

proceedings. Plaintiff alleges these actions by the tribal court violated the Federal Indian Child Welfare Act. (See *generally* Filing No. [1](#).) As relief, Plaintiff asks this court to invalidate the tribal court's guardianship decision. (*Id.* at CM/ECF p. 6.)

II. APPLICABLE LEGAL STANDARDS ON INITIAL REVIEW

The court is required to review prisoner and in forma pauperis complaints seeking relief against a governmental entity or an officer or employee of a governmental entity to determine whether summary dismissal is appropriate. See [28 U.S.C. §§ 1915\(e\)](#) and [1915A](#). The court must dismiss a complaint or any portion thereof that states a frivolous or malicious claim, that fails to state a claim upon which relief may be granted, or that seeks monetary relief from a defendant who is immune from such relief. [28 U.S.C. § 1915\(e\)\(2\)\(B\)](#); [28 U.S.C. § 1915A](#).

Therefore, where pro se plaintiffs do not set forth enough factual allegations to “nudge[] their claims across the line from conceivable to plausible, their complaint must be dismissed” for failing to state a claim upon which relief can be granted. [Bell Atlantic Corp. v. Twombly](#), 550 U.S. 544, 569-70 (2007), (overruling [Conley v. Gibson](#), 355 U.S. 41 (1967), and setting new standard for failure to state a claim upon which relief may be granted). Regardless of whether a plaintiff is represented or is appearing pro se, the plaintiff's complaint must allege specific facts sufficient to state a claim. See [Martin v. Sargent](#), 780 F.2d 1334, 1337 (8th Cir. 1985). However, a pro se plaintiff's allegations must be construed liberally. [Burke v. North Dakota Dep't of Corr. & Rehab.](#), 294 F.3d 1043, 1043-44 (8th Cir. 2002) (citations omitted).

III. DISCUSSION OF CLAIMS

Plaintiff brings this action in an effort to challenge a child guardianship determination made by an Indian tribal court in Minnesota. Liberally construed, he invokes jurisdiction under the Indian Child Welfare Act, specifically, 25 U.S.C. § 1914.¹ Section 1914 states:

Any Indian child who is the subject of any action for foster care placement or termination of parental rights *under State law*, any parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe may petition any court of competent jurisdiction to invalidate such action upon a showing that such action violated any provision of sections 1911, 1912, and 1913 of this title.

[25 U.S.C. § 1914](#) (emphasis added).

Section 1914 does not confer jurisdiction upon this court because the guardianship action at issue here was not decided *under State law*. Rather, Plaintiff is challenging an Indian tribal court's decision to place an Indian child in foster care. Plaintiff does not allege that the tribal court lacked jurisdiction to make a custody determination or otherwise violated his due process or equal protection rights; rather, he merely alleges that its decision violated the Indian Child Welfare Act. However, the Indian Child Welfare Act, 25 U.S.C. §§ 1901-1963, gives Indian tribes jurisdiction to determine custody of Indian children. See [DeMent v. Oglala Sioux Tribal Court, 874 F.2d 510, 514 \(8th Cir. 1989\)](#). The Indian Child Welfare Act does not confer jurisdiction upon this court to review the propriety of the tribal court's guardianship decision in this case.

IT IS THEREFORE ORDERED that:

¹In Plaintiff's statement of jurisdiction, he references 28 U.S.C. § 1914, which sets forth the fees the clerk of each district court must charge for the filing of civil actions. (See Filing No. 1 at CM/ECF p. 1.) However, in light of Plaintiff's references to the Indian Child Welfare Act, the court assumes Plaintiff intended to cite to 25 U.S.C. § 1914 of the Indian Child Welfare Act, and not 28 U.S.C. § 1914.

1. This matter is dismissed without prejudice; and
2. A separate judgment will be entered in accordance with this Memorandum and Order.

DATED this 5th day of May, 2014.

BY THE COURT:

s/Laurie Smith Camp
Chief United States District Judge

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