

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 04 RB 2455 (BNB)

Charles H. Clements,

Plaintiff,

v.

Janis E. Chapman,
Thomas C. Miller,
Katherine Grier,
Kevin C. Massaro,

Defendants.

DEFENDANT CHAPMAN'S REPLY IN SUPPORT OF HER MOTION TO DISMISS

Defendant, Janis E. Chapman, through her counsel, the Office of the Attorney General for the State of Colorado, replies in support of her motion to dismiss as follows:

ARGUMENT

The allegations raised in Plaintiff's Complaint fall into two categories: (1) Rulings that Defendant Chapman allegedly made against Plaintiff were not supported by the law; and (2) Defendant Chapman was biased against him. Neither allegation is sufficient to withstand Defendant Chapman's motion to dismiss.

I. PLAINTIFF'S CLAIMS ARE BARRED BY THE DOCTRINE OF ABSOLUTE JUDICIAL IMMUNITY.

A. Dissatisfaction With Judicial Rulings Is Not A Sufficient Basis To Overcome Absolute Judicial Immunity.

Plaintiff uses his response to register his dissatisfaction with rulings that Defendant Chapman allegedly made in state litigation in which he was involved. For instance, in his response Plaintiff alleges that his claims against Defendant Chapman:

Arise from the denial of due process in determining subject matter jurisdiction. Plaintiff was given no notice of such a Trial, no opportunity to present evidence already filed in the Record, no opportunity to read the affidavits into the Record, no opportunity to prepare or subpoena witnesses, prepare to present evidence available had Plaintiff been given notice.

[Plaintiff's Response, ¶ 5]. Plaintiff then quotes at length from various judicial opinions in an apparent attempt to demonstrate why the rulings that Defendant Chapman allegedly made against him were contrary to the law.

Plaintiff further alleges that his claims against Defendant Chapman "arise out of [her] denial of due process rights by awards of legal fees to Defendant Grier without notification of Plaintiff, opportunity to call for an evidentiary hearing, nor to give good reason for awarding Defendant Grier fees for simple reading a Common Law pleading to a purported Common Law Contract." [Plaintiff's Response, ¶ 8]. Plaintiff's additional claims against Defendant Chapman include the alleged

“modification to Permanent Trial Orders in Case 03C5606,” and “ex parte dismissal without hearing of three Show Cause Orders in Case 03C56006, without notice to Plaintiff or opportunity to present evidence.” [Plaintiff’s Response, ¶ 14-15].

Chapman also allegedly denied Plaintiff “the right to present evidence by affidavit already filed in the Record” and “rule[d] on custody matters without a McLendon hearing in the best interest of the minor children....” [Plaintiff’s Response, ¶ 18 and ¶ 20].

While Plaintiff disputes the legal basis for the rulings that Defendant Chapman allegedly made, Plaintiff concedes that Defendant Chapman was operating within her “judicial capacity” when she made the rulings. [Plaintiff’s Response, ¶ 27]. Despite admitting that Defendant Chapman acted within her judicial capacity, Plaintiff attempts to circumvent her judicial immunity by implying that she exceeded her jurisdiction. [Plaintiff’s Response, ¶ 22]. However, in a civil case a Colorado district court magistrate acting with consent of the parties may perform any function except preside over jury trials. C.R.M. Rule 6(c)(2). Even without consent of the parties, a district court magistrate in a civil case may conduct settlement conferences, conduct hearings, and rule upon discovery motions, among other functions. C.R.M. (c)(1). In a family law case, a district court magistrate “shall have the power to preside over all proceedings arising under Titles 14 and 26, except that a district court magistrate may not hear contested permanent orders without the consent of the parties.” C.R.M. (a)(2)(b).

Therefore, contrary to Plaintiff's implication, Defendant Chapman had jurisdiction to perform judicial functions in a family law case. Moreover, an allegation that a judge acted in excess of his or her jurisdiction is insufficient to overcome absolute judicial immunity. *Stump v. Sparkman*, 435 U.S. 349, 356 (1978). "[T]he scope of the judge's jurisdiction must be construed broadly where the issue is the immunity of the judge." *Id.* A judge "will be subject to liability only when he has acted in the 'clear absence of all jurisdiction.'" *Id.* at 356-57 (quoting *Bradley v. Fisher*, 13 Wall. 335, 351 (1872)). Plaintiff's allegations do not show that Defendant Chapman acted with a clear absence of all jurisdiction. Therefore, his claim against Defendant Chapman should be dismissed with prejudice.

B. A Claim Of Judicial Bias Is An Insufficient Basis For Overcoming Absolute Judicial Immunity.

In his response, Plaintiff also alleges that Defendant Chapman was biased against him and was a participant in a conspiracy. [Plaintiff's Response, ¶ 24]. Such allegations do not pierce judicial immunity. *Moore v. Brewster*, 96 F.3d 1240, 1244 (9th Cir. 1996)(Judicial immunity is not lost by allegations that a judge conspired with one party to rule against another party); *Sparkman*, 435 U.S. at 356-57 (A judge will not be deprived of immunity because of allegations that he or she acted maliciously).

II. THE ROOKER-FELDMAN DOCTRINE BARS PLAINTIFF'S CLAIMS.

The *Rooker-Feldman* doctrine prohibits a party losing in state court "from seeking what in substance would be appellate review of the state judgment in a United States district court, based on the losing party's claim that the state judgment violated the loser's federal rights." *Johnson v. DeGrandy*, 512 U.S. 997, 1006 (1994). Here, Plaintiff is intent on achieving exactly the type of outcome that *Rooker-Feldman* prohibits. Therefore, his claims against Defendant Chapman should be dismissed with prejudice.

III. PLAINTIFF LACKS STANDING TO BRING CLAIMS UNDER 18 U.S.C. § 241, § 242, § 842, § 872, § 1001 AND 42 U.S.C. § 1988.

Plaintiff asserts that he has standing to bring a cause of action under these claims but does not explain how, or otherwise challenge Defendant Chapman's arguments. Therefore, these claims should be dismissed.

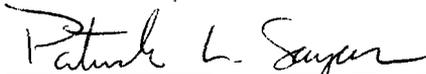
IV. PLAINTIFF'S CLAIMS UNDER 42 U.S.C. ¶ 1985 and ¶ 1986 SHOULD BE DISMISSED BECAUSE PLAINTIFF FAILED TO ALLEGE RACE-BASED DISCRIMINATION.

In his response, Plaintiff alleges that the basis of his alleged discrimination was due to his "longstanding activism on behalf of the Negro race and civil rights." [Plaintiff's Response, ¶ 31]. However, no such allegation is contained in his Complaint. Therefore, Plaintiff's claims should be dismissed.

CONCLUSION

For the foregoing reasons, Plaintiff's claims against Magistrate Chapman should be dismissed with prejudice because she has absolute judicial immunity and because Plaintiff's claims are barred by the *Rooker-Feldman* doctrine. Plaintiff also lacks standing to bring claims under 42 U.S.C. § 1988, and 18 U.S.C. § 241, § 242, § 842, § 872, and § 1001. Lastly, Plaintiff fails to state a claim for relief under 42 U.S.C. § 1985 and § 1986.

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CERTIFICATE OF DELIVERY

This is to certify that I have duly served the within Defendant Chapman's Reply
in Support of her Motion to Dismiss upon all parties herein by hand delivering copies of
same to their office this 8TH day of March 2005 addressed as follows:

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