IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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MICHAEL O'GRADY,

Plaintiff,

v.

MARATHON COUNTY CHILD SUPPORT AGENCY, JENIFER FOLEY; SYNTHIA O'GRADY; TAMYY LEVIT-JONES; PAUL A. DIRKSE and DANIEL KLINT,

Defendants.

ORDER

03-C-700-C

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In this civil action, plaintiff Michael O'Grady contends that defendants violated his constitutional rights in the context of child support proceedings in state court. In an order dated December 15, 2003, I dismissed the case for lack of subject matter jurisdiction. I concluded that federal question jurisdiction did not exist because plaintiff's allegations of fraud and conspiracy failed to support a claim for a violation of federal law. Diversity jurisdiction does not exist because plaintiff is suing defendants that are citizens of Wisconsin.

Plaintiff has filed a timely motion under Fed. R. Civ. P. 59 to alter or amend the

judgment. He argues that the court does have jurisdiction because the following federal questions are present in his case: (1) whether he has a constitutional right "to a review or reduction in a child support obligation pursuant to a finding and order by a United States Administrative Law Judge, that the plaintiff is disabled, unable to work, and entitled to Social Security benefits"; (2) whether he was deprived of due process "by the defendant's misapplication or disregard of the State of Wisconsin rules of civil process"; (3) whether a Wisconsin circuit court judge violated his due process rights by "refusing to allow the Plaintiff the right to examine evidence or require the existence of evidence before depriving plaintiff of property and liberty"; (4) whether he had a constitutional right to a hearing before the circuit court terminated his parental rights; (5) whether a state court order violated his constitutional rights because it "required prior approval of the Marathon County Child Support Agency and its officials authorizing signature placed on the order which gave permission to a judge to issue the order."

Even assuming that the issues raised by plaintiff could amount to constitutional violations, plaintiff cannot obtain any relief in this court. Each of the issues raised by plaintiff represents a challenge to the proceedings in state court. In Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923), and District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 486 (1983), the United States Supreme Court held that federal district courts lack jurisdiction to entertain appeals of the decisions of a state's highest court. The

Rooker-Feldman doctrine has been extended to apply to decisions of lower state courts. See, e.g., Ritter v. Ross, 992 F.2d 750, 755 (7th Cir. 1993); Keene Corp. v. Cass, 908 F.2d 293 (8th Cir. 1990). Under the doctrine, a litigant may not obtain review of a state court judgment merely by recasting it as a civil rights action under § 1983. Ritter, 992 F.2d at 754. Indeed, Rooker- Feldman bars a federal court from entertaining not only claims actually reviewed in state court but also other claims, including constitutional claims, that are "inextricably intertwined" with the claims heard by the state court. Leaf v. Supreme Court of Wisconsin, 979 F.2d 589, 598 (7th Cir. 1992) (quoting Feldman, 460 U.S. at 486).

Plaintiff had an opportunity to present his concerns in state court. He either failed to take advantage of this opportunity or the state court did not accept his position. If it was the latter, plaintiff's only redress was an appeal *through the state court system* and finally to the United States Supreme Court. In any event, this court has no authority to review a state court's determination regarding child support or child custody. If plaintiff has exhausted his potential appeals, he should focus his energies and resources on finding ways to comply with the state court's orders rather than continuing to squander both his resources and the judiciary's in pursuing a frivolous claim.

Soon after he filed his Rule 59 motion, plaintiff sent the court a letter, which states: "This letter is my notice of appeal of the Court's December 15, 2003, order of dismissal for

lack of subject matter jurisdiction." Because he did not include the $255 fee with his notice of appeal, I construe plaintiff's letter as including a request to proceed in forma pauperis on appeal.

A district court has authority to deny a request for leave to proceed in forma pauperis on appeal under 28 U.S.C. § 1915 only for one or more of the following reasons: the plaintiff has not established indigence, the appeal is in bad faith or the plaintiff has three strikes. § 1915(a)(1),(3) and (g). Sperow v. Melvin, 153 F.3d 780 (7th Cir 1998). Plaintiff paid the fee for filing his original complaint and he has not submitted an affidavit of indigency with his notice of appeal. Because plaintiff has not established his indigence, his request for leave to proceed in forma pauperis on appeal will be denied.

Even if plaintiff had shown that he was financially eligible to proceed in forma pauperis on appeal, I would certify his appeal as not taken in good faith. To appeal in bad faith means merely to appeal on the basis of a legally frivolous claim. Lee v. Clinton, 209 F.3d 1025 (7th Cir. 2000). Plaintiff's claims are legally frivolous. There is no legal basis on which to argue that a federal district court may review a state court's determinations regarding family law matters. Accordingly, I must certify that his appeal is not taken in good

faith; plaintiff will not be permitted to proceed in forma pauperis on appeal.

ORDER

IT IS ORDERED that plaintiff Michael O'Grady's motion to alter or amend the judgment is DENIED. FURTHER IT IS ORDERED that plaintiff's request for leave to proceed in forma pauperis on appeal is DENIED.

Entered this 3rd day of February, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge