

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHWESTERN DIVISION**

THE CHURCH OF JESUS CHRIST)	
CHRISTIAN, et al.)	
)	
Plaintiffs,)	
)	
v.)	No. 3:13-cv-05020-SRB
)	
NEWTON COUNTY, et al.)	
)	
Defendants.)	

ORDER

Before the Court is Defendants Selby's and Perigo's Motion to Dismiss (Doc. #27). For the reasons stated herein, the motion is GRANTED.

I. Pleading Standard

Defendants Selby and Perigo, both Newton County Circuit Court Judges, bring their motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). In order to survive the motion to dismiss, Plaintiffs' Pro Se Amended Complaint must meet the standard set out in Rule 8(a), which requires that a plaintiff plead sufficient facts to state a claim upon which relief may be granted. "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citations omitted). A pleading that offers only "labels and conclusions" or a "formulaic recitation of the elements of a cause of action" is not sufficient. *Id.*

In determining whether the complaint alleges sufficient facts to state a plausible claim to relief, all factual allegations made by the plaintiff are accepted as true. *Great Plains Trust Co. v. Union Pac. R.R. Co.*, 492 F.3d 986, 995 (8th Cir. 2007) (noting that legal allegations are not accepted as true). If the facts in the complaint are sufficient for the Court to draw a reasonable

inference that Defendant is liable for the alleged misconduct, the claim has facial plausibility and will not be dismissed. *Iqbal*, 556 U.S. at 678. While pro se complaints must be construed liberally, “they must still allege sufficient facts to support the claims advanced.” *Stone v. Harry*, 364 F.3d 912, 914 (8th Cir. 2004).

II. Background and Discussion

Plaintiffs The Church of Jesus Christ Christian/Aryan Nations of Missouri and Pastor Martin Luther Dzerhinsky Lindstedt, filed their original complaint on February 22, 2013. (Doc. #1). Plaintiffs filed a Pro Se Amended Complaint on September 26, 2014, naming Defendants Selby and Perigo as parties for the first time.¹ Plaintiffs’ claim against Judges Selby and Perigo arises from a guardianship proceeding instituted by Martin Lindstedt and involving his now-deceased mother, Martina Lindstedt, in which Judge Selby presided. (Doc. #15, p. 5). Judge Selby is also now the presiding judge in the probate proceeding regarding the administration of Martina Lindstedt’s estate. (Doc. #15, pp. 10-11). Plaintiffs’ Pro Se Amended Complaint is rambling, confusing, and fails to identify the specific claims alleged against any of the defendants. Plaintiffs’ Pro Se Amended Complaint further fails to identify any involvement in these matters or injury suffered by The Church of Jesus Christ Christian/Aryan Nations of Missouri.

While Plaintiffs do not specifically state what claim they are bringing against Defendants Selby and Perigo, they refer to the action as “federal civil rights litigation.” (Doc. #15, p. 6). Regardless, Plaintiffs have failed to state a claim upon which relief can be granted against Judge Perigo. Plaintiffs’ only allegation of wrongdoing by Judge Perigo, the Newton County Circuit

¹ The Court notes that Plaintiffs filed their amended complaint without leave of Court in violation of Fed. R. Civ. P. 15(a)(2). As leave should be freely given “when justice so requires,” the Court will treat the Pro Se Amended Complaint as the operative complaint, but Plaintiffs are reminded of their obligation to seek leave for any future amendments.

Court Presiding Judge, states, “Presiding Judge Timothy Perigo allows misbehaving judges, especially Judge Kevin Lee Selby, to do whatever they please, especially against Plaintiff.” Plaintiffs have alleged no deprivation of their civil rights at the hands of Judge Perigo, nor have they alleged a factual basis for any other cause of action against Judge Perigo. Accordingly, Plaintiffs’ Pro Se Amended Complaint fails to state a claim against Judge Perigo and must be dismissed pursuant to Fed. R. Civ. P. 12(b)(6).

Plaintiffs’ allegations of wrongdoing by Judge Selby stem solely from his role as a judge in the guardianship and probate proceedings. Plaintiffs allege, “Judge Selby appointed a rather incompetent lawyer named Terry Neff as Martina Lindstedt’s guardian ad litem.” (Doc. #15, p. 5). Plaintiffs further allege, “Plaintiff thinks and wants to prove before a jury that Judge Kevin Selby picked an incompetent lawyer to write a bogus motion to dismiss so that Plaintiff could be hurt and Mike and Lindstedt and Crystal Courtney could embezzle Martina Lindstedt’s estate.” (Doc. #15, p. 6). Then, in connection with the probate proceeding regarding administration of Martina Lindstedt’s estate, Plaintiffs allege wrongdoing in Judge Selby’s denial of Martin Lindstedt’s motion for change of judge and venue. (Doc. #15, p. 10). Finally, Plaintiffs allege Judges Selby and Perigo conspired “to allow murder and embezzlement by Michael Lindstedt and Crystal Courtney[.]” (Doc. #15, p. 12). Plaintiffs seek both damages from Judge Selby and an injunction preventing him from presiding over the ongoing probate matter. (Doc. #15, pp. 12-13).

Judge Selby is entitled to absolute judicial immunity from liability for damages under 42 U.S.C. § 1983. *See Winters v. Palumbo*, 512 F. Supp. 7, 9 (E.D. Mo. 1980). Further, this

judicial immunity extends “to participation in a conspiracy by a judge in his judicial role.”² *Id.*

Accordingly, Plaintiffs’ damages claims against Judge Selby must be dismissed.

As Plaintiffs correctly point out, judicial immunity does not apply to an action for equitable relief. *See Winters*, 512 F. Supp. at 9. Plaintiffs’ claim for equitable relief must also be dismissed, however, on the basis of *Younger* abstention. *See Bugg v. Boots*, No. 2:08-4277-CV-C-NKL, 2009 WL 900736, *2 (W.D. Mo. April 1, 2009). “Under *Younger v. Harris*, 401 U.S. 37 (1971), federal courts should abstain from exercising jurisdiction in cases where the requested relief would interfere ‘with pending state proceedings in a way that offends principles of comity and federalism.’” *Id.* (citing *Aaron v. Target Corp.*, 357 F.3d 768, 774 (8th Cir. 2004)). “Federal courts must abstain from hearing cases when (1) there is an ongoing state judicial proceeding which (2) implicates important state interests, and when (3) that proceeding affords an adequate opportunity to raise the federal questions presented.” *Id.* (citing *Cedar Rapids Cell. Tel., L.P. v. Miller*, 280 f.3d 874 (8th Cir. 2002)).

Plaintiffs’ claims fall within the purview of *Younger*. The Pro Se Amended Complaint states that the probate matter was ongoing at least as recently as August 2014. (Doc. #15, p. 11). Whether the matter has been concluded in probate court or not, the results will be appealable under Mo. Rev. St. § 472.160. Further, the ongoing state proceeding implicates the important state interests of “allowing state courts to administer their own cases—to deal with their own court rules and files[.]” *See Bugg* 2009 WL 900736, *2. Finally, the state proceeding will address the questions presented here. Therefore the Court declines to exercise jurisdiction over Plaintiffs’ equitable claims and dismisses them.

² To the extent the Pro Se Amended Complaint could be read to allege Judge Perigo also participated in a conspiracy in his judicial role, he is entitled to judicial immunity as well.

This Court can discern no other cause of action that even might form the basis of a claim against Defendants Selby and Perigo based on the facts alleged. Therefore, to the extent Plaintiffs attempt to bring a claim other than under 42 U.S.C. § 1983, Plaintiffs' Pro Se Amended Complaint fails to state a claim against Defendants Selby and Perigo upon which relief can be granted and must be dismissed pursuant to Fed. R. Civ. P. 12(b)(6).

Accordingly, it is hereby ORDERED that Defendants Selby's and Perigo's Motion to Dismiss (Doc. #27) is GRANTED.

/s/ Stephen R. Bough
STEPHEN R. BOUGH
United States District Judge

Dated: February 26, 2015