

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

RHONDA FUNMAKER AND S.F.,

Plaintiffs,

v.

ADAMS COUNTY CIRCUIT COURT
and ADAMS COUNTY TREASURER,

Defendants.

OPINION AND ORDER

13-cv-779-wmc

On behalf of herself and her minor son, S.F., plaintiff Rhonda Funmaker proposes to sue the Circuit Court and County Treasurer for Adams County, Wisconsin, for conduct in an action for delinquent property taxes. After considering financial information provided by the plaintiffs, the court concluded that Funmaker is eligible for leave to proceed without prepayment of the full filing fee. Because plaintiffs proceed *in forma pauperis*, the court is also required to screen the complaint and dismiss any portion that is frivolous, malicious, fails to state a claim upon which relief may be granted or seeks money damages from a defendant who by law is immune from such relief. 28 U.S.C. § 1915(e)(2). Because plaintiffs fail to state a claim on which relief can be granted, the complaint will be dismissed.

ALLEGATIONS

In addressing any *pro se* litigant's complaint, the court must read the allegations generously, reviewing them under "less stringent standards than formal pleadings drafted by lawyers." *Haines v. Kerner*, 404 U.S. 519, 521 (1972). For purposes of this screening

order, therefore, the court accepts all well-pled allegations as true and assumes the following facts.

Plaintiffs Rhonda Funmaker and her minor child, S.F., presently reside at 916 State Road 21 in Friendship, Wisconsin, which is located in Adams County. Funmaker is listed as the owner of this property, although the home was reportedly “willed” to S.F. by Kenneth Funmaker, Sr., who is now deceased.

Funmaker has not paid the state property taxes on her residence since 2008. After receiving a letter regarding the delinquent taxes for 2009, 2010, 2011 and 2012, Funmaker called the Adams County Treasurer, Jani Zander. Zander reportedly told Funmaker that she could appear in Adams County Circuit Court on September 23, 2013, and request a six-month extension of time to pay off the delinquent amount owed, at which point all of the “back taxes will become due or foreclosure proceedings will start.” Because Funmaker had requested help from the Ho-Chunk Nation to pay off the back taxes, she told Zander that she believed this was manageable, but needed just a few more months to arrange payment.

Funmaker appeared in circuit court as instructed on September 23, 2013, along with documents showing that the Federal Bureau of Indian Affairs built the home located at 916 State Road 21 in Adams County. She repeated the conversation she had with Zander to the circuit court judge, who denied her request. Funmaker also attempted to give the documents to the presiding judge, noting that her maternal great-grandparents and two infants were buried on the property, which was considered sacred by the “Bear Clan” and Ho-Chunk Native-American Indian tribe. The circuit court allegedly refused

to look at the documents and denied her request for an extension. Zander, who was present as Adams County Treasurer, also allegedly attempted to make an unspecified statement, but the judge interrupted and would not let her finish.

In this lawsuit, Funmaker contends that: (1) the circuit court violated her federal civil rights as a member of the Ho-Chunk tribe by denying her a six-month extension of time to pay the back taxes; and (2) Zander committed legal malpractice by providing incorrect information as to the circuit court's willingness to consider a six-month extension. Funmaker further asks that this court grant her the six-month extension denied by the Adams County Circuit Court, and appears to request that the property be recognized as a Native Ho-Chunk sacred ceremonial and religious site. Finally, she also asks that Zander be held "accountab[le]" for giving her misinformation.

OPINION

Funmaker's primary request -- that the court grant her the six-month extension to pay the back taxes on the property -- necessarily implicates the validity of the ruling by the Adams County Circuit Court *denying* that same request. This court's review of these allegations is, therefore, constrained by the *Rooker-Feldman* doctrine. *See District of Columbia Ct. of App. v. Feldman*, 460 U.S. 462, 486 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-16 (1923). The *Rooker-Feldman* doctrine prevents a party "complaining of an injury caused by [a] state-court judgment" from seeking redress in a lower federal court. *See Exxon Mobil Corp. v. Saudi Indus. Corp.*, 544 U.S. 280, 291-92 (2005).

A litigant may not avoid the *Rooker-Feldman* doctrine by casting his complaint in the form of a civil rights action, as plaintiffs have done in this case. *See Ritter v. Ross*, 992

F.2d 750, 753 (7th Cir. 1993). Rather, litigants who feel that a state court proceeding has violated their constitutional rights must appeal through the state court system and then to the United States Supreme Court. *See Young v. Murphy*, 90 F.3d 1225, 1230 (7th Cir. 1990). Because Funmaker directly challenges the decision of the Adams County Circuit Court to deny her the six-month extension, the *Rooker-Feldman* doctrine bars this court from acting on that claim.

Even if plaintiffs were requesting some form of declaratory judgment, the request is legally unsupported and appears misdirected. Perhaps plaintiffs seek a determination that the property is eligible for protection under the Native American Graves Protection and Repatriation Act (“NAGPRA”), 25 U.S.C. § 3001, *et seq.*, but plaintiffs do not allege facts showing that relief is available under that statute, or even if it were, those rights could not be vindicated in the state court foreclosure proceeding. *See Monet v. Lee, Henderson & Wong*, Nos. Civ. 94-00884 HG; Civ. 95-00300 HG, 1995 WL 774527 (D. Hawai’i Oct. 30, 1995).

Moreover, plaintiffs do not appear to have followed the NAGPRA procedures by applying for recognition with the United States Department of Interior. *See* 25 U.S.C. § 3002(d)(1). In fact, plaintiffs do not even allege that there has been any actual violation of NAGPRA at all, nor does it appear that the Adams County Circuit Court and Zander would be appropriate defendants in such a lawsuit. Thus, plaintiffs have failed to articulate a valid claim for a declaratory judgment of any arguable NAGPRA rights.

Finally, the court turns briefly to plaintiffs’ legal malpractice claim, which is directed toward Zander in her official capacity as the Adams County Treasurer. To

prevail on such a claim, plaintiffs would be required to prove: (1) that plaintiffs had a lawyer-client relationship with Zander; (2) that Zander committed acts or omissions constituting negligence; (3) that this negligence caused injury to plaintiffs; and (4) the fact and extent of the injury alleged. *See Lewandowski v. Continental Cas. Co.*, 88 Wis. 2d 271, 277, 276 N.W.2d 284 (1979). Because the complaint fails to establish in any way that there was an attorney-client relationship between plaintiffs and Zander, they cannot satisfy the first element. Indeed, on the facts pled, it is obvious that no such relationship existed. Even assuming that Zander is a lawyer, she was clearly acting on behalf of Adams County, not plaintiffs, in their short phone conversation. As a result, this claim fails as a matter of law as well.

ORDER

IT IS ORDERED that plaintiff Rhonda Funmaker's request for leave to proceed is DENIED and the complaint is DISMISSED.

Entered this 6th day of January, 2015.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge