

complaint seeks injunctive relief against the defendant, ordering her to surrender custody of the parties' son, to bar her from using their son's current residence with her as a reason to support a claim for permanent custody in pending New Jersey divorce proceedings, and to bar the defendant "from giving misleading answers in NJ court and any other proceedings while she is under oath." *Id.* at 4. The proposed amended complaint asserts a claim against the defendant under 42 U.S.C. § 1983 by depriving the plaintiff of custody of their son and a declaratory judgment as to whether a state court may be allowed to prefer a female parent over a male parent in custody proceedings in violation of New Jersey statute and in violation of the Fourteenth Amendment. [Proposed Amended] Complaint, attached to Motion to Allow Amend [sic] Complaint (Docket No. 10), at 2-3.

When a proposed amendment to a complaint would be futile as a matter of law the court may deny leave to amend. *Carlo v. Reed Rolled Thread Die Co.*, 49 F.3d 790, 792 (1st Cir. 1995); *see also Maurice v. State Farm Mut. Auto. Ins. Co.*, 235 F.3d 7, 11 (1st Cir. 2000). The Supreme Court reaffirmed in *Ankenbrandt v. Richards*, 504 U.S. 689, 703-04 (1992), the long-standing principle that federal courts may not exercise jurisdiction over suits for divorce and alimony decrees and lack power to issue child custody decrees. Federal courts may, however, exercise jurisdiction over tort claims that arise out of domestic relationships. *Id.* at 704. To the extent that the plaintiff's proposed section 1983 claim may be so characterized, it nonetheless fails to state a claim on which relief may be granted. A spouse's participation in state court litigation and custody of child pursuant to state-court order does not constitute action taken under color of state law, a necessary prerequisite for an action under section 1983. *McDougald v. Jenson*, 596 F. Supp. 680, 684 (N.D. Fla. 1984). The remaining claims in the proposed amended complaint are not properly directed at the defendant, who is not alleged to be a judge of the New Jersey state courts. Clearly, the defendant has no power to change the allegedly unconstitutional actions of those courts. In addition, the proposed claims in

practical effect seek reversal of a state court's custody decree, which this court lacks the power to do. Accordingly, the motion for leave to amend the complaint is denied.

The allegations of the original complaint also seek relief in the form of a custody decree, or modification of a custody decree, which is not within this court's jurisdiction. The second request for relief, limiting the arguments the defendant may make in a divorce or custody proceeding, are also beyond the scope of this court's jurisdiction pursuant to the domestic relations exception. Even if that were not the case, granting the request would constitute unwarranted interference in the internal procedures of a state court. Finally, the request to order the defendant to testify truthfully is without a basis in an actual case or controversy and is unnecessary in light of existing state legal remedies for perjury should it occur.

For all of the foregoing reasons, this court lacks subject matter jurisdiction over the plaintiff's complaint and this case. Accordingly, the action is hereby **DISMISSED**.

Dated this 9th day of November 2001.

David M. Cohen
United States Magistrate Judge

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