

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
CHATTANOOGA DIVISION**

Gary Lynn Jr. of the Family Scott)
)
Plaintiff,)
)
v.)
)
42 U.S.C. § 654(3), Alone, Separate and Apart)
Child Support Program;)
31 C.F.R. § 6303 Contractor Danielle Barnes)
Commissioner of the IV-D Franchise, in her)
Official and Private Capacity;)
45 C.F.R. § 75.2 Contractor Hamilton County)
Tennessee Circuit Court Division IV;)
45 C.F.R. § 75.2 Contractor Hamilton County;)
45 C.F.R. § 75.2 Contractor Kyle Hedrick in his)
Official and Private Capacity;)
45 C.F.R. § 75.2 Contractor Charles Bryson)
in his Official and Private Capacity;)
45 C.F.R. § 75.2 Contractor Larry L. Henry in)
his Official and Private Capacity;)
45 C.F.R. § 75.2 Contractor Maximus Child)
Support Services;)
45 C.F.R. § 75.2 Contractor Stacy Elrod)
in her Official and Private Capacity,)
)
Defendants.)

No. 1:18-CV-272
Judge Thomas W. Phillips
Magistrate Judge Steger

**DEFENDANTS MAXIMUS, INC. AND STACY ELROD’S MEMORANDUM OF LAW
IN SUPPORT OF DEFENDANTS’ MOTION TO DISMISS**

Pursuant to Federal Rules of Civil Procedure Rule 12(b)(6), Defendants, Maximus, Inc. (“Maximus”) and Stacy Elrod (“Elrod”), collectively “Defendants,” respectfully move the court to dismiss the claims that Plaintiff Gary Lynn Scott, Jr. (“Scott”) has asserted in this action.

I. Introduction

Plaintiff's *pro se* Complaint attempts to bring a Section 1983 action against all parties involved in his child support proceedings before the Circuit Court for Hamilton County, Tennessee. The Complaint, without stating any facts, concludes that the Defendants violated a litany of Plaintiff's constitutional rights without due process. (Docket Entry 1).

Plaintiff cannot prevail on any of his claims for the following reasons: (1) the Court lacks subject matter jurisdiction as to Defendants Maximus and Elrod; (2) the Plaintiff has failed to state a claim upon which relief can be granted as against Maximus and Elrod; (3) the Plaintiff's fraud claims are not plead with particularity. As such, the Court should dismiss the Plaintiff's Complaint for the reasons outlined below.

II. Summary of Facts

Plaintiff Scott has been subject to child support payments since 2006, or earlier. Defendant Maximus contracts with the Tennessee Department of Human Services, Child Support Division ("TDHS") to provide certain child support services, including managing child support payments and wage garnishment, in Hamilton County, Tennessee. Defendant Elrod is an employee of Maximus where she works as a Legal Administrative Specialist. As part of her employment at Maximus, Elrod is the case manager for Plaintiff's file.

III. Law and Argument

Plaintiff's Complaint, without offering any facts, concludes that Defendants fraudulently executed withholding orders to garnish his wages and that they acted in a matter that violated his constitutional and statutory rights. (Docket Entry 1). The fact is the Plaintiff's case is based on a child support grievance, a domestic relations matter, that the Plaintiff is now attempting to seek relief from by claiming that all persons and institutions responsible for enforcing a valid court

order and judgment against him do not have the legal authority to act and violated his constitutional rights. The Plaintiff's allegations fail to state a claim upon which relief can be granted and should be dismissed as a matter of law.

A. This Court Does Not Have Subject Matter Jurisdiction Over Plaintiff's Claim.

The Court does not have subject matter jurisdiction over this matter. Federal courts are courts of limited jurisdiction and may only adjudicate cases that are authorized by either the Constitution or by the Congress of the United States. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994); *Harkness v. U.S.* 727 F.3d 465, 469 (6th Cir. 2013). The party who invoked the court's jurisdiction bears the burden of establishing the existence of a federal jurisdiction. *McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178 (1936); *DHSC, LLC v. Nurses Association / National Nurses Organizing Committee, AFL-CIO*, 700 Fed. Appx. 466, 740 (6th Cir. 2017). The Complaint does not include any facts which support this Court's jurisdiction over this matter either as an admiralty claim or based upon the appropriate subject matter jurisdiction standards. As such, the Complaint should be dismissed.

i. The Plaintiff's Claim is Solely Based on A Domestic Law Matter, Not a Colorable Claim Under § 1331 Capable of Establishing Federal Question Jurisdiction and Should Be Dismissed.

Federal question jurisdiction requires a plaintiff to plead a colorable claim arising under the United States Constitution or federal statutes. 28 U.S.C § 1331. A plaintiff is prohibited from "simply referenc[ing] a federal statute or constitutional provision in order to invoke the limited jurisdiction of a federal court." *Bryant v. United Stated AG*, 2006 U.S. Dist. LEXIS 64462, at *3. (E.D. Tenn. Sept. 8, 2006). Even a *pro se* plaintiff is required to meet this minimum pleading requirement, including those set forth in Federal Rules of Civil Procedure 8(a), which

requires that a pleading contain “a short and plain statement of the grounds upon which the court’s jurisdiction depends...” *Id.* at *1.

In general, federal courts do not have jurisdiction over domestic relations matters. *See Ankenbrandt v. Richards*, 504 U.S. 689, 703 (1992). “The whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States.” *Id.* (citation omitted). Rather, state courts have exclusive jurisdiction over these matters. *Danforth v. Celebrezze*, 76 Fed. Appx. 615, 616 (6th Cir. 2003). The fact that a domestic relations case is brought under the pretense of a federal question does not alter this rule. *Id.* at 616-617 (district court properly held that it lacked jurisdiction over Plaintiff’s claim when a fair reading of the Plaintiff’s complaint revealed that it was a pretense to obtain federal review of a domestic relations matter); *see also, Drewes v. Ilnicki*, 863 F.2d 469, 471 (6th Cir. 1988); *Denman v. Leedy*, 479 F.2d 1097, 1098 (6th Cir. 1973).

The Plaintiff’s Complaint does not contain any statement that explains how this Court has subject matter jurisdiction over his alleged claims. The fact that the Plaintiff is proceeding *pro se* does not excuse him from complying with this basic pleading requirement. *See, Wells v. Brown*, 891 F.2d 591, 594 (6th Cir. 1989) (stating that *pro se* litigants are not exempt from the requirements of Federal Rules of Civil Procedure).

This lawsuit arises out of child support proceedings that have taken place before the Circuit Court for Hamilton County, Tennessee. It is a domestic relations matter. Scott’s reference to the Constitution and federal statutes does not magically convert this case from a domestic relations matter to a federal matter or suddenly place this case within the jurisdiction of a federal court. The Court does not have federal question jurisdiction, and dismissal is warranted.

ii. The Court Does Not Have Diversity Jurisdiction.

The principal federal statutes governing diversity jurisdiction, 28 U.S.C. § 1332, gives federal district courts original jurisdiction of all civil actions between citizens of different states where the amount in controversy exceeds \$75,000. *Lincoln Property Co. v. Roche*, 546 U.S. 81, 89 (2005). It provides: “The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs and is between . . . citizens of different States . . .” 28 U.S.C. § 1332(a)(1). Scott does not include any assertions in his Complaint to establish diversity jurisdiction. If he did, such assertions would fail. Scott provided an address in Chattanooga, Tennessee on his certificate of service. (Docket Entry 1 at 20). Defendant Maximus operates its business in Chattanooga, Tennessee, and Defendant Elrod resides and works in Chattanooga, Tennessee. All of the parties clearly reside in the State of Tennessee. The Court does not have diversity jurisdiction, and dismissal is warranted.

B. The Plaintiff’s Fraud Allegation is Without Merit.

The Plaintiff’s fraud claim fails to meet the minimum pleading requirement set forth in the Federal Rules of Civil Procedure. The Plaintiff alleges that the “[d]efendants did in fact commit fraud...” by misrepresenting certain facts. (Docket Entry 1 at 10). Federal Rules of Civil Procedure Rule 9(b) requires that a party alleging fraud “must state with particularity the circumstances constituting fraud or mistake.” See *Advocacy Org. for Patients & Providers v. Auto Club Ins. Ass’n*, 176 F.3d 315, 322 (6th Cir. 1999) (“[A]llegations of fraudulent misrepresentation[s] must be made with sufficient particularity and with a sufficient factual basis to support an inference that they were knowingly made.”) (quoting *Coffey v. Foamex L.P.*, 2 F.3d 157, 162 (6th Cir. 1993)). The Complaint does not state with particularity any supposed

material facts that were misrepresented by Defendants Maximus or Elrod. In fact, the Complaint does not include any statement or misstatement by either Defendants. The Complaint does not plead the fraud allegation with particularity and dismissal is warranted.

Even if the Plaintiff met the pleading requirement set forth in Rule 9(b), the Plaintiff's fraud claim is without merit. Under, Tennessee law, a Plaintiff asserting a fraud claim must plead the following: "(1) an intentional misrepresentation with regard to a material fact; (2) knowledge of the representation's falsity (i.e., it was made 'knowingly' or 'without belief in its truth,' or 'recklessly' without regard to its truth or falsity); (3) the plaintiff reasonably relied on the misrepresentation and suffered damage; and (4) the misrepresentation relates to an existing or past fact, or, if the claim is based on promissory fraud, the misrepresentation 'must embody a promise of future action without the present intention to carry out the promise.'" *Grant v. Tucker*, 57 F. Supp. 3d 852, 858 (M.D. Tenn. 2014).

The Plaintiff's Complaint does not state a single factual allegation against the Defendants to satisfy the elements discussed above. As such, dismissal of the Complaint is warranted.

C. The Complaint Fails to State a Claim upon Which Relief Can be Granted.

The Plaintiff's Complaint also fails to state a claim upon which relief can be granted, as required by Rule 12(b)(6) of the Federal Rules of Civil Procedure. Federal Rule of Civil Procedure 8(a)(2) requires that a pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." FED. R. CIV. P. 8(a)(2). Only a complaint that states a plausible claim for relief can survive a motion to dismiss. *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). A complaint does not require detailed factual allegations, but still must contain more than mere labels and conclusions, or a formulaic recitation of the elements, in order to give a defendant fair notice of the claims. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

A claim only can be considered plausible on its face when it contains factual content that “allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678. Furthermore, when a complaint fails to mention allegations as to certain defendants that would suggest their involvement in the events leading to a plaintiff’s injury, the claim must necessarily fail. *Rodriguez v. Jabe*, 904 F.2d 708, at *1 (6th Cir. 1990); *see also Griffin v. Montgomery*, 2000 U.S. App. Lexis 30782, at *2 (6th Cir. Nov. 30, 2000) (plaintiff’s claims dismissed for failure to allege personal involvement by defendants in alleged denial of his rights). To succeed on such allegations, the complaint must assert that the defendant personally was involved in the alleged deprivation of federal rights. *Frazier v. Michigan*, 2002 U.S. App. Lexis 14881, at *5 (6th Cir. July 22, 2002). In *Frazier*, for example, the plaintiff’s complaint contained allegations against some named defendants, but failed to further mention others. *Id.* The Court ultimately dismissed the case as to the two defendants against whom the plaintiff failed to allege wrongdoing and upheld the case against the others. *Id.* at *2.

Here, Plaintiff’s Complaint is hardly decipherable, much less plausible. Further, Scott names Maximus and Elrod as defendants in the caption of his Complaint and later pleads for relief against Maximus and Elrod in Section XIV of his Complaint, fails to assert any specific allegations against Maximus or Elrod in the body of the Complaint. As such, the Complaint should be dismissed for failure to state a claim for which relief may be granted.

IV. Conclusion

For these reasons discussed above, Defendants Maximus and Elrod requests the Court grant this Motion to Dismiss and assess costs against the Plaintiff.

Respectfully submitted,

/s/ Wells Trompeter

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CERTIFICATE OF SERVICE

I hereby certify that, on this the 6th day of December, 2018, a true and correct copy of the foregoing was served via the Court's CM/ECF system or via USPS First Class Mail to the following recipients:

Gary Lynn Jr. of the Family Scott
Post Office Box 16946
Chattanooga, TN 37416

Respectfully submitted,

/s/ Wells Trompeter