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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TOBY JO TODD,
Plaintiff,
v.
TROY L. NUNLEY, et al.,
Defendants.

No. 2:18-cv-02499-WBS-KJN PS

ORDER AND
FINDINGS AND RECOMMENDATIONS

Plaintiff Toby Jo Todd, who proceeds in this action without counsel,¹ has requested leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. (ECF No. 2.) Pursuant to 28 U.S.C. § 1915, the court is directed to dismiss the case at any time if it determines that the allegation of poverty is untrue, or if the action is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against an immune defendant.

For the reasons discussed below, the court concludes that defendants are immune from plaintiff’s suit. Accordingly, the court recommends that the action be dismissed and that plaintiff’s application to proceed *in forma pauperis* in this court be denied as moot.

“Judges are immune from damage actions for judicial acts taken within the jurisdiction of their courts. . . . Judicial immunity applies however erroneous the act may have been, and

¹ This case proceeds before the undersigned pursuant to E.D. Cal. L.R. 302(c)(21) and 28 U.S.C. § 636(b)(1).

1 however injurious in its consequences it may have proved to the plaintiff.” Ashelman v. Pope,
2 793 F.2d 1072, 1075 (9th Cir. 1986). A judge can lose his or her immunity when acting in clear
3 absence of jurisdiction, but one must distinguish acts taken in error or acts that are performed in
4 excess of a judge’s authority (which remain absolutely immune) from those acts taken in clear
5 absence of jurisdiction. Mireles v. Waco, 502 U.S. 9, 12-13 (1991) (“If judicial immunity means
6 anything, it means that a judge will not be deprived of immunity because the action he took was
7 in error . . . or was in excess of his authority”). Thus, for example, in a case where a judge
8 actually ordered the seizure of an individual by means of excessive force, an act clearly outside of
9 his legal authority, he remained immune because the order was given in his capacity as a judge
10 and not with the clear absence of jurisdiction. Id.; see also Ashelman, 793 F.2d at 1075 (“A judge
11 lacks immunity where he acts in the clear absence of jurisdiction . . . or performs an act that is not
12 judicial in nature”).

13 Here, plaintiff seeks six million dollars in damages from defendants United States District
14 Judge Troy L. Nunley and United States Magistrate Judge Allison Claire. (ECF No. 1 at 7.)
15 According to plaintiff, she previously brought an action in federal court in the Eastern District
16 against an attorney she had been appointed in Ohio as part of child custody case. (Id. at 3.)
17 Plaintiff asserts that in this prior federal case, defendants violated her due process by denying her
18 “motion of discovery” and dismissing the case. (Id. at 3-4.)

19 Clearly, plaintiff seeks monetary relief from two federal judges for actions they took
20 within their jurisdiction—denying a motion and dismissing a case. Indeed, such actions are
21 quintessential examples of judicial acts. Therefore, defendants are immune from this suit,
22 “however erroneous the act[s] may have been.” Ashelman, 793 F.2d at 1075. Plaintiff’s proper
23 course of action to redress any erroneous rulings by defendants was to appeal those rulings to the
24 Ninth Circuit Court of Appeals.

25 Accordingly, IT IS HEREBY RECOMMENDED that:

- 26 1. The action be dismissed due to judicial immunity.
- 27 2. Plaintiff’s motion to proceed *in forma pauperis* in this court (ECF No. 2) be denied as
28 moot.

