

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DAVID DeSANTIS,

Plaintiff,

-v-

5:09-CV-530 (NAM/GHL)

**THE STATE OF NEW YORK and JUDGE
KIMBERLY SEAGER,**

Defendants.

APPEARANCES:

David DeSantis
Plaintiff, *pro se*

Hon. Norman A. Mordue, Chief U.S. District Judge:

MEMORANDUM-DECISION AND ORDER

Plaintiff has filed a complaint (Dkt. No. 1) and moved for leave to proceed *in forma pauperis* (Dkt. No. 2). The complaint seeks injunctive, declaratory, and monetary relief against Oswego County Family Court Judge Kimberly Seager and the State of New York. United States Magistrate Judge George H. Lowe reviewed the application and concluded that Judge Seager enjoyed absolute immunity for the actions alleged in the complaint, that the claim for money damages against New York State was barred by the Eleventh Amendment, and that there was no ground for any other relief. He recommends dismissal with leave to file an amended complaint within 30 days.

Plaintiff has submitted an objection (Dkt. No. 5). In view of plaintiff's objections, pursuant to 28 U.S.C. § 636(b)(1)(C), this Court conducts a *de novo* review of the matters raised in the Report and Recommendation. Upon *de novo* review the Court finds, for the reasons set

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forth in the Report and Recommendation, that the complaint is frivolous and fails to state a cause of action. *See* 28 U.S.C. § 1915(e)(2)(B). Accordingly, the Court adopts the Report and Recommendation except that, rather than dismiss with leave to replead, the Court holds that the action will be dismissed automatically within 30 days of the date of this Memorandum-Decision and Order unless within that time period plaintiff files a non-frivolous amended complaint that states a claim on which relief may be granted.

It is therefore

ORDERED that the Report and Recommendation of United States Magistrate Judge George H. Lowe (Dkt. No. 4) is adopted except as set forth in the following ordering paragraph; and it is further

ORDERED that the complaint will be dismissed automatically under 28 U.S.C. § 1915(e)(2)(B) without further Order of the Court unless, within 30 days of the date of this Memorandum-Decision and Order, plaintiff files a non-frivolous amended complaint that states a claim on which relief may be granted; and it is further

ORDERED that upon the filing of an amended complaint, the file in this matter be returned to the Court for further review; and it is further

ORDERED that plaintiff's *in forma pauperis* application (Dkt. No. 2) is granted.¹

IT IS SO ORDERED.

Date: July 7, 2009
Syracuse, New York


Norman A. Mordue
Chief United States District Court Judge

¹ Although the application to proceed *in forma pauperis* has been granted, plaintiff will still be required to pay fees that he may incur in this action, including copying and/or witness fees.