

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 31 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ALLEN WISDOM,

Plaintiff - Appellant,

v.

STATE OF NEVADA; et al.,

Defendants - Appellees.

No. 08-15056

D.C. No. CV-06-00094-PMP

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Philip M. Pro, District Judge, Presiding

Submitted July 29, 2009**

Before: WALLACE, LEAVY, and HAWKINS, Circuit Judges.

Allen Wisdom appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action on *Rooker-Feldman* grounds, among others. He also

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

appeals from an order denying his request to proceed in forma pauperis (IFP) pursuant to 28 U.S.C. § 1915. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review a jurisdictional dismissal under the *Rooker-Feldman* doctrine de novo. *Noel v. Hall*, 341 F.3d 1148, 1154 (9th Cir. 2003). We review denial of a request for IFP status for an abuse of discretion. *Minetti v. Port of Seattle*, 152 F.3d 1113, 1114 (1998) (per curiam). We affirm in part, reverse in part, and remand.

At the time that Wisdom filed this action in federal district court against defendants, including his former lawyers and members of the Nevada judiciary, Wisdom's state court action, arising out of the same facts and against some of the named defendants, was ongoing. Accordingly, the district court should have temporarily stayed Wisdom's action pursuant to the abstention doctrine developed in *Younger v. Harris*, 401 U.S. 37 (1971). See *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005) (*Rooker-Feldman* bars "state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced," from asking district courts to review and reject those judgments) (emphasis added); *Gilbertson v. Albright*, 381 F.3d 965, 978-84 (9th Cir. 2004) (en banc) (holding that a section 1983 action for damages that would have the practical effect of enjoining an ongoing state judicial proceeding should be stayed under *Younger* where the state proceeding implicates

important state interest, and the plaintiff is not barred from litigating the federal issues in the state proceeding).

On remand, the district court should consider whether a judgment has entered in Wisdom's state court action, and whether that judgment precludes any of Wisdom's claims in this action. *See Exxon Mobil*, 544 U.S. at 293 ("In parallel litigation, a federal court may be bound to recognize the claim- and issue-preclusive effects of a state-court judgment, but federal jurisdiction over an action does not terminate automatically on the entry of judgment in the state court."); *Kay v. City of Rancho Palos Verdes*, 504 F.3d 803, 808-09 (9th Cir. 2007). If some claims remain, the district court should consider whether *Younger* applies to them.

The district court did not abuse its discretion by denying Wisdom's motion to proceed in forma pauperis after Wisdom paid the court filing fee. *See United States v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981) (per curiam).

We deny all pending motions.

The parties shall bear their own costs on appeal.

AFFIRMED in part, REVERSED in part, and REMANDED.