

NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with Fed. R. App. P. 32.1

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Submitted November 1, 2019*
Decided November 20, 2019

Before

AMY C. BARRETT, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

No. 19-2517

MELODY JACKSON HALE,
Plaintiff-Appellant,

Appeal from the United States
District Court for the Southern District
of Indiana, Indianapolis Division.

v.

No. 1:19-cv-01197-TWP-MJD

INDIANA DEPARTMENT OF CHILD
SERVICES and KOSCIUSKO COUNTY
DEPARTMENT OF CHILD SERVICES,
Defendants-Appellees.

Tanya Walton Pratt,
Judge.

ORDER

In 1996, child-services case workers removed Melody Jackson Hale's two sons from her custody. Almost 25 years later, she filed this action in federal court against the state and county departments of child services, alleging that case workers unlawfully

* The appellees were not served with process in the district court and are not participating in this appeal. After examining the appellant's brief and the record, we have concluded that this case is appropriate for summary disposition. FED. R. APP. P. 34(a)(2).

13
#1

took custody of her children without a warrant, a court order, or probable cause. Hale seeks damages for the emotional distress she suffered as a result of her children's unlawful removal.

Although Hale checked a box on her form complaint stating that she was suing for a violation of a federal law, *see* 28 U.S.C. § 1915(e)(2)(B), the district court at screening construed her pleadings to raise only a state-law tort claim for infliction of emotional distress. The court determined that the complaint was subject to dismissal because Hale had not alleged a basis for either federal-question or diversity jurisdiction, and because the defendants were entitled to sovereign immunity under the Eleventh Amendment. Before dismissing Hale's case, the district court gave her the opportunity to show cause why her case should not be dismissed on those two bases. Hale responded by submitting child services records and state-court records from several cases involving custody of her two sons. The district court concluded that although the documents might support the factual basis of Hale's complaint, they did not cure its jurisdictional defects.

On appeal, Hale restates the factual basis of her claim but does not engage with the district court's reasons for dismissal. Even so, we understand her as attempting to raise a claim under 42 U.S.C. § 1983 that child services violated her substantive due process right to familial integrity when it took custody of her children without probable cause. We have recognized the existence of such a right. *See, e.g., Sebesta v. Davis*, 878 F.3d 226, 233 (7th Cir. 2017); *Siliven v. Ind. Dep't of Child Servs.*, 635 F.3d 921, 928 (7th Cir. 2011). Hale's claim thus arises under federal law and falls within federal jurisdiction.

We may affirm "on any ground contained in the record," and we conclude that Hale's complaint should have been dismissed under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim. *Brooks v. Ross*, 578 F.3d 574, 578 (7th Cir. 2009). Hale broadly alleges that child services removed her sons without probable cause or a warrant, but her complaint and the attached documents fail to give the defendants fair notice about the nature of her claim. *See, e.g., Smith v. Dart*, 803 F.3d 304, 309 (7th Cir. 2015) (pro se complaints, though read liberally, must provide allegations "sufficient to give the defendant fair notice of what the claim is and the grounds upon which it rests") (citations omitted); *Swanson v. Citibank, N.A.*, 614 F.3d 400, 403 (7th Cir. 2010) ("[P]laintiff must do better than putting a few words on paper that, in the hands of an imaginative reader, might suggest that something has happened to her that *might* be redressed by the law."). Indeed, the documents Hale attached to her complaint (and

#2

submitted in response to the district court's initial screening order) show actions by child services that are "just as consistent with lawful conduct" as "with wrongdoing." *Brooks*, 578 F.3d at 581–82. Without more, Hale's allegations are "too vague to provide notice to the defendants of the contours of [her] § 1983 due process claim." *Id.*

Lastly, Hale also does not raise, and therefore waives, any challenge to the district court's proper conclusion that her claims for damages are barred because both defendants are state agencies. *See Ind. Prot. & Advocacy Servs. v. Ind. Family & Soc. Servs. Admin.*, 603 F.3d 365, 370 (7th Cir. 2010) (en banc) (court may raise sovereign immunity issue); *Holmes v. Marion Cty. Office of Family & Children*, 349 F.3d 914, 918–19 (7th Cir. 2003) (concluding that in Indiana, county offices of family and children are part of the state for purposes of the Eleventh Amendment).

✓ Because the complaint should not have been dismissed for lack of subject-matter jurisdiction, we modify the district court's judgment to reflect that Hale's claims are dismissed with prejudice for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *See Bovee v. Broom*, 732 F.3d 743, 744–45 (7th Cir. 2013).

The judgment is AFFIRMED as modified.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

MELODY JACKSON HALE,

Plaintiff,

V.

INDIANA DEPARTMENT OF CHILD
SERVICES, and
KOSCIUSKO COUNTY DEPARTMENT OF
CHILD SERVICES,

Defendants.

No. 1:19-cv-01197-TWP-MJD

FINAL JUDGMENT PURSUANT TO FED. R. CIV. PRO. 58

The Court having this day made its Entry directing the entry of final judgment, now enters

FINAL JUDGMENT. The action is dismissed for lack of jurisdiction.

Dated: 6/28/2019

Danzy Walton Pratt

TANYA WALTON PRATT, JUDGE
United States District Court
Southern District of Indiana

Laura A. Briggs, Clerk of Court

By: James R. Hines

Deputy Clerk

Distribution:

Melody Jackson Hale
2947 N. 775 East
Elwood, IN 46036

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

MELODY JACKSON HALE,

Plaintiff,

v.

INDIANA DEPARTMENT OF CHILD
SERVICES, and
KOSCIUSKO COUNTY DEPARTMENT OF
CHILD SERVICES,

Defendants.

No. 1:19-cv-01197-TWP-MJD

ENTRY DISMISSING ACTION AND
DIRECTING ENTRY OF FINAL JUDGMENT

On March 26, 2019, Plaintiff Melody Jackson Hale ("Plaintiff") filed a Complaint and a Non-Prisoner Request to Proceed in District Court Without Prepaying the Filing Fee. Having granted Plaintiff *in forma pauperis* status, the Court screened the Complaint pursuant to 28 U.S.C. § 1915(e)(2)(B) (*see* Filing No. 5). The Court determined that this action is subject to dismissal for lack of jurisdiction because of a lack of diversity jurisdiction and because of sovereign immunity of the defendants. Plaintiff's Complaint raised a state law tort claim for infliction of emotional distress, seeking monetary damages in the amount of \$3,000,000.00 against defendants that share the same state citizenship of Plaintiff. The Court granted Plaintiff an opportunity to show cause why this action should not be dismissed for lack of jurisdiction.

On April 29, 2019, Plaintiff responded to the show cause order and submitted thirty-four pages of evidence or support documentation (Filing No. 7). While the documentation submitted by the Plaintiff appears to provide support for her allegations contained in the Complaint, the documentation fails to cure the jurisdictional defects that the Court raised in its Screening Order.

pg 12

The Plaintiff's new filing fails to show that diversity jurisdiction exists, and it does not raise a federal question. The Plaintiff's documents also do not show that sovereign immunity is inapplicable in this case. While the Plaintiff may have a claim that can be asserted in state court, the Court must dismiss this action because jurisdiction does not exist over Plaintiff's claim in federal court. Therefore, this action is **dismissed for lack of jurisdiction**. Final judgment consistent with this Entry will be issued under separate order.

SO ORDERED.

Date: 6/28/2019



TANYA WALTON PRATT, JUDGE
United States District Court
Southern District of Indiana

Distribution:

Melody Jackson Hale
2947 N. 775 East
Elwood, IN 46036