No. 24-697

In The
SUPREME COURT OF THE UNITED STATES

TERRY JOSEPH CLARK, Petitioner,

v.

DEBRA ANNE TAYLOR, RICHARD ANDREWS, ALLAN PAUL ATHA, GEORGE ANDREW MARRIOTT, ROBERT HARKEN, HARKEN LAW FIRM, LLC, ROBERT R. TITUS
Respondents

On Petition of Writ of Certiorari to the UNITED STATES COURT of Appeals for the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

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Pro Se Petitioner

December 20, 2024

QUESTIONS PRESENTED

1. The first question presented is about Rooker-Feldman, what standards exist for any and all appellate courts EXCEPTIONS to Rooker-Feldman?

2. Does Rooker-Feldman require that all Defendants in both cases be the same?

3. Are there any exceptions to Rooker Feldman as stated by the United States Supreme Court in Exxon Mobil Corp. v. Saudi Basic and seven Circuit Courts have stated?

4. Is it alright for a District Court to change the Complaint and add Counts the Complainant Plaintiff/Petitioner did not put in the Complaint?

5. Can a District Court or an Appellate Court ignore the contents of a Complaint?

PARTIES TO THE PROCEEDINGS

The following was Plaintiff in the Federal District Court and Appellant in the 8th Circuit Court of Appeals in St Louis, Missouri and is Petitioner in this Court: Terry Joseph Clark.

The Following were Defendants in the Federal District Court and Appellees in the 8th Circuit Court of Appeals in St Louis, Missouri and are Respondents in this Court: Debrah Anne Taylor, Richard Andrews, Allan Paul Atha, George Andrew Marriott, Robert Harken, Harken Law Firm, LLC, Robert R. Titus.

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

Terry J. Clark v RHF 1, LLC 19CV04727 Johnson County, Kansas Initial Partial Journal Entry of Judgment January 5, 2023 and Final Journal Entry of Judgment on July 11th, 2023. Appeal to the Appeals Court in Topeka, Kansas on October 9th, 2024, pending.

There are no other directly related proceedings within the meaning of this Court's Rule 14.1(b)(iii).

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PETITION FOR WRIT OF CERTIORARI

Petitioner Terry Joseph Clark (Clark)

Prays that a Writ of Certiorari issue to review a Judgment of the United States Court of Appeals For the 8th Circuit.

OPINIONS BELOW

The Opinion of the 8th Circuit Court of Appeals which is the subject of this Petition, dated July 29, 2024 is unpublished and attached.

The opinion for the U. S. District Court for the Western District of Missouri under Appeal is dated October 02, 2023 attached.

Kansas Judgments Partial Judgment January 5, 2023. Kansas Final Judgment July 11th, 2023.

Kansas Appeal still on Appeal: Appeals Case # 24-127-092.

JURISDICTION

The 8th Circuit Court issued its ruling on July 29th, 2024, making Petitioners Writ of Certiorari due by October 27th, 2024, since that is a Sunday that moves the due date of the Writ of Certiorari to 28th of October, 2024. The Jurisdiction of the Court is properly invoked pursuant to 28 U. S. C. 1257(a).

CONSTITUTIONAL PROVISIONS

5th Amendment in part: "NOR BE DEPRIVED OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR SHALL PRIVATE PROPERTY BE TAKEN FOR PUBLIC USE, WITHOUT JUST COMPENSAITON."

14th Amendment in part: "NOR SHALL ANY STATE DEPRIVE ANY PERON OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW, NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAW."

STATEMENT OF THE CASE

Factual Background; This is a case that has run head long into a battle between all the Circuit Courts. The only thing this Writ is concerned with is SUBJECT MATTER JURISDICTION. The case itself is very simple. A conspiracy between 4 individuals merged with their 2 attorneys and 1 LLC. The 7 Defendants do not want to pay out any money and found a very convenient patsy. A business owner that wanted a new building and found a retired person that had decades of experience bubuilding commercial buildings.

Defendant Taylor had known Plaintiff Clark since kindergarten, junior high and high school. Taylor married one of Clarks best friends after high school. That union did not workout. However Taylar had her patsy with the ultimate goal of getting Clark to build a beautiful building and not pay Clark.

Initially Clark helped Taylor look for a lot to build her new building on to house her used furniture business. As the project went along Taylor says she and Andrews conspired to defraud Central Bank and the City of Overland Park, Kansas. Both Taylor and Andrews testified that Taylor paid Andrews

$2$2,000.00 to PULL THE CONSTRUCTION PERMIT. Which is illegal. At the end of the project Clark had a heart attack and open heart surgery. Taylor saw her opportunity to move Clark out and move on without paying Clark.

December of 2016 Petitioner/Clark had a heart attack and January 9th 2017 Clark underwent Triple Bypass Surgery. In two weeks Clark was back on the job and finished a few things but RHF 1,LLC did not pay for. Clark left the Construction Job in April of 2017. Clark waited to see if he would be paid and when he was no paid the Suit was filed in Johnson County, Kansas March of 2017. The counter suit was filed by RHF 1, LLC July of 2017. Then the

was filed by RHF 1, LLC July of 2017. Then the4 Kansas Suit began. Preliminary Judgment was entered January 5th, 2023. Final Judgment was entered against Clark July 11, 2023.

Clark knew that Taylor, Andrews, Marriott lied about a lot of documents being forged by Clark because Clark had seen them sign their documents. The Defendants had pulled a very successful conspiracy. All lying and the judge believed them. Why would four witnesses lie? First Taylor owned the project and Taylor did not want to pay Clark. Since attorney and Defendant Harken represented four witnesses, Taylor, Andrews, Atha and Marriott. Harken had an attorney client privilege that no one could pierce. A fact Harken nor the witnesses/defendants did not disclose. Defendant Andrews was the General Contractor of record and he didn't want to get sued so he cooperated. Defendant Atha was the Architect on the job, and he didn't want to get sued. Defendant Marriott built the building, and he didn't want to get sued. It was easy to get all of them to say he/Clark did it.

The Plaintiff/Clark hired 2 forensic documents examiners to review the documents the Defendants said were all forged. This type of examination takes time and no way could it have been ready immediately. The last co-conspirator, Marriott, testified on the last day of trial.

There was one document that Plaintiff could not have been accused to tampering with, this affidavit was in the bank's possession because the bank notary notarized it.

Exhibit - (PLAINTIFF'S BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR NEW TRIAL TO ALTER OR AMEND JUDGMENT OR MOTION TO RECONSIDER JUDGMENT, (Filed 8-1-2023 in Kansas Court of Appeals Case # 24-127-092 record on appeal, (Exhibit #11, pages 153-156. Appendix I. Kansas Court of Appeals Record on Appeal Appellant

24-127-092).

This is the Affidavit from the Notary at Taylors bank which corroborates Exhibit #145 introduced by Defendant/Harken in the Johnon County Kansas trial, the Kansas Judge would not admit because we were out of time.

(TT Exhibit #4, Sub Exh #3, pgs 88, 89, Clark v Taylor, Western District of Missouri, Case No. 2:23-cv-04139-SRB). Appendix H.

Taylor Testimony: "Q. Do you recognize Exhibit 145 from defendants?

A.Yes.

Q. It says the "Affidavit of Debra Taylor"?A. Uh-huh, yes.

Q. All right. If we go to the third page, is that

your signature?

A. It appears to be my signature, yes.

Q. Did you ever sign this affidavit? A. No. I never

saw this affidavit."

(EXHIBIT #27, Sub Exhibit #8, in the file, Clark v Taylor et al, West District of MISOURI, Case 2:23-cv-04139-SRB), Appendix G. Forensic Document Examiner Affidavit confirming Taylors signature on (EXHIBIT #27, EXHIBIT #145, , Clark v Taylor, Western District of Missouri, Case No. 2:23-cv-04139-SRB). Appendix K.

Defendant/Harken an attorney suborned perjury from his client Taylor and 3 defendants, Richard Andrews, Alan Atha, George Marriott, Defendant Titus is an attorney and a co-conspirator.

Plaintiff's attorneys subpoenaed the Central banks notary into Court. However, on the last day of trial the Judge refused to let the Notary testify. The Judge said there was not time for the notary.

"MR. HAMMOND: If we could just schedule a time is what -- all I'm asking. THE COURT: I'm not going to allow that. We've got to be done. This case was supposed to be submitted in two days. We're on day four. You've gone way over the line."

(EXHIBIT #5, Sub Exh #4, pg 106, Clark v Taylor et al, Western District of MISOURI, Case 2:23-cv-04139-SRB). Appendix H.

This is a violation of Due Process, violations of the 5th Amendment and the 14th Amendment.

Now we are at the point where the District Court and the 8th Circuit Court just want to clear their dockets.

REASONS TO GRANT THE PETITION

Rooker-Feldman has been around since 1983. The Courts have used it to clear their dockets. In 2005 the U. S. Supreme Court took Certiorari of

"Exxon-Mobil Corp. v. Saudi Basic Indus. Corp. 544 U.S. 289, 293-94 (2005)."

Changes were made by some of the Circuit Courts, but the 8th Circuit has stood steadfast in not granting Exceptions to Rooker-Feldam even though the U.S. Supreme Court did order restrictions on Rooker-Feldman. In this case the 8th Circuit Court ignored evidence that makes Rooker-Feldman moot, Clear evidence of Perjury, Fraud, Abuse of Process, Conspiracy, RICO and Constitutional violations of many laws.

The Supreme Court should reverse the 8th Circuit and order specific rulings to unify all Circuit Courts.

"We granted certiorari, 543 U. S. ___ (2004), to resolve conflict among the Courts of Appeals over the scope of the Rooker-Feldman doctrine. We now reverse the judgment of the Court of Appeals for the Third Circuit.[Footnote 7]"

"When there is parallel state and federal litigation, Rooker-Feldman is not triggered simply by the entry of judgment in state court. This Court has repeatedly held that "the pendency of an action in the state court is no bar to proceedings concerning the same matter in the Federal court having jurisdiction."

McClellan v. Carland, 217 U. S. 268, 282 (1910); accord Doran v. Salem Inn, Inc., 422 U. S. 922, 928 (1975); Atlantic Coast Line R. Co., 398 U. S., at 295." "But neither Rooker nor Feldman supports the notion that properly invoked concurrent jurisdiction vanishes if a state court reaches judgment on the same or related question while the case remains sub judice in a federal court."

"For the reasons stated, the judgment of the Court of Appeals for the Third Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered."

RHF 1, LLC Kansas Case 19cv04727 is still sub judice.

The Kansas case the District Court and 8th Circuit Court drew into this case is sub judice. Which according to "Exxon-Mobil Corp. v. Saudi Basic Indus. Corp. 544 U.S. 289, 293-94 (2005)." Makes Rooker-Feldman moot. Plaintiff/Petitioner Clark specifically wrote in this case that Clark did not want the Courts to review the Judgment in RHF 1, LLC, but the Courts did it anyway so they could use Rooker-Feldman and clear their dockets. The Defendant's in this case were not Defendant in RHF 1, LLC in Kansas. Also the counts in the current case have never been tried anywhere.

SUPREME COURT OF THE UNITED STATES

"Although we have never addressed the precise question before us, we have held Rooker-Feldman inapplicable where the party against whom the doctrine is invoked was not a party to the underlying state-court proceeding. See De Grandy, supra, at 1006. In De Grandy, the State of Florida sought, using Rooker-Feldman, to prevent the United States from bringing a challenge under §2 of the Voting Rights Act of 1965 to the reapportionment of state electoral districts. The Florida Supreme Court, in an action initiated by the state attorney general, had already declared the law valid under state and federal law. We held that Rooker-Feldman did not bar the United States from bringing its own action in federal court because the United States "was not a party in the state court," and "was in no position to ask this Court to review the state court's judgment and has not directly attacked it in this proceeding." 512 U. S., at 1006."

2nd Circuit Gabriele v. Am. Home Mortg. Serv., Inc., 2012 WL 5908601, at *5 n.1 (2d Cir. Nov. 27, 2012)

"Thus since Gabriele does not seek to undo the state court judgment through this federal action, the Rooker-Feldman doctrine does not apply." Jurisdiction to entertain Buckskin's first three causes of action. See Decision 7–12, ECF No. 102.

The Court applied the test for Rooker-Feldman used in the Second Circuit since the Supreme Court's decision in Exxon Mobil Corp. v. Saudi Basic Industries Corp., 544 U.S. 280 (2005): (1) the federal-court plaintiff lost in state court; (2) the plaintiff

"must complain of injuries caused by a state-court judgment;" (3) the plaintiff "must invite district court

review and rejection of that judgment;" and (4) "the state-court judgment must have been rendered before the district court proceedings commenced." Green v. Mattingly, 585 F.3d 97, 101 (2d Cir. 2009) (quoting Hoblock v. Albany Cty. Bd. of Elections, 422 F.3d 77, 85 (2d Cir. 2005)); see Decision 7–8, ECF No. 102. Application of the test led the Court to conclude that its requirements were satisfied on the facts presented. See Decision 8, ECF No. 102.

Primary Holding

"The scope of the Rooker-Feldman doctrine is limited to cases brought by parties that lose at the state court level before federal court proceedings have begun and that have been harmed by the judgments at that level, which they are seeking to reverse at the federal level."

"In the case before us, the Court of Appeals for the Third Circuit misperceived the narrow ground occupied by Rooker-Feldman, and consequently erred in ordering the federal action dismissed for lack of subject-matter jurisdiction. We therefore reverse the Third Circuit's judgment."

Two of the four requirements listed are not here in the Appealed case. The State case is completely different with seven different Defendants that were not in the State Case. The Plaintiff/ Petitioner did not invite the District Court to reject the state court judgment. The District Court and Appellate Court invited themselves. The State Court Judgment is still in process and is not final.

2nd Circuit McKithen v. Brown United States Court of Appeals, Second Circuit Mar 13, 2007 481 F.3d 89 (2d Cir. 2007)

"Exxon Mobil teaches that Rooker-Feldman and preclusion are entirely separate doctrines." 422 F.3d at 86. The Hoblock panel then undertook the task of clarifying the limited scope of the Rooker-

Feldman doctrine after Exxon Mobil: From [the opinion in Exxon Mobil], we can see that there are four requirements for the application of Rooker-Feldman. First, the federal-court plaintiff must have lost in state court. Second, the plaintiff must

"complain of injuries caused by [a] state-court judgment[.]" Third, the plaintiff must "invit[e] district court review and rejection of [that] judgment." Fourth, the state-court judgment must have been "rendered before the district court proceedings commenced" — i.e., Rooker-Feldman has no application to federal-court suits proceeding in parallel with ongoing state-court litigation. The first and fourth of these requirements may be loosely termed procedural; the second and third may be termed substantive."

Again four requirements for Rooker-Feldman to be used.

Not met in the current case.

THE FEDERAL COURTS LAW REVIEW Volume 5, Issue 2 2011.

8th Circuit: "The Eight Circuit has stated that there are "multiple problems" with a fraud exception to Rooker-Feldman and that it is "unwilling to create piecemeal exceptions to Rook-er-Feldman." 151 It concluded Rooker-Feldman should be applied broadly because the issue of "whether a state court judgment should be subject to collateral attack or review is an issue best left to the state courts." 152 At least one district court within the Eighth Circuit has also

declined the opportunity to adopt a fraud exception to Rooker-Feldman.

153 The fraud exception created in re Sun Valley Foods Co. has not remained within the Sixth Circuit, but has been cited with approval by several other courts. 81 And plaintiffs have been more successful invoking the exception in some of these jurisdictions. In one interesting set of cases, the United States District Court for the Western District of Missouri recognized and applied the fraud exception from In re Sun Valley Foods Co., only to be reversed on appeal by the Eighth Circuit. 82 In Fielder v. Credit Acceptance Corp., the plaintiffs lost breach of contract actions in the Missouri state courts and subsequently filed a class action in federal district court, not to challenge the judgments of liability, but the damages awarded. 83 Specifically, the plaintiffs alleged the defendant fraudulently charged excessive post-maturity interest and argued this allegation of fraud satisfied the fraud exception to Rooker-Feldman. 84 While noting that the Eighth Circuit had not established such a fraud exception to Rooker-Feldman, the district court agreed with the plaintiffs, citing In re Sun Valley Foods Co. and subsequent cases from the Sixth Circuit and stating that "the excessive post-maturity interest charges on the contracts could easily be attributed to accident or mistake and, conceivably, fraud or deception." 85 On appeal, however, the Eighth Circuit reversed, stating that there were "multiple problems" with the district court's use of the fraud exception to Rooker-Feldman. 86 The court stated that, in general, it had been

"unwilling to create piecemeal exceptions to Rooker-Feldman." 87

It also noted the complex issues that would need to be resolved if such an exception were created, including "whether it matters if the fraud was

'extrinsic' or 'intrinsic.'" 88 Concluding that the issue of "whether a state court judgment should be subject to collateral attack or review is an issue best left to the state courts," the court held that Rooker-Feldman deprived the district court of jurisdiction. 89

The 8th Circuit is out of step with the other Circuit Courts which claim exemptions to Rooker-Feldman. The Supreme needs to take this case and clean up the Circuit Courts and remand this case with instructions to reinstate the case.

7th Circuit Jensen v. Foley, 295 F.3d 745 (7th Cir. 2002)"The district court dismissed the Jensens'

claims, concluding that they were barred bythe Rooker-Feldman doctrine. On appeal, we held that the Rooker-Feldman doctrine did not applybecause that doctrine "bars a plaintiff from bringing a § 1983 suit to remedy an injury inflicted by thestate court's decision," id. at 747 (emphasis in original), whereas "the injury that the plaintiffs herecomplain of was caused not by the state court's temporary custody order, but by the underlyingtaking of Kayla by the DCFS agents and local officers, ..." Id. at 748.

7th Circuit Hadzi-Tanovic v. Johnson United States Court of Appeals, Seventh Circuit Mar 14, 2023 62 F.4th 394 (7th Cir. 2023)

"This court ultimately affirmed dismissal of Parker's suit, but we found that Rooker-Feldman did not bar his due process claim for two reasons. 757 F.3d at 705. First, Parker had appealed the state court's ruling, and his appeal was pending when he

filed his federal lawsuit. Because the state court proceedings had not concluded when Parker initiated his federal lawsuit, Rooker-Feldman did not apply (though in such circumstances, federal courts would have powerful reasons to abstain until the state courts resolved the matter). Id. at 706.

Second, Parker accused Lyons of "vitiat[ing] the state-court process by collaborating with a friendly judge to rush the case to a foreordained judgment." 757 F.3d at 706. Under the reasoning of Nesses, this alleged corruption of the state judicial process provided a second reason that Rooker-Feldman did not bar his suit. Id. Nevertheless, we affirmed dismissal of Parker's due process claim against Lyons. The Eleventh Amendment barred Parker's suit against Lyons in his official capacity, while absolute prosecutorial immunity blocked Parker's suit against Lyons in his individual capacity. Id."

7th Circuit Kelley v. Med-1 Solutions, LLC United States Court of Appeals, "Seventh Circuit Nov 25, 2008 548 F.3d 600 (7th Cir. 2008).

B. Does Rooker-Feldman not apply becauseplaintiffs did not have reasonable opportunities to litigate their claims in state small claims court?

We proceed to plaintiffs' second argument, which is based on the "reasonable opportunity" exception to the Rooker-Feldman doctrine. The "reasonable opportunity" exception was first recognized by the

Eleventh Circuit in 1983, see Wood v. Orange County, 715 F.2d 1543, 1547 (11th Cir. 1983), and we adopted it in 1986. See Lynk v. LaPorte Superior Court No. 2, 789 F.2d 554, 564-65 (7th Cir. 1986).

Under the exception, if a plaintiff lacked a reasonable opportunity to litigate its claims in state court, then the federal law-suit can proceed."

Plaintiff/Petitioner Clark did not have a reasonable opportunities to litigate his claims in state court.

Plaintiff/s attorneys subpoenaed the central banks notary into Court. However, on the last day of trial the Judge refused to let the Notary testify. The Judge said there was not time for the notary.

TT: "MR HAMMOND: If we could just schedule a time is what -- all I'm asking.

THE COURT: I'm not going to allow that. We've got to be done. This case was supposed to be submitted in two days. We're on day four. You've gone way over the line." (EXHIBIT #5 Sub Exh #4, pg 106, Clark v Taylor, Wester District of MISSOURI, Case 2:23-cv-04139-SRB). Appendix H.

This is a violation of due Process, violations of the 5th Amendment and the 14th Amendment. lake of time is not a right a Judge has to deny a witness and an exhibit.

3rd Circuit Philadelphia Entm't & Dev. Partners, 17-1954,

2018 WL 358216 (3rd Cir. Jan. 11, 2018).

"The Third Circuit's analysis focused on the fourth prong of the Rooker-Feldman test, which asks whether the plaintiff has invited the federal court to review and reject the state court judgment. As the Third Circuit noted, there is some tension between the application of the Rooker-Feldman doctrine and the prosecution of avoidance claims under the Bankruptcy Code. This is because the avoidance of a

judgment seems to authorize what the Rooker-Feldman doctrine prohibits — appellate review of state court judgments by federal courts other than the Supreme Court. However, the tension may be more apparent than real: The U.S. Supreme Court has cautioned against applying the Rooker-Feldman doctrine too broadly. Rather, the doctrine is supposed to be confined to "limited circumstances" where "state-court losers complain[ ] of injuries caused by state-court judgments rendered before the district court proceedings commenced and invit[e] district court review and rejection of those judgments."4 Thus, as understood by the Third Circuit in PEDP, a federal court has jurisdiction "as long as the 'federal plaintiff present[s] some independent claim,' even if that claim denies a legal conclusion reached by the state court."5

"The Commonwealth Court considered whether the board had authority under the Gaming Act to revoke the slot machine license due to PEDP's noncompliance with the board's orders, and whether the requirements were sufficiently clear and afforded due process to the licensee during the revocation proceedings. On the other hand, a constructive fraudulent transfer claim in bankruptcy asks an entirely different question: whether a transfer, which may have been otherwise lawful, can nonetheless be avoided for the benefit of creditors where there was not a reasonably equivalent exchange of value. For that reason, the Third Circuit explained that the constructive fraudulent transfer analysis could be conducted without deciding the same question as the Commonwealth Court or the Pennsylvania Supreme Court had already decided, and the Rooker-Feldman doctrine was therefore not implicated."

6th Circuit Sun Valley Foods Co., 801 F.2d 186 United States Court of Appeals, Sixth Circuit.

"There is, however, an exception to the general rule that precludes a lower federal court from reviewing a state's judicial proceedings. A federal court "may entertain a collateral attack on a state court judgment which is alleged to have been procured through fraud, deception, accident, or mistake. . . ." Resolute Insurance Co. v. State of North Carolina, 397 F.2d 586, 589 (4th Cir. 1968). The district court below stated: "there has been no evidence . . . [of] facts such as fraud, accident or mistake which . . . deceived the Court into a wrong decree. . . ." We are bound to accept the district court's factual findings unless those findings are "clearly erroneous." Fed. R. Civ. P. 52(a). Arthur v. City of Toledo, 782 F.2d 565, 570 (6th Cir. 1986). The district court's findings in this case are not clearly erroneous and we therefore affirm its decision to dismiss Sun Valley's § 1983 claims against the Michigan state officials."

4th Circuit Resolute Insurance Co. v. State of North Carolina,

397 F.2d 586, 589 (4th Cir. 1968).

"While a federal court may entertain a collateral attack on a state court judgment which is alleged to have been procured through fraud, deception, accident, or mistake, there is no basis in the instant case for such an attack."

6th Circuit McCormick v. Braverman, 451 F.3d 382, 392 (6th Cir. 2006).

"Michigan has three requirements for collateral estoppel: "(1) `a question of fact essential to the judgment must have been actually litigated and

determined by a valid and final judgment'; (2) `the same parties must have had a full [and fair] opportunity to litigate the issue'; and (3) `there must be mutuality of estoppel.'"

This is where the Judgment of the District Court and the 8th Circuit fail.

None of Clark's claims have ever been litigated in any Court.

There must be mutuality of estoppel.

None of these exist in the current case.

The same parties are not in each case. Not in RHF 1 LLC in Kansas nor the current cases under review in this Writ.

7th Circuit Brokaw v. Weaver United States Court of Appeals,

Seventh Circuit Sep 13, 2002 305 F.3d 660 (7th Cir. 2002).

"Whether A.D. is presenting an independent claim rather than a claim premised on an injury caused by the state court's judgment in her child removal case is a complex question, as it is often "`difficult to distinguish' between situations in which the plaintiff is seeking to set aside a state court judgment and ones in which the claim is independent." Edwards v. Illinois Bd. of Adm. to the Bar, 261 F.3d 723, 728-29 (7th Cir. 2001) (quoting Long, 182 F.3d at 555). A.D. contends that the defendants conspired - prior to any judicial involvement - to cause false child neglect proceedings to be filed, resulting in her removal from her home in violation of her Fourth Amendment and Fourteenth Amendment substantive and procedural

due process rights. A.D. explains that she is seeking damages for the conspiracy, not for the state court's decision in the child neglect proceeding. Thus, under these circumstances, A.D. maintains she has an independent claim which is not barred by Rooker-Feldman."

"In support of her position, A.D. cites Nesses, 68 F.3d 1003. In that case, Nesses brought suit in federal court against the lawyers and some of the judges involved in a breach of contract case which he had filed in Indiana state court and lost. Id. at 1004. Nesses claimed that his opponents' lawyers used their political clout to turn the state judges against him. Id. The district court dismissed Nesses' suit for lack of jurisdiction based on the Rooker-Feldman doctrine. Id. This court rejected that conclusion, reasoning that the Rooker-Feldman doctrine did not bar Nesses' claim because his suit was not premised on a claim that the state court judgment denied him some constitutional right; rather, his federal claim was based on a right independent of the state court proceeding. As we explained in Nesses, any other conclusion would mean that "there would be no federal remedy for a violation of federal rights whenever the violator so far succeeded in corrupting the state judicial process as to obtain a favorable judgment, ..." Id. at 1005. Moreover, we reasoned that such a "result would be inconsistent with cases in which, for example, police officers are sued under nesses U.S.C. § 1983 for having fabricated evidence that resulted in the plaintiff's being convicted in a state court." Id."

"Other circuits have applied similar reasoning to arrive at this conclusion. See Holloway v. Brush, 220 F.3d 767 (6th Cir. 2000), and Ernst v. Child and

Youth Servs. of Chester County, 108 F.3d 486 (3d Cir. 1997). In Holloway, a mother brought a Section 1983 action against the county and the county social worker alleging that they had improperly interfered with her right to the custody of her children. Holloway, 220 F.3d at 772. The Sixth Circuit held that the Rooker-Feldman doctrine did not bar the mother's federal claim because she was not seeking review of the custody decision, which was an entirely separate state matter. Id. at 778-79. Instead, as the court in Holloway explained, the mother's claim presented a distinct question as to "whether certain actions in the course of those proceedings may have involved a violation of her federal constitutional rights for which the responsible party may be held liable for damages." Id. at 779. Similarly, in Ernst, 108 F.3d 486, the Third Circuit held that Rooker-Feldman did not bar a claim based on alleged constitutional violations stemming from child custody proceedings. Id. at 491-92. In Ernst, a grandmother, who had sole guardianship of her granddaughter, sued the child welfare department and case workers alleging substantive and procedural due process claims after the defendants removed and retained custody of her granddaughter for five years. Id. at 488-89. The court held that "the Rooker-Feldman doctrine did not preclude the district court from deciding those claims because a ruling that the defendants violated Ernst's right to substantive due process by making recommendations to the state court out of malice or personal bias would not have required the court to find that the state court judgments made on the basis of those recommendations were erroneous." Id. at 491-92. The court further reasoned that "it is clear that deciding

the substantive due process claims did not involve federal court review of a state court decision because Ernst's substantive due process claims were never decided by the state court." Id. at 492.

While the Rooker-Feldman doctrine bars federal subject matter jurisdiction over issues raised in state court, and those inextricably intertwined with such issues, "an issue cannot be inextricably intertwined with a state court judgment if the plaintiff did not have a reasonable opportunity to raise the issue in state court proceedings." Id. at 558.

In this case, the Rooker-Feldman doctrine does not bar A.D.'s claims because she did not have a reasonable opportunity to raise her constitutional claims in the state court child neglect proceedings."