

Claims against state test probate jurisdiction

Today's 7th U.S. Circuit Court of Appeals case helps clarify the sometimes blurry line between federal court jurisdiction and state court jurisdiction in two areas: (1) application of the *Rooker-Feldman* doctrine; and (2) application of the "probate exception" to federal courts jurisdiction. *Jones v. Brennan*, 465 F.3d 304 (7th Cir. 2006).

Lois Jones, pro se, filed a section 1983 action (42 U.S.C. § 1983) in federal court against several Cook County probate judges, the public guardian and two deputy guardians and four private attorneys appointed as guardians ad litem. Jones contended she was deprived of property without due process of law in the course of the probate proceedings of her father's estate. Because her father was incapable (dementia/diabetes problems) of handling his affairs, the matter was in probate court. He died during the probate proceedings.

Jones' complaint alleged, among other charges, that the guardians bargained with her siblings for property that belonged in the estate, illegally searched her personal belongings, and that the guardians prevented her from spending time with her father by making false reports to the probate court.

The district court dismissed Jones' complaint, finding no federal court jurisdiction, under the *Rooker-Feldman* doctrine.

The 7th Circuit, in an opinion authored by Judge Richard A. Posner, vacated the judgment, holding that *Rooker-Feldman* was not applicable; and remanded for further consideration on the issue of whether there was at least one colorable federal claim that could survive the "probate exception" to federal court jurisdiction.

Posner began the 7th Circuit's discussion explaining why Jones' complaint did not take the claim outside federal court's jurisdiction based on the *Rooker-Feldman* doctrine.

Posner wrote: "The judge dismissed the suit on the pleadings on the authority of the *Rooker-Feldman* doctrine. *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 44 S.Ct. 149, 68 L.Ed. 362 (1923). This was a mistake. The doctrine, which forbids a federal court other than the Supreme Court to entertain an appeal from a decision by a state court, is inapplicable when the plaintiff is not attacking a state court judgment. *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 291-94, 125 S.Ct.



Federal Courts

By Jay S. Judge

Judge, a name partner of Judge, James & Kujawa LLC in Park Ridge, is a defense attorney who specializes in trials, appeals and insurance coverage. Judge graduated with honors from The John Marshall Law School and served as editor-in-chief of the school's law review.

1517, 161 L.Ed.2d 454 (2005); *TruServ Corp. v. Flegles Inc.*, 419 F.3d 584, 591 (7th Cir. 2005). The plaintiff filed her suit before the litigation in state court over her father's estate was completed, and is complaining (so far as we can determine from the inartfully drafted pro se complaint), in part anyway, about matters that were not the subject of the state court judgment, such as the alleged bargaining between her siblings and the guardians, the search, the denial of access to her father, and the defendants' actions that she contends hastened his death. To the extent that the *Rooker-Feldman* doctrine does not apply, the plaintiff's claims may be barred by res judicata, 28 U.S.C. § 1738, or the anti-injunction act, 28 U.S.C. § 2283, but these are defenses rather than jurisdictional obstacles and their applicability remains to be determined."

The court explained that although *Rooker-Feldman* was not an impediment to federal court jurisdiction, the "probate exception" to federal court jurisdiction could take the case outside the federal court's power to hear:

"There is another jurisdictional obstacle to consider, however, and that is the 'probate exception' to the federal courts' jurisdiction. See, e.g., *Storm v. Storm*, 328 F.3d 941, 943-44 (7th Cir. 2003). As recently clarified by the Supreme Court, the exception 'reserves to state probate courts the probate or annulment of a will and the administration of a decedent's estate; it also precludes federal courts from endeavoring to dispose of property that is in the custody of a state probate court. But it does not bar federal courts from adjudicating matters outside those confines and otherwise within federal jurisdiction.' *Marshall v. Marshall, U.S.*, 126 S.Ct. 1735, 1748, 164 L.Ed.2d 480 (2006)."

Posner noted a conflict as to whether the probate exception applied in federal-question cases, stating the 7th Circuit holds it does:

"The probate exception is usually invoked in diversity cases, and the courts are divided over its applicability to federal-question cases, such as this case. Compare *In re Marshall*, 392 F.3d 1118, 1131-32 (9th Cir. 2004), rev'd on other grounds under the name *Marshall v. Marshall*, supra, and *Tonti v. Petropoulos*, 656 F.2d 212, 215-16 (6th Cir. 1981), holding it applicable to such cases, with *Goerg v. Parungao*, 844 F.2d 1562, 1565 (11th Cir. 1988), holding it inapplicable. We think it applicable."

After discussing the history of the probate exception, the 7th Circuit analyzed the contemporary reasons for the federal courts' deference to state courts, both in diversity and federal-question cases, in local uniquely state court matters such as wills, divorce, estates, adoptions and such:

"There is no good reason to strain to give a different meaning to the identical language in the diversity and federal-question statutes. The best contemporary reasons for keeping federal courts out of the business of probating wills, resolving will contests, granting divorces and annulments, administering decedents' estates, approving child adoptions, and the like are two, and they are as persuasive when a suit is filed in federal court on the basis of federal law as when it is based on state law. First, the proceedings we have listed, or at least those involving child custody and probate administration, are in rem in character — they are fights over a thing of value that is in the court's control — and another court should not try to elbow its way into the fight. Second, state courts are assumed to have developed a proficiency in these matters, to have procedures tailored to them, and to work closely with and even employ specialized staff not found in federal courts. *Ankenbrandt v. Richards*, 504 U.S. 689, 112 S.Ct. 2206, 119 L.Ed.2d 468 (1992)."

The court found Jones' complaint involved both considerations:

"This case, involving as it does a fight over an estate in the control of the state probate court, and the deployment of the public guardian, illustrates both points."

Holding that the federal court could not adjudicate the probate issue under the "probate exception"; but, that jurisdiction could exist if the guardians

stepped outside of their scope of their duties, the court noted it was possible jurisdiction might exist:

"Jones for the most part is complaining simply about the maladministration of her father's estate by the Cook County probate court, and this complaint, brought while the probate proceedings were in progress though they have since concluded, was tantamount to asking the federal district court to take over the administration of the estate. That clearly would violate the probate exception. But she is also accusing the guardians of having mismanaged the estate, and as an heir she may have a claim for breach of fiduciary duty by them.

"Such a claim does not ask the court in which it is filed to administer the estate, but rather to impose tort liability on the guardians for breach of fiduciary duty. Although both the public guardians and the guardians ad litem are agents of the probate court as long as they are acting at the court's direction, and so have to that extent absolute quasi-judicial immunity, e.g., *Dornheim v. Sholes*, 430 F.3d 919, 925 (8th Cir. 2005), they can be sued if they step outside the scope of their agency and engage in self-dealing, as charged by the plaintiff. In any event, immunity is a defense rather than a jurisdictional defect, although the grounds for dismissal in this case based on the probate exception and the immunity defenses merge when guardians are acting within the scope of their authority because they are administering a probated estate."

Posner discussed the need for more information to determine whether Jones' claims were "outside" of the probate proceedings — if "outside," the "probate exception" would not bar federal jurisdiction:

"The plaintiff is also claiming, however, that the defendants deprived her of her property interest in her father's estate without due process of law. If they did this in the course of administering the estate, the claim cannot escape the gravitational pull of the probate exception.

"It is too facile a litigation move to recast a claim of maladministration as a denial of due process. But conceivably some of the alleged misconduct involving the plaintiff's claim to a share of her father's estate occurred outside the proceedings to administer the estate.

"Another federal claim in the

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complaint is that the plaintiff was deprived, again without due process of law, of a liberty interest in her relationship with her father. We suggested in *Russ v. Watts*, 414 F.3d 783, 790 (7th Cir. 2005), that parents and adult children have some constitutionally protected interest in being able to associate with each other. But this claim may also be within the probate exception if, as appears from the complaint, the alleged interference was caused by a protection order that the guardians obtained to prevent the plaintiff from interfering with the probate proceedings.

“As for the complaint about the search of the plaintiff’s personal belongings, the legal basis of the claim is obscure but the search may have been conducted under a warrant issued

by the probate court. In that event it would be state action that could be challenged under the Fourteenth Amendment as an unreasonable search and seizure — unless, once again, the issuance of the warrant was ancillary to the administration of the estate ‘in the practical sense that allowing [the claim] to be maintained in federal court would impair the policies served by the probate exception.’ This we cannot tell from the complaint.”

Although skeptical as to whether Jones’ claims were outside of the “probate exception,” but with insufficient information to resolve the question, the 7th Circuit vacated the judgment of the district court and remanded for further proceeding to determine the federal court’s jurisdiction to hear the case.