

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Jolee Kimble v. Frank Birchank

Kimble · No. 25-cv-3507-AGS-SBC · Decided December 19, 2025

SUMMARY

The United States District Court for the Southern District of California denied Jolee Kimble’s motions for a temporary restraining order and appointed counsel. The court held that injunctive relief was unavailable because the complaint had already been dismissed and, independently, that the motion failed to establish likely success on the merits, including because it appeared to challenge state-court judicial actions. The court also found no exceptional circumstances supporting appointment of counsel.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Andrew G. Schopler
JURISDICTION	United States District Court for the Southern District of California
DECIDED	December 19, 2025
DOCKET	25-cv-3507-AGS-SBC
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff, proceeding pro se, moved for an ex parte temporary restraining order and appointment of counsel after the complaint had been dismissed and before it was amended.
STANDARD OF REVIEW	A temporary restraining order requires a showing of likely success on the merits, likely irreparable harm, a balance of equities favoring relief, and consistency with the public interest. Appointment of counsel for a civil plaintiff requires exceptional circumstances, including consideration of the likelihood of success on the merits.
PRECEDENTIAL VALUE	unpublished district court order
PARTIES	Jolee Kimble v. Frank Birchank

TOPICS

- injunctions
- civil procedure
- equitable relief

PRACTICE AREAS

civil procedure

civil rights

remedies

QUESTIONS PRESENTED

1. Whether the court could grant a temporary restraining order after dismissing the underlying complaint.
2. Whether Kimble satisfied the temporary-restraining-order requirements.
3. Whether Kimble demonstrated exceptional circumstances warranting appointment of counsel.

HOLDINGS

1. Once the complaint had been dismissed and had not been amended, there was no underlying complaint to which the temporary-restraining-order motion could relate, so the court lacked authority to grant the requested injunctive relief.
2. Even if the complaint had remained operative, Kimble did not satisfy the temporary-restraining-order standard because she was unlikely to succeed on the merits of a claim challenging Judge Birchank's judicial actions, and failure to establish likely success was independently sufficient to deny relief.
3. Kimble was not entitled to appointed counsel because she failed to show exceptional circumstances, including a likelihood of success on the merits, and the court could not determine that her underlying claims had merit.

KEY QUOTATIONS

“Such emergency relief is “an extraordinary remedy never awarded as of right.”” (at 1)

“But when a court “dismissed Plaintiff[’s] complaint before [she] moved for a TRO [temporary restraining order],” as here, there is “no underlying complaint to which the motion could relate,” and this Court lacks “authority to grant injunctive relief in the form of a TRO.”” (at 1)

“For that reason alone, Kimble is unlikely to succeed on any civil claim challenging Judge Birchank’s judicial actions.” (at 1)

FACTUAL BACKGROUND

Kimble sought a temporary restraining order concerning conduct attributed primarily to non-defendant Michael Bergen and apparently relating to Superior Court Judge Michael Birchank's denial of a similar filing after Kimble had been adjudicated a vexatious litigant. The complaint naming Birchank had already been dismissed, and Kimble had not amended it. The prior dismissal was based on the apparent judicial immunity of the only named defendant.

PROCEDURAL HISTORY

The court had previously dismissed Kimble's complaint because the only named defendant, a Superior Court judge, appeared to be immune from suit. Kimble then moved for emergency injunctive relief and appointed counsel. The court denied both motions.

DISPOSITION

other

CASES CITED

- Winter v. Natural Resources Defense Council, 555 U.S. 7, 24 (2008)
- Washington v. Trump, 847 F.3d 1151, 1159 (9th Cir. 2017)
- Pacific Radiation Oncology v. Queen's Medical Center, 810 F.3d 631, 636 (9th Cir. 2015)
- Yoshimoto v. Alaska Airlines, Inc., No. 24-6692, 2025 WL 2911144, at *2 (9th Cir. Oct. 14, 2025)
- Cooper v. Ramos, 704 F.3d 772, 777 (9th Cir. 2012)
- Geo Group, Inc. v. Inslee, 151 F.4th 1107, 1114 (9th Cir. 2025)
- Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991)
- Fuller v. Houston, EDCV 21-00127 JGB (AS), 2022 WL 225671, at *2 (C.D. Cal. Jan. 25, 2022)

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