

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Ezor v. Goetz

698 F. App'x 442 (9th Cir. 2017) · Decided October 4, 2017

SUMMARY

The Ninth Circuit affirmed the dismissal of A. Edward Ezor’s federal and state claims arising from probate proceedings. The court held that the claims constituted a forbidden de facto appeal of a final state-court judgment under the Rooker-Feldman doctrine and rejected the asserted extrinsic-fraud exception, bias arguments, and other appellate requests.

CASE DETAILS

COURT	United States Court of Appeals for the Ninth Circuit
WRITING FOR THE COURT	Silverman; Smith; Tallman
JURISDICTION	Federal
DECIDED	October 4, 2017
DISPOSITION	affirmed
PROCEDURAL POSTURE	Pro se plaintiff appealed from the district court's dismissal of federal and state law claims arising from probate proceedings.
STANDARD OF REVIEW	De novo review of dismissal under the Rooker-Feldman doctrine.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	A. Edward Ezor v. Goetz, Aldrich, Hitching, Estate of H. Walter Croskey

TOPICS

subject matter jurisdiction

appellate procedure

standard of review

probate

civil procedure

PRACTICE AREAS

civil procedure

appellate procedure

probate

QUESTIONS PRESENTED

1. Whether the district court had subject matter jurisdiction over Ezor’s claims under the Rooker-Feldman doctrine.
2. Whether the extrinsic-fraud exception to Rooker-Feldman applied.

3. Whether Ezor's arguments concerning judicial bias and disqualification were properly before the court.
4. Whether Ezor's motions to strike the answering brief and to interplead disputed funds should be granted.

HOLDINGS

1. The district court properly lacked subject matter jurisdiction because Ezor's claims constituted a forbidden de facto appeal from a prior final state court judgment.
2. The extrinsic-fraud exception did not apply because Ezor alleged no facts showing that extrinsic fraud prevented him from presenting his claims in state court.
3. The court rejected Ezor's bias and disqualification contentions as unsupported by the record.
4. The court would not consider matters not specifically and distinctly raised and argued in the opening brief or arguments and allegations raised for the first time on appeal.

KEY QUOTATIONS

"It is a forbidden de facto appeal under Rooker-Feldman when the plaintiff in federal district court complains of a legal wrong allegedly committed by the state court, and seeks relief from the judgment of that court."

FACTUAL BACKGROUND

Ezor brought federal and state law claims arising from probate proceedings and challenged a prior final state court judgment. He alleged that the state-court proceedings involved legal errors and asserted that Magistrate Judge Rosenberg was biased and should have been disqualified. The court found no facts showing that extrinsic fraud prevented Ezor from presenting his claims in state court.

PROCEDURAL HISTORY

The district court dismissed Ezor's action for lack of subject matter jurisdiction under the Rooker-Feldman doctrine. Ezor appealed, challenged the dismissal and the handling of alleged judicial bias, sought to strike the answering brief, and moved to interplead disputed funds. The Ninth Circuit affirmed the dismissal and denied the ancillary motions.

DISPOSITION

affirmed

CASES CITED

- Noel v. Hall, 341 F.3d 1148, 1154, 1163 (9th Cir. 2003)
- Bianchi v. Rylaarsdam, 334 F.3d 895, 901-02 (9th Cir. 2003)
- Kougasian v. TMSL, Inc., 359 F.3d 1136, 1140 (9th Cir. 2004)
- Padgett v. Wright, 587 F.3d 983, 985 n.2 (9th Cir. 2009)

OPINION

PER CURIAM.

MEMORANDUM ** A. Edward Ezor appeals pro se from the district court's judgment dismissing his action alleging federal and state law claims arising from probate proceedings. We have jurisdiction under 28 U.S.C. § 1291.

We review de novo a dismissal under the Rooker-Feldman doctrine. *Noel v. Hall*, 341 F.3d 1148, 1154 (9th Cir. 2003). We affirm. The district court properly concluded that it lacked subject matter jurisdiction under the Rooker-Feldman doctrine over Ezor's claims against defendants Goetz, Aldrich, Hitching, and the Estate of H. Walter Croskey because these claims amounted to a forbidden "de facto appeal" of a prior, final state court judgment.

See *id.* at 1163 ("It is a forbidden de facto appeal under Rooker-Feldman when the plaintiff in federal district court complains of a legal wrong allegedly committed by the state court, and seeks relief from the judgment of that court."); *Bianchi v. Rylaarsdam*, 334 F.3d 895, 901-02 (9th Cir. 2003) (due process claim against state court judge for bias was "inextricably intertwined" with the state court's decision, and thus beyond the federal court's subject matter jurisdiction).

Contrary to Ezor's contention, the extrinsic fraud exception to the Rooker-Feldman doctrine does not apply because Ezor did not allege any facts showing that he was prevented from presenting his claims in state court. See *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1140 (9th Cir. 2004) (Rooker-Feldman doctrine does not apply if extrinsic fraud prevented a party from presenting his claim in state court).

We reject as unsupported by the record Ezor's contentions that Magistrate Judge Rosenberg was biased and should have been disqualified. We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time on appeal. See *Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

Ezor's request to strike the answering brief, set forth in his reply brief, is denied.. Ezor's motion for an order to interplead disputed funds (Docket Entry No. 11) is denied. AFFIRMED. This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.