IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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D, by his next friend, KURTIS B.,
JENNIFER B. and KURTIS B.,

Plaintiffs,

v.

JAMES KOPP, JAN MORAVITS,
LISA RINIKER, GRANT COUNTY
and GRANT COUNTY DEPT. OF
SOCIAL SERVICES,

Defendants.

ORDER

11-cv-773-bbc

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Plaintiff D is a six-year-old boy; plaintiffs Jennifer B. and Kurtis B. are his parents. Plaintiffs allege that defendant Lisa Riniker (an assistant district attorney) and other public officials violated D's rights under federal and state law in various ways after D was accused of sexually assaulting a 5-year-old girl while "playing doctor."

Several motions are before the court. Initially, defendants James Kopp, Jan Moravits, Grant County and Grant County Department of Social Services filed a motion to dismiss for failure to state a claim upon which relief may be granted under Fed. R. Civ. P. 12(b)(6) and defendant Riniker filed a motion for judgment on the pleadings under Fed. R. Civ. P.

12(c). Dkt. ##22 and 24. Plaintiffs filed a motion to "strike" the motion to dismiss on the ground that defendants already had filed their answer, making a motion to dismiss untimely. Fed. R. Civ. P. 12(b) ("A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed."). In response, defendants withdrew their motion to dismiss and replaced it with a motion for judgment on the pleadings. Dkt. #31. Accordingly, I am denying the motion to dismiss and the motion to strike the motion to dismiss as moot.

This leaves the two motions for judgment on the pleadings and plaintiffs' new motion to "strike" the portion of defendant Riniker's brief regarding the constitutionality of Wis. Stat. § 938.01(2). A threshold question raised by these motions is whether I must abstain from exercising jurisdiction over this case. Under the doctrine first articulated in Younger v. Harris, 401 U.S. 37 (1971), federal courts are required to abstain from hearing "claims that involve or call into question ongoing state proceedings." FreeEats.com, Inc. v. Indiana, 502 F.3d 590, 595 (7th Cir. 2007). In particular, abstention is required if (1) there is an ongoing state proceeding that is judicial in nature; (2) the state proceeding implicates important state interests; (3) the parties have an adequate opportunity in the state court proceeding to raise the constitutional challenge presented in the federal claims; and (4) no extraordinary circumstances render abstention inappropriate. Green v. Benden, 281 F.3d 661, 666 (7th Cir. 2002).

In this case, plaintiffs are alleging that defendants have "interfered with D's right to assert his innocence" in the judicial proceeding, attempted to coerce D to sign a consent decree, sent correspondence relating to the judicial proceedings to D rather than his parents in an attempt to harass him, "initiated baseless actions against 'D' since and because the child that 'D' allegedly assaulted is the daughter of a popular political figure," charged plaintiff under an unconstitutional statute and "seized" D unreasonably "by both a criminal and judicial process launched by all Defendants." In response to defendants' argument that plaintiffs' claims are barred under the Younger doctrine, plaintiffs say that "there is no longer a pending state case against Plaintiff D." Plts.' Br., dkt. #37, at 11. They do not explain further or cite any evidence to support this allegation, which contradicts the allegations of the amended complaint. Dkt. #10, ¶ 15 ("The case as to First Degree Sexual Assault is now pending."). In their reply brief, defendants dispute plaintiffs' new allegation, also without citing any evidence. Dkt. #43, at 3.

Because abstention is a threshold question, I must resolve it before considering the merits of plaintiffs' claims. Accordingly, I will give the parties an opportunity to file supplemental materials from the record of the state court proceedings showing the status of those proceedings. (The parties may submit those documents jointly if they agree on the relevant portions of the record.) If the proceedings have ended because judgment was entered, then the parties should (1) submit court documents showing whether an appeal has

been filed; and (2) file a supplemental brief addressing the question whether any of plaintiffs' claims are barred under the Rooker–Feldman doctrine. If the parties believe that any of these court records are confidential, they may file them under seal.

If the court records do not show that the state court proceedings have ended, the parties should file supplemental briefs on the question whether Younger abstention is appropriate. In particular, the parties should address the four Younger factors cited above with respect to each federal claim. In addition, the parties should address whether the Anti-Injunction Act, 28 U.S.C. § 2283, bars any of plaintiffs' state law claims.

ORDER

IT IS ORDERED that

1. The motion to dismiss filed by defendants James Kopp, Jan Moravits, Grant County and Grant County Department of Social Services, dkt. #22, and the motion to strike filed by plaintiffs D, Jennifer B. and Kurtis B., dkt. #30, are DENIED as moot

2. The parties may have until April 5, 2012, to file the supplemental materials

described in this order.

Entered this 28th day of March, 2012.

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