UNITED STATES DISTRJCT COURT FOR THE EASTERN DISTRJCT OF NORTH CAROLINA

WESTERN DIVISION No. 5:23-CV-256-FL EDDIE LAREECE PITTMAN,

Plaintiff, V.

ORDER AND MEMORANDUM AND RECOMMENDATION WAKE TECHNICAL COMMUNITY COLLEGE, et al. ,

Defendants.

This matter is before the court on prose Plaintiff Eddie Pittman's application to proceed in forma pauper is and for frivolity review of the complaint pursuant to 28 U.S.C. § 1915( e )(2)(B). [DE-1, 2]. Plaintiff has demonstrated appropriate evidence of inability to pay the required court costs, and the application to proceed in forma pauperis is allowed. However, it is recommended that the complaint be dismissed for failure to state a claim.

I. STANDARD OF REVIEW Pursuant to 28 U.S.C. § 1915(e)(2)(B), the court shall dismiss the complaint ifit 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 of Corr. , 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 are held to a less stringent standard than those drafted by an attorney. See Haines v. Kerner, 404

2 U.S. 519,520 (1972). The court is charged with liberally construing a pleading filed by a prose 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. DISCUSSION Pittman, a former adjunct Chemistry instructor at Wake Technical Community College ("Wake Tech") from January 2019 through May 15, 2019, claims that he was discriminated against and bullied in violation of Title VII of the Civil Rights Act, 42 U.S.C. § 1981 , and the Equal Protection Clause of the Fourteenth Amendment. Pittman alleges that students did not take his class seriously and demanded accommodations to enhance their grades. One parent of a student tried to coerce Pittman to give his son a better grade. At the end of the course, Pittman spoke with Jason Whitehead, a department official, and Pittman concluded he would not be asked to teach in Fall 2019 as promised. Wake Tech ignored internal complaints, did not provide promised feedback, and allowed students to bully Pittman without intervention. Compl. [DE-1] at 1- 5; Suppl. [DE-1- 3] at 3-4, 7, 10, 13 , 16. Pittman seeks compensatory and punitive damages for loss of income, professional humiliation, emotional and mental distress, and reputational damage. Compl. [DE-1] at 5-6. Having reviewed and liberally construed the allegations of the complaint, Pittman has failed to state a plausible claim under Title VII, § 1981, or the Equal Protection Clause.

Title VII prohibits an employer from "discharg[ing] any individual, or otherwise . discimin[ating] against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race .... " 42 U.S.C.A § 2000e-2(a). There

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U.S,C. are no allegations from which the court could reasonably infer that Pittman was discriminated against because of his race. See Meeks v. NC Admin. Off of the Cts. , No. 5:23-CV-109-FL, 2023 WL 3859008, at *4 (E.D.N.C. May 8, 2023) (finding plaintiff failed to plausibly connect her race or color to her termination and thus, failed to state a Title VII race discrimination claim), report and recommendation adopted, 2023 WL 3855596 (E.D.N.C. June 6, 2023). Furthermore, a plaintiff is required to exhaust his administrative remedies by bringing a charge with the U.S. Equal Employment Opportunity Commission ("EEOC") before filing suit. See Walton v. Harker, 33 F.4th 165 (4th Cir. 2022) (citing 42 U.S.C. § 2000e-5(b), (f); 29 U.S.C. § 633a(d)). Pittman did not plead exhaustion of remedies with the EEOC. See Allen v. Kitchen, No. 5:2 1-CV-293-BO, 2022 WL 2651841 , at *l (E.D.N.C. July 8, 2022) (dismissing Title VII claim on frivolity review for failure to exhaust remedies with the EEOC). Accordingly, Pittman has failed to state a Title VII claim against Defendants.

Pittman's claim that he was discriminated against in violation of the Equal Protection Clause of the Fourteenth Amendment is properly asserted under 42 § 1983. Section 1983 imposes liability on anyone who, under the color of state law, deprives a person "of any rights, privileges, or immunities secured by the Constitution and laws." 42 U.S.C. § 1983. However, § 1983 is not a "source of substantive rights, but a method for vindicating federal rights elsewhere conferred by those parts of the United States Constitution and federal statutes that it describes." Lambert v. Williams , 223 F.3d 257, 260 (4th Cir. 2000) (citations omitted). Thus, to state a cause of action under § 1983, a plaintiff must allege facts indicating a deprivation of rights guaranteed by the Constitution or laws of the United States and that this deprivation resulted from conduct committed by a person acting under the color of state law. West v. Atkins, 487 U.S. 42, 49-50 (1988).

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Ali The Equal Protection Clause provides that "[n]o State shall ... deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. "To succeed on an equal protection claim, a plaintiff must first demonstrate that he has been treated differently from others with whom he is similarly situated and that the unequal treatment was the result of intentional or purposeful discrimination." Morrison v. Garraghty, 239 F.3d 648, 654 (4th Cir. 2001). A plaintiff must set forth "specific, non-conclusory factual allegations that establish improper motive." Williams v. Hansen, 326 F.3d 569, 584 (4th Cir. 2003) (quoting Trulock v. Freeh, 275 F.3d 391 , 405 (4th Cir. 2001)) (internal quotations omitted).

Pittman alleges no facts from which the court could reasonably infer that Pittman was discriminated against based on improper motive. See Harris v. Manager Avcook, No. 5:15- CT-3261-D, 2016 WL 2931630, at *3 (E.D.N.C. Apr. 11 , 2016) (finding failure to set forth "specific, non-conclusory factual allegations" that establish an improper motive warranted dismissal of equal protection claim on frivolity review), report and recommendation adopted sub nom. v. Avcook, 2016 WL 2917412 (E.D.N.C. May 18, 2016). Accordingly, Pittman has failed to state an Equal Protection claim.

Finally, Pittman has likewise failed to state a§ 1981 claim. Under42 U.S.C. § 1981 , "[a]ll persons .. . shall have the same right ... to make and enforce contracts .. . as is enjoyed by white citizens," and the Supreme Court has interpreted this statute "to forbid all racial discrimination in the making of private as well as public contracts," including employment contracts. v. BC Architects Engineers, PLC, 832 F. App'x 167, 170- 71 (4th Cir. 2020), as amended (Oct. 16, 2020) (quoting Saint Francis Coll. v. Al-Khazraji, 481 U.S. 604, 609 (1987), and citing Johnson v. Ry. Express Agency , Inc., 421 U.S. 454, 460 (1975)). A§ 1981 plaintiff is not required to plead facts demonstrating that she satisfies the McDonnell Douglas framework to survive a motion to dismiss.

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- See id. (citing Swierkiewicz v. Sorema NA., 534 U.S. 506, 510-11 (2002)). Rather, "to state a§ 1981 race-discrimination claim, a plaintiff must allege facts making it plausible 'that, but for race, [she] would not have suffered the loss of a legally protected right' under the statute." Id. at 171 (quoting Comcast Corp. v. Nat'! Ass 'n of Afr. Am.-Owned Media, U.S. -, 140 S. Ct. 1009, 1019 (2020)). Pittman has pleaded no facts from which the court could reasonably infer that "but for race" he would have been extended an opportunity to teach at Wake Tech for the Fall 2019 semester. Pittman's allegations that his students bullied him for better grades and Wake Tech did not intervene or extend his contract are devoid of even a hint of racial animus. Accordingly, Pittman has failed to state a claim under § 1981.

III. CONCLUSION For the reasons stated above, Plaintiff's application to proceed informa pauper is is allowed, and it is recommended that the complaint be dismissed without prejudice.

IT IS DIRECTED that a copy of this Memorandum and Recommendation be served on Plaintiff. You shall have until August 4, 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 m the 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

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- 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).

So ordered, this the day of July, 2023.

bert B. Jone r. United States Magistrate Judge

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