

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 18-1804

Luis A. Serna

Plaintiff - Appellant

v.

County of Hennepin

Defendant - Appellee

Appeal from U.S. District Court for the District of Minnesota - Minneapolis
(0:17-cv-05221-PAM)

JUDGMENT

Before COLLTON, SHEPHERD and ERICKSON, Circuit Judges.

The court has reviewed the original file of the United States District Court. Appellant's application to proceed in forma pauperis is granted.

It is ordered by the court that the judgment of the district court is summarily affirmed.

See Eighth Circuit Rule 47A(a).

September 04, 2018

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Luis A. Serna,

Civ. No. 17-5221 (PAM/LIB)

Plaintiff,

MEMORANDUM AND ORDER

v.

County of Hennepin,

Defendant.

This matter is before the Court on the Report and Recommendation ("R&R") of United States Magistrate Judge Leo Brisbois dated January 23, 2018. (Docket No. 6.) In The R&R, Magistrate Judge Brisbois recommends summarily dismissing this matter without prejudice. Plaintiff Luis Serna timely objected to the R&R. (Docket No. 7).

This Court must review de novo any portion of an R&R to which specific objections are made. 28 U.S.C. § 636(b)(1); D. Minn. L.R. 72.2(b). The R&R concluded that the Rooker-Feldman doctrine deprives the Court of subject-matter jurisdiction over this case because it "is premised upon Plaintiff's allegation that his civil commitment was obtained unconstitutionally." (R&R at 3 (citing Liedtke v Runningen, No. 15 -cv-3361, 2016 WL 5660455, at *4 (D. Minn. Sept. 29, 2016) (Tunheim, C.J.)). The R&R also concluded that dismissal is appropriate because Serna is proceeding in forma pauperis, and his Complaint fails to state a valid claim of relief. (R&R at 4.) After conducting the required review and for the following reasons, the Court adopts the R&R.

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favorable outcome here would not imply the invalidity of his civil commitment, because he only seeks a declaration that he is entitled to the presumption of innocence. (See Compl. (Docket No. 1) at 4). But he also seeks \$1,000,000 in damages for every year that he has been allegedly wrongfully confined. (*Id.*) As the R&R noted, Serna's request for damages improperly "impl[ies] the invalidity of his conviction or sentence." (R&R at 5 (quoting Heck v Humphrey, 512 U.S 477, 487 (1994)). And the Court does not have jurisdiction to consider that issue. Thus, Serna must "demonstrate that [his] conviction or sentence has already been invalidated" before he can bring a claim for damages under § 1983. Heck, 512 U.S. at 487. The R&R properly concluded that the Complaint fails to state a claim on which relief can be granted.

Because the Court agrees with the R&R that the Court lacks subject-matter jurisdiction under the Rooker-Feldman doctrine and that Serna fails to state a valid claim, the Complaint must be dismissed. Accordingly, IT IS HEREBY ORDERED that:

1. The R&R (Docket No. 6) is ADOPTED;
2. The Objection (Docket No. 7) is OVERRULED; and
3. The Complaint (Docket No. 1) is DISMISSED without prejudice.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: March 23, 2018

s/ Paul A. Magnuson

Paul A. Magnuson

United States District Court Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

LUIS A. SERNA,

Case No. 17-cv-5221 (PAM/LIB)

Plaintiff,

v

REPORT AND RECOMMENDATION

COUNTY OF HENNEPIN,

Defendant.

Plaintiff Luis A. Serna, a civil detainee at the Minnesota Sex Offender Program at Moose Lake, Minnesota, has filed a Complaint for violations of his constitutional rights under 42 U.S.C § 1983. ([Docket NO. 1]). He did not pay any filing fee for this case, but instead filed an Application seeking leave to proceed *in forma pauper* (“IFP”). ([Docket No. 2 and 3]).

The matter comes before the undersigned upon Plaintiff's Application to Proceed *in forma pauperis*. However, “Federal [C]ourts have an independent duty to determine subject matter jurisdiction” and “[i]f the [C]ourt determines at any time that it lacks subject matter jurisdiction, the [C]ourt must dismiss the action.” See, City of Kansas City, Mo. v Tarco Co., Inc. 625 F.3 1038, 1040 (8th Cir. 2010), Fed. R. Civ. P. 12(h)(3).

In his Complaint, Plaintiff asserts that on January 19, 2001, he was civilly committed in Hennepin County Probate Court as a sexually dangerous person. ([Docket No. 1],3). Plaintiff further alleges that employees of Defendant Hennepin County “filed, prosecuted, and successfully obtained the indefinite civil commitment of Plaintiff based upon allegations of “future’ criminal sexual behavior” in violation of his due process rights under the Fifth and Fourteenth Amendments to the United States Constitution and in violation of his asserted “Right to [a] presumption of innocence.” (*Id.*). Plaintiff identifies Defendant Hennepin County as “ultimately responsible for Plaintiff’s civil commitment as complained,” and claims that Defendant Hennepin County “is solely liable to Plaintiff.” (*Id.*) Plaintiff seeks declaratory relief that “Defendant[‘s] actions has [sic] violated Petitioner’s

Plaintiff was civilly committed in 2001 in Minnesota state court in Hennepin County. He complains that the Minnesota state court judgment committing him was obtained unconstitutionally and led to his wrongful confinement as a civil committee, and he asks the Court to issue declaratory judgment stating that his civil commitment was unconstitutionally obtained. (Compl., [Docket No. 1], 3-4). He calculates the compensatory damages he seeks upon the time from the date of commitment "until liberty is restored," which would necessitate a finding that the order of commitment was invalid. (*Id.*) Thus, although the Rooker-Feldman doctrine has a narrow application, the present suit is premised upon Plaintiff's allegation that his commitment was obtained unconstitutionally, leading to an erroneous order of commitment—it is precisely the sort of claim which the Rooker-Feldman doctrine deprives the Court of subject-matter jurisdiction. See, Liedtke Runningen, No. 15-cv-3361 (JRT/HB), 2016 WL 5660455, *4 (D. Minn. Sept 29, 2016) ("[W]hether the Dakota Defendants followed proper procedure leading up to [Plaintiff's] civil commitment under state law is essentially a challenge to the commitment itself... Thus,...the Court lacks subject matter jurisdiction under the Booker-Feldman doctrine for any of [Plaintiff's] claims that sought to set aside her state court civil commitment orders or proceedings.").

Even assuming solely for the sake of argument that this Court has subject matter jurisdiction over Plaintiff's claims, the undersigned would nevertheless recommend dismissal of the present case under 28 U.S.C. § 1915(e)(2) which provides that in the case of any Plaintiff who is unable to afford counsel and proceeds *in forma pauperis*, "the court shall dismiss the case at any time if the court determines that ... (B) the action or appeal... (ii) fails to state a claim on which relief may be granted."

To state a claim to relief which is plausible, a Plaintiff must plead factual allegations in his or her Complaint sufficient to "raise a right to relief about the speculative level," which "requires more than labels and conclusions, an a formulistic recitation of the elements of a cause of action will not do." Bell Atl. Corp v Twombly, 550 U.S. 544, 555 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged," and "[w]here a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of "entitlement of relief." Ashcroft b Iqbal, 556 U.S. 662, 678 (2009) (quoting Twombly 550 U.S. at 556-57).

First, as to Plaintiff's request for declaratory relief, the undersigned notes that "in seeking declaratory relief, 'a plaintiff must be seeking more than a retrospective

RECOMMENDATION

Based on the foregoing, and on all the files, records, and proceedings herein, IT IS HEREBY RECOMMENDED THAT:

1. This action be **SUMMARILY DISMISSED WITHOUT PREJUDICE**.¹
2. The remaining pending motions²

¹ "A district court is generally barred from dismissing a case with prejudice if it concludes subject matter jurisdiction is absent." County of Mille Lacs v. Benjamin, 361 F.3d 460, 464 (8th Cir. 2004); See, also, MSK EyeEs Ltd. v. Wells Fargo Bank, Natl. Ass'n, 546 F.3d, n.3 (8th Cir. 2008) (finding the district court erred when it dismissed with prejudice claims over which it had no subject matter jurisdiction under the Rook-Feldman doctrine).

² Plaintiff's Motion to Proceed in Forma Pauperis, [Docket No. 2]; Plaintiff's "Application to Proceed In District Court without Prepaying Fees or Cost, [Docket No. 3]; Plaintiff's Motion for the Appointment of Counsel, [Docket No. 4; and Plaintiff's Motion for Order Directing United States Marshall to Serve Complaint upon Defendant Hennepin County, [Docket No. 5].