

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

HAROLD STANLEY,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 06-0752-CV-W-GAF
)	
HON. JACK GRATE, et al.,)	
)	
Defendants.)	

ORDER

Pending before the Court is Plaintiff Harold Stanley’s (“Plaintiff”) Motion for Partial Summary Judgment against Defendant Marcia Stanley (“Defendant”) filed pursuant to Fed. R. Civ. P. 56. (Doc. #39).

A federal court can dismiss a suit for lack of subject matter jurisdiction where a plaintiff’s claim his constitutional rights were violated does not contain sufficient allegations of state action.¹ See Lubin v. Crittenden Hosp. Ass’n, 713 F.2d 414, 415-16 (8th Cir. 1983); Briscoe v. Bock, 540 F.2d 392, 394, 396 (8th Cir. 1976); and Nowlin v. Prof’l Auto Sales, Inc., 496 F.2d 16, 17 (8th Cir. 1974) (affirming dismissal for lack of subject matter jurisdiction where plaintiff’s claims did not sufficiently allege state action).

In this Court’s January 9, 2007 Order, the Court held Plaintiff’s constitutional claims against Defendant’s Co-defendant Les G. Wight II (“Wight”) could not proceed because Wight was a private actor under the circumstances. (Doc. #32 pp.8-11). Plaintiff’s present claims against

¹Fed. R. Civ. P. 12(h)(3) requires a court to dismiss an action, whether or not the parties raise the issue, if the court determines it lacks subject matter jurisdiction over the action.

Defendant are identical to those he made against Wight. (Doc. #1). The same analysis the Court applied in dismissing Plaintiff's claims against Wight applies here. Plaintiff's claim for Intentional Infliction of Emotional Distress also fails because it is based on state law and the Court has no original jurisdiction in this case. Accordingly, all Plaintiff's claims against Defendant are DISMISSED.

IT IS SO ORDERED.

s/ Gary A. Fenner _____
GARY A. FENNER, JUDGE
UNITED STATES DISTRICT COURT

DATED: November 9, 2007