

Michael S. Gogola
508 BAY ST APT 7
WAYCROSS GA 31501-6306

July 19, 2005

Appeal Number: 05-10668-DD
Case Style: Michael S. Gogola v. James Zingale
District Court Number: 04-00417 CV-FTM-29-DNF

✓ CC: Michael S. Gogola

CC: Joseph Hwan-Yul Lee

CC: Hon. John E. Steele

CC: Hon. Douglas N. Frazier

CC: Administrative File

United States Court of Appeals

Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

Thomas K. Kahn
Clerk

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MEMORANDUM TO COUNSEL OR PARTIES

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Enclosed is a copy of the court's decision filed today in this appeal. Judgment has this day been entered pursuant to Rule 36 of the Federal Rules of Appellate Procedure. Fed.R.App.P. 39, 40 and 41, and the corresponding circuit rules govern costs and attorney's fees, petitions for rehearing, and mandate, respectively.

The time for filing a petition for rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing or rehearing en banc is timely only if received in the clerk's office within the time specified in the rules. The timing, format, and content of a motion for attorney's fees and an objection thereto is governed by 11th Cir. R. 39-2 and 39-3.

Please note that a petition for rehearing en banc must include in the Certificate of Interested Persons a complete list of all persons and entities listed on all certificates previously filed by any party in the appeal. See 11th Cir. R. 26.1-1. In addition, a copy of the opinion sought to be reheard must be included in any petition for rehearing or petition for rehearing en banc. See 11th Cir. R. 35-6(k) and 40-1.

Counsel appointed under the CRIMINAL JUSTICE ACT must file a CJA voucher claiming compensation for time spent on the appeal no later than 60 days after either issuance of mandate *or* filing with the U.S. Supreme Court of a petition for a writ of certiorari (whichever is later).

Pursuant to Fed.R.App.P. 39, costs taxed against appellant.

For questions concerning the issuance of this court's decision, please call the "Reply To" number shown below. For all other questions, please call Tunstall, Lois (404) 335-6173.

Sincerely,

THOMAS K. KAHN, Clerk

Reply To: Jarvis Jackson (404) 335-6161

Encl.

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 05-10668
Non-Argument Calendar

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
JULY 19, 2005
THOMAS K. KAHN
CLERK

D. C. Docket No. 04-00417-CV-FTM-29-DNF

MICHAEL S. GOGOLA,

Plaintiff-Appellant,

versus

JAMES ZINGALE,

Defendant-Appellee,

FLORIDA DEPARTMENT OF REVENUE, et al.,

Defendants.

Appeal from the United States District Court
for the Middle District of Florida

(July 19, 2005)

Before ANDERSON, BIRCH and CARNES, Circuit Judges.

PER CURIAM:

Michael S. Gogola, proceeding pro se, appeals the district court's dismissal of his civil rights action for lack of jurisdiction. Because Gogola's claims regarding Florida's alimony laws were "inextricably intertwined" with the state court's final judgment of dissolution of his marriage, and he had a reasonable opportunity to raise his claims in state court, his instant action was barred by the Rooker-Feldman¹ doctrine. Accordingly, the district court lacked jurisdiction to review Gogola's claims. We **AFFIRM**.

I. BACKGROUND

In an amended verified complaint, Gogola filed an action against James Zingale, the Chairman and Executive Director of the Florida Department of Revenue, and the Florida Department of Revenue (collectively "the defendants"), and maintained that Florida's "Dissolution of Marriage" alimony provisions ("the alimony provisions"), including Fla. Stat. § 61.08, were unconstitutional under the United States Constitution because they violated (1) his rights to privacy and equal protection under the Fourteenth Amendment, and (2) the Thirteenth Amendment's

¹ The Rooker-Feldman doctrine is based on the following two cases: District of Columbia v. Court of Appeals v. Feldman, 460 U.S. 462, 103 S. Ct. 1303 (1983), and Rooker v. Fidelity Trust Co., 263 U.S. 413, 44 S. Ct. 149 (1923).

prohibition against involuntary servitude.² He also asserted that the alimony provisions (1) were unconstitutional under the Florida Constitution because they violated his right to privacy, right to equal protection, and inalienable basic rights, and (2) violated Florida Supreme Court precedent and public policy.

In support of his complaint, Gogola indicated the following: (1) in 1969, he married Sandra S. Gogola ("Sandra"); (2) in 1999, the 20th Judicial Circuit in Lee County, Florida, entered a final judgment of dissolution of marriage, in which the court ordered him to pay alimony to Sandra until he or Sandra dies, or Sandra remarries; (3) he has tried to comply with the court's alimony order, but occasionally has failed to make payments, and several contempt orders have been entered against him; (4) although he has not previously raised his federal claims in any court, he has raised some of his state claims in state court, but the court denied him relief; and (5) the Second District Court of Appeals dismissed his appeal without analysis or opinion. Gogola requested a declaratory judgment that the alimony provisions violated the United States Constitution, the Florida Constitution, Florida Supreme Court precedent, and Florida public policy.

² The complaint also included (1) the U.S. District Court, Middle District of Florida, and (2) Patricia C. Fawcett, U.S. District Court Chief Judge, as defendants. Gogola later voluntarily dismissed these parties.

Gogola attached, inter alia, documents relating to the 20th Judicial Circuit's final judgment of dissolution of marriage. These documents indicate that, after the 20th Judicial Circuit ordered Gogola to pay alimony to Sandra, Gogola filed a motion, requesting, inter alia, a declaratory judgment that the alimony provisions (1) were unconstitutional under the Florida Constitution, and (2) violated the Due Process Clause of the United States Constitution. The 20th Judicial Court entered an order denying Gogola relief, and the Second District Court of Appeal dismissed Gogola's appeal on the ground that the order was nonappealable.

The defendants filed a motion to dismiss the amended verified complaint. The defendants argued, inter alia, that the Rooker-Feldman doctrine barred the district court from reviewing Gogola's claims because (1) Gogola was a party to the state court dissolution proceedings, (2) the final judgment of dissolution of marriage was a final judgment on the merits, (3) Gogola had a reasonable opportunity to raise his federal claims during the dissolution proceedings and did raise some of his claims therein, and (4) Gogola's federal claims were inextricably intertwined with the state court's judgment. Gogola responded that the defendants' motion to dismiss should be denied and argued, inter alia, that (1) because he was raising a general constitutional challenge to the alimony provisions, the Rooker-Feldman doctrine was inapplicable. (2) since he was not asking the court to issue a

divorce, alimony, or custody decree, the court should not abstain from reviewing his claims, and (3) the court had supplemental jurisdiction over his state claims.

The district court granted the defendant's motion to dismiss. The district court found that the Rooker-Feldman doctrine barred it from reviewing Gogola's claims that the alimony provisions were unconstitutional or a violation of federal law because (1) these claims were inextricably intertwined with the state court's dissolution judgment, since Gogola was, in essence, seeking to reverse the portion of the order that required him to pay alimony, and (2) Gogola had a reasonable opportunity to raise his claims during the dissolution proceedings. Citing Doe v. Pryor, 344 F.3d 1282 (11th Cir. 2003), the court also found that Gogola lacked standing to raise a general challenge to the constitutionality of the alimony provisions. Gogola filed a motion to reconsider and argued that the court failed liberally to construe his pleadings and that the court's reliance on Doe was misplaced since his case was distinguishable from Doe. The district court found that Gogola failed to demonstrate good cause to justify the remedy of reconsideration and denied Gogola's motion.³

³ On appeal, Gogola has failed to raise any arguments relating to how the district court erred by denying his motion for reconsideration. Issues not argued on appeal are deemed waived, and a passing reference in an appellate brief is insufficient to raise an issue. Greenbriar, Ltd. v. City of Alabaster, 881 F.2d 1570, 1573 n.6 (11th Cir. 1989). Accordingly, Gogola has waived his appeal of the district court's denial of his motion for reconsideration. See id.

II. DISCUSSION

On appeal, Gogola argues that the district court erred by finding that it lacked jurisdiction under the Rooker-Feldman doctrine. Specifically, Gogola asserts that: (1) his action was a constitutional civil rights action not based on family law; (2) he was not seeking to overturn a state court judgment; (3) he did not have a reasonable opportunity to raise his federal claims in state court; and (4) judicial economy mitigates against abstention.

We review de novo a dismissal for lack of subject matter jurisdiction.

Williams v. Best Buy Co., 269 F.3d 1316, 1318 (11th Cir. 2001). “The Rooker-Feldman doctrine places limits on the subject-matter jurisdiction of federal district courts and courts of appeal over certain matters related to previous state court litigation.” Goodman v. Sipos, 259 F.3d 1327, 1332 (11th Cir. 2001).

Under this doctrine, “federal courts, other than the . . . Supreme Court, have no authority to review the final judgments of state courts,” which “extends not only to constitutional claims presented or adjudicated by a state court, but also to claims that are ‘inextricably intertwined’ with a state court judgment.” Id. (citation and quotations omitted). “A federal claim is inextricably intertwined with a state court judgment if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it.” Id. (citation and quotations omitted).

Nevertheless, “even if a claim is ‘inextricably intertwined’ with the state court’s judgment, the doctrine does not apply if the plaintiff had no ‘reasonable opportunity to raise his federal claim in state proceedings.’” Id. (citation and quotations omitted).

The district court did not err by granting the defendant’s motion to dismiss because Gogola’s suit was barred by the Rooker-Feldman doctrine. Although Gogola asserts that the Rooker-Feldman doctrine did not bar his federal action because he was not trying to overturn the state court’s final judgment of dissolution of marriage, the Rooker-Feldman doctrine also prevents a party from raising claims that are “inextricably intertwined” with a state court judgment. See Goodman, 259 F.3d at 1332. Gogola’s claims were “inextricably intertwined” with the state court’s judgment because Gogola, by challenging the constitutionality of the alimony statute, in essence, was attempting to reverse the state court’s order regarding the payment of alimony. Additionally, Gogola had a reasonable opportunity to raise his federal claims in state court and, in fact, did file a motion requesting a declaratory judgment that the alimony provisions violated the Due Process Clause of the United States Constitution, which the state court denied. See

III. CONCLUSION

The district court correctly found that this action is barred by application of the Rooker-Feldman doctrine. Accordingly, we **AFFIRM**.