

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

RAY PETERSON,

Plaintiff,

OPINION AND ORDER

v.

DANE COUNTY CIRCUIT COURT
JUDGE PETER ANDERSON,

12-cv-151-slc

Defendant.

In this civil action, *pro se* plaintiff Ray Peterson alleges that defendant Dane County Circuit Judge Peter Anderson improperly entered judgment against him for wrongful eviction in state court. Before the court is Anderson'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. 6. Because I agree that Peterson's claims fail both under the *Rooker-Feldman* doctrine and the doctrine of judicial immunity, I am granting Anderson's motion to dismiss.

ALLEGATIONS OF FACT

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

In 2008, the Madison Equal Opportunities Commission found that plaintiff Ray Peterson denied housing to Orlando Larry, a prospective tenant, on the basis of Larry's conviction record in violation of the City of Madison's Equal Opportunities Ordinance § 39.03(4)(d)(4). *See Larry v. Peterson*, case no. 20051069. Peterson filed an appeal in the Circuit Court for Dane County. Because Peterson was challenging the constitutionality of the

ordinance, the attorney for the City of Madison entered an appearance. On September 23, 2010, Judge Peter Anderson granted Larry's motion to dismiss for lack of jurisdiction. *See Ray Peterson v. Orlando Larry*, Dane County Circuit Court Case No. 2010CV2040. According to Peterson, the court found that the constitutionality of the ordinance constituted a new and separate claim against Larry over which the court did not have jurisdiction.

The Wisconsin Court of Appeals summarily affirmed Judge Anderson's order on September 29, 2011. On January 27, 2012, the Wisconsin Supreme Court denied Peterson's petition for review. On March 6, 2012, Peterson commenced this action solely against Judge Anderson, asking the court to review and declare § 39.03(4)(d)(4) unconstitutional.

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 to set aside a state court judgment are de facto appeals and are barred without additional inquiry. *Id.*

To the extent that Peterson is challenging the adverse rulings made by Judge Anderson in state court before he filed the present action fall squarely within the *Rooker-Feldman* doctrine. Peterson cannot relitigate the merits of his underlying state court action in this court.

Although Peterson asks the court to find the city ordinance unconstitutional, he has named only Judge Anderson as a defendant. Judge Anderson did not have any role in adopting or enacting the ordinance. Further, any 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 Anderson's arguments relating to the Eleventh Amendment and Fed. R. Civ. P. 19.

ORDER

IT IS ORDERED that defendant Judge Peter Anderson's motion to dismiss, dkt. 6, is GRANTED.

Entered this 11th day of July, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge