United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted November 21, 2019*
Decided November 25, 2019

Before

DIANE P. WOOD, *Chief Judge*

FRANK H. EASTERBROOK, *Circuit Judge*

DANIEL A. MANION, *Circuit Judge*

No. 19-1571

RAFEAL D. NEWSON,
Plaintiff-Appellant,

v.

SUPERIOR COURT OF PIMA COUNTY and MILWAUKEE COUNTY CIRCUIT COURT,
Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of Wisconsin.

No. 19-C-219

William C. Griesbach,
Judge.

ORDER

Rafeal Newson was convicted of first-degree intentional homicide and sentenced to life in prison after he was extradited from Arizona, where he was incarcerated, to Wisconsin pursuant to a detainer. Almost twenty years after his conviction, he sued the

* The defendants were not served with process and are not participating in this appeal. We have agreed to decide the case without oral argument because the brief and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

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Superior Court of Pima County, Arizona and the Milwaukee County Circuit Court for violating the Interstate Agreement on Detainers Act, 18 U.S.C. app. 2, § 2, during his extradition. At screening, the district court ruled that it lacked subject-matter jurisdiction over the case, which Newson framed as a breach-of-contract suit, because the parties were not completely diverse. *See* 18 U.S.C. § 1332(a). Because Newson's complaint fails to state a valid claim for relief, and any attempt at amendment would be futile, we affirm the district court's dismissal.

In his complaint, Newson claims that the defendants violated the Detainer Act when an Arizona judge allowed him to be extradited to Wisconsin in 2000 based on an allegedly incomplete extradition packet. According to Newson, the 1996 criminal complaint on which the extradition was based had never been filed or approved by a judge. He seeks $32 million in compensatory and punitive damages for his loss of liberty. He also alleges that he was "kidnapped" from Arizona and is now being "held in slavery," and he asks the district court to order the State of Wisconsin to dismiss the criminal complaint on which he was convicted.

The district court dismissed Newson's case at screening, *see* 28 U.S.C. § 1915A(b), for lack of subject-matter jurisdiction. Taking Newson's breach-of-contract theory at face value, the court concluded that Newson's complaint did not present a federal question and that diversity jurisdiction was lacking because Newson and the Milwaukee County Circuit Court were both citizens of Wisconsin. The court then denied Newson's two motions for reconsideration, determining that he failed to state a claim and that any attempt at amending the complaint would be futile.

On appeal, Newson continues to insist that the defendants breached a contract with him and contends that the district court should have either dismissed the Milwaukee County Circuit Court under Federal Rule of Civil Procedure 21 or allowed him to amend the complaint to cure the lack of complete diversity. Newson is correct that a court can cure jurisdictional defects by dismissing non-essential parties, *see Hurley v. Motor Coach Industries*, 222 F.3d 377, 380 (7th Cir. 2000); FED. R. CIV. P. 21, and that litigants in this circuit are ordinarily given the chance to amend their pleadings once as a matter of course. *See Luevano v. Wal-Mart Stores, Inc.*, 722 F.3d 1014, 1022 (7th Cir. 2013). But dismissal may still be appropriate if "it is certain from the face of the complaint that any amendment would be futile or otherwise unwarranted." *O'Boyle v. Real Time Resolutions, Inc.*, 910 F.3d 338, 347 (7th Cir. 2018). That is true here.

In reviewing federal complaints, courts must analyze a plaintiff's claims, not his legal theories. *See Norfleet v. Walker*, 684 F.3d 688, 690 (7th Cir. 2012). To state a claim, a

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plaintiff need only narrate his claim with sufficient clarity to put the defendants on notice of its basis; he need not present legal theories at all. *See Chapman v. Yellow Cab Coop.*, 875 F.3d 846, 848 (7th Cir. 2017). Instead of simply adopting Newson's breach-of-contract theory, then, the district court should have considered whether his allegations of an illegal extradition could plausibly entitle him to relief under any theory.

Newson's suit alleges that he was extradited to Wisconsin in violation of the Detainer Act. A suit to enforce the violation of a federal law by state actors is one under 42 U.S.C. § 1983, and the Supreme Court has held that a prisoner can state a claim under that statute for violations of the Detainer Act. *Cuyler v. Adams*, 449 U.S. 433, 449 (1981). (There are also direct remedies under the Act, but those are not relevant here.) The district court was therefore incorrect to state in its order on reconsideration that Newson's complaint "raised no constitutional questions or questions of federal law."

Nevertheless, we agree that dismissal of the complaint was proper. Leaving aside the problem of seeking damages from an entity of the state, which is not a "person" under § 1983, *see Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989), or from state judges over performance of their judicial functions, *see Stump v. Sparkman*, 435 U.S. 349, 359–60 (1978), Newson cannot state a claim under § 1983 for the wrong he alleges—one that took place decades ago. His request for damages for "illegal extradition" and incarceration is blocked by *Heck v. Humphrey*, 512 U.S. 477 (1994). Unless his Wisconsin conviction or sentence has been invalidated, his claim necessarily impugns their validity. *Id.* at 487; *Knowlin v. Thompson*, 207 F.3d 907, 909 (7th Cir. 2000).

A dismissal under *Heck* is without prejudice and does not prevent Newson from seeking relief that is not inconsistent with the validity of his conviction. *See Polzin v. Gage*, 636 F.3d 834, 839 (7th Cir. 2011). For example, if Newson seeks release from prison, he must proceed under 28 U.S.C. § 2254, naming his custodian as the respondent. We express no opinion, however, on whether the violation of the Detainer Act of which Newson complains (extradition on the basis of an allegedly incomplete extradition package) could lend itself to collateral review. *See Reed v. Clark*, 984 F.2d 209, 212 (7th Cir. 1993).

We assess Newson with one "strike" for filing his complaint and a second for pursuing this appeal. *See* 28 U.S.C. § 1915(g); *Flynn v. Thatcher*, 819 F.3d 990, 992 (7th Cir. 2016). Although he did not proceed in forma pauperis in the district court or in this court (where he paid the filing fee after the appeal was certified to not be in good faith), he is a "prisoner" within the meaning of § 1915(h) and therefore can incur strikes to deter groundless litigation in the future. The judgment is AFFIRMED.

APPENDIX A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

RAFEAL D. NEWSON,

Plaintiff,

v. Case No. 19-C-219

SUPERIOR COURT OF PIMA COUNTY, et al.,

Defendants.

SCREENING ORDER

Plaintiff Rafeal D. Newson, who is currently representing himself and incarcerated at Dodge Correctional Institution, filed a complaint for a civil case alleging breach of contract against Defendants Superior Court of Pima County and Milwaukee County Court. Plaintiff paid the $400.00 filing fee in this action on February 26, 2019. On February 28, 2019, Plaintiff filed a motion for leave to proceed without prepayment of the filing fee (*in forma pauperis*). Because Plaintiff has paid the filing fee, his motion to proceed *in forma pauperis* will be denied as moot. The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b).

To state a cognizable claim under the federal notice pleading system, the plaintiff is required to provide a "short and plain statement of the claim showing that [he] is entitled to relief." Fed. R. Civ. P. 8(a)(2). The complaint must contain sufficient factual matter "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

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(2007)). The court accepts the factual allegations as true and liberally construes them in the plaintiff's favor. *Turley v. Rednour*, 729 F.3d 645, 651 (7th Cir. 2013). Nevertheless, the complaint's allegations "must be enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555 (citation omitted).

Plaintiff's breach of contract claim relates to his extradition from Arizona to face a homicide charge in Wisconsin. He claims that a Circuit Court of Milwaukee County judge "rubber-stamped" an extradition packet that included a complaint that did not bear a case number or a file stamp from the Clerk of Court establishing that the complaint was authentic. Plaintiff asserts that the Superior Court of Pima County erred in extraditing him based on the invalid extradition packet. He claims he entered into a contract with the Circuit Court of Milwaukee County and the Superior Court of Pima County, in which the defendants agreed to comply with the Interstate Agreement on Detainers Act, and that the defendants breached the contract by improperly extraditing him from Arizona.

To the extent Plaintiff seeks to pursue state law claims of breach of contract against the defendants, the court lacks subject matter jurisdiction. Subject matter jurisdiction cannot be waived and may be "raised *sua sponte* by the court at any point in the proceedings." *Hawxhurst v. Pettibone Corp.*, 40 F.3d 175, 179 (7th Cir. 1994). Diversity jurisdiction exists when there is complete diversity of citizenship among the parties to an action and the amount in controversy exceeds $75,000. 28 U.S.C. § 1332(a)(1). Complete diversity of citizenship means that "none of the parties on either side of the litigation may be a citizen of the state of which a party on the other side is a citizen." *Howell v. Tribune Entm't Co.*, 106 F.3d 215, 217 (7th Cir. 1997). In this case, complete diversity does not exist because Plaintiff and the Circuit Court of Milwaukee County are citizens of Wisconsin. As a result, complete diversity is lacking, and this court has no subject matter jurisdiction over this action.

IT IS THEREFORE ORDERED that this civil action is **DISMISSED** for failing to allege facts establishing that this court has subject matter jurisdiction over Plaintiff's state law claims. Because this matter is dismissed for lack of subject matter jurisdiction, Plaintiff does not incur a "strike" under 28 U.S.C. § 1915(g).

IT IS FURTHER ORDERED that Plaintiff's motion for leave to proceed without prepayment of the filing fee (ECF No. 5) is **DENIED as moot**.

IT IS FURTHER ORDERED that the Clerk of Court enter judgment accordingly.

IT IS FURTHER ORDERED that copies of this order be sent to the officer in charge of the agency where the inmate is confined.

Dated this 28th day of February, 2019.

s/ William C. Griesbach
William C. Griesbach, Chief Judge
United States District Court

This order and the judgment to follow are final. The plaintiff may appeal this court's decision to the Court of Appeals for the Seventh Circuit by filing in this court a notice of appeal within **30 days** of the entry of judgment. *See* Fed. R. App. P. 3, 4. This court may extend this deadline if a party timely requests an extension and shows good cause or excusable neglect for not being able to meet the 30-day deadline. *See* Fed. R. App. P. 4(a)(5)(A). If the plaintiff appeals, he will be liable for the $505.00 appellate filing fee regardless of the appeal's outcome. If the plaintiff seeks leave to proceed *in forma pauperis* on appeal, he must file a motion for leave to proceed *in forma pauperis* with this court. *See* Fed. R. App. P. 24(a)(1). The plaintiff may be assessed another "strike" by the Court of Appeals if his appeal is found to be non-meritorious. *See* 28 U.S.C. § 1915(g). If the plaintiff accumulates three strikes, he will not be able to file an action in federal court (except as a petition for habeas corpus relief) without prepaying the filing fee unless he demonstrates that he is in imminent danger of serous physical injury. *Id.*

Under certain circumstances, a party may ask this court to alter or amend its judgment under Federal Rule of Civil Procedure 59(e) or ask for relief from judgment under Federal Rule of Civil Procedure 60(b). Any motion under Federal Rule of Civil Procedure 59(e) must be filed within **28 days** of the entry of judgment. Any motion under Federal Rule of Civil Procedure 60(b) must be filed within a reasonable time, generally no more than one year after the entry of judgment. The court cannot extend these deadlines. *See* Fed. R. Civ. P. 6(b)(2).

A party is expected to closely review all applicable rules and determine, what, if any, further action is appropriate in a case.

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604
January 24, 2020

Before

DIANE P. WOOD, *Circuit Judge*

FRANK H. EASTERBROOK, *Circuit Judge*

DANIEL A. MANION, *Circuit Judge*

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William C. Griesbach,
Judge.

ORDER

No judge of the court having called for a vote on the Petition For Rehearing En Banc filed by Plaintiff-Appellant, Rafeal D. Newson, on December 12, 2019, and all of the judges on the original panel having voted to deny the Petition for Rehearing,

IT IS HEREBY ORDERED that the Petition For Rehearing and Rehearing En Banc is DENIED.

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