UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

AMY WEBER,	:	**Civil Action No. 14-7340 (CCC)**
Plaintiff,	:	
v.	:	**REPORT & RECOMMENDATION**
FRANCES A. MCGROGAN, et al.,	:	
Defendants.	:	

CLARK, Magistrate Judge

This matter has come before the Court on an Order to Show Cause ("OTSC") issued *sua sponte* on June 1, 2015 [Docket Entry No. 78] wherein the Court directed *pro se* Plaintiff Amy Weber ("Plaintiff") to show cause why this case is not barred by the *Rooker-Feldman* doctrine and why it should not be dismissed on that ground. Plaintiff submitted a legal brief in response to the OTSC on June 9, 2015. [Docket Entry No. 84]. For the reasons that follow, it is respectfully recommended that the case be dismissed for lack of subject matter jurisdiction under the *Rooker-Feldman* doctrine.

BACKGROUND

On November 24, 2014, Plaintiff filed the instant complaint alleging violations of her First and Fourteenth Amendment rights, as well as therapist malpractice and fraud in connection with a child custody case heard by the Honorable Frances A. McGrogan, J.S.C. of the New Jersey Superior Court, Family Part ("State Court" or "Judge McGrogan"). *See generally, Compl.*; Docket Entry No. 1. The following facts are taken from the State Court's judgment dated October 4, 2012. *See* Docket Entry No. 44-1.

Plaintiff and Keith Yonos (an interested party in the instant litigation and a party to the State Court action) were married from 2007 until their divorce in May 2008. They had one child, a son,[1] over whom they shared joint legal custody following the divorce, but with Plaintiff retaining primary residence. Following a number of incidents regarding Plaintiff's behavior, Mr. Yonos filed for sole legal custody on July 2, 2009. Thereafter, Plaintiff began making allegations that Mr. Yonos had sexually abused the child. Following approximately two years of investigation into many alleged incidents by the New Jersey Division of Child Protection and Permanency[2] (the "Division") and the Audrey Hepburn Children's House ("Children's House"), in March 2011 professionals from Children's House recommended that the child be removed from Plaintiff's custody and placed in the care of Mr. Yonos. In April 2011, the Division awarded Mr. Yonos physical custody of his son and ordered a therapeutic supervisor from Children's Aid and Family Services ("CAFS") to be present for Plaintiff's visitations with the child.

The State Court held a fact-finding trial at various intervals from September 16, 2011 through August 20, 2012. Ultimately, Judge McGrogan found that "there is no evidence to support [Plaintiff's] contention that Mr. Yonos sexually abused [his son]. However, there is substantial credible evidence to support a finding that [Plaintiff] emotionally and psychologically harmed the child as defined [by applicable state law]." *Id.* at 25. Furthermore, Judge McGrogan found that "it would be contrary to the child's welfare to remove him from his father's custody. If returned to his mother, he would again be placed at substantial risk of harm." *Id.* As such, Judge McGrogan ordered that Mr. Yonos retain custody of his son, and that therapeutic

[1] Although Ms. Weber has publicly released her son's name in several court filings in this matter, the Court will decline to identify the minor by name and indeed, his name has been redacted from the State Court's Opinion. *See* Docket Entry No. 44-1.

[2] Formerly known as the Division of Youth and Family Services, a.k.a. DYFS.

intervention for visitations with Plaintiff continue. Judge McGrogan also ordered Plaintiff to obtain psychiatric treatment. Plaintiff appealed the State Court's judgment to the Appellate Division.

On May 13, 2015, the Appellate Division affirmed the State Court judgment, finding that "there is more than ample evidence to sustain the judge's shift of residential custody to the father, and the cessation of the mother's parenting time while she continued to exhibit instability." *See* Docket Entry No. 76 at 22. Additionally, the Appellate Division affirmed the State Court's order for Plaintiff to undergo therapy, finding that "the evidence in the record essentially compelled such remedial and protective action." *Id.*

However, before the Appellate Division rendered its opinion, Plaintiff filed the instant action naming approximately sixty (60) Defendants[3], including Judge McGrogan, the Division, Children's House and CAFS. *See Compl.* Essentially, Plaintiff's complaint seeks an Order from the Court finding that the Defendants continually violated the law from the time up to and including the child's removal from Plaintiff's custody, and that they continue to violate the law and Plaintiff's rights in carrying out the orders of the State Court. *See generally id.* at 147-152; ¶¶a.-nn. Several Defendants moved to dismiss Plaintiff's complaint on the grounds that, *inter alia*, the Court lacked subject matter jurisdiction over the action under the *Rooker-Feldman* doctrine, which precludes the federal courts from engaging in appellate review of state court judgments. As such, the Court issued an Order on June 1, 2015 for Plaintiff to show cause why this matter is not barred by the *Rooker-Feldman* doctrine and why it should not be dismissed on that ground. The Court received her submission on June 9, 2015.

[3] Among others, Plaintiff appears to have sued the entire Bergen County Family Court and its Judges, a Law Clerk, Governor Chris Christie, United States Senator Robert Menendez and New Jersey State Senator Nicholas Sacco. *Id.*

LEGAL STANDARD

"The Rooker-Feldman doctrine deprives a federal district court of jurisdiction to review, directly or indirectly, a state court adjudication." *Judge v. Canada*, 208 Fed.Appx. 106, 107 (3d Cir. 2006) (citing *D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 103 S. Ct. 1303, 75 L. Ed. 2d 206 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 416, 44 S. Ct. 149, 68 L. Ed. 362 (1923)). This doctrine precludes courts from evaluating "constitutional claims that are inextricably intertwined with the state court's decision in a judicial proceeding." *FOCUS v. Allegheny County Court of Common Pleas*, 75 F.3d 834, 840 (3d Cir. 1996) (internal quotations omitted). "State and federal claims are inextricably intertwined (1) when in order to grant the federal plaintiff the relief sought, the federal court must determine that the state court judgment was erroneously entered [or] (2) when the federal court must ... take action that would render [the state court's] judgment ineffectual." *ITT Corp. v. Intelnet Intern.*, 366 F.3d 205, 211 (3d Cir. 2004) (internal quotation marks and citations omitted). "In other words, *Rooker-Feldman* precludes a federal action if the relief requested in the federal action would effectively reverse the state decision or void its ruling." *FOCUS*, 75 F.3d at 840 (quoting *Charchenko v. City of Stillwater*, 47 F.3d 981, 983 (8th Cir. 1995)); *see also Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 291-92, 125 S. Ct. 1517, 161 L. Ed. 2d 454 (2005) (explaining that 28 U.S.C. § 1257 has long been interpreted as vesting authority to review a state court's judgment solely in the Supreme Court).

The Third Circuit has found that "there are four requirements that must be met for the *Rooker-Feldman* doctrine to apply: (1) the federal plaintiff lost in state court; (2) the plaintiff "complain[s] of injuries caused by [the] state-court judgments"; (3) those judgments were rendered before the federal suit was filed; and (4) the plaintiff is inviting the district court to review and

reject the state judgments." *Great Western Mining & Mineral Co. v. Fox Rothschild LLP*, 615 F.3d 159, 166 (3d Cir. 2010) (internal citations omitted). Moreover, the Court elucidated that "[t]he second and fourth requirements are the key to determining whether a federal suit presents an independent, non-barred claim." *Id.*

In the context of cases where plaintiffs challenge the judgment of state family courts under 42 U.S.C. § 1983, the Third Circuit has consistently affirmed district court determinations that the *Rooker-Feldman* doctrine prohibits such suits. *See, e.g., Gass v. DYFS Workers*, 371 F. App'x 315, 315-16 (3d Cir. 2010) (affirming district court dismissal under *Rooker-Feldman* of claims asserted against state court judge, DYFS, DYFS officials, deputy attorneys general, and public defender attorney in underlying termination of parental rights action to the extent plaintiff challenged family court orders regarding custody of two minors); *McKnight v. Baker*, 244 F. App'x 442, 444-45 (3d Cir. 2007) (affirming district court finding that the court lacked jurisdiction under *Rooker-Feldman* to review Section 1983 claims where crux of plaintiff's complaint was that defendants conspired to have the family court suspend his visitation rights with his daughter); *McAllister v. Allegheny Cnty. Family Div.*, 128 F. App'x 901, 902 (3d Cir. 2005) (affirming district court dismissal of federal constitutional claims where plaintiff "plainly [sought] to void or overturn adverse rulings entered in the child-custody litigation" by state family court because such relief required "a finding that the state court ... made incorrect factual or legal determinations").

Similarly, courts within this District have repeatedly recognized that they lack subject matter jurisdiction to entertain claims which challenge adjudications made by state family courts. *See, e.g., Severino v. Div. of Youth & Family Servs.*, No. 11-3767, 2011 U.S. Dist. LEXIS 131009, *1 (D.N.J. Nov. 14, 2011) (dismissing *sua sponte pro se* plaintiff's §1983 claims against

defendants, including DYFS, DYFS caseworker, New Jersey State Court Judges, and a deputy attorney general, under *Rooker-Feldman* which challenged state court proceeding terminating plaintiff's parental rights); *Wilson v. Atl. Cnty. DYFS*, No. 10-202, 2010 U.S. Dist. LEXIS 51601, at *5-6 (D.N.J. May 25, 2010) (dismissing plaintiff's complaint against local DYFS agency and state court judge and finding that *Rooker-Feldman* claims relating to the family court's issuance of a restraining order which effectively barred plaintiff from seeing his son because the claims were "inextricably intertwined" with the restraining order and amounted to a "prohibited appeal" from the family court adjudication); *Kwiatkowski v. De Francesco*, No. 01-6145, 2006 U.S. Dist. LEXIS 56190, *4-5 (D.N.J. Aug. 11, 2006) (concluding that *Rooker-Feldman* barred constitutional claims because they were "a direct result of the actions taken by DYFS and the state courts" and were "so inextricably intertwined with the state court proceedings that federal review [was] precluded as it would be tantamount to appellate review of state court determinations.").

DISCUSSION

In her written response to the OTSC, Plaintiff begins by arguing that the pleadings of *pro se* litigants are not to be held to the same standards as practicing attorneys. *See Plaintiff's Response to OTSC* at 3; Docket Entry No. 84. Plaintiff then argues that none of the four requirements set forth in *Great Western* have been met. First, Plaintiff maintains that the first and third requirements are not met because "her appeal was successfully filed…[b]efore the Appellate Division deliver (*sic*) its decision." *Id.* at 4. As such, Plaintiff submits that she did not lose in state court and that, on account of the appeal, the judgment was not rendered before the federal suit was filed. *Id.* at 5-6. Plaintiff further submits that she "still has custody litigations" in the state court and that simultaneous litigation is permitted where there is parallel state and federal

litigation. *Id.* (citing *Great Western*, 615 F.3d at 169).

As to the second and fourth requirements, which go to whether the federal suit brings an independent claim, Plaintiff argues the following, in unedited form: "Plaintiff Amy Weber stated on her complaint that Plaintiff's complains of injuries caused by the conduct of the Defendants, actions and inactions of Defendants caused Plaintiff legal injury, where Plaintiff suffered physical hurt as well as damage to her reputation, damage to her dignity and loss of her a legal rights, as a human and as a mother." *Id.* at 5. She maintains that she "is not requesting this Honorable Court to review and reject the state judgments. Plaintiff is requesting justice as the actions and inactions by named and unnamed Defendants were and are the cause this complaint was filed." *Id.* at 6.

At the outset, the Court notes that it agrees with Plaintiff insofar as *pro se* litigants indeed are afforded a certain degree of leniency in their pleadings. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *United States v. Day*, 969 F.2d 39, 42 (3d Cir. 1992). However, *pro se* litigants are still "bound by this Court's orders, local rules, policies and procedures, as well as the Federal Rules of Civil Procedure." *N'Jai v. Pittsburgh Bd. of Pub. Educ.*, 2011 U.S. Dist. LEXIS 40121 at *3 (W.D. Pa. Apr. 13, 2011).

Turning to factors one and three, the Court is not persuaded by Plaintiff's reasoning that she did not lose in state court and that there was no final judgment because she had an appeal pending. Such reasoning is inapposite to applicable case law, and, indeed, the filing of a federal action in the midst of a state court appeal likely divests this Court of subject matter jurisdiction under the Younger Abstention Doctrine. *See Younger v. Harris,* 401 U.S. 37, 43-54 (1971); *see also Miller v. Mitchell,* 598 F.3d 139, 145 (3d Cir. 2010) ("Under Younger…federal courts must abstain in certain circumstances from exercising jurisdiction over a claim where resolution of that

claim would interfere with an ongoing state proceeding."). However, now that the appeal has been decided,[4] in the interest of judicial efficiency, and the overwhelming interest the Court has in deciding cases on their merits, the Court shall demonstrate why factors one and three have been satisfied. *See Foman v. Davis*, 371 U.S. 178 (1962).

First, it cannot be disputed that Plaintiff lost at the state court level when Judge McGrogan ordered that the child remain with his father and not be placed back in his mother's custody. Indeed, the fact that Plaintiff appealed the state court's judgment illustrates that she was not satisfied with the result. Second, the judgment of which Plaintiff complains is the ruling of Judge McGrogan, which was undeniably rendered before this action was filed. For purposes of the Court's analysis under this factor, it is of no moment that the judgment had not yet been addressed by the Appellate Division. As such, factors one and three are satisfied.

Turning to the second and fourth factors, although Plaintiff states that her complaint is based on the "actions and inactions of Defendants[,]" the Court finds that the essence of Plaintiff's action complains of conduct occurring prior to the state court action, considered by Judge McGrogan in his analysis of same, and the action subsequently taken to enforce his judgment. *See Reed v. N.J. Div. of Youth & Family Services*, 2012 U.S. Dist. LEXIS 50969 *13 (D.N.J. Apr. 10, 2012) (finding that "the actions of the defendants prior to the hearing which resulted in the termination of plaintiffs' parental rights and removal of the child are 'inextricably intertwined' with the relief requested by plaintiffs in this matter."). Likewise, the conduct of which Plaintiff complains in this matter is inextricably intertwined with Judge McGrogan's custody determination

[4] The Court is not aware of any further appeal pending to either the New Jersey Supreme Court or the United States Supreme Court. However, to the extent there were such an appeal, the Court would find that it lacks subject matter jurisdiction under *Younger*.

and moreover, if Plaintiff were to receive the relief she seeks, this Court would have to improperly "determine that the state court judgment was erroneously entered[,]" thereby rendering the state court's judgment ineffectual. *ITT Corp.*, 366 F.3d at 211. The aforementioned *Reed* and *McKnight* cases are particularly instructive to the Court's analysis.

Similar to the instant case, the plaintiffs in *Reed* sued DYFS, various New Jersey State Court Judges, former Governor Jon Corzine and several other attorneys and doctors, alleging that the defendants violated their constitutional rights which ultimately resulted in the termination of their parental rights. In finding that it lacked subject matter jurisdiction over the action, the Court reasoned that even if it found due process violations, "then the result would be that the Family Part erroneously removed the child from [plaintiffs'] custody and erroneously terminated their parental rights. Such a finding…would render the judgment ineffectual." *Reed*, 2012 U.S. Dist. LEXIS 50969 *13. Likewise, in *McKnight*, the Third Circuit affirmed the district court's dismissal under *Rooker-Feldman*, holding that "it is abundantly clear that the crux of [plaintiff's] complaint is that [defendants] conspired to have the Family Court suspend his visitation rights and have subsequently acted in accordance with that Family Court order. It is hard to imagine a case which more directly asks a district court to review the actions of a state court." *McKnight*, 244 F. App'x at 444 (emphasis added).

A review of Plaintiff's 154-page complaint reveals that the conduct of which she complains is inextricably intertwined with her child's custody hearing in state court and Judge McGrogan's ultimate ruling. The Court finds that there is no distinction between this case and those of *Reed* and *McKnight* and likewise finds that Plaintiff had failed to show cause to the contrary as ordered. For these reasons, the Court shall recommend dismissal of this action to the District Court.

CONCLUSION

In light of the foregoing, and the Court having considered this matter pursuant to FED.R.CIV.P.78;

IT IS on this 17th day of June, 2015,

RECOMMENDED that Plaintiff's Complaint be DISMISSED for lack of subject matter jurisdiction under the *Rooker-Feldman* doctrine. Parties are advised that they may file an objection within 14 days of the date of this Order pursuant to FED.R.CIV.P. 72(b)(2). It is additionally

ORDERED that pursuant to the Court's inherent power to control its docket, the proceedings in this matter remain STAYED[5] and the following motions be terminated by the Clerk of the Court pending disposition of this Report & Recommendation: [Docket Entry Nos. 83, 88].

s/James B. Clark, III
HONORABLE JAMES B. CLARK, III
UNITED STATES MAGISTRATE JUDGE

[5] The Court has already stayed the proceedings in this matter. *See* Docket Entry No. 79.