

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

DEKATOR M. THORPE,

Plaintiff,

OPINION AND ORDER

v.

13-cv-680-wmc

JILL MARIE TAYLOR,

Defendant.

Plaintiff Dekator M. Thorpe has filed a proposed civil action against Jill Marie Taylor. Because Thorpe seeks leave to proceed without prepayment of fees and costs, the court must review the proposed complaint to determine if his allegations are (1) frivolous or malicious, (2) fail to state a claim on which relief may be granted, or (3) seek money damages from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915(e)(2). In addressing any *pro se* litigant's complaint, the court must construe the allegations generously. *See Haines v. Kerner*, 404 U.S. 519, 521 (1972). Even under this lenient standard, Thorpe's request for leave to proceed must be denied for reasons set forth below.

ALLEGATIONS OF FACT

Plaintiff Dekator M. Thorpe is a resident of Rio, Wisconsin. The defendant, Jill Marie Taylor, resides in Pardeeville and works as a licensed vocational nurse at a local nursing home. Thorpe provides no other information about his relationship to Taylor, but evidently it was not a good one.

Thorpe contends that Taylor made false charges of harassment in a police report, seeking a restraining order against him based on "lies." He does not provide a copy of

the police report or describe its contents. Nevertheless, he claims that Taylor repeated these false accusations to her office administrator, an employee of the Columbia County Department of Health Services, and to another individual at the Columbia County Courthouse in Portage.

Court records reflect that Taylor also filed a civil action in state circuit court requesting a restraining order against Thorpe for harassment.¹ See *Taylor v. Thorpe*, Columbia County Case No. 2013CV344. That case was dismissed on October 2, 2013. No restraining order issued and no criminal case was opened against Thorpe. Arguing that Taylor’s false accusations constitute “slander,” Thorpe seeks monetary damages in whatever amount the court decides is appropriate.

OPINION

Unlike state courts, which have subject matter jurisdiction over a broad assortment of causes and claims, the jurisdiction of federal courts is limited only to “cases or controversies” that are “authorized by Article III of the [United States] Constitution and the statutes enacted by Congress pursuant thereto.” *Buchel-Ruegsegger v. Buchel*, 576 F.3d 451, 453 (7th Cir. 2009) (quoting *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541 (1986)). In other words, “[a] federal court is the wrong forum when there is no case or controversy, or when Congress has not authorized it to resolve a particular kind of

¹ The court has supplemented the facts with dates and procedural information about plaintiff’s underlying state proceedings from the electronic docket available at Wisconsin Circuit Court Access, <http://wcca.wicourts.gov> (last visited January 15, 2014). The court draws all other facts from the complaint and accepts all of plaintiff’s well-pleaded allegations as true.

dispute.” *Morrison v. YTB Intern., Inc.*, 649 F.3d 533, 536 (7th Cir. 2011) (explaining that “subject-matter jurisdiction is a synonym for adjudicatory competence”).

Because of the limits on federal judicial power, district courts have a duty to evaluate subject-matter jurisdiction - - even if the parties do not raise this issue - - before reaching the merits of a case. *See Buchel-Rueggsegger*, 576 F.3d at 453. If a district court determines at any time that it lacks subject matter jurisdiction, it “must dismiss the action.” Fed. R. Civ. P. 12(h)(3).

Generally, a federal court such as this one has the authority to hear two types of cases: (1) cases in which a plaintiff alleges a cognizable violation of his rights under the Constitution or federal law; and (2) cases in which a citizen of one state alleges a violation of his or her rights established under state law by a citizen of one state alleges a violation of his or her rights established under state law by a citizen of another state where the amount in controversy exceeds \$75,000. *See* 28 U.S.C. §§ 1331-32. Even assuming all of Thorpe’s allegations are true, his case falls into neither category.

The face of the complaint establishes that both parties reside in Wisconsin, meaning that there is no diversity of citizenship. In addition, slander or defamation is a state tort claim, not one based on federal law. *See Cross v. Fiscus*, 830 F.2d 755, 756-57 (7th Cir. 1987); *see also Paul v. Davis*, 424 U.S. 693, 712 (1976) (recognizing that, while a State may protect against injury to reputation by virtue of its tort law, a person’s reputation does not implicate a “liberty” or “property” interest of the sort protected by the Due Process Clause). It follows that Thorpe articulates no legitimate federal question. Absent a valid basis for jurisdiction, this court can take no further action.

ORDER

IT IS ORDERED that plaintiff Dekator M. Thorpe's request for leave to proceed is DENIED and the complaint is DISMISSED pursuant to Fed. R. Civ. P. 12(h)(3) for lack of subject matter jurisdiction.

Entered this 29th day of January, 2014.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge