

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

CLAYTON MELLENDER,

Petitioner,

OPINION and ORDER

v.

07-C-359-C

DANE COUNTY CHILD SUPPORT
AGENCY, ANTON JAMIESON and
CLAIRE ALTSCHULER,

Respondents.

In this proposed civil action for injunctive and monetary relief brought under 42 U.S.C. § 1983, pro se petitioner Clayton Mellender requests leave to proceed in forma pauperis on his claim that respondents Dane County Child Support Agency, Anton Jamieson (a Dane County Circuit Court commissioner) and Claire Altschuler (a lawyer with the Dane County Child Support Agency) have violated his rights under federal law by ordering him to pay child support from his federal veteran's disability benefits. 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). Because this court lacks jurisdiction over petitioner's claim under the Rooker-Feldman doctrine, petitioner's request will be denied.

In his complaint, petitioner makes the following factual allegations.

ALLEGATIONS OF FACT

A. Parties

Petitioner Clayton Mellender is a resident of Madison, Wisconsin.

Respondent Dane County Child Support Agency is a municipal agency charged with establishing and collecting child support payments on behalf of children who reside in Dane County, Wisconsin. Respondent Claire Altschuler is a lawyer employed by respondent Dane County Child Support Agency. Respondent Anton Jamieson is a family court commissioner in the Circuit Court for Dane County, Wisconsin.

B. Child Support Payments

Petitioner is a disabled veteran of the United States Army. He receives a monthly disability pension of \$1348.00 each month from the Department of Veterans Affairs.

On June 13, 2007, petitioner and his ex-wife attended a court hearing for the purpose of setting the amount of monthly child support he was required to pay on behalf of his two minor birth children and one minor stepchild. At that hearing, respondent Altschuler moved the court to order child support in the amount of \$337.00 a month, with a monthly payment of \$63.00 each month toward petitioner's past due child support obligations. Petitioner took the position that federal law prohibited the state from collecting any portion of his veteran's disability benefits. Respondent Jamieson disagreed and ordered petitioner to pay the full amount of child support respondent Altschuler had requested.

DISCUSSION

Petitioner's one and only claim in this lawsuit is that respondents have violated his rights under 38 U.S.C. § 5301 by ordering him to pay child support from his disability benefits. Section 5301 reads as follows:

Payments of benefits due or to become due under any law administered by the Secretary [of the Veteran's Administration] shall not be assignable except to the extent specifically authorized by law, and such payments made to, or on

account of, a beneficiary shall be exempt from taxation, shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary.

On its face, § 5301 appears to bar levies of any sort, including the child support payments respondents have allegedly sought to collect from petitioner. From that fact, petitioner concludes that it is illegal for respondents to compel him to pay any portion of his disability benefits in child support.

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 or order 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).

Petitioner may continue to raise in state court his concerns regarding the child

support assessed against him. If the state court continues to rule against petitioner, his redress is an appeal through the state court system and finally to the United States Supreme Court. His relief does not lie in this court.

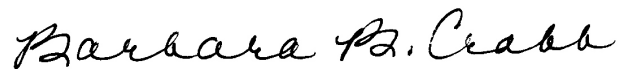
Finally, although this court has no authority to review the state court's determination regarding the propriety of his child support order, I note that petitioner's claim resembles closely an unsuccessful action brought before the United States Supreme Court in Rose v. Rose, 481 U.S. 619 (1987). Before pursuing his present arguments further in state court, petitioner may wish to examine that case thoroughly.

ORDER

IT IS ORDERED that petitioner Clayton Mellender's request to proceed in forma pauperis is DENIED. The clerk of court is directed to close this case.

Entered this 11th day of July, 2007.

BY THE COURT:



BARBARA B. CRABB
District Judge