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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 ROBERT GRUNDSTEIN, ESQ.,

11 Plaintiff,

12 v.

13 WASHINGTON STATE/ROB
14 MCKENNA/AG; J. GEORGE
15 APPEL/SNOHOMISH SUPERIOR
16 COURT/2ND FLOOR; CHIEF JUSTICE
17 B. MADSEN/CHAIR, BOARD FOR
18 JUDICIAL ADMINISTRATION,

19 Defendants.

CASE NO. C12-283MJP

ORDER DISMISSING CASE WITH
PREJUDICE

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This matter comes before the Court on Defendants' motion to dismiss pursuant to Federal Rule 12(b)(1) for lack of subject matter jurisdiction and Federal Rule 12(b)(6) for failure to state a claim. (Dkt. No. 11.) Having reviewed the motion, Plaintiff's materials in opposition (Dkt. Nos. 15, 16), Defendants' reply (Dkt. No. 18), and all related filings, the Court GRANTS Defendants' motion and DISMISSES this action with prejudice. The Court DENIES Plaintiff's motion to amend because amendment would be futile. (Dkt. No. 19.)

1 **Background**

2 Although draped in constitutional rhetoric, this case is about a dispute between two
3 brothers over their mother’s estate. Plaintiff Robert Grundstein, an inactive member of the
4 Washington bar, seeks an injunction requiring the state superior court to rehear his case, this time
5 allowing him to cite an unpublished opinion that he thinks will swing the outcome in his favor.
6 (Dkt. No. 1 at 16-17.)

7 This began as a Washington state court dispute between Plaintiff and his brother, Leon
8 Grundstein, over their deceased mother’s half-share membership interest in an assisted living
9 community, Scribner Gardens, LLC. Grundstein v. Grundstein, Case No. 09-2-07764-7; (Dkt.
10 No. 1 at 6). Plaintiff asked the Snohomish County Superior Court to consider the LLC
11 membership to be a real estate asset and to partition it pursuant to RCW 7.52 et seq. (Dkt. No. 1
12 at 7-8.) In support of his argument that a LLC share should be considered a real estate asset,
13 Plaintiff cited an unpublished Washington Court of Appeals decision, Carroll v. Elzey, 146
14 Wn.App. 140 (2008), 2008 WL 3906353.

15 Pursuant to Washington State General Rule (GR) 14.1, which prohibits the citation to
16 unpublished opinions of the Court of Appeals, the trial court refused to consider the unpublished
17 case and ruled against Plaintiff. (Dkt. No. 1 at 7-8.) Plaintiff appealed to the Washington Court
18 of Appeals, which affirmed the trial court. Grundstein v. Grundstein, 162 Wn.App. 1059, 2011
19 WL 3055381 at 1. Plaintiff sought review by the Washington Supreme Court, but was denied.
20 Grundstein v. Grundstein, 173 Wn.2d 1015 (2012).

21 Plaintiff’s constitutional argument here is that GR 14.1 violates his Fifth Amendment
22 right to due process and his Fourteenth Amendment right to equal protection. (Dkt. No. 1 at 9-
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1 10.) This is because, Plaintiff says, when a court denies precedential value to unpublished
2 opinions, “[s]ome parties will get the benefit of precedent, others won’t.” (Id. at 9.)

3 Defendants assert that Plaintiff’s claims for retrospective relief must be dismissed under
4 the Rooker-Felman doctrine, which provides that lower federal courts lack subject matter
5 jurisdiction to consider claims that seek to reverse state court decisions. (Dkt. No. 11 at 4.) In
6 addition, Defendants assert that Plaintiff lacks standing to pursue his claims for prospective relief
7 because a favorable decision would not redress his claimed injury. (Id.) Defendants also raise a
8 number of other arguments, including Eleventh Amendment immunity, judicial immunity, and
9 failure to state a claim. (Id. at 11-14.)

10 Discussion

11 A. Legal Standards

12 The question of subject matter jurisdiction is properly raised by a party through a motion
13 under Fed. R. Civ. P. 12(b)(1). United States v. Moreno-Morillo, 334 F.3d 819, 830 (9th Cir.
14 2003). Once raised, “[t]he party asserting federal jurisdiction has the burden of establishing it.”
15 Miguel v. Country Funding Corp., 309 F.3d 1161, 1164 (9th Cir. 2002), citing Kokkonen v.
16 Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994).

17 In considering a motion to dismiss under Federal Rule 12(b)(6), a court must accept all
18 plaintiff’s well-pled factual allegations as true and must draw all reasonable inferences in
19 plaintiff’s favor. Wolfe v. Strankman, 392 F.3d 358, 362 (9th Cir. 2004). However, Rule
20 12(b)(6) requires a court to dismiss a claim when “there is no cognizable legal theory or an
21 absence of sufficient facts alleged to support a cognizable legal theory.” Navarro v. Block, 250
22 F.3d 729, 732 (9th Cir. 2001). A plaintiff must plead “more than a sheer possibility that a
23 defendant has acted unlawfully.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). In considering a
24 motion to dismiss pursuant to Rule 12(b), the Court may consider documents upon which the

1 complaint relies, which are effectively incorporated by reference, as well as public records
2 subject to judicial notice. United States v. Ritchie, 342 F.3d 903, 908 (9th Cir. 2003).

3 B. Rooker-Feldman

4 To the extent Plaintiff seeks retrospective relief, he is barred by the Rooker-Feldman
5 doctrine. The Rooker-Feldman doctrine provides that “a party losing in state court is barred from
6 seeking what in substance would be appellate review of the state judgment in a United States
7 District Court based on the losing party’s claim that the state judgment itself violates the loser’s
8 federal rights.” Johnson v. DeGrandy, 512 U.S. 997, 1005-06 (1994). This doctrine is subject to
9 two significant limitations. First, Rooker-Feldman applies only when a losing party in state court
10 seeks to relitigate the same matter. In Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S.
11 280 (2005). Second, Rooker-Feldman does not bar actions by non-parties to the state court
12 judgment, even if they were in privity with a party to the judgment. Lance v. Dennis, 546 U.S.
13 459 (2006).

14 Neither limitation applies here. First, Plaintiff raised his constitutional challenges in both
15 his appellant brief before Division I of the Court of Appeals and his motion for discretionary
16 review by the Washington Supreme Court. In his appellant brief to the state court of appeals,
17 Plaintiff argued that it was “unconstitutional” for the court to refuse to follow unpublished cases
18 because “[t]he judiciary cannot act as a legislature and change the principles of jurisprudence
19 which existed and applied at the time the Constitution was drafted.” (Dkt. No. 12 at 35.) In his
20 motion for review in the Washington Supreme Court, Plaintiff argued “it is unconstitutional to
21 deny [unpublished opinions] as a violation of 5th Amendment Due Process and 14th Amendment
22 Equal Protection.” (Dkt. No. 17 at 22.)

23 Even if Plaintiff’s constitutional arguments were unclear in his state court briefing, they
24 are still barred here because they are “inextricably intertwined with the state court’s decision

1 such that the adjudication of the federal claims would undercut the state ruling or require the
2 district court to interpret the application of state laws or procedural rules” Bianchi v.
3 Rylaarsdam, 334 F.3d 895, 898 (9th Cir. 2003). Even if Plaintiff had not raised his constitutional
4 challenge to GR 14.1 in state court, he had the opportunity to do so. See Bianchi, 334 F.3d at
5 902. Therefore, his claim is barred. Id.

6 C. Collateral Estoppel

7 Plaintiff’s constitutional claim is also barred by the doctrine of collateral estoppel.
8 “Whether a prior state court judgment precludes relitigation of an identical claim in federal court
9 depends on the preclusion rules of the state.” Gupta v. Thai Airways Int’l, LTD, 487 F.3d 759,
10 765 (9th Cir. 2007). Under Washington law, collateral estoppels applies when (1) the issue
11 decided in the prior case is identical with the one presented in the second; (2) the prior case
12 ended in a final judgment on the merits; (3) the party against whom the doctrine is asserted was a
13 party or in privity with a party to the prior case; and (4) the doctrine does not work an injustice.
14 Hanson v. City of Snohomish, 121 Wn.2d 552, 562 (1993).

15 Plaintiff had a full and fair opportunity to litigate his constitutional challenge to CR 14.1,
16 and indeed raised these constitutional issues in his state court proceedings. (Dkt. No. 12 at 35;
17 Dkt. No. 17 at 22.) Plaintiff’s state court action ended in a final judgment on the merits. (Dkts.
18 No. 12, 17.) Although the present case includes new parties, the party “against whom the
19 doctrine [of collateral estoppels] is asserted,” Robert Grundstein, was a party in the prior
20 proceedings. (Id.) Plaintiff also does not show that a manifest injustice would occur if he is
21 precluded from bringing this claim. See State Farm Mut. Auto. Ins. Co. v. Aver, 114 Wash.App.
22 299, 306 (2002). Finally, Plaintiff’s proposed amendment (Dkt. No. 19) does not save his claim
23 because Plaintiff has had prior opportunity to raise these issues in his state court proceedings.
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1 D. Standing

2 Finally, to the extent that Plaintiff seeks prospective relief, his claim must be dismissed
3 because he does not have standing under Article III. To satisfy the “irreducible constitutional
4 minimum of standing,” a plaintiff must allege: (1) an injury-in-fact that is “concrete and
5 particularized” and “actual or imminent not conjectural or hypothetical”; (2) the injury is fairly
6 traceable to the challenged action of the defendant, not the result of the independent action of a
7 third party; and (3) it is likely, not merely speculative, that the alleged injury will be redressed by
8 a favorable decision. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992).

9 Even if the Court were to invalidate the rule, it would not affect Plaintiff’s now-final state
10 court case or any other active case in which he is involved. (Dkt. No. 11 at 10.) Plaintiff must
11 show a “significant likelihood” that the rule will be applied to him again in the future. Canatella
12 v. State of California, 304 F.3d 843, 852 (9th Cir. 2002); Friends of the Earth, Inc. v. Laidlaw
13 Envtl. Servs. (TOC), Inc., 528 U.S. 167, 181 (2000). Plaintiff makes no such showing.

14 **Conclusion**

15 Because Plaintiff’s appeal for retrospective relief is barred by the Rooker-Feldman
16 doctrine and collateral estoppel, and because his appeal for prospective relief is barred for lack of
17 standing, the Court GRANTS Defendants’ motion and DISMISSES this action with prejudice.
18 Because the Court does not have subject matter jurisdiction, it need not reach the issues of
19 immunity or adequacy of Plaintiff’s claim under Rule 12(b)(6). Plaintiff’s motion to amend is
20 DENIED as futile. The clerk is ordered to provide copies of this order to all counsel.

21 Dated this 28th day of June, 2012.

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23 Marsha J. Pechman
24 United States District Judge