

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

February 2, 2021

Christopher M. Wolpert
Clerk of Court

EDSON G. GARDNER,

Plaintiff - Appellant,

v.

WENDI LONG, in her official capacity as
Treasurer of Uintah County, Utah,

Defendant - Appellee.

No. 20-4128
(D.C. No. 2:18-CV-00509-RJS-DBP)
(D. Utah)

ORDER

Before **TYMKOVICH**, Chief Judge, **BRISCOE** and **HARTZ**, Circuit Judges.

Pro se Plaintiff Edson Gardner filed the underlying complaint against Wendi Long, the Treasurer for Uintah County, Utah, alleging that the assessment of property taxes on Mr. Gardner's land violates federal law. Treasurer Long filed an answer to the complaint and counterclaims against Mr. Gardner for civil conspiracy, abuse of process, and bad faith, and sought attorneys' fees and costs for defending against Mr. Gardner's complaint. Mr. Gardner filed a motion to dismiss counterclaims and to strike affirmative defenses, and asserted the counterclaims are barred by "Indian sovereign immunity." The magistrate judge recommended denying Mr. Gardner's motion and Gardner filed objections. On November 23, 2020, the district court entered an order adopting the report and recommendation and denying Mr. Gardner's motion to dismiss counterclaims and to

strike affirmative defenses. The case is ongoing in the district court. Mr. Gardner seeks to appeal the district court's November 23, 2020 interlocutory order. This court entered an order to show cause why the appeal should not be dismissed for lack of appellate jurisdiction. Mr. Gardner has filed responses asserting appellate jurisdiction.

Upon consideration, we dismiss this appeal for lack of appellate jurisdiction. The district court's November 23, 2020 is not a final decision of the merits, *see* 28 U.S.C. § 1291, or an order denying a preliminary injunction, *see* 28 U.S.C. § 1292(a)(1), to provide appellate jurisdiction. Moreover, the district court's order is not an immediately appealable collateral order. Treasurer Long's counterclaims seeking attorneys' fees and costs are against Mr. Gardner individually and do not implicate tribal sovereign immunity. *Cf. Lewis v. Clarke*, 137 S. Ct. 1285, 1288 (2017) (when an individual and not the tribe is the real party in interest, the tribe's sovereign immunity is not implicated) *but cf. Osage Tribal Council v. U.S. Dep't of Labor*, 187 F.3d 1174, 1179 (10th Cir. 1999) (order denying tribal immunity is an immediately appealable collateral order).

APPEAL DISMISSED

Entered for the Court
CHRISTOPHER M. WOLPERT, Clerk



By: Sunil N. Rao
Counsel to the Clerk