

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 16-17785-BB

JENNIFER FELDMAN,

Plaintiff - Appellant,

versus

ADOPTION STAR AGENCY,
KATHY CRISSY,
ELLEN KAPLAN,
N.F.,

Defendants - Appellees.

Appeal from the United States District Court
for the Southern District of Florida

BEFORE: ED CARNES, Chief Judge, MARTIN, and JILL PRYOR, Circuit Judges.

PER CURIAM:

The petition(s) for panel rehearing filed by Jennifer Feldman is DENIED.

ENTERED FOR THE COURT:



CHIEF JUDGE

ORD-41

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 16-17785-BB

JENNIFER FELDMAN,

Plaintiff - Appellant,

versus

ADOPTION STAR AGENCY,
KATHY CRISSY,
ELLEN KAPLAN,
N.F.,

Defendants - Appellees.

Appeal from the United States District Court
for the Southern District of Florida

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: ED CARNES, Chief Judge, MARTIN, and JILL PRYOR, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:



CHIEF JUDGE

ORD-42

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 16-17785
Non-Argument Calendar

D.C. Docket No. 1:16-cv-24931-KMM

JENNIFER FELDMAN,

Plaintiff-Appellant,

versus

ADOPTION STAR AGENCY,
KATHY CRISSY,
ELLEN KAPLAN,
N.F.,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Florida

(May 24, 2018)

Before ED CARNES, Chief Judge, MARTIN, and JILL PRYOR Circuit Judges.

PER CURIAM:

Jennifer Feldman, proceeding pro se, brought a lawsuit against Adoption Star Agency, Ellen Kaplan (the attorney for the Agency), and N.F., Feldman's daughter. Feldman challenged the adoption proceedings relating to her biological granddaughter, who was placed for adoption by N.F. shortly after birth. The district court issued a paperless order dismissing Feldman's complaint without prejudice for lack of subject matter jurisdiction. Feldman appealed.

We review de novo a district court's sua sponte order dismissing a case for lack of subject matter jurisdiction. McElmurray v. Consol. Gov't of Augusta-Richmond Cty., 501 F.3d 1244, 1250 (11th Cir. 2007). Diversity jurisdiction is not alleged in Feldman's complaint.¹ So the only other basis for jurisdiction would be if a federal question is present. See Gellert v. E. Airlines, Inc., 688 F.2d 723, 724 (11th Cir. 1982) (stating that the district court "was wholly without jurisdiction" where the plaintiff "did not allege diversity of citizenship or federal question jurisdiction" in his complaint).

Although we hold pro se pleadings "to a less stringent standard than pleadings drafted by attorneys" and will construe the allegations contained therein

¹ In her reply brief Feldman raises diversity jurisdiction under 28 U.S.C. § 1332 as a basis for subject matter jurisdiction. But there are no facts alleged in her complaint or her initial brief that support diversity jurisdiction.

liberally, Tannenbaum v. United States, 148 F.3d 1262, 1263 (11th Cir. 1998), that doesn't give us license to manufacture claims for a pro se plaintiff out of thin air, see Campbell v. Air Jam, Ltd., 760 F.3d 1165, 1168–69 (11th Cir. 2014). We can only "liberally construe" those allegations that are in the pleadings. See id. We can't serve as counsel to a party just because they are pro se. Id.

In her complaint, Feldman alleged that the adoption of her granddaughter was fraudulent because the granddaughter was in Feldman's care and was taken under duress and against Feldman's will. She claimed that every child has the right under federal law to be placed with a biological family member before being placed with a stranger. But Feldman never alleges any federal law that provides such a right.² Without an allegation that the defendants violated a federal statute or the Constitution, or that Feldman's claim turns on the resolution of some other substantial question of federal law, there is no federal question jurisdiction here. See 18 U.S.C. § 1331; see also Smith v. GTE Corp., 236 F.3d 1292, 1310 (11th Cir. 2001) ("A well-pleaded complaint presents a federal question where it establishes either that federal law creates the cause of action or that the plaintiff's right to relief necessarily depends on resolution of a substantial question of federal

² In her brief to this Court, Feldman cites several Florida statutes in support. See, e.g., Fla. Stat. §§ 63.063, 787.01, 984.02. But she doesn't cite any federal statutes in her complaint or in her brief.

law.”) (quotation marks omitted). And as a result, the district court did not have subject matter jurisdiction and properly dismissed Feldman’s complaint.

AFFIRMED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 16-24931-CIV-MOORE/MCALILEY

JENNIFER FELDMAN,

Plaintiff,

vs.

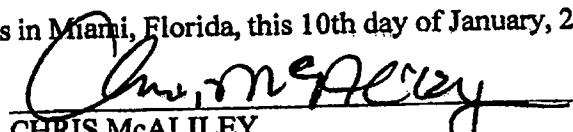
ADOPTION STAR ADOPTION
AGENCY, *et al.*,

Defendants.

ORDER REFERRING CASE TO VOLUNTEER LAWYERS PROGRAM

Plaintiff, who is proceeding *pro se*, filed a motion requesting referral to the Court's Volunteer Lawyers Program, which the Honorable K. Michael Moore referred to me. [DE 11, 13]. Having reviewed the record in this action, the Court recognizes that Plaintiff would benefit from the assistance of an attorney. It is therefore ORDERED that Plaintiff's Request for Referral to the Court's Volunteer Lawyers Program [DE 11], it is GRANTED. This matter is hereby referred to the Court's Volunteer Lawyers Program where a volunteer attorney may accept the representation on a *pro bono* basis if he/she so chooses. A brief description of this case, including contact information, is attached hereto so that the Clerk of Court may post the information on the Court's website of available *pro bono* cases seeking volunteer lawyers.

DONE and ORDERED in chambers in Miami, Florida, this 10th day of January, 2017.


CHRIS MCALILEY
UNITED STATES MAGISTRATE JUDGE

Copies to:

The Honorable K. Michael Moore

Jennifer Feldman, *pro se*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 16-24931-CIV-MOORE/MCALILEY

JENNIFER FELDMAN,

Plaintiff,

vs.

ADOPTION STAR ADOPTION
AGENCY, *et al.*,

Defendants.

**ORDER GRANTING APPLICATION TO PROCEED
WITHOUT PREPAYMENT OF FEES**

Plaintiff previously filed an Application to Proceed in District Court Without Prepaying Fees or Costs, which the Court granted. [See DE 7]. Subsequently, the Court entered an Order dismissing this case for lack of subject matter jurisdiction. [DE 8]. Plaintiff timely filed a notice of appeal of the Court's dismissal Order. [DE 9]. She has now filed a second Application to Proceed in District Court Without Prepaying Fees or Costs, which the Honorable K. Michael Moore referred to me. [DE 10, 13]. The Court construes Plaintiff's second Application to be directed at covering fees or costs associated with her pending appeal.

The information set forth in Plaintiff's current Application is the same as set forth in her prior application, except for a modest increase in the amount of her disability or worker's compensation payments from \$733.00 to \$755.00 per month. [Compare DE 4, p. 3 with DE 10, pp. 3-4]. For the reasons set forth in the Court's prior Order Granting

Plaintiff's Application to Proceed In District Court Without Prepaying Fees and Costs [DE 7], which are incorporated herein, Plaintiff's current Application to Proceed In District Court Without Prepaying Fees and Costs [DE 10], is **GRANTED**.

DONE and ORDERED in chambers in Miami, Florida, this 10th day of January, 2017.


CHRIS McALILEY
UNITED STATES MAGISTRATE JUDGE

Copies to:
The Honorable K. Michael Moore
Jennifer Feldman, *pro se*

CLOSED,CMM

U.S. District Court
Southern District of Florida (Miami)
CIVIL DOCKET FOR CASE #: 1:16-cv-24931-KMM

Feldman v. Adoption Star Agency et al
Assigned to: Chief Judge K. Michael Moore
Referred to: Magistrate Judge Chris M. McAliley
Case in other court: USCA, 16-17785-F
Cause: 28:1343 Violation of Civil Rights

Date Filed: 11/28/2016
Date Terminated: 11/30/2016
Jury Demand: None
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff**Jennifer Feldman**

represented by **Jennifer Feldman**
26521 SW 127th Avenue
Homestead, FL 33032
PRO SE

V.

Defendant

Adoption Star Agency
Kathy Crissy

Defendant**Ellen Kaplan****Defendant****N. F.**

Date Filed	#	Docket Text
11/28/2016	1	COMPLAINT against Adoption Star Agency, N.F., Ellen Kaplan. Filing fees NOT FILED. IFP Filed by Jennifer Feldman. (Attachments: # <u>1</u> Civil Cover Sheet) (rms1) Modified to redact names per 18 Order on 6/20/2017 (asl). (Main Document 1 replaced on 6/20/2017) (asl). (Entered: 11/28/2016)
11/28/2016	2	Judge Assignment to Chief Judge K. Michael Moore (rms1) (Entered: 11/28/2016)
11/28/2016	3	Clerks Notice pursuant to 28 USC 636(c). Parties are hereby notified that the U.S. Magistrate Judge Chris M. McAliley is available to handle any or all proceedings in this case. If agreed, parties should complete and file the attached form. (rms1) (Entered: 11/28/2016)

11/28/2016	<u>4</u>	MOTION for Leave to Proceed in forma pauperis by Jennifer Feldman. (rms1) (Entered: 11/28/2016)
11/28/2016	<u>5</u>	MOTION for Referral to Volunteer Attorney Program by Jennifer Feldman. (rms1) (Main Document 5 replaced on 6/20/2017) (asl). (Entered: 11/28/2016)
11/29/2016	<u>6</u>	ORDER REFERRING <u>4</u> MOTION for Leave to Proceed in forma pauperis filed by Jennifer Feldman, <u>5</u> MOTION for Referral to Volunteer Attorney Program filed by Jennifer Feldman. Motions referred to Judge Chris M. McAliley. Signed by Chief Judge K. Michael Moore on 11/29/2016. (aby) (Entered: 11/29/2016)
11/30/2016	<u>7</u>	ORDER granting <u>4</u> Motion for Leave to Proceed in forma pauperis. Signed by Magistrate Judge Chris M. McAliley on 11/30/2016. (nsy) (Entered: 11/30/2016)
11/30/2016	<u>8</u>	<p>PAPERLESS ORDER DISMISSING CASE FOR LACK OF JURISDICTION. THIS CAUSE came before the Court upon a sua sponte review of the Complaint <u>1</u>.</p> <p>Plaintiff Jennifer Feldman, pro se, brings an action against Defendants Adoption Star Agency, N. F., and Ellen Kaplan asserting federal question jurisdiction. Plaintiff Feldman alleges that her civil rights were violated due to her granddaughter M. J's "wrongful and fraudulent adoption."</p> <p>Federal district courts have original jurisdiction "of all civil actions arising under the Constitution, laws, or treaties of the United States." See 28 U.S.C. § 1331. However, Plaintiff Feldman's Complaint <u>1</u> does not identify what federal law, treaty, or constitutional provision is the basis for her cause of action. The Court finds that there is no federal question pleaded in the Complaint and therefore the Court does not have subject matter jurisdiction. Accordingly, this case is DISMISSED WITHOUT PREJUDICE for lack of jurisdiction. The Clerk of the Court is instructed to CLOSE this case. All pending motions are DENIED AS MOOT.</p> <p>Motions terminated: <u>5</u> MOTION for Referral to Volunteer Attorney Program filed by Jennifer Feldman. Signed by Chief Judge K. Michael Moore on 11/30/2016. (aby)</p> <p>NOTICE: If there are sealed documents in this case, they may be unsealed after 1 year or as directed by Court Order, unless they have been designated to be permanently sealed. See Local Rule 5.4 and Administrative Order 2014-69. Modified to redact names per 18 Order on 6/20/2017 (asl). (Entered: 11/30/2016)</p>
12/27/2016	<u>9</u>	Notice of Appeal as to 8 Order Dismissing Case, Order on Miscellaneous Case - Closeout by Jennifer Feldman. IFP Filed. Within fourteen days of the filing date of a Notice of Appeal, the appellant must complete the Eleventh Circuit Transcript Order Form regardless of whether transcripts are being ordered [Pursuant to FRAP 10(b)]. For information go to our FLSD website under Transcript Information.

		(apz) (Main Document 9 replaced on 6/20/2017) (asl). (Entered: 12/28/2016)
12/27/2016	<u>10</u>	MOTION for Leave to Appeal in forma pauperis by Jennifer Feldman. (apz) (Main Document 10 replaced on 6/20/2017) (asl). (Entered: 12/28/2016)
12/27/2016	<u>11</u>	MOTION for Referral to Volunteer Attorney Program by Jennifer Feldman. (apz) (Entered: 12/28/2016)
12/28/2016		Transmission of Notice of Appeal, Order under appeal and Docket Sheet to US Court of Appeals re <u>9</u> Notice of Appeal, Notice has been electronically mailed. (apz) (Entered: 12/28/2016)
01/03/2017	<u>12</u>	Acknowledgment of Receipt of NOA from USCA re <u>9</u> Notice of Appeal, filed by Jennifer Feldman. Date received by USCA: 12/28/2016. USCA Case Number: 16-17785-F. (apz) (Main Document 12 replaced on 6/20/2017) (asl). (Entered: 01/03/2017)
01/05/2017	<u>13</u>	ORDER REFERRING <u>10</u> MOTION for Leave to Appeal in forma pauperis filed by Jennifer Feldman, <u>11</u> MOTION for Referral to Volunteer Attorney Program filed by Jennifer Feldman. Motions referred to Judge Chris M. McAliley. Signed by Chief Judge K. Michael Moore on 1/5/2017. (aby) (Entered: 01/05/2017)
01/06/2017	<u>14</u>	TRANSCRIPT INFORMATION FORM by Jennifer Feldman re <u>9</u> Notice of Appeal. No Transcript Requested. (apz) (Main Document 14 replaced on 6/20/2017) (asl). (Entered: 01/09/2017)
01/10/2017	<u>15</u>	ORDER granting <u>10</u> Motion for Leave to Appeal in forma pauperis. Signed by Magistrate Judge Chris M. McAliley on 1/10/2017. (nsy) (Entered: 01/10/2017)
01/10/2017	<u>16</u>	ORDER REFERRING CASE to Volunteer Lawyers Program; granting <u>11</u> MOTION for Referral to Volunteer Attorney Program. Signed by Magistrate Judge Chris M. McAliley on 1/10/2017. (jas) (Entered: 01/10/2017)
06/14/2017	<u>17</u>	ORDER of LIMITED REMAND from USCA. We REMAND this case on a limited basis for the district court to direct its clerk to (1) replace all occurrences of the minor adoptee's and birth parents' names with their respective initials in the filings, orders, case caption, and docket; and (2) redact, as necessary, any other confidential or protected information in the filings, consistent with Fed. R. Civ. P. 5.2. re <u>9</u> Notice of Appeal, filed by Jennifer Feldman. USCA #16-17785-BB. (apz) (Entered: 06/14/2017)
06/19/2017	<u>18</u>	PAPERLESS ORDER. THIS CAUSE came before the Court upon the United States Court of Appeals for the Eleventh Circuit's <u>17</u> Order of Limited Remand. In accordance with the Eleventh Circuit's Order, the Court directs the Clerk of Court to: (1) replace all occurrences of the minor adoptee's and birth parents' names with their respective initials in the filings, orders, case caption, and docket; and (2) redact, as necessary, any other confidential or protected information in the filings, consistent with Fed. R. Civ. P. 5.2. Signed by Chief Judge K. Michael Moore on 6/19/2017. (aby) (Entered: 06/19/2017)

06/20/2017	<u>19</u>	CLERK'S NOTICE of Compliance re 18 Order the Clerk of Court to: (1) replace all occurrences of the minor adoptee's and birth parents' names with their respective initials in the filings, orders, case caption, and docket; and (2) redact, as necessary, any other confidential or protected information in the filings, consistent with Fed. R. Civ. P. 5.2. (asl) (Entered: 06/20/2017)
07/26/2017	<u>20</u>	ORDER of USCA. Adoption Star Agency's "Emergency Motion to Amend Court Order Denying Emergency Motion for Protective Order and Limited Remand to the District Court" is GRANTED re <u>9</u> Notice of Appeal, filed by Jennifer Feldman. USCA #16-17785-BB. (apz) (Entered: 07/27/2017)
09/22/2017	<u>21</u>	Pursuant to F.R.A.P. 11(c), the Clerk of the District Court for the Southern District of Florida certifies that the record is complete for purposes of this appeal re: <u>9</u> Notice of Appeal, Appeal No. 16-17785-BB. The entire record on appeal is available electronically. (apz) (Entered: 09/22/2017)
08/29/2018	<u>22</u>	MANDATE of USCA, AFFIRMING judgment/order of the district court as to <u>9</u> Notice of Appeal, filed by Jennifer Feldman ; Date Issued: 8/29/18 ; USCA Case Number: 16-17785-BB (hh) (Entered: 08/29/2018)

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from this filing is
available in the
Clerk's Office.**