

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION
FRANKFORT

MARK XAVIER WEBB, ET AL.,

Plaintiffs,

v.

KAREN EVANS,

Defendant.

Civil Action No. 3:19-078-KKC

MEMORANDUM OPINION
AND ORDER

*** **

Mark Xavier Webb is an inmate at the Fulton County Detention Center in Hickman, Kentucky. Proceeding without a lawyer, Webb filed a civil rights complaint with the United States District Court for the Western District of Kentucky on behalf of himself and his minor daughter. [R. 1]. In the complaint, Webb alleges that the defendant, the owner of a daycare center in Carrollton, Kentucky, left his child alone at the daycare during a power outage. [See *id.* at 4-5]. As a result, Webb is seeking money damages, among other forms of relief. [*Id.* at 6]. That said, the Western District transferred Webb's case to this Court pursuant to 28 U.S.C. § 1406(a) because the defendant resides in this judicial district and all or a substantial part of the events set forth in the complaint allegedly occurred here. [R. 5].

This Court, however, will dismiss Webb's *pro se* complaint without prejudice pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure because it lacks subject matter jurisdiction over his case. Although Webb filed his pleading on a *pro se* prisoner civil rights complaint form, and, thus, he invokes 42 U.S.C. § 1983, there is no indication that Webb's claim against the defendant, a private citizen, arises under federal constitutional or statutory law. Moreover, since

Webb indicates that the parties all reside in Kentucky [*see id.* at 1-2, 5], this Court does not have diversity jurisdiction. In short, this Court does not have subject matter jurisdiction over this action and, therefore, it will dismiss Webb's complaint without prejudice to his right to assert his claim in the proper forum.

Accordingly, it is **ORDERED** as follows:

1. Webb's complaint [R. 1] is **DISMISSED** without prejudice for lack of subject matter jurisdiction.
2. Any and all pending motions are **DENIED** as moot.
3. This action is **STRICKEN** from the Court's docket.
4. The Court will enter an appropriate Judgment.

Dated October 28, 2019



Karen K. Caldwell
KAREN K. CALDWELL
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF KENTUCKY