15-705cv

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JEFFREY PITRE, SR. AND AWENHA PITRE,
Individually and on Behalf of Their Children,
DP, SK, DP, SP, EP and JP

Plaintiffs-Appellants,

-against-

LORRIE A. SHENANDOAH; JAMES DOOLEY;
ONONDAGA SOCIAL SERVICES DEPARTMENT;
OSWEGO SOCIAL SERVICES DEPARTMENT;
AND ONONDAGA NATION

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

BRIEF FOR DEFENDANTS-APPELLEES, ONONDAGA SOCIAL SERVICES DEPARTMENT

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JURISDICTIONAL STATEMENT

Plaintiffs appeal from a Memorandum-Decision and Order and a final Judgment of the District Court for the Northern District of New York both entered on February 17, 2015. (Onondaga Co. App. pp. A146-A156 [Dist. Ct. Doc. ## 45, 46]). Pitre v. Shenandoah, 2015 WL 667540 (N.D.N.Y.). The district court had original jurisdiction of the matter pursuant to 28 U.S.C. §1331 and 42 U.S.C. §1983 based on allegations that the Defendants are wrongfully withholding custody of the minor children from Plaintiffs in violation of Plaintiffs' Federal constitutional rights. Plaintiffs also alleged violations of the New York State Constitution and law. The United States Court of Appeals for the Second Circuit acquired jurisdiction over this matter pursuant to 28 U.S.C. §1291 and Federal Rules of Appellate Procedure, Rule 4(a), when Plaintiffs filed a Notice of Appeal on March 9, 2015.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

Whether the district court's granting of judgment dismissing Plaintiffs' claims of violations of their Federal and State constitutional rights and State law was proper. Plaintiffs present two issues for review: whether the Rooker-Feldman doctrine requires dismissal of the Complaint; and whether the Indian Child Welfare Act (ICWA) supports dismissal of the Complaint.

Defendants assert that the district court's granting of judgment dismissing Plaintiffs' Complaint was proper on the grounds that the Rooker-Feldman doctrine requires dismissal of the Complaint and ICWA supports dismissal of the Complaint.

For the purposes of this appeal Defendant Onondaga Social Services Department (Onondaga County) will address the issues concerning the Rooker-Feldman doctrine in its principal brief, and Defendants Shenandoah and the Onondaga Nation (the Nation) will address the issues concerning ICWA in their principal brief. Onondaga County hereby adopts and incorporates the arguments set forth by the Nation on the issues concerning ICWA.

STATEMENT OF THE CASE

A. Nature Of The Case And The District Court's Decision.

The underlying action involved claims brought pursuant to 42 U.S.C. §1983 alleging that Defendants are wrongfully withholding custody of Plaintiffs' minor children from Plaintiffs in violation of Plaintiffs' Federal constitutional rights. Additionally, Plaintiffs allege violations of their State constitutional rights and State law. Plaintiffs appeal the Memorandum-Decision and Order, and Judgment, of the Honorable David N. Hurd (D.C.J.), dated February 17, 2015, which granted Defendants' motions to dismiss and dismissed the Complaint in its entirety on the grounds that ICWA provides the Nation with exclusive jurisdiction over the issue of the children's custody and therefore the District Court lacked subject matter jurisdiction, and on the grounds that the Rooker-Feldman doctrine barred Plaintiffs' claims and requested relief. (Onondaga Co. App. pp. A146-A154). Pitre v. Shenandoah, 2015 WL 667540.

B. Course of the Proceedings

On February 6, 2013, pursuant to ICWA, the Oswego County Family Court transferred jurisdiction of an abuse/neglect proceeding, involving the children who are the subject of these proceedings, to the jurisdiction of the Nation. (Onondaga Co. App. pp. A59-A61). On or about August 6, 2013, Plaintiff Jeffrey Pitre filed a Petition for

Custody in Onondaga County Family Court seeking custody of the subject children. (Onondaga Co. App. pp. A81-A87). Summonses were issued in the custody matter on February 20, 2014. (Onondaga Co. App. p. A80). By Notice of Motion to Dismiss and Counterclaim, dated March 13, 2014, the Nation moved to have the Petition for Custody dismissed on several grounds, including lack of subject matter and personal jurisdiction pursuant to ICWA. (Onondaga Co. App. pp. A89-A91). On March 18, 2014, Plaintiffs, *pro se*, filed their Complaint in the Northern District. (Onondaga Co. App. pp. A8-A22). On July 14, 2014, the Onondaga County Family Court granted the Nation's motion to dismiss the Petition for Custody, in its entirety, on the grounds that the Court lacked jurisdiction. (Onondaga Co. App. pp. A93-A94). On July 22, 2014, the Nation filed a Motion to Dismiss the district court Complaint, pursuant to FRCP Rules 12(b)(1) and 12(b)(2), and Rules 19(a) and (b). (Onondaga Co. App. pp. A23-A73). On August 13, 2014, Onondaga County filed a Motion to Dismiss the pleadings filed in this matter pursuant to FRCP Rules 8 and 12(b)(6). (Onondaga Co. App. pp. A74-A94). On October 9, 2014, Defendant Oswego Social Services Department [Oswego County] filed a Motion to Dismiss the pleadings pursuant to FRCP Rules 8, 12(b)(1) and 12(b)(6). (Onondaga Co. App. pp. A105-A114). On October 14, 2014, Plaintiffs filed a response to the Nation's and Onondaga County's motions to dismiss by filing what purported to be an opposition to dismissal and cross-motion for leave to

amend the complaint and file a late notice of claim. (Onondaga Co. App. pp. A115-A117). On October 27, 2014, the Nation filed a Reply to the Plaintiffs' response to the motions to dismiss. (Onondaga Co. App. pp. A118-A142). On October 28, 2014, Onondaga County filed a Reply to Plaintiffs' response to the motions to dismiss. (Onondaga Co. App. pp. A143-A145). On November 26, 2014, Oswego County submitted a Reply Memorandum of Law in Support of Motion to Dismiss in reply to Plaintiffs' response to the motions to dismiss. (Dist. Ct. Doc. No. 43).

SUMMARY OF THE ARGUMENT

The granting of Defendants' motions for dismissal was proper. Plaintiffs' claims and requested relief are barred by the Rooker-Feldman doctrine. Additionally, Plaintiffs' claims are precluded by the doctrines of res judicata and/or collateral estoppel. Furthermore, the "domestic relations exception" bars the federal courts from hearing this matter. Finally, as is argued in the Nation's principal brief, and adopted and incorporated herein, ICWA is applicable and provides the Nation with exclusive jurisdiction over the children's custody, and therefore, the district court lacks subject matter jurisdiction in this matter.

STANDARD OF REVIEW

This Court reviews *de novo* a district court's decision dismissing a matter for lack of subject-matter jurisdiction. Hoblock v. Albany County Board of Elections, 422 F.3d 77, 83 (2nd Cir. 2005).

ARGUMENT

POINT I

THE DISTRICT COURT PROPERLY DISMISSED THE COMPLAINT PURSUANT TO THE ROOKER-FELDMAN DOCTRINE

The Rooker-Feldman doctrine bars district courts from hearing cases "brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those arguments". Hoblock v. Albany County Board of Elections, 422 F.3d at 85 citing Exxon Mobil Corp. v. Saudi Basic Industries Corp., 544 U.S. 280, 283-284 (2005). In determining whether the Rooker-Feldman doctrine is applicable four requirements must be met, namely, the federal court plaintiff must have lost in state court; the injuries complained of must have been caused by the state court judgment; the plaintiff must invite district court review and rejection of the state court judgment; and the state-court judgment must have been rendered before the district court proceedings commenced. See Hoblock v. Albany County Board of Elections,

422 F.3d at 85. All four requirements are met in this matter.

First, Plaintiffs did not win their case in the Oswego County Family Court proceeding. In fact, the Family Court judge transferred jurisdiction of the proceedings, including custody of the children, to the Nation. (Onondaga Co. App. pp. A59-A61). The Family Court matter was not dismissed in Plaintiffs' favor, but rather the Family Court judge determined that jurisdiction over the matter properly belonged with the Nation pursuant to ICWA. Plaintiffs' reliance on the Corrected Order of Dismissal annexed to their brief is misplaced in that the order does not stand on its own. The Corrected Order of Dismissal was issued in conjunction with the order transferring jurisdiction and therefore was merely a procedural requirement in light of the transfer of jurisdiction to the Nation. Furthermore, the Corrected Order of Dismissal was not part of the record before the district court and therefore should be stricken from this appellate proceeding. (Addendum to Appellants' Brief on Appeal, pp. 68-69). As the matter was transferred to the jurisdiction of the Nation, it cannot be argued that it was terminated in Plaintiffs' favor as physical custody of the children was not returned to Plaintiffs pursuant to the order. Plaintiffs never appealed the state court decision that ICWA was applicable in the Family Court matter, and further never appealed the state court decision transferring jurisdiction of the Family Court matter and custody of the children to the Nation. As a result, Plaintiffs were losers in the state court action.

Second, the injuries of which Plaintiffs complain are a direct result of the Family Court decision that ICWA was applicable, and the order transferring jurisdiction to the Nation. The Complaint seeks the return of physical custody of the children to Plaintiffs, and alleges that Defendants, collectively, have detained and held custody of the children. (Onondaga Co. App. p. A10, par. 16). The Complaint further alleges that Plaintiffs have not had care and custody of their children since September 2012. (Onondaga Co. App. p. A12, par. 21). Plaintiffs newly asserted argument that they are only addressing the continued denial of custody since the Family Court order dismissing the state court action is belied by the fact that they have sued both Onondaga and Oswego Counties neither of which have any control or custody over the children who are under the jurisdiction of the Nation. Furthermore, the Complaint makes clear that Plaintiffs are seeking redress for the removal of the children from their custody from September 2012, when they were placed in foster homes under the state court action, until the present, pursuant to the jurisdiction of the Nation. Clearly the injuries of which Plaintiffs complain are inextricably intertwined with the state court judgment herein. The children are under the care and custody of the Nation and placed in Nation foster homes as a result of the state court decision finding that ICWA was applicable in the Family Court matter, and therefore issuing an order transferring jurisdiction to the Nation. This situation is similar to that analogized in Hoblock,

where this Court held "if the state has taken custody of a child pursuant to a state judgment, the parent cannot escape Rooker-Feldman simply by alleging in federal court that he was injured by the state employees who took his child rather than by the judgment authorizing them to take the child". Hoblock v. Albany County Board of Elections, 422 F.3d at 88. In fact, this Court set forth the formula for inquiries regarding whether the injury alleged in the federal action was caused by the state court judgment. "A federal suit complains of injury from a state-court judgment, even if it appears to complain only of a third party's actions, when the third party's actions are produced by a state-court judgment and not simply ratified, acquiesced in or left unpunished by it. Where a state-court judgment causes the challenged third-party action, any challenge to that third-party action is necessarily the kind of challenge to the state judgment that only the Supreme Court can hear. Id. Here, it is clear that Defendants' alleged actions were produced by the state court judgment recognizing the applicability of ICWA and transferring jurisdiction of the matter to the Nation. As a result, the district court has no jurisdiction over this matter. Id.

Third, Plaintiffs are clearly inviting the district court to review and reject the Family Court judgment. Plaintiffs make a point of arguing that Plaintiff father is not subject to the jurisdiction of the Nation on the grounds that he is not Native American, and that, consequently, the Nation has no jurisdiction over the father's children.

(Onondaga Co. App. p. A17, par. 53). In effect, Plaintiffs are arguing that ICWA does not apply in this matter. It should be noted that Plaintiffs appeared with counsel during the Oswego County Family Court proceedings, and did not object to the applicability of ICWA, did not object to the permanency report concerning the foster placements of the children and consented to jurisdiction of the Family Court proceedings being transferred to the Nation. (Onondaga Co. App. pp. A59-A61). Again, the determination that ICWA was applicable to the matter was made by the state court which then conferred jurisdiction of the state court matter to the Nation. It is this very determination, to which Plaintiffs never objected and never appealed, they are now seeking to have reviewed and rejected by the district court.

Finally, the state court judgment determining that ICWA was applicable and transferring the matter to jurisdiction of the Nation was made in January 2013, over a year before the filing of the Complaint herein. Therefore, the fourth prong of the test is met. Hoblock v. Albany County Board of Elections, 422 F.3d at 85.

As a result, the Rooker-Feldman doctrine is applicable herein, and as such, the district court correctly determined it did not have jurisdiction, and therefore the Memorandum-Decision and Order and a final Judgment of the district court entered on February 17, 2015 should be affirmed.

POINT II

THE STATE COURT DECISIONS PRECLUDE THE DISTRICT COURT FROM HEARING THIS MATTER

Assuming *arguendo* that this Court determines that the Rooker-Feldman doctrine is not applicable, this matter should still be dismissed on the grounds that it has been precluded by the state court judgments.

The Full Faith and Credit Act [28 U.S.C. §1738] requires that a federal court "give the same preclusive effect to a state-court judgment as another court of that State would give". Exxon Mobil Corp. v. Saudi Basic Industries Corp., 544 U.S. at 293 citing Parsons Steel Inc. v. First Alabama Bank, 474 U.S. 518 (1986) [further citations omitted]. In this matter, New York preclusion law would apply. Hoblock v. Albany County Board of Elections, 422 F.3d at 93. Here, the district court is precluded from hearing this matter due to the doctrines of collateral estoppel and *res judicata*.

A. Collateral Estoppel Applies Herein.

Plaintiffs' claims regarding the applicability of ICWA and transfer of jurisdiction of the Oswego County Family Court matter and custody of the children to the Nation are subject to collateral estoppel. Under New York law, in order for collateral estoppel to apply, the issue in question must have actually and necessarily been decided in a prior proceeding, and the party against whom collateral estoppel is

being asserted must have had a full and fair opportunity to litigate the issue in the previous proceeding. See Id. at 94.

The Oswego County Family Court proceedings and decision actually and necessarily decided the issue of the applicability of ICWA, and the issues of jurisdiction of the Family Court proceedings and custody of the children. (Onondaga Co. App. pp. A59-A61). Plaintiffs appeared with counsel during the Oswego County Family Court proceedings, did not object to the permanency report which was submitted concerning the foster placements of the children and consented to jurisdiction of the Family Court proceedings being transferred to the Nation. (Onondaga Co. App. pp. A59-A61). At no time did Plaintiffs object to the applicability of ICWA, to the jurisdiction of the matter being transferred to the Nation, or to custody of the children being transferred to the Nation. Nor did Plaintiffs file an appeal. Clearly, Plaintiffs had a full and fair opportunity to litigate the issues concerning the applicability of ICWA, the Nation's jurisdiction and custody of the children, but instead stipulated to the Family Court order regarding these issues. As a result, Plaintiffs cannot now seek a reversal of that Family Court order in these proceedings.

As the issues presented to the district court were actually and necessarily decided by Oswego County Family Court, and Plaintiffs had a full and fair opportunity

to litigate those issues in Family Court, Plaintiffs are collaterally estopped from having the district court hear those issues.

B. The Doctrine of *Res Judicata* is Applicable.

Plaintiffs' claims are also barred by the doctrine of *res judicata*. Under this doctrine "once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy." O'Brien v. City of Syracuse, 54 N.Y.2d 353, 357 (1981). See Hoblock v. Albany County Board of Elections, 422 F.3d at 95. Additionally, the question turns on whether Plaintiffs were parties or were in privity with parties to the state court matters. See Hoblock v. Albany County Board of Elections, 422 F.3d at 95.

In regard to the Oswego County Family Court order, as Plaintiffs were both named as respondents in those proceedings, and the issues of the applicability of ICWA, the jurisdiction of the Nation, and custody were brought to a final conclusion, Plaintiffs are barred under the doctrine of *res judicata* from presenting their claims in this proceeding.

Subsequent to the proceedings in Oswego County Family Court, but prior to the Complaint filed herein, Plaintiff Jeffrey Pitre sought to obtain custody of the children in Onondaga County Family Court. Plaintiff Jeffrey Pitre filed the instant Complaint

while the Petition for Custody was pending in Onondaga County. While the Rooker-Feldman doctrine was not triggered in relation to the ongoing Onondaga County Family Court custody proceeding, once that action was complete, the federal action was governed by preclusion law. See Exxon Mobil Corp. v. Saudi Basic Industries Corp., 544 U.S. at 292-93.

On or about August 6, 2013, Plaintiff Jeffrey Pitre filed a Petition in Onondaga County Family Court seeking custody of the subject children alleging allegations similar to those contained herein. (Onondaga Co. App. pp. A81-A87). The Petition repeatedly references Plaintiff Awenha Pitre and her wishes regarding care and custody of the children, and specifically states that Plaintiff Awenha Pitre consents to and joins in Plaintiff Jeffrey Pitre's application for the return of care and custody to them. (Onondaga Co. App. pp. A81-A87). A Summons was issued in the custody matter on February 20, 2014. (Onondaga Co. App. p. A80). By Notice of Motions to Dismiss and Counterclaim, dated March 13, 2014, the Nation moved to have the Petition for Custody dismissed on several grounds, including lack of subject matter and personal jurisdiction pursuant to ICWA. (Onondaga Co. App. pp. A89-91). On March 18, 2014, Plaintiffs, *pro se*, filed their Complaint in the Northern District. (Onondaga Co. App. pp. A8-A22). On July 14, 2014, the Onondaga County Family Court granted the Nation's motion to dismiss the Petition for Custody, in its entirety, on the grounds

that the Court lacked jurisdiction. (Onondaga Co. App. pp. A93-A94).

Clearly, the Onondaga County Family Court decision gave full faith and credit to the Oswego County Family Court decision (Onondaga Co. App. pp. A59-A61). Additionally, Onondaga County Family Court made the determination that it had no jurisdiction over the matter of custody due to the application of ICWA, and the fact that jurisdiction resided with the Nation. Furthermore, as is clear from the Petition for Custody filed by Plaintiff Jeffrey Pitre, Awenha Pitre was in privity to her husband during the custody proceedings, and in fact, was named as a respondent in those proceedings. (Onondaga Co. App. pp. A81-A87). Finally, with the exception of Oswego County, the remaining Defendants herein were named as respondents in the custody proceeding. (Onondaga Co. App. pp. A81-A87). Therefore, all of the requirements of *res judicata* have been met, and Plaintiffs are precluded from presenting their claims in this matter. As a result, the lower court decision should be affirmed.

POINT III

THE "DOMESTIC RELATIONS EXCEPTION" APPLIES HEREIN

As referenced by the district court, the "domestic relations exception" is applicable herein. (Onondaga Co. App. p. A153, ftnt. 9). Pitre v. Shenandoah, 2015 WL 667540 *4, FN9. It is well-settled that "the whole subject of the domestic

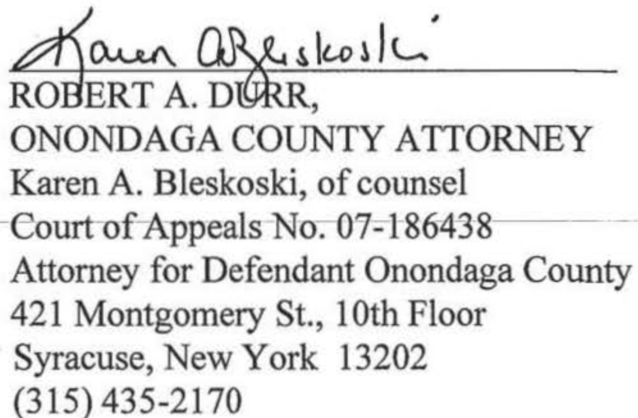
relations of husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States. In re Burrus, 136 U.S. 586, 593-94 (1890). The Supreme Court has recognized the "domestic relations exception" divesting the federal courts of the power to issue child custody decrees. See Elk Grove Unified Sch. Dist. v. Newdow, 542 U.S. 1, 12-13 (2004) citing Ankenbrandt v. Richards, 504 U.S. 689, 703 (1992).

Here, Plaintiffs seek to have the district court issue a custody order returning the subject children to their care and custody. (Onondaga Co. App. pp. A10, A18). Additionally, Plaintiffs seek the ancillary relief of monetary damages as a result of the current custody issues. (Onondaga Co. App. pp. A10-A11, A18-A19). Clearly the "domestic relations exception" is applicable herein and the district court is divested of the power to issue a custody order regarding the subject children. Likewise, as the request for monetary damages is ancillary to the custody issue, that request must also be dismissed. As such, the Complaint was properly dismissed in its entirety and the district court order and judgment should be affirmed.

CONCLUSION

For all of the foregoing reasons, as well as those set forth in the Nation's principal brief, it is respectfully submitted that this Court should affirm the Memorandum-Decision and Order and final Judgment entered on February 17, 2015, granting Defendants' motions to dismiss and dismissing Plaintiffs' Complaint in its entirety, and grant such other and further relief as the Court deems just and proper.

Dated: July 29, 2015



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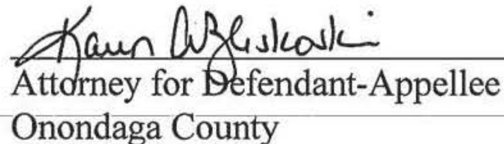

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