

App. 1

**United States Court of Appeals
for the Fifth Circuit**

No. 21-10127
Summary Calendar

CAROL M. KAM,

Plaintiff—Appellant,

versus

JOHN B. PEYTON, JR.,

Defendant—Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:18-CV-1447

(Filed Jun. 24, 2021)

Before CLEMENT, HIGGINSON, and ENGELHARDT, *Circuit
Judges.*

PER CURIAM:*

This is Carol Kam's second appeal of the district court's dismissal of her claims against the state judge

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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who presided over her brother's probate. This court previously affirmed the district court's dismissal pursuant to the *Rooker-Feldman* doctrine. *Kam v. Peyton*, 773 F. App'x 784 (5th Cir. 2019) (per curiam), *cert. denied*, 140 S. Ct. 494 (2019) (mem.). Kam then moved to vacate the *Rooker Feldman* dismissal under Federal Rule of Civil Procedure 60(b). The district court denied Kam's Rule 60(b) motion as untimely and otherwise meritless. *See FED. R. Civ. P. 60(c); Bailey v. Ryan Stevedoring Co.*, 894 F.2d 157, 160 (5th Cir. 1990); *Carter v. Dolce*, 741 F.2d 758, 759 (5th Cir. 1984). Kam filed this *pro se* appeal. Upon review of the party's briefs, the district court's opinion, the applicable law, and the entire record, we affirm for substantially the same reasons stated in the district court's opinion and order.

AFFIRMED.

**United States Court of Appeals
for the Fifth Circuit**

No. 21-10127
Summary Calendar

CAROL M. KAM,

Plaintiff—Appellant,

versus

JOHN B. PEYTON, JR.,

Defendant—Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:18-CV-1447

Before CLEMENT, HIGGINSON, and ENGELHARDT, *Circuit
Judges.*

JUDGMENT

(Filed Jun. 24, 2021)

This cause was considered on the record on appeal
and the briefs on file.

IT IS ORDERED and ADJUDGED that the judg-
ment of the District Court is AFFIRMED.

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IT IS FURTHER ORDERED that plaintiff-appellant pay to defendant-appellee the costs on appeal to be taxed by the Clerk of this Court.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CAROL M. KAM, §
Plaintiff, §
VS. § Civil Action No.
JOHN B. PEYTON, JR., § 3:18-CV-1447-D
Defendant. §

MEMORANDUM OPINION AND ORDER

(Filed Jan. 29, 2021)

Pro se plaintiff Carol Kam (“Kam”) moves for relief from this court’s final judgment dismissing her action against former Dallas County Associate Probate Judge John B. Peyton (“Judge Peyton”), arising from probate litigation following her brother’s death. For the reasons that follow, the court denies the motion.¹

I

The pertinent background facts that underlie Kam’s claims are set forth in the October 11, 2018 findings, conclusions, and recommendations of the magistrate judge, adopted by this court on December 20, 2018. *See Kam v. Peyton (“Kam I”),* 2018 WL 6696499, at *1 (N.D. Tex. Dec. 20, 2018) (Fitzwater, J.), *aff’d*, 773 Fed. Appx. 784 (5th Cir. 2019). The court therefore

¹ It is not clear whether Kam has served her motion on Judge Peyton. No response has been filed to the motion.

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recounts only the relevant procedural history and facts necessary for today's decision.

Judge Peyton presided over a trial to decide a will contest filed by Kam in Dallas Probate Court in July 2013, ruled against her, and ordered her to pay attorney's fees and costs of over \$200,000. Judge Peyton later denied her motion for new trial, the Texas Court of Appeals² affirmed the ruling, the probate court denied her statutory bill of review, and the Texas Court of Appeals affirmed that denial. The Supreme Court of Texas denied her petition for review, and Kam then filed this action.

In *Kam I* Kam sued Judge Peyton under 42 U.S.C. § 1983 for various constitutional violations. In short, she maintained that Judge Peyton lacked jurisdiction to preside over the probate action or rule on her motion for a new trial. Judge Peyton moved to dismiss this action, and the court granted the motion, entering a final judgment on December 20, 2018 dismissing this case without prejudice. *See Kam I*, 2018 WL 6696499, at *1. The court of appeals affirmed. Kam now moves to vacate the December 20, 2018 judgment granting Judge Peyton's motion to dismiss, which the court entered after adopting the magistrate judge's findings, conclusions, and recommendation.

² The Court of Appeals for the Fifth District of Texas at Dallas.

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II

Under Rule 60(b), a court may relief a party from final judgment because of

(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (wither previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; [or] . . . (6) any other reason justifying relief from the operation of the judgment.

To the extent that Kam moves for relief under Rule 60(b)(1), (2) or (3), the motion is untimely. According to Rule 60(b)(c), a motion for relief under Rule 60(b) for reasons (1), (2), or (3) must be made no more than a year after the entry of the judgment at issue. In *Kam I* the court granted Judge Peyton's motion to dismiss and entered judgment in his favor on December 20, 2018. Kam filed the instant motion nearly two years later, on October 14, 2020.

Kam's motion pursuant to Rule 60(b)(6) is also without merit. Rule 60(b)(6) relief "will be granted only if extraordinary circumstances are present." *Bailey v. Ryan Stevedoring Co.*, 894 F.2d 157, 160 (5th Cir. 1990) (affirming order denying Rule 60(b)(6) motion based on change in federal law). Moreover, a party is not entitled to relitigate its claims through a Rule 60(b)(6) motion. *See, e.g., Evenson v. Sprint/United Mgmt. Co.*, 2011 WL 3702627, at *5 (N.D. Tex. Aug. 23, 2011) (Fitzwater, C.J.) (citing *Carter v. Dolce*, 741 F.2d 758, 759 (5th Cir.

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1984) (affirming denial of Rule 60(b) motion where plaintiff had previously litigated or had the opportunity to litigate the same claims)).

Kam has not met her burden of demonstrating that extraordinary circumstances exist. She maintains that she is entitled to relief from the judgment because Judge Peyton did not have jurisdiction to enter his orders, and, according to her, the Dallas Probate Court, the Texas Court of Appeals, and the Supreme Court of Texas have revised their opinions to align with Kam's position. The court rejected these arguments in *Kam I*, and she is not entitled to relitigate the case using Rule 60(b)(6).

* * *

For the reasons explained, Kam's October 14, 2020 motion for this court to vacate the prior order dated December 20, 2018 is denied.

SO ORDERED.

January 29, 2021.

/s/ Sidney A. Fitzwater
SIDNEY A. FITZWATER
SENIOR JUDGE

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FILE COPY

RE: Case No. 20-0490 DATE: 10/2/2020
COA #: 05-19-01293-CV TC#: PR-11-01368-3
STYLE: KAM v. KAM

Today the Supreme Court of Texas denied the petition for review in the above-referenced case.

MS. CAROL M. KAM
* DELIVERED VIA E-MAIL *

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Order entered June 9, 2020

[SEAL]

**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-19-01293-CV

CAROL M. KAM, Appellant

V.

**DAVID J. KAM, TRUSTEE FOR
THE ROBERT S. KAM TRUST, Appellee**

**On Appeal from the Probate Court No. 3
Dallas County, Texas
Trial Court Cause No. PR-11-01368-3**

ORDER

Before Justices Whitehill, Molberg, and Nowell

(Filed Jun. 9, 2020)

Before the Court is appellant's May 26, 2020 motion to reopen the appeal. We construe the motion as a motion for rehearing and **DENY** the motion.

**/s/ ERIN A. NOWELL
JUSTICE**

App. 11

Order entered May 12, 2020

[SEAL]

**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-19-01293-CV

CAROL M. KAM, Appellant

V.

**DAVID J. KAM, TRUSTEE FOR
THE ROBERT S. KAM TRUST, Appellee**

**On Appeal from the Probate Court No. 3
Dallas County, Texas
Trial Court Cause No. PR-11-01368-3**

ORDER

Before Justices Whitehill, Molberg, and Nowell

(Filed May 12, 2020)

Before the Court are appellee's motion for rehearing and appellant's response. In her response, appellant asks not only that the motion for rehearing be denied but also that our opinion be modified to include certain language.

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We **DENY** the motion for rehearing. We further
DENY appellant's request to modify the opinion.

/s/ ERIN A. NOWELL
JUSTICE

CASE NO. PR-11-1368-3

**THE ESTATE OF § PROBATE COURT NO. 3
ROBERT S. KAM, §
DECEASED §
§ DALLAS COUNTY, TEXAS**

**ORDER DENYING CONTESTANT'S
VERIFIED MOTION FOR NEW TRIAL
AND IN THE ALTERNATIVE MOTION
TO MODIFY THE JUDGMENT**

(Filed May 7, 2020)

On May 7, 2020 the Court, after considering the recommendation of the Associate Judge to Deny the Contestant's Verified Motion for New Trial and in the Alternative Motion to Modify the Judgment (the "Motions") the Court adopts the recommendation and concludes denying the Motions.

IT IS THEREFORE ORDERED the adoption of the Associate Judge's recommendation and FURTHER ORDERS that Contestants' Verified Motion for New Trial and in the Alternative Motion to Modify the Judgment be, and hereby D.

SO ORDERED on this 7th day of May, 2020.

/s/ Margaret Jones-Johnson
Margaret Jones-Johnson
Presiding Judge
Dallas County Probate
Court No. 3

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DISMISSED; Opinion Filed April 10, 2020

[SEAL]

**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-19-01293-CV

CAROL M. KAM, Appellant

V.

**DAVID J. KAM, TRUSTEE FOR
THE ROBERT S. KAM TRUST, Appellee**

**On Appeal from the Probate Court No. 3
Dallas County, Texas
Trial Court Cause No. PR-11-01368-3**

MEMORANDUM OPINION
Before Justices Whitehill, Molberg, and Nowell
Opinion by Justice Nowell

(Filed Apr. 10, 2020)

This appeal, filed October 22, 2019, challenges the (1) August 9, 2013 final judgment overruling Carol Kam's contest to her brother's will and (2) October 16, 2013 order denying Kam's motion for new trial and

alternative motion to modify judgment.¹ Both were signed by former Associate Probate Judge John Peyton, Jr. after the parties agreed on the record that he would decide all issues and any appeal would be taken directly to this Court.

Because an appeal from a final judgment must generally be filed within thirty days of judgment, we questioned our jurisdiction over the appeal and directed Kam to file a letter brief addressing our concern. *See* TEX. R. APP. P. 26.1. Kam complied, agreeing we lack jurisdiction but for a different reason – the appellate deadlines have not been triggered because the judge of the referring court, Probate Court No. 3, has not signed the judgment.² Kam is correct.

Chapter 54A, subchapter C of the Texas Government Code governs the appointment and use of associate judges in probate cases. *See* TEX. GOV'T CODE ANN. Ch. 54A, subch. C. Under section 54A.209(a)(17), the associate judge may sign a final order that includes a waiver of the right to a *de novo* hearing before the referring court. *See id.* § 54A.209(a)(17). However, the judgment does not become the judgment of the referring court, and the appellate deadlines are not triggered, until the judge of the referring court signs the judgment. *See id.* §§ 54A.214(b), 54A.217(b).

¹ The contest and motion were also filed by Kam's nephew. He is not a party to this appeal.

² Although given an opportunity to respond, appellee has not filed a response.

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The final judgment here was signed by the associate judge but not the judge of the referring court. While the associate judge may have decided all issues and the parties may have agreed to appeal directly to this Court, the judgment is not appealable until the judge of the referring court has signed it. *See id.* §§ 54A.214(b), 54A.217(b). Accordingly, we lack jurisdiction and dismiss the appeal and any pending motions. *See* TEX. R. APP. P. 42.3(a).

/Erin A. Nowell/
ERIN A. NOWELL
JUSTICE

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[SEAL]

**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

(Filed April 10, 2020)

CAROL M. KAM, Appellant	On Appeal from the
No. 05-19-01293-CV	Probate Court
DAVID J. KAM, TRUSTEE	No. 3, Dallas County, Texas
FOR THE ROBERT S. KAM	Trial Court Cause No.
TRUST, Appellee	PR-11-013683.
	Opinion delivered by
	Justice Nowell, Justices
	Whitehill and Molberg
	participating.

In accordance with this Court's opinion of this date, we **DISMISS** the appeal.

We **ORDER** that appellee David J. Kam, Trustee for The Robert S. Kam Trust, recover his costs, if any, of this appeal from appellant Carol M. Kam.

Judgment entered this 10th day of April, 2020.

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Order entered April 10, 2020

[SEAL]

**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-19-01462-CV

IN RE CAROL M. KAM

**On Appeal from the Probate Court No. 3
Dallas County, Texas
Trial Court Cause No. PR-11-01368-3**

ORDER

(Filed April 10, 2020)

Based on the Court's opinion of this date, we DENY the petition for writ of mandamus. We ORDER Carol M. Kam to bear the costs of this original proceeding.

/s/ **ERIN A. NOWELL**
JUSTICE

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 18-11657
Summary Calendar.

CAROL M. KAM,
Plaintiff-Appellant
v.
JOHN B. PEYTON, JR.,
Defendant-Appellee

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:18-CV-1447

(Filed Jul. 18, 2019)

Before JONES, HIGGINSON, and OLDHAM, Circuit
Judges.

PER CURIAM:*

This is an appeal from a district's court dismissal,
pursuant to the *Rooker-Feldman* doctrine, of the Appel-
lant's claims relating to a probate matter that was fully
litigated, decided, and upheld in Texas state courts.

* 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.

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The Appellant filed a variety of pro se claims under 42 U.S.C. § 1983 against the state judge who presided over the original probate matter, predicated upon the Appellant's theory that the judge was without jurisdiction to preside over the dispute. The district court, upon the recommendation of a magistrate judge, characterized the Appellant's claims as a thinly-veiled collateral attack on the state courts' final judgment and dismissed the claims under the *Rooker-Feldman* doctrine as articulated by this court in *Phinizy v. State of Ala.*, 847 F.2d 282, 284 (5th Cir. 1988). After a careful review of the parties' briefs, the district court's decision, and applicable case law, this court **AFFIRMS** the district court's decision for substantially the same reasons articulated in the magistrate's Findings, Conclusions, and Recommendation and adopted by the district court in that case.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CAROL M. KAM, §
Plaintiff, §
VS. § Civil Action No.
JOHN B. PEYTON, JR., § 3:18-CV-1447-D.
Defendant. §

ORDER

(Filed Dec. 20, 2018)

After making an independent review of the pleadings, files, and records in this case, the October 11, 2018 findings, conclusions, and recommendation of the magistrate judge, and plaintiff's October 23, 2018 objections, the court concludes that the findings and conclusions are correct. It is therefore ordered that plaintiff's objections are overruled, and the findings, conclusions, and recommendation of the magistrate judge are adopted. All pending motions are denied, and this action is dismissed without prejudice by judgment filed today.

SO ORDERED.

December 20, 2018.

/s/ Sidney A. Fitzwater
SIDNEY A. FITZWATER
SENIOR JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

CAROL M. KAM, §
 PLAINTIFF, §
 V. § **CASE NO.**
 JOHN B. PEYTON, JR., § **3:18-cv-1447-D-BK**
 DEFENDANT. §

**FINDINGS, CONCLUSIONS AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

(Filed Oct. 11, 2018)

Pursuant to the district judge's *Order of Reference*, Doc. 9, and 28 U.S.C. § 636(b), *Defendant's Motion to Dismiss*, Doc. 8, has been referred to the undersigned United States magistrate judge for a recommended disposition. For the reasons stated herein, Defendant's motion should be **GRANTED**.

A. Background

Plaintiff Carol Kam brings this *pro se* action against former Dallas County Associate Probate Judge John B. Peyton ("Judge Peyton"), arising from the protracted probate litigation that ensued after the death of her brother Robert Kam (the "Probate Proceeding").¹ Doc. 3 at 1. Plaintiff alleges that in February 2011, after being diagnosed with cancer, Robert

¹ For clarity, the Court refers to Robert Kam by his first name.

created a trust for his estate (the “Original Trust”). Doc. 3 at 2. Under the terms of the Original Trust, Plaintiff was to receive a \$10,000 inheritance. Doc. 3 at 2. Plaintiff avers that in March 2011, Robert’s girlfriend, with the aid of her attorney, David Pyke (“Attorney Pyke”), made changes to the Original Trust (hereafter, the “Amended Trust”). Doc. 3 at 2-3. When it was discovered that the provision providing for Plaintiff’s inheritance had been removed, Attorney Pyke drafted a second amendment restoring Plaintiff’s inheritance, which was subsequently signed by Robert (the “Second Amended Trust”). Doc. 3 at 3. However, following Robert’s death, Attorney Pyke instructed the trustee not to distribute to Plaintiff the sum she was to receive. Doc. 3 at 3.

Consequently, Plaintiff filed a will contest in Dallas Probate Court, seeking to uphold the Original Trust. Doc. 3 at 4. The case was assigned to Probate Court Judge Michael Miller and subsequently transferred to Judge Peyton for trial in July 2013, during which Robert’s testamentary capacity at the time he executed the Amended Trust was contested. Doc. 3 at 4. Judge Peyton found, *inter alia*, that the Original Trust was unenforceable and taxed attorneys’ fees and court costs against Plaintiff for over \$220,000. Doc. 3 at 5, 15. In October 2013, Judge Peyton also presided over the hearing on Plaintiff’s motion for a new trial and ruled against her. Doc. 3 at 7-8. Judge Peyton’s ruling was affirmed on appeal, and Plaintiff’s statutory bill of review was denied in November 2015. Doc. 8-4 at 2. The Fifth Court of Appeals subsequently affirmed

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the denial of the bill of review. Doc. 8-4 at 8; *In the Estate of Kam*, No. 05-16-00126-CV, 2016 WL 7473905 (Tex. App.—Dallas 2016, pet. denied). Finally, in March 2017, the Supreme Court of Texas denied Plaintiff’s petition for review. Plaintiff subsequently filed the instant action.²

Plaintiff has sued Judge Peyton pursuant to 42 U.S.C. § 1983 for various constitutional violations, arguing that Judge Peyton did not have jurisdiction to preside over the Probate Proceeding or rule on her motion for a new trial and, thus, has lost his right to judicial immunity. Doc. 3 at 7-10. She seeks over \$5 million in damages. Doc. 3 at 11-12.

B. Parties’ Arguments

Judge Peyton now moves to dismiss Plaintiffs complaint arguing, *inter alia*, that the *Rooker-Feldman* doctrine³ divests this Court of jurisdiction to hear her claims. Doc. 8 at 4, 8-9. Plaintiff responds, in relevant part, that the *Rooker-Feldman* doctrine does not apply

² The Court notes that Plaintiff has filed at least two prior cases in this Court challenging the Probate Proceeding. See *Kam v. Jenkins, et al.*, No. 3:17-CV-03469-L; *Kam v. Dallas Cty., et al.*, No. 3:18-CV-0378-G-BK. Plaintiff voluntarily dismissed the first action without prejudice, and judgment was entered against her in the second action. 2018 WL 2979469 (N.D. Tex. May 29, 2018) (Toliver, J.), adopted by 2018 WL 2951010 (N.D. Tex. June 12, 2018) (Fish, J.). Her appeal of that judgment is pending. *Kam v. Dallas Cty.*, No. 18-10735 (5th Cir.).

³ The doctrine takes its name from two Supreme Court decisions: *D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983), and *Rooker v. Fidelity Tr. Co.*, 263 U.S. 413 (1923).

because Judge Peyton had no authority to preside over the Probate Proceeding. Doc. 10 at 11. Upon review, Judge Peyton's argument is well-founded and entirely disposes of Plaintiff's claims. As such, the Court need not reach his absolute immunity and limitations arguments.

C. Applicable Law and Analysis

A court must dismiss a case for lack of subject matter jurisdiction under Rule 12(b)(1) of the Federal Rules of Civil Procedure if it lacks the statutory or constitutional power to adjudicate the case. *Home Builders Ass'n of Miss., Inc. v. City of Madison, Miss.*, 143 F.3d 1006, 1010 (5th Cir. 1998). As the Court of Appeals for the Fifth Circuit has succinctly stated:

The Supreme Court has definitively established, in what has become known as the *Rooker-Feldman* doctrine, that "federal district courts, as courts of original jurisdiction, lack appellate jurisdiction to review, modify, or nullify final orders of state courts." "If a state trial court errs the judgment is not void, it is to be reviewed and corrected by the appropriate state appellate court. Thereafter, recourse at the federal level is limited solely to an application for a writ of certiorari to the United States Supreme Court."

Weekly v. Morrow, 204 F.3d 613, 615 (5th Cir. 2000) (quoting *Liedtke v. State Bar of Tex.*, 18 F.3d 315, 317 (5th Cir. 1994)). Additionally, the *Rooker-Feldman* "jurisdictional bar is not limited to actions in federal court

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that explicitly seek review of a state court decision, but also extends to those ‘in which the constitutional claims presented . . . are inextricably intertwined with the state court’s grant or denial of relief.’” *Jordaan v. Hall*, 275 F. Supp. 2d 778, 788 (N.D. Tex. 2003) (quoting *Hale v. Harney*, 786 F.2d 688, 691 (5th Cir. 1986)). Claims are inextricably intertwined with a state court’s judgment when “the District Court is in essence being called upon to review the state court decision.” *Feldman*, 460 U.S. at 482 n.16.

Plaintiff’s complains [sic] of the actions of the judges involved in the Probate Proceeding and, though cast as constitutional violations, her claims amount to nothing more than a collateral attack on the judgments entered in that proceeding. See *Jordaan*, 275 F. Supp. 2d at 788-89 (when a federal action “is nothing more than a thinly veiled attempt to circumvent the state appellate process and to collaterally attack – in the guise of a federal civil rights action – the validity of a state court [judgment] and other related orders,” lower federal courts lack subject matter jurisdiction over such action).

Plaintiff’s insistence that *Rooker-Feldman* does not apply because she is not asking this Court to “modify, bypass, reverse, or void any State Judgment” is unavailing. Doc. 10 at 11. As mentioned above, *Rooker-Feldman* not only bars explicit efforts to review state court rulings, but also claims that are inextricably intertwined therewith. *Jordaan*, 275 F. Supp. 2d at 788. In the instant case, Plaintiff’s federal constitutional claims are premised the alleged impropriety of the

judges involved in the Probate Proceeding and are thus inextricably intertwined with their rulings. *See Phinizy v. State of Ala.*, 847 F.2d 282, 284 (5th Cir. 1988) (plaintiff's claim that the probate court's conduct denied her due process was "obviously" inextricably intertwined with the probate court's judgment in the state proceeding).

Such intertwining is made all the more apparent by the relief that Plaintiff seeks in this case, to wit: (1) her \$10,000 inheritance; (2) reimbursement of her \$300,000 in litigation expenses; and (3) \$400,000 stemming from Judge Peyton's imposition of costs and fees against her. Doc. 3 at 11. To grant this relief, the Court would have to reverse the judgment entered in the Probate Proceeding. *See Magor v. GMAC Mortg., L.L.C.*, 456 F. App'x 334, 336 (5th Cir. 2011) (per curiam) (finding plaintiff's claims were inextricably intertwined with state court judgment where reversal of the state court judgment would be a necessary part of the relief requested in the federal action); *see also Wallace v. Hernandez*, No. A-14-CV-691-LY, 2015 WL 1020720, at *2 (W.D. Tex. Mar. 9, 2015) (finding plaintiffs' claims were barred by *Rooker-Feldman* where the "essential relief" they sought was reversal of probate court's rulings against them), *adopted by* 2015 WL 12751504 (W.D. Tex. Apr. 9, 2015), *aff'd* 631 F. App'x 257 (5th Cir. 2016) (per curiam). Accordingly, *Rooker-Feldman* divests this Court of subject-matter jurisdiction, and Plaintiff's claims should be dismissed without prejudice.

D. Leave to Amend

Ordinarily, a *pro se* plaintiff should be granted leave to amend her complaint prior to dismissal. However, leave to amend is not required when plaintiff “has already pleaded [her] best case.” *Brewster v. Dretke*, 587 F.3d 764, 767-68 (5th Cir. 2009) (quotation omitted). As discussed herein, Plaintiffs claims are fatally infirm and duplicative of previous, unsuccessful claims filed in this Court. Thus, granting her leave to amend under these circumstances would be futile and cause needless delay.

E. Conclusion

For the foregoing reasons, *Defendant’s Motion to Dismiss*, Doc. 8, should be **GRANTED**.

SO RECOMMENDED on October 11, 2018.

/s/ Renee H. Toliver
RENEE HARRIS TOLIVER
UNITED STATES
MAGISTRATE JUDGE

**INSTRUCTIONS FOR SERVICE AND
NOTICE OF RIGHT TO APPEAL/OBJECT**

A copy of this report and recommendation will be served on all parties in the manner provided by law. Any party who objects to any part of this report and recommendation must file specific written objections within 14 days after being served with a copy. *See* 28

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U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b). To be specific, an objection must identify the finding or recommendation to which objection is made, state the basis for the objection, and indicate the place in the magistrate judge's report and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996), modified by statute on other grounds, 28 U.S.C. § 636(b)(1) (extending the time to file objections to 14 days).

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 18-10735
Summary Calendar

CAROL M. KAM,
Plaintiff - Appellant

v.

DALLAS COUNTY; STATE OF TEXAS,
Defendants - Appellees

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:18-CV-378

(Filed March 7, 2019)

Before STEWART, Chief Judge, and OWEN and OLDHAM, Circuit Judges.

PER CURIAM:*

Plaintiff-Appellant Carol M. Kam appeals the district court's dismissal of her claims for lack of subject matter jurisdiction. We affirm.

* 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.

I.

In the proceedings below, Kam brought a *pro se* action in federal district court against the State of Texas and Dallas County upon the conclusion of extended probate litigation involving two will contest suits arising from the deaths of her brother and father. The first will contest suit, as to Kam's brother's amended trust, resulted in a judgment against Kam. The probate court also found her in violation of the "no contest" provision in her brother's trust, resulting in revocation of her benefits, *i.e.*, her \$10,000 inheritance. She was further assessed with over \$226,000 in attorney's fees and costs. The second will contest suit, as to Kam's father's will, resulted in a judgment in her favor with an award of costs.

The relief Kam sought in the federal district court included: (1) a retrial of the first will contest suit to remove the "malicious judgment" entered against her; (2) her \$10,000 inheritance; and (3) reimbursement of all litigation expenses she had incurred to date. Because granting relief would require the district court to reverse the state court judgment entered in one of the will contest suits, the district court found that it was divested of jurisdiction under the *Rooker-Feldman* doctrine and dismissed Kam's claims with prejudice.

II.

We review the district court's application of the *Rooker-Feldman* de novo. *See Ill. Cent. R.R. Co. v. Guy*, 682 F.3d 381, 390 (5th Cir. 2012).

III.

“[The Rooker-Feldman] doctrine directs that federal district courts lack jurisdiction to entertain collateral attacks on state court judgments.” *See Liedtke v. State Bar of Tex.*, 18 F.3d 315, 317 (5th Cir. 1994). “Further, in addition to the precise claims presented to the state court, *Rooker-Feldman* prohibits federal court review of claims that are ‘inextricably intertwined’ with a state court decision.” *Burciaga v. Deutsche Bank Nat'l Trust Co.*, 871 F.3d 380, 384–85 (5th Cir. 2017) (quoting *Dist. Ct. of Columbia Appeals v. Feldman*, 460 U.S. 462, 486–87 (1983)).

On appeal, Kam argues that the State of Texas and Dallas County: (1) failed to provide her with an unbiased tribunal; (2) failed to provide her with proper jurisdictional notice and authority; (3) failed to allow her to depose certain witnesses; (4) failed to allow her to provide opposing evidence; (5) failed to provide her with a judgment based on the evidence presented; (6) failed to provide her with findings of fact and reasons for judgment; (7) “failed to address the improper use of the trial court as revenge”; and (8) permitted the court system to be used in a malicious manner that deprived her of her inheritance and placed an unfair financial burden on her.

We agree with the district court that the claims Kam presents and the relief she seeks would require reversal of one of the state court judgments in the proceedings below – the judgment in the first will contest suit. Consequently, we are barred from reviewing

Kam's claims and find no reversible error in the district court's conclusion that the *Rooker-Feldman* doctrine deprived it of jurisdiction to hear Kam's claims.¹ *See Liedtke*, 18 F.3d at 317; *see also Burciaga*, 871 F.3d at 384–85 (observing that federal courts are prohibited from reviewing “claims that are ‘inextricably intertwined’ with a state court decision”).

IV.

The district court's judgment dismissing Kam's claims is affirmed.

¹ To the extent, if any, that Kam appeals the district court's denial of her motion to amend her complaint, we hold that the district court did not err in doing so on grounds of futility in that all of Kam's proposed amendments were also “inextricably intertwined” with the prior state court judgment. *See Burciaga*, 871 F.3d at 384–85.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CAROL M. KAM,)
Plaintiff,)
VS.) CIVIL ACTION NO.
DALLAS COUNTY,) 3:18-CV-0378-G (BK)
ET AL.,)
Defendants.)

ORDER ACCEPTING FINDINGS,
CONCLUSIONS, AND RECOMMENDATION OF
THE UNITED STATES MAGISTRATE JUDGE

(Filed Jun. 12, 2018)

The United States Magistrate Judge made findings, conclusions, and a recommendation in this case. Plaintiff filed objections, and the court has made a *de novo* review of those portions of the proposed findings, conclusions, and recommendation to which objection was made. The objections are overruled, and the court **ACCEPTS** the findings, conclusions, and recommendation of the United States Magistrate Judge.

Plaintiff's amended complaint (docket entry 34) is **STRICKEN** from the docket, Dallas County's motion to dismiss (docket entry 29) is **GRANTED**, and the State of Texas' motion to dismiss (docket entry 24) is **TERMINATED AS MOOT**.

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SO ORDERED.

June 12, 2018.

/s/ A. Joe Fish
A. JOE FISH
Senior United States
District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CAROL M. KAM,)
Plaintiff,)
VS.) CIVIL ACTION NO.
DALLAS COUNTY,) 3:18-CV-0378-G (BK)
ET AL.,)
Defendants.)

JUDGMENT

(Filed Jun. 12, 2018)

The court has entered its order accepting the findings, conclusions, and recommendation of the United States Magistrate Judge in this case.

It is **ORDERED, ADJUDGED and DECREED** that:

1. Plaintiff's amended complaint (docket entry 34) is **STRICKEN** from the docket, Dallas County's motion to dismiss (docket entry 29) is **GRANTED**, and the State of Texas' motion to dismiss (docket entry 24) is **TERMINATED AS MOOT**, and plaintiff's claims are **DISMISSED** without prejudice.
2. The clerk shall transmit a true copy of this judgment and the order accepting the findings and recommendation of the United States Magistrate Judge to all parties.

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June 12, 2018.

/s/ A. Joe Fish
A. JOE FISH
Senior United States
District Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**CAROL M. KAM, §
Plaintiff, §
v. § Civil Action No.
DALLAS COUNTY, § 3:18-CV-0378-G-BK
et al., § Defendants.**

**FINDINGS, CONCLUSIONS AND
RECOMMENDATION OF THE
UNITED STATES MAGISTRATE JUDGE**

(Filed May 29, 2018)

Pursuant to *Special Order 3* and 28 U.S.C. § 636(b), *State of Texas' Motion to Dismiss*, Doc. 24, and *Dallas County's Motion to Dismiss*, Doc. 29, have been referred to the undersigned for a recommended disposition. For the reasons stated herein, Dallas County's motion should be **GRANTED IN PART**, resulting in the dismissal of all of Plaintiff's claims, and the State of Texas' motion should be **DENIED AS MOOT**.

I. BACKGROUND

Plaintiff Carol Kam brings this *pro se* action against the State of Texas and Dallas County (the "County") (collectively "Defendants") arising from the probate litigation that ensued after the deaths of her

brother, Robert Kam, and father, Charles Kam (the “Probate Proceedings”).¹

A. Litigation Regarding Robert Kam’s Estate

Plaintiff alleges that in February 2011, after being diagnosed with pancreatic cancer, Robert created a trust for his estate, over which Plaintiff’s brother, David Kam, was named trustee (the “Original Trust”). Doc. 3 at 6, 37. Under the terms of the Original Trust, Plaintiff was to receive a \$10,000.00 inheritance. Doc. 3 at 7. Plaintiff further alleges that in March 2011, Robert’s girlfriend, with the aid of her attorney, David Pyke (“Attorney Pyke”), made changes to the Original Trust that were approved by David and Robert (the “Amended Trust”). Doc. 3 at 8-9. When it was discovered that the provision providing for Plaintiff’s inheritance had been removed, Attorney Pyke drafted an amendment restoring Plaintiff’s inheritance, which was subsequently signed by Robert (the “Second Amendment”). Doc. 3 at 10-11. However, following Robert’s death, David refused to distribute to Plaintiff the sum she inherited. Doc. 3 at 11.

Consequently, Plaintiff and her nephew, Justin Kam, who was also dissatisfied with his inheritance under the Amended Trust, filed a will contest in Dallas Probate Court No. 3, seeking to void the Amended Trust and uphold the Original Trust (the “First Will Contest”). Doc. 3 at 11. The case was assigned to Judge

¹ For clarity, the Court refers to individuals with the surname “Kam” by their first name.

Michael Miller and subsequently transferred to Judge John Peyton for trial in July 2013, during which Robert's testamentary capacity at the time he executed the Amended Trust was contested. Doc. 3 at 11-13. Judge Peyton found, *inter alia*, that (1) Plaintiff and Justin failed to meet their burden of proof on all counts, (2) the Original Trust was unenforceable, and (3) the contest was maintained in bad faith and without probable cause. Doc. 3 at 48-49. Thus, pursuant to the Amended Trust's "no contest" provision, Judge Peyton found that Plaintiff and Justin revoked all benefits to which they would have been entitled under the terms of the Amended Trust and Second Amendment. Doc. 3 at 49. Judge Peyton also ordered Plaintiff and Justin to pay attorneys' fees and litigation expenses totaling \$226,242.88. Doc. 3 at 49-51. Judge Peyton's ruling was affirmed on rehearing and in November 2015, Judge Margaret Jones Johnson denied Plaintiff's bill of review.² Doc. 3 at 14-16. The Fifth Court of Appeals affirmed Judge Johnson's denial. Doc. 3 at 16; *see In re Estate of Kam*, No. 05-16-00126-CV, 2016 WL 7473905 (Tex. App. Dallas 2016, pet. denied). Finally, in March 2017, the Supreme Court of Texas denied Plaintiff's petition for review. Doc. 3 at 16.

B. Litigation Regarding Charles Kam's Estate

Plaintiff alleges that in April 2012, during the pendency of the First Will Contest, Charles amended his will to remove David as an heir. Doc. 3 at 18. After

² Justin did not join in Plaintiff's appeal. Doc. 3 at 15, 43.

Charles died in August 2012, Plaintiff filed the amended will for probate. Doc. 3 at 18-19. Thereafter, David, represented by Attorney Pyke, contested the will (the “Second Will Contest”). Doc. 3 at 19. Plaintiff alleges that David did so “to destroy the entire amount of the Estate” through costly litigation. Doc. 3 at 20. In September 2013, trial was held in Dallas Probate Court No. 2 before Judge Chris Wilmouth, who denied Plaintiff’s application for probate. Doc. 3 at 20-21. In February 2016, the Eighth Court of Appeals reversed Judge Wilmouth’s ruling, admitted Charles’ amended will to probate, and awarded Plaintiff costs of the appeal. Doc. 3 at 21-22; *see Matter of Kam*, 484 S.W.3d 642 (Tex. App. El Paso 2016, pet. denied).

C. The Instant Lawsuit

In February 2018, Plaintiff filed this lawsuit in which she asserts violations of her Fourteenth Amendment right to due process because the state judges and justices involved in the Probate Proceedings allegedly denied her the right to a fair trial. Specifically, Plaintiff challenges the validity of the judgment entered in the First Will Contest, arguing: (1) Robert lacked testamentary capacity to execute the Amended Trust, Doc. 3 at 24-27; (2) Attorney Pyke relied on forged evidence at trial, Doc. 3 at 28-29; (3) Judge Peyton lacked authority to preside over the trial, Doc. 3 at 30-33; and (4) Judge Peyton improperly denied Plaintiff the right to question a witness during the rehearing, Doc. 3 at 34-36. Plaintiff also contends she is entitled to the \$10,000.00 she inherited from Robert, and that Judge

Peyton's order that she pay over \$200,000.00 in litigation expenses and court costs is a baseless and "malicious penalty." Doc. 3 at 37-42. As relief, Plaintiff requests that: (1) Defendants grant her "a Fair Trial, with a Jury, so [she] may have the opportunity to have the Malicious Judgment removed," (2) she "receive [her] assigned inheritance," and (3) she be fully reimbursed for all legal expenses and court costs incurred to date. Doc. 3 at 46.

The County and State filed motions to dismiss Plaintiff's Original Complaint on March 24, 2018 and April 6, 2018, respectively. Doc. 24; Doc. 29. Plaintiff responded to each. Doc. 30; Doc. 31. Only the County filed a reply.³ Doc. 32.

In its motion to dismiss, the County argues, *inter alia*, that the *Rooker-Feldman* doctrine⁴ divests this Court of jurisdiction to hear Plaintiff's claims. Doc. 29 at 8-10. Upon review, the County's argument is well-founded and entirely disposes of Plaintiff's claims. As such, the Court need not reach the other arguments raised by the County or the State of Texas' motions to dismiss.

³ Plaintiff filed without leave a "Second Response" to the County's reply, which the Court construes as an improperly filed sur-reply. Doc. 33; *see* N.D. TEX. L. Civ. R. 56.7 (stating that sur-replies may not be filed unless the Court has granted leave to do so). Because Plaintiff did not seek or obtain leave to file her sur-reply, the Court will not consider it.

⁴ The doctrine takes its name from two Supreme Court decisions: *D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983), and *Rooker v. Fidelity Tr. Co.*, 263 U.S. 413 (1923).

II. APPLICABLE LAW

A court must dismiss a case for lack of subject matter jurisdiction under Rule 12(b)(1) of the Federal Rules of Civil Procedure if it lacks the statutory or constitutional power to adjudicate the case. *Home Builders Ass'n of Miss., Inc. v. City of Madison, Miss.*, 143 F.3d 1006, 1010 (5th Cir. 1998). As the Court of Appeals for the Fifth Circuit has succinctly stated:

The Supreme Court has definitively established, in what has become known as the *Rooker-Feldman* doctrine, that “federal district courts, as courts of original jurisdiction, lack appellate jurisdiction to review, modify, or nullify final orders of state courts.” “If a state trial court errs the judgment is not void, it is to be reviewed and corrected by the appropriate state appellate court. Thereafter, recourse at the federal level is limited solely to an application for a writ of certiorari to the United States Supreme Court.”

Weekly v. Morrow, 204 F.3d 613, 615 (5th Cir. 2000) (quoting *Liedtke v. State Bar of Tex.*, 18 F.3d 315, 317 (5th Cir. 1994)). Additionally, the *Rooker-Feldman* “jurisdictional bar is not limited to actions in federal court that explicitly seek review of a state court decision, but also extends to those ‘in which the constitutional claims presented . . . are inextricably intertwined with the state court’s grant or denial of relief.’” *Jordaan v. Hall*, 275 F. Supp. 2d 778, 788 (N.D. Tex. 2003) (Fish, C.J.) (quoting *Hale v. Harney*, 786 F.2d 688, 691 (5th Cir. 1986)). Claims are inextricably intertwined with a

state court's judgment when "the District Court is in essence being called upon to review the state court decision." *Feldman*, 460 U.S. at 482 n.16.

III. ANALYSIS

Plaintiff's claims stem from the actions of the judges and justices involved in the Probate Proceedings and, though cast as constitutional claims, amount to nothing more than a collateral attack on the judgments entered in the Probate Proceedings, in particular the First Will Contest. *See Jordaan*, 275 F. Supp. 2d at 788-89 (when a federal action "is nothing more than a thinly veiled attempt to circumvent the state appellate process and to collaterally attack – in the guise of a federal civil rights action – the validity of a state court [judgment] and other related orders," lower federal courts lack subject matter jurisdiction over such action). Plaintiff's insistence that *Rooker-Feldman* does not apply because she is "not asking to relitigate [sic] [her] Case" is unavailing. Doc. 31 at 13. As mentioned above, *Rooker-Feldman* not only bars explicit efforts to review state court rulings, but also claims that are inextricably intertwined with those rulings. *Jordaan*, 275 F. Supp. 2d at 788. In the instant case, Plaintiff's federal constitutional claims are premised on accusations of impropriety on the part of the judges and justices involved in the Probate Proceedings, and are thus inextricably intertwined with those judgments. *See Turner v. Cade*, 354 F. App'x 108, 110-11 (5th Cir. 2009) (per curiam) (holding that plaintiff's claims premised on the allegation that a state court judge conspired and

colluded with defendants to deprive her of her constitutional, civil, and property rights were inextricably intertwined with the state court judgment she complained of); *Phinizy v. State of Ala.*, 847 F.2d 282, 284 (5th Cir. 1988) (plaintiff's claim that the probate court's conduct denied her due process was "obviously" inextricably intertwined with the probate court's judgment in the state proceeding).

Such intertwining is made all the more apparent by the relief that Plaintiff seeks in this case, to-wit: (1) a retrial of the First Will Contest to remove the "malicious judgment" entered against her; (2) her \$10,000.00 inheritance; and (3) reimbursement of all litigation expenses incurred thus far. Doc. 3 at 46. To grant this relief, the Court would have to reverse the judgment entered in the First Will Contest. *See Magor v. GMAC Mortg., L.L.C.*, 456 F. App'x 334, 336 (5th Cir. 2011) (per curiam) (finding plaintiff's claims were inextricably intertwined with state court judgment where reversal of the state court judgment would be a necessary part of the relief requested in the federal action); *see also Wallace v. Hernandez*, No. A-14-CV-691-LY, 2015 WL 1020720, at *2 (W.D. Tex. Mar. 9, 2015) (finding plaintiffs' claims were barred by *Rooker-Feldman* where the "essential relief" they sought was reversal of probate court's rulings against them), *adopted by* 2015 WL 12751504 (W.D. Tex. Apr. 9, 2015), *aff'd* 631 F. App'x 257 (5th Cir. 2016) (per curiam). Consequently, Plaintiff's only recourse is application for writ of certiorari to the United States Supreme Court. *Weekly*, 204 F.3d at 615. As such, *Rooker-Feldman*

divests this Court of subject-matter jurisdiction and Plaintiff's claims should be dismissed without prejudice.

IV. LEAVE TO AMEND

Ordinarily, a *pro se* litigant should be granted leave to amend her complaint prior to dismissal. *Brewster v. Dretke*, 587 F.3d 764, 767-68 (5th Cir. 2009) (per curiam). However, leave need not be granted if the court determines that the plaintiff has already pleaded her best case or if the proposed amendment would be futile. *Id.*; *Stripling v. Jordan Prod. Co., L.L.C.*, 234 F.3d 863, 872-73 (5th Cir. 2000). While Court has not previously granted Plaintiff leave to amend, she has nonetheless done so. On May 14, 2018, after briefing on the motions to dismiss was complete, Plaintiff filed an Amended Complaint adding Judge Peyton as a defendant.⁵ *See Doc. 34. See Doc. 34.* The claims that Plaintiff asserts therein are essentially identical to the claims she asserted in her Original Complaint and predicated

⁵ Because Defendants' motions to dismiss were filed more than 21 days before Plaintiff filed her Amended Complaint, Plaintiff lacked authority to amend her complaint without Defendants' consent or the Court's leave. Fed. R. Civ. P. 15(a)(2). Plaintiff obtained neither. Even if the Court liberally construes Plaintiff's Amended Complaint as a motion for leave to amend, *see e.g., Jacuzzi, Inc. v. Franklin Elec. Co., Inc., No. 3:07-CV-1090-D, 2008 WL 2185209, at *4 (N.D. Tex. May 27, 2008)* (Fitzwater, C.J.), it has no merit for the reasons discussed *infra* – the Court lacks jurisdiction to hear all the claims pled therein. *See Union Planters Nat'l Leasing, Inc. v. Woods*, 687 F.2d 117, 121 (5th Cir. 1982) (instructing courts to consider, *inter alia*, "futility of amendment" when deciding whether to grant leave to amend).

on the same factual allegations, namely, her challenge to the validity of the First Will Content [sic] and the resulting judgment entered by Judge Peyton. *See Doc. 34* at 1-10. Thus, for the reasons explained above, the amended claims also are inextricably intertwined with a prior state court judgment and accordingly barred by *Rooker-Feldman*. *Jordaan*, 275 F. Supp. 2d at 788. In light of the futility of Plaintiff's proposed amendments, the Court concludes that she has simply pleaded her best case and any additional grant of leave to amend would cause needless delay. *Brewster*, 587 F.3d at 767-68; *Stripling*, 234 F.3d at 872-73.

V. CONCLUSION

For the foregoing reasons, *Dallas County's Motion to Dismiss*, Doc. 29, should be **GRANTED IN PART** and Plaintiff's claims **DISMISSED WITHOUT PREJUDICE**. Because no other claims will remain, *State of Texas' Motion to Dismiss*, Doc. 24, should be **DENIED AS MOOT**.

SO RECOMMENDED on May 29, 2018.

/s/ Renee H. Toliver
RENEE HARRIS TOLIVER
UNITED STATES
MAGISTRATE JUDGE

**INSTRUCTIONS FOR SERVICE AND
NOTICE OF RIGHT TO APPEAL/OBJECT**

A copy of this report and recommendation shall be served on all parties in the manner provided by law. Any party who objects to any part of this report and recommendation must file specific written objections within 14 days after being served with a copy. See 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b). Any objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's report and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. See *Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996), modified by statute, 28 U.S.C. § 636(b)(1) (extending the time to file objections from 10 to 14 days).

/s/ Renee H. Toliver
RENEE HARRIS TOLIVER
UNITED STATES
MAGISTRATE JUDGE

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CASE NO. PR-11-1368-3

IN THE ESTATE OF § IN PROBATE COURT NO. 3
ROBERT S. KAM, §
DECEASED § DALLAS COUNTY, TEXAS

**ORDER DENYING CONTESTANTS'
VERIFIED MOTION FOR NEW TRIAL AND
IN THE ALTERNATIVE MOTION
TO MODIFY THE JUDGMENT**

(Filed Oct. 16, 2013)

On October 16, 2013, the Court heard Contestants' Verified Motion for New Trial and in the Alternative Motion To Modify the Judgment (the "Motions"). Upon consideration of the Motions, the arguments presented during the hearing, and the entire record, the Court has concluded that the Motions should be denied.

IT IS THEREFORE ORDERED that Contestants' Verified Motion for New Trial and in the Alternative Motion To Modify the Judgment be, and hereby are, **DENIED**.

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SO ORDERED on this 16th day of October, 2013.

/s/ John B. Peyton
PRESIDING JUDGE

**ASSOCIATE JUDGE,
IN AND FOR THE
PROBATE COURTS,
DALLAS COUNTY,
TEXAS**

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CASE NO. PR-11-1368-3

IN THE ESTATE OF § IN PROBATE COURT NO. 3
ROBERT S. KAM, §
DECEASED § DALLAS COUNTY, TEXAS

FINAL JUDGMENT

(Filed Aug. 9, 2013)

On July 22, 2013, this case was called to trial. All parties appeared through counsel and announced ready for trial. All parties expressly agreed on the record that Associate Judge John B. Peyton is authorized to decide all issues of fact and all issues of law, his judgment will be deemed the final judgment of Probate Court Number Three, Dallas, County, Texas, and any appeal from his judgment will be taken directly to the Court of Appeals for the Fifth District of Texas at Dallas. On July 25, 2013, all parties rested their respective cases, the evidence was closed, and the case was submitted for decision. Upon careful consideration of the pleadings, the evidence admitted at trial, the arguments presented by counsel, and the applicable law, the following rulings are made.

IT IS ORDERED, ADJUDGED, AND DECREED that Contestants Carol Kam and Justin Kam have failed to meet their burden of proof on all counts pleaded by them and accordingly they TAKE NOTHING.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the application of Contestants Carol

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Kam and Justin Kam for determination of heirship is moot and is hereby DISMISSED.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Contestants Carol Kam and Justin Kam failed to plead or to prove that their contest of the Robert S. Kam Trust as Amended and Restated dated March 17, 2011 and the Second Amendment to the Robert S. Kam Trust dated March 22, 2011 (hereinafter collectively referred to as the "Trust Agreement") was brought with "probable cause" or that it was brought and maintained in "good faith," while Respondents David J. Kam and Robert S. Kam, Jr. both pleaded and proved that Contestants Carol Kam and Justin Kam brought and maintained the contest in bad faith and without probable cause, and consequently the "No Contest" provisions of Article VIII of the Trust Agreement shall operate against Contestants Carol Kam and Justin Kam and all benefits to which they or their descendants would otherwise be entitled are revoked and shall pass as if Contestants Carol Kam and Justin Kam and their descendants had predeceased the Settlor, Robert S. Kam.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the instrument entitled "Trust Agreement Creating Robert S. Kam Trust," dated February 13, 2011, but apparently signed on February 15, 2011, and naming Jimmy R. Carter as "Settlor," is unenforceable.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that all actions taken by David J. Kam as

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Executor of the Estate of Robert S. Kam or as Trustee of the Robert S. Kam Trust were authorized by statute, by controlling instrument, or by common law.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Respondent David J. Kam, Trustee of the Robert S. Kam Trust, have and recover from Contestants Carol Kam and Justin Kam, jointly and severally, the amount of ONE HUNDRED NINETY-EIGHT THOUSAND FOUR HUNDRED DOLLARS (\$198,400) for attorneys' fees and litigation expenses that were reasonably and necessarily incurred in responding to the contest of the Trust Agreement and the action for declaratory judgment by Contestants Carol Kam and Justin Kam and for recoverable costs.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Respondent Robert S. Kam, Jr. have and recover from Contestants Carol Kam and Justin Kam, jointly and severally, the amount of EIGHT THOUSAND EIGHT HUNDRED THIRTY-NINE DOLLARS (\$8,839) for attorneys' fees and litigation expenses that were reasonably and necessarily incurred in responding to the contest of the Trust Agreement and the action for declaratory judgment by Contestants Carol Kam and Justin Kam and for recoverable costs.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Attorney Ad Litem Nathan K. Griffin have and recover from the Trustee of the Robert S. Kam Trust the amount of NINETEEN THOUSAND THREE DOLLARS AND EIGHTY-EIGHT CENTS

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(\$19,003.88) for the reasonable fees of the Attorney Ad Litem for services necessarily rendered, and for reimbursement of expenses reasonably incurred by him, in the course of fulfilling his duties in this case.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that David J. Kam, as Trustee of the Robert S. Kam Trust, have and recover from Contestants Carol Kam and Justin Kam, jointly and severally, the additional amount of NINETEEN THOUSAND THREE DOLLARS AND EIGHTY-EIGHT CENTS (\$19,003.88) as an award of the fees and expenses to be paid by the Trustee to the Attorney Ad Litem.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Respondents David J. Kam, as Trustee of the Robert S. Kam Trust, and Robert S. Kam, Jr. have and recover from Contestants Carol Kam and Justin Kam, jointly and severally, interest at the rate of FIVE PERCENT PER ANNUM, which shall accrue on all monetary relief awarded above from the date of this Final Judgment until such monetary relief is paid.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that in the event of an unsuccessful appeal to the Court of Appeals by either Contestant Carol Kam or Contestant Justin Kam, or by both of them, Respondent David J. Kam, as Trustee of the Robert S. Kam Trust, have and recover from whichever of Contestants Carol Kam and Justin Kam brings such appeal, and from them jointly and severally if both bring the appeal, the additional amount of THIRTY

THOUSAND DOLLARS (\$30,000) for attorneys' fees and expenses.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that in the event that a petition for review of this Final Judgment is filed by either Contestant Carol Kam or Contestant Justin Kam, or by both of them, in the Supreme Court of Texas, and such petition is denied, Respondent David J. Kam, as Trustee of the Robert S. Kam Trust, have and recover from whichever of Contestants Carol Kam and Justin Kam files such petition, and from them jointly and severally if both file such a petition, the additional amount of TEN THOUSAND DOLLARS (\$10,000) for attorneys' fees and expenses.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that in the event that a petition for review of this Final Judgment is filed in the Supreme Court of Texas by either Contestant Carol Kam or Contestant Justin Kam, or by both of them, and such petition is granted, but the Supreme Court ultimately affirms this Final Judgment, Respondent David J. Kam, as Trustee of the Robert S. Kam Trust, have and recover from whichever of Contestants Carol Kam and Justin Kam files such petition for review, and from them jointly and severally if both file such a petition for review, the additional amount of TWENTY THOUSAND DOLLARS (\$20,000) for attorneys' fees and expenses.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that each of the Respondents have and recover from Contestants Carol Kam and Justin Kam,

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jointly and severally, all recoverable costs, if any, incurred by such Respondent.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that all writs and processes necessary to enforce this Final Judgment be, and hereby are, authorized and shall issue.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Attorney Ad Litem Nathan K. Griffin be, and hereby is, DISCHARGED.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that any and all relief that was requested by any party to this case, and that is not expressly awarded in this Final Judgment, be and hereby is DENIED.

DATED AND SIGNED on this 9th day of August, 2013.

/s/ John B. Peyton
THE HONORABLE
JOHN B. PEYTON
PRESIDING JUDGE

**United States Court of Appeals
for the Fifth Circuit**

No. 21-10127

CAROL M. KAM,

Plaintiff—Appellant,

versus

JOHN B. PEYTON, JR.,

Defendant—Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:18-CV-1447

ON PETITION FOR REHEARING

(Filed Jul. 20, 2021)

Before CLEMENT, HIGGINSON, and ENGELHARDT,
Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing is
DENIED.
