


demonstrating the presence of federal subject matter jurisdiction. McNutt v. Gen. Motors Acceptance Corp. of Ind., Inc., 298 U.S. 178, 182 (1936) (“It is incumbent upon the plaintiff properly to allege the jurisdictional facts, according to the nature of the case.”); Montoya v. Chao, 296 F.3d 952, 955 (10th Cir. 2002) (“The burden of establishing subject-matter jurisdiction is on the party asserting jurisdiction.”). The Court has an obligation to consider whether subject matter jurisdiction exists, even if the parties have not raised the issue. The Tenth Circuit has stated that “[f]ederal courts ‘have an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party,’ and thus a court may *sua sponte* raise the question of whether there is subject matter jurisdiction ‘at any stage in the litigation.’” Image Software, Inc. v. Reynolds & Reynolds Co., 459 F.3d 1044, 1048 (10th Cir. 2006).

It is well settled that federal courts do not have jurisdiction to hear probate matters. See Marshall v. Marshall, 547 U.S. 293, 308 (2006). This “probate exception” to federal jurisdiction extends to all cases which are “ancillary” to probate proceedings. Rienhardt v. Kelly, 164 F.3d 1296, 1301 (10th Cir. 1999). Such matters “can and should be challenged only in the ongoing state probate proceedings.” Id. It is clear from plaintiff’s motion for temporary restraining order that she seeks the Court’s involvement in ongoing matters of probate related to her late husband’s trust and estate. The Court is without jurisdiction to entertain such matters, and this case must be dismissed.

IT IS THEREFORE ORDERED that this case is **dismissed**. A separate judgment of dismissal will be entered herewith.

IT IS FURTHER ORDERED that plaintiff’s motion for temporary restraining order, Dkt. # 3, and motion for leave to proceed in forma pauperis, Dkt. # 2, are **moot**.

DATED this 1st day of October, 2014.

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CLAIRE V. EAGAN
UNITED STATES DISTRICT JUDGE