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

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SHANE MALLY,

Plaintiff,

v.

GRANDE CHEESE and
AGNESIAN WORK AND WELLNESS,

Defendant.

OPINION and ORDER

20-cv-922-wmc[1]

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SHASTA HOWELL,

Plaintiff,

v.

GRANDE CHEESE,

Defendant.

OPINION and ORDER

Case No. 20-cv-923-wmc

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SHASTA C. HOWELL,

Plaintiff,

v.

RICHARD DONAHUE,

Defendant.

OPINION and ORDER

Case No. 20-cv-924-wmc

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SHASTA C. HOWELL,

Plaintiff,

v.

JUDGE ALAN BATES, et al.,

Defendants.

OPINION and ORDER

Case No. 20-cv-925-wmc

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Pro se plaintiffs Shasta Howell and Shane Mally (Howell's son) have filed the four civil

[1] I am exercising jurisdiction over these cases for purposes of this screening order only.

actions captioned above. In Case Nos. 20-cv-922-wmc and 20-cv-923-wmc, Mally and Howell bring federal and state-law claims against their former employers Grande Cheese and Agnesian Work and Wellness. In Case No. 20-cv-924-wmc Howell brings federal and state-law claims against her former landlord. In Case No. 20-cv-925-wmc, Howell seeks to revive claims against the individuals and entities involved in the termination of Howell's parental rights over her other son, which this court and the Court of Appeals for the Seventh Circuit have rejected multiple times. *See Howell v. Wisconsin Dep't of Children and Family*, No. 19-cv-732-wmc (W.D. Wis. Sept. 15, 2020); *Howell v. Rock Cnty.*, No. 19-cv-733-wmc (W.D. Wis. Sept. 15, 2020); *Howell v. Bates*, No. 19-cv-754-wmc (W.D. Wis. Sept. 15, 2020); *Mally v. Bates*, No. 19-cv-755-wmc (W.D. Wis. Sept. 15, 2020); *Howell v. Dewey*, 817 F. App'x 268, 270 (7th Cir. Aug. 19, 2020) (affirming dismissal of two other cases challenging those same proceedings, Case Nos. 19-cv-415-wmc and 19-cv-468-wmc, but modifying judgment to reflect dismissal for lack of subject matter jurisdiction); *Mally v. Bates*, No. 20-cv-437-wmc (W.D. Wis. Mar. 16, 2021) (dismissing defamation claim against judge and court commissioner involved in child custody and placement proceedings for lack of subject matter jurisdiction).

Mally and Howell are proceeding in forma pauperis, so the next step is to screen these complaints and dismiss any portion that is legally frivolous or malicious, fails to state a claim upon which relief may be granted, or asks for money damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. § 1915. I also have an independent obligation to determine whether the court has subject matter jurisdiction over the claims. *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006). When screening a pro se litigant's complaint, I construe the complaint generously, holding it to a less stringent standard than formal pleadings drafted by lawyers. *Arnett v. Webster*, 658 F.3d 742, 751 (7th Cir. 2011).

I am dismissing the ’922 and ’923 cases for failure to state a federal claim. I am dismissing the ’924 and ’925 cases for lack of subject matter jurisdiction.

## ANALYSIS

**’922 Case**

Mally alleges that in January 2020, he was hired to work as a packaging associate at Grande Cheese. A week after he was hired Mally had to take physical, hearing, vision, and drug tests at Agnesian. Although Mally passed the tests, Agnesian staff accused him of inappropriately using his cell phone during those tests, and his employment was terminated. Howell complained on behalf of her son to Grande Cheese about the incident, and she was told that Mally had admitted to cheating. Mally says that he suffers from anxiety and that his experience with Grande Cheese and Agnesian gave him post-traumatic stress disorder.

Mally contends that defendants violated his rights under the Americans with Disabilities Act (ADA), the United States Constitution, and state law, but his complaint does not support a federal claim. To state a discrimination claim under the ADA, a plaintiff must allege that (1) he is disabled within the meaning of the ADA; (2) he is qualified to perform the essential functions of the job either with or without a reasonable accommodation; and (3) he suffered from an adverse employment action because of his disability. *Nese v. Julian Nordic Construction Co.*, 405 F.3d 638, 641 (7th Cir. 2005).

But Mally does not allege that he is disabled, and his allegations do not suggest he is disabled as defined by the ADA. An individual is considered disabled within the meaning of the ADA if he has “a physical or mental impairment that substantially limits one or more major life activities of such individual.” 42 U.S.C. § 12102(2)(A). Courts have held that “a major life

activity is something that is 'integral to one's daily existence.'" *Furnish v. SVI Sys., Inc.*, 270 F.3d 445, 449 (7th Cir. 2001) (quoting *Lawson v. CSX Transp., Inc.*, 245 F.3d 916, 923 (7th Cir. 2001)). "[F]unctions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working," all qualify as major life activities. 45 C.F.R. § 84.3; *Bragdon v. Abbott*, 524 U.S. 624, 639 (1998) (quoting 45 C.F.R. § 84.3). Although Mally says that he disclosed to defendants on a health questionnaire that he has had high anxiety all his life, Mally does not label his anxiety as a disability or detail how his anxiety adversely impacts his ability to function on a daily basis. Therefore, this claim fails at the first element.

This claim also fails at the third element. Mally's employment was terminated because he was accused of, and admitted to, using a cellphone inappropriately during testing at Agnesian. Although Mally says that he may have acted nervous and Agnesian staff harassed him about his cellphone, Mally does not allege that there was any other reason for his termination from the position with Grande Cheese. Therefore, Mally may not proceed on an ADA claim.

Mally does not state a constitutional claim despite invoking multiple constitutional amendments. I understand Mally to be pursuing claims under 42 U.S.C. § 1983, but only government actors, or those acting under the color of law, are subject to suit under § 1983. *West v. Atkins*, 487 U.S. 42, 49 (1988). Because Grande Cheese and Agnesian are not alleged to be acting under color of law, Mally may not proceed against either defendant on constitutional claims.

Mally fails to state a federal claim upon which relief can be granted. So, I decline to exercise supplemental jurisdiction over his state-law claims under 28 U.S.C. § 1367(c)(3).

The court of appeals has cautioned against dismissing a pro se plaintiff's case without giving the plaintiff a chance to amend. *Felton v. City of Chicago*, 827 F.3d 632, 636 (7th Cir. 2016). In this case, dismissal of Mally's federal claims with prejudice is appropriate because Mally concedes that he was terminated for cheating, not because of any disability, and I see no facts suggesting that he has a plausible theory for relief under federal law. Therefore, I will dismiss Mally's federal claims with prejudice for failure to state a claim upon which relief can be granted, and I will dismiss Mally's state-law claims without prejudice.

**'923 Case**

In the '923 case, Howell claims that Grande Cheese's handling of her employment violated her rights under the ADA, the Constitution, and state law. Howell worked at Grande Cheese from at least July 2019 until May 2020. Howell says that she reached out to her supervisors about harassment by an associate, which led to Howell being transferred to another team. Her supervisors told her that the matter was handled, but when Howell switched back to her original team, the problems continued. Howell does not say what happened, but she describes her working environment as hazardous and unsafe.

Howell says that she tried to get help from her supervisors and the human resources department to file insurance, life insurance, and savings account forms. Howell did not receive help, and she enrolled in the wrong programs.

In March 2020 Howell took time off for medical reasons. Although the human resources department told Howell she would be paid by short term disability insurance or through the Family and Medical Leave Act, Howell was not paid on a regular basis. Howell also says that money was taken out of her paycheck without her knowledge or consent.

In July 2020 Howell took time off work for medical reasons. Someone from Grande Cheese wrote to her via text message that if Howell did not provide a doctor's note she would be terminated. Howell responded that she was on doctor's orders and had to quarantine, so she could not provide a doctor's note. Grande Cheese terminated her for failing to provide the doctor's note.

These allegations do not state an ADA claim. Howell does not allege that she is disabled or that she informed Grande Cheese of a disability. She says that that she took time off for medical reasons, but Howell does not detail how those medical reasons substantially limited her major life activities. Howell's allegations also do not suggest that she was terminated because of the disability. Howell says that Grande Cheese terminated her because she did not provide a doctor's note, but she does not explain how a disability prevented her from obtaining a doctor's note. Although she says that she could not obtain the doctor's note because she was in quarantine, Howell does not say that the quarantine was due to a disability. Even if Howell had identified a disability that required her to quarantine, Grande Cheese's request for a doctor's note to document her absence was reasonable. Howell has not alleged that she tried to comply with that request beyond responding that she had to quarantine. She does not allege that she told Grande Cheese that her health condition prevented her from calling her doctor's office or using other remote methods of obtaining the doctor's note and Grande Cheese terminated her anyway. Therefore, Howell's allegations do not show that Grande Cheese terminated her because of a disability, and she may not proceed on an ADA discrimination claim.

Howell's allegations about workplace harassment suggest a hostile work environment claim. But to succeed on a claim of a hostile work environment under the ADA, Howell would

need to show that: (1) her work environment was both objectively and subjectively offensive; (2) the harassment was based on her disability; and (3) the conduct was sufficiently severe or pervasive so as to alter the conditions of his employment. *Boss v. Castro*, 816 F.3d 910, 920 (7th Cir. 2016); *Ekstrand v. School Dist. of Somerset*, 583 F.3d 972, 978 (7th Cir. 2009). Howell does not say why her fellow employees harassed her, nor does not detail the nature of the harassment. Therefore, even accepting that her work environment was objectively and subjectively offensive, Howell's hostile work environment claim fails at the second element.

Howell also invokes multiple constitutional amendments, but she may not proceed on any constitutional claims. I understand Howell, like Mally, intends to pursue constitutional claims under § 1983. But because Grande Cheese is not alleged to have acted under color of state law, Howell cannot proceed against it under § 1983.

Because Howell fails to state a federal claim upon which relief can be granted, I decline to exercise jurisdiction over her state-law claims. Like Mally's, Howell's allegations do not suggest that she has a federal claim arising from her employment with Grande Cheese, so I will dismiss Howell's federal claims with prejudice for failure to state a claim upon which relief can be granted. I will dismiss Howell's state-law claims without prejudice. Howell may pursue her state-law claims in state court.

**'924 Case**

In the '924 case, Howell claims defendant Richard Donahue, who was Howell's landlord from October 2019 through 2020, violated her constitutional and state-law rights in managing the property she rented. Howell says that Donahue failed to address several problems in the rental property that subjected her and her family to substandard living conditions. Howell

contends that Donahue failed to perform his duties as a landlord, breached the rental contract, harassed and defamed her, and caused her extreme emotional distress. Howell says that his treatment caused her to move out and have her son take over her lease.

These claims cannot be addressed in this court. Federal courts have limited jurisdiction, which means that they may hear a case only if Congress or the Constitution authorizes it. Generally, this court may consider only cases: (1) that arise under federal law, 28 U.S.C. § 1331; or (2) in which the parties in suit are citizens of different states and the amount in controversy is greater than $75,000, 28 U.S.C. § 1332.

Howell's claims against Donahue do not arise under federal law. Although Howell invokes multiple constitutional amendments, the assertion that Donohue violated her constitutional rights is insufficient to invoke this court's jurisdiction under § 1331. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (a complaint need not contain detailed factual allegations, but it does require more than labels and conclusions, or a formulaic recitation of the elements of a cause of action). Howell does not allege that Donohue was acting under color of state law, so any claim against him cannot be brought under § 1983. Howell's claims also do not fall under § 1332 because she alleges that Donohue's address is in Wisconsin, and she does not allege that he is a citizen from a different state than she is. Therefore, I am dismissing this lawsuit for lack of subject matter jurisdiction.

**'925 Case**

Finally, in the '925 case, Howell attempts to revive her claims against numerous entities and individuals involved in the state court parental rights termination proceedings. However, like the other lawsuits challenging those proceedings, this case must be dismissed under the

*Rooker-Feldman* doctrine. *See Rooker v. Fid. Tr. Co.*, 263 U.S. 413, 415-16 (1923); *District of Columbia Ct. of App. v. Feldman*, 460 U.S. 462, 496 (1983). Howell brings the same types of claims challenging those proceedings, none of which may be re-litigated in federal court. *See Howell*, 817 F. App'x at 270 ("Arguments like Howell's must be pursued on appeal through the state courts . . . .") (citation omitted). Therefore, I am dismissing this lawsuit for lack of subject matter jurisdiction.

ORDER

IT IS ORDERED that:

1. Plaintiffs' federal claims in Case No. 20-cv-922-wmc and Case No. 20-cv-923-wmc are DISMISSED with prejudice for failure to state a claim upon which relief can be granted. Plaintiffs' state-law claims in these cases are dismissed without prejudice.

2. Case Nos. 20-cv-924-wmc and 20-cv-925-wmc are DISMISSED for lack of subject matter jurisdiction.

3. The clerk of court is directed to close these cases.

Entered September 8, 2022.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge