

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

K. ANDREA BRIARMOON,

Plaintiff,

v.

MEMORANDUM and ORDER

MUNICIPALITY OF JANESVILLE,

06-C-246-S

Defendant.

Plaintiff commenced this action on May 5, 2006 against defendant Municipality of Janesville. She seeks to prevent the City from razing her carriage barn.

On June 6, 2006, defendant moved to dismiss plaintiff's complaint. This motion has been fully briefed and is ready for decision.

A complaint should be dismissed for failure to state a claim only if it appears beyond a reasonable doubt that the plaintiffs can prove no set of facts in support of the claim which would entitle the plaintiffs to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). In order to survive a challenge under Rule 12(b)(6) a complaint "must contain either direct or inferential allegations respecting all the material elements necessary to sustain recovery under some viable legal theory." Car Carriers, Inc. v. Ford Motor Co., 745 F. 2d 1101, 1106 (7th Cir. 1984).

FACTS

On June 9, 2003 the City of Janesville inspected plaintiff's carriage barn. As a result of the inspection an order was issued on July 18, 2003 requiring Briarmoon to raze her carriage barn. The assessed value of the shed was \$400.00.

Plaintiff filed suit against the City of Janesville in Rock County Circuit Court on January 23, 2004. After a two day trial on June 24 and 25, 2004 the Court ruled in favor of the City. Judgment was entered on July 12, 2004.

Plaintiff appealed the decision. On December 1, 2005 the Wisconsin Court of Appeals issued a decision affirming the circuit court's judgment.

On December 28, 2005 Briarmoon filed a petition for review with the Wisconsin Supreme Court. On April 10, 2006 the Wisconsin Supreme Court denied petitioner's petition for review.

MEMORANDUM

Defendant moves to dismiss plaintiff's complaint for lack of subject matter jurisdiction. Plaintiff is seeking the same relief, preventing the City from razing her carriage barn, that she sought in the state court action.

Federal courts cannot exercise jurisdiction over claims that would require them to review a final judgment of a state court. See Rooker v. Fidelity Trust Co., 263 U.S. 413, 416 (1923); District of

Colombia Court of Appeals v. Feldman, 460 U.S. 413, 416 (1983). The Rooker-Feldman doctrine also applies to issues that could have been raised in the state court proceeding and not just to issues that were actually raised. Barefoot v. City of Wilmington, 306 F.3d 113, 119-120 (4th Cir.), cert. denied, 537 U.S. 1019(2002).

Plaintiff is relitigating the case that she lost in state court. Any constitutional claims that she may be raising are inextricably intertwined with the state court's decision which this Court cannot review. Feldman, 460 U.S. 482-84, n. 16. She could have raised these claims in state court and failed to do so.

Pursuant to the Rooker-Feldman doctrine this Court lacks subject matter jurisdiction of plaintiff's complaint. Accordingly, defendant's motion to dismiss plaintiff's complaint will be granted.

Plaintiff is advised that in any future proceedings in this matter she must offer argument not cumulative of that already provided to undermine this Court's conclusion that her claim must be dismissed. See Newlin v. Helman, 123 F.3d 429, 433 (7th Cir. 1997).

ORDER

IT IS ORDERED that defendant's motion to dismiss for lack of subject matter jurisdiction is GRANTED.

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IT IS FURTHER ORDERED that judgment be entered in favor of defendant against plaintiff DISMISSING her complaint and all federal law claims contained therein with prejudice and costs.

Entered this 28th day of June, 2006.

BY THE COURT:

S/

JOHN C. SHABAZ
District Judge