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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

GREG STEVEN ELOFSON,
Plaintiff,
v.
STEPHANIE BIVENS, et al.,
Defendants.

Case No. 15-cv-05761-BLF

**ORDER DENYING MOTION FOR
LEAVE TO FILE A MOTION FOR
RECONSIDERATION**

[Re: ECF 24]

Plaintiff Greg Steven Elofson, proceeding pro se, seeks leave to file a motion for reconsideration of this Court’s order denying his application for a temporary restraining order (“TRO”). Plaintiff’s TRO application described the circumstances under which the Arizona superior court appointed Defendant Stephanie McCollum as the guardian and conservator of Plaintiff’s father, Milo Elofson, and reflected Plaintiff’s desperate concerns regarding Milo’s health and well-being under McCollum’s aegis. Plaintiff sought a TRO that would, among other things, enjoin McCollum from exercising her powers as Milo’s guardian and conservator and require her to disclose Milo’s location and medical status. The Court denied Plaintiff’s TRO application based upon its conclusion that Plaintiff had not shown a likelihood of success on the merits of the claims in his complaint. Because Plaintiff has not demonstrated any potential basis for reconsideration of that ruling, his current motion likewise must be DENIED.

In this district, a party must seek leave of court before filing a motion for reconsideration of an interlocutory order. Civ. L.R. 7-9(a). The party seeking leave must show reasonable diligence and one of the following: (1) a material difference in fact or law exists from that which was presented to the Court before entry of the interlocutory order, and the moving party in the exercise of reasonable diligence did not know such fact or law at the time of the interlocutory

1 order; (2) the emergence of new material facts or a change of law occurring after the interlocutory
2 order; or (3) a manifest failure by the Court to consider material facts or dispositive legal
3 arguments which were presented to the Court before the interlocutory order. Civ. L.R. 7-9(b). The
4 moving party may not reargue any written or oral argument previously asserted to the Court in
5 connection with the interlocutory order. Civ. L.R. 7-9(c).

6 Plaintiff first asserts the existence of new facts that have developed since the Court's denial
7 of Plaintiff's application for a TRO. Specifically, Plaintiff describes communications in which
8 Defendants allegedly agreed to let Plaintiff speak with Milo and then failed to follow through on
9 that agreement. Plaintiff asserts that those new facts show a likelihood of irreparable harm to
10 Milo. While likelihood of irreparable harm is one of the four factors that must be established by a
11 plaintiff seeking a TRO, *see Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20
12 (2008), the Court did not focus on that factor when denying Plaintiff's application. The Court
13 denied Plaintiff relief based entirely upon Plaintiff's failure to establish another of the *Winter*
14 factors, likelihood of success on the merits. The Court concluded that Plaintiff cannot establish a
15 likelihood of success on the merits of his claims because the Court lacks subject matter
16 jurisdiction over those claims under the *Rooker-Feldman* doctrine. *See* Order at 8, ECF 23. Thus
17 Plaintiff's submission of new facts relevant to likelihood of irreparable harm does not provide a
18 potential basis for reconsideration.

19 Plaintiff next asserts that reconsideration is warranted based upon several decisions
20 addressing the *Rooker-Feldman* doctrine that predate his motion for a TRO but that he did not
21 bring to the Court's attention. Although the latest of those decisions was issued in 2005, Plaintiff
22 argues that his failure to cite them in his TRO application was not caused by a lack of diligence
23 but by the complexity of the *Rooker-Feldman* doctrine and the urgency of the circumstances.
24 Even if the Court were to accept Plaintiff's representations of diligence, the cited cases would not
25 alter the Court's determination that the *Rooker-Feldman* doctrine bars Plaintiff's claims. In *Exxon*
26 *Mobil Corp.*, the Supreme Court held that "[w]hen there is parallel state and federal litigation,
27 *Rooker-Feldman* is not triggered simply by the entry of judgment in state court." *Exxon Mobil*
28 *Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 292 (2005). However, the Supreme Court

1 affirmed that district courts lack subject matter jurisdiction over “cases brought by state-court
2 losers complaining of injuries caused by state-court judgments.” *Id.* at 284. The present case does
3 not involve parallel state and federal litigation – it falls squarely within the latter category of cases
4 in which an individual who lost before a state court impermissibly seeks review of the state court
5 rulings. The other cases cited by Plaintiff likewise fail to support his position. *See, e.g., Noel v.*
6 *Hall*, 341 F.3d 1148, 1163 (9th Cir. 2003) (“It is a forbidden de facto appeal under *Rooker-*
7 *Feldman* when the plaintiff in federal district court complains of a legal wrong allegedly
8 committed by the state court, and seeks relief from the judgment of that court.”).

9 The Court recognizes Plaintiff’s understandable frustration arising from his inability to
10 communicate with Milo or participate in his care. However, this Court lacks jurisdiction to grant
11 Plaintiff the relief that he seeks. Because Plaintiff has failed to present any potential basis for
12 reconsideration of the order denying his application for a TRO, Plaintiff’s motion for leave to file
13 a motion for reconsideration is DENIED.

14 **IT IS SO ORDERED.**

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16 Dated: February 29, 2016

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BETH LABSON FREEMAN
United States District Judge