

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

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MICHAEL J. SCHAEFER,

Plaintiff,

v.

CHIPPEWA COUNTY, WISCONSIN,  
STATE OF WISCONSIN,  
JAMES B. SHERMAN and JIM DOYLE,

Defendants.  
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ORDER

10-cv-565-bbc

In this proposed civil action for monetary and injunctive relief, plaintiff Michael Schaeffer contends that he was denied due process during his trial and appeal of Chippewa County case number 2008FO000059, in which he was convicted of trespass to land. Plaintiff has also filed a motion for appointment of counsel, dkt. #3. Because plaintiff is proceeding under the in forma pauperis statute, 28 U.S.C. § 1915, his complaint must be dismissed if it is legally frivolous, malicious, fails to state a claim upon which relief may be granted or asks for money damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. § 1915(e)(2)(B).

After reviewing the proposed complaint, I conclude that plaintiff has failed to state

a claim upon which relief may be granted. Therefore, I will dismiss his complaint. Because his complaint will be dismissed, I will deny his motion for appointment of counsel.

#### ALLEGATIONS OF FACT

In January 2008, plaintiff Michael Schaefer was cited for “trespass to land” in violation of Wis. Stat. § 943.13 and Chippewa County ordinance 46-6. A jury trial was held on September 12, 2008 in Chippewa County case number 2008FO000059. Immediately before trial, the district attorney filed a motion to preclude certain evidence, including evidence regarding ownership of the property at issue and plaintiff’s payment of taxes on the property for several years. The Circuit Court for Chippewa County granted the motion without providing plaintiff an opportunity to respond. In addition, the district attorney did not provide notice to plaintiff before the trial began of the witnesses or evidence that the district attorney planned to call. After trial, plaintiff was found guilty of trespass and the court ordered him to forfeit certain property and pay a fine.

Plaintiff appealed the conviction. He filed a motion with the circuit court to waive the costs of preparing the transcript, but the circuit court denied the motion. The Wisconsin court of appeals affirmed the circuit court’s denial of a fee waiver. Plaintiff could not afford to have the transcripts prepared and believed that he could not proceed with his appeal without the transcripts. Eventually, he filed a motion to voluntarily dismiss his appeal.

## DISCUSSION

Plaintiff contends that his right to due process under the Fourteenth Amendment was violated by actions of the circuit court, district attorney and the Wisconsin Court of Appeals during the trial and appeal of his trespass charge. He asks that this court vacate the guilty verdict, allow the trespass case to be litigated in federal court and allow him to proceed on his due process claims against defendants.

Presumably, plaintiff seeks to proceed under 42 U.S.C. § 1983, which allows individuals to sue government actors responsible for a deprivation of the individual's constitutional rights. However, plaintiff may not proceed under § 1983 because his claim is premised on the contention that his conviction for trespass in Chippewa County case 2008FO000059 is invalid. Before a plaintiff may bring a civil suit for damages related to an unconstitutional conviction under § 1983, the plaintiff must prove that the conviction "has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determinations, or called into question by a federal court's issuance of a writ of habeas corpus." Heck v. Humphrey, 512 U.S. 477, 486-87 (1994). Plaintiff's trespass conviction has not been reversed, expunged, declared invalid or called into question by any court.

Plaintiff cannot file a petition for a writ of habeas corpus because he is not in custody, and it is an open question whether the rule in Heck bars claims in situations in which habeas

relief is not available. Spencer v. Kemna, 523 U.S. 1, 21 (1998) (Ginsburg, J., concurring) (“Individuals without recourse to the habeas statute because they are not ‘in custody’ (people merely fined or whose sentences have been fully served, for example) fit within §1983’s ‘broad reach.’”); Heck, 512 U.S. at 500 (Souter, J., concurring) (suggesting that “individuals . . . who were merely fined, for example, or who have completed short terms of imprisonment, probation, or parole, or who discover (through no fault of their own) a constitutional violation after full expiration of their sentences” should be permitted to bring damages actions under § 1983). However, to the extent that any of plaintiff’s claims are not barred by the rule in Heck, they would be barred by the Rooker-Feldman doctrine.

The Rooker-Feldman doctrine prohibits federal courts other than the Supreme Court from exercising subject matter jurisdiction when the federal plaintiff alleges that his or her injury was caused by a state court judgment. Exxon Mobil Corp. v. Saudi Basic Industries Corp., 544 U.S. 280, 284 (2005); see also Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923); District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983). In addition, the Rooker-Feldman doctrine “precludes federal jurisdiction over claims ‘inextricably intertwined’ with a state court determination . . . even when those claims were never argued in the state court.” Remer v. Burlington Area School District, 205 F.3d 990, 996 (7th Cir. 2000). In applying the Rooker-Feldman doctrine, the inquiry is whether the “federal plaintiff seeks to set aside a state court judgment or whether he [or she] is, in fact,

presenting an independent claim.” Taylor v. Federal National Mortgage Ass’n, 374 F.3d 529, 532 (7th Cir. 2004). “A plaintiff may not circumvent the effect of the Rooker-Feldman doctrine simply by casting [his or her] complaint in the form of a federal civil rights action.” Remer, 205 F.3d at 997 (citations omitted). Claims that seek to set aside a state court judgment are de facto appeals and are barred without additional inquiry. Taylor, 374 F.3d at 532.

In this case, plaintiff’s claims relate to alleged injuries that he suffered because of orders by the Circuit Court for Chippewa County and a state court judgment that was entered against him. Plaintiff’s claims amount to requests for this court to review and reject a state court order and allow him to relitigate a state court case in federal court. Thus, plaintiff’s claims fall squarely within Rooker-Feldman and should have been raised during the state court proceedings or on direct appeal. Because this court cannot order relief that would directly overrule a state court’s order, plaintiff’s complaint must be dismissed.

## ORDER

IT IS ORDERED that

1. Plaintiff Michael J. Schaefer’s motion for appointment of counsel, dkt. #3, is DENIED.
2. Plaintiff is DENIED leave to proceed on his due process claims against defendants

Chippewa County, Wisconsin, the State of Wisconsin, James B. Sherman and Governor Jim Doyle. Plaintiff's complaint is DISMISSED for failure to state a claim upon which relief may be granted.

3. The clerk of court is directed to enter judgment for defendants and close this case.

Entered this 25th day of November, 2010.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge