

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Chief Judge Marcia S. Krieger**

Civil Action No. 17-cv-00399-MSK

JAMES EDWARD DOUGHERTY,

Plaintiff,

v.

**JAMES ANTHONY DOUGHERTY,
DARCY JANNE TENORIO,
HUNTER & ASSOCIATES, P.A.,
DR. SHERRY RISCH, and
SHARON BRUCE,**

Defendants.

**OPINION AND ORDER DISMISSING ACTION FOR LACK OF SUBJECT-MATTER
JURISDICTION**

THIS MATTER comes before the Court *sua sponte* for determination of the Court's subject matter jurisdiction. *See Webb v. Smith*, 632 Fed.Appx. 957, 960 (10th Cir. 2015) (court may consider the absence of subject-matter jurisdiction *sua sponte*).

Plaintiff James Edward Dougherty commenced this action *pro se*. His Complaint contains somewhat scattershot, half-formed allegations. All those that involve the named Defendants concern events relating, directly or indirectly, to Mr. Dougherty's divorce in the Florida state courts.

This Court clearly lacks subject-matter jurisdiction over the claims against these Defendants due to lack of diversity of citizenship pursuant to 28 U.S.C. § 1332. The Complaint identifies Mr. Dougherty, Defendant James Anthony Dougherty, and Defendant Sharon Bruce as

all being residents¹ of Colorado. 28 U.S.C. § 1332(a)(1); *Grynberg v. Kinder Morgan Energy Partners, LP*, 805 F.3d 901, 905 (10th Cir. 2015) (“Diversity jurisdiction requires complete diversity—no plaintiff may be a citizen of the same state as any defendant”).

The Court also lacks federal question jurisdiction pursuant to 28 U.S.C. § 1331, insofar as none of Mr. Dougherty’s claims against the named Defendants appear to invoke any federal law. His claims against these Defendants primarily sound in state common-law slander (against Anthony and Defendant Risch) , embezzlement (against Defendant Bruce), perhaps negligence or breach of a fiduciary duty (against Defendant Hunter & Associates), and claims seeking to set aside domestic relations orders issued by the Florida court (against Defendant Tenorio).

Discharging the Court’s obligations under *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972), to liberally construe Mr. Dougherty’s *pro se* Complaint, the Court has looked beyond his specific allegations to several pages of exhibits attached thereto. The Court can infer that Mr. Dougherty is apparently serving a sentence for a criminal conviction and is currently on probation under the supervision of a state or county Probation Department in Moffat County. The exhibits also reflect that in February 2017, Mr. Dougherty was issued a criminal summons in Moffat County for the crime of Harassment, C.R.S. § 18-9-111. (The exhibit does not contain the narrative portion describing the incident.) That summons may be related to disagreements or difficulties that Mr. Dougherty may be having with two of his neighbors, both of whom are police officers in Craig, Colorado.

Further light is shed on Mr. Dougherty’s concerns by other filings in this action. Mr. Dougherty has moved (# 7) to have this Court “issue an order to prevent the Craig Police

¹ The Court will assume for purposes of this order, without necessarily finding, that the parties’ state of residence is also their state of citizenship. *Whitelock v. Leatherman*, 460 F.2d 507, 514 n. 14 (10th Cir. 1972).

Department from trespassing and harassment at properties” Mr. Dougherty owns and “to dismiss [the] current Harassment charge issued by the Craig Police Department” against him. More recently, Mr. Dougherty filed a second motion (# 16) requesting that the Court “provide relief from” certain state court proceedings in Moffat County that appear to be requests by the state to revoke Mr. Dougherty’s probation. *See also* Docket # 22.

Although the Court is required to construe Mr. Dougherty’s *pro se* pleadings liberally, the Court is not obligated to – and indeed, should not -- act as Mr. Dougherty’s advocate or to rewrite his Complaint to assert claims that were not originally presented. *Barnett v. Hargett*, 174 F.3d 1128, 1133 (10th Cir. 1999). None of the named Defendants appear to be state actors or public officials in any capacity, there is no allegation of violation of any federal or constitutional right, and nothing in the record suggests that Mr. Dougherty’s interactions with police or probation officers in Craig or in Moffat County would give rise to a cognizable claim under 42 U.S.C. § 1983.²

In the absence of allegations which if true would give rise to subject matter jurisdiction, dismissal of this action is appropriate under Fed. R. Civ. P. 12(b)(1). Moreover, because it does not appear that Mr. Dougherty can assert any cognizable claims over which this Court would have subject-matter jurisdiction, the Court declines to reflexively grant Mr. Dougherty leave to amend his Complaint. If Mr. Dougherty believes he can adequately plead claims that are cognizable in this Court, he may move to reopen this action upon the tender of a proposed Amended Complaint that demonstrates that fact.

² Even assuming, as discussed below, that the ongoing matters involving Mr. Dougherty and the police in Craig, Colorado could give rise to some cognizable federal claim, such claim would be entirely unrelated to the claims against the named Defendants, such that the Court would decline to exercise supplemental jurisdiction over the existing claims pursuant to 28 U.S.C. § 1367(c)(2).

Accordingly, the Court **DISMISSES** all claims in Mr. Dougherty's Complaint (# 1) against all named Defendants for lack of federal subject-matter jurisdiction. There being no colorable claims to pursue at this time, the Clerk of the Court shall close this case.

Dated this 6th day of April, 2017.

BY THE COURT:



A handwritten signature in black ink, reading "Marcia S. Krieger". The signature is written in a cursive style with a prominent dot over the 'i' in "Krieger".

Marcia S. Krieger
Chief United States District Judge