

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jan 08, 2021

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

In propria persona AARON M.
SURINA; A.A.S., minor son; and
D.M.S., minor son,

Plaintiffs,

v.

KEITH A. GLANZER; KEITH A.
GLANZER, P.S.; SPOKANE
COUNTY SUPERIOR COURT
JUSTICES; DONNA HENRY; and
CARL BERNARD WILSON,

Defendants.

No. 2:20-cv-00345-SMJ

**ORDER GRANTING
DEFENDANTS SPOKANE
COUNTY SUPERIOR COURT
JUSTICES' MOTION TO DISMISS**

Before the Court, without oral argument, is Defendants Spokane County Superior Court Justices'¹ ("Judges") motion to dismiss, ECF No. 35. The Court is fully informed and grants the motion and dismisses Judges with prejudice.

BACKGROUND

Plaintiffs filed their Complaint on September 24, 2020. ECF No. 1. The

¹ Filings in this matter alternately name "Spokane County Superior Court Justices," "Spokane County Superior Court Justices (EN BANC)," and "Spokane County Superior Court." *See, e.g.*, ECF Nos. 1, 9 & 35.

1 Complaint names “Spokane County Superior Court Justices (EN BANC)” as a
2 Defendant. ECF No. 1 at 2. Plaintiffs filed “Proof of Service” on October 16, 2020.
3 ECF No. 9. The proof of service indicated that the process server left the summons
4 for “Spokane County Superior Court” at “Rm 300/Clerk.” *Id.* at 1.

5 Plaintiffs appears to bring a claim under 42 U.S.C. § 1983, alleging that
6 Defendants violated their Fourth, Fifth, and Eighth Amendment Rights. ECF No. 1
7 at 3–4. As to Judges, Plaintiff Aaron Surina alleges that Commissioner
8 Swennumson ordered ninety percent of his income to go to his wife, and denied his
9 motion to correct this judgment. *Id.* at 6. Commissioner Swennumson also allegedly
10 denied him equal time with his children (minor Plaintiffs A.A.S. and D.M.S.). *Id.*
11 He also alleges that Commissioners receive payments from Washington State
12 Department of Social and Health Services (DSHS) to place children in the lower
13 income household of divorcing parents and that the court has ignored his objections
14 to this practice. *Id.* Plaintiffs assert monetary damages and other “appropriate
15 relief.” *Id.* at 7.

16 DISCUSSION

17 A. The Court takes judicial notice of the Final Divorce Order

18 A Court may take judicial notice of facts which are either “(1) generally
19 known within the territorial jurisdiction of the trial court or (2) capable of accurate
20 and ready determination by resort to sources whose accuracy cannot reasonably be

1 questioned.” Fed. R. Evid. 201(b). A court may not take judicial notice of a matter
2 that is in dispute. *Lee v. City of Los Angeles*, 250 F.3d 668, 690 (9th Cir.2001). The
3 Court can take judicial notice of facts contained in public records. *Santa Monica*
4 *Food Not Bombs v. City of Santa Monica*, 450 F.3d 1022, 1025 n.2 (9th Cir.2006).

5 The Court takes Judicial Notice under Federal Rule of Evidence 201 of
6 Plaintiff’s state action at issue here, Plaintiff’s Final Divorce Order in Spokane
7 County Superior Court Cause Number 17-3-01817-0. ECF No. 37-1; *see also Khoja*
8 *v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 998 (9th Cir. 2018). The rights and
9 obligations created by this Order constitute the basis of Plaintiffs’ Complaint
10 against Judges. *See* ECF No. 1 at 6. The existence and contents of the Final Divorce
11 Order are generally known to this tribunal as well as being capable of being
12 authenticated by a source whose accuracy cannot reasonably be questioned and
13 meets the requirements for admission.

14 **B. This Court lacks jurisdiction to hear claims against Judges**

15 **1. Plaintiffs did not properly serve Judges**

16 “A federal court is without personal jurisdiction over a defendant unless the
17 defendant has been served in accordance with Fed. R. Civ. P. 4.” *Benny v. Pipes*,
18 799 F.2d 489, 492 (9th Cir. 1986). Plaintiffs did not properly serve Judges as
19 required by Federal Rules of Civil Procedure 4 and 12. *See* Fed. R. Civ P.
20 4(a)(1)(a)–(b), 12(b)(4). First, Plaintiffs did not name or serve a proper Defendant.

1 Second, Plaintiffs did not comply with the statutory rules for service upon a county.
2 *See* Wash. Rev. Code § 4.28.080(1).

3 The Complaint names “Spokane County Superior Court Justices (EN
4 BANC)” as a Defendant. But the proof of service lists “Spokane County Superior
5 Court” at “Rm 300/Clerk.” ECF No. 9 at 1. There is no such entity as “Spokane
6 County Superior Court Justices (EN BANC)”. Service was thus not directed to a
7 particular defendant. *See* Fed. R. Civ. P. 4(a)(1). Nor did Plaintiff serve the
8 summons and complaint on the county auditor or chief executive officer as required.
9 *See* ECF No. 9 at 1; Wash. Rev. Code § 4.28.080(1); Fed. R. Civ. P. 4(j)(2). The
10 Court thus lacks personal jurisdiction over Judges.

11 Although Plaintiffs seek alternative service or service by the U.S. Marshal
12 Service, ECF No. 39 at 1, because Plaintiffs’ Complaint is otherwise deficient, *see*
13 *below*, the Court denies Plaintiffs’ request.

14
15 **2. This Court lacks subject-matter jurisdiction to adjudicate
Plaintiffs’ damages claims against judges**

16 A two-part test determines whether a judge is immune from liability when
17 sued under Section 1983. *Stump v. Sparkman*, 435 U.S. 349, 362 (1978) First, the
18 judge must have dealt with the plaintiff in his judicial capacity. *Id.* “[W]hether an
19 act by a judge is a judicial one relates to the nature of the act itself, *i.e.* whether it is
20 a function normally performed by a judge, and to the expectations of the parties, *i.e.*

1 whether they dealt with the judge in his judicial capacity.” *Mireles v. Waco*, 502
2 U.S. 9, 12 (1991) (quoting *Stump*, 435 U.S. at 362). Second, the judge must not
3 have acted in the “clear absence of all jurisdiction.” *Stump*, 435 U.S. at 357.

4 Both prongs of judicial immunity are met here. Plaintiff seeks damages from
5 this court which he asserts stem from a state court judgment. This is a function
6 normally performed by judges in their judicial capacity. And in issuing the Final
7 Divorce Order, the judge did not act in the clear absence of all jurisdiction. *See* ECF
8 No. 37-1; *Stump*, 435 U.S. at 357, 362.

9 The Eleventh Amendment further bars Plaintiffs’ claims against Judges.
10 Under the Eleventh Amendment, this Court cannot adjudicate an action brought by
11 a citizen of a state against the state itself, its agencies, or its officials in their official
12 capacities. *See Hans v. Louisiana*, 134 U.S. 1, 10–11 (1890); *Walden v. Nevada*,
13 945 F.3d 1088, 1092 (9th Cir. 2019). Washington has not unmistakably waived this
14 immunity for judges in their official capacity, nor has unmistakably Congress
15 abrogated it. *See Raygor v. Regents of the Univ of Minn.*, 534 U.S. 533, 541–42
16 (2002). Washington law provides judges with absolute immunity from civil damage
17 suits for acts performed within their judicial capacity. *Taggart v. State*, 822 P.2d
18 243, 247 (Wash. 1992); Wash. Rev. Code § 4.24.470. The purpose of such
19 immunity is to ensure that judges can administer justice without fear of personal
20 consequences. *Taggart*, 822 P.2d at 247. Judges are thus immune from money

1 damages.

2 **C. Plaintiffs improperly appeal a state court judgment in federal court**

3 “The *Rooker–Feldman* doctrine forbids a losing party in state court from
4 filing suit in federal district court complaining of an injury caused by a state court
5 judgment, and seeking federal court review and rejection of that judgment.” *Bell v.*
6 *City of Boise*, 709 F.3d 890, 897 (9th Cir. 2013); *see also Noel v. Hall*, 341 F.3d
7 1148, 1155 (9th Cir. 2003).

8 A plaintiff cannot bring a federal suit when the claim merely constitutes “a
9 forbidden de facto appeal of a state court decision” or any inextricably intertwined
10 claim. *Id.*; *see also Reusser v. Wachovia Bank, N.A.*, 525 F.3d 855, 859 (9th Cir.
11 2008) (holding a federal suit is prohibited “the adjudication of the federal claims
12 would undercut the state ruling or require the district court to interpret the
13 application of state laws or procedural rules.”).

14 Plaintiffs’ action here is “inextricably intertwined” with the Final Divorce
15 Order. *See Bell*, 709 F.3d at 897; ECF Nos. 37-1, 27-2. They dispute the validity of
16 the custody and child support decision as well as the division of assets. ECF No. 1
17 at 6. They blame this on procedural shortcomings, alleged constitutional violations,
18 and a supposed scheme with DSHS to favor custody with the lower-income parent.
19 *See id.* As to their claims against Judges, Plaintiffs merely attempt a de facto appeal
20 of state court proceedings.

1 Plaintiffs' raises other arguments and allegations in response to his motion to
2 dismiss. ECF No. 39. These include that Judges refused to accept pleadings
3 requesting a temporary restraining order to protect minor plaintiffs and ordered a
4 writ of habeas corpus without a hearing while Plaintiff was in the hallway. *Id.* at 3.
5 They also include that Judges have denied Plaintiffs' request for a change of venue.
6 ECF No. 39 at 6. Those factual claims were not asserted in Plaintiffs' Complaint.
7 Nor have Plaintiffs filed any amended complaint. More importantly, for reasons
8 discussed in the Court's Order Denying Plaintiffs' Motion for Preliminary
9 Injunction, ECF No. 33, these claims are similarly improper. *See* ECF No. 33 at 10–
10 11 (discussing *Noel*, 341 F.3d at 1155 in the context of Plaintiffs other allegations).
11 The gravamen of Plaintiffs' Complaint is that they disagree with the results of his
12 state court proceedings. And for the reasons discussed in this Order, the Court
13 cannot hear those claims. Plaintiffs must pursue the proper state court remedies.

14 **D. Plaintiffs fail to state a claim upon which relief can be granted**

15 Under Rule 12(b)(6), the Court must dismiss a complaint if it “fail[s] to state
16 a claim upon which relief can be granted,” including where the plaintiff's claims
17 either fail to allege a cognizable legal theory or fail to allege sufficient facts to
18 support a cognizable legal theory. *Kwan v. SanMedica Int'l*, 854 F.3d 1088, 1093
19 (9th Cir. 2017). To survive a Rule 12(b)(6) motion, a complaint must contain
20 “sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible

1 on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v.*
2 *Twombly*, 550 U.S. 544, 570 (2007)).

3 Facial plausibility exists when a complaint pleads facts permitting a
4 reasonable inference that the defendant is liable to the plaintiff for the misconduct
5 alleged. *Iqbal*, 556 U.S. at 678. Plausibility does not require probability but
6 demands something more than a mere possibility of liability. *Id.* While the plaintiff
7 need not make “detailed factual allegations,” “unadorned” accusations of unlawful
8 harm and “formulaic” or “threadbare recitals” of a claim’s elements, supported only
9 “by mere conclusory statements,” are insufficient. *Id.*

10 In deciding a Rule 12(b)(6) motion, the Court construes a complaint in the
11 light most favorable to the plaintiff, assumes the facts as pleaded are true, and draws
12 all reasonable inferences in his or her favor. *Ass’n for L.A. Deputy Sheriffs v. County*
13 *of Los Angeles*, 648 F.3d 986, 991 (9th Cir. 2011); *Iqbal*, 556 U.S. at 678. Even so,
14 the Court may disregard legal conclusions couched as factual allegations. *See id.*

15 Here, Plaintiffs appear to bring a claim under 42 U.S.C. § 1983, alleging that
16 Defendants violated their Fourth, Fifth, and Eighth Amendment Rights. ECF No. 1
17 at 3–4. As to Judges, Plaintiff Aaron Surina alleges that Commissioner
18 Swenumson ordered ninety percent of his income to go to his ex-wife and denied
19 his motion to correct this judgment. *Id.* at 6. Commissioner Swenumson also
20 allegedly denied him equal time with his children (minor Plaintiffs A.A.S. and

1 D.M.S.). *Id.* He also alleges that Commissioners receive payments DSHS to place
2 children in the lower income household of divorcing parents and that the court has
3 ignored his objections to this practice. *Id.* Plaintiffs’ Complaint contains little more
4 than legal conclusions couched as factual allegations. Instead of making “detailed
5 factual allegations,” his insistence that Judges have violated his rights contains little
6 support. *See Iqbal*, 556 U.S. at 678. Other than the Final Divorce order and
7 threadbare allegations of a scheme with DSHS, there are no other facts in the
8 complaint which give rise to legal liability for Judges. *See id.*

9 **E. The Court dismisses Judges with prejudice**

10 “[D]ismissal without leave to amend is improper unless it is clear . . . that the
11 complaint [can] not be saved by any amendment.” *Lee v. City of Los Angeles*, 250
12 F.3d 668, 692 (9th Cir. 2001). In this case, Plaintiffs clearly cannot save their claims
13 against Judges through Amendment. Accordingly, the Court dismisses the claims
14 against Judges with prejudice.

15 Accordingly, **IT IS HEREBY ORDERED:**

16 **1.** Defendant Spokane County Superior Court Judges Memorandum for
17 Dismissal Pursuant to FRCP 12(b); and Motion for Judgment on the
18 Pleadings, **ECF No. 35**, is **GRANTED**.

19 **2.** Plaintiffs’ Prayer for Alternate/Substitute Service on Defendant
20 Spokane County Exec Gerry Gemmil (CEO), **ECF No. 39 at 1**, is

