

Case No. _____

IN THE
UNITED STATES SUPREME COURT

ROSEMARY ANN LYNN,

Petitioner,

Against,

THE HONORABLE CLARE V. EAGAN-LORETTI,

Respondent.

On Writ Of Certiorari To The
United States Court Of Appeals
For the Tenth Circuit

Appendix To The Petition For A Writ of Certiorari

Rosemary Ann Lynn-Pro Se
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UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ROSEMARY ANN LYNN,

Plaintiff,

v.

ANDREW GEORGE BROWN III,

Defendant.

Case No. 19-CV-0331-CVE-JFJ

OPINION AND ORDER

Now before the Court is plaintiff's complaint (Dkt. # 1). Plaintiff is proceeding pro se and, consistent with Supreme Court and Tenth Circuit precedent, the Court will construe her pro se pleading liberally. See, e.g., Haines v. Kerner, 404 U.S. 519, 520 (1972); Gaines v. Stenseng, 292 F.3d 1222, 1224 (10th Cir. 2002). On June 21, 2019, plaintiff filed a pro se complaint alleging claims of defamation and intentional infliction of emotional distress against defendant. The complaint states that plaintiff and defendant are both citizens of Oklahoma. Dkt. # 1, at 1-2. Plaintiff claims that defendant has repeatedly made false statements suggesting that plaintiff forged documents concerning the estate of defendant's sister, Audrey Brown. Id. at 3. Plaintiff also claims that defendant has falsely alleged that plaintiff stole over \$75,000 from Brown's bank accounts. Id. Defendant allegedly hired two persons to impersonate Tulsa Police Department officers who forced plaintiff to sign documents containing false statements, and the documents were allegedly used to convince a "subdued" state court probate judge to deny plaintiff guardianship over Brown. Id. at 4-6. Plaintiff seeks damages in excess of \$1 million. Id. at 11.

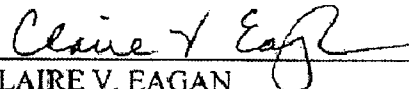
Federal courts are courts of limited jurisdiction, and there is a presumption against the exercise of federal jurisdiction. Merida Delgado v. Gonzales, 428 F.3d 916, 919 (10th Cir. 2005); Penteco Corp. Ltd. Partnership--1985A v. Union Gas System, Inc., 929 F.2d 1519, 1521 (10th Cir. 1991). The party invoking federal jurisdiction has the burden to allege jurisdictional facts demonstrating the presence of federal subject matter jurisdiction. McNutt v. General Motors Acceptance Corp. of Indiana, Inc., 298 U.S. 178, 182 (1936) ("It is incumbent upon the plaintiff properly to allege the jurisdictional facts, according to the nature of the case."); Montoya v. Chao, 296 F.3d 952, 955 (10th Cir. 2002) ("The burden of establishing subject-matter jurisdiction is on the party asserting jurisdiction."). The Court has an obligation to consider whether subject matter jurisdiction exists, even if the parties have not raised the issue. The Tenth Circuit has stated that "[f]ederal courts 'have an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party,' and thus a court may sua sponte raise the question of whether there is subject matter jurisdiction 'at any stage in the litigation.'" Image Software, Inc. v. Reynolds & Reynolds Co., 459 F.3d 1044, 1048 (10th Cir. 2006).

Plaintiff asserts that the Court has diversity and federal question jurisdiction over this case. The complaint alleges that plaintiff seeks damages in excess of "the minimal jurisdictional limits of Tulsa County District Courts" and that venue is proper in this Court. Dkt. # 1, at 8. For the Court to have jurisdiction under 28 U.S.C. § 1332, plaintiff must allege that the parties are citizens of different states and that the amount in controversy exceeds \$75,000. The Court will have diversity jurisdiction over this case only if there is complete diversity among the parties, and this means that "each plaintiff must be diverse from each defendant." Ravenswood Inv. Co., L.P. v. Avalon Correctional Servs., 651 F.3d 1219, 1223 (10th Cir. 2011). Plaintiff states that she and many of the

defendants are citizens of Oklahoma and it is apparent that complete diversity is lacking. The Court will consider whether plaintiff's complaint could be construed to allege a claim arising under federal law. Generally, the "well-pleaded complaint" rule requires that the federal question appear on the face of the plaintiff's properly pleaded complaint. See Garley v. Sandia Corp., 236 F.3d 1200, 1207 (10th Cir. 2001). Plaintiff cites the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 et seq. (RICO), and she alleges that the 29 named defendants engaged in a conspiracy to defraud Brown and her estate. To plead a civil RICO claim, a plaintiff must make plausible allegations that the defendants "(1) conducted the affairs (2) of an enterprise (3) through a pattern (4) of racketeering activity." George v. Urban Settlement Servs., 833 F.3d 1242, 1248 (10th Cir. 2016). The complaint contains a lengthy series of unconnected allegations concerning the purported mistreatment of Brown and her estate, but there is simply no plausible way to view the defendants' alleged conduct as a single enterprise for the purpose of a RICO claim. Plaintiff has also not identified any specific illegal acts that could qualify as "racketeering activity," and plaintiff's rambling complaint does not allege a plausible RICO claim against any of the defendants. The Court finds no basis to exercise federal question jurisdiction over this case, and plaintiff's claims should be dismissed for lack of subject matter jurisdiction.

IT IS THEREFORE ORDERED that the complaint (Dkt. # 1) is hereby **dismissed without prejudice**. A separate judgment of dismissal is entered herewith.

DATED this 26th day of June, 2019.


CLAIRE V. EAGAN
UNITED STATES DISTRICT JUDGE

United States District Court
Northern District of Oklahoma

I hereby certify that the foregoing
is a true copy of the original on file
in this court.

By  Mark C. McCart
Deputy

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ROSEMARY ANN LYNN,

Plaintiff,

v.

ANDREW GEORGE BROWN III,

Defendant.

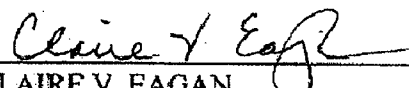
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Case No. 19-CV-0331-CVE-JFJ

JUDGMENT OF DISMISSAL

This matter has come before the Court for consideration and an opinion and order (Dkt. # 3) dismissing plaintiff's case for lack of subject matter jurisdiction has been entered. A judgment of dismissal of plaintiff's claims is hereby entered.

IT IS SO ORDERED this 25th day of June, 2019.



CLAIRE V. EAGAN
UNITED STATES DISTRICT JUDGE

Now before the Court is plaintiff's complaint (Dkt. # 1). Plaintiff is proceeding pro se and, consistent with Supreme Court and Tenth Circuit precedent, the Court will construe her pro se pleading liberally. See, e.g., Haines v. Kerner, 404 U.S. 519, 520 (1972); Gaines v. Stenseng, 292 F.3d 1222, 1224 (10th Cir. 2002). On June 21, 2019, plaintiff filed a pro se complaint alleging that 29 defendants engaged in a conspiracy to gain control over Audrey Brown and her assets. Of the 29 defendants named in the complaint, all but two are identified as citizens of Oklahoma for the purpose of diversity jurisdiction, and plaintiff alleges that she is a citizen of Oklahoma. Plaintiff claims that Brown named plaintiff as Brown's legal guardian in the event that Brown was unable to manage her own affairs. Id. at 8-9. However, plaintiff claims that certain defendants forged signatures on legal documents and sought to have Brown declared incompetent to manage her own affairs, and defendants initiated proceedings to have plaintiff removed as Brown's guardian. Id. at 11. Plaintiff alleges that the guardianship proceedings were a sham and the state court judge "allowed [the defendants] to utilize her court as the backdrop for their racketeering schemes." Id. at 16. Plaintiff seeks damages in excess of \$75,000. Id. at 8.

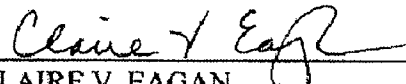
Federal courts are courts of limited jurisdiction, and there is a presumption against the exercise of federal jurisdiction. Merida Delgado v. Gonzales, 428 F.3d 916, 919 (10th Cir. 2005); Penteco Corp. Ltd. Partnership--1985A v. Union Gas System, Inc., 929 F.2d 1519, 1521 (10th Cir. 1991). The party invoking federal jurisdiction has the burden to allege jurisdictional facts demonstrating the presence of federal subject matter jurisdiction. McNutt v. General Motors Acceptance Corp. of Indiana, Inc., 298 U.S. 178, 182 (1936) (“It is incumbent upon the plaintiff properly to allege the jurisdictional facts, according to the nature of the case.”); Montoya v. Chao, 296 F.3d 952, 955 (10th Cir. 2002) (“The burden of establishing subject-matter jurisdiction is on the party asserting jurisdiction.”). The Court has an obligation to consider whether subject matter jurisdiction exists, even if the parties have not raised the issue. The Tenth Circuit has stated that “[f]ederal courts ‘have an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party,’ and thus a court may sua sponte raise the question of whether there is subject matter jurisdiction ‘at any stage in the litigation.’” Image Software, Inc. v. Reynolds & Reynolds Co., 459 F.3d 1044, 1048 (10th Cir. 2006).

The complaint alleges that plaintiff seeks damages in excess of “the minimal jurisdictional limits of Tulsa County District Courts” and that venue is proper in this Court. However, the complaint does not include any allegations concerning federal jurisdiction over plaintiff’s claims. For the Court to have jurisdiction under 28 U.S.C. 1332, plaintiff must allege that the parties are citizens of different states and that the amount in controversy exceeds \$75,000. The complaint alleges that plaintiff and defendant are citizens of Oklahoma. Consequently, the parties are not diverse and there is no basis for the Court to exercise diversity jurisdiction over this case. The Court will consider whether plaintiff’s complaint could be construed to allege a claim arising under federal

law. Generally, the “well-pleaded complaint” rule requires that the federal question appear on the face of the plaintiff’s properly pleaded complaint. See Garley v. Sandia Corp., 236 F.3d 1200, 1207 (10th Cir. 2001). Plaintiff does not cite a federal statute or allege that her constitutional rights were violated, and her complaint cannot be construed to assert a claim arising under federal law. The Court finds no basis to exercise federal question jurisdiction over this case, and plaintiff’s claims should be dismissed for lack of subject matter jurisdiction.

IT IS THEREFORE ORDERED that the complaint (Dkt. # 1) is hereby **dismissed without prejudice**. A separate judgment of dismissal is entered herewith.

DATED this 25th day of June, 2019.



CLAIRE V. EAGAN
UNITED STATES DISTRICT JUDGE

United States District Court
Northern District of Oklahoma

I hereby certify that the foregoing
is a true copy of the original on file
in this court.

Mark C. McCartt

By



Deputy

ROSEMARY ANN LYNN,

V.

Defendants.

Case No. 19-CV-0332-CVE-JFJ

Claire V Eagan
CLAIRE V. EAGAN
UNITED STATES DISTRICT JUDGE

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

February 7, 2020

Christopher M. Wolpert
Clerk of Court

ROSEMARY ANN LYNN,

Plaintiff - Appellant,

v.

ANDREW GEORGE BROWN, III,

Defendant - Appellee.

No. 19-5062
(D.C. No. 4:19-CV-00331-CVE-JFJ)
(N.D. Okla.)

ROSEMARY ANN LYNN,

Plaintiff - Appellant,

v.

ANDREW GEORGE BROWN, III, an individual; MARY JEAN BAGWELL-HENDERSHOTT, an individual; SUSAN BOYD, an individual; MELISSA TAYLOR, an individual; EMILY CRAIN, an individual; THEODORE RIESLING, an individual a/k/a Ted; RANDALL ALLEN GILL, an individual; ROBYN OWENS, an individual; KIMBERLY BIEDLER SCHUTZ, an individual; REBECCA WOOD-HUNTER, an individual; PHILLIP FEIST, an individual a/k/a Phil; JON BRIGHTMIER, an individual; MICHAEL LINSKOTT, an individual; NANCY DALE, an individual; RANDY WHITWORTH, an individual; CLARK WILLIAMS, an individual; HELEN HOLMES-LATIMER, an individual; TERRY HORWATH BITTING, an

No. 19-5063
(D.C. No. 4:19-CV-00332-CVE-JFJ)
(N.D. Okla.)

individual; FAUST BIANCO, JR., an individual; TERESE HALL, an individual; JAMES CAMPBELL, an individual; AMY REA, an individual; MATTHEW BROWN, an individual; SIOK MCKAY, an individual; SAINT FRANCIS EMPLOYEE FEDERAL CREDIT UNION, a member-owned Financial Cooperative and Financial Banking Association, licensed and doing business in Oklahoma; EDWARD JONES, a National Investment, Banking, and Financial Association providing Wealth Management, Brokerage, Corporation, authorized to conduct business in Oklahoma; CHARLES SCHWAB, a National Banking Association, providing Banking, Wealth Management, Investments, banking, and a Financial Association, authorized to conduct financial and banking services in Oklahoma; US TRUST BANK OF AMERICA, a Wealth Management, Financial Services Association Operating as US Trust, however owned by Bank of America, a National Banking Association authorized to conduct and operate in Oklahoma; PURVIEW LIFE TULSA, a/k/a Select Care Management; JOHN DOES, sued as John Does 1-100; JANE DOES, sued as Jane Does 1-100; DOE ENTITIES, sued as Doe Entities 1-100, inclusive,

Defendants - Appellees.

ORDER AND JUDGMENT*

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding

Before **MATHESON, KELLY, and PHILLIPS**, Circuit Judges.

Rosemary Ann Lynn, appearing pro se, appeals from the district court's orders dismissing her complaint against Defendant Andrew George Brown, III (No. 19-5062) and a second complaint against Mr. Brown and a host of other defendants (No. 19-5063) for lack of subject-matter jurisdiction.¹ She has also moved for expedited consideration of her appeal in No. 19-5063. Exercising appellate jurisdiction under 28 U.S.C. § 1291, we affirm both of the district court's orders and deny her motion to expedite as moot.

BACKGROUND

Ms. Lynn filed the complaints underlying her appeals in the U.S. District Court for the Northern District of Oklahoma. Though her allegations in these related cases are difficult to follow in many respects, together they appear to allege that Ms. Lynn provided services to Mr. Brown's elderly sister, Audrey Louise Brown (Audrey), from 2008 through 2017. She claims that in September 2017, Audrey executed documents that appointed Ms. Lynn as Audrey's "guardian, caregiver, trustee, beneficiary, devisee, legatee, and personal representative of the Audrey

precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

¹ We address these appeals in a single order because the facts alleged by Ms. Lynn in the two complaints overlap, as do some of the relevant legal standards.

Louise Brown Estate,” No. 19-5063 R. at 14, and gave her full control over Audrey’s considerable estate.² Mr. Brown then apparently instituted proceedings in Tulsa County Probate Court that resulted in Audrey being declared incompetent and removed from Ms. Lynn’s care. Ms. Lynn complains that the probate court also removed her as Audrey’s guardian and appointed a guardian ad litem and other temporary and then permanent guardians for Audrey, as well as a conservator to administer Audrey’s property and assets. It also appears from Ms. Lynn’s allegations that the probate court invalidated the documents that purportedly gave her control over Audrey and her assets and made her the beneficiary of Audrey’s estate. Both complaints also include other rambling and conclusory allegations about actions taken by different individuals and entities with respect to Audrey and/or her estate.

Against this backdrop, Ms. Lynn’s first complaint asserts claims for defamation and intentional infliction of emotional distress against Mr. Brown, based on allegedly false statements he made about her in legal documents filed in the guardianship proceedings. We refer to this action hereinafter as the “Defamation Complaint.” Ms. Lynn did not assert a basis for federal jurisdiction in this complaint, but specifically alleged in it that both she and Mr. Brown were citizens of Oklahoma. After sua sponte considering the issue, the district court dismissed the complaint without prejudice for lack of subject-matter jurisdiction, holding there was no basis for it to exercise diversity jurisdiction over her state law claims and no federal

² Ms. Lynn asserts in her appellate brief that the estate contains “hundreds of millions of dollars.” No. 19-5063 Aplt. Br. at 6.

question presented on the face of the complaint. Ms. Lynn timely appealed the district court's order of dismissal in Appeal No. 19-5062.

In her second complaint, Ms. Lynn sued Mr. Brown, the probate judge who presided in the guardianship proceedings, the court-appointed guardians and conservator, numerous attorneys, other named individuals and financial institutions, and 200 unknown individuals and entities. Her complaint references the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961-1968, and we refer to this complaint hereinafter as the "RICO Complaint." Ms. Lynn asserted in this complaint that the court had both diversity and federal-question jurisdiction. Again acting sua sponte, the district court dismissed it without prejudice for lack of subject-matter jurisdiction. In so doing, the district court held diversity jurisdiction was lacking because there was not complete diversity among the parties, most of whom Ms. Lynn alleged were citizens of Oklahoma. It also found there was no basis on which to exercise federal-question jurisdiction because Ms. Lynn had fallen far short of stating a RICO claim. Ms. Lynn timely appealed the district court's order of dismissal, and that appeal is before us as No. 19-5063.

DISCUSSION

We review the district court's dismissal of Ms. Lynn's complaints for lack of subject matter jurisdiction de novo. *Blue Valley Hosp., Inc. v. Azar*, 919 F.3d 1278, 1283 (10th Cir. 2019). Federal courts are courts of limited jurisdiction, and Ms. Lynn, as the party seeking to invoke federal jurisdiction, had the burden of establishing the court's jurisdiction over each of her complaints. *See Becker v. Ute*

Indian Tribe of Uintah & Ouray Reservation, 770 F.3d 944, 946-47 (10th Cir. 2014).

As relevant here, this required her to establish either diversity jurisdiction as provided by 28 U.S.C. § 1332 or federal-question jurisdiction under 28 U.S.C. § 1331. *See Home Depot U.S.A., Inc. v. Jackson*, 139 S. Ct. 1743, 1746 (2019) (describing federal courts' limited jurisdiction). In determining whether Ms. Lynn met this burden, we take as true all "well-pled factual allegations," *Blue Valley Hosp.*, 919 F.3d at 1283, that is, all allegations that are "plausible, non-conclusory, and non-speculative," *Dudnikov v. Chalk & Vermilion Fine Arts, Inc.*, 514 F.3d 1063, 1070 (10th Cir. 2008) (defining "well-pled" allegations). Because Ms. Lynn is acting pro se in these actions, we also construe her filings liberally, but we do not act as her advocate. *Yang v. Archuleta*, 525 F.3d 925, 927 n.1 (10th Cir. 2008).

A. Defamation Complaint

Most of Ms. Lynn's arguments in her brief to this court are irrelevant to the jurisdictional question decided by the district court.³ To the extent Ms. Lynn addresses the court's jurisdiction in her brief, she merely declares that federal-question jurisdiction exists because her admittedly state-law defamation claim "echoed in federal law under the First Amendment." No. 19-5062 Aplt. Br. at 13. She cites no authority supporting this novel proposition and there is none. Her suggestion that the district court had some ulterior motive in sua sponte dismissing

³ Ms. Lynn devotes the majority of her brief to arguing the merits of her defamation claim, asserting that she properly pled this state-law claim, and accusing Mr. Brown and others of various misdeeds.

her complaint is also unsupported and ignores that “[f]ederal courts have an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party.”⁴ *Image Software, Inc. v. Reynolds & Reynolds Co.*, 459 F.3d 1044, 1048 (10th Cir. 2006) (internal quotation marks omitted). “[T]hus a court may *sua sponte* raise the question of whether there is subject matter jurisdiction at any stage in the litigation,” *id.* (internal quotation marks omitted), and “*must* dismiss the cause at any stage of the proceedings in which it becomes apparent that jurisdiction is lacking,” *Pueblo of Jemez v. United States*, 790 F.3d 1143, 1151 (10th Cir. 2015) (emphasis added) (internal quotation marks omitted). We have reviewed Ms. Lynn’s complaint in this action and agree that her allegations fail to establish any basis for federal jurisdiction. The district court therefore properly dismissed her complaint for lack of subject matter jurisdiction.

B. RICO Complaint

The question presented in this appeal is whether the district court properly held that Ms. Lynn failed to allege a claim arising under federal law despite referencing the RICO Act in her complaint.⁵ While claims asserted under the RICO Act

⁴ Ms. Lynn’s references to the district court judge as a “Respondent” in the caption of her briefs in both appeals and in her argument are also mistaken. The district court judge is not a party to either appeal or the underlying actions. We also find no support in the record for Ms. Lynn’s suggestion that the district court’s dismissal of her complaints was motivated by bias.

⁵ Ms. Lynn’s arguments regarding personal jurisdiction, service of process, venue, and other unrelated topics in her appellate brief are irrelevant to deciding this question.

ordinarily qualify for federal-question jurisdiction, “jurisdiction under § 1331 exists only where there is a colorable claim arising under federal law.” *McKenzie v. U.S. Citizenship & Immigration Servs., Dist. Dir.*, 761 F.3d 1149, 1156 (10th Cir. 2014) (internal quotation marks omitted). “[A] court may dismiss for lack of subject-matter jurisdiction when the [purported federal] claim is so insubstantial, implausible, foreclosed by prior decisions of this Court, or otherwise completely devoid of merit as not to involve a federal controversy.” *Id.* at 1156-57 (internal quotation marks omitted). The district court held that this was the case here, and we agree.

A civil RICO claim may be brought by “[a]ny person injured in his business or property by reason of a violation of [18 U.S.C.] section 1962.” 18 U.S.C. § 1964(c). Ms. Lynn alleges in her complaint that the defendants violated the entire RICO statute, but as best we can determine she is attempting to allege that each of them violated § 1962(c).⁶ To state a civil RICO claim for violation of § 1962(c), Ms. Lynn was required to “plausibly allege that the defendants each (1) conducted the affairs (2) of an enterprise (3) through a pattern (4) of racketeering activity.” *Safe Streets*

⁶ This conclusion is consistent with Ms. Lynn’s argument in support of her motion for a temporary restraining order in the district court, in which she asserted that the defendants had violated § 1962(c). In her appellate brief, however, Ms. Lynn declares that her complaint also alleges that her business or property were injured as a result of violations of § 1962(a) (prohibiting investment of income derived from a pattern of racketeering activity in an enterprise engaged in interstate or foreign commerce), § 1962(b) (prohibiting acquisition or maintenance through a pattern of racketeering activity of an interest in or control of an enterprise engaged in interstate or foreign commerce), and § 1962(d) (prohibiting conspiracy to violate § 1962(a)-(c)). But Ms. Lynn does not point to any allegations supporting this assertion and we found none in our careful review of her complaint.

All. v. Hickenlooper, 859 F.3d 865, 882 (10th Cir. 2017) (internal quotation marks omitted). Ms. Lynn's complaint does not state a colorable RICO claim against any of the defendants for a variety of reasons, only some of which we address here.

First, Ms. Lynn's attempt to allege a RICO enterprise is completely devoid of merit. As the district court noted, Ms. Lynn's rambling complaint alleges that different defendants mistreated Audrey and/or her estate in different ways. Ms. Lynn tries to cast this alleged mistreatment in RICO terms by alleging that the named and unnamed defendants "were working as a single entity and enterprise to commit extrinsic fraud, intrinsic fraud, extortion, kidnapping, undue influence, perjury, forgery, mail, and wire fraud through communications." No. 19-5063 R. at 12. But this apparent attempt to allege an "association-in-fact" RICO enterprise⁷ fails not only because it is conclusory, *see Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991) (holding that a pro se litigant's "conclusory allegations without supporting factual averments are insufficient to state a claim on which relief can be based"), but also because Ms. Lynn's complaint does not connect the defendants' different conduct to the alleged enterprise or provide a plausible basis for finding that the defendants were and are functioning as a continuing unit, *see Boyle v. United States*, 556 U.S. 938, 944-45 (2009) (defining an association-in-fact RICO enterprise as a

⁷ RICO defines an "enterprise" as "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." 18 U.S.C. § 1961(4). Because the collection of defendants named by Ms. Lynn is not a legal entity, the only potential RICO enterprise that might be applicable here is the last portion of this definition, regarding association-in-fact enterprises.

“group of persons associated together for a common purpose of engaging in a course of conduct,” which is demonstrated “by evidence of an ongoing organization, formal or informal, and by evidence that the various associates function as a continuing unit” (internal quotation marks omitted)).

Ms. Lynn’s complaint similarly falls far short of plausibly alleging “racketeering activity” by the defendants. Only some of the wrongful conduct listed by Ms. Lynn—namely mail and wire fraud, extortion, and kidnapping—qualify as “racketeering activity” that might support a RICO claim. *See* 18 U.S.C. § 1961(1); *see also Beck v. Prupis*, 529 U.S. 494, 497 n.2 (2000) (“Section 1961(1) contains an exhaustive list of acts of ‘racketeering,’ commonly referred to as ‘predicate acts.’”). And Ms. Lynn was required to do more than just list these alleged predicate acts to state a RICO claim—she needed to plead the elements of each predicate act, and to do so with particularity with respect to those sounding in fraud. *See Robbins v. Wilkie*, 300 F.3d 1208, 1211 (10th Cir. 2002); *Farlow v. Peat, Marwick, Mitchell & Co.*, 956 F.2d 982, 989 (10th Cir. 1992). Ms. Lynn did not come close to doing so.⁸

For example, to plead the predicate acts of mail and wire fraud, Ms. Lynn needed to “plausibly allege the existence of a scheme or artifice to defraud or obtain

⁸ In her appellate brief, Ms. Lynn complains of additional alleged wrong-doing by defendants that occurred after the district court dismissed her complaint. We do not consider these additional allegations in assessing whether she stated a colorable RICO claim because these new allegations were not included in her complaint or otherwise presented to the district court. *See Regan-Touhy v. Walgreen Co.*, 526 F.3d 641, 648 (10th Cir. 2008) (“We generally limit our review on appeal to the record that was before the district court when it made its decision”).

money or property by false pretenses, representations or promises, and that [the alleged enterprise] communicated, or caused communications to occur, through the U.S. mail or interstate wires to execute that fraudulent scheme.” *George v. Urban Settlement Servs.*, 833 F.3d 1242, 1254 (10th Cir. 2016) (internal quotation marks omitted). “And because Fed. R. Civ. P. 9(b) requires a plaintiff to plead mail and wire fraud with particularity,” she was further required to plead “the time, place and contents of the false representation[s], the identity of the party making the false statements and the consequences thereof” as relevant to the alleged mail and wire fraud. *Id.* (internal quotation marks omitted). Ms. Lynn’s complaint is devoid of allegations meeting this standard. In addition, to the extent Ms. Lynn pled any of the elements of kidnapping or extortion in her complaint, she offered only “labels and conclusions” and “naked assertions devoid of further factual enhancement.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks and alterations omitted). Such allegations are insufficient even under the more relaxed pleading standard of Fed. R. Civ. P. 8. *See id.*

Accordingly, we agree with the district court that Ms. Lynn failed to state a colorable RICO claim, and that the district court therefore lacked federal-question jurisdiction over her purported RICO Complaint. As it is also indisputable that diversity jurisdiction was lacking, the district court properly dismissed this complaint for lack of subject matter jurisdiction.⁹

⁹ Contrary to Ms. Lynn’s argument here, the district court was not required to allow her discovery to cure these deficiencies.

CONCLUSION

We affirm the district court's dismissal of Ms. Lynn's complaints. We also deny Ms. Lynn's motion for expedited consideration in No. 19-5063 as moot.

Entered for the Court

Paul J. Kelly, Jr.
Circuit Judge

Appellate Case: 19-5062 Document: 010110301297 Date Filed: 02/07/2020 Page: 1

**UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT
OFFICE OF THE CLERK**

Byron White United States Courthouse
1823 Stout Street
Denver, Colorado 80257
(303) 844-3157

Christopher M. Wolpert
Clerk of Court

February 07, 2020

Jane K. Castro
Chief Deputy Clerk

Ms. Rosemary Ann Lynn
P.O. Box 701432
Tulsa, OK 74170

RE: 19-5062, 19-5063, Lynn v. Brown
Dist/Ag docket: 4:19-CV-00331-CVE-JFJ

Dear Appellant:

Enclosed is a copy of the order and judgment issued today in this matter. The court has entered judgment on the docket pursuant to Fed. R. App. P. Rule 36.

Please contact this office if you have questions.

Sincerely,



Christopher M. Wolpert
Clerk of the Court

CMW/mlb

Stephanie Clark

From: ca10_cmecf_notify@ca10.uscourts.gov
Sent: Friday, February 7, 2020 11:33 AM
To: CM-ECF Intake OKND
Subject: 19-5062 Lynn v. Brown "Case termination for order and judgment" (4:19-CV-00331-CVE-JFJ)

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Tenth Circuit Court of Appeals

Notice of Docket Activity

The following transaction was entered on 02/07/2020 at 10:29:40 AM MST and filed on 02/07/2020

Case Name: Lynn v. Brown
Case Number: 19-5062
Document(s): Document(s)

Docket Text:

[10716309] Affirmed; Terminated on the merits after submissions without oral hearing; Written, signed, unpublished. Judges Matheson, Kelly (authoring judge) and Phillips. Mandate to issue. [19-5062, 19-5063]

Notice will not be electronically mailed to the following as the Court does not have a valid email address on file or the person has not consented to service via email. If appropriate, notice will be delivered by other means to:

Ms. Rosemary Ann Lynn
P.O. Box 701432
Tulsa, OK 74170

The following document(s) are associated with this transaction:

Document Description: OJ

Original Filename: 19-5062.pdf

Electronic Document Stamp:

[STAMP acecfStamp_ID=1104938855 [Date=02/07/2020] [FileNumber=10716309-0]
[13dd8f0b06c247900eb4c5a52bf698236df0dc1cf21da837606aa1950b108ced38c35f07780ee9efcb18d6c769e881a8df86
89fa9b26bff2507e8d616b86c20a]]

Document Description: Order Judgment Cover Letter

Original Filename: /opt/ACECF/live/forms/MichaelBarajas_195062_10716309_136.pdf

Electronic Document Stamp:

[STAMP acecfStamp_ID=1104938855 [Date=02/07/2020] [FileNumber=10716309-1]
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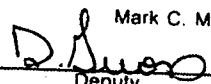
3d76b0e3267a5ca6a3243b7d1ef39]]

Recipients:

- Ms. Rosemary Ann Lynn

United States District Court
Northern District of Oklahoma

I hereby certify that the foregoing
is a true copy of the original on file
in this court.

By  Mark C. McCartt
Deputy

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