IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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MICHAEL O'GRADY,

ORDER

Plaintiff,

10-cv-222-bbc

v.

SYNTHIA Y. O'GRADY and
DANIEL A. KLINT,

Defendants.

- -

In this civil action for monetary relief, plaintiff Michael O'Grady is proceeding in forma pauperis under the court's diversity jurisdiction on Wisconsin claims for tortious interference with the custody of a child and intentional infliction of emotional distress against defendants Synthia O'Grady and Daniel Klint. Plaintiff alleges that defendants have interfered with his custody of his four minor children numerous times since 1999. Plaintiff has filed a motion for summary judgment, a motion for preliminary injunctive relief and a motion for leave to amend the complaint. Defendants have filed their own motion for summary judgment as well as a motion to dismiss the case under the domestic relations exception to diversity jurisdiction.

After considering the parties' submissions, I will deny plaintiff's motions. Further, I will grant defendants' motion to dismiss as it pertains to claims arising from defendants' alleged misconduct taking place after August 22, 2006. Finally, I will grant defendants' motion for summary judgment for the remainder of plaintiff's claims because they are barred by the statute of limitations.

PLAINTIFF'S MOTION FOR PRELIMINARY INUNCTION

First, plaintiff has filed a motion for a preliminary injunction prohibiting defendant Klint

> from litigating this case in any way at the expense of tax payers through or from his government provided office as assistant Anoka County attorney (Minnesota) from which he has been operating his private law business (Klint's law office). Defendant Klint has been providing legal services while being paid his government salary to Synthia O'Grady both as a behind the scene attorney and official legal counsel and to others . . . to obstruct and deprive Plaintiff of substantial procedureal and due process rights . . .

I will deny this motion because defendant Klint is free to prepare filings or otherwise participate in this case. After all, he is a party to this action. The question whether Klint has misused government funds is not a claim in this action and cannot be considered by this court.

DISPOSITIVE MOTIONS

Both plaintiff and defendants have filed motions for summary judgment. In addition, defendants have filed a motion to dismiss the case under the domestic relations exception to diversity jurisdiction. Before proceeding, I note the following about the state of the materials submitted by the parties regarding these motions. As defendants point out, plaintiff failed to follow this court's procedures by failing to submit proposed findings of fact supporting his motion or responding to defendants' proposed findings. Procedure to be Followed on Motions for Summary Judgment, attached to Preliminary Pretrial Conference Order, dkt. #18. For their own part, defendants did not submit proposed findings of fact either supporting or refuting the allegations in plaintiff's complaint that they repeatedly kept plaintiff from exercising custody over his children. Rather than disputing the version of events in the complaint, defendants are seeking summary judgment on various legal grounds. In support of their motion, defendants have submitted proposed findings regarding state court divorce proceedings between plaintiff and defendant Synthia O'Grady.

Because there are no proposed facts in the summary judgment record from which I could find whether defendants actually kept plaintiff from exercising custody over his children, I must deny plaintiff's motion for summary judgment; it was his responsibility to put into the record enough proposed facts to allow a jury to find in his favor on his claims. Fed. R. Civ. P. 56(a) ("The court shall grant summary judgment if the movant shows that

there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.")

That leaves defendants' motion to dismiss and motion for summary judgment. In briefing their motion to dismiss, defendants relied on state court documents filed by the parties in conjunction with their motions for summary judgment. Because this court may take judicial notice of documents in the public record without converting a motion to dismiss into a motion for summary judgment, Pugh v. Tribune Co., 521 F.3d 686, 691 (7th Cir. 2008), I will consider these documents in addressing the motion to dismiss as well as in addressing the summary judgment motion.

A. Plaintiff's Allegations

Plaintiff and defendant Synthia O'Grady were married on September 22, 1989. During their marriage they had four sons, Brendan, Shamus, Timothy and Daniel. (Plaintiff redacts Daniel's name in his complaint because he was a minor at the time he filed the complaint, but documents submitted by the parties indicate that Daniel is now over 18, so I will use his full name. Also, for the sake of clarity, in the remainder of the factual sections of this opinion, I will refer to plaintiff Michael O'Grady as "plaintiff" and defendant Synthia O'Grady as "Synthia.")

In September 1999, Synthia violated the court order requiring her to have the

children available for plaintiff to pick up at her Wausau, Wisconsin home at a specific time. On June 8, 2000, plaintiff arrived at Synthia's home but no one was home. Plaintiff searched for his children but did not see them again until August 2000, when he found them in the back storage room of a restaurant in Merrill, Wisconsin, where Synthia worked.

In September 2000, plaintiff arrived again at Synthia's home but no one was there. In March 2001, his son Timothy told plaintiff that he was at Synthia's home in Wausau and wanted to see him. Plaintiff drove to Wausau and "obtained custody" of the children until May 2001. (It is unclear whether plaintiff means that the children lived with him for this period of time or just that he was able to exercise his alternate weekend and holiday custodial rights during this time.). On about June 10, 2001, Synthia relocated the children to a new residence, concealing their whereabouts from plaintiff from June through August. Also, in June 2002, when it was time for plaintiff to take the children, Synthia and the children could not be located. Eventually, plaintiff discovered that Synthia and the children had moved to Coon Rapids, Minnesota to live with defendant Daniel Klint.

In March 2003, plaintiff filed an action in the Circuit Court for Marathon County, Wisconsin, to obtain a child custody enforcement order. When the order was served on Synthia, she delivered the children to plaintiff's home in Portage, Wisconsin. However, on July 4, 2003, Synthia and Klint took Brendan, Shamus and Timothy out of plaintiff's home (Daniel was not taken because he was out with his stepmother at the time). On July 27,

2003, Synthia and Klint pulled up to plaintiff's house and took Daniel, who was playing outside.

As a result of a December 28, 2004 hearing in the state court, a new schedule of physical placement was established, giving plaintiff additional time with his four sons. However, defendants failed to comply with the new order. On July 10, 2005, Synthia came to plaintiff's house and took Timothy and Daniel. On October 21, 2005, plaintiff drove to Coon Rapids to pick up the children, but defendants refused to allow them to leave with plaintiff. On November 24, 2005, plaintiff drove to Coon Rapids to pick up the children for Thanksgiving. Defendants told plaintiff that they were not going to let the children leave their home and that they would not let plaintiff have custody of the children any longer.

By the summer of 2009, Daniel was the only remaining minor child. On September 18, 2009, plaintiff drove to Coon Rapids to pick him up. No one answered the door. Further attempts by plaintiff to contact Daniel by phone or though the mail were unsuccessful. On April 9, 2010, plaintiff, Synthia, defendant Klint, Timothy and Daniel went to Shamus's wrestling awards banquet at St. Cloud State University. Daniel told plaintiff that defendants had blocked his attempts to contact him. When plaintiff asked Synthia to comply with the custody orders, Synthia said, "Screw you," and walked away.

B. State Court Proceedings

By court order dated January 27, 1997, plaintiff and Synthia were divorced. In re Marriage of O'Grady v. O'Grady, No. 1995FA420, Circuit Court for Marathon County, Wisconsin. Under the Marital Settlement Agreement and Findings of Fact, Conclusions of Law and Judgment of Divorce, Synthia and plaintiff were awarded joint legal custody of their children, with Synthia designated as the primary caretaker. Plaintiff was awarded periods of physical placement of his four sons under a schedule provided in the Marital Settlement Agreement.

On December 28, 2004, the court granted plaintiff's petition to enforce the physical placement order, finding that Synthia intentionally and unreasonably interfered with plaintiff's time periods as the custodial parent. The court provided additional time periods for the children to be placed with plaintiff.

In a motion dated March 6, 2006, Synthia filed a motion to modify the divorce judgment as to placement, custody and child support. Synthia sought primary physical placement limiting placement with plaintiff to two weeks during the summer, sole legal custody and child support.

Synthia's motion to modify the divorce judgment was considered at a July 12, 2006 hearing before Judge Habeck. Habeck instructed plaintiff as follows:

I want you to write down your vision of how you share time with your boys;

> how you share that time with your boys and how your wife shares that time. Send one to the Clerk of Courts Office. They always copy me with what you send here. And a copy to [Synthia's attorney] so they can see your vision and understand the way you are thinking on how the boys spend time with you. And that will help narrow the area of disagreement down or see if there is grounds for agreement.

Plaintiff did not comply with Judge Habeck's order and never sent a written statement of the way he wanted to spend time with his sons. On August 22, 2006, Judge Habeck issued a letter responding to a letter from Synthia's lawyer, stating in relevant part.

> You may recall at your last hearing I had some discussion with Mr. O'Grady trying to figure out whether there is indeed a dispute as to the changed placement you suggested. In order to determine what the issue was as to the change placement, I asked Mr. O'Grady to forward to the court his written plan as to the vision he had for the children spending time with each parent. To date, I have not received such a plan. As a result, I do not believe there is a dispute.
>
> I do understand that Mr. O'Grady may never have signed a written stipulation as to any change. However, for the time being, since no dispute has been formally declared, I believe your client can rely on your vision of the placement situation. The mother's plan is the only one that I am aware of in the court file.

C. Discussion

1. Motion to dismiss

In the July 29, 2010 order screening plaintiff's claims, dkt. #7, I discussed whether the "domestic relations exception" to diversity jurisdiction barred plaintiff from bringing his

tortious interference with child custody claims in this court. Under this exception, federal courts lack jurisdiction over domestic relations cases in which the relief sought would "involv[e] the issuance of a divorce, alimony, or child custody decree." Ankenbrandt v. Richards, 504 U.S. 689, 704 (1992). I stated that the Court of Appeals for the Seventh Circuit has ruled that the domestic relations exception does not apply to this Wisconsin tort, citing Lloyd v. Loeffler, 694 F.2d 489, 492-93 (7th Cir. 1982). Accordingly, I allowed plaintiff to bring these claims but noted that "[d]efendants remain[ed] free to file a motion to dismiss on this ground if they have good reason to believe that the specifics of this case distinguish it from Lloyd."

Now defendants have filed a motion to dismiss the entire action on the ground that the present case should be distinguished from Lloyd and that the domestic relations exception should apply. The facts in Lloyd were as follows: a Maryland state court awarded custody of Carol Lloyd to plaintiff Kenneth Lloyd, Carol's father. The court awarded visitation rights to Bonnie McMahan, Carol's mother. McMahan and her husband picked up Carol, purportedly to take her to visit McMahan's parents, the Loefflers. However, the McMahans then absconded with Carol, leaving their whereabouts unknown. Kenneth Lloyd obtained a contempt judgment against Bonnie and arrest warrants from the Maryland court and then filed a case in federal court for damages. At issue in the case was whether Kenneth Lloyd could bring tortious interference with child custody claims against the McMahans and

the Loefflers in federal court. In deciding that Lloyd could bring such a claim, the court stated:

> And since the Loefflers do not contest the validity of the Maryland custody decree, the tort issues in this case are not entangled with issues that only state courts are competent to resolve. The federal court is being asked to decide not who should have custody over Carol but only whether the McMahans and the Loefflers have violated or (in the case of the Loefflers) conspired to violate the custody decree by taking Carol away from her father, and if so what damages he has suffered.

Defendants argue that the present case should be distinguished from Lloyd and the domestic relations exception to diversity jurisdiction should apply to this case because this court "is going to have to interpret various decisions made in the Wisconsin Marathon County Circuit Court family law case to determine who was entitled to custody of the children, whether certain actions by the Defendants were in violation of the custody order and whether certain allegations made by the Plaintiff were already decided by the state court." In particular, the parties dispute whether the state court resolved placement issues in 2006. Defendants point to Judge Habeck's August 22, 2006 letter regarding Synthia's motion to modify the divorce judgment as to placement. Judge Habeck stated

> You may recall at your last hearing I had some discussion with Mr. O'Grady trying to figure out whether there is indeed a dispute as to the changed placement you suggested. . . .
>
> I do understand that Mr. O'Grady may never have signed a written stipulation as to any change. However, for the time being, since no dispute has been formally declared, I believe your client can rely on your vision of the placement situation.

In the summary judgment briefing, the parties dispute whether this letter operated as a valid order amending the divorce judgment to give Synthia primary physical placement with plaintiff's receiving no more than two weeks during summer, drastically reducing his rights to placement. In their motion to dismiss, defendants seem to concede that it is unclear whether Judge Habeck meant to modify the divorce judgment by issuing the letter; neither the court documents submitted by the parties nor an independent examination of the electronic state court docket provides any indication whether the parties or the court understood the divorce judgment to be amended by this letter. However, defendants raise the alternative argument that the parties' dispute over the validity of this letter calls into question the status of the custody decree, distinguishing this case from Lloyd.

I conclude that the domestic relations exception should apply to the portion of this case affected by this letter. Under Lloyd, this court should not exercise jurisdiction over proceedings affected by a dispute over the validity of the custody decree. The Circuit Court for Marathon County is the place for the parties to resolve questions over the status of the custody decree and whether the decree was amended by the August 22, 2006 letter.

In short, this court cannot resolve the tort issues in this case without knowing the placement rights of the parties. This applies not only to plaintiff's intentional interference with custody claim, but also the intentional infliction of distress claim. That claim is premised on the idea that defendants kept the children away from plaintiff *in violation* of the

custody decree. Alsteen v. Gehl, 21 Wis.2d 349, 358, 124 N.W.2d 312, 318 (1963) (in order to state claim for intentional infliction of emotional distress, defendant's conduct must be "extreme and outrageous" such that an average member of the community would find it to be a complete denial of plaintiff's dignity as a person.) Plaintiff cannot state a plausible claim for intentional infliction of emotional distress if defendants did not deny plaintiff placement of the children in violation of the custody decree.

Accordingly, I will grant defendants' motion to dismiss plaintiff's claim regarding his allegations that plaintiff's interfered with his custody rights on September 18, 2009, which is plaintiff's only claim based on events occurring after the August 22, 2006 letter.

This leaves the remainder of plaintiff's claims, regarding defendants' alleged behavior from 1999 to 2005. These claims are not subject to the domestic relations exception because the parties do not dispute the terms of the custody decree as it existed at that time. Instead, defendants argue that the court should not exercise jurisdiction over these claims because it will have to determine whether defendants violated the custody decree. I will deny defendants' motion to dismiss these claims because under Lloyd, this court is suited to determining the question whether the decree was violated. Lloyd, 694 F.2d at 492-93 ("[T]he tort issues in this case are not entangled with issues that only state courts are competent to resolve. The federal court is being asked to decide not who should have custody over Carol but only whether the McMahans and the Loefflers have violated . . . the custody

decree.")

2. Defendant's motion for summary judgment

Defendants move for summary judgment on plaintiff's remaining claims (ranging from 1999 to 2005), arguing that the statute of limitations bars him from bringing those claims. Which statute of limitations applies is a question of state law. In exercising diversity jurisdiction, I must attempt to "predict how the [state] Supreme Court would answer this question if it were presented to it." United States v. Navistar Int'l Transp. Corp., 152 F.3d 702, 713 (7th Cir. 1998) (citing Konradi v. United States, 919 F.2d 1207, 1213 (7th Cir. 1990)).

Defendants argue that both of plaintiff's claims are subject to Wisconsin Statutes § 893.57, which sets forth the controlling statute of limitations for intentional torts. That statute states: "An action to recover damages for libel, slander, assault, battery, invasion of privacy, false imprisonment or other intentional tort to the person shall be commenced within 2 years after the cause of action accrues or be barred." (That statute has been amended to state a three-year statute of limitations, but the new version applies to injuries occurring on or after February 26, 2010 and so does not affect the status of plaintiff's claims.) Plaintiff argues that one of the following statutes with six-year limitations should apply: Wis. Stat. §§ 893.40 (action on judgment or decree); 893.43 (action on contract);

893.51 (wrongful taking of personal property); or 893.53 (injury to character or other rights).

I conclude that both of plaintiff's claims (tortious interference with the custody of a child and intentional infliction of emotional distress) are subject to the two-year limitation period set out in Wis. Stat. § 893.57. Wisconsin courts have already concluded that intentional infliction of emotional distress claims are subject to this statute. Hammer v. Hammer, 142 Wis. 2d 257, 260 n.4, 418 N.W.2d 23, 23 n.4 (Ct. App. 1987) ("The statute of limitations for an intentional tort such as assault, battery *or intentional infliction of emotional distress* is two years, sec. 893.57, Stats." (Emphasis added.)

As I stated in the July 29, 2010 order screening plaintiff's claims, Wisconsin courts have not yet recognized a cause of action based on a claim of tortious interference with the custody of a child, but the Court of Appeals for the Seventh Circuit has concluded that Wisconsin courts *would* recognize that claim. Lloyd v. Loeffler, 694 F.2d 489, 496 (7th Cir. 1982).

Plaintiff does not explain why a longer statute of limitations should be applied to his claims for tortious interference with the custody of a child. Because this is a tort cause of action, there is no reason to apply Wis. Stat. § 893.40, which controls actions on judgments or decrees, or § 893.43, which controls contract actions. Section 893.51, which applies actions for the wrongful taking of property, is not sufficiently analogous to claims for

interference with plaintiff's custody of his children. Section 893.53 is a better fit. It applies to actions "to recover damages for an injury to the . . . rights of another, not arising on contract."

However, § 893.53 does not apply where "a different period is expressly prescribed." Wis. Stat. § 893.57 applies specifically to intentional torts. Throughout plaintiff's complaint, he characterizes defendants' actions as intentional. E.g., Cmplt., dkt. #1 at 6, 8 ("The Defendants have engaged in acts constituting intentional interference with Plaintiff's right to have and exercise custody of [his children]"; "Both Defendants demonstrated deliberate interference to Plaintiff's custody and physical placement rights as custodial parent.") I am persuaded that the two-year statute of limitations in § 893.57 applies to plaintiff's claims for tortious interference with the custody of a child rather than the more general statute, § 893.53.

Plaintiff argues further that these claims are not time-barred because the statute of limitations is tolled in three different ways. First, his claims are saved by the "doctrine of continuous acts," by which I understand plaintiff to mean the "continuing violation doctrine." The continuing violation doctrine acts as a defense to the statute of limitations by delaying its accrual or start date. Hukic v. Aurora Loan Serv., 588 F.3d 420, 435 (7th Cir. 2009). The doctrine applies when "a tort involves a continued repeated injury" and "the limitation period does not begin until the date of the last injury or when the tortious act

ceased." Rodrigue v. Olin Employees Credit Union, 406 F.3d 434, 442 (7th Cir. 2005). It applies where "a series of wrongful acts blossoms into an injury on which suit can be brought." Limestone Development Corp. v. Village of Lemont, Ill., 520 F.3d 797, 801 (7th Cir. 2008). "It is thus a doctrine not about a continuing, but about a cumulative, violation." Id. at 801. See also Dasgupta v. University of Wisconsin Board of Regents, 121 F. 3d 1138, 1139 (7th Cir. 1997) ("A continuing violation is one that could not reasonably have been expected to be made the subject of a lawsuit when it first occurred because its character as a violation did not become clear until it was repeated during the limitations period."). The doctrine does not apply to "a series of discrete acts, each of which is independently actionable, even if those acts form an overall pattern of wrongdoing." Rodrigue, 406 F.3d at 443.

Even assuming the dubious proposition that the continuing violation doctrine could be applied to Wisconsin claims for tortious interference with the custody of a child and intentional infliction of emotional distress, Barry v. Maple Bluff Country Club, 221 Wis. 2d 707, 727, 586 N.W.2d 182, 190 (Ct. App. 1998) (noting continuing violation doctrine has not been applied in any Wisconsin published appellate decision), plaintiff's claims concern a series of discrete acts in which defendants allegedly interfered with his custodial rights. The fact that a handful of these acts occurred after April 27, 2008 does not mean that the statute of limitations can be tolled for the vast majority of the acts that took place before

April 27, 2008.

Second, plaintiff argues, the statute of limitations should be tolled by Wis. Stat. § 893.16(1), which states

> If a person entitled to bring an action is, at the time the cause of action accrues, either under the age of 18 years, except for actions against health care providers; or mentally ill, the action may be commenced within 2 years after the disability ceases, except that where the disability is due to mental illness, the period of limitation prescribed in this chapter may not be extended for more than 5 years.

For purposes of this statute, a "mental illness" is a "mental condition that renders a person functionally unable to understand or appreciate the situation giving rise to the legal claim so that the person can assert legal rights or functionally unable to understand legal rights and appreciate the need to assert them." Storm v. Legion Insurance Co., 2003 WI 120, ¶ 46, 265 Wis. 2d 169, 665 N.W.2d 353. Plaintiff states that on "August 4, 2003, the United States Social Security Administration held a proceeding in which the Judge found Plaintiff having suffered physical manifestation of injury, became disabled on September 18, 2000," and he included a copy of a letter stating that he is entitled to monthly Social Security Disability benefits.

A person who wishes to claim mental illness under § 893.16(1) must prove the condition by a preponderance of the evidence. Storm, 2003 WI 120, ¶ 46 n.29. Plaintiff has failed to show that this statute applies to him. He has not identified his disability; it

appears unlikely that his disability is a mental illness because he states that he has suffered "physical manifestation of injury," which implies that his disability is a physical one rather than mental. At any rate, it seems unlikely that he was "functionally unable to understand or appreciate the situation giving rise to the legal claim" in view of his long history of litigation of his state divorce case. His filings in this case do not indicate that he cannot understand his legal rights. Accordingly, I conclude that his claims are not tolled by § 893.16(1).

Finally, plaintiff argues that the statute of limitations should be tolled by Wis. Stat. § 893.13(2), which states that

> A law limiting the time for commencement of an action is tolled by the commencement of the action to enforce the cause of action to which the period of limitation applies. The law limiting the time for commencement of the action is tolled for the period from the commencement of the action until the final disposition of the action.

The purpose of the statute is to protect a timely filed claim that is dismissed on procedural grounds or is heard on appeal. Johnson v. County of Crawford, 195 Wis. 2d 374, 383-84, 536 N.W.2d 167, 170 (Ct. App. 1995). Plaintiff argues that this provision tolls his current claims because his underlying state divorce case in the Circuit Court for Marathon County, In re Marriage of O'Grady v. O'Grady, No. 1995FA420, remains open. In particular, plaintiff states that on December 22, 2005, he filed a motion to enforce the physical placement order in that case, but that the motion has not yet been resolved by the state

court.

However, § 893.13(2) does not apply because the divorce action is not an "action to enforce *the cause of action to which the period of limitation applies.*" (Emphasis added.) Plaintiff is not pursuing tort claims in that action. See also Lloyd, 694 F.2d 493 (tort action arising out of custody decree is separate from custody proceeding). It can not be said that plaintiff's tort claims are "timely filed claim[s] that [were] dismissed on procedural grounds or [were] heard on appeal." Instead, they are claims that plaintiff should have brought in a separate action filed before the statute of limitations had expired. If plaintiff is dissatisfied with the progress of his enforcement proceedings, he should raise the issue in his state case.

Plaintiff filed his complaint in this case on April27, 2010. Because I conclude that the two-year statute of limitations should not be tolled for plaintiff's claims, his claims for any acts committed by defendants before April 27, 2008 are barred. This means that I must grant defendants' motion for summary judgment regarding the remainder of plaintiff's claims that occurred between 1999 and 2005.

PLAINTIFF'S MOTION TO SUPPLEMENT COMPLAINT

Finally, plaintiff has filed a motion to supplement his complaint to include additional allegations against defendant stemming from a July 3, 2010 incident in which defendants traveled to plaintiff's home and took plaintiff's son Daniel with them back to Coon Rapids,

Minnesota, against plaintiff's wishes. Under Fed. R. Civ. P. 15(a)(2), a plaintiff seeking leave to amend his complaint beyond the initial stages of a case and without the opposing party's consent must obtain the court's leave, which should be given "freely . . . when justice so requires." In determining whether this standard is met, courts consider a number of factors, including whether the amendment would be futile or cause unfair prejudice or whether the party waited too long to ask for the amendment. Sound of Music v. Minnesota Mining & Manufacturing Co., 477 F.3d 910, 922-23 (7th Cir. 2007). I will deny plaintiff's motion because I conclude it would be futile. I have already determined that the domestic relations exception to diversity jurisdiction bars the court from considering plaintiff's claims following the state court's August 22, 2006 letter that arguably altered the custody decree.

ORDER

IT IS ORDERED that

1. Plaintiff Michael O'Grady's motion for preliminary injunctive relief, dkt. #19, is DENIED.

2. Plaintiff's motion for leave to file an amended complaint, dkt. #25, is DENIED as futile.

3. Plaintiff's motion for summary judgment, dkt. #50, is DENIED.

4. Defendants Synthia O'Grady's and Daniel Klint's motion to dismiss plaintiff's

claims under the domestic relations exception to diversity jurisdiction, dkt. #56, is GRANTED with respect to plaintiff's claims regarding allegations of acts committed on September 18, 2009 and DENIED with respect to plaintiff's claims regarding allegations of events occurring between 1999 and 2005.

5. Defendants' motion for summary judgment, dkt. #11, is GRANTED with respect to plaintiff's claims regarding allegations taking place between 1999 and 2005.

6. The clerk of court is directed to enter judgment for defendants and close this case.

Entered this 15th day of February, 2011.

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