

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIARANDY L. THOMAS,
Plaintiff,

No. C-09-1487 EMC

v.

**ORDER DISMISSING CASE WITH
PREJUDICE**AIDA CORREA,
Defendant.

Previously, the Court issued an order in which it dismissed, without prejudice, the above-referenced case for lack of subject matter jurisdiction. The Court gave Plaintiff Randy L. Thomas an opportunity to file an amended notice of removal, which he has now done. *See* Docket Nos. 8-9. Mr. Thomas has also filed, on behalf of himself as well as his minor son, a document titled "Petition for Writ of Habeas Corpus." *See* Docket No. 7. For the reasons discussed below, the Court dismisses the case a second time, this time with prejudice.

I. DISCUSSION**A. Amended Notice of Removal**

The Court has reviewed Mr. Thomas's amended notice of removal and finds that, for the reasons stated in its prior order, *see* Docket No. 6 (order, filed on 6/1/2009), this Court has no subject matter jurisdiction over the state court case which Mr. Thomas seeks to remove -- *i.e.*, he is not the defendant in the state court case and therefore has no right to remove; the state court complaint on its face does not present a federal question; the requirements of § 1443 removal have not been met; and removal to this Court (as opposed to the federal court in North Carolina) is

1 improper. The state court case is therefore remanded to the North Carolina state court in which the
2 action was originally filed.

3 B. Petition for Writ of Habeas Corpus

4 Although the Court does not have jurisdiction over the state court case, Mr. Thomas has, as
5 noted above, now filed an independent federal action on his behalf and on the behalf of his minor
6 son. Assuming, without deciding, that Mr. Thomas may bring this action on behalf of his son as
7 well as himself, *see* Fed. R. Civ. P. 17(c) (providing that (1) a general guardian or like fiduciary may
8 sue on behalf of a minor and (2) a minor without a duly appointed representative may sue by a next
9 friend or by a guardian ad litem), the Court does not find a basis for a habeas petition. Federal
10 habeas corpus has never been available to challenge parental rights or child custody.¹ *See Lehman v.*
11 *Lycoming County Children’s Servs.*, 458 U.S. 502, 511 (1982).

12 To the extent Mr. Thomas is bringing a claim for damages pursuant to 42 U.S.C. § 1983, he
13 is no better off. Although Aida Correa is named as the defendant, the complaint reflects that Mr.
14 Thomas does not take issue with her actions per se but rather with the actions of the state court judge
15 (Christy T. Mann) who adjudicated the custody matter regarding Mr. Thomas’s son. To the extent
16 Judge Mann is being sued in her official capacity for damages, she has sovereign immunity from
17 suit. *See Hirsh v. Justices of the Supreme Court*, 67 F.3d 708, 715 (9th Cir. 1995) (explaining that
18 state’s sovereign immunity “extends to . . . individual defendants acting in their official capacities”).
19 To the extent she is being sued in her individual capacity for damages, she has absolute judicial
20 immunity from suit. *See Dennis v. Sparks*, 449 U.S. 24, 27 (1980) (stating that “this Court has
21 consistently adhered to the rule that ‘judges defending against § 1983 actions enjoy absolute
22 immunity from damages liability for acts performed in their judicial capacities”). There is no doubt
23 that the judges’ actions that are being challenged by Mr. Thomas are judicial acts and therefore
24 protected. *See Duvall v. County of Kitsap*, 260 F.3d 1124, 1133 (9th Cir. 2001) (explaining that
25 “absolute judicial immunity does not apply to non-judicial acts, i.e. the administrative, legislative,

26
27 ¹ Title 28 U.S.C. § 1915(e)(2) requires a court to dismiss any case in which a litigant seeks leave
28 to proceed *in forma pauperis* if the court determines that the action is (1) frivolous or malicious; (2) fails
to state a claim on which relief may be granted; or (3) seeks monetary relief against a defendant who
is immune from such relief. *See* 28 U.S.C. § 1915(e)(2).

1 and executive functions that judges may on occasion be assigned to perform” but that “[r]uling on a
2 motion is a normal judicial function”). Finally, to the extent Judge Mann is being sued for
3 injunctive relief, and not any damages, § 1983 provides that, “in any action brought against a
4 judicial officer for an act or omission taken in such officer’s judicial capacity, injunctive relief shall
5 not be granted unless a declaratory decree was violated or declaratory relief was unavailable.” 42
6 U.S.C. § 1983; *see also Wolfe v. Strankman*, 392 F.3d 358, 366 (9th Cir. 2004) (noting that § 1983
7 “contemplates judicial immunity from suit for injunctive relief for acts taken in a judicial capacity”).
8 That is not the case here.²

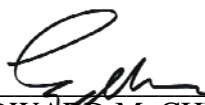
9 **II. CONCLUSION**

10 For the foregoing reasons, the Court hereby remands the state court action to the state court
11 in which the action was originally filed. The Court also dismisses with prejudice the independent
12 federal action filed by Mr. Thomas on his and his son’s behalf.

13 The Clerk of the Court is directed to enter judgment in accordance with this order and close
14 the file in this case.

15
16 IT IS SO ORDERED.

17
18 Dated: July 10, 2009

19 
20 _____
EDWARD M. CHEN
United States Magistrate Judge

21
22
23
24
25 _____
26 ² Although the Court does not dismiss on this basis, another problem for Mr. Thomas is whether
27 there is personal jurisdiction over Judge Mann. “For a court to exercise personal jurisdiction over a
28 nonresident defendant [such as Judge Mann], that defendant must have at least minimum contacts with
the relevant forum [here, California] such that the exercise of jurisdiction does not offend traditional
notions of fair play and substantial justice.” *Boschetto v. Hansing*, 539 F.3d 1011, 1015-16 (9th Cir.
2008).

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 RANDY L. THOMAS,

5 Plaintiff,

6 v.

7 CORREA et al,

8 Defendant.

Case Number: CV09-01487 EMC

CERTIFICATE OF SERVICE

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
10 Court, Northern District of California.

11 That on July 10, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
14 located in the Clerk's office.

15 Randy L. Thomas
16 5906 Barrington Drive
17 Charlotte, NC 28215



18 Dated: July 10, 2009

Richard W. Wieking, Clerk
By: Betty Lee, Deputy Clerk