IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

WALTER H. HORNER, M.D, PhD.,	)	CIVIL ACTION NO. 5:02CV00099
	)	
Plaintiff,	)	
	)	
v.	)	MEMORANDUM OPINION
	)	
DEPT. OF MENTAL HEALTH, *et al.*,	)	
	)	
Defendants.	)	JUDGE JAMES H. MICHAEL, JR.

This matter comes before the court on the defendants' "Motion to Dismiss," filed December 2, 2002. The above-captioned civil action was referred to the presiding United States Magistrate Judge for proposed findings of fact, conclusions of law, and a recommended disposition. *See* U.S.C. § 636(b)(1)(B). In his March 14, 2003 Report and Recommendation, Magistrate Judge B. Waugh Crigler rendered to this court a report setting forth findings, conclusions, and recommendations for the disposition of the aforementioned filing. The plaintiff filed timely objections to portions of the Magistrate's Report and Recommendation on March 27, 2003.

The court has performed a *de novo* review of those portions of the Report and Recommendation to which objections were made. *See* U.S.C. § 636(b)(1)(C) (West 1993 and Supp. 2000); FED.R.CIV.P. 72(b). Having thoroughly considered the entire case, all relevant law, and for the reasons stated herein, the court shall GRANT the defendants' Motion to Dismiss and DISMISS the case from the docket of the court for lack of subject matter jurisdiction. Additionally, the court shall ACCEPT the Report and Recommendation of the Magistrate Judge

in its entirety.

I.

The court will rely on the Magistrate Judge's recitation of the facts involved in this matter. Plaintiff Walter Harry Horner ("Horner") is an internist who was employed as a "mental health physician" at Western State Hospital from 1995 until May, 2001. During at least part of his employment, Horner was a vocal critic of Western State's leadership and policies, and the effects of those policies on patient care. He repeatedly reported what he believed to be federal and state law violations occurring at Western State. Specifically, on February 27, 2001, Horner sent an e-mail to his immediate supervisor, both the medial director and director at Western State, the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services, and the Inspector General for Mental Health, Mental Retardation and Substance Abuse Services. This communication noted specific performance problems relating to a certain named employee at Western State and predominantly laid blame on the hospital's leadership and on poor supervision. This e-mail revealed Horner's deep concern over the inadequacy of patient care at Western State.

According to the Complaint in this case, Horner later became the subject of disciplinary action by his state employer. Three charges appear to have been leveled against him. One of those was for "failure to follow a supervisor's direction" and related to Horner obtaining coverage for his shift during periods of absence. A second related to the alleged release of confidential employee information to a party outside the agency, and it clearly stemmed from Horner's February 27, 2001, e-mail communication. The subject of the third charge is not

apparent on the record, and its relevance to the disposition of the defendants' Motion to Dismiss has not been raised by either side.

Horner's employment was terminated on May 15, 2001. The applicable "Standards of Conduct" apparently impose termination as the sanction for conduct set forth in the combination of charges brought against the plaintiff. The plaintiff now alleges that these charges were improper because they amounted to retaliation for engaging in protected communications. Horner appealed the disciplinary action in accordance with the Commonwealth's grievance procedure. VA. CODE § 2.2-3000 *et seq*. (2001) (formerly § 2.1-116.04 *et seq.*).

The job action was reversed by Horner's superior at the initial stage of the grievance review. The Department, however, was dissatisfied with this decision and instituted an appeal, an action the plaintiff consistently has maintained is not permitted under the state grievance procedure. The appeal, nevertheless, made its way to a hearing officer in the Commonwealth's Department of Employment Dispute Resolution (David J. Latham, Esq.) who heard the matter and apparently issued three decisions. One of those decisions dismissed one of the three charges, but in the other two, the hearing officer affirmed the Department's decision to discharge the plaintiff. (*See* Defs.' Br. Supp. Mot. Dismiss ("Def. Brief") at Ex. 1, 2.) In each decision affirming the two respective job actions, the hearing officer addressed the plaintiff's assertion that "the disciplinary action was retaliatory because of purported disparate treatment." (*Id.* at Ex. 1 at 8; *id.* at Ex. 2 at 8.) There is no question that, as to each assertion, the hearing officer entertained evidence concerning whether the Department's conduct was in retaliation for Horner's "outspoken ... complaints to the agency's top management." (*Id.* at Ex. 1 at 9; *id.* at Ex.

2 at 9.) Additionally, Latham expressly found that Horner had not produced adequate evidence that the disciplinary actions taken against him were retaliatory.[1] In accordance with state law, Horner appealed these two decisions to the Circuit Court of Staunton. VA. CODE § 2.2-3006B (2001) (formerly § 2.1-116.07).

The State Circuit Judge first determined the scope of his judicial review and then reversed the hearing Officer's determination on the grounds that they were "contradictory to law." (Def. Brief at Ex. 3.) The court ordered reinstatement, back pay, and reinstatement of fringe benefits as if the plaintiff had never been terminated. The Judge did not consider or decide any of Horner's other substantive claims, including whether he suffered retaliation on account of his exercise of his alleged state and federal constitutional rights. This decision was appealed by the Department to the Virginia Court of Appeals and a stay of the Circuit Court decision has issued pending the outcome of the appeal. To date, no decision has issued from the Virginia Court of Appeals.

II. The Objections

In his Report and Recommendation, the Magistrate Judge concluded that the *Rooker-Feldman* doctrine "applies and dictates a conclusion that this Court is without jurisdiction to

[1] In the Decision of Hearing Officer regarding Grievance in Case No. 5249, Latham states: "[T]he grievant has provided no testimony or evidence that would substantiate that this disciplinary action was retaliatory. There is more to proving retaliation then making a mere allegation." (Def. Brief at Ex. 2 at 9.) Horner apparently had alleged that the disciplinary action taken against him was both disparate and retaliatory in that, in the past, he had reported deficient patient care on the part of other physicians but had not been disciplined. According to the hearing officer, Horner offered neither documentation nor testimony to support the assertion except with regard to reports about one physician, whose professional services were the subject of pending litigation.

entertain the claims brought in this case." (Report and Recommendation, page 10.) Accordingly, Magistrate Judge Crigler recommended that this court grant the defendants' Motion to Dismiss and dismiss this action from the docket of the court for lack of subject matter jurisdiction. Plaintiff Horner has filed six objections to this recommendation, the first two of which directly implicate the *Rooker-Feldman* doctrine.

A. The First *Rooker-Feldman* Objection:

Because the *Rooker-Feldman* doctrine is jurisdictional, the court is obliged to address it before proceeding any further in its analysis. *Stanton v. District of Columbia Court of Appeals*, 127 F.3d 72, 75 (D.C. 1997) ("Because it is jurisdictional, we *first* consider the *Rooker-Feldman* doctrine ..." (emphasis added)). The *Rooker-Feldman* doctrine generally bars federal district courts from "sit[ting] in direct review of state court decisions." *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 483 n. 16 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-416 (1923). "Rather, jurisdiction to review such decisions lies exclusively with superior state courts and, ultimately, the United States Supreme Court." *Phyler v. Moore*, 129 F.3d 728, 731 (4th Cir. 1997).

The plaintiff, in an attempt to remove the instant action out of the scope of *Rooker-Feldman*, articulates two reasons why the doctrine is not controlling in this case. First, Horner contends that "[T]he Rooker-Feldman doctrine does not deprive this Court of subject-matter jurisdiction because this doctrine does not apply to any administrative action, whether that action involves rulemaking or judicial-like inquiries." (Plaintiff's Objections, page 1; *see also* Plaintiff's Brief in Support of Objections ("Plaintiff's Brief"), pages 3-8.) Put differently, the plaintiff attempts to characterize the Virginia grievance proceedings as rulemaking or otherwise

exempt from the application of *Rooker-Feldman*. As the Magistrate Judge explained, "such a characterization is a stretch at best and ... plainly incorrect." (Report and Recommendation, page 7.)

In his brief, Horner asks the court to "recall that at the heart of Rooker-Feldman is [Title] 28 U.S.C. Section 1257 ... which provides that the United States Supreme Court is the only federal court with jurisdiction to review a decision by a state's highest court – no mention is made of administrative agencies." (Plaintiff's Brief, page 5.) While it is true that *Rooker-Feldman*, by the language of the statute upon which it is based, does not explicitly apply to decisions by lower state courts, the Fourth Circuit views the doctrine "to also preclude review of adjudications by lower state courts as well." *Jordahl v. Democratic Party of Va.*, 122 F.3d 192, 199 (4th Cir. 1997) ("[T]he *Rooker-Feldman* doctrine precludes not only review of adjudications of the state's highest court, but also the decisions of its lower courts."). Therefore, the plaintiff's implication that the doctrine must not apply to agency decisions because the statute upon which it is based does not expressly mention administrative agencies is incorrect. To the contrary, the fact that the statute does not explicitly mention administrative agencies is not dispositive. Only a review of the relevant case law can tell the court whether the administrative proceedings at issue are exempt from the application of *Rooker-Feldman*.

The plaintiff correctly points out that "[N]either the United States Supreme Court nor the Fourth Circuit Court of Appeals has ruled directly on the issue of whether the Rooker-Feldman doctrine applies to decisions by state administrative agencies acting under the authority of the executive branch." (Plaintiff's Brief, page 4.) In support of its objection, however, plaintiff Horner argues that "in an unpublished opinion, the Fourth Circuit held that "' state administrative

agencies are not 'courts' within the meaning of the Rooker-Feldman doctrine.'" (Plaintiff's Brief, page 4 (quoting *Fleming v. Worker's Compensation Comm'n of the Commonwealth of Virginia*, 78 F.3d 578 (4th Cir. 1996) (unpublished))).

The plaintiff made the same argument to the Magistrate Judge. The Magistrate Judge was unpersuaded. As Magistrate Judge Crigler explained, the Fourth Circuit's

> rather loose observations about whether state administrative proceedings are subject to *Rooker-Feldman*, are overshadowed by the fact that, in *Fleming*, the Fourth Circuit addressed a constitutional question of whether the plaintiff was deprived of due process by the unilateral suspension of his worker's compensation without notice and an opportunity to be heard. Finding no action under color of state law, and, thus, no state action, the court affirmed the trial court's dismissal of the case.

(Report and Recommendation, page 8.) Even if *Fleming* has some precedential value, which it does not, the *Rooker-Feldman* doctrine never was brought squarely into play. The point here is that if the Fourth Circuit has elected not to foreclose the possibility that the *Rooker-Feldman* doctrine applies to administrative decisions, far be it for this court to take the view that the doctrine does not apply to any administrative action, as the plaintiff argues in this case. To that end, it is the court's view that the state grievance process that is the subject of this case was and is an adjudicatory process subject to the *Rooker-Feldman* doctrine.

B. The Second *Rooker-Feldman* Objection:

Plaintiff Horner next argues that "[t]he Rooker-Feldman doctrine does not deprive this Court of subject-matter jurisdiction because this doctrine only applies when claims may be reviewed by a state court and in the United States Supreme Court." (Plaintiff's Objections, page 1; *see also* Plaintiff's Brief, pages 8-10.) The *Rooker-Feldman* doctrine divests federal district courts of the authority to consider "issues actually presented to and decided by a state court" *or*

"constitutional claims that are inextricably intertwined with questions ruled upon by a state court." *Phyler v. Moore*, 129 F.3d 728, 731 (4th Cir. 1997) (emphasis added). There is no question that the claims set forth in Horner's federal complaint are "inextricably intertwined" with the retaliation claims set forth in his grievance. "Horner has not and cannot offer that the factual basis for his constitutional claims under § 1983 would differ, in any substantial part, from those essential facts presented in the state proceedings." (Report and Recommendation, page 8.) Moreover, Horner's attempt to distinguish the state and federal actions by labeling the latter a constitutional complaint is unavailing because "[t]he label attached to the federal court action will rarely, if ever, be important, since a party that is seeking in federal court to readjudicate an issue decided in state court is unlikely to say so." *Friedman's, Inc. v. Dunlap*, 290 F.3d 191, 196 (4th Cir. 2002).

Despite the plaintiff's contention to the contrary, then, his constitutional claims could have been raised and adjudicated in the state proceedings. Additionally, the entire process is subject to state appellate review and, ultimately, to review by the United States Supreme Court. Thus, as the Magistrate Judge explained, "an important element of *Rooker-Feldman* relating to whether the claims asserted in the collateral federal action are ones that ultimately could be addressed on direct appeal by the United States Supreme Court, if raised in the state proceedings, has been satisfied." (Report and Recommendation, page 9.)

Finally, to the extent that the plaintiff is arguing that it is improper for the court to invoke the *Rooker-Feldman* doctrine before the state court proceedings have run their course,[2] it is

[2] As noted earlier, The Department of Mental Health has appealed a decision of a state Circuit Judge ordering reinstatement, back pay, and reinstatement of fringe benefits as if the plaintiff had never been terminated. The Virginia Court of Appeals has issued a stay of the Circuit

worthy of note that "the fact that the decision of a state court is winding its way through the state appellate system does not subject it to federal review in the meantime." *Friedman's, Inc. v. Dunlap*, 290 F.3d 191, 196 (4th Cir. 2002) (internal citation omitted). "The *Rooker-Feldman* doctrine is in no way dependent upon the temporal procedural posture of the state court judgment." *Jordahl v. Democratic Party of Va.*, 122 F.3d 192, 202 (4th Cir. 1997).

For all of the preceding reasons, the *Rooker-Feldman* doctrine applies and dictates a conclusion that this court is without subject matter jurisdiction to entertain the plaintiff's claims. Because *Rooker-Feldman* divests the court of jurisdiction, there is no reason for the court to address the plaintiff's remaining objections to the Magistrate Judge's Report and Recommendation. In the interest of completeness, however, the court notes that having thoroughly reviewed the entire case and all relevant law, the court is in complete agreement with the Magistrate Judge's analysis.

III.

For the reasons articulated herein, the court shall GRANT the defendants' Motion to Dismiss and DISMISS the case from the docket of the court for lack of subject matter jurisdiction. Additionally, the court shall OVERRULE the plaintiff's objections to the Magistrate Judge's Report and Recommendation. The court shall ACCEPT the Report and Recommendation of the Magistrate Judge in its entirety. The court dispenses with oral argument because the facts and legal contentions are adequately presented in the materials before the court,

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Court decision pending the outcome of the appeal.

and argument would not aid in the decisional process.[3] An appropriate Order shall this day enter.

The Clerk of the Court hereby is directed to send a certified copy of this Memorandum Opinion and the accompanying Order to Magistrate Judge Crigler and to all counsel of record.

ENTERED:

_____
Senior United States District Judge

_____
Date

[3] Pursuant to *U.S. v. Raddatz*, 447 U.S. 667, 674 (1980), the district court is not required to rehear testimony on which the magistrate judge based his findings and recommendations in order to make an independent evaluation of credibility. Specifically, the Supreme Court found that "[w]e find nothing in the legislative history of the statute to support the contention that the judge is required to rehear the [arguments] in order to carry out the statutory command to make the required 'determination.'"

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WALTER H. HORNER, M.D, PhD.,	)	CIVIL ACTION NO. 5:02CV00099
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Plaintiff,	)	
	)	
v.	)	FINAL ORDER
	)	
DEPT. OF MENTAL HEALTH, *et al.*,	)	
	)	
Defendants.	)	JUDGE JAMES H. MICHAEL, JR.

For the reasons stated in the accompanying Memorandum Opinion, it is this day

ADJUDGED, ORDERED and DECREED

as follows:

(1) The "Plaintiff's Objections to the Magistrate Judge's Report and Recommendation," filed March 27, 2003, shall be, and they hereby are, OVERRULED;

(2) The Magistrate Judge's "Report and Recommendation," filed March 14, 2003, shall be, and it hereby is, ACCEPTED and ADOPTED in its entirety;

(3) The defendants' "Motion to Dismiss," filed December 2, 2002, shall be, and it hereby is, GRANTED. This case shall be, and it hereby is, DISMISSED from the docket of the court for lack of subject matter jurisdiction.

The Clerk of the Court hereby is directed to send a certified copy of this Order and the accompanying Memorandum Opinion to Magistrate Judge Crigler and to all counsel of record.

ENTERED:

_____
Senior United States District Judge

_____
Date