

United States Court of Appeals For the First Circuit

No. 17-2038

IN RE: GERARD D. GRANDOIT,
Petitioner, Appellant.

Before

Howard, Chief Judge,
Torruella, Lynch, Thompson,
Kayatta and Barron, Circuit Judges.

ORDER OF COURT

Entered: August 30, 2018

The petition for rehearing having been denied by the panel of judges who decided the case and the petition for rehearing en banc having been submitted to the active judges of this court and a majority of the judges not having voted that the case be heard en banc, it is ordered that the petition for rehearing and petition for rehearing en banc be denied.

By the Court:

/s/ Margaret Carter, Clerk

cc:
Gerard D. Grandoit

United States Court of Appeals For the First Circuit

No. 17-2038

IN RE: GERARD D. GRANDOIT,

Petitioner, Appellant.

Before

Lynch, Kayatta and Barron,
Circuit Judges.

JUDGMENT

Entered: March 14, 2018

Having reviewed the record in this case, we agree with the district court that appellant has not presented sufficient allegations to support a claim for federal relief and that there is no basis for federal jurisdiction over any state law claims he might have. Therefore, we affirm the district court's denial of the request to be allowed to file a new complaint.

Appellant's request to proceed in forma pauperis is denied as moot.

By the Court:

/s/ Margaret Carter, Clerk

cc:

Gerard D. Grandoit

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

M.B.D. NO. 17-91151-RGS

IN Re: MOTION FOR LEAVE TO APPEAL IN FORMA PAUPERIS

MOVANT: GERARD D. GRANDOIT

MEMORANDUM AND ORDER

October 23, 2017

Movant Gerard D. Grandoit filed a notice of appeal [Docket No. 6] as to the order [Docket No. 5] denying his request for leave to file a new lawsuit. Now pending is Grandoit's motion for leave to appeal *in forma pauperis*. Docket No. 9.

STANDARD OF REVIEW

Applications to appeal *in forma pauperis* are governed by 28 U.S.C. § 1915 and Federal Rule of Appellate Procedure 24. In pertinent part, Rule 24(a) provides:

(1) ... [A] party to a district-court action who desires to appeal in forma pauperis must file a motion in the district court. The party must attach an affidavit that:

(A) shows ... the party's inability to pay or to give security for fees and costs;

(B) claims an entitlement to redress; and

(C) states the issues that the party intends to present on appeal.

Similarly, Section 1915(a)(1) provides “any court of the United States may authorize the commencement, prosecution or defense of any ... appeal ... without prepayment of fees and costs or security therefor, by a person who makes affidavit that he is unable to pay such costs or give security therefor.” 28 U.S.C. § 1915(a) (1). Section 1915(a)(1) requires that the affidavit also state the nature of the action, defense or appeal and the affiant's belief that the person is entitled to redress. Id.

DISCUSSION

Here, Grandoit lacks funds to pay the appellate filing fee for this action. Despite his financial inability to pay the filing fee, Grandoit has not submitted an affidavit, or proper substitute therefor, “claim[ing] an entitlement to redress” or “stat[ing] the issues that [he] intends to present on appeal” as required by Rule 24(a)(1)(B) and (C) of the Federal Rules of Appellate Procedure. Because Grandoit fails to provide any reason to conclude that there is a legitimate ground for appeal, his motion is denied.

ORDER

Based on the foregoing, it is hereby Ordered that:

(1) Grandoit’s motion (Docket No. 9) for leave to appeal *in forma pauperis* is DENIED. Further requests to proceed on appeal *in forma pauperis* should be directed on motion to the United States Court of Appeals

for the First Circuit in accordance with Rule 24(a)(5) of the Federal Rules of Appellate Procedure; and

(2) The clerk is directed to transmit this Order as a supplemental record to the First Circuit Court of Appeals.

SO ORDERED.

SO ORDERED.

/s/ Richard G. Stearns
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

M.B.D. NO. 17-91151-RGS

IN Re: MOTION REQUESTING PERMISSION TO FILE NEW LAWSUIT

MOVANT: GERARD D. GRANDOIT

ORDER

September 20, 2017

Movant Gerard D. Grandoit has been deemed an abusive litigant. See *Grandoit v. Staples*, C.A. No. No. 10-10299-RGS (Dec. 6, 2012). As a result, he has been enjoined from filing civil actions in this Court without first obtaining permission from a judicial officer.

Now before the Court are Grandoit's motions (1) requesting permission to file a new lawsuit and (2) to show good cause for filing a complaint. See Docket Nos. 1 - 2. Grandoit did not pay the \$47 Miscellaneous Business Docket filing fee or seek waiver thereof. His motions are accompanied by two proposed complaints seeking equitable and monetary relief from defendants Roche Insurance Agency ("Roche") and Arbella Mutual Insurance Company ("Arbella") for statutory and constitutional violations. Here, Grandoit is proceeding *pro se* and as such, his pleadings are entitled

to a liberal construction. *See Haines v. Kerner*, 404 U.S. 519, 520–521 (1972).

In his motion requesting permission to file a new lawsuit, Grandoit informs the Court of the difficulty he has had in retrieving files from his computer. *See* Docket No. 1. He asks the Court to delay “the process” to provide him with additional “time to file the rest of the complaint.” *Id.* He seeks “leave and permission to allow [him to file] the recognized claims from [his] complaint against the Defendants involved.” *Id.* In addition to the complaints, Grandoit has filed addendums, attachments and memoranda in support.

Grandoit's complaints consist primarily of a recounting of events surrounding his July 2013 purchase of an Arbella car insurance policy from Roche as well as his subsequent efforts to have his policy reinstated in 2014 after it was cancelled due to nonpayment and in 2016 after Arbella terminated its agency contract with Roche. Grandoit subsequently filed demand letters to the defendants as well as administrative and consumer complaints with the Massachusetts Division of Insurance, Massachusetts Office of the Attorney General, the U.S. Office of Fair Housing and Equal Opportunity, and the Equal Employment Opportunity Commission.

Grandoit's request to file a new civil action will be denied. Each complaint contains from thirty to sixty counts and many of the numbered counts consist of formulaic recitations of some of the elements of particular statutes and regulations. The allegations concerning the alleged termination and/or reinstatement of Grandoit's insurance policies epitomize the type of "threadbare recitals of the elements of a cause of action, supported by mere conclusory statements" found to be insufficient by the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Moreover, because the citizenship of Grandoit and each of the defendants are not diverse, diversity jurisdiction under Section 1332 does not exist. *Northeast Federal Credit Union v. Neves*, 837 F.2d 531, 533 (1st Cir. 1988) (vacating and directing district court to dismiss, no diversity jurisdiction existed); *Paparella v. Idreco Invest.*, 858 F. Supp. 283, 284 (D. Mass. 1994) (dismissing). Even if there was diversity of citizenship between the parties, Grandoit cannot satisfy the amount in controversy requirement because it appears that he lacks a reasonable, good faith basis to believe that his recovery could exceed \$75,000.

To the extent Grandoit alleges federal constitutional violations, private conduct is generally beyond the reach of the 42 U.S.C. § 1983, which creates a private right of action through which plaintiffs may recover against

state actors for constitutional violations. *González-Maldonado v. MMM Healthcare, Inc.*, 693 F.3d 244, 247-48 (1st Cir. 2012). Moreover, Grandoit offers no factual allegations to support his bare conclusions that the defendants' actions were discriminatory.

To the extent Grandoit seeks to assert a myriad of claims under the Equal Credit Opportunity Act, 15 U.S.C. § 1691, (1) defendants are not lenders that provided credit to Grandoit, and (2) the allegations are insufficient to support a finding of discrimination under the burden shifting framework set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973).

Based on the foregoing, I do not find any good basis to permit Grandoit to file the proposed complaints and it is hereby Ordered that:

(1) Grandoit's motion (Docket No. 1) requesting permission to file a new lawsuit is DENIED;

(2) Grandoit's motion (Docket No. 2) to show good cause for filing a complaint is DENIED; and

(3) The clerk is directed to terminate this matter without assessment of the filing fee.

SO ORDERED.

/s/ Richard G. Stearns
UNITED STATES DISTRICT JUDGE