

APPENDIX A
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United States Court of Appeals
for the Fifth Circuit

No. 25-50309
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED
November 25, 2025

Lyle W. Cayce
Clerk

JABIAS D. JONES,

Plaintiff—Appellant,

versus

AMBER MARTINEZ, *Assistant District Attorney, Chief of Child Protection Services Unit*; CHARLES LEVY, AD LITEM,

Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 6:24-CV-5

Before SMITH, DENNIS, and HAYNES, *Circuit Judges.*

PER CURIAM:*

Federal Rule of Appellate Procedure 4(a)(1)(A) requires litigants to file a notice of appeal “within 30 days after entry of the judgment or order appealed from.” The district court entered an order of dismissal on February 20, 2025. Plaintiff Jabias Jones appealed the dismissal on April 17, 2025. Because the appeal is untimely, we lack jurisdiction to consider it. *Frew v.*

* This opinion is not designated for publication. See 5TH CIR. R. 47.5.

No. 25-50309

Young, 992 F.3d 391, 395 (5th Cir. 2021) (citing *Bowles v. Russell*, 551 U.S. 205, 209-13 (2007)).

Accordingly, the appeal is DISMISSED for want of jurisdiction.

APPENDIX B
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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

JABIAS D. JONES,
Plaintiff.

v.

JUDGE NIKKI MUNDKOWSKY, et
al.
Defendants.

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CIVIL NO. 6:24-CV-00005

ORDER GRANTING DEFENDANTS MOTION TO DISMISS

Before the Court is Defendants Judge Nikki Mundkowsky, Amber Martinez, and Charles Levy's Motions to Dismiss pursuant to Rules 12(b)(1) and 12(b)(6). The Court has considered the Motion, all relevant filings, and the applicable law. For the reasons set forth below, the Court finds that the Defendants Motions (ECF No. 5, 6, and 7) should be **GRANTED** for the following reasons.

I. BACKGROUND

A. FACTUAL BACKGROUND

In November 2021, a Texas court terminated the parental rights of a mother. ECF No. 6 at 13–14. In the process, the maternal grandmother, Jabias Jones (Plaintiff), intervened seeking sole conservatorship of her three grandchildren. *Id.* at 12. In the adoption case, the state court determined adoption was in the grandchildren's best interest and they were subsequently adopted by another family. *Id.* at 12. Plaintiff seeks revocation of the state court judgement for adoption of her three grandchildren. ECF No. 1.

B. PROCEDURAL BACKGROUND

Plaintiff seeks to reverse the adoption order signed on November 11, 2021. Plaintiff filed her complaint in the U.S. District Court for the Western District of Texas, Waco Division on January 2, 2024. Defendant Judge Nikki Mundkowsky filed her motion to dismiss on February 6, 2024, pursuant to Federal Rule of Civil Procedure 12(b)(1). ECF No. 5. Defendant Charles Levy filed his motion to dismiss on February 12, 2024, pursuant Federal Rule of Civil Procedure 12(b)(6). ECF No. 6. Defendant Amber Martinez filed her motion to dismiss on February 13, 2024, pursuant Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6). ECF No. 7.

II. LEGAL STANDARD

A complaint must be dismissed if the court lacks subject matter jurisdiction over the plaintiff's claim, Fed. R. Civ. P. 12(b)(1), or if the plaintiff fails to state a claim upon which relief may be granted. Fed. R. Civ. P. 12(b)(6). A motion to dismiss under 12(b)(1) is analyzed under the same standard as rule 12(b)(6). *See Home Builders Ass'n v. City of Madison*, 143 F.3d 1006, 1010 (5th Cir. 1998).

A plaintiff must plead sufficient facts to "state a claim to relief that is plausible on its face." *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, (2007)). In deciding a Rule 12(b)(6) motion to dismiss for failure to state a claim, the court accepts all well-pleaded facts as true, viewing them in the light most favorable to the nonmovant. *In re Katrina Canal Breaches Litig.*, 495 F.3d 191, 205 (5th Cir. 2007). A complaint does not need detailed factual allegations, but the facts alleged must be enough to raise a right of relief above a speculative level. Properly pleaded allegations of fact amount to more than just "conclusory allegations or legal conclusions masquerading as a factual conclusion." *Fernandez - Montes v. Allied Pilots Ass'n*, 987 F.2d 278, 284 (5th Cir. 1993).

III. ANALYSIS

A. Plaintiff's Claims Against Judge Mundkowsky should be dismissed

Plaintiff names Judge Mundkowsky as a party to the lawsuit but makes no factual allegations about her. ECF No. 1. Plaintiff does not assert any causes of action against Judge Mundkowsky. *See Id.* Plaintiff seeks revocation of the state court judgement for adoption of her three grandchildren. *See Id.*

i. Plaintiff's Lawsuit Against Judge Mundkowsky is Barred by the *Rooker-Feldman* Doctrine

The *Rooker-Feldman* doctrine bars a federal court from entertaining collateral attacks on state court judgements. *United States v. Shepherd*, 23 F.3d 923, 924 (5th Cir.1994). The *Rooker-Feldman* doctrine prohibits federal district court jurisdiction over “cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the federal district court proceedings commenced and inviting district court review and rejection of those judgments.” *Exxon Mobil Corp. v. Saudi Basic Indus.*, 544 U.S. 280, 281 (2005). “If the district court is confronted with issues that are ‘inextricably intertwined’ with a state judgment, the court is ‘in essence being called upon to review the state-court decision,’ and the originality of the district court’s jurisdiction precludes such a review.” *Id.* (citing *Feldman*, 460 U.S. at 482); *see also Weaver v. Tex. Capital Bank, N.A.*, 660 F.3d 900, 904 (5th Cir. 2011) (per curiam).

Here, the Plaintiff asserts her suit is an attempt to vacate the state court judgment of adoption shown through the title of her complaint: “Petition to Revoke Adoption.” ECF No. 1. Her claim is therefore inextricably intertwined with the state court’s judgment in which adoption was granted. Thus, the plaintiff’s claim is barred by the *Rooker-Feldman* doctrine and is dismissed for lack of subject matter jurisdiction pursuant to Rule 12(b)(1).

B. Plaintiff's Claim Against Amber Martinez

Amber Martinez was the Assistant District Attorney of the McClennan County Criminal District Attorney's Office. ECF No. 7. Martinez represented C.P.S. in the termination of rights case. *Id.* Plaintiff asserts that Martinez was ineffective counsel and acted improperly by not reporting Charles Levy, the guardian *ad litem* when he refused to allow Jones visitation rights to the grandchildren. ECF No. 1.

i. Plaintiff's Lawsuit is Barred by the *Rooker-Feldman* Doctrine

Plaintiff is seeking a review of the state court judgment granting adoption. ECF No. 1. Notwithstanding Plaintiff's allegations against Amber Martinez, the *Rooker-Feldman* doctrine bars a federal court from hearing collateral attacks on state court judgements. The plaintiff's claim is barred by the *Rooker-Feldman* doctrine and is appropriately dismissed for lack of subject matter jurisdiction pursuant to Rule 12(b)(1).

C. Plaintiff's Claim Against Charles Levy

In the termination suit, Charles Levy was appointed as the guardian *ad litem* and attorney *ad litem* for Plaintiff's grandchildren. ECF No. 6. The suit was brought by the Texas Department of Family and Protective Services/Child Protective Services to terminate the parental rights and allow the plaintiff's grandchildren to be adopted. *Id.* Plaintiff now alleges that Levy violated her constitutional right to due process by denying her visitation rights to the grandchildren. ECF No. 1. Additionally, Plaintiff argues Levy did not protect her rights, was ineffective as counsel, and violated the Texas Family Code. ECF No. 1.

i. Judicial Immunity

In the termination suit, Levy was the guardian *ad litem* and attorney *ad litem* for Plaintiff's grandchildren. ECF No. 6. A guardian *ad litem* must be appointed in termination cases to

represent the children's best interests. Tex. Fam. Code § 107.012. The same individual may also be appointed as the attorney *ad litem*. Tex. Fam. Code § 107.0125. The guardian *ad litem* is a court appointed role to protect the child in a termination case. The judicial immunity that protects the judge follows the court's delegation to the guardian. *Byrd v. Woodruff*, 891 S.W.2d 689, 707 (Tex. App.—Dallas 1994, writ denied). If the party is "acting as an integral part of the judicial system or an 'arm of the court' that party is entitled to absolute immunity." *Delcourt v. Silverman*, 919 S.W.2d 777, 782 (Tex. App.—Houston [14th Dist.] 1996, writ denied). The purpose is so the guardian *ad litem* may act in the child's interest "without the worry of possible later harassment and intimidation from dissatisfied parents." *Kurzawa v. Mueller*, 732 F.2d 1456, 1458 (6th Cir. 1984). Levy was acting as an integral part of the judicial system when advocating for the plaintiff's grandchildren. The common law doctrine of judicial immunity protects Levy from complaints arising from his actions while serving as guardian *ad litem* and attorney *ad litem*. Plaintiff makes no complaint against Levy that does not involve his legal representation of her grandchildren's best interest. Plaintiff's claim is barred by judicial immunity and is dismissed pursuant to Rule 12(b)(6).

ii. Impermissible Collateral Attack on Final Judgment

Plaintiff's claim is an impermissible attack on a final adoption order. Texas Family Code Section 162.012 stipulates the "validity of an adoption order is not subject to attack after six months after the date order was signed." The adoption order in this case was signed on November 11, 2021. Plaintiff filed her suit seeking to revoke the adoption on May 22, 2023. The Texas Legislature did not make an exception to the six-month limitation. *Hobbs v. Stavern*, 249 S.W.3d 1, 4 (Tex. App.—Houston [1st Dist.] 2006, pet. denied). The statute of limitations has lapsed, the Plaintiff is barred from bringing her claim.

III. CONCLUSION

Because of the reasons stated above, the court finds that Judge Mundkowsky's motion to dismiss (ECF No. 5) is **GRANTED** pursuant to Rule 12(b)(1). The court finds that Amber Martinez's motion to dismiss (ECF No. 7) is **GRANTED** pursuant to Rule 12(b)(1). The court finds that Charles Levy's motion to dismiss (ECF No. 6) is **GRANTED** pursuant to Rule 12(b)(6). All the Plaintiff's claims are hereby **DISMISSED**.

Signed this 20th day of February 2025.



Alan D Albright

United States District Judge

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