

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

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 meet the temporary-restraining-order standard. Most of her filing, difficult as it is to decipher, complains about the behavior of a non-defendant named “Michael Bergen.” (See, e.g., ECF 5, at 1.) The captioned defendant—Superior Court Judge Michael Birchank—doesn’t appear anywhere in the motion itself. (See *id. passim*.) His name first appears in the exhibits attached to the motion, which indicate that Judge Birchank denied Kimble’s request to file a similar motion because the Superior Court adjudged Kimble a “vexatious litigant.” (See ECF 5-1, at 1.) But even if this ruling is what Kimble is complaining about and seeking to restrain, this Court is forbidden from sitting as a “de facto” appeals court over state-court actions. See *Cooper v. Ramos*, 704 F.3d 772, 777 (9th Cir. 2012). For that reason alone, Kimble is unlikely to succeed on any civil claim challenging Judge Birchank’s judicial actions. Since “[l]ikelihood of success on the merits is the most important factor” for a temporary restraining order, when “a movant fails to meet this threshold inquiry,” the Court “need not consider the other factors.” *Geo Grp., Inc. v. Inslee*, 161 F.4th 1107, 1114 (9th Cir. 2025) (cleaned up). Thus, for both reasons, the motion for emergency injunctive relief is DENIED. B. Motion for Appointed Counsel For similar reasons, her request for appointed counsel fails. For such an appointment, a civil plaintiff must show “exceptional circumstances.” *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991). To find such circumstances, the Court must evaluate, among other things, “the likelihood of success on the merits.” *Id.* (cleaned up). But, as previously discussed, her chance of success is almost zero: her complaint was dismissed because “the only named defendant—a Superior Court judge—appears to be immune from suit.” (See ECF 4, at 2.) When “the court is unable to determine whether plaintiff’s underlying claims have merit,” as in this case, “appointment of counsel is premature.” See *Fuller v. Houston*, 2022 WL 225671, at *2 (C.D. Cal. Jan. 25, 2022) || (collecting cases). So, the appointment-of-counsel motion is DENIED. Dated: December 19, 2025 Hon. G. Schopler United States District Judge