

Plaintiff seeks an injunction, a writ of prohibition, and a writ of mandamus against Judge Stremel. *Id.* at 4. The relief sought is “permanent removal from the bench.” *Id.*

Judge Stremel seeks dismissal of the Petition on the grounds that it does not state a cognizable claim against him. First, the doctrine of judicial immunity forms an absolute bar to Plaintiff’s suit. Second, Plaintiff’s suit is an impermissible collateral attack on the protective order obtained by Price, and the legal proceedings related thereto. Finally, Plaintiff has not alleged sufficient facts to support injunctive relief. For these reasons, Plaintiff’s suit should be dismissed.

II. LEGAL STANDARD

In evaluating a motion to dismiss for failure to state a claim, the court assumes that all of the averments are true and liberally grants the pleader all reasonable inferences therefrom. *McIntosh v. LaBundy*, 161 S.W.3d 413, 415 (Mo. App. W.D. 2005). Nonetheless, Missouri remains a “fact pleading” state, requiring that “the petition contain a short and plain statement of the facts showing that the pleader is entitled to relief.” *ITT Commercial Fin. Corp. v. Mid-Am. Marine Supply Corp.*, 854 S.W.2d 371, 379 (Mo. 1993) (internal quotation omitted). “Under Missouri pleading rules, to state a claim, a petition must invoke substantive principles of law entitling the plaintiff to relief and allege ultimate facts informing the defendant of what the plaintiff

will attempt to establish at trial.” *Charron v. Holden*, 111 S.W.3d 553, 555 (Mo. App. W.D. 2003). “Courts disregard conclusions not supported by facts in determining whether a petition states a cause of action.” *Williams v. Barnes & Noble, Inc.*, 174 S.W.3d 556, 560 (Mo. App. W.D. 2005).

III. ARGUMENTS AND AUTHORITIES

a. Plaintiff's claims are barred by the doctrine of judicial immunity.

“Absolute judicial immunity has been adopted by Missouri as recognized by the U.S. Supreme Court. *White v. Camden County Sheriff's Dept.*, 106 S.W.3d 626, 633 (Mo.App. S.D. 2003). “[J]udicial immunity is an immunity from suit, not just from ultimate assessment of damages.” *Mireles v. Waco*, 502 U.S. 9, 11 (1991). This immunity is not defeated “by allegations of bad faith or malice.” *Id.* For actions taken in a judicial capacity, a judge is immune from all actions except those in the complete absence of jurisdiction. *State ex rel. Raack v. Kohn*, 720 S.W.2d 941, 944 (Mo. 1986). “A judge with subject matter jurisdiction has judicial immunity from all actions taken, even when acting in excess of his jurisdiction.” *Id.*

Here, there can be no doubt that Judge Stremel was acting within his judicial capacity in presiding over the protective order case. All of Plaintiff's allegations arise from his handling of the case. Nor is there any basis to conclude that he was acting without subject matter jurisdiction. In Missouri,

circuit courts have subject matter jurisdiction “over *all* cases and matters, civil and criminal.” *J.C.W. ex rel. Webb v. Wyciskalla*, 275 S.W.3d 249, 253 (Mo. 2009) (citing MO. CONST. art V, § 14). Thus, he is entitled to immunity for all decisions made in the case. Plaintiff’s suit must therefore be dismissed.

b. Plaintiff’s suit is an impermissible collateral attack on the order of protection proceedings.

‘A judgment rendered by a court having jurisdiction of the parties and subject matter ... is not open to collateral attack’. *Reimer v. Hayes*, 365 S.W.3d 280, 283 (Mo.App. W.D. 2012). Nor may a party “collaterally attack alleged errors or defects prior to judgment.” *McAllister v. Garrett*, 591 S.W.2d 31, 33 (Mo.App. S.D. 1979). “[A]n action for declaratory judgment will not be tolerated as a subterfuge or facade for litigating an issue to which a former final judgment is conclusive.” *Flanary v. Rowlett*, 612 S.W.2d 47, 50 (Mo.App. W.D. 1981). Nor may a party challenge perceived errors in a case by filing a subsequent action in lieu of an appeal. *McAllister*, 591 S.W.2d at 33.

Plaintiff here is attempting to do exactly that. All of his allegations against Judge Stremel concern the prior order of protection proceedings. Any error in these proceedings must be addressed with an appeal, not a subsequent lawsuit. As a result, dismissal is required.

c. Plaintiff's Petition does not meet the requirements for an injunction.

To obtain a permanent injunction, Plaintiff must show that he does not have an adequate remedy at law. *City of Greenwood v. Martin Marietta Materials, Inc.*, 311 S.W.3d 258, 265 (Mo.App. W.D. 2010). A preliminary injunction requires a showing of likelihood of success on the merits. *State ex rel. Dir. of Revenue, State of Mo. v. Gabbert*, 925 S.W.2d 838, 839 (Mo. 1996). Plaintiff cannot meet either of these requirements. He has a remedy at law for challenging the alleged errors committed by Judge Stremel in the course of the Price protective order case, namely the right to appeal the order. He certainly has not shown a likelihood of success on the merits, as mere alleged errors in conducting a hearing and deciding a case will not support the extraordinary remedy of an injunction against a sitting judge, let alone one as sweeping as "permanent removal from the bench", as sought by Plaintiff. Thus, Plaintiff's proposed injunction will not lie.

IV. CONCLUSION

For the reasons stated herein, Plaintiff's claims against Judge Gregory Stremel fail as a matter of law, and should be dismissed with prejudice.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I further certify that on this date, the foregoing document and the notice of electronic filing were mailed by first-class mail to the following non-CM/ECF participants:

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