UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

WILLIAM LUCAS, Plaintiff,	:	
v.	:	C.A. No. 19-213WES
D.C.Y.F. and HEATHER FOGG, Defendants.	:	

REPORT AND RECOMMENDATION

Patricia A. Sullivan, United States Magistrate Judge.

On April 25, 2019, Plaintiff William Lucas, a prisoner, filed a *pro se* civil rights form complaint against "D.C.Y.F.," the Rhode Island Department of Children, Youth and Families ("DCYF"), and Heather Fogg, who is sued "personally and professionally." ECF No. 1. Along with his complaint, Plaintiff filed an Application to Proceed without Prepayment of Fees and Affidavit (the "IFP motion"), ECF No. 2, which has been referred to me for determination pursuant to 28 U.S.C. § 636(b)(1)(A).

Plaintiff's IFP motion fails because he did not include the required prisoner trust fund account statement. 28 U.S.C. § 1915(a)(2) ("A prisoner seeking to bring a civil action . . . without prepayment of fees . . . shall submit a certified copy of the trust fund account statement . . . for the 6-month period immediately preceding the filing of the complaint."). This deficiency precludes the granting of the IFP motion until it is cured. Further, the filing of the IFP motion renders the case subject to preliminary screening under 28 U.S.C. § 1915(e)(2)(B). Screening requires the Court to consider whether the complaint is frivolous, fails to state a claim or seeks monetary relief from a defendant who is immune. Id. For the reasons that follow, I find that, as currently crafted, this complaint both fails to state a claim and seeks monetary relief from

immune defendants, and I recommend that Plaintiff be afforded thirty days from the adoption of this report and recommendation to amend the pleading, as well as to file his prisoner trust fund account statement. If he fails to do either or both, or if the amended complaint he files is still deficient, I recommend that the complaint be dismissed and that the IFP motion be denied.

The legal standards applicable at screening may briefly be summarized. The Court "shall dismiss" a complaint filed with an IFP motion in reliance on the same legal principles that are used when ruling on a Fed. R. Civ. P. 12(b)(6) motion to dismiss. Hodge v. Murphy, 808 F. Supp. 2d 405, 408 (D.R.I. 2011). That is, a complaint must contain sufficient factual allegations to "state a claim to relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Iqbal, 556 U.S. at 678. In addition, a viable complaint must satisfy Fed. R. Civ. P. 8(a), which requires a plaintiff to include "a short and plain statement of the grounds for the court's jurisdiction . . . and of the claim showing that the pleader is entitled to relief," as well as Fed. R. Civ. P. 10(a-b), which requires a caption and claims set out in numbered paragraphs, each limited to a single set of circumstances. Federal district courts are limited to exercising jurisdiction over cases that arise "under the Constitution, laws, or treaties of the United States," 28 U.S.C. § 1331, and over cases between citizens of different states where the amount in controversy exceeds $75,000, 28 U.S.C. § 1332(a).

Plaintiff has presented a complaint that states only that the case arose at his home in the "Winter of 2017 around 10 AM," when DCYF removed his daughter from his custody "without good reason or anything at all." ECF No. 1 at 4-5. For relief, Plaintiff requests that the Court "overturn [his] open adoption agreement, 'because I was blackmailed.'" Id. at 5. He further asks

for "the maximum amount possible" against DCYF and Ms. Fogg for "mental, emotion pain inflicted on [him] and [his] daughter." Id. Claiming § 1331 federal question jurisdiction, Plaintiff asserts that these allegations state a 42 U.S.C. § 1983 claim against state officials grounded in due process and the equal protection clause. Id. at 3.

Applying Fed. R. Civ. P. 12(b)(6), this complaint lacks sufficient facts to advance § 1983 claims under due process or the equal protection clause; nor does it comply with the mandate of Fed. R. Civ. P. 8(a)(2) that a pleading must include a "plain statement of the claim." Indeed, as to Ms. Fogg, the complaint alleges no facts at all and therefore must be dismissed. Bartolomeo v. Liburdi, No. 97–0624-ML, 1999 WL 143097, at *3 (D.R.I. Feb. 4, 1999) (action dismissed as to defendants against whom no factual allegations directed). As to DCYF, Plaintiff supplies no facts regarding the process by which Defendants took his daughter or how or why Plaintiff was treated differently, beyond the conclusory statements that he believes DCYF did not have "good reason" and that he was "blackmailed," though he does not say by whom. Thus, the pleading fails to set out "minimal facts as to who did what to whom, when, where, and why," which is essential for a viable civil rights action. Laurence v. Wall, No. CA 09-427 ML, 2009 WL 4780910, at *2 (D.R.I. Dec. 10, 2009). With no facts describing what happened, the pleading fails to scratch the surface of showing how Plaintiff might have received constitutionally deficient due process.[1] Similarly, with no allegations that Plaintiff was deprived of any right, never mind a fundamental right "regarding family relationships and raising children," based on a

[1] There can be no doubt that the separation of a parent and child could implicate due process considerations. See, e.g., Tower v. Leslie-Brown, 326 F.3d 290, 298 (1st Cir. 2003) ("Ordinarily, a deprivation of a fundamental right such as the custody of one's children must be preceded by notice and an opportunity to be heard on the matter. However, in cases where the safety of the child is at risk, the parents' rights are not absolute.") (internal citation omitted); Hatch v. Dep't for Children, Youth & Their Families, 274 F.3d 12, 20 (1st Cir. 2001) ("interest of parents in the care, custody, and control of their children is among the most venerable of the liberty interests embedded in the Constitution" and "is protected by the Due Process Clause").

state-created classification, his equal protection claim is not viable.[2] It is conceivable that Plaintiff may be able to make the requisite showing of a § 1983 violation, but his pleading as currently stated does not and is therefore subject to dismissal for failure to state a claim.[3]

While the entire pleading fails because it lacks facts sufficient to support any plausible claim, it also is flawed to the extent that Plaintiff has included claims and/or allegations that cannot proceed because of immunity. That is, Plaintiff's claim for money damages against DCYF and Ms. Fogg in her official capacity must be dismissed because they are blocked by Rhode Island's sovereign immunity. Will v. Mich. Dep't of State Police, 491 U.S. 58, 71 (1989) ("neither a State nor its officials acting in their official capacities are 'persons' under § 1983"; claims against State for money damages barred by Eleventh Amendment and sovereign immunity); J.R. v. Gloria, 599 F. Supp. 2d 182, 184 (D.R.I. 2009) ("Any discernable claim for money damages out of official capacity liability against DCYF employees would ordinarily be dismissed because DCYF, as an arm of the State, is entitled to Eleventh Amendment sovereign immunity."). As to individual capacity claims, assuming Ms. Fogg is a DCYF social worker

[2] There is no question that a state classification interfering with life decisions or parent/child relationships could be subject to equal protection scrutiny. See Zablocki v. Redhail, 434 U.S. 374, 384-85 (1978) (family relationships implicate fundamental rights and state classifications that significantly interfere must be based on legitimate and substantial interests with the means to achieve those interests narrowly tailored to avoid impingement on fundamental right); Mass. Bd. of Retirement v. Murgia, 427 U.S. 307, 312 (1976) (legislation creating age-based classification that interferes with decision when to retire from police force does not implicate fundamental right but is still subject to equal protection review for rationality).

[3] Plaintiff has not alleged diversity jurisdiction and the meager facts stated do not suggest that it is conceivably available. However, it is worth noting that a diversity-based claim to interfere with adoption or custody of a child is likely subject to dismissal because it would fall within the ambit of the domestic relations exception to federal jurisdiction, which divests federal courts of authority over child custody. See Irish v. Irish, 842 F.3d 736, 740 (1st Cir. 2016) (domestic relations exception divests federal courts of jurisdiction over "a narrow range of [cases implicating] domestic relations issues" that otherwise meet the requirements for federal diversity jurisdiction).

who acted on a reasonable basis,[4] any claim would fail based on qualified immunity. See Hatch v. Dep't for Children, Youth & Their Families, 274 F.3d 12, 25-26 (1st Cir. 2001).

There is one more potential problem if it turns out Plaintiff wants this Court to interfere with a state family court judgment. That the Court may not do because "the Rooker-Feldman doctrine bars 'cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments'" Silva v. Farrell, C.A. No. 18-650JJM, 2018 WL 6505367, at *1 n.5 (D.R.I. Dec. 11, 2018) (quoting Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284 (2005)).

Based on the foregoing, I provisionally recommend that Plaintiff's IFP motion should be denied and that his complaint should be dismissed. However, because the deficiencies tainting both the IFP motion and the complaint may be curable, I further recommend that the Court first direct Plaintiff to file an amended complaint that cures the deficiencies identified above and to file his prisoner trust fund account statement, both within thirty days of the Court's adoption of this report and recommendation. If Plaintiff fails to file an amended complaint, or if the amended complaint fails to cure the deficiencies noted in this report and recommendation or otherwise fails to state a claim, or is frivolous or malicious, I recommend that the complaint be dismissed. 28 U.S.C. § 1915(e)(2). If the complaint survives screening but Plaintiff fails to file his prisoner trust fund account statement, I recommend that the IFP motion be denied and that he be ordered to pay the filing fee. If he has been denied IFP status and fails to pay the filing fee, I recommend that the case be dismissed without prejudice.

[4] This is speculation – the pleading does not reveal anything about Ms. Fogg's role in the incident from which the claim arises.

Any objection to this report and recommendation must be specific and must be served and filed with the Clerk of the Court within fourteen (14) days after its service on the objecting party. See Fed. R. Civ. P. 72(b)(2); DRI LR Cv 72(d). Failure to file specific objections in a timely manner constitutes waiver of the right to review by the district judge and the right to appeal the Court's decision. See United States v. Lugo Guerrero, 524 F.3d 5, 14 (1st Cir. 2008); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1st Cir. 1980).

/s/ Patricia A. Sullivan
PATRICIA A. SULLIVAN
United States Magistrate Judge
May 7, 2019