No. 22-40378

In the United States Court of Appeals

for the Fifth Circuit

JOE BLESSETT,
Plaintiff-Appellant,

v.

GREG ABBOTT; KEN PAXTON; STEVEN C. MCCRAW; XAVIER BECERRA; UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; ANTHONY BLINKIN, UNITED STATES DEPARTMENT OF STATE; UNITED STATES; CITY OF GALVESTON; SINKIN LAW FIRM,
Defendants-Appellees.

On Appeal from the United States District Court
for the Southern District of Texas, Galveston Division
Case No. 3:22-cv-00009

BRIEF OF APPELLEES AND RESPONSE TO APPELLANT'S "INJUNCTION FOR AN ESTOPPEL OF TITLE IV-D ADMINISTRATIVE ENFORCEMENT AGAINST THE APPELLANT"

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CERTIFICATE OF INTERESTED PERSONS

JOE BLESSETT,
Plaintiff-Appellant,

v.

GREG ABBOTT; KEN PAXTON; STEVEN C. MCCRAW; XAVIER BECERRA; UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; ANTHONY BLINKIN, UNITED STATES DEPARTMENT OF STATE; UNITED STATES; CITY OF GALVESTON; SINKIN LAW FIRM,
Defendants-Appellees.

Under the fourth sentence of Fifth Circuit Rule 28.2.1, Appellees Greg Abbott, Ken Paxton, and Steven McCraw, as a governmental parties, need not furnish a certificate of interested persons.

/s/ Johnathan Stone
JOHNATHAN STONE
Counsel of Record for State Defendants-Appellees Greg Abbott, in his official capacity as Governor of Texas, Ken Paxton, in his official capacity as Attorney General for Texas, and Steven C. McCraw, in his official capacity as Executive Director for the Department of Public Safety

STATEMENT REGARDING ORAL ARGUMENT

State Appellees do not believe oral argument is necessary in this case, as the briefing amply demonstrates that Blessett's claims are barred by Eleventh Amendment immunity and the *Rooker-Feldman* doctrine.

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STATEMENT OF JURISDICTION

The District Court had jurisdiction under 28 U.S.C. § 1331. This Court has jurisdiction under 28 U.S.C. § 1291. The District Court entered a final judgment dismissing Blessett's suit with prejudice on May 17, 2022. ROA.1691. Blessett timely filed a notice of appeal on June 14, 2022. ROA.1703.

STATEMENT OF ISSUES PRESENTED

Issue I: Do federal courts have subject matter jurisdiction over Blessett's claims, which are not subject to the *Ex Parte Young* exception because he seeks monetary compensation for past alleged wrongs, or are they barred by Eleventh Amendment immunity?

Issue II: Are Blessett's claims, which necessarily challenge the validity of the state-court child-support judgments rendered against him, barred by the *Rooker-Feldman* doctrine?

Issue III: Has Blessett stated a claim for relief under any of the myriad of contract-based claims and constitutional challenges in his Complaint? [1]

[1] Issue III also addresses the arguments in Blessett's "Injunction for an Estoppel of Title IV-D Administrative Enforcement Against the Appellant." Blessett's motion contains exactly the same arguments as his brief.

STATEMENT OF THE CASE

On July 23, 1999, a Galveston County court entered a Final Decree of Divorce between Blessett and his ex-wife. ROA.1295. That decree established Blessett's paternity over his name-sake child born during the marriage and ordered Blessett to make child support payments of $800 each month. *Id.*

Blessett refused to comply with his child-support obligations. *Id.* So, 16 years later, his ex-wife retained the Sinkin Law Firm, which obtained a state-court judgment against Blessett for child support arrears of roughly $130,000. ROA.1681. Just as he had with his child-support obligations, Blessett refused to comply with that child-support judgment. ROA.1295. After a year of Blessett's noncompliance, Blessett's ex-wife obtained a writ of withholding. *Id.* That writ garnished Blessett's wages and placed a lien on his real property. *Id.* Blessett's wife ultimately foreclosed on Blessett's real property, which was sold at auction to satisfy a portion of Blessett's outstanding child-support arrears. ROA.1296–97. That was December 5, 2017. *Id.* The next day, Blessett filed the first of what are now six federal lawsuits relating to his child-support obligations. ROA.1298.

This case, the sixth, was filed in January 2022. ROA.13. His 109-page Complaint was, in the words of the District Court, "frivolous and difficult to understand." ROA.1682. Among the defendants were the State Appellees—Governor Greg Abbott; Attorney General Ken Paxton; and Steven McCraw, the Director of the Texas Department of Public Safety—whom he sued solely in their official capacities for garnishing his wages and revoking his driver's license due to his outstanding child support arrears. ROA.1096–1107.

The State Appellees moved to dismiss, ROA.357, and the District Court dismissed for lack of jurisdiction on May 7, 2022. ROA.1680. The District Court summarized Blessett's blunderbuss litigation thusly:

> This is at least the sixth federal case Blessett has filed to challenge his child-support obligations.[1] He has also filed two *certiorari* petitions to the Supreme Court, both of which were denied.[2] In this particular case, he has spammed the court with numerous and sundry filings, including many groundless motions for injunctive relief, two apparently identical motions for partial summary judgment, and a petition for habeas corpus—despite not being in custody. It all amounts to a ridiculous waste of time and resources. The court warns Blessett that his continued abuse of the judicial system may result in his being declared a vexatious litigant, which will limit his access to the court. Monetary sanctions will also not be out of the question for any future frivolous litigation.
>
> Basically, Blessett needs to pay his child support and keep his fatuous drivel out of this court's files.

ROA.1690–91.

STANDARD OF REVIEW

This Court reviews *de novo* a district court's rulings on motions to dismiss for failure to state a claim and lack of subject-matter jurisdiction. *Taylor v. Acxiom Corp.*,

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[1] *See, e.g., Blessett v. Sinkin Law Firm*, No. 3:17-CV-370, 2018 WL 1932386 (S.D. Tex. Apr. 23, 2018); *Blessett v. Jacoby*, No. 3:18-CV-00153, 2018 WL 5014146 (S.D. Tex. Oct. 16, 2018); *Blessett v. Texas Off. of Att'y Gen. Galveston Cnty. Child Support Enf't Div.*, No. 3:17-CV-164, 2018 WL 836058, at *1 (S.D. Tex. Feb. 12, 2018), *aff'd in part, vacated in part,* 756 F. App'x 445 (5th Cir. 2019), *on remand*, 2019 WL 4034304 (S.D. Tex. Aug. 27, 2019), *aff'd*, No. 20-40135, 2021 WL 4726598 (5th Cir. Oct. 8, 2021); *Blessett v. Garcia*, No. 3:18-CV-137 (S.D. Tex. Oct. 23, 2019), *aff'd*, 816 Fed. App'x 945 (5th Cir. 2020).

[2] *See Blessett v. Garcia*, 141 S. Ct. 622 (2020); *Blessett v. Texas Off. of Att'y Gen. Galveston Cnty. Child Support Enf't Div.*, 142 S. Ct. 1365 (2022).

612 F.3d 325, 331 (5th Cir. 2010).

SUMMARY OF THE ARGUMENT

The Court should affirm the district court's ruling that it lacks subject matter jurisdiction. The State Appellees are immune to Blessett's damages claims under the Eleventh Amendment, and the *Rooker-Feldman* doctrine bars Blessett's claims relating to his state-court child-support judgment.

The Court should similarly affirm the district court's ruling that Blessett categorically failed to state a contract-based claim. It was correct that (1) Blessett's state-court child-support obligations are not a contract and (2) that heterosexual males do not have a constitutionally protected right to engage in consequence-free recreational sex with their spouses.

Finally, Blessett failed to state a contract-based claim arising from his so-called "notice of acceptance" letters to State Appellees because there was no meeting of the minds, nor acceptance and consent by the State Appellees.

ARGUMENT

The claims and defenses involving the State and Federal Appellees are substantially similar; therefore, in the interest of brevity and judicial economy, State Appellees join the arguments made by Federal Appellees in their brief.

I. BLESSETT'S DAMAGES CLAIMS AGAINST THE STATE APPELLEES ARE BARRED BY SOVEREIGN IMMUNITY.

"[A]bsent waiver by the State or valid congressional override, the Eleventh Amendment bars a damages action against a State in federal court." *Kentucky v. Graham*, 473 U.S. 159, 169 (1985). Here, Congress has not abrogated Texas's sovereign immunity, and Texas has not waived it.

Blessett's claims do not fall within the limited exception identified in *Ex parte Young*. *Edelman v. Jordan*, 415 U.S. 651, 664–68 (1974) (providing a general overview of the doctrine). Under the *Ex parte Young* exception, Eleventh Amendment immunity may be overcome when the suit "seeks prospective, injunctive relief from a state actor, in [his] official capacity, based on an alleged ongoing violation of the federal constitution" or other federal law. *K.P. v. LeBlanc*, 729 F.3d 427, 439 (5th Cir. 2013); *McCarthy ex rel. Travis v. Hawkins*, 381 F.3d 407, 413–14 (5th Cir. 2004). Determining whether the doctrine applies requires only "a 'straightforward inquiry' into whether the complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective." *Verizon Md., Inc. v. Public Serv. Com'n of Md.*, 535 U.S. 635, 645 (2002) (quoting *Idaho v. Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, 296, 298–299 (1997)).

Blessett's complaint, which seeks more than $100 million in monetary damages from State Appellees for, among other things, failing to respond to a "notice" he sent them, fails this straightforward inquiry. ROA.1065–68. The *Ex parte Young* doctrine does not permit claims for monetary damages for past conduct, which are squarely barred by a State's sovereign immunity. *Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 146 (1993) ("[T]he [*Young*] exception is narrow: It applies only to prospective relief, [and] does not permit judgments against state officers declaring that they violated federal law in the past."). Blessett's damages claims against State Appellees are barred by the Eleventh Amendment; the District Court correctly dismissed them for lack of subject-matter jurisdiction.

II. BLESSETT'S CLAIMS ATTACKING THE VALIDITY OF THE CHILD-SUPPORT JUDGMENTS ARE BARRED BY THE *ROOKER-FELDMAN* DOCTRINE.

A. *ROOKER-FELDMAN* PROHIBITS FEDERAL-COURT ASSAULTS ON STATE-COURT RULINGS.

The *Rooker-Feldman* doctrine bars a federal court from entertaining collateral attacks on state-court judgments. *United States v. Shepard*, 23 F.3d 923, 924 (5th Cir. 1994). In short, it deprives federal courts of jurisdiction to consider "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 judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005)); *Johnson v. De Grandy*, 512 U.S. 997, 1005-06 (1994). To permit otherwise would enable "litigants [to] obtain review of state court actions by filing complaints about those actions in lower federal courts cast in the form of civil rights suits." *Hale v. Harney*, 786 F.2d 688, 691 (5th Cir. 1986); *Liedtke v. State Bar of Tex.*, 18 F.3d 315, 317 (5th Cir. 1994).

The doctrine extends beyond obvious challenges. If a plaintiff's claims "are 'inextricably intertwined' with a state judgment, the court is 'in essence being called upon to review the state-court decision,' and the originality of the district court's jurisdiction precludes such a review." *Shepard*, 23 F.3d at 924 (citing *D.C. Ct. of Appeals v. Feldman*, 460 U.S. 462, 482 (1983)). A plaintiff cannot "circumvent this jurisdictional limitation by asserting claims not raised in the state court proceedings or claims framed as original claims for relief," if these claims are "inextricably intertwined with a state judgment." *Turner v. Cade*, 354 F. App'x 108, 111 (5th Cir. 2009) (quoting *United States v. Shepherd*, 23 F.3d 923, 924 (5th Cir. 1994)).

B. BLESSETT'S CLAIMS ARE INEXTRICABLY INTERTWINED WITH STATE-COURT JUDGMENTS AND WERE PROPERLY DISMISSED FOR LACK OF JURISDICTION.

This Court has consistently applied the *Rooker-Feldman* doctrine as a bar to federal jurisdiction over matters related to divorce and child support. *See Evans v. Williamson Cty. Gov't*, No. 1:15-CV-436-SS, 2015 WL 4621449, at *4 (W.D. Tex. May 28, 2015) (collecting cases), *rec. accepted*, 2015 WL 4624708 (W.D. Tex. July 31, 2015); *see, e.g., McCormick v. Dempster*, 82 F. App'x 871, 2003 WL 22922312, at *1 (5th Cir. Dec. 9, 2013) (per curiam) (affirming dismissal under *Rooker-Feldman* of claim that due-process rights were violated "by a state court's entry of a child custody order and another state court's enforcement of that order"); *Glatzer v. Chase Manhattan Bank*, 108 F. App'x 204, 2004 WL 2091406, at *1 (5th Cir. Sept. 20, 2014) (affirming dismissal under *Rooker-Feldman* of claims "inextricably intertwined with [a] state court [custody and child-support] order"). It should do the same here.

Blessett's claims against State Appellees boil down to a single contention that reveals their entanglement in a state-court judgment. His claims derive from the central assertion that "no state actor has legal standing to enforce a Title IV-D debt obligation for a federal program against [Blessett] without consent." ROA.1064–67. For instance, Blessett contends that forcing him to pay child support when he did not agree to do so violates the Thirteenth Amendment prohibition against slavery. ROA.1099, 1117, 1135; Br. 18. Were that true, the underlying child-support judgments could not be enforced against Blessett without his consent. Blessett's claim thus necessarily arises from, and is inexplicably intertwined with, the state court

child-support judgments against him. As such, they are barred by the *Rooker-Feldman* doctrine, and the District Court's dismissal should be affirmed.

This conclusion does not change because Blessett characterizes his claims as facial challenges. *Cf. Truong v. Bank of Am., N.A.*, 717 F.3d 377, 382 (5th Cir. 2013) (*Rooker–Feldman* bars as-applied constitutional challenges, but not facial challenges). Blessett's claims against State Appellees arise from efforts to enforce Blessett's child-support obligations, which he seeks to have voided. *See* ROA.1063–68; Br. 13-14, 25-28. He is not, that is, challenging the Title IV program or child-support-collection efforts as a whole; he is challenging their application *to him*. Blessett's claims are as-applied challenges, and they are barred by the *Rooker-Feldman* doctrine.

III. BLESSETT'S REMAINING ALLEGATIONS DO NOT STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.[3]

None of Blessett's remaining claims, which can be categorized as contract claims and due-process and equal-protection claims, entitle him to relief. The rights he seeks to vindicate do not exist, and there is no contract on which he could sue.

A. BLESSETT HAS NOT ALLEGED THAT A CONTRACT EXISTS.

Blessett brings two claims sounding in contract. Both fail.

First, he asserts that the State Appellees breached an agreement to pay him $100,000 per day because they did not respond to his so-called "notice of acceptance" letters. Br. 30–31; ROA.1064–68. According to those "notices," the State

[3] This section also addresses Blessett's "Injunction for an Estoppel of Title IV-D Administrative Enforcement Against the Appellant" motion, which contains the same arguments made in Blessett's brief.

Appellees agreed to his terms by not responding to the "notices" when they were received. *See* ROA.674–97. But parties to a contract cannot impose terms on each other; there must, among other things, be a meeting of the minds, consent to the agreement's terms, and an intention by all parties that the agreement be mutual and binding. *Prime Products, Inc. v. S.S.I. Plastics, Inc.*, 97 S.W.3d 631, 636 (Tex. App. – Houston [1st Dist.] 2002, pet. denied). Blessett alleges none of those things—which, given his allegations, do not exist here as a matter of law. Nor can he cite an authority for his proposition, *see* Br. 29–30, ROA.1168, that "tacit admission by silence" creates a contract—which, as a matter of law, it does not. And even if Blessett's "notices" could have conceivably created a contract, that contract would be unenforceable on unconscionability and public policy grounds. *See LeBlanc v. Lange*, 365 S.W.3d 70, 88 (Tex. App. – Houston [1st Dist.] 2011, no pet.); *In re Green Tree Servicing LLC*, 275 S.W.3d 592, 602–03 (Tex. App. – Texarkana 2008, no pet.); *Phila. Indem. Ins. Co. v. White*, 490 S.W.3d 468, 475 (Tex. 2016).

Second, Blessett asserts that he was never obliged to pay child support because he never consented to the child-support order, Br. 44–45—but court orders are not contracts. They do not require consent from the parties subject to the orders to be enforced. Child support in particular is a duty—not a debt. *See Wetmore v. Markoe*, 196 U.S. 68, 74 (1904). ("He owes this duty, not because of any contractual obligation, or as a debt due from him to the wife, but because of the policy of the law which imposes the obligation upon the husband."). Blessett's child support obligations arise from his 1999 divorce decree. ROA.1271-72. Whether he agreed to them or not is irrelevant; a court with the power to order him to pay child support ordered him to pay child support.

Blessett's contract-based assertions were properly dismissed, and the Court should affirm.

B. BLESSETT'S PURPORTED RIGHTS DO NOT EXIST.

Blessett purports to bring a claim against the State Appellees for failing to create a Title IV registry. However, there is no enforceable federal right to have a state's child-support program comply with the requirements of Title IV. *See Blessing v. Freestone*, 520 U.S. 329, 333 (1997).

Similarly, Blessett purports to bring a number of claims arising from the premise that heterosexual males have a constitutionally protected right "to be free of all consequences of recreational sex" with their spouses. ROA.1119–20, ROA.1155–58. There is no such right—certainly, Blessett has not met his burden of showing that such a right is "'deeply rooted in this Nation's history and tradition' and 'implicit in the concept of ordered liberty.'" *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2242 (2022) (quoting *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997)) (cleaned up). Nor would failing to recognize such a right for heterosexual men be an equal-rights violation; Blessett is simply wrong that the Supreme Court has recognized such a right for homosexuals and women. *Cf.* ROA.1156–59 (citing *Roe v. Wade*, 410 U.S. 113 (1973), *overruled by Dobbs*, 142 S. Ct. at 2242, and *Obergefell v. Hodges*, 576 U.S. 644 (2015)).

Blessett's due-process and equal-protection claims were properly dismissed, and the Court should affirm.

CONCLUSION

This Court should affirm the judgment of the district court.

Respectfully submitted.

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CERTIFICATE OF SERVICE

On September 12, 2022, this brief was served via CM/ECF on all registered counsel and transmitted to the Clerk of the Court. Counsel further certifies that: (1) any required privacy redactions have been made in compliance with Fifth Circuit Rule 25.2.13; (2) the electronic submission is an exact copy of the paper document in compliance with Fifth Circuit Rule 25.2.1; and (3) the document has been scanned with the most recent version of Symantec Endpoint Protection and is free of viruses

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Texas, and Steven C. McCraw, in his official capacity as Executive Director for the Department of Public Safety

CERTIFICATE OF COMPLIANCE

This motion complies with: (1) the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 2467 words, excluding the parts exempted by Rule 32(f); and (2) the typeface and type style requirements of Rule 32(a)(5) and Rule 32(a)(6) because it has been prepared in a proportionally spaced typeface (14-point Equity) using Microsoft Word (the program used for the word count).

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