(iv) Dr. Golz's standing to seek a remedy for the orders directing his responsibilities for the closed Estate is clear

As the Court explained in *Steel Co.*, 523 U.S. at 84, standing "contains three requirements: injury in fact to the plaintiff, causation of that injury by the defendant's complained-of conduct, and a likelihood that the requested relief will redress that injury." These requirements are clearly satisfied in this case:

Dr. Golz's injury includes litigation costs and unrecoverable losses to "draft needless responses and spend hundreds of hours in legal research." *Supra.* In addition, from May 2018 through April 2019, Dr. Golz had to defend the closed Estate and his right to self-representation against Judges Jackson and Hegarty, whose official acts undermining Dr. Golz's defense included the sustained effort to foist Ms. Callan's counsel upon him.

The Second Circuit in *O'Reilly v. New York Times Co.,* 692 F.2d 863, 867 (2d Cir. 1982), held that "denial of the statutory right of self-representation ... in civil cases conferred by § 35 of the Judiciary Act of 1789, ... [is] a right of high standing, not simply a practice to be honored or dishonored by a court depending on its assessment of the desiderata of a particular case." Judges Jackson's and Hegarty's eleven-months of official acts employing the closed Estate to hamper Dr. Golz's defense and attempt to impose counsel upon him was an act of oppression and demonstration of prejudice, for even when an estate exists: "It is only a legal fiction that assigns the sole beneficiary's claims to a paper entity — the estate — rather than the beneficiary himself. ... Because the administrator is the only party

affected by the disposition of the suit, he is, in fact, appearing solely on his own behalf." *Guest v. Hansen*, 603 F.3d 15, 21 (2d Cir. 2010).

Dr. Golz suffered a significant injury in fact consequent to the acts of Judges Jackson and Hegarty, whom, absent all subject-matter jurisdiction, reopened, or, equivalently, refused to acknowledge the probate court's jurisdiction to close the Estate. If the injury is adjudged to be prejudice to Dr. Golz's defense and unrecoverable time spent in responding to void orders and defending his right to self-representation, the wrong could be redressed by remand to another district in the Tenth Circuit or to another circuit. Opening Br. at 55, Conclusion. If the role that HUD and its counsel played were then adjudged to have caused a significant part of the injury, which was deemed irreparable, the relief of dismissal with prejudice of HUD's complaint could redress the wrong. Opening Br. at 55, Conclusion.

(v) The Tenth Circuit's opinion that Dr. Golz's appeal is " 'to protect the rights of third parties' " is in direct conflict with longstanding Supreme Court precedent

By May 7, 2018, Judge Jackson's Court was in receipt of the PR's Deed distributing the Property and the Estate Closing Statement that Dr. Golz had perfected in the probate court. Dr. Golz was the only party extant, the explicit and only object of the court's orders, and the only party that could sustain any injury in fact from those orders.

The Tenth Circuit's presumption that the Estate existed as a third party during the period on appeal—May 8, 2018 to April 8, 2019, J&O at 3 ¶ 1, *see*

App. A—asserts a power the court does not have to give the district court jurisdiction in violation of Supreme Court precedent that deprives federal courts of subject-matter jurisdiction to administer probate, which includes: to reopen (or, equivalently, to refuse to acknowledge probate court jurisdiction to close the Estate); to maintain a cause against Verna Mae through her closed Estate to nullify her will; or to require Dr. Golz to retain licensed counsel to represent the closed Estate in the federal district court. *E.g., Byers v. McAuley*, 149 U.S. 608 (1893) ("An administrator appointed by a state court is an officer of that court;" *id.* at 608. "No officer appointed by any court should be placed under the stress which rested upon this administrator, and compelled for his own protection to seek orders from two courts in respect to the administration of the same estate." *Id.* at 613.).

II. THE STAY IS NECESSARY TO PREVENT IRREPARABLE HARM TO DR. GOLZ AND WILL CAUSE NO PREJUDICE TO HUD

(A) Denying the stay will irreparably harm Dr. Golz

Dr. Golz moved with his parents to the Golz home in 1970. The home is near Nederland, population 1,500, where Dr. Golz has known many of the families since he was school age. Dr. and Ms. Golz spent their honeymoon replacing the flooring and fixtures in Verna Mae's bathroom and returned nearly every summer thereafter to help Verna Mae with chores and repairs. This is not just a house for the Golz family but a connection to a small community where they have deep roots.

If the Court does not grant the stay, HUD will, as it did the day after Dr. Golz filed his notice of appeal, move the district court for a judicial sale. Sale of

the Property would extinguish the case-or-controversy, conclude the abridgment of Dr. Golz's rights, and preclude the Court's ability to review questions that are important to public policy, including whether HUD is exempt from affirmative defenses based upon the claim it is acting in the public interest, and whether HUD's deed of trust preempts a state's forcible entry and detainer statute and, in this case, the Fourth Amendment, which are intended to protect a home's occupants.

(B) The stay will cause no prejudice to HUD

(i) HUD will continue to accrue a large benefit from Colorado's record price-appreciation while the Golz family pays all property costs

Facts have not changed since Dr. Golz moved the district court for a stay on August 2, 2019, "pending final disposition of his appeal to the Tenth Circuit, and, as applicable, to the Supreme Court[,]" and provided the following good cause:

> It serves no beneficial purpose to irreversibly harm Defendant by permitting the sale of a Property his family has owned for fifty years when allowing the Golzes to continue maintaining and paying for carrying costs of the Property will, according to Plaintiff's own published reports, provide a net economic benefit to the Secretary:
>
> Defendant was ready, willing, and able to pay off the loan on the Property on May 23, 2014, [1 R. 257] ¶¶ 80 and 81, and since that date, the Golzes have paid all carrying costs of the Property. Defendant's wife, Annette Golz, itemized her payments for taxes, homeowners insurance, and maintenance for the period 2014 to 2019 which totaled $30,331 (exclusive of certain not-yet itemized, but significant, costs of tree and brush clearing for wildfire mitigation, one-time repairs, and improvements).

> Meanwhile, Housing and Urban Development's [ ] January 2017 market analysis for the Boulder area reports that single-family homes appreciated at 9% per year, a total of 27% for 2014 through 2016. [ ].[16] HUD's most-recent publication reported that prices for single-family homes rose more than 9% through September 2018.[17] This steady 9% annual increase yields a net return to the Secretary of 54% for the period June 2014 to June 2019.[18]
>
> HUD's October-2018 market analysis forecasts a strong economy for the Boulder area over next three years with the supply of single-family homes remaining tight and continued price appreciation.[19] Per HUD's data, the Secretary can expect to realize a continuing net gain of 9% per year, 0.75% per month (9%÷12 months), while Defendant's family will continue paying for all carrying costs.[20]

3 R. 471–73.

Colorado home values have continued to appreciate at a record pace with the median price of a single-family home increasing 8.6% from 2019 to 2020.[21]

(ii) HUD is typically the purchaser at judicial sales of its homes with defaulted reverse-mortgages and sells them in pools at 63% of market value

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16 *HUD Comprehensive Housing Market Analysis, Boulder, Colorado, as of January 1, 2017,* at 9; https://www.huduser.gov/portal/publications/pdf/BoulderCO-comp-17.pdf.

17 *HUD Comprehensive Housing Market Analysis, Boulder, Colorado, as of October 1, 2018,* at 4 and 12; https://www.huduser.gov/portal/publications/pdf//BoulderCO-CHMA-18.pdf.

18 Compounded annually, per HUD's data.

19 *See* the HUD publication in [note 17], *supra,* at 4 and 14.

20 Boulder County Property Taxes, due annually, were paid by Ms. Golz in April 2019[and April 20, 2020. Check No. 1193].

21 Aldo Svaldi, *Home sales and price records were set all across* Colorado *in July*, The Denver Post, August 15, 2020, *available at* https://www.denverpost.com/2020/08/15/colorado-home-sales-prices-records-july/

Homes with defaulted reverse-mortgages, like the Golz home, are typically "purchased" by HUD at its judicial sales then aggregated and sold to large investors at deep discounts. In 2020, FHA reported a sale of 652 homes which, just like the Golz home, were security for Secretary-held, due-and-payable reverse-mortgages. The 652 homes were pooled and sold to five bidders for a total of $104 million with an overall-average sale price of 62.6 percent of Broker Price Opinion—a real-estate broker's estimate of market value. *FHA Annual Management Report, Fiscal Year 2020* at 48 (Nov. 16, 2020).[22]

(C) The district court granted the stay for "irreparable injury"; the appeals court denied the stay without comment

The district court granted the above stay, acknowledging that Dr. Golz "has shown 'irreparable injury,' because the case involves a specific piece of real estate, and once sold, it is gone." 3 R. 508.

The Tenth Circuit's order states: "The motion to stay issuance of the mandate is denied." App. B.

CONCLUSION

For the reasons provided above, Applicant respectfully requests that the Court recall and stay the Tenth Circuit's mandate.[23]

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22 http://www.hud.gov/sites/dfiles/Housing/documents/FHAFY2020ANNUALMGMNTRPT.pdf.

23 In reply to a personal communication from Dr. Golz dated December 23, 2020, HUD agreed that it would initiate no action against the subject property in the district court prior to January 15, 2021. *See supra* p. 1 and note 1.

DATED this 6th day of January, 2021.

Respectfully submitted,

William Golz, Ph.D.
29714 North 152nd Way
Scottsdale, Arizona 85262
Phone/Facsimile: (480) 816-5019
Applicant, Pro Se

APPENDIX A

FILED
United States Court of Appeals
Tenth Circuit

September 21, 2020

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

BENJAMIN S. CARSON, Secretary of Housing and Urban Development,

Plaintiff - Appellee,

v.

WILLIAM J. GOLZ,

Defendant - Appellant,

and

MARCUS GOLZ; MATTHEW J. GOLZ,

Defendants.

No. 19-1242
(D.C. No. 1:17-CV-01152-RBJ-MEH)
(D. Colo.)

ORDER AND JUDGMENT*

Before **PHILLIPS**, **BALDOCK**, and **CARSON**, Circuit Judges.

Pro se appellant William J. Golz, Ph.D., appeals from the district court's judgment in favor of the Secretary of Housing and Urban Development (HUD) in this

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* After examining the briefs and appellate record, this panel has determined unanimously to honor the parties' request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore submitted without oral argument. This order and judgment is not binding 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.

foreclosure action under 42 U.S.C. § 3535(i). Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

DISCUSSION

The parties are familiar with the facts, and we do not repeat them here. Dr. Golz argues that the district court usurped a probate court's jurisdiction when it delayed a ruling and that it erred in striking his affirmative defenses and in denying him leave to file a second amended answer and counterclaims. He further argues that this court should apply the unclean hands doctrine to sanction HUD for certain post-judgment arguments in the district court. Because Dr. Golz proceeds pro se, we construe his filings liberally, but he must comply with the same rules as other litigants. *See Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005). We do not act as his "attorney in constructing arguments and searching the record." *Id.*

I. Alleged Judicial Usurpation

Dr. Golz first argues that the district court usurped an Arizona probate court's jurisdiction when it delayed in dismissing the Estate of Verna Mae Golz (the Estate) as a defendant. A threshold issue is Dr. Golz's standing to appeal from a decision regarding the Estate. *See Arizonans for Official English v. Arizona*, 520 U.S. 43, 64 (1997) ("The standing Article III requires must be met by persons seeking appellate review, just as it must be met by persons appearing in courts of first instance.").

The appellant here is Dr. Golz individually, not Dr. Golz as the personal representative of the Estate. Therefore, to challenge the delay in dismissing the

Estate, Dr. Golz must show he individually suffered injury from the delay. *See Thomas v. Metro. Life Ins. Co.*, 631 F.3d 1153, 1159 (10th Cir. 2011). ("[T]o have standing on appeal, one must be aggrieved by the order from which appeal is taken. . . . [P]arties generally do not have standing to appeal in order to protect the rights of third parties." (brackets and internal quotation marks omitted)). He has failed to do so. His averments of judicial usurpation do not establish any harm to him individually. And although he states that during the delay he could not amend pleadings to which the Estate was a party, he has not identified any authority restricting him, individually, from taking any action in the course of representing himself. Dr. Golz therefore has not established his standing to appeal from the delay in dismissing the Estate as a defendant.

II. Striking Affirmative Defenses

Dr. Golz next challenges the district court's grant of HUD's Fed. R. Civ. P. 12(f) motion to strike his affirmative defenses of equitable estoppel and unclean hands. Although we generally review a decision on a motion to strike for abuse of discretion, *see Durham v. Xerox Corp.*, 18 F.3d 836, 840 (10th Cir. 1994), here the district court considered evidence outside the pleadings and applied a summary-judgment standard. We therefore review the decision de novo. *See Whitesel v. Sengenberger*, 222 F.3d 861, 866 (10th Cir. 2000) (applying de novo review where district court converted motion to dismiss into motion for summary judgment).

A. Estoppel

The district court followed *FDIC v. Hulsey*, 22 F.3d 1472, 1489-90 (10th Cir. 1994), which holds that a party seeking to establish estoppel against the government must show affirmative misconduct. Dr. Golz argues that *Hulsey* is inapplicable because HUD's funds are not appropriated from the public treasury, but come from mortgage insurance premiums. He further posits that HUD should be subject to equitable defenses because, in this case, it is acting in the nature of a private party seeking to enforce a contract.

Hulsey recognized that "[c]ourts generally disfavor the application of the estoppel doctrine against the government and invoke it only when it does not frustrate the purpose of the statutes expressing the will of Congress or unduly undermine the enforcement of the public laws." *Id.* at 1489. "It is far from clear that the Supreme Court would ever allow an estoppel defense against the government under any set of circumstances." *Id.* at 1490. "However, even assuming estoppel could be applicable," *Hulsey* continued, "the Court has indicated that there must be a showing of affirmative misconduct on the part of the government." *Id.*

We are not persuaded by Dr. Golz's attempts to distinguish *Hulsey*. To the contrary, we see no reason why *Hulsey* should not apply. *See Wade Pediatrics v. Dep't of Health & Human Servs.*, 567 F.3d 1202, 1206 (10th Cir. 2009) ("Courts are parsimonious about estoppel claims against the government for good reason . . . ."); *Bd. of Cty. Comm'rs v. Isaac*, 18 F.3d 1492, 1498 (10th Cir. 1994) ("[T]he Supreme Court has alerted the judiciary that equitable estoppel against the government is an

extraordinary remedy."). Further, we agree with the district court that Dr. Golz failed to show affirmative misconduct by HUD. *See Hulsey*, 22 F.3d at 1490 ("[T]he erroneous advice of a government agent does not reach the level of affirmative misconduct."); *Isaac*, 18 F.3d at 1499 ("Mere negligence, delay, inaction, or failure to follow agency guidelines does not constitute affirmative misconduct."). Accordingly, the court did not err in striking the estoppel defense.

B. Unclean Hands

Dr. Golz asserts that HUD has unclean hands because it communicated in bad faith before ultimately filing for foreclosure and its agents committed trespass on the property. The magistrate judge doubted that unclean hands could apply to a foreclosure by HUD, but the district court assumed without deciding that the defense could apply. It held that Dr. Golz must show fraudulent and deceitful conduct, which must be pleaded with particularity. It concluded that "[t]he accusation that HUD acted in bad faith bordering on fraud is a conclusory allegation for which neither [the magistrate judge] nor [the district court] have found supportive facts alleged with particularity in the Amended Answer." R. Vol. 2 at 417.

Like the district court, we assume without deciding that the defense of unclean hands is not categorically barred against the government. *See Deseret Apartments, Inc. v. United States*, 250 F.2d 457, 458 (10th Cir. 1957) ("[T]he Government may not invoke the aid of a court of equity if for any reason its conduct is such that it must be said it comes into court with unclean hands."). *But see id.* (recognizing that equitable principles "will not be applied to frustrate the purpose of [the United

States'] laws or to thwart public policy" (internal quotation marks omitted)); *McKennon v. Nashville Banner Pub. Co.*, 513 U.S. 352, 360 (1995) (stating that "unclean hands . . . has not been applied where Congress authorizes broad equitable relief to serve important national policies"). Having reviewed the arguments and record, however, we are not persuaded that Dr. Golz satisfies the high standard for proceeding with the defense, either with regard to HUD's pre-foreclosure communications, *see Eresch v. Braecklein*, 133 F.2d 12, 14 (10th Cir. 1943) ("The [unclean hands] maxim refers to willful misconduct rather than merely negligent misconduct."), or its alleged trespasses, *see Ohio Oil Co. v. Sharp*, 135 F.2d 303, 308-09 (10th Cir. 1943) ("[N]ot every actionable wrong amounting to a trespass or an invasion of the property rights of others is iniquitous, inequitable or unconscionable," such as "to repel [the plaintiff] from a court of equity."). Accordingly, the district court did not err in striking the unclean hands defense.

III. Denial of Leave to Amend

Dr. Golz further argues that the district court erred in denying him leave to file a second amended answer and counterclaims. The district court found the request "was filed with unjustified delay, with a dilatory or bad faith motive and would be futile." R. Vol. 3 at 357. Because we need not go beyond the district court's first reason, unjustified delay, our review is for abuse of discretion. *See Miller ex rel. S.M. v. Bd. of Educ.*, 565 F.3d 1232, 1249 (10th Cir. 2009).

"It is well settled in this circuit that untimeliness alone is a sufficient reason to deny leave to amend, especially when the party filing the motion has no adequate

explanation for the delay." *Frank v. U.S. West, Inc.*, 3 F.3d 1357, 1365-66 (10th Cir. 1993) (citations omitted). Dr. Golz asserts that he did not complete administrative presentment of his Federal Tort Claims Act (FTCA) counterclaim until December 2018, and then he brought the claim in January 2019.

Our review of the record indicates, however, that Dr. Golz did not properly present any FTCA counterclaim(s) at any time after December 2018. His January 2019 filings referred to potential counterclaims, but those filings were not motions to amend, as required by the court's rules. He first formally moved to amend his answer on April 1, 2019, the due date for his objections to the magistrate judge's recommendation that the district court grant HUD's motion for summary judgment. But that motion contemplated changes only to the factual recitations and the affirmative defenses the district court had stricken six months earlier. According to the title of the motion, with regard to counterclaims, Dr. Golz merely intended to give "Notice of Intent to File Counterclaims and Add an Intervenor by May 1, 2019." R. Vol. 3 at 205 (capitalization and boldface omitted). The body of the motion failed to address any proposed counterclaims, and the proposed second amended answer failed to set forth any counterclaims. A week later, Dr. Golz submitted a further amended proposed second amended answer, which also failed to set forth any counterclaims.

Further, by the time Dr. Golz moved to amend, the litigation was twenty-three months old, and four months had passed since the alleged FTCA counterclaim(s) had been administratively presented. He himself acknowledged that allowing amendment

would moot the then-pending motion for summary judgment and the magistrate judge's recommendation. Allowing amendment also would negate the district court's earlier decision to strike affirmative defenses. As the district court stated, nearly two years into the suit, "Dr. Golz . . . attempts to restart this litigation from ground zero." *Id.* at 359. Under these circumstances, we are not persuaded that the district court abused its discretion in concluding that Dr. Golz unduly delayed in moving to amend. Having upheld the decision on this ground, we need not consider the district court's other reasons for denying amendment.

IV. Post-Judgment Conduct

Finally, Dr. Golz suggests the unclean hands doctrine should apply to sanction HUD for post-judgment arguments it made in the district court while seeking the court's approval of a judicial notice of sale. It does not appear that he made this argument in the district court. More importantly, even if he did raise the argument, we lack jurisdiction to hear it in this appeal.

This appeal arises from the notice of appeal Dr. Golz filed on July 8, 2019, from the final judgment and the orders denying his motion to alter or amend the judgment and his motion to correct the post-judgment order. The district court did not decide HUD's motion for approval until August 15, 2019, and Dr. Golz did not file a new or amended notice of appeal after the district court issued that order. We therefore lack jurisdiction to consider issues concerning that order. *See* Fed. R. App. P. 3; *Abbasid, Inc. v. First Nat'l Bank of Santa Fe*, 666 F.3d 691, 697 (10th Cir.

2012) ("A notice of appeal of a judgment or order is not effective with respect to judgments or orders entered after the challenged judgment or order.").

CONCLUSION

The district court's judgment is affirmed. Dr. Golz's motion to file an oversize reply brief is granted. His two motions to certify questions of state law to the Colorado Supreme Court are denied. His motions to disqualify the Chief Judge of this court and the panel assigned to decide a prior mandamus petition, *see In re Golz*, No. 19-1083 (10th Cir. May 13, 2019) (unpublished order), are denied as moot.

Entered for the Court

Bobby R. Baldock
Circuit Judge

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

Jane K. Castro
Chief Deputy Clerk

September 21, 2020

William J. Golz
29714 North 152nd Way
Scottsdale, AZ 85262

RE: 19-1242, Carson v. Golz
Dist/Ag docket: 1:17-CV-01152-RBJ-MEH

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

cc: Jasand Patric Mock

CMW/lg

APPENDIX B

FILED
United States Court of Appeals
Tenth Circuit

December 22, 2020

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

BENJAMIN S. CARSON, Secretary of Housing and Urban Development,

Plaintiff - Appellee,

v.

WILLIAM J. GOLZ,

Defendant - Appellant,

and

MARCUS GOLZ, et al.,

Defendants.

No. 19-1242
(D.C. No. 1:17-CV-01152-RBJ-MEH)
(D. Colo.)

ORDER

Before **PHILLIPS**, **BALDOCK**, and **CARSON**, Circuit Judges.

This matter is before the court on Appellant's Unopposed Motion to Exceed the Type-Volume Limitation and Motion to Stay Issuance of Mandate Pending Petitioner for Writ of Certiorari. The motion to exceed the type-volume limitation is granted. The motion to stay issuance of the mandate is denied.

Entered for the Court

CHRISTOPHER M. WOLPERT, Clerk