IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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DAN HAWK,

Plaintiff,

v.

THOMAS BELLAVIA, AAG, WIDOJ, WISCONSIN COMMISSIONER OF INSURANCE, WISCONSIN DEPARTMENT OF FINANCIAL INSTITUTIONS, WINN COLLINS, ADA,

Defendants.

OPINION AND ORDER

03-C-0686-C

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This is a civil action in which plaintiff is contending that the state of Wisconsin has violated his rights in a number of ways, such as by enforcing state insurance laws on and off an Indian reservation and by forcing plaintiff to make payments to certain tribes without due process of law. The case is before the court on the motion of defendants Thomas Bellavia and Winn Collins to dismiss, on plaintiff's motion for injunctive relief and on plaintiff's motion to remove.

I conclude that the motion to dismiss must be granted because plaintiff has failed to

state a claim against any defendant on which relief could be granted; plaintiff's motion for injunctive relief must be denied with respect to the ongoing litigation in the Circuit Court for Outagamie County because plaintiff has not shown a legal basis for staying the case and with respect to his effort to close down the state's prescription drug savings website because he has not shown that he has standing to challenge its existence or that either defendant Collins or Bellavia has any responsibility for the website; plaintiff's motion to remove must be denied because he has shown no basis for removing a case pending in state court to this court.

Plaintiff's "complaint" is generally unintelligible. It consists of five separate documents: "Amendment 1," "Appeal," "Amendment 2," "Motion to Remove" and "Injunction." Whether considered together or separately, these documents fall far short of setting out a claim against any defendant. As far as I can determine from plaintiff's allegations, it appears that he is alleging that the state of Wisconsin ordered him to shut down a website he was operating, ordered him to stop soliciting sales of federal tribal corporate stock to individuals and asserted jurisdiction over off-reservation sales of insurance polices. He alleges also that the Circuit Court for Outagamie County, Branch 7, has refused to dismiss a case (presumably against him) or "remand" it to the Oneida Tribe and that the Oneida Tribe owes him $36,180.78 plus interest and penalties. Plaintiff provides no factual context for his allegations, making it impossible to know what kind of website he was

operating, the circumstances of his solicitations for the sale of stock or the sales of insurance policies, on reservation or off. He does not say what kind of case is pending in the state circuit court, who the parties are, what the claims are or why the case should be remanded. He does not explain why the Oneida Tribe owes him money or who, if anyone, is forcing him to pay money without due process. In the document entitled "Appeal," he describes this case as an appeal from the Oneida Appeals Commission, but he does not say what the case is or explain why this court would have jurisdiction to hear such an appeal. More to the point, he does not explain how defendants Thomas Bellavia and Winn Collins are involved in any of the acts of which he complains or how they might be in a position to provide the relief he seeks.

OPINION

A. Motion to Dismiss

The purpose of a complaint is to advise the defendants of the claims against them. A complaint does not have to set out every detail of the claims or allege every fact supporting them but it does have to give the defendants fair notice of the claim and the grounds upon which it rests. Fed. R. Civ. P. 8(a); Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit, 507 U.S. 163, 168 (1993). Plaintiff's complaint fails to do this. No one reading it could guess what each defendant is alleged to have done to violate

plaintiff's rights or what rights might be at stake. Plaintiff never explains why he thinks he has a right to operate a website or to solicit sales of stock. He does not say that he was trying to sell insurance, although one might speculate that this is the case, or why he thinks he should be free to do so. Rule 8(a) does not require parties to make their pleadings long; it does require them to make their pleadings straightforward. United States ex rel. Garst v. Lockheed-Martin Corp., 328 F.3d 374, 378 (7th Cir. 2003).

Because plaintiff's complaint is so incoherent, I have to grant the motion to dismiss filed by defendants Bellavia and Collins. They cannot be expected to answer a complaint that they cannot understand. However, I will give plaintiff an opportunity to amend his complaint if he thinks he can make out a claim against these defendants.

Plaintiff has never served the other two defendants, the Wisconsin Commissioner of Insurance and the Wisconsin Department of Financial Institutions, and more than 120 days have elapsed since the filing of this suit. It is too late to try to serve them now, Fed. R. Civ. P. 4(m) (failure to serve copy of summons and complaint within 120 days warrants dismissal of unserved parties), but even if it were not, plaintiff would be unable to sustain a case against them. Both defendants are immune from suit under the principles of state sovereign immunity. Hafer v. Melo, 502 U.S. 21, 25 (1991) (actions against state agency are barred by Eleventh Amendment to United States Constitution); Duckworth v. Franzen, 780 F.2d 645, 649 (7th Cir. 1985) (action against state office holder in name of his office is official

capacity suit considered as suit against state itself). Accordingly, defendant Wisconsin Commissioner of Insurance and the Wisconsin Department of Financial Institutions will be dismissed from this suit.

If plaintiff contemplates filing an amended complaint, he should bear in mind that persons acting as prosecutors are immune from suit for actions taken in their roles as prosecutors. Imbler v. Pachtman, 424 U.S. 409, 431 (1976). These actions include the initiation of prosecutions and the presentation of the state's case. In addition, state officers have qualified immunity from suit for any acts that do not violate clearly established statutory or constitutional rights. Harlow v. Fitzgerald, 457 U.S. 800, 819 (1982). In other words, to avoid dismissal, plaintiff would have to show first, that he is suing defendants Collins and Bellavia for acts that have nothing to do with the initiation or prosecution of any charges against him and second, that reasonable persons in defendants' position would have known from established law that any acts they committed would violate plaintiff's constitutional rights.

If plaintiff's suit is intended to prevent the state courts from proceeding with pending actions, he should understand that federal courts have almost no authority to stop an ongoing state court action. The general rule is that states may prosecute or otherwise proceed against violators of its own laws in its own courts in any case in which the alleged violator has engaged in conduct actually or arguably in violation of state law. Alleghany

Corp. v. Haase, 896 F.2d 1051, 1053 (7th Cir. 1990), vacated as moot, 499 U.S. 933 (1991).

If plaintiff's purpose is to have this court review the constitutionality of a completed state court action, he has no chance of succeeding. Unless he is bringing an action for a writ of habeas corpus challenging the constitutionality of his conviction and sentencing, he must look to the state appellate courts for any review of state court proceedings and ultimately, to the United States Supreme Court. Federal district courts have no jurisdiction over state court cases. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 467 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413, 416 (1923). If plaintiff decides he wants to bring a petition for a writ of habeas corpus, he should know that this court will be unable to hear the case until he has exhausted all the remedies available to him in the state courts.

B. Plaintiff's Motion for Injunctive Relief

1. Requiring state to shut down its prescription drug website

In order to prosecute a suit in federal court, a party must demonstrate that he or she has "standing" to sue, that is, that he or she has a legally enforceable interest in the outcome of the suit. The required elements of standing are "(i) an injury in fact, which is an invasion of a legally protected interest that is concrete and particularized and, thus, actual or imminent, not conjectural or hypothetical; (ii) a causal relation between the injury and the

challenged conduct, such that the injury can be fairly traced to the challenged action of the defendant; and (iii) a likelihood that the injury will be redressed by a favorable decision." Wisconsin Right to Life, Inc. v. Schober, 2004 WL 885719 (7th Cir. 2004) (quoting Reid L. v. Illinois State Bd. of Education, 358 F.3d 511, 515 (7th Cir. 2004) (quoting in turn Lee v. City of Chicago, 330 F.3d 456, 468 (7th Cir. 2003)); see also Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992). Plaintiff has not identified any particularized interest of his own that is affected by the state of Wisconsin's website; he merely objects to it as ill-conceived. A generalized objection to an act by the state is not sufficient to give a person legal standing to challenge the act.

2. Request to stay litigation pending in the Circuit Court for Outagamie County

Plaintiff has shown no reason why this court should stay litigation pending in a state court and he has not suggested any basis on which the court might act to impose such a stay. He has not alleged that either defendant is responsible for the litigation, what it might be about, whom it might concern or why it should not go forward. Without such basic information, I cannot even guess what kind of litigation it might be or why plaintiff is concerned with it, let alone determine whether plaintiff has any chance of having it stayed permanently. Therefore, plaintiff's motion for injunctive relief must be denied.

C. Removal of State Court Case

Once again, the unintelligibility of plaintiff's complaint makes it impossible to evaluate the basis of his request for the removal of the case pending in the Circuit Court for Outagamie County. It is evident that he wants the Outagamie County case removed so that it may be sent to the Oneida Appeals Commission, but this is the only part of his request that is evident or even comprehensible. Plaintiff has not suggested any reason why this court or any other would have the authority to engineer such a realignment of litigation. If he thinks that the Outagamie County litigation is dealing with matters that have been addressed elsewhere so that the court is legally precluded from hearing them again or if he thinks the Outagamie Court lacks jurisdiction over his case, his remedy is in the state courts.

ORDER

IT IS ORDERED that

1. The motion to dismiss filed by defendants Thomas Bellavia and Winn Collins is GRANTED without prejudice;

2. Plaintiff's motion for injunctive relief is DENIED;

3. Plaintiff's motion to remove a case pending in the Circuit Court for Outagamie County is DENIED;

4. Defendants Wisconsin Commissioner of Insurance and Wisconsin Department of

Financial Institutions are DISMISSED from the case on the court's own motion for plaintiff's failure to accomplish timely service on them; and

5. Plaintiff's "appeal" from the Oneida Appeals Commission is DENIED for lack of jurisdiction.

Entered this 25th day of May, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge