Appendix A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 19-40966
Summary Calendar

JOE BLESSETT,
Plaintiff-Appellant,
v.
BEVERLY ANN GARCIA,
Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 3:18-CV-137

June 8, 2020

Before OWEN, Chief Judge, and SOUTHWICK and WILLETT, Circuit Judges.

PER CURIAM:1

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1 Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Pro se appellant Joe Blessett sued his ex-wife, Beverly Ann Garcia, in federal district court alleging numerous claims that can be categorized as challenges to a series of prior state court proceedings and allegations that Garcia had committed fraud. The district court dismissed the first category of claims pursuant to the *Rooker-Feldman* doctrine.[2] It subsequently dismissed the second category of claims after concluding each allegation failed to state a claim upon which relief can be granted. We affirm.

I Blessett and Garcia divorced on July 23, 1999. In the final divorce decree, Garcia received primary custody of Blessett and Garcia's only child, Joseph C. Blessett, Jr. The final divorce decree also ordered Blessett to pay $800 per month in child support.

Blessett failed to pay child support over the course of the next several years. As a result, Garcia sought a state court judgment for child support arrears in July of 2015. Blessett did not attend the proceedings. He was ultimately held liable for $131,923.14 in outstanding child support and was ordered to begin making payments immediately. In June of 2016, Garcia sought a writ of withholding in Texas state court in order to garnish Blessett's wages for the outstanding child support. She also filed a lien against certain real property then-owned by Blessett (the Property).

In response to the lien, Blessett filed suit in

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[2] *See generally Dist. of Columbia Court of Appeals v. Feldman,* 460 U.S. 462 (1983); *Rooker v. Fid. Tr. Co.,* 263 U.S. 413 (1923).

Texas state court seeking a partial release of the lien on the basis that the Property qualified as his homestead. Garcia countersued. She alleged that the lien was proper and sought the right to foreclose on the Property. As part of discovery, Garcia inquired into Blessett's allegations that the Property was an exempt homestead. Blessett failed to respond. Garcia's counsel thereafter filed in the real property records an affidavit alleging the Property did not qualify as a homestead.

Garcia moved for summary judgment on the basis that Blessett had judicially admitted he did not own any exempt real property by failing to respond to discovery.[3] Blessett did not respond to the motion. The state court entered a final judgment in Garcia's favor, concluding the Property did not qualify as a homestead and was thus subject to Garcia's child support lien. Garcia was also granted the right to foreclose on the Property. Blessett did not appeal the judgment. The Property was sold at a constable auction in December of 2017.

After the sale, Blessett initiated the instant proceedings in United States District Court. The district judge initially dismissed the action for want of subject matter jurisdiction. Following an intervening opinion from this court in a related case,[4] however, the district

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[3] *See Marshall v. Vise,* 767 S.W.2d 699, 700 (Tex. 1989) (noting that under Texas law, "[u]nanswered requests for admissions are automatically deemed admitted, unless the court on motion permits their withdrawal or amendment").

[4] *See Blessett v. Tex. Office of Att'y Gen.*

court sua sponte withdrew its previous opinion, reinstated Blessett's case, and ordered him to file an amended complaint. The district court expressly instructed Blessett that failure to plead any allegations of fraud with particularity would result in dismissal of those claims with prejudice.

Blessett's amended compliant included claims related to previous state court proceedings, as well as five separate allegations of fraud. Garcia moved to dismiss the complaint, alleging, inter alia, that the court lacked subject matter jurisdiction over the case and that any remaining claims either failed to state a claim upon which relief can be granted or failed to comply with Rule 9(b)'s heightened pleading standards. The district court ultimately granted the motion.

Pursuant to the *Rooker-Feldman* doctrine, the district court dismissed the amended complaint to the extent it "collaterally attack[ed] the state court divorce decree, judgments concerning paternity and child support, or the foreclosure order." It subsequently dismissed the five allegations of fraud after concluding each allegation failed to comply with the heightened pleading standards required by Rule 9(b) of the Federal Rules of Civil Procedure. This appeal followed.

II

We first consider whether the district court had subject matter jurisdiction to entertain each of the claims alleged in Blessett's complaint. As previously mentioned, the

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Galveston Cty. Child Support Enf't Div., 756 F. App'x 445 (5th Cir. 2019) (per curiam).

district court dismissed portions of Blessett's complaint pursuant to the *Rooker-Feldman* doctrine. The court concluded, however, that it had subject matter jurisdiction to entertain each of Blessett's fraud claims. Reviewing de novo, we agree with the district court's analysis in full.[5]

At its core, "the *Rooker-Feldman* doctrine holds that inferior federal courts do not have the power to modify or reverse state court judgments except when authorized by Congress."[6] "[T]he doctrine is a narrow one."[7] It is limited to those "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."[8] A litigant is seeking "review and reversal" of a state-court judgment "when the [federal] claims are 'inextricably intertwined' with a challenged state court judgment,"[9] or when the litigant is requesting "what in substance would be appellate review

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[5] *See Lane v. Halliburton*, 529 F.3d 548, 557 (5th Cir. 2008) (noting that dismissals for want of subject matter jurisdiction are reviewed de novo).

[6] *Burciaga v. Deutsche Bank Nat'l Tr. Co.*, 871 F.3d 380, 384 (5th Cir. 2017) (internal quotation marks omitted) (quoting *Truong v. Bank of Am., N.A.*, 717 F.3d 377, 382 (5th Cir. 2013)).

[7] *Truong*, 717 F.3d at 382.

[8] *Id.* (quoting *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005)).

[9] *Weaver v. Tex. Capital Bank N.A.*, 660 F.3d 900, 904 (5th Cir. 2011) (alteration in original) (quoting *Richard v. Hoechst Celanese Chem. Grp., Inc.*, 355 F.3d 345, 350 (5th Cir. 2003)).

of the state judgment."[10]

Liberally construing Blessett's complaint in light of the aforementioned standards,[11] we agree with the district court that some of Blessett's allegations were not cognizable in federal court. As indicated previously, Blessett lost in his state court proceedings, proceedings which had ended long before he initiated the present matter. Portions of Blessett's operative complaint likewise appear to seek review of those state court proceedings. The complaint alleges, for example, that Blessett received insufficient service of process during two earlier state court proceedings, and that Garcia failed to follow proper procedures in Texas state court. Blessett's "recourse [for each of these contentions] was with the state appellate courts and thereafter the United States Supreme Court on application for a writ of certiorari, not by a complaint to the federal district court."[12] Accordingly, the district court properly dismissed these claims.

Nevertheless, we conclude that the bulk of Blessett's complaint— specifically, each of Blessett's fraud claims—fell within the district court's subject matter jurisdiction. Our court does not recognize a universal fraud exception to the *Rooker-Feldman* doctrine.[13] That is, a

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[10] *Id.* (quoting *Johnson v. De Grandy,* 512 U.S. 997, 1005-06 (1994)).

[11] *See Kaltenbach v. Richards,* 464 F.3d 524, 527 (5th Cir. 2006) (construing a complaint liberally in part because the litigant proceeded pro se).

[12] *See Liedtke v. State Bar of Tex.,* 18 F.3d 315, 318 (5th Cir. 1994).

[13] *Truong v. Bank of Am., N.A.,* 717 F.3d 377,

litigant cannot circumvent the doctrine's scope by merely casting his or her challenge to a state court judgment as an allegation that the judgment was obtained through fraud.[14] If the relief a litigant requests would in substance require the federal court to invalidate a prior state court judgment, the *Rooker-Feldman* doctrine may still be implicated.[15] Likewise, a plaintiffs claim may be barred by the *Rooker-Feldman* doctrine if he or she is essentially alleging the state court judge erred in arriving at a particular conclusion.[16] But where a litigant seeks damages as compensation for the putatively fraudulent conduct of a litigant in a prior state court action, the *Rooker-Feldman* doctrine is less likely to come into play.[17] Each

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383 n.3, 384 n.6 (5th Cir. 2013).

[14] *See id.* at 383 n.3 (collecting cases where fraud claims were held to be barred by the *Rooker-Feldman* doctrine).

[15] *See id.* at 383-84 (collecting cases where fraud claims were held to be barred by the *Rooker-Feldman* doctrine in part because the relief requested directly challenged prior state court judgments).

[16] *See id.* at 382-83 (noting that "[i]f 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, *Rooker-Feldman* bars subject matter jurisdiction in federal district court" (alteration in original) (quoting *Noel v. Hall,* 341 F.3d 1148, 1164 (9th Cir. 2003))).

[17] *See id.* at 383 ("If . . . a federal plaintiff asserts as a legal wrong an allegedly illegal act or omission by an adverse party, *Rooker-Feldman* does not bar jurisdiction." (quoting *Noel,* 341 F.3d at 1164)); *see also id.* at 383-84 (collecting cases where the nature of the requested relief impacted whether the *Rooker-Feldman*

of Blessett's fraud claims passes muster under these parameters. He seeks monetary damages because Garcia—an adverse party in several prior state court proceedings—allegedly engaged in fraudulent conduct. Consequently, the district court properly considered these claims on the merits.

III As to the merits of Blessett's five fraud claims, the district court dismissed each allegation after concluding each failed to plead fraud with particularity. Following our own independent review of the complaint, we agree that each allegation fails to state a claim.[18]

Because each of Blessett's fraud claims fall within the court's diversity jurisdiction, our analysis is governed by the substantive law of Texas.[19] As a general matter, Texas state law fraud claims require the plaintiff to offer sufficient proof of the following six elements:

> (1) that a material representation was made; (2) the representation was false; (3) when the representation was

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doctrine barred the claims at issue in each case).

[18] *See Carroll v. Fort James Corp.*, 470 F.3d 1171, 1173 (5th Cir. 2006) (noting that appellate courts "review a dismissal pursuant to [Rules] 12(b)(6) or 9(b) de novo" (citing *Herrmann Holdings Ltd. v. Lucent Techs., Inc.*, 302 F.3d 552, 557 (5th Cir. 2002))).

[19] *See Erie R.R. v. Tompkins*, 304 U.S. 64, 78 (1938); *Universal Truckload, Inc. v. Dalton Logistics, Inc.*, 946 F.3d 689, 695 (5th Cir. 2020) ("Under the *Erie* doctrine, this court must apply substantive state law in diversity jurisdiction cases." (citing *Erie*, 304 U.S. at 78)).

> made, the speaker knew it was false or made it recklessly without any knowledge of the truth and as a positive assertion; (4) the speaker made the representation with the intent that the other party should act upon it; (5) the party acted in reliance on the representation; and (6) the party thereby suffered injury.[20]

At least two intermediate courts of appeals in Texas have recognized a subcategory of fraud—fraud by omission.[21] This sub-category of claims stems from the basic recognition that an "omission or nondisclosure may be as misleading as a positive misrepresentation of fact where a party has a duty to disclose."[22] "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face."[23] We "accept all well-pleaded facts as true, viewing them in the light most

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[20] *Allstate Ins. Co. v. Receivable Fin. Co.*, 501 F.3d 398, 406 (5th Cir. 2007) (quoting *In re FirstMerit Bank, N.A.*, 52 S.W.3d 749, 758 (Tex. 2001)).

[21] *Dewayne Rogers Logging, Inc. v. Propac Indus., Ltd.*, 299 S.W.3d 374, 391 (Tex. App.—Tyler 2009, pet. denied) (citing *Four Bros. Boat Works, Inc. v. Tesoro Petroleum Cos., Inc.*, 217 S.W.3d 653, 670 (Tex. App.—Houston [14th Dist.] 2006, pet. denied)).

[22] *Id.* (citing *Four Bros. Boat Works, Inc.*, 217 S.W.3d at 670).

[23] *Allen v. Walmart Stores, L.L.C.*, 907 F.3d 170, 177 (5th Cir. 2018) (internal quotation marks omitted) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)); *see also* FED. R. CIV. PRO. 12(b)(6).

favorable to the plaintiff."[24] But "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements," are insufficient to state a claim.[25] Nor can a complaint survive if it fails to allege a required element of the cause of action.[26]

Furthermore, allegations of fraud must be pleaded with particularity under the Federal Rules of Civil Procedure.[27] Specifically, Rule 9(b) requires the plaintiff to allege "the time, place and contents of the false representation^, as well as the identity of the person making the misrepresentation and what that person obtained thereby."[28] The rule is context specific. Nevertheless, at its core, the rule is intended to "provide[] defendants with fair notice of the plaintiffs' claims, protect[]

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[24] *Allen,* 907 F.3d at 177 (quoting *Jones v. Greninger,* 188 F.3d 322, 324 (5th Cir. 1999)).

[25] *Iqbal,* 556 U.S. at 678 (citing *Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 555 (2007)).

[26] *Allen,* 907 F.3d at 178 (noting that "[d]ismissal is proper if the complaint lacks an allegation regarding a required element necessary to obtain relief' (alteration in original) (quoting *Rios v. City of Del Rio, Tex.,* 444 F.3d 417, 421 (5th Cir. 2006))).

[27] *See* FED. R. CIV. PRO. 9(b) ("In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally.").

[28] *IAS Servs. Grp., L.L.C. v. Jim Buckley & Assocs., Inc.,* 900 F.3d 640, 647 (5th Cir. 2018) (alteration in original) (quoting *United States ex rel. Grubbs v. Kanneganti,* 565 F.3d 180, 186 (5th Cir. 2009)).

defendants from harm to their reputation and goodwill, reduce [] the number of strike suits, and prevent[] plaintiffs from filing baseless claims and then attempting to discover unknown wrongs."[29] Accordingly, district courts are permitted to dismiss complaints with prejudice if plaintiffs fail to comply with these heightened pleading standards despite being given numerous opportunities to do so.[30]

1 Blessett's first allegation of fraud—which he titles, "[f]raud by omission of federal statutes and Texas family codes"—fails under Rule 9(b)'s heightened pleading standards. The claim appears to allege that Blessett was harmed when Garcia failed to mention two statutes at some point in time following the couple's divorce. But even liberally construing the claim, we are left to guess when and where the omission occurred and why Garcia had a duty to include the statutes at all. Blessett likewise fails to allege Garcia's omissions were the product of fraudulent intent. Therefore, Blessett's first allegation of fraud fails to pass

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[29] *Id.* (alterations in original) (quoting *Tuchman v. DSC Commc'ns Corp.*, 14 F.3d 1061, 1067 (5th Cir. 1994)).

[30] *See Hart v. Bayer Corp.*, 199 F.3d 239, 247 n.6 (5th Cir. 2000) (noting that "[a]lthough a court may dismiss [a] claim [for failure to comply with Rule 9(b)], it should not do so without granting leave to amend, unless . . . the plaintiff has failed to plead with particularity after being afforded repeated opportunities to do so" (citing *O'Brien v. Nat'l Prop. Analysts Partners*, 936 F.2d 674, 675-76 (2d Cir. 1991))).

muster under Rule 9(b). Given Blessett's failure to correct these deficiencies despite being provided numerous opportunities to amend his complaint, we conclude the district court correctly dismissed the first allegation of fraud with prejudice.[31]

2 Blessett's second claim—"[f]raud by use of an administrative enforcement action under the color of law"—fails to state a claim upon which relief can be granted. The complaint specifically alleges Garcia suspended Blessett's driver's license without due process of law. But Blessett fails to allege any statement or omission by Garcia that ultimately led to the revocation of his driver's license. The gravamen of a common law fraud claim is a false *statement* or *omission.*[32] Because Blessett failed to plead this required element, his second allegation of fraud

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[31] *See Hart,* 199 F.3d at 247 n.6 (noting that "[a]lthough a court may dismiss [a] claim [for failure to comply with Rule 9(b)], it should not do so without granting leave to amend, unless . . . the plaintiff has failed to plead with particularity after being afforded repeated opportunities to do so" (citing *O'Brien,* 936 F.2d at 675-76)).

[32] *See Allstate Ins. Co. v. Receivable Fin. Co.,* 501 F.3d 398, 406 (5th Cir. 2007) (quoting *In re FirstMerit Bank, N.A.,* 52 S.W.3d 749, 758 (Tex. 2001)); *Dewayne Rogers Logging, Inc. v. Propac Indus., Ltd.,* 299 S.W.3d 374, 391 (Tex. App.—Tyler 2009, pet. denied) (citing *Four Bros. Boat Works, Inc. v. Tesoro Petroleum Cos., Inc.,* 217 S.W.3d 653, 670 (Tex. App.— Houston [14th Dist.] 2006, pet. denied)).

fails to state a claim upon which relief can be granted.[33]

3 Blessett next alleges Garcia engaged in "[f]raud by [i]nducement and [c]oercion." Specifically, he contends Garcia threatened him with the possibility of arrest if he did not appear at several state court proceedings. But Blessett fails to allege with particularity the statements he contends constituted fraud. As with his first allegation of fraud, we are left wondering what was said, when the statement occurred, and why the statement amounted to fraud. Nor can we deduce this information from the exhibits he cites in the complaint. The exhibits are orders to appear from state judicial officers, not Garcia. Blessett's complaint fails to allege with particularity how any putatively false statement by Garcia may have prompted state-level judicial officers to issue these orders. Collectively, these inadequacies amount to a failure to comply with Rule 9(b)'s heightened pleading standards. Because Blessett was given ample opportunities to correct these issues, the district court did not err in subsequently dismissing this claim with prejudice.[34]

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[33] *Allen v. Walmart Stores, L.L.C.*, 907 F.3d 170, 178 (5th Cir. 2018) (noting that "[d]ismissal is proper if the complaint lacks an allegation regarding a required element
necessary to obtain relief' (alteration in original) (quoting *Rios v. City of Del Rio, Tex.*, 444 F.3d 417, 421 (5th Cir. 2006))).

[34] *See Hart*, 199 F.3d at 247 n.6 (noting that "[a]lthough a court may dismiss [a] claim [for failure to

4 Blessett next alleges Garcia engaged in "[f]raud by [p]erjury and violation of [p]ublic [p]olicy rights to property." The factual basis for this claim lies in the affidavit filed with the real property records challenging Blessett's assertions that his property qualified as a homestead. We conclude, however, that this allegation fails to comply with Rule 9(b)'s heightened pleading standards. The affidavit—which counsel authored in his capacity as a fact witness—is clearly counsel's declaration, not Garcia's. The complaint fails to plead with particularity to what extent, if at all, Garcia was involved in the filing of the affidavit nor why her involvement amounted to fraud. Consequently, the district court correctly dismissed this claim with prejudice.

5 Blessett's final allegation of fraud—"[f]raud by [o]mission to provide notice as ordered by a [j]udge"—alleges Garcia failed to provide Blessett with notice of a status conference during the state court proceedings he initiated challenging Garcia's lien on his property. Accordingly, Blessett could not "defend his rights [at] the status conference." He then appears to

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comply with Rule 9(b)], it should not do so without granting leave to amend, unless . . . the plaintiff has failed to plead with particularity after being afforded repeated opportunities to do so" (citing *O'Brien*, 936 F.2d at 675-76)).

insinuate that his case was dismissed for want of prosecution as a result. But this allegation is not plausible. As the judgment in the state court proceeding makes clear, Blessett's case was dismissed following Garcia's motion for summary judgment, not for want of prosecution.[35] Because the claim does not plausibly allege Garcia's putative omission caused Blessett harm, Blessett's claim falls sort of stating a claim upon which relief can be granted.[36]

IV In summary, the district court properly dismissed each of Blessett's claims. Blessett's remaining contentions are either waived,[37] unnecessary to address in light of our

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[35] *See Lone Star Fund V (U.S.), L.P. v. Barclays Bank PLC,* 594 F.3d 383, 387 (5th Cir. 2010) (noting that a court, in evaluating a motion to dismiss, can consider "any documents attached to the complaint, and any documents attached to the motion to dismiss that are central to the claim and referenced by the complaint" (citing *Collins v. Morgan Stanley Dean Witter,* 224 F.3d 496, 498-99 (5th Cir. 2000))).

[36] *See Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009) ("A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." (citing *Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 556 (2007))).

[37] *See F.D.I.C. v. Mijalis,* 15 F.3d 1314, 1327 (5th Cir. 1994) ("[I]f a litigant desires to preserve an argument for appeal, the litigant must press and not merely intimate the argument during the proceedings before the district court.").

previous holdings, or are dismissed pursuant to our longstanding policy not to consider inadequately briefed arguments on appeal.[38]

* * *

The district court's judgment is AFFIRMED.

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[38] *See Monteon-Camargo v. Barr*, 918 F.3d 423, 428 (5th Cir.), *as revised* (Apr. 26, 2019) ("Generally speaking, a [party] waives an issue if he fails to adequately brief it." (alteration in original) (quoting *United States v. Martinez*, 263 F.3d 436, 438 (5th Cir. 2001))).

Appendix B

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT
No. 19-40966

JOE BLESSETT,
Plaintiff – Appellant
v
BEVERLY ANN GARCIA,
Defendant – Appellee

July 10, 2020

Appeal from the United States District Court
for the Southern District of Texas

ON PETITION FOR REHEARING

Before OWEN, Chief Judge, SOUTHWICK, and WILLETT, Circuit Judges. PER CURIAM:

IT IS ORDERED that the petition for rehearing is DENIED.

ENTERED FOR THE COURT:

UNITED STATES CIRCUIT JUDGE

Appendix C

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
3:17-CV-164

No. 18-40142
Summary Calendar

JOE BLESSETT,

Plaintiff-Appellant

v.

TEXAS OFFICE OF THE ATTORNEY GENERAL GALVESTON COUNTY CHILD SUPPORT ENFORCEMENT DIVISION,
Defendant-Appellee

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 3:17-CV-164

March 6, 2019

Before DENNIS, CLEMENT, and OWEN, Circuit Judges. PER CURIAM:*

Joe Blessett, proceeding pro se, appeals the district court's dismissal of his civil complaint for lack of subject matter jurisdiction pursuant to the *Rooker-Feldman*[39] [40] doctrine. He argues that the *Rooker-Feldman* doctrine is inapplicable because he did not receive notice of any of the judicial acts entered against him in state court and because he is seeking to set aside state court judgments obtained by extrinsic fraud. Blessett also complains that the district court erroneously denied his motions for entry of a default judgment and his motion for leave to file an amended complaint.

We review the grant of a Federal Rule of Civil Procedure 12(b)(1) motion to dismiss for lack of jurisdiction de novo. *Lane v. Halliburton,* 529 F.3d 548, 557 (5th Cir. 2008). In reviewing the dismissal order, we view "the well-pled factual allegations of the complaint as true" and construe them "in the light most favorable to the plaintiff." *Id.*

The *Rooker-Feldman* doctrine dictates that federal district courts lack subject matter jurisdiction over lawsuits that effectively seek to "overturn" a state court ruling. *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.,* 544 U.S.

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* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

[40] *Rooker u. Fidelity Trust Co.,* 263 U.S. 413 (1923); *District of Columbia Court of Appeals u. Feldman,* 460 U.S. 462 (1983).

280, 291 (2005). The doctrine applies to "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." *Id.* at 284.

Our review of the complaint reveals that Blessett asserted claims that collaterally attack the state court divorce decree and judgments concerning paternity and child support, as well as claims that assert constitutional violations relating to the enforcement of the state child support judgments. The former claims are barred under the *Rooker-Feldman* doctrine because they "invit[e] district court review and rejection" of the state divorce decree and child support judgments. *See Exxon Mobil*, 544 U.S. at 284. Moreover, it is of no help to Blessett that he claims he failed to receive notice of any hearing in relation to the child support arrearage judgment of July 13, 2015, as " [constitutional questions arising in state proceedings are to be resolved by the state courts." *Liedtke v. State Bar of Tex.*, 18 F.3d 315, 317 (5th Cir. 1994).

We reach a different result as to Blessett's claims that the defendant and its "contractors" engaged in fraud and violated his constitutional rights in their efforts to enforce and collect the state child support judgments. Because such claims do not ask the district court to review and reject a final order of a state court, they are not barred under the *Rooker-Feldman* doctrine. *See Truong v. Bank of Am., N.A.*, 717 F.3d 377, 382-84 (5th Cir. 2013). Accordingly, we vacate the dismissal of

such claims and remand to the district court.

As noted, Blessett also challenges the district court's denial of his motions for entry of default judgment against the defendants based on their failure to answer his amended complaint. This challenge ignores that the district court denied leave to file the amended complaint, and thus the defendants were under no obligation to respond to an unfiled pleading. *See* FED. R. ClV. P. 12(a)(1)(A). Accordingly, the district court did not abuse its discretion in denying Blessett's motions for entry of a default judgment against the defendants. *See Lewis v. Lynn,* 236 F.3d 766, 767 (5th Cir. 2001).

In view of the above determinations, it is unnecessary to consider Blessett's arguments concerning the district court's denial of his motion seeking leave to file an amended complaint.

AFFIRMED IN PART, VACATED IN PART, AND REMANDED.

APPENDIX D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

CIVIL ACTION NO. 3:18-CV-00137

JOE BLESSETT,

Plaintiff,

VS

BEVERLY ANN GARCIA, *et al,*

Defendants.

August 29, 2019

MEMORANDUM OPINION AND

ORDER

Before the Court is Beverly Ann Garcia's ("Garcia") Motion to Dismiss Plaintiff's Amended Complaint. Dkt. 98. After reviewing the motion, the response, the reply, and the applicable law, the motion is **GRANTED IN PART** and **DENIED IN PART**.

Factual Background and Prior Proceedings On July 23, 1999, a Galveston County court entered a Final Decree of Divorce

between the Plaintiff, Joe Blessett ("Blessett"), and Garcia. Dkt. 31-1. The decree also established Blessett's paternity over a child born during the marriage and ordered him to pay child support payments of $800 each month. *Id.* at 11. After Blessett consistently defaulted on this child support obligation for sixteen years, the county court entered an order in favor of Garcia confirming child support arrearage in the amount of $131,923.14. Dkt. 31-2.

Almost a year later, Garcia used that order to apply for a judicial writ of withholding to garnish Blessett's wages and to place a child support lien on some of Blessett's real property. Dkt. 31-3; Dkt. 31-4. In response, Blessett filed a lawsuit against

Garcia to have the child support liens released. Dkt. 31-6. Garcia answered the lawsuit, and then asserted counterclaims of her own for "a cumulative money judgment" and for a declaratory judgment that Blessett did not own any real property that was exempt from foreclosure. Dkt. 31-17. On June 30, 2017, the Galveston County court granted Summary Judgment in favor of Garcia on each of her counterclaims. Dkt. 31-32. Blessett did not file a motion for new trial nor did he appeal the county court's order. Dkt. 31 at 11. Subsequently, Garcia foreclosed on Blessett's property, which was ultimately sold at public auction in partial satisfaction of the child support arrears he owes. *Id.*

Since Blessett's property was sold at public auction, he has filed this and several other lawsuits in this Court to collaterally attack the state-court orders that led to the

foreclosure of his property.[41] On March 4, 2019, the Court dismissed this suit under the *Rooker-Feldman* doctrine, because the Court lacked subject matter jurisdiction to collaterally review state court Judgments. Dkt. 82. Two days later, the Fifth Circuit partially vacated an order dismissing another suit initiated by Blessett on *Rooker- Feldman* grounds. *See Blessett* v. *Tex. Office of the AG Galveston Cty. Child Support Enf't Div. (Blessett Appellate Decision),* 756 F. App'x 445, 446 (5th Cir. 2019). In an abundance of caution, the Court withdrew the order of dismissal that it issued in this case and allowed Blessett an opportunity to amend his complaint consistent with the Fifth Circuit's order in the parallel case. Dkt. 88.

In his amended complaint, Blessett asserts five separate "counts" of fraud against Garcia. Dkt. 93. Garcia now moves to dismiss Blessett's amended complaint under Federal Rules of Civil Procedure 12(b)(1), 12(b)(6), and Texas Civil Practice and Remedies Code §

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[41] *See Blessett v. Tex. Office of the AG Galveston Cty. Child Support Enft Div.,* No. 3:17-CV-164, 2018 WL 836058, 2018 U.S. Dist. LEXIS 22972 (S.D. Tex. Feb. 12, 2018); *Blessett v. Sinkin Law Firm,* No. 3:17-CV-370, 2018 WL 1932386, 2018 U.S. Dist. LEXIS 67683 (S.D. Tex. Apr. 23, 2018) (the Court granted the defendant's motion to dismiss); *Blessett v. Jacoby,* No. 3:18-CV-00153, 2018 WL 5014146, 2018 U.S. Dist. LEXIS 177837 (S.D. Tex. Oct. 16, 2018) (the Court granted the defendant's motion to dismiss); *Blessett et al. v. Galveston County Child Support Division et al.,* No. 3:18-CV-00415 (S.D. Tex. Feb. 14, 2018) (parties stipulated to dismissal).

27.003(a). For the reasons stated below, the Court finds that Garcia's motion to dismiss should be granted in part on 12(b)(1) and 12(b)(6) grounds.

Standard of Review

"[F]ederal courts are courts of limited jurisdiction." *Hashemite Kingdom of Jordan* v. *Layale Enters. (In re B-727 Aircraft),* 272 F.3d 264, 269 (5th Cir. 2001). Thus, a federal district court is required to presume that it does not have the jurisdiction to rule on a matter until "the party asserting jurisdiction" can prove otherwise. *Griffith* v. *Alcon Research, Ltd.,* 712 F. App'x 406, 408 (5th Cir. 2017) (internal quotation marks omitted). To make its case, the party asserting jurisdiction may direct the Court to look at "(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." *Ramming* v. *United States,* 281 F.3d 158, 161 (5th Cir. 2001). Ultimately, a court cannot dismiss a claim for lack of subject matter jurisdiction unless "it appears certain that [a party] cannot prove any set of facts" in support of its assertion that jurisdiction is appropriate in federal court. *Bombardier Aero. Emple. Welfare Benefits Plan* v. *Ferrer, Poirot & Wansbrough, P.C.,* 354 F.3d 348, 351 (5th Cir. 2003).

[2] Although the docket report in this case lists Stett Jacoby as a Defendant in this matter, the Court finds that he has not been served, and therefore he is not a party to this suit. The only Defendant in this case is Garcia. In that same vein, Blessett cannot allege

claims in this case against unidentified "contractors" either, because the Court has no jurisdiction over parties not served with process in this case. Dkt. 93 at 3 (for a reference to "contractors" who may have harmed Blessett); *see Lifemark Hosps., Inc. v. Liljeberg Enters. (In re Liljeberg Enters.),* 304 F.3d 410, 468 (5th Cir. 2002) ("It is elementary that one is not bound by a judgment in personam resulting from litigation in which he is not designated as a party or to which he has not been made a party by service of process.").

If a party is successful in establishing that the Court has jurisdiction to hear a dispute, the Court may still dismiss the dispute where the party fails "to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). The Court's task in this inquiry is to determine whether "the plaintiff has stated a legally cognizable claim that is plausible" on its face. *Shandong Yinguang Chem. Indus. Joint Stock Co. v. Potter,* 607 F.3d 1029, 1032 (5th Cir. 2010). With respect to fraud claims, a Plaintiff must "state with particularity the circumstances constituting the fraud" in order to survive this inquiry. Fed. R. Civ. P. 9(b). This means that a court will dismiss the case unless the plaintiff can adequately plead "the who, what, when, where, and how to be laid out" for a particular fraud allegation. *Benchmark Electronics, Inc.* v. *J.M. Huber Corp.,* 343 F.3d 719, 724 (5th Cir. 2003). In evaluating a plaintiff's pleadings, the Court will not "strain to find inferences favorable to the plaintiff[]," nor will it "accept conclusory allegations, unwarranted deductions or legal conclusions." *Barrie* v. *Intervoice-Brite, Inc.,*

397 F.3d 249, 254-55 (5th Cir. 2005).

Analysis

A. Dismissal on 12(b)(1) grounds

Garcia asserts that this Court lacks subject matter jurisdiction over this dispute, because Blessett's complaint asks the Court to "review, modify, or reverse" state court orders, which is expressly prohibited by the *Rooker-Feldman* doctrine. Dkt. 98 at 17. The Court agrees and dismisses Blessett's complaint to the extent that it "collaterally attack[s] the state court divorce decree," "judgments concerning paternity and child support," or the foreclosure order. *See Blessett Appellate Decision,* 756 F. App'x at 445-446.

Under federal law, the Supreme Court has exclusive "authority to review a state-court judgment." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.,* 544 U.S. 280, 283 (2005); 28 U.S.C.S. § 1257 (2018). Therefore, a federal district court cannot modify or reverse a state court judgment unless Congress authorizes it to do so. *Burciaga* v. *Deutsche Bank Nat'l Tr. Co.,* 871 F.3d 380, 384 (5th Cir. 2017). Casually referred to as *Rooker-Feldman,* this doctrine was created to bar "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." *Houston* v. *Queen,* 606 F. App'x 725, 730 (5th Cir. 2015). In *Exxon,* the Supreme Court explained that this doctrine is triggered by the existence of "four elements: (1) a state-court loser; (2) alleging harm caused by a state-court judgment; (3) that was rendered before the

district court proceedings began; and (4) the federal suit requests review and reversal of the state-court judgment." *Id.* (quoting *Exxon Mobil Corp.*, 544 U.S. at 284).

Here, the Court finds that all four elements of the *Rooker-Feldman* doctrine are met. First, the child support and summary judgment orders in favor of Garcia make Blessett a state-court loser. Dkt. 31-2; Dkt. 31-32. Second, Blessett alleges that he was caused harm by both orders in his amended complaint. Dkt. 93. Third, the county court's orders were rendered before these proceedings began. *Id.* And Fourth, Blessett's complaint asks this court to review and reverse the harm he has experienced as a result of the county court's orders. *Id.* Therefore, Blessett must now be barred from complaining about injuries allegedly caused by state court judgments he refused to appeal.

While Blessett may argue that this Court should not partially dismiss his complaint because he asserts independent civil rights claims in the enforcement and collection of the child support order, a party cannot escape *Rooker-Feldman* by "casting.. .a complaint in the form of a civil rights action." *Liedtke v. State Bar of Tex.*, 18 F.3d 315, 317 (5th Cir. 1994); *see also Truong* v. *Bank of Am., N.A.*, 717 F.3d 377, 382 (5th Cir. 2013). Simply put, the Court does not have jurisdiction to adjudicate a claim that would require the Court to review "injuries caused by state-court judgments." *Land & Bay Gauging,*

L.L.C. v. *Shor,* 623 F. App'x 674, 679 (5th Cir. 2015). Moreover, the Fifth Circuit has already held that Blessett missed his

opportunity to complain about due process violations he may have experienced at state court. *See Blessett Appellate Decision,* 756 F.

App'x at 446 ("Moreover, it is of no help to Blessett that he claims he failed to receive notice of any hearing in relation to the child support arrearage judgment of July 13, 2015, as constitutional questions arising in state proceedings are to be resolved by the state courts.") (internal citations omitted). This is exactly what Blessett attempts to do here.

Blessett's amended complaint is a compilation of requests to redress constitutional violations that he should have appealed in state court:

The Defendant and the Title IV-D agency and its contractors has failed to *provide sufficient service of process* to Mr. Blessett for this default judgment for child support arrears for Cause #98FD0817 on July 13, 2015.

The Defendant and Title IV-D agency and its contractors *does not have proof that procedural due process was afforded to Mr. Blessett*, in the suspension of his Texas driver license in 2014.

The Defendant Ms. Beverly A. Garcia and the Title IV-D agency and its contractors threatened Mr. Blessett with possibility of arrest, on January 24, 2001 and February 10, 2012, in order to produce private information such as his IRS federal tax returns, payroll stubs, vouchers, records of commissions and all other written records or evidence of income,

statements of accounts for all checking or savings accounts, and all documents showing income received, under the color of law, for Cause #98FD0817 *which is a violation of his 4th Amendment US constitutional rights.* (See exhibit D page 1 & 3)

Dkt. 93 at 10, 13, 15 (italics added). However, these claims are so "inextricably intertwined" with the county court's judgments that allowing them to survive dismissal would effectively cause this Court to sit in "appellate review" of state court orders. *See Weaver v. Tex. Capital Bank N.A.*, 660 F.3d 900, 904 (5th Cir. 2011) (quotations omitted). Accordingly, these claims must be dismissed for a lack of subject matter jurisdiction. *See Exxon Mobil Corp.*, 544 U.S. at 283; *see also* 28 U.S.C.S. § 1257.

B. Dismissal on 12(b)(6) grounds

Notwithstanding the dismissal of these claims, the Court finds that Blessett has also alleged five independent causes of action for fraud "relating to the enforcement [and collection] of the state child support judgments," over which this Court has subject matter jurisdiction. *See Blessett Appellate Decision,* 756 F. App'x at 445-446. Four of these claims must be dismissed because they fail to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). One of the claims will survive. The Court will address each of these fraud claims separately.

i. "Fraud by omission of federal statutes and Texas family codes"

In his amended complaint, Blessett asserts five separate "counts" of fraud against Garcia. This is the first. The Court finds that

this claim must be dismissed because it fails Dkt. 93 at 4 (for each of these fraud claims). to plead allegations of fraud with the particularity that Rule 9(b) demands. *See* Fed. R. Civ. P. 9(b) ("In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake."); *see also Benchmark Electronics, Inc.,* 343 F.3d at 724.

The elements of a common law fraud claim are "(1) that a material representation was made; (2) the representation was false; (3) when the representation was made, the speaker knew it was false or made it recklessly without any knowledge of the truth and as a positive assertion; (4) the speaker made the representation with the intent that the other party should act upon it; (5) the party acted in reliance on the representation; and (6) the party thereby suffered injury." *United States ex rel. Grubbs v. Ravikumar Kanneganti,* 565 F.3d 180, 188 (5th Cir. 2009). Therefore, in order "[t]o satisfy Rule 9(b)'s pleading requirements [for a fraud claim], [a] plaintiff must specify the statements contended to be fraudulent, identify the speaker, state when and where the statements were made, and explain why the statements were fraudulent." *See Southland Sec. Corp.* v. *INSpire Ins. Sols. Inc.,* 365 F.3d 353, 362 (5th Cir. 2004).

Here, Blessett has failed to meet these pleading requirements for his claim of "[f]raud by omission of federal statutes and Texas family codes." *See* Dkt. 93 at 4. Blessett alleges that Garcia committed fraud by applying

"penalties under the color of law that [were] not expressly granted within the Final divorce decree granted on July 23, 1999." Dkt. 93 at 10. However, the Court finds that Blessett has not specified the statements contended to be fraudulent, when and where a fraudulent statement was made, or explain why a particular statement was fraudulent. *See Southland Sec. Corp.*, 365 F.3d

at 362. And the Court is not required to strain itself to find an interpretation of Blessett's complaint that would satisfy Rule 9(b)'s strict pleading requirements. *See Barrie*, 397 F.3d at 254-55. Indeed, this failure to plead with particularity is notable considering that the Court has already allowed Blessett to amend his complaint twice. Dkt. 1 (for original complaint); Dkt. 22 (for second amended complaint); Dkt. 93 (for third amended complaint). At the last hearing in this matter, the Court even alerted Blessett that it would consider dismissing this case with prejudice if Blessett failed to plead fraud with particularity in his amended complaint. Dkt. 91. Having failed to adhere to these instructions, the Court now dismisses this claim with prejudice. *See Hart v. Bayer Corp.*, 199 F.3d 239, 247 n.6 (5th Cir. 2000) (A district court may dismiss a plaintiff's complaint with prejudice if it fails "to plead [fraud] with particularity after being afforded repeated opportunities to do so.").

ii. "Fraud by use of an administrative action under the color of law"

In his second "count," Blessett alleges that Garcia committed "[f]raud by use of an

administrative action under the color of law." Dkt. 93 at 4. The gravamen of this complaint appears to be that Garcia committed fraud by assisting in "[t]he suspension of Mr. Blessett's Texas driver license.. .under the color of law." Dkt. 93 at 13. The Court finds that this claim must also be dismissed because it fails to plead allegations of fraud with the particularity that Rule 9(b) demands. *See* Fed. R. Civ. P. 9(b); *see also Benchmark Electronics, Inc.,* 343 F.3d at 724. Specifically, the Court finds that Blessett failed to plead the statements contended to be fraudulent, when and where a fraudulent statement was made, or explain why a particular statement was fraudulent. *See Southland Sec. Corp.,* 365 F.3d at 362. Accordingly, the Court now dismisses this claim with prejudice for the reasons stated above. *See Hart,* 199 F.3d at 247 n.6.

iii. "Fraud by inducement or coercion"

In his third "count," Blessett alleges that Garcia committed "[f]raud by inducement or coercion." Dkt. 93 at 4. The gravamen of this complaint appears to be that Garcia committed fraud by "threatening] Mr. Blessett with [the] possibility of arrest, on January 24, 2001 and February 10, 2012, in order to produce private information such as his IRS federal tax returns, payroll stubs, vouchers, records of commissions and all other written records or evidence of income...." Dkt. 93 at 15. The Court finds that this claim must also be dismissed because it fails to plead its allegations of fraud with particularity. *See* Fed. R. Civ. P. 9(b); *see also Benchmark Electronics, Inc.,* 343 F.3d at 724. Specifically, the Court finds that Blessett

failed to plead the statements contended to be fraudulent, when and where a fraudulent statement was made, or explain why a particular statement was fraudulent. *See Southland Sec. Corp.,* 365 F.3d at 362. Accordingly, the Court now also dismisses this claim with prejudice. *See Hart,* 199 F.3d at 247 n.6.

iv. "Fraud by Omission to provide notice as ordered by a Judge"

In his fourth "count," Blessett alleges that Garcia committed "[f]raud by Omission to provide notice as ordered by a Judge." Dkt. 93 at 4. The gravamen of this complaint appears to be that Garcia committed fraud by "fail[ing] to provide notice to Mr. Blessett as ordered by the Judge on May 24, 2017, [which] resulted in the failure of Mr. Blessett to appear [at] the status conference scheduled on June 8, 2017." Dkt. 93 at 24. The Court finds that this claim must also be dismissed because it fails to plead its allegations of fraud with particularity. *See* Fed. R. Civ. P. 9(b); *see also Benchmark Electronics, Inc.,* 343 F.3d at 724. Specifically, the Court finds that Blessett failed to plead the statements contended to be fraudulent, when and where a fraudulent statement was made, or explain why a particular statement was fraudulent. *See Southland Sec. Corp.,* 365 F.3d at 362. Accordingly, the Court dismisses this claim with prejudice as well. *See Hart,* 199 F.3d at 247 n.6.

v. "Fraud by Perjury and violation of Public Policy rights to property"

In his fifth "count," Blessett alleges that Garcia committed "[f]raud by Perjury and

violation of Public Policy rights to property." Dkt. 93 at 4. In this claim Blessett alleges that Garcia committed fraud by submitting affidavits, which falsely stated that Blessett did "not own any real or personal property that is exempt from the claims in this cause" and that Blessett did not own a "homestead." Dkt. 93 at 18-19. Additionally, Blessett alleges that Garcia "misrepresented" herself "as a creditor in the Plaintiff's exempt property." *Id.* Construing Blessett's complaint liberally, the Court finds that Blessett has plead this allegation of fraud with sufficient particularity to survive a rule 12(b)(6) motion to dismiss. *See Kaltenbach v. Richards,* 464 F.3d 524, 526 (5th Cir. 2006) (The court shall construe the complaint liberally in favor of the plaintiff); *see also Benchmark Electronics, Inc.,* 343 F.3d at 724 (for the fraud pleading standards). This claim for fraud will remain in the case.

Conclusion

For the foregoing reasons, Garcia's motion is **GRANTED IN PART** and **DENIED IN PART**. Accordingly, the Court **DISMISSES** the following claims alleged by Blessett: (1) "[f]raud by omission of federal statutes and Texas family codes," (2) "[f]raud by use of an administrative action under the color of law," (3) "[f]raud by inducement or coercion," (4) "[f]raud by Omission to provide notice as ordered by a Judge," and (5) all claims that require the Court to collaterally review the state court judgments. Blessett's claim for "[f]raud by [p]erjury and violation of [p]ublic [p]olicy rights to property" will remain in this case.

SIGNED at Galveston, Texas, this 29th

day of August, 2019.

United States District Judge

Appendix E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

CIVIL ACTION NO. 3:18-cv-00137

JOE BLESSETT,

Plaintiff,

VS.

BEVERLY ANN GARCIA,

Defendant.

October 23, 2019

MEMORANDUM OPINION AND ORDER

JEFFREY V. BROWN, UNITED STATES DISTRICT JUDGE

Before the Court is Beverly Ann Garcia's Motion to Dismiss. Dkt. 98. On August 29, 2019, the Court entered a memorandum opinion and order granting in part and denying in part the same motion, which resulted in the dismissal of all but one of the plaintiff's claims. Dkt. 107 at 12. Upon reconsideration, and for the reasons discussed below, the Court has

determined that the motion should be granted in its entirety. Accordingly, the Court vacates its ruling as to Blessett's sole remaining claim, grants Garcia's motion in its entirety, and dismisses all the plaintiff's claims with prejudice.

[3] FACTUAL BACKGROUND AND PRIOR PROCEEDINGS

On July 23, 1999, a Galveston County court entered a final divorce decree ending the marriage between the plaintiff, Joe Blessett, and Garcia. Dkt. 31-1. The decree also established Blessett's paternity over a child born during the marriage and ordered him to pay $800 per month in child support. *Id.* at 11. Then, after sixteen years passed, during which Blessett consistently defaulted on his child-support obligation, the county court revisited the case; it entered an order in favor of Garcia confirming child-support arrearage in the amount of $131,923.14. Dkt. 31-2.

Almost one year later, Garcia used that order to apply for a judicial writ of withholding to garnish Blessett's wages and place a child-support lien on some of Blessett's real property. Dkts. 31-3, 31-4. In response, Blessett filed a lawsuit against Garcia to lift the child-support liens. Dkt. 31-6. Garcia answered the lawsuit and asserted counterclaims of her own, seeking "a cumulative money judgment" and a declaratory judgment that Blessett did not own any real property that was exempt from foreclosure. Dkt. 31-17. On June 30, 2017, the Galveston County court granted summary judgment in favor of Garcia on

determined that the motion should be granted in its entirety. Accordingly, the Court vacates its ruling as to Blessett's sole remaining claim, grants Garcia's motion in its entirety, and dismisses all the plaintiff's claims with prejudice.

[3] FACTUAL BACKGROUND AND PRIOR PROCEEDINGS

On July 23, 1999, a Galveston County court entered a final divorce decree ending the marriage between the plaintiff, Joe Blessett, and Garcia. Dkt. 31-1. The decree also established Blessett's paternity over a child born during the marriage and ordered him to pay $800 per month in child support. *Id.* at 11. Then, after sixteen years passed, during which Blessett consistently defaulted on his child-support obligation, the county court revisited the case; it entered an order in favor of Garcia confirming child-support arrearage in the amount of $131,923.14. Dkt. 31-2.

Almost one year later, Garcia used that order to apply for a judicial writ of withholding to garnish Blessett's wages and place a child-support lien on some of Blessett's real property. Dkts. 31-3, 31-4. In response, Blessett filed a lawsuit against Garcia to lift the child-support liens. Dkt. 31-6. Garcia answered the lawsuit and asserted counterclaims of her own, seeking "a cumulative money judgment" and a declaratory judgment that Blessett did not own any real property that was exempt from foreclosure. Dkt. 31-17. On June 30, 2017, the Galveston County court granted summary judgment in favor of Garcia on

each of her counterclaims. Dkt. 31-32. Blessett neither filed a motion for new trial nor appealed the county court's order. Dkt. 31 at 11. Subsequently, Garcia foreclosed on Blessett's property, which was ultimately sold at public auction in partial satisfaction of the child-support arrears. *Id.*

Since Blessett's property was sold at public auction, he has filed this and several other lawsuits in this Court to collaterally attack the state-court order that led to the foreclosure of his property.[42] On March 4, 2019, the Court dismissed this suit under the *Rooker-Feldman*[43] doctrine, determining it lacked subject-matter jurisdiction to collaterally review the state-court judgments. Dkt. 82. Two days later, however, the Fifth Circuit partially vacated an order, also on *Rooker-Feldman* grounds, dismissing a suit

Blessett had filed against the

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[42] *See Blessett v. Tex. Office of Attorney Gen. Galveston Cty. Child Support Enft Div.,* 756 Fed. App'x 445 (5th Cir. 2019); *Blessett v. Sinkin Law Firm,* No. 3U7-CV-370, 2018 WL 1932386, 2018 U.S. Dist. LEXIS 67683 (S.D. Tex. Apr. 23, 2018) (the Court granted the defendant's motion to dismiss); *Blessett v. Jacoby,* No. 3U8-CV-00153, 2018 WL 5014146, 2018 U.S. Dist. LEXIS 177837 (S.D. Tex. Oct. 16, 2018) (the Court granted the defendant's motion to dismiss); *Blessett, et al. v. Galveston Cty. Child Support Div., et al.,* No. 3U8-CV-00415 (S.D. Tex. Feb. 14, 2018) (parties stipulated to dismissal).

[43] *Rooker v. Fidelity Tr. Co.,* 263 U.S. 413, 44 S.Ct. 149, 68 L.Ed. 362 (1923); *Dist. of Columbia Ct. of App. v. Feldman,* 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983).

Galveston County Child Support Division of the Texas Attorney General's Office. *Blessett v. Tex. Office of Attorney Gen. Galveston Cty. Child Support Enf't Div.*, 756 Fed. App'x 445 (5th Cir. 2019). Out of an abundance of caution, the Court *sua sponte* withdrew its order of dismissal and allowed Blessett an opportunity to amend his complaint, consistent with the Fifth Circuit's order in the parallel case. Dkt. 88.

In his amended complaint, Blessett asserted five separate "counts" of fraud against Garcia. Dkt. 93 at 8-26. Although not expressly pleaded, Blessett also asserted a litany of allegations collaterally attacking the state-court divorce decree, state-court judgments concerning paternity and child support, and the state-court foreclosure order. *See generally id.* Garcia moved to dismiss Blessett's amended complaint under Federal Rules of Civil Procedure 12(b)(1), 12(b)(6), and Texas Civil Practice and Remedies Code § 27.003(a). Dkt. 98.

On August 29, 2019, the Court issued its order dismissing Blessett's complaint on jurisdictional grounds to the extent he "ask[ed] the Court to 'review, modify, or reverse' state[-]court orders, which is expressly prohibited by the *Rooker-Feldman* doctrine." Dkt. 107 at 4 (quoting *Blessett,* 756 Fed. App'x at 445). The Court's order also dismissed four of Blessett's five fraud claims for failure to state a claim upon which relief can be granted: "[f]raud by omission of federal statutes and Texas family codes" (Count 1);

"[f]raud by use of an administrative enforcement action under the color of law" (Count 2); "[f]raud by [i]nducement and [c]oercion" (Count 3); and "[f]raud by [o]mission to provide notice as ordered by a [j]udge" (Count 5). *Id.* at 7-11. In its analysis, the Court determined that, for each of these claims, Blessett failed to specify the representations he contended to be fraudulent, identify when or where the fraudulent representations were made, or explain why the particular representations were fraudulent. *See id.*[44]

But the Court concluded that Blessett pleaded his remaining fraud claim, "[f]raud by [p]erjury and violation of [p]ublic [p]olicy rights to property," with sufficient particularity to survive Rule 12(b)(6). *Id.* at 11. The Court reasoned:

> In this claim Blessett alleges that Garcia committed fraud by submitting affidavits, which falsely stated that Blessed did not own a "homestead." Additionally, Blessett alleges that Garcia "misrepresented" herself "as a creditor in the Plaintiff's exempt property." Construing Blessett's complaint liberally, the Court finds that Blessett has plead[ed] this allegation of

[44] After vacating its first dismissal order, the Court alerted Blessett that it would consider dismissing this case with prejudice if he failed to plead fraud with particularity in his amended complaint. Dkt. 91.

> fraud with sufficient particularity to survive a rule 12(b)(6) motion to dismiss.

Id. (internal citations omitted).

Shortly after the Court ruled, Blessett filed two motions—one seeking to "amend" and the other "objecting to" the Court's order. Dkts. 108 and 109. The latter, which seeks a declaration that the property at issue "was protected under the Texas Homestead Exemption," is without merit and warrants no further consideration. *See* Dkt. 109.

Blessett's motion to amend, however, does deserve a brief discussion. Essentially, it can be taken as a request that the Court reconsider its decision to dismiss most of Blessett's claims. *See* Dkt. 108 at 1-2. Garcia filed a response to the motion to amend. Dkt. 114. In it, she both opposes the relief Blessett seeks and argues that his motion is inappropriate under the rules of civil procedure. *Id.* at 3. She further requests, in the alternative, if the Court revisits its ruling, that it should finish the job and dismiss Blessett's sole remaining claim. *Id.* at 3-4.

[4] **LEGAL STANDARD**

ii. Standard for Reconsideration

Because the Court's order of August 29, 2019, did not dispose of all the claims pending in this case, it "may be revised at any time." Fed. R. Civ. P. 54(b) (stating that any order adjudicating fewer than all the claims pending in a case is subject to revision up until the time a final judgment

is entered). So Blessett's motion that the Court revisit its ruling was an appropriate request under the rules.

But Blessett did not need to move for reconsideration in order for the Court to revisit its ruling; district courts "possess[] the inherent procedural power to reconsider, rescind, or modify an interlocutory order for cause seen by it to be sufficient." *Melancon v. Texaco, Inc.*, 659 F.2d 551, 553 (5th Cir. Unit A Oct. 1981); *see Zarnow v. City of Wichita Falls, Tex.*, 614 F.3d 161, 171 (5th Cir. 2010) ("[W]hen a district court rules on an interlocutory order, it is 'free to reconsider and reverse its decision for any reason it deems sufficient, even in the absence of new evidence or an intervening change in or clarification of the substantive law.'") (citing *Lavespere,* 910 F.2d at 185). Although neither Rule 54(b) nor the Fifth Circuit articulates a standard by which to decide whether reconsideration is merited, *St. Paul Mercury Ins. Co. v. Fair Grounds Corp.*, 123 F.3d 336, 339 (5th Cir. 1997), it is well-settled that the authority to consider such a motion "rests within the discretion of the court." *Dos Santos v. Bell Helicopter Textron, Inc. Dist.*, 651 F. Supp. 2d 550, 553 (N.D. Tex. 2009).

iii. Rule 12(b)(6) Dismissal

When considering a Rule 12(b)(6) motion to dismiss, the court must take the well- pleaded factual allegations of the complaint as true, viewing them in the light most favorable to the plaintiff. *In re*

Katrina Canal Breaches Litig., 495 F.3d 191, 205 (5th Cir. 2007) (citations and quotations omitted). A plaintiff's pleading must provide "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009) (citing *id.* at 556). On the other hand, a "pleading that offers 'labels and conclusions' or a 'formulaic recitation of the elements of a cause of action will not do.'" *Id.*

In addition to the plaintiff's pleadings, in taking up a motion to dismiss, the Court may consider offensive extrinsic evidence without converting the motion to dismiss into a motion for summary judgment, including any documents attached to the live pleading and any documents attached to the motion to dismiss that are central to the claim and referred to in the live pleading. *Sivertson v. Citibank, NA. as Tr. for Registered Holders of WAMU Asset-Back Certificates WAMU Series No. 2007-HE2 Tr.,* 390 F. Supp. 3d 769, 780 (E.D. Tex. 2019) (citing *Lone Star Fund V (U.S.), L.P. v. Barclays Bank PLC,* 594 F.3d 383, 387 (5th Cir. 2010)). The Court may also take judicial notice of an "adjudicative fact," including public filings in other court cases. Fed. R. Evid. 201; *Thomas v. Beaumont Indep. Sch. Dist.,* No. 1:15-CV-112, 2016 WL 922182, at *3 (E.D.

Tex. Feb. 12, 2016) (holding that a court can consider filings in plaintiff's state court case in analyzing the motion to dismiss as a matter of public record), report and recommendation adopted, No. 1:15-CV-112, 2016 WL 899870 (E.D. Tex. Mar. 8, 2016) (citing *Van Duzer v. U.S. Bank Ass'n.,* 995 F.Supp.2d 673, 684 (S.D. Tex. 2014) (Lake, J)).

iv. Rule 9(b)'s Heightened Pleading Standard

Fraud is subject to a heightened pleading standard. Fed. R. Civ. P. 9(b) ("In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake."). The elements of a common-law fraud claim are "(1) that a material misrepresentation was made; (2) the representation was false; (3) when the representation was made, the speaker knew it was false or made it recklessly without any knowledge of the truth and as a positive assertion; (4) the speaker made a representation with the intent that the other party should act upon it; (5) the party acted in reliance on the representation; and (6) the party thereby suffered an injury." *United States ex rel. Grubbs v. Ravikumar Kanneganti,* 565 F.3d 180, 188 (5th Cir. 2009) (citing *Allstate Ins. Co. v. Receivable Fin. Co.,* 501 F.3d 398, 406 (5th Cir. 2007) (interpreting Texas law)). Therefore, "[t]o satisfy Rule 9(b)'s pleading requirement [for a fraud claim], [a] plaintiff must specify the statements contended to be fraudulent, identify the speaker, state when and where

the statements were made, and explain why the statements were fraudulent." *See Southland Sec. Corp. v. INSpire Ins. Sols. Inc.*, 365 F.3d 353, 362 (5th Cir. 2004).

ANALYSIS

In his amended complaint, Blessett alleges five independent causes of action for fraud "relating to the enforcement [and collection] of the state child support judgments, over which this Court has subject matter jurisdiction." Dkt. 107 at 7. The Court adopts its prior analysis and decision regarding the four previously dismissed fraud claims— concluding that, as to those allegations, Blessett has failed to state a claim upon which relief may be granted. *Id.* at 7-11. As for Blessett's sole remaining fraud claim, "[f]raud by [p]erjury and violation of [p]ublic [p]olicy rights to property," the Court likewise rules that he has failed to state a claim upon which relief may be granted.

In January 2017, Blessett filed a "Motion for Partial Release of Child Support Lien" in state court in Galveston County. *See* Dkt. 93 at 16-17. In the course of that proceeding, Garcia's attorney, Stett Jacoby, swore out an affidavit asserting that Blessett was not entitled to homestead protection and filed it in the Galveston County court. These representations in that affidavit form the basis of Blessett's sole remaining fraud claim:

vi. Blessett "judicially admitted that he does not own any real property that is exempt from the claims in this cause";

vii. Blessett's claim that "he owns a

homestead is untrue";

viii. "Garcia was a creditor in [Blessett's] exempt property"; and

ix. The homestead in question was "currently the subject of litigation." *Id.* at 18-21.

Fatally, however, none of these representations is attributable to Garcia. Instead, every allegation regarding the allegedly fraudulent representations begins with the caveat: "On May 12, 2017, Ms. Beverly Garcia's legal counsel[,] Atty. Stett M[.] Jacoby[,] submitted an affidavit on her behalf, to the Galveston County Public Records that misrepresented . . ." *See* Dkt. 93 at 17-22.

But Jacoby did not submit the affidavit on Garcia's behalf—a crucial fact Blessett omits from his amended complaint. Instead, Jacoby submitted the affidavit *on behalf of his law firm,* which Blessett had also sued in the same proceedings.[45] *See* Dkt. 93 at 29 ("I am authorized by the Sinkin Law Firm to testify as its representative with respect to these matters."). On its face, the affidavit shows Jacoby testified as a representative of the Sinkin Law Firm and that his testimony was based upon his "personal

[45] A court may take judicial notice of a plaintiff's state-court filings as a matter of public record, which includes Blessett's citation of service on the Sinkin Law Firm. Dkt. 31-10 (citation of service); *see Thomas,* No. 1:15-CV-112, 2016 WL 922182, at *3 (holding that a court can consider filings in plaintiff's state-court case in analyzing the motion to dismiss as a matter of public record) (citing *Van Duzer,* 995 F.Supp.2d at 684)).

knowledge of the facts contained herein . . ." *Id.* at 29. There is not a single allegation in the amended complaint that Garcia made the allegedly fraudulent representations, knew the contents of the affidavit, or even knew the affidavit existed. *See id.* at 17-22. In fact, the only references to Garcia in Jacoby's affidavit are two sentences in which he stated he "is handling the [above-]captioned cause on behalf of judgment creditor/child support obligee Beverly Garcia" and "has represented Garcia in this matter since March 2016 and continues to represent her." *Id.* at 29-30.

Because the affidavit's allegedly false statements were Jacoby's—and not Garcia's— they cannot form the basis of a fraud claim against Garcia. The statements cannot be attributed to Garcia, much less any knowledge by her that they were false, any reckless disregard by her of their veracity, or any intent by her that Blessett rely on them. *See Allstate,* 501 F.3d at 406 (listing the elements of a Texas-law fraud claim). The failure by Blessett to attribute any allegedly fraudulent statements to Garcia, as opposed to anyone else, violates Rule 9(b)'s requirement of pleading fraud allegations with particularity. *See* Fed. R. Civ. P. 9(b); *see also Pegasus Holdings v. Veterinary Ctrs. of Am., Inc.,* 38 F. Supp. 2d 1158, 1163 (C.D. Cal. 1998). Accordingly, Blessett's allegations are insufficient to state a claim for fraud. *See Pegasus Holdings,* 38 F. Supp. 2d at 1163 ("Plaintiffs' failure to attribute any

misleading statements or omissions to the non-speaking defendants violates Rule 9(b) of the Federal Rules of Civil Procedure's requirement of pleading with particularity.").

Finally, for the sake of completeness, although the docket report in this case lists Jacoby as a defendant in this matter, Jacoby has not been served. Thus, the only defendant in this case is Garcia. *See Lifemark Hosps., Inc. v. Liljeberg Enters. (In re Liljeberg Enters.),* 304 F.3d 410, 468 (5th Cir. 2002) ("It is elementary that one is not

bound by a judgment *in personam* resulting from litigation in which he is not designated

as a party or to which he has not been made a party by service of process.").[46]

* * *

For the foregoing reasons, the Court grant's Garcia's motion to dismiss and dismisses this case with prejudice.

SIGNED at Galveston, Texas, on this 23rd day of October, 2019.

JEFFREY VINCENT BROWN
UNITED STATES DISTRICT JUDGE

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[1] Moreover, if Jacoby were a defendant in this case, it would deprive the Court of jurisdiction as Jacoby, like Blessett, is a resident of Texas, a fact which Blessett expressly pleaded in a separate lawsuit against Jacoby and his law firm. *See Blessett v. Sinkin Law Firm,* 3U7-CV-370, 2018 WL 1932386, at *1 n.6 (S.D. Tex. Apr. 23, 2018) ("Blessett does not assert the Court has diversity jurisdiction. In fact, his Complaint states the parties are not diverse.").