Plaintiff is seeking to overturn state court rulings by bringing claims related to or arising from those rulings in federal court. *See Ankenbrandt*, 504 U.S. 689 (holding the domestic relations exception is an implied exception to Congress's grant of diversity jurisdiction in 28 U.S.C. § 1332); *see also Mochary v. Bergstein*, 42 F.4th 80, 88 (2d Cir. 2022) ("The domestic relations exception to diversity jurisdiction provides that federal courts will not exercise jurisdiction" over certain cases).

Where a plaintiff asks a federal court to interfere in and regulate ongoing state family court proceedings, a federal court should generally refrain from exercising subject matter jurisdiction. As the Supreme Court has observed:

> Not only is our conclusion rooted in respect for this long-held understanding, it is also supported by sound policy considerations. Issuance of decrees of this type not infrequently involves retention of jurisdiction by the court and deployment of social workers to monitor compliance. 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. Moreover, as a matter of judicial expertise, it makes far more sense to retain the rule that federal courts lack power to issue these types of decrees because of 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.

Ankenbrandt, 504 U.S. at 703-04.

Each of Plaintiff's claims arises from Family Court proceedings that are ongoing. Indeed, a hearing was held October 5, 2023, and Plaintiff has an appeal pending before the Vermont Supreme Court. Although framed as tort claims seeking compensatory and punitive damages as well as declaratory relief, the thrust of Plaintiff's lawsuit is to seek and obtain this court's interference in child custody and visitation and to alter the outcome of Family Court proceedings. As Plaintiff himself admits, he has filed this lawsuit to obtain "[r]elief from enforcement of [an] [u]nconstitutional and fraudulently obtained custody order." (Doc. 29-1 at 47.) The Supreme Court has instructed, however, that "[t]he whole subject [of the] domestic relations of husband and wife, parent and child, belongs to the laws of the states, and not to the laws of the United States." *See Ex parte Burrus*, 136 U.S. at 593-94.

The domestic-relations abstention doctrine and comity dictate deference to the Vermont Family Court in the management of its own proceedings. *See Deem v. DiMella-Deem*, 941 F.3d 618, 624-25 & n.1 (2d Cir. 2019) (holding domestic-relations abstention may apply to diversity as well as federal-question jurisdiction cases). To the extent Plaintiff is seeking review of a state court ruling, this court does not sit as a court of appeals for the state courts. *See Skinner v. Switzer*, 562 U.S. 521, 532 (2011). Plaintiff's proper recourse is an appeal to the Vermont Supreme Court, which he is pursuing, rather than to seek an appellate ruling here.

For the foregoing reasons, the court will not exercise subject matter jurisdiction over the state-law claims Plaintiff seeks to allege in his Amended Complaint. The court has addressed this same issue in Plaintiff's case against T.D.'s therapist and adopts that analysis here. *See Dasler v. Washburn*, Case No. 2:21-cv-194, slip op. at 11-12 (D. Vt. July 18, 2023). Plaintiff's Amended Complaint must therefore be dismissed.

D. Whether *Younger* Abstention Applies.

Even if the domestic relations abstention doctrine did not bar the court from exercising subject matter jurisdiction, the *Younger* doctrine would necessitate this court's abstention from interfering in the state court's domestic relations and child custody proceedings. In "certain instances," the "prospect of undue interference with state proceedings counsels against federal relief." *Sprint Commc'ns Inc. v. Jacobs*, 571 U.S. 69, 70, 72 (2013) (instructing abstention is warranted in "particular state civil proceedings . . . that implicate a State's interest in enforcing the orders and judgments of its courts").

Under the *Younger* abstention doctrine, federal courts should abstain in three circumstances: "[(1)] ongoing state criminal prosecutions, [(2)] certain civil enforcement proceedings, and [(3)] civil proceedings involving certain orders uniquely in furtherance of the state courts' ability to perform their functions." *Id.* 78. The doctrine applies to federal claims for both declaratory and injunctive relief but "is not appropriate with respect to [a] claim for money damages[.]" *Kirschner v. Klemons*, 225 F.3d 227, 238 (2d Cir. 2000).

The Supreme Court has recognized the significance of a state's interest in domestic relations and child custody determinations in the context of *Younger* abstention and has noted "[f]amily relations are a traditional area of state concern." *Moore v. Sims*, 442 U.S. 415, 435 (1979); *see also Phillips, Nizer, Benjamin, Krim & Ballon v. Rosenstiel*, 490 F.2d 509, 516 (2d Cir. 1973) (recognizing "states have an especially strong interest" in, among other things, custody actions). The Second Circuit has held that where a plaintiff's lawsuit "implicate[d] the way that [state] courts manage their own divorce and custody proceedings[,]" a district court's decision to abstain from exercising

federal jurisdiction was correct. *See Falco v. Justs. of the Matrim. Parts of the Sup. Ct. of Suffolk Cnty.*, 805 F.3d 425, 427 (2d Cir. 2015). Thus, even if the domestic relations exception did not apply, the *Younger* doctrine would require this court to abstain from providing much of the relief Plaintiff seeks. *See Parent v. New York*, 485 F. App'x 500, 503 (2d Cir. 2012) (holding that *Younger* abstention doctrine barred plaintiff's claims for declaratory judgment regarding his "ongoing . . . divorce action"); *see also Tomcyzk v. N.Y. Unified Ct. Sys.*, 2019 WL 2437849, at *3 (E.D.N.Y. June 10, 2019) (holding that *Younger* abstention doctrine barred claims "that would cause [the c]ourt to intervene in [p]laintiff's ongoing state-court divorce and child support proceedings"); *see also Banyai v. Town of Pawlet*, 2023 WL 3814371, at *4 (D. Vt. June 5, 2023) (holding that *Younger* doctrine required the court to "abstain from interjecting in the state court's civil contempt proceedings").

CONCLUSION

For the reasons stated above, Plaintiff's motion to correct the date of filing of the original Complaint is DENIED. Plaintiff's motion for leave to file an Amended Complaint (Doc. 29) is DENIED.

Plaintiff has already filed an appeal to the Second Circuit, which is currently in abeyance pending the issuance of this Order. Plaintiff is reminded of his obligation to notify the Court of Appeals of this Order within fourteen (14) days of this ruling.

SO ORDERED.

Dated at Burlington, in the District of Vermont, this 13th day of October, 2023.

Christina Reiss, District Judge
United States District Court

D. Vt.
21-cv-135
Reiss, J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 12th day of July, two thousand twenty-four.

Present:

Eunice C. Lee,
Myrna Pérez,
Sarah A. L. Merriam,
Circuit Judges.

Timothy P. Dasler,

Plaintiff-Appellant,

v.

23-33 (L),
23-7859 (Con)

Jennifer Knapp, FKA Jennifer Dasler,

Defendant-Appellee.

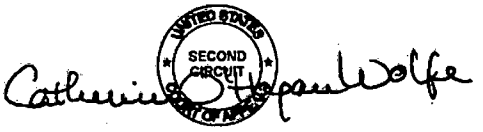
Appellee, through counsel, moves for summary affirmance or for this Court to dismiss as frivolous these two appeals and to impose sanctions against Appellant pursuant to Federal Rule of Appellate Procedure 38. Appellant, proceeding pro se, moves for leave to file an oversized brief and a supplemental appendix.

Upon due consideration, it is hereby ORDERED that Appellee's motion for summary affirmance is GRANTED because Appellant's appeals "lack[] an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *see also United States v. Davis*, 598 F.3d 10, 13 (2d Cir. 2010) (holding that summary affirmance is available only if an appeal is truly frivolous).

It is further ORDERED that Appellant's motions are DENIED as moot and that Appellee's motion to impose sanctions is DENIED because Appellee did not present sufficient proof in this filing of bad faith. *See, e.g., In re 60 East 80th St. Equities, Inc.*, 218 F.3d 109, 119 (2d Cir. 2000).

This panel notes that Dasler's brief, opposition, and appendix contain the full first name of his minor child. Federal Rule of Appellate Procedure 25(a)(5), which incorporates Federal Rule of Civil Procedure 5.2, requires redaction of this information. Accordingly, the Clerk of the Court is directed to SEAL from public view documents 83, 90, and 106 on this Court's docket for 2d Cir. 23-33 and documents 36, 37, and 46 on this Court's docket for 2d Cir. 23-7859.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court



UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 6th day of September, two thousand twenty-three.

Timothy P. Dasler,

Plaintiff - Appellant,

v.

Jennifer Knapp, FKA Jennifer Dasler,

Defendant - Appellee.

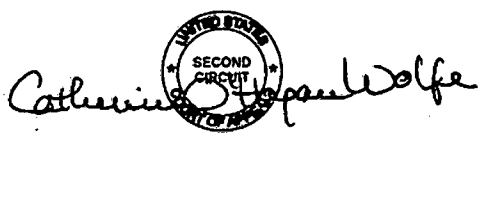
ORDER

Docket Nos: 23-33 (Lead)
23-7859 (Con)

Appellant, Timothy P. Dasler, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request as a motion for reconsideration, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the motion and petition are denied.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk



MANDATE

D. Vt.
21-cv-135
Reiss, J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 12th day of July, two thousand twenty-four.

Present:

Eunice C. Lee,
Myrna Pérez,
Sarah A. L. Merriam,
Circuit Judges.

Timothy P. Dasler,

Plaintiff-Appellant,

v.

23-33 (L),
23-7859 (Con)

Jennifer Knapp, FKA Jennifer Dasler,

Defendant-Appellee.

Appellee, through counsel, moves for summary affirmance or for this Court to dismiss as frivolous these two appeals and to impose sanctions against Appellant pursuant to Federal Rule of Appellate Procedure 38. Appellant, proceeding pro se, moves for leave to file an oversized brief and a supplemental appendix.

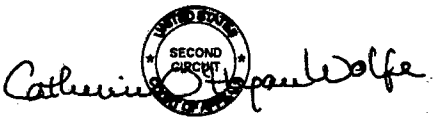
Upon due consideration, it is hereby ORDERED that Appellee's motion for summary affirmance is GRANTED because Appellant's appeals "lack[] an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *see also United States v. Davis*, 598 F.3d 10, 13 (2d Cir. 2010) (holding that summary affirmance is available only if an appeal is truly frivolous).

MANDATE ISSUED ON 09/16/2024

It is further ORDERED that Appellant's motions are DENIED as moot and that Appellee's motion to impose sanctions is DENIED because Appellee did not present sufficient proof in this filing of bad faith. *See, e.g., In re 60 East 80th St. Equities, Inc.*, 218 F.3d 109, 119 (2d Cir. 2000).

This panel notes that Dasler's brief, opposition, and appendix contain the full first name of his minor child. Federal Rule of Appellate Procedure 25(a)(5), which incorporates Federal Rule of Civil Procedure 5.2, requires redaction of this information. Accordingly, the Clerk of the Court is directed to SEAL from public view documents 83, 90, and 106 on this Court's docket for 2d Cir. 23-33 and documents 36, 37, and 46 on this Court's docket for 2d Cir. 23-7859.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court



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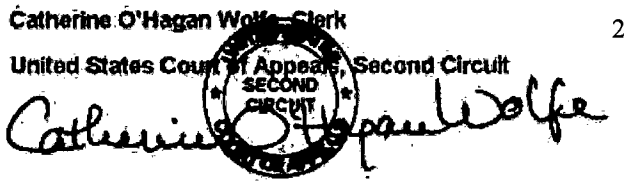
Catherine O'Hagan Wolfe, Clerk
United States Court of Appeals, Second Circuit



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