

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

GALE RACHUY,

Plaintiff,

v.

CITY OF SUPERIOR, WISCONSIN;
CITY OF DULUTH, MINNESOTA;
CORY HANSON, City of Superior
Wisconsin Police Officer; MICHAEL JASZCZAK,
City of Superior Wisconsin Police Detective;
JEANINE PAULY, City of Duluth Police Officer;
DAVE ROSE and TED NOLEN;

Defendants.

ORDER

09-cv-639-slc¹

This is a proposed civil action for monetary relief in which plaintiff, a resident of Duluth, Minnesota, alleges that defendants wrongfully seized and damaged his property, including tires and lumber, which caused him to suffer a loss in excess of \$400,000. Plaintiff has asked for leave to proceed in forma pauperis and has supported his request with an affidavit of indigency. The standard for determining whether plaintiff qualifies for indigent status is the following:

- From plaintiff's annual gross income, the court subtracts \$3700 for each dependent excluding the plaintiff.

¹ While this court has a judicial vacancy, it is assigning 50% of its caseload automatically to Magistrate Judge Stephen Crocker. For the purpose of issuing this order I am assuming jurisdiction over the case.

- If the balance is less than \$16,000, the plaintiff may proceed without any prepayment of fees and costs.
- If the balance is greater than \$16,000 but less than \$32,000, the plaintiff must prepay half the fees and costs.
- If the balance is greater than \$32,000, the plaintiff must prepay all fees and costs.
- Substantial assets or debts require individual consideration.

In this case, plaintiff has no dependents. His monthly income is \$720 and his wife's monthly income is \$380. Thus, the combined annual income is \$13,200. Because plaintiff's income is less than \$16,000, he can proceed without any prepayment of fees or costs.

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, because plaintiff is requesting leave to proceed in forma pauperis, his complaint must be dismissed if it is legally frivolous, 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(e)(2)(B). I conclude that plaintiff's complaint must be dismissed for lack of subject matter jurisdiction.

Plaintiff's allegations involve several situations where either property was wrongfully taken from him or defendants wrongfully refused to return property to him after it was taken. Plaintiff requests money damages to replace the loss or damage of property taken or not returned. These allegations appear to assert a claim under state law for conversion.

Production Credit Association of Madison v. Nowatzski, 90 Wis. 2d 344, 353-54, 280 N.W.2d 118, 123 (Wis. 1979) (“Conversion is often defined as the wrongful exercise of dominion or control over a chattel. Conversion may result from a wrongful taking or a wrongful refusal to surrender property originally lawfully obtained.” (Internal quotation omitted)).

However, plaintiff can pursue a state law claim in federal court only if the federal court has subject matter jurisdiction over that claim. As plaintiff should remember from his previous case in this court, no. 09-cv-356-slc, raising only state law claims means that plaintiff must show that he can meet the requirements of diversity jurisdiction under 28 U.S.C. § 1332. In relevant part, § 1332 provides district courts with diversity jurisdiction over civil actions in which the amount in controversy exceeds \$75,000 and the action is between citizens of different states. “For a case to be within the diversity jurisdiction of the federal courts, diversity must be ‘complete,’ meaning that no plaintiff may be a citizen of the same state as any defendant.” McCready v. eBay, Inc., 453 F.3d 882, 891 (7th Cir. 2006) (quoting Fidelity & Deposit Co. of Maryland v. City of Sheboygan Falls, 713 F.2d 1261, 1264 (7th Cir. 1983)).

Plaintiff’s allegations demonstrate that there is not complete diversity. Plaintiff is a citizen of Minnesota. Plaintiff lists defendant Dave Rose as being from Atwater, Minnesota. Further, plaintiff lists the City of Duluth, Minnesota as a defendant. As a political subdivision of Minnesota, the city is a citizen of Minnesota for diversity purposes. Moor v. County of Alameda, 411 U.S. 693, 717-18 (1973); Goros v. County of Cook, 489 F.3d

857, 859 (7th Cir. 2007). Accordingly, this case must be dismissed for lack of subject matter jurisdiction.

ORDER

IT IS ORDERED that this case is dismissed without prejudice for lack of subject matter jurisdiction; the clerk of court is directed to enter judgment in accordance with this order and close this case.

Entered this 30th day of November, 2009.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge