

APPENDICES

APPENDIX 1

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Case no. 1:20-cv-00689-JB/KRS

Dated: 4/29/2023

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

Emma Serna and Mike Serna

v.

William Cooksey, Daniel White,
David Webster, Margette Webster.

FINAL JUDGMENT

This matter comes before the court on: (i)

In Memorandum and Opinion.

Filed February 27, 2021 (Doc. 62x "First moo",

and (ii) its Memorandum.

Opinion and Order Adopting Second Proposed Findings

and Recommended Disposition, Filed April 29, 2022.

Doc. 124 ("Second Moo").

In the first Moo, the court dismisses Emma and Mike

Serna's claims against Defendant Daniel White.

See First Moo at 25. In the Second Moo the court grants

APPENDIX II

FEDERAL COURT OF APPEALS
TENTH CIRCUIT

Emma Serna,
Mike Serna,
Plaintiffs,

v.

William Cooksey, et al.,
Defendants.

Tenth Circuit mandate issued on March 28, 2023 and
the court's March 2, 2023 judgment takes effect this date.
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ORDER AND JUDGMENT

Before PHILLIPS, McHUGH, and ROSSMAN,
Circuit Judges,

Emma Serna and Mike Serna appeal the district Court's
Final Judgment in favor of defendant's.

William J. Cooksey, Daniel White, David Webster, and
Margette Webster. Exercising jurisdiction under
28 U.S.C. 1291, we affirm.

Re: 22-2063, Serna, et al., v. Cooksey, et al.,
Dist/Ag docket: 1:20-cv-00689-JB/KRS

Pursuant to Federal Rule of Appellate Procedure 41,
Appeal issued today. The court's March 2, 2023 judgment
takes effect this date with the issuance of this letter,
jurisdiction is transferred back to the lower court.

case and that the Serna's Complaint asserted only one federal-law claim (in County I and V) that the Websters and Mr. Cooksey violated 42 U.S.C. 407 by garnishing the Serna's Social Security payments; (5) determined the court lacked jurisdiction over the Sernas' state-law claims; and (6) dismissed their 407 claim for lack of jurisdiction under the Rooker-Feldman Doctrine.

II. Discussion

Because the Sernas proceeding pro se on appeal, we liberally Construe their filings, but we do not act as their advocate.

See *James v. Wada*, 724 F.3d 1312, 1315 (10th Cir. 2013).

Their opening brief mainly repeats---and adds to---the factual Allegations in their Complaint without challenging the district court's reasoning in dismissing their claims. We construe their brief as asserting four claims of error:

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(1) the district court erred in dismissing their claims against Mr. White for failure to state a claim; (2) the court erred in holding that they asserted only one federal-law claim;

trust. Mr. White filed voluminous pleadings and tried “to force the Court to make the trustee disclose the benefactor’s personal information.”

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R. Vol. 1 at 18. Although Mr. White claims that the 2015 Judgment is not void, he agreed otherwise in a state-court hearing, but the stenographer failed to record his agreement. Mr. White “has lied to the judge, and has shown candor [sic] towards the tribunal, and has refused to correct his misrepresentations.” *Id.*

He filed a lien and lis pendens on property owned by the trust. Mr. White “is demonstrating [sic] toward the tribunal by entering a judgment thtat is made out to a “Margaret Webster, and Margette Webster hand wrote a a/k/a Margette Webster['] in. *Id* at 23. Mr. White argued in his motion to dismiss that it was unclear what claims the Sernas were asserting against the law. On appeal, the Sernas continue to complain about Mr. White’s filings on behalf of the Webster’s in a “Wrongful

not support an exception to our firm waiver rule in this case.

See *Casanova v. Ulibarri*, 595

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F.3d 1120, 1123 (10th Cir. 2010) (discussing the factors relevant to determining whether to apply the interests-of-justice exception. As to the argument they did preserve, the Sernas fail to explain how their factual allegations support a Fifth Amendment claim against the Websters or Mr. Cooksey. We conclude the Sernas fail to show error in the district court's conclusion that their Complaint raised only on federal-law claim.

C. Dismissal of 407 Claim

As part of their collection efforts on the 2015 Judgment, the Websters sought to garnish an account at the Bank belonging to the Sernas (the Garnished Account). The district court construed the Sernas Complaint as alleging that the Websters and Mr. Cooksey violated 407 by garnishing their Social Security

of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.” *Id* at 1255-56 (internal quotation marks omitted).

[The] doctrine recognizes a jurisdictional bar on lower federal courts’ review of claims where (1) the plaintiff lost in state court, (2) the state court judgment caused the plaintiff injuries, (3) the state court rendered judgment before the plaintiff filed the federal claim, and (4) the plaintiff is asking district court to review and reject the state court judgment.

Bruce, 57 F. 4th at 746.

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See *Rooker v. Fid. Trust Co.* 263 U.S. 413 (1923); *D.C. Ct.App. v. Feldman*, 460 U.S. 462 (1983).

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Emma Serna did not file a claim of exemption with the state-court.

None of the funds held in the Garnished Account were exempt from attachment. In particular, such funds were not derivative of Social Security deposits by Emma Serna or Mike Serna.

An earlier state-court order stating that Emma Serna may not be the judgment debtor on the 2015 judgment was rescinded and she was recognized as the judgment debtor.

The Bank was ordered to turn over to the Websters the funds held in the Garnished Account, less the Bank's costs and attorney fees.

The sum of \$8,964.72 was ordered disbursed to the Websters and was deemed a partial payment and reduction of the 2015 judgment.

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The district court held it lacked jurisdiction over the Serna's 407 claim under the Rooker Feldman doctrine

ordered by the State Court).

Thus, the Sernas' 407 Claim had merit only if the 2018 judgment "was unlawful on the record before the court"

Id The Sernas argue Rooker-Feldman does not apply

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because the Webstes misused the judicial process. But in Campbell, we rejected the plaintiffs contention that her Fifth-Amendment claim was not barred by Rooker-Feldman because the defendants deprived her of due process by unconstitutional using the state's forfeiture procedure. *Id*. We concluded the plaintiff's injury was still caused by the State court's forfeiture order. *Id*. Finally, the Sernas cite the Ninth Circuit's Holding in Kougzsizn v. TMSL., Inc., 359 F.3d 1136, 1141 (9th Cir. 2004) that a plaintiff in Federal Court can seek to set aside a state court judgment obtained through extrinsic fraud." But, the district court did not err in rejecting this contention because this court does not

first time on appeal. See *United States v. Lang*, 364 F.3d 1210, 1216 (10th Cir. 2004) (noting circuit precedent holding that a recusal issue is not preserved for review timely objection in the district court pursuant to 455), vacated on other grounds, 543 U.S. 1108 (2005).

It is unclear which of two PFRDs the Sernas reference.

They describe the relevant PFRD as disposing of their case, which would appear to refer to the second PFRD issued by the Magistrate judge that recommended dismissal of their 407 claim. This lack of clarity does not affect our disposition of their failure-to-recuse argument.

At the very least, the Sernas must show plain error. See *Id.* at 1216-17 (declining to resolve circuit disagreement on standard of review and reviewing for plain error); *United States v. Mendoza* 468 F.d 1256, 1262 (10th Cir. 2006) Reviewing recusal argument not raised in the district court for plain error. The Sernas make no attempt to show plain error, nor could they. They argue only that the magistrate

APPENDIX III

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Filed March 20, 2023

Emma Serna,
Mike Serna,
Plaintiff/Appellant,

No. 22-2063
D.C. 1:20-cv-00689

v.

JB/KRS
(D.N.M.)

William Cooksey, et al.,
Defendants/Appellants.

ORDER AND JUDGMENT

Before PHILLIPS, McHUGH, and ROSSMAN,

Circuit Judges, Appellant's petition for

REHEARING is denied.

Entered for the Court

Christopher M. Wolpert,

Clerk