



Moore et al v. Bunting

2023 | Cited 0 times | E.D. Texas | July 17, 2023

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS

SHERMAN DIVISION MARCUS MOORE and MARY LEE MOORE, Plaintiffs, v. DR. LANCE CLAY BUNTING, Defendants.

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Civil Action No. 4:23-cv-291-SDJ-KPJ

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE Pending before the Court is Moore filed a response (Dkt. 8). For the reasons that follow, the Court recommends

the Motion to Dismiss (Dkt. 4) be GRANTED.

I. BACKGROUND On April 4, 2023, Plaintiffs, proceeding pro se, filed a complaint alleging that on September 13, 2022, Plaintiffs Moore and Mary Lee Moore sign[ed] on [J]uly[] 27, 2022 that Heuser Chiropractic gave Marcus

Moore saying that was the contract [that] came from Amber [S]liger, [a]ttorney at [l]aw. at 4. Plaintiffs allege the following:

have a sign[ed] agreement contract [sic] with Marcus Moore and Mary [L]ee Moore on the date [J]uly[] 27, 2022[.] Dr. Lance Clay Bu[n]ting [lied] on July[] 27, [and] Marcus Moore and Mary [L]ee Moore [believed they were] signing a contract with attorney Amber Sliger (See Attache[d]). Id. 1

[b]eli[e]ve that Dr. Lance Clay Bu[n]ting is in a conspiracy with Id. Plaintiffs request the Court order Defendant end the power of attorney relationship with Plaintiff Marcus Moore and Id. Plaintiff asserts the basis for jurisdiction is federal question jurisdiction

on the grounds 18 U.S.C. Section 242 and 18 U.S.C. Section 1341 have been violated by Defendant. See Dkt. 1 at 3.

On May 19, 2023, Defendant filed the Motion to Dismiss (Dkt. 4), wherein Defendant argues Plaintiffs have failed to state a claim under 18 U.S.C. Sections 242 and 1341 because these statutes do



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not provide a civil cause of action. 2

See Dkt. 4 at 5. On June 7, 2023, as Plaintiffs had not timely responded to the Motion to Dismiss (Dkt. 4), the Court ordered Plaintiffs to file a response to the Motion to Dismiss (Dkt. 4) within fourteen days. See Dkt. 6 at 1 (citing LOCAL RULE CV-7(d)). On June 14, 2023, Plaintiffs filed the (Dkt. 8), which is construed by the Court as a response

to the Motion to Dismiss (Dkt. 4). Dkt. 8 at 1. In the response (Dkt. 8), Plaintiffs assert they brought their complaint against Defendant under 18 U.S.C. Sections 242 and 1341, and reallege that Defendant is in a conspiracy with a government official to kill Plaintiff Marcus Moore for n as evidenced by the agreement contract signed by Plaintiff Marcus Moore and Defendant. See Dkt. 8 at 1. Plaintiffs further assert that on January 6, 2023, the

1 in the complaint (Dkt. 1), and do not raise additional allegations or seek to amend the complaint (Dkt. 1). 2 Defendant asserts he treated Plaintiff Marcus Moore for a back pain that has persisted since a car accident two years prior and Plaintiff Marcus Moore executed a Records Release and Payment Agreement assigning Heuser Chiropractic the right and authority t See Dkt. 4 at 1. Colorado Department of Regulatory Agencies Division of Professions and Occupations wrote a lett complaint against Defendant. See id. On July 12, 2023, Plaintiffs refiled the response titled

: A Monograph on Rule 56 of the Federal is dated June 10, 2023. See id. at 2.

II. LEGAL STANDARD Rule 12(b)(6) of the Federal Rules of Civil Procedure allows a defendant to move for dismissal of an action if the plaintiff fails to state a claim upon which relief can be granted. See FED. R. CIV. P. r Rule 12(b)(6), the court -pleaded facts as true, and . . . view them in the light most favorable to the plaintiff. Inclusive Cmtys. Project, Inc. v. Lincoln Prop. Co., 920 F.3d 890, 899 (5th Cir. 2019) (quoting Campbell v. Wells Fargo Bank, N.A. questions of fact and any ambiguities in the controlling substantive law must be resolved in the Id. (quoting Lewis v. Fresno, 252 F.3d 352, 357 (5th Cir. 2001)). However, . In re Ondova Ltd., 914 F.3d 990, 993 (5th Cir. 2019) (quoting Papasan v. Allain, 478 U.S. 265, 286, -pleaded facts must permit the court Hale v. King, 642 F.3d 492, 499 (5th Cir. 2011) (quoting Ashcroft v. Iqbal, 556 U.S. line from conce Turner v. Pleasant, 663 F.3d 770, 775 (5th Cir. 2011), as

revised (Dec. 16, 2011) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). -specific task that Id. (quoting Iqbal, 556 U.S. at 663 64).

documents attached to the complaint, and any documents attached to the motion to dismiss that Allen v. Vertafore, Inc., 28 F.4th 613, 616 (5th Cir.), cert. denied, 143 S. Ct. 109 (2022) (quoting Lone Star Fund V (U.S.), L.P. v. Barclays Bank PLC, 594 F.3d 383, 387 (5th Cir. 2010)).

III. DISCUSSION A. Failure to State a Claim In the Motion to Dismiss (Dkt. 4), Defendant argues



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Plaintiffs have failed to state a claim under 18 U.S.C. Sections 242 and 1341 because these statutes do not provide a civil cause of action. See Dkt. 4 at 5. In response, Plaintiffs assert Defendant has violated 18 U.S.C. Sections 242 and 1341. See Dkt. 8 at 1; see also Dkt. 9 at 1. For the reasons that follow, the Court finds 18 U.S.C. Sections 242 and 1341 do not provide for a private cause of action and, accordingly, Plaintiff has failed to state a claim.

Plaintiffs claims under 18 U.S.C. Sections 242 and 1341 necessarily fail as they do not provide private causes of action. 18 U.S.C. § 242 criminalizes the deprivation of civil rights under the color of law, and courts have unanimously held that 18 U.S.C. § 242 does not provide or contemplate a private cause of action. See *Liu v. City of Allen*, No. 417CV00874ALMCAN, 2018 WL 2144363, at *4 (E.D. Tex. Mar. 12, 2018), R. & R. adopted, 2018 WL 2129451 (E.D. Tex. Plai Hebrew v. Houston Media

Source, Inc., No. 09-CV-3274, 2010 WL 2944439, at *1, n.2 (S.D. Tex. July 20, 2010), *aff'd*, 453 Parham v. Clinton 1141638, at *1 n. 1 (5th Cir. 2010) (per curiam))).

Similarly, 18 U.S.C. § 1341 criminalizes mail fraud, and the Fifth Circuit has long held that 18 U.S.C. § 1341 does not provide for a private cause of action. See *Bell v. Health-Mor, Inc.*, *ve* a private right of action under the Federal Mail Fraud and Lottery statutes, 18 U.S.C. ss 1302 et seq., 1341 et seq. We agree with the district court that our decision in *Napper v. Anderson*, 500 F.2d 634 (5th Cir. 1975) . . . forecloses any such claim accord *Gipson v. Deutsche Bank Nat'l Tr. Co.*, No. 3:13-CV-4820-L (BH), 2015 WL 11120535, at *17 (N.D. Tex. Jan. 5, 2015), R. & R. adopted, 2015 WL 2069583 (N.D. Tex. May 4, 2015) (collecting cases). Thus, as there are no private causes of action under these statutes, Plaintiffs necessarily fail to state claims under these statutes.

B. Leave to Amend

pleading requirements should not automatically or inflexib[ly] result in dismissal of the complaint with prejudice to re- *Hart v. Bayer Corp.*, 199 F.3d 239, 247 n.6 (5th Cir. 2000) (citation omitted). Further, a pro se litigant should generally be offered an opportunity to amend his or her complaint before it is dismissed. *Brewster v. Dretke*, 587 F.3d 764, 767 68 (5th Cir. 2009) (per curiam) (citing *Bazrowx v. Scott* Id. at 768 (quoting *Bazrowx*, 136 F.3d at 1054). The Court can deny leave to amend where such an amendment would be futile. See, e.g., , No. 4:20-cv-948, 2021 WL 2232052, *3 (E.D. Tex. Apr. 28, 2021), R. & R. adopted, 2021 WL 2224345 (E.D. Tex. June 2, 2021). In the present case, Plaintiffs allege Defendant violated two federal criminal statutes that do not provide a civil cause of action. See Dkts. 1, 8, 9. Thus, it would be futile to provide Plaintiffs leave to amend.

Furthermore, while Defendant asserts that determines that still be dismissed because they have failed to plead underlying factual circumstances with

particular[it]y as is required by Fed. R. Civ. P. 9((Dkts. 8, 9) to the Motion to Dismiss (Dkt. 4) to be 18 U.S.C. Sections 242 and 1341. Accordingly,



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the Court declines to infer a common law fraud claim, as it is not raised by Plaintiffs in any of their filings. As Plaintiff raises no additional claims that are not futile, the Court does not find it appropriate to grant Plaintiffs leave to amend.

IV. RECOMMENDATION For the foregoing reasons, the Court recommends the Motion to Dismiss (Dkt. 4) be GRANTED be DISMISSED WITH PREJUDICE.

serve and file written objections to the findings and recommendations of the magistrate judge. 28 U.S.C. § 636(b)(1)(C).

A party is entitled to de novo review by the district court of the findings and conclusions contained in this report only if specific objections are made, and failure to timely file written objections to any proposed findings, conclusions, and recommendations contained in this report shall bar an aggrieved party from appellate review of those factual findings and legal conclusions accepted by the district court, except on grounds of plain error, provided that the party has been served with notice that such consequences will result from a failure to object. *Id.*; *Thomas v. Arn*, 474 U.S. 140, 148 (1985); see also , 79 F.3d 1415, 1417 (5th Cir. 1996) (en banc), superseded by statute on other grounds, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).

