IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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PATRICK J. McLAFFERTY,

Petitioner,

ORDER

v.

05-C-607-C

BURNETT COUNTY, STATE OF WISCONSIN, CANDACE FITZGERALD, County Administrator, DEAN ROLAND, SOCIAL SERVICES CHILD PROTECTION OFFICE, KEN KUTZ, County Attorney, PEG LAUTENSCHLAGER, State of Wisconsin Attorney General, JUDGE MICHAEL GABLEMAN and TOM DINKEL, Probation and Parole Officer,

Respondents.

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This is a proposed civil action for monetary and injunctive relief brought under 42 U.S.C. § 1983, in which petitioner Patrick McLafferty contends that defendants have violated his rights under Wisconsin state law and the Fourth, Fifth and Fourteenth Amendments of the United States Constitution. Petitioner seeks leave to proceed without prepayment of fees and costs or providing security for such fees and costs, pursuant to 28

U.S.C. § 1915. From the affidavit of indigency accompanying petitioner's proposed complaint, I conclude that petitioner is unable to prepay the fees and costs of instituting this lawsuit.

In addressing any pro se litigant's complaint, the court must construe the complaint liberally and grant leave to proceed if there is an arguable basis for a claim in fact or law. Haines v. Kerner, 404 U.S. 519, 521 (1972); Neitzke v. Williams, 490 U.S. 319 (1989). However, if the action is frivolous or malicious, fails to state a claim upon which relief may be granted or seeks monetary relief against a defendant who is immune from such relief, the case must be dismissed promptly pursuant to 28 U.S.C. § 1915(e)(2).

In his complaint, petitioner makes the following allegations of fact.

ALLEGATIONS OF FACT

Petitioner lives in Burnett County, Wisconsin. He has never been convicted of a crime. He does not drink or use illegal drugs. He has been a volunteer fireman and treatment foster parent for almost thirty years. He has also worked for the Minnesota Department of Corrections.

Respondent Candace Fitzgerald is a Burnett County administrator. Respondent Dean Roland is a sheriff. Respondent Ken Kutz is a Burnett County attorney. Respondent Peg Lautenschlager is the Attorney General of the State of Wisconsin. Respondent Michael

Gableman is a Burnett County Circuit Court judge, responsible for determining the custody and visitation schedule for petitioner's son, D. J. M. Respondent Tom Dinkel is the probation and parole officer who provides correctional supervision to D. J. M.'s mother, Janine Cowle.

D. J. M. resides with his maternal grandmother, who has lung problems and is on probation for obstruction of justice. The grandmother and child live with two other individuals. One has hepatitis and is on probation for "harboring a marijuana forest." The other is a mentally ill convicted felon and methamphetamine addict, who has abused and neglected one or more children in the past.

The county and state have ignored Wisconsin's laws regarding child custody and denied petitioner a jury trial with respect to his visitation rights. The county and state took D. J. M. out of petitioner's life without cause and placed him in his current home. The county and state knowingly permitted Cowle to reside in the child's home, despite orders from respondent Judge Gableman and respondent Dinkel that forbid Cowle from living with the child. Despite petitioner's repeated phone calls to the Social Services and Child Protection Office, to the sheriff's office and to the court, nothing was done to prevent Cowle from living with D. J. M.

At a child custody and visitation hearing, the court-appointed guardian ad litem, Molly Benson, provided incomplete and inaccurate information. Prior to the hearing,

Benson told petitioner that her report would contain information it did not contain. In fact, the report was "diametrically opposite" the information petitioner had been provided in advance of the hearing. Benson's report did not recommend shared custody. In addition, although she had promised to do so, she did not present an expert witnesses to testify to the important role a father plays in a young boy's life. Petitioner had no time before the hearing to prepare a defense to the report's unexpected recommendations. Judge Gableman would not delay the hearing.

The County of Burnett and the state of Wisconsin have conspired to "get [D. J. M.'s mother] out of the state at any cost." D. J. M.'s mother is leaving the state in several weeks and D. J. M. will move with her.

DISCUSSION

I understand petitioner to contend that his rights were violated when defendants placed D. J. M. in an unsuitable home, permitted Cowle to reside with the child, denied petitioner joint custody of his son and authorized Cowle to move out of state with D. J. M. Petitioner indicates that each of these challenged actions was the subject of litigation in the Circuit Court for Burnett County.

Petitioner contends that defendants' actions have violated his rights under the Fourth, Fifth and Fourteenth Amendments of the United States Constitution and under Wisconsin

state statutes. However, even if the issues raised by petitioner did amount to constitutional violations, he cannot obtain relief in this court because his claims are challenges to state court proceedings.

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). 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 has had an opportunity in state court to raise his concerns regarding D. J. M.'s placement. Either he has failed to take advantage of this opportunity or the state court has not agreed with his position. If the state court has ruled against petitioner, his only redress is an appeal through the state court system and finally to the United States Supreme Court. This court has no authority to review the state court's determination regarding child

custody or visitation.

ORDER

IT IS ORDERED that petitioner's request for leave to proceed in forma pauperis is DENIED.

Entered this 4th day of November, 2005.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge