



Dooley v. Dooley

2020 | Cited 0 times | S.D. Georgia | October 27, 2020

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION

ANTONIO DESHONE DOOLEY,

Plaintiff, CIVIL ACTION NO.: 2:20-mc-2 v. GEORGIA B. DOOLEY,

Defendant.

ORDER AND MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff, who is currently housed at the Stephens County Jail in Toccoa, Georgia, filed a Complaint on a 42 U.S.C. § 1983 form. Doc. 1. For the reasons which follow, I RECOMMEND the Court DISMISS Plaintiff's Complaint for failure to state a claim, DIRECT the Clerk of Court to CLOSE this case and enter the appropriate judgment of dismissal, and DENY Plaintiff in forma pauperis status on appeal. In addition, I DENY Plaintiff's Motion for Leave to Proceed in Forma Pauperis in this Court. Doc. 2.

PLAINTIFF'S CLAIMS

1 Plaintiff contests actions allegedly taken by Georgia B. Dooley, who Plaintiff does not identify in any manner. It appears Plaintiff wishes to have an executed power of attorney revoked. Doc. 1 at 3. However, Plaintiff is attacking events occurring in Stephens County, Georgia. Docs. 1, 1-1.

1 All allegations set forth here are taken from Plaintiff's Complaint, doc. 1, and are accepted as true. Waldman v. Conway, 871 F.3d 1283, 1289 (11th Cir. 2017).

STANDARD OF REVIEW A federal court is required to conduct an initial screening of all complaints filed by prisoners and plaintiffs proceeding in forma pauperis. 28 U.S.C. §§ 1915A(a), 1915(a). During the initial screening, the court must identify any cognizable claims in the complaint. 28 U.S.C. § 1915A(b). Additionally, the court must dismiss the complaint (or any portion of the complaint) that is frivolous, malicious, fails to state a claim upon which relief may be granted, or which seeks monetary relief from a defendant who is immune from such relief. Id. The pleadings of unrepresented parties are held to a less stringent standard than those drafted by attorneys and,



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therefore, must be liberally construed. *Haines v. Kerner*, 404 U.S. 519, 520 (1972). However, Plaintiff's unrepresented status will not excuse mistakes regarding procedural rules. *McNeil v. United States*, 508 U.S. 106, 113 (1993).

A claim is frivolous under § 1915(e)(2)(B)(i) if it is “without arguable merit either in law or fact.” *Napier v. Preslicka*, 314 F.3d 528, 531 (11th Cir. 2002) (quoting *Bilal v. Driver*, 251 F.3d 1346, 1349 (11th Cir. 2001)). In order to state a claim upon 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 Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). To state a claim, a complaint must contain “more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not” suffice. *Twombly*, 550 U.S. at 555.

DISCUSSION I. Whether Venue is Proper

A district court may raise the issue of defective venue sua sponte. *Collins v. Hagel*, No. 1:13-CV-2051, 2015 WL 5691076, at *1 (N.D. Ga. Sept. 28, 2015) (citing *Kapordelis v. Danzig*,

387 F. App'x 905, 906–07 (11th Cir. 2010) (affirming sua sponte transfer, in accordance with 28 U.S.C. § 1406(a), of pro se prisoner's civil rights action from New York to Georgia, and collecting cases)). When venue is improper, a court “shall dismiss, or if it be in the interest of justice, transfer such case to any district . . . in which it could have been brought.” 28 U.S.C. § 1406(a). “The court may transfer the case if (1) the proposed transferee court is one in which the action ‘could have been brought’ and (2) transfer would be ‘in the interest of justice.’” *Leach v. Peacock*, Civil Action No. 2:09cv738, 2011 WL 1130596, at *4 (M.D. Ala. Mar. 25, 2011) (citing 28 U.S.C. § 1406(a)). Trial courts generally have broad discretion in determining whether to transfer or dismiss a case. *Id.* (citing *England v. ITT Thompson Indus., Inc.*, 856 F.2d 1518, 1520 (11th Cir. 1988)).

This Court is not the proper venue to hear Plaintiff's claims against the named Defendant. Section 1391(b) of Title 28 of the United States Code sets forth the applicable venue provisions:

A civil action may be brought in (1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located; (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or (3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action. Plaintiff complains about events occurring in Stephens County, Georgia, which is within the Northern District of Georgia. 28 U.S.C. § 90(a)(1). Thus, venue is proper in that District. 28 U.S.C. § 1391(b)(2). Ordinarily, this Court would transfer this case, in the interest of justice, as venue is not proper in this Court. As explained below, in this case, because Plaintiff fails to state a claim against a viable entity, the interest of justice would not be served by transferring this case to the Northern District



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of Georgia. Plaintiff's claims would be subject to dismissal in that court, and thus, transferring this case to another district would be futile. II. Whether Plaintiff States a Claim Under § 1983 In order to state a claim for relief under § 1983, a plaintiff must satisfy two elements. First, a plaintiff must allege that an act or omission deprived him "of some right, privilege, or immunity secured by the Constitution or laws of the United States." *Hale v. Tallapoosa County*, 50 F.3d 1579, 1582 (11th Cir. 1995). Second, a plaintiff must allege that the act or omission was committed by "a person acting under color of state law." *Id.* A private actor may qualify as a "state actor" for purposes of § 1983 if one of three conditions is met: "(1) the State has coerced or at least significantly encouraged the action alleged to violate the Constitution ('State compulsion test'); (2) the private parties performed a public function that was traditionally the exclusive prerogative of the State ('public function test'); or (3) 'the State had so far insinuated itself into a position of interdependence with the [private parties] that it was a joint participant in the enterprise['] ('nexus/joint action test')." *Rayburn ex rel. Rayburn v. Hogue*, 241 F.3d 1341, 1347 (11th Cir. 2001) (quoting *NBC, Inc. v. Commc'ns Workers of Am.*, 860 F.2d 1022, 1026-27 (11th Cir. 1988)). Plaintiff makes no allegations against Defendant, and there is no indication from Plaintiff's Complaint that Defendant meets the state actor test under § 1983. Accordingly, the Court should DISMISS his Complaint in its entirety. III. Leave to Appeal in Forma Pauperis

The Court should also deny Plaintiff leave to appeal in forma pauperis. Though Plaintiff has not yet filed a notice of appeal, it is proper to address these issues in the Court's order of

dismissal. See Fed. R. App. P. 24(a)(3) (trial court may certify that appeal of party proceeding in forma pauperis is not taken in good faith "before or after the notice of appeal is filed").

An appeal cannot be taken in forma pauperis if the trial court certifies that the appeal is not taken in good faith. 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a)(3). Good faith in this context must be judged by an objective standard. *Busch v. County of Volusia*, 189 F.R.D. 687, 691 (M.D. Fla. 1999). A party does not proceed in good faith when he seeks to advance a frivolous claim or argument. See *Coppedge v. United States*, 369 U.S. 438, 445 (1962). A claim or argument is frivolous when it appears the factual allegations are clearly baseless or the legal theories are indisputably meritless. *Neitzke v. Williams*, 490 U.S. 319, 327 (1989); *Carroll v. Gross*, 984 F.2d 392, 393 (11th Cir. 1993). An in forma pauperis action is frivolous and not brought in good faith if it is "without arguable merit either in law or fact." *Napier v. Preslicka*, 314 F.3d 528, 531 (11th Cir. 2002); see also *Brown v. United States*, Nos. 407CV085, 403CR001, 2009 WL 307872, at *1-2 (S.D. Ga. Feb. 9, 2009).

Based on the above analysis of Plaintiff's claims, there are no non-frivolous issues to raise on appeal, and an appeal on these claims would not be taken in good faith. Thus, the Court should DENY Plaintiff in forma pauperis status on appeal.

CONCLUSION For the reasons set forth above, I RECOMMEND the Court DISMISS Plaintiff's Complaint in its entirety, DIRECT the Clerk of Court to CLOSE this case and enter the appropriate



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judgment of dismissal, and DENY Plaintiff in forma pauperis status on appeal. I DENY Plaintiff's Motion for Leave to Proceed in Forma Pauperis in this Court. Doc. 2.

Any objections to this Report and Recommendation shall be filed within 14 days of today's date. Objections shall be specific and in writing. Any objection that the Magistrate

Judge failed to address a contention raised in the Complaint must be included. Failure to file timely, written objections will bar any later challenge or review of the Magistrate Judge's factual findings and legal conclusions. 28 U.S.C. § 636(b)(1)(C); *Harrigan v. Metro Dade Police Dep't Station #4*, No. 17-11264, 2020 WL 6039905, at *4 (11th Cir. Oct. 13, 2020). A party waives all rights to challenge the Magistrate Judge's factual findings and legal conclusions on appeal by failing to file timely, written objections. *Harrigan*, 2020 WL 6039905, at *4; 11th Cir. R. 3-1. A copy of the objections must be served upon all other parties to the action.

Upon receipt of objections meeting the specificity requirement set out above, a United States District Judge will make a de novo determination of those portions of the report, proposed findings, or recommendation to which objection is made and may accept, reject, or modify in whole or in part, the findings or recommendations made by the Magistrate Judge. Objections not meeting the specificity requirement set out above will not be considered by a District Judge. A party may not appeal a Magistrate Judge's report and recommendation directly to the United States Court of Appeals for the Eleventh Circuit. Appeals may be made only from a final judgment entered by or at the direction of a District Judge.

SO ORDERED and REPORTED and RECOMMENDED, this 27th day of October, 2020.

BENJAMIN W. CHEESBRO UNITED STATES
MAGISTRATE JUDGE SOUTHERN DISTRICT OF GEORGIA

