

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

FELIX J. BRUETTE, JR.,

Plaintiff,

v.

Case No.: 17-cv-286

U.S. SECRETARY OF THE INTERIOR, and
STOCKBRIDGE-MUNSEE COMMUNITY,

Defendants.

SECRETARY OF THE INTERIOR'S REPLY BRIEF
IN SUPPORT OF AMENDED MOTION TO DISMISS

On February 28, 2017, plaintiff Felix J. Bruette, Jr. filed a pro se complaint against the United States Secretary of the Interior and the Stockbridge-Munsee Community. ECF 1. In his “Statement of Claim,” Bruette alleges that the Interior Department: (1) improperly conveyed property and treaty rights belonging to the Stockbridge-Munsee Tribe to the Stockbridge-Munsee Indian Community without congressional authority; and (2) deprived Bruette and others of rights they are entitled to as lineal descendants of members of the Stockbridge-Munsee Tribe. ECF 1, at pp. 2-3 (¶ B). In the “Relief Wanted” section of his complaint, Bruette asks the Court to:

1. Stop the “[Department] of the Interior and Indian community in conveying, allocating treaty property and rights in the state of Wisconsin and New York”;
2. Reaffirm “due process under article 3 of the [Stockbridge-Munsee] constitution”; and
3. Assess punitive and compensatory damages, and grant declaratory relief.

ECF 1, at p. 4 (¶ D). The Interior Secretary subsequently filed an amended motion to dismiss and supporting brief, arguing that Mr. Bruette’s complaint should be dismissed as barred by the

doctrine of res judicata, by the applicable statute of limitations, and for want of jurisdiction. *See* ECF 13.

In response to the Secretary's res judicata argument, Mr. Bruette argues, without further development or case citation, that "the central issue is not treaty, but the legal standing of an Indian Community ... by the Department of Interior in 1937, organized without regard to past Tribal Affiliation." ECF 15, at p.1. But in making this assertion, Bruette appears to seek the same essential relief he sought in *Bruette I*—to reverse the impact of treaties and statutes that have been in effect for several decades, to the benefit of himself and alleged lineal descendants of the original Stockbridge-Munsee Tribe. In doing so, Bruette ignores the fact (as argued by the Secretary in her opening brief) that res judicata "bars not only those issues which were actually decided in a prior suit, but also all issues which could have been raised in that action." *Brzostowski v. Laidlaw Waste Systems, Inc.*, 49 F.3d 337, 338 (7th Cir. 1995). Here, Bruette is simply attempting to posit new or modified legal theories to support claims against the Secretary he either did assert, or could have asserted, in *Bruette I* as he challenged the proper interpretation of the Treaties and Acts addressed in that case. This "second bite at the apple" should fail as a matter of law.

Similarly, in response to the Secretary's statute of limitations argument, Bruette asserts only that "the plaintiff response date of discovery was on 08/25/15, Case No. 1:14-CV-00876-WCG, pg. 1, Document No. 27." But as in *Bruette I*, Bruette fails to explain the significance of the August 25, 2015 date, or why he waited decades after the accrual of this action and expiration of the six-year statute of limitation (see 28 U.S.C. § 2401(a)) to file suit. Finally, Bruette offers no comprehensible assertion of jurisdiction, much as in he failed to do *Bruette I*. *See Bruette v. Jewell*, 2015 WL 5022591 (E.D. Wis. 2015), *aff'd*, 638 Fed. Appx. 528 (7th Cir. 2016).

Under these circumstances, the Court should grant the Secretary's motion to dismiss on the grounds set forth in her motion. *Cf. Mathis. v. New York Life Ins. Co.*, 133 F.3d 546, 548 (7th Cir. 1998) (per curiam) (“[E]ven pro se litigants must include legal argument and cite supporting authority in their briefs”); *Sommerfield v. City of Chicago*, 252 F.R.D. 407, 419 (N. D. Ill. 2008).

For the reasons set forth above, defendant United States Secretary of the Interior respectfully requests that the Court dismiss this action with prejudice.

Dated this 25th day August 2017.

Respectfully submitted,

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United States Attorney

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