

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PRECEDENTIAL VALUE	unpublished district court order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)

OPINION

Kimble

PER CURIAM.

1 UNITED STATES DISTRICT COURT

2 SOUTHERN DISTRICT OF CALIFORNIA

3 Jolee KIMBLE, Case No.: 25-cv-3507-AGS-SBC 4 Plaintiff, ORDER DENYING MOTIONS
FOR

RESTRAINING ORDER (ECF 5) AND

5 v.

FOR APPOINTED COUNSEL (ECF 3)

6 Frank BIRCHANK, 7 Defendant. 8 9 Plaintiff Jolee Kimble, proceeding without an attorney,
seeks an “ex parte restraining 10 order” and appointed counsel. (ECF 5, at 1; ECF 3.) Because the
complaint was previously 11 dismissed in this case—and has not been amended—her requests are
denied.

12 DISCUSSION

13 A. Motion for Temporary Restraining Order 14 A temporary restraining order is a form of
emergency injunctive relief without notice 15 to the other side. See Fed. R. Civ. P. 65. Such
emergency relief is “an extraordinary remedy 16 never awarded as of right.” Winter v. Natural
Res. Def. Council, 555 U.S. 7, 24 (2008). To 17 obtain such an order, plaintiff “must establish that
[s]he is likely to succeed on the merits, 18 that [s]he is likely to suffer irreparable harm in the
absence of preliminary relief, that the 19 balance of equities tips in [her] favor, and that an
injunction is in the public interest.” Id.; 20 see also Washington v. Trump, 847 F.3d 1151, 1159
(9th Cir. 2017) (“[T]he legal standards 21 applicable to TROs and preliminary injunctions are
substantially identical.” (cleaned up)). 22 Kimble’s request never leaves the starting gate. An

emergency injunction at a case's 23 start "is appropriate when it grants relief of the same nature as that to be finally granted." 24 *Pacific Radiation Oncology v. Queen's Med. Ctr.*, 810 F.3d 631, 636 (9th Cir. 2015). But 25 when a court "dismissed Plaintiff[']s complaint before [she] moved for a TRO [temporary 26 restraining order]," as here, there is "no underlying complaint to which the motion could 27 relate," and this Court lacks "authority to grant injunctive relief in the form of a TRO." See 28 *Yoshimoto v. Alaska Airlines, Inc.*, No. 24-6692, 2025 WL 2911144, at *2 (9th Cir. Oct. 14, 1 2025); (ECF 4 (order dismissing complaint)). So, the request must be denied. 2 Even if Kimble's complaint weren't already dismissed, her motion would fail to 3 meet the temporary-restraining-order standard. Most of her filing, difficult as it is to 4 decipher, complains about the behavior of a non-defendant named "Michael Bergen." (See, 5 e.g., ECF 5, at 1.) The captioned defendant—Superior Court Judge Michael Birchank— 6 doesn't appear anywhere in the motion itself. (See *id. passim*.) His name first appears in 7 the exhibits attached to the motion, which indicate that Judge Birchank denied Kimble's 8 request to file a similar motion because the Superior Court adjudged Kimble a "vexatious 9 litigant." (See ECF 5-1, at 1.) But even if this ruling is what Kimble is complaining about 10 and seeking to restrain, this Court is forbidden from sitting as a "de facto" appeals court 11 over state-court actions. See *Cooper v. Ramos*, 704 F.3d 772, 777 (9th Cir. 2012). For that 12 reason alone, Kimble is unlikely to succeed on any civil claim challenging Judge 13 Birchank's judicial actions. Since "[l]ikelihood of success on the merits is the most 14 important factor" for a temporary restraining order, when "a movant fails to meet this 15 threshold inquiry," the Court "need not consider the other factors." *Geo Grp., Inc. v. Inslee*, 16 151 F.4th 1107, 1114 (9th Cir. 2025) (cleaned up). 17 Thus, for both reasons, the motion for emergency injunctive relief is DENIED. 18 B. Motion for Appointed Counsel 19 For similar reasons, her request for appointed counsel fails. For such an appointment, 20 a civil plaintiff must show "exceptional circumstances." *Terrell v. Brewer*, 935 F.2d 1015, 21 1017 (9th Cir. 1991). To find such circumstances, the Court must evaluate, among other 22 things, "the likelihood of success on the merits." *Id.* (cleaned up). But, as previously 23 discussed, her chance of success is almost zero: her complaint was dismissed because "the 24 only named defendant—a Superior Court judge—appears to be immune from suit." (See 25 ECF 4, at 2.) When "the court is unable to determine whether plaintiff's underlying claims 26 have merit," as in this case, "appointment of counsel is premature." See *Fuller v. Houston*, 27 28 1 EDCV 21 00127 JGB (AS), 2022 WL 225671, at *2 (C.D. Cal. Jan. 25, 2022) 2 || (collecting cases). So, the appointment-of-counsel motion is DENIED. 3 Dated: December 19, 2025 5 Hon. rew G. Schopler United States District Judge 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28