

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

JACQUES GEORGE RODRIGUE, ET AL.

CIVIL ACTION

VERSUS

No. 20-1240

WENDY WOLFE RODRIGUE MAGNUS

SECTION I

ORDER & REASONS

Before the Court is defendant Wendy Wolfe Rodrigue Magnus's ("Wendy") motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction or, alternatively, Rule 12(b)(6) for failure to state a claim.<sup>1</sup> The plaintiffs, Jacques George Rodrigue ("Jacques"), André George Rodrigue ("André"), and the Rodrigue Charitable Remainder Unitrust No. 1 (the "Unitrust") (collectively, the "plaintiffs") filed a memorandum in opposition,<sup>2</sup> to which Wendy replied.<sup>3</sup> The Court grants the motion because it lacks subject matter jurisdiction.

I.<sup>4</sup>

Artist George G. Rodrigue, Jr. ("George") gained fame for his iconic "Blue Dog" paintings.<sup>5</sup> He died in 2013, survived by his second wife, Wendy (the defendant here), with whom he was married for the last sixteen years of his life, and his two children

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<sup>1</sup> R. Doc. No. 10.

<sup>2</sup> R. Doc. No. 17.

<sup>3</sup> R. Doc. No. 23.

<sup>4</sup> The Court takes judicial notice herein of certain courts' records and rulings (but not their factual findings), which is proper when deciding this Rule 12(b)(1) motion. *See, e.g., Gray ex rel. Rudd v. Beverly Enters.-Miss., Inc.*, 390 F.3d 400, 407 n.7 (5th Cir. 2004).

<sup>5</sup> R. Doc. No. 9, at 3 ¶ 6 (first amended and supplemental declaratory complaint).

from his first marriage, Jacques and André (plaintiffs here).<sup>6</sup> George disposed of his property in a last will and testament, which left his interest in his copyrights to two trusts: (1) the George Godfrey Rodrigue, Jr. Family Trust (the “Family Trust”), and (2) the Rodrigue Charitable Remainder Unitrust No. 1 (the “Unitrust”).<sup>7</sup>

After George’s death, Jacques and André sued Wendy and her second husband, Douglas Magnus (“Douglas”), in state court under a variety of theories, including a copyright infringement claim against Douglas for his use of Blue Dog images in jewelry he created.<sup>8</sup> After Wendy removed that case to this Court—based on exclusive federal jurisdiction under the Copyright Act<sup>9</sup>—the plaintiffs amended their complaint to withdraw the infringement claim; this Court remanded the case to state court.<sup>10</sup>

In state court again, Wendy moved to enjoin Jacques from selling physical prints that she co-owned, as well as new prints made from the intellectual property that she co-owned.<sup>11</sup> The requested injunction was granted.<sup>12</sup> Then, Jacques and Wendy jointly moved to amend the injunction to cover only co-owned physical

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<sup>6</sup> *Id.* at 3 ¶ 7.

<sup>7</sup> *Id.* at 4–5 ¶¶ 12–14.

<sup>8</sup> *See Rodrigue v. Magnus*, No. 19-12036, R. Doc. No. 1, at 2 (E.D. La. Aug. 6, 2019) (notice of removal).

<sup>9</sup> *Id.*

<sup>10</sup> *Rodrigue v. Magnus*, No. 19-12036, R. Doc. No. 16 (E.D. La. Sept. 4, 2019) (remand order).

<sup>11</sup> *See generally* R. Doc. No. 1-6 (state court motion for entry of preliminary injunction).

<sup>12</sup> *See* R. Doc. No. 10-2, at 6 (order granting amended preliminary injunction, referencing earlier injunction).

prints—not the intellectual property thereto.<sup>13</sup> The state court granted the motion, removing from the injunction the restraints on intellectual property.<sup>14</sup>

Following all of that, Jacques and André, joined by Jacques in his official capacity as trustee for the Unitrust, brought this declaratory judgment action. They ask this Court to declare the following as to the copyrights created during George’s marriage with Wendy: (1) “[b]y operation of copyright law,” George “alone held all exclusive copyrights to his created works;” (2) the “Family Trust and Unitrust are the sole owners of all exclusive copyrights owned by” George upon his death; (3) the “Unitrust holds all copyrights related to the physical prints that were donated to the Unitrust” by George’s First Codicil and “the Family Trust holds the copyrights to the remainder, as transferred by” George’s Last Will and Testament; (4) Wendy “does not own copyrights to any of” George’s “works or prints that are owned by the Family Trust and the Unitrust by operation of the Judgment of Possession;” (5) Wendy “has only an arguable claim to a percentage of the *economic benefit* derived from” George’s “copyright,” which “does not confer any controlling or exclusive rights to [Wendy,] the non-author spouse, as decided in *Rodrigue v. Rodrigue*[], 218 F.3d 432 (5th Cir. 2000)];” (6) Wendy “owns none of the copyrights to artwork created by” George; and (7) Wendy “does not own or co-own any copyrights to prints made from George’s original artwork.”<sup>15</sup>

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<sup>13</sup> *Id.* at 2; *see also* R. Doc. No. 17, at 5 (stating the parties “reached a compromise regarding the injunction issue in an effort to allow Rodrigue Studios to continue to operate pending the litigation”).

<sup>14</sup> R. Doc. No. 10-2, at 4.

<sup>15</sup> R. Doc. No. 9, at 10–11 ¶ 40 (emphasis in original).

Wendy has moved to dismiss for lack of subject matter jurisdiction under Rule 12(b)(1), claiming that neither the plaintiff's declaratory complaint, nor any hypothetical claim that Wendy could raise, arises under federal law.<sup>16</sup> The Court agrees for the reasons that follow.

## II.

Pursuant to Federal Rule of Civil Procedure 12(b)(1), “[a] case is properly dismissed for lack of subject matter jurisdiction when the court lacks the statutory or constitutional power to adjudicate the case.” *Home Builders Ass’n of Miss., Inc. v. City of Madison*, 143 F.3d 1006, 1010 (5th Cir. 1998) (quoting *Nowak v. Ironworkers Local 6 Pension Fund*, 81 F.3d 1182, 1187 (2d Cir. 1996)). Where “a Rule 12(b)(1) motion is filed in conjunction with other Rule 12 motions, the court should consider the Rule 12(b)(1) jurisdictional attack before addressing any attack on the merits.” *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001) (per curiam) (citing *Hitt v. City of Pasadena*, 561 F.2d 606, 608 (5th Cir. 1977) (per curiam)).

“The burden of proof for a Rule 12(b)(1) motion to dismiss is on the party asserting jurisdiction.” *Id.* (citing *McDaniel v. United States*, 899 F. Supp 305, 307 (E.D. Tex. 1995)). That party must prove jurisdiction by a preponderance of the evidence. *New Orleans & Gulf Coast Ry. Co. v. Barrois*, 533 F.3d 321, 327 (5th Cir. 2008). In evaluating jurisdiction, courts must resolve disputed facts without giving a presumption of truthfulness to the plaintiff's allegations. *Williamson v. Tucker*, 645

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<sup>16</sup> See R. Doc. No. 10. Alternatively, Wendy asks this Court to dismiss for failure to state a claim under Rule 12(b)(6). Because the Court concludes it lacks jurisdiction, it cannot reach that merits-based argument. *Ramming*, 281 F.3d at 161.

F.2d 404, 413 (5th Cir. 1981) (citing *Mortensen v. First Fed. Savings and Loan Assoc.*, 549 F.2d 884, 891 (3d Cir. 1977)). A court may dismiss an action for lack of subject matter jurisdiction “on any one of three separate bases: (1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court’s resolution of disputed facts.” *Spotts v. United States*, 613 F.3d 559, 565–66 (5th Cir. 2010) (quoting *St. Tammany Parish, ex rel. Davis v. Fed. Emer. Mgmt. Agency*, 556 F.3d 661, 663 (5th Cir. 2007)).

### III.

Federal courts have limited jurisdiction. See U.S. Const. art. III, § 2. Generally, a case “arises under” federal law “only if a federal question appears on the face of the plaintiff’s well-pleaded complaint.” *Bernhard v. Whitney Nat’l Bank*, 523 F.3d 546, 551 (5th Cir. 2008). But the inquiry is slightly different when the plaintiff sues for only a declaration. That is because a federal question is not necessarily present every time a declaration is sought—“the Declaratory Judgment Act does not ‘extend’ the ‘jurisdiction’ of the federal courts.” *Medtronic, Inc. v. Mirowski Fam. Ventures, LLC*, 571 U.S. 191, 197 (2014) (quoting *Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667, 671 (1950)). In other words, “in an action for declaratory judgment, the inquiry is inverted: Since a declaratory judgment action is inherently anticipatory, the federal issue must form part of the hypothetical well-pleaded complaint that the declaratory judgment *defendant* would have filed but for the

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