UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 20-1475

RANDALL WINSLOW,
Appellant

v.

SUPREME COURT OF PENNSYLVANIA; PENNSYLVANIA BAR ASSOCIATION;
CHESTER COUNTY BAR ASSOCIATION; and WILLIAM P. MAHON

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil Action No. 2:19-cv-4632)
District Judge: Honorable Mitchell S. Goldberg

Submitted Pursuant to Third Circuit LAR 34.1(a)
April 13, 2021
Before: AMBRO, PORTER and SCIRICA, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Eastern District of Pennsylvania and was submitted pursuant to Third Circuit L.A.R. 34.1(a) on April 13, 2021. On consideration whereof, it is now hereby

ORDERED and ADJUDGED by this Court that the judgment of the District Court entered February 13, 2020, be and the same is hereby affirmed. Costs will not be taxed. All of the above in accordance with the opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

~~Dated: May 3, 2021~~ Certified as a true copy and issued in lieu of a formal mandate on May 25, 2021

Teste: Patricia S. Dodszuweit
Clerk, U.S. Court of Appeals for the Third Circuit

NOT PRECEDENTIAL

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(Opinion filed: May 3, 2021)

OPINION*

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* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

PER CURIAM

Randall Winslow sued the Supreme Court of Pennsylvania, two bar associations, and a state trial judge. Winslow sought to invalidate Pennsylvania Rule of Civil Procedure 1042.3, which requires a certificate of merit (COM) in professional malpractice cases. Winslow claimed that his inability to afford a COM means that Rule 1042.3 creates an unconstitutional barrier to certain types of litigants and litigation. Three defendants entered their appearances and moved to dismiss the complaint. The District Court granted the motions based on the Rooker-Feldman[1] doctrine, a jurisdictional ground raisable in a motion under Federal Rule of Civil Procedure 12(b)(1).[2] The District Court determined that Winslow was, in effect, seeking federal court review of two state-court malpractice cases that he lost due to lack of COMs. To support its determination, the District Court cited our decision affirming the Rooker-Feldman-based dismissal of Winslow's virtually-identical-in-substance prior suit. See Winslow v. Stevens, 632 F. App'x 721 (3d Cir. 2015) (per curiam); cf. Dist. Ct. Op. at 6 ("The Third Circuit's ruling now acts as a collateral estoppel that binds me to conclude

[1] D.C. Ct. of Appeals v. Feldman, 460 U.S. 462 (1983); Rooker v. Fid. Tr. Co., 263 U.S. 413 (1923).

[2] The District Court dismissed the non-appearing, fourth defendant (the Pennsylvania Bar Association) from suit under Federal Rule of Civil Procedure 4(m), because it was not timely served with process.

that Plaintiff's constitutional claim—as applied to his state lawsuit against [one of his prior attorneys]—is barred by the Rooker-Feldman doctrine.").

Winslow appealed. Our appellate jurisdiction is provided by 28 U.S.C. § 1291. See Gomez v. Gov't of V.I., 882 F.2d 733, 736 (3d Cir. 1989). We review de novo an order granting a motion under Rule 12(b)(1) that facially attacks the District Court's jurisdiction. Davis v. Wells Fargo, 824 F.3d 333, 346 (3d Cir. 2016).[3] And we may affirm on any basis supported by the record. Tourscher v. McCullough, 184 F.3d 236, 240 (3d Cir. 1999).

We have carefully reviewed Winslow's brief, in which he argues at length that the District Court misapplied Rooker-Feldman. Winslow's arguments are ultimately unavailing, for at least the three reasons that follow.

First, this Court already has determined that Rooker-Feldman bars any attempt by Winslow to collaterally attack the adverse state court ruling, in his original malpractice case, by way of a federal court action to invalidate Rule 1042.3. See Winslow, 632 F. App'x at 723. To the extent that Winslow has attempted to do just that (again), the District Court was correct to support its jurisdictional ruling by invoking the doctrine of issue preclusion. See Burlington N. R.R. v. Hyundai Merchant Marine Co., 63 F.3d 1227, 1231–32 (3d Cir. 1995) (outlining the requirements for application of issue preclusion).

[3] Winslow does not challenge on appeal the District Court's Rule 4(m) dismissal.

Second, it matters not that Winslow's complaint at issue referenced a failed malpractice action against an attorney different from the attorney whose alleged malpractice was at issue in the prior complaint. To that separate malpractice case Rooker-Feldman applies with equal force, using the same rationale previously employed by this Court, see Winslow, 632 F. App'x at 723, and by the District Court below. Here too, then, issue preclusion bars what appears to be nothing more than a request by Winslow to relitigate the past.

Third, even if Winslow were right that there is some facet of his case that eludes Rooker-Feldman—on the theories that he claims prospective injury or instead an injury to the general public—it would not alter our disposition. Winslow lacks constitutional standing to press either theory. Cf. Spokeo, Inc. v. Robins, 136 S. Ct. 1540, 1547 (2016), as revised (May 24, 2016) (explaining that "the 'irreducible constitutional minimum' of standing consists of three elements. The plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision") (citation omitted). Specifically, there is still "no foreseeable prospect that Rule 1042.3 will bar some hypothetical future lawsuit [Winslow] might assert against an attorney or other licensed professional." Winslow, 632 F. App'x at 724.[4] And Winslow cannot demonstrate

[4] That we previously ruled on Winslow's standing to challenge Rule 1042.3, based on alleged prospective harm, is yet another basis for application of issue preclusion.

standing by alleging that he seeks vindication for the public generally. Cf. Carney v. Adams, 141 S. Ct. 493, 499 (2020) (explaining that "a plaintiff cannot establish standing by asserting an abstract 'general interest common to all members of the public,' 'no matter how sincere' or 'deeply committed' a plaintiff is to vindicating that general interest on behalf of the public") (citations omitted).

Accordingly, the District Court's judgment will be affirmed.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RANDALL P. WINSLOW, *Plaintiff,*	:	**CIVIL ACTION**
v.	:	**NO. 19-4632**
SUPREME COURT OF PENNSYLVANIA, et al., *Defendants.*	:	

ORDER

AND NOW, this 12th day of February, 2020, upon consideration of the Motion to Dismiss by Defendants William Mahon and the Supreme Court of Pennsylvania (Doc. No. 3), the Motion to Dismiss by Defendant Chester County Bar Association (Doc. No. 8), the Motion to Stay Discovery by Defendant Chester County Bar Association (Doc. No. 7), and Plaintiff's Responses (Doc. Nos. 5, 9, 10), I find as follows:

Facts as Set Forth in the Complaint[1]

1. Plaintiff's *pro se* Complaint challenges the Pennsylvania requirement that a plaintiff seeking to bring a professional malpractice action obtain a certificate of merit from another licensed professional, pursuant to Pennsylvania Rule of Civil Procedure 1042.3. [2]

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[1] In deciding a motion under Federal Rule of Civil Procedure, the court must accept all factual allegations in the complaint as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading, the plaintiff may be entitled to relief. Atiyeh v. Nat'l Fire Ins. Co. of Hartford, 742 F. Supp. 2d 591, 596 (E.D. Pa. 2010).

[2] Pennsylvania Rule of Civil Procedure 1042.3 provides:

> (a) In any action based upon an allegation that a licensed professional deviated from an acceptable professional standard, the attorney for the plaintiff, or the plaintiff if not represented, shall file with the complaint or within sixty days after the filing of the complaint, a certificate of merit signed by the attorney or party that either
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> . . .

2. Plaintiff alleges that, in 2006, he contracted with attorney Paul Rubino for assistance with a DUI charge. (Compl. p. 1.) Attorney Rubino, however, was a "complete failure as an attorney" and neglected to take an appeal from his conviction. (Id.) Thereafter, Plaintiff brought a state professional malpractice action against Attorney Rubino and, in an attempt to comply with Pennsylvania Rule of Civil Procedure 1042.3, sought to obtain a certificate of merit. Plaintiff claims that tried everything to obtain a certificate of merit from another attorney, but it was either too costly or his efforts were thwarted. (Id.)
3. Also in connection with his DUI charge, Plaintiff hired a second lawyer, Evan Kelly, to pursue his direct appeal. According to the Complaint, "[t]he second attorney Evan J. Kelly . . . [was] another attorney failure." (Id. at p.2.) Plaintiff brought another state court professional malpractice action, this time against Attorney Kelly. Plaintiff asserts that he contacted other lawyers for purposes of obtaining a certification of merit and, although they agreed that Kelly was negligent, they wanted "ten thousand dollars and more for a Certificate of Merit." (Id.)

> (1) an appropriate licensed professional has supplied a written statement that there exists a reasonable probability that the care, skill or knowledge exercised or exhibited in the treatment, practice or work that is the subject of the complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm, or
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> . . .
>
> (2) the claim that the defendant deviated from an acceptable professional standard is based solely on allegations that other licensed professionals for whom this defendant is responsible deviated from an acceptable professional standard, or
>
> . . .
>
> (3) expert testimony of an appropriate licensed professional is unnecessary for prosecution of the claim.

Pa. R. Civ. P. 1042.3.

4. On October 5, 2019, Plaintiff filed this federal suit against Defendants the Supreme Court of Pennsylvania, the Chester County Bar Association, and state trial Judge William Mahon, challenging the constitutionality and legal propriety of Pennsylvania's certificate of merit requirement. [3]

5. Defendants Supreme Court of Pennsylvania and William Mahon filed a Motion to Dismiss all claims against them under both Federal Rule of Civil Procedure 12(b)(1) and Federal Rule of Civil Procedure 12(b)(6). Defendant Chester County Bar Association filed a separate Motion to Dismiss, also under both Rules.

6. As I find that I lack jurisdiction to adjudicate this matter, I focus solely on Defendants' Rule 12(b)(1) Motions.

Standard of Review

7. A motion to dismiss under Federal Rule of Civil Procedure 12(b)(1) challenges the power of a federal court to hear a claim or a case. Petruska v. Gannon Univ., 462 F.3d 294, 302 (3d Cir. 2006). When presented with a Rule 12(b)(1) motion, the plaintiff "will have the burden of proof that jurisdiction does in fact exist." Id. at 302 n.3 (quotation omitted).

8. There are two types of Rule 12(b)(1) motions. A "facial" attack assumes that the allegations of the complaint are true, but contends that the pleadings fail to present an action within the court's jurisdiction. Mortensen v. First Fed. Sav. & Loan Ass'n, 549 F.2d 884, 891 (3d Cir. 1977).

9. A "factual" attack, on the other hand, argues that, while the pleadings themselves facially establish jurisdiction, one or more of the factual allegations is untrue, causing the case to fall

[3] Plaintiff also named as a Defendant the State of Pennsylvania Bar Association, but has yet to serve this Defendant. Given that more than ninety days has passed since the filing of the Complaint, all claims against this Defendant are dismissed without prejudice. See Fed. R. Civ. P. 4(m) (giving ninety days to effect service).

outside the court's jurisdiction. Mortensen, 549 F.2d at 891. In such a case, "no presumptive truthfulness attaches to plaintiff's allegations" and the court must evaluate the merits of the disputed allegations because "the trial court's . . . very power to hear the case" is at issue. Id. With a factual attack, the Court is free to consider evidence outside the pleadings and weigh that evidence. Petruska, 462 F.3d at 302 n.3; see also Gould Elecs., Inc. v. U.S., 220 F.3d 169, 176 (3d Cir. 2000). "[T]he existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims." Petruska, 462 F.3d at 302 n.3 (quoting Mortenson, 549 F.2d at 891).

Dismissal Under the Rooker-Feldman Doctrine

10. All Defendants seek dismissal of the Complaint under the Rooker-Feldman doctrine. The Rooker-Feldman doctrine derives from two United States Supreme Court cases which established that federal district courts may not exercise jurisdiction over suits that are essentially appeals from state-court judgments. Rooker v. Fid. Trust Co., 263 U.S. 413 (1923); D.C. Court of Appeals v. Feldman, 460 U.S. 462 (1983). The doctrine "is confined 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." Exxon Mobil v. Saudi Basic Indus. Corp., 544 U.S. 280, 284 (2005).

11. In order to determine when the Rooker-Feldman doctrine divests a federal district of jurisdiction to consider a plaintiff's claim, a court must find that four factors are satisfied: "(1) the federal plaintiff lost in state court; (2) the plaintiff 'complain[s] of injuries caused by [the] state-court judgments;' (3) those judgments were rendered before the federal suit was filed; and (4) the plaintiff is inviting the district court to review and reject the state judgments." Great W. Mining & Miner Co. v. Fox Rothschild LLP, 615 F.3d 159, 166 (3d

Cir. 2010) (alterations in original). The second and fourth requirements are the key to determining whether a federal suit presents an independent, non-barred claim. Id. Thus, it is incumbent on the district court to "identify those federal suits that profess to complain of injury by a third party, but actually complain of injury 'produced by a state court judgment and not simply ratified, acquiesced in, or left unpunished by it.'" Id. at 167 (quoting Hoblock v. Albany Cnty. Bd. of Elections, 422 F.3d 77, 88 (2d Cir. 2005)).

12. Applying those elements here, I find that the Rooker-Feldman doctrine clearly bars Plaintiff's challenges to the certificate of merit requirement as it applied to both (a) his attempted civil suit against Attorney Rubino and (b) his attempted civil suit against Attorney Kelly.

13. First, as to the claim involving Attorney Rubino, the United States Court of Appeals for the Third Circuit—faced with the identical facts—conclusively found that Rooker-Feldman precludes plaintiff's constitutional challenge to the certificate of merit requirement. Specifically, in Winslow v. Stevens, No. 14-4550, 2015 WL 289998 (E.D. Pa. Jan. 21, 2015), Plaintiff brought a federal civil rights action against three state court judges, alleging that Pa. R. Civ. P. 1042.3 unconstitutionally precluded him from pursuing a professional malpractice claim against Attorney Rubino in connection with Plaintiff's 2006 DUI arrest and conviction. Id. at *1. The District Court, Judge Thomas O'Neill, dismissed the complaint under the Rooker-Feldman doctrine, finding that Plaintiff had already raised that issue to and lost before the state trial court and Superior Court. Id. at *5.

14. The Third Circuit affirmed, holding that "[a]lthough Rooker–Feldman is a 'narrow doctrine that applies only in limited circumstances,' there is no question that these four requirements apply to [Plaintiff's] federal lawsuit." Winslow v. Stevens, 632 F. App'x 721, 723 (3d Cir. 2015) (internal citations omitted). Rejecting Plaintiff's argument that his case was an

independent constitutional challenge that did not require direct review of the state court's judgment, the Third Circuit held that both the Pennsylvania trial and Superior Court "explicitly considered and rejected Winslow's constitutional challenge to Rule 1042.3." Id. The Third Circuit further found that Plaintiff's federal case sought "an improper 'review of the proceedings already conducted by the "lower" tribunal to determine whether it reached its result in accordance with law'—i.e., that his case against his attorney should not have been dismissed because Rule 1042.3 is unconstitutional." Id.

15. The Third Circuit's ruling now acts as a collateral estoppel that binds me to conclude that Plaintiff's constitutional claim—as applied to his state lawsuit against Attorney Rubino—is barred by the Rooker-Feldman doctrine. The Third Circuit case involved the same plaintiff challenging the constitutionality of the same law under the same set of facts. The issue was fully litigated and the Third Circuit decided, in a full and final judgment, that Plaintiff's constitutional challenge to the certificate of merit requirement was barred by the Rooker-Feldman doctrine. See Burlington N. R.R. v. Hyundai Merchant Marine Co., 63 F.3d 1227, 1231–32 (3d Cir. 1995) (holding that for collateral estoppel to apply, four elements must be satisfied: ("1) the issue sought to be precluded [is] the same as that involved in the prior action; (2) that issue [was] actually litigated; (3) it [was] determined by a final and valid judgment; and (4) the determination [was] essential to the prior judgment.") (alterations in original) (quotations omitted).

16. Second, with respect to Plaintiff's challenge to Pa. R. Civ. P. 1042.3 as it applied to his state suit against Attorney Kelly, I find that this claim is likewise barred by the Rooker-Feldman doctrine. Plaintiff filed a state malpractice action against Attorney Kelly alleging that Kelly had failed to pursue certain issues in the criminal appeal of Plaintiff's DUI conviction. Winslow v. Goldberg, Meanix & Muth, No. 3606 EDA 2017, 2018 WL 3434233, at *1 (Pa.

Super. Ct. July 17, 2018). The trial court dismissed the case due to Plaintiff's failure to file a certificate of merit. Id. Plaintiff appealed to the Pennsylvania Superior Court alleging, like here, that Pennsylvania Rule of Civil Procedure 1042.3 violates the Pennsylvania and United States Constitution. Id. at *2. The Pennsylvania Superior Court affirmed, thereby rejecting the constitutional challenge. Id. at *3.

17. In light of that history, it is clear that Plaintiff's constitutional challenge to the Pennsylvania certificate of merit requirement—as applied to his state suit against Attorney Kelly—was previously raised to the Pennsylvania state courts, which rendered a final judgment rejecting that constitutional claim. The current action complains of "injuries" resulting from the state court's refusal to deem Pennsylvania Rule of Civil Procedure 1042.3 unconstitutional and invites me to review and reject the state judgments. Under the Rooker-Feldman doctrine, I lack jurisdiction to do so.[4]

WHEREFORE, it is hereby **ORDERED** that Defendants' Motions to Dismiss (Doc. Nos. 3, 5) are **GRANTED** and the Motion to Stay Discovery (Doc. No. 7) is **DENIED AS MOOT**. The Clerk of Court shall mark this case **CLOSED**.

BY THE COURT:

/s/ Mitchell S. Goldberg
MITCHELL S. GOLDBERG, J.

[4] Defendants raise a host of other challenges to Plaintiff's claims. Given that the Rooker-Feldman doctrine deprives me of jurisdiction over the Complaint, I need not address those other challenges.