

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Magistrate Judge Boyd N. Boland

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

JUN 17 2005

GREGORY C. LANGHAM
CLERK

Civil Action No. 04-cv-02455-REB-BNB

CHARLES C. CLEMENTS,

Plaintiff,

v.

THOMAS C. MILLER,
JANIS E. CHAPMAN, and
KATHERINE GRIER,

Defendants.

RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

This matter is before me on **Defendant Chapman's Motion to Dismiss** (the "Motion"), filed January 24, 2005.¹ For the following reasons, I respectfully RECOMMEND that the Motion be GRANTED and that all claims against defendant Chapman be DISMISSED for lack of subject matter jurisdiction.

I. BACKGROUND

The plaintiff filed his Complaint with Jury Demand (the "Complaint") on November 26, 2004. The plaintiff's claims arise out of an Adams County domestic proceeding wherein defendant Chapman was the presiding magistrate judge, defendant Miller was the attorney for the plaintiff, and defendant Grier was the opposing counsel. The plaintiff seeks monetary damages

¹Defendant Chapman seeks to dismiss the plaintiff's Amended Complaint. However, the plaintiff was never granted leave to file an Amended Complaint. *Minute Order dated December 20, 2004; Order dated February 18, 2005* (filed February 22, 2005). Nevertheless, defendant Chapman's defenses apply with equal force to the initial Complaint.

from the defendants.

II. STANDARD OF REVIEW

As a preliminary matter, I must liberally construe the pleadings of a *pro se* plaintiff. Haines v. Kerner, 104 U.S. 519, 520-21 (1972). Nevertheless, I cannot act as advocate for a *pro se* litigant, who must comply with the fundamental requirements of the Federal Rules of Civil Procedure. Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991).

Defendant Chapman asserts that the Complaint must be dismissed for lack of subject matter jurisdiction under the Rooker-Feldman doctrine. The standard of review for a motion to dismiss for lack of subject matter jurisdiction under Fed.R.Civ.P. 12(b)(1) is described as follows:

Generally, Rule 12(b)(1) motions to dismiss for lack of subject matter jurisdiction take two forms. First, a facial attack on the complaint's allegations as to subject matter jurisdiction questions the sufficiency of the complaint. In reviewing a facial attack on the complaint, a district court must accept the allegations in the complaint as true.

Second, a party may go beyond allegations contained in the complaint and challenge the facts upon which subject matter jurisdiction depends. When reviewing a factual attack on subject matter jurisdiction, a district court may not presume the truthfulness of the complaint's factual allegations. A court has wide discretion to allow affidavits, other documents, and a limited evidentiary hearing to resolve disputed jurisdictional facts under Rule 12(b)(1). In such instances, a court's reference to evidence outside the pleadings does not convert the motion to a Rule 56 motion.

However, a court is required to convert a Rule 12(b)(1) motion to dismiss into a Rule 12(b)(6) motion or a Rule 56 summary judgment motion when resolution of the jurisdictional question is intertwined with the merits of the case. The jurisdictional question is intertwined with the merits of the case if subject matter

jurisdiction is dependent on the same statute which provides the substantive claim in the case.

Holt v. United States, 46 F.3d 1000, 1003 (10th Cir. 1995) (citations omitted).

III. ANALYSIS

The Rooker-Feldman doctrine is derived from 28 U.S.C. § 1257 which provides that federal review of state court judgments can be obtained only in the United States Supreme Court. Kenmen Engineering v. City of Union, 314 F.3d 468, 473 (10th Cir. 2002). The Rooker-Feldman doctrine “prohibits a lower federal court from considering claims actually decided by a state court and claims inextricably intertwined with a prior state-court judgment.” Id. (internal quotations and citations omitted).

The Complaint is confusing, at best. It is replete with conclusory and self-serving allegations. Most of the allegations center around defendants Grier and Miller’s actions against the plaintiff in connection with the domestic proceeding. The plaintiff’s only factual allegations against defendant Chapman² are as follows: (1) defendant Chapman abused her discretion “in custody orders, restraining orders, awards of attorney fees, [and] improper collegiality and colloquy between Defendants Grier, Miller and Chapman,” and (2) the “improper, vexatious and harassing . . . awards of[] money for ‘attorney fees’ were an improper abuse of discretion by Janis E. Chapman” *Complaint*, at ¶¶ 18, 27.

It is clear from the allegations against defendant Chapman that the state court judgment caused, actually and proximately, the injury for which the plaintiff seeks redress. This is exactly

²I do not address the conclusory and self-serving allegations against defendant Chapman, such as “the Record will show that Magistrate Chapman’s prior and subsequent ministerial and administrative actions made real on the threats from Defendants Grier and Miller.” *Complaint*, ¶ 17.

the type of lawsuit that the Rooker-Feldman doctrine is designed to prevent. See District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 486 (1983) (holding federal district courts “do not have jurisdiction . . . over challenges to state court decisions in particular cases arising out of judicial proceedings even if those challenges allege that the state court’s action was unconstitutional”).³

IV. CONCLUSION

I respectfully RECOMMEND that Defendant Chapman’s Motion to Dismiss be GRANTED and that all claims against defendant Chapman be DISMISSED for lack of subject matter jurisdiction.

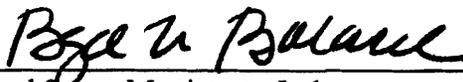
FURTHER, IT IS ORDERED that pursuant to 28 U.S.C. § 636(b)(1)(C) and Fed. R. Civ. P. 72(b), the parties have 10 days after service of this recommendation to serve and file specific, written objections. A party’s failure to serve and file specific, written objections waives *de novo* review of the recommendation by the district judge, Fed. R. Civ. P. 72(b); Thomas v. Arn, 474 U.S. 140, 147-48 (1985), and also waives appellate review of both factual and legal questions. In re Key Energy Resources Inc., 230 F.3d 1197, 1199-1200 (10th Cir 2000). A party’s objections to this recommendation must be both timely and specific to preserve an issue for *de novo* review

³Even if the claims against Defendant Chapman were not barred by the Rooker-Feldman Doctrine, they would be barred by judicial immunity. Judges are immune from “liability for damages for acts committed within their judicial jurisdiction.” Pierson v. Ray, 386 U.S. 547, 554 (1967). Judicial immunity applies regardless of whether the judge acted maliciously or corruptly. Forrester v. White, 484 U.S. 219, 225 (1988). Judicial immunity is overcome only where (1) the actions in question were not taken in the judge’s judicial capacity, and (2) where the actions in question were taken in the clear absence of all jurisdiction. Mireles v. Waco, 502 U.S. 9, 11-12 (1991). The plaintiff’s allegations against defendant Chapman are based on acts performed in Chapman’s judicial capacity and within her jurisdiction as a “Magistrate” in the “Adams County Family Court.” *Complaint*, ¶ 2.

by the district court or for appellate review. United States v. One Parcel of Real Property, 73 F.3d 1057, 1060 (10th Cir. 1996).

Dated June 17, 2005.

BY THE COURT:



United States Magistrate Judge

**UNITED STATES MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT**

**BOYD N. BOLAND
U.S. Magistrate Judge**

**CERTIFICATE OF MAILING
Civil Action No. 04-cv-2455-REB-BNB**

I hereby certify that a copy of this **RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE** dated June 17, 2005, entered by Magistrate Judge B.N. Boland was served by (*) delivery to or (**) depositing the same in the United States mail, postage prepaid, this 17 day of June, 2005, to the following persons:

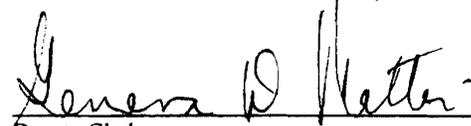
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