

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

MARCEL STRELOW,

Plaintiff,

v.

ADM. DIVISION OF BANKING and
FOND DU LAC CIRCUIT COURT,

Defendants.

OPINION AND
ORDER

01-C-0333-C

This is a civil action for monetary relief in which pro se plaintiff Marcel Strelow is suing the Adm. Division of Banking and the Fond du Lac County Circuit Court. Plaintiff contends that defendant Adm. Division of Banking improperly garnished his wages and that defendant Fond du Lac County Circuit Court failed to uphold the Wisconsin statutes. The case is before the court on defendants' motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). Because I conclude this court lacks jurisdiction to entertain this suit, I will grant defendants' motion to dismiss.

For the purpose of deciding defendants' motion to dismiss, I must accept the allegations in plaintiff's complaint as true.

ALLEGATIONS OF FACT

Plaintiff Marcel Strelow is a resident of Wisconsin. Defendants Adm. Division of Banking and Fond du Lac County Circuit Court are located in Wisconsin. For a nine-month period from May 1999 to February 2000, Bonded Credit Company garnished twenty percent of plaintiff's wages without a court order or a signed agreement between the parties. Bonded Credit Company is licensed and bonded by Adm. Division of Banking. Fond du Lac County Circuit Court failed to enforce the Wisconsin statutes after the first garnishment order expired in May 1999.

OPINION

In addressing any pro se litigant's complaint, the court must construe the complaint liberally. Haines v. Kerner, 404 U.S. 519, 520 (1972). A motion to dismiss will be granted only if "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations" of the complaint. Cook v. Winfrey, 141 F.3d 322, 327 (7th Cir. 1998) (citing Hishon v. King & Spalding, 467 U.S. 69, 73 (1984)); Gossmeyer v. McDonald, 128 F.3d 481, 489 (7th Cir. 1997).

A. Fond du Lac County Circuit Court

Plaintiff fails to state a claim against defendant Fond du Lac County Circuit Court

because the Eleventh Amendment to the United States Constitution "bars federal suits against state courts and other branches of state government." Landers Seed Co., Inc. v. Champaign Nat'l Bank, 15 F.3d 729, 732 (7th Cir. 1994) (holding that Eleventh Amendment bars suit against Supreme Court of Illinois). See also Johnson v. Supreme Court of Illinois, 165 F.3d 1140 (7th Cir. 1999) (same). Article VII, § 2 of the Wisconsin Constitution states that "[t]he judicial power of this state shall be vested in a unified court system consisting of one supreme court, a court of appeals, a circuit court" Because defendant Fond du Lac County Circuit Court is a state court, plaintiff's claim against it is barred by the Eleventh Amendment.

B. Adm. Division of Banking

Although the Eleventh Amendment's prohibition of suits against a state includes state agencies, it is not obvious whether defendant Adm. Division of Banking is entitled to immunity under the Eleventh Amendment. Ford Motor Co. v. Dep't of Treasury of Indiana, 323 U.S. 459, 462-63 (1945); Kroll v. Board of Trustees of University of Illinois, 934 F.2d 904 (7th Cir. 1991) (state agency is treated as state for purposes of immunity); Gleason v. Bd. of Educ. of City of Chicago, 792 F.2d 76, 79 (7th Cir. 1986) (stating "the eleventh amendment 'prohibits federal courts from entertaining suits by private parties against States and their agencies'" (quoting Alabama v. Pugh, 438 U.S. 781, 781 (1978))). The issue is

whether the defendant "is to be treated as an arm of the State partaking of the State's Eleventh Amendment immunity, or is instead to be treated as a municipal corporation or other political subdivision to which the Eleventh Amendment does not extend." Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle, 429 U.S. 274, 280 (1977). Where an agency is determined to be arm of the state, the state's immunity extends to that agency. Kegonsa Joint Sanitary Dist. v. Stoughton, 87 Wis. 2d 131, 144, 274 N.W.2d 598, 604 (1979).

The Wisconsin Statutes provide that the Division of Banking is a division of the Wisconsin Department of Financial Institutions, an administrative agency created by the Wisconsin State Legislature. Wis. Stat. §§ 15.18, 15.183(1). The statutes furthermore provide that "[t]he administrator of the division . . . shall serve at the pleasure of the secretary [of the Department of Financial Institutions]." Id. § 15.183(1). Therefore, the Adm. Division of Banking is presumably a function of the Division of Banking. Because defendant Adm. Division of Banking is not a legal entity separate from the state, it partakes of the state's Eleventh Amendment immunity. Therefore, I will grant defendant's motion to dismiss.

If by "Adm.," plaintiff meant the administrator of the Division of Banking, his suit would still be subject to dismissal. If he is suing the administrator in his or her official capacity, Eleventh Amendment immunity would bar a suit. If plaintiff is suing the administrator in his or her individual capacity, plaintiff's suit would be dismissed for his

failure to allege any personal involvement by the administrator in the allegedly improper garnishment of his wages.

ORDER

IT IS ORDERED that the motion to dismiss filed by defendants Adm. Division of Banking and Fond du Lac Circuit Court is GRANTED and plaintiff Marcel Strelow's suit for monetary relief is DISMISSED. The clerk of court is directed to enter judgment for defendants and close this case.

Entered this 16th day of October, 2001.

BY THE COURT:

BARBARA B. CRABB
District Judge