UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

KENNETH RAY BLUME,

Plaintiff,

v.

Civil Action 2:11-cv-146
JUDGE GREGORY L. FROST
Magistrate Judge E.A. Preston Deavers

MARY JEAN SUPILANAS, et al.,

Defendants,

ORDER and INITIAL SCREEN REPORT AND RECOMMENDATION

Plaintiff Kenneth Ray Blume, an Ohio resident proceeding without the assistance of counsel, brings this action against nearly forty Defendants, asserting a variety of claims, many of which attack the orders of Ohio's Noble County Court of Common Pleas establishing custody and visitation rights in connection with Plaintiff's divorce. This matter is before the Court for the initial screen of Plaintiff's Amended Complaint as required by 28 U.S.C. § 1915(e)(2) to identify cognizable claims and to recommend dismissal of Plaintiff's Amended Complaint, or any portion of it, which is frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). Having performed the initial screen, for the reasons that follow, the undersigned **RECOMMENDS** that the Court **DISMISS** this action for failure to assert any claim with an arguable basis in law over which this Court has subject matter jurisdiction. Additionally, as set forth below, Plaintiff's requests for appointment of counsel (ECF No. 6) and revision of his child support payments (ECF No. 8) are **DENIED**.

I. BACKGROUND

In February 2011, Plaintiff contemporaneously filed his Complaint and his application to proceed *in forma pauperis*. The Court granted his request to proceed *in forma pauperis*, but noted that his filing, which exceeded 280 pages, violated Federal Rule of Civil Procedure 8(a)'s requirement that a complaint contain a short plain statement of the claim and Rule 12(f)'s bar on redundant, immaterial, impertinent and scandalous materials. The Court explained as follows:

> Plaintiff's current submission is deficient for a number of reasons. First, the Court is unable to discern what claims Plaintiff seeks to assert against each Defendant. Second, the bases for each of Plaintiff's claims is unclear. Third, Plaintiff fails to set forth the relief he seeks from this Court with respect to each claim. Fourth, the Court is unable to discern which documents in Plaintiff's filing constitute the Complaint, which constitute exhibits to the Complaint, and which are extraneous to the Complaint. Finally, the Court characterizes much of Plaintiff's submission as scandalous and immaterial to his claims.

(Feb. 23, 2011 Order 2, ECF No. 3.) The Court ordered Plaintiff to correct the deficiencies by submitting an amended complaint that complies with the Federal Rules.

Plaintiff subsequently submitted a request for appointment of counsel and a 55-page filing ("Amended Filing"), which included a listing of defendants; correspondence to the undersigned regarding the contents of the Amended Filing; three versions of an amended complaint; and three versions of correspondence directed to the Court that Plaintiff titled "restitution letters." (Pl.'s Am. Filing 8, ECF No. 7.) Plaintiff's amended complaints set forth allegations for each Defendant, but fail to set forth the relief he seeks. His restitution letters, in contrast, set forth the relief he seeks from each Defendant, but contain no supporting allegations. Plaintiff's most comprehensive amended complaint and his most comprehensive restitution letter name thirty-nine Defendants. Specifically, Plaintiff names the following thirty-nine Defendants: Mary Jean Supilanas Blume, Plaintiff's ex-wife; Judge John W. Nau, Noble County Common

Pleas Court Judge; Landon T. Smith, former Noble County Sheriff; Rob McKenna, Attorney General of the State of Washington; Mike DeWine, Attorney General of the State of Ohio; Eric H. Holder, Jr., Attorney General of the United States; Marietta Memorial Hospital; Thompson Children and Adolescent Counseling Center; Guernsey County Six County Counseling Center; Noble County Six County Counseling Center; L&P Services, Inc.; Millennia Ministries, LLC; Attorney David A. Tawney; Attorney Eric Engel; Attorney Philip B. Kaufman; American Civil Liberties Union; Attorney Gerald L. Jones; Attorney Chandra L. Ontko; Attorney Myra K. Enos; The Citizen Bank Company; Washington State Community College; Fort Frye School District; Cambridge School District; Washington County Sheriff's Department; Noble County Sheriff's Department; Guernsey County Sheriff's Department; Marietta Police Department; Cambridge City Police Department; Everett Police Department; Snohomish County Sheriff's Department; John Woodnal; Federal Savings Bank; Knight Protective Services; The Wackenhut Corporation; General Security Services Corporation; Influent Tele Service Agency; ITPE Union; Dr. Christopher Blank; and Ohio University at Zanesville.

Because several of Plaintiff's claims against the above-named Defendants relate to the custody and visitation rights that Ohio's Noble County Court of Common Pleas established in connection with Plaintiff's divorce from Defendant Mary Jean Supilanas Blume, a brief summary of those state-court proceedings is relevant.[1] Plaintiff's divorce decree, which

[1] The Court takes judicial notice, pursuant to Rule 201 of the Federal Rules of Evidence, of Plaintiff's state-court proceedings, *Kenneth Ray Blume v. Mary Jean Blume*, Case No. 207-0053 in Ohio's Noble County Court of Common Pleas; and *Kenneth Ray Blume v. Mary Jean Blume*, Case No. 10 NO 377 in Ohio's Seventh District Court of Appeals. State-court proceedings, which are a matter of public record, satisfy Rule 201(b)'s criteria for the Court to take judicial notice. Fed. R. Evid. 201. Thus, pursuant to Rule 201(c), the Court may take judicial notice of the state-court proceedings. *Id.*

established the terms of custody and visitation of the couple's children, designated Ms. Blume as the custodial parent. (July 18, 2008 Decree of Divorce, *Kenneth Ray Blume v. Mary Jean Blume*, Case No. 207-0053 (Noble Cty. Ct. Com. Pl.).) After the state court issued the divorce decree, Ms. Blume relocated herself her daughters to Everett, Washington. (July 21, 2010 Transcript at 5, *Kenneth Ray Blume v. Mary Jean Blume*, Case No. 207-0053 (Noble Cty. Ct. Com. Pl.).) It appears that, upon learning of Ms. Blume's relocation, Plaintiff unsuccessfully sought to file parental kidnaping charges against her. Then, after locating and communicating with Ms. Blume, Plaintiff traveled to Everett, Washington under the auspices of retrieving his daughters for a summer in Ohio. (*Id.* at 11.) Upon arriving in Washington, Plaintiff alleges that Ms. Blume severely curtailed his visitation rights and that, in contravention of their prior agreement, she refused to let him take his daughters to Ohio for the summer. (Blume Corres. 3, ECF No. 2.) Plaintiff subsequently sought the aid of the local law enforcement agencies in Washington to compel Ms. Blume to allow him reasonable visitation. Plaintiff alleges that the local law enforcement agencies refused to assist him. After this visit, Plaintiff returned to the Noble County Court of Common Pleas and requested that the court modify the custodial arrangement. Following a hearing on the issue, the court declined to rule on his request for modification, explaining that Ohio was now an inconvenient forum in which to settle the dispute as Ms. Blume and the children resided in Washington. (July 23, 2010 Journal Entry, *Kenneth Ray Blume v. Mary Jean Blume*, Case No. 207-0053 (Noble Cty. Ct. Com. Pl.).) Plaintiff's failure to timely file an appeal precluded him from pursuing further relief in state court. (Sept. 28, 2010 Judgment Entry, *Kenneth Ray Blume v. Mary Jean Blume*, Case No. 10 No. 377 (7th Dist. Ct. App.).)

Plaintiff subsequently filed the instant action. Some of Plaintiff's claims and requests for relief directly attack the rulings of the Noble County Court of Common Pleas. For example, he asks this Court to "turn[] over custody rights of [his] children to [him]," asserting that Defendant Judge Nau "wrongfully gave [Ms. Blume] custody of the children" and "refus[ed] to recognize [his] custodial and visitation rights." (Pl.'s Am. Filing 16 and 39, ECF No. 7.) Further, Plaintiff characterizes this action as "part of [his] appeal process" (Blume Corres. 1, ECF No. 2) and refers to his Amended Filing as his "complaint for custody of [his] children" (ECF No. 6). He also recently asked this Court to revise the rulings of the Noble County Court of Common Pleas setting his child support payments. (ECF No. 8.) Other claims rest upon his conclusory allegations that various Defendants are complicit in Ms. Blume's purported "child abuse and endangerment," apparently for their respective roles in allowing or assisting Ms. Blume to retain custody of the children and relocate to Washington. (Pl.'s Am. Filing 39–46, ECF No. 7.) Finally, some of Plaintiff's claims are wholly unrelated to the foregoing events. For example, he names five companies, alleging in a conclusory fashion that these companies violated or ignored employment laws. (*Id*. at 46–47.)

II. SECTION 1915(e)(2) STANDARD

Congress enacted 28 U.S.C. § 1915, the federal *in forma pauperis* statute, seeking to "lower judicial access barriers to the indigent." *Denton v. Hernandez*, 504 U.S. 25, 31 (1992). In doing so, "Congress recognized that 'a litigant whose filing fees and court costs are assumed by the public, unlike a paying litigant, lacks an economic incentive to refrain from filing frivolous, malicious, or repetitive lawsuits.'" *Id*. at 31 (quoting *Neitzke v. Williams*, 490 U.S.

319, 324 (1989)). To address this concern, Congress included subsection (e)(2)[2] as part of the statute, which provides in pertinent part:

> (2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that--
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> * * *
>
> (B) the action or appeal–
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> (i) is frivolous or malicious;
>
> (ii) fails to state a claim on which relief may be granted; or . . . .

28 U.S.C. § 1915(e)(2)(B)(i) & (ii); *Denton*, 504 U.S. at 31. Thus, § 1915(e)(2) requires *sua sponte* dismissal of an action upon the Court's determination that the action is frivolous or malicious, or upon determination that the action fails to state a claim upon which relief may be granted.

To properly state a claim upon which relief may be granted, a plaintiff must satisfy the basic federal pleading requirements set forth in Fed. R. Civ. P. 8(a). *See Hill v. Lappin*, 630 F.3d 468, 470–71 (6th Cir. 2010) (applying Federal Rule of Civil Procedure 12(b)(6) standards to review under 28 U.S.C. §§ 1915A and 1915(e)(2)(B)(ii)). Although this pleading standard does not require "'detailed factual allegations,' . . . [a] pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action,'" is insufficient. *Ashcroft v. Iqbal*, 566 U.S. ----, ----, 129 S.Ct. 1937, 1949 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Furthermore, a complaint will not "suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Id.* (quoting *Twombly*, 550 U.S. at 557).

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[2] Formerly 28 U.S.C. § 1915(d)(2).

Instead, to survive a motion to dismiss for failure to state a claim under Rule 12(b)(6) of the Federal Rules of Civil Procedure, "a complaint must contain sufficient factual matter . . . to 'state a claim to relief that is plausible on its face.'" *Id*. (quoting *Twombly*, 550 U.S. at 570). Facial plausibility is established "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.*

In considering whether this facial plausibility standard is met, a Court must construe the complaint in the light most favorable to the non-moving party, accept all factual allegations as true, and make reasonable inferences in favor of the non-moving party. *Total Benefits Planning Agency, Inc. v. Anthem Blue Cross & Blue Shield*, 552 F.3d 430, 434 (6th Cir. 2008) (citations omitted). Further, when considering a *pro se* plaintiff's complaint, a court "must read [the allegations] with less stringency . . . and accept the *pro se* plaintiff's allegations as true, unless they are clearly irrational or wholly incredible." *Reynosa v. Schultz*, 282 F. App'x 386, 389 (6th Cir. 2008) (citing *Denton v. Hernandez*, 504 U.S. 25, 33 (1992) (internal citation omitted)); *Younis v. Pinnacle Airlines, Inc.*, 610 F.3d 359, 362 (6th Cir. 2010). A court is also not required to accept as true mere legal conclusions unsupported by factual allegations. *Iqbal*, 129 S.Ct. at 1949.

Additionally, when the face of the complaint provides no basis for federal jurisdiction, the Court may dismiss an action as frivolous and for lack of subject matter jurisdiction under both 28 U.S.C. § 1915(e)(2)(B) and Fed. R. Civ. P. 12(h)(3). *Williams v. Cincy Urban Apts.*, No. 1:10-cv-153, 2010 WL 883846, at *2 n.1 (S.D. Ohio Mar. 9, 2010) (citing *Carlock v. Williams*, 182 F.3d 916, 1999 WL 454880, at *2 (6th Cir. June 22, 1999) (table)).

III. SECTION 1915(e)(2) INITIAL SCREEN

As a preliminary matter, for purposes of this initial screen, the undersigned construes Plaintiff's Amended Filing liberally. Specifically, the undersigned construes the restitution letters as supplements to the amended complaints in determining whether any cognizable claims survive the § 1915(e)(2) screen. Additionally, the undersigned has screened Plaintiff's most comprehensive amended complaint (Pl.'s Am. Filing 38–47, ECF No. 7) (the "Amended Complaint") and restitution letter (*Id.* at 16–23) (the "Restitution Letter"), both of which list thirty-nine Defendants.

The undersigned concludes that Plaintiff has failed to assert any claim with an arguable basis in law over which this Court has subject matter jurisdiction. "'Federal courts are courts of limited jurisdiction.'" *Rasul v. Bush*, 542 U.S. 466, 489 (2004) (quoting *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994)). "The basic statutory grants of federal court subject-matter jurisdiction are contained in 28 U.S.C. § 1331, which provides for '[f]ederal-question' jurisdiction, and § 1332, which provides for '[d]iversity of citizenship' jurisdiction." *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 501 (2006). Federal-question jurisdiction is invoked when a plaintiff pleads a claim "arising under" the federal laws or the Constitution. *Id.* (citation omitted). For a federal court to have diversity jurisdiction pursuant to Section 1332(a), there must be complete diversity, which means that each plaintiff must be a citizen of a different state than each defendant, and the amount in controversy must exceed $75,000. *Caterpillar, Inc. v. Lewis*, 519 U.S. 61, 68 (1996).

A doctrine known as *Rooker-Feldman* further limits this Court's ability to adjudicate certain claims. Specifically, under the *Rooker-Feldman* doctrine, this Court lacks jurisdiction to consider Plaintiff's claims attacking the rulings of the Noble County Court of Common Pleas.

"The *Rooker-Feldman* doctrine embodies the notion that appellate review of state-court decisions and the validity of state judicial proceedings is limited to the Supreme Court under 28 U.S.C. § 1257, and thus that federal district courts lack jurisdiction to review such matters." *In re Cook*, 551 F.3d 542, 548 (6th Cir. 2009). The *Rooker-Feldman* doctrine applies to cases "brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Ind. Corp.*, 544 U.S. 280, 284 (2005). "The pertinent question in determining whether a federal district court is precluded under the *Rooker-Feldman* doctrine from exercising subject-matter jurisdiction over a claim is whether the 'source of the injury' upon which plaintiff bases his federal claim is the state court judgment." *In re Cook*, 551 F.3d at 548. Here, it is clear that the source of Plaintiff's injury is the ruling of the Noble County Court of Common Pleas establishing custody and visitations rights of his children in connection with his divorce. As set forth above, Plaintiff characterizes this action as "part of [his] appeal process" and asks this Court to reject the state court rulings, awarding him custody of his children. (Blume Corres. 1, ECF No. 2; Pl.'s Am. Filing 16 and 39, ECF No. 7.) Thus, the *Rooker-Feldman* doctrine applies and operates to bar this Court's exercise of jurisdiction over these claims.[3]

The remainder of Plaintiff's Amended Complaint also fails to provide a basis for federal

[3]Further, Defendant Judge Nau is entitled to immunity. In this action, Plaintiff complains of Judge Nau's judicial acts. It is well settled that a judge acting in a judicial capacity has absolute immunity from civil suits for monetary damages. *See, e.g.*, *Mireless v. Waco*, 502 U.S. 9, 9–12 (1991); *Barnes v. Winchell*, 105 F. 3d 1111, 1115–16 (6th Cir. 1997).

jurisdiction. Notwithstanding issues of sovereign immunity,[4] Plaintiff's claims against the federal-agency Defendants lack facial plausibility. Plaintiff's claims against the federal agencies are premised upon the unsubstantiated, conclusory allegations that Ms. Blume kidnapped and abused his children and that these agencies assisted Ms. Blume in abusing the children.[5] Similarly, his allegations against the remainder of the federal agencies consist of nothing more than "unadorned, the-defendant-unlawfully-harmed-me accusation[s]." *Iqbal*, 129 S.Ct. at 1949. To the extent Plaintiff seeks to assert an employment action premised upon federal law against private companies, these claims, too, lack facial plausibility. His bald allegations that these Defendant companies "violated employment laws" or "ignored employment laws," constitute pure legal conclusions or "legal conclusion[s] couched as . . . factual allegation[s]" insufficient to satisfy the basic federal pleading requirements set forth in Rule 8(a). *Twombly*, 550 U.S. at 555. Finally, the remainder of Plaintiff's claims are state-law claims against Ohio citizens or which otherwise fail to satisfy Section 1332(a)'s requirements for diversity jurisdiction.

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[4]"[F]ederal Courts may exercise subject matter jurisdiction over a cause prosecuted against a federal agency only if the United States has consented to be sued by waiver sovereign immunity." *United Liberty Life Ins. Co. v. Ryan*, 985 F.2d 1320, 1325 (6th Cir. 1993). Here, Plaintiff has failed to identify any statute in which Congress has expressly authorized suit against any of the named federal-agency Defendants.

[5]To the extent that Plaintiff is alleging complicity in the purported continued child abuse that derives from Ms. Blume's continued custody of the children, this Court is precluded from exercising jurisdiction over these claims under the *Rooker-Feldman* doctrine because the source of the injury is the ruling of the Noble County Court of Common Pleas establishing Ms. Blume as the custodial parent.

IV. PLAINTIFF'S MOTION TO APPOINT COUNSEL (ECF No. 6)

Plaintiff's request for appointment of counsel is **DENIED**. Plaintiff incorrectly asserts that the United States Constitution requires this Court to provide him with an attorney. Rather, a plaintiff does not have a constitutional right to counsel in a civil case. *Lavado v. Keohane*, 992 F.2d 601, 605–06 (6th Cir. 1993) (citation omitted). Although the Court has the statutory authority to appoint counsel in civil cases under 28 U.S.C. § 1915(e), the exercise of this authority is limited to extraordinary situations. *Id*. at 606. The Court has evaluated whether such exceptional circumstances exist in this case, and has determined that the appointment of counsel is not warranted.

V. PLAINTIFF'S MOTION TO REVISE A STATE COURT ORDER (ECF No. 8)

Plaintiff's request for this Court to "reduce or put a hold on all child support payments" that "Judge Nau ordered [him] to pay" is **DENIED**. (Pl.'s Mot. to Revise Child Support 1, ECF No. 8.) As discussed above, this Court lacks jurisdiction to review the rulings of the Noble County Court of Common Pleas.

VI. CONCLUSION

In sum, the undersigned **RECOMMENDS** that the Court **DISMISS** Plaintiff's action pursuant to § 1915(e)(2) because Plaintiff has failed to assert any claims with an arguable basis in law over which this Court has subject matter jurisdiction. Further, Plaintiff's requests for appointment of counsel (ECF No. 6) and revision of his child support payments (ECF No. 8) are **DENIED**.

VII. PROCEDURE ON OBJECTIONS

If any party seeks review by the District Judge of this Report and Recommendation, that party may, within fourteen (14) days, file and serve on all parties objections to the Report and Recommendation, specifically designating this Report and Recommendation, and the part in question, as well as the basis for objection. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). Response to objections must be filed within fourteen (14) days after being served with a copy. Fed. R. Civ. P. 72(b).

The parties are specifically advised that the failure to object to the Report and Recommendation will result in a waiver of the right to *de novo* review by the District Judge and waiver of the right to appeal the judgment of the District Court. *See, e.g.*, *Pfahler v. Nat'l Latex Prod. Co.*, 517 F.3d 816, 829 (6th Cir. 2007) (holding that "failure to object to the magistrate judge's recommendations constituted a waiver of [the defendant's] ability to appeal the district court's ruling"); *United States v. Sullivan*, 431 F.3d 976, 984 (6th Cir. 2005) (holding that defendant waived appeal of district court's denial of pretrial motion by failing to timely object to magistrate judge's report and recommendation). Even when timely objections are filed, appellate review of issues not raised in those objections is waived. *Robert v. Tesson*, 507 F.3d 981, 994 (6th Cir. 2007) ("[A] general objection to a magistrate judge's report, which fails to specify the issues of contention, does not suffice to preserve an issue for appeal . . . .") (citation omitted)).

Date: October 11, 2011

/s/ *Elizabeth A. Preston Deavers*
Elizabeth A. Preston Deavers
United States Magistrate Judge