

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 1:15-cv-20821-UU

MARIO JIMENEZ,

Plaintiff,

v.

KAREN WIZEL,

Defendant.

_____ /

ORDER

THIS CAUSE is before the Court *sua sponte* upon review of Plaintiff's *pro se* Complaint.

(D.E. 1.)

THE COURT has considered the Complaint and the pertinent portions of the record, and is otherwise fully advised of the premises.

On February 27, 2015, Plaintiff Mario Jimenez ("Jimenez") removed this action from the Circuit Court for the Eleventh Judicial Circuit in and for Miami-Dade County, Florida and claims that this Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1367, 1441(b), 1441(c), 1441(e), 1443(1), 1443(2) and/or 1446. In his Complaint, Plaintiff alleges violations of his First Amendment and Due Process rights but has not clearly alleged what law entitles him to bring a private right of action to assert those rights. Plaintiff cites to several provisions under Title 42 of the United States Code, which relates to the public health and welfare, but none of the sections cited by Plaintiff relate to the allegations asserted in his Complaint. For example, Plaintiff cites to 42 U.S.C. §§ 2000a

(prohibits discrimination or segregation in places of public accommodation), 2000d (prohibits exclusion from participation in, denial of benefits of, and discrimination under federally assisted programs on account of race, color, or national origin), 5891 (prohibits sex discrimination), 5106a (relates to grants to states for child abuse or neglect prevention and treatment programs), 5106c (relates to grants to states for programs focused on the investigation and prosecution of child abuse and neglect cases), 10406 (relates to grants to states for family violence prevention and services), 10420 (relates to grants to states to support families in the justice system), and 10701 (relates to definitions used in relation to the State Justice Institute) as well as several other sections of Title 42. These sections cannot provide a basis for Plaintiff's claims and therefore, Plaintiff has failed to allege what law entitles him to bring a private right of action to assert the constitutional violations cited in his Complaint.

Although it was not specifically cited in the Complaint, construing his *pro se* filings liberally, Plaintiff appears to be seeking relief pursuant to 42 U.S.C. § 1983. However, to state a claim pursuant to 42 U.S.C. § 1983, Plaintiff must allege that a person acting under color of state law deprived him of a federal right. *West v. Atkins*, 487 U.S. 42, 48 (1988) (citing *Parratt v. Taylor*, 451 U.S. 527, 535 (1981); *Flagg Bros., Inc. v. Brooks*, 436 U.S. 149, 155 (1978)). “The Supreme Court has defined ‘acting under color of law’ as acting with power possessed by virtue of the defendant’s employment with the state.” *Edwards v. Wallace Cmty. Coll.*, 49 F.3d 1517, 1522-23 (11th Cir. 1995) (citation omitted). The Defendant in this action is Karen Wizel and based on the allegations in the Complaint, she is the mother of Plaintiff’s children, not a state actor. As a result, Plaintiff cannot bring a claim under Section 1983 against Defendant Wizel and therefore, this action must be dismissed.

Additionally, most of the allegations in the Complaint relate to actions taken by judges in the Family Division of the Circuit Court for the Eleventh Judicial Circuit in and for Miami-Dade County, Florida. Judges are entitled to absolute immunity for all actions taken in their judicial capacity, except where they act in the “clear absence of all jurisdiction.” *Bolin v. Story*, 225 F.3d 1234, 1239 (11th Cir. 2000) (quoting *Stump v. Sparkman*, 435 U.S. 349, 356–57 (1978)). In fact, absolute judicial immunity “applies even when the judge’s acts are in error, malicious, or were in excess of his or her jurisdiction.” *Id.* Therefore, any claims alleged against a judge relating to actions taken in a judicial capacity are precluded by the doctrine of judicial immunity.

Based on the Court’s findings above, the Complaint is dismissed, but Plaintiff is granted leave to file an amended complaint on or before March 27, 2015 to correct the errors described above, if possible. Accordingly, it is hereby

ORDERED AND ADJUDGED that the Complaint (D.E. 1) is DISMISSED. It is further ORDERED AND ADJUDGED that Plaintiff may file an amended complaint on or before March 27, 2015 curing all the deficiencies noted above as well as any other defects. If Plaintiff fails to file a compliant amended complaint by March 27, 2015, this case will be dismissed and closed without further notice.

DONE AND ORDERED in Chambers at Miami, Florida, this 12th day of March, 2015.



URSULA UNGARO
UNITED STATES DISTRICT JUDGE

copies provided:
Mario Jimenez, *pro se*