

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DANIEL C. BARRISH : CIVIL ACTION
 :
 v. :
 :
 RALPH J. CAPPY, et al. : NO. 06-837

MEMORANDUM

Bartle, C.J.

April 17, 2006

Before the court is the motion of the defendants to dismiss the complaint under Rules 12(b)(1) and (6) of the Federal Rules of Civil Procedure.

Pro se plaintiff Daniel Barrish is an attorney who, until March 15, 2006, was admitted to practice law in the Commonwealth of Pennsylvania. On February 25, 2006, Barrish filed this suit under 42 U.S.C. § 1983 seeking equitable relief against the defendants, the Supreme Court of Pennsylvania and its Chief Justice, Ralph J. Cappy. Although it is not totally clear, it appears plaintiff is suing the Chief Justice in both his personal and official capacities. Plaintiff asks this court to enjoin the Supreme Court and its Chief Justice from deciding disciplinary proceedings against him and, in a subsequent motion, to stay enforcement of the Supreme Court's March 15, 2006 order until we can adjudicate his case. That order suspended him from the practice of law for five years. Barrish argues the entire Pennsylvania unified judiciary generally and the attorney

discipline system specifically violates the United States Constitution.

I.

Under Rule 12(b)(6), a claim should be dismissed only where it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Cal. Pub. Employees' Ret. Sys. v. Chubb Corp., 394 F.3d 126, 143 (3d Cir. 2004). All well-pleaded allegations in the complaint must be accepted as true, and all reasonable inferences are drawn in favor of the non-moving party. Id. We may consider "the allegations contained in the complaint, exhibits attached thereto, and matters of public record." Beverly Enterprises, Inc. v. Trump, 182 F.3d 183, 190 n.3 (3d Cir. 1999); Pension Benefit Guar. Corp. v. White Consol. Indus. Inc., 998 F.2d 1192, 1196 (3d Cir. 1993). In deciding a motion to dismiss, a court also may consider "document[s] *integral to or explicitly relied upon in the complaint ... without converting the motion [to dismiss] into one for summary judgment.*" In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1426 (3d Cir. 1997) (emphasis in original) (quoting Shaw v. Digital Equip. Corp., 82 F.3d 1194, 1220 (1st Cir. 1996)).

II.

Recent events have overtaken the plaintiff's original complaint. The Supreme Court of Pennsylvania entered a final order on March 15, 2006 suspending the plaintiff's license to

practice law in Pennsylvania for five years.¹ Barrish's most recent motion effectively amends his complaint to reflect this recent event.

In substance, Barrish asks this court to review the March 15 order of the Pennsylvania Supreme Court suspending his license to practice law for five years. He asks this court to conduct what amounts to appellate review of that judgment based on his argument that the Pennsylvania attorney disciplinary structure and, indeed, the entire unified judiciary violates the United States Constitution.

This court does not have jurisdiction to review the final judgments and decrees of the Supreme Court of Pennsylvania. See 28 U.S.C. § 1257; Exxon Mobil Corp. v. Saudi Basic Indus., 544 U.S. 280, 125 S. Ct. 1517 (2005); D.C. Court of Appeals v. Feldman, 460 U.S. 462 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923); see also Johnson v. De Grandy, 512 U.S. 997, 1005-06 (1994). Under the Rooker-Feldman doctrine, as recently clarified by the Supreme Court, lower federal courts may not adjudicate "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." Exxon, 125 S. Ct. at 1521-22.

1. Therefore, abstention under Younger v. Harris, 401 U.S. 37 (1971), is inappropriate because the state proceedings are no longer pending.

Barrish is a state-court loser who is complaining of injuries "caused by state-court judgments" and is asking this court to "review and reject[]" that judgment. Id. Under Rooker-Feldman, we do not have jurisdiction to entertain such a case. If plaintiff wishes appellate review, he must petition the United States Supreme Court for a writ of certiorari. 28 U.S.C. § 1257.

Accordingly, because the plaintiff is seeking appellate review of the March 15 order of the Pennsylvania Supreme Court, we will dismiss the complaint as to all defendants for lack of jurisdiction.

III.

This action was commenced on February 24, 2006, that is, before the Pennsylvania Supreme Court entered its judgment in the plaintiff's disciplinary proceedings on March 15. Thus, it might be argued that Rooker-Feldman does not apply. See Exxon, 125 S. Ct. at 1521-02. However, even if Rooker-Feldman is not applicable to this case, we must still dismiss the complaint.

It is well established that the Eleventh Amendment to the United States Constitution² immunizes states from suits brought against them in federal court by both their own citizens and citizens from other states unless a state has consented. See Seminole Tribe of Fla. v. Florida, 517 U.S. 44 (1996); Hans v.

2. The Eleventh Amendment states "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." U.S. Const. amend. XI.

Louisiana, 134 U.S. 1 (1890).³ The Eleventh Amendment also may bar suits where a state is not named as a defendant but actually is the real party in interest. See Regents of the Univ. of Cal. v. Doe, 519 U.S. 425 (1997); Edelman v. Jordan, 415 U.S. 651 (1974). Nonetheless, consistent with the Eleventh Amendment, a plaintiff may bring a claim against a state officer in his individual or personal capacity for money damages. See Hafer v. Melo, 502 U.S. 21 (1991). A plaintiff may also sue a state officer in his official capacity for prospective injunctive relief. See Ex parte Young, 209 U.S. 123 (1908). Claims for damages against individual officers in their official capacity are not permitted. See Will v. Michigan Dep't of State Police, 491 U.S. 58 (1989).

The plaintiff has sued the Supreme Court of Pennsylvania. The Pennsylvania Constitution vests the Supreme Court with the "supreme judicial power of the Commonwealth." Pa. Const. art. V, § 2(a). Clearly the Supreme Court is an "integral component" of the unified state judicial system. Benn v. First Judicial Dist. of Pa., 426 F.3d 233, 241 (3d Cir. 2005). As our Court of Appeals has already determined that a locally-funded judicial district is a state entity entitled to Eleventh

3. The Supreme Court has repeatedly held that Congress may abrogate this immunity and subject unconsenting states to suits in federal court with legislation enacted pursuant to § 5 of the Fourteenth Amendment as long as it clearly expresses its intent to do so. See Kimel v. Fla. Bd. of Regents, 528 U.S. 62 (2000); College Sav. Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd., 527 U.S. 666 (1999).

Amendment protection, it follows that Pennsylvania's highest court also enjoys that immunity. See id.

Furthermore, Barrish cannot maintain an action against the Supreme Court of Pennsylvania under 42 U.S.C. § 1983. Our Court of Appeals has held that the courts of the Commonwealth's unified judiciary are not "persons" for purposes of § 1983. Callahan v. City of Phila., 207 F.3d 668, 673 (3d Cir. 2000). As the Supreme Court of Pennsylvania is clearly part of the unified judiciary, Barrish cannot bring a § 1983 action against it. See Pa. Const. art. V, § 1; see also Will, 491 U.S. 58.

Barrish's claims against the Supreme Court of Pennsylvania will also be dismissed for the above reasons.

IV.

Assuming again that the Rooker-Feldman doctrine does not require dismissal, we now turn to plaintiff's claims against Chief Justice Cappy. As plaintiff's original complaint together with his recent motion pertain to the Chief Justice, they request this court enjoin the Chief Justice from any involvement in the plaintiff's disciplinary proceedings and any punishment of the plaintiff in which he may have or will play a part. In addition, Barrish seeks a declaration that the unified judiciary of Pennsylvania acts in a unconstitutional manner "as it pertains to matters involving ... a judge of that system." Compl. at 12. We must dismiss the complaint because the relief requested will not accomplish plaintiff's objectives.

Under 42 U.S.C. § 1983, Barrish may seek prospective injunctive relief against a state supreme court justice in his official capacity. Will, 491 U.S. at 71; Young, 209 U.S. 123; Harris v. Champion, 51 F.3d 901, 906 (10th Cir. 1995). Of course, the plaintiff cannot sue an individual justice when his target, that is, the real party in interest from which he seeks relief, is the court itself, a state entity. See Kentucky v. Graham, 473 U.S. 159, 165 (1985). To the extent the relief Barrish seeks against the Chief Justice is really sought from the Supreme Court of Pennsylvania, which is not a "person" under § 1983, his claim is barred by the Eleventh Amendment. See id.

The Pennsylvania Supreme Court consists of the Chief Justice of Pennsylvania and six associate justices. 42 Pa. Cons. Stat. Ann. § 501. The Chief Justice is the justice "longest in continuous service" on the Supreme Court. Pa. Const. art. V, § 10(d). The justices are elected by Pennsylvania citizens to a term of ten years. 42 Pa. Cons. Stat. Ann. §§ 3131, 3152(a)(3). A justice may be retained in general elections for additional terms. See § 3131(b). The governor may, with the advice and consent of two-thirds "of the members elected to the Senate," fill vacancies that may occur on the Supreme Court.⁴ 42 Pa. Cons. Stat. Ann. § 3132(a).

4. A justice appointed to fill a vacancy serves "for a term ending on the first Monday of January following the next municipal election more than ten months after the vacancy occurs or for the remainder of the unexpired term whichever is less." 42 Pa. Cons. Stat. Ann. § 3132(a).

The Supreme Court acts as a collegial body with each of the justices exercising equal authority. See In re Stout, 559 A.2d 489, 496 (Pa. 1989). Plaintiff does not direct us to any constitutional provision, statute or rule to the contrary. There is nothing to indicate that the vote of the Chief Justice carries any added weight in deciding appeals generally or attorney discipline matters specifically. In adjudicating plaintiff's attorney disciplinary proceedings, six justices, including Chief Justice Cappy, participated.⁵ The Chief Justice, joined by Justices Newman, Saylor, Eakin and Baer voted to suspend plaintiff's license to practice law for five years. Justice Castille dissented but not because he agreed with Barrish but rather because he thought the plaintiff should have been disbarred.

The equitable relief plaintiff seeks against the Chief Justice, even if granted, cannot reverse plaintiff's fortunes.⁶ The March 15, 2006 order of the Supreme Court of Pennsylvania stands with or without the Chief Justice's involvement. Even if we could have enjoined the Chief Justice from deciding or otherwise participating in the disciplinary proceedings prior to

5. Recently appointed Justice Cynthia A. Baldwin did not participate.

6. Plaintiff also requests an order declaring Pennsylvania's unified judiciary unconstitutional when deciding a certain type of case that happens to match the allegations Barrish presented in his case. We do not consider such relief because it is not in any way rational or reasonable in this case brought by a now-suspended attorney against one judge in his official capacity.

that order, the result would be the same.⁷ In addition, the plaintiff does not cite and we have not found any statute or precedent that suggests the Chief Justice possesses the authority to prevent his colleagues from deciding Barrish's case or to undo any such decision once made.

The justices of the Pennsylvania Supreme Court, like judges of every state, are bound by the United States Constitution, laws, and treaties even when construing state or local law. See U.S. Const. art. VI, § 2. We cannot assume, as plaintiff apparently does, that state court judges will not faithfully apply the United States Constitution and federal laws even when interpreting federal or state law. See Pennzoil Co. v. Texaco, Inc., 481 U.S. 1, 15 (1987). Barrish could have raised all his constitutional objections to Pennsylvania's unified judicial system, the disciplinary structure, or any other aspect of Pennsylvania's courts when arguing his case before the state Supreme Court. The record is silent on whether he did so. Like any other losing party, plaintiff is free to seek review of the March 15, 2006 order by petitioning the United States Supreme Court for a writ of certiorari, not by suing the Chief Justice of Pennsylvania or the State Supreme Court itself in federal court. See 28 U.S.C. § 1257.

7. We note that plaintiff does not argue that the Chief Justice should have recused himself due to a conflict of interest or for any other reason.

Finally, to the extent Barrish's complaint seeks an injunction against the Chief Justice in his personal capacity, it is fundamentally flawed. We do not see how a court can order an officer in his personal capacity to take an official act.

In conclusion, for these reasons also, we will dismiss the complaint against Chief Justice Ralph J. Cappy.

