

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

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ERVIN BRASKI,

Plaintiff,

v.

MERLE J. SHERIDAN, CITY OF MERRILL,  
ANN L. JACOBSON, PAMELA M. FISHER,  
CITY OF WAUSAU, DOES 1-10 and  
CORPORATIONS 1-10,

Defendants.

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ORDER

05-C-02-C

Plaintiff Ervin Braski filed this action on January 4, 2004, and paid the filing fee. Pursuant to Fed. R. Civ. P. 12(h)(3), I have reviewed plaintiff's complaint to determine whether this court has subject matter jurisdiction. Barichello v. McDonald, 98 F3d 948, 955 (7th Cir. 1996) (federal courts 'obliged to inquire sua sponte' whenever doubt of existence of federal jurisdiction) (quoting Mt. Healthy City Bd. of Edu. v. Doyle, 429 U.S. 274 (1977)). From the complaint, I understand plaintiff to allege the following facts.

ALLEGATIONS OF FACT

Plaintiff resides at 910 East Union Avenue in Wausau, Wisconsin. Defendant Merle Sheridan is a municipal judge for the city of Merrill. Defendant Ann Jacobson is a lawyer for the city of Wausau. Defendant Pamela Fisher is the clerk of the Municipal Court for the city of Wausau. The cities of Merrill and Wausau are municipalities.

On March 26, 2004, plaintiff was ticketed in the city of Wausau for violating a traffic ordinance. He appeared in the Wausau municipal court and requested substitution of the named presiding judge. Subsequently, defendant Fisher notified plaintiff that the District Court Administrator for the Ninth Judicial District had assigned a city of Merrill municipal judge, defendant Sheridan, to hear plaintiff's case. Plaintiff appeared in the Merrill municipal court on May 3, 2004, and objected to the jurisdiction of the court. Subsequently, plaintiff moved to dismiss the action against him on the ground that the Merrill municipal court lacked subject matter jurisdiction and jurisdiction over his person. Defendant Sheridan denied plaintiff's motion and ordered him to stand trial in the Merrill municipal court. Defendant Jacobson prosecuted the action.

## OPINION

Plaintiff does not allege any facts concerning the outcome of his prosecution in municipal court. However, he contends in his complaint that defendants' conduct deprived him of his driver's license without due process of law. From this statement, I infer that

plaintiff was found guilty of violating the municipal traffic ordinance with which he was charged.

Plaintiff seeks compensatory and punitive damages and any other equitable and just relief for defendants' alleged violation of his constitutional right to due process under the Fourteenth Amendment. Plaintiff's due process claim is premised on his contention that the Merrill municipal court lacked jurisdiction to issue a judgment against him under Article VII, Section 14 of the Wisconsin Constitution, which states, "All municipal courts shall have uniform jurisdiction *limited to actions and proceedings arising under ordinances of the municipality in which established*. (Emphasis added).

In Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923), and District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 486 (1983), the United States Supreme Court held that federal district courts lack jurisdiction to entertain appeals of the decisions of a state's highest court. The Rooker-Feldman doctrine has been extended to apply to decisions of lower state courts. See, e.g., Ritter v. Ross, 992 F.2d 750, 755 (7th Cir. 1993); Keene Corp. v. Cass, 908 F.2d 293 (8th Cir. 1990). Under the doctrine, a litigant may not obtain federal court review of a state court judgment merely by recasting it as a civil rights action under § 1983. Ritter, 992 F.2d at 754. The Rooker-Feldman doctrine "precludes lower federal court jurisdiction over claims seeking review of state court judgments . . . [because] no matter how erroneous or unconstitutional the state court judgment may be, the Supreme Court of the

United States is the only federal court that could have jurisdiction to review a state court judgment." Brokaw v. Weaver, 305 F.3d 660, 664 (7th Cir.2002).

In applying the Rooker-Feldman doctrine, the inquiry is whether the "federal plaintiff seeks to set aside a state court judgment or whether he is, in fact, presenting an independent claim." Taylor v. Federal Nat. Mortg. Ass'n, 374 F.3d 529, 532-33 (7th Cir. 2004) (citing Kamilewicz v. Bank of Boston Corp., 92 F.3d 506, 510 (7th Cir.1996)). Claims that directly seek to set aside a state court judgment are de facto appeals and are barred without additional inquiry. However, federal claims presented to the district court that were not raised in state court or that do not on their face require review of a state court's decision may still be subject to Rooker-Feldman if those claims are "inextricably intertwined" with a state court judgment. Id. at 533.

In determining whether a plaintiff's claim is "inextricably intertwined" with a challenge to the validity of the state court's judgment, the "crucial point is whether 'the district court is in essence being called upon to review the state-court decision.'" Ritter, 992 F.2d at 754 (quoting Feldman, 460 U.S. at 483-84 n. 16). The determination hinges on whether the federal claim alleges that the injury was caused by the state court judgment or, alternatively, whether the federal claim alleges an independent prior injury that the state court failed to remedy. Long v. Shorebank Development Corp., 182 F.3d 548, 555 (7th Cir.1999). In this case, plaintiff seeks a ruling that his prosecution and conviction in a

municipal court violated his constitutional right to due process because the municipal court lacked jurisdiction to convict him. He cannot recover money damages for this alleged constitutional violation without calling into question the validity of the municipal court's judgment.

"While the Rooker-Feldman doctrine bars federal subject matter jurisdiction over issues raised in state court, and those inextricably intertwined with such issues, 'an issue cannot be inextricably intertwined with a state court judgment if the plaintiff did not have a reasonable opportunity to raise the issue in state court proceedings.'" Brokaw, 305 F.3d at 668 (quoting Long, 182 F.3d at 558). Plaintiff had an opportunity to present his concerns about the municipal court's jurisdiction in state court. Indeed, he filed a motion to dismiss in the municipal court and lost. A party who loses in a municipal court has the right to a de novo review before a circuit court. Wis. Stat. § 800.14. Adverse decisions of circuit courts may be appealed through the state court system and finally, to the United States Supreme Court. Perhaps plaintiff is pursuing those avenues. The record is silent on this point. In any event, because plaintiff's constitutional claim is inextricably intertwined with the question of the validity of the judgment of the municipal court and because plaintiff had a reasonable opportunity to challenge the judgment in state court, his claim is barred by the Rooker-Feldman doctrine and this court lacks subject matter jurisdiction over his case.

ORDER

IT IS ORDERED that plaintiff Ervin Braski's action is DISMISSED on the court's own motion for lack of subject matter jurisdiction. The Clerk of Court is directed to enter judgment dismissing the case.

Entered this 7th day of January, 2005.

BY THE COURT:

BARBARA B. CRABB  
District Judge