

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

|                         |   |                        |
|-------------------------|---|------------------------|
| JOHNATHAN LARGE,        | ) |                        |
|                         | ) |                        |
| Plaintiff               | ) |                        |
|                         | ) |                        |
| v.                      | ) | Case No. CIV-13-1255-F |
|                         | ) |                        |
| BECKHAM COUNTY DISTRICT | ) |                        |
| COURT,                  | ) |                        |
|                         | ) |                        |
| Defendant.              | ) |                        |


**ORDER**

Before the court are the Report and Recommendation of United States Magistrate Judge Suzanne Mitchell [doc. no. 7] and plaintiff’s objection to the Report and Recommendation [doc. no. 9]. The magistrate judge concluded that plaintiff’s claim for monetary relief from the Beckham County District Court was barred by Eleventh Amendment immunity because the state district court operates as an arm of the State. Moreover, she found that the State of Oklahoma had not expressly waived that immunity. Plaintiff objects, complaining that the case of Edward v. Whetsel, 2009 WL 368487 (WD. Okla. Feb. 13, 2009) (No. CIV-08-134-F), cited by the magistrate judge, is only persuasive. Plaintiff also cites District of Columbia v. Heller, 554 U.S. 570, 634-35 (2008) for the proposition that citizens of the state can sue the state for “alleged wrongs and violations of the constitution of their own state.” Objection [doc. no. 9] at p. 5. Finally, he suggests that the state’s Eleventh Amendment immunity has either been abrogated or waived. *See id.* at pp. 5-6.

The magistrate judge did not rely exclusively on this court's unpublished order in Edward v. Whetsel, but relied as well on Okla. Const. art. 7, § 7. In any event, this court's unpublished order in Edwards v. Whetsel is persuasive and plaintiff has cited no case law to the contrary. The State of Oklahoma has not waived its Eleventh Amendment immunity. To find that it has done so requires a showing of unequivocal intent to do so, *see* Guttman v. Khalsa, 669 F.3d 1101, 1110 (10<sup>th</sup> Cir. 2012). Plaintiff has not made such a showing and the court finds no expression of that intent. Moreover, plaintiff has cited no authority that the State of Oklahoma's Eleventh Amendment immunity has been abrogated. Finally, the Heller case is of no assistance to plaintiff. In that case, the plaintiff sought only injunctive relief, not monetary relief as is sought by plaintiff.

In summary, plaintiff's objection is without merit and the Report and Recommendation is **ADOPTED** in its entirety. Plaintiff's complaint is **DISMISSED** without prejudice pursuant to 28 U.S.C. § 1915A(b)(2). Plaintiff's pending motions for leave to proceed in forma pauperis [doc. nos. 2 & 6] are **DENIED** as moot. Likewise, to the extent plaintiff by his letters [doc. nos. 10 & 11] seeks leave to file a brief concerning filing fees or seeks other relief, such leave and/or other relief are **DENIED** as moot.

Dated this 6<sup>th</sup> day of January, 2014.

  
STEPHEN P. FRIOT  
UNITED STATES DISTRICT JUDGE