

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THOMAS J. SHALLOW	:	CIVIL ACTION
	:	
v.	:	NO. 05-6227
	:	
JUDGE THOMAS P. ROGERS, COURT	:	
OF COMMON PLEAS, RANDEE	:	
FELDMEN, ESQ., DR. STEVEN COHEN,	:	
and ELIZABETH RICHMAN	:	

MEMORANDUM AND ORDER

Juan R. Sánchez, J

April 6, 2006

Defendants request this Court to dismiss a four-count complaint, which alleges state court Judge Thomas P. Rogers improperly jailed Thomas P. Shallow for failing to participate in a court-ordered psychological evaluation and conditioning his release on undergoing and paying for the evaluation. This conduct, according to Shallow, deprived him of his civil rights and liberty interests. After careful consideration of the various arguments, ranging from the lack of jurisdiction to the applicability of judicial immunity, I will grant the Defendants' motions to dismiss.

FACTS

A Pennsylvania state court granted Shallow's former wife custody of Shallow's children. (Complaint ¶ 14.) Shallow challenged the decision for several years, ultimately appearing before Judge Rogers in the Court of Common Pleas of Montgomery County, Family Division. (Complaint ¶ 25.) In April, 2005, Judge Rogers ordered a psychological evaluation for the entire Shallow family by Defendant Steven Cohen, Ph.D. (Complaint ¶ 18; Complaint Ex. A., Order of Apr. 8, 2005.) The order required Shallow to pay fifty percent of the costs for the evaluation. (Complaint ¶ 18;

Complaint Ex. A., Order of Apr. 8, 2005.) On the record, Judge Rogers informed Shallow he was subject to contempt if he failed to participate in the evaluation. (Complaint ¶ 19.) Shallow refused to see Dr. Cohen, resulting in Judge Rogers issuing a contempt order. (Complaint ¶¶ 17, 18; Complaint Ex. B., Order of June 8, 2005.) The order directed Shallow to pay Dr. Cohen \$2,500 (equivalent to his share of the evaluation fee) and incarcerated him for six months or until payment was made. (Complaint ¶ 22; Complaint Ex. B., Order of June 8, 2005.)

Shallow entered a contract with Dr. Cohen on June 14, 2005, at which time he asserts he reserved in writing his right to object to the contract. (Complaint ¶¶ 23, 24.) Judge Rogers ordered Shallow to execute a “clean” agreement, which Shallow asserts required him to delete his reservation to the contract. (Complaint ¶¶ 25-27; Complaint Ex. E., Order of June 23, 2005.) Shallow retained Dr. Monty Weinstein to examine whether any impropriety took place in the psychological assessment ordered by Judge Rogers and conducted by Dr. Cohen. (Complaint ¶¶ 28.) Dr. Weinstein allegedly found ethically questionable aspects of the evaluation and drafted a letter to Dr. Cohen regarding the evaluation. (Complaint ¶ 33-37.)

Shallow filed a *pro se* Complaint in this Court in December, 2005 asserting various claims for violations of his constitutional and civil rights.¹ He named as defendants Judge Rogers

¹In the preliminary statement to the Complaint, Shallow asserts various grounds for his causes of action including 42 U.S.C. § 1983 and the First, Fifth, Ninth and Fourteenth Amendments. Three of the four asserted claims for relief, however, fail to identify the specific constitutional or statutory basis. Because Shallow filed this complaint *pro se*, this Court must “liberally construe his pleadings” and “apply the applicable law, irrespective of whether the *pro se* litigant has mentioned it by name. *Dluhos v. Strasberg*, 321 F.3d 365, 369 (3d Cir. 2003). Accordingly, I find four constitutional grounds and one statutory basis for Shallow’s Complaint claims. The first cause of action asserts, by jailing him and coercing him to attend psychological counseling against his will, “Defendant violated [his] civil rights to be free from violations of his liberty interests.” (Complaint ¶ 45.) At best, this cause of action involves unlawful incarceration and forced medical treatment, both of which raise Fourteenth Amendment and 42 U.S.C. § 1983

(Complaint ¶ 6), the Court of Common Pleas for failure to supervise Judge Rogers (Complaint ¶ 7) and Dr. Cohen for coercing him to participate in a psychological examination against his will (Complaint ¶ 9). Shallow also asserts claims against Randee Feldman,² the attorney for his ex-wife, for “putting [him] in jail” and threatening Dr. Weinstein not to testify under fear of some unspecified retaliation (Complaint ¶ 8), and Dr. Elizabeth Richman, a court-ordered psychologist for Shallow’s children, for refusing Shallow access to her therapy notes and information (Complaint ¶ 10).

DISCUSSION

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(1) challenges the subject matter jurisdiction of the court. A party asserting a Rule 12(b)(1) motion may present either a facial challenge or factual challenge. *Medtronic Vascular, Inc. v. Boston Sci. Corp.*, 348 F. Supp. 2d 316, 321 (D. Del. 2004) (citing 2 James W. Moore, Moore’s Federal Practice § 12.30[4] (3d ed. 1997)). A facial challenge asserts the complaint allegations are insufficient on their face to invoke federal jurisdiction and requires the court to accept the Complaint allegations as true. *Mortensen v. First Fed. Sav. & Loan Ass’n*, 549 F.2d 884, 891 (3d Cir. 1977). By contrast, in a factual attack, the challenging party disputes the court’s “very power to hear the case.” *Id.* In such an attack, “no presumptive truthfulness attaches to plaintiff’s allegations, and the existence of disputed material

protections. Shallow invokes the equal protection clause of the Fourteenth Amendment in his second claim for relief, alleging “Defendant selectively prosecuted [him] by incarcerating him for refusing to participate in court ordered psychological assessments.” (Complaint ¶ 48.) Article I, Section 10 of the Constitution is the only basis for Shallow’s third cause of action, asserting “Defendant impaired the obligation of contracts, and enforced a contract by incarceration.” (Complaint ¶ 51.) The final claim alleges Shallow was enslaved, which invokes the Thirteenth Amendment’s prohibition against slavery and involuntary servitude.

²The Complaint lists the defendant’s name as Feldman, whereas the defendant’s motion to dismiss writes Feldman. I will refer to the defendant as Feldman.

facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims.” *Carpet Group Int’l v. Oriental Rug Imps. Ass’n*, 227 F.3d 62, 69 (3d Cir. 2000). Once subject matter jurisdiction is challenged, the plaintiff bears the burden to establish jurisdiction in fact exists. *Id.*

All the defendants assert a factual challenge to this Court’s subject matter jurisdiction based on the *Rooker-Feldman* doctrine.³ This doctrine prohibits lower federal courts from exercising jurisdiction over claims “‘actually litigated in state court prior to the filing of the federal action’” or “‘inextricably intertwined with the state adjudication, meaning that federal relief can only be predicated upon a conviction that the state court was wrong.’” *Knapper v. Bankers Trust Co.*, 407 F.3d 573, 580 (3d Cir. 2005) (quoting *Walker v. Horn*, 385 F.3d 321, 329 (3d Cir. 2004)). Only the United States Supreme Court has the authority to directly review a state court’s decision. 28 U.S.C. § 1257. “‘Although § 1257 refers to orders and decrees of the highest state court, the *Rooker-Feldman* doctrine has been applied to final decisions of lower state courts.’” *Knapper*, 407 F.3d at 580 (quoting *Walker*, 385 F.3d at 329).

Shallow did not actually litigate the federal claims at issue before the Family Court. Therefore, the relevant inquiry here is whether the instant action is inextricably intertwined with the state court action. A federal claim is inextricably intertwined with a state adjudication when “(1) the federal court must determine that the state court judgment was erroneously entered in order to grant the requested relief, or (2) the federal court must take action that would negate the state court’s judgment.” *Id.* at 581. Thus, a plaintiff is foreclosed from seeking relief in a lower federal court that would “prevent a state court from enforcing its orders,” or effectively reverse or void the decision

³The *Rooker-Feldman* doctrine derives from two Supreme Court decisions: *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923) and *D.C. Circuit Court of Appeals v. Feldman*, 460 U.S. 462 (1983).

of the state court. *Id.*

Shallow's claims in this case are inextricably tied to his state court adjudication. Judge Rogers's contempt order and mandate Shallow undergo a psychological evaluation are the underlying acts upon which Shallow premises the four causes of action in his Complaint. If this Court were to find Shallow's constitutional and civil rights were violated when he was held in contempt and later participated in and paid for the court-ordered evaluation, the result would call into question Judge Rogers' decisions, his handling of the family court case, and his ultimate judgment based on the evaluation results. Shallow's requested relief also evidences his federal claims are intertwined with his state court adjudication. In his Complaint, Shallow asks the Court not only to declare the Defendants violated his constitutional rights and enjoin them from violating his civil rights, but also to "free[] him from his obligation under a coerced contract." (Complaint 9.) Granting such relief would necessarily require this Court to overturn Judge Rogers order mandating the court-ordered evaluation, and such a finding would negate the state court's judgment. Shallow's instant lawsuit thus is "inextricably intertwined" with the state court judgment and falls squarely within the category of cases the *Rooker-Feldman* doctrine precludes a federal court from considering. Judicial errors are subject to correction on appeal, and if Shallow believes the decisions of Judge Rogers were made in error, his recourse is to appeal to the Pennsylvania Superior Court. This Court, though, lacks subject matter jurisdiction and must dismiss the Complaint.

Even if the *Rooker-Feldman* doctrine were inapplicable to Shallow's case, this Court would dismiss the Complaint based on Defendants' alternative argument the Complaint fails to state a claim. The purpose of a motion filed under Federal Rule of Civil Procedure 12(b)(6) is to test the legal sufficiency of the complaint. *Holder v. City of Allentown*, 987 F.2d 188, 194 (3d Cir. 1993).

When considering a motion to dismiss for failure to state a claim, the court must accept all well-pleaded allegations in the complaint as true and view them in the light most favorable to plaintiff. *Christopher v. Harbury*, 536 U.S. 403, 406 (2002); *Jordan v. Fox, Rothschild, O'Brien & Frankel*, 20 F.3d 1250, 1261 (3d Cir. 1994). The court must consider only the facts alleged in the complaint and its attachments, without reference to other items in the record. *Id.* The court may not dismiss the complaint unless the plaintiff can prove no set of facts which would entitle him to relief. *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957).

The Court of Common Pleas and Judge Rogers raise a defense of immunity. The Eleventh Amendment bars suits against an unconsenting state brought in federal court. *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 54 (1996). Even if the state is not named a party, sovereign immunity is preserved provided the state is deemed to be the real party in interest. In *Benn v. First Judicial District*, 426 F.3d 233, 241 (3d Cir. 2005), the Third Circuit extended Eleventh Amendment immunity to a Judicial District to bar an action under the American with Disabilities Act because the Commonwealth was a real party in interest. *Benn v. First Judicial District*, 426 F.3d 233, 241 (3d Cir. 2005). The court emphasized the Pennsylvania constitution recognizes a Judicial District and its counterparts as state entities and an integral part of the unified state judicial system. *Id.* at 240-41. It therefore follows the Court of Common Pleas, an entity within the Judicial District, is entitled to Eleventh Amendment immunity. Moreover, the Court of Common Pleas does not qualify as a “person” subject to suit under § 1983. *Callahan v. Philadelphia*, 207 F.3d 668, 673 (3d Cir. 2000). Therefore, I will dismiss the claims against the Court of Common Pleas.

With respect to Shallow’s claims against Judge Roberts, judges are entitled to absolute immunity from liability for damages as a result of judicial acts. *Stump v. Sparkman*, 435 U.S. 349,

356 (1978); *Gallas v. Supreme Court*, 211 F.3d 760, 768 (3d Cir. 2000). Immunity is overcome only if a judge acts outside his judicial capacity or in the complete absence of jurisdiction. *Mireles v. Waco*, 502 U.S. 9, 11-12 (1991). Nothing in the Complaint indicates Judge Roberts acted in any way to lose his immunity. Issuing a contempt order and mandating a court-ordered psychological evaluation are judicial acts a judge performs in the course of judicial proceedings. Judge Rogers had the authority to issue the contempt order and mandate the evaluation and did so as a part of normal court business in his judicial capacity. Even if Judge Rogers issued his orders unfairly, maliciously or corruptly, he retains his judicial immunity. *Schuler v. Chambersburg*, 641 F. Supp. 657, 659 (M.D. Pa. 1986) (stating judicial immunity “may be invoked even if the conduct was in excess of [the judge’s] jurisdiction and done maliciously and corruptly”); *Gallas*, 211 F.3d at 769 (holding “immunity will not be lost merely because the judge’s action is unfair or controversial”). Moreover, as a matter of law, Shallow is not entitled to injunctive relief because Congress has expressly precluded such relief “in any action brought against a judicial officer for an act or omission taken in such officer’s judicial capacity” 42 U.S.C. § 1983; *Brandon E. v. Reynolds*, 201 F.3d 194, 197 (3d Cir. 2000). Judge Rogers is entitled to dismissal of the Complaint against him.

Pennsylvania law also extends immunity to Dr. Cohen and Dr. Richman. In *Hughes v. Long*, 242 F.3d 121, 126 (3d Cir. 2001), the plaintiff sued a licensed social worker and her supervisor (a licensed clinical psychologist) alleging interference with his familial rights and violations of his civil rights after the professionals evaluated the plaintiff’s children, provided a custody recommendation unfavorable to the plaintiff and refused to give the plaintiff the assessment data to provide to an expert the plaintiff hired to evaluate the testing results. The Third Circuit held the court-appointed evaluators were entitled to judicial immunity because “they acted as ‘arms of the court.’” *Id.* Each

qualified as a “non-judicial person who fulfills a quasi-judicial role at the court’s request,” *id.*, and their functions were “integral to the judicial process, such as gather[ing] information, conduct[ing] an evaluation, and mak[ing] a recommendation to aid the custody determination,” *id.* at 127. There is little distinction between *Hughes* and the present case. Shallow has filed suit against Cohen and Richman, both court-appointed psychologists in a child custody proceeding, after he was dissatisfied with Cohen’s evaluation and was denied evaluation data from Richman. Like the professionals in *Hughes*, Cohen and Richman acted as “arms of the court” and as such are entitled to judicial immunity and dismissal of the Complaint.

Nor will Shallow’s claims survive as to Feldman. Shallow references Feldman only once in the Complaint. In the section identifying the parties, a single paragraph states Feldman “orchestrated” his incarceration related to his contempt charge and threatened Dr. Weinstein. The Complaint is legally and factually deficient because Shallow never explains when or how Feldman played a role in his incarceration, when or how she threatened Dr. Weinstein, or even how the threat relates to his claims. Even if the allegations in the Complaint are sufficient, two other grounds support dismissal of the Complaint. First, Shallow’s civil rights claims are premised upon 42 U.S.C. § 1983, which requires Shallow prove Feldman acted under color of state law and denied him a federally protected constitutional or statutory right. *See Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 936 (1982); *Angelico v. Lehigh Valley Hosp., Inc.*, 184 F.3d 268, 277 (3d Cir. 1999). Feldman does not qualify as a state actor for § 1983 purposes because she was a private attorney representing Shallow’s ex-wife and there are no allegations her actions were “fairly attributable” to the state. *Angelico*, 184 F.3d at 277. Second, Shallow’s civil and constitutional claims fail as to Feldman because Shallow cannot establish proximate cause. Feldman’s behavior is not the predicate of the

ultimate harm Shallow alleges – being held in contempt and jailed for not participating in the court-ordered psychological evaluation and later complying and paying for the assessment. His alleged injury resulted not from Feldman’s actions, but from the rulings of Judge Rogers. The Third Circuit has held such “intervention of independent judicial review” a superceding cause sufficient to break the chain of liability unless a judge “reaches an erroneous conclusion because he or she is misled in some manner as to the relevant facts.” *Egervary v. Young*, 366 F.3d 238, 250 (3d Cir. 2004). There is no allegation Judge Rogers issued the contempt order because Feldman misrepresented facts or other evidence. Rather, the Complaint explicitly states Shallow was incarcerated “for refusing to undergo a psychological evaluation against [his] will.” (Complaint ¶ 6.)

An appropriate Order follows.

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ORDER

AND NOW this 6th day of April, 2006, Defendants' Motions to Dismiss (Documents 7, 8, 9, and 11) are GRANTED. The Clerk of the Court is directed to close the above-captioned case.

BY THE COURT:

/s/ Juan R. Sánchez
Juan R. Sánchez, J.