Lefebvre v. Barnsley, et al. CV-97-297-B 09/22/99
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Francis J. Lefebvre

v. Civil No. 97-297-B

Kerry Barnsley, et. al.

MEMORANDUM AND ORDER

Francis Lefebvre brought this civil rights action against the United States, the Secretary of the United States Department of Health and Human Services ("USDHHS"), and numerous state defendants, including state judges, a clerk of court, and agency administrators. Construing Lefebvre's amended complaint generously, he alleges that he was twice jailed for failing to pay child support pursuant to an unconstitutional state and federal child enforcement scheme.

The state defendants argue that Lefebvre's claims should be dismissed because they are barred by the "Rooker-Feldman" doctrine, see Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923); District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983).[1] The federal defendants request that I dismiss

[1] The state defendants also argue that several of Lefebvre's claims are barred by res judicata and the applicable statute of limitations. Because I conclude that these claims are

Lefebvre's claims against them because he lacks standing to sue and because he fails to state valid claims for relief.

I.

Lefebvre was obligated to make payments for the support of his children from a prior marriage. When he became delinquent in tendering these payments, his ex-wife, with the assistance of the New Hampshire Office for Child Support Enforcement Services ("NHOCSES"), instituted an enforcement action to compel him to pay the required child support. At the conclusion of the proceeding, a state court judge ordered Lefebvre either to make the payments or demonstrate his inability to pay.

Lefebvre did not make the required payments and he was unable to convince the court that he lacked the ability to pay. As a result, he was jailed for 103 days pursuant to a civil contempt citation. Lefebvre also alleges that he was jailed for civil contempt on a second occasion for an unspecified period. He eventually was released from incarceration after declaring bankruptcy.

Lefebvre asserts five primary claims in his amended

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defective for other reasons, I do not address the defendants' res judicata and statute of limitations arguments.

complaint.[2] First, he argues that defendants violated his constitutional rights to due process and equal protection by subjecting him to a biased child support enforcement regime. Lefebvre bases his bias claim on the assertion that the marital master who presided over his case was paid by the New Hampshire Department of Health and Human Services ("NHDHHS"), which, as the parent agency of the prosecutorial NHOCSES, was essentially a party to the proceeding. He also argues that the federal government perpetuated the biased system, pursuant to 42 U.S.C. § 654 and 45 C.F.R. § 302.34, by providing financial assistance to the state. See Pl.'s Am. Compl. Counts 1-12.[3] Second, Lefebvre claims that his constitutional rights to due process and equal protection were violated because, pursuant to cooperative agreements between the Administrative Office of the New Hampshire State Courts and the NHOCSES, state court clerks gave preferen-

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[2] Counts 1-13, 17 and 23 of Lefebvre's amended complaint remain viable. Lefebvre's other claims were dismissed pursuant to an order by United States Magistrate Judge James R. Muirhead dated Mar. 31, 1998 (Doc. 20).

[3] Lefebvre asserts these claims against the United States and Donna Shalala, in her official capacity as Secretary of the United States Department of Health and Human Services; New Hampshire Supreme Court Chief Justice David A. Brock; James F. Lynch, James A. Brickner, and Donald D. Goodnow, as administrative officers of the courts; Harry H. Bird, Kathleeen G. Sgambati, and Terry L. Morton, as Commissioners of the NHDHHS; and William H. Mattil and Frank Richards, as administrators of the NHOCSES.

tial treatment to the NHOCSES by expediting its hearings. See id. Count 10.[4] Third, Lefebvre charges that New Hampshire's child support enforcement regime unconstitutionally deprived him of his rights to due process and equal protection by failing to provide procedural safeguards in civil contempt proceedings, including enforceable rules of procedure and evidence and clearly delineated burdens of proof. See id. Count 13.[5] Fourth, Lefebvre alleges that Superior Court Justice Peter Smith violated his constitutional right to equal protection by issuing a blanket order barring Lefebvre from filing other court actions until his child support arrearage was paid. See id. Count 17. Finally, Lefebvre asserts that an individual state defendant improperly accessed a confidential file containing information about Lefebvre. According to Lefebvre, this improper action ultimately led to his incarceration for contempt. See id. Count 23.[6]

Lefebvre seeks a variety of remedies on each count including damages and injunctive relief.

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[4] Lefebvre makes this claim against the same defendants. See supra note 3.

[5] Lefebvre makes this claim against Chief Judge Joseph Nadeau of the New Hampshire Superior Court, Brickner, Lynch, and Robert Muh, clerk of the Grafton County Superior Court.

[6] Lefebvre brings this claim against James T. McEntee, an attorney for the NHOCSES.

II.

A full understanding of Lefebvre's claims requires a brief introduction to the regulatory framework in which they arise. Accordingly, I briefly outline the evolution of the current federal and state child support enforcement schemes.

A. The Child Support Enforcement Program

The federal Child Support Enforcement ("CSE") program, Title IV-D of the Social Security Act, 42 U.S.C. §§ 651-669b (1994 & Suppl. II 1996) (hereinafter "Title IV-D"), was created

> [f]or the purpose of enforcing the support obligations owed by noncustodial parents to their children. . . locating noncustodial parents, establishing paternity, obtaining child and spousal support, and assuring that assistance in obtaining support will be available . . . to all children.

42 U.S.C. § 651 (1994 & Supp. II 1996). Congress instituted the CSE program upon finding that "[t]he problem of welfare in the United States is, to a considerable extent, a problem of non-support of children by their absent parents." S. Rep. No. 93-1356, reprinted in 1974 U.S.C.C.A.N. 8133, 8145.

Since the initial enactment of Title IV-D, the CSE program has provided for incentive payments to states to encourage the efficient collection of child support. See 42 U.S.C. § 658 (1994 & Supp. II 1996). The purpose of these payments is "to encourage and reward State child support enforcement programs which perform

in a cost-effective and efficient manner to secure support for all children who have sought assistance in securing support." Id. § 658(a). With certain exceptions and limitations, the incentive payments are calculated as a percentage of the total amount of support collected. See id. § 658(b).

In 1984, Congress required the states to share incentive payments with political subdivisions that participate in child support programs. Accordingly, Title IV-D now provides that,

> in order for the State to be eligible to receive any incentive payments under section 658 of this title, [its plan must] provide that, if one or more political subdivisions of the State participate in the costs of carrying out activities under the State plan during any period, each such subdivision shall be entitled to receive an appropriate share (as determined by the State) of any such incentive payments made to the State for such period, taking into account the efficiency and effectiveness of the activities carried out under the State plan by such political subdivision.

Id. § 654(22); see also 45 C.F.R. § 302.55 (1998). HHS defines "political subdivision" in its regulations as "a legal entity of the State as defined by the State, including a legal entity of the political subdivision so defined, such as a Prosecuting or District Attorney or a Friend of the Court." 45 C.F.R. § 301.1 (1998).

B. Cooperative Arrangements

Title IV-D requires states to seek cooperative arrangements with courts and law enforcement officials to encourage the prompt

and efficient collection of child support. In this regard, the act states that

> [a] State plan for child and spousal support must. . . provide for entering into cooperative arrangements with appropriate courts and law enforcement officials. . . (A) to assist the agency administering the plan, including the entering into of financial arrangements with such courts and officials in order to assure optimum results under such program, and (B) with respect to any other matters of common concern to such courts or officials and the agency administering the plan.

42 U.S.C. § 654(7) (1994 & Supp. II 1996). Regulations promulgated by the USDHHS also require such cooperative arrangements. See 45 C.F.R. § 302.34 (1998) ("The State plan shall provide that the State will enter into written agreements for cooperative arrangements under § 303.107 with appropriate courts and law enforcement officials."). Pursuant to these regulations, states must provide courts and law enforcement officials with pertinent information needed to locate non-custodial parents, establish paternity, and secure financial support. See id. Further, states must ensure that their cooperative arrangements,

> (a) Contain a clear description of the specific duties, functions and responsibilities of each party;
>
> (b) Specify clear and definite standards of performance which meet Federal requirements;
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> (c) Specify that the parties will comply with

> [T]itle IV-D of the Act, implementing Federal regulations and any other applicable Federal regulations and requirements;
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> (d) Specify the financial arrangements including budget estimates, covered expenditures, methods of determining costs, procedures for billing the [Title] IV-D agency, and any relevant Federal and State reimbursement requirements and limitations;
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> (e) Specify the kind of records that must be maintained and the appropriate Federal, State and local reporting and safeguarding requirements; and
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> (f) Specify the dates on which the arrangement begins and ends, any conditions for revision or renewal, and the circumstances under which the arrangement may be terminated.

45 C.F.R. § 303.107 (1998).

Pursuant to the regulations, cooperative arrangements may include "provisions to reimburse courts and law enforcement officials for their assistance." 45 C.F.R. § 302.34. Federal financial participation is available for some of the expenses incurred. See 45 C.F.R. § 304.21(a) (1998). Federal funds, however, are specifically barred from use for:

> (2) Costs of compensation (salary and fringe benefits) of judges;
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> (3) Costs of travel and training related to the judicial determination process incurred by judges;
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> (4) Office-related costs, such as space, equipment, furnishings and supplies, incurred by judges; [or]

(5) Compensation (salary and fringe benefits), travel and training, and office-related costs incurred by administrative and support staffs of judges.

45 C.F.R. § 304.21(b).

C. New Hampshire's Child Support Enforcement System

New Hampshire implements its child support program through the NHOCSES, a bureau of the New Hampshire Department of Health and Human Services. The goals of this office are to

> provide. . . a more effective and efficient way to effect the support of dependent children by the person or persons who, under the law, are primarily responsible for such support and to lighten the heavy burden of the taxpayer, who in many instances is paying toward the support of dependent children while those persons primarily responsible are avoiding their obligations.

N.H. Rev. Stat. Ann. § 161-B:1 (1997 & Supp. 1998). In order to achieve these objectives, the NHOCSES is

> authorized to commence or appear in any proceedings before any court or administrative agency for the purpose of obtaining, enforcing, or modifying an order of support on behalf of any dependent child or any other person for whom the department has a duty to obtain or enforce an order of support.

Id. § 161-B:5.

1. "Marital Masters"

The New Hampshire Superior Court has developed special procedures to ensure the prompt and efficient adjudication of family law cases. These procedures include the appointment of special masters, known as "marital masters," to hear child

support cases and other family law matters. See N.H. Super. Ct. Admin. R. 12. Although marital masters do not issue final judgments, they provide recommendations to superior court judges. See N.H. Super. Ct. R. 84 ("Trials Before Auditors, Masters, and Referees").

2. Cooperative Agreements

New Hampshire has authorized the State Commissioner of Health and Human Services, or his designee, to "contract with counties, cities, towns or any other person to aid in collecting or to collect support obligations and to administer the child support program established by Title IV-D of the Federal Social Security Act and any and all amendments thereto and regulations promulgated thereunder." N.H. Rev. Stat. Ann. § 161-B:3 (1997 & Supp. 1998).

Pursuant to this authorization, the NHOCSES has entered into a series of two-year cooperative agreements with the New Hampshire Supreme Court.[7] The cooperative agreements require each marital master to prepare a case log showing the percentage of time each day that he or she dedicated to Title IV-D cases. See 1992 State of New Hampshire OCSES Cooperative Agreement. These logs are submitted each month to the chief justice of the superior court, or his designee, who then forwards them to the Administrative Office of the Courts ("AOC"). See id. The AOC then reviews the logs and submits them to NHOCSES with a monthly

[7] Because Lefebvre alleges that the contempt proceedings which triggered his complaint occurred in June 1994, the 1992 NHOCSES Cooperative Agreement, effective from October 1, 1992 through September 30, 1994, is the relevant agreement governing this case. See State Def.'s Mot. to Dismiss (Doc. 49, Ex. B, p. 2).

summary report denoting the number of hours marital masters spent on Title IV-D cases. See id.

The NHOCSES uses the marital masters' logs to obtain proportional reimbursement from the Federal Office of Child Support Enforcement for the masters' time spent on Title IV-D cases. See id. The amount of federal reimbursement owed to the state is the product of three factors: (1) the current federal participation rate, (2) the percentage of time spent by the marital masters on Title IV-D cases as reported on a monthly basis, and (3) the total amount of direct expenses incurred by the marital masters for that month. See id. The federal contribution is used only to reimburse the state. It is not used to compensate marital masters directly. Further, the federal contribution is determined only by the number of hours marital masters spend on Title IV-D cases, irrespective of case outcomes. The compensation marital masters receive for their services is not affected by the amount of time they devote to Title IV-D cases.

III.

The state and federal defendants offer different arguments as to why the court lacks subject matter jurisdiction to consider Lefebvre's claims. I address each argument in turn.

A. The Rooker-Feldman Doctrine

The state defendants contend that the court lacks subject matter jurisdiction to consider most of Lefebvre's claims based on the Rooker-Feldman doctrine. This doctrine, which is premised on an expansive reading of 28 U.S.C. § 1257, holds that a federal district court ordinarily lacks subject matter jurisdiction to consider an appeal from a state court judgement. See Rooker, 263 U.S. at 415-16; Feldman, 460 U.S. at 482. The doctrine applies to both litigated claims and unlitigated claims that are "inextricably intertwined" with litigated claims. See Feldman, 460 U.S. at 482 n.16; Lancellotti v. Fay, 909 F.2d 15, 17 (1st Cir. 1990).

Lefebvre asserts in Count 17 that the state trial court's order allegedly denying him access to the courts until he paid his overdue child support payments violates his right to equal protection. The Rooker-Feldman doctrine unquestionably bars this claim because Lefebvre appealed the trial court's order to the New Hampshire Supreme Court, which declined to accept his appeal. Accordingly, Count 17 is dismissed.

I am less certain that the Rooker-Feldman doctrine bars Lefebvre's other claims. His claims could be viewed as a challenge to the process the state court employed when it determined and enforced Lefebvre's child support obligations. At

least two circuit courts have suggested that the Rooker-Feldman doctrine does not bar a federal court from considering a challenge to the constitutionality of the process by which a state court judgment was reached. See Catz v. Chalker, 142 F.3d 279, 294 (6th Cir 1998); Nesses v. Shepard, 68 F.3d 1003, 1005 (7th Cir. 1995). Because neither the Supreme Court nor the First Circuit has determined whether the Rooker-Feldman doctrine bars a process-based challenge to a state court ruling, the applicability of the doctrine to such claims in this circuit remains in doubt.

I need not resolve this difficult jurisdictional question in this case because I conclude that Lefebvre's claims are defective for other reasons. The Supreme Court has determined that I ordinarily may not avoid a difficult subject matter jurisdiction question by disposing of a case on its merits. See Steel Co. v. Citizens for a Better Env't, 118 S. Ct. 1003, 1009-16 (1998). The First Circuit, however, has twice stated that this rule does not apply to challenges to the court's statutory jurisdiction. See Kelly v. Marcantonio et. al., No. 98-1438 (1st Cir. Aug. 8, 1999); Parella v. Retirement Bd. Of the Rhode Island Employees' Retirement System, 173 F.3d 46, 54 (1st Cir. 1999); cf. Cablevision of Boston, Inc. v. Public Improvement Comm'n, No. 99-1222 (1st Cir. Aug. 25, 1999). Because the Rooker-Feldman

doctrine is premised on a statutory limitation on the court's subject matter jurisdiction, see ASARCO, Inc. v. Kadish, 490 U.S. 605, 622 (1989), Steel Co. does not require that I resolve the jurisdictional question presented by Lefebvre's claims.

B. Standing

The federal defendants argue that Lefebvre lacks standing to assert claims against them because his alleged injuries are not "fairly traceable" to the conduct of the federal defendants. See Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992) (mandate that injury must be "fairly traceable" to defendant's misconduct is one of three constitutional standing requirements). I reject this argument. Because this case is still in its early stages, I must construe the complaint in Lefebvre's favor and accept the truth of his well-pleaded allegations. I may dismiss Lefebvre's claims on standing grounds only if standing could not be established even if the allegations detailed in his complaint prove to be true. See id. at 561. Lefebvre has alleged sufficient facts in the present case to establish his standing to sue. Accordingly, I decline to dismiss his claims on standing grounds.

IV.

The federal defendants argue that I must dismiss Lefebvre's

claims pursuant to Fed. R. Civ. P. 12(b)(6) because he has failed to state claims for relief.[8] I evaluate this contention by first examining Lefebvre's bias claims and then turning to his remaining claims.

A. Bias Claims (Counts 1-12)

Lefebvre's primary argument in Counts 1-12 is that the marital master who presided over his case was biased against him because state and federal law authorized the master's salary to be paid by the NHDHHS. These claims are most clearly characterized as procedural due process violations.[9]

In Tumey v. Ohio, 273 U.S. 510 (1927), the Supreme Court stated that the test for a due process violation stemming from bias or conflict is whether the particular situation "would offer

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[8] In ruling on a motion based on Fed. R. Civ. P. 12(b)(6), I construe the complaint in the light most favorable to the plaintiff and grant the requested relief only if the plaintiff would not be entitled to relief under any plausible interpretation of the pleaded facts. See Gooley v. Mobil Oil Corp., 851 F.2d 513, 514 (1st Cir. 1988).

[9] Lefebvre also alleges that the state court clerks' policy of expediting child support enforcement hearings violates his right to equal protection. As Lefebvre does not assert that he is a member of a suspect class or that defendants have deprived him of a fundamental right, his equal protection claims must be analyzed using a rational basis test. See Inmates of Suffolk County Jail v. Rouse, 129 F.3d 649, 660 (1st Cir. 1997), cert. denied, 118 S. Ct. 2366 (1998). This standard is easily satisfied here because the state reasonably could conclude that the public interest is furthered by expediting child support enforcement matters.

a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear, and true between the state and the accused." Id. at 532. The Court defined the limits of this principle in Dugan v. Ohio, 277 U.S. 61 (1928). In that case, the plaintiff challenged the constitutionality of an Ohio "mayor's court" which imposed fines for unlawful possession of intoxicating liquor. In Tumey, the mayor's compensation for acting as judge was entirely dependent upon the fines collected from the proceedings over which he presided. See Tumey, 273 U.S. at 520. In contrast, the mayor in Dugan received a fixed salary which, although derived from a general fund to which fines from his court were contributed, was not derived directly from the cases he heard. See Dugan, 277 U.S. at 63. The Supreme Court found no due process violation in this arrangement, explaining that

> The mayor of Xenia receives a salary which is not dependent on whether he convicts in any case or not. While it is true that his salary is paid out of a fund to which fines accumulated from his court. . . it is a general fund, and he receives a salary in any event, whether he convicts or acquits. There is no reason to infer on any showing that failure to convict in any case or cases would deprive him of or affect his fixed compensation.

Id. at 65.

The Court reached a different conclusion in Ward v. Village

of Monroeville, 409 U.S. 57 (1972). There, the petitioner challenged an Ohio statutory scheme which allowed mayors to sit as judges in traffic cases. In addition to his judicial functions in this role, the mayor had substantial executive powers and responsibilities, including acting as "chief conservator of the peace." Id. at 58. Moreover, "[a] major part of village income [was] derived from the fines, forfeitures, costs, and fees imposed by him in his mayor's court." Id. Citing Tumey, the Court found that this scheme violated the petitioner's right to due process. The Court noted that although the mayor in Ward was not compensated by the fines he imposed, he was susceptible to a sufficient risk of bias because his "executive responsibilities for village finances may make him partisan to maintain the high level of contribution from the mayor's court." Id. at 60. According to the Court, the degree of executive authority exercised by the mayor was critical. See id. at 60-61. Dugan, therefore, was distinguishable because in that case the mayor exercised only judicial, not executive, functions. See Dugan 277 U.S. at 65.

These cases establish two potential sources of bias. First, a plaintiff's right to due process can be violated if a decisionmaker has a "direct, personal, substantial pecuniary interest" in the outcome. Tumey, 273 U.S. at 523. Second, even

if no personal financial interest is at stake, due process may be compromised if the decisionmaker's executive or institutional responsibilities provide a sufficiently strong motive to rule in a way which benefits the institution he serves. See Ward, 409 U.S. at 60-61. But, if the decisionmaker has no personal interest in the outcome of the proceeding, and his institutional interest in the outcome is remote, there is no due process violation. See id.

The facts Lefebvre cites do not establish a sufficient risk of bias or conflict of interest to support his claims. In accordance with federal regulations, incentive payments are paid to the state. Federal funds are not used to pay the salaries of the marital masters. See 45 C.F.R. § 304.21(b)(2) (federal funds may not be used to pay the salaries or fringe benefits of judges). Further, marital masters receive their paychecks from the state, irrespective of the amount of federal reimbursement the state receives, and regardless of the conclusions they reach in Title IV-D cases. Thus, Lefebvre's only potential claim is that marital masters are biased because the superior court as an institution stands to benefit whenever a marital master considers an NHOCSES child support proceeding.

Courts that have evaluated the issue of institutional bias have construed the potential for bias narrowly. For example, in

Northern Mariana Islands v. Kaipat, 94 F.3d 574 (9th Cir. 1996), the plaintiff, who was convicted of various traffic offenses and fined, challenged the constitutionality of his conviction. In particular, the plaintiff challenged a statute, passed by the Commonwealth of the Northern Mariana Islands, which earmarked all civil and criminal fines collected by the courts for the construction of new court facilities. According to the plaintiff, the system provided an improper incentive for the court to levy fines because judges stood to benefit from the construction of a new courthouse.

The Ninth Circuit, after examining Tumey, Dugan, and Ward, found the connection between courthouse construction and the fines imposed by judges too remote to support an inference of bias. See id. at 581. The court observed that, unlike in Tumey, the Mariana Islands judges "receive their compensation whether they convict or acquit, fine or don't fine. That compensation is fixed and does not fluctuate." Id. at 580. Although the court noted that the judges would obviously welcome a new courthouse, it concluded that "this kind of interest is too contingent and speculative and insubstantial to constitute the direct stake in the outcome of a case that is constitutionally infirm." Id. at 581. In addition, unlike the mayor in Ward, the Mariana Islands judges had "no other governmental position, and no executive

responsibilities" to raise the specter of bias. Id. at 580-81.

Similarly, in Van Harken v. City of Chicago, 103 F.3d 1346 (7th Cir.), cert. denied, 520 U.S. 1241 (1997), the case most like the one presently before me, plaintiffs contended that a municipal ordinance which empowered hearing officers to adjudicate parking infractions violated due process. The plaintiffs posited that because the hearing officers could be hired and fired at will by the city's director of revenue, they could be subject to pressure to impose fines to fill the city's coffers. See id. at 1352. The Seventh Circuit found this connection insufficient to establish a constitutional violation, concluding that

> [W]e do not think that the adjudicative reliability of the hearing officers is fatally compromised by the manner of their appointment and by their lack of secure tenure. The officers are not paid by the number of hearings that they resolve against the respondent; they are not paid any portion of the fines they impose. . .; they have no quota of fines that they must impose on pain of losing their jobs or having their pay reduced; and they have no other financial stake in the outcome of the cases that they adjudicate. . . .

Id. at 1352-53 (internal citations omitted).

Lefebvre's bias claims are even weaker than those considered in Van Harken. Like the hearing officers in Van Harken, marital masters are not compensated according to the number of hearings which they resolve against a particular party; in addition, their

compensation does not hinge, in any way, upon the size of the judgments they impose. Moreover, the connection between the decisionmakers and the state is even more attenuated than that in Van Harken. Because the hearing officers in Van Harken were directly accountable to the city's director of revenue, it might plausibly have been argued that the director could improperly exert pressure on them to collect funds. In contrast, the marital masters in the instant case are supervised by a masters committee consisting of five superior court justices appointed by the chief justice. There is no direct connection between the marital masters and the state OCSES office. As a result, there is no significant risk that marital masters will be pressured to decide cases in favor of the OCSES.

In light of the Supreme Court's holdings in Tumey, Dugan, and Ward, and the additional guidance provided by the Seventh and Ninth Circuits, I conclude that Lefebvre's allegations about the unconstitutionality of New Hampshire's child support enforcement scheme fail to state a claim upon which relief can be granted. Accordingly, all of Lefebvre's bias-based claims against the federal and state defendants (Counts 1-12) are dismissed.

B. Count 13

Lefebvre alleges in Count 13 that Chief Judge Joseph Nadeau, Grafton County Superior Court Clerk Robert Muh, and court administrative directors, James A. Brickner and James F. Lynch, unconstitutionally deprived him of equal protection in his state civil contempt proceedings by failing to (1) adhere to clearly defined burdens of proof, and (2) follow the rules of evidence and procedure during those proceedings. Lefebvre seeks monetary damages from the defendants in their individual and official capacities. He also seeks prospective injunctive relief to prevent future violations.

1. Individual Capacity Damage Claims

Judges have absolute immunity when sued in their individual capacity for monetary damages for their judicial acts. See Pierson v. Ray, 386 U.S. 547, 554 (1967) (judge should not have to "fear that unsatisfied litigants may hound him with litigation charging malice or corruption"), overruled on other grounds by Harlow v. Fitzgerald, 467 U.S. 800 (1982) (qualified immunity). This immunity exists even when there are charges that the judge acted maliciously, "however erroneous the act may have been, and however injurious in its consequences it may have proved to the plaintiff." Bradley v. Fisher, 80 U.S. 335, 347 (1871); see also, Mireles v. Waco, 502 U.S. 9, 11 (1991) (per curiam)

(upholding absolute immunity for a judge who allegedly ordered excessive force in the arrest of the suspect).

Absolute immunity extends only to judicial tasks. Judge Nadeau's alleged misconduct which Lefebvre cites in support of Count 13 is of a judicial nature.[10] Accordingly, Lefebvre's damage claim against Judge Nadeau in his individual capacity is barred by absolute immunity. Further, to the extent that Muh, as a clerk of court, and Lynch and Brickner, as administrative officers of the New Hampshire Superior Court, are even proper parties to this claim, Lefebvre's claims against each of them, in their individual capacities, are similarly barred. See Slotnick v. Garfinkle, 632 F.2d 163, 166 (1st Cir. 1980) (per curiam) (holding that doctrine of absolute judicial immunity extends to those who carry out the orders of judges); Slotnick v. Staviskey, 560 F.2d 31,32 (1st Cir. 1977) (holding that absolute judicial immunity applies to judge's clerk); cf. Smith v. Tandy, 897 F.2d 355 (8th Cir. 1990) (per curiam) (affirming district court's grant of summary judgment for defendant, certified transcriber, on grounds of qualified immunity).

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[10] The test for whether an act is judicial "relate[s] to the nature of the act itself, i.e. whether it is a function normally performed by a judge and to the expectations of the parties, i.e., whether they dealt with the judge in his judicial capacity." Mireles, 502 U.S. at 12 (quoting Stump v. Sparkman, 435 U.S. 349, 362 (1978)).

2. Official Capacity Damage Claims

It is well settled "'that neither a state agency nor a state official acting in his official capacity may be sued for damages in a section 1983 action.'" Wang v. New Hampshire Bd. of Reg. in Med., 55 F.3d 698, 700 (1st Cir. 1995) (quoting Johnson v. Rodriguez, 943 F.2d 104, 108 (1st Cir. 1991) (citations omitted)). The Eleventh Amendment bars Lefebvre's claims against each of these individuals in their "official capacities" because any award against them would be paid from the state treasury. See Ford Motor Co. v. Dep't of the Treasury, 323 U.S. 459, 464 (1945) ("[W]hen the action is in essence one for the recovery of money from the state, the state is the real, substantial party in interest and is entitled to invoke its sovereign immunity from suit even though individual officers are nominal defendants."); see also Edelman v. Jordan, 415 U.S. 651, 676-77 (1974) (holding that Eleventh Amendment prohibits all awards of retroactive damages from the state treasury, even when a state officer is the named defendant); Bettencourt v. Bd. of Reg. in Med., 904 F.2d 772, 781 (1st Cir. 1990) (declining to disturb district court's ruling that Eleventh Amendment bars "official capacity" suit for damages against state officials). Accordingly, Lefebvre's claims against these defendants in their "official capacities" are barred by the Eleventh Amendment.

3. Prospective injunctive relief

To the extent that Lefebvre seeks to obtain prospective injunctive relief in Count 13, I determine that he lacks standing to seek such relief. According to the Supreme Court, "[p]ast exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief . . . if unaccompanied by any continuing, present adverse effects." O'Shea v. Littleton, 414 U.S. 488, 495-96 (1974); see also Rizzo v. Goode, 423 U.S. 362, 372 (1976).

In the instant case, each of Lefebvre's claims for prospective relief is premised on the speculative assertions that he could again be arrested for failure to pay child support, again be injured by the allegedly unconstitutional application of the New Hampshire child protection system, and again be subjected to an allegedly unconstitutional contempt proceeding in the New Hampshire state courts. Pursuant to the holdings of O'Shea and its progeny, these "someday possibilities" are far too uncertain to constitute an "actual or imminent" injury sufficient to meet the standing requirement. See Rizzo, 423 U.S. at 372; O'Shea, 414 U.S. at 496. If Lefebvre were to again experience these alleged violations of his constitutional rights, he will have a forum in either the state or federal courts to litigate his claims. Until such a time, however, Lefebvre's claims for

prospective relief are dismissed.

C. Count 23

Lefebvre argues in Count 23 that James T. McEntee is liable for damages in his individual and official capacities because he obtained improper access to a "confidential file" containing information about Lefebvre. For reasons identical to those stated above, Lefebvre's claim against McEntee in his "official capacity" is barred by the Eleventh Amendment. See Wang, 55 F.3d at 700 ("[N]either a state agency nor a state official acting in his official capacity may be sued for damages in a section 1983 action.") (internal quotation marks and citations omitted); see also Edelman, 415 U.S. at 651. I must deny defendants' motion to dismiss Lefebvre's claim against McEntee in his individual capacity, however, because, given the liberal standard by which I must judge a motion to dismiss for failure to state a claim, I cannot conclude that there are no circumstances under which McEntee could be held liable for the misconduct alleged in this count.[11]

III. CONCLUSION

[11] I reach this conclusion without prejudice to defendant McEntee's right to seek summary judgment on the same grounds set forth in the motion to dismiss.

Lefebvre's claims for damages against all state and federal defendants, except for the claim against defendant McEntee in his "individual capacity" as described in Count 23, are dismissed.

The federal defendants' motion to dismiss (doc. 50) is granted. The state defendants' motion to dismiss (doc. 49) is granted except as to the claim against defendant McEntee in his individual capacity (Count 23).

SO ORDERED.

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Paul Barbadoro
Chief Judge

September 22, 1999

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