

APPENDIX A

United States Court of Appeals
For the First Circuit
No. 18-1280

MOSTAFA MASOMI
Plaintiff, Appellant,
V.
MEHRANDOKHT MADADI; ROBERT J. DILIBERO;
LISA MODECKER
Defendants , Appellees.

Before
Torruella, Kayatta, and Barron
Circuit Judges

JUDGMENT
Entered: August 6, 2018

Pro se Plaintiff- appellant Mostafa Masomi seeks to proceed in forma pauperis ("IFP") in this appeal. The district court certified that the appeal was not taken in good faith. See U.S.C. § 1915(a)(3). We construe appellant's motion to proceed IFP as a motion under Fed. R. App. P. 24(a)(5). We agree with the district court's determination that good faith is lacking. Because appellant has failed to identify any non-frivolous argument on appeal, we deny his IFP motion.

We further conclude that appellant need not be given additional time to pay the filing fee because, after careful review of relevant portions

of the record, we conclude that the appeal does not present a "substantial question," see 1st Cir. R. 27.0(c), and that, for substantially the reasons set out by the district court, dismissal was in order. The judgment of the district court is summarily affirmed.

By the Court:

/s/ Margaret Carter, Clerk

Cc: Mostafa Masomi
Robert J. DiLibero
Lisa Modecker

APPENDIX B

UNITED STATES DISTRICT COURT DISTRICT COURT OF MASSACHUSETTS

MOSTAFA MASOMI

Plaintiff

V.

MEHRANDOKHT MADADI, et al.,

Defendants.

Civil Action No. 18-10058-FDS

MEMORANDUM AND ORDER

SAYLOR, J.

For the reasons set forth below, this action will be dismissed pursuant to Fed. R. Civ. P. 12(h)(3) for lack of subject- matter jurisdiction.

I. Background

In this action, pro se plaintiff Mostafa Masomi seeks to have this court to alter or overturn decision of the Massachusetts state court relating to his divorce. The named defendants are his attorney, his former Wife, and her attorney. Based upon the allegations in the complaint, all parties appear to be resident of Massachusetts. Plaintiff contends that the defendants deprived him of his constitutional rights, apparently in the course of his divorce proceedings.

Plaintiff filed this action after his unsuccessful appeal to the Massachusetts Appeals court, Masomi v. Madadi, No. 16-P-1718,92 Mass. App.

Ct. 1107, 2017 WL 4364379 (Mass. App. Ct. Oct. 3, 2017) (unpublished table disposition), and Supreme Judicial Court's denial of this application for further appellant review on November 30, 2017. See *Masomi v. Madadi*, 478 Mass. 1106, 2017 WL 6047067 (Mass. 2017) (table).

II. The Court Lacks Subject-Matter Jurisdiction Over Plaintiff's Claims

"Federal courts are courts of limited jurisdiction," possessing "only that power authorized by Constitution and statute." *Gunn v. Minton*, 568 U.S. 251, 256 (2013) (quoting *Kokkonen v. Gurdian Life Ins. Co. of America*, 511 U.S. 375, 377 (1994)). "A court is duty-bound to notice, and act upon, defects in its subject matter jurisdiction sua sponte." *Spooner v. EEN, Inc.*, 644 F.3d 62, 67 (1st Cir.2011).

A pro se complaint is subject to "less stringent standards than formal pleadings drafted by lawyers." *Haines v. Kerner*, 404 U.S. 519, 520 (1972). Nonetheless, the complaint fails to include any basis upon which this Court could exercise its jurisdiction.

Pursuant to 28 U.S.C. § 1332, district courts have original jurisdiction "where the matter in controversy exceeds the sum or value of \$75,000. . . and is between citizen of different States." 28 U.S.C. § 1332(a)(1). All parties are alleged to reside in Massachusetts, and the claim, therefore, is clearly not within the Court's diversity jurisdiction.

Pursuant to 28 U. S. C. § 1331, district courts "have original jurisdiction of all actions arising under the Constitution, laws, or treaties of the United States. "28 U. S. C. § 1331. The complaint purport to assert a claim based on the United States Constitution.

However, the court is without subject-matter jurisdiction over claims relating to plaintiff's divorce proceedings, among other reasons, under the Rooker-Feldman doctrine. D. C. Ct. App. V. Feldman, 460 U. S. 462,467 (1983); *Rooker v. Fidelity Trust* courts do not have jurisdiction to review a case litigated and decided in state court; only the United States Supreme Court has jurisdiction to correct state court judgments." *littler v. Massachusetts*, No. 17-11277-RGS, 2017 WL 3495173, at *4 (D. Mass. Aug. 14, 2017). "Thus, even if the challenge is that the state court's action was unconstitutional, this court may not review the challenge." *Id* (citing *Feldman*, 460 U. S. at 485-86). "The Rooker-Feldman doctrine is properly applied where, regardless of how the claim is phrased, the only real injury to . . . (Plaintiff). . . is ultimately still caused by a state-court judgment," *DuLaurence v. Telegen*, 94 F. Supp. 3d 73, 80 (d. Mass. 2015), *aff'd sub nom. DuLaurence v. Telegen et al.* (May 5, 2015) (citations and quotations omitted.). The complaint concerns plaintiff's divorce proceedings and he seeks to have this court review the state court's judgment and order. The claims are therefore subject to dismissal based upon the Rooker-Feldman doctrine.

In summary, it is clear that subject-matter

jurisdiction is lacking, and dismissal is appropriate.

III. Conclusion

For the foregoing reasons, this action is dismissed pursuant to Fed. R. Civ. P. 12(h)(3) for lack of subject-matter jurisdiction. The clerk shall enter a separate order of dismissal.

So Ordered.

/s/ F. Dennis Saylor IV

F. Dennis Saylor IV

Dated: March 1, 2018

United States District Judge

¹ In addition, this matter may fall within domestic relations exception to federal jurisdiction. "this exception prohibits federal courts from issuing or altering 'divorce, alimony, and child custody decrees.'" Mandel v. Town of Orleans, 326 F.3d 267, 271 (1 st Cir. 2003) (citing Ankenbrandt V. Richards, 504 U. S. 689, 703 (1992)). The courts are divided as to whether the doctrine is limited to diversity claims, and the First Circuit has not decided the issue. Id.

APPENDIX C

United States Court of Appeals
For the First Circuit

No. 18-1280
MOSTAFA MASOMI
Plaintiff, Appellant

V

MEHRANDOKHT MADADI; ROBERT J. DILIBERO; LISA
MODECKER
Defendants, Appellees.

Before
Torruella, Kayatta and Barron,
Circuit Judges.

ORDER OF COURT
Entered: August 27, 2018

Mostafa Masomi's "Motion to Reconsider
judgment" is construed as a petition for panel

Rehearing. The petition for panel rehearing is
denied.

By the Court:

/s/ Margaret Carter, Clerk

cc:

Mostafa Masomi
Robert J. DiLibero
Lisa Modecker

APPENDIX D

NOTICE: Summary decision issued by the Appeals Court pursuant to its rule 1:28, as amended by 73 Mass. App. Ct. 1001 (2009), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the view of the panel that decided the case. A summary decision pursuant to rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See *Chase v. Curran*, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS APPEALS COURT

16-P-1718
MOSTAFA MASOMI
vs.
MEHRANDOKHT MADADI.

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

This appeal stems from divorce proceedings in the probate and Family Court. Mostafa Masomi (husband) appeals from (1) the order denying his second motion to file a late notice of appeal from the judgment of divorce (second extension motion);
and (2) the order denying his motion for relief from judgment pursuant to Mass.R.Civ. P. 60 (b), 365 Mass. 828 (1974). We affirm.

Background. On October 22, 2014, the parties agreed to participate in a conciliation program for the purpose of settling the contested issues in their divorce action. On January 8, 2015, the parties executed a "Stipulation / Agreement" (agreement) in which they agreed, inter alia, to a specific division of marital assets, and that each party would be responsible for his or her own debts.¹

The parties further agreed that the agreement "shall be submitted to court and entered as a judgment unless the parties prepare and execute a more detailed formal agreement."

On February 27, 2015, the parties and their respective counsel appeared for a hearing before a judge of the probate and Family Court, at which time the agreement was submitted to the judge for review. Despite the plain language of the agreement, father counsel asserted that the agreement was simply a draft. Ultimately, the father testified that he had signed the agreement with the advice of counsel and understood that it would be incorporated into the judgment. The judge then found the agreement to be fair and reasonable and approved it.

A little more than ten months later, a single justice of this court granted the husband an extension of time to file a notice of appeal from the divorce from the divorce judgment. Although the defendant filed a notice of appeal, he voluntarily withdrew it less than one month later, apparently to seek relief under rule 60(b) instead.

1 A significant portion of the dispute between the parties involves student loans taken out by their children (some guaranteed by the father) to pay for attendance at college, and disputes over payment of tuition for the children. The father favors a considerably larger amount of resources being placed toward higher education for the children than does the mother.

On February 23, 2016, the husband filed a motion for relief from judgment pursuant to rule 60(b), which the divorce judge denied on March 3, 2016. At this point, the husband filed his second extension motion, this time in the probate and Family Court. The judge denied this motion as well. The husband filed notice of appeal from the order denying his rule 60(b) motion and from the order denying his second extension motion, and the cases were later consolidated.

Discussion. We review the judge's denial of a motion for relief from judgment pursuant to rule 60(b) for an abuse of discretion. Rezendes v. Rezendes, 46 Mass. App. Ct. 438, 441 (1999). In his rule 60 (b) motion, the husband merely repeated his claim that the agreement was a draft and left the issue of the parties' "marital debt. . . unresolved." The agreement, however, specifically states that it shall be submitted and entered as a judgment and provides that each party would be responsible for his or her own debts. There is no indication in the record that the parties had any jointly held debt at the time of the divorce proceeding.² Although we understand the husband's claim that the wife should be required

to contribute to the payment of debts in his name or the names of their children, the husband agreed otherwise when he signed the agreement. We discern no abuse of discretion in the denial of the husband's rule 60(b) motion.

2 The wife did not report any liabilities on her financial statements filed during the divorce proceedings. The husband reported several liabilities totaling approximately \$130,361, more than eighty percent of which were student loans for the children.

We similarly review the judge's order denying the second extension motion for an abuse of discretion. See *Lawrence Sav. Bank v. Garabedian*, 49 Mass. App. Ct. 157, 161 (2000). We do not reach the question whether such a motion may be field in these circumstances, as we discern no abuse of discretion in denial. The only reason asserted by the husband to the judge for his withdrawal of the first notice of appeal was that he "did not know my appeal could proceed while my motion for relief from judgment . . . was under consideration." Even pro se, the husband's misunderstanding of the procedural rules does not constitute "good cause" for extending the time to appeal. *Ibid.*, quoting from *Bernard v. United Brands Co.*, 27 Mass. App. Ct. 415 n.8 (1989) (Under either Mass. R. A. P. 4 (c), as amended, 378 Mass. 928 (1979), or Mass. R. A. P. 14 (b), as amended, 378 Mass. 939 (1979), an extension requires a showing of "circumstances that are unique or extraordinary").

See Kellermann v. Kellerman, 390 Mass. 1007, 1008 (1984) (A party's pro se status "does not excuse (his) failure to file the claim of appeal within the applicable time period").

There is also no indication in the record that the husband's challenge of the divorce judgment is meritorious. See Commonwealth v. Barclay, 424 Mass. 377, 379 (1997), quoting from Tisei v. Building Inspector of Mariborough, 3 Mass. App. Ct. 377, 379 (1975) ("In the case of motions for leave to file an appeal late . . . a showing of meritorious case is required"). The husband here presented to the judge no reason to challenge the divorce judgment other than those in his rule 60(b) motion. As explained supra, these arguments provided no reason to disturb the agreement stuck by the parties.

Accordingly, we discern no basis for reversing the order denying the husband's second extension motion.³

Order denying motion for relief from judgment affirmed.

Order dated April 12, 2016, denying late notice of appeal affirm.

By the Court (Massing, Kinder & Ditekoff, JJ.4),
/s/ Joseph F. Stanton, Clerk

Entered: October 3, 2017.

3 The equities do not favor the wife's request for appellate attorney's fees and double costs, and it therefore is denied. The panelists are listed in order of seniority.

APPENDIX E

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT
Norfolk Division
Docket No. 13D1227

Mostafa Masomi, Plaintiff
of Norwood in the County of Norfolk
V.
Mehrandokht Madadi, Defendant

JUDGMENT OF DIVORCE NISI

All persons interested having been notified in accordance with law and after hearing, it is adjudged nisi that a divorce from the bond of matrimony be granted the said petitioner of the cause of an irretrievable breakdown of the marriage pursuant to M.G.L. Chap. 208, Sec 1-B; and after the expiration of ninety days from the entry of the judgment it shall become and be absolute unless, upon the application of any person within such period, the Court shall otherwise order, and it is further ordered that:

It is further ordered that the Agreement of the parties dated January 8, 2015 is approved and incorporated into and made part of the Judgment, and MERGED into this Judgment.

February 27, 2015

/s/JAMES V. MENNO, JUSTICE 3/5/15

Final Date: May 29, 2015