NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted December 20, 2023*
Decided December 21, 2023

Before

DIANE S. SYKES, *Chief Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 23-2119

JOEY KIMBROUGH,
Plaintiff-Appellant,

v.

FORTUNE COMPANIES, INC., et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division.

No. 1:23-cv-00390-JPH-TAB

James Patrick Hanlon,
Judge.

O R D E R

In foreclosure proceedings in Indiana state court, Joey Kimbrough, who is not a lawyer, attempted to litigate on behalf of two limited liability companies, in violation of

* The Appellees were not served with process and are not participating in this appeal. We have agreed to decide the case without oral argument because the brief and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

Indiana Code § 34-9-1-1(c). When the state court would not allow him to proceed in this way, he filed this federal suit alleging that he was being deprived of the opportunity to be heard in the state court proceedings. The district judge decided to abstain from exercising jurisdiction under *Younger v. Harris*, 401 U.S. 37, 43–44 (1971), and ultimately dismissed the suit when Kimbrough failed to amend his complaint. Although there is no longer an ongoing state court proceeding that requires abstention, we conclude that there is no live controversy between the parties, and so federal subject matter jurisdiction is lacking.

We accept the well-pleaded facts in Kimbrough's complaint as true and draw all reasonable inferences in his favor; as needed, we also take judicial notice of court records from the Indiana proceedings that gave rise to this case. *Adkins v. VIM Recycling, Inc.*, 644 F.3d 483, 492–93 (7th Cir. 2011); *see* FED R. EVID. 201.

In 2019, Fortune Companies Inc. filed a mortgage foreclosure action against a commercial building in which JMC Property Group, LLC and Kipcor 219, LLC held interests. (Fortune had a judgment against Kipcor that it was seeking to satisfy.) Kimbrough is a member of both LLCs and attempted to litigate on their behalf. Because Kimbrough is not an attorney, Fortune objected and moved to strike Kimbrough's pleadings under Indiana Code § 34-9-1-1(c). Kimbrough argued that striking his filings violated his due process rights, and he continued to file various pleadings and motions. Eventually, the state court ordered that it would not accept anything filed on behalf of JMC and Kipcor until they were represented by an attorney. The case settled in December 2022, and the parties set a sheriff's sale of the property for April 2023.

Before the sheriff's sale, Kimbrough brought suit in federal court against Fortune, its attorneys, an attorney for a co-defendant, and the state judge, alleging that they were violating his due process rights by preventing him from defending his companies in the foreclosure action. *See* 42 U.S.C. § 1983. He sought injunctive and declaratory relief under 28 U.S.C. §§ 2201 & 2202, allowing him to represent his companies in that matter despite the Indiana statute that prohibits it.

The district judge dismissed Kimbrough's complaint at screening, finding multiple defects. First, the court determined that because Kimbrough challenged the application of § 34-9-1-1(c) in the state foreclosure case, exercising federal jurisdiction was improper while that proceeding was ongoing. *See Younger*, 401 U.S. at 43–44. The judge also concluded that nothing in the complaint suggested that Fortune or the defendant attorneys were state actors subject to suit under § 1983. And it told Kimbrough that his companies could not be co-plaintiffs without an attorney. The judge

gave Kimbrough 30 days to amend his complaint and warned that failure to amend in that time would result in the dismissal of the suit.

Kimbrough instead filed what he styled as a "Motion to Correct Error" under Federal Rule of Civil Procedure 59. In denying that motion, the court rejected Kimbrough's main arguments that *Younger* abstention was improper because the case has a federal question and the ongoing state court proceeding was not "judicial in nature." And because Kimbrough had not timely amended his complaint, the judge dismissed the action and entered judgment for the defendants, which led to this appeal.

We first note that the judge dismissed "without prejudice," but we conclude that we have a final decision to review under 28 U.S.C. § 1291 because the judge plainly was finished with the case and entered a final judgment under Rule 58 of the Federal Rules of Civil Procedure. *Kowalski v. Boliker*, 893 F.3d 987, 994 (7th Cir. 2018).

Kimbrough objects to the sua sponte dismissal of his case pursuant to *Younger*. We need not address his objections because *Younger* is no longer relevant; the state court case is now final, and so there is no ongoing proceeding. *See Ankenbrandt v. Richards*, 504 U.S. 689, 705 (1992). After the property was sold, Kimbrough attempted to appeal other issues through the state court system, but the appeal was dismissed as untimely. The Supreme Court of Indiana denied transfer in August 2023.

But that does not mean that Kimbrough now is entitled to have his case heard in federal court; we first must consider whether there is subject matter jurisdiction. *Jakupovic v. Curran*, 850 F.3d 898, 902–903 (7th Cir. 2017). There is not. A federal court has jurisdiction only over live cases and controversies and therefore cannot decide legal questions that will not affect the rights of the litigants in the case before it. *United States v. Sanchez-Gomez*, 138 S. Ct. 1532, 1537–38 (2018). If an event occurs during an appeal that eliminates the court's power to provide relief, the appeal is moot. *See id.*; *Stone v. Bd. of Election Comm'rs for City of Chicago*, 643 F.3d 543, 545 (7th Cir. 2011). That is what occurred here. Because the state foreclosure action became final as of August 2023, Kimbrough's case is now moot.

Recall that Kimbrough did not seek damages (nor plead any basis on which they could be awarded) for the enforcement of Indiana Code § 34-9-1-1(c). He wanted the federal court to declare that enforcement of that statute violated his right to due process and enjoin further attempts to keep him from representing his companies in the foreclosure suit. Now that the state case has come to an end, there is no relief the federal courts could provide (even if a lawsuit to enjoin a state court's application of state procedural rules could somehow proceed). *See Stone*, 643 F.3d at 545 ("That election has

passed, the requirement was enforced, and the requested injunction is now worthless.").

The request for declaratory relief does not prevent mootness. Federal courts may issue declaratory judgments only when the ruling "would have an impact on the parties." *See Cornucopia Inst. v. United States Dep't. of Ag.*, 560 F.3d 673, 676 (7th Cir. 2009). Because the state court litigation is now resolved, any declaration that applying § 34-9-1-1(c) unconstitutionally interferes with Kimbrough's rights would have no effect on the parties here. *See St. John's United Church of Christ v. City of Chicago*, 502 F.3d 616, 627–28 (7th Cir. 2007) ("The availability of declaratory relief depends on whether there is a live dispute between the parties.") (citation omitted).

DISMISSED