FILED
United States Court of Appeals
Tenth Circuit

August 10, 2021

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

JOREL SHOPHAR,

Plaintiff - Appellant,

v.

JOHNSON COUNTY, KANSAS; CHRISTINA GYLLENBORG; KRISSY GORSKI,

Defendants - Appellees.

No. 20-3248
(D.C. No. 2:20-CV-02280-EFM-TJJ)
(D. Kansas)

ORDER AND JUDGMENT*

Before **HARTZ**, **KELLY**, and **McHUGH**, Circuit Judges.

Plaintiff-appellant Jorel Shophar, proceeding pro se, appeals from the district court's order (1) dismissing his case for lack of subject-matter jurisdiction, and (2) imposing filing restrictions.[1] We affirm the district court's ruling as to subject

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* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Federal Rule of Appellate Procedure 32.1 and Tenth Circuit Rule 32.1.

[1] Because Mr. Shophar is a pro se litigant, we construe his "pleadings and other papers liberally and hold them to a less stringent standard than those drafted by attorneys." *Trackwell v. U.S. Gov't*, 472 F.3d 1242, 1243 (10th Cir. 2007). "[T]his

matter jurisdiction. We hold we lack jurisdiction over Mr. Shophar's appeal to the extent it challenges the district court's imposition of filing restrictions.

I. BACKGROUND

In May 2020, Krissy Gorski—the mother of Mr. Shophar's children—filed a Petition for Protection from Stalking ("PFS") pursuant to Kansas law in Kansas state district court—specifically, the Johnson County District Court. In this petition, Ms. Gorski requested that the court issue an *ex parte* temporary order restraining Mr. Shophar from taking various actions, including following, harassing, calling, or otherwise communicating with her. The Johnson County District Court granted the temporary order of protection. A week later, Judge Christina Gyllenborg of the Johnson County District Court issued an order continuing the temporary order and scheduling a hearing for a final order of protection the following month.

Before that hearing could take place, Mr. Shophar removed the case to the U.S. District Court for the Northern District of Illinois. In his notice of removal, Mr. Shophar alleged, among other things, that the PFS order is a "fraudulent foreign protection order" and that the defendants are "attempting to mischaracterize [him] and cover-up sexual abuse[] and physical abuse of the children." ROA at 8. He named Johnson County, Kansas ("Johnson County"), Judge Gyllenborg, and Ms. Gorski as respondents. They are the appellees in the instant appeal.

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rule of liberal construction stops, however, at the point at which we begin to serve as his advocate." *United States v. Pinson*, 584 F.3d 972, 975 (10th Cir. 2009).

The Northern District of Illinois subsequently transferred the case to the U.S. District Court for the District of Kansas. In an order issued on December 9, 2020, the U.S. District Court for the District of Kansas concluded it lacked subject-matter jurisdiction over Mr. Shophar's claims under the *Rooker-Feldman* doctrine, reasoning Mr. Shophar's filing merely sought review of Ms. Gorski's allegations in her PFS and of Judge Gyllengborg's subsequent order. *Id.* at 328 (citing *D.C. Ct. of App. v. Feldman*, 460 U.S. 462, 482 (1983) ("[A] United States District Court has no authority to review final judgments of a state court in judicial proceedings."); *Rooker v. Fidelity Tr. Co.*, 263 U.S. 413, 416 (1923) ("[N]o court of the United States other than [the Supreme Court] c[an] entertain a proceeding to reverse or modify [a state court's] judgment for errors.")). The district court further held that if Mr. Shophar "intended to assert any other viable ground for removal, [it could not] identify it." *Id.* at 329. It therefore dismissed Mr. Shophar's entire case for lack of subject-matter jurisdiction.

In the same order, the district court imposed filing restrictions on Mr. Shophar. Specifically, the district court stated:

> [Mr.] Shophar will be required to obtain leave of Court to submit future filings in any existing cases currently pending in the U.S. District Court for the District of Kansas, or to initiate a civil action in the U.S. District Court for the District of Kansas without representation of an attorney licensed to practice in the State of Kansas and admitted to practice before this Court.

Id. at 332. The district court permitted Mr. Shophar to file objections to these restrictions, stating: "[Mr.] Shophar may file objections in writing to the Court's Order issuing the above filing restrictions by no later than 14 days after receipt of this Order." *Id.* at 334.

Mr. Shophar filed a notice of appeal to this court on the same day—i.e., December 9. On December 23, Mr. Shophar filed an objection to the district court's imposition of filing restrictions. On December 30, 2020, the district court entered an order overruling Mr. Shophar's objection and imposing restrictions. Mr. Shophar did not file a new or amended notice of intent to appeal the filing restrictions following the district court's December 30 Order.

II. APPELLATE JURISDICTION

In "every . . . appeal, the first and fundamental question is that of jurisdiction, first, of this court, and then of the court from which the record comes." *Lang v. Lang (In re Lang)*, 414 F.3d 1191, 1195 (10th Cir. 2005) (quoting *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998)). That is, whether we have appellate jurisdiction "is antecedent to all other questions, including the question of the subject matter of the District Court." *Id.* (internal quotation marks omitted). "[T]he appellant . . . bears the burden to establish appellate jurisdiction." *EEOC v. PJ Utah, LLC*, 822 F.3d 536, 542 n.7 (10th Cir. 2016).

Here, we conclude (1) we lack jurisdiction to review the district court's imposition of filing restrictions, but (2) we have jurisdiction to review the district court's dismissal of Mr. Shophar's case for lack of subject matter jurisdiction. We explain the basis for each conclusion below.

A. District Court's Ruling Regarding Imposition of Filing Restrictions

"Aside from a few well-settled exceptions, federal appellate courts have jurisdiction solely over appeals from 'final decisions of the district courts of the

United States.'" *Rekstad v. First Bank Sys., Inc.,* 238 F.3d 1259, 1261 (10th Cir. 2001) (quoting 28 U.S.C. § 1291). The Supreme Court has defined "a 'final decision' [as] one that ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." *Ray Haluch Gravel Co. v. Cent. Pension Fund*, 571 U.S. 177, 183 (2014) (quoting *Catlin v. United States*, 324 U.S. 229, 233 (1945)).

Assuming no exception applies, an appellant who files a notice of appeal from a nonfinal decision has filed a premature appeal. In most civil cases this defect may be "cured" by obtaining a final judgment disposing of all claims and parties. *See* Fed. R. App. P. 4(a)(2) ("A notice of appeal filed after the court announces a decision or order—but before the entry of the judgment or order—is treated as filed on the date of and after the entry."); *Shepherd v. Holder*, 678 F.3d 1171, 1178 (10th Cir. 2012) (collecting cases). The Supreme Court has clarified, however, that "a notice of appeal from a nonfinal decision . . . operate[s] as a notice of appeal from the final judgment only when a district court announces a decision that would be appealable if immediately followed by the entry of judgment." *FirsTier Mortg. Co. v. Investors Mortg. Ins. Co*., 498 U.S. 269, 276 (1991). In other words, "[a] premature notice of appeal may ripen . . . upon entry of a subsequent final order, [only] so long as the order leading to the premature notice of appeal has some indicia of finality and is likely to remain unchanged during subsequent court proceedings." *Elm Ridge Expl. Co., LLC v. Engle*, 721 F.3d 1199, 1209 n.5 (10th Cir. 2013) (quotation marks omitted). Thus, a notice of appeal from a clearly interlocutory ruling does not ripen into a notice of appeal from the final judgment. *FirsTier Mortg.,* 498 U.S. at 276.

Here, the district court's December 9, 2020, order imposing filing restrictions was clearly interlocutory. It lacked "indicia of finality" and was not "likely to remain unchanged during subsequent court proceedings" because it expressly allowed Mr. Shophar to file objections. *Judd v. Univ. of N.M.,* 204 F.3d 1041*,* 1043 (10th Cir. 2000), *as amended* (Mar. 22, 2000) ("The order proposing filing restrictions was subject to Mr. Judd's objections and therefore would not have been final even if immediately followed by entry of judgment. . . . We therefore conclude that Mr. Judd's . . . notice of appeal was ineffective to appeal from either the order proposing filing restrictions or the ultimate order imposing filing restrictions."). The order did not become final until December 30, when the district court overruled Mr. Shophar's objections and ordered the restrictions to be "made final and imposed." ROA at 343. Accordingly, Mr. Shophar's notice of appeal from the December 9 Order could not ripen into a notice of appeal from the final judgment imposing filing restrictions. *See FirsTier Mortg.*, 498 U.S. at 276; *see also Judd*, 204 F.3d at 1043. And, as indicated, Mr. Shophar did not file a new or amended notice of his intent to appeal the filing restrictions following the district court's December 30 Order.

Mr. Shophar did, of course, file an appellate brief, which the Supreme Court instructs may be deemed "the 'functional equivalent' of [a] formal notice of appeal." *Smith v. Barry*, 502 U.S. 244, 248 (1992) (quoting *Smith v. Galley*, 919 F.2d 893, 895 (4th Cir. 1990), *rev'd sub nom. Smith v. Barry*, 502 U.S. 244). The Supreme Court further directs, however, that appellate briefing may be treated as such only if it

(1) "provides sufficient notice to other parties and the courts" of "the litigant's intent to seek appellate review," and (2) is "filed within the time specified by [Federal Rule of Appellate Procedure] 4." *Id.* at 248–49. Here, Mr. Shophar's appellate brief fails on both counts. First, it does not provide sufficient notice of his intent to appeal the district court's December 30 Order. The brief's introduction explicitly states: "[Mr.] Shophar[] appeals the District Court's ruling that was entered by [the] District Court of Kansas on **December 9, 2020**." Aplt. Br. at 1 (emphasis in original). The section of Mr. Shophar's brief discussing filing restrictions also does not mention the December 30 Order or mention any particular facet of that Order such that the appellees or this court may assume he intended to refer to it. Second, it does not appear from the docket that Mr. Shophar filed his appellate brief within 30 days of the December 30 Order, as required by Federal Rule of Appellate Procedure 4. *See* Fed. R. App. P. 4(a)(1) (requiring civil appellant to file notice of appeal within 30 days after entry of the judgment or order appealed from).

Finally, Mr. Shophar does not claim any exception applies that would allow this court to exercise jurisdiction absent finality. *See* Aplt. Br. at 1 (Mr. Shophar's jurisdictional statement, in which he cites only 28 U.S.C. § 1291 as the basis for this court's jurisdiction, states "The December 9, 2020 'Memorandum Decision and Order and Judgment are the final decisions of the District Court of Kansas'").

For these reasons, we lack jurisdiction to review Mr. Shophar's appeal from the district court's December 9 Order imposing filing restrictions. We therefore dismiss Mr. Shophar's appeal to the extent it pertains to that issue.

B. District Court's Ruling on Subject Matter Jurisdiction

We must also ensure we have jurisdiction over the district court's December 9 Order dismissing Mr. Shophar's appeal for lack of subject matter jurisdiction. We conclude we do. As discussed, the district court's December 9 Order both dismissed Mr. Shophar's case for lack of subject matter jurisdiction and imposed filing restrictions. Because the filing restrictions involved only collateral matters related to whether Mr. Shophar had abused the judicial process, the fact that those filing restrictions were not yet final did not prevent the dismissal order itself from being final for purposes of appeal. *See Budinich v. Becton Dickinson & Co.*, 486 U.S. 196, 199 (1988) ("A question remaining to be decided after an order ending litigation on the merits does not prevent finality if its resolution will not alter the order or moot or revise decisions embodied in the order.").

III. DISCUSSION

Having assured ourselves of our jurisdiction to do so, we now consider whether the district court correctly held it lacked subject matter jurisdiction over Mr. Shophar's case. The district court based its jurisdictional holding primarily on the *Rooker-Feldman* doctrine. The district court offered an alternative basis for dismissal of the action, and two of the appellees offered alternative bases for their dismissal as parties.[2] We need not reach these alternative grounds, however, because

[2] The district court stated that it also "appear[ed] to lack jurisdiction under the *Younger* abstention doctrine." ROA at 188; *see also Younger v. Harris*, 401 U.S. 37 (1971). Johnson County asserts (1) the district court did not have personal jurisdiction over Johnson County based on insufficient service of process, and

we affirm the district court's dismissal of Mr. Shophar's case based on the *Rooker-Feldman* doctrine.

A. Legal Standards and Standard of Review

We review de novo a district court's dismissal of an action for lack of subject matter jurisdiction. *Green v. Napolitano*, 627 F.3d 1341, 1344 (10th Cir. 2010). "The party invoking a court's jurisdiction"—here, Mr. Shophar—"bears the burden of establishing it." *Id.*

The *Rooker-Feldman* doctrine bars a federal court from exercising jurisdiction over a case where the court is being asked, in essence, to review a state court judgment. *Feldman*, 460 U.S. at 482; *Facio v. Jones*, 929 F.2d 541, 543 (10th Cir. 1991). Thus, the *Rooker-Feldman* doctrine deprives federal courts of jurisdiction to consider a "state-court loser['s]" claim, if that claim is "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." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). This prohibition extends to all state court decisions, whether final or otherwise. *Shophar v. United States*, No. 5:19-CV-04052-HLT, 2019 WL 6700405, at *3 (D. Kan. Dec. 9,

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(2) Mr. Shophar forfeited any claims against Johnson County by failing to adequately raise them in his appellate briefing. Judge Gyllenborg argues she should be dismissed as a party because (1) Mr. Shophar failed to file a complaint against her, so summons should not have issued against her under Federal Rule of Civil Procedure 4(b); (2) Mr. Shophar makes no allegations of liability against her for presiding over the PFS case; and (3) she is entitled to absolute judicial immunity. Ms. Gorski does not raise any alternative bases for affirmance.

2019), *aff'd*, 838 F. App'x 328 (10th Cir. 2020), *cert. denied*, 209 L. Ed. 2d 550 (U.S. Apr. 19, 2021).

B. Analysis

The district court explained that, under the *Rooker-Feldman* doctrine, "federal courts generally lack subject-matter jurisdiction over claims that seek review of adverse state court judgments." ROA at 328. It stated, "[t]his is the exact nature of [Mr.] Shophar's claim[:] he asserts a right to trial in U.S. District Court to review [Ms.] Gorski's allegations in her PFS petition and [Judge] Gyllenborg's subsequent order." *Id.* It therefore held it lacked subject-matter jurisdiction over Mr. Shophar's case. Construing his briefing liberally, Mr. Shophar advances two arguments against the district court's *Rooker-Feldman* holding. Neither is persuasive.

First, he contends the district court mischaracterizes his action in describing it as "a challenge to a state Court PFS." Aplt. Br. at 3. "[O]n the contrary," Mr. Shophar asserts, his "action is a challenge to the illegal and fraudulent action filed by [Ms.] Gorski and granted by [Judge] Gyllenborg, without jurisdiction." *Id.*; *see also id.* at 12 ("The PFA claim by [Judge] Gyllenborg and [Ms.] Gorski is fraud, perjury and harassment."). Far from undermining the district court's interpretation of the nature his action, Mr. Shophar's briefing confirms the district court correctly construed it. He expressly states his action is "a challenge to the" state-court "action filed by [Ms.] Gorski and granted by [Judge] Gyllenborg." *Id.* at 3. Mr. Shophar's first argument therefore fails.

Second, Mr. Shophar contends the "Rooker-Feldman Doctrine does not trump over [the] Due Process Clause." *Id.* at 6. He contends he was deprived of due process because Judge Gyllenborg granted the protection order against him "without submission of evidence, witnesses, or giving [him] the opportunity to be heard," and without affording him "the opportunity of confrontation and cross examination." *Id.* at 7. This argument, too, is unavailing. Mr. Shophar cites no legal authority supporting an exception based on due process to the *Rooker-Feldman* doctrine. This court has rejected similar exceptions to the doctrine in the past. In *Tso v. Murray*, for example, we rejected the appellant's arguments that this court should apply "void ab initio" and "extrinsic fraud" exceptions to the *Rooker-Feldman* doctrine. 822 F. App'x 697, 701 (10th Cir. 2020) (unpublished).[3] We explained:

> We have not adopted the "void ab initio" exception, and we are not persuaded it would be appropriate to do so here. *See Anderson v. Private Capital Grp.*, 549 F. App'x 715, 717–18 (10th Cir. 2013) [(unpublished)] (noting that this court would create a circuit split were it to adopt the "void ab initio" doctrine outside of the bankruptcy context). And we already have declined to adopt the "extrinsic fraud" exception. *See Tal v. Hogan*, 453 F.3d 1244, 1256 (10th Cir. 2006) ("It is true that new allegations of fraud might create grounds for appeal, but that appeal should be brought in the state courts.").

Id. (footnote omitted).

In the absence of any meaningful briefing from Mr. Shophar as to why we should recognize a due process exception to the doctrine, we decline to do so now. Although we liberally construe Mr. Shophar's appellate brief and his other pro se

[3] We cite *Tso v. Murray,* 822 F. App'x 697 (10th Cir. 2020), an unpublished case, for its persuasive value. Fed. R. App. P. 32.1; 10th Cir. R. 32.1.

filings, "the court cannot take on the responsibility of serving as the litigant's attorney in constructing arguments . . . . [That is,] 'we cannot fill the void [in a pro se litigant's briefing] by crafting arguments and performing the necessary legal research.'" *Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840–41 (10th Cir. 2005) (quoting *Anderson v. Hardman*, 241 F.3d 544, 545 (7th Cir. 2001)); *see also, e.g.*, *Firstenberg v. City of Santa Fe*, 696 F.3d 1018, 1024 (10th Cir. 2012) ("[A]s we often reiterate, the generous construction that we afford pro se pleadings has limits, and we must avoid becoming the plaintiff's advocate.").

Finally, "if there is any respect in which [Mr. Shophar's] claims fall outside the reasons for dismissal relied upon by the district court, [he] ha[s] not explained it to us." *Shophar*, 838 F. App'x at 333. Indeed, as we explained the last time Mr. Shophar filed an appeal to this court:

> [W]here the plaintiff ha[s] made h[is] complaint unintelligible by scattering and concealing in a morass of irrelevancies the few allegations that matter . . . it hardly matters whether the district court dismissed [his] complaint because it believed all of h[is] claims were barred by *Rooker-Feldman* or simply because it could not separate the wheat from the chaff.

Id. (internal quotation marks omitted). Then, as now, "[i]t was not the district court's job to stitch together cognizable claims for relief from the wholly deficient pleading that [Mr. Shophar] filed. As we have frequently noted, we are loath to reverse a district court for refusing to do the litigant's job." *Id.* (quotation marks omitted).

For these reasons, we hold the district court did not err in dismissing Mr. Shophar's federal action as barred under the *Rooker-Feldman* doctrine. *Exxon*

Mobil Corp., 544 U.S. at 284; *PJ ex rel. Jensen*, 603 F.3d at 1193; *see also Shophar*, 838 F. App'x at 332–33 (explaining to Mr. Shophar that under *Rooker-Feldman*, "the [district and circuit] federal courts have no authority—that is, no jurisdiction—to give relief from state-court judgments").

IV. CONCLUSION

We affirm the district court's dismissal of Mr. Shophar's case for lack of jurisdiction. We dismiss Mr. Shophar's appeal of the district court's order imposing filing restrictions because we lack jurisdiction over that aspect of Mr. Shophar's appeal.

Entered for the Court

Carolyn B. McHugh
Circuit Judge