APPENDIX A

[File date April 24, 2024
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Merrilee Stewart v. Kim J. Brown 23-3690
ORDER.]

Case No. 23-3690

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ORDER

Filed: April 24, 2024

MERRILEE STEWART

Plaintiff - Appellant

v.

JUDGE KIM J. BROWN, Franklin County Common Pleas Court; DAVE YOST, Ohio Attorney General

Defendants - Appellees

BEFORE: SUTTON, Chief Circuit Judge; NORRIS, Circuit Judge; SILER, Circuit Judge;

Upon consideration of the petition for rehearing filed by the Appellant, It is ORDERED that the petition for rehearing be, and it hereby is, DENIED.

ENTERED BY ORDER OF THE COURT
Kelly L. Stephens, Clerk
/s/ Kelly L. Stephens

Issued: April 24, 2024

APPENDIX C

[File date April 4, 2024
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Merrilee Stewart v. Kim J. Brown 23-3690
JUDGEMENT.]

FILED
Apr 4, 2024
Kelly L. Stephens, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No: 23-3690

MERRILEE STEWART,
Plaintiff-Appellant,

v.

JUDGE KIM J. BROWN, Franklin County Common Pleas Court, et al.,
Defendants-Appellees.

Before: SUTTON, Chief Judge; NORRIS and SILER, Circuit Judges.

JUDGMENT

On Appeal from the United States District Court for the Southern District of Ohio at Columbus.

THIS CAUSE was heard on the record from the district court and was submitted on the briefs without oral argument.

IN CONSIDERATION THEREOF, it is ORDERED that the judgment of the district court is AFFIRMED.

ENTERED BY ORDER OF THE COURT
/s/ Kelly L. Stephens, Clerk

APPENDIX D

[File date April 4, 2024
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Merrilee Stewart v. Kim J. Brown 23-3690
ORDER.]

FILED
Apr 4, 2024
Kelly L. Stephens,

NOT RECOMMENDED FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No: 23-3690

MERRILEE STEWART,	) ON APPEAL FROM
Plaintiff-Appellant,	) THE UNITED
v.	) STATES DISTRICT
JUDGE KIM J. BROWN,	) COURT FOR THE
Franklin County	) SOUTHERN
Common Pleas Court, et al.	) DISTRICT OF OHIO

Defendants-Appellees.

O R D E R

Before: SUTTON, Chief Judge; NORRIS and SILER, Circuit Judges.

Merrilee Stewart, an Ohio resident proceeding pro se, appeals the district court's judgment dismissing her civil complaint for lack of subject matter jurisdiction. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. See Fed. R.

App. P. 34(a). For the following reasons, we affirm the district court's judgment.

Stewart filed a civil complaint against state-court judge Kim Brown and Ohio attorney general Dave Yost, who was later dismissed from the suit. Stewart alleged various causes of action against Judge Brown, who presided over two cases involving Stewart and her former business partners, who jointly owned RRL Holding Company of Ohio, which is the sole owner of IHT Insurance Agency Group.

In 2015, after Stewart's former business partners removed her for operating a competing insurance agency, RRL and IHT filed suit against her raising various claims for relief, and Stewart raised various counterclaims. Judge Brown stayed the case pending binding arbitration, and in 2017, the arbitration panel determined that Stewart was properly removed and ordered her to sell her shares in accordance with the parties' buy/sell agreement. In 2018, Judge Brown affirmed the arbitration award. The Ohio Court of Appeals affirmed, RRL Holding Co. of Ohio v. Stewart, No. 18AP-118, 2018 WL 4692639 (Ohio Ct. App. Sept. 27, 2018), and the Ohio Supreme Court declined to review the case, RRL Holding Co. of Ohio v. Stewart, 114 N.E.3d 216 (Ohio 2018) (table). In 2019, Stewart moved to lift the stay, but Judge Brown denied the motion as moot because the binding arbitration was complete, and the case had been appealed through the state courts. In 2020, Judge Brown issued a final judgment. The Ohio Court of Appeals dismissed Stewart's appeal, and the Ohio Supreme Court declined to review the case.

While the 2015 case was pending, RRL and IHT filed a separate case requesting that Stewart be declared a

vexatious litigator. Judge Brown granted summary judgment to the plaintiffs and declared Stewart a vexatious litigator. In her federal complaint, Stewart sought as relief an injunction (1) preventing Judge Brown from applying Ohio's vexatious litigator statute against her in the 2015 case, and (2) compelling Judge Brown to lift the stay in the 2015 case so it could proceed. The district court dismissed Stewart's complaint based on the Rooker-Feldman doctrine, see D.C. Ct. of Appeals v. Feldman, 460 U.S. 462 (1983); Rooker v. Fid. Tr. Co., 263 U.S. 413 (1923), and the abstention doctrine articulated in Younger v. Harris, 401 U.S. 37 (1971).

On appeal, Stewart argues that the district court erred by relying on evidence outside the record and dismissing her complaint based on Rooker-Feldman and Younger.

Stewart first argues that the district court erred by relying on evidence outside the record when determining whether to dismiss her case rather than limiting its consideration to her complaint. This argument does not warrant relief because, in conducting the relevant analysis, the district court properly relied on public records showing what had occurred in Stewart's state-court proceedings. See *MacIntosh v. Clous,* 69 F.4th 309, 313 (6th Cir. 2023) (recognizing that a court may consider public records when ruling on a motion to dismiss); *Buck v. Thomas M. Cooley Law Sch.,* 597 F.3d 812, 816 (6th Cir. 2010) (recognizing that a court may take judicial notice of other court proceedings without converting a motion to dismiss into a motion for summary judgment).

Stewart next argues that the district court erred by dismissing her complaint based on Rooker-Feldman and Younger.

We review de novo a district court's decision to abstain from hearing a case based on Younger. Aaron v. O'Connor, 914 F.3d 1010, 1015 (6th Cir. 2019). Under Younger, a federal court may abstain from entertaining an action in three circumstances, including, as relevant here, where there is a civil proceeding involving certain orders that are uniquely in furtherance of the state court's ability to perform its judicial function. Id. at 1016. The prototypical examples of such a situation are (1) a state-court judgment debtor seeking to enjoin a state-court judge from enforcing against him a state contempt statute, and (2) a federal plaintiff seeking to enjoin the enforcement of a state-court jury verdict. Id. at 1016-17.

The district court properly concluded that Stewart's case fell under Younger because she effectively sought (1) to prevent the enforcement against her of a state-court order deeming her a vexatious litigator, and (2) reversal of a state-court judge's order denying her motion to lift the stay in her civil case. See id. at 1017 (noting that Younger applies where the plaintiff seeks an injunction requiring the recusal of a state-court judge).

Because Younger applies, we must analyze whether (1) state proceedings are currently pending, (2) the proceedings involve an important state interest, and (3) the state proceedings provide Stewart an adequate opportunity to raise her constitutional claims. See id. at 1018. A state proceeding is "currently pending" if it

was pending when the federal complaint was filed. *Loch v. Watkins,* 337 F.3d 574, 578 (6th Cir. 2003).

Stewart's state proceedings were pending when she filed her federal complaint in December 2022, as her petition for certiorari in her state case was not resolved until May 19, 2023. In addition, the state-court decisions denying Stewart's motion to lift the stay and deeming her a vexatious litigator implicate important state interests related to the functioning of the state judicial system, see *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass 'n,* 457 U.S. 423, 432 (1982), and Stewart made no effort to meet her burden of showing that she lacked an adequate opportunity to raise her constitutional claims in state court, see Aaron, 914 F.3d at 1018. Finally, there are no other circumstances present that would make Younger abstention inappropriate. See id. at 1019 (identifying the circumstances where a federal court should not abstain from hearing a case).

Because the district court properly abstained from hearing the case under Younger, we need not address the dismissal based on Rooker-Feldman.

Accordingly, we AFFIRM the district court's judgment.

ENTERED BY ORDER OF THE COURT
/s/ Kelly L. Stephens
Kelly L. Stephens, Clerk

APPENDIX G

[File date August 8, 2023
UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO

Merrilee Stewart v. Kim J. Brown 2:22-CV-4478 JUDGEMENT.]

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO

Merrilee Stewart	) Civil action no.
Plaintiff,	) 2:22-CV-4478
v.	)
Kim J. Brown, et al.,	)
Defendants.	

JUDGMENT IN A CIVIL ACTION

Judgment in favor of the defendants. This case is closed.

Date: 08/08/2023

CLERK OF COURT
s/Denise M. Shane

APPENDIX H

[File date August 8, 2023
UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO

Merrilee Stewart v. Kim J. Brown 2:22-CV-4478
OPINION AND ORDER.]

UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

MERRILEE STEWART Plaintiff, v. KIM J. BROWN, et al., Defendants.	Case no. 2:22-CV-4478 Judge James L. Graham Magistrate Judge Kimberly A. Jolson

OPINION AND ORDER

Plaintiff Merrilee Stewart has been involved in extensive litigation before Franklin County Common Pleas Court Judge Kim J. Brown since 2015. During that litigation, Judge Brown found Stewart in contempt of court on multiple occasions, imposed sanctions, and declared her a vexatious litigator. Stewart believes Judge Brown acted wrongfully and filed this action without the assistance of counsel, asserting that Judge Brown's rulings violated her state and federal statutory and constitutional rights. Judge Brown filed a motion to dismiss, asserting that the Court lacks subject matter jurisdiction and Stewart's claims fail as a matter of law. Doc. 7. For the following reasons, the Court agrees with Judge

Brown, GRANTS her motion to dismiss, and DISMISSES Stewart's complaint, Doc. 1.

I. Background

A. Factual Background

This case has its origins in a 2015 contractual dispute. Stewart and her former business partners owned RRL Holding Company Ohio, LLC ("RRL"). RRL was the sole owner and member of IHT Insurance Agency Group, LLC ("IHT"). The members of RRL, including Stewart, served as officers and on the board of managers for IHT. Stewart's business partners terminated their relationship with Stewart once it was discovered that she was operating a competing insurance company. Doc. 7 at 3. RRL and IHT then filed suit in Franklin County Common Pleas Court Case Number 15cv1542 alleging that Stewart breached fiduciary duties (the "2015 Case"). Id. Stewart counterclaimed that her termination violated an operating agreement. Id. Judge Brown presided over the 2015 Case. RRL and IHT moved for a preliminary injunction on March 2, 2015. The motion was resolved by the parties filing an agreed entry on May 28, 2015. The agreed entry required Stewart to refrain from "representing to any person, business, or entity that [she is] . . . in any way working with or for . . . IHT or RRL . . . ." Judge Brown then, on November 10, 2015, stayed the case and ordered the parties to submit their claims to binding arbitration. RRL Holding Company of Ohio, LLC v. Stewart, Case No. 15CVH-1842, Nov. 10, 2015 Order at 6. ("The Court hereby ORDERS that Plaintiffs RRL and IHT and Defendant Stewart submit their affirmative claims

against each other and defenses to such claims to binding arbitration.").

On August 10, 2016, RRL and IHT complained to Judge Brown that Stewart violated the terms of the agreed entry and "escalated her vendetta against RRL and IHT by making wild accusations of fraud and embezzlement against the companies and their employees." RRL Holding Company of Ohio, LLC v. Stewart, Case No. 15CVH-1842, August 10, 2016 Mot. for Show Cause at 1. Specifically, RRL and IHT asserted that Stewart held herself out as a representative of RRL and IHT in filing a complaint with the Ohio Civil Rights Commission, filing a claim with the Columbus Police Department that an IHT employee embezzled 5 to 10 million dollars from IHT; and filing insurance claims on behalf of IHT with two insurance companies. Id. at 3-5. Judge Brown ultimately found Stewart in contempt of court, imposed a $2,750 fine, and awarded $27,034.08 in attorney fees. RRL Holding Company of Ohio, LLC v. Stewart, Case No. 15CVHCase 1842, Mar. 15, 2019 Order at 7 (adopting magistrate judge's December 21, 2018 report and recommendation). Stewart appealed, and the Ohio Tenth District Court of Appeals reversed and remanded, finding that Judge Brown failed to address evidence brought by Stewart.1 RRL Holding Company of Ohio, LLC v. Stewart, Case No. 19AP-202 at ¶¶ 46-54 (Ohio 10th Dist. Feb. 4, 2020).

The arbitration panel reached a conclusion on December 8, 2017. It concluded that Stewart was properly terminated, and that Stewart must sell her shares in accordance with the parties' buy/sell

agreement. More specifically, the panel directed Stewart to:

> (i) sell her Units to RRL for $520,000; (ii) execute and deliver to RRL the Member Interest Redemption Agreement, and all related documents attached as Exhibits to the Buy/Sell Agreement . . . , and any other documents necessary to the effectuation of the complete transfer of Ms. Stewart's membership interest; and (iii) close such transaction within 30 days of the Award.

Doc. 7-4 and 11. Judge Brown confirmed the arbitration award on February 5, 2018. The Ohio Court of Appeals affirmed the confirmation and the Ohio Supreme Court declined jurisdiction.

Despite the arbitration award, Stewart refused to transfer her membership interest. RRL and IHT moved Judge Brown to issue a show cause order on March 7, 2018. Judge Brown granted the request on March 15, 2019 and ordered a show cause hearing to be held. The show cause hearing was referred to a magistrate judge on April 2, 2019. The magistrate judge recommended Stewart be found in contempt of court for failing to execute the transfer documents in accordance with the arbitration award and imposed a fine of $100 payable to RRL for each additional day of noncompliance, with the option that she can avoid paying the fines if she executes the documents within 15 days of Judge Brown's decision adopting the magistrate judge's report and recommendation. RRL Holding Company of Ohio, LLC v. Stewart, Case No. 15CVH-1842, Aug. 15, 2019 Magistrate Decision.

Judge Brown adopted the report and recommendation on September 9, 2019.

Stewart was insistent the issues were not yet resolved. On October 6, 2019, she asked Judge Brown to lift the November 2015 stay. Judge Brown denied the request in a November 5, 2019 order, explaining that the purpose of the stay, to permit arbitration, was complete in 2017, that the resulting arbitration award was confirmed, and that the confirmation was appealed all the way up to the Supreme Court of Ohio.

Around the same time, RRL and IHT were growing tired of Stewart's delays. On October 3, 2019, they moved Judge Brown for judgment directing that the transfer documents be signed on Stewart's behalf. Judge Brown concluded that she could deem the documents executed without a signature and did so. RRL Holding Company of Ohio, LLC v. Stewart, Case No. 15CVH-1842, June 26, 2020 Judgment Entry. Judge Brown then issued final judgment on August 26, 2020, setting forth an amortization schedule. Stewart appealed the final judgment. The court of appeals dismissed Stewart's appeal, and the Supreme Court of Ohio and the United States Supreme Court declined jurisdiction.

While the 2015 Case was pending, RRL and IHT moved in a separate case for Judge Brown to declare Stewart a vexatious litigator. RRL et al. v. Stewart, Case No. 18cv007212 (the "2018 Case"). Judge Brown granted summary judgment in the 2018 Case, declaring Plaintiff a vexatious litigator pursuant to Ohio Revised Code § 2323.52. This status indefinitely

prohibits Stewart from instituting or continuing any legal proceeding without authorization.

B. Procedural Background

Stewart began the instant proceeding on December 27, 2022 against Judge Brown and Ohio Attorney General Dave Yost in their official capacities. Compl. at ¶¶ 3-4, Doc. 1. The gravamen of Stewart's wide-spanning complaint is that Judge Brown stalled and refuses to recommence the 2015 case, which remains pending, depriving her of access to courts. See generally Doc. 1. For relief, she requests only:

> [P]rospective and permanent injunctive relief against Defendant Kim J Brown, in her official capacity as Franklin County Ohio Common Pleas Court Judge, from applying Ohio's vexatious litigator statute against the Ms. Stewart in the March 2015 case, release of the November 10, 2015 stay and allow the case to proceed to finality of all claims and defenses. Doc. 1 at pg 13.

The Court dismissed Ohio Attorney General Yost at Stewart's request. Doc. 12. On February 27, 2023, Judge Brown filed a motion to dismiss asserting that the Court lacks subject matter jurisdiction and, furthermore, Stewart's claims fail for a host of reasons. Doc. 7.

II. Analysis

Stewart asks this Court to take the extraordinary action of intervening in a state-court proceeding. Judge Brown asserts that the Court lacks subject

matter jurisdiction to do so, relying on two abstention doctrines – Younger and Rooker-Feldman.

A. Younger Abstention

Younger abstention calls for courts to abstain from entertaining an action which threatens "undue influence with state proceedings . . . ." Aaron v. O'Connor, 914 F.3d 1010, 1016 (6th Cir. 2019) (citation omitted). It applies in three circumstances – when there is an ongoing criminal prosecution, when there is a civil enforcement proceeding that is akin to a criminal prosecution, and when there is a "civil proceeding involving certain orders that are uniquely in furtherance of the state court's ability to perform their judicial functions. Id. (citation omitted).

This case presents the third circumstance. Stewart complains of Judge Brown's conduct during the 2015 Case, specifically continuing the stay, imposing sanctions, and restricting her ability to file. Judge Brown's ability to manage a case and the parties thereto, including reprimanding a litigant for noncompliance, is "uniquely in furtherance" of her ability to perform her judicial functions. See id. (finding enforcement of the state contempt statute a "prototypical example[] of the situations falling within this third category . . . .").

Next, the Court must analyze the case using the three Middlesex factors. Id. at 1018. The Middlesex factors call for a court to abstain under Younger if "(1) state proceedings are currently pending; (2) the proceedings involve an important state interest; and

(3) the state proceedings will provide the federal plaintiff with an adequate opportunity to raise his constitutional claims . . . ." Id. All three factors are satisfied here. A state proceeding is "currently pending" if at the time the federal action commenced, it had already been filed and appellate remedies had not been exhausted. Loch v. Watkins, 337 F.3d 574, 578 (6th Cir. 2003). Here, the present action was filed on December 27, 2022, after the 2015 Case was filed (March 2, 2015) and before appeals were exhausted (May 19, 2023). Second, the request to intervene in a state-court proceeding raises important issues of state-court independence. See Belill v. Hummel, 835 F.2d 877 (6th Cir. 1987)

("[T]he principles of federalism may require that a federal court abstain from granting such relief if it unduly interferes with the independence of the state court."). Third, "[t]he federal plaintiffs bear the burden of showing that state procedural law barred presentation of their constitutional claims." Nimer v. Litchfield Twp. Bd. of Trustees, 707 F.3d 699, 701 (6th Cir. 2013). Stewart has made no attempt to satisfy this burden.

In sum, the Court finds that Younger abstention applies and instructs against exercising subject matter jurisdiction over Stewart's action.

B. Rooker-Feldman Doctrine

While Younger abstention protects against a district court from meddling with ongoing state-court proceedings, the Rooker-Feldman doctrine prevents a

district court from acting as appellate court over a state court. "The Rooker-Feldman doctrine bars lower federal courts from conducting appellate review of final state-court judgments because 28 U.S.C. § 1257 vests sole jurisdiction to review such claims in the Supreme Court." VanderKodde v. Mary Jane M. Elliott, P.C., 951 F.3d 397, 402 (6th Cir. 2020) (quoting Berry v. Schmitt, 688 F.3d 290, 298 (6th Cir. 2012)). It applies only to "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." VanderKodde, 951 F.3d at 402; RLR Invs.,

LLC v. City of Pigeon Forge, Tennessee, 4 F.4th 380, 387 (6th Cir. 2021), cert. denied sub nom. RLR Invs., LLC v. City of Pigeon Forge, 211 L. Ed. 2d 569, 142 S. Ct. 862 (2022).

Crucial to the Rooker-Feldman analysis is that the claims brought in federal court seek relief from injuries caused by a state-court judgment. RLR Invs., F.4th at 388 ("If the injury's source is not the judgment, then the plaintiff's federal claim is independent of the state-court judgment and the district court has jurisdiction over the claim"). Two questions follow – whether the plaintiff seek relief from a state-court order and whether that state court order is a "judgment."

As to the first question, to determine whether a plaintiff seeks review of a state-court order, courts look to the source of the injury alleged and the relief

sought. Id. (citations omitted). As explained above, the gravamen of Stewart's complaint is that she is harmed by Judge Brown's refusal to permit the 2015 Case to proceed to conclusion. She seeks injunctive relief to remove the two roadblocks which she perceives to be holding up the case – the November 10, 2015 stay and her status as a vexatious litigator. This is not the first time Stewart sought to recommence the 2015 Case. On October 6, 2019, she asked Judge Brown to lift the November 10, 2015 stay. Judge Brown denied this request as moot in an order dated November 5, 2019. The Court finds that Stewart's present suit requires the Court to review Judge Brown's denial to lift the November 10, 2015 stay.

As to the second question, a court order is a judgment for purposes of Rooker-Feldman if it is an "investigat[ion], declar[ation], and enforce[ment of] 'liabilities as they [stood] on present or past facts and under laws supposed already to exist.'" Id. at 389. The judgment can be final or interlocutory. Pieper, 336 F.3d at 462. Judge Brown's order denying the request to lift stay resulted from an investigation, declaration, and enforcement of liabilities. Specifically, Judge Brown considered the request to lift stay within the context of the case and determined it to be moot because the purpose of the stay, to permit arbitration, was complete.

In sum, the Court finds that Stewart is a state-court loser complaining of injuries caused by a state-court judgment rendered before the present action commenced and that she is inviting the Court to

review and reject that state-court judgment. Therefore, Rooker-Feldman applies and deprives the Court of subject-matter jurisdiction.

III. Conclusion

As explained above, two abstention doctrines instruct the Court to not involve itself in Stewart's causes of action and request for it to intervene in the 2015 Case. Therefore, the Court lacks subject matter jurisdiction. Judge Brown's motion to dismiss, Doc. 7, is GRANTED. The Clerk shall enter final judgment in favor of Judge Brown.

IT IS SO ORDERED.

s/ James L. Graham
JAMES L. GRAHAM
United States District Judge

DATE: August 8, 2023

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