

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

Greg A. Bell,

Plaintiff,

-v-

Case No. 2:11-cv-168

Timothy S. Rankin, et al.,

Judge Michael H. Watson

Defendants.

**ORDER**

Plaintiff seeks a temporary restraining order ("TRO") as well as declaratory and injunctive relief, asserting that Defendants violated his right to due process under the Fifth and Fourteenth Amendments to the Constitution of the United States, when they obtained an order from the Madison County Court of Common Pleas in 2005 granting a construction easement to lay sewer piping on his property. Plaintiff seeks a TRO barring Defendants from entering his property to lay such piping. This matter is before the Court on Plaintiff's motion for a TRO and motion for a preliminary injunction. ECF No. 3. This motion was assigned to the undersigned Judge pursuant to Southern District of Ohio Civil Rule 65.1(c) because Judge Watson is out of state and unavailable to hear the matter. The undersigned Judge only considers Plaintiff's motion for a TRO, and, for the reasons set forth below, **DENIES** this motion.

**I. BACKGROUND**

The following facts are set forth for the limited purpose of addressing the

immediate motion before the Court. Any findings of fact and conclusions of law made by a district court in addressing a request for a TRO or injunctive relief are not binding at a trial on the merits. See *United States v. Edward Rose & Sons*, 384 F.3d 258, 261 (6th Cir. 2004) (citing *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981)).

According to the verified complaint, and the attached exhibit, this case derives from an underlying litigation in the Madison County Court of Common Pleas in which the court issued an order in 2005 granting a construction easement to lay sewer piping on Plaintiff's property. See Madison County Board of Commissioners, Madison C.P. No. 2003—cv—071. That order has also has been affirmed and upheld upon appeal to the Ohio 12th District Court of Appeals on May 27, 2007. Further review was declined by the Supreme Court of Ohio. Plaintiff has also attached to his motion an order of the Madison County Court of Common Pleas dated February 16, 2011, which finds him in contempt for interfering with the efforts of the County to enforce the easement order.

## **II. DISCUSSION**

### **A. Rule 65(b)(2)**

Plaintiff has represented that he did not provide notice to the Defendants that he was seeking a TRO. Federal Rule of Civil Procedure 65 provides that:

The court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if:

(A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition;  
and

(B) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

Fed. R. Civ. P. 65(b)(1). Accordingly, the Court is precluded from issuing the TRO unless the Plaintiff satisfies the requirements of subsections (A) & (B). Here, the Plaintiff has not. The Plaintiff has failed to demonstrate that he lacked time to provide notice to Defendants before immediate and irreparable injury would occur. Further, as explained in Section II.B.2, *infra*, Plaintiff has failed to demonstrate that the actions of Defendants he seeks to restrain would cause irreparable harm. Finally, Plaintiff's explanation as to why no notice was provided to the other Parties is not acceptable to the Court. Plaintiff states that notice of this action should be excused because the Defendants are already on notice of his objections to the Common Pleas Court's Orders. However, in the Court's view, even if Defendants are aware of Plaintiff's objections, such awareness would in no way place them on notice of the possibility of Plaintiff seeking a temporary restraining order in Federal Court. Thus, Plaintiff has failed to comply with requirements of Rule 65 for the issuance of a TRO without notice to opposing parties.

#### **B. Requirements for Issuing a TRO**

In addition to failing to meet the requirements of Rule 65, Plaintiff's request for a TRO also fails on substantive grounds. The Sixth Circuit Court of Appeals has explained the inquiry involved in addressing either a motion for a temporary restraining order or a preliminary injunction:

When ruling on a motion for [injunctive relief], a district court must consider and balance four factors: (1) whether the movant has a strong likelihood of success on the merits; (2) whether the movant would suffer irreparable injury without the injunction; (3) whether issuance of the injunction would cause substantial harm to others; and (4) whether the public interest would be served by issuance of the injunction.

*Chabad of S. Ohio & Congregation Lubavitch v. City of Cincinnati*, 363 F.3d 427, 432 (6th Cir. 2004) (quoting *Blue Cross & Blue Shield Mut. of Ohio v. Columbia/HCA Healthcare Corp.*, 110 F.3d 318, 322 (6th Cir. 1997) (internal quotations and citations omitted)). See also *Edward Rose & Sons*, 384 F.3d at 261 (6th Cir. 2004) (quoting *Washington v. Reno*, 35 F.3d 1093, 1099 (6th Cir.1994)). The Sixth Circuit has further explained that a district court should not consider the foregoing factors as prerequisites to be met; rather, these factors are to be balanced in a weighing of the equities involved. *Edward Rose & Sons*, 384 F.3d at 261.

### **1. Likelihood of success on the merits**

The Court finds three reasons that Plaintiff is unlikely to succeed on the merits.

#### **a. Rooker-Feldman Doctrine**

The Court notes that the *Rooker-Feldman* Doctrine is at play here. As explained by the Sixth Circuit,

Pursuant to [the Rooker-Feldman] doctrine, lower federal courts lack subject matter jurisdiction to review the decisions of state courts. *D.C. Ct. of App. v. Feldman*, 460 U.S. 462, 476, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983); *Rooker v. Fid. Trust Co.*, 263 U.S. 413, 416, 44 S.Ct. 149, 68 L.Ed. 362 (1923). As the Supreme Court has recently clarified, however, the application of *Rooker-Feldman* is confined to "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 Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284, 125 S.Ct. 1517, 161 L.Ed.2d 454 (2005). Thus, *Rooker-Feldman* deprives a lower court of jurisdiction only when the cause of the plaintiff's complaints is the state judgment itself. *McCormick v. Braverman*, 451 F.3d 382, 393 (6th Cir. 2006).

Givens's suit fits squarely within this narrow range of cases over which jurisdiction does not exist. It is clear from his complaint that the source of Givens's injuries is the state possession order. Revealingly, the primary relief that Givens requests in his complaint is a temporary injunction that would "enjoin Defendants from physically entering onto plaintiff[]s property" and

that would "dispos[e] ... of any other civil or procedural action regarding the subject property." Because the point of this suit is to obtain a federal reversal of a state court decision, dismissal on the grounds of *Rooker-Feldman* was appropriate. See *Kafele v. Lerner, Sampson & Rothfuss, L.P.A.*, 161 F. App'x 487, 489–90 (6th Cir.2005) (*Rooker-Feldman* barred FD CPA action filed after entry of state foreclosure decree and order of sale).

*Givens v. Homecomings Financial*, No. 07-2359, 2008 WL 2121008, at \*1-2 (6th Cir. May 20, 2008).

In the instant case, Plaintiff seeks injunctive relief which would, in effect enjoin Defendants from entering his property pursuant to the state court judgment granting the construction easement to lay sewer piping. As in *Givens*, the ultimate source of Mr. Bell's injuries is the state court judgment. Consequently, Mr. Bell's injunctive relief is likely barred under the *Rooker-Feldman* doctrine.

#### **b. Res Judicata**

"Res judicata may bar any claims over which the federal courts have jurisdiction, including both claims of injuries caused by state-court judgments and general challenges to state statutes." *Abbott v. Michigan*, 474 F.3d 324, 330 (6th Cir. 2007). Thus, federal courts "must give the same preclusive effect to a state-court judgment as that judgment receives in the rendering state." *Id.* (citing 28 U.S.C. § 1738).

Res judicata consists of four elements, all of which must be present in order to bar a previously litigated claim: (1) a final decision on the merits in the first action by a court of competent jurisdiction; (2) a subsequent action between the same parties or their privies; (3) the subsequent action raises issues actually litigated or which should have been litigated in the first action; and (4) an identity of the causes of action. *Rawe v. Liberty Mut. Fire Ins. Co.*, 462 F.3d 521, 528 (6th Cir. 2006) (citation omitted). "A

final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action." *Id.* (internal citation and quotation marks omitted).

In this case, a final decision on the merits was issued by the Madison County Court of Common Pleas and subsequently affirmed by the Ohio 12th District Court of Appeals. It appears that the action is between the same parties or their privies. It also appears that this action attempts to litigate constitutional arguments that were, or could have been, brought in the state court proceedings.

### **c. Self Created Emergency/Laches**

In the alternative, the Court also finds that laches bars Plaintiff's requested for a TRO. As a court facing a similarly-delayed TRO noted:

An injunction is an equitable remedy, and as such, the equitable defense of laches is applicable. The " 'doctrine of laches' is based upon the maxim that equity aids the vigilant and not those who slumber on their rights. It is defined as neglect to assert a right or claim which, taken together with lapse of time and other circumstances causing prejudice to the adverse party, operates as bar in court of equity." *Blacks Law Dictionary*, 875 (6th ed.1990). "Laches requires proof of (1) lack of diligence by the party against whom the defense is asserted, and (2) prejudice to the party asserting the defense." *Costello v. United States*, 365 U.S. 265, 282, 81 S. Ct. 534, 5 L.Ed.2d 551 (1981) (quoted in *United States v. Weintraub*, 613 F.2d 612, 619 (6th Cir. 1979), cert. denied, 447 U.S. 905, 100 S. Ct. 2987, 64 L.Ed.2d 854 (1980)). See *Kay v. Austin*, 621 F.2d 809, 813 (6th Cir.1980) (barring plaintiff's claim for equitable relief due to laches).

*Advocacy Org. for Patients & Providers v. Mercy Health Servs.*, 987 F.Supp. 967, 970 (E.D. Mich.1997).

In this case, Plaintiff has been aware of the 2005 Madison County Court of Common Pleas order for several years and could have brought any claims allegedly stemming from that litigation. Additionally, he has been aware of the subsequent 12th

District Ohio Court of Appeals decision affirming that order. Plaintiff has been aware of his legal position and the facts giving rise to this law suit for several years. Plaintiff offers no explanation as to why he waited until the very day Defendants allegedly are arriving to take action to seek relief.

## **2. Irreparable injury**

The Court finds that Plaintiff has also failed to demonstrate irreparable injury. The Plaintiff suggests "bulldozers" are on their way and alleges that agents of the county are poised to enter his residence, conduct unlawful searches of his home, and seize or destroy his personal property. However, a review of the Common Pleas Court's Order of February 16, 2011, indicates that the county seeks entry into Plaintiff's home for purposes much less sinister than Plaintiff represents. According to that Order, Plaintiff was found to be in contempt for refusing to allow county officials into his residence to "install a new circuit breaker and run a new electric line from that circuit breaker to the outside" in connection with the installation of the sewer line. ECF No. 3, Ex. A at 1–2. Plaintiff has not demonstrated or shown how the installation of a circuit breaker and an electric line in his home would lead to irreparable harm.

## **3. Harm to others**

Based on the record before it, the Court finds this factor to be essentially neutral. However, the Court notes that there is some possibility that issuance of a TRO hindering Madison County's completion of the sewer project on Plaintiff's property could cause injury to those persons whom the County intends to benefit through completion of the project.

#### 4. Public interest

The Court also finds that the public interest would not be served by issuance of a TRO in this matter. Madison County obtained a valid decision granting it an easement over Plaintiff's property in 2005. That decision was subsequently upheld on appeal. Now, nearly six years later, the County still has not been able to effectuate its objectives in obtaining the easement. A TRO would only serve to further delay and burden the County.

#### 5. Balancing of the Factors


None of the factors the Court is required to balance weigh in favor of issuing a TRO in this case. Plaintiff is unlikely to succeed on the merits and has made no showing of irreparable injury. Further, the public interest could be harmed by further delay of the sewer project on Plaintiff's land. Finally, while there is no indication that others would be harmed by the issuance of a TRO, that possibility exists.

### III. CONCLUSION

For the above stated reasons, Plaintiff's Motion for a Temporary Restraining Order is **DENIED**.

**IT IS SO ORDERED.**

2-24-2011  
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**DATED**

  
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**EDMUND A. SARGUS, JR.**  
UNITED STATES DISTRICT JUDGE