

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

No: 18-2874

Darrel R. Fisher

Appellant

v.

J. Doe, Director of Missouri Department of Revenue, License Division in 1997

Appellee

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:18-cv-00604-ODS)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

April 18, 2019

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

/s/ Michael E. Gans

Appendix C

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

No: 18-2874

Darrel R. Fisher

Plaintiff - Appellant

v.

J. Doe, Director of Missouri Department of Revenue, License Division in 1997

Defendant - Appellee

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:18-cv-00604-ODS)

JUDGMENT

Before COLLOTON, SHEPHERD, and ERICKSON, Circuit Judges.

The motion to proceed on appeal in forma pauperis is granted.

This court has reviewed the original file of the United States District Court. It is ordered by the court that the judgment of the district court is summarily affirmed. See Eighth Circuit Rule 47A(a).

February 08, 2019

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

/s/ Michael E. Gans

Appendix A

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

DARREL R. FISHER,

Plaintiff,

vs.

J. DOE,

Defendant.

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) Case No. 18-0604-CV-W-ODS-P
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**ORDER GRANTING PLAINTIFF LEAVE TO PROCEED IN FORMA PAUPERIS
AND SUMMARILY DISMISSING CASE**

Plaintiff, who currently is confined at the Butner Federal Medical Center in Butner, North Carolina, has filed this civil rights action pursuant to 42 U.S.C. § 1983, seeking relief for certain claimed violations of his federally protected rights.¹ Plaintiff has requested leave to proceed *in forma pauperis*, which will be granted. However, for the reasons set forth below, Plaintiff's complaint will be summarily dismissed as legally frivolous and for failure to state a claim.

I. Standard

Because Plaintiff is civilly-committed, Plaintiff is not subject to the inmate account procedures and three-strikes rule contained within the Prison Litigation Reform Act (PLRA). *Kolocotronis v. Morgan*, 247 F. 3d 726, 728 (8th Cir. 2001). Instead, “[P]laintiff is simply an ordinary civil litigant seeking to proceed *in forma pauperis*.” *Id.* Therefore, the Court may grant Plaintiff leave to proceed *in forma pauperis*, depending upon his ability to pay the fees associated with this case, 28 U.S.C. § 1915(a)(1), and the Court must dismiss the case if it determines, at any

¹ Plaintiff indicates on his complaint form that he also brings suit under *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971), but Plaintiff names only one Missouri state official as a Defendant. Doc. 1, p. 2. “An action under *Bivens* is almost identical to an action under section 1983, except that the former is maintained against federal officials while the latter is against state officials.” *Christian v. Crawford*, 907 F.2d 808, 810 (8th Cir.1990) (per curiam).

Appendix B

time, that the action is frivolous, malicious, or fails to state a claim on which relief may be granted. § 1915(e)(2)(B)(i)-(ii); see also *Kane v. Lancaster County Dept. of Corrections*, 960 F. Supp. 219, 221-22(D. Neb. 1997) (citing *Neitzke v. Williams*, 490 U.S. 319, 325 (1989), and finding that “preanswer screening has long been part of the in forma pauperis process for prisoner and non prisoner cases alike.”). An action is legally “frivolous” within the meaning of § 1915 if it “lacks an arguable basis either in law or fact.” *Neitzke*, 490 U.S. at 325.

II. Background

On February 25, 2010, this Court found Plaintiff incompetent to stand trial and committed Plaintiff to the custody of the Attorney General for hospitalization and treatment. See *United States v. Fisher*, No. 99-00012-CR-W-ODS (W.D. Mo. Feb. 25, 2010). In his present complaint, Plaintiff brings suit against J. Doe, who was the Director of the Missouri Department of Revenue, License Division, on December 7, 1997. Doc. 1, pp. 1, 3. The nature of Plaintiff’s allegations are difficult to understand. For instance, under the section of the complaint form asking “What happened to you?” Plaintiff writes the following:

The Director of the License Division of the Missouri Department of Revenue did take from across state lines unverifiable and proven in kangaroo court, perjured statement from those proven perjurers, statements adverse to me without affording me any judicial proceeding to take, deny property, no due process of law, my professional reputation and liberty, my right to exercise and pursue my chosen profession and my reputation, without any chance to confront and cross-examine those I proved in several states perjured themselves was for a few dollars of federal HTF money. I was defamed, brutally battered called several slanderous, libelous names per my good name, without him/ her, Director, interviewing the detractors, to revoke that forced [illegible] blacklisting me from gainful employment per the 1986 CMUSA, R.W. Reagan signed into law. For 21 years I have been trying to get justice from the Feds and the state. Now, I will get results in Missouri courts.

Id. at 6. Plaintiff raises numerous other similar allegations in his complaint and in a separate statement. See Doc. 4.

In the section of the complaint form asking Plaintiff to state what he wants the court to do for him, Plaintiff writes the following:

(1) Restore me to being whole as I was before being/ and [illegible] and libeled by R.W. Regan as a drug addict, less than human degenerate unfit to be in civilized society, just because I chose a proud profession of hauling [illegible] food and house and car and [illegible] chose a profession or job you enjoy, so why pick on the one who you depend on for your food distribution and your daily lives? (2) Call for the convention of a grand jury to investigate how many other victims of the 1986 CMUSA exist in the United States [illegible] targeted by USDOT/ USDOJ/ LCAA subsidies to accuse for money, falsely; (3) restore my good name as reputation is a civil right; (4) consider declaring the CDL unconstitutional as per the unwritten charge of drug use, pre-employment drug test and random drug tests as no due process of law and denial of equal rights and protection of the laws; (5) issue warrants for your fellow federal employees and agents on probable cause at trial as [illegible] will be described during the trial.

Doc. 1, p. 8.

III. Discussion

Initially, Plaintiffs' allegations are incoherent, conclusory, and unsupported by sufficient factual content to state cognizable claims under § 1983. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (Plaintiff must plead more than "threadbare recitals of a cause of action's elements, supported by mere conclusory statements" and must include "factual content" that "allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged."). Plaintiff does not set forth sufficient factual content regarding Defendant's personal involvement in his claims for this Court to draw a reasonable inference that Defendant is liable under § 1983. *Id.* at 676 ("a plaintiff must plead that each Government official defendant, through the official's own individual actions, has violated the Constitution.).

Plaintiff's allegations are legally frivolous and fail to state cognizable claims for relief for the following additional reasons. Claims of defamation are not actionable under § 1983. *Paul v. Davis*, 424 U.S. 693, 701-02, 710-712 (1976) (holding defamation, per se, is not actionable under

§ 1983); *see also Underwood v. Pritchard*, 638 F.2d 60, 62 (8th Cir.1981). Insofar as Plaintiff alleges that Defendant or any other individuals made false statements to police or in his court proceedings, witnesses are entitled to absolute immunity from a claim for damages pursuant to § 1983 for having committed perjury. *Briscoe v. LaHue*, 460 U.S. 325, 335–46 (1983). This Court further notes that Missouri's five-year statute of limitations for personal injury actions, Mo. Rev. Stat. § 516.120(4), applies to Plaintiff § 1983 claims. *See Wilson v. Garcia*, 471 U.S. 261, 276 (1985) (§ 1983 actions should be characterized as personal injury claims for purpose of applying appropriate state statute of limitations); *Farmer v. Cook*, 782 F.2d 780, 780 (8th Cir.1986) (per curiam) (§ 1983 claims brought in Missouri were subject to 5-year statute of limitations). Plaintiff's claims are premised on actions that occurred well over five years ago, in that Plaintiff alleges in his complaint that "Dec. 7, 1997, was the culmination of all of the acts." Doc. 1, p. 6. Finally, much of the ~~relief~~ Plaintiff appears to seek is either incoherent or not cognizable in a § 1983 action. *See Kunzer v. Magill*, 667 F. Supp. 2d 1058, 1061 (D. Minn. 2009) ("Private citizens have no constitutional or other right to a criminal investigation, nor any judicially-cognizable interest in the prosecution or non-prosecution of another." (citing *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973))). ~~Therefore, Plaintiff's allegations are legally frivolous and fail to state a claim.~~

IV. Conclusion

For the foregoing reasons, Plaintiff is granted provisional leave to proceed *in forma pauperis*, and this case is ~~summarily~~ dismissed as legally frivolous and for failure to state a claim.

It is so **ORDERED**.

/s/ Ortrie D. Smith
ORTRIE D. SMITH
UNITED STATES DISTRICT JUDGE

Dated: August 9, 2018.