FILED
United States Court of Appeals
Tenth Circuit

May 3, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

CLAUDIA DAIGLE,

Plaintiff - Appellant,

v.

ELDORADO COMMUNITY IMPROVEMENT ASSOCIATION, INC., a New Mexico non-profit corporation; GREG D. COLELLO, individually and officially as Director of the 2014 Board of Directors, Eldorado Community Improvement Association, Inc., a New Mexico non-profit corporation; KATHLEEN HOLIAN, Municipality of Santa Fe and County of Santa Fe, New Mexico, retired Santa Fe County Commissioner, District 4, in her individual and official capacity; MUNICIPALITY OF CITY OF SANTA FE, NEW MEXICO; COUNTY OF SANTA FE, NEW MEXICO; HOMEOWNER ASSOCIATION MANAGEMENT COMPANY,

Defendants - Appellees.

No. 22-2081
(D.C. No. 1:22-CV-00147-KG-JHR)
(D. N.M.)

ORDER AND JUDGMENT[*]

Before **BACHARACH**, **KELLY**, and **MORITZ**, Circuit Judges.[**]

---

[*] This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

[**] After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of

---

Plaintiff-Appellant, Claudia Daigle, appearing pro se, appeals from the district court's sua sponte dismissal of her first amended complaint ("FAC") without prejudice. See Daigle v. Matthew, No. 1:22-cv-00147-KG-JHR, 2022 WL 2158329 (D.N.M. June 15, 2022). Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

Background

Ms. Daigle is a homeowner in the defendant Eldorado Community Improvement Association, Inc. ("ECIA"). Ms. Daigle first asserted claims against ECIA in state court in 2014, seeking an injunction and alleging ECIA violated the protective covenants of the homeowners' association ("Covenants") when it allowed ground-based solar structures on residential lots. See R. 25–27. The state court dismissed the 2014 complaint with prejudice.[1] Daigle, 2022 WL 2158329, at *1.

On February 25, 2022, she filed suit in federal district court. R. 25. The assigned magistrate judge ordered her to (1) show cause why her action was not barred by the Rooker-Feldman doctrine and for failure to state a claim; and (2) file an amended complaint. R. 54–64. On April 20, 2022, Ms. Daigle filed the FAC. The FAC: (1) seeks relief from the 2014 state court judgment; (2) mounts a constitutional

---

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.

[1] In 2018, Ms. Daigle moved to vacate that judgment for lack of jurisdiction, but that motion was denied as frivolous and the state court imposed Rule 11 sanctions. Daigle, 2022 WL 2158329, at *1. The New Mexico Court of Appeals affirmed. Id.

challenge to N.M. Stat. Ann. § 3-18-32(b); (3) asserts violation of due process claims against the State of New Mexico, the City of Santa Fe, the County of Santa Fe,[2] and certain Private Defendants[3] pursuant to 42 U.S.C. § 1983. R. 65–88. As relevant, the FAC's prayer for relief seeks declaratory and injunctive relief against the ECIA and a declaration that N.M. Stat. Ann. § 3-18-32(b) is void. R. 87–88. On the same day motions to dismiss were filed, Ms. Daigle filed a second amended complaint ("SAC") without consent or leave of court, re-alleging claims in her original complaint that she dropped in the FAC, namely her conspiracy claim under 42 U.S.C. § 1985(3). R. 133–54.

Acting sua sponte, the district court reviewed only the FAC and noted it dropped the conspiracy claims and claims against the 93 other homeowners. Daigle, 2022 WL 2158329, at *2. The court then held that: (1) the Rooker-Feldman doctrine barred Ms. Daigle's attempt to relitigate her 2014 state court action and denied her embedded request to amend should the doctrine be deemed inapplicable; (2) dismissed the § 1983 claims against the State of New Mexico on the basis of Eleventh Amendment immunity; (3) dismissed the § 1983 claims against the City of Santa Fe, the County of Santa Fe, and Ms. Holian for failure to state a claim and as time-barred; (4) dismissed the § 1983 claims against Private Defendants because (a)

---

[2] She also asserted claims against Kathleen S. Holian, a retired Santa Fe County Commissioner, in her individual and official capacity. R. 65.

[3] These include ECIA, Greg D. Colello (the director of the 2014 Board of Directors for ECIA), and the Homeowners Association Management Company ("HOMECO") — the alleged management company for ECIA (collectively "Private Defendants"). R. 65.

there are insufficient allegations they acted as state actors and (b) the claims are also time barred; (5) dismissed Ms. Daigle's facial constitutional challenge to N.M. Stat. Ann. § 3-18-32(b), finding the statute neither overbroad nor vague and that it did not violate the Federal or State Contracts Clause as applied to her; and (6) declined to exercise supplemental jurisdiction over Ms. Daigle's remaining state law claims. Id. at *2–7. Ms. Daigle appeals.

Discussion

We review a dismissal for lack of subject matter jurisdiction pursuant to the Rooker-Feldman doctrine de novo. Campbell v. City of Spencer, 682 F.3d 1278, 1280–81 (10th Cir. 2012). We also review de novo a district court's dismissal for failure to state a claim upon which relief can be granted. Fenn v. City of Truth or Consequences, 983 F.3d 1143, 1147 (10th Cir. 2020). Given Ms. Daigle proceeds pro se, we liberally construe her pleadings, but we will not act as her advocate. Yang v. Archuleta, 525 F.3d 925, 927 n.1 (10th Cir. 2008). Moreover, "[p]ro se status 'does not excuse the obligation of any litigant to comply with the fundamental requirements of the Federal Rules of Civil and Appellate Procedure.'" Id. (quoting Ogden v. San Juan Cnty., 32 F.3d 452, 455 (10th Cir.1994)).

I. Rooker-Feldman Doctrine

The Rooker-Feldman doctrine bars "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." Campbell, 682 F.3d at 1283 (quoting Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284 (2005)).

Ms. Daigle essentially seeks to relitigate that the ECIA violated the Covenants under a variety of meritless theories. R. 87–88; see Aplt. Br. at 15–18. She argues she should be permitted to proceed anew because the original state action was void for lack of jurisdiction given she did not sign her state court complaint. R. 78. She litigated and lost her claim that the ECIA violated the Covenants in state court, See R. 26–27, 201–02, and the state courts rejected her attempt to void for lack of a signature, see R. 27–28. Thus, the district court properly dismissed these claims pursuant to the Rooker-Feldman doctrine.

II. Conspiracy claim under 42 U.S.C. § 1985(3)

Ms. Daigle objects to the district court's conclusion she abandoned her conspiracy claim and claims against the 93 other homeowners. Aplt. Br. at 19. Contrary to her conclusory assertion that the FAC's factual allegations somehow preserve her claim, Ms. Daigle abandoned these claims when she omitted them in the FAC. Compare R. 22–44 with R. 65–88; see also In re Rumsey Land Co., 944 F.3d 1259, 1271 (10th Cir. 2019). Her attempt to revive these claims by filing the SAC was ineffective as it was filed without party consent or leave of court. See Fed. R. Civ. P. 15(a)(2).[4]

[4] Regardless, she has failed to state a conspiracy claim as there are no factual allegations of racial or class-based motivation. See Dixon v. City of Lawton, 898 F.2d 1443, 1447 (10th Cir. 1990) (requiring "proof that a conspirator's action was

III. Section 1983 claims against State of New Mexico

Ms. Daigle objects to the dismissal of the State of New Mexico. Aplt. Br. at 20–21. For support, she does not allege the state waived its Eleventh Amendment immunity but rather cites to 28 U.S.C. § 2403(b), which gives the state attorney general the right to intervene in a case concerning the constitutionality of a state statute. This statute does not abrogate New Mexico's immunity. Her claims against the state were properly dismissed. See Quern v. Jordan, 440 U.S. 332, 345 (1979).

IV. Section 1983 claims against City of Santa Fe, County of Santa Fe, and Ms. Holian

Ms. Daigle objects to the dismissal for these claims based on the statute of limitations, arguing she properly alleged a continuing wrongful act up to the present and that "her claims are not barred as 'a civil rights action accrues when the plaintiff knows or has reason to know of the injury.'" Aplt. Br. at 21–22 (quoting Smith v. City of Enid, 149 F.3d 1151, 1154 (10th Cir. 1998)).

The district court properly noted the statute of limitations for civil rights claims under § 1983 arising in New Mexico is three years, see Varnell v. Dora Consol. Sch. Dist., 756 F.3d 1208, 1212 (10th Cir. 2014), and thus Ms. Daigle had to allege these defendants engaged in acts or omissions that occurred on or after February 25, 2018 — three years before the filing of the instant case. See Daigle, 2022 WL 2158329, at *3. The FAC alleges acts on the part of these defendants that

---

motivated by a class-based, invidiously discriminatory animus" under 42 U.S.C. § 1985(3)).

occurred only between 2010 and 2013. R. 69–74, 82–85. Ms. Daigle alleges she was aware of all these actions as they occurred with the exception of certain emails she discovered in 2020 through Inspection of Public Records Act (IPRA) requests with Santa Fe County. R. 71. Ms. Daigle never explains why this material could not have been pursued or discovered earlier. And she does not claim she only became aware of her claim upon their discovery. See Alexander v. Oklahoma, 382 F.3d 1206, 1216 (10th Cir. 2004) ("[A] plaintiff need not have conclusive evidence of the cause of an injury in order to trigger the statute of limitations."). In fact, in the original complaint and the FAC she states she discovered the underlying conduct that gave rise to all this litigation in 2012. R. 26, 72. Further, she does not allege the state is engaging in continuous harmful acts to this day — let alone provide allegations that might support such an inference.[5] Dismissal was proper as her brief based arguments are wholly conclusory and beside the point given a court looks to the complaint's allegations. See Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

V. Section 1983 Claims Against Private Defendants

Ms. Daigle also disputes the basis of the district court's dismissal of the Private Defendants — that she failed to adequately allege they acted under color of state law. Aplt. Br. at 22–23. A claim under § 1983 requires (1) the deprivation of a federal right by (2) an actor acting under color of state law. VDARE Found. v. City of Colo. Springs, 11 F.4th 1151, 1160 (10th Cir. 2021). The district court properly

[5] In fact, the FAC alleges only Defendant ECIA continues to violate her constitutional rights. R. 87.

dismissed these claims as she offers only conclusory allegations that the Private Defendants were state actors. Ms. Daigle makes a conclusory allegation of "collaboration" and points out (1) that some Private Defendants had meetings and communications concerning solar power with some county and city officials, (2) governmental encouragement of developing a community solar program, and (3) the fact the ECIA relied on a state statute to justify permitting ground-based solar structures. These allegations are insufficient to establish the Private Defendants may fairly be said to be state actors. See Lugar v. Edmondson Oil Co., 457 U.S. 922, 937 (1982) (requiring joint action or significant state aid and cautioning that merely relying on a state rule to govern an interaction does not render a private party a state actor). And for substantially the same reasons as above, we agree with the district court that these claims are likewise time-barred.

VI. Constitutional Challenge to N.M. Stat. Ann. § 3-18-32(b)

Ms. Daigle also argues the district court was wrong to dismiss her constitutional facial challenge to N.M. Stat. Ann. § 3-18-32(b) which states:

> A covenant, restriction or condition contained in a deed, contract, security agreement or other instrument, effective after July 1, 1978, affecting the transfer, sale or use of, or an interest in, real property that effectively prohibits the installation or use of a solar collector is void and unenforceable.

N.M. Stat. Ann. § 3-18-32(b) (2007). On appeal, she argues this state statute violates her right to equal protection and substantive due process, is impermissibly vague, and substantially impairs her contract rights. Aplt. Br. 24–30. She does not appeal the

district court's determination that the statute is not unconstitutionally overbroad.[6] We review her dismissed constitutional challenge de novo. See Powers v. Harris, 379 F.3d 1208, 1214 (10th Cir. 2004).

The district court's dismissal was proper. As for vagueness there are no plausible allegations the statute's effect is unclear. See Harmon v. City of Norman, 981 F.3d 1141, 1151 (10th Cir. 2020). As for impairment of contract,[7] we agree with the district court that Ms. Daigle fails to allege a substantial impairment of her contract right with ECIA[8] and that she fails to allege there is no significant or legitimate public purpose behind the statute. See Stillman v. Tchrs. Ins. & Annuity Ass'n Coll. Ret. Equities Fund, 343 F.3d 1311, 1321 (10th Cir. 2003) (detailing that a violation of the Contract Clause requires a substantial impairment of a contract caused by a new law and in turn whether the state then has a significant and legitimate public purpose to justify the law). For the first time on appeal and not in the FAC, Ms. Daigle alleges an equal protection claim arguing differences between N.M. Stat. Ann. § 3-18-32(a) and (b) reveal a discriminatory classification for

---

[6] To the extent she does appeal this finding, for substantially the same reasons we agree with the district court that the statute is not unconstitutionally overbroad. See Daigle, 2022 WL 2158329, at *4–5.

[7] Ms. Daigle alleges a Contract Clause violation under the United States Constitution and its equivalent in the New Mexico constitution. See U.S. Const. Art. I, Sec. 10; N.M. Const. Art. II, § 19. The same analysis applies for both. See Los Quatros, Inc. v. State Farm Life Ins., 800 P.2d 184, 194 (N.M. 1990).

[8] Ms. Daigle claims her contract right is impaired because the ECIA relied on the statute in permitting ground-based solar structures where the Covenants prohibit permanent structures on residential lots without majority consent of homeowners. See R. 75, 81; Aplt. Br. 25–27.

homeowners' associations.[9] We decline to consider this new claim that was not presented before the district court. See McDonald v. Kinder-Morgan, Inc., 287 F.3d 992, 999 (10th Cir. 2002).

VII. Leave to Amend

Lastly, to the extent Ms. Daigle challenges the district court's denial of leave to amend the FAC, see Aplt. Br. 1–2, her appeal is meritless. She never sought leave of court or party consent to amend the FAC — she simply filed it. See Fed. R. Civ. P. 15(a)(2). Thus, to the extent she seeks leave to amend all her claims, she cannot seek such leave with this court when she failed to seek it before the district court. See McDonald, 287 F.3d at 999.

To the extent the district court did deny her leave to amend, it did so within the context of Ms. Daigle's request — embedded in the FAC under the Rooker-Feldman section — that should the district court agree that her 2014 state court action was a nullity, i.e., she can relitigate it, she be allowed ten days to amend. See Daigle, 2022 WL 2158329, at *2; see also R. 78. Since the district court correctly found the Rooker-Feldman doctrine bars those claims, denial of leave to amend was proper.

AFFIRMED. The mandate shall issue forthwith.

Entered for the Court

Paul J. Kelly, Jr.
Circuit Judge

[9] Ms. Daigle alludes to this issue in her complaint but within the context of whether her contractual right has been substantially impaired. See R. 81.