UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA

SOUTHERN DIVISION

No. 7:23-CV-125-D WILLIAM D. WOOLENS,

Plaintiff, V. CHARLENE DENISE RUCKLE, WANDA MOORE, AND JILL SWITZER,

Defendants.

MEMORANDUM AND RECOMMENDATION

This matter is before the court on Plaintiffs' application to proceed informa pauperis, [DE- 2] , and for frivolity review of the complaint, [DE-I], pursuant to 28 U.S.C. § 1915(e)(2)(B). Plaintiff has demonstrated appropriate evidence of inability to pay the required court costs, and it is recommended the application to proceed in forma pauperis be allowed. However, it is also recommended that the complaint be dismissed for failure to state a claim and lack of jurisdiction.

I. STANDARD OF REVIEW Pursuant to 28 U.S.C. § 1915(e)(2)(B), the court shall dismiss the complaint if it is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks money damages from a defendant immune from such recovery. 28 U.S.C. § 1915(e)(2)(B)(i-iii); see Adams v. Rice, 40 F.3d 72, 74 (4th Cir. 1994) (explaining Congress enacted predecessor statute 28 U.S.C. § 1915(d) "to prevent abuse of the judicial system by parties who bear none of the ordinary financial disincentives to filing meritless claims"). A case is frivolous if it lacks an arguable basis in either law or fact. See Neitzke v. Williams, 490 U.S. 319, 325 (1989); McLean v. United States, 566 F.3d 391, 399 (4th Cir. 2009) ("Examples of frivolous claims include those whose factual allegations are ' so nutty,' 'delusional,' or 'wholly fanciful ' as to be simply 'unbelievable. " '). A claim lacks an arguable basis in law when it is "based on an indisputably meritless legal theory." Neitzke , 490 U.S. at 327. A claim lacks an arguable basis in fact when it describes "fantastic or delusional scenarios." Id. at 327-28.

In determining whether a complaint is frivolous, "a court is not bound, as it usually is when making a determination based solely on the pleadings, to accept without question the truth of the Plaintiff's allegations." Denton v. Hernandez, 504 U.S . 25 , 32 (1992). Rather, the court may find a complaint factually frivolous "when the facts alleged rise to the level of the irrational or the wholly incredible,

whether or not there are judicially noticeable facts available to contradict them." Id. "The word 'frivolous' is inherently elastic and not susceptible to categorical definition .. .. The term's capaciousness directs lower courts to conduct a flexible analysis, in light of the totality of the circumstances, of all factors bearing upon the frivolity of a claim." Nagy v. Fed Med Ctr. Butner, 376 F.3d 252, 256-57 (4th Cir. 2004) (some internal quotation marks omitted). In making its frivolity determination, the court may "apply common sense." Nasim v. Warden. , Md House o/Correction, 64 F.3d 951 , 954 (4th Cir. 1995).

In order to state a claim on which relief may be granted, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face. "' Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell At!. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). "Factual allegations must be enough to raise a right to relief above the speculative level .. . " Twombly, 550 U.S. at 555. While a complaint need not contain detailed factual allegations, the plaintiff must allege more than labels and conclusions. Id.

In the present case, Plaintiff is proceeding pro se, and pleadings drafted by a pro se litigant

2 are held to a less stringent standard than those drafted by an attorney. See Haines v. Kerner, 404 U.S. 519, 520 (1972). This court is charged with liberally construing a pleading filed by a pro se litigant to allow for the development of a potentially meritorious claim. See id; Estelle v. Gamble, 429 U.S. 97, 106 (1976); Noble v. Barnett, 24 F.3d 582, 587 n.6 (4th Cir. 1994). However, the principles requiring generous construction of pro se complaints are not without limits; the district courts are not required "to conjure up questions never squarely presented to them." Beaudett v. City of Hampton, 775 F.2d 1274, 1278 (4th Cir. 1985).

II. ANALYSIS A. Background

Plaintiff, William D. Woolens, alleges that his civil rights were violated because he was never issued a subpoena from the New Hanover County Sheriff noticing Plaintiff to appear in a state court child support proceeding on August 31 , 2011. Com pl. [DE-1] at 2. Plaintiff also complains of paternity, social security, and child support fraud and racketeering, all related to the August 31 , 2011 child support proceeding in which support was awarded against Plaintiff to Defendant Charlene Ruckle. Id. Plaintiff specifically alleges that Defendant Ruckle committed local, state, and federal paternity and social security fraud in two states: first, in West Virginia by submitting a birth certificate showing Plaintiff as the father of her child without DNA testing on August 5, 2002, and obtaining a fraudulent temporary order for child support; and second, in North Carolina by obtaining an illegal child support obligation against Plaintiff in New Hanover County from January 1, 2011 to August 31, 2011 , reopening a closed child support case for Defendant's and her ex-husband's daughter, and involving a collection agency to obtain illegal garnishments from November 2011 to the present. Compl. Suppl. [DE-1-1] at 4. Plaintiff seeks (1) to recover his child support payments dating back to August 31 , 2011 , which he contends are illegal

3 garnishments; (2) the prosecution of Defendants by the Attorney General; and (3) the pursuit of fraud charges by the Inspector General against Defendants for using his social security number illegally on August 31, 2011. Comp 1. [DE-1] at 3. Attached to Plaintiff's complaint are several documents Plaintiff contends support his racketeering charge related to paternity and the child support proceeding. [DE-1-1 to -1-12]. Plaintiff filed a substantially similar case in this court in December 2021, against Defendant Ruckle that was dismissed for lack of jurisdiction and failure to state a claim. See Woolens v. Ruckle/Cliborne, No. 7:21-CV-216-M, 2022 WL 1105670, at *1 (E.D.N.C. Apr. 13 , 2022).

B. Discussion

First, to the extent Plaintiff requests that the court order the Attorney General to criminally prosecute Defendants or the Inspector General to investigate Defendants, the court lacks jurisdiction to do so. Criminal prosecutions are initiated by prosecutors, not by federal courts. See Jones v. Gen. Elec. Co., No. CV ELH-19-196, 2019 WL 6918490, at *9 (D. Md. Dec. 19, 2019) (concluding that "because 'a private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another,' Linda R.S. v. Richard D., 410 U.S. 614, 619, 93 S. Ct. 1146, 35 L. Ed. 2d 536 (1973), '[a] private person may not initiate a criminal action in the federal courts.'") (citing Ras-Selah: 7 Tafari: El v. Glasser and Glasser PLC, 434 F. App'x 236, 236 (4th Cir. 2011) (per curiam); Conn. Action Now, Inc. v. Roberts Plating Co., 457 F.2d 81, 86-87 (2d Cir. 1972) ("It is a truism ... that in our federal system crimes are always prosecuted by the Federal Government[.]")). Likewise, investigations are not initiated by the courts. Accordingly, Plaintiff's criminal prosecution and fraud investigation claims should be dismissed.

Plaintiff next seeks repayment of garnishments enforced against him as a result of allegedly fraudulent child support obligations. Plaintiff couches his claim as one for racketeering under the

4 Racketeer Influenced and Corrupt Organizations Act ("RICO"). However, the essence of Plaintiff's complaint is that he disputes the validity of the child support orders Defendant obtained against him in West Virginia and North Carolina and, thus, his claim is barred by the Rooker Feldman doctrine.

Under the Rooker-Feldman doctrine, "lower federal courts are precluded from exercising appellate jurisdiction over final state-court judgments." Lance v. Dennis, 546 U.S. 459,463 (2006) (per curiam); see Rooker v. Fid. Tr. Co., 263 U.S. 413 (1923); D.C. Court of Appeals v. Feldman, 460 U.S. 462 (1983). Jurisdiction to review such decisions lies with superior state courts and, ultimately, the United States Supreme Court. See 28 U.S.C. § 1257(a). The Rooker-Feldman doctrine applies to "cases brought by state-court losers complaining of injuries caused by state court judgments rendered before the district court proceedings commenced and inviting [federal] court review and rejection of those judgments." Thana v. Bd. of License Comm 'rs for Charles Cnty., Md., 827 F.3d 314, 319 (4th Cir. 2016) (quotation marks omitted) (quoting Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284 (2005)). The doctrine prevents federal courts from considering "issues actually presented to

and decided by a state court, but also . . . constitutional claims that are inextricably intertwined with questions ruled upon by a state court, as when success on the federal claim depends upon a determination that the state court wrongly decided the issues before it." Plyer v. Moore, 129 F.3d 728, 731 (4th Cir. 1997) (quotation marks and citations omitted). "[I]f the state-court loser seeks redress in the federal district court for the injury caused by the state-court decision, his federal claim is, by definition, 'inextricably intertwined' with the state-court decision, and is therefore outside of the jurisdiction of the federal district court." Davani v. Va. Dep 't ofTransp., 434 F.3d 712, 719 (4th Cir. 2006).

Plaintiff's request for repayment from illegal garnishments is "inextricably intertwined"

5 with the state court child support orders, and thus, Plaintiff must bring his challenge through the state courts. See Mendives v. Bexar Cnty., No. 5:21-CV-00356-JKP-RBF, 2021 WL 4708079, at *4 (W.D. Tex. June 23 , 2021) (finding claims, including a claim under the False Claims Act that plaintiff's ex-wife and her attorney made certain false claims in their application for child support, were barred by the Rooker-Feldman doctrine because they "invite district court review and rejection of the state child support [garnishment and custody] judgment .. . . ") (citation omitted), report and recommendation adopted sub nom. Mendives on behalf of R. CM v. Bexar Cnty., No. SA-21-CV-0356-JKP, 2021 WL 4705175 (W.D. Tex. Oct. 8, 2021); McAllister v. North Carolina, No. 5:10-CV-79-D, 2011 WL 883166, at *4 (E.D.N.C. Mar. 11 , 2011) (concluding that plaintiff dissatisfied with a state court child support proceeding may appeal within the state court appellate system and, thereafter, to the United States Supreme Court). While the Rooker-Feldman doctrine is a narrow exception to federal subject-matter jurisdiction, Vicks v. Ocwen Loan Servicing, 676 F. App'x 167, 168 (4th Cir. 2017) (per curiam), it nevertheless precludes a federal district court from reviewing final judgments of state courts, even when a plaintiff has attempted to re-fashion his federal complaint to avoid this jurisdictional bar, Moore v. Ideal ease of Wilmington, 465 F. Supp. 2d 484, 490 (E.D.N.C. 2006) ("[A] plaintiff cannot escape the reach of Rooker-Feldman by merely arguing a different legal theory not raised in state court.") (citing Davani v. Va. Dep't ofTransp., 434 F.3d 712, 719 (4th Cir. 2006)). Plaintiff's characterization of his claims as arising under federal racketeering law does not confer jurisdiction on this court to review the state court child support or garnishment orders. Because this court is without jurisdiction to review the judicial actions of the West Virgina and North Carolina state courts, Plaintiff's complaint should be dismissed.

Alternatively, Plaintiff has failed to state a claim under RICO or 42 U.S.C. § 1983. To state

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28 a civil RICO claim under§ 1962(c), a plaintiff must allege (1) conduct, (2) an enterprise, and (3) a pattern (4) of racketeering activity (5) that causes injury to the plaintiff. Sedima v. lmrex Co., 473 U.S. 479, 496 (1985). "The statute of limitations on private civil RICO claims is four years, beginning on the date the plaintiff discovered, or should have discovered, the injury." CVLR Performance Horses,

Inc. v. W ynne, 792 F.3d 469, 476 (4th Cir. 2015); Carias v. Harrison, No. 5:13-CT-3264-FL, 2017 WL 1155749, at *10 (E.D.N.C. Mar. 27, 2017), aff'd, 705 F. App'x 181 (4th Cir. 2017). "There is no statute oflimitations provided in § 1983; rather, federal courts apply the forum state's ' most analogous' statute of limitations, generally the statute applicable to personal injury actions." Fayemi v. Offerman, 99 F. App'x 480, 481 (4th Cir. 2004) (citing Owens v. Okure, 488 U.S. 235 (1989); Wilson v. Garcia, 471 U.S. 261,276 (1985)). "In North Carolina, the statute of limitations for actions under 42 U.S.C. § 1983 (2000) is three years." Id. (citing Love v. Alamance Cnty. Bd. of Educ., 757 F.2d 1504, 1506 (4th Cir. 1985)); see Brooks v. Stanley, No. 7:19-CV-195-FL, 2020 WL 2430947, at *4 (E.D.N.C. May 12, 2020) (noting that a three year "statute of limitations applies to all § 1983 claims). Additionally, "[u]nder federal law, a cause of action accrues and the statute of limitation commences 'when the plaintiff possesses sufficient facts about the harm done to him that reasonable inquiry will reveal his cause of action."' Fayemi, 99 F. App'x at 481 (citing Nasim , 64 F.3d at 955).

The court may raise a statute of limitations defense sua sponte when a complaint is filed in formapauperis pursuant to U.S.C. § 1915. See Eriline Co. SA. v. Johnson, 440 F.3d 648, 655 (4th Cir. 2006) (citing Nasim, 64 F.3d at 953-54). Plaintiff's claims are based on acts he alleged occurred more than a decade ago. First, Plaintiff alleges Defendants obtained a fraudulent child support order in West Virginia in August 2002 and obtained a fraudulent child support order in North Carolina in August 2011. Com pl. [DE-1-1] at 4. In recommending dismissal of Plaintiff's

7 pnor case, the court noted that documents attached to Plaintiff's complaint contained correspondence between Plaintiff and the West Virginia Bureau for Child Support Enforcement from July 2015 regarding his child support case with Monongalia County, and a garnishment for child support issued to Plaintiff's employer in November 2011 by New Hanover County, which indicated that Plaintiff had discovered, or should have discovered, the alleged injury more than four years prior to the filing of this case. See Woolens v. Ruckle/Cliborne, No. 7:21-CV-216-M, 2022 WL 1112225, at *4 (E.D.N.C. Mar. 24, 2022), report and recommendation adopted, No. 7:21-CV-00216-M, 2022 WL 1105670 (E.D.N.C. Apr. 13 , 2022). While in the present case, Plaintiff substituted correspondence dated July 7, 2020 from the West Virginia Bureau for Child Support Enforcement in an apparent attempt to avoid a dismissal on statute oflimitations grounds, the court takes judicial notice of Plaintiff's previously filed documents. See Epcon Homestead, LLC v. Town o/Chapel Hill, No. 21-1713 , 2023 WL 2564355, at *2 (4th Cir. Mar. 21 , 2023) (court may take judicial notice of matters in the public record). Accordingly, in addition to being barred by Rooker-Feldman, Plaintiff's RICO and § 1983 claims are time-barred.

III. CONCLUSION For the reasons stated herein, it is recommended that the motion to proceed in forma pauperis be allowed and that the complaint be dismissed for lack of subject matter jurisdiction and, alternatively, for failure to state a claim.

IT IS DIRECTED that a copy of this Memorandum and Recommendation be served on Plaintiff. You shall have until April 11, 2023, to file written objections to the Memorandum and Recommendation.

The presiding district judge must conduct his or her own review (that is, make a de novo determination) of those portions of the Memorandum and Recommendation to which objection is properly made and may accept, reject, or modify the determinations in the

8 Memorandum and Recommendation; receive further evidence; or return the matter to the magistrate judge with instructions. See, e.g., 28 U.S.C. § 636(b)(l); Fed. R. Civ. P. 72(b)(3); Local Civ. R. 1. 1 (permitting modification of deadlines specified in local rules), 72.4(b), E.D.N.C.

If you do not file written objections to the Memorandum and Recommendation by the foregoing deadline, you will be giving up the right to review of the Memorandum and Recommendation by the presiding district judge as described above, and the presiding district judge may enter an order or judgment based on the Memorandum and Recommendation without such review. In addition, your failure to file written objections by the foregoing deadline will bar you from appealing to the Court of Appeals from an order or judgment of the presiding district judge based on the Memorandum and Recommendation. See Wright v. Collins, 766 F.2d 841, 846-47 (4th Cir. 1985).

Submitted, this the 28th day of March, 2023.

United States Magistrate Judge

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