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**ORDER AND JUDGMENT*, U.S. COURT OF
APPEALS FOR THE TENTH CIRCUIT
(DECEMBER 4, 2024)**

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

KENNETH SORAK,

Plaintiff - Appellant,

v.

THERESA CISNEROS in her official capacity as
Senior Judge; AMANDA BRADLEY,
in her official capacity as Magistrate;
COLORADO JUDICIAL BRANCH,

Defendants - Appellees.

No. 24-1170
(D.C. No. 1:23-CV-02391-CNS-NRN)
(D. Colo.)

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Before: HARTZ, BALDOCK, and ROSSMAN,
Circuit Judges.

ORDER AND JUDGMENT

Kenneth Sorak, a Colorado resident proceeding pro se,¹ appeals the district court's order dismissing his complaint against two Colorado state-court judges under Fed. R. Civ. P. 12(b)(1).² We exercise jurisdiction under 28 U.S.C. § 1291 and affirm.

BACKGROUND

In 2019, Mr. Sorak's then-wife, nonparty Amy Sorak, filed a state-court petition for legal separation from Mr. Sorak in Douglas County, Colorado. The ensuing domestic relations case proceeded to a con-

¹ "Because [Mr. Sorak] appear[s] pro se, we liberally construe his pleadings. Nevertheless, he . . . must comply with the same rules of procedure as other litigants." *Requena v. Roberts*, 893 F.3d 1195, 1205 (10th Cir. 2018) (citations omitted). And in the course of our review, "[w]e will not act as his counsel, searching the record for arguments he could have, but did not, make." *Id.*

² Mr. Sorak's lawsuit named three defendants: Senior Judge Theresa Cisneros in her official capacity, Magistrate Amanda Bradley in her official capacity, and the Colorado Judicial Branch. In his notice of appeal and opening brief, however, he indicates he no longer wishes to proceed against the Colorado Judicial Branch. But whether the Colorado Judicial Branch is a party to the appeal is academic, because "[o]fficial-capacity suits . . . generally represent only another way of pleading an action against an entity of which an officer is an agent." *Kentucky v. Graham*, 473 U.S. 159, 165 (1985) (internal quotation marks omitted); see also *id.* at 166 ("[A]n official-capacity suit is, in all respects other than name, to be treated as a suit against the entity.").

clusion that left Mr. Sorak dissatisfied, so he sued the magistrate, the senior judge, and the Colorado Judicial Branch in federal court. He specified in his complaint that he was suing each judge only “in her official capacity.” R. at 5. As relief, he requested compensatory damages, punitive damages, and attorney fees. He also requested “a judgment for removal of the [state-court] Protection Order [in the domestic relations case], a parenting and child support order hearing . . . a judgment for a change of venue for [the domestic relations case] to the Federal District Court, [and] an immediate trial to address the contempt issues before the state court.” R. at 17.

The defendants moved to dismiss. Their motion asserted that the district court lacked jurisdiction based on (1) the Eleventh Amendment and (2) the *Rooker-Feldman* doctrine, see *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983). A magistrate judge recommended granting the motion. Mr. Sorak objected, but the district court overruled the objections, granted the motion, and dismissed the case.

DISCUSSION

“We review de novo the district court’s dismissal for lack of subject matter jurisdiction pursuant to Rule 12(b)(1)” *Stuart v. Colo. Interstate Gas Co.*, 271 F.3d 1221, 1225 (10th Cir. 2001). Where, as here, the party seeking dismissal made a facial attack on the complaint’s allegations of subject-matter jurisdiction, the district court “must accept the allegations in the complaint as true.” *Id.*

Both the Eleventh Amendment and the *Rooker-Feldman* doctrine limit the jurisdiction of federal courts.

The Eleventh Amendment “deprives federal courts of any jurisdiction to entertain” claims for money damages brought by a private citizen against a State without the State’s consent. *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 98-99 & n.8 (1984). And a claim against a state official in her official capacity, as here, is in essence a claim against the State. See *Kentucky v. Graham*, 473 U.S. 159, 165-66 (1985).

As for the *Rooker-Feldman* doctrine, it “is a jurisdictional prohibition on lower federal courts exercising appellate jurisdiction over state-court judgments.” *Campbell v. City of Spencer*, 682 F.3d 1278, 1281 (10th Cir. 2012). On appeal Mr. Sorak argues his injuries came not from the state-court judgment itself but from the allegedly unconstitutional processes that produced it. But all his claims would evaporate if there were no state-court judgment against him. In other words, every claim for relief in the complaint is predicated on the effect of the state-court judgment. And a claim is barred by *Rooker-Feldman* if “an element of the claim [is] that the state court wrongfully entered its judgment.” *Id.* at 1283.

Mr. Sorak also argues that the doctrine of judicial immunity does not shield the state-court actions in this case because, he asserts, the adverse judgments resulted from nonjudicial acts. But we do not need to decide whether judicial immunity applies because we agree with the district court that *Rooker-Feldman* and the Eleventh Amendment stand as jurisdictional bars to the complaint.

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CONCLUSION

We affirm the judgment of the district court.

Entered for the Court

/s/ Harris L Hartz

Circuit Judge

**ORDER ADOPTING MAGISTRATE REPORT
AND DISMISSING CASE, U.S. DISTRICT
COURT FOR THE DISTRICT OF COLORADO
(APRIL 3, 2024)**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

KENNETH SORAK,

Plaintiff,

v.

THERESA CISNEROS in her official capacity as
Senior Judge, AMANDA BRADLEY in her official
capacity as Magistrate, and COLORADO JUDICIAL
BRANCH,

Defendants.

Civil Action No. 1:23-cv-02391-CNS-NRN

Before: Charlotte N. SWEENEY,
United States District Judge.

ORDER

Before the Court is United States Magistrate Judge N. Reid Neureiter's Recommendation on Defendants' Motion to Dismiss. ECF No. 17. (Recommendation). Plaintiff objected to the Recommendation, ECF No. 18, and Defendants responded, ECF No. 19. For the

following reasons, the Court AFFIRMS and ADOPTS the Recommendation.

I. Summary for Pro Se Plaintiff

On October 13, 2023, Defendants filed a motion to dismiss with Magistrate Judge Neureiter. ECF No. 8. Magistrate Judge Neureiter recommended that the Defendants' motion to dismiss be granted. You then filed a response to Magistrate Judge Neureiter's Recommendation, objecting to the Recommendation to grant the motion to dismiss. The Defendants then filed a response to the objections you made to Magistrate Judge Neureiter's Recommendation.

Magistrate Judge Neureiter made the Recommendation to grant the motion to dismiss for two reasons. Primarily, this Court does not have jurisdiction to hear this case because the *Rooker-Feldman* doctrine applies. Also, any claims for money damages are barred by the Eleventh Amendment.

In your response, you objected to the Recommendation first by arguing that this Court does have jurisdiction. You argued that there are federal issues, including constitutional issues, that this Court should have jurisdiction over, and that the *Rooker-Feldman* doctrine does not apply. You also argued that the Eleventh Amendment does not bar the claims for money damages.

After considering the arguments raised in your objection and reviewing all of the related briefing, the Court is overruling your objection and it is affirming and adopting Magistrate Judge Neureiter's Recommendation. The Court will explain why it is doing so

below. This Order will discuss the legal authority that supports this conclusion.

II. Background

This case arises from a Colorado state court domestic relations case, Case No. 2019DR742, between Kenneth Sorak, Plaintiff, and Amy Edwards Sorak that took place between 2019 and 2023. *See generally* ECF No. 1 (Complaint). Plaintiff alleges that the Defendants, two judicial officers and the Colorado Judicial Branch, deprived him of his Fourth and Fourteenth Amendment Rights based on their rulings in the domestic relations proceedings. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983.

III. Standard of Review and Legal Standards

A. Rule 72(b)(3)

When a magistrate judge issues a recommendation on a dispositive matter, the presiding district judge must “determine de novo any part of the magistrate judge’s [recommended] disposition that has been properly objected to.” Fed. R. Civ. 72(b)(3). An objection to a recommendation is properly made if it is both timely and specific. *United States v. 2121 East 30th St.*, 73 F.3d 1057, 1059-60 (10th Cir. 1996). An objection is sufficiently specific if it “enables the district judge to focus attention on those issues—factual and legal—that are at the heart of the parties’ dispute.” *Id.* at 1059. In conducting its review, “[t]he district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.” Fed. R. Civ. P. 72(b)(3).

B. Rule 12(b)(1)

Federal Rule of Civil Procedure 12(b)(1) governs dismissal challenges for lack of subject matter jurisdiction. Rule 12(b)(1) challenges assume two forms. First, the moving party may mount a “facial attack” that challenges the complaint’s allegations as to the “existence of subject matter jurisdiction.” *Merrill Lynch Bus. Fin. Servs., Inc. v. Nudell*, 363 F.3d 1072, 1074 (10th Cir. 2004). Second, a party may “go beyond” the complaint’s allegations by presenting evidence challenging the factual basis “upon which subject matter jurisdiction rests.” *Id.* (citation omitted). It is well settled that Plaintiff bears the burden of establishing subject matter jurisdiction because he is the party asserting it. *Port City Props. v. Union Pac. R. Co.*, 518 F.3d 1186, 1189 (10th Cir. 2008).

In this case, Defendants implicate the first type of Rule 12(b)(1) challenge, arguing that Plaintiff cannot establish jurisdiction because his claims are barred by the *Rooker-Feldman* doctrine and the Eleventh Amendment. *See generally* ECF No. 8.

IV. Analysis

In accordance with 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b)(3), the Court has conducted a de novo review of those parts of the Recommendation to which Plaintiff properly objected. The Court’s analysis follows, but as noted above, the Court concurs with the analysis of Magistrate Judge Neureiter and overrules each of Plaintiff’s objections.

A. The *Rooker-Feldman* Doctrine

Magistrate Judge Neureiter determined that subject matter jurisdiction is lacking for Plaintiffs claims under the *Rooker-Feldman* doctrine. Recommendation at 7. The Court agrees. “The *Rooker-Feldman* doctrine is derived from 28 U.S.C. § 1257(a), [which] provides that only the Supreme Court has jurisdiction to hear appeals from final state court judgments.” *Suasnavas v. Stover*, 196 F. App’x 647, 652 n.3 (10th Cir. 2006) (internal quotation omitted). “The *Rooker-Feldman* doctrine establishes, as a matter of subject-matter jurisdiction, that only the United States Supreme Court has appellate authority to review a state-court decision.” *Merrill Lynch Bus. Fin. Servs., Inc. v. Nudell*, 363 F.3d 1072, 1074-75 (10th Cir. 2004). The doctrine “precludes a losing party in state court who complains of injury caused by the state-court judgment from bringing a case seeking review and rejection of that judgment in federal court.” *Miller v. Deutsche Bank Nat’l Trust Co.*, 666 F.3d 1255, 1261 (10th Cir. 2012). Federal district courts lack jurisdiction to review or reverse a state court judgment, and they also lack jurisdiction to issue declaratory relief that is “inextricably intertwined” with the state court judgment, meaning that the injury alleged resulted from the judgment. See *D.C. Ct. of Appeals v. Feldman*, 460 U.S. 462, 486 (1983); *Facio v. Jones*, 929 F.2d 541, 543 (10th Cir. 1991). “Where a constitutional issue could have been reviewed on direct appeal by the state appellate courts, a litigant may not seek to reverse or modify the state court judgment by bringing a constitutional claim under 42 U.S.C. § 1983.” *Facio*, 929 F.2d at 544.

In this case, Magistrate Judge Neureiter found that all of Plaintiff's claims against Defendants impermissibly ask the court to reverse or set aside state court orders, including the protective order and parenting and child support orders issued in the domestic relations proceedings. The Court agrees. While the request to overturn the state court's decisions is couched in constitutional terms as a denial of his Fourth and Fourteenth Amendment rights, a ruling on the constitutional issues would be so inextricably intertwined with the state court orders that, as in *Facio*, the *Rooker-Feldman* doctrine bars jurisdiction. As Magistrate Judge Neureiter pointed out, when the relief sought is an order setting aside state court orders derived from divorce proceedings, federal district courts lack jurisdiction under the *Rooker-Feldman* doctrine. See *Facio*, 929 F.2d at 544; *Yisrael v. Russell*, 82 F. App'x. 629 (10th Cir. 2003).

B. Eleventh Amendment Immunity

Magistrate Judge Neureiter determined that subject matter jurisdiction is also lacking over all claims against the Colorado Judicial Branch and the judicial officer Defendants in their official capacities because these claims are barred by the Eleventh Amendment. Recommendation at 9-10. The Court agrees.

The plain language of the Eleventh Amendment provides that the "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. This language "has been interpreted to bar a suit by a citizen against the citizen's own State in

Federal Court.” *Johns v. Stewart*, 57 F.3d 1544, 1552 (10th Cir. 1995). The Eleventh Amendment bars suits in federal court for damages against a state or a state officer sued in their official capacity, unless the state waives this immunity or Congress creates a statutory cause of action that abrogates this immunity. *Pennhurst v. Halderman*, 465 U.S. 89, 97-102 (1984).

In this case, Magistrate Judge Neureiter correctly determined that all Defendants are protected by Eleventh Amendment immunity as a state or officers of a state. As Magistrate Judge Neureiter points out, “it is beyond dispute that the judicial branch of the State of Colorado has Eleventh Amendment immunity from § 1983 claims.” *Lucas v. The Bd. of Cnty. Comm’rs of the Cnty. of Larimer Cnty. Co/o.*, No. 19-cv-1251-WJM-SKC, 2020 WL 5642321 at *12 (D. Colo. Sept. 22, 2020).

V. Conclusion

Accordingly, the Court overrules Plaintiffs objections and AFFIRMS and ADOPTS Magistrate Judge Neureiter’s Recommendation, ECF No. 17, in its entirety as an order of this Court. Consistent with the above analysis, the Court makes the following rulings:

- Defendants’ Motion to Dismiss, ECF No. 8, is GRANTED.
- All claims in Plaintiffs Complaint, ECF No. 1, are DISMISSED WITHOUT PREJUDICE for lack of subject matter jurisdiction.¹

¹ *Garman v. Campbell Cnty. Sch. Dist. No. 1*, 630 F.3d 977, 985 (10th Cir. 2019) (dismissal for lack of subject matter jurisdiction is generally without prejudice).

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All claims against all Defendants are dismissed,
and the Clerk of Court is directed to close this case.

DATED this 3rd day of April 2024.

BY THE COURT:

/s/ Charlotte N. Sweeney
United States District Judge

**FINAL JUDGMENT, U.S. DISTRICT COURT
FOR THE DISTRICT OF COLORADO
(APRIL 3, 2024)**

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

KENNETH SORAK,

Plaintiff,

v.

**THERESA CISNEROS in her official capacity as
Senior Judge, AMANDA BRADLEY
in her official capacity as Magistrate, and
COLORADO JUDICIAL BRANCH,**

Defendants.

Civil Action No. 23-cv-02391-CNS-NRN

FINAL JUDGMENT

In accordance with the orders filed during the pendency of this case, and pursuant to Fed. R. Civ. P. 58(a), the following Final Judgment is hereby entered.

Pursuant to the ORDER of United States District Judge Charlotte N. Sweeney issued on April 3, 2024, [ECF No. 20] it is

ORDERED that the Recommendation of United States Magistrate Judge N. Reid Neureiter [ECF No. 17] is AFFIRMED and ADOPTED. It is

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FURTHER ORDERED that Defendants' Motion to Dismiss [ECF No. 8] is GRANTED. It is

FURTHER ORDERED that Plaintiff's claims are DISMISSED without prejudice for lack of subject matter jurisdiction. It is

FURTHER ORDERED that this case is closed.

Dated at Denver, Colorado this 3th day of April, 2024.

FOR THE COURT:

/s/ Jeffrey P. Colwell

Clerk

By:

/s/ J. Dynes

Deputy Clerk

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**MAGISTRATE RECOMMENDATION
ON DEFENDANTS' MOTION TO DISMISS,
U.S. DISTRICT COURT
FOR THE DISTRICT OF COLORADO
(JANUARY 23, 2024)**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

KENNETH SORAK,

Plaintiff,

v.

THERESA CISNEROS in her official capacity as
Senior Judge, AMANDA BRADLEY
in her official capacity as Magistrate, and
COLORADO JUDICIAL BRANCH,

Defendants.

Civil Action No. 23-cv-02391-CNS-NRN

Before: N. Reid NEUREITER,
United States Magistrate Judge

**RECOMMENDATION ON DEFENDANTS'
MOTION TO DISMISS (DKT. #8)**

N. REID NEUREITER
United States Magistrate Judge

This matter comes before the Court on Defendants'
Motion to Dismiss (Dkt. #8), filed on October 13, 2023.

Plaintiff Kenneth Sorak (“Plaintiff” or “Mr. Sorkak”) filed his response to the Motion to Dismiss on October 29, 2023. Dkt. #9. Defendants filed a reply on November 13, 2023. Dkt. #12. Plaintiff filed a surreply on November 15, 2023 (although there had been no motion for leave to file a surreply). Dkt. #14.

Defendants’ Motion to Dismiss was referred to me by Judge Charlotte N. Sweeney for recommendation on November 14, 2023. *See* Dkt. #13. I heard oral argument on Defendants’ motion on November 21, 2023. Based on the pleadings, the motion, Plaintiff’s opposition, and replies, I RECOMMEND that Defendants’ Motion to Dismiss be GRANTED.

Mr. Sorak is trying to sue a state judge (Defendant Theresa Cisneros, or “Judge Cisneros”), a state magistrate (Defendant Amanda Bradley, or “Magistrate Bradley”), and the entire Colorado Judicial Branch for adverse rulings against him in a state court domestic relations proceeding. It is not appropriate to use a federal lawsuit to collaterally attack a state court judgment. Neither is it appropriate to bring suit for money damages against state court judicial officers for actions or judicial decisions taken by those officers in their official capacities, even if those decisions arguably might be erroneous.

Pro Se Plaintiff

Mr. Sorak proceeds pro se. The Court, therefore, “review[s his] pleadings and other papers liberally and hold[s] them to a less stringent standard than those drafted by attorneys.” *Trackwell v. United States*, 472 F.3d 1242, 1243 (10th Cir. 2007) (citations omitted). However, a pro se litigant’s “conclusory allegations without supporting factual averments are insufficient

to state a claim upon which relief can be based.” *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). A court may not assume that a plaintiff can prove facts that have not been alleged, or that a defendant has violated laws in ways that a plaintiff has not alleged. *Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519, 526 (1983); see also *Whitney v. New Mexico*, 113 F.3d 1170, 1173–74 (10th Cir. 1997) (court may not “supply additional factual allegations to round out a plaintiff’s complaint”); *Drake v. City of Fort Collins*, 927 F.2d 1156, 1159 (10th Cir. 1991) (the court may not “construct arguments or theories for the plaintiff in the absence of any discussion of those issues”). A plaintiff’s pro se status does not entitle him to an application of different rules. See *Montoya v. Chao*, 296 F.3d 952, 957 (10th Cir. 2002).

Background¹

Plaintiff Kenneth Sorak was married to attorney Amy Edwards Sorak and the couple had one child. Dkt. #1 at ¶¶ 11, 57. Upon the couple’s separation, a temporary protection order was issued requiring Mr. Sorak to move from the marital residence. *Id.* at ¶ 12. This allegedly left Mr. Sorak without a job and homeless for eight months. *Id.*

On December 10, 2019, Mr. Sorak requested spousal support, but Magistrate Bradley allegedly denied the request without first holding a hearing. *Id.* at

¹ The following allegations are taken from Plaintiff’s Complaint (Dkt. #1) and all non-conclusory allegations are presumed true for the purposes of the Motion to Dismiss. Any citation to docketed materials is to the page number in the CM/ECF header, which sometimes, differs from a document’s internal pagination.

¶ 13. On December 18, 2019, Magistrate Bradley entered a permanent protection order, based in part on the conclusion that Mr. Sorak was “stalking” his ex-wife by taping conversations using an iPhone placed in his ex- wife’s car. Mr. Sorak believes the permanent protection order was erroneous, unreasonable, and unfair. *Id.* at ¶¶ 14–15. Mr. Sorak alleges that he was given only nine minutes to give testimony.

Sometime thereafter, Mr. Sorak’s then-wife allegedly accepted a position as a research attorney for the Douglas County District Court and the domestic relations case was reassigned to Judge Cisneros, a senior judge. *Id.* at ¶¶ 20–21. Judge Cisneros was assigned to the case from El Paso County, where Mr. Sorak’s wife had just left the district attorney’s office a month earlier. *Id.* at ¶ 21.

Judge Cisneros held evidentiary hearings on September 9 and 14, 2021, before entering final orders in the domestic relations case. *Id.* at ¶ 22. Final orders were issued on November 5, 2021. Mr. Sorak alleges that Judge Cisneros’ evidentiary rulings were wrong, her credibility determinations were incorrect, her orders apportioning debts and assessing child support were unreasonable, and an order requiring Mr. Sorak to remain 100 yards away from his ex-wife allegedly interfered with Mr. Sorak’s First Amendment rights to attend church. *Id.* at ¶¶ 23–26, 31–38, 52. One of the alleged errors, and an example of the unfairness of the process, was that Mr. Sorak was precluded from using any exhibits at the hearings because they had been filed or disclosed too late, while Mr. Sorak’s ex-wife’s exhibits had also been filed late, but the court allowed her to use her own exhibits. Thus, Mr. Sorak was unable to enter into the record various financial

statements, spending summaries, and documentation providing proof that his ex-wife and her attorney were “using perjury to commit fraud.” *Id.* at ¶ 23. Judge Cisneros was allegedly “not fully informed in her final orders because she did not allow evidence and testimony to support an accurate finding of fact.” *Id.* at ¶ 28.

Mr. Sorak also suggests Judge Cisneros was biased because his ex-wife recently had left a job with the El Paso County District Attorneys’ Office. *Id.* at ¶ 21. Judge Cisneros had rejected multiple motions to recuse from the domestic relations proceedings and subsequent contempt hearings. *Id.* at ¶¶ 43-44, 46.

Mr. Sorak also alleges that he has not been allowed to parent his minor daughter as a result of the erroneous decisions in the state court case and his minor daughter is failing scholastically, in part because of excessive absences. *Id.* at ¶ 57.

Plaintiff’s Claims

Mr. Sorak alleges three claims for relief under 42 U.S.C. § 1983: (1) Fourth and Fourteenth Amendment violations by all Defendants; (2) Fourth and Sixth Amendment violations against Judge Cisneros and the Colorado Judicial Branch for failing to return his property and failing to provide him with a speedy trial in the state court domestic relations matter; and (3) First Amendment violations against Judge Cisneros. *Id.* at ¶¶ 58-79.

As relief, Mr. Sorak asks that the Court grant a “change of venue” in the state court domestic relations matter to this Court, that the Court vacate the protection order entered against him, that the Court grant a

hearing to establish parenting and child support, and that the Court grant an immediate trial to address contempt issues that have been pending before the state court for more than a year, plus compensatory money damages and punitive damages in an amount to be determined at trial. *Id.* at ¶¶ 80–82.

Defendants' Motion to Dismiss

Defendants move to dismiss for lack of subject matter jurisdiction based on the Eleventh Amendment, the *Rooker-Feldman* doctrine, and the *Younger* abstention doctrine. *See* Dkt. #8 at 3–5. Defendants also move to dismiss for failure to state a claim under Rule 12(b)(6) of the Federal Rules of Civil Procedure. The failure to state a claim is based, in part, on the statute of limitations for Mr. Sorak's § 1983 claims. *Id.* at 7. Defendants also assert judicial immunity regarding judicial acts taken within the jurisdiction of the judicial officers' respective courts. *Id.* at 8.

Standard for Considering a Motion to Dismiss under Rule 12(b)(1)

Defendants move to dismiss in part under Rule 12(b)(1) for lack of subject matter jurisdiction. These types of motions generally take two forms: facial attacks or factual attacks. *Ruiz v. McDonnell*, 299 F.3d 1173, 1180 (10th Cir. 2002). A facial attack questions the sufficiency of a complaint, and the allegations in the complaint are accepted as true. *Id.* In a factual attack, the movant goes beyond the allegations in the complaint and challenges the facts upon which subject-matter jurisdiction depends. In a factual attack, the Court must look beyond the complaint and has wide discretion to consider documentary and even

testimonial evidence. *Sizova v. Nat'l Inst. of Standards & Tech.*, 282 F.3d 1320, 1324 (10th Cir. 2002). Defendants launch a facial attack on Mr. Sorak's Complaint. The Court will therefore accept Mr. Sorak's allegations as true when addressing the assertions of lack of jurisdiction.

Motion to Dismiss under Rule 12(b)(6)

Rule 12(b)(6) provides that a defendant may move to dismiss a claim for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). "The court's function on a Rule 12(b)(6) motion is not to weigh potential evidence that the parties might present at trial, but to assess whether the plaintiff's complaint alone is legally sufficient to state a claim for which relief may be granted." *Dubbs v. Head Start, Inc.*, 336 F.3d 1194, 1201 (10th Cir. 2003) (citations and quotation marks omitted).

"A court reviewing the sufficiency of a complaint presumes all of plaintiff's factual allegations are true and construes them in the light most favorable to the plaintiff." *Hall*, 935 F.2d at 1108. "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Plausibility, in the context of a motion to dismiss, means that the plaintiff pleaded facts which allow "the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* As outlined in more detail below, because the Court makes its determination based on Defendants' jurisdictional objections, the Court need not address whether Mr. Sorak has failed to state a claim or not.

Analysis

The Court lacks jurisdiction to hear this case

The Court agrees with Defendants that it lacks jurisdiction to hear this case and it must be dismissed. This is because Mr. Sorak is inappropriately trying to relitigate (or continue to litigate) his state court divorce case via this federal action. This violates the so-called *Rooker-Feldman* doctrine. The *Rooker-Feldman* doctrine provides that federal courts, other than the United States Supreme Court, lack jurisdiction to entertain claims for review of state court judgments. See *D.C. Ct. of Appeals v. Feldman*, 460 U.S. 462, 486 (1983); *Rooker v. Fid. Trust Co.*, 263 U.S. 413, 415–16 (1923). The doctrine applies to all state-court judgments, including those of intermediate state courts. It also applies to claims inextricably intertwined with a state court judgment. See *Yisreal v. Russell*, 82 F. App'x 629 (10th Cir. 2003). If a plaintiff could have raised a constitutional issue in a direct appeal of the state-court order, he may not bring that claim under § 1983 seeking to modify the state court judgment. *Facio v. Jones*, 929 F.2d 541, 544 (10th Cir.1991).

In this case, Mr. Sorak explained at oral argument that he was prevented, due to some procedural mistakes by his counsel, from properly appealing to the Colorado Court of Appeals the state court rulings about which he is presently complaining. He could have appealed the rulings if he had complied with the procedural requirements. The fact that he did not appeal (or was unsuccessful in doing so) does not save him from the application of the *Rooker-Feldman* doctrine.

An instructive case from the Tenth Circuit is *Yisrael*. In that case, a divorced husband sued numerous

individuals involved in his Kansas state divorce proceedings, alleging that his civil rights were violated by the way the divorce proceedings were conducted. The Tenth Circuit held that, under the *Rooker-Feldman* doctrine, a federal court lacks jurisdiction over an action challenging state divorce proceedings where the relief sought from the federal court is an order setting aside the state court orders. *Yisrael*, 82 F. App'x at 632.

As the Tenth Circuit explained in *Yisreal*, to determine if *Rooker-Feldman* applies, the Court looks to the relief the plaintiff is seeking. *Id.* Among other things, Mr. Sorak seeks to set aside the protective order entered against him, and requests a parenting and child support order hearing that would either reverse or set aside the parenting and child support orders issued in the Colorado domestic relations proceedings. Any such orders by a federal court would either directly challenge the state court orders or be inextricably intertwined with those state court orders. Per the *Rooker-Feldman*, the Court therefore lacks jurisdiction to consider Mr. Sorak's claims attacking the underlying domestic relations proceedings.

The Court also notes that Mr. Sorak's request to have his state court case transferred (via a "change of venue") to this federal district court, *see* Dkt. #1 at ¶ 81, runs afoul of the domestic relations exception to federal jurisdiction, a 120-year-old doctrine that the United States Supreme Court has explicitly recognized. *See Ankenbrandt v. Richards*, 504 U.S. 689, 701 (1992) ("In the more than 100 years since this Court laid the seeds for the development of the domestic relations exception, the lower federal courts have applied it in a variety of circumstances."). "It is well-established that federal courts lack jurisdiction over the whole

subject of the domestic relations of husband and wife.” *Hunt v. Lamb*, 427 F.3d 725 (10th Cir. 2005) (citation omitted) (ordering remand of removed Kansas state court child custody matter). Family relations are traditionally a matter of state law and there is a “strong common law tradition” against federal review of substantive state domestic law decrees. *United States v. Bigford*, 365 F.3d 859, 869–70 (10th Cir.2004). Thus, to the extent that Mr. Sorak seeks to have this federal court step in and replace the Colorado state court in connection with his completed or ongoing divorce proceedings, money disputes, and child custody problems, this Court lacks jurisdiction to do so.

The Eleventh Amendment bars any monetary recovery

To the extent that Mr. Sorak seeks not to reverse or challenge the orders issued by the state court judicial officers, but instead seeks to be awarded money damages for the alleged constitutional wrongs he has suffered, the Court agrees with Defendants that the Eleventh Amendment bars any monetary recovery against the defendant judicial officers or the Colorado Judicial Branch.

Mr. Sorak sues Judge Cisneros and Magistrate Bradley in their official capacities. Dkt.#1 at 1. He also sues the Colorado Judicial Branch. *Id.*

The Eleventh Amendment provides: “The 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. This means the Eleventh Amendment bars suits in federal court for

damages and injunctive relief against states unless the state unequivocally waives its immunity or Congress expressly abrogates the state's immunity in creating a statutory cause of action. *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 97–102 (1984). A state officer sued in his official capacity enjoys similar protection. *Colby v. Herrick*, 849 F.3d 1273, 1276 (10th Cir. 2017). An effectively raised Eleventh Amendment defense deprives a federal court of jurisdiction. *Harris v. Owens*, 264 F.3d 1282, 1288 (10th Cir. 2001).

“[I]t is ‘beyond dispute’ that the judicial branch of the State of Colorado has Eleventh Amendment immunity from § 1983 claims.” *Lucas v. The Bd. of Cnty Comm’s of the Cnty. of Larimer Cnty. Colo.*, No. 19-cv-1251-WJM-SKC, 2020 WL 5642321 at * 12 (D. Colo. Sept. 22, 2020). Here, Mr. Sorak has explicitly sued the Colorado Judicial Branch and two judicial officers in their official capacities for monetary damages. No waiver of sovereign immunity applies, and therefore all claims for monetary damages for the alleged wrongs done to Mr. Sorak by these judicial officers in connection with his divorce and child custody proceedings should be dismissed.

Because the Court finds that the jurisdictional issues and Eleventh Amendment immunity are dispositive of all of Mr. Sorak’s claims, it need not and will not address Defendants’ other bases for dismissal.

Conclusion

It is hereby RECOMMENDED that Mr. Sorak’s Complaint be DISMISSED WITHOUT PREJUDICE for lack of subject matter jurisdiction.

NOTICE: Pursuant to 28 U.S.C. § 636(b)(1)(c) and Fed. R. Civ. P. 72(b)(2), the parties have fourteen (14) days after service of this recommendation to serve and file specific written objections to the above recommendation with the District Judge assigned to the case. A party may respond to another party's objections within fourteen (14) days after being served with a copy. The District Judge need not consider frivolous, conclusive, or general objections. A party's failure to file and serve such written, specific objections waives de novo review of the recommendation by the District Judge, *Thomas v. Arn*, 474 U.S. 140, 148–53 (1985), and also waives appellate review of both factual and legal questions. *Makin v. Colo. Dep't of Corr.*, 183 F.3d 1205, 1210 (10th Cir. 1999); *Talley v. Hesse*, 91 F.3d 1411, 1412–13 (10th Cir. 1996).

Dated at Denver, Colorado this 23rd day of January,
2024

/s/ N. Reid Neureiter
United States Magistrate Judge



SUPREME COURT
PRESS