

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

JERRY SIMONSON,

Plaintiff,

v.

JOHN TWING, et al.,

Defendants.

OPINION AND ORDER

18-cv-793-wmc

Pro se plaintiff Jerry Simonson brings this action under 42 U.S.C. § 1983, alleging violations of his constitutional rights by 23 defendants, various Portage and Columbia County police officers, detectives and other public officials. (Compl. (dkt. #1).) Simonson claims that all of these defendants violated his constitutional rights in July of 2018, when they arrested him and confiscated certain property in retaliation for serving them with the summons and complaint in another lawsuit in this district court, *O’Grady v. Garrigan*, Case No. 18-cv-368-jdp (W.D. Wis., filed May 17, 2018). Because Simonson seeks to proceed *in forma pauperis*, 28 U.S.C. § 1915(e)(2) requires the court to screen his complaint and dismiss any portion that is: (1) frivolous or malicious; (2) fails to state a claim on which relief may be granted; or (3) seeks money damages from a defendant who is immune from such relief. *Id.* Since Simonson is currently pursuing an appeal of a Wisconsin circuit court injunction imposed upon him related directly to the events comprising his proposed claims here, pursuant to *Younger v. Harris*, 401 U.S. 37, 45 (1971), the court is abstaining from exercising jurisdiction of his proposed claims and dismissing this case without prejudice.

ALLEGATIONS OF FACT¹

The allegations in Simonson's complaint are not straightforward, but it appears he is challenging a restraining order that Columbia County and the Columbia County Sheriff's Department obtained against him and several other individuals in October of 2018. *See Columbia Cty. v. O'Grady, et al.*, Case No. 2018CV230 (Columbia Cty., filed Aug. 8, 2018), available at <https://wcca.wicourts.gov/case.html> (last visited Oct. 11, 2019).

Simonson's complaint is 23 pages long and consists primarily of long-winded conclusory assertions about how "defendants" have been violating his various constitutional and state law rights. The only points of specificity involve three interactions between him and a few of the defendants.

First, on December 12, 2016, and June 21, 2017, defendants falsely arrested him. After the June arrest, the defendants confiscated various building materials he had on his property.

Second, Simonson alleges that he is a service provider and served the defendants named in the *O'Grady* lawsuit with the complaint and summons for that case. In that lawsuit, plaintiff Michael O'Grady is suing the same group of defendants, asserting a wide variety of constitutional claims related to municipal racketeering, corruption and conspiratorial murder. Simonson claims that some of the defendants in *this* lawsuit have retaliated against him for serving them with the summons and complaint in a number of

¹ In addressing any pro se litigant's complaint, the court must read the allegations of the complaint generously, resolving ambiguities and making reasonable inferences in plaintiff's favor. *Haines v. Kerner*, 404 U.S. 519, 521 (1972).

ways. In particular, he alleges that on July 27, 2018, after he served defendant with the complaint and summons, defendant Scott Albrecht ticketed him for trespassing, and subsequently Simonson has been falsely charged with felony stalking. Then, on July 29, 2018, Simonson served a complaint and summons on defendant Leda Wagner by leaving a copy with defendant Todd Wagner. Simonson alleges that Wagner was leaving his residence from the back door when Simonson approached his house, and Wagner placed him under arrest, brought him to the Columbia County Jail and ticketed him. On July 30, 2018, Simonson was interrogated at the Columbia County Jail and officers instructed Simonson to stop serving law enforcement defendants at their residences since defendants had waived service in the *O'Grady* lawsuit. Simonson was released from jail on July 31, 2018. On August 14, 2018, Simonson entered a not guilty plea on the trespass charges.

Third, Simonson alleges that on August 8, 2018, defendant Mark Hazelbaker, an attorney representing Columbia County and the Columbia County Sheriff's Department, filed a request for an injunction under Wis. Stat. § 813.125, against Simonson and the other plaintiffs in the *O'Grady* lawsuit. *Columbia Cty.*, No. 2018CV230. They sought an injunction requiring Simonson and numerous other respondents to stay 100 feet away from any Columbia County Sheriff official, not to park a motor vehicle within sight of any law enforcement vehicle, and stay out of any Columbia County building in which a law enforcement official is present. An injunction was entered on October 18, 2018, and Simonson is currently appealing that decision. *Petitioner v. O'Grady et al.*, 2018AP2006 (Columbia Cty., filed Oct. 19, 2018), available at <https://wcca.wicourts.gov/case.html> (last visited Oct. 11, 2019).

Simonson's remaining allegations are vague and conclusory. While he claims that the remaining defendants "conspired to violate" his constitutional and state law rights in a variety of manner, he has not included any actual events that would comprise his claims against any other defendants. Rather, it appears that he has copied and pasted many of the allegations directly from the *O'Grady* complaint. Simonson states that he is not seeking monetary damages, just a declaration that defendants violated his constitutional rights and injunctive relief. However, he does not specify exactly what he wants this court to do, besides entering an order directing defendants not to violate his constitutional rights.

OPINION

Simonson's complaint suffers from a number of problems. To start, to the extent that he is challenging the constitutionality of any of his prior arrests, Simonson has not alleged facts suggesting that he may be arrested by those same defendants again. In fact, the only live controversy outlined in Simonson's complaint arises directly from his *on-going* state court challenge to the injunction imposed in October of 2018. Yet principles of equity, comity, and federalism preclude federal courts from hearing cases that interfere with ongoing state proceedings. *Younger v. Harris*, 401 U.S. 37, 45 (1971). Indeed, "[t]he *Younger* doctrine requires federal courts to abstain from taking jurisdiction over federal constitutional claims that seek to interfere with or interrupt ongoing state proceedings." *SKS & Assocs., Inc. v. Dart*, 619 F.3d 674, 678 (7th Cir. 2010). With respect to civil suits in particular, *Younger* "extends only to a federal suit filed by a party that is the target of state court or administrative proceedings in which the state's interests are so important that the exercise of federal judicial power over those proceedings would disregard the

comity between the states and federal government.” *Id.* at 679 (internal citations omitted).

Here, while not all of the proposed defendants to *this* lawsuit are named in the Columbia County case to which Simonson is a respondent, Columbia County and the Columbia County Sheriff’s Department are asserting the interests that Simonson is challenging here. Since Simonson is currently appealing the circuit court’s injunction, this parallel federal challenge and Simonson’s request for an injunction certainly has the potential to interfere with that proceeding. *See Olsson v. O’Malley*, 352 F. App’x 92, 94 (7th Cir. 2009) (concluding that abstention was appropriate where plaintiff bringing § 1983 challenge was simultaneously seeking state court habeas relief and plaintiff did not show that the state court procedures were ineffective). Normally, the court would stay this case pending resolution of the underlying state court case, but given that the only relief plaintiff is seeking in this lawsuit is injunctive in nature, the court will dismiss this lawsuit without prejudice. *Cf. Gakuba v. O’Brien*, 711 F.3d 751, 754 (7th Cir. 2013) (finding that in circumstances in which a plaintiff is seeking monetary damages related to an on-going state proceeding, a stay, rather than dismissal without prejudice, is necessary to preserve the plaintiff’s civil rights damages claims).

ORDER

IT IS ORDERED that:

- 1) Plaintiff Jerry Simon’s motion for leave to proceed is DENIED, and this lawsuit is DISMISSED WITHOUT PREJUDICE.
- 2) The clerk of court is directed to close this case.

Entered this 11th day of October, 2019.

BY THE COURT:

/s/

WILLIAM M. CONLEY

District Judge