

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

RAY PETERSON,

Plaintiff,

OPINION AND ORDER

v.

JUDGE RICHARD NIESS,

12-cv-150-slc

Defendant.

In this civil action, *pro se* plaintiff Ray Peterson alleges that defendant Dane County Circuit Judge Richard Niess improperly entered judgment against him for wrongful eviction in state court. Before the court is Judge Niess's motion to dismiss the complaint on the grounds that Peterson's claim is barred under the *Rooker-Feldman* doctrine, judicial and Eleventh Amendment immunity and failure to join a party under Fed. R. Civ. P. 19. Dkt. 5. Because I agree that Peterson's claims fail both under the *Rooker-Feldman* doctrine and the doctrine of judicial immunity, I am granting Niess's motion to dismiss.

The following facts are drawn from the complaint and court records available electronically:

ALLEGATIONS OF FACT

Plaintiff Ray Peterson commenced a small claims action in the Dane County Circuit Court to evict and to recover unpaid rent from Richard Breyman. *See Ray Peterson v. Richard Breyman*, Dane County Circuit Court Case No. 2009SC6715, re-designated as Case No. 2010CV2525. A default judgment was entered in favor of Peterson, but Breyman later successfully moved to vacate that judgment and reopen the case on the ground that the affidavit on which the judgment was based had not been notarized. The case was reassigned to defendant Judge Richard Niess in the circuit court and re-designated *Peterson v. Breyman*, case no. 2010CV2525.

On October 26, 2010, Judge Niess entered an order finding that Peterson was entitled to unpaid rent and awarding Breyman damages on his counterclaim for wrongful eviction. On December 6, 2010, Judge Niess entered judgment against Peterson in the amount of \$27,208.68, after offsetting Peterson's recovery on his claim for unpaid rent. *See* case no. 2010CV2525. The Wisconsin Court of Appeals summarily affirmed the judgment on September 21, 2011. On January 27, 2012, the Wisconsin Supreme Court denied Peterson's petition for review.

DISCUSSION

The *Rooker-Feldman* doctrine prohibits federal courts other than the Supreme Court from exercising subject matter jurisdiction over "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. 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 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 National Mortgage Ass'n*, 374 F.3d 529, 552 (7th Cir. 2004). Suits in which the plaintiffs seek to set aside a state court judgment are de facto appeals and are barred without additional inquiry. *Id.*

In this case, all of Peterson's allegations relate to "injuries" that he suffered during the state court litigation as a result of adverse rulings made by the state court before Peterson filed the present action. Specifically, Peterson contends that Judge Niess improperly assessed damages in the amount of \$26,797.47 because Peterson failed to have a document notarized. Peterson claims that the notarization was not required and constitutes an "unconstitutional burden." As relief, he asks that I review and reject Judge Niess's decision. Peterson's allegations are simply an attempt to relitigate

the merits of the underlying state court action. As such, his claim falls squarely within *Rooker-Feldman* and could only be raised during the state court proceedings or on direct appeal. Peterson followed both of those avenues, although not successfully.

I also note that Peterson's claims would not be viable even if they were not barred by *Rooker-Feldman*. State or federal claims against a state court judge are barred by the doctrine of judicial immunity. *Dawson v. Newman*, 419 F.3d 656, 660-61 (7th Cir. 2005); *Evans v. Luebke*, 2003 WI App 207, ¶ 13, 267 Wis. 2d 596, 671 N.W.2d 304. There are only two circumstances in which judicial immunity does not apply: (1) where the alleged actions were taken outside the judge's judicial capacity and (2) where they were judicial in nature but taken in the absence of jurisdiction. *Mireles v. Waco*, 502 U.S. 9, 11-12 (1991). Peterson does not allege any facts suggesting that either of these circumstances exists in the present case.

Because I conclude that Peterson's claims fail both under the *Rooker-Feldman* doctrine and the doctrine of judicial immunity, it is unnecessary to reach Judge Niess's arguments relating to the Eleventh Amendment and Fed. R. Civ. P. 19.

ORDER

IT IS ORDERED that defendant Judge Richard Niess's motion to dismiss, dkt. 5, is GRANTED.

Entered this 3rd day of July, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge