

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

MEMORANDUM AND ORDER

Plaintiff seeks leave to proceed in forma pauperis in this civil action under state law for medical malpractice. The motion is granted. Additionally, this action is dismissed for lack of jurisdiction.

The Complaint

On April 15, 2015, plaintiff went to Southeast Health Hospital for a routine ultrasound of her unborn fetus. Her doctor told her that she needed an emergency cesarean section. He wanted to administer a spinal block because she had recently eaten, making full anesthesia dangerous. Defendant Kevin Callahan, Certified Registered Nurse Anesthetist, unsuccessfully attempted to administer the spinal block more than seven times. Plaintiff says he did not put her in the proper position to perform the procedure, and therefore, he was negligent. She claims to have suffered unnecessary pain and suffering. There are no claims pertaining to the other defendants.

Discussion

“Federal courts are courts of limited jurisdiction. The requirement that jurisdiction be established as a threshold matter springs from the nature and limits of the judicial power of the

United States and is inflexible and without exception.” *Kessler v. Nat'l Enterprises, Inc.*, 347 F.3d 1076, 1081 (8th Cir. 2003) (quotation marks omitted); *see Kuhl v. Hampton*, 451 F.2d 340, 342 (8th Cir. 1971) (federal courts “were not established to mediate any and all types of complaints and alleged wrongs.”).

There are two avenues to jurisdiction in federal court. Under 28 U.S.C. § 1331, the Court has “jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” And under § 1332, the Court has jurisdiction over cases involving citizens of different states where the matter in controversy exceeds \$75,000. Neither of these conditions are met in this case.

Medical malpractice is a state cause of action and does not state a claim under the Constitution or federal law. And diversity jurisdiction does not exist because plaintiff and defendants are not citizens of different states. As a result, this action must be dismissed under Rule 12(h)(3) of the Federal Rules of Civil Procedure.

Although this Court does not have the authority to provide plaintiff with relief, the Court expresses no opinion about whether plaintiff may file her action in state court.

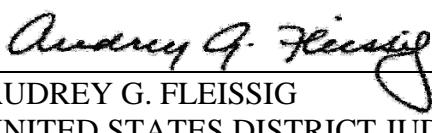
Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion to proceed in forma pauperis [ECF No. 3] is **GRANTED**.

IT IS FURTHER ORDERED that this action is **DISMISSED** without prejudice.

An Order of Dismissal will be filed forthwith.

Dated this 25th day of July, 2017.


AUDREY G. FLEISSIG
UNITED STATES DISTRICT JUDGE