

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-9506

Summary Calendar

KENNETH MAURICE ROBINSON

Plaintiff-Appellant,

v.

STATE OF LOUISIANA, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Louisiana
CA 92 809 B M1)

(September 9, 1993)

Before KING, HIGGINBOTHAM and BARKSDALE, Circuit Judges.

PER CURIAM:*

Louisiana Department of Public Safety and Corrections inmate Kenneth Maurice Robinson appeals the district court's dismissal of his § 1983 claim for lack of subject matter jurisdiction and that court's denial of his motion for a certificate of probable cause. After a careful review of the record, we affirm the judgment of the district court.

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

I.

Robinson brought this pro se, in forma pauperis § 1983 civil rights action against the State of Louisiana and various state officers and private citizens from Louisiana and Arizona. He alleged that these defendants conspired to deprive him of due process by allowing him to be served with a petition--filed in Arizona state court--for termination of parent-child relationship. Robinson contended, inter alia, that no proof of his paternity had been established with respect to the minor child in question, Tyrone Maurice Fraley, and that the officials' actions in allowing service of the petition for a \$34 fee was arbitrary and capricious.

Furthermore, Robinson brings suit on behalf of Fraley, alleging that the child's rights to due process were violated in the Arizona court. He requested, within his § 1983 claim, that the district court intervene in the Arizona action to protect the child's rights and to address Robinson's right against the determination of paternity without due process of law.

After noting that the domestic relations exception divests federal courts of the power to issue child custody decrees, the district court determined that Robinson neither did, nor could, state a claim against the defendants because he had been accorded due process by being served with process and thus given an opportunity to respond to the petition. The court then dismissed Robinson's complaint for lack of subject matter jurisdiction.

Robinson then filed a motion for a certificate of probable cause, which the district court denied.

Robinson now appeals both the district court's denial of his motion for a certificate of probable cause and its dismissal of his § 1983 claim for lack of subject matter jurisdiction. Furthermore, Robinson argues on appeal that the complexities of this case warrant federal diversity jurisdiction over the termination-of-parental-relationship lawsuit because the fact that paternity was not proven deprived him of due process.

II.

A certificate of probable cause is a jurisdictional prerequisite for an appeal arising from the denial of a petition for habeas corpus. See Fed. R. App. P. 22(b); 28 U.S.C. § 2253. Robinson's motion for a certificate of probable cause was thus unnecessary, and the district court was correct in denying such motion.

Moreover, Robinson did not invoke federal diversity jurisdiction in his § 1983 complaint; he raises his diversity argument for the first time on appeal. It therefore need not be addressed. United States v. Sherbak, 950 F.2d 1095, 1101 (5th Cir. 1992).

Rather than addressing the district court's conclusion that it lacked subject matter jurisdiction,¹ we have chosen to review

¹ Obviously, however, the district court did *not* have jurisdiction to entertain Robinson's complaint against the states of Louisiana and Arizona because such a complaint is barred by the Eleventh Amendment. See Hans v. Louisiana, 134 U.S. 1, 15 (1890). Furthermore, we are assuming that Robinson brings suit

the district court's dismissal by applying general principles of abstention. Although abstention from jurisdiction is the exception rather than the rule, see Ankenbrandt v. Richards, 112 S.Ct. 2206, 2215 (1992), abstention is appropriate in certain circumstances. For example, if assumption of federal jurisdiction would interfere with pending proceedings in state tribunals involving important state interests, abstention is proper under Younger v. Harris, 401 U.S. 37 (1971), and its progeny. See Ankenbrandt, 112 S.Ct. at 2216; Word of Faith Outreach Center Church v. Morales, 986 F.2d 962, 966 (5th Cir. 1993).

Clearly the interests implicated in the Arizona proceeding are important state interests, and abstention is therefore appropriate in the instant case under Younger.² We therefore find, albeit on different grounds, that the district court was correct in dismissing Robinson's claims without prejudice.

III

For the foregoing reasons, we AFFIRM the judgment of the district court.

against the state officials named in his complaint only in their individual capacities.

² Had the Arizona court adjudicated the parental-rights matter before Robinson filed his federal complaint, or if the matter has since been adjudicated, Robinson's § 1983 complaint could not have been used to attack the Arizona court's final judgment. See Howell v. Supreme Court of Texas, 885 F.2d 308, 311 (5th Cir. 1989), cert. denied, 496 U.S. 936 (1990). Review of state court judgments is available only in the United States Supreme Court on direct appeal or by writ of certiorari. Id.