

I. Legal Standards

A. Rule 12(b)(1): Lack of Subject Matter Jurisdiction

Federal courts are courts of limited jurisdiction and may only exercise jurisdiction when specifically authorized to do so. *See Castaneda v. Immigration & Naturalization Serv.*, 23 F.3d 1576, 1580 (10th Cir. 1994). This court's jurisdiction is established by the United States Constitution and by acts of Congress. *See United States v. Hardage*, 58 F.3d 569, 574 (10th Cir. 1995).

A party who seeks to invoke federal jurisdiction bears the burden of establishing that such jurisdiction is proper. *See Basso v. Utah Power & Light Co.*, 495 F.2d 906, 909 (10th Cir. 1974).

When federal jurisdiction is challenged, plaintiff bears the burden of showing why the case should not be dismissed. *See Penteco Corp. v. Union Gas Sys.*, 929 F.2d 1519, 1521 (10th Cir. 1991).

“A court lacking jurisdiction must dismiss the cause at any stage of the proceeding in which it becomes apparent that jurisdiction is lacking.” *Scheideman v. Shawnee County Bd. of County Comm'rs*, 895 F. Supp. 279, 280 (D. Kan. 1995) (citing *Basso*, 495 F.2d at 909); Fed. R. Civ. P. 12(h)(3).

B. Rule 12(b)(6): Failure to State a Claim

The court will dismiss a cause of action for failure to state a claim only when it appears beyond a doubt that the plaintiff can prove no set of facts in support of the theory of recovery that would entitle him or her to relief, *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); *Maher v. Durango Metals, Inc.*, 144 F.3d 1302, 1304 (10th Cir. 1998), or when an issue of law is dispositive. *Neitzke v. Williams*, 490 U.S. 319, 326 (1989). The court accepts as true all well-pleaded facts, as distinguished from conclusory allegations, *Maher*, 144 F.3d at 1304, and all reasonable inferences from those facts are viewed in favor of the plaintiff. *Swanson v. Bixler*, 750 F.2d 810, 813 (10th Cir. 1984). The issue in resolving a motion such as this is not

whether the plaintiff will ultimately prevail, but whether he or she is entitled to offer evidence to support the claims. *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974), *overruled on other grounds*, *Davis v. Scherer*, 468 U.S. 183 (1984).

II. Analysis

Pursuant to Federal Rule of Civil Procedure 12(b)(1), defendant moves to dismiss plaintiff's suit on the basis of sovereign immunity.

The Eleventh Amendment to the United States Constitution bars suits in federal court against a state, its agencies, or its officers. *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 66 (1989); *Klein v. Univ. of Kan. Med. Ctr.*, 975 F. Supp. 1408, 1415 (D. Kan. 1997). Three exceptions exist to a state's sovereign immunity from suit. A state may waive its immunity and thereby consent to a plaintiff's suit in federal court. *Alden v. Maine*, 527 U.S. 706, 755 (1999). Also, Congress may abrogate a state's sovereign immunity "when it both unequivocally intends to do so and acts pursuant to a valid grant of constitutional authority." *Bd. of Trustees of Univ. of Ala. v. Garrett*, 531 U.S. 356, 363 (2001). Finally, the Supreme Court's decision in *Ex Parte Young*, 209 U.S. 123 (1908), permits an individual to seek prospective injunctive relief against a state official for ongoing violations of federal law.

None of the exceptions are applicable in plaintiff's case. The State of Kansas has not waived its Eleventh Amendment immunity. *Prager v. State of Kan., et al.*, 271 Kan. 1, 33, 20 P.3d 39 (2001). Nor has Congress abrogated Kansas's immunity for the cause of action asserted by plaintiff. Lastly, plaintiff has filed suit against the State of Kansas, rendering *Ex Parte Young* inapplicable. The court concludes, therefore, that the Eleventh Amendment bars plaintiff's suit against the State of Kansas, and that defendant's Rule 12(b)(1) motion is granted based on the absence of the court's jurisdiction over defendant.

Even had the court not granted defendant's motion pursuant to Rule 12(b)(1), the court would dismiss plaintiff's case according to Rule 12(b)(6). Plaintiff's complaint states that he brings claims under the First and Fourteenth Amendments. However, plaintiff has proffered no evidence and has not alleged *any* facts in his case. The only specific reference plaintiff makes in his complaint is that he brings his suit "due to discrimination caused by the Leavenworth County Leavenworth Kansas courts systems." The court accepts as true all well-pleaded facts, but here plaintiff offers no facts describing defendant's alleged wrongful actions or plaintiff's alleged injuries. Consequently, the court grants defendant's motion to dismiss plaintiff's case under Rule 12(b)(6) as well as Rule 12(b)(1).

III. Order

IT IS THEREFORE ORDERED that Defendant State of Kansas' Motion to Dismiss (Doc. 8) is granted.

Dated this 12th day of May 2004, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge