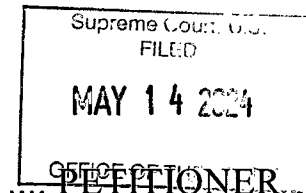


23-7518

NO: _____

IN THE SUPREME COURT OF THE UNITED STATES

KELLY MCGOFFNEY.



V.

MATTHEW KINCAID AND VIGO

COUNTY PROBATE COURT,

.... RESPONDENTS

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit (Appeal No. 22-3047)

PETITION FOR A WRIT OF CERTIORARI

Kelly D. McGoffney (pro se)

P.O. Box 10425

Terre Haute, IN 47801

1-812-223-2512

QUESTIONS PRESENTED

- I. Can this Court exercise jurisdiction to remedy violations of the petitioner's First, Fifth, and Fourteenth Amendment rights, including due process and lack of access to the courts, resulting from the state court judge's independent and unlawful actions?
- II. Seeking clarification regarding the application of the Rooker-Feldman doctrine in cases transferred from state court to federal court. Given the affirmance of the district court's decision under Rule 58 by the Court of Appeals, and the circumstances surrounding the closure of state court cases initiated by the appellant, which were not adjudicated as 'losers' but rather closed due to the Estate's closure, what criteria or circumstances determine when the doctrine is applied in such transfers?
- III. Did the district court properly consider the circumstances surrounding the closure of the state court cases initiated by the appellant, noting that they were not adjudicated as "losers" but rather closed due to the Estate's closure? Furthermore, was the district court's dismissal decision mindful of the ongoing medical review processes and unresolved matters within these state court cases, which were pivotal to the appellant's claims?
- IV. How could the district court make a determination based on the Rooker-Feldman doctrine and Rule 58 without affording the petitioner the opportunity for discovery, the trial process, and their 7th Amendment right to a jury trial, particularly when these rights were denied during the pretrial stage?
- V. Whether this court should grant the writ to prevent further miscarriages of justice by providing clarification on the scope of the

Rooker-Feldman doctrine, which has led to conflicting decisions among Circuits Courts?

- VI. Does the petitioner qualify as a 'state court loser' under the Rooker-Feldman doctrine, considering the potential reopening of the state court case (probate case on estates) and the fact that an Estate is not required to be opened to pursue medical malpractice or federal claims, and thus warrant review by this Court?
- VII. Is the State of Indiana's requirement for the opening of an Estate to pursue medical malpractice or federal claims a significant factor in assessing the dismissal of the appellant's case by the district court, considering the appellant's specific circumstances regarding the guardianship case and pending legal matters?
- VIII. Can a court, upon motion to reconsider or rehear, upon its own motion or the suggestion of a party, vacate, set aside, amend, or modify a ruling entered in the same term of court, considering that such matters are still in progress?
- IX. Can a court, upon motion to reconsider or rehear, whether initiated by its own volition or at the suggestion of a party, vacate, set aside, amend, or modify a ruling entered in the same term of court, taking into account that ongoing matters are still in progress?

LIST OF PARTIES

Petitioner: Kelly McGoffney

Respondents: Judge Matthew Kincaid, and the Probate Division of the Vigo County Superior Court

KELLY MCGOFFNEY v. MATTHEW KINCAID, ET AL No. 2:21-cv-00478-JRS-DLP, U. S. District Court for the Southern Indiana. Judgment entered Sept. 26th, 2022.

KELLY MCGOFFNEY v. MATTHEW KINCAID, ET AL No. 22-3047, U. S. Court of Appeals for the Seventh Circuit. Judgment entered Jan. 4th, 2024.

KELLY MCGOFFNEY v. MATTHEW KINCAID, ET AL 22-3047, U. S. Court of Appeals for the Seventh Circuit. EN BANC Judgment entered Feb. 14th, 2024.

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7th Amendment on access to court and right to a jury trial where the value in controversy shall exceed twenty dollars.

14th Amendment on due process clause: Violation of the due process and equal protection of law rights.

V. STATEMENT OF THE CASE

On December 31, 2021, the Petitioner filed under 42 U.S.C. §§1983 complaint by suing Judge Kincaid and the probate court in federal district court, alleging a violation of her constitutional rights protected by the First, Fifth, and Fourteenth Amendments of the United States Constitution as she challenges the independently unlawful conduct of Judge Kincaid and the probate court. The unlawful conduct emanates from the Judge's action in accepting the requests made by a party that wasn't in any way connected with the case or estate thereby going against legal principles (doctrines) and precedents that only a party to the case or that has interests in the case can have standing before the court. The judge's action by removing the petitioner as estate representative and subsequently closing the estate through the request of the party that does not have legal standing (*locus standi*) before the court on the subject matter, therefore, constituted extrinsic fraud. By removing Petitioner as personal representative, closing the estate, and denying her repeated requests to reopen the estate, the judge violated her rights under the federal Constitution, see 28 U.S.C. § 1983, and the "Open Courts" clause of the Indiana Constitution, see IND. CONST. art. I, § 12. Further, in

the Estate to lose some of the pending claims, medical malpractice claims were placed on hold, and some were even dismissed. This was independently due to the unlawful conduct of Judge Kincaid.

Therefore the appellant's Complaint at the federal district court challenged independently unlawful conduct of Judge Kincaid and the probate court in violations of the appellant's due process and equal protection of law rights Judge Kincaid's reason for his unlawful conduct was based on the inability of the petitioner to hire an attorney, as she was acting on a pro se basis, an act that constitute the punishment of a pro se litigant just for appearing as a pro se. the conduct of the state court judge also contravened access to the Courts Petition Clause, Due Process

removing the petitioner as the estate representative, Judge Kincaid violated Henry's Indiana Probate Law and Practice § 14.20 (2018) which states that the wrongful death statute requires that the plaintiff in the action be the decedent's properly appointed personal representative. However, in a medical malpractice action for the death of a patient, the medical malpractice statute controls, and under it, the plaintiff need not first be appointed personal representative of the patient's estate.

The actions of Special Judge Kincaid of Boone County, Indiana, in refusing to rule on the Petition to Reopen the Estate, ignored a stay that had already been granted in Marion County Cause Number: 49C01-1302-CT-007663 and did not allow the Estate to file and process legal paperwork that was required for the closing, violate the Open Courts Clause of the Indiana Constitutional, Art. 1, § 12. a fair trial and hearing. The decision to close the Estate of Carrie Etta Mills-McGoffney wreaked havoc on the estate due to the Estate having open claims that were still pending and additional inventory that had been discovered. This caused the Estate to lose some of the pending claims, medical malpractice claims were placed on hold, and some were even dismissed. This was independently due to the unlawful conduct of Judge Kincaid.

Therefore the appellant's Complaint at the federal district court challenged independently unlawful conduct of Judge Kincaid and the probate court in violations of the appellant's due process and equal protection of law rights Judge Kincaid's reason for his unlawful conduct was based on the inability of the petitioner to hire an attorney, as she was acting on a pro se basis, an act that constitute the punishment of a pro se litigant just for appearing as a pro se. the conduct of the state court judge also contravened access to the Courts Petition Clause, Due Process

Clause, and the Open Court Clause of the Indiana Constitution. The Indiana Code Title 29, Probate § 29-1-17-14, which allows for the reopening of an estate, if necessary, acts remain unperformed or for other valid reasons, Judge Kincaid and the probate court failed to follow the proper procedures for removing a personal representative under Indiana Code section 29-1-10- 6, the Removal Statute Code.

The Petitioner (appellant in this matter) requested the federal court for orders of the violation of her due process and equal protection of the law rights by the independent conduct of Judge Kincaid and the probate court. The appellant contended the above-highlighted concerns which raised the stake of the injustice committed by the unlawful independent action of Judge Kincaid in going against the procedural rules and blatant disregard to the constitutional rights of due process of law and equal protection of the law. The appellant also raised concerns regarding the defendant's actions, including the requirement to hire an attorney despite being allowed to represent the estate pro se in another case, the ruling that deemed the Petitioner unsuitable to pursue claims, granting intervention by a non-interested party, and failure to address open claims with the Indiana Department of Insurance. For instance, dismissing the petitioner's legal suit on the basis of legal representation when she wasn't able to raise the same goes against the congress's intention in providing the legal option of the parties to proceed before the court on a pro se basis.

On April 20, 2022, the Respondents (Appellees) moved to dismiss for lack of subject-matter jurisdiction under the Rooker-Feldman doctrine, see Rooker-Feldman doctrine. *Rooker v. Fidelity Tr. Co.*, 263 U.S. 413 (1923); *District of Columbia Ct. of Appeals v. Feldman*, 460

U.S. 462 (1983). The Appellant filed her opposition on May 16, 2022. The district court granted the Appellee's motion; it explained that McGoffney's effort to use civil rights claims to void decisions of the probate court was a "blatant attempt at an appeal" of a state judgment. The appellant filed for a leave to amend the motion to the district court which was allowed and the appellant moved to amend the pleadings. However, the district court closed the petitioner's claim on 09/26/2022 on grounds of Rooker Feldman doctrine and the petitioner's leave to amend was been preemptively denied as futile even before granting the petitioner time to file the amended petition thereby denying her the right to petition the court, the due process rights, and consequently violated her natural rights. (see **Appendix C and D**)

The petitioner subsequently appealed the district court decision in the Seventh Circuit Court of Appeals on Nov 14, 2022. She contested the misapplication of the Rooker-Feldman doctrine in her case because her complaint in federal district court was independent and sought a remedy for violation of her constitutional rights. On June 6, 2023, Petitioner filed Appellant's Amended Brief. On August 1, Appellees' brief was filed through a motion for an extension of time. The reply brief was submitted on September 11, 2023, and a subsequent amended Reply brief was filed by the Appellant. The United States Court of Appeals for the Seventh Circuit Panel on January 4, 2024, affirmed the decision of the district court that the Petitioner's suit lacks subject matter jurisdiction under the Rooker-Feldman doctrine. Motion for panel rehearing en banc was filed on January 29, 2024. On January 14, 2024, the rehearing was denied by the Seventh Circuit Appeal Court panel.

However, contrary to the Appellate and district court Judgment, the Petitioner McGoffney's civil rights claims were to challenge independently the unlawful conduct of Judge Kincaid and the probate court and not to actually void the decisions of the probate court, as the Amended Complaint points to this effect. Petitioner's civil rights claim was not a blatant attempt to appeal a state judgment. The Panel of the United States Court of Appeals for the Seventh Circuit erred in the affirmation of the district court Judgement of dismissal of Petitioner's suit for lack of subject matter jurisdiction under the Rooker-Feldman doctrine.

Petitioner's federal claim pursuant to 42 U.S.C. § 1983 was to redress the deprivation, under color of state law, of rights secured by the Constitution of the United States because Judge Kincaid and the probate court act or omission, taken in the officer's judicial capacity, violated a declaratory decree and that the Complaint seeks to enforce rights and privileges secured by the laws of the United States. The petitioner challenged the federal district court decision dismissing the petitioner's complaint on the grounds of the Rooker-Feldman doctrine at the Seventh Circuit Court for misapplication of the Rooker-Feldman doctrine by the federal district court. As per the numerous precedents of the Supreme Court of the US, the Rooker-Feldman doctrine is not applicable on independent motions/petitions challenging the unlawful conduct of the state officers, that results in violation of constitutional rights to another person. The circuit court ruling on the application of the doctrine was not conclusive as they were not clear whether the doctrine applied in the appellant matter or not. Further, there is confusion on the applicability of this doctrine in the circuit courts with several holding contrasting

opinions about the confines of the Rooker Feldman doctrine and the tests for its application in matters brought before federal courts challenging the unlawful and illegalities arising from state officer's actions or conducts that violates the constitutional rights and freedoms of the parties concerned. Further, the Rooker-Feldman doctrine is being used as a weapon against the pro se litigants, and such is a grave contravention of the constitutional rights as is the issue in the appellant's case in this matter. This extends the mandate of the judiciary (courts) to the scope of the jurisdiction of the Congress as it is only the Congress that has the mandate of making the laws. Numerous federal appellate judges have criticized the approach used by the lower court to deny petitions on the grounds of the Rooker-Feldman doctrine that the outcome as directly conflicting with the prior intention of the application of the doctrine. The conflict warrants this Court's review, and Petitioner's case is an ideal vehicle for resolving it.

VI. REASON FOR GRANTING PETITION

This case is a superior vehicle for resolving a circuit conflict on a well-defined legal issue of exceptional importance.

a. Petitioner's due process, access to court and the right to petition the court Warrants grant of Certiorari.

The appellant submits that the district court misinterpreted the application of the Rooker-Feldman doctrine in dismissing the appellant's case was erroneous as the scope of the doctrine does not extend to the

instances arising from the independent, unlawful, and unprocedural conduct of the state officer that violates the appellant constitutional rights. The appellant was moving the court on the grounds of the violation of her constitutional rights by the unlawful and unprocedural conduct of Judge Kincaid an action that is beyond the confines of the Rooker-Feldman doctrine. See 42 U.S. Code § 1983. The federal district court application of the doctrine to dismiss the petitioner's claim affirms the unlawful conduct of Judge Kincaid's bias, partiality and denial of due process, and lack of access to the court (which constitutes extrinsic fraud) thereby affirming the blatant limitation of Congress-guaranteed rights to institute a claim as a pro se petitioner before any court in the US. The Rooker-Feldman doctrine, as elucidated in *United States v. Ju Toy* (198 U.S. 253, 263, 1905), emphasizes the importance of fairness and due process in judicial proceedings. This doctrine is designed to prevent federal courts from acting as appellate courts for state court decisions. However, it should not be applied to preclude federal court review of constitutional claims, as established in *Wight v. Davidson* (181 U.S. 371, 384, 1901).

The petitioner's rights to access the courts have gravely been violated by both the state court's refusal to open the estate and also by the district court's dismissal of the federal claims filed by the petitioner for gross violation of her constitutional rights under 1st, 5th, 7th and 14th Amendments. The petition by the petitioner before the district court was not a direct attack on the state court decision but dealt with the independent and unlawful conduct of the state court judge, a conduct which denied the petitioner access to court and the right to jury. Juries constitute a crucial component of American democracy and are, in fact, the most diverse institution of government. The right to trial by jury gives 12 citizens absolute authority to stop the state from taking away a person's

liberty. The seventh circuit court in *Owsley v. Gorbett*, 87 N.E.3d 44, 48-50 (Ind. Ct. App. 2017) established that the federal district court decision to dismiss the case on the grounds of jurisdiction as the matter had been litigated before the state court was a misstep and the court had jurisdiction to consider the issues raised such as the issue raised on the denial of access to the court. The circuit court therefore remanded the matter back to the state court to facilitate access to court. This demonstrates that the federal district court had jurisdiction to consider the violation of rights claims including lack of access to court, and violation of due process among others raised by the petitioner before ruling on the jurisdiction part.

In *Owsley v. Gorbett*, 87 N.E.3d 44, 48-50 (Ind. Ct. App. 2017) case, the Rooker-Feldman doctrine was not applied to deny the federal court jurisdiction even though the matter concerned the probate matters but the circuit court noted that the district court dismissal of the petitioner's claim on the basis of jurisdiction was a misstep as it had jurisdiction to consider independent claims of access to court raised by the petitioner.

The federal district court dismissal of the petitioner's claim using rule 58 on the basis of the Rooker-Feldman doctrine without considering the issues raised by the petitioner against lack of subject matter jurisdiction through jurisdictional discovery denied the petitioner access to the court. The federal district court erred by failing to consider jurisdictional discovery to determine the question of jurisdiction and access to the court claims. The Fourth Circuit Court in *Rich v. U.S.*, 811 F.3d 140, 145 (4th Cir. 2015) noted that the court may go beyond the allegations in the complaint and an evidentiary hearing to determine if there are facts to support the jurisdictional allegations in cases where the defendant has disputed claims related to subject matter jurisdiction. "If,

however, the jurisdictional facts are intertwined with the facts central to the merits of the complaint, a presumption of truthfulness should attach to the plaintiff's allegations. And, most relevant here, the court should resolve the relevant factual disputes only after appropriate discovery.” *Rich v. U.S.*, 811 F.3d 140, 145 (4th Cir. 2015) (internal quotations and citations omitted) And, most relevant here, the court should resolve the relevant factual disputes only after appropriate discovery.” *Rich v. U.S.*, 811 F.3d 140, 145 (4th Cir. 2015) (internal quotations and citations omitted). Therefore, if appropriate discovery in the petitioner's case was denied by the federal district court, how can the court resolve factual disputes by applying a doctrine that doesn't apply.

It is pertinent to mention that the district court must protect the rights of the prose litigants and their cases have not to be dismissed on technical reasons instead as settled by the superior court the prose litigants have to give the opportunity to amend their cases. It has been settled in *Tate v. SCR Med. Transp.*, 809 F.3d 343, 346 (7th Cir. 2015), specifically identified requests for relief must be dismissed due to lack of jurisdiction, this dismissal does not result in the dismissal of the entire lawsuit at this stage. Instead, Ms. El is granted an extension until May 8, 2023, to file another amended complaint. Further, In the case of *Kollsman v. City of Los Angeles* (9th Cir. 2015), the Ninth Circuit dealt with allegations of constitutional violations by city officials. The court's decision emphasized the necessity for federal courts to remain vigilant and proactive in addressing claims where local government actions are alleged to breach constitutional standards. This case reinforces the role of federal judiciary not only as a mediator but as an enforcer of constitutional norms, ensuring that municipal and state entities do not overstep their boundaries at the expense of individual rights. These decisions aligns with the ruling which

emphasizes the importance of granting litigants, particularly pro se litigants, an opportunity to amend their complaints before dismissing a case under the First Amendment on petition clause, and the 14th Amendment on due process and equal protection of the law. But in the present case no opportunity was given instead the court failed to consider the amended complaint and incorrectly applied rule 58 in dismissing the petitioner's claim even before the petitioner had the opportunity to file an amended petition.

The district court's denial of the Appellant's motion on the grounds of the Rooker-Feldman doctrine and the subsequent circuit court decision is erroneous as they go against the scope of the doctrine due to the lack of fairness, due process and protection of law in the judicial proceedings. The application of the Rooker -Feldman doctrine must take into account the fairness, due process, and protection of the law of the parties so as to avoid miscarriage of justice. In *Massey Ferguson Division of Varity Corp. v. Gurley* (51 F.3d 102, 104, 7th Cir. 1995) emphasizes the importance of fairness and due process in judicial proceedings. This aligns with the argument that the district court's misinterpretation of the Rooker-Feldman doctrine deprived the appellant of a fair adjudication, and therefore the position taken by the district court was erroneous. See also, *Tate v. SCR Med. Transp.* (809 F.3d 343, 346, 7th Cir. 2015; *Kollsman v. City of Los Angeles* (9th Cir. 2015).

The appellant's right to amend the complaint once as a matter of right was violated by the district court's failure to allow the appellant to file the amended petition even after it had allowed her to amend the petition, which violates the appellant's First Amendment right to petition the court for the violation of constitutional rights. The erroneous

application of rule 58 by the district court to close the case before the filing of the amended petition goes against the foundations of justice, violates natural rights to be heard and respond, and consequently violates the rights of the appellant to petition the court under the 1st amendment. *Foster*, 545 F.3d at 584, affirms that "an order dismissing the original complaint normally does not eliminate the plaintiff's right to amend once as a matter of right." Additionally, *Crestview Vill. Apts. v. United States HUD*, 383 F.3d 552, 557 (7th Cir. 2004), confirms that a plaintiff is entitled to amend the complaint once as a matter of right if done promptly. Even beyond this period, the court should freely grant leave to amend when justice requires it, as stated in Federal Rule of Civil Procedure 15, as cited in *Independent. Trust Corp. v. Stewart Info. Servs. Corp.*, 665 F.3d 930 (7th Cir. 2012). *Bausch*, 603 F.3d at 562, firmly upholds this principle, stating that the court should grant leave to amend irrespective of such doubts. Consequently, the court's failure to consider the appellant's amended complaint constitutes an error, contradicting the precedents established by these cases. *Conley v. Gibson*, 355 U.S. 41 (1957), *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) underscore the importance of allowing plaintiffs the opportunity to present a plausible claim for relief. The district court's dismissal without considering the amended complaint failed to adhere to the plausibility standard set forth by the Supreme Court.

The appellant submits that her petition at the federal district court was independent as it involved different parties from the initial claim at the state court. The petition does not seek to review the state court decision but contests the state officer's unlawful conduct, that results in violation of the petitioner's civil rights. The case therefore is independent thereby making the US district court its original jurisdiction over the subject

matter of the case. Justice Stevens in his dissenting opinion in the *District of Columbia Court of Appeals v. Feldman* 460 U.S. 462 (1983) at 56 noted that; 'If a challenge to a state court's decision is brought in United States District Court and alleges violations of the United States Constitution, then by definition it does not seek appellate review. It is plainly within the federal-question jurisdiction of the federal court. see 28 U.S.C. § 1331 (1976).' Therefore, the federal district court had subject matter jurisdiction over the appellant petition and the Rooker-Feldman doctrine does not bar the district court jurisdiction.

The appellant submits that she followed the proper procedure in initiating the case at the federal district court thereby the federal district court was not barred by the Rooker Feldman doctrine. The appellant's claim in the United States District Court involved separate parties from the estate case filed in the state court. This is because the appellant's case at the U.S. District Court is against the state court's judicial officer who was not a party in the state court decision where the appellant was seeking judicial intervention due to the appellee's unlawful conduct. See, *Kamilewicz v. Bank of Boston*, 100 F.3d 1348, 1351 (7th Cir. 1996) (Easterbrook, J., dissenting from denial of rehearing) (The malpractice suit was "a suit against a nonparty (the lawyer) alleging harm from incompetent or deceitful acts. That the lawyer's misconduct occurred in a judicial proceeding doesn't insulate the lawyer from liability, even when the Rooker-Feldman doctrine insulates the judgment"). Further, it has been previously held that "when the claim is made in a state court and a denial of the right is made by judicial order, it is a case which may be reviewed under Article III of the Constitution when federal questions are raised and proper steps are taken to that end, in this Court." *re Summers*, 325 U.S. 561, 65 S.Ct. 1307, 89 L.Ed. 1795 (1945), at 567-569, 65 S.Ct.,

at 1311-1312. The appellant followed all the requisite steps in commencing the suit in the federal district court and thereby the US District Court had subject matter jurisdiction to entertain the matter.

The appellant further submits that the US district court had subject matter jurisdiction on the matter as the matter in question involved the appellee's unlawful conduct and did not involve the appellant's complaint about the state court decision. "Were [p laintiff] merely claiming that the decision of the state court was incorrect, even that it denied him some constitutional right, the doctrine would indeed bar his claim. But if he claims, as he does, that people involved in the decision violated some independent right of his . . . then he can, without being blocked by the Rooker-Feldman doctrine, sue to vindicate that right." *Kamilewicz v. Bank of Boston Corp.*, 100 F.3d 1348, 1351 (7th Cir. 1996) (Easterbrook, J., dissenting from denial of rehearing) (quoting *Nesses v. Shepard*, 68 F.3d 1003, 1004 (7th Cir. 1995)). This makes the appellant's claim, a separate and independent legal suit from the state court decision and therefore the US district court has jurisdiction to entertain the appellant's case without being barred by the provisions of the Rooker-Feldman doctrine. The Rooker-Feldman does not bar jurisdiction where a federal plaintiff is complaining of a legal injury caused by an adverse party, not a state court judgment. See *Noel v. Hall*, 341 F.3d 1148, 1163-65 (9th Cir. 2003). Therefore, where a federal plaintiff presents an independent claim attempting to deny a legal conclusion that a state court reached in the previous case, there is jurisdiction even though the defendant may prevail under other grounds apart from the Rooker Feldman doctrine. see *GASH Assocs. v. Village of Rosemont*, 995 F.2d 726, 728 (7th Cir. 1993).

The district court application of the Rooker-Feldman doctrine to deny the appellant's petition on the grounds of lack of subject matter jurisdiction is an expansion of the doctrine which results in the interference with the action of the party to vindicate federal rights. This approach is dangerous as it ends up causing more injustices due to the misapplication of the Rooker-Feldman doctrine in the instances where the doctrine should not be applied. The US district court misapplied the Rooker-Feldman Doctrine as the appellant's petition was not subject to the provisions of the Rooker-Feldman Doctrine. "Rooker-Feldman is back to its old tricks of interfering with efforts to vindicate federal rights and misleading federal courts into thinking they have no jurisdiction over cases Congress empowered them to decide." In short, the lower courts' tango with the doctrine often involves too many missteps ", *VanderKodde v. Mary Jane M. Elliott, P.C.*, 951 F.3d 397 (6th Cir. 2020) (Sutton, J., concurring).

The appellant further submits that the federal district court has subject matter jurisdiction in the cases involving parties that were not subject to the state court case where the case at federal district court arises due to the misconduct of the said party leading to the violation of the plaintiff's civil rights. The appellant in this case contends that even if Judge Matthew Kincaid forms an essential part of the state court proceedings, does not form a sufficient basis for immunization of his unlawful conduct from review in the federal court and in this case United States District Court. This is because "a suit against a nonparty (the lawyer) alleging harm from incompetent or deceitful acts. That the lawyer's misconduct occurred in a judicial proceeding doesn't insulate the lawyer from liability, even when the Rooker-Feldman doctrine insulates

the judgment”, *Kamilewicz v. Bank of Boston*, 100 F.3d 1348, 1351 (7th Cir. 1996) (Easterbrook, J., dissenting from denial of rehearing).

The appellant submits that the Rooker Feldman doctrine does not bar the federal district court subject matter jurisdiction in the instances where the plaintiff is not seeking an appeal or the review of the state court decision. In *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1139 (9th Cir. 2004), the Ninth Circuit found that, although the plaintiff sought relief from the state court judgment, she did not complain of a legal wrong committed by the state court. Instead, she alleged that the wrongful acts of the defendants were responsible for the court’s erroneous judgment. Because her complaint only satisfied one prong of the “forbidden de facto appeal” test, the court held that Kougasian was not seeking a forbidden appeal and therefore it had no occasion to inquire into whether any of her claims were inextricably intertwined with issues before the state court. Although in “an ordinary language sense, the issues in Kougasian’s claims [were] indeed ‘inextricably intertwined’ with issues in [the state court proceedings],” the court held that “because she is not bringing a forbidden de facto appeal, there are no issues with which the issues in her federal claims are ‘inextricably intertwined’ within the meaning of Rooker-Feldman.” The appellant’s petition in the US district court was grounded on the unlawful conduct by a state officer that violated her 14th amendment right to due process of law and was not an appeal for the state court decision therefore the district court had subject matter jurisdiction to entertain her claim.

Rooker-Feldman is not a jurisdictional giant, it is a limited doctrine that applies only when litigants try to appeal state court losses in the lower federal courts. Where the plaintiff does not seek to “review and reject” a

state court judgment, the district court is not barred by the Rooker-Feldman doctrine, even in the instances where the plaintiff seeks damages for issues collateral to a state court judgment rather than relief from that judgment itself. See *Behr v. Campbell*, No. 18-12842 (11th Cir. 2021). The appellant submits she was not seeking to review or reject the state court decision by filing her petition against the appellee but instead was seeking collateral damages arising from the unlawful conduct of the judicial officer, conduct that violated constitutional provision and therefore US district court was not barred by Rooker-Feldman doctrine from entertaining the appellant's suit against the appellee.

The submits that her petition to the federal district court does not emanate from the highest state court but is an independent petition against the conduct of the magistrate that violates the appellant's constitutionally protected rights of due process. Therefore, the appellant case is an independent suit for the violation of the constitutionally protected rights which was not contended or formed the key issue of determination before the state courts. This therefore means that the district court had subject matter jurisdiction to determine the appellant's petition. This court acting as the last refuge of justice for the petitioner should therefore correct the mistakes done by the district court and affirmed by the 7th circuit court by holding the inapplicability of the Rooker Feldman doctrine or the provision of 28 U.S.C. § 1254(1) denying federal district court jurisdiction in an independent matter that arises out of the unlawful conduct of the state judge that violates constitutional rights of the appellant.

b. Application of the Rooker-Feldman Doctrine and District Court Decision under Rule 58 , court cases were

not adjudicated as loser but rather closed due to Estate's closure.

The application of the Rooker-Feldman doctrine in cases transferred from state court to federal court requires clarification to ensure the preservation of constitutional rights and the proper balance between state and federal judicial systems. The circumstances surrounding the closure of state court cases initiated by the appellant, which were not concluded adversely but rather closed due to procedural matters related to the Estate, necessitate an understanding of when the doctrine should be applied in such transfers to avoid unjust restrictions on access to federal court.

While the Rooker-Feldman doctrine is essential for maintaining jurisdictional boundaries, its application must be judicious. Cases transferred from state court to federal court should only invoke the doctrine when there is a clear challenge to a conclusively decided state court judgment. However, the closure of state court cases initiated by the appellant, due to procedural reasons related to the Estate, does not meet the criteria for invoking the doctrine. Applying it in this context would unjustly restrict access to federal court for resolution of constitutional violations.

c. The Petitioner is not a state court loser and therefore not subject to the Rooker-Feldman Doctrine.

The Estate Closure vs. Losing on the Merits

The petitioner submits that did not lose in the state court as the estate was only closed and can be reopened and the district court has jurisdiction to entertain it and therefore does not fall under the meaning of the state loser. The Petitioner initiated proceedings in the state court concerning her deceased mother's estate which was open because, at the time, there were

several independent suits of medical malpractices, and bankruptcy foreclosure among other pending matters pertinent to the estate. The estate was open and remained so for 5 years so that all properties and claims connected to it could be resolved before the closure of the estate. Instead of the state court ruling against the petitioner on the merits of her claim, the court closed the estate without prejudice. The closure of the estate does not constitute a final order against the petitioner by the state court but a provisional or temporary closure as the state court issued the order because of the pro se petitioner's lack of legal representative on the matter. This closure was not a determination of the petitioner's claim but rather a procedural step that halted the proceedings.

Further, the appellant's suit at the state court was dismissed without prejudice thereby making the Rooker-Feldman doctrine inapplicable. The Eighth Circuit ruled in *Webb v. Smith*, No. 18-2541 (8th Cir. Aug. 28, 2019), where the plaintiff parents filed section 1983 claims against social workers alleging constitutional violations in connection with emergency protective custody of their children, that *Rooker-Feldman* did not apply: "The state courts here never issued any judgments; they entered orders in cases that were later voluntarily dismissed, which under Arkansas law is a decision 'without prejudice' and is not an adjudication on the merits."

The petitioner therefore submits that the district court had subject matter jurisdiction as he does not fall under the definition of state court loser as provided for under the Rooker-Feldman doctrine as the Estate is an ongoing matter until all issues have been resolved. Rooker -Feldman doctrine is only applicable in instances involving state court losers as per the supreme court decision in *Exxon Mobil*, 544 U. S (2004)

A critical distinction must be made between losing on the merits of a claim and the closure of an estate without prejudice. Losing on the merits implies that the court has made a substantive decision against the petitioner's claim. In contrast, closing an estate does not necessarily equate to a judgment against the petitioner. The ability to reopen the estate underscores the provisional nature of its closure and signifies that the proceedings are not definitively concluded. If the estate can be reopened, it logically follows that the petitioner's claim can be reconsidered, thereby providing her with an opportunity to present her case in a new court.

In the context of the petitioner's case, the closure of the estate does not signify a determination on the merits of her claim and therefore is not losing as per the Rooker-Feldman doctrine. Instead, it is a procedural mechanism that temporarily suspends the proceedings. This distinction is vital because the Rooker-Feldman doctrine is aimed at preventing federal courts from reviewing state court judgments, not procedural steps like the closure of an estate.

Given the aforementioned distinctions and circumstances surrounding the petitioner's case, it is clear that she does not fall under the category of a "state court loser" as envisioned by the Rooker-Feldman doctrine. The petitioner has not suffered a final adverse judgment on the merits of her claim in the state court. Instead, she has encountered a procedural obstacle in the form of the estate's closure, which can be overcome by reopening the estate. Consequently, the petitioner's pursuit of her claim in federal court does not contravene the principles underlying the Rooker-Feldman doctrine. She seeks not to overturn a state court judgment but to address a procedural issue

and illegalities by the state officer (state court judge) that has impeded her quest for justice. This court should therefore provide clarification of who exactly is the state court loser and the confines of the term 'state court loser.' In addition, the Court has a special responsibility to superintend the administration of justice in federal court, which includes setting rules to encourage compliance as well as clear interpretation of the law to avoid confusion as is evident in the application of the Rooker-Feldman doctrine, by the lower court and enforcement of the constitutional rights to avoid instances of miscarriage of justice. See *MARBURY v. MADISON*, 5 U.S. 137 (1803) and *COHENS v. COM. OF VIRGINIA*, 19 U.S. 264 (1821)

d. The trial process, and their 7th Amendment right to a jury trial

The district court's decision to dismiss the petitioner's case based on the Rooker-Feldman doctrine and Rule 58 without affording them the opportunity for discovery, the trial process, and their 7th Amendment right to a jury trial is a grave violation of fundamental principles of due process and procedural fairness. The right to a fair trial, including access to discovery, the presentation of evidence, and a jury trial, lies at the core of the American justice system. Denying these rights during the pretrial stage effectively denies the petitioner the chance to fully and fairly litigate their claims.

Firstly, the denial of discovery inhibits the petitioner's ability to gather crucial evidence and information to support their case. Discovery allows parties to obtain relevant documents, depose witnesses, and gather other evidence essential for presenting their arguments effectively. Without access to discovery, the petitioner is severely handicapped in their ability to substantiate their claims and challenge the opposing party's assertions.

Secondly, the denial of the trial process deprives the petitioner of their day in court and the opportunity to present their case before an impartial judge or jury. The trial process serves as the cornerstone of justice, providing a forum for parties to present evidence, cross-examine witnesses, and argue their positions. By bypassing the trial stage and dismissing the case summarily, the district court effectively denies the petitioner the chance to fully litigate their claims and seek redress for any wrongs they have suffered.

Furthermore, the denial of the petitioner's 7th Amendment right to a jury trial compounds the injustice of the situation. The 7th Amendment guarantees the right to a trial by jury in civil cases where the value in controversy exceeds \$20, preserving the essence of citizen participation in the judicial process. Denying the petitioner this right not only undermines their ability to seek justice but also erodes the principles of fairness and impartiality upon which the legal system is built.

In conclusion, the district court's decision to dismiss the petitioner's case without affording them the opportunity for discovery, the trial process, and their 7th Amendment right to a jury trial constitutes a flagrant violation of their constitutional rights. Such actions not only undermine the integrity of the judicial process but also deprive the petitioner of the fundamental protections guaranteed to them under the law.

While the petitioner asserts that their rights to discovery, the trial process, and a jury trial were denied, it is essential to recognize that the district court's decision was based on legal principles and procedural rules. The application of the Rooker-Feldman doctrine and Rule 58 was done within the court's discretion and in accordance with applicable laws and regulations.

Moreover, it is crucial to consider the context in which the district court made its decision. The court may have determined that the petitioner's claims were not appropriate for further litigation based on the legal arguments and evidence presented. In such cases, dismissal without affording extensive discovery or a trial may be justified to conserve judicial resources and prevent the prolongation of meritless litigation.

Additionally, while the petitioner emphasizes their right to a fair trial and access to discovery, it is essential to balance these rights with the need for efficient and effective judicial proceedings. Courts must weigh the interests of all parties involved and ensure that justice is served in a timely and equitable manner.

Therefore, while the petitioner may disagree with the district court's decision, it is imperative to recognize that such decisions are made based on legal considerations and procedural rules designed to uphold the integrity of the judicial process.

VII. CONCLUSION

For the foregoing reasons, the petitioner respectfully requests that this Court grant the writ of certiorari to review the judgment of the district court and the Seventh Circuit of Appeals. The appellant respectfully requests this court for orders certifying that the district court had subject matter jurisdiction in her matter, remand the matter to the district court for hearing on merit, and also clarify the scope of the application of the Rooker-Feldman doctrine. The intervention of this honorable court is necessary to overturn the orders of both the Seventh Circuit Court and district courts, ensuring a fair trial and safeguarding the vested fundamental rights enshrined in the Constitution.

Respectfully submitted, this 14th day of May
2024.



Kelly D. McGoffney

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of May 2024, I mailed the foregoing document with the Clerk of Court using the US Postal Service and mailed to the counsel for the Respondent.

Sign: KLP, mm