IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS GALVESTON DIVISION

No. 3:22-cv-9

JOE BLESSETT, *PLAINTIFF*,

v.

TEXAS, *ET AL.*, *DEFENDANTS*.

MEMORANDUM OPINION AND ORDER

JEFFREY VINCENT BROWN, *UNITED STATES DISTRICT JUDGE*:

Rule 6 of the Galveston District Court Rules of Practice requires parties intending to file a Rule 12(b) motion to confer with opposing counsel and inform the respondent by letter of both the expected basis of the motion and the right to amend the pleadings under the Federal Rules of Civil Procedure. The motion respondent then has the opportunity to amend the pleadings within 14 days.

The defendants in this case can be divided into four categories: (1) the City of Galveston, (2) the State of Texas and its officers, (3) the federal government and its officers, and (4) the Sinkin Law Firm ("the law firm"). All of the defendants informed the plaintiff separately that they intended to

file a motion to dismiss. The plaintiff first amended his complaint after Texas moved for dismissal. Dkts. 36, 45. Galveston then moved for dismissal, and Texas supplemented its motion. Dkts. 60, 82. The plaintiff amended a second time without seeking leave from the court, and the law firm and the federal government moved for dismissal. Dkts. 90, 96, 101. Texas and Galveston have not formally renewed their motions following the plaintiff's amendment of his pleadings.

Rule 6 is intended to facilitate efficient decisions on motions to dismiss. But this case presents a unique situation where the docket is not clear on which pleading is live, and to which complaint Texas's and Galveston's motions to dismiss apply. Because the amended complaints are nearly identical to the original, the court will treat the second amended complaint (Dkt. 90) as the live pleading and will apply Texas's and Galveston's motions to dismiss (Dkts. 36, 60) to the second amended complaint.

* * *

In 2015, after years of unpaid child support, the Galveston County Court ordered the plaintiff, Joe Blessett, to pay arrears to his ex-wife, Beverly Ann Garcia, in the amount of $131,923.14. Dkt. 101-2, Exhibit B at 1–2. In 2017, the county court found—in a final and appealable order—that the

amount Blessett owed had grown, through the accrual of interest, to $135,392.37. Dkt. 101-13, Exhibit M at 1–2. The court issued a judicial writ of withholding, allowing Garcia to execute the judgment against Blessett's personal property. *Id.* at 2–3. Blessett did not directly appeal the order in state court or move for a new trial, but instead filed several lawsuits in federal court collaterally attacking the Texas state court order. *See* Dkt. 101 at 5. He is back in the Southern District of Texas for the sixth time, challenging the county court order as fraudulent, unconstitutional, and violating several federal statutes. He also claims that the law firm failed to report proceeds from the sale of his property against his child-support arrears.

Blessett, proceeding *pro se*, has submitted a 109-page complaint. Dkt. 90. The complaint is frivolous and difficult to understand. But the court will attempt to sort through his supposed causes of action and explained why each must be dismissed as a matter of law.

Legal Standard

Rule 12(b)(1) requires dismissal if the court "lacks the statutory or constitutional power to adjudicate the case." *Home Builders Ass'n of Miss., Inc. v. City of Madison, Miss.*, 143 F.3d 1006, 1010 (5th Cir. 1998). The party asserting jurisdiction bears the burden of proof. *Howery v. Allstate Ins. Co.*, 243 F.3d 912, 916 (5th Cir. 2001). Federal courts have jurisdiction over a

claim between parties only if the plaintiff presents an actual case or controversy. U.S. Const. art. III, § 2, cl. 1; *Okpalobi v. Foster*, 244 F.3d 405, 425 (5th Cir. 2001).

To test whether the party asserting jurisdiction has met its burden, a court may rely upon: "(1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts." *Barrera–Montenegro v. United States*, 74 F.3d 657, 659 (5th Cir. 1996) (quoting *Voluntary Purchasing Groups, Inc. v. Reilly*, 889 F.2d 1380, 1384 (5th Cir. 1989)). When standing is challenged in a motion to dismiss, the court "must accept as true all material allegations of the complaint and . . . construe the complaint in favor of the complaining party." *Ass'n of Am. Physicians & Surgeons v. Tex. Med. Bd.*, 627 F.3d 547, 550 (5th Cir. 2010) (quotations omitted).

When considering a Rule 12(b)(6) motion to dismiss, the court must take the well-pleaded factual allegations of the complaint as true, viewing them in the light most favorable to the plaintiff. *In re Katrina Canal Breaches Litig.*, 495 F.3d 191, 205 (5th Cir. 2007). A plaintiff's pleading must provide "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial

plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *id.* at 556). On the other hand, a "pleading that offers labels and conclusions or a formulaic recitation of the elements of a cause of action will not do." *Id.* (quotations omitted).

In addition to the plaintiff's pleadings, in taking up a motion to dismiss, the court may consider offensive extrinsic evidence without converting the motion to dismiss into a motion for summary judgment, including any documents attached to the live pleading and any documents attached to the motion to dismiss that are central to the claim and referred to in the live pleading. *Sivertson v. Citibank, N.A. as Tr. for Registered Holders of WAMU Asset-Back Certificates WAMU Series No. 2007-HE2 Tr.*, 390 F. Supp. 3d 769, 779–80 (E.D. Tex. 2019) (citing *Lone Star Fund V (U.S.), L.P. v. Barclays Bank PLC*, 594 F.3d 383, 387 (5th Cir. 2010)). The court may also take judicial notice of an "adjudicative fact," including public filings in other court cases. Fed. R. Evid. 201; *Thomas v. Beaumont Indep. Sch. Dist.*, No. 1:15-CV-112, 2016 WL 922182, at *3 (E.D. Tex. Feb. 12, 2016) (holding that a court can consider filings in plaintiff's state court case in analyzing the

motion to dismiss as a matter of public record), *report and recommendation adopted*, No. 1:15-CV-112, 2016 WL 899870 (E.D. Tex. Mar. 8, 2016).

Jurisdiction

As an initial matter, the court does not have jurisdiction to decide most of Blessett's claims. In another suit regarding the exact same state court order, Judge Hanks determined, and the Fifth Circuit affirmed, that Blessett's collateral attacks on the state court judgment are barred by the *Rooker-Feldman* doctrine. *Blessett v. Texas Off. of Att'y Gen. Galveston Cty. Child Support Enf't Div.*, 756 F. App'x 445–46 (5th Cir. 2019). If Blessett believed that the state court order was fraudulent or that proper procedures were not followed, he should have appealed in state court.

Blessett also asks the court to assess damages against both the government and its officers—apparently in both their individual and official capacities. *See, e.g.*, Dkt. 90 at 10. Sovereign immunity bars all of the plaintiff's claims for damages against the state government and its employees in their official capacity. *See Ford Motor Co. v. Dep't of the Treas.*, 323 U.S. 459, 464 (1945); *Tunstall v. Daigle*, No. 21-30510, 2022 WL 728977, at *2–*3 (5th Cir. Mar. 10, 2022). And federal sovereign immunity bars Blessett's direct claims against the federal government. *See FDIC v. Meyer*, 510 U.S. 471, 475 (1994).

Blessett does not have standing to sue the City of Galveston. A core element of Article III standing is traceability. *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 180 (2000). As the city notes, it does not enforce child support—his case was through the statutory county courts, not through the city. The county courts' power comes from the Texas Government Code, not the city. *See* Tex. Gov't Code § 21.001. Blessett's injury is not fairly traceable to the city.

Statutory Challenges

Blessett challenges his child support as unlawful under a multitude of federal statutes. *See* Dkt 90 at 6. His primary theory is that child support is a contract that requires his consent to be enforced, and federal contract protections under the Uniform Commercial Code apply to child-support enforcement. *See id.* He also suggests that protections in the Sherman Antitrust Act and Fair Debt Collection Practices Act apply to his child-support obligations. None of these areas of federal law protect child-support obligors. Child support is not a debt, but rather a duty of the obligor. *Wetmore v. Markoe*, 196 U.S. 68, 74 (1904). ("He owes this duty, not because of any contractual obligation, or as a debt due from him to the wife, but because of the policy of the law which imposes the obligation upon the husband.").

Blessett claims that the state violated the requirement in 42 U.S.C. § 654(12) that states provide a copy of any order modifying a child support obligation. Dkt. 90 at 31–32. The federal statute requires states to, as part of their child-support plans, provide for notice of proceedings where support obligations might be modified. But Blessett has not alleged facts that his obligations have been modified. In fact, as Texas points out in its briefing, his obligations were *not* modified. Dkt. 82 at 3. This claim fails.

Next, Blessett claims that his driver's license and passport were unlawfully revoked. *See, e.g.*, Dkt. 90 at 33, 54. 22 C.F.R. § 51.60(a)(2) requires the Department of State to deny passport applications upon the Department of Health and Human Service's certification of unpaid child support. To the extent that Blessett is arguing that the state child support is invalid and invalidates the certification, the *Rooker-Feldman* doctrine bars this claim. And his driver's-license claim is based on his incorrect contract theory. *See* Dkt. 90 at 13 ("No state actor had legal standing to enforce a Title IV-D obligation for the federal program against [Blessett] without consent.").

Finally, Blessett claims that Texas violated 46 U.S.C. § 11109 in withholding his "maritime" wages. Dkt. 90 at 29. He argues that any withholding from his wages as an "executive Maritime Engineering Officer" was "an illegal attachment without a valid judicial order." *Id.* But Blessett has

no cognizable argument as to why the order requiring him to pay child support was not valid. It appears that he believes that he received inadequate notice of a modification to the court order. But the argument that notice was invalid in state court is barred by the *Rooker-Feldman* doctrine.

Constitutional Challenges

Blessett challenges Texas child support under various constitutional provisions including the 5th, 9th, 10th, and 14th Amendments. He also asks for damages under 42 U.S.C. § 1983 and *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971).

As an initial matter, his constitutional damages claims are easily dismissed. Blessett has identified no violation of a clearly established federal constitutional right to defeat the qualified immunity enjoyed by the government officials he has sued. Further, Blessett has asserted no established *Bivens* claim. And, especially given the interest the state and federal governments have in ensuring adequate child support, the court declines to add Blessett's claims to those allowed under *Bivens*. *See Hernandez v. Mesa*, 140 S. Ct. 735, 743 (2020).

Blessett alleges, cryptically and breathlessly, that the United States engages "in the application of a Cooperative Federalism and Title IV-D contract" and that "Child Support debt is nothing but a commercial debt that

does not merit special discriminatory treatment to enforce this specific U.S. Congressional Act." Dkt. 90 at 19. It is unclear exactly what he means by this, but to the extent that it is a coercive-federalism claim, it is without merit. *See Blessing v. Freestone*, 520 U.S. 329, 333 (1997) (holding that there is no enforceable federal right to have a state's child-support program comply with the requirements of Title IV-D). He also argues that there is a separation-of-powers issue arising from a "conflict of interest," but has not specified any facts to support a separation-of-powers claim. Dkt. 90 at 63–64.

Blessett seemingly attempts to advance a number of facial procedural and substantive due-process claims with allegations such as this: "U.S. Congressional debt collection legislation under Title IV-D discriminates against a specific class of debtors without political clout with unequal treatment under public law . . . heterosexual male groups are described as hate groups, or heterosexual male complaints are myths." Dkt. 90 at 61. He adds that equal protection requires that men have the right "to be free of all consequences of recreational sex." *Id.* at 105. None of Blessett's challenges amount to constitutional due-process violations or warrant further consideration.

The remainder of Blessett's constitutional challenges to child support appear to be based on the incorrect theory that child support is governed by contract law. Those claims are also without merit and are dismissed.

Claims against the Law Firm

Blessett has alleged claims against the law firm under 18 U.S.C. §§ 241, 242; 28 U.S.C. § 1343; 42 U.S.C. §§ 1981, 1982, and 1985; 28 U.S.C. §§ 2201, 2202; the Fourth, Fifth, Seventh, and Fourteenth Amendments; U.C.C. § 3-304; and in equity. Dkt. 90 at 23–24, 73–78.

Blessett has pleaded no facts to support any claim under §§ 1981, 1982, or 1985. Sections 1981 and 1982 concern private contract rights. As discussed above, contract law plays no role in this case. Section 1985 applies to conspiracies to deprive a person of equal protection of law. Blessett pleaded no facts to support an equal- protection claim.

* * *

This is at least the sixth federal case Blessett has filed to challenge his child-support obligations.[1] He has also filed two *certiorari* petitions to the

[1] *See Blessett v. Sinkin L. Firm*, No. 3:17-CV-370, 2018 WL 1932386 (S.D. Tex. Apr. 23, 2018); *Blessett v. Jacoby*, No. 3:18-CV-00153, 2018 WL 5014146 (S.D. Tex. Oct. 16, 2018); *Blessett v. Texas Off. of Att'y Gen. Galveston Cnty. Child Support Enf't Div.*, No. 3:17-CV-164, 2018 WL 836058, at *1 (S.D. Tex. Feb. 12, 2018), *aff'd in part, vacated in part, remanded*, 756 F. App'x 445 (5th Cir. 2019); *Blessett v. Texas Off. of Att'y Gen. Galveston Cnty. Child Support Enf't Div.*, No. 3:17-CV-00164, 2019 WL 4034304 (S.D. Tex. Aug. 27, 2019); *Blessett v. Garcia*, No. 3:18-CV-137 (S.D. Tex. Oct. 23, 2019).

Supreme Court, both of which were denied.[2] In this particular case, he has spammed the court with numerous and sundry filings, including many groundless motions for injunctive relief, two apparently identical motions for partial summary judgment, and a petition for habeas corpus—despite not being in custody. It all amounts to a ridiculous waste of time and resources. The court warns Blessett that his continued abuse of the judicial system may result in his being declared a vexatious litigant, which will limit his access to the court. Monetary sanctions will also not be out of the question for any future frivolous litigation.

Basically, Blessett needs to pay his child support and keep his fatuous drivel out of this court's files.

The defendants' motions to dismiss are granted. Dkts. 60, 68, 96, 101. The plaintiff's claims are dismissed with prejudice.

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Signed on Galveston Island this 17th day of May, 2022.

JEFFREY VINCENT BROWN
UNITED STATES DISTRICT JUDGE

[2] *See Blessett v. Garcia*, 141 S. Ct. 622 (2020); *Blessett v. Texas Off. of Att'y Gen. Galveston Cnty. Child Support Enf't Div.*, 142 S. Ct. 1365 (2022).