

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 07-2866

JAMES E. NIXON, SR.

Appellant

v.

TIOGA COUNTY FAMILY SERVICES;
JUDY TARBOX, Volunteer; DONETTE POST, Case Manager;
MELINDA HASKINS, Case Manager; MARGARET HAYES, Therapist;
MARY CAPKOVITZ, Therapist; MARK CLARK, Therapist;
CHERYL DAVIS, Homemaker; PENNY COCHENOUR, Reach Worker;
JENNY TAYLOR, Associate; DONALD BENNELLI, Reach Therapist;
EILEEN ROBBINS, Counselor; JEN PHILLIPS, Counselor;
SALLY LUPINI, Foster Parents Rep.; JACK DETTINGER, Case Manager;
JOHN KRAVIS, Ex Director; SAMUEL GREEN, Director;
DENNIS STAGER, Supervisor; JAMES MONTEL, Supervisor;
DEBBIE HARGARTHER, Supervisor; DIANE HOUGHTALING, Case Manager;
DIANE ROBINSON, Supervisor; COLLEEN BAKER, Case Manager;
MARY STRINGHAM, Social Worker; LORNA HARER, Case Manager;
STEVE OWLETT, Esq., for Tioga Co. Family Services;
OFFICE OF CHILDREN, YOUTH and FAMILIES; MARK ZARA, Investigator;
ROBERT YECK, Supervisor; LEONARD POOLES, Regional Director;
Dr. TASWIR, Psychiatrist; TAMMY WESTBYGIBSON, Foster Mother;
CAROL ALLENS, Foster Mother; LENORE URBANO, Esq., For Guardian Ad Litem;
FELICTY ANN FORD, Natural Mother; THOMAS WALRATH, Esq., For Natural
Mother; DAVID WINTERSTEIN, For Natural Father (Plaintiff)

On Appeal From the United States District Court
For the Middle District of Pennsylvania
(D.C. Civ. No. 07-cv-00142)
District Judge: Honorable William W. Caldwell

Submitted For Possible Dismissal Under 28 U.S.C. § 1915(e)(2)(B) or Summary Action
Under Third Circuit LAR 27.4 and I.O.P. 10.6
September 20, 2007

Before: MCKEE, FUENTES AND VAN ANTWERPEN, CIRCUIT JUDGES.

(Filed October 4, 2007)

OPINION

PER CURIAM

James E. Nixon appeals from the dismissal of his complaint by the United States District Court for the Middle District of Pennsylvania. We will affirm the judgment of the District Court.

Nixon is a state prisoner currently incarcerated at the Rockview State Correctional Institution at Bellefonte, Pennsylvania. He filed his complaint in District Court pursuant to 42 U.S.C. § 1983, referencing his unsuccessful proceedings in the state courts concerning visitation with his two children who are under the care of the Tioga County Department of Human Services.¹ During his incarceration, Nixon had telephone contact with his children, but in March 2003, after a hearing, the Tioga County Court of Common Pleas suspended his telephone visitation. Nixon later filed a petition for visitation, which

¹ Nixon referred to the appellate proceedings docketed in the Pennsylvania Superior Court at 345 MDA 2004, and in the Pennsylvania Supreme Court at 211 MM 2004. The background information is supplied by the state court materials filed in those proceedings.

was denied after a hearing in February 2004. Nixon appealed to the Pennsylvania Superior Court. In his brief, he argued, among other things, that he was denied due process because he was not notified of the February 2004 hearing, and thus he could not present evidence and rebut the testimony of the Tioga County Department of Human Services witnesses. The Pennsylvania Superior Court affirmed the trial court's decision in September 2004. Nixon unsuccessfully filed with the Pennsylvania Supreme Court a motion for extension of time to file a petition for allowance of appeal. On January 24, 2005, the Pennsylvania Supreme Court denied Nixon's subsequent motion for reconsideration.

Nixon then filed his civil rights complaint, dated January 20, 2007, asserting that the defendants lied, covered up mistakes or negligent acts, falsified documents related to his children, or made slanderous comments about him in connection with the state court proceedings. He sought reinstatement of visitation privileges with his youngest child and punitive damages. The District Court granted Nixon's motion for leave to proceed in forma pauperis under 28 U.S.C. § 1915 and dismissed the complaint for lack of jurisdiction based upon the Rooker-Feldman doctrine.² Nixon filed a motion for reconsideration, which the District Court denied. Nixon appeals and proceeds in forma

² The doctrine is named for Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923), and District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983).

pauperis on appeal.

We have jurisdiction over this appeal under 28 U.S.C. § 1291 and exercise plenary review of the District Court's application of the Rooker-Feldman doctrine. See Turner v. Crawford Square Apartments III, L.P., 449 F.3d 542, 547 (3d Cir. 2006). The Rooker-Feldman doctrine applies 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." Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284 (2005).

Nixon asserted in his motion for reconsideration that the defendants' lies, perjury, and defamatory statements violated his civil rights as a father and a citizen of the United States. However, despite Nixon's apparent attempt in his motion for reconsideration to raise claims not barred by Rooker-Feldman by asserting that he filed suit seeking redress for the wrongs committed by the defendants, we are hard-pressed to agree. This is especially true given that Nixon's motion for reconsideration invited the District Court to review the state court record and transcripts and that his complaint specifically sought reinstatement of the suspended visitation rights. Though Nixon's allegations are phrased in terms of the defendants' actions during the state court proceedings, the injury for which he seeks redress was caused by the state court judgment. Thus, we conclude that the District Court lacked jurisdiction over these claims. See Holt v. Lake County Bd. of Comm'rs, 408 F.3d 335, 336 (7th Cir. 2005) (a litigant may not circumvent the effect of

Rooker-Feldman by styling the complaint as a civil rights action) (per curiam).³

Because we conclude that his appeal presents us with no substantial question, see Third Circuit L.A.R. 27.4 and I.O.P. 10.6, we will summarily affirm the District Court's order.

³ Moreover, we note that several of the defendants appear to be private individuals, including the children's natural mother. To the extent that Nixon attempted to raise independent civil rights claims not barred by Rooker-Feldman, it does not appear that any such claims could be stated under section 1983, because there was no suggestion in the complaint that those individuals acted under color of state law.