

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

KELLY RAE MIER,

Plaintiff,

OPINION AND ORDER

v.

13-cv-375-wmc

STATE OF WISCONSIN, *et al.*,

Defendants.

Plaintiff Kelly Rae Mier has filed a civil action against the State of Wisconsin and others involved in a state court proceeding that resulted in her losing custody of her three young children. Because Mier seeks leave to proceed without prepayment of fees and costs, the court must review the proposed complaint to determine if her allegations are (1) frivolous or malicious; (2) fail to state a claim on which relief may be granted; or (3) seek money damages from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915(e)(2). In addressing any *pro se* litigant's complaint, the court must construe the allegations generously. *See Haines v. Kerner*, 404 U.S. 519, 521 (1972). Even under this lenient standard, Mier's motion for leave to proceed will be denied because the court lacks jurisdiction to consider her claims for relief.

ALLEGATIONS OF FACT

Mier's complaint stems from a state court action that took place in Eau Claire County, Wisconsin, where she currently resides. The pleadings include a police report, court records, and a rambling portion of Mier's journal. The latter indicates that the

state court removed Meir's children (ages 7, 5 and 10 months) from her custody and placed them in foster care.

On April 18, 2013, police officers encountered Mier at a local hospital emergency room, where she was displaying confused, incoherent behavior. At that time, Mier could not or would not answer questions from staff or police, demanding instead to be placed in the "Witness Protection Program." Mier insisted that she could not return to her home because the man she was living with was drugging her and the children, who had reportedly been raped. Tests administered at the hospital showed that the children had no drugs in their system, while Mier tested positive for marijuana or THC, which she admitted smoking on a daily basis. Hospital staff declined to examine the children for signs of sexual assault because Mier was unable to provide any details to support her claim that they had been raped. Observing that Mier was essentially homeless and had obvious "mental health issues," officers contacted a local social services agency, which promptly took temporary custody of the children.

The following day, Mier agreed to receive inpatient treatment at the hospital's behavioral health unit. Staff observed that Mier displayed a high level of paranoia. She also kept insisting that her daughters had been raped by a neighbour, as she had been when she was a child.

On April 23, 2013, staff advised a county social worker assigned to Mier's case that "in her current delusional state she is not suited to take custody and control of [her] minor children." Officials then tried, without success, to locate a relative or responsible family member to care for the children.

On April 25, 2013, the State of Wisconsin initiated a CHIPS (Children in Need of Protection) proceeding in Eau Claire County Circuit Court, alleging that Mier's children were receiving "inadequate care" and were "in need of protection and services" pursuant to Wis. Stat. § 48.13(8). In addition to Mier's apparent mental health issues and lack of a stable home, the State noted that Eau Claire County had received 15 reports from Child Protective Services ("CPS"), regarding Mier and her children between March 2010 and April 2013.

To date, Mier's children remain in foster care pursuant to a "CHIPS order" entered by the circuit court. Mier currently resides at a transitional living facility in Eau Claire. Mier filed this suit against the State of Wisconsin, Eau Claire County, and two social workers (Michelle Helmer and Cindy Waller) regarding the CHIPS proceeding, claiming (as she had at the hospital on April 18, 2013) that her children were drugged and raped. Arguing further that the system is "corrupt," Mier asks this court to intervene and set aside the state court's order that resulted in her children's placement in foster care.

OPINION

A district court must dismiss a complaint for lack of subject matter jurisdiction if the claims stated are "so insubstantial, implausible, foreclosed by prior decisions of [the United States Supreme Court], or otherwise completely devoid of merit as not to involve a federal controversy." *Steel Company v. Citizens for a Better Environment*, 523 U.S. 83, 89 (1998) (citing *Oneida Indian Nation of N.Y. v. County of Oneida*, 414 U.S. 661, 666 (1974)). Assuming that all of Mier's allegations are true, her complaint is not one over

which this court has jurisdiction or authority to review for reasons set forth briefly below.

Generally, a federal court such as this one has the power to hear two types of cases: (1) cases in which a plaintiff alleges a cognizable violation of his rights under the Constitution or federal law; and (2) cases in which a citizen of one state alleges a violation of his or her rights established under state law by a citizen of another state where the amount in controversy exceeds \$75,000. *See* 28 U.S.C. §§ 1331-32.

Here, Mier would take issue with an order granting temporary custody of her children to the State of Wisconsin for their own protection, which is a classic family law and custody dispute that arises under state law. *See Rose v. Rose*, 481 U.S. 619, 625 (1987) (quoting *In re Burrus*, 136 U.S. 586, 593–94 (1890)) (“[T]he whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States.”); *see also Mansell v. Mansell*, 490 U.S. 581, 587 (1989) (“[D]omestic relations are preeminently matters of state law”); *Moore v. Sims*, 442 U.S. 415, 435 (1979) (“Family relations are a traditional area of state concern”); *De Sylva v. Ballentine*, 351 U.S. 570, 580 (1956) (“[T]here is no federal law of domestic relations, which is primarily a matter of state concern.”).

Unless a substantial federal question “transcends or exists apart from” a dispute involving “elements of the domestic relationship,” federal courts typically must decline jurisdiction even when divorce, alimony, or child custody is not strictly at issue. *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 13 (2004). Since Mier does not allege facts signaling the existence of a substantial federal question that is *separate* from the child-custody proceeding which forms the backboard of her complaint, the court has no

jurisdiction to look further under *Rose*.

Even if a substantial federal question was present, this court still could not consider Mier's complaint because her request for relief is precluded by the *Rooker-Feldman* doctrine. See *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-16 (1923); *District of Columbia Ct. of App. v. Feldman*, 460 U.S. 462, 486 (1983). The *Rooker-Feldman* doctrine is another, recognized jurisdictional limitation, which prevents a party "complaining of an injury caused by [a] state-court judgment" from seeking redress in a lower federal court. See *Exxon Mobil Corp. v. Saudi Indus. Corp.*, 544 U.S. 280, 291-92 (2005); see also *Commonwealth Plaza Condominium Ass'n v. City of Chicago*, 693 F.3d 743, 745 (7th Cir. 2012). A litigant may not avoid the *Rooker-Feldman* doctrine by casting her complaint in the form of a civil rights action, as Mier may be attempting to do in this case. See *Ritter v. Ross*, 992 F.2d 750, 753 (7th Cir. 1993). Instead, litigants who feel that a state court proceeding has violated their constitutional rights must appeal that decision through the state court system and then, if appropriate, by petitioning the United States Supreme Court. See *Young v. Murphy*, 90 F.3d 1225, 1230 (7th Cir. 1990).

Because Meir's allegations expressly implicate a state court judgment -- she plainly asks this court to intervene and overturn the state court's decision to place her children in protective custody -- *Rooker-Feldman* bars federal review by lower federal courts. See *Johnson v. Orr*, 551 F.3d 564, 568 (7th Cir. 2008); see also *Golden v. Helen Sigman & Assoc., Ltd.*, 611 F.3d 356, 361-62 (7th Cir. 2010) (holding that *Rooker-Feldman* barred review of claims related to a state court divorce and child custody proceedings); *Wright v. Tackett*, 39 F.3d 155, 157-58 (7th Cir. 1993) (per curiam) (holding that *Rooker-Feldman* bars

review of constitutional claims that are inextricably intertwined with state court divorce proceedings); *Liedel v. Juvenile Court of Madison County*, 891 F.2d 1542 (11th Cir. 1990) (finding that *Rooker-Feldman* and *Younger* abstention doctrine bar federal court jurisdiction over a case involving ongoing child custody dispute, notwithstanding claims of violation of constitutional rights to due process) (citing *Younger v. Harris*, 401 U.S. 37 (1971)).

Accordingly, Meir's complaint must be dismissed on its face for lack of subject matter jurisdiction.

ORDER

IT IS ORDERED that plaintiff Kelly Rae Mier's motion for leave to proceed *in forma pauperis* is DENIED and the complaint is DISMISSED for lack of subject matter jurisdiction.

Entered this 18th day of June, 2013.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge