UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA

Roanoke Division

WESLEY C. SMITH, Plaintiff, v. CHERI SMITH, et. al., Defendants.	))))))))))	Case No. 7:07-CV-00117

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS OF DEFENDANT JUDGES LON FARRIS, LEROY MILLETTE, JR., ROSSIE ALSTON, JR., WILLIAM HAMBLEN, RICHARD POTTER and H. LEE CHITWOOD and PRINCE WILLIAM CIRCUIT COURT

Defendant Judges Lon Farris, Leroy Millette, Jr., Rossie Alston, Jr., William Hamblen, Richard Potter and H. Lee Chitwood ("the Judges") and Prince William Circuit Court ("the Circuit Court") submit this Memorandum in Support of their Motion to Dismiss.

The nature of his action is difficult to discern. Construing the complaint liberally, see, e.g., *Ransom v. Danzig*, 69 F. Supp. 2d 779, 787 (E.D. Va. 1999), plaintiff is attempting to state a claim for violation of protected rights. Assuming this to be the case, defendants move to dismiss the complaint under Fed. R. Civ. P. 12(b)(1) and 12(b)(6). When a defendant moves to dismiss for lack of jurisdiction pursuant to Rule 12(b)(1), the burden is on plaintiff, as the party asserting jurisdiction, to prove that federal jurisdiction is proper. *White v. CMA Const. Co., Inc.*, 947 F. Supp. 231, 233 (E.D. Va. 1996).

Defendants may assert affirmative defenses to be resolved on the merits under Fed. R. Civ. P. 12(b)(6) where the affirmative defenses are apparent from a fair reading of the complaint. A Motion to Dismiss tests the sufficiency of the complaint. Facts asserted are taken as true solely for purposes of argument on the 12(b)(6) Motion, and the complaint must be construed in the light most favorable to the plaintiff. *Iodice v. United States*, 289 F.3d 270, 273 (4th Cir. 2002). The Court should not dismiss the complaint unless it is clear that the facts alleged do not entitle plaintiff to relief. *GE Inv. Private Placement Partners II v. Parker*, 247 F.3d 543, 548 (4th Cir. 2001). However, legal conclusions couched as factual allegations need not be taken as true. *Estate Construction Co. v. Miller & Smith Holding Co.*, 14 F.3d 213, 217-18 (4th Cir. 1994); *Assa' Ad-Faltas v. Commonwealth*, 738 F. Supp. 982, 985 (E.D. Va. 1989) (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)); see also *District 28, United Mine Workers of Am., Inc. v. Wellmore Coal Corp.*, 609 F.2d 1083, 1085 (4th Cir. 1979). Neither must the Court accept as true allegations that are merely conclusory, unwarranted deductions of fact or unreasonable inferences. *Veney v. Wyche*, 293 F.3d 726, 730 (4th Cir. 2002). The presence of a few conclusory legal terms does not insulate a complaint from dismissal where the facts alleged cannot support the claim. See *Young v. City of Mount Ranier*, 238 F.3d 567, 577 (4th Cir. 2001). Dismissal is appropriate when the face of the complaint clearly reveals the existence of a meritorious affirmative defense. See *Brooks v. City of Winston-Salem*, 85 F.3d 178, 181 (4th Cir. 1996).

Plaintiff herein failed to state a claim entitling him to relief. Nowhere in his complaint does plaintiff inform this Court how defendants' alleged acts, if they occurred at all, are a violation of his constitutional rights. Plaintiff believes defendants

demonstrated a particular bias when it came to his cases. Beyond conclusory statements, nothing is said about how defendants' conduct violated plaintiff's constitutional rights. Plaintiff failed to allege facts necessary to support his federal claims. The Judges and the Circuit Court also enjoy absolute judicial and/or Eleventh Amendment sovereign immunity. This Court does not have personal jurisdiction over these defendants. This Court does not have subject matter jurisdiction over plaintiff's claims by virtue of the domestic relations exception to federal court jurisdiction. Moreover, this Court does not have subject matter jurisdiction by virtue of either the Younger abstention doctrine or the Rooker-Feldman doctrine.

THIS COURT LACKS JURISDICTION UNDER THE DOMESTIC RELATIONS EXCEPTION

In *Ankenbrandt v. Richards*, 504 U.S. 689, 112 S. Ct. 2206, 119 L. Ed. 2d 468 (1992), the Supreme Court reaffirmed adherence to the domestic relations exception to federal court jurisdiction. As a result, federal courts abstain from exercising jurisdiction over claims involving "the issuance of a divorce, alimony, or child custody decree...." *Id.*, 504 U.S at 703. See also *Mazur v. Woodson*, 932 F. Supp. 144, 149 (E.D. Va. 1996)("Child custody cases fall squarely within the ambit of the domestic relations exception.") Further, in *Doe v. Doe*, 660 F.2d 101, 105 (4th Cir. 1981), the Court noted that "[t]his Court has consistently acknowledged and upheld this lack of federal court jurisdiction in the area of domestic relations." The Court added that "federal courts must be alert to keep genuinely domestic matters such as 'child custody' out of the federal courts." *Id.* In this case, despite conclusory allegations to the contrary, plaintiff clearly