

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 18-5601

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Jan 03, 2019
DEBORAH S. HUNT, Clerk

ORDER

Before: KEITH, MOORE, and GIBBONS, Circuit Judges.

Daniel H. Jones, a Tennessee prisoner proceeding pro se, appeals the district court's order dismissing his 42 U.S.C. § 1983 complaint. This appeal 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).

Jones alleged in his complaint that several Kentucky judges negligently handled his case and denied him the opportunity to appeal, that he has evidence negating his guilt, and that Tennessee improperly included him on its sexual offender registry because of his Kentucky conviction. Reviewing the complaint under 28 U.S.C. §§ 1915(e)(2) and 1915A, the district court determined that Jones had failed to state a claim because he did not provide factual support for his claims and because they were barred by sovereign and judicial immunity, so it dismissed Jones's complaint.

A district court must, under § 1915(e)(2), screen and dismiss a complaint if it is frivolous, malicious, fails to state a claim, or seeks monetary relief from an immune defendant. 28 U.S.C.

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§ 1915(e)(2). We review an order dismissing a complaint under § 1915(e)(2) de novo. *Hill v. Lappin*, 630 F.3d 468, 470 (6th Cir. 2010). To state a claim, a complaint must allege “sufficient factual matter, accepted as true,” that makes it reasonable to infer that the defendants are liable for the claimed misconduct. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Unsupported legal conclusions and speculative allegations will not suffice to state a claim. *See id.* at 679.

“Sovereign immunity protects states, as well as state officials sued in their official capacity for money damages, from suit in federal court.” *Boler v. Earley*, 865 F.3d 391, 409-10 (6th Cir. 2017). There are, nevertheless, three exceptions to that immunity: (1) the State has waived its immunity, (2) Congress has overridden that immunity, and (3) the doctrine set out in *Ex parte Young*, 209 U.S. 123 (1908), applies. *Boler*, 865 F.3d at 409-10. None of those exceptions apply to Jones’s claims against Kentucky. To start, Kentucky has not waived its immunity. *See Whittington v. Milby*, 928 F.2d 188, 193-94 (6th Cir. 1991). Nor does § 1983 override sovereign immunity. *See Boler*, 865 F.3d at 410. And the *Ex parte Young* doctrine allows only for claims against state officials—not a State itself. *See id.* at 412. As a result, Jones’s claims against Kentucky cannot proceed.

His claims against the named judges cannot proceed because they are entitled to judicial immunity. In short, absolute judicial immunity bars any suit “for money damages for all actions taken in the judge’s judicial capacity, unless those actions are taken in the complete absence of any jurisdiction.” *Bush v. Rauch*, 38 F.3d 842, 847 (6th Cir. 1994). Here, Jones takes issue with the judges’ adjudication of his motion to proceed in forma pauperis—which clearly constitutes an action taken in a judicial capacity—without claiming that those judges acted without jurisdiction.

Accordingly, we **AFFIRM** the judgment of the district court.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

No. 18-5601

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Mar 19, 2019
DEBORAH S. HUNT, Clerk

DANIEL H. JONES,

Plaintiff-Appellant,

v.

COMMONWEALTH OF KENTUCKY, ET AL.,

Defendants-Appellees.

ORDER

BEFORE: KEITH, MOORE, and GIBBONS, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
SOUTHERN DIVISION
at LONDON

DANIEL H. JONES,

Plaintiff,

v.

COMMONWEALTH OF KENTUCKY, et al.,

Defendant.

Civil Action No. 6: 18-96-KKC

MEMORANDUM OPINION
AND ORDER

*** * * * ***

Plaintiff Daniel H. Jones is an inmate currently confined in the Turney Center Industrial Complex located in Only, Tennessee. Jones has filed a *pro se* civil rights complaint pursuant to 42 U.S.C. § 1983 [R. 1] and a motion to waive payment of the filing and administrative fees. [R. 3] The information contained in Jones's fee motion indicates that he lacks sufficient assets or income to pay the \$350.00 filing fee. [R. 4] Because Jones has been granted pauper status in this proceeding, the \$50.00 administrative fee is waived. District Court Miscellaneous Fee Schedule, § 14.

The Court must conduct a preliminary review of Jones's complaint because he has been granted permission to pay the filing fee in installments and because he asserts claims against government officials. 28 U.S.C. §§ 1915(e)(2), 1915A. A district court must dismiss any claim that is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. *Hill v. Lappin*, 630 F. 3d 468, 470-71 (6th Cir. 2010). When testing the sufficiency of Jones's complaint, the Court affords it a forgiving construction, accepting as true all non-conclusory factual allegations and liberally

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construing its legal claims in the plaintiff's favor. *Davis v. Prison Health Servs.*, 679 F.3d 433, 437-38 (6th Cir. 2012).

In his complaint, Jones names as Defendants the Commonwealth of Kentucky, Harlan County Circuit Judge Kent Hendrickson, and "Justices Acree, Nickell, Venters, Wright, Cunningham and Hughes" of the Kentucky Court of Appeals and the Kentucky Supreme Court. [R. 1] Although his allegations are not entirely clear, he generally claims violations of his "state and U.S. constitutional rights involving each defendants' act of gross-negligence as to a statutory need in protecting the plaintiff's best interest, seeking both immediate and permanent injunction, as well as a declaratory judgment with monetary compensation for the injuries sustained." [R. 1 at p. 1] He also references his rights under the Constitution of the State of Tennessee. [Id. at p. 2]

The majority of Jones's complaint generally accuses the defendants of gross negligence, acting with callous indifference and malicious intent, willfully violating legislation, and acting unprofessionally, without indicating the specific factual basis for these allegations. However, from what the Court is able to ascertain, it appears that Jones tendered a civil complaint to the Harlan Circuit Court in July 2017 "requesting, *inter alia*, a declaration of rights regarding a crucial piece of evidence; [doc.A-1], clearly negating his guilt involving a crime of rape. Here, plaintiff's indicia overwhelmingly shows a deliberate omission by the Commonwealth in neglecting this crucial evidence which 'could have' exonerated him in preventing a conviction and sentence to a term of Life w/o Parole." [Id. at p. 5]. Although it is not entirely clear, Jones's allegations suggest that his requests for relief were denied by the Harlan Circuit Court, as well as on appeal by the Kentucky Court of Appeals and the Kentucky Supreme Court. [Id. at p. 5-6]. Jones also indicates that, because of Defendants' actions, Tennessee's TBI Agency has retained him on its Sex

Offenders Registry. [Id. at p. 6] As relief, he seeks a declaration by this Court that Jones's due process rights have been violated, an injunction, and monetary damages. [Id. at p. 7-8]

A complaint must set forth sufficient allegations to "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The Court has an obligation to liberally construe a complaint filed by a person proceeding without counsel, but it has no authority to create arguments or claims that the plaintiff has not made. *Coleman v. Shoney's, Inc.*, 79 F. App'x 155, 157 (6th Cir. 2003) ("Pro se parties must still brief the issues advanced with some effort at developed argumentation."). In addition, a federal district court has the authority to dismiss any complaint under Fed. R. Civ. P. 12(b)(1) "when the allegations of a complaint are totally implausible, attenuated, unsubstantial, frivolous, devoid of merit, or no longer open to discussion." *Apple v. Glenn*, 183 F.3d 477, 479 (6th Cir. 1999) (citing *Hagans v. Lavine*, 415 U.S. 528, 536 (1974)).

Here, Jones's complaint must be dismissed for failure to state a claim for which relief may be granted. First, Jones's complaint does not comply with Federal Rule of Procedure 8 because it does not contain "a short and plain statement of the claim showing that [he] is entitled to relief" and fails to include allegations that are "simple, concise, and direct." Fed. R. Civ. P. 8(a)(2), (d)(1). Indeed, the majority of Jones's complaint simply labels defendants' actions as "grossly negligent," "willful," "malicious," and "unprofessional," without providing any factual allegations supporting such conclusions. Vague allegations that one or more of the defendants acted wrongfully or violated the plaintiff's constitutional rights are not sufficient. *Laster v. Pramstaller*, No. 08-CV-10898, 2008 WL 1901250, at *2 (E.D. Mich. April 25, 2008).

Moreover, Jones's complaint seeks to assert civil rights claims against the Commonwealth of Kentucky and various state judges based on decisions and rulings made during the course of

civil proceedings. However, Jones's claims against the Commonwealth of Kentucky are be barred by sovereign immunity, *see Sefa v. Kentucky*, 510 F. App'x 435, 437 (6th Cir. 2013). In addition, Jones's claims against the individual judges are clearly barred by judicial immunity.

Judges have long been entitled to absolute judicial immunity from tort claims arising out of their performance of functions integral to the judicial process. *Pierson v. Ray*, 386 U.S. 547, 553-55 (1967). Indeed, "judicial immunity is not overcome by allegations of bad faith or malice...". *Mireles v. Waco*, 502 U.S. 9, 11 (1991). Here, the judicial conduct alleged by Jones falls squarely within the individual judge's respective roles as trial and appellate judges. *See Huffer v. Bogen*, 503 F. App'x 455, 459 (6th Cir. 2012)("[T]he factors determining whether an act by a judge is a 'judicial' one relate to the nature of the act itself, *i.e.*, whether it is a function normally performed by a judge, and to the expectations of the parties, *i.e.*, whether they dealt with the judge in his judicial capacity.") (quoting *Stump v. Sparkman*, 435 U.S. 349, 362 (1978)). Thus, each of the individual judges named as defendants are entitled to absolute judicial immunity against Jones's claims.

For all of the foregoing reasons, Jones's complaint fails to state a claim for which relief may be granted and will be dismissed.

Accordingly, it is hereby **ORDERED** as follows:

1. Jones's motion for leave to proceed *in forma pauperis* [R. 3] is **GRANTED** and payment of the filing and administrative fees is **WAIVED**.
2. Jones's complaint [R. 1] is **DISMISSED**.
3. All pending requests for relief, including Jones's Motion for Issuance of Summons [R. 7], are **DENIED AS MOOT**.

4. The Court will enter an appropriate judgment.
5. This action is **STRICKEN** from the Court's docket.

Dated May 30, 2018.



Karen K. Caldwell

KAREN K. CALDWELL, CHIEF JUDGE
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
SOUTHERN DIVISION at LONDON

DANIEL H. JONES,

Plaintiff,

v.

COMMONWEALTH OF KENTUCKY, et al.,

Defendant.

Civil Action No. 6: 18-96-KKC

JUDGMENT

*** * * * ***

Consistent with the Memorandum Opinion and Order entered this date, and pursuant to Rule 58 of the Federal Rules of Civil Procedure, it is hereby **ORDERED** and **ADJUDGED** as follows:

1. The Complaint [R. 1] filed by Plaintiff, Daniel H. Jones, is **DISMISSED** with prejudice.
2. Judgment is **ENTERED** in favor of the Defendants.
3. This action is **DISMISSED** and **STRICKEN** from the Court's docket.
4. This is a **FINAL** and **APPEALABLE** Judgment and there is no just cause for delay.

Dated May 30, 2018.



Karen K. Caldwell

KAREN K. CALDWELL, CHIEF JUDGE
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY

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which Jones is currently confined and to the Clerk of the United States Court of Appeals for the Sixth Circuit.

4. After the initial partial filing fee is paid, each month Jones's custodian shall send the Clerk of the Court a payment in an amount equal to 20% of his income for the preceding month out of his inmate trust fund account, but only if the amount in the account exceeds \$10.00. The custodian shall continue such monthly payments until the entire \$505.00 filing fee is paid. 28 U.S.C. § 1915(b)(2).
5. The Clerk of the Court shall send a copy of this Order to the Clerk of the Court of Appeals for the Sixth Circuit.

Dated June 29, 2018.



A handwritten signature in cursive script that reads "Karen K. Caldwell".

KAREN K. CALDWELL, CHIEF JUDGE
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY

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