

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

PEGGY ANN DUFF EL,

Petitioner,

v.

UNITED STATES OF AMERICA DEPT.
OF AGRICULTURE, JOHN C. ALBERT and KENNETH
WM. JOST,

Respondents.

ORDER

07-C-239-C

In this proposed civil action for monetary, injunctive and declaratory relief, frequent litigant petitioner Peggy Duff El seeks leave to proceed in forma pauperis on her claim that respondents United States Department of Agriculture (USDA), Judge John C. Albert and USDA lawyer Kenneth Jost violated her constitutional rights by foreclosing on her home. Although petitioner has not submitted an affidavit of indigency in support of her request for leave to proceed in forma pauperis, I am satisfied from the affidavit she submitted recently in Case No. 06-C-744-C that she is, in fact, indigent.

In addressing any pro se litigant's complaint, the court must read the allegations of the complaint generously. Haines v. Kerner, 404 U.S. 519, 521 (1972). However, leave to

proceed must be denied when a proposed action is frivolous or malicious, fails to state a claim on which relief may be granted or seeks money damages from a respondent who is immune from such relief. 28 U.S.C. § 1915(e)(2).

This complaint marks petitioner's second attempt to file a lawsuit against respondents USDA, Albert and Jost for actions they took in connection with her home foreclosure. Petitioner's first attempt, in Case No. 07-C-031-C, ended at screening when I dismissed her complaint for failure to state any legally-cognizable claim against respondents. This case suffers from the same defects as the last.

As I explained to petitioner in an order dated Jan. 23, 2007, Case No. 07-C-31-C, dkt. #1 (a copy of which is attached to this order), respondent Albert cannot be sued for decisions he made while acting as a judge in the foreclosure action. Although petitioner makes several new allegations against respondents USDA and Jost in her new complaint, none implicates respondents in any violation of her rights under federal law. Petitioner's key allegation continues to be that respondent Albert was wrong when he found that she had defaulted on her mortgage. Even if those allegations are true, petitioner's remedy is to appeal the state court's decision; not to file a new lawsuit in federal court. Because petitioner has not stated a claim against respondents, her motion to proceed in forma pauperis will be denied.

ORDER

IT IS ORDERED that petitioner Peggy Duff El's request to proceed in forma pauperis is DENIED and her case DISMISSED. The clerk of court is directed to close this case.

Entered this 2d day of May, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge