

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

RICHARD BOLTE,

Plaintiff,

v.

CAROL KOSCOVE, EDWARD J. O'BRIEN,
THERESA M. CISNEROS, individually
and Judge of District Court Division 8,
County of El Paso, State of Colorado, and
EL PASO COUNTY,

Defendants.

ORDER

04-C-935-C

This is a civil action in which plaintiff alleges that the defendants engaged in a conspiracy to violate his civil rights by prosecuting an action against him in Colorado charging him with the unauthorized practice of law, and then pursuing their false claim in Wisconsin by using the judgment against him to report him to the Office of Lawyer Regulation. Plaintiff admits in his complaint that the judgment rendered against him in defendant Judge Cisneros's court has been upheld in the Colorado Appellate Court and that his requests for review on petitions for writs of certiorari were denied both by the Colorado Supreme Court and the United States Supreme Court.

Defendant El Paso County has moved to dismiss plaintiff's complaint on the grounds that it is not an entity that may be sued and that, in any event, plaintiff has not alleged facts in his complaint from which an inference may be drawn that his rights were violated by virtue of an official policy or custom of the county. Defendant Cisneros has moved to dismiss plaintiff's complaint on the grounds that 1) the suit is barred under the Rooker-Feldman doctrine; 2) she is entitled to judicial immunity for her actions; and 3) this court lacks personal jurisdiction over her. Defendants Koscove, O'Brien II and Dunlap have moved to dismiss plaintiff's complaint on the grounds that 1) none of them is a state actor that may be sued under 42 U.S.C. § 1983, 2) plaintiff's claims are barred by the statute of limitations, preclusion principles and various privileges and immunities; and 3) the court lacks personal jurisdiction over defendants Koscove and O'Brien II. A briefing schedule was established on each of these motions. Pursuant to that schedule, plaintiff has until March 2, 2005, in which to oppose the motions.

Now plaintiff has moved for permission to present matters outside the pleadings in opposition to defendants' motions to dismiss. In his motion, plaintiff states that he wants to argue that the Colorado judgment is void and that he wishes to support this argument with evidentiary materials. Plaintiff's request will be denied.

It is true that defendants have supported their motions with affidavits attesting to the affiants' contacts or lack of contacts with the state of Wisconsin, as well as with copies of

public documents, such as the record of Colorado state court proceedings involving plaintiff. However, these documents may be considered by this court in connection with defendants' motions without treating the motions as motions for summary judgment. Menominee Indian Tribe of Wisconsin v. Thompson, 161 F. 3d 449, 455 (7th Cir. 1998) (citing General Electric Capital Corp. v. Lease Resolution Corp., 128 F.3d 1074, 1080-81 (7th Cir. 1997)(court may take judicial notice of public record documents without converting motion to dismiss into motion for summary judgment). Also, in deciding whether a party has made the necessary showing of personal jurisdiction, a court may rely on the allegations of the complaint and also may receive and weigh affidavits submitted by the parties. Nelson v. Park Industries, Inc., 717 F.2d 1120, 1123 (7th Cir. 1983).

The general rule is that when there are a variety of grounds asserted for dismissal of an action, the court is to decide questions of jurisdiction first. See, e.g., Leroy v. Great Western United Corp., 443 U.S. 173, 180 (1979) (stating that court without personal jurisdiction lacks power to exercise control over parties). This means that this court will consider first defendants' motions to dismiss asserting lack of personal jurisdiction and a bar under the Rooker-Feldman doctrine. To the extent that plaintiff might wish to argue that the Colorado judgments are void, his arguments would have to be directed at the Rooker-Feldman challenge and would be unavailing. This is because Rooker- Feldman bars a federal court from entertaining not only claims actually reviewed in state court but also other claims,

including constitutional claims, that are "inextricably intertwined" with the claims heard by the state court. Leaf v. Supreme Court of Wisconsin, 979 F.2d 589, 598 (7th Cir. 1992) (quoting Feldman, 460 U.S. at 486). Thus, any argument plaintiff might attempt to make in an effort to challenge the validity of the Colorado state court decisions would also be barred by Rooker-Feldman.

ORDER

IT IS ORDERED that plaintiff's motion for leave to present matters outside the pleadings in connection with the motions to dismiss presently being briefed in this case is DENIED.

Entered this 16th day of February, 2005.

BY THE COURT:

BARBARA B. CRABB
District Judge