

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

-----  
GREGORY A. TRACY,

Petitioner,

v.

FAY M. WALDO and  
PROGRESSIVE NORTHERN  
INSURANCE,

Respondents.

-----

OPINION and ORDER

06-C-737-C

This is a proposed civil action for injunctive relief, in which petitioner Gregory Tracy contends that his rights under the Family Educational Rights and Privacy Act (FERPA) and the Health Information Privacy Protection Act (HIPPA) have been violated by an order issued by Judge Michael Nowakowski of the Circuit Court for Dane County, Wisconsin, in Dane County Case No. 2005CV554. Petitioner seeks leave to proceed without prepayment of fees and costs or providing security for such fees and costs, pursuant to 28 U.S.C. § 1915. From the affidavit of indigency accompanying petitioner's proposed complaint, I conclude that petitioner is unable to prepay the fees and costs of instituting this lawsuit.

In addressing any pro se litigant's complaint, the court must construe the complaint liberally and grant leave to proceed if there is an arguable basis for a claim in fact or law. Haines v. Kerner, 404 U.S. 519, 521 (1972); Neitzke v. Williams, 490 U.S. 319 (1989). However, if the action is frivolous or malicious, fails to state a claim upon which relief may be granted or seeks monetary relief against a defendant who is immune from such relief, the case must be dismissed promptly pursuant to 28 U.S.C. § 1915(e)(2).

In his complaint and attachments, I understand petitioner to be alleging the following facts.

#### ALLEGATIONS OF FACT

Petitioner is the plaintiff in Dane County Case No. 2005CV554. In that case, petitioner is seeking money damages arising out of an automobile accident that occurred on April 12, 2003, when respondent "rear-ended" petitioner's vehicle. As a result of the accident, petitioner suffers from a permanent disability known as "reflex sympathetic dystrophy."

On December 13, 2006, presiding judge Michael Nowakowski ordered plaintiff to produce medical records to respondent, respondent's counsel and respondent's retained expert. Petitioner seeks an order from this court enjoining Judge Nowakowski's order and mandating that plaintiff's medical records be returned to him.

## DISCUSSION

I understand petitioner to contend that his rights under federal law were violated when Judge Nowakowski ordered that his medical records be released to respondent in connection with petitioner's state court personal injury litigation. As a general rule, district courts are required to abstain from issuing injunctions against ongoing state court proceedings. Younger v. Harris, 401 U.S. 37 (1971) ("the normal thing to do when federal courts are asked to enjoin pending proceedings in state courts is not to issue such injunctions"). As the Court of Appeals for the Seventh Circuit has explained:

Younger holds that federal courts are not to use their equity powers to enjoin proceedings in state courts . . . merely because the person seeking the injunction has a federal defense to the state proceeding. States oughtn't to be impeded in their efforts to enforce their own laws in their own courts . . . by injunctions issued at the behest of defendants in state proceedings who, seeking to delay and if possible derail those proceedings in midcourse, run to a federal court for an injunction against the continuation of the proceeding.

Midwestern Gas Transmission Co. v. McCarty, 270 F.3d 536, 537 (7th Cir. 2001).

If petitioner believes that his rights are being violated in the context of his state court case, he may raise his concerns with Judge Nowakowski or petition the Wisconsin court of appeals for interlocutory review of the judge's order under Wis. Stat. § 808.03(2)(b). However, petitioner may not make an end run around the state judicial process by filing an action in federal court. General Auto Service Station LLC v. City of Chicago, 319 F.3d 902, 904 (7th Cir. 2003) (abstention generally proper in cases in which party has opportunity to

raise constitutional arguments in state court). Because petitioner has adequate opportunities to raise his federal concerns in state court, his request for leave to proceed in forma pauperis must be DENIED.

ORDER

IT IS ORDERED that petitioner's request for leave to proceed in forma pauperis is DENIED and this case is DISMISSED as barred by the Younger abstention doctrine. The clerk of court is directed to close this file.

Entered this 19th day of December, 2006.

BY THE COURT:  
/s/  
BARBARA B. CRABB  
District Judge