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DEBORAH S. HUNT, Clerk

No. 18-1637

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

GWANJUN KIM, Plaintiff-Appellant, v. GRAND VALLEY STATE UNIVERSITY, et al., Defendants-Appellees.	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN

ORDER

Before: GRIFFIN and KETHLEDGE, Circuit Judges; HOOD, District Judge.*

GwanJun Kim, a Michigan litigant proceeding pro se, appeals the district court's judgment dismissing his complaint purportedly filed under the False Claims Act (FCA), 31 U.S.C. § 3729 et seq. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

In 2011, Kim filed an action pursuant to 42 U.S.C. § 1983 and Title VI of the Civil Rights Act of 1964 against Grand Valley State University (GVSU), the GVSU College of Education, the GVSU College of Community and Public Service, and several GVSU administrators and professors. *Kim v. Grand Valley State Univ.*, No. 1:11-cv-233 (W.D. Mich.) (*Kim I*). Kim filed numerous requests for entry of default and default judgment against the

*The Honorable Joseph M. Hood, United States District Judge for the Eastern District of Kentucky, sitting by designation.

defendants. The district court denied Kim's requests on the basis that the defendants were never served with the amended complaint and filed a timely answer after receiving requests for waiver of service. When Kim continued to file motions for entry of default and default judgment, the district court denied those motions and warned him that "[f]iling of future motions for either an entry of default or for a[n] entry of a default judgment may result in sanctions assessed against plaintiff." The district court subsequently dismissed Kim's § 1983 and Title VI claims for failure to state a claim upon which relief can be granted. On appeal, this court affirmed the district court's judgment, including the denial of Kim's default motions. *Kim v. Grand Valley State Univ.*, No. 12-1401 (6th Cir. Feb. 11, 2013) (order).

Kim moved for relief from judgment pursuant to Federal Rule of Civil Procedure 60(b)(3) and (d)(3), asserting in relevant part that the defendants acted fraudulently when they claimed to have filed a timely answer to his amended complaint. The district court denied Kim's motion, and this court affirmed. *Kim v. Grand Valley State Univ.*, No. 12-2407 (6th Cir. Sept. 11, 2013) (order). Kim then filed another motion for relief from judgment, this time pursuant to Rule 60(b)(6), and again asserted that the defendants acted fraudulently when they claimed to have filed a timely answer. The district court denied Kim's motion.

In 2016, Kim filed an action against the same defendants named in *Kim I* as well as their attorneys. *Kim v. Grand Valley State Univ.*, No. 1:16-cv-309 (W.D. Mich.) (*Kim II*). Claiming negligent and intentional misrepresentation, Kim alleged that the defendants made false representations regarding service in *Kim I*. The defendants moved to dismiss Kim's complaint and to impose sanctions. The district court granted the defendants' motion, concluding that res judicata barred Kim's claims, and placed Kim on restricted filing status. On appeal, this court concluded that the district court lacked subject-matter jurisdiction because Kim's complaint raised state common-law claims and the parties were nondiverse. *Kim v. Grand Valley State Univ.*, No. 16-2321 (6th Cir. Dec. 22, 2017) (order). Kim's case was remanded to the district court, where it was dismissed for lack of subject-matter jurisdiction.

Purporting to cure the lack of subject-matter jurisdiction, Kim filed a complaint for violations of the FCA against the same defendants named in *Kim II* in the United States District

Court for the Southern District of Ohio. That court found venue to be improper and transferred Kim's case to the United States District Court for the Western District of Michigan. Upon screening pursuant to 28 U.S.C. § 1915(e)(2), the district court dismissed Kim's complaint and placed him on restricted filing status. The district court determined that Kim again complained about the defendants' alleged misrepresentations regarding service in *Kim I* and that his claims were therefore barred by res judicata. The district court further determined, in the alternative, that Kim could not bring a qui tam action under the FCA pro se and that his FCA claims failed on the merits. Kim filed a motion for reconsideration, which the district court denied. This timely appeal followed.

Where, as here, a plaintiff is granted leave to proceed in forma pauperis, the district court "shall dismiss the case at any time if the court determines that . . . the action . . . fails to state a claim on which relief may be granted." 28 U.S.C. § 1915(e)(2)(B)(ii). We review de novo a dismissal for failure to state a claim pursuant to § 1915(e)(2)(B)(ii). *Hill v. Lappin*, 630 F.3d 468, 470 (6th Cir. 2010). To survive screening under § 1915(e)(2)(B)(ii), "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Id.* at 471 (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). The district court's application of res judicata is also reviewed de novo. *United States ex rel. Sheldon v. Kettering Health Network*, 816 F.3d 399, 407 (6th Cir. 2016).

The district court concluded that issue preclusion barred Kim's claims. Issue preclusion, also known as collateral estoppel, "bars 'successive litigation of an issue of fact or law actually litigated and resolved in a valid court determination essential to the prior judgment,' even if the issue recurs in the context of a different claim." *Taylor v. Sturgell*, 553 U.S. 880, 892 (2008) (quoting *New Hampshire v. Maine*, 532 U.S. 742, 748-49 (2001)). Issue preclusion applies if four requirements are met:

> (1) the precise issue must have been raised and actually litigated in the prior proceedings; (2) the determination of the issue must have been necessary to the outcome of the prior proceedings; (3) the prior proceedings must have resulted in a final judgment on the merits; and (4) the party against whom estoppel is sought must have had a full and fair opportunity to litigate the issue in the prior proceeding.

Cobbins v. Tenn. Dep't of Transp., 566 F.3d 582, 589-90 (6th Cir. 2009) (emphasis omitted). Those four requirements are met in this case. Kim repeatedly raised and litigated the same fraud allegations in *Kim I*. The litigation of the service-of-process issues was necessary to the outcome of *Kim I* because Kim asserted those issues as a basis for an entry of default or default judgment and for relief under Rule 60. *Kim I* resulted in a final judgment on the merits. Finally, Kim had a full and fair opportunity to litigate and has in fact litigated those issues multiple times.

Even if issue preclusion did not bar Kim's complaint, other reasons warranted dismissal of his claims purportedly brought under the FCA. "The purpose of the False Claims Act is 'to provide for restitution to the government of money taken from it by fraud.'" *United States ex rel. Augustine v. Century Health Servs., Inc.*, 289 F.3d 409, 413 (6th Cir. 2002) (quoting *United States v. Hess*, 317 U.S. 537, 551 (1943)). Kim cited 31 U.S.C. § 3729(a)(1)(B), which provides that any person who "knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim" is liable to the United States government. To state a claim under § 3729(a)(1)(B), the plaintiff must "plead a connection between the alleged fraud and an actual claim made to the government." *Chesbrough v. VPA, P.C.*, 655 F.3d 461, 473 (6th Cir. 2011). Kim's fraud allegations do not relate in any way to a claim made to the government. Furthermore, a pro se plaintiff cannot bring a claim under the FCA. *See United States ex rel. Mergent Servs. v. Flaherty*, 540 F.3d 89, 93-94 (2d Cir. 2008); *Timson v. Sampson*, 518 F.3d 870, 873-74 (11th Cir. 2008); *Stoner v. Santa Clara Cty. Office of Educ.*, 502 F.3d 1116, 1126-28 (9th Cir. 2007).

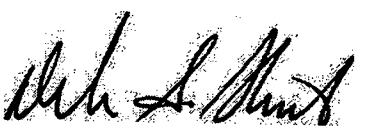
The district court placed Kim on restricted filing status, requiring a judicial officer to first determine whether Kim's complaint survives screening under 28 U.S.C. § 1915(e)(2) before granting him leave to proceed in forma pauperis. A district court may impose prefiling restrictions on an individual with a history of repetitive or vexatious litigation. *Feathers v. Chevron U.S.A., Inc.*, 141 F.3d 264, 269 (6th Cir. 1998). Given Kim's continued pursuit of decided issues, his frequent and frivolous filings, and his repeated disregard for court rules, the district court did not abuse its discretion in placing him on restricted filing status.

Kim argues that the district court judge engaged in misconduct and failed to treat him fairly. Kim fails to point to any evidence of bias on the part of the district court judge other than his unfavorable rulings, which "alone almost never constitute a valid basis for a bias or partiality motion." *Liteky v. United States*, 510 U.S. 540, 555 (1994).

Kim also challenges the district court's designation of the defendants as the prevailing parties. Kim apparently believes that he prevailed when this court vacated the district court's judgment in *Kim II* and remanded to the district court to dismiss the case for lack of subject-matter jurisdiction. In this case, however, the district court dismissed Kim's complaint for failure to state a claim; the defendants therefore prevailed. *See Burda v. M. Ecker Co.*, 954 F.2d 434, 440 n.9 (7th Cir. 1992).

For the foregoing reasons, we **AFFIRM** the district court's judgment dismissing Kim's complaint.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GWANJUN KIM,

Plaintiff,

v.

GRAND VALLEY STATE UNIVERSITY, et al.,

Defendants.
_____/

CASE NO. 1:18-CV-107

HON. ROBERT J. JONKER

OPINION AND ORDER

This is a civil action brought by a *pro se* plaintiff. Plaintiff has been an active litigant in this district, and the instant litigation merely reasserts the same arguments that this Court has previously found to be meritless. The prior litigation therefore directs the Court to the result it must reach in this case. For the reasons outlined below, this action will be dismissed.

BACKGROUND

This is the third lawsuit that Plaintiff has filed based on the same underlying claim that Defendants somehow discriminated against him in violation of 42 U.S.C. § 2000d and 42 U.S.C. § 1983. The first lawsuit, *Kim v. Grand Valley State University*, No. 1:11-cv-233 (W.D. Mich.) ("*Kim I*"), was filed in 2011. The Sixth Circuit Court of Appeals summarized the history of that matter as follows:[1]

[1] The court's summation by no means captures the full extent of the filings Plaintiff has made in that case as well as in other cases he has brought in this district. While not relevant to the instant matter, these filings do bear on the question of whether the Court should re-impose sanctions. The Court has provided a more extensive discussion of these filings in the attached appendix.

> In 2011, Kim filed an action pursuant to 42 U.S.C. § 1983 and Title VI of the Civil Rights Act of 1964 against Grand Valley State University (GVSU), the GVSU College of Education, the GVSU College of Community and Public Service, and several GVSU administrators and professors. *Kim v. Grand Valley State Univ.*, No. 1:11–cv–233 (W.D. Mich.) (*Kim I*). Kim filed numerous requests for entry of default and default judgment against the defendants. The district court denied Kim's requests on the basis that the defendants were never served with the amended complaint and filed a timely answer after receiving requests for waiver of service. The district court subsequently dismissed Kim's § 1983 and Title VI claims for failure to state a claim upon which relief can be granted. On appeal, this court affirmed the district court's judgment, including the denial of Kim's default motions. *Kim v. Grand Valley State Univ.*, No. 12–1401 (6th Cir. Feb. 11, 2013). Kim filed motions for relief from judgment pursuant to Federal Rule of Civil Procedure 60, asserting in relevant part that the defendants acted fraudulently when they claimed to have filed a timely answer to his amended complaint. The district court denied Kim's motions, and this court affirmed.

Kim v. Grand Valley State University, No. 16-2321, 2017 WL 8294004, at *1 (6th Cir. Dec. 22, 2017).

Plaintiff, apparently deciding he had used up the procedural devices available to him in *Kim I*, filed a second lawsuit on March 29, 2016. That case named the same defendants named in *Kim I*, as well as those defendants' attorneys. *Kim v. Grand Valley State University*, No. 16-cv-309 (W.D. Mich.) ("*Kim II*"). In *Kim II*, Plaintiff raised the same claims he alleged in *Kim I*, and he further argued that defendants' counsel made false representations regarding service in the *Kim I* case. Finding the claims barred by principles of res judicata, this Court granted Defendants' motion to dismiss on August 19, 2016. (*Id.*, at ECF Nos. 34-35). The Court also imposed sanctions for Plaintiff's continued pursuit of issues that had already been decided against him by placing Plaintiff on restricted filing status. (*Id.* at ECF No. 34, PageID.221).

On appeal, however, the Sixth Circuit Court of Appeals found that this Court lacked subject-matter jurisdiction over the claims Plaintiff presented. Accordingly, on December 22,

2017, the court vacated this Court's decision in *Kim II* and remanded with instructions to dismiss the Complaint for lack of subject-matter jurisdiction. *Kim*, 2017 WL 8294004, at *1-*2. Consistent with the court's order, this Court dismissed the *Kim II* Complaint on January 19, 2018.

On January 11, 2018, Plaintiff filed the instant action against the same defendants named in *Kim II* in the Southern District of Ohio. (ECF No. 11). Finding venue was improper there, Magistrate Judge Vascura ordered the matter transferred to this district under 28 U.S.C. § 1406(a). (ECF No. 5). The matter is now before this Court for screening under 28 U.S.C. § 1915(e). The matter will again be dismissed.

DISCUSSION

1. Plaintiff's Restricted Filing Status and § 1915(e) Screening

Plaintiff has been permitted to file the present action *in forma pauperis* under 28 U.S.C. § 1915 by the Magistrate Judge. (ECF No. 10). Defendants have filed an Objection and accompanying brief that contends the Magistrate Judge erred in granting Plaintiff's IFP request. (ECF Nos. 12 & 13). Defendants aver the instant matter is barred because of Plaintiff's restricted filing status that the Court imposed in *Kim II*. (ECF No. 13). In the Court's view, however, Plaintiff shed his restricted filing status when the Sixth Circuit Court of Appeals vacated the Court's decision in *Kim II*, even if the Court of Appeals did not explicitly state as much. While it may be the case a court retains the inherent authority to impose sanctions despite a lack of subject-matter jurisdiction over the underlying matter, here the Sixth Circuit vacated this Court's order that imposed the sanction. No mention was made that the Court of Appeals intended to limit the order in any respect. For this reason, the Magistrate Judge did not err in granting Plaintiff IFP status. There was no filing restriction in effect, and Plaintiff is clearly indigent. Accordingly, the objection is OVERRULED and the request for monetary sanctions will be denied.

Because Plaintiff is proceeding IFP, however, this action is still subject to the screening mechanism outlined in 29 U.S.C. § 1915(e)(2)(B)(ii), which provides that the court "shall dismiss" actions brought *in forma pauperis* "at any time if the court determines that . . . the action . . . is frivolous or . . . fails to state a claim on which relief may be granted." Dismissal of a complaint for failure to state a claim on which relief can be granted under § 1915(e)(2) is appropriate "only if it appears beyond a doubt that the plaintiff can prove no set of facts in support of [her] claim that would entitle [her] to relief." *Brown v. Bargery*, 207 F.3d 863, 867 (6th Cir. 2000). In order to survive dismissal under Section 1915(e)(2)(B),

> [a] complaint must contain "'either direct or inferential allegations respecting all the material elements to sustain a recovery under *some* viable legal theory.'" *Scheid v. Fanny Farmer Candy Shops, Inc.*, 859 F.2d 434, 436 (6th Cir. 1988) (quoting *Car Carriers, Inc. v. Ford Motor Co.*, 745 F.2d 1101, 1106 (7th Cir. 1984)). The court is not required to accept non-specific factual allegations and inferences or unwarranted legal conclusions. *See Lillard v. Shelby County Bd. of Educ.*, 76 F.3d 716, 726 (6th Cir. 1996); *Morgan v. Church's Fried Chicken*, 829 F.2d 10, 12 (6th Cir. 1987).

Mitchell v. Cmty. Care Fellowship, 8 F. App'x 512, 513 (6th Cir. 2001). For the reasons discussed below, Plaintiff's Complaint fails to survive even this this lenient standard.

2. Plaintiff's Complaint

Plaintiff invokes the Court's jurisdiction under the False Claims Act ("FCA"), 31 U.S.C. § 3279 *et seq.* thus the Court has federal question subject matter jurisdiction in this case, with supplemental jurisdiction over any state law claims.[2] Plaintiff complains that the defendants were

[2] Plaintiff also asserts diversity of citizenship. Complete diversity hinges on a party's domicile, not his residence. Domicile, in turn, requires: (1) physical presence at a location and (2) the intent to remain there indefinitely. *See Binkley v. APComPower, Inc.*, No. 1:09-cv-203, 2009 WL 3246857, at *1 (W.D. Mich. Oct. 5, 2009). Plaintiff appears to argue diversity of citizenship exists because he was domiciled in Ohio and Defendants are all citizens of Michigan. It may be that Plaintiff has changed his domicile to Ohio, though his previous filings in this district consistently list an address located in Ionia, Michigan as the address to receive court documents.

properly served before Plaintiff moved for an entry of default in *Kim* and that defense counsel gave false information about service to the Court. Plaintiff also raises the same underlying claims he brought in *Kim I* and *Kim II*. As the Court has previously held, there is no basis whatsoever for the relief Plaintiff seeks.

These are issues that have been fully litigated, and so res judicata bars the claims. As the Supreme Court discussed in *Migra v. Warren City Sch. Dist. Bd. of Ed.*, 465 U.S. 75 (1984):

> Res judicata is often analyzed further to consist of two preclusion concepts: "issue preclusion" and "claim preclusion." Issue preclusion refers to the effect of a judgment in foreclosing litigation of a matter that has been litigated and decided. . . . This effect also is referred to as direct or collateral estoppel. Claim preclusion refers to the effect of a judgment in foreclosing litigation of a matter that never has been litigated, because of a determination that it should have been advanced in an earlier suit. Claim preclusions therefore encompasses the law of merger and bar.

Id. at 77 n.1. Here, issue preclusion prevents Plaintiff from continuing on with this matter. Issue preclusion applies where: (1) the identical issue was raised and actually litigated in a prior proceeding; (2) the determination of the issue was necessary to the outcome of the prior proceeding; (3) the prior proceeding resulted in a final judgment on the merits; and (4) the party against whom issue preclusion is sought had a full and fair opportunity to litigate the issue in the

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See, e.g., *Kim v. Maxey Training School*, No. 1:99-cv-917, ECF No. 75 (W.D. Mich. filed Sept.17, 2001). That address appears to have been the only address used by Plaintiff in all subsequent litigation through *Kim II*. *See Kim II* at ECF No. 36 (providing a return address in Ionia, Michigan). Plaintiff's Complaint in the instant matter was filed in the Southern District of Ohio on January 11, 2018. In it, Plaintiff stated he was a resident of Ohio (ECF No. 11, PageID.185) and listed an address in Jeffersonville, Ohio. (*Id.* at PageID.183). Only a few days later, however, on January 27, 2018, Plaintiff filed with the Court a document advising the court of a change of address, and listed the same Ionia, Michigan address he has always used. (ECF No. 4). Furthermore, a simple internet search reveals that the Ohio address Plaintiff provided is an AmeriHost Inn & Suites hotel located just outside of Cincinnati. Even if Plaintiff was in Ohio when he filed this action, he likely did not intend to remain in Ohio indefinitely. Thus Ohio is probably not his domicile, and complete diversity of citizenship is probably lacking.

prior proceeding. *Aircraft Braking Sys. Corp. v. Local 856, Int'l Union, United Auto., Aerospace & Agric. Implement Workers, UAW*, 97 F.3d 155, 161 (6th Cir. 1996). All of those elements are met in the instant case. The same issues have previously been raised and litigated and were necessary to the outcome of *Kim I*. *Kim I* also resulted in a final judgment on the merits, and Plaintiff had a full and fair opportunity to litigate the issue.[3]

Assuming for the sake of argument, however, that res judicata did not apply there is an additional procedural bar to Plaintiff's FCA claims. Plaintiff is proceeding *pro se* in this matter, and it is well-established that litigants may not bring a qui tam action under the FCA pro se. *See, e.g., United States ex rel. Lu v. Ou*, 368 F.3d 773, 775 (7th Cir. 2004); *Hopson v. Weinburg Attorney's At Law*, No. 3:12CV-802-H, 2013 WL 557263, at *3 (W.D. Ky. Feb. 12, 2013) (collecting cases). Plaintiff's Complaint must be dismissed for that reason alone.

Plaintiff's FCA claims would also fail on the merits. A lawyer's request to the Court for action, such as a motion for summary judgment, is not the kind of claim that falls within the meaning of the False Claims Act. *Cf. United States ex rel. Augustine v. Century Health Servs., Inc.*, 289 F.3d 409, 413 (6th Cir. 2002) ("The purpose of the False Claims Act is 'to provide for restitution to the government of money taken from it by fraud.'") (quoting *United States v. Hess*, 317 U.S. 537, 551 (1943)).

Finally, Plaintiff has filed a motion entitled "Leave to File Motion for Summary Judgment Answer to Motion for Sanction Against Plaintiff and Defendants' Objection to Magistrate Order Granting Plaintiff's Leave to Proceed in Forma Pauperis." (ECF No. 16). It is not entirely clear

[3] In addition to issue preclusion, it may be the case that claim preclusion bars Plaintiff's FCA allegations in the instant case. Even though the Court of Appeals found subject-matter jurisdiction lacking in *Kim II*, Plaintiff insists he has been raising FCA claims all along. Thus, there is at least a question of whether claim preclusion applies. Because issue preclusion directs the dismissal of this case, the Court need consider the question further.

what type of relief Plaintiff is requesting. To the extent Plaintiff believes he is entitled to judgment in his favor, the motion fails for the reasons discussed above. To the extent Plaintiff wishes to respond to Defendant's Objection, the Court has overruled the Plaintiff's objection, thus any response in opposition to the objection would be unnecessary. Accordingly, the motion will be denied.

3. Sanctions

The Court has inherent power to impose sanctions for conduct that abuses the judicial process. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991). Furthermore, parties participating in a case *pro se* are still obligated to follow court rules, orders, and process. Plaintiff's continued pursuit of issues already decided, the filing of multiple meritless motions, and his repeated disregard for Court rules amounts to such an abuse. The attached appendix summarizes the several cases and the dozens of frivolous submissions Plaintiff has filed in this district and makes plain why a sanction is warranted.

Accordingly, to deter future frivolous filings, and to avoid needless litigation burden on defendants, the Court places Plaintiff on Restricted Filing status and directs that any Judicial Officer reviewing an application from Plaintiff to proceed *in forma pauperis* under 28 U.S.C. § 1915(a)(1) may grant such an application only after first determining that the complaint survives screening under the standards of 28 U.S.C. § 1915(e)(2). No defendant named in any such complaint shall have an obligation to respond unless and until the Court authorizes service of the complaint on that defendant and sets a deadline for response. To facilitate effective screening, the Court directs that any future cases filed by Plaintiff be assigned to the undersigned under the related case rule of the Court.

The Court notes that Defendants are prevailing parties in this case and may request costs as provided in 28 U.S.C. § 1920 and FED. R. CIV. P. 54(d)(1).

ACCORDINGLY, IT IS ORDERED:

1. Defendant's Objection (ECF No. 12) is **OVERRULED.**
2. Plaintiff's Motion for Leave to File (ECF No. 16) is **DENIED.**
3. The Clerk is directed to place Plaintiff on Restricting Filing status.
4. Any Judicial Officer reviewing an application from Plaintiff to proceed *in forma paupers* under 28 U.S.C. § 1915(a)(1) may grant such an application only after first determining that the complaint survives screening under the standards of 28 U.S.C. § 1915(e)(2). No defendant named in any such complaint shall have an obligation to respond unless and until the Court authorizes service of the complaint on that defendant and sets a deadline for response.
5. Any future cases filed by Plaintiff shall be assigned to the undersigned under the related case rule of the Court.
6. This case is **DISMISSED** under 28 U.S.C. § 1915(e)(2) for the reason that it fails to state a claim on which relief may be granted because the claims are barred by res judicata.

A separate Judgment shall enter.

Dated: May 10, 2018

/s/ Robert J. Jonker
ROBERT J. JONKER
CHIEF UNITED STATES DISTRICT JUDGE

Additional material from this filing is available in the Clerk's Office.