

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

JESSIE LEE BIZZELL,

Plaintiff,

v.

Case No.: 2:23-cv-734-SPC-NPM

21ST CENTURY ONCOLOGY
HOLDINGS INC.,

Defendant.

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OPINION AND ORDER

Before the Court is Plaintiff Jessie Lee Bizzell's Complaint (Doc. 1). Bizzell, a prisoner of the Florida Department of Corrections, sues 21st Century Oncology Holdings under 42 U.S.C. § 1983. United States Magistrate Judge Nicholas Mizell granted Bizzell leave to proceed *in forma pauperis*, so the Court must review the Complaint *sua sponte* to determine whether it is frivolous or malicious, fails to state a claim, or seeks monetary damages against a party who is immune from such relief. *See* 28 U.S.C. 1915(e)(2).

Bizzell fails to state a claim here. He accuses 21st Century Oncology of misconduct—the precise nature of the alleged misconduct is not clear—in a bankruptcy appeal in the Southern District of New York. To state a claim under § 1983, a plaintiff “must allege that a person acting under color of state law deprived him of a federal right.” *McIndoo v. Broward Cty.*, 750 F. App'x

816, 819 (11th Cir. 2018). The defendant appears to be a private business entity and clearly did not operate under color of state law. And anyhow, this is not a proper venue to challenge the defendant's conduct in a New York bankruptcy case. Bizzell should seek relief from the court where the alleged misconduct occurred.

The Court would normally grant leave to amend, but that would be futile here. Bizzell cannot sue the defendant under § 1983, and no amendment will make this the proper venue for Bizzell's allegations. Accordingly, Plaintiff Jessie Lee Bizzell's Complaint (Doc. 1) is **DISMISSED**. The Clerk is **DIRECTED** to terminate any pending motions and deadlines, enter judgment, and close this case.

DONE and **ORDERED** in Fort Myers, Florida on December 6, 2023.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

SA: FTMP-1

Copies: All Parties of Record