

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

July 23, 2020

Before:

Daniel A. Manion, Circuit Judge
David F. Hamilton, Circuit Judge
Michael B. Brennan, Circuit Judge

BRENDA L. WHITE,
Plaintiff-Appellant,

No. 20-2215 v.

TAVEL,
Defendant-Appellee.

] Appeal from the United
] States District Court
] for the Southern District
] of Indiana, Indianapolis
] Division.
]
] No. 1:20-cv-00874-JMS-TAB
]
] Jane Magnus-Stinson,
] Chief Judge.

ORDER

On consideration of the papers filed in this case and review of the short record,

IT IS ORDERED that this appeal is **DISMISSED** for lack of jurisdiction.

Rule 4(a) of the Federal Rules of Appellate Procedure requires that a notice of appeal in a civil case be filed in the district court within 30 days of the entry of the judgment or order appealed. In this case judgment was entered on May 29, 2020, and the notice of appeal was filed on July 7, 2020, eight days late. The district court has not granted an extension of the appeal period, *see* Rule 4(a)(5), and this court is not empowered to do so, *see* Fed. R. App. P. 26(b).

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

BRENDA L. WHITE,)
Plaintiff,)
v.) No. 1:20-cv-00874-JMS-TAB
TAVEL,)
Defendant.)

**ENTRY GRANTING MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*,
SCREENING COMPLAINT, AND DIRECTING FURTHER PROCEEDINGS**

Pending before the Court are Plaintiff Brenda L. White's Complaint, [Filing No. 1], and Motion to Proceed *In Forma Pauperis*, [Filing No. 2]. This Order first addresses Ms. White's Motion to Proceed *In Forma Pauperis*, then screens her Complaint pursuant to 28 U.S.C. § 1915(e)(2), and directs further proceedings.

I.
MOTION TO PROCEED *IN FORMA PAUPERIS*

28 U.S.C. § 1915(a) permits the Court to authorize a plaintiff to file a lawsuit "without prepayment of fees" if the plaintiff "submits an affidavit" demonstrating that she lacks the assets to pay the filing fee at this time. 28 U.S.C. § 1915(a)(1). Ms. White's Motion to Proceed *In Forma Pauperis*, [2], meets this standard and is therefore **GRANTED**. 28 U.S.C. § 1915(a).

The Court notes that, while *in forma pauperis* status allows the plaintiff to proceed without *pre-payment* of the filing fee, the plaintiff remains liable for the full fee. *Robbins v. Switzer*, 104 F.3d 895, 898 (7th Cir. 1997) (Every *in forma pauperis* litigant is liable for the filing fee; "all [18 U.S.C.] § 1915(a) does for any litigant is excuse the *pre*-payment of fees") (emphasis in original). The Court does not have the authority to waive the filing fee, and it remains due despite plaintiff's *in forma pauperis* status. *Fiorito v. Samuels*, 2016 WL 3636968, *2 (C.D. Ill. 2016) ("The Court

does not have the authority to waive a filing fee"); *McDaniel v. Meisner*, 2015 WL 4773135, *5 (E.D. Wis. 2015) (same principle). The filing fee for *in forma pauperis* litigants is \$350. See USDC Fee Schedule at <https://www.insd.uscourts.gov/fees-financial-information> (stating that the \$400 filing fee includes a \$50 administrative fee, but that the administrative fee "does not apply to...persons granted in forma pauperis status under 28 U.S.C. § 1915"). Immediate payment is not required; however, the \$350 balance remains owing.

II. SCREENING

A. Screening Standard

Pursuant to 28 U.S.C. § 1915(e)(2), the Court shall dismiss a case brought by a plaintiff proceeding *in forma pauperis* "at any time if the court determines that . . . the action . . . is frivolous or malicious; . . . fails to state a claim on which relief may be granted; or . . . seeks monetary relief against a defendant who is immune from such relief." In determining whether a complaint states a claim, the Court applies the same standard as when addressing a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). *See Lagerstrom v. Kingston*, 463 F.3d 621, 624 (7th Cir. 2006).

To survive dismissal:

[the] complaint must contain sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.

Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

B. Complaint

The following are the factual allegations in the Complaint, which the court must accept as true at this time:

On November 14, 2019, Ms. White visited the Tavel eye care center located at 8139 Pendleton Pike in Lawrence, Indiana for an appointment. [Filing No. 1 at 5.] During the

appointment, David Rich (presumably an employee or agent of Tavel) flipped on bright lights directly into both of Ms. White's eyes for approximately five seconds without first giving her any warning that he was about to do so. [Filing No. 1 at 5.] This resulted in Ms. White's eyes becoming very sore, feeling as though they had been bruised. [Filing No. 1 at 5.] Ms. White's eyes still feel sore several months later, although the amount of soreness has somewhat lessened over time. [Filing No. 1 at 5.] After the incident, Ms. White contacted Tavel and spoke to the manager about Mr. Rich's actions; the manager defended Mr. Rich. [Filing No. 1 at 5.] Ms. White then contacted Tavel's customer service department who told her that it would contact the Tavel location she visited and would call Ms. White back. [Filing No. 1 at 5.] However, Tavel customer service did not contact Ms. White. [Filing No. 1 at 5.] Ms. White states that the incident "happened because [she is] African-American." [Filing No. 1 at 5.] She states that such an incident has never happened to her before in her fifty-five years of receiving eye care and she has "always been told what is about to happen before it happens. And only one eye at a time." [Filing No. 1 at 5.] Ms. White seeks a judgment against Tavel for \$1,000,000.00 "for the damage to [her] eyes, and for the pain and suffering of the actions of David Rich and no consideration of Tavel." [Filing No. 1 at 5.]

C. Discussion

"Federal courts are courts of limited jurisdiction" that "possess only that power authorized by Constitution and statute." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). "[T]he party invoking federal jurisdiction bears the burden of demonstrating its existence," *Hart v. FedEx Ground Package Sys. Inc.*, 457 F.3d 675, 679 (7th Cir. 2006), but "it is always a federal court's responsibility to ensure it has jurisdiction," *Hukic v. Aurora Loan Servs.*, 588 F.3d 420, 427 (7th Cir. 2009). "Subject-matter jurisdiction is the first question in every case, and if the court

concludes that it lacks jurisdiction it must proceed no further.” *State of Ill. v. City of Chicago*, 137 F.3d 474, 478 (7th Cir. 1998). As such, before delving into the substance of Ms. White’s claims, the Court must first determine whether it has jurisdiction to hear such claims to begin with.

There are two types of subject matter jurisdiction. “One circumstance in which federal courts have original jurisdiction is when the lawsuit is between ‘citizens of different States’ and the amount in controversy is over \$75,000.” *Hukic*, 588 F.3d at 427 (citing 28 U.S.C. § 1332(a)(1)). Ms. White alleges that diversity of citizenship exists between her and Tavel. [Filing No. 1 at 2.] However, although she adequately alleges that she is a citizen of Indiana, she does not properly allege the citizenship of Tavel. [Filing No. 1 at 3.] Ms. White alleges that Tavel is incorporated under the laws of “various” states, and then lists the address for the Tavel location she visited, which is in Indiana. [Filing No. 1 at 2-3.] These jurisdictional allegations are insufficient. If Tavel is a corporation, Ms. White needs to allege the state in which it is incorporated and the state in which it has its principal place of business. 28 U.S.C. § 1332(c)(1). If Tavel is a limited liability company or some other unincorporated entity, Ms. White needs to allege the citizenship of each of the members of the organization. *Wise v. Wachovia Sec., LLC*, 450 F.3d 265, 267 (7th Cir. 2006). Further, if Tavel is, in fact, a citizen of Indiana, there would not be diversity of citizenship in this case because Ms. White is also a citizen of Indiana. Because Ms. White has failed to properly allege diversity of citizenship between the parties, it does not appear to the Court that it may exercise jurisdiction on this basis.

This leaves federal question jurisdiction. “Under 28 U.S.C. § 1331, district courts have federal question jurisdiction in civil cases ‘arising under the Constitution, laws, or treaties of the United States.’” *Napoleon Hardwoods, Inc. v. Professionally Designed Benefits, Inc.*, 984 F.2d 821, 822 (7th Cir. 1993). Ms. White alleges that the incident occurred because she is African

American. To the extent that she is intending to assert a discrimination or civil rights claim, she has not alleged any facts to demonstrate that Tavel is a state actor or violated any federal law. *See, e.g., London v. RBS Citizens, N.A.*, 600 F.3d 742, 746 (7th Cir. 2010) (explaining that private actors may be sued for civil rights violations under 42 U.S.C. § 1983 when they act “under color of state law,” and not for “merely private conduct, no matter how discriminatory or wrongful”) (citation omitted). For that reason, Ms. White’s potential federal claim against Tavel is dismissed.

Ms. White’s allegations most closely resemble a state law negligence or medical malpractice claim, which this Court cannot consider in the absence of diversity jurisdiction. Because there does not appear to be diversity of citizenship in this case, the Court has no jurisdiction, and Ms. White’s claims are **DISMISSED WITHOUT PREJUDICE**.

The Court is mindful of Ms. White’s *pro se* status and its attendant duty to construe her pleadings liberally. *See e.g., Kiebala v. Boris*, 928 F.3d 680, 684 (7th Cir. 2019). Nevertheless, because Ms. White’s allegations do not indicate that this Court has subject matter jurisdiction over this case, the Complaint must be dismissed. Consistent with the general policy that *pro se* litigants should be given ample opportunity to correct deficiencies, *see id.*, Ms. White shall have until **April 13, 2020** to file an Amended Complaint that sets forth a basis for this Court to exercise jurisdiction and provides “a short and plain statement of the claim showing that [she] is entitled to relief,” Fed. R. Civ. P. 8.

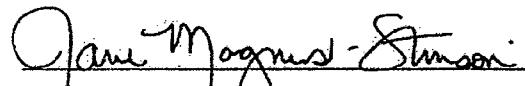
III. CONCLUSION

The Court, having considered the above action and the matters that are pending, makes the following rulings:

1. Plaintiff’s request to proceed *in forma pauperis*, [2], is **GRANTED**.
2. Plaintiff’s Complaint is **DISMISSED WITHOUT PREJUDICE**. [1]

3. Ms. White shall have until **April 13, 2020** to file an Amended Complaint that addresses the deficiencies in this Order and otherwise complies with federal pleading standards. Failure to do so may result in dismissal of this case for lack of jurisdiction and without prejudice to her filing her claims in state court.

Date: 3/20/2020



Hon. Jane Magnus-Stinson, Chief Judge
United States District Court
Southern District of Indiana

Distribution via U.S. Mail to:

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**Additional material
from this filing is
available in the
Clerk's Office.**