

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

ROBERT ABELE,

Plaintiff,

OPINION AND ORDER

v.

21-cv-602-wmc

DONALD RAY,
PAUL HUBER,
DIRK BECKER and
KIMBERLY BECKER,

Defendants.

In this civil action for injunctive relief, *pro se* plaintiff Robert Abele claims Donald Ray has misappropriated his trade secrets in violation of 18 U.S.C. § 1836(b)(1). Abele names three other defendants, but includes no specific allegations against any of them. To date, Abele has also failed to properly serve the defendants, and Ray moves to dismiss this lawsuit on that ground. (Dkt. #8.) Because Abele lacks good cause for this failure to serve defendants, and the court does not construe Abele's procedural failings as excusable neglect, the court will grant Ray's motion and dismiss his lawsuit without prejudice.

BACKGROUND¹

Amidst Abele's divorce proceeding in Illinois, the state trial court issued an Order of Protection that bars Abele from entering the home where his wife resided. Although Abele had used that same residence as his place of business, he was able to remove a server

¹ The court draws the following facts from the filings in this lawsuit, as well as Abele's previous, related lawsuit in this court, Case No. 21-cv-370-wmc, and publicly available docket information from the Illinois Circuit Court for Winnebago County's website. For the purposes of this order, the court accepts all of Abele's well-pleaded allegations as true and construes all reasonable inferences in his favor.

containing some business files, but not what he refers to as his “Trade Secret” files. (Dkt. #6 at 7.) In June of 2021, Abele filed a civil action for injunctive relief against his wife and her divorce attorney, Donald Ray, in this court in Case No. 21-cv-370-wmc. Abele claimed that defendants had threatened to misappropriate his trade secrets and had denied him access to the intellectual property still stored in the basement of his wife’s residence. In that case, Abele timely served defendants via a process server. However, because the property in dispute was a part of the Abele’s ongoing divorce proceedings, the court dismissed that case without prejudice. Moreover, publicly available, Illinois state court docket information indicates that as of the date of this order, Abele’s divorce proceeding remains pending and appears to be on appeal.

On September 23, 2021, Abele filed this related civil action requesting that defendants be enjoined from “destroying, disposing of, or relocating the Trade Secret Assets,” and filed a motion in his Illinois state court divorce proceeding via the Illinois state court’s electronic filing system asking that court to take notice of his latest federal lawsuit. (Dkt. #1 at 4; Dkt. #11-1.) As before, Abele alleges that Ray threatened to copy trade secrets from several hard drives still in the residence, and adds that the state court only granted Abele two days to remove the property from his wife’s home despite his insisting that it would require him “four or more 12-hour days” to do so. He also alleges that the state court allowed Abele’s wife to remove any property “left in the house after 3:00pm” on the second day.² (Dkt. #1 at 4.)

² As noted, there are no specific allegations made against any of the other three defendants in Abele’s initial motion and pleading. Given that Abele references only Ray in subsequent filings, the court presumes that Abele has voluntarily dropped these defendants from this lawsuit. (*See*,

Abele does not clarify whether he tried to remove any of the disputed property during this two-day window, but alleges that the disputed property is no longer in the home, and he does not know where it is. Upon reviewing Abele's initial motion and complaint, this court denied Abele a temporary restraining order and construed his request as one for a preliminary injunction; the court also instructed Abele to file amended proposed findings of fact in support of an injunction *and* to serve the defendants properly with the court-issued summons, along with his amended proposed findings of fact, his motion and complaint, memorandum in support, and the court's order. (Dkt. #4.) The court also warned Abele that its reasons for dismissing his prior lawsuit may still apply since his ongoing divorce proceedings were continuing.

Nearly a month after the extended, December 22, 2021, deadline for service had passed, the court issued a *second* order instructing Abele to submit proof of service or show good cause for his failure to timely serve defendants by February 8, 2022. (Dkt. #5) Instead, Abele submitted a motion for reconsideration on February 8, claiming that he had been ill for three weeks and making new allegations of trade secret misappropriation. (Dkt. #6.) Abele then emailed Ray a waiver of service form on February 9 without the Clerk of Court's certified summons or the actual complaint. Understandably enough, Ray apparently chose not to sign the waiver of service form. Rather, on March 6, 2022, he filed a motion to dismiss based on Abele's failure to effect service timely under Fed. R. Civ. P. 4(m). (Dkt. #8.) Abele has now responded to that motion, indicating that he properly

e.g., dkt. ##6 at 2, 6, 7 at 1, 11 at 1, 14 at 1 (listing Abele and Ray as the parties or Ray as the defendant).) Regardless, the timing to serve those defendants has long since elapsed as well.

served Ray in the previous, now dismissed lawsuit and notified the state court of this lawsuit, as well as filed a motion for discovery. (Dkt. #14). However, crucially, Abele has yet to serve any defendant in this case properly as the court has now repeatedly instructed him to do at risk of default.

OPINION

A district court may not exercise personal jurisdiction over a defendant unless the defendant has been properly served with process. *United States v. Ligas*, 549 F.3d 497, 500 (7th Cir. 2008). Rule 4(m) requires that a plaintiff serve defendants within 90 days after a complaint is filed or else show good cause for the failure to do so. The court must grant a party an extension of the deadline for good cause shown, and may in its discretion extend the deadline for excusable neglect. *Coleman v. Milwaukee Bd. of Sch. Dirs.*, 290 F.3d 932, 934 (7th Cir. 2002). Among the factors a court considers in granting an extension for excusable neglect are: (1) whether the expiration of the statute of limitations would prevent refiling; (2) whether the defendant evaded service; (3) whether the defendant's ability to defend would be prejudiced by an extension; (4) whether the defendant had actual notice of the lawsuit; and (5) whether the defendant was eventually served. *Cardenas v. City of Chicago*, 646 F.3d 1001, 1006 (7th Cir. 2011).

Plaintiff has not shown good cause, nor do the *Cardenas* factors support a finding that plaintiff's neglect of his procedural obligations is excusable. While the plaintiff alleges a serious, three-week illness, the documents in support indicate that he fell ill on or after the original 90-day deadline for service, and he does not explain his failure to serve defendants properly either before his deadline *or after his recovery*, even though plaintiff

properly served defendants in his prior, related lawsuit, demonstrating that he understands how to do so. Moreover, the court can find no excusable neglect.

To the contrary, although there is not yet an indication that any defendant would be prejudiced by an extension, the rest of the *Cardenas* factors balance firmly in defendants' favor. To begin, there is no statute of limitations issue. Taking plaintiff's claims at face value, the statute of limitations for trade secret misappropriation will not expire until November of 2023 at the earliest. And there is nothing in the record suggesting that defendants have evaded service, or even that the named defendants (other than Ray) have actual notice of the lawsuit. Indeed, despite the instructions from this court, plaintiff appears to have made little effort to serve Ray properly, and no effort to serve any of the other named defendants. In light of these circumstances, this court will grant Ray's motion.

Finally, even if plaintiff had properly served defendants, or the court were to again extend his deadline to do so, plaintiff alleges that he has been prevented from accessing the disputed property and seeks its return or compensation for its loss. That issue is for the state courts to address in the first instance as part of plaintiff's ongoing divorce proceedings. As noted, publicly available Illinois state court docket information indicates that those proceedings remain pending and appear to be on appeal. *See Abele v. Abele*, no. 2020-D-31 (Ill. Cir. Ct. 2021). Moreover, as the court explained in its order dismissing plaintiff's previous action, the question of possession of divorce property is not even within this court's jurisdiction. *See Budorick v. Maneri*, 607 F. App'x 876, 878 (7th Cir. 2017) (plaintiff's claim that his wife wrongfully diverted marital property fell "squarely within

the domestic-relations exception”). To the extent plaintiff now alleges injury arising out of a state-court order entered against him, the *Rooker-Feldman* doctrine also prevents a party “complaining of an injury caused by [a] state-court judgment” from seeking redress in a lower federal court. *Exxon Mobil Corp. v. Saudi Indus. Corp.*, 544 U.S. 280, 291-92 (2005). *See 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). For all these reasons, this lawsuit must be dismissed,

ORDER

IT IS ORDERED that:

1. Defendant Donald E. Ray’s motion to dismiss (dkt. #8) is GRANTED and this lawsuit is DISMISSED without prejudice.
2. Plaintiff Robert J. Abele’s motion for injunctive relief (dkt. #1), motion for reconsideration (dkt. #6), and request for discovery (dkt. #14) are DENIED.
3. The clerk of court is directed to enter judgment for defendants and to close this case.

Entered this 30th day of September, 2022.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge