

APPENDIX A ORDER OF THE LOWER COURT DISMISSING
COMPLAINT

APPENDIX “A”

Seq: 4	App Desc:	#1 - DEFENDANT KATIE HUANG, M.D.'S MOTION TO DISMISS COMPLAINT FILED OCTOBER 10, 2014 FOR LACK OF SUBJECT MATTER JURISDICTION (M. CHOI)(FR 12/11) #2 - DEFENDANT KEIICHI KOBAYASHI, M.D.'S MOTION TODISMISS COMPLAINT FILED 10/10/14 (M. SCHRECK) (FR 12/11/14) #3 - PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT PURSUANT TO H.R.CIV.P. RULE 56 ETC. (Y YAMANO, PLAINTIFF PRO SE) (FILED 10/29/14) (FORMERLY NON-HEARING MOTION) (JAPANESE INTERPRETER TSUGUMI HASABE)		
		App Type: DSM Date/Time: 01/22/2015 10:00 CTRM: Judge I.D.: JRNISHIMUR	Loc: 1C10 Phase: Cal Type: CM Video No.:	Type: CM App Disp: GRT Priority: 0 Audio No.:
		Minutes: COURT REPORTER: NIKKI CHEANG CLERK: K. OTSUKA PRESENT: YURIE YAMANO, PLAINTIFF PRO SE MONICA CHOI FOR KATIE HUANG, M.D. BRAD BLISS FOR KEIICHI KOBAYASHI TSUGUMI HASABE, JAPANESE INTERPRETER 10:21-10:36A CASE CALLED W/APPEARANCES MADE BY COUNSEL AND THE COURT INTERPRETER. 10:23A - INTERPRETER SWORN IN. ARGUMENTS MADE BY MS. CHOI AND MR. BLISS. COURT EXPLAINS THE MOTION(S) TO DISMISS AND THEIR ARGUMENTS MADE BY DEFENSE COUNSEL. COURT HEARS ARGUMENT BY PLAINTIFF. COURT READS PLAINTIFF'S COMPLAINT. COURT GRANTS BOTH MOTIONS BY DEFENDANTS. COUNSEL TO PREPARE THEIR RESPECTIVE ORDERS. COURT FINDS PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT NOW BECOMES MOOT.		
Seq: 5	App Desc:	EX PARTE MOTION TO EXPEDITE FINAL JUDGMENT BY THE COURT ETC (Y YAMANO) (FILED 5/13/15)		
		App Type: MOT Date/Time: 06/01/2015 CTRM: Judge I.D.: JRNISHIMUR	Loc: 1C10 Phase: Cal Type: NH Video No.:	Type: NH App Disp: DND Priority: 0 Audio No.:
		Minutes: 6/1/15 MINUTE ORDER: COURT DENIES THE EX PARTE MOTION TO EXPEDITE FINAL JUDGMENT BY THE COURT PURSUANT TO HRS 641-1 PURSUANT TO RULE 58, HAWAII RULES OF CIVIL PROCEDURE, "THE PREVAILING PARTY[S] SHALL PREPARE AND SUBMIT A PROPOSED JUDGMENT." COUNSEL FOR DEFT DR. HUANG TO PREPARE THE ORDER.*** A COPY OF THE MINUTE ORDER PROVIDED TO: YURIE YAMANO (VIA U.S. MAIL) 2024 LIME STREET HONOLULU, HI 96826 THOMAS COOK, ESQ. (VIA COURT JACKET) JOHN NISHIMOTO, ESQ. (VIA COURT JACKET) ***		
Seq: 6	App Desc:	EX PARTE MOTION TO EXPEDITE THE DEMAND FOR FINAL JUDGMENT PURSUANT TO H.R.CIV.P RULE 54 (Y YAMANO, PRO SE)(FLD 04/14/16)		
		App Type: MOT Date/Time: 05/01/2016 CTRM: Judge I.D.: JRNISHIMUR	Loc: 1C10 Phase: Cal Type: NH Video No.:	Type: NH App Disp: DND Priority: 0 Audio No.:
		Minutes: 5/4/16 MINUTE ORDER: DENIED, JUDGMENT WAS ENTERED ON AUGUST 20, 2015.THERE IS NO LEGAL OR FACTUAL BASIS FOR THIS MOTION. THE COURT ALSO NOTES THAT THIS IS AT LEAST THE SECOND MOTION FILED BY PLAINTIFF WITH NO LEGAL OR FACTUAL BASIS (E.G. "EX PARTE NOTICE OF HEARING MOTION TO SEVER THE CASE PURSUANT TO HRCP RULE 21," WHICH WAS DENIED BY THIS COURT. COURT PREPARED AND FILED THE ORDER DENYING PLAINTIFF'S EX PARTE MOTION TO EXPEDITE THE DEMANDFOR FINAL JUDGMENT ON 5/4/16. COPIES OF THE FILED ORDER PROVIDED TO: YURIE YAMANO (VIA U.S. MAIL) 2024 LIME STREET HONOLULU, HI 96826 MALIA SCHRECK, ESQ. (VIA COURT JACKET) JOHN NISHIMOTO, ESQ. (VIA COURT JACKET) ***		

APPENDIX B ORDER OF THE STATE SUPREME COURT
DENYING AND GRANTING WRIT OF CERTIORARI AND DENYING
CERTIORARI

APPENDIX “B”

Electronically Filed
Supreme Court
SCWC-16-0000398
13-JUN-2017
12:12 PM

SCWC-16-0000398

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

YURIE YAMANO,
Petitioner/Plaintiff-Appellant,

vs.

DOCTOR KEIICHI KOBAYASHI and DOCTOR KATIE HUANG,
Respondents/Defendants-Appellees.

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CAAP-16-0000398; CIV. NO. 14-1-2135 (RAN))

ORDER DISMISSING APPLICATION FOR WRIT OF CERTIORARI
(By: Recktenwald, C.J., Nakayama, McKenna, Pollack, and Wilson, JJ.)

It appearing that the judgment on appeal in the above-referenced matter not having been filed by the Intermediate Court of Appeals at the time the application for writ of certiorari was filed, see Hawai'i Revised Statutes § 602-59(a) (Supp. 2013); see also Hawai'i Rules of Appellate Procedure (HRAP) Rule 36(b)(1) (2012),

IT IS HEREBY ORDERED that Petitioner's application for writ of certiorari, filed June 5, 2017, is dismissed without prejudice to re-filing the application pursuant to HRAP Rule 40.1(a) (2014) ("The application shall be filed within thirty

days after the filing of the intermediate court of appeals' judgment on appeal or dismissal order, unless the time for filing the application is extended in accordance with this rule.").

DATED: Honolulu, Hawai'i, June 13, 2017.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Richard W. Pollack

/s/ Michael D. Wilson



SCWC-16-0000398

Electronically Filed
Supreme Court
SCWC-16-0000398
08-SEP-2017
09:05 AM

IN THE SUPREME COURT OF THE STATE OF HAWAII

YURIE YAMANO, Petitioner/Plaintiff-Appellant,

vs.

DOCTOR KEIICHI KOBAYASHI and DOCTOR KATIE HUANG,
Respondents/Defendants-Appellees.

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CAAP-16-0000398; CIVIL NO. 14-1-2135 (RAN))

ORDER ACCEPTING APPLICATION FOR WRIT OF CERTIORARI
(By: Recktenwald, C.J., Nakayama, McKenna, Pollack, and Wilson, JJ.)

Petitioner/Plaintiff-Appellant Yurie Yamano's
application for writ of certiorari filed on July 31, 2017, is
hereby accepted.

IT IS FURTHER ORDERED that no oral argument will be
held, subject to further order of this court. Any party may,
within ten days and pursuant to Rule 34(c) of the Hawai'i Rules
of Appellate Procedure, move for retention of oral argument.

DATED: Honolulu, Hawai'i, September 8, 2017.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Richard W. Pollack

/s/ Michael D. Wilson



Electronically Filed
Supreme Court
SCWC-16-0000398
13-NOV-2017
02:17 PM

SCWC-16-0000398

IN THE SUPREME COURT OF THE STATE OF HAWAII

YURIE YAMANO, Petitioner/Plaintiff-Appellant,

vs.

DOCTOR KEIICHI KOBAYASHI and DOCTOR KATIE HUANG,
Respondents/Defendants-Appellees.

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CAAP-16-0000398; CIVIL NO. 14-1-2135 (RAN))

ORDER

(By: Recktenwald, C.J., Nakayama, McKenna, Pollack, and Wilson, JJ.)

Upon consideration of Petitioner/Plaintiff-Appellant Yurie Yamano's "Petition [for] Permission to File a Supplemental Brief to Further Explain the Appellant/Plaintiff's . . . Application for Writ of Certiorari," filed October 24, 2017 (which this court construes as a motion for leave to file a supplemental brief), and the record herein,

IT IS HEREBY ORDERED that the motion is denied as unnecessary.

Additionally, upon further consideration of the records and files in this case, it appearing that the writ of certiorari herein was improvidently granted,

IT IS FURTHER ORDERED that this certiorari proceeding
is dismissed.

DATED: Honolulu, Hawai'i, November 13, 2017.

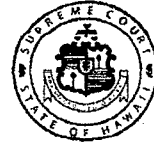
/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Richard W. Pollack

/s/ Michael D. Wilson



**APPENDIX C ORDER OF THE U.S. DISTRICT COURT
DISMISSING COMPLAINT UNDER THE ROOKER-FELDMAN DOCTRINE**

APPENDIX “C”

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

YURIE YAMANO,)	Civ. No. 18-00078 SOM-RLP
)	
Plaintiff,)	AMENDED ORDER GRANTING STATE
)	OF HAWAII JUDICIARY'S, DOCTOR
vs.)	KOBAYASHI'S, and DOCTOR
)	HUANG'S MOTIONS TO DISMISS
STATE OF HAWAII JUDICIARY,)	
DOCTOR KEIICHI KOBAYASHI, AND)	
DOCTOR KATIE HUANG,)	
)	
Defendants.)	
)	

**AMENDED ORDER GRANTING STATE OF HAWAII JUDICIARY'S,
DOCTOR KOBAYASHI'S, and DOCTOR HUANG'S MOTIONS TO DISMISS**

I. INTRODUCTION.

The Order Granting State of Hawaii Judiciary's, Doctor Kobayashi's, and Doctor Huang's Motions to Dismiss, filed on July 3, 2018, is withdrawn, and this Amended Order is substituted in its place. The disposition remains the same, but the court's reasoning has been amended in some respects.

Plaintiff Yurie Yamano, proceeding *pro se*, asserts that Defendants violated her Fifth and Fourteenth Amendment rights. The allegations focus on medical treatment Yamano received from Doctor Keiichi Kobayashi and Doctor Katie Huang related to the removal of Yamano's gallbladder in January 2014. Yamano asserts that Kobayashi and Huang violated Hawaii state malpractice laws and that the State of Hawaii Judiciary denied

action." *Kirtley*, 326 F.3d at 1094 (quoting *Sutton*, 192 F.3d at 842). Finally, the nexus test asks whether "there is such a close nexus between the State and the challenged action that the seemingly private behavior may be fairly treated as that of the State itself." *Id.* at 1095 (quoting *Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n*, 531 U.S. 288, 295 (2001)).

Yamano's claims against Kobayashi and Huang do not satisfy any of these tests. Yamano refers only to conduct stemming from the doctors' respective private practices and their treatment of Yamano's medical issues. See ECF No. 1, PageID #s 2-6. The alleged infringement on Yamano's rights by Kobayashi and Huang bears no relation to any state action. Therefore, Kobayashi and Huang cannot be said to have acted under color of state law, and Yamano's § 1983 claims against Kobayashi and Huang are dismissed under Rule 12(b)(6) for failure to state a claim.

C. The Rooker-Feldman Doctrine Bars Yamanos's State Claims Against Kobayashi and Huang.

What remains of the Complaint are Yamano's state malpractice claims against Kobayashi and Huang. These claims are examined under Rule 12(b)(1) and are barred by the *Rooker-Feldman* doctrine.

Under *Rooker-Feldman*, a district court lacks jurisdiction over "cases brought by state-court losers

complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). This is because district courts lack appellate jurisdiction over the judgments of state courts; their jurisdiction is "strictly original." *Id.* at 284 (quoting *Rooker v. Fidelity Trust Co.*, 276 U.S. 413, 416 (1923)).

To determine whether *Rooker-Feldman* applies, this court must determine "whether the action contains a forbidden de facto appeal of a state court decision." *Bell v. City of Boise*, 709 F.3d 890, 897 (2013). "A de facto appeal exists when 'a federal plaintiff asserts as a legal wrong an allegedly erroneous decision by a state court, and seeks relief from a state court judgment based on that decision.'" *Id.* (quoting *Noel v. Hall*, 341 F.3d 1148, 1164 (9th Cir. 2003)). If the action contains such an appeal, "that federal plaintiff may not seek to litigate an issue that is 'inextricably intertwined' with the state court judicial decision from which the forbidden de facto appeal is brought." *Id.* (quoting *Noel*, 341 F.3d at 1158).

The Hawaii state court dismissed Yamano's medical malpractice suit against Kobayashi and Huang based on Yamano's failure to exhaust administrative prerequisites, and entered

judgment against her. See ECF No. 10-6, PageID #s 61-62; ECF No. 10-7 PageID #s 63-64. Yamano asserts that this "erroneous decision," and the subsequent decisions on the Hawaii appellate courts, violated her due process rights. See ECF No. 1, PageID #s 4, 6-7. She now asks this court for relief against the State of Hawaii Judiciary based on those decisions. See *id.* at 6-7. Because Yamano "challenges the particular outcome in [her] state case," the Complaint contains a forbidden de facto appeal. *Cooper v. Ramos*, 704 F.3d 772, 781 (9th Cir. 2012) ("[I]t is immaterial that Cooper frames his federal complaint as a constitutional challenge to the state court's decision, rather than as a direct appeal of that decision." (alterations omitted) (quoting *Bianchi v. Rylaarsdam*, 334 F.3d 895, 900 n.4 (9th Cir. 2003))).

The Complaint's requested relief for the state medical malpractice claims against Kobayashi and Huang "is contingent upon a finding that the state court decision was in error." See *Cooper*, 704 F.3d at 782. This court would be required to find that the Hawaii state court wrongly determined Yamano's administrative prerequisites under state malpractice laws. Thus, Yamano's malpractice claims in the Complaint are "inextricably intertwined" with the Hawaii state court decision. See *id.*

Under *Rooker-Feldman*, this court lacks jurisdiction over Yamano's state malpractice claims against Kobayashi and Huang. Those claims are dismissed.

D. Yamano Did Not Properly Serve Kobayashi and Huang.

Neither Kobayashi nor Huang was served in accordance with Rule 12(b)(5) of the Federal Rules of Civil Procedure.⁵

Yamano served the doctors' respective counsel from the earlier state lawsuit. ECF No. 7, PageID # 27; ECF No. 9, PageID # 29. Yamano argues that such service was proper given Rule 4(e)(2)(C), which allows for service to "an agent authorized by appointment or by law to receive service of process." ECF No. 22, PageID # 219; Fed. R. Civ. P. 4(e)(2)(C). However, Kobayashi and Huang assert that they did not authorize their prior counsel to accept service in this case. ECF No. 10-3, PageID # 50; ECF No. 11-1, PageID # 90. Representation by certain counsel in an earlier lawsuit does not necessarily indicate authorization to accept service in future, separate suits. *United States v. Ziegler Bolt & Parts Co.*, 111 F.3d 878, 881 (Fed. Cir. 1997) ("The mere relationship between a defendant

⁵ This order does not address the sufficiency of service on the State of Hawaii Judiciary. This court dismisses claims against the State of Hawaii Judiciary on jurisdictional grounds and therefore does not address nonjurisdictional challenges premised on hypothetical jurisdiction. Because the § 1983 claims against Kobayashi and Huang are dismissed for failure to state a claim, this court does address service of process with respect to them.

and his attorney does not, in itself, convey authority to accept service."); see also 4A Charles A. Wright & Arthur R. Miller, *Federal Practice & Procedure* § 1097 (4th ed. 2018)

("[D]efendant's attorney probably will not be deemed an agent appointed to receive process absent a factual basis for believing that an appointment of this type has taken place.").

Thus, the Complaint was not properly served on Kobayashi and Huang. Had improper service been the Complaint's only deficiency, the court would have granted Yamano leave to serve them properly. However, given the other deficiencies discussed in this order, such leave is not granted.

V. CONCLUSION.

The Complaint and this action are DISMISSED.

The Clerk of Court is directed to enter judgment for Defendants and to close this case.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, July 16, 2018.



/s/ Susan Oki Mollway

Susan Oki Mollway
United States District Judge

Yurie Yamano v. State of Hawaii Judiciary, Doctor Keiichi Kobayashi, and Doctor Katie Huang, Civ. No. 18-00078 SOM-RLP;
AMENDED ORDER GRANTING STATE OF HAWAII JUDICIARY'S, DOCTOR KOBAYASHI'S, and DOCTOR HUANG'S MOTIONS TO DISMISS.

APPENDIX D ORDER OF THE NINTH CIRCUIT COURT OF
APPEALS AFFIRMING THE LOWER COURTS DECISION
EXPANDING THE STATES 11TH AMENDMENT IMMUNITY

APPENDIX “D”

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 20 2019

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

YURIE YAMANO,

Plaintiff-Appellant,

v.

STATE OF HAWAII JUDICIARY; et al.,

Defendants-Appellees.

No. 18-16359

D.C. No. 1:18-cv-00078-SOM-RLP

MEMORANDUM*

Appeal from the United States District Court
for the District of Hawaii
Susan O. Mollway, District Judge, Presiding

Submitted March 12, 2019**

Before: LEAVY, BEA, and N.R. SMITH, Circuit Judges.

Yurie Yamano appeals pro se from the district court's judgment dismissing her 42 U.S.C. § 1983 action alleging federal and state law claims. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). *Davidson v. Kimberly-Clark*

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Corp., 889 F.3d 956, 963 (9th Cir. 2018). We affirm.

The district court properly dismissed Yamano's claim against defendant State of Hawaii Judiciary because her claim is barred by the Eleventh Amendment. *See Simmons v. Sacramento Cty. Superior Court*, 318 F.3d 1156, 1161 (9th Cir. 2003) (state courts are "arms of the state" entitled to Eleventh Amendment immunity); *see also Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 100 (1984) (Eleventh Amendment immunity applies to states and their agencies or departments "regardless of the nature of the relief sought").

The district court properly dismissed Yamano's claims against defendants Kobayashi and Huang for lack of subject matter jurisdiction under the *Rooker-Feldman* doctrine because Yamano's claims constitute a forbidden de facto appeal of a prior state court judgment. *See Noel v. Hall*, 341 F.3d 1148, 1163-65 (9th Cir. 2003) (discussing proper application of the *Rooker-Feldman* doctrine); *see also Henrichs v. Valley View Dev.*, 474 F.3d 609, 616 (9th Cir. 2007) (*Rooker-Feldman* doctrine barred plaintiff's claim because the relief sought "would require the district court to determine that the state court's decision was wrong and thus void"). Contrary to Yamano's contention, the extrinsic fraud exception to the *Rooker-Feldman* doctrine does not apply to her claims.

The district court did not abuse its discretion by denying Yamano's motion to appoint counsel because Yamano was not proceeding in forma pauperis ("IFP"). *See Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) (setting forth standard of review and explaining that the court may under "exceptional circumstances" appoint pro bono counsel to civil litigants with IFP status).

The district court did not abuse its discretion by denying Yamano's request for appointment of a next friend because Yamano failed to demonstrate that a next friend was necessary to protect her interests. *See Davis v. Walker*, 745 F.3d 1303, 1310-11 (9th Cir. 2014) (setting forth standard of review and discussing the limited nature of next friend standing).

We reject as without merit Yamano's contention regarding judicial bias.

AFFIRMED.

**APPENDIX E ORDER OF DENIAL OF THE NINTH
CIRCUIT COURT OF APPEALS EN BANC**

APPENDIX “E”

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

MAY 29 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

YURIE YAMANO,

Plaintiff-Appellant,

v.

STATE OF HAWAII JUDICIARY; et al.,

Defendants-Appellees.

No. 18-16359

D.C. No. 1:18-cv-00078-SOM-RLP
District of Hawaii, Honolulu

ORDER

Before: LEAVY, BEA, and N.R. SMITH, Circuit Judges.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See Fed. R. App. P. 35.*

Yamano's petition for rehearing en banc (Docket Entry No. 17) is denied.

No further filings will be entertained in this closed case.

**Additional material
from this filing is
available in the
Clerk's Office.**