

custody of Katrina with the Department. [Comp. at ¶¶ 29-32]. They seek injunctive and monetary relief.

All Plaintiffs have filed Motions to Proceed In Forma Pauperis in this action. Plaintiffs Tracy Abbott's and Yvonne Jones's Motions are hereby GRANTED.¹ For the reasons that follow, however, I recommend that the action be DISMISSED.

The absolute immunity afforded judges in the performance of their judicial duties is well-settled. *Harlow v. Fitzgerald*, 457 U.S. 800, 807 (1982) (citing *Stump v. Sparkman*, 435 U.S. 349 (1978)). It has also long been the case that prosecutors benefit from absolute immunity. *Id.* (citing *Butz v. Economou*, 438 U.S. 478, 508-12 (1978)). Those courts that have addressed the issue have extended that immunity to social workers performing quasi-prosecutorial functions with respect to child protection proceedings. *Eg.*, *Salyer v. Patrick*, 874 F.2d 374 (6th Cir. 1989); *Vosburg v. Department of Soc. Serv.*, 884 F.2d 133 (4th Cir. 1989); *Meyers v. Contra Costa County Dept. of Soc. Serv.*, 812 F.2d 1154 (9th Cir.), *cert. denied*, 484 U.S. 829 (1987). Accordingly, the Complaint is properly dismissed to the extent it seeks monetary damages against Defendants Maine District Court Judge and Mosca. 28 U.S.C. § 1915(e)(2)(B)(iii) (permitting summary dismissal of in forma pauperis proceedings that seek monetary damages from a defendant who is immune from such relief).

Plaintiffs' claims against Defendant Concannon are clearly an attempt to impose liability solely by virtue of his supervisory position within the Department of Human Services. There is no *respondeat superior* liability under section 1983. *Monell v. Department of Soc. Serv.*, 436

¹ A recommendation that the Court deny Plaintiff Lewis Abbott's Motion to Proceed In Forma Pauperis is being issued this date.

U.S. 658, 691 (1978). “Liability in damages can only be imposed upon officials who were involved personally in the deprivation of constitutional rights.” *Ramirez v. Colon*, 21 F. Supp. 2d 96, 98 (D.P.R. 1997) (citing *Pinto v. Nettleship*, 737 F.2d 130, 132 (1st Cir. 1984)). There is no allegation in this case that Defendant Concannon had any personal involvement in the child protection action relative to Katrina Fitzsimmons. Accordingly, Plaintiffs have failed to state a claim against Defendant Concannon upon which relief may be granted, and the Complaint is therefore properly dismissed as to this Defendant. 28 U.S.C. § 1915(e)(2)(B)(ii).

Finally, Plaintiffs’ claim for injunctive relief is really seeking an order overturning decisions issued in the state court. Section 1983 does not provide an alternate form of appellate review of state court decisions. *Torres Irizarry v. Toro Goyco*, 425 F. Supp. 366 (D.P.R. 1976) (citations omitted). Plaintiffs’ claim for injunctive relief is also properly dismissed for failure to state a claim upon which relief may be granted. 28 U.S.C. § 1915(e)(2)(B)(ii).

Conclusion

For the foregoing reasons, I hereby recommend Plaintiffs Tracy Abbott’s, Katrina Fitzsimmons’s, and Yvonne Jones’s Complaint be DISMISSED in its entirety pursuant to 28 U.S.C. section 1915(e)(2)(B).

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1988) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

Margaret J. Kravchuk
United States Magistrate Judge

Dated on: March 31, 2000

STNDRD

U.S. District Court
District of Maine (Bangor)

CIVIL DOCKET FOR CASE #: 00-CV-59

ABBOTT, et al v. CONCANNON, et al
Assigned to: JUDGE GENE CARTER
Demand: \$0,000
Lead Docket: None
Dkt# in other court: None

Filed: 03/28/00
Jury demand: Plaintiff
Nature of Suit: 440
Jurisdiction: Federal Question

Cause: 42:1983 Civil Rights Act

TRACY ABBOTT, As Mother and
Next Friend of Katrinia
Fitzsimmons
 plaintiff

TRACY ABBOTT
[COR LD NTC] [PRO SE]
171 Red Bridge Road
Ellsworth, ME 04605

LEWIS ABBOTT
 plaintiff

LEWIS ABBOTT
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YVONNE JONES
 plaintiff

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v.

KEVIN CONCANNON, Individually,
and in his capacity as
Commissioner of the Maine
Department of Human Services
 defendant

JENNIFER K MOSCA, Individually,
and in her capacity as a case
worker with the Maine
Department of Human Services
defendant

JANE DOE, As Judge of the
Maine District Court, District
Five, Division of Central