IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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CHERYL A. ELKINTON,

Petitioner,

v.

PAUL B. HIGGENBOTHAM, Appeals Court Judge, Dist. 4; STUART SCHWARTZ, Dane County Circuit Court Judge; and ANGELA BARTELL, Dane County Circuit Court Judge,

Respondents.

ORDER

07-C-474-C

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Petitioner Cheryl Elkinton has filed this proposed new lawsuit and requests leave to proceed in forma pauperis. She names as respondents Paul Higgenbotham, Stuart Schwartz and Angela Bartell, each of whom is a Wisconsin state court judge. I am personally acquainted with all of these judges and my friendship with Judge Bartell dates from 1972.

Ordinarily, when a proposed litigant names as a respondent an individual who is a close friend of the judge to whom the case is assigned, the judge should recuse herself. However, where, as here, no reasonable jurist could debate that the claims made against the respondents are barred by the doctrine of judicial immunity, recusal would serve no purpose

other than to prolong the case and consume limited administrative and judicial resources unnecessarily. Recusal under these circumstances is not warranted. Therefore, I will consider petitioner's request for leave to proceed in forma pauperis.

From the affidavit of indigency accompanying petitioner's proposed complaint, I conclude that petitioner is unable to prepay the fees and costs of instituting this lawsuit.

In addressing any pro se litigant's complaint, the court must construe the complaint liberally, Haines v. Kerner, 404 U.S. 519, 521 (1972), and grant leave to proceed if there is an arguable basis for a claim in fact or law. Neitzke v. Williams, 490 U.S. 319 (1989). However, if the action is frivolous or malicious, fails to state a claim upon which relief may be granted or seeks monetary relief against a defendant who is immune from such relief, the case must be dismissed promptly pursuant to 28 U.S.C. § 1915(e)(2).

Petitioner's complaint is difficult to understand. She appears to be contending that her parental rights were terminated and her children removed from her custody "without cause" years ago. She has filed petitions and appeals since at least 1984, which respondents have denied. She seeks money damages, "correction of the records," a "showing of [respondents'] errors," and an order granting her sole legal custody of her children.

DISCUSSION

Petitioner appears to be contending that the actions of respondents deprived her of

her rights under the Fourteenth Amendment due process clause. What she seeks, in effect, is for this court to interfere with completed state judicial proceedings. Such interference is impermissible under our federal system of government.

To the extent petitioner is asking this court to review and reverse the decisions of the court of appeals, I cannot oblige. In Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923) and District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 486 (1983), the United States Supreme Court held that federal district courts lack jurisdiction to entertain appeals of the decisions of a state's highest court. The Rooker-Feldman doctrine has been extended to apply to decisions of lower state courts. See, e.g., Ritter v. Ross, 992 F.2d 750, 755 (7th Cir. 1993); Keene Corp. v. Cass, 908 F.2d 293 (8th Cir. 1990). Under the doctrine, a litigant may not obtain review of a state court judgment merely by recasting it as a civil rights action under § 1983. Ritter, 992 F.2d at 754. Indeed, Rooker-Feldman bars a federal court from entertaining not only claims actually reviewed in state court but also other claims, including constitutional claims, that are "inextricably intertwined" with the claims heard by the state court. Leaf v. Supreme Court of Wisconsin, 979 F.2d 589, 598 (7th Cir. 1992) (quoting Feldman, 460 U.S. at 486).

Moreover, petitioner's claim for money damages against the respondents are unavailable under the doctrine of absolute judicial immunity. There are few doctrines established more solidly than the absolute immunity of judges from liability for their judicial

acts, even when they act maliciously or corruptly. Mireles v. Waco, 502 U.S. 9 (1991). This immunity is not for the protection or benefit of a malicious or corrupt judge, but for the benefit of the public, which has an interest in a judiciary free to exercise its function without fear of harassment by unsatisfied litigants. Pierson v. Ray, 386 U.S. 547, 554 (1967). It is unquestioned that immunity applies to "the paradigmatic judicial acts involved in resolving disputes between parties who have invoked the jurisdiction of a court." Forrester v. White, 484 U.S. 219 (1988). Because petitioner's claims against the respondent judges are based on her dissatisfaction with their judicial decisions, there is no arguable basis in fact or law for her claims against them.

ORDER

IT IS ORDERED that petitioner Cheryl A. Elkinton's request for leave to proceed in forma pauperis is DENIED. The clerk of court is directed to close this file.

Entered this 29th day of August, 2007.

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