



Strickland v. WHNS Fox Carolina et al

2018 | Cited 0 times | D. South Carolina | March 7, 2018

UNITED STATES DISTRICT COURT DISTRICT OF SOUTH CAROLINA Cale Marcus Strickland,
Plaintiff, vs. WHNS Fox Carolina, Kelly Bean, Les Dann,
Defendants.

C/A No. 2:17-3261-MGL-KFM REPORT AND RECOMMENDATION The plaintiff, proceeding pro se, seeks relief pursuant to 42 U.S.C. § 1983. Pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B), and Local Civil Rule 73.02(B)(2)(d) (D.S.C.), this magistrate judge is authorized to review all pretrial matters in cases filed under 42 U.S.C. § 1983, and submit findings and recommendations to the District Court.

BACKGROUND The plaintiff filed this defamation action pursuant to 42 U.S.C. § 1983, alleging that an article was published by WHNS Fox Carolina that was false, and that the “material has had a damaging attitude on the area of life I walk around.” (doc. 1 at 5). All of the defendants are located in South Carolina (id., at 2). The plaintiff seeks damages of \$1,650,000.00 (id. at 6).

DISCUSSION The plaintiff filed this action pursuant to 28 U.S.C. § 1915, the in forma pauperis statute. This statute authorizes the District Court to dismiss a case if it is satisfied that the action “fails to state a claim on which relief may be granted,” is “frivolous or malicious,” or “seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B). As a pro se litigant, the plaintiff’s pleadings are accorded liberal construction and held to a less stringent standard than formal pleadings drafted by attorneys. See *Erickson v. Pardus*, 551 U.S. 89 (2007) (per curiam). However, even under this less stringent standard, the pro se pleading remains subject to summary dismissal. The requirement of liberal construction does not mean that the Court can ignore a clear

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failure in the pleading to allege facts which set forth a claim cognizable in a federal district court. See *Weller v. Dep’t of Soc. Servs.*, 901 F.2d 387 (4th Cir. 1990).

This complaint is filed pursuant to 42 U.S.C. § 1983, which “‘is not itself a source of substantive rights,’ but merely provides ‘a method for vindicating federal rights elsewhere conferred.’” *Albright v. Oliver*, 510 U.S. 266, 271 (1994) (quoting *Baker v. McCollan*, 443 U.S. 137, 144 n. 3 (1979)). A civil



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action under § 1983 “creates a private right of action to vindicate violations of ‘rights, privileges, or immunities secured by the Constitution and laws’ of the United States.” *Rehberg v. Paulk*, 132 S.Ct. 1497, 1501 (2012). To state a claim under § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

The complaint should be dismissed for failure to state a claim on which relief may be granted. The plaintiff cannot bring his defamation claim in this federal court pursuant to § 1983. An alleged act of defamation of character or injury to reputation is not actionable under 42 U.S.C. § 1983. *Paul v. Davis*, 424 U.S. 693, 697–710 & n. 3-4 (1976). Civil rights statutes, such as 42 U.S.C. § 1983, do not impose liability for violations of duties of care arising under a state's tort law. *DeShaney v. Winnebago Cty. Dep't of Soc. Serv.*, 489 U.S. 189, 200–03 (1989).

Further, state law claims of defamation and slander are actionable in this Court only if diversity jurisdiction is satisfied. See *Cent. W. Va. Energy Co. v. Mountain State Carbon, LLC*, 636 F.3d 101, 103 (4th Cir. 2011). With the exception of certain class actions, the diversity statute requires complete diversity of parties and an amount in controversy in excess of seventy-five thousand dollars (\$75,000.00). See *id.*; 28 U.S.C. § 1332(a). Complete diversity of parties in a case means that the citizenship of every plaintiff must be different from the citizenship of every defendant. *Central West Virginia Energy Co.*, 636 F.3d at 103. Here, the plaintiff alleges that all of the parties are domiciled in South Carolina (doc. 10). Thus, complete diversity is lacking, and this Court has no

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diversity jurisdiction over this action.

RECOMMENDATION It is recommended that the District Court dismiss this action without prejudice. The plaintiff's attention is directed to the important notice on the next page.

IT IS SO RECOMMENDED.

s/ Kevin F. McDonald United States Magistrate Judge March 7, 2018 Greenville, South Carolina

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Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n



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the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’ ” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4 th

Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk United States District Court 300 East Washington Street, Room 239

Greenville, South Carolina 29601 Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).

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