

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

SEP 22 2022

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

KEITH STROM,

Plaintiff-Appellant,

v.

DOUGLAS MITCHELL, Lane County
Deputy District Attorney; et al.,

Defendants-Appellees.

No. 22-35584

D.C. No. 6:22-cv-00710-MC
District of Oregon,
Eugene

ORDER

Before: M. SMITH, BRESS, and VANDYKE, Circuit Judges.

A review of the record and the parties' responses to this court's August 1, 2022 order to show cause demonstrates that this court lacks jurisdiction over this appeal because the July 28, 2022 notice of appeal was not filed within 30 days after the district court's judgment entered on June 10, 2022. *See* 28 U.S.C. § 2107(a); *United States v. Sadler*, 480 F.3d 932, 937 (9th Cir. 2007) (requirement of timely notice of appeal is jurisdictional); *see also* Fed. R. App. P. 26(b)(1) (court of appeals may not extend time to file a notice of appeal except as authorized in Rule 4); *Bowles v. Russell*, 551 U.S. 205 (2007) (court lacks authority to create equitable exceptions to jurisdictional requirement of timely notice of appeal). Consequently, this appeal is dismissed for lack of jurisdiction.

DISMISSED.

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

KEITH LEON STROM,
Plaintiff,

Case No. 6:22-cv-00710-MC

ORDER

v.

DOUGLAS MITCHELL, KATHLEEN
MILLER, and LINEBARGER, GOGGAN
BLAIR & SAMPSON,

Defendants.

MCSHANE, District Judge:

Plaintiff Keith Strom, pro se, brings this Application for Leave to Proceed in Forma Pauperis (“IFP”), ECF No. 2, in an action against Douglas Mitchell, Kathleen Miller, and Linebarger, Goggan Blair & Sampson (“Linebarger”). Plaintiff alleges that Defendants, through their involvement with the state child custody system, deprived him of his constitutional right to parenthood and harmed his relationship with his children. Am. Compl. 4, ECF No. 4.

The Court, pursuant to 28 U.S.C. § 1915(e)(2), must screen applications to proceed IFP and dismiss any case that is frivolous or malicious, or fails to state a claim on which relief may

be granted. Pleadings by pro se plaintiffs are construed liberally and afforded “the benefit of any doubt.” *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010) (citation omitted). The Court must give a pro se litigant “leave to amend his or her complaint unless it is ‘absolutely clear that the deficiencies of the complaint could not be cured by amendment.’” *Karim-Panahi v. L.A. Police Dep’t*, 839 F.2d 621, 623 (9th Cir. 1988) (citation omitted).

To survive an assessment under FRCP 12(b)(6) and 28 U.S.C. § 1915(e)(2)(B), a plaintiff must allege “enough facts to state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Under this standard, a plaintiff’s alleged facts must constitute “more than a sheer possibility that a defendant acted unlawfully.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The Court must assume that the allegations contained in the complaint are true. *Id.*

Plaintiff’s claims are based on his belief that the State imposes “excessive ‘child support’” obligations, which causes “severe interference in the relationship and influence between the non-custodial parent and [] other family members.” Am. Compl. 4. After his divorce in 1985, Plaintiff now brings claims against individual Defendants for a series of events related to his divorce and child custody proceedings. Am. Compl. 10. Around 1997 or 1998, Plaintiff alleges Defendant Mitchell suspended his driver’s license, causing him to become unemployed and unable to visit his children. Am. Compl. 12, 14. In another instance, Plaintiff alleges he was wrongfully arrested after arriving at Mitchell’s office seeking to negotiate a child support payment plan. Am. Compl. 8. After Plaintiff refused to leave, he was arrested and held in jail for forty days on a charge with a maximum penalty of thirty days in jail, according to Plaintiff. *Id.* Regarding Defendant Miller, Plaintiff claims that ten years ago, Miller ordered Plaintiff into court after failing to pay a child support fine. *Id.* at 8–9. Defendant Linebarger is a collection

agency and, Plaintiff claims, a co-conspirator involved in harming his children by collecting child support payments from him. *Id.* at 9.

Plaintiff's claims, all stemming from events that occurred decades ago, are barred by the applicable two-year statute of limitations for § 1983 claims. *Sain v. City of Bend*, 309 F.3d 1134, 1138 (9th Cir. 2002) (“[T]he statute of limitations for § 1983 actions is borrowed from state personal injury tort law.”); *Cooper v. City of Ashland*, 871 F.2d 104, 105 (9th Cir. 1989) (“Oregon’s two-year statute of limitations for personal injury actions applies to actions under 42 U.S.C. § 1983.”). Plaintiff’s overall assertion that the State deprived him of his right to parenthood resulted from his divorce and child custody proceedings, which occurred nearly forty years ago. As to the instances involving individual Defendants Mitchell, Miller, and Linebarger, including his license suspension, arrest, and court appearance, these too occurred many years ago. Because the events that form the basis of Plaintiff’s claims occurred outside the applicable two-year statute of limitations, Plaintiff’s claims are dismissed. *See Jones v. Bock*, 549 U.S. 199, 215 (2007) (“If the allegations . . . show that relief is barred by the applicable statute of limitations, the complaint is subject to dismissal for failure to state a claim.”).

Plaintiff’s claims against Defendant Miller are further barred by judicial immunity. “Judges and those performing judge-like functions are absolutely immune from damage liability for acts performed in their official capacities.” *Ashelman v. Pope*, 793 F.2d 1072, 1075 (9th Cir. 1986). Miller was a Circuit Court Judge acting within her judicial duties when she ordered Plaintiff into court for his failure to pay a fine. Am. Compl. 8–9. Plaintiff’s claims against Miller are therefore barred due to timelines and judicial immunity.

For the above reasons, and because amendment could not overcome the statute of limitations bar, Plaintiff's Amended Complaint (ECF No. 4) is DISMISSED without leave to amend. *See Belanus v. Clark*, 796 F.3d 1021, 1027 (9th Cir. 2015).

IT IS SO ORDERED.

DATED this 10th day of June, 2022.

s/ Michael J. McShane
Michael J. McShane
United States District Judge