

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

FRANK J. LAWRENCE, JR.,

Plaintiff,

v.

CASE NO. 4:05cv14-RH/WCS

PAUL J. SCHWIEP, et al.,

Defendants.

ORDER DENYING MOTION FOR RELIEF FROM JUDGMENT

The Florida Board of Bar Examiners filed charges against plaintiff challenging his fitness to practice law in Florida. While those charges were pending, plaintiff filed this action asserting the Board was proceeding in violation of the United States Constitution. Defendants moved to dismiss. By order entered October 7, 2005, I granted the motion. The principal basis of the ruling was the holding in *Middlesex County Ethics Comm. v. Garden State Bar Assoc.*, 457 U.S. 423, 102 S. Ct. 2515, 73 L. Ed. 2d 116 (1982), that a federal action challenging ongoing bar disciplinary proceedings is barred by the doctrine of *Younger v. Harris*, 401 U.S. 37, 91 S. Ct. 746, 27 L. Ed. 2d 669 (1971). The clerk entered judgment.

Plaintiff appealed. Though the appeal is still pending, plaintiff has moved for relief from the judgment under Federal Rule of Civil Procedure 60 on the grounds that the state court proceedings have concluded and his constitutional arguments were not adequately considered.

“As a general matter, the filing of a notice of appeal deprives the district court of jurisdiction over all issues involved in the appeal.” *Mahone v. Ray*, 326 F.3d 1176, 1179 (11th Cir. 2003). When faced with a Rule 60 motion, however, a district court can deny the motion outright, or “indicate its belief that the arguments raised are meritorious.” *Id.* at 1180. If the district court indicates the arguments are meritorious, the appellant may seek remand from the circuit court in order to obtain relief from the judgment. *Id.*

Plaintiff’s Rule 60 motion is unfounded for the reasons set forth in the order granting the original motions to dismiss. That the state court proceeding has now concluded with unfavorable results for plaintiff does not change that analysis, for two reasons.

First, when a federal action is dismissed under *Younger* based on the pendency of a state enforcement action, the unfavorable termination of the enforcement action does not allow the resumption of the federal challenge to the state proceeding. To the contrary, the whole point of *Younger* is that defenses to a state enforcement proceeding of this type must be presented in the state

enforcement proceeding, not in a separate federal action challenging the state procedures.

Second, that the state court now has entered its ruling provides an additional bar to adjudication of plaintiff's claims by a federal district court. Under the *Rooker-Feldman* doctrine, federal review of a state court decision of this type is available only by petition for writ of certiorari in the United States Supreme Court, not by filing what amounts to an appeal of the state court decision in a federal district court. See *Rooker v. Fidelity Trust Company*, 263 U.S. 413, 44 S.Ct. 149, 68 L. Ed. 362 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 75 L. Ed. 2d 206, 103 S.Ct. 1303 (1982).

For these reasons,

IT IS ORDERED:

Plaintiff's motion for relief from judgment (document 53) is DENIED.

SO ORDERED this 17th day of January, 2006.

s/Robert L. Hinkle
Chief United States District Judge