

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 19-1360

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Jan 07, 2020
DEBORAH S. HUNT, Clerk

LARRY A. MEITZNER,)
)
 Plaintiff-Appellant,)
)
 v.) ON APPEAL FROM THE UNITED
) STATES DISTRICT COURT FOR
) THE EASTERN DISTRICT OF
) MICHIGAN
 BILL SCHUETTE; JOHN DOE; JANE DOE,)
)
 Defendants-Appellees.)
)
)

Q R D E R

Before: SUHRHEINRICH, BATCHELDER, and NALBANDIAN, Circuit Judges.

Larry A. Meitzner, a pro se Michigan litigant, appeals the district court's judgment dismissing his complaint. 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)*.

Meitzner filed his complaint against then Michigan Attorney General Bill Schuette and John/Jane Doe, asserting a conspiracy to violate his civil rights under 42 U.S.C. § 1985. Meitzner alleged that he sent numerous communications to Schuette to initiate an investigation into the "falsified per curiam" decision issued by the Michigan Court of Appeals in a prior action and that Schuette chose to ignore his letters. As relief, Meitzner sought \$15,000 in compensatory damages and \$50,000 in punitive damages to a scholarship program of his choice.

Meitzner's case was initially assigned to Judge Cox. Pursuant to local rule, the case was reassigned to Judge Ludington as a companion to one of Meitzner's earlier cases.

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In response to Meitzner's complaint, Schuette filed a motion, which was styled as a motion for summary judgment but cited the legal standard for dismissing a complaint for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6). Meitzner filed a petition for injunctive relief, a motion to recuse the magistrate judge, a motion for default judgment as to John/Jane Doe, and a motion for declaratory judgment. Construing Schuette's motion as a motion to dismiss, the district court granted the motion, dismissed the complaint with prejudice, and denied Meitzner's pending motions.

Meitzner filed a motion to recuse Judge Ludington, which was mailed before the district court entered its judgment dismissing his complaint. The district court denied Meitzner's motion as moot.

This timely appeal followed. Meitzner challenges the dismissal of his complaint and the denial of his motion for Judge Ludington's recusal. After briefing, Meitzner filed a motion for a change of venue to another court of appeals.

We review de novo the district court's dismissal of a complaint for failure to state a claim pursuant to Rule 12(b)(6). *Thompson v. Bank of Am., N.A.*, 773 F.3d 741, 750 (6th Cir. 2014). "To survive a motion to dismiss, 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 Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

Meitzner claimed a conspiracy to violate his civil rights under 42 U.S.C. § 1985. "It is well-settled that conspiracy claims must be pled with some degree of specificity and that vague and conclusory allegations unsupported by material facts will not be sufficient to state such a claim . . ." *Gutierrez v. Lynch*, 826 F.2d 1534, 1538 (6th Cir. 1987). To state a conspiracy claim under 42 U.S.C. § 1985(2) or (3), "a complaint must allege both a conspiracy and some 'class-based discriminatory animus behind the conspirators' action.'" *Newell v. Brown*, 981 F.2d 880, 886 (6th Cir. 1992) (quoting *Dunn v. Tennessee*, 697 F.2d 121, 124 (6th Cir. 1982)); *see Fox v. Mich. State Police Dep't*, 173 F. App'x 372, 376 (6th Cir. 2006). Meitzner did not allege that Schuette conspired with John/Jane Doe, instead making his allegations in the alternative: "The addition of John/Jane Doe to the complaint is a 'Plan B' in case Bill Schuette swears under oath

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that he never received any of the plaintiff's postings. The onus then falls on John/Jane Doe." Even if he sufficiently alleged a conspiracy between two or more persons, Meitzner failed to allege any class-based discriminatory animus. The district court properly dismissed Meitzner's complaint for failure to state a § 1985 conspiracy claim.

Meitzner argues on appeal that the district court erred in converting Schuette's motion for summary judgment into a motion to dismiss and that the summary judgment standard should have applied. Although styled as a motion for summary judgment, the body of Schuette's motion did not reference the summary judgment standard and instead set forth Rule 12(b)(6)'s standard for dismissing a complaint for failure to state a claim. The district court therefore did not err in analyzing Schuette's motion under Rule 12(b)(6).

We review the district court's denial of a recusal motion for an abuse of discretion. *Decker v. GE Healthcare Inc.*, 770 F.3d 378, 388 (6th Cir. 2014). Because the district court received Meitzner's recusal motion after judgment had been entered, the district court denied his motion as moot.

On appeal, Meitzner argues that Judge Ludington's "action in usurping control" over this case violated his right to a fair judge as required by the Due Process Clause. "It is axiomatic that '[a] fair trial in a fair tribunal is a basic requirement of due process.'" *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 876 (2009) (quoting *In re Murchison*, 349 U.S. 133, 136 (1955)). The Due Process Clause requires recusal "when, objectively speaking, 'the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable.'" *Rippo v. Baker*, 137 S. Ct. 905, 907 (2017) (quoting *Withrow v. Larkin*, 421 U.S. 35, 47 (1975)).

Meitzner's allegations of bias involved Judge Ludington's prior 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). Meitzner also asserted that his motion for the magistrate judge's recusal created a conflict of interest because Judge Ludington recommended the magistrate judge for the position and worked closely with the magistrate judge over the years; that Judge Ludington's case manager certified that a ruling in a prior case was mailed on a particular date, but the ruling was postmarked on a different date; and that Judge Ludington wrote in a prior case that the magistrate

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judge would be sending paperwork, which never arrived. The facts alleged by Meitzner do not create a probability of actual bias rising to an unconstitutional level. *See Caperton*, 556 U.S. at 886-87. Meitzner has failed to demonstrate that the district court abused its discretion in denying his motion to recuse.

Meitzner moves for a change of venue to another court of appeals because “there is too much baggage between the Plaintiff and the Court.” This court has appellate jurisdiction over decisions of the United States District Court for the Eastern District of Michigan. *See* 28 U.S.C. §§ 41, 1294(1). Any other court of appeals would lack jurisdiction to review the district court’s judgment.

For these reasons, we **DENY** Meitzner’s motion for a change of venue and **AFFIRM** the district court’s judgment.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

LARRY MEITZNER,

Plaintiff,

Case No. 18-cv-13950
Honorable Thomas L. Ludington

v.

BILL SCHUETTE, et al.

Defendant.

**ORDER GRANTING MOTION TO DISMISS, DENYING MOTION FOR INJUNCTION,
MOTION FOR RECUSAL, MOTION FOR DECLARATORY JUDGMENT, MOTION
FOR DEFAULT JUDGMENT AND DISMISSING COMPLAINT**

This case stems from a property dispute between Plaintiff and his neighbors. In 2010, Robert and Donna Clark sued Meitzner in the Presque Isle Circuit Court over their easement road running across his property. The trial court found in favor of the Clarks and enjoined Meitzner from interfering with their use of the easement. The Michigan Supreme Court denied leave to appeal. *Clark v. Meitzner*, 823 N.W.2d 603 (Mich. 2012). Meitzner subsequently brought an action against the seven justices listed on the Michigan Supreme Court's order. Case No. 15-cv-14444. The case was dismissed. Plaintiff subsequently filed a similar case, which was also dismissed. Case No. 15-cv-12870. A full summary can be found in the court's orders dismissing those complaints.

On December 18, Plaintiff filed a complaint against Bill Schuette and Jane and John Doe accusing them of conspiracy to violate his rights under 42 U.S.C. § 1985(2)-(3). The caption does not specify the capacity in which Bill Schuette is being sued, though the text of the complaint refers to "Bill Schuette in his position of Michigan Attorney General." In his motion

for declaratory judgment Plaintiff clarifies that his intent is to sue Mr. Schuette in his individual capacity. In either case, Plaintiff has failed to state a claim, as explained below.

Defendant moves for “summary judgment” although the legal authority cited in the motion is Federal Rule of Civil Procedure 12(b)(6) and Defendant argues that Plaintiff has failed to state a claim. The motion will therefore be construed as a motion to dismiss. “To survive a motion to dismiss, 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). To state a conspiracy claim under 42 U.S.C. § 1985(2) or (3), “a plaintiff must allege that there was ‘some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators’ action.’” *Fox v. Mich. State Police Dep’t*, 173 F. App’x 372, 376 (6th Cir. 2006).

Plaintiff does not allege such animus. He alleges that Mr. Schuette did not respond to Plaintiff’s letters asking that the AG’s office open an investigation into the “falsified per curiam” issued by the state court. Plaintiff has no legal right to receive a response to his letters or to have an investigation opened at his request.

To the extent he asks this Court to review the state court judgment, this Court has no jurisdiction to do so. *See D.C. Ct. of App. v. Feldman*, 460 U.S. 462, 476 (1983); *Rooker v. Fid. Tr. Co.*, 263 U.S. 413, 415-16 (1923).

Plaintiff also asks the Court to compel Defendant to answer under rule 8(b)(1)(B). A defendant has no obligation to file an answer in response to a complaint. Rather, a defendant can file a motion under rule 12 which extends the answer deadline until 14 days after the rule 12 motion is decided. *See Fed. R. Civ. P* 12(a)(4). Accordingly, the motion for injunction and motion for default judgment will be denied.

Plaintiff also moves to recuse Magistrate Judge Morris. The motion is moot. No motions

have been referred to Judge Morris.

Plaintiff also moves for declaratory judgment. ECF No. 16. The motion will be denied.

Plaintiff has not pled facts demonstrating his entitlement to any relief, declaratory or otherwise.

Plaintiff's cross motion for summary judgment will be denied on the same basis (his cross motion for summary judgment is embedded in his response brief, ECF No. 17).

Accordingly, it is **ORDERED** that defendant's motion to dismiss, ECF No. 9, is **GRANTED**.

It is further **ORDERED** that the complaint, ECF No. 1, is **DISMISSED** with prejudice.

It is further **ORDERED** that Plaintiff's motion for injunction, for recusal, for default judgment, for declaratory judgment, and for summary judgment (ECF Nos. 10, 11, 15, 16) are **DENIED**.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: February 1, 2019

<p style="text-align: center;">PROOF OF SERVICE</p> <p>The undersigned certifies that a copy of the foregoing order was served upon each attorney by electronic means and to Larry Allen Meitzner, 4209 Klee Rd., Rogers City, MI 49778 by first class U.S. mail on February 1, 2019.</p> <p style="text-align: center;"><u>s/Kelly Winslow</u> KELLY WINSLOW, Case Manager</p>

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

LARRY MEITZNER,

Plaintiff,

Case No. 18-cv-13950
Honorable Thomas L. Ludington

v.

BILL SCHUETTE, et al.

Defendant.

ORDER DENYING MOTION FOR RECONSIDERATION

On December 18, Plaintiff filed a complaint against former Attorney General Bill Schuette and Jane and John Doe accusing them of conspiracy to violate his rights under 42 U.S.C. § 1985(2)-(3). Plaintiff also filed motions for an injunction, for recusal, for default judgment, for declaratory judgment, and for summary judgment, all of which were denied. Defendant's motion to dismiss was granted. ECF No. 18. A factual summary can be found in that order. Judgment was entered against Plaintiff. ECF No. 19.

As Plaintiff is not an e-filer, he did not receive immediate notice of those filings, including the judgment. While those filings were en route to Plaintiff via mail, he filed three additional motions regarding the hearing that was originally scheduled for March 13, 2019: motion to recuse, motion to include, and motion for expedited hearing. At the time he filed the motions, Plaintiff was unaware that the hearing was cancelled and the motions were ruled on without oral argument. His motions were therefore denied as moot as judgment had been entered and Plaintiff had identified no basis for relief from that judgment.

Plaintiff also filed a document that he titled a "motion for reconsideration" but the

document contained a letter addressed to Chief Judge Hood. The motion was denied as it contained no request for relief.

Plaintiff has now filed “a re-submission or Meitzner’s original Motion for Reconsideration” because he wanted Judge Hood, and not this Court, to respond to his letter. Filing letters on this Court’s docket is not an effective way to communicate with Judge Hood, who does not receive such filings or review this Court’s docket. Because the motion requests no relief from this Court, it will be denied.

Accordingly, it is **ORDERED** that the motion, ECF No. 26, is **DENIED**.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: April 1, 2019

<p style="text-align: center;">PROOF OF SERVICE</p> <p>The undersigned certifies that a copy of the foregoing order was served upon each attorney of record herein by electronic means and to Larry Allen Meitzner, 4209 Klee Rd., Rogers City, MI 49779 by first class U.S. mail on April 1, 2019.</p> <p style="text-align: center;"><u>s/Kelly Winslow</u> KELLY WINSLOW, Case Manager</p>
