

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

August 10, 2021

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

YOURAS ZIANKOVICH,

Plaintiff - Appellant,

v.

MEMBERS OF THE COLORADO
SUPREME COURT, each of them
individually and in their official capacity;
WILLIAM R. LUCERO, in his individual
and official capacity,

Defendants - Appellees.

No. 20-1314
(D.C. No. 1:20-CV-00158-WJM-SKC)
(D. Colo.)

ORDER AND JUDGMENT*

Before **MATHESON, BRISCOE, and CARSON**, Circuit Judges.

Youras Ziankovich is a New York attorney who was disciplined by the Colorado Office of Attorney Regulation Counsel (OARC) for practicing law in federal courts and agencies in Colorado without a Colorado law license. During the disciplinary proceeding, he challenged the state’s authority to discipline him because

* 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 This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel.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 Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

he did not practice law in Colorado state courts or agencies. Colorado's Presiding Disciplinary Judge, William J. Lucero (PDJ), rejected Ziankovich's jurisdictional challenge, as did the three-member disciplinary hearing board (Board) when it issued its disciplinary decision, and the Colorado Supreme Court when it affirmed the Board's sanction. This appeal involves Ziankovich's second federal lawsuit raising various constitutional claims under 42 U.S.C. § 1983 challenging the state's authority to discipline him. In the first suit, he named Colorado's Attorney Regulation Counsel and an OARC attorney, both acting through the OARC, as defendants. The district court granted summary judgment for the defendants and we affirmed. Ziankovich then filed the suit at issue here asserting essentially the same claims, this time against the individual Members of the Colorado Supreme Court (the Justices) and the PDJ, each individually and in their official capacities (collectively, the Defendants). The district court dismissed the complaint under Fed. R. Civ. P. 12(b)(1) and 12(b)(6), concluding the claims were barred on various jurisdictional and immunity grounds. Ziankovich now appeals that order and, exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

BACKGROUND

This is Ziankovich's fourth appeal to this court involving his two federal lawsuits. Our decisions in his first two appeals described in some detail the factual and procedural background of the state disciplinary proceeding, his unsuccessful appeal to the Colorado Supreme Court, and his first federal lawsuit and related appeals. *See Ziankovich v. Large (Ziankovich I)*, 745 F. App'x 800 (10th Cir. 2018),

and *Ziankovich v. Large (Ziankovich II)*, 833 F. App'x 721 (10th Cir. 2020).¹ We do not repeat that background here, other than as necessary to provide context for our consideration of his arguments in this appeal.

Early in the disciplinary proceeding, Ziankovich moved to dismiss OARC's complaint against him, arguing that the Colorado Supreme Court and the PDJ, who was appointed by that Court to preside over state disciplinary proceedings,² lacked "jurisdiction to discipline him under the Colorado Rules of Professional Conduct because he is not practicing law in Colorado [within the meaning of the rules], and his law practice is limited to federal immigration cases." R. Vol. 1 at 20. The PDJ denied the motion, concluding that under applicable Colorado rules, the Colorado Supreme Court has jurisdiction over all matters involving the regulation of the practice of law in Colorado, including the discipline of attorneys who are not licensed in Colorado but who represent clients in the state.³ In so concluding, the PDJ

¹ Ziankovich's third appeal sought review of two district court orders denying his motions for a temporary restraining order and preliminary injunction. Because neither order was immediately appealable, we dismissed the appeal for lack of jurisdiction. *See Ziankovich v. Members of the Colo. Sup. Ct.*, No. 20-1195, Order at 3 (10th Cir. July 2, 2020).

² *See* Colo. R. Civ. P. 251.16(a), (c) (establishing the Office of the Presiding Disciplinary Judge, providing that the PDJ is appointed by and serves at the pleasure of the Colorado Supreme Court, and authorizing the PDJ to preside over disciplinary proceedings and to impose discipline on attorneys who practice law in Colorado).

³ *See* Colo. R. Civ. P. 202.1 ("The Supreme Court exercises jurisdiction over all matters involving the . . . regulation of those persons who practice law in Colorado."); *id.* R. 204.1(1), (3), (5) (authorizing the Colorado Supreme Court to permit an out-of-state attorney who lives in Colorado to act as counsel for a single client as if licensed in Colorado under limited circumstances, and subjecting

rejected Ziankovich’s contention that Colorado authorities could not enjoin him from practicing before federal courts and agencies in Colorado, explaining that the Colorado Supreme Court’s regulatory authority over attorneys practicing within the state’s physical boundaries extends to attorneys whose practice is limited to immigration law in federal courts and agencies in Colorado, because regardless of the court or tribunal the attorney practices in, he is practicing law in Colorado. The PDJ thus held that he and the Colorado Supreme Court have “the authority to regulate [Ziankovich’s] practice of law in Colorado.” R. Vol. 1 at 23. Ziankovich filed an interlocutory appeal of the PDJ’s ruling in the Colorado Supreme Court, which dismissed the appeal.

The disciplinary proceedings moved forward and the PDJ granted summary judgment for the OARC on six of its misconduct claims against Ziankovich. The matter proceeded to a hearing to resolve the remaining claims and to determine the

attorneys with single-client certification to the disciplinary authority of the court); *id.* R. 205.1(1)(excluding out-of-state attorneys who have a regular place of business from which he accepts Colorado clients from the list of out-of-state attorneys who may be authorized to temporarily practice law in Colorado); *id.* R. 251.1(b) (“Every attorney practicing law in this state pursuant to [Rule 204 or 205] is subject to the disciplinary . . . jurisdiction of the [Colorado] Supreme Court when practicing law pursuant to such rules.”); Colo. R. Pro. Cond. 5.5(a)(1) (“A lawyer shall not . . . practice law in this jurisdiction without a license to practice law issued by the Colorado Supreme Court unless specifically authorized by [Rules 204 or 205] or federal or tribal law.”); *id.* R. 8.5(a) (“A lawyer not admitted in this jurisdiction is . . . subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction.”); *id.* cmt. [1A] (providing that “a lawyer who is not admitted in this jurisdiction, and who does not comply with [Rule 204 or 205], but who provides or offers to provide any legal services in this jurisdiction” may be prosecuted for the unauthorized practice of law).

appropriate sanction for the established violations. Ziankovich again moved to dismiss the claims for lack of jurisdiction and raised a number of constitutional and federal law defenses, including that the proceeding violated the Commerce Clause, his state and federal rights to due process, and his rights under the First and Fifth Amendments of the federal and state constitutions. The Board “reject[ed] [his] subject matter jurisdiction challenge on the grounds set forth in the PDJ’s [order] on that issue.” *Id.* at 39. It also rejected all of his constitutional defenses on the merits. *See id.* at 39-40. It then suspended Ziankovich from practicing law in Colorado for one year and a day.

Ziankovich sought reconsideration of the Board’s decision. As pertinent here, he reiterated his argument that the Colorado Supreme Court and the PDJ lacked jurisdiction to discipline him and that the disciplinary proceeding violated the Commerce Clause. The Board rejected both arguments and denied reconsideration. As for the jurisdictional challenge, the Board reaffirmed its and the PDJ’s earlier holdings that “a lawyer with an out-of-state law license who provides legal services within the physical boundaries of Colorado under federal law is subject to this state’s disciplinary authority.” *Id.* at 58. As for the Commerce Clause argument, the Board explained that the order suspending Ziankovich did not regulate his New York law license or his practice of law in federal court—it “simply precludes [him] from practicing law within the State of Colorado”—and the fact that the order might affect the status of his license in New York did not violate the Commerce Clause. *Id.* at 63.

Ziankovich appealed the Board's decision to the Colorado Supreme Court, which affirmed in a summary order. He filed a petition for writ of certiorari in the United States Supreme Court, which the Court denied. *See Ziankovich v. Colorado*, 140 S. Ct. 133 (Oct. 7, 2019).

Soon thereafter, Ziankovich filed his complaint in federal district court against the Justices and the PDJ, asserting his now familiar constitutional claims under § 1983 challenging the authority of the Colorado judiciary to discipline him and alleging that the Justices' and PDJ's participation in the disciplinary proceeding violated the Commerce Clause and his rights under the First, Fifth, and Fourteenth Amendments. He also raised a new claim alleging an equal protection violation. He alleged the Justices violated his rights by promulgating civil rules regulating his practice of law in federal court in Colorado, and by affirming the PDJ's decisions in his disciplinary proceeding. And he alleged that the PDJ violated his constitutional rights every time he issued orders and decisions imposing sanctions against him. He sought damages, an order directing the Justices to repeal the Colorado rules providing a jurisdictional basis for the discipline of out-of-state attorneys who practice in federal courts and agencies in Colorado, and an order invalidating the disciplinary orders against him.

The Defendants moved to dismiss the complaint on five grounds. The district court granted the motion on four of them: (1) Eleventh Amendment immunity barred Ziankovich's official-capacity claims; (2) the district court lacked subject matter

jurisdiction over state disciplinary proceedings under the *Rooker-Feldman* doctrine⁴ if the proceedings were concluded, and under the *Younger* abstention doctrine⁵ if they were ongoing; (3) the claims were barred by absolute judicial immunity; and (4) the claims were barred by legislative immunity. The district court did not reach Defendants' argument that the claims were barred by preclusion principles.

DISCUSSION

Ziankovich takes issue with all of the district court's reasons for dismissing his complaint, while the Defendants argue that each of those reasons was sound and that we can also affirm the dismissal order on additional grounds, including issue preclusion. We conclude that the district court correctly dismissed the complaint for lack of subject matter jurisdiction under the *Rooker-Feldman* doctrine. Accordingly, we do not address the parties' other arguments.

A. Legal Standards

"We review de novo a district court's dismissal of a complaint for lack of subject matter jurisdiction." *Guttman v. Khalsa*, 446 F.3d 1027, 1031 (10th Cir. 2006). A district court "lacking jurisdiction cannot render judgment but must dismiss the cause [when] it becomes apparent that jurisdiction is lacking." *Tuck v. United Servs. Auto. Ass'n*, 859 F.2d 842, 844 (10th Cir. 1988) (internal quotation marks

⁴ *D.C. Ct. of Appeals v. Feldman*, 460 U.S. 462 (1983); *Rooker v. Fid. Tr. Co.*, 263 U.S. 413 (1923).

⁵ *Younger v. Harris*, 401 U.S. 37 (1971).

omitted). Thus, if the district court lacked subject matter jurisdiction over Ziankovich's claims, we need go no further.

The *Rooker-Feldman* doctrine prevents the lower federal courts from exercising jurisdiction over “cases brought by state-court losers” challenging “state-court judgments rendered before the district court proceedings commenced.” *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). It “prohibits a lower federal court both from considering claims actually decided by a state court, and claims inextricably intertwined with a prior state-court judgment.” *Tal v. Hogan*, 453 F.3d 1244, 1256 (10th Cir. 2006) (brackets and internal quotation marks omitted). A federal constitutional claim is inextricably intertwined with the state court's denial of the plaintiff's state court claims if the district court “is in essence being called upon to review the state court decision.” *Feldman*, 460 U.S. at 482 n.16; *see also Tal*, 453 F.3d at 1256 (holding that constitutional claims are barred if addressing them would “request the federal court to upset the state court judgment”). “[C]hallenges to a state court judgment are barred even if the claim forming the basis of the challenge was not raised in the state proceedings.” *Khalsa*, 446 F.3d at 1031; *see also Feldman*, 460 U.S. at 483 n.16 (recognizing that the fact that constitutional claims were not raised in state court does not mean that a federal district court has jurisdiction over the claims).

We have upheld the dismissal under *Rooker-Feldman* of a disciplined attorney's constitutional claims seeking declaratory and injunctive relief against the state supreme court and disciplinary administrator. *See Kline v. Biles*, 861 F.3d 1177,

1180-82 (10th Cir. 2017) (per curiam).⁶ As the Seventh Circuit observed, “the *Rooker-Feldman* doctrine eliminates most avenues of attack on attorney discipline.” *Johnson v. Sup. Ct. of Ill.*, 165 F.3d 1140, 1141 (7th Cir. 1999). That includes challenges to the process leading to the disciplinary decision. *Feldman* itself held that constitutional challenges to the rules used to license or discipline attorneys may be raised under § 1983 if they are separable from the decision in an individual licensing or disciplinary case. *See* 460 U.S. at 486. Thus, the exclusive avenue for federal-court review of a state disciplinary decision is a petition to the United States Supreme Court. *See id.*; *see also* 28 U.S.C. § 1257(a) (providing that “[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari”).

B. Application

For the most part, the claims Ziankovich raised in his federal lawsuit are the same claims he raised in the state disciplinary proceeding. The crux of his claims both in the state proceeding and here is that Colorado—whether through its disciplinary administrators (the OARC), the PDJ, the Board, or the Colorado Supreme Court—did not have authority to discipline him because he was not licensed

⁶ *See also Smith v. Bender*, 350 F. App’x 190, 193-94 (10th Cir. 2009) (holding that *Rooker-Feldman* barred unsuccessful state bar applicant from relitigating the Justices’ refusal to recuse from his appeal); *Varallo v. Sup. Ct. of Colo.*, No. 98-1243, 1999 WL 140161 (10th Cir. Mar. 16, 1999) (unpublished) (upholding *Rooker-Feldman* dismissal of disciplined attorney’s § 1983 suit seeking to enjoin enforcement of the Colorado Supreme Court’s order of disbarment against him and a declaration that Colorado’s lawyer disciplinary process was unconstitutional).

in Colorado and did not practice in state courts and agencies. The PDJ, the Board, and ultimately the Colorado Supreme Court in affirming the sanctions imposed, squarely considered and rejected his claims at every turn, and his federal claims are plainly “inextricably intertwined” with the state court judgment because he can only succeed if we conclude the state got it wrong and effectively reverse its decision or void its ruling. *See Tal*, 453 F.3d at 1256; *see also Campbell v. City of Spencer*, 682 F.3d 1278, 1283 (10th Cir. 2012) (explaining that “[t]he essential point [of the inextricably intertwined test is that] barred claims are those complaining of injuries caused by state-court judgments,” meaning that “an element of the claim must be that the state court wrongfully entered its judgment” (internal quotation marks omitted)). That is true even for the equal protection claim he raised for the first time in the federal action as well as any repackaged old claims. *See Campbell*, 682 F.3d at 1284 (affirming *Rooker-Feldman* dismissal of claim that, though not raised in the state court proceeding, were “a direct attack on the state court’s judgment because an element of the claim [was] that the judgment was wrongful”). Because Ziankovich’s claims asked the district court to second-guess the state’s decisions rejecting his jurisdictional challenges and constitutional defenses, it correctly concluded it lacked jurisdiction under *Rooker-Feldman*. *See id.*

Ziankovich’s attempts to avoid this result are unavailing. First, he argues that *Rooker-Feldman* does not bar his claims because he was suspended, not disbarred, so he is still potentially subject to the PDJ’s jurisdiction and thus has “standing” to challenge the constitutionality of Colorado’s attorney discipline system. Aplt.

Opening Br. at 32. For support, he relies on a Seventh Circuit case upholding the district court's *Rooker-Feldman* dismissal of a disbarred attorney's § 1983 claims against the state disciplinary commission alleging that the disciplinary proceeding violated his constitutional rights. *See Levin v. Att'y Registration & Disciplinary Comm'n of the Sup. Ct. of Ill.*, 74 F.3d 763, 767 (7th Cir. 1996). Contrary to Ziankovich's suggestion, however, the fact that the attorney in *Levin* had been disbarred and the state disciplinary commission no longer had authority to discipline him was not the factor that drove the court's analysis. Rather, the critical factor was that "[t]he gravamen of [the attorney's] entire complaint is that his disciplinary proceedings were unconstitutional" and "effectively asked the district court to review" the state supreme court's judgment. *Id.* Because the attorney's "claimed injuries stem[med] from the application of allegedly unconstitutional [state rules] to his disciplinary proceedings," the court rejected his claim—similar to Ziankovich's here—that he presented permissible "general challenges" to the state rules, concluding instead that the claims were "inextricably intertwined with the [state court's] decision to disbar him." *Id.* (internal quotation marks omitted); *see also id.* (explaining that "the justiciability of Levin's complaint depends entirely on the allegations that his disciplinary proceedings injured him"). The attorney's disbarment and resultant lack of standing to challenge the state's attorney discipline scheme was thus secondary to the court's dispositive determination that his challenges were a direct attack on the state judgment and were therefore not "general challenges." *See id.* ("Even if we strained to read the complaint as posing only

general challenges to the [state rules], such general challenges would have been mooted by Levin’s disbarment.”). That Ziankovich is still a licensed attorney, albeit in another state, so may or may not have standing to challenge Colorado’s disciplinary scheme is beside the point. The point is that he may not do so by filing a federal action that effectively seeks federal district court review of a final state judgment, as he attempted to do here.

And his contention that *Rooker-Feldman* does not apply because the decisions the PDJ and the Board made during the disciplinary proceeding are administrative, not judicial, is a non-starter. The Supreme Court has made clear that state attorney discipline proceedings are “judicial in nature.” *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass’n*, 457 U.S. 423, 433-34 (1982) (finding it “clear beyond doubt” that a state supreme court’s attorney discipline processes and procedures are “judicial in nature” and “are of a character to warrant federal-court deference” under the *Younger* abstention doctrine (internal quotation marks omitted)). Following the Supreme Court’s lead, we have recognized that Colorado’s attorney discipline process is “definitely judicial rather than administrative in nature.” *Razatos v. Colo. Sup. Ct.*, 746 F.2d 1429, 1435 (10th Cir. 1984) (citing *Middlesex*). Ziankovich’s argument also ignores the fact that the Colorado Supreme Court issued what is undeniably a final judicial decision affirming the PDJ’s and the Board’s rulings. *See Levin*, 74 F.3d at 766-67 (recognizing that a disciplinary decision that has been upheld by the state’s highest court is a judicial decision that may not be contested in inferior federal courts).

Finally, we decline to consider the arguments Ziankovich has raised for the first time on appeal regarding a separate disciplinary proceeding the OARC initiated against him in 2019 and that he did not mention in his complaint. *See Singleton v. Wulff*, 428 U.S. 106, 120 (1976) (recognizing that federal appellate courts generally do “not consider an issue not passed upon below”). There are some “unusual circumstances” in which we should exercise our discretion to consider unpreserved arguments, *see Lyons v. Jefferson Bank & Tr.*, 994 F.2d 716, 720-22 (10th Cir. 1993), but Ziankovich has given us no reason to do so here.

CONCLUSION

We affirm the district court’s judgment dismissing Ziankovich’s complaint under *Rooker-Feldman* for lack of subject matter jurisdiction.

Entered for the Court

Joel M. Carson III
Circuit Judge