UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Deborah S. Hunt
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Filed: February 24, 2020

Mr. Antuan Burress-El
5607 Ebersole Avenue
Cincinnati, OH 45227

Re: Case No. 20-3016, *Antuan Burress-El v. John Born, et al*
Originating Case No. : 2:18-cv-00098

Dear Sir or Madam,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/C. Anthony Milton
For Sharday Swain
Case Manager
Direct Dial No. 513-564-7026

cc: Mr. Richard W. Nagel

Enclosure

No mandate to issue

No. 20-3016

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ANTUAN BURRESS-EL,

Plaintiff-Appellant,

v.

JOHN BORN, Ohio Department of Public Safety; DONALD PETIT, Ohio Bureau of Motor Vehicle,

Defendants-Appellees.

ORDER

Before: GUY, DONALD, and LARSEN, Circuit Judges.

This court must examine the basis of its jurisdiction, on its own motion if necessary. *See Alston v. Advanced Brands & Importing Co.*, 494 F.3d 562, 564 (6th Cir. 2007). Generally, in a civil case where the United States, a United States agency, or a United States officer or employee is not a party, a notice of appeal must be filed within thirty days after the judgment or order appealed from is entered. *See* 28 U.S.C. § 2107(a); Fed. R. App. P. 4(a)(1)(A).

On October 23, 2018, the clerk of court for the district court, pursuant to the opinion and order of the district judge, entered the final judgment dismissing Antuan Burress-El's complaint that asserted various federal and state law claims. Any notice of appeal was due to be filed on or before November 23, 2018. The notice of appeal filed on December 30, 2019, is therefore late.

Compliance with the statutory deadline in § 2107(a) is a mandatory, jurisdictional prerequisite that this court may neither waive nor extend. *See Hamer v. Neighborhood Hous. Servs. of Chi.*, 138 S. Ct. 13, 21 (2017); *Bowles v. Russell*, 551 U.S. 205, 214 (2007). Because Burress-El's notice of appeal was filed over one year after entry of judgment, this court is without jurisdiction to consider the merits of his appeal. The statutory provisions permitting the district

court to extend or reopen the time to file a notice of appeal do not apply here. *See* 28 U.S.C. § 2107(c).

Accordingly, it is ordered that the appeal is **DISMISSED**.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

ANTUAN BURRESS-EL,

Plaintiff,

v.

Civil Action 2:18-cv-98
Judge Algenon L. Marbley
Magistrate Judge Chelsey M. Vascura

JOHN BORN, *et al.*,

Defendants.

ORDER and REPORT AND RECOMMENDATION

Plaintiff, Antuan Burress-El, an Ohio resident proceeding without the assistance of counsel, has submitted a request to file a civil action *in forma pauperis*. (ECF No. 1.) The Court **GRANTS** Plaintiff's request to proceed *in forma pauperis*. All judicial officers who render services in this action shall do so as if the costs had been prepaid. 28 U.S.C. § 1915(a). This matter is also before the Court for the initial screen of Plaintiff's Amended Complaint as required by 28 U.S.C. § 1915(e)(2) to identify cognizable claims and to recommend dismissal of Plaintiff's Amended Complaint, or any portion of it, which is frivolous, 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. 28 U.S.C. § 1915(e)(2). Having performed the initial screen, for the reasons that follow, it is **RECOMMENDED** that the Court **DISMISS** this action pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) and Federal Rule of Civil Procedure 12(h)(3) **WITHOUT PREJUDICE** to filing any state-law claims in state court.

I.

Congress enacted 28 U.S.C. § 1915, the federal *in forma pauperis* statute, seeking to "lower judicial access barriers to the indigent." *Denton v. Hernandez*, 504 U.S. 25, 31 (1992). In doing so, however, "Congress recognized that 'a litigant whose filing fees and court costs are assumed by the public, unlike a paying litigant, lacks an economic incentive to refrain from filing frivolous, malicious, or repetitive lawsuits.'" *Id.* at 31 (quoting *Neitzke v. Williams*, 490 U.S. 319, 324 (1989)). To address this concern, Congress included subsection (e)[1], which provides in pertinent part as follows:

> (2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that--
>
> * * *
>
> (B) the action or appeal--
>
> (i) is frivolous or malicious;
>
> (ii) fails to state a claim on which relief may be granted; or . . . .

28 U.S.C. § 1915(e)(2)(B)(i) & (ii); *Denton*, 504 U.S. at 31. Thus, § 1915(e) requires *sua sponte* dismissal of an action upon the Court's determination that the action is frivolous or malicious, or upon determination that the action fails to state a claim upon which relief may be granted.

To properly state a claim upon which relief may be granted, a plaintiff must satisfy the basic federal pleading requirements set forth in Federal Rule of Civil Procedure 8(a). *See also Hill v. Lappin*, 630 F.3d 468, 470–71 (6th Cir. 2010) (applying Federal Rule of Civil Procedure 12(b)(6) standards to review under 28 U.S.C. §§ 1915A and 1915(e)(2)(B)(ii)). Under Rule 8(a)(2), a complaint must contain a "short and plain statement of the claim showing that the

[1]Formerly 28 U.S.C. § 1915(d).

pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Thus, Rule 8(a) "imposes legal *and* factual demands on the authors of complaints." *16630 Southfield Ltd., P'Ship v. Flagstar Bank, F.S.B.*, 727 F.3d 502, 503 (6th Cir. 2013).

Although this pleading standard does not require "'detailed factual allegations,' . . . [a] pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action,'" is insufficient. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). A complaint will not "suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Id.* (quoting *Twombly*, 550 U.S. at 557). Instead, to survive a motion to dismiss for failure to state a claim under Rule 12(b)(6), "a complaint must contain sufficient factual matter . . . to 'state a claim to relief that is plausible on its face.'" *Id.* (quoting *Twombly*, 550 U.S. at 570). Facial plausibility is established "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* "The plausibility of an inference depends on a host of considerations, including common sense and the strength of competing explanations for the defendant's conduct." *Flagstar Bank*, 727 F.3d at 504 (citations omitted). Further, the Court holds *pro se* complaints "'to less stringent standards than formal pleadings drafted by lawyers.'" *Garrett v. Belmont Cnty. Sheriff's Dep't.*, 374 F. App'x 612, 614 (6th Cir. 2010) (quoting *Haines v. Kerner*, 404 U.S. 519, 520 (1972)). This lenient treatment, however, has limits; "'courts should not have to guess at the nature of the claim asserted.'" *Frengler v. Gen. Motors*, 482 F. App'x 975, 976–77 (6th Cir. 2012) (quoting *Wells v. Brown*, 891 F.2d 591, 594 (6th Cir. 1989)).

Finally, when the face of the complaint provides no basis for federal jurisdiction, the Court may dismiss an action as frivolous and for lack of subject matter jurisdiction under both 28

U.S.C. § 1915(e)(2)(B) and Fed. R. Civ. P. 12(h)(3). *Williams v. Cincy Urban Apts.*, No. 1:10-cv-153, 2010 WL 883846, at *2 n.1 (S.D. Ohio Mar. 9, 2010) (citing *Carlock v. Williams*, 182 F.3d 916, 1999 WL 454880, at *2 (6th Cir. June 22, 1999) (table)).

II.

Based upon the case caption, it appears that Plaintiff seeks to bring this action against officials at the Ohio Department of Public Safety and the Ohio Bureau of Motor Vehicles. The entirety of Plaintiff's "Statement of Claim" in his Amended Complaint provides as follows:

1) i, a man: claim Deprivation of 'Inalieable Rights' [FORGERY] against me, my person and my property; By O.D.P.S., John Born, O.B.M.V., Donald Petit also referred to as "wrongdoers" in his said "court" case.

2) No, law exist that binds "i" to the wrongdoers;

3) The casual agents of the Deprivation [FORGERY] comes by way of its use of commercial contractual instrument;

4) The Deprivation of I.R. [FORGERY] did and does harm and injury to me, my person, and my property;

5) The commencement of the wrong and harm began in April 2001;

6) i require delivery of all said property be under my jurisdiction no later than February 15, 2018;

7) i require compensation for the initial and continual Deprivation of I.R. [FORGERY] upon me, my person, and my property;

8) I have placed a charge of $1.5 million for the wrongdoers: $250,000.00 per wrongdoer, $250,000.00 per pecuniary damages, $250,000.00 per mental anguish;

9) The wrong and harm continues and the Failure in restoration of property to this day, January 30, 2018;

10) i, say here, and will verify in open court, that all herein be true

11) OHIO SUPREME COURT (TRAFFIC RULE 13) SEC (B) (1)(2)(3)(4)(5)(6)(7)(8)(9). Laws having Authority over (O.R.CODES).

(Pl.'s Compl., ECF No. 2 at p. 3 (all punctuation and information in brackets in original).) In the relief section of his Amended Complaint, Plaintiff says that he requires "a common law court to face [his] accusers for any crimes or injuries done to them." (*Id.* at p. 4.) He also asks the Court to take notice of claims made against him and to award him $1.5 million for "the initial and continual injuries and harm" that he and his property suffered. On the civil cover sheet, under the section asking for a brief description of his cause of action, Plaintiff states "FORGERY [DEPRIVATION OF INALIABLE RIGHTS]." (ECF No. 2 at p. 7.)

Plaintiff's Amended Complaint provides insufficient factual content or context from which the Court could reasonably infer that Defendants violated Plaintiff's rights. Instead, Plaintiff's Amended Complaint consists of nothing more than "unadorned, the-defendant-unlawfully-harmed-me accusation[s]." *Iqbal*,129 S.Ct. at 1949. These pure legal conclusions or "legal conclusion[s] couched as [ ] factual allegation[s]" fail to satisfy the basic federal pleading requirements set forth in Rule 8(a). *Twombly*, 550 U.S. at 555.

Moreover, the allegations Plaintiff sets forth in his Amended Complaint are so nonsensical as to render his Amended Complaint frivolous. A claim is frivolous if it lacks "an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). The former occurs when "indisputably meritless" legal theories underlie the complaint, and the latter when it relies on "fantastic or delusional" allegations. *Id.* at 327–28. This Court is not required to accept the factual allegations set forth in a complaint as true when such factual allegations are "clearly irrational or wholly incredible." *Ruiz v. Hofbauer*, 325 F. App'x 427, 429–30 (6th Cir. 2009) (citing *Denton v. Hernandez*, 504 U.S. 25, 33 (1992)). Here, Plaintiff's generic assertion that Defendants violated his "inalienable rights" lacks an arguable basis in law or fact.

Finally, to the extent Plaintiff is attempting to assert a claim for forgery, this Court does not have jurisdiction over that claim because it is a state-law claim. The basic statutory grants of federal court subject-matter jurisdiction are contained in 28 U.S.C. § 1331, which provides for '[f]ederal-question' jurisdiction, and § 1332, which provides for '[d]iversity of citizenship' jurisdiction." *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 501 (2006). Federal-question jurisdiction is invoked when a plaintiff pleads a claim "arising under" the federal laws or the United States Constitution. *Id.* (citation omitted). For a federal court to have diversity jurisdiction pursuant to Section 1332(a), there must be complete diversity, which means that each plaintiff must be a citizen of a different state than each defendant, and the amount in controversy must exceed $75,000. *Caterpillar, Inc. v. Lewis*, 519 U.S. 61, 68 (1996). Section 1331 cannot be satisfied here because state-law claims such as a forgery claim do not involve alleged violations of federal statutes or alleged deprivations of constitutional rights. Section 1332 also cannot be satisfied here because Plaintiff and Defendants are both citizens of Ohio. Because Plaintiff's Amended Complaint provides no basis for federal jurisdiction, this Court must dismiss this action.

III.

For the reasons set forth above, it is **RECOMMENDED** that the Court **DISMISS** this action pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) and Federal Rule of Civil Procedure 12(h)(3) **WITHOUT PREJUDICE** to filing any state-law claims in state court.

PROCEDURE ON OBJECTIONS

If any party objects to this Report and Recommendation, that party may, within fourteen (14) days of the date of this Report, file and serve on all parties written objections to those specific proposed findings or recommendations to which objection is made, together with supporting authority for the objection(s). A Judge of this Court shall make a *de novo*

determination of those portions of the Report or specified proposed findings or recommendations to which objection is made. Upon proper objections, a Judge of this Court may accept, reject, or modify, in whole or in part, the findings or recommendations made herein, may receive further evidence or may recommit this matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

The parties are specifically advised that failure to object to the Report and Recommendation will result in a waiver of the right to have the District Judge review the Report and Recommendation *de novo*, and also operates as a waiver of the right to appeal the decision of the District Court adopting the Report and Recommendation. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

IT IS SO ORDERED.

/s/ Chelsey M. Vascura
CHELSEY M. VASCURA
UNITED STATES MAGISTRATE JUDGE

THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

ANTUAN BURRESS-EL,	:	
	:	
Plaintiff,	:	**Civil Action 2:18-CV-98**
	:	
v.	:	**JUDGE ALGENON L. MARBLEY**
	:	
JOHN BORN, *et al.*,	:	**Magistrate Judge Vascura**
	:	
Defendants.	:	
	:	

OPINION & ORDER

This matter is before the Court for consideration of the United States Magistrate Judge's Report and Recommendation (ECF No. 4) recommending that the Court dismiss Plaintiff's action without prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) and Federal Rule of Civil Procedure 12(h)(3). In response to the Report and Recommendation, Plaintiff filed four notices within the 14-day statutory timeframe allowed by the Court to file objections. (ECF Nos. 7-10). Plaintiff also filed an amended notice, Motion for Default Judgment and/or Objection, and amended Motion after the statutory timeframe allowed by the Court to file objections. (ECF Nos. 11-13).

For the reasons set forth below, the Court **ADOPTS** the Magistrate Judge's Report and Recommendation, **OVERRULES** Plaintiff's Objections (ECF Nos. 7-10), **DENIES AS MOOT** Plaintiff's amended Notice, Motion for Default Judgment and/or Objection and amended Motion (ECF Nos. 11-13), and declares Plaintiff a vexatious litigator.

I. BACKGROUND

Plaintiff Antuan Burress-El seeks to bring action against officials at the Ohio Department of Public Safety and the Ohio Bureau of Motor Vehicles. (ECF No. 4 at 4). He describes the cause of action as "Forgery [Deprivation of Inalienable Rights]." (ECF No. 2 at 3).

A. The Report and Recommendation

At the outset of this litigation, Mr. Burress-El moved to proceed *in forma pauperis*. (ECF No. 4 at 1). On February 12, 2018, the Magistrate Judge issued a Report and Recommendation holding that Mr. Burress-El should be permitted to proceed *in forma pauperis*, but recommending that the case should nevertheless be dismissed. (ECF No. 4 at 1). The Report and Recommendation offered the following reasons for the suggested disposition: First, the Amended Complaint provided insufficient factual content or context to allow a Court reasonably to infer that Defendants violated Plaintiff's rights, failing to satisfy the pleading requirements in Federal Rule of Civil Procedure 8(a) (ECF No. 4 at 5). Second, the allegations in the Amended Complaint were "so nonsensical as to render [the] Amended Complaint frivolous." (*Id.*). Finally, the Court does not have jurisdiction because forgery is a state law claim and the parties do not meet the requirements for diversity jurisdiction. (*Id.*).

B. Plaintiff's Objections

On February 26, 2018, Mr. Buress-El filed four objections to the Magistrate Judge's Report and Recommendation. They are styled as "notice: jurisdiction" (ECF No. 7), "notice: venue" (ECF No. 8), "notice: signature" (ECF No. 9), and "notice: 'right to pursue a claim.'" (ECF No. 10).

II. STANDARD OF REVIEW

For the Report and Recommendation, the Magistrate Judge screened Plaintiff's Complaint to identify cognizable claims and to recommend dismissal of Plaintiff's Amended Complaint, or

any portion of it, if it is frivolous, 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. 28 U.S.C. § 1915(e)(2). If a party objects within the timeframe allotted in the Magistrate Judge's Report and Recommendation, the Court "shall make a *de novo* determination of those portions of the report or specified proposed findings and recommendations to which objection is made." 28 U.S.C. § 636(b)(1). After such determination, the Court "may accept, reject, modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). *See also* Federal Rule of Civil Procedure 72(b).

III. ANALYSIS

A. Plaintiff's Objections

A *pro se* party's pleadings must be construed liberally and are held to less stringent standards than formal pleadings drafted by attorneys. *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972). Mr. Burress-El's filings (ECF Nos. 7-10) therefore will be construed as objections to the Magistrate Judge's Report and Recommendation. Even so, none of the filings responds to the deficiencies the Magistrate Judge correctly identified in Mr. Burress-El's complaint. In short: Mr. Burress-El does not state a claim, but to the extent he did, it is frivolous, and to the extent it could be construed as non-frivolous, this Court lacks jurisdiction to adjudicate the matter. His complaint must be **DISMISSED**.

B. Plaintiff's Prior Lawsuit Filings

On April 12, 2018, a United States Magistrate Judge wrote a Report and Recommendation recommending that Plaintiff's complaint in a separate lawsuit be dismissed with prejudice. *Burress-El v. Kelley*, 2018 WL 2716315 at *3 (S.D. OH Apr. 12, 2018). Citing four prior lawsuits filed in this Court and two additional lawsuits under the name "Antuan L. Burress", the Magistrate

Judge noted that virtually all of the lawsuits were dismissed at the screening level. *Id.* at *1 n.1. In addition, the Magistrate Judge found that Plaintiff presented similar claims in several of his prior lawsuits. *Id.* at *2 n.3.

The Magistrate Judge's Report and Recommendation warned Mr. Burress-El that additional attempts to file similar lawsuits will not only be summarily dismissed at the screening level but may invite sanctions from this Court if deemed to be vexatious. *Id.* at *3. The United States District Judge reviewing the Report and Recommendation adopted the Magistrate Judge's recommendations, including the warning to Plaintiff. *Burress-El v. Kelley*, 2018 WL 2688437 at *1 (S.D. OH June 5, 2018).

This Court will first determine whether Mr. Burress-El's conduct is vexatious. A party's right of access to the Court is not absolute or unconditional. *In re Moncier*, 488 Fed.Appx. 57 (6th Cir. 2012). Litigants who continually file frivolous lawsuits pertaining to the same matter can be deemed a vexatious litigator and can be subject to "pre-filing restrictions" for future lawsuits. *Feathers v. Chevron U.S.A., Inc.*, 141 F.3d 264, 269 (6th Cir. 1998). Courts have the discretion to "prevent a *pro se* litigant from filing an *in forma pauperis* complaint where such a litigant has a long track record of filing frivolous suits." *Gibson v. R.G. Smith Co.*, 915 F.2d 260, 262 (6th Cir. 1990).

Plaintiff has repeatedly brought actions in this Court, each time alleging § 1983 claims against various defendants, all of which were either dismissed after screening or have a pending Report and Recommendation recommending dismissal after screening. These actions include:

- *Burress v. Hamilton County, et al.*, 1:14-cv-390 (complaint alleging § 1983 claims against Defendants Hamilton County, James Engelhardt, James Zieverink, Anthony Carter, and Simon L. Leis, Jr., that was dismissed with prejudice after screening);
- *Burress v. Hamilton County, et al.*, 1:14-cv-391 (complaint alleging § 1983 claims against Defendants Hamilton County Office of Child Support Enforcement, Hamilton

County Juvenile Courts, Ohio Department of Jobs and Family Services, Summit Behavioral Hospital, Ohio Bureau of Motor Vehicles, Hamilton County Jobs and Family Services, and the State of Ohio that was dismissed with prejudice after screening);

- *Burress-El v. Shabazz, et al.*, 1:17-cv-866 (complaint alleging § 1983 claims against Defendants Ayesha Shabazz and Nanci Brocker for which a Report and Recommendation suggesting dismissal with prejudice is currently pending);

- *Burress-El v. Hamilton County Juvenile Courts, et al.*, 1:18-cv-40 (complaint alleging § 1983 claims against Defendants Hamilton County Juvenile Courts for which a Report and Recommendation suggesting dismissal with prejudice is currently pending); and,

- *Burress-El v. Kelly, et al.*, 1:18-cv-254 (complaint alleging § 1983 claims against Defendants David Kelley and Melissa Powers that was dismissed with prejudice after screening and resulted in a warning that "additional attempts to file similar lawsuits will not only be summarily dismissed at the screening level, but may invite sanctions from the Court if deemed vexatious).

Although the ability to file *in forma pauperis* is an important tool to ensure equal access to justice, it must also be noted that "litigant[s] whose filing fees and court costs are assumed by the public, lack an economic incentive to refrain from filing frivolous, malicious, or repetitive lawsuits." *Neitzke v. Williams*, 490 U.S. 319, 324 (1989). In considering the above litany of actions, it is evident that not only has Mr. Burress-El depleted judicial resources, but he has also repeatedly forced the public to bear the costs of his unavailing efforts to litigate. The Court thus finds that Plaintiff is a vexatious litigator. The Court declines to assess any monetary sanctions at this juncture, but finds that pre-filing restrictions are appropriate. *See, e.g., Feathers v. Chevron U.S.A., Inc.*, 141 F.3d 264, 269 (6th Cir. 1998) (noting that pre-filing restrictions are common in "matters with a history of repetitive or vexatious litigation).

It is therefore hereby **ORDERED** that Mr. Burress-El is barred from filing any further actions in this Court without submitting a certification from an attorney that his claims are not frivolous, malicious, or repetitive.

IV. CONCLUSION

The Court **ADOPTS** the Magistrate Judge's Report and Recommendation and **DISMISSES** the case with prejudice. Because the matter is dismissed, all other pending motions are **MOOT**. (ECF Nos. 11-13). Further, Mr. Burress-El is declared a **VEXATIOUS LITIGATOR** and may not submit further filings with this Court without attorney certification. The Clerk's Office is hereby **DIRECTED** to reject any filings that Mr. Burress-El attempts to submit that lack such certification, with the exception of any filings Mr. Burress-El is otherwise entitled to submit in the cases still pending before the Southern District of Ohio (*Burress-El v. Shabazz, et al.*, 1:17-cv-866 and *Burress-El v. Hamilton County Juvenile Courts, et al.*, 1:18-cv-40).

IT IS SO ORDERED.

s/ Algenon L. Marbley
ALGENON L. MARBLEY
UNITED STATES DISTRICT JUDGE

DATED: October 23, 2018