
**IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

SEAN HARRINGTON

Plaintiff-Appellant,

v.

MADELINE WILSON and the “LAW OFFICE OF MADELINE WILSON”;
CHRISTY RYAN;
BILL J. FYFE and COLUMBINE COUNSELING CENTER, P.C.;
LAURA ARCILISE, in her personal capacity;
LOUISE CULBERSON-SMITH, in her personal capacity;
JOHN GLEASON in both his personal and official capacity;
WENDELL PRYOR in his official capacity;
ROBERT EVANS, in his official capacity; and
the JEFFERSON COUNTY COMBINED COURT (a/k/a “THE FIRST JUDICIAL DISTRICT”),
by and through the COLORADO ATTORNEY GENERAL, JOHN SUTHERS, in his official Capacity.

Defendants-Appellees

On Appeal from the United States District Court
for the District of Colorado

Honorable Edward W. Nottingham
District Judge

D.C. No. 05-cv-01858-EWN-MJW

APPELLANT’S MOTION SEEKING CLARIFICATION OF JUNE 7, 2007 ORDER.

Appellant Sean L. Harrington, *pro se*, moves for clarification of this court’s
June 7, 2007 unpublished opinion specifically, whether the order affirms the

magistrate judge's dismissal of the lawsuit for lack of subject matter jurisdiction and, therefore, without prejudice or instead affirms the district judge's order affirming the magistrate judge's order in all respects *but adding that the lawsuit is dismissed with prejudice* and was "frivolous and vexatious." The within MOTION SEEKING CLARIFICATION should not be construed as a Petition for Rehearing *En Banc*. In support, the appellant states the following:

This court's unpublished opinion discusses the magistrate judge's recommendations and expressly adopts them in their entirety but does not discuss the district judge's memorandum opinion except to say, Magistrate Judge Watanabe's recommendations of September 7, 2006, **as adopted by the district court** [highlighting added], the judgment of the United States District Court for the District of Colorado is **AFFIRMED**. There is, however, a contradiction between the two memorandum opinions, regarding whether the lawsuit was dismissed with or instead without prejudice.

Among other things, the magistrate judge's recommendations included recommended findings, some *sua sponte*, that the court lacked jurisdiction by reason of lack of standing and/or *Rooker-Feldman* and/or *Younger* abstention doctrine and/or the domestic relations exception to diversity jurisdiction and/or *Colorado River* abstention doctrine and/or *Burford* abstention, *etc.* At the time the magistrate issued his recommendations, there had been no activity in the underlying state-court case in more than two years, and a motion filed in that case by Mr. Harrington had been pending for two years. In invoking *Younger* abstention, the magistrate judge mentioned only the ongoing pendency of the state case, and stated that "The state court provides an

adequate forum to hear such claims . . . Plaintiff has adequate remedies in state court.” Docket # 73 at 20, 39. That was not contested by appellees in their Answer Brief.

Yet by contrast, the district judge’s orders (docket # [80](#) & [114](#)), which were the subject of this appeal, dismissed this civil case **for lack of jurisdiction** but **with prejudice** which, if affirmed, means that Plaintiff would not be able to pursue these adequate remedies in state court.

It appears likely that this court’s unpublished opinion did not intend to affirm the district judge’s order dismissing this lawsuit with prejudice for lack of jurisdiction, and instead intended to affirm the magistrate judge’s recommendations, which in conformance with longstanding precedent of this circuit and other circuits, holds that dismissals for want of jurisdiction or lack of standing must be without prejudice. See *Brereton v. Bountiful City Corp.*, 434 F.3d 1213, 1216 (10th Cir. 2006); see also *St. Pierre v. Dyer*, 208 F.3d 394, 400 (2nd Cir. 2000). Indeed, the author of the unpublished opinion in this appeal wrote last year in affirming the dismissal of a lawsuit upon *Rooker-Feldman* grounds in *Jackson v. Jackson*, [195 Fed. Appx. 745](#); 2006 U.S. App. LEXIS 22550 (10th 2006):¹

The district court, however, erroneously dismissed Jackson's complaint with prejudice. See *Brereton v. Bountiful City Corp.*, 434 F.3d 1213, 1214 (10th Cir. 2006) ("A longstanding line of cases from this circuit holds that where the district court dismisses an action for lack of jurisdiction, as it did here, the dismissal must be without prejudice."). Accordingly, the judgment of the United States District Court for the District of Colorado is **modified** to reflect that dismissal of Jackson's claims is without prejudice.

[Emphasis in the original].

¹ The *Jackson* decision is attached hereto and made part hereof by reference as [Exhibit A](#).

Appellees have notified Mr. Harrington that they will take the position that this court affirmed the dismissal of this lawsuit with prejudice. Specifically, on June 8th counsel for the Fyfe defendants sent Mr. Harrington an electronic email in which he wrote, *“The 10th Circuit affirmed the district court's judgment dismissing the case with prejudice. I don't think you can file in state court without the U.S. Supreme Court reversing the judgment.”*

Mr. Harrington is pursuing the adequate remedies in state court, in the underlying case in Colorado state court and, perhaps more meaningfully, in a lawsuit he filed earlier this year in state court in Texas, where his daughter and his former wife reside. The latter case is scheduled for a major hearing later this month. Mr. Harrington therefore requests that this court clarify that its June 7, 2007 unpublished opinion and order adopts only the recommendations of the magistrate judge and does not adopt or affirm the portion of the district judge's order that dismissed this lawsuit with prejudice.

Wherefore, appellant Sean L. Harrington moves that this court clarify that its June 7, 2007 unpublished opinion and order adopts only the recommendations of the magistrate judge and does not adopt or affirm the portion of the district judge's order that dismissed this lawsuit with prejudice.

Submitted 11 June 2007:



Sean L. Harrington, appellant

CERTIFICATE OF SERVICE

I hereby certify that on *June 11th 2007*, I sent a copy of the within Motion for Clarification by way of United States mail or by electronic means, as designated hereinbelow, and affixed hereto:

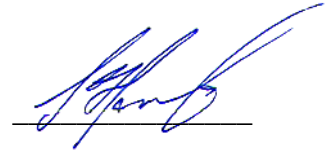
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A handwritten signature in blue ink, appearing to read "B. Huff", is written over a horizontal line.

* service by electronic means was expressly authorized by this recipient.