

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

D'ARMY BAILEY,

Plaintiff,

v.

No. 04-2402 B

SHELBY COUNTY, TENNESSEE, et al.,

Defendants.

ORDER REMANDING PLAINTIFF'S STATE LAW CLAIMS, STAYING
PLAINTIFF'S FEDERAL CONSTITUTIONAL CLAIMS, DENYING
WITHOUT PREJUDICE DEFENDANTS' MOTION TO DISMISS,
AND ADMINISTRATIVELY CLOSING CASE

Plaintiff, D'Army Bailey, initiated this lawsuit in Chancery Court of Shelby County, Tennessee, seeking declaratory, injunctive, and compensatory relief against Shelby County and the Shelby County Retirement Board, as well as various other Defendants, for his exclusion from a retirement benefit plan offered to Shelby County employees. The Defendants removed the action to this Court based on federal question and supplemental jurisdiction under 28 U.S.C. §§ 1331 and 1367, respectively. Plaintiff has filed a motion seeking to have this matter remanded to state court for resolution. Also pending before the Court is the Defendants' motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure.

FACTS

Plaintiff began working for Defendant Shelby County in 1974 as a part-time public defender. (Petition Statutory Writ of Cert., Declaratory J., Inj. Relief, Damages at 2 ("Petition"), attached to Am. Notice Removal.) At the time Bailey was hired, the County's retirement plan ("Plan B") provided in relevant part that "[a]ll salaried employees who enter County Service after September

1, 1949, shall, as a condition of such employment, be members [of the retirement plan] on or after the date of entering such service.” (Petition at 2 (emphasis omitted from original).) According to the Plaintiff, “[t]he Shelby County Attorney has continuously affirmed that part-time regular and continuous employees . . . must mandatorily be included in the Shelby County Retirement Plan.” (Petition at 2.) In his petition, Plaintiff asserts that the Defendants did not include him, nor ever inform him of his right to participate, in Plan B, which he argues violated the provisions of the plan. Bailey alleges that he inadvertently learned of his rights when the Defendants decided to terminate Plan B and implement a new plan on February 4, 1980. (Petition at 3.) He insists that he was never given the opportunity to transfer from Plan B to the new plan. (Petition at 4.) Further, Plaintiff submits that he repeatedly requested that his rights be formally decided, which the Shelby County Retirement Board did on March 9, 2004. (Petition at 4.) However, when the board considered Plaintiff’s request, four members voted to include Bailey in the retirement plan while four voted against his inclusion. Because seven affirmative votes were needed to pass the proposal to include him, Bailey’s request was denied. (Petition at 4.) In his Chancery Court lawsuit, Plaintiff claimed that the board’s decision was made contrary to the terms of the County’s retirement plan and in violation of his rights to due process and to equal protection under the Fourteenth Amendment to the United States Constitution and under Article I, Section 8 and Article XI, Section 8 of the Tennessee Constitution. He seeks damages and injunctive relief under 42 U.S.C. § 1983 for his federal claims, a writ of certiorari overturning the board’s decision under Tennessee Code Annotated § 27-9-101 et seq., and a declaratory judgment pursuant to Tennessee Code Annotated § 29-14-102 declaring the decision of the board illegal and unconstitutional.

ANALYSIS

Bailey contends that remand of his lawsuit is appropriate because this Court should abstain from exercising jurisdiction when state court adjudication of an issue under state law would be determinative of his claims. Specifically, he submits that Tennessee courts have exclusive jurisdiction over writs of certiorari challenging the judgment of a Tennessee board or commission.¹ Tennessee Code Annotated § 27-9-101 provides that “[a]nyone who may be aggrieved by any final order or judgment of any board or commission functioning under the laws of this state may have [it] reviewed by the courts.” In order for that review to occur, Tennessee Code Annotated § 27-9-102 provides that such a party “shall . . . file a petition of certiorari in the chancery court.” Tenn. Code Ann. § 27-9-102; see also Tenn. Code Ann. § 27-9-103 (“The circuit court is given concurrent jurisdiction over such proceeding.”). In response to the Plaintiff’s motion, the Defendants submit that they do not object to remand of the state claims. (Def.’s Resp. Pl.’s Mot. Remand at 4.) However, if the state matters are sent back to Chancery Court, they contend the remaining federal claims should be dismissed by this Court. In the event that the Court does not remand all of his claims to state court, Plaintiff insists that the Court should stay consideration of the federal claims under the Pullman abstention doctrine.

In Railroad Commission of Texas v. Pullman Company, 312 U.S. 496, 501-02, 61 S.Ct. 643, 645-46, 85 L.Ed. 971 (1941), the United States Supreme Court unanimously held that a federal district court erred in deciding a challenge to a Texas regulation based on a federal constitutional

¹ As additional support for his motion, the Plaintiff argued that remand was proper because the Defendants’ notice of removal was not signed or joined in by all of the Defendants. However, after Bailey filed his motion, Defendants moved to amend the notice of removal by including all of the Defendants as signatories. Upon referral, Magistrate Judge Diane Vescovo granted the Defendants’ motion which this Court affirmed over Plaintiff’s objection. (See Order Overruling Pl.’s Objections and Affirming Order of the Magistrate Judge.)

equal protection argument when it was unclear under Texas law whether the commission had authority to pass the challenged regulation in the first instance. The Court reasoned that abstention was appropriate because the “federal court’s decision could be supplanted by a later state court ruling” and the court could avoid deciding a premature federal constitutional question and avert “friction between state and federal courts.” Entman v. City of Memphis, 341 F. Supp. 2d 997, 998 (W.D. Tenn. 2004) (quoting Pullman, 312 U.S. at 500-01, 61 S.Ct. at 644-46). “Where uncertain questions of state law must be resolved before a federal constitutional question can be decided, federal courts should abstain until a state court has addressed the state questions.” Brown v. Tidwell, 169 F.3d 330, 332 (6th Cir. 1999) (citations omitted).

Two factors must exist in order for Pullman abstention to be warranted: (1) there must be a reasonable likelihood that the state court’s decision might obviate the need for a federal constitutional decision and (2) there must be uncertainty of the meaning of a state law. Tyler v. Collins, 709 F.2d 1106, 1108 (6th Cir. 1983). In Entman, District Judge Jon McCalla concluded that abstention was appropriate where the plaintiff brought claims under the freedom of religion clauses of the Tennessee and federal constitutions because it was unclear whether the defendant’s conduct violated the religion clause under the state constitution. Entman, 341 F. Supp. 2d at 1000. The court also found that by remanding the state claims to the state court, a federal constitutional ruling could potentially be avoided. Id. at 999.

The Court concludes that abstention is appropriate on the facts of the present case. A decision by the Tennessee courts in favor of the Plaintiff might prevent the need for this Court to decide Plaintiff’s federal constitutional claims. Moreover, it is not clear under Tennessee law whether a federal court should review orders of a Tennessee board. As noted above, Tennessee

Code Annotated § 27-9-102 provides the mechanism of filing a petition of certiorari in state court to review such an order. Although the statutes do not specifically provide that Tennessee courts have exclusive jurisdiction, language from state cases lend support to such a conclusion. In Brown v. Board of Professional Responsibility of the Supreme Court of Tennessee, 29 S.W.3d 445, 449 (Tenn. 2000), the Tennessee Supreme Court found that “application of Tenn. Code Ann. § 27-9-101 in the disciplinary context is limited to chancery court review of the judgment of a hearing panel.” See also Cobb v. Vinson, No. 02A01-9707-CV-00144, 1998 WL 148352, at *4 (Tenn. Ct. App. April 1, 1998) (holding that Davidson County chancery court as well as chancery courts in other counties may exercise jurisdiction over certiorari review of prison disciplinary actions), overruled on other grounds by, Buford v. Tenn. Dept. of Corrections, No. M199800157COAR3CV, 1999 WL 1015672 (Tenn. Ct. App. Nov. 10, 1999). Although Defendants argue that abstention is not appropriate because “[t]here is no unclear state law in this case,” the Defendants have failed to cite any decisions rebutting Bailey’s claim that only Tennessee chancery courts have jurisdiction to review the retirement board’s decision. It is not without doubt that this Court has jurisdiction to review orders and judgments of a Tennessee board or commission. Moreover, remand of the state law claims to the Shelby County Chancery Court is not opposed by the Defendants. Therefore, the Court finds that abstention is appropriate in this case.

Under England v. Louisiana State Board of Medical Examiners, 375 U.S. 411, 421-22, 84 S.Ct. 461, 11 L.Ed.2d 440 (1964), the appropriate procedure when Pullman abstention is warranted is for the district court to retain jurisdiction over the plaintiff’s federal causes of action while staying the litigation pending resolution of the state claims by the state court. See also Entman, 341 F. Supp. 2d at 1001. Accordingly, the Court grants Plaintiff’s motion to remand only with respect to his state law claims and stays Plaintiff’s federal constitutional claims. Because it has been determined that

a stay is appropriate, the Court denies Defendants' motion to dismiss without prejudice at this time. Should the Court have occasion to address Plaintiff's federal constitutional claims, the Defendants will be free to refile their motion at a later date.

CONCLUSION

For the reason stated herein, Defendants' motion to dismiss is DENIED without prejudice. The Court REMANDS Plaintiff's state law and state constitutional claims to the Tennessee chancery court while retaining jurisdiction over his federal claims. The action in this Court will be STAYED pending resolution of the state law claims.

The Clerk's office is DIRECTED to administratively close this case during the pendency of the stay. If the Tennessee state courts resolve this action in favor of the Plaintiff, then no further action by this Court will be necessary. If the state courts resolve the Tennessee claims in the Defendants' favor, then it will be appropriate to proceed with the federal constitutional questions in this forum. At that point, Bailey should immediately file a motion to reopen the case for further proceedings.

IT IS SO ORDERED this ___ day of April, 2005.

J. DANIEL BREEN
UNITED STATES DISTRICT JUDGE