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9/10/2019
CENTRAL DISTRICT OF CALIFORNIA
BY: CW DEPUTY

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SUSAN SPELL, et al.,

Plaintiffs,

v.

COUNTY OF LOS ANGELES, et al.,

Defendants.

Case No. 2:19-06652 FMO (ADS)

**ORDER DENYING MOTION FOR
TEMPORARY RESTRAINING ORDER**

I. INTRODUCTION

Before the Court is a Motion for Temporary Restraining Order and for Preliminary Injunction and Order to Show Cause (“Motion for TRO and PI”) filed by pro se plaintiff Susan Spell (“Plaintiff”). [Dkt. No. 10]. Having reviewed the Motion for TRO and PI and all filings in support, the Complaint, and all other relevant filings, the Court **DENIES** Plaintiff’s Motion for TRO and PI to the extent she seeks a temporary restraining order (“TRO”).

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II. PROCEDURAL BACKGROUND

On July 31, 2019, Plaintiff and her co-plaintiff and son, B. Nicholas Evans (“Co-Plaintiff”), both proceeding pro se, filed a Complaint asserting claims under 42 U.S.C. § 1983 (“Section 1983”), the Fourteenth Amendment, the Racketeer Influenced and Corrupt Organizations Act (“RICO”), and California state law against eight named defendants and two unnamed defendants (collectively, “Defendants”). [Dkt. No. 1]. The alleged violations of Plaintiff’s rights occurred over the course of a divorce and ensuing custody dispute over Plaintiff’s four children. [Dkt. No. 1]. Defendants include the County of Los Angeles, four social workers with the Los Angeles County Department of Children and Family Services (“DCFS”), a Deputy Counsel for Los Angeles County, and two California Superior Court judges. [Dkt. No. 1, pp. 4-5, 14]. The record reflects service of the Summons on only one defendant, Mark Juhas. [Dkt. No. 14]. However, Plaintiff has submitted documentation that certain documents related to the Motion for TRO and PI were mailed to Defendants.¹ [Dkt. Nos. 20, 22]. No defendant has appeared in the case.

In the Complaint, Plaintiff and Co-Plaintiff assert that Defendants engaged in various misconduct related to the custody dispute between Plaintiff and her ex-husband and separate child abuse proceedings. [Dkt. No. 1]. Plaintiff and Co-Plaintiff allege that social worker defendants ignored evidence of Plaintiff’s ex-husband’s abuse of their children and falsified evidence that Plaintiff abused the children, that the county counsel

¹ Rule 65(b)(1) of the Federal Rules of Civil Procedure permit the issuance of temporary restraining orders without notice to the adverse party only where two circumstances are met, neither of which exist here. See Fed. R. Civ. P. 65.

1 fabricated evidence that Plaintiff's ex-husband is the children's biological father, and
2 that the judge defendants improperly found Plaintiff guilty of abuse and improperly
3 permitted Plaintiff's ex-husband to obtain and retain custody over the minor children.
4 [Dkt. No. 1]. Plaintiff asserts four claims: (1) violation of Section 1983; (2) violation of
5 the Fourteenth Amendment; (3) violation of RICO; and (4) loss of consortium. [Dkt.
6 No. 1]. Plaintiff and Co-Plaintiff seek punitive damages in the amount of seven-hundred
7 and fifty million dollars (\$750,000,000), compensatory damages in the amount of
8 seven-hundred and fifty million dollars (\$750,000,000), a permanent injunction
9 enjoining Defendants from further violation of Section 1983, the Fourteenth
10 Amendment, RICO, and common law, and reasonable attorney's fees and costs. [Dkt.
11 No. 1, p. 40].

12 **III. ANALYSIS**

13 **A. Motion for TRO and PI**

14 In the Motion for TRO and PI, Plaintiff seeks an order enjoining defendant
15 County of Los Angeles from enforcing the Juvenile Dependency Court's judgment issued
16 on May 11, 2016 and order issued July 7, 2016 in case DK02119 ("Juvenile Dependency
17 Orders") and the orders issued in Family Court case BD565529 ("Family Orders") that
18 awarded Plaintiff's ex-husband custody of the children. [Dkt. No. 10]. The
19 Memorandum in Support of the Motion for TRO and PI ("Memorandum") focuses
20 exclusively on the issuance of a preliminary injunction and does not discuss the need for
21 a TRO. [Dkt. No. 16].

22 In the Memorandum, Plaintiff reasserts many of the allegations in the Complaint
23 to argue that she will likely be successful on the merits. [Dkt. No. 16, pp. 5-12]. Plaintiff
24 then alleges her ex-husband is verbally, physically, and sexually abusing the minor

1 children to show that there is a substantial threat of irreparable harm if a preliminary
2 injunction does not issue. [*Id.*, pp. 13-16]. Plaintiff asserts that the Juvenile Dependency
3 Orders are the cause of this harm, that the irreparable harm itself shows that the
4 balance of the equities weighs in favor of granting an injunction, and that her likelihood
5 of success on the merits shows that an injunction would be in the public interest. [*Id.*,
6 pp. 17-18]. Further, Plaintiff attaches multiple exhibits reflecting documentation from
7 various stages of the state court litigation, three declarations, and various documents
8 reflecting social workers' and other investigations into allegations similar to those in the
9 Complaint. [*Id.*, pp. 22-201].

10 The two Declarations in support of the Motion for TRO and PI do not contain any
11 additional information. [Dkt. Nos. 12, 21]. Plaintiff also filed the Affidavit of M.A.
12 Melinda Wallace, which states that Ms. Wallace was told by a DCFS social worker,
13 Smith, that Smith "planned to testify about the truth [regarding Plaintiff's children]
14 despite her suffering reprisal" and that "Smith disclosed that her documentation in the
15 DCFS file was deleted regarding her questioning the children's safety with [the father]." [Dkt. No. 18, pp. 2-3]. Finally, in Plaintiff's "Affidavit Annexed in Support of Order to
16 Show Cause and Preliminary Injunction," Plaintiff attests that the California Supreme
17 Court awarded custody of Plaintiff's children to "a non-biological restrained person,"
18 and claims that her Fourth Amendment rights were violated. [Dkt. No. 13, pp. 13].

20 **B. Standard of Review**

21 The purpose of a TRO is to preserve the status quo before a preliminary
22 injunction hearing may be held; its provisional remedial nature is designed merely to
23 prevent irreparable loss of rights prior to judgment. See Granny Goose Foods, Inc. v.
24 Bhd. of Teamsters & Auto Truck Drivers, 415 U.S. 423, 438-39 (1974) (noting that a

1 TRO is restricted to its “underlying purpose of preserving the status quo and preventing
2 irreparable harm just so long as is necessary to hold a hearing, and no longer”). A
3 preliminary injunction is an “extraordinary remedy never awarded as of right.” Winter
4 v. Natural Res. Def. Council, Inc., 555 U.S. 7, 24 (2008).

5 The standards for issuing a TRO and a preliminary injunction are “substantially
6 identical.” Stuhlbarg Int’l Sales Co. v. John D. Brushy & Co., 240 F.3d 832, 839 n.7 (9th
7 Cir. 2001) (overruled on other grounds). The Ninth Circuit recognizes two tests for
8 demonstrating preliminary injunctive relief. Cassim v. Bowen, 824 F.2d 791, 795 (9th
9 Cir. 1987). A plaintiff seeking preliminary injunctive relief “must establish that he is
10 likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence
11 of preliminary relief, that the balance of equities tips in his favor, and that an injunction
12 is in the public interest.” Am. Trucking Ass’n, Inc. v. City of Los Angeles, 559 F.3d 1046,
13 1052 (9th Cir. 2009) (quoting Winter, 555 U.S. at 20)). Alternatively, “serious questions
14 going to the merits and a hardship balance that tips sharply toward the plaintiff can
15 support issuance of an injunction, assuming the other two elements of the Winter test
16 are also met.” Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1132 (9th
17 Cir. 2011) (internal quotation omitted).

18 **C. Plaintiff Fails to Establish Necessary Elements to Obtain a TRO**

19 As a preliminary matter, it is not clear that Defendants have had notice of
20 Plaintiff’s Motion for TRO and PI. However, even if Defendants have been properly
21 noticed, Plaintiff has failed to establish the necessary elements to obtain a TRO. Read
22 together, the Motion for TRO and PI and accompanying documents fail to establish that
23 Plaintiff is likely to succeed on the merits, that the balance of equities tips in her favor,
24 or that an injunction is in the public interest. See Am. Trucking Ass’n, Inc. v. City of Los

1 Angeles, 559 F.3d 1046, 1052 (9th Cir. 2009).

2 Plaintiff has not shown that she is likely to succeed on the merits to the extent she
3 seeks an injunction of the state court orders because such claims are barred by the
4 Rooker-Feldman doctrine. The Rooker-Feldman doctrine provides that federal district
5 courts may exercise only original jurisdiction; they may not exercise appellate
6 jurisdiction over state court decisions. See District of Columbia Court of Appeals v.
7 Feldman, 460 U.S. 462, 482, 482-86 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413,
8 416 (1923). The Rooker-Feldman doctrine applies when a plaintiff in federal court
9 alleges a “de facto appeal” by (1) asserting errors by the state court as an injury, and (2)
10 seeking relief from the state court judgment as a remedy. Kougasian v. TMSL, Inc., 359
11 F.3d 1136, 1139-40 (9th Cir. 2004).

12 Here, to the extent Plaintiff challenges the outcome of her state court custody
13 proceedings, any such challenge must be made through the state court appellate
14 process. See Bennett v. Yoshina, 140 F.3d 1218, 1223 (9th Cir. 1998) (noting that the
15 rationale behind the Rooker-Feldman doctrine “is that the only federal court with the
16 power to hear appeals from state courts is the United States Supreme Court”). Second,
17 it appears some, if not all, of Plaintiff’s factual allegations related to her ex-husband’s
18 and social workers’ conduct have been heard by the state courts. See [Dkt. No. 16,
19 pp. 15-27 (referencing allegations of physical and sexual assault and allegations that
20 Plaintiff’s ex-husband is not the children’s biological father)]. To the extent Plaintiff has
21 presented her claims to state courts in her attempts to set aside the child custody orders,
22 these claims fall within the Rooker-Feldman doctrine and are barred. See Safapou v.
23 Marin Cty. of Cal., 2018 WL 4381552, at *4 (N.D. Cal. Jan. 23, 2018) (finding claims
24 that “mirror” those raised in state court child custody proceedings barred by Rooker-

1 Feldman).

2 Plaintiff relies on Rhoades v. Penfold, 694 F.2d 1043, 1046-47 (5th Cir. 1983), to
3 argue that the Rooker-Feldman doctrine should not apply. Plaintiff misunderstands
4 Rhoades, which was limited to allegations that the lack of counsel in the proceeding
5 itself constituted a deprivation of constitutional rights rather than the substantive
6 outcome of the proceeding. Rhoades, 694 F.2d at 1047 (“Significantly, Rhoades was not
7 claiming that the district court should review the state court’s rulings on the substantive
8 issues involved in the termination proceeding.”). Further, Rhoades is not binding on
9 this Court, while Ninth Circuit precedent is binding on this Court.

10 Finally, the purpose of a temporary restraining order is to preserve the status quo
11 pending the complete briefing and thorough consideration contemplated by full
12 proceedings pursuant to a preliminary injunction. See Granny Goose Foods, Inc. v. Bhd.
13 of Teamsters & Auto Truck Drivers, 415 U.S. 423, 438-39 (1974) (noting that a TRO is
14 restricted to its “underlying purpose of preserving the status quo and preventing
15 irreparable harm just so long as is necessary to hold a hearing, and no longer”).
16 Plaintiff asserts that the order she seeks is necessary because her ex-husband is verbally,
17 physically, and sexually abusing the minor children. While the alleged conduct Plaintiff
18 describes is serious, it is not clear how issuance of the requested temporary restraining
19 order will preserve the status quo as it relates to this case.

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1 **IV. CONCLUSION**

2 For the foregoing reasons, Plaintiff's Motion for a TRO and PI [Dkt. No. 3] is
3 **DENIED** to the extent it seeks a TRO. To the extent Plaintiff seeks a preliminary
4 injunction, the matter will be heard as noticed in the motion.

5 **IT IS SO ORDERED.**

6 Dated: September 10, 2019

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_____/s/_____
THE HONORABLE FERNANDO M. OLGUIN
United States District Judge

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11 Presented by:

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_____/s/ Autumn D. Spaeth_____
THE HONORABLE AUTUMN D. SPAETH
United States Magistrate Judge

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