

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

GINA MARIE HARRIS,

Petitioner,

v.

BETH CURLEY, JO-ANN MOORE
and M&I BANK,

Respondents.

ORDER

01-C-634-C

This is a civil action for declaratory and monetary relief brought by petitioner Gina Marie Harris,¹ a resident of Wisconsin, against respondents Beth Curley, Jo-Ann Moore and M&I Bank, located in Madison, Wisconsin. Petitioners contend that respondents violated their Fourteenth Amendment right to equal protection and conspired to interfere with petitioner's constitutional rights. They seek leave to proceed without prepayment of fees

¹ Petitioner has brought this pro se action in her name only, but alleges equal protection violations against her children. It has long been recognized that an adult litigant in federal court had the rights to proceed as his or her own counsel. 28 U.S.C. § 1654. In contrast, under Fed. R. Civ. P. 17, minors are precluded from determining their own legal actions. Although petitioner is free to represent herself, as a non-lawyer she has no authority to appear as her children's legal representative. See Navin v. Park Ridge School District 64, No. 00-4109, slip op. at 2 (7th Cir. Nov. 6, 2001).

and costs or providing security for such fees and costs, pursuant to 28 U.S.C. § 1915. From the affidavit of indigency accompanying petitioner's proposed complaint, I conclude that petitioner is unable to prepay the full fees and costs of instituting this lawsuit. However, this lawsuit must be dismissed immediately on the court's own motion because this court lacks jurisdiction to hear petitioner's claims.

In her complaint, petitioner makes the following allegations of fact.

ALLEGATIONS OF FACT

Petitioner Gina Marie Harris is a resident of Madison, Wisconsin. Respondent Beth Curley is the branch manager at respondent M&I Bank located in Madison, Wisconsin. Respondent Jo-Ann Moore is a former employee of respondent M&I Bank who resides in Madison, Wisconsin.

On December 29, 2000, petitioner entered respondent M&I Bank at 1 West Main St. in Madison, Wisconsin, where she had held a savings and checking accounts for seven years. Petitioner intended to cash her social security disability check, her child supplemental check and her S.S.I. check. Petitioner approached a teller, signed the checks and began receiving payment of the checks. At that time, the teller received a telephone call which petitioner later discovered was from respondent Moore. The teller abruptly stopped the transaction and demanded that petitioner return the money that the teller had already given

her. When petitioner asked the teller why she had to return the cash, the teller told her to see a personal banker, respondent Moore.

Moore told petitioner that her accounts were closed and that she could no longer cash checks at respondent M&I Bank because of an overdraft and outstanding debt owed on petitioner's Visa debit card amounting to approximately \$379.00. Petitioner demanded to speak with Moore's supervisor, respondent Curley. Respondent Curley told petitioner that the small funds from her checking and savings accounts (approximately \$7 total) had been applied toward the debt, resulting in the closing of both accounts. Curley demanded the full payment of petitioner's debt, which was less than \$400 and had been outstanding for less than sixty days. Petitioner offered to pay \$50 toward the debt, which Curley rejected. Curley also rejected petitioner's offer to pay \$100, insisting on full payment that same day.

DISCUSSION

Petitioner alleges that respondents violated her rights under the equal protection clause of the Fourteenth Amendment by conspiring to treat her differently from similarly situated white bank customers. Petitioner seeks monetary damages for this alleged violation. I understand petitioner to assert jurisdiction for this claim under 28 U.S.C. § 1331. Section 1331 grants district courts "original jurisdiction of all civil actions arising under the Constitution. . . ." However, it does not give jurisdiction to federal district courts over

actions for money damages against private citizens who are alleged to have violated the petitioner's constitutional rights. Instead, petitioners in federal court actions may sue other citizens or entities for alleged constitutional violations only when those citizens or entities are state or federal actors. The defendant must be "acting under color of state law" in order for a petitioner to bring an action alleging a constitutional violation under 42 U.S.C. § 1983. Federal officials may be sued for constitutional injuries under §1331. Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971). In other words, the Constitution protects citizens from unconstitutional acts performed by individuals and entities who are acting under state or federal authority only. Because respondents in this case are bank employees and a bank and not state or federal officials, this court lacks jurisdiction to hear this case under 28 U.S.C. § 1331.

The allegations of fact also establish that this court does not have jurisdiction under 28 U.S.C. § 1332, the statute governing diversity jurisdiction. Under § 1332, petitioners may sue private citizens for violations of state law as long as those citizens are residents of states other than the one in which the petitioner resides. Petitioner is a resident of Madison, Wisconsin, respondents Curley and Moore have Madison addresses and respondent M&I Bank is located in Madison, Wisconsin. Moreover, petitioner does not suggest what state law respondents may have violated and I am aware of none.

ORDER

IT IS ORDERED that petitioner Gina Marie Harris's request for leave to proceed in forma pauperis is GRANTED. FURTHER, IT IS ORDERED that this case is DISMISSED for lack of jurisdiction. The clerk of court is directed to enter judgment for respondents and close this file.

Entered this 3rd day of December, 2001.

BY THE COURT:

BARBARA B. CRABB
District Judge