

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DEC 10 2021

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

BYRON CASE, and as Dependents,

No. 21-35851

Plaintiff-Appellant,

D.C. No. 6:21-cv-01193-MC
District of Oregon,
Eugene

v.

DOUGLAS COUNTY OREGON; et al.,

ORDER

Defendants-Appellees.

Before: O'SCANLAIN, THOMAS, and TALLMAN, Circuit Judges.

The district court certified that this appeal is not taken in good faith and revoked appellant's in forma pauperis status. *See* 28 U.S.C. § 1915(a). On October 20, 2021, the court ordered appellant to explain in writing why this appeal should not be dismissed as frivolous. *See* 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

Upon a review of the record and responses to the court's October 20, 2021 order, we conclude this appeal is frivolous. We therefore deny appellant's motion to proceed in forma pauperis (Docket Entry No. 2) and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2).

All pending motions are denied as moot.

DISMISSED.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

BYRON CASE,

Plaintiff,

v.

DOUGLAS COUNTY OREGON ET AL,

Defendants.

Civ. No. 6:21-cv-01193-MC

OPINION AND ORDER

MCSHANE, Judge:

Plaintiff, *pro se*, brings this motion to proceed *in forma pauperis*, ECF No. 2, in an action against Douglas County, two circuit court judges, and the Douglas County Sheriff's Office.

~~Plaintiff alleges that the state court improperly awarded his disability benefits as spousal support.~~
Compl. 8, ECF No. 1.

Federal Civil Procedure Rule 12(h)(3) provides: "If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action." Fed. R. Civ. P. 12(h)(3). This Court may dismiss a claim *sua sponte* under FRCP 12(b)(6) for failure to state a claim upon which relief can be granted. *Omar v. Sea-Land Serv., Inc.*, 813 F.2d 986, 991 (9th Cir. 1987) (citations omitted). Likewise, if a plaintiff proceeds *in forma pauperis*, this Court is required to dismiss "the case at any time if the court determines that" the action or appeal is "frivolous or malicious" ~~or "fails to state a claim on which relief may be granted."~~ 28 U.S.C. § 1915(e)(2)(B).

1 – OPINION AND ORDER

Appendix D

Upon review, plaintiff's motion to proceed in forma pauperis, ECF No. 2, is GRANTED, but plaintiff's complaint, ECF No. 1, is DISMISSED with prejudice, and plaintiff's motion for a preliminary injunction, ECF No. 3, is DENIED as moot.

STANDARD OF REVIEW

"In civil rights cases where the plaintiff appears pro se, [this Court] must construe the pleadings liberally and must afford plaintiff the benefit of any doubt." *Karim-Panahi v. L.A. Police Dep't*, 839 F.2d 621, 623 (9th Cir. 1988) (citations omitted). This Court must give a *pro se* litigant "leave to amend his or her complaint unless it is absolutely clear that the deficiencies of the complaint could not be cured by amendment." *Id.* (citations and internal quotation marks omitted). "Moreover, before dismissing a *pro se* civil rights complaint for failure to state a claim, [this Court] must give the plaintiff a statement of the complaint's deficiencies." *Id.*

DISCUSSION

Plaintiff seeks damages for claims of extortion and false imprisonment, treason, due process violations, and violations of 42 U.S.C. §§ 1983 and 1985. *See* Compl. 10–14. Plaintiff's complaint centers on a July 10, 2017 judgment from Douglas County Circuit Court Judge Frances Burge awarding a lump sum of \$234,000 in spousal support to Plaintiff's former spouse. Compl. Ex. 1 at 1–2. Plaintiff's appeal to the Oregon Court of Appeals was unsuccessful. *See* *Id.* at 10. Plaintiff was subsequently held in contempt of court for repeated refusal to pay. *Id.* at 6, 11–12.

To survive an assessment under FRCP 12(b)(6) and 28 U.S.C. § 1915(e)(2)(B), plaintiff must allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Under this standard, plaintiff's alleged facts must constitute "more than a sheer possibility that a defendant acted unlawfully." *Ashcroft v. Iqbal*,

556 U.S. 662, 678 (2009). This Court must assume that the allegations contained in the complaint are true. *Id.*

Plaintiff's challenge is barred by the *Rooker-Feldman* doctrine, which precludes lower federal courts from hearing claims that collaterally attack prior state court decisions. *See Ignacio v. Judges of U.S. Court of Appeals for the Ninth Circuit*, 453 F.3d 1160, 1165 (9th Cir. 2006); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482 & n.16 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415–16 (1923).

Under the *Rooker-Feldman* doctrine, federal courts lack jurisdiction to exercise appellate review over state court judgments. *See Reusser v. Wachovia Bank, N.A.*, 525 F.3d 855, 858–59 (9th Cir. 2008); *see also Feldman*, 460 U.S. at 482–86; *Rooker*, 263 U.S. at 415–416. “The clearest case for dismissal based on the *Rooker-Feldman* doctrine occurs when a federal plaintiff asserts as a legal wrong an allegedly erroneous decision by a state court, and seeks relief from a state court judgment based on that decision.” *Henrichs v. Valley View Dev.*, 474 F.3d 609, 613 (9th Cir. 2007) (quoting *Noel v. Hall*, 341 F.3d 1148, 1164 (9th Cir. 2003)). However, the doctrine is equally applicable to bar the federal courts “from exercising subject matter jurisdiction over a suit that is a *de facto* appeal from a state court judgment.” *Reusser*, 525 F.3d at 859 (internal quotations and citations omitted). An action brought in federal court constitutes such an appeal if “claims raised in the federal court action are ‘inextricably intertwined’ with [a] state court’s decision such that the adjudication of the federal claims would undercut the state ruling or require the district court to interpret the application of state laws or procedural rules. *Id.* (quoting *Bianchi v. Rylaarsdam*, 334 F.3d 895, 898 (9th Cir. 2003)). In essence, the *Rooker-Feldman* doctrine provides that “a party losing in state court is barred from seeking what in substance would be appellate review of the state judgment in a United States district court, based

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JUDGMENT

MCSHANE, Judge:

Based on the record, this case is dismissed with prejudice.

IT IS SO ORDERED.

DATED this 9th day of September, 2021.

/s/ Michael J. McShane

Michael McShane
United States District Judge

1 - JUDGMENT

u Appendix 1/4

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U.S. District Court for Oregon,
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MANDATE

The judgment of this Court, entered December 10, 2021, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: David J. Vignol
Deputy Clerk
Ninth Circuit Rule 27-7

"Appendix A"

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