FILED
U.S. Bankruptcy Appellate Panel
of the Tenth Circuit
December 3, 2007
Barbara A. Schermerhorn
Clerk

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE TENTH CIRCUIT

IN RE DAVID L. SMITH, also known as David Lee Smith, also known as David Smith, and M. JULIA HOOK, also known as Mary Julia Hook, also known as Julia Hook, Debtors.	BAP No. CO-07-028
DAVID L. SMITH, Plaintiff – Appellant, v. COLORADO SUPREME COURT, Defendant – Appellee.	Bankr. No. 06-15511-SBB Adv. No. 06-01824-SBB Chapter 11 ORDER AND JUDGMENT*

Appeal from the United States Bankruptcy Court
for the District of Colorado

Before CLARK, MICHAEL, and KARLIN[1], Bankruptcy Judges.

MICHAEL, Bankruptcy Judge.

David L. Smith ("Debtor"), a disbarred attorney and a Chapter 11 debtor, filed an adversary proceeding asking the bankruptcy court to order the Colorado Supreme Court to reinstate him as a member of the Colorado Bar Association. The Colorado Supreme Court moved to dismiss the action, claiming the

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. 10th Cir. BAP L.R. 8018-6(a).

1 Honorable Janice Miller Karlin, United States Bankruptcy Judge, United States Bankruptcy Court for the District of Kansas, sitting by designation.

bankruptcy court lacked subject matter jurisdiction, and also that Debtor failed to state a claim upon which relief may be granted. The bankruptcy court agreed, and dismissed the adversary proceeding for lack of subject matter jurisdiction. Debtor then asked the bankruptcy court to reconsider its decision, and the bankruptcy court declined the invitation. Having reviewed the record and applicable law, we affirm the bankruptcy court's decision in all respects.

I. BACKGROUND

Debtor was disbarred by the United States Court of Appeals for the Tenth Circuit (the "Tenth Circuit") in 1996 for filing frivolous appeals and failing to pay court ordered sanctions. In 1999, the Colorado Supreme Court entered a reciprocal disbarment order. Debtor filed his Chapter 11 petition on August 18, 2006. On October 5, 2006, he filed an adversary proceeding seeking the following relief: "(1) an order declaring [the Colorado Supreme Court's] suspension and disbarment orders null and void *ab initio*; (2) an order granting prospective injunctive relief; and, (3) an order granting such other and further legal and equitable relief as may be just under the circumstances, including a preliminary injunction and reinstatement or readmission to the Colorado bar."[2]

The Colorado Supreme Court filed a motion to dismiss ("Motion to Dismiss") Debtor's adversary proceeding based on lack of subject matter jurisdiction and failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(1) and (6).[3] On January 9, 2007, the bankruptcy court entered an order granting the Motion to Dismiss, relying upon the *Rooker-Feldman* doctrine.[4] On January 16, 2007, Debtor filed a Motion to Amend Findings or Make Additional Findings and to Amend the Judgment Accordingly; and Request for

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[2] *Complaint* at 4, *in* Appellant's App. at 9.

[3] Appellant's App. at 10.

[4] *Order Granting Defendant's Motion to Dismiss*, *in* Appellant's App. at 81.

Oral Argument ("Motion to Amend").[5] The bankruptcy court, finding that no new grounds existed for reconsideration, denied the Motion to Amend on February 1, 2007.[6] Debtor now timely appeals the bankruptcy court's orders granting the Colorado Supreme Court's Motion to Dismiss and denying his Motion to Amend.

II. APPELLATE JURISDICTION

This Court has jurisdiction to hear timely-filed appeals from "final judgments, orders, and decrees" of bankruptcy courts within the Tenth Circuit, unless one of the parties elects to have the district court hear the appeal.[7] Neither party elected to have this appeal heard by the United States District Court for the District of Colorado. The parties have therefore consented to appellate review by this Court.

A decision is considered final "if it 'ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.'"[8] Here, the bankruptcy court dismissed Debtor's adversary proceeding. Nothing remains for the trial court's consideration. Thus, the order of the bankruptcy court is final for purposes of review.

III. STANDARD OF REVIEW

Whether a court has subject matter jurisdiction is a legal question. Questions of law are reviewable *de novo*.[9] *De novo* review requires an

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[5] Appellant's App. at 73.

[6] *Order Denying Plaintiff's Motion to Amend Findings or Make Additional Findings and to Amend Judgment Accordingly; and Request for Oral Argument, in* Appellant's App. at 93.

[7] 28 U.S.C. § 158(a)(1), (b)(1), and (c)(1); Fed. R. Bankr. P. 8002; 10th Cir. BAP L.R. 8001-1(a) & (d).

[8] *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 712 (1996) (quoting *Catlin v. United States*, 324 U.S. 229, 233 (1945)).

[9] *Pierce v. Underwood*, 487 U.S. 552, 558 (1988); *Fowler Bros. v. Young (In re Young)*, 91 F.3d 1367, 1370 (10th Cir. 1996).

independent determination of the issues, giving no special weight to the bankruptcy court's decision.[10] Review of the bankruptcy court's ruling on Debtor's Motion to Amend is for abuse of discretion.[11] "Under the abuse of discretion standard[,] 'a trial court's decision will not be disturbed unless the appellate court has a definite and firm conviction that the lower court made a clear error of judgment or exceeded the bounds of permissible choice in the circumstances.'"[12]

IV. ANALYSIS

The bankruptcy court correctly concluded that, pursuant to the *Rooker-Feldman* doctrine, it did not have subject matter jurisdiction over Debtor's adversary proceeding regarding his disbarment by the Colorado Supreme Court. The Tenth Circuit has summarized the *Rooker-Feldman* doctrine as follows:

> Under 28 U.S.C. § 1257, "federal review of state court judgments can be obtained only in the United States Supreme Court." *Kiowa Indian Tribe of Okla. v. Hoover*, 150 F.3d 1163, 1169 (10th Cir.1998) (citing *Dist. of Columbia Ct. of App. v. Feldman*, 460 U.S. 462, 476, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983)). As a result, the *Rooker-Feldman* doctrine prohibits a lower federal court from considering claims actually decided by a state court, *Rooker v. Fid. Trust Co.*, 263 U.S. 413, 415-16, 44 S.Ct. 149, 68 L.Ed. 362 (1923), and claims "inextricably intertwined" with a prior state-court judgment. *Feldman*, 460 U.S. at 483 n. 16, 103 S.Ct. 1303. In other words, *Rooker-Feldman* precludes "a party losing in state court . . . from seeking what in substance would be appellate review of [a] state judgment in a United States district court, based on the losing party's claim that the state judgment itself violates the loser's federal rights." *Johnson v. De Grandy*, 512 U.S. 997, 1005-06, 114 S.Ct. 2647, 129 L.Ed.2d 775 (1994).[13]

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[10] *Salve Regina Coll. v. Russell*, 499 U.S. 225, 238 (1991).

[11] *Loughridge v. Chiles Power Supply Co., Inc.*, 431 F.3d 1268, 1275 (10th Cir. 2005) (citing *Minshall v. McGraw Hill Broad. Co., Inc.*, 323 F.3d 1273, 1287 (10th Cir. 2003)).

[12] *Moothart v. Bell*, 21 F.3d 1499, 1504 (10th Cir. 1994) (quoting *McEwen v. City of Norman*, 926 F.2d 1539, 1553-54 (10th Cir. 1991)).

[13] *Kenmen Eng'g v. City of Union*, 314 F.3d 468, 473 (10th Cir. 2002), *abrogated on other grounds by Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*,

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Pursuant to the *Rooker-Feldman* doctrine, "'lower federal courts possess no power whatever to sit in direct review of state court decisions.'"[14] The United States Court of Appeals for the Seventh Circuit described the doctrine this way:

> The *Rooker-Feldman* doctrine asks: is the federal plaintiff seeking to set aside a state judgment, or does he present some independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party? If the former, then the district court lacks jurisdiction; if the latter, then there is jurisdiction and state law determines whether the defendant prevails under principles of preclusion.[15]

The *Rooker-Feldman* doctrine is applicable "to *all* state-court judgments, including those of intermediate state courts[,]"[16] but "only to suits filed after state proceedings are final."[17]

In this case, Debtor seeks to have the bankruptcy court order his readmission to the Colorado Bar Association and effectively reverse the Colorado Supreme Court's suspension and disbarment orders against him, on the basis that he has been denied his rights of liberty and property in violation of the Fourteenth Amendment. The position advanced by the Debtor has previously been rejected by the Tenth Circuit. In *Varallo v. Supreme Court of Colorado*,[18] a disbarred attorney filed an action in federal district court arising under 42 U.S.C. § 1983

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[13] (...continued)
544 U.S. 280 (2005).

[14] *Id.* at 474–75 (quoting *D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 483 n.16 (1983)).

[15] *GASH Assocs. v. Vill. of Rosemont*, 995 F.2d 726, 728 (7th Cir. 1993); *see also Smith v. Cowden (In re Cowden)*, 337 B.R. 512, 540 (Bankr. W.D. Pa. 2006) (citing *GASH*).

[16] *Kenmen Eng'g v. City of Union*, 314 F.3d at 473.

[17] *Guttman v. Khalsa*, 446 F.3d 1027, 1032 (10th Cir. 2006).

[18] 176 F.3d 490 (10th Cir. 1999) (table, unpublished decision) (Pursuant to Tenth Circuit Local Rule 32.1, unpublished decisions are not precedential, but they may be cited for their persuasive value.)

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. The district court dismissed the action for lack of subject matter jurisdiction based on the *Rooker-Feldman* doctrine.[19] The Tenth Circuit affirmed, finding that the attorney's "claims that defendants violated his constitutional rights are inextricably intertwined with his state court judgment, and he cannot, therefore, maintain his § 1983 action."[20] The same is true of this case – Debtor's claims are inextricably intertwined with the Colorado Supreme Court's judgment disbarring him. Bankruptcy courts are not, nor should they be, in the business of determining who is licensed by a particular state to practice law. This is precisely the type of case to which the *Rooker-Feldman* doctrine is intended to apply.

At oral argument, Debtor attempted to escape the grasp of the *Rooker-Feldman* doctrine by arguing that he no longer seeks to disturb the order of disbarment on a retroactive basis, but now only seeks prospective relief from its effects. This is a distinction without a difference. Even if Debtor seeks only prospective relief, the bankruptcy court could not grant that relief without reversing the Supreme Court's order of disbarment. The United States Supreme Court is vested with exclusive jurisdiction to review a decision of the highest state court.[21] At oral argument Debtor informed this Court that he had petitioned for, but was denied, a writ of certiorari by the United States Supreme Court. His quest for judicial review ends there.[22] Pursuant to the *Rooker-Feldman* doctrine,

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[19] *Id.* at *1.

[20] *Id.* at *2.

[21] *Facio v. Jones*, 929 F.2d 541, 543 (10th Cir. 1991).

[22] At oral argument, the Colorado Supreme Court informed this Court that, because eight years had passed since his disbarment, Debtor was now eligible to

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the lower federal courts are without authority to hear Debtor's case. The bankruptcy court's order granting the order dismissing this adversary proceeding for lack of subject matter jurisdiction should be affirmed.

We also conclude that the bankruptcy court did not abuse its discretion in denying the Motion to Amend. "A Rule 59(e) motion to alter or amend the judgment should be granted only to correct manifest errors of law or to present newly discovered evidence."[23] Debtor argued nothing new to the bankruptcy court in his Motion to Amend that was not available or considered at the time the adversary was dismissed. Thus, no grounds existed for reconsideration of the order. There is no basis for this Court to conclude that the bankruptcy court made a clear error of judgment or exceeded the permissible bounds of choice in the circumstances. As a result, the bankruptcy court's order denying Debtor's Motion to Amend must be affirmed.

V. CONCLUSION

The orders of the bankruptcy court granting the Colorado Supreme Court's Motion to Dismiss Debtor's adversary proceeding and denying Debtor's Motion to Amend are affirmed.[24]

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[22] (...continued)
apply for readmission to the Colorado Bar Association, and would be admitted upon meeting the requirements of Colorado Rule of Civil Procedure 251.29(a) (demonstration of fitness to practice law and completion of the written bar examination).

[23] *Phelps v. Hamilton*, 122 F.3d 1309, 1324 (10th Cir. 1997) (internal quotation marks omitted).

[24] Accordingly, we HEREBY DENY Appellant's Motion to Stay Disbarment Order Pending Appeal and Request for Oral Argument, filed June 11, 2007.