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7 California, County of Contra Costa

8
9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN JOSE DIVISION

12 ANDREA WOOD,)

13 Petitioner,)

14 vs.)

15 COUNTY OF CONTRA COSTA, et al.)

16 Respondents.)

Case No. 19-cv-3885-EJD

REPLY TO OPPOSITION TO MOTION
TO DISMISS AMENDED PETITION
FOR A WRIT OF HABEAS CORPUS

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18 **I. INTRODUCTION**

19 Petitioner Andrea Wood fails to establish that this Court has jurisdiction over her
20 Amended Petition for a Writ of Habeas Corpus (“the Petition”) or that the Honorable Lois
21 Haight, Judge of the Superior Court of California, County of Contra Costa, is a proper
22 respondent in this matter. The Petition is fatally flawed and cannot be saved by further
23 amendment. Consequently, Judge Haight’s motion to dismiss the Petition must be granted.

24 Petitioner fails to provide authority for this Court to expand the limited relief
25 traditionally provided by a writ of habeas corpus to state court child custody matters. Even if
26 child custody were a proper subject for a writ of habeas corpus, this action is barred by the
27 *Rooker-Feldman* doctrine. Lastly, Petitioner’s claim fails because she has not, and cannot,
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1 establish the grounds required for relief: Petitioner’s children are not “in custody,” Petitioner
2 has not exhausted her state court remedies, and the Petition is directed to a respondent, Judge
3 Haight, who does not have custody of the children. For these reasons, the motion to dismiss
4 must be granted without leave to amend.

5 **II. THE PETITION MUST BE DISMISSED BECAUSE THE DISTRICT COURT**
6 **LACKS SUBJECT MATTER JURISDICTION AND PETITIONER FAILS TO**
7 **ALLEGE FACTS TO SUPPORT A HABEAS CORPUS PETITION**

8 Contrary to Petitioner’s assertions (Opp. p. 15), a motion to dismiss is a proper attack
9 on a flawed petition for writ of habeas corpus. The rules governing petitions pursuant to 28
10 U.S.C. § 2254 state that a court may dismiss the petition “[f]if it plainly appears from the
11 petition and any attached exhibits that the petitioner is not entitled to relief.... Rule 4 of the
12 Rules Governing Section 2254 Cases. Despite Petitioner’s claim that Judge Haight’s motion to
13 dismiss “does not comply with the protocol of a habeas corpus motion [sic]” a respondent may
14 file a motion to dismiss a petition pursuant to section 2254. *White v. Lewis*, 874 F.2d 599, 601-

15 For example, the judge may want to authorize the respondent to make a
16 motion to dismiss based upon information furnished by respondent, which may
17 show that petitioner's claims have already been decided on the merits in a federal
18 court; that petitioner has failed to exhaust state remedies; that the petitioner is not
19 in custody within the meaning of 28 U.S.C. § 2254; or that a decision in the matter
is pending in a state court. In these situations, a dismissal may be called for on
procedural grounds, which may avoid the necessity of filing an answer on the
substantive merits of the petition

20 *White*, 874 F.2d at 602, citing Rules Governing Section 2254 Cases, Rule 4 Advisory
21 Committee’s Note.

22 This Court lacks jurisdiction to consider the Petition because habeas corpus is not a
23 proper remedy for child custody disputes and the Petition is barred by the *Rooker-Feldman*
24 doctrine. Even if this Court had jurisdiction over the Petition, it must be dismissed because
25 Petitioner failed to exhaust her state remedies and Judge Haight is not a proper respondent
26 because she does not have custody of the children. Petitioner cannot remedy these defects by
27 amendment and for these reasons, the Petition must be dismissed.

1 **A. Habeas Corpus is Not Available Because the Minors are not in Custody**

2 Petitioner fails to address Judge Haight’s argument that habeas corpus is not a proper
3 remedy because the minor children are not “in custody” for habeas corpus purposes, stating
4 only that “the federal habeas corpus statute authorizing federal court collateral review of
5 federal decisions can be construed to include child custody cases.” Petitioner’s reliance upon
6 *Lehman v. Lycoming County Children’s Services Agency*, 458 U.S. 501 (1982) for this
7 proposition is puzzling, because the court in *Lehman* denied the use of a petition for a writ of
8 habeas corpus in a state court child custody case and noted that “federal habeas has never been
9 available to challenge parental rights or child custody.” *Lehman*, 458 U.S. at 511. The thrust
10 of the instant litigation and *Lehman* are the same: the petitioner “simply seeks to relitigate,
11 through federal habeas, not any liberty interest of her sons, but the interest in her own parental
12 rights.” *Id.*

13 Petitioner fails to demonstrate that Congress intended the use of a writ of habeas corpus
14 to review state child custody orders. The United State Supreme Court has specifically held that
15 habeas corpus cannot be utilized to review such orders. *Id.* Thus, this Court lacks jurisdiction
16 to consider the Petition and the motion to dismiss must be granted.

17 **B. The Petition is Barred Under the *Rooker-Feldman* Doctrine**

18 Because the Petition is based upon final determinations in an underlying state court
19 matter, this Court lacks jurisdiction to consider the Petition pursuant to the *Rooker-Feldman*
20 doctrine. Petitioner fails to address the merits of *Rooker-Feldman*, only questioning how
21 *Rooker-Feldman* applies, because “collateral estoppel is firmly part of the case law...” (Opp. p.
22 14.)

23 As noted by the court in *Lefcourt v. Superior Court*, “the district court does not have
24 jurisdiction if it cannot evaluate the constitutional claims without conducting a review of the state
25 court’s legal determinations in a particular case.” *Lefcourt v. Superior Court*, 63 F.Supp.2d 1095,
26 1098 (N.D. Cal. 1999). In order to grant Plaintiff relief, this Court would need to review state
27 court judicial actions and determine that those actions were taken in error. This Court lacks
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1 jurisdiction to take such action and therefore the motion to dismiss must be granted. *See*
2 *Worldwide Church of God v. McNair*, 805 F.2d 888, 892-93 (9th Cir. 1986).

3 **C. Petitioner has not Exhausted her State Court Remedies**

4 Even if this Court had jurisdiction to consider the Petition, Petitioner fails to meet the
5 procedural requirements for a writ of habeas corpus. Petitioner contends that she is not
6 required to exhaust her state court remedies, arguing that 28 U.S.C. §§ 2241 and 2243 do not
7 mention such a requirement. (Opp. p. 14.) The requirements for a writ of habeas corpus are
8 found in 28 U.S.C. Chapter 153, which contains several sections applicable to the pursuit of a
9 writ of habeas corpus. One such requirement is found in 28 U.S.C. § 2254, which states in part
10 that an application for a writ of habeas corpus will not be granted until the “applicant has
11 exhausted the remedies available in the courts of the State.” 28 U.S.C. § 2254(b)(1)(A.)
12 Courts consistently recognize this requirement and deny a petition if a petitioner fails to
13 exhaust state remedies. *See Fields v. Waddington*, 401 F.3d 1018, 1020 (9th Cir. 2005);
14 *O’Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999); *Jiminez v. Rice*, 276 F.3d 478, 481 (9th Cir.
15 2001); *Rose v. Lundy*, 455 U.S. 509, 520 (1982.)

16 Because Petitioner is continuing to pursue an appeal in state court, she has not
17 exhausted her state court remedies and she cannot seek a petition for a writ of habeas corpus.
18 Therefore, the motion to dismiss must be granted.

19 **D. Judge Haight is not a Proper Respondent**

20 Petitioner fails to address Judge Haight’s assertion that the Petition is not properly
21 directed to Judge Haight. A writ of habeas corpus must be directed to the person having
22 custody of the detained person. 28 U.S.C. § 2243. Judge Haight’s sole role in this matter is as
23 a judicial officer in state court proceedings. She does not have custody over the minor children
24 and thus she is not a proper respondent in this action. Therefore, the Petition must be
25 dismissed as to her.

26 **III. CONCLUSION**

27 This Court lacks jurisdiction to hear a petition for a writ of habeas corpus related to
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1 state court child custody matters. Even if it did, the Petition is flawed and must be dismissed
2 because Petitioner is currently pursuing state court remedies and Judge Haight does not have
3 custody of the minor children. Petitioner cannot cure these defects by amendment and
4 therefore, the motion to dismiss must be granted without leave to amend.

5
6 DATE: August 13, 2019

BOLD, POLISNER, MADDOW, NELSON & JUDSON

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8 By: /s/ Sharon M. Nagle
9 SHARON M. NAGLE
10 Attorneys for the Hon. Judge Lois Haight
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1 **PROOF OF SERVICE**
2 **USDC-Northern District of CA Case No: Case No. 19-cv-3885-EJD**

3 I am a citizen of the United States, over the age of 18 years, employed in the County of
4 Contra Costa, and not a party to the within action; my business address is 2125 Oak Grove
5 Road, Suite 210, Walnut Creek, CA 94598.

6 On the date set forth below, I served the following:


7 **REPLY TO OPPOSITION TO MOTION TO DISMISS AMENDED PETITION FOR A**
8 **WRIT OF HABEAS CORPUS**

9 upon the following at the address(es) stated below via:

10 **BY CM/ECF NOTICE OF ELECTRONIC FILING**, I electronically filed the
11 document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case
12 who are registered CM/ECF users will be served by the CM/ECF system. Participants in the
case who are not registered CM/ECF users will be served by mail or by other mean permitted
by the court rules at the address(es) set forth below.

13 Andrea C. Wood
14 40 Hilldale Court
15 Orinda, CA 94563
16 Tel: 415-375-1686
Email: dreacwood@gmail.com

17 I declare under penalty of perjury under the laws of the State of California that the
18 foregoing is true and correct, and that this declaration was executed on August 13, 2019, at
19 Walnut Creek, California.

20 
21 Shannon Wurth