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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY: MXN DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

KIZER DICKERSON,
Plaintiff,
v.
STATE OF CALIFORNIA,
Defendant.

Case No.: 3:17-cv-01360-BEN-AGS

ORDER:
(1) DENYING IN FORMA PAUPERIS APPLICATION;
(2) DENYING REQUEST FOR APPOINTMENT OF COUNSEL

On July 5, 2017, Plaintiff Kizer Dickerson filed a civil rights action for declaratory relief against the State of California. (Docket No. 1.) Instead of paying the filing fee, Plaintiff filed an application to proceed *in forma pauperis* ("IFP"). (Docket No. 2.) Plaintiff also filed a request for appointment of counsel. (Docket No. 3.) For the reasons set forth below, the Court **DENIES** both Plaintiff's IFP application and request for appointment of counsel.

A. IFP Application

All parties instituting any civil action in a district court must pay a filing fee. 28 U.S.C. § 1914(a). An action may proceed despite a party's failure to prepay the entire fee only if the party is granted leave to proceed IFP pursuant to 28 U.S.C. § 1915(a).

1 Under 28 U.S.C. § 1915(a)(1),

2 [A]ny court of the United States may authorize the
3 commencement, prosecution or defense of any suit, action or
4 proceeding . . . without prepayment of fees or security therefor,
5 by a person who submits an affidavit that includes a statement
6 of all assets such [person] possesses that the person is unable to
7 pay such fees or give security therefor.

8 Plaintiff receives \$2,600.00 in income per month, which consists of his self-
9 employment income (\$1,700.00) and public assistance (\$900.00). (Docket No. 2 at ¶¶ 1-
10 2.) He pays for rent, utilities, food and other monthly expenses amounting to
11 approximately \$3,298.00 per month. (*Id.* at ¶ 8.) Although Defendant reports that his
12 expenses exceed his income, the information provided in his affidavit does not reflect an
13 inability to pay the fee to pursue the action. Therefore, the IFP application is **DENIED**.

14 **B. Request for Appointment of Counsel**

15 Courts have discretion to appoint counsel for indigent civil litigants upon a
16 showing of exceptional circumstances. *See Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th
17 Cir. 1991); *Bradshaw v. Zoological Soc. of San Diego*, 662 F.2d 1301, 1318 (9th Cir.
18 1981). “A finding of exceptional circumstances requires an evaluation of both the
19 likelihood of success on the merits and the ability of the petitioner to articulate his claims
20 pro se in light of the complexity of the legal issues involved.” *Terrell*, 935 F.2d at 1017
21 (9th Cir. 1991) (internal citations omitted); *see also Bradshaw*, 662 F.2d at 1318.
22 “Neither of these factors is dispositive and both must be viewed together before reaching
23 a decision.” *Terrell*, 935 F.2d at 1017 (internal citations omitted).

24 At this time, the Court cannot say there is any likelihood of success on the merits.
25 Plaintiff’s Complaint essentially seeks a declaration that California Family Code section
26 3030 (“Section 3030”) violates parental and due process rights under the Fourteenth
27 Amendment. (*See generally* Docket No. 1, Complaint.) Section 3030 generally prohibits
28 the placing of a child into the custody of a person who is required to be registered as a

1 sex offender under California Penal Code section 290, due to a criminal conviction of
2 certain crimes involving a minor victim. Cal. Fam. Code § 3030. Plaintiff asserts that
3 because he “cannot find a case in which this law would be reasonable,” he “requests [this
4 Court] analyze and confirm.” (Compl. at p. 1.) However, Plaintiff has not alleged facts
5 to demonstrate he has standing to bring such a claim. *See Lujan v. Defs. of Wildlife*, 504
6 U.S. 555, 560 (1992) (a plaintiff invoking federal jurisdiction bears the burden of
7 establishing the three elements of standing: 1) that the plaintiff has suffered an “injury in
8 fact”; 2) that there is a causal connection between the plaintiff’s injury and the conduct
9 complained of traceable to the defendant; and 3) that is likely, i.e. not merely speculative,
10 that the plaintiff’s injury will be “redressed by a favorable decision”) (internal citations
11 omitted). As a result, it is not clear the Court has jurisdiction to hear his claim.

12 Moreover, Plaintiff fails to demonstrate an inability to represent himself beyond
13 the ordinary burdens encountered by plaintiffs representing themselves *pro se*, or that he
14 has made a good faith effort to obtain counsel to represent him. *See Garcia v. Smith*, No.
15 10-cv-1 187, 2012 WL 2499003, at *4 (S.D. Cal. June 27, 2012) (“Merely alleging
16 indigence is insufficient to entitle him to appointed counsel; he must also demonstrate
17 that he made a good faith effort, but was unable, to obtain counsel.”). Therefore, the
18 Court finds that the exceptional circumstances required for the appointment of counsel
19 are not present. Plaintiff’s Motion is **DENIED**.

20 CONCLUSION

21 Plaintiff’s IFP application and request for appointment of counsel are **DENIED**.
22 Plaintiff’s Complaint is **DISMISSED without prejudice** and may be re-opened if
23 Plaintiff pays the required filing fee within **forty-five (45) days** of the date of this Order.

24 **IT IS SO ORDERED.**

25
26 DATED: July 13, 2017

27 
28 HON. ROGER T. BENITEZ
United States District Court Judge