IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

1. TAYLEUR RAYE PICKUP; *et al*	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	**Case No. 20-CV-346-JED-FHM**
	)	
1. THE DISTRICT COURT OF NOWATA COUNTY, OKLAHOMA; *et al*;	)	
	)	
	)	
Defendants.	)	

REPLY BRIEF OF DEFENDANT CATHI EDWARDS
IN SUPPORT OF HER MOTION TO DISMISS

COMES NOW Defendant Cathi Edwards, in her official capacity as Court Clerk for Rogers County, and hereby submits her Reply Brief in Support of Her Motion to Dismiss.

Respectfully submitted:

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ARGUMENTS

I. Rogers County Court Clerk Cathi Edwards is an "arm of the state" and entitled to Eleventh Amendment immunity with respect to her ministerial court duties.

Plaintiff's Response Brief fails to address Cathi Edwards's entitlement to Eleventh Amendment immunity due to her functioning as an arm of the State with regard to *her ministerial court duties.* In her Motion to Dismiss, Defendant cited clear case law extending such immunity to entities that function as an arm of the State. Dkt. #71, pp. 5-6. Court clerks are functionaries of the *state* district court for the purpose of collecting fines, fees and costs; they are elected *county* officials only when handling appropriated county funds. *North Side State Bank v. Board of County Comm'rs of Tulsa County,* 894 P.2d 1046, 1051-52 (Okla. 1994). Plaintiffs make no attempt to distinguish or contradict this law. For that reason, Plaintiffs' claims (which solely implicate Edwards's ministerial court duties) are barred by the Eleventh Amendment.

Plaintiffs' attempt to distinguish other cited case law is misguided. In her Motion to Dismiss, Defendant cited *Couser v. Gay,* 959 F.3d 1018 (10th Cir. 2020) for the proposition that Eleventh Amendment immunity extends to entities that are "arms of the state," even though in that case, immunity was denied to a county sheriff. In response, Plaintiffs' only argument is that "court clerks are like Sheriffs" because they are both elected positions. Dkt. #79, p. 2. However, Plaintiffs cannot overcome the clear case law designating court clerks as "arms of state" at all times other than when handling *county* appropriations. By Plaintiffs' own test of identifying not "the actor, but the function performed," Dkt. #79, p. 2 (citing *Buckley v. Fitzsimmons,* 509 U.S. 259, 269 (1993)), Plaintiffs admits that Edwards was acting as an arm of the State. That is, in their Complaint, Plaintiffs allege that "[b]oth she and her predecessors collected monies from Tribal members *that were assessed by the Court*." Dkt. #2, ¶17 (italics added). This further implicates *Couser* because monies collected by court clerks are paid into the state treasury. *See Couser*, 959

F.3d at n.4 ("[A]n official-capacity claim against a county officer is barred if payable out of the state treasury."). There is no allegation that Defendant handled appropriated *county* funds in a manner that harmed Plaintiffs. For those reasons, no "fact based inquiry" is required; there are no facts provable under the allegations of the Complaint to overcome a 12(b)(1) Motion to dismiss.

Plaintiffs cite *Tindal v. Wesley*, 167 U.S. 204, 220 (1897), for the proposition that Eleventh Amendment immunity does not extend to state officers who hold property of another "without authority of law." Dkt. #79, p. 4. However, *Tindal* concerned government officials who were sued in their personal, not official capacities.[1] *Id.* at 219 ("In these cases, he is not sued as an officer of the government, but as an individual . . . [to assert official capacity defenses] he must show that his authority was sufficient in law to protect him."). Here, setting aside the fact that Plaintiffs have not properly pled that Edwards *actually* holds their property, she could only "hold" such funds pursuant to authority of law, i.e., convictions that remain intact. The *Tindal* court stripped defendants of their immunity because the officers "acted under the color of an unconstitutional statute." *Id.* Plaintiffs here do not challenge the constitutionality of the underlying statutes on which they were convicted (speeding, escape from custody, etc.), nor do they challenge the constitutionality of the statutes which allow (or, rather, require) court clerks to collect fees pursuant to judgments. *E.g.*, 28 O.S. §§101, 151, 153. They challenge the judgments themselves. *E.g.*, Dkt. #2, ¶87. They are free to do so: in state court proceedings. The Eleventh Amendment bars claims against Court Clerk Edwards in federal court.

II. The *Ex parte Young* exception to Eleventh Amendment Immunity does not apply as Plaintiffs do not identify an ongoing violation of federal law and do not seek prospective relief.

Plaintiffs argue that *Ex parte Young,* 209 U.S. 123 (1908), abrogates any Eleventh Amendment immunity. Not so. The *Ex parte Young* exception to Eleventh Amendment immunity

[1] Here, Edwards is sued solely in her official capacity as Court Clerk. Dkt. #2, ¶17.

only applies where a plaintiff seeks to enjoin a state official from enforcing an unconstitutional statute. *Cressman v. Thompson*, 719 F.3d 1139, 1146 n.8 (10th Cir. 2013). The plaintiff must be "(1) suing state officials rather than the state itself, (2) alleging an ongoing violation of federal law, and (3) seeking prospective relief." *Muscogee (Creek) Nation v. Pruitt*, 669 F.3d 1159, 1167 (10th Cir. 2012). *Ex parte Young* "may not be used to obtain a declaration that a state officer has violated a plaintiff's federal rights in the past." *Buchwald v. Univ. of N.M. Sch. of Med.*, 159 F.3d 487, 495 (10th Cir. 1998). In the present case, Plaintiffs seek retrospective relief in the form of an order finding that their convictions are "void" and an order requiring Defendants to "refund" all funds paid by the "Class to the State of Oklahoma, any of its agents or political subdivisions." Dkt. #2, p 21. They do not seek prospective relief and they do not allege that any violations of federal law are "ongoing." In fact, their Complaint does not identify an ongoing violation of federal law in any regard. Hence, *Ex parte Young* is inapplicable.

Plaintiffs' attempt to distinguish *Collins v. Daniels,* 916 F.3d 1302 (10th Cir. 2019) is without merit. In that case, the Court held that "**[a]s a general matter, state courts are considered arms of the state and are entitled to sovereign immunity**." *Id.* at 1316 (internal quotes omitted; emphasis added). And, as discussed above, in Oklahoma, court clerks are functionaries of the state courts when collecting fines, fees and costs. Somewhat bizarrely, Plaintiffs seem to concede this point later in their brief when they argue that Court Clerks are "bursars" of the district courts "and deposit money collected into various accounts maintained for the court by the treasurer." Dkt. #79, p. 21.

Plaintiffs also misquote *Collins* when claiming that "11th Amendment and *Younger type* [sic] immunity only applies against judges for damage claims when sued in their individual capacities. Dkt. #79, p. 1 (emphasis removed). The language cited by Plaintiffs appears nowhere on p. 1316 of the opinion, nor does the case discuss *Younger* at all. Rather, the Court stated that

"[s]overeign immunity *also* bars Collins's claims against the individual defendants in their official capacities." *Collins,* 916 F.3d at 1316 (emphasis added). "*Ex parte Young* may not be used to obtain a declaration that a state officer has violated a plaintiff's federal rights in the past." *Id.* (internal quotes removed).

Plaintiffs' attempts to distinguish other cases cited by Defendant Edwards also fail: "fact based determinations" were necessary in those cases because they alleged violations of the Americans with Disabilities Act, a law which clearly implicates the discretionary, not ministerial, acts of a court clerk. Dkt. #79, p. 2. No fact-inquiry is necessary when there is no set of provable facts alleged that will vest this Court with jurisdiction or grant relief for Plaintiffs' claims. By suing Edwards in her official capacity, Plaintiffs have sued an arm of the State. The State has not consented to such a suit, and Edwards is thus entitled to Eleventh Amendment immunity.

III. The *Rooker-Feldman* doctrine clearly bars Plaintiffs' claims

Defendant has pointed out that the *Rooker-Feldman* doctrine applies even where the plaintiff claims the state court judgments are void. Dkt. #71 at p. 17. Plaintiffs do not respond to this argument. Instead, they make the case for application of the doctrine: they repeatedly claim that their underlying convictions were "*void ab initio*" and request an order of the Court so declaring. Dkt. #79, p. 19. Plaintiff has cited no authority to overcome *In re Smith,* 287 Fed. Appx. 683, 685 (10th Cir. 2008) and *Anderson v. Private Capital Group, Inc.*, 549 Fed. Appx. 715, 717 (10th Cir. 2013), whereby the Court rejected an exception to *Rooker-Feldman* in cases where the plaintiff claimed the state court did not have authority to enter the judgment at issue. *See also Mothershed v. Okla. ex rel. Okla. Bar Ass'n,* 2010 WL 11508465, at 3 (W.D. Okla. 2010) ("This court likewise concludes that the *void ab initio* exception to the *Rooker-Feldman* doctrine has no place in this case.").

Plaintiffs cite *Cowan v. Hunter*, 762 Fed. Appx. 521, 523 (10th Cir. 2019), for the proposition that "claims for money damages" do not trigger *Rooker-Feldman.* However, Plaintiffs have repeatedly argued that they are not seeking "money damages" from Defendants. Dkt. #79 at p. 21-22 ("Plaintiffs are not seeking 'damages' from actions of Defendants arising in 'tort.'"); at p. 3 ("The claims brought are not for damages . . ."); at 5 (arguing disgorgement claim is "not a request for money damages"); at 8 ("[T]his is not a lawsuit for traditional type damages . . ."). Rather, they are seeking equitable disgorgement of court fines, fees and costs which were paid as a result of their allegedly invalid criminal convictions. Such claims are "inextricably intertwined" with Plaintiffs' state court judgments and therefore barred by *Rooker-Feldman*.[2]

Plaintiffs' claims fit squarely within the *Rooker-Feldman* doctrine: they are a *de facto* challenge to the validity of Plaintiffs' underlying convictions. Dkt. #2, at p. 21. And unlike *Cowan,* where the § 1983 damages claims were based on independent conduct that would only *implicate* error on part of the state court, Plaintiffs' claims for money "had and received" *require* an invalid judgment *as an element of the claim.* In sum, *Rooker-Feldman* and federalism dictate deference to Oklahoma courts to review the validity of their own judgments. If they err, Plaintiffs are free to petition the United States Supreme Court for review over any issue of federal law. Plaintiffs are free to argue the underlying judgments were "*void ab initio*," but not in this Court. This Court is without subject matter jurisdiction over Plaintiffs' claims against Edwards.[3]

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[2] Further, the "money damage" claims in *Cowan* were based on separate allegations of racial discrimination that did not rely on a *de facto* invalidation of a state court judgment. Unlike Plaintiffs' claims here, the *Cowan* Court found that awarding damages would only imply invalidity of the state court judgments, rather than vacatur of it. *Id.* The Tenth Circuit nonetheless affirmed dismissal of the damage claims, in addition to the vacatur claims, because those claims implicated "preclusion" doctrine rather than *Rooker-Feldman*. *Id.* at 524.

[3] Plaintiffs also cite *Rizzo v. Goode*, 423 U.S. 362 (1976), for the proposition that §1983 allows claims for equitable relief. This argument is irrelevant to the issue of the immunity and jurisdictional issues addressed by Defendants.

IV. Plaintiffs have failed to negate any argument regarding *Heck v Humphrey*

Plaintiffs have failed entirely to respond to section C(2) of this Defendant's Motion to Dismiss related to the *Heck* doctrine. The Court should deem this point conceded. A § 1983 plaintiff seeking damages for harm caused by actions whose unlawfulness would render a conviction or sentence invalid *must* prove that the conviction has been reversed, expunged or declared invalid "by a *state tribunal authorized to make* such determination." *Heck v. Humphrey,* 512 U.S. 477, 486 (1994). As briefed earlier, the Oklahoma Uniform Post-Conviction Procedure Act ("OUPCPA"), 22 O.S. § 1080 *et seq.,* is Plaintiffs' sole avenue for such relief. *Heck* therefore bars Plaintiffs' § 1983 claims.

V. *Younger v. Harris* applies to any putative claim on behalf of class members which may yet emerge, and to existing claims which require post-conviction relief as a matter of law.

The *Younger* doctrine requires this Court to abstain from hearing this matter because any orders entered by this Court would have preclusive effects on state court proceedings. Dkt. #71, p. 9; *See Sprint Commc'ns, Inc. v. Jacobs,* 134 S. Ct. 584, 591 (2013). "For *Younger* purposes, the State's trial-and-appeals process is treated as a unitary system, and for a federal court to disrupt its integrity by intervening in mid-process would demonstrate a lack of respect for the State as sovereign." *NOPSI v. Council of City of New Orleans*, 491 U.S. 350, 369 (1989). A party may not procure federal intervention by foregoing a state appeal to attack the judgment in federal court. *Id.* A party *must* exhaust his state remedies before seeking relief in federal district court. *Id.* Plaintiffs claim *Younger* does not apply because the proceedings are not "ongoing." However, insofar as Plaintiffs have state post-conviction relief available to them, these are "ongoing proceedings," and the Court should abstain under *Younger* insofar as any Order issued by this Court would be preclusive of Orders that might be entered in state court proceedings.

VI. Plaintiffs have failed to address Defendant's other arguments on failure to state a §1983 claim.

In addition to failure to address this Defendant's *Heck* arguments, Plaintiffs have also failed to address any argument that, when pleading a constitutional violation against a state official, only those officials with "final policymaking authority" can subject a governmental entity to liability. *See City of St. Louis v. Praprotnik,* 485 U.S. 112, 125 (1988). Plaintiffs' section XIII of their response brief attempts to provide responsive arguments, but Plaintiffs fail to identify any facts or allegations showing that Defendant Edwards violated Plaintiffs' constitutional rights. Dkt. #79, p. 18. Nor have Plaintiffs responded to the fact that judges alone have statutory power to assess fines, not court clerks. *See Petuskey v. Cannon,* 742 P.2d 1117, 1121 (Okla. 1987). Nor have the Plaintiffs responded to the point that Plaintiffs were afforded proper procedural protections, i.e. meaningful opportunity to raise their jurisdictional challenges, nor the point that conduct for a substantive due process claim must "shock the conscience." Dkt. 71, pp. 15-16. The Court should deem these points conceded and find that Plaintiffs have failed to state a § 1983 claim.

VII. Plaintiffs' Declaratory Judgment claims are without merit

Plaintiffs' request for a "declaratory judgment" is without merit for several reasons. First, Plaintiffs argue that they do not seek to "establish liability," but rather "seek a ruling that would entitle them to disgorgement." Dkt. #79, p. 19. They conclude that this relief is "not retroactive." However, this argument is without merit because Plaintiff have simply used different words to achieve the same result, i.e., to hold a plaintiff "entitled" to a remedy is to hold a defendant "liable" for it. In the present case, Plaintiffs have not identified sufficient facts to justify an advisory opinion on whether the Cherokee Nation has been disestablished.

Second, Plaintiffs implicitly concede the dictates of *Winsness*: courts treat declaratory relief *as retrospective* to the extent it is *intertwined* with a claim for monetary damages. *Winsness v. Yocom,* 433 F.3d 727, 735 (10th Cir. 2006). Third, Plaintiffs fail to address the clear dictates of

Archilta raised in the opening brief: if a §1983 claim is barred by *Heck,* then a related request for declaratory relief should be dismissed. *Archilta v. Oklahoma,* 123 Fed. Appx. 852, 856-57 (10th Cir. 2005). Fourth, at one point in their response brief, Plaintiffs claim that there is in fact "no conviction to overturn." Dkt. #79, p. 23. But, if that were true, then there would be no need for declaratory relief. Finally, Plaintiffs do not dispute that the Declaratory Judgment statute (22 U.S.C. § 2201) does not confer an independent basis for federal jurisdiction. And, because Plaintiffs have failed to identify any violation of any federal right by Defendant Edwards, Plaintiffs' request for a declaratory judgment should be dismissed.

VIII. Plaintiffs have failed to address Defendant's arguments regarding their GTCA claim.

a. The GTCA applies and *Sholer* is distinguishable from this situation.

Plaintiffs cite *Sholer v. State ex rel. Dept. of Pub. Safety,* 945 P.2d 469, 472-73 (Okla. 1995), for the proposition that the state law claim does not fall under the purview of the Oklahoma Governmental Tort Claims Act ("GTCA"). While it is true that the *Sholer* plaintiffs were seeking a refund of an amount overpaid, "the power of DPS to collect license fees or its power to issue or suspend a driver's license [was] not at issue." *Id.* at 472. It acknowledged that the GTCA applies when a claim results from assessment of taxes or fees, including "other fees or charges *imposed by law*." *Id.* (quoting 51 O.S. § 155(11)).[4] Here, the power of all Defendants to collect fees and fines "imposed by law" *is* at issue, and the claim clearly results from "fees or charges imposed by law." *Sholer* was a case that revolved around an accounting error, not a challenge to jurisdiction altogether. The GTCA applies to this case and the Plaintiffs have admittedly failed to comply with its procedural requirements. Dkt. #2, ¶52.

[4] Further, since *Sholer* was decided, the Oklahoma legislature has amended the definition of "tort" to include violations of the Oklahoma Constitution. Because Plaintiffs allege that State entities hold monies pursuant to wrongful and unlawful acts, these allegations are, in essence, tort claims against the State. 51 O.S. § 152(14).

b. The fee protest statute applies.

Plaintiffs also cite *Sholer* for the proposition that the fee protest statute, 62 O.S. §206(A), does not apply. But again, the facts of this case are distinguishable. In their own citation, Plaintiffs note the *Sholer* plaintiffs "were not claiming a fee to be unconstitutional or invalid. They do not dispute the *validity* of reinstatement fees." Dkt. #79, p. 22. Here, however, Plaintiffs clearly dispute the validity of the fees. They argue throughout every pleading that all underlying convictions were "*void ab initio*." This is clearly a dispute over the validity of the fines and fees. 62 O.S. § 206(A) applies.

c. Plaintiffs also fail to plead the other elements required for a "money had and received" claim.

Assuming the Court declines to dismiss based on any of the jurisdictional or procedural arguments, Plaintiffs still fail to plead the requisite elements for their "money had and received" claim. Plaintiffs cite various non-Oklahoma state cases, and federal cases outside the Tenth Circuit, for the proposition that a "money had and received" claim is governed by principles of equity and conscience. Dkt. #79, pp. 20-21. However, this argument undercuts Plaintiffs' claims due to the equitable defenses raised the Defendants. They implicitly concede *McGirt's* dictates that equitable doctrines such as laches[5] and *res judicata* protect those who have labored under a mistaken understanding of the law. 140 S. Ct. at 2481. Plaintiffs also concede that they have failed to plead a sum certain and have failed to allege that any particular amount is *actually* held by Court Clerk Edwards.

Plaintiffs then claim equity somehow favors them. They argue that if the reservation does indeed still exist, then all Defendants have unclean hands, and "knew" they were acting without jurisdiction, as all state officials are charged with knowing the law. But such an argument stands

[5] This Defendant asserted such defenses by reference to the briefs of various Municipal defendants. Dkt. #71, p. 22.

diametrically opposed to their argument against laches. If it was well-known that the State, municipalities or cities "lacked jurisdiction," then a subject matter jurisdiction defense could have been (and should have been) asserted in their criminal or municipal proceedings. But, that did not happen. Instead, the named Plaintiffs entered into plea agreements concerning their law violations. Dkt. #71, Exhibits 1-6. "When a defendant pleads guilty he or she, of course, forgoes not only a fair trial, but also other accompanying constitutional guarantees." *United States v. Ruiz*, 536 U.S. 622, 628 (2002). Hence, by virtue of these plea agreements, it is not unconscionable or unjust for Defendants to receive, collect and keep the fees/fines/costs at issue, particularly insofar as Plaintiffs have tarried this long in asserting jurisdictional defenses and have unclean hands via their admitted law violations.[6]

Conclusion

Plaintiffs have failed to identify any facts supporting any claims against Rogers County Court Clerk Cathi Edwards. Defendant Edwards is entitled to Eleventh Amendment immunity for any claims related to her role in collecting fines, fees and costs for the Oklahoma state court system. In addition, Plaintiffs have taken to any action to challenge their convictions in the Oklahoma state court system. For the reasons discussed in the briefing, Plaintiffs' claims are barred by *Rooker-Feldman, Younger*, and *Heck.* Finally, the Court should decline to exercise jurisdiction over Plaintiffs' state law claims or otherwise dismiss them for failure to state a claim upon which relief can be granted.

WHEREFORE, premises considered, Defendant Cathi Edwards, Court Clerk of Rogers County, in her official capacity, requests the Court dismiss any and all claims against her.

[6] Plaintiffs also claim that Defendants should be estopped from denying existence of the Cherokee Reservation because the State has long dealt with the Cherokee Nation in negotiations for gaming compacts. However, the negotiation of a gaming compact under the Indian Gaming Regulatory Act, 25 U.S.C. §2701, is analytically distinct from the issue of whether the Cherokee Nation has been "disestablished" as a matter of sovereignty (and geography).

Respectfully submitted:

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CERTIFICATE OF SERVICE

I hereby certify that on 22nd day of October, 2020, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants (names only are sufficient):

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