

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

DANIEL TREVOR ASHBAUGH,

Plaintiff,

v.

CASE NO. 19-3089-SAC

TERRY WAGNER, et al.,

Defendants.

MEMORANDUM AND ORDER

This matter is a civil rights action filed under 42 U.S.C. § 1983. Mr. Ashbaugh proceeds *pro se* and *in forma pauperis*. Plaintiff alleges his due process rights were violated when the defendants failed to allow him to see his children, to give him a court date, or to give him a “real” case plan. Plaintiff seeks return of his children to his custody.

On July 12, 2019, the Court entered a Memorandum and Order to Show Cause (ECF No. 6)(“MOSC”) ordering Plaintiff to show cause by August 5, 2019, why this matter should not be dismissed due to the deficiencies set forth. The MOSC stated that if Plaintiff failed within the time allotted to file a response, this action could be dismissed without further notice. Plaintiff has not responded to the MOSC.

As explained in the MOSC, Mr. Ashbaugh’s complaint is subject to dismissal because the domestic relations exception to the federal courts’ jurisdiction “divests the federal courts of power to issue divorce, alimony, and child custody decrees.” *Johnson v. Rodriguez (Orozco)*, 226 F.3d 1103, 1111 (10th Cir. 2000)(quoting *Ankenbrandt v. Richards*, 504 U.S. 689, 703 (1992)). In

addition, Plaintiff fails to assert sufficient facts to determine whether any of the defendants, a private corporation and two of its employees, is subject to liability under § 1983 as a state actor. *See Schwab v. Kansas*, No. 16-CV-4033-DDC-KGS, 2017 WL 2831508, at *14 (D. Kan. June 30, 2017).

For these reasons, Plaintiff's complaint is dismissed without prejudice.

IT IS THEREFORE ORDERED that this action is dismissed without prejudice.

IT IS FURTHER ORDERED that Plaintiff's Motion for Leave to Proceed in forma pauperis (ECF No. 2) is granted.

IT IS SO ORDERED.

DATED: This 16th day of August, 2019, at Topeka, Kansas.

s/ Sam A. Crow
SAM A. CROW
U.S. Senior District Judge