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

DENNIS LEE HARGROVE,

Plaintiff,

v.

STATE OF WISCONSIN,
Child Support Agency, and
CAROLYN MITCHELL HARGROVE,

Defendants.

OPINION & ORDER

14-cv-439-jdp

Pro se plaintiff Dennis Lee Hargrove, who resides in Deforest, Wisconsin, has filed a proposed civil complaint alleging that defendants Child Support Agency of the State of Wisconsin and Carolyn Mitchell Hargrove[1] have "overreached" in trying to collect unpaid child support obligations for children who are now in their fifties. Dkt. 1. Plaintiff has made an initial partial payment of the filing fee as directed by the court. Dkt. 3. Because plaintiff is proceeding *in forma pauperis*, I must next screen his complaint and dismiss any portion that is legally frivolous, malicious, or fails to state a claim upon which relief may be granted. 28 U.S.C. § 1915. In addressing any pro se litigant's complaint, I must read the allegations of the complaint generously. *McGowan v. Hulick*, 612 F.3d 636, 640 (7th Cir. 2010). After reviewing the complaint with this principle in mind, I conclude that plaintiff has failed to state a claim upon which relief may be granted in federal court. I will therefore dismiss the case.

[1] I understand defendant Carolyn Mitchell Hargrove to be plaintiff's ex-wife and the recipient of his child support payments.

ALLEGATIONS OF FACT

In his complaint, Hargrove alleges that he made child support payments to Wisconsin between 1971 and 1975, and again between 1977 and 1981. According to plaintiff's records, he has paid more than $33,500. But he alleges that Wisconsin failed to credit him for his earlier payments and is now wrongfully collecting on his outstanding debt by garnishing his social security payments and tax refunds. Plaintiff apparently owes more than $71,500 in child support, which he claims is accruing at over 600% interest on the original debt.

ANALYSIS

Federal courts are courts of limited jurisdiction, which means that they do not have authority to hear all cases. Federal courts may hear only cases that: (1) allege a violation of rights under the United States Constitution or federal law; or (2) allege a violation of rights under state law where the parties are from different states and the amount in controversy exceeds $75,000. *See* 28 U.S.C. §§ 1331-32. Federal courts have a duty to determine whether they have authority to hear a case before reaching its merits. *See Buchel–Ruegsegger v. Buchel*, 576 F.3d 451, 453 (7th Cir. 2009). Under the Federal Rules of Civil Procedure, if a federal court does not have authority to hear a case, it "must dismiss the action." Fed. R. Civ. P. 12(h)(3).

A complaint in federal court must provide "a short and plain statement of the claim showing that [plaintiff] is entitled to relief." Fed. R. Civ. P. 8; *Arnett v. Webster*, 658 F.3d 742, 751 (7th Cir. 2011). One purpose of this rule is to give defendants "fair notice" of the violations they are accused of committing. A second purpose of the rule is to help the federal court determine whether it may hear a case by requiring plaintiffs to provide enough information to establish what kinds of claims they plead. If a court determines that a "plaintiff can prove no set of facts in support of his claim which would entitle him to relief," then it must dismiss the claim

for failure to state a claim upon which relief can be granted under Rule 12(b)(6). *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); *see also Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557, 127 S. Ct. 1955, 1966, 167 L. Ed. 2d 929 (2007) (stating that the plausibility pleading standard "reflects the threshold requirement of Rule 8(a)(2) that the 'plain statement' possess enough heft to 'sho[w] that the pleader is entitled to relief.'").

Plaintiff alleges that defendants are wrongfully collecting his past child support obligations. Plaintiff's complaint does not allege an actionable federal claim. First, plaintiff's issue is a state law issue. Generally, child support and other family issues fall under state law. *See Moore v. Sims*, 442 U.S. 415, 435 (1979) ("Family relations are a traditional area of state concern."). "Notwithstanding the limited application of federal law in the field of domestic relations generally," federal courts may act to protect federal rights. *Ridgway v. Ridgway*, 454 U.S. 46, 54 (1981). But plaintiff's allegations do not suggest any apparent federal right. Second, even if there are federal issues in this case, plaintiff's claim would likely be barred by the *Rooker–Feldman* doctrine, which precludes federal district courts from reviewing state-court judgments, such as the award of child support at the root of plaintiff's complaint. See *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923), and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983).

Perhaps plaintiff is not asking this court to review the state-court child support judgment, but is instead alleging that the way defendants are enforcing the child support judgment violates his Fourteenth Amendment due process rights. A civil rights claim for unconstitutional state action would proceed in federal court under 42 U.S.C. § 1983. But plaintiff cannot proceed on that type of claim for two reasons. First, a § 1983 claim may be alleged only against individuals, and not against the state itself. *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71 (1989) (holding that "neither a State nor its officials acting in their

official capacities" are "persons" who may be sued under § 1983). So that would preclude bringing the claim against the state agency. And it may be alleged only against a person who acts "under color of state law" by exercising power "possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law," which would preclude bringing the claim against plaintiff's ex-wife. *United States v. Classic*, 313 U.S. 299, 326 (1941).

Second, even if plaintiff could identify the proper state actor to sue, the state of Wisconsin affords him post-deprivation remedies within the state court system, precluding his constitutional due process claim for the deprivation. *Hudson v. Palmer*, 468 U.S. 517, 533 (1984) (holding "that an unauthorized intentional deprivation of property by a state employee does not constitute a violation of the procedural requirements of the Due Process Clause of the Fourteenth Amendment if a meaningful postdeprivation remedy for the loss is available."); *see also Sheppard v. Welch*, No. 05-cv-467, 2006 WL 3134869, at *3 (S.D. Ind. Oct. 31, 2006) (granting summary judgment to state actors accused of depriving plaintiff of due process by seizing his bank account and garnishing his wages to enforce a child support order against him). Wisconsin provides post-deprivation remedies for child support overpayment and plaintiff has not alleged that these remedies are inadequate as a matter of law. *See Poehnelt v. Poehnelt*, 94 Wis. 2d 640, 289 N.W.2d 296, 303-04 (1980) (affirming divorce judgment as modified to offset or credit past overpayment of child support); *see also* Wis. Stat. Chap. 767, Subchap. VI (Actions Affecting the Family, Support and Maintenance).

Plaintiff has failed to allege facts sufficient to state a claim upon which relief may be granted in federal court. I will deny him leave to proceed and dismiss this case.

ORDER

IT IS ORDERED that:

1. Plaintiff Dennis Lee Hargrove is DENIED leave to proceed on his claim for unlawful garnishment against defendants and the case is DISMISSED with prejudice for failure to state a claim upon which relief may be granted.

Entered April 15, 2015.

BY THE COURT:

/s/

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JAMES D. PETERSON
District Judge