UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

SUSAN SKIPP,

Plaintiff,

No. 3:17-cv-1974(VAB)(WIG)

v.

MAUREEN MURPHY, ET AL.

Defendants.
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RECOMMENDED RULING OF DISMISSAL

Plaintiff Susan Skipp, appearing *pro se*, filed a civil action in the Southern District of New York on November 1, 2017. On November 28, 2017, the case was transferred to this court. [Doc. # 6]. Plaintiff has sued a number of entities, including attorneys, state and federal judges, and various Connecticut state agencies. The complaint alleges that the defendants violated Plaintiff's rights under the Americans with Disabilities Act, 42 U.S.C. § 12131 *et seq.* ("ADA"), and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794 ("Section 504"), in connection with their involvement in Connecticut state court divorce and child custody proceedings in which Plaintiff lost custody of her children. Now before the Court is Plaintiff's motion for leave to proceed *in forma pauperis* pursuant to 28 U.S.C. §1915. [Doc. # 1]. For the reasons that follow, Plaintiff's motion is granted, but the Court recommends this matter be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B).

Applications to proceed *in forma pauperis* require a two-step process of review by the district court. *See Bey v. Syracuse Univ.*, 155 F.R.D. 413, 413 (N.D.N.Y. 1994). First, the Court must determine whether the litigant qualifies to proceed *in forma pauperis* based upon economic

status. 28 U.S.C. §1915. Based upon review of Plaintiff's financial affidavit, the motion to proceed *in forma pauperis* is granted.

Second, the Court must determine whether the cause of action is frivolous, malicious, or without merit. 28 U.S.C. §1915(e)(2)(B). This Court "*shall dismiss* the case at any time if the court determines that…the action (i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief." *Id.* (emphasis added). The term "frivolous" is not intended to be insulting or demeaning; it is a term of art that has a precise meaning. A claim is said to be frivolous if it does not have an arguable basis in law or fact. *See Neitzke v. Williams*, 490 U.S. 319, 325 (1989). The Court, by using this term as required, does not intend to diminish what the plaintiff has experienced or its impact upon her.

When a plaintiff appears *pro se*, the complaint must be construed liberally in the plaintiff's favor and must be held to a less stringent standard than formal pleadings drafted by lawyers. *Hughes v. Rowe*, 449 U.S. 5, 9 (1980); *Estelle v. Gamble*, 429 U.S. 97, 106 (1976). It is well established that "[t]he power to dismiss *sua sponte* must be reserved for cases in which a *pro se* complaint is so frivolous that, construing the complaint under the liberal rules applicable to *pro se* complaints, it is unmistakably clear that the court lacks jurisdiction or that the claims are lacking in merit." *Mendlow v. Seven Locks Facility*, 86 F. Supp. 2d 55, 57 (D. Conn. 2000).

The Court lacks subject matter jurisdiction to review Plaintiff's claims. Pursuant to what is commonly known as the *Rooker-Feldman* doctrine, a party losing his or her case in state court is barred from seeking what is in substance appellate review of the state judgment in federal district court based on the party's claim that the state judgment violates his or her federal rights. *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 414-15 (1923); *District of Columbia Court of*

Appeals v. Feldman, 460 U.S. 462, 486 (1983). The doctrine bars "not only claims that involve direct review of a state court decision, but also claims that are 'inextricably intertwined' with a state court decision." *Swiatkowski v. Bank of Am., NT & SA*, 103 F. App'x 431, 432 (2d Cir. 2004). In order for the *Rooker-Feldman* doctrine to apply, four requirements must be met:

> First, the federal-court plaintiff must have lost in state court. Second, the plaintiff must complain of injuries caused by a state-court judgment. Third, the plaintiff must invite district court review and rejection of that judgment. Fourth, the state-court judgment must have been rendered before the district court proceedings commenced.

Hoblock v. Albany Cty. Bd. of Elections, 422 F.3d 77, 85 (2d Cir. 2005) (internal quotation marks and alteration omitted); *see also Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). The first and fourth of these requirements are procedural, and the second and third are substantive. *Hoblock*, 422 F.3d at 85.

Here, Plaintiff alleges that the defendants' conduct in the state court proceedings violated her rights under the ADA and Section 504. The ADA prohibits disability discrimination by public entities. 42 U.S.C. § 12132. Similarly, Section 504 provides that a person should not be excluded from participation in, denied the benefits of, or subject to discrimination on the basis of disability. 29 U.S.C. § 794(a). Claims under the two statutes are considered together because the statutes impose identical requirements. *Henrietta D. v. Bloomberg*, 331 F.3d 261, 272 (2d Cir. 2003).

The allegations in Plaintiff's complaint meet the four factors of the *Rooker-Feldman* doctrine. First, the procedural requirements are met: Plaintiff lost in state court, as the complaint documents, and the state court judgments she complains of were rendered prior to the commencement of the instant action. Second, the substantive factors are met: Plaintiff's allegations that the defendants violated the ADA and Section 504 in either issuing or following

the state court orders constitute a complaint of injuries caused by a state court judgment. And, the complaint invites this Court to review and reject the state court decisions in order to grant the relief Plaintiff seeks.

Other cases in which plaintiffs have asked a federal court to review a state family court judgment, even when the plaintiff alleges the state family court matter was discriminatory, have been held to be barred by the *Rooker-Feldman* doctrine. *See Richter v. Connecticut Judicial Branch*, No. 3:12-CV-1638 JBA, 2014 WL 1281444, at *8 (D. Conn. Mar. 27, 2014), *aff'd*, 600 F. App'x 804 (2d Cir. 2015) (dismissing ADA and Section 504 claims stemming from state court divorce and custody proceedings under *Rooker-Feldman*, describing the doctrine's requirements as "unmistakably satisfied" under claims substantially similar to those raised by Plaintiff here). *See also Chase v. Czajka*, No. 04 CIV 8228 LAK AJP, 2005 WL 668535, at *5 (S.D.N.Y. Mar. 23, 2005), *adhered to*, No. 04 CIV 8228 LAK AJP, 2005 WL 1123397 (S.D.N.Y. May 12, 2005) (dismissing conspiracy and defamation claims under *Rooker-Feldman* when the basis of the complaint concerned decisions regarding plaintiff's state court divorce and child custody proceedings); *Hoblock*, 422 F.3d at 88 ("[I]f 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."). Accordingly, the Court lacks subject matter jurisdiction to review Plaintiff's claims.[1]

[1] In addition, many of the named defendants are immune from suit. Absolute immunity is enjoyed by judges for all acts that are judicial in nature. *Forrester v. White*, 484 U.S. 219, 228-29 (1988). Thus, the claims against the defendant judges should be dismissed. Likewise, the claims against the defendants who perform functions judicial in nature are barred by the doctrine of quasi-judicial immunity. *See Oliva v. Heller*, 839 F.2d 37, 39 (2d Cir. 1988). Therefore, the claims against the Connecticut Court Support Services and the Connecticut Association of Family and Conciliatory Courts should be dismissed. Finally, the complaint names several state

The Court notes that Plaintiff has filed numerous actions in this district, all of which arise from her attempts to regain custody of her children. *See Skipp v. Brigham et al.* (17-cv-1224); *Skipp v. Tittle et al.* (17-cv-1569); *Skipp v. Brigham et al.* (17-cv-1761). These cases were consolidated, and dismissed, in a ruling issued by Judge Shea in case no. 17-cv-1761 on October 26, 2017.[2] In that ruling, Judge Shea also issued a warning of a leave-file-injunction. Specifically, Judge Shea stated as follows:

> Ms. Skipp has pursued similar claims to those she makes in the present cases repeatedly in both federal and state court. As noted above, Ms. Skipp filed a complaint similar to the present actions in this court two years ago assailing the state court decisions resulting in the loss of Ms. Skipp's custody of her children. *See Skipp v. Connecticut Judicial Branch*, No. 3:14-CV-00141 JAM, 2015 WL 1401989 (D. Conn. Mar. 26, 2015), appeal dismissed (July 6, 2015). She then filed two successive habeas petitions nearly identical to the one in the present case, both of which were dismissed for similar reasons. *See Skipp et al. v. Connecticut et al.*, 3:16-cv-1194-MPS (Doc. #7*); Skipp et al. v. Paxton et al.*, 3:16-cv-01619-JAM (Doc. #5). After filing another suit in Connecticut Superior Court, Ms. Skipp initiated the original action in this case (*Skipp et al. v. Brigham et al.*, 17-cv-01224) by attempting to remove that case to the Southern District of New York. (See ECF No. 2). She then filed the two other actions which the Court disposes of in this case, both of which contain similar allegations to her numerous prior complaints. Although Ms. Skipp's complaints are not a carbon copy of her previous actions in state and federal court, they present a very similar attempt to use this court to conduct an end run around the state courts that have addressed her claims over the past several years. Ms. Skipp's suits also target a number of defendants who have repeatedly had to defend against her meritless claims for some time now. Although a pro se party must always be granted more

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agencies: the Department of Children and Families, the Judicial Branch, the Judicial Review Council, and the Attorney General's Office. These agencies are entitled to Eleventh Amendment immunity, and the claims against them should be dismissed. *See Bhatia v. Connecticut Dep't of Children & Families*, 317 F. App'x 51, 52 (2d Cir. 2009) (Department of Children and Families entitled to immunity); *Allen v. Egan*, 303 F.Supp.2d 71, 75 (D. Conn. 2004) (Judicial Branch entitled to immunity); *Manchanda v. Emons*, No. 3:17-CV-127 (VLB), 2017 WL 810278, at *4 (D. Conn. Mar. 1, 2017), *appeal dismissed* (Apr. 6, 2017) (Judicial Review Council and Attorney General's Office entitled to immunity).

[2] Plaintiff also filed *Skipp v. Tittle, et al.* (18-cv-447), which also asserts various claims against persons who were involved with the state court child custody proceedings, but that case was not consolidated with the others under case number 17-cv-1761. A Recommended Ruling has been issued in that case, recommending dismissal for substantially the same reasons set forth in this opinion.

> leniency than a party represented by counsel, *see, e.g.*, *Coombe*, 174 F.3d at 280, the Court will not hesitate to impose sanctions in response to vexatious litigation. In particular, the Court has authority to impose a leave-to-file injunction upon Ms. Skipp under the All Writs Statute. *See Matter of Hartford Textile Corp.*, 681 F.2d 895, 897 (2d Cir. 1982) ("The equity power of a court to give injunctive relief against vexatious litigation is an ancient one which has been codified in the All Writs Statute, 28 U.S.C. s 1651(a)."). A leave-to-file injunction could prevent Ms. Skipp from filing any further suits in this Court that arose from the same events that have been the subject of these and previous actions, except under certain, restrictive conditions. If Ms. Skipp makes any further filings in this Court (except a notice of appeal) setting forth similar allegations, she will leave the Court with little choice other than to exercise this power.

Given the similarity of the allegations in the instant action to the allegations in the previous actions, the Court recommends that the district court judge to whom this case is assigned consider whether it is appropriate to exercise the court's sanction power at this juncture.

For the reasons set forth above, the Court recommends this matter be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B). This is a Recommended Ruling. *See* Fed. R. Civ. P. 72(b)(1). Any objection to this Recommended Ruling should be filed within 14 days after service. *See* Fed. R. Civ. P. 72(b)(2). Failure to timely object will preclude appellate review. *Impala v. United States Dep't of Justice*, 670 Fed.App'x 32, 32 (2d Cir. 2016).

SO ORDERED, this 7th day of June, 2018, at Bridgeport, Connecticut.

/s/ William I. Garfinkel
WILLIAM I. GARFINKEL
United States Magistrate Judge