

NOT RECOMMENDED FOR PUBLICATION

Nos. 19-1566/1714

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

May 06, 2020

DEBORAH S. HUNT, Clerk

ORDER

Before: SUTTON, McKEAGUE, and NALBANDIAN, Circuit Judges.

Jane Doe, a Michigan litigant proceeding pro se, appeals the district court's orders denying her motion to amend her complaint and denying her motion to retain her anonymity. 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).

Doe filed a complaint against Ben Carson as Executive Director of the United States Department of Housing and Urban Development, Earl Poleski as Executive Director of the Michigan State Housing Development Authority, the United States, and the United States Attorney, claiming disability discrimination in violation of the Rehabilitation Act and the Americans with Disabilities Act with respect to her participation in the housing voucher program. Doe alleged that she is a qualified individual with a disability and that her disability is “brain dysfunction” or “mental illness.”

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Doe subsequently filed an amendment to her complaint. Doe then filed a motion to further amend her complaint and for appointment of counsel and a motion to retain her anonymity. A magistrate judge denied Doe's motion to amend her complaint and for appointment of counsel. With respect to Doe's motion to retain her anonymity, the magistrate judge recommended that Doe's motion be denied and that the case be dismissed if she failed to amend her complaint to identify herself by her legal name. Over Doe's objection, the district court adopted the magistrate judge's report and recommendation, denied Doe's motion to retain her anonymity, and ordered Doe to file an amended complaint identifying herself within twenty-one days. Doe filed a notice of appeal (No. 19-1566). To the extent that Doe's interlocutory appeal could be construed as an appeal to the district court from the magistrate judge's order denying her motion to amend her complaint and for appointment of counsel, the district court denied her appeal. Because Doe did not file an amended complaint identifying herself within twenty-one days, the district court dismissed her case. Doe filed another notice of appeal (No. 19-1714).

On appeal, Doe challenges the denial of her motion to amend her complaint and the denial of her motion to retain her anonymity. Doe moves this court for assignment to a new judge if this case is remanded to the district court.

The district court denied Doe's motion to further amend her complaint because she failed to submit a proposed amended complaint. Doe argues on appeal that providing a copy of her amended complaint in advance would be "very arduous and expensive" and that "going through the effort only to have it rejected would be very difficult." Federal Rule of Civil Procedure 15(a)(2) provides that the district court "should freely give leave [to amend] when justice so requires." However, "the district court must be able to determine whether 'justice so requires,' and in order to do this, the court must have before it the substance of the proposed amendment." *Roskam Baking Co. v. Lanham Mach. Co.*, 288 F.3d 895, 906 (6th Cir. 2002). Because Doe did not submit her proposed amended complaint, merely asserting in her motion to amend that the defendants had other statutory duties falling outside disability law, the district court did not abuse its discretion in denying her motion. *See id.* at 906–07.

The district court denied Doe's motion to retain her anonymity and subsequently dismissed her case when she failed to file an amended complaint identifying herself. We review the district court's denial of Doe's motion to retain her anonymity for abuse of discretion. *See D.E. v. Doe*, 834 F.3d 723, 728 (6th Cir. 2016).

"As a general matter, a complaint must state the names of all parties." *Doe v. Porter*, 370 F.3d 558, 560 (6th Cir. 2004) (citing Fed. R. Civ. P. 10(a)). "Under certain circumstances, however, the district court may allow a plaintiff to proceed under a pseudonym by granting a protective order." *D.E.*, 834 F.3d at 728. "It is the exceptional case in which a plaintiff may proceed under a fictitious name." *Doe v. Frank*, 951 F.2d 320, 323 (11th Cir. 1992) (per curiam). In determining "whether a plaintiff's privacy interests substantially outweigh the presumption of open judicial proceedings," courts consider:

- (1) whether the plaintiffs seeking anonymity are suing to challenge governmental activity; (2) whether prosecution of the suit will compel the plaintiffs to disclose information "of the utmost intimacy"; (3) whether the litigation compels plaintiffs to disclose an intention to violate the law, thereby risking criminal prosecution; and (4) whether the plaintiffs are children.

Porter, 370 F.3d at 560 (citing *Doe v. Stegall*, 653 F.2d 180, 185–86 (5th Cir. 1981)).

In her motion to retain her anonymity, Doe acknowledged that the defendants must know her identity to respond to her complaint, but asked that the district court permanently seal information about her identity and that the defendants be prohibited from "publishing" information about her identity or the nature of her medical issues. Doe asserted: "Revealing medical diagnoses of brain disorders and the effects thereof of any person relevant to their mental health renders an individual subject to fear, paranoia, ridicule and intimidation due to the public's inadequate understanding and false negative assumptions of the true nature of unseen disabilities."

In recommending that Doe's motion be denied, the magistrate judge noted that she "arguably" challenged governmental activity but found that none of the other *Porter* factors weighed in favor of her request. The magistrate judge was unpersuaded that pursuit of her claims would compel Doe to disclose information "of the utmost intimacy." Although the magistrate

judge sympathized with Doe's desire to maintain privacy with respect to her medical impairments and treatment, the magistrate judge stated that she could request submission of her medical records under seal. Doe objected to the magistrate judge's report and recommendation, asserting that "the stigma of mental illness is one of the worst ones in society," that the submission of medical records under seal would not avoid "revealing the fact of mental illness which is the main subject of every section of the complaint," and that she would "never be able to work again if the court insists on putting a permanent record on the internet of this illness in her real name."

The district court adopted the magistrate judge's report and recommendation and denied Doe's motion to retain her anonymity. The district court agreed with the magistrate judge that "concerns about stigma and scrutiny from prospective employers do not involve information 'of the utmost intimacy'; rather, they constitute the type of concerns harbored by other similarly situated litigants who file lawsuits under their real names." The district court pointed out that, even assuming that Doe satisfied the second factor, that factor was not dispositive. According to the district court, Doe failed to demonstrate any error in the magistrate judge's ultimate conclusion that all four *Porter* factors, considered together, did not establish exceptional circumstances to warrant an exception from the general rule under Rule 10(a) that a plaintiff's complaint "must name all the parties."

The district court, having considered the relevant factors in determining that Doe failed to establish exceptional circumstances to overcome the presumption of open judicial proceedings, did not abuse its discretion in denying her motion to retain her anonymity. Doe asserted that Congress, in enacting the Americans with Disabilities Act, recognized the discrimination and prejudice faced by persons with disabilities and that "the stigma of mental illness is one of the worst ones in society." But Doe failed to identify any exceptional circumstances distinguishing her case from other cases brought by plaintiffs claiming disability discrimination who suffer from mental illness. As Doe acknowledged in her motion, "[t]his decision affects Doe and any victim of disability discrimination likewise situated." Nor did Doe identify any specific harm arising from disclosure of her identity. Doe, who alleged in her complaint that she is completely disabled and unable to work, speculated that she would "never be able to work again" if the district court

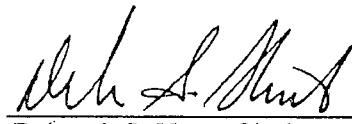
required her identification. In the case cited by Doe, *Doe v. Sessions*, No. 18-0004, 2018 WL 4637014 (D.D.C. Sept. 27, 2018), the plaintiff alleged that the defendants humiliated and harassed him based on his sensitive mental conditions, which he had kept confidential for twenty-five years, and asserted that public identification would cause him to be traumatized again. *Id.* at *4. Unlike the plaintiff in that case, Doe did not assert any harassment by the defendants or claim any potential exacerbation of her mental illness.

Doe argues on appeal that she has a First Amendment right to petition for the redress of grievances without roadblocks keeping her from exercising that right. Because any lawsuit against the government would implicate the First Amendment right to petition for redress of grievances, Doe's argument fails to show exceptional circumstances warranting the use of a pseudonym. Doe also contends that statutes such as the Freedom of Information Act and the Health Insurance Portability and Accountability Act provide for the protection of private medical information. Although these laws support the nondisclosure of medical records, they do not entitle Doe to litigate under a pseudonym.

The district court did not abuse its discretion in determining that Doe's case did not present exceptional circumstances to excuse her from Rule 10(a)'s requirement that a plaintiff's complaint "must name all the parties." Doe does not challenge the district court's subsequent dismissal of her case for failure to file an amended complaint identifying herself. Regardless, because the district court did not abuse its discretion in denying Doe's motion to retain her anonymity, the district court properly dismissed her case based on her failure to comply with Rule 10(a) by filing an amended complaint identifying herself. *See Doe v. Kamehameha Sch./Bernice Pauahi Bishop Estate*, 596 F.3d 1036, 1046 (9th Cir. 2010) (affirming dismissal of case based on the plaintiffs' failure to disclose their identities).

For these reasons, we **AFFIRM** the district court's orders and **DENY** Doe's motion for assignment to a new judge as moot.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt
Deborah S. Hunt, Clerk

Doe v. Carson, Slip Copy (2019)

KeyCite Blue Flag – Appeal Notification
Appeal Filed by JANE DOE v. BEN CARSON, ET AL. 6th Cir., May 22, 2019

2019 WL 1978428

Only the Westlaw citation is currently available.
United States District Court, W.D. Michigan, Southern Division.

Jane DOE, Plaintiff,

v.

Ben CARSON, et al., Defendants.

Case No. 1:18-cv-1231

Signed 05/03/2019

Attorneys and Law Firms

Jane Doe, Grand Rapids, MI, pro se.

Jeanne Frances Long, U.S. Attorney, Grand Rapids, MI, Erik Alwyn Graney, Michigan Department of Attorney General, Lansing, MI, for Defendants.

OPINION AND ORDER

JANET T. NEFF, United States District Judge

*1 The matter is presently before the Court on Plaintiff's objections to the Magistrate Judge's Report and Recommendation, recommending that this Court deny Plaintiff's Motion to Retain Anonymity. The Magistrate Judge further recommends that Plaintiff either amend her complaint to properly identify herself or this action be dismissed for lack of jurisdiction. In accordance with 28 U.S.C. § 636(b)(1) and FED.R.CIV.P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections and issues this Opinion and Order.

Plaintiff's objections concern the second factor that courts consider in determining whether a plaintiff should be permitted to prosecute an action anonymously, to wit: whether prosecution of the action will compel the plaintiff to disclose information "of the utmost intimacy." Plaintiff argues that in considering this factor, the Magistrate Judge did not adequately weigh the stigma of mental illness (Pl. Obj., ECF No. 26 at PageID.120). Plaintiff argues that merely submitting her medical records under seal, as the Magistrate Judge suggested, does not sufficiently accommodate her disability(*id.*). According to Plaintiff, she will "never be able to work again if the court insists on putting a permanent record on the internet of this illness in her real name" (*id.* at PageID.121).

Plaintiff's argument demonstrates her disagreement with the manner in which the Magistrate Judge weighed the second factor, but Plaintiff's argument fails to demonstrate any factual or legal error by the Magistrate Judge. The Court agrees with the Magistrate Judge that concerns about stigma and scrutiny from prospective employers do not involve information "of the

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utmost intimacy"; rather, they constitute the type of concerns harbored by other similarly situated litigants who file lawsuits under their real names. Further, even assuming arguendo that Plaintiff satisfied the second factor, the second factor is not dispositive. Plaintiff's argument fails to demonstrate any error in the Magistrate Judge's ultimate conclusion that all four factors, considered together, do not demonstrate the exceptional circumstances necessary to remove this case from the general rule requiring that a plaintiff's complaint "must name all the parties." Therefore, the Court, in its discretion and consistent with the Magistrate Judge's recommendation, will deny Plaintiff's motion and require Plaintiff to file an Amended Complaint to properly identify herself in compliance with Federal Rule of Civil Procedure 10(a), or this action will be dismissed for lack of jurisdiction. Accordingly:

IT IS HEREBY ORDERED that the Objections (ECF No. 26) are DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 20) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that Plaintiff's Motion to Retain Anonymity (ECF No. 12) is DENIED for the reasons stated in the Report and Recommendation.

***2 IT IS FURTHER ORDERED** that if Plaintiff fails to amend her complaint to identify herself by her legal name within twenty-one (21) days after entry of this Opinion and Order, then this matter will be dismissed for lack of jurisdiction.

All Citations

Slip Copy, 2019 WL 1978428

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Doe v. Carson, Slip Copy (2019)

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2019 WL 1981886

Only the Westlaw citation is currently available.
United States District Court, W.D. Michigan, Southern Division.

Jane DOE, Plaintiff,

v.

Ben CARSON, et al., Defendants.

Case No. 1:18-cv-1231

Signed 01/04/2019

Attorneys and Law Firms

Jane Doe, Grand Rapids, MI, pro se.

Jeanne Frances Long, U.S. Attorney, Grand Rapids, MI, Erik Alwyn Graney, Michigan Department of Attorney General, Lansing, MI, for Defendants.

REPORT AND RECOMMENDATION

ELLEN S. CARMODY, U.S. Magistrate Judge

*1 This matter is before the Court on Plaintiff's Motion to Retain Anonymity. (ECF No. 12). Plaintiff initiated this action against: (1) Ben Carson, Executive Director of the United States Department of Housing and Urban Development; (2) Earl Poleski, Executive Director of the Michigan State Housing Development Authority; and (3) the United States of America. Plaintiff alleges violations of the Americans with Disabilities Act (ADA) with respect to her attempts to obtain government subsidized housing. Plaintiff now moves to be permitted to proceed in this matter anonymously. Pursuant to 28 U.S.C. § 636(b) (1)(B), the undersigned recommends that Plaintiff's motion be denied and, furthermore, that Plaintiff either amend her complaint to properly identify herself or this action be dismissed for lack of jurisdiction.

The Federal Rules of Civil Procedure expressly require that "the complaint must name all the parties." Fed. R. Civ. P. 10(a); *see also, Erickson v. United States*, 2017 WL 264499 at *1 (E.D. Mich., Jan. 20, 2017) ("[t]he public disclosure of the identities of parties in a lawsuit is required by Federal Rule of Civil Procedure 10(a)"). Plaintiffs are permitted to proceed anonymously only in exceptional circumstances. *See, e.g., Citizens for a Strong Ohio v. Marsh*, 123 Fed. Appx. 630, 636 (6th Cir., Jan. 3, 2005). When considering whether a plaintiff should be permitted to prosecute an action anonymously, the Court considers factors such as: (1) whether the plaintiff is challenging governmental activity; (2) whether prosecution of the action will compel plaintiff to disclose information "of the utmost intimacy"; (3) whether the litigation compels plaintiff to disclose an intention to violate the law, thereby risking criminal prosecution; and (4) whether plaintiff is a minor. *See Doe v. Porter*, 370 F.3d 558, 560 (6th Cir. 2004).

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plaintiff's case, because...the federal courts lack jurisdiction over the unnamed parties, as a case has not been commenced with respect to them"). While Defendants have not expressed any objection to Plaintiff proceeding anonymously, the Court nevertheless has an obligation to address the matter given that it affects the Court's jurisdiction.

While Plaintiff is arguably challenging government activity, none of the other factors weigh in favor of her request. The second factor, whether prosecution of the action will compel Plaintiff to disclose information "of the utmost intimacy," concerns "matters of a sensitive and highly personal nature, such as birth control, abortion, homosexuality or the welfare rights of illegitimate children or abandoned families." *G.E.G. v. Shinseki*, 2012 WL 381589 at *2 (W.D. Mich. Feb. 6, 2012). While Plaintiff repeatedly asserts the conclusion that her free speech rights will be chilled if she is required to pursue this action openly, she fails to persuade the Court that pursuit of her claims will compel Plaintiff to reveal information "of the utmost intimacy."

*2 The Court recognizes that prosecution of this action appears to implicate Plaintiff's medical condition and/or treatment. While the Court is sympathetic to Plaintiff's desire to maintain a certain level of privacy vis-à-vis her medical impairments and/or treatment, Plaintiff can request that such records be submitted to the Court under seal pursuant to Local Rule of Civil Procedure 10. Accordingly, this factor weighs against Plaintiff's request. The final two factors both weigh against Plaintiff's request as neither are applicable to Plaintiff's circumstance.

CONCLUSION

In sum, consideration of the relevant factors weighs against Plaintiff's request to proceed anonymously. Accordingly, the undersigned recommends that Plaintiff's Motion to Retain Anonymity, (ECF No. 12), be denied. The undersigned further recommends that if Plaintiff fails to amend her complaint, to identify herself by her legal name, within twenty-one (21) days after the adoption of the aforementioned recommendation, that this matter be dismissed for lack of jurisdiction.

OBJECTIONS to this Report and Recommendation must be filed with the Clerk of Court within fourteen (14) days of the date of service of this notice. 28 U.S.C. § 636(b)(1)(C). Failure to file objections within the specified time waives the right to appeal the District Court's order. See *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir.1981).

All Citations

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Doe v. Carson, Slip Copy (2019)

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JANE DOE,

Plaintiff,

Hon. Janet T. Neff

v.

Case No. 1:18-cv-1231

BEN CARSON, et al.,

Defendants.

REPORT AND RECOMMENDATION

This matter is before the Court on Plaintiff's Motion to Retain Anonymity. (ECF No. 12). Plaintiff initiated this action against: (1) Ben Carson, Executive Director of the United States Department of Housing and Urban Development; (2) Earl Poleski, Executive Director of the Michigan State Housing Development Authority; and (3) the United States of America. Plaintiff alleges violations of the Americans with Disabilities Act (ADA) with respect to her attempts to obtain government subsidized housing. Plaintiff now moves to be permitted to proceed in this matter anonymously. Pursuant to 28 U.S.C. § 636(b)(1)(B), the undersigned recommends that Plaintiff's motion be **denied** and, furthermore, that Plaintiff either amend her complaint to properly identify herself or this action be dismissed for lack of jurisdiction.

The Federal Rules of Civil Procedure expressly require that "the complaint must name all the parties." Fed. R. Civ. P. 10(a); *see also, Erickson v. United States*, 2017 WL 264499 at *1 (E.D. Mich., Jan. 20, 2017) ("[t]he public disclosure of the identities of parties in a lawsuit is required by Federal Rule of Civil Procedure 10(a)"). Plaintiffs are permitted to proceed anonymously only in exceptional circumstances. *See, e.g., Citizens for a Strong Ohio v. Marsh*, 123 Fed. Appx. 630, 636

(6th Cir., Jan. 3, 2005). When considering whether a plaintiff should be permitted to prosecute an action anonymously, the Court considers factors such as: (1) whether the plaintiff is challenging governmental activity; (2) whether prosecution of the action will compel plaintiff to disclose information “of the utmost intimacy”; (3) whether the litigation compels plaintiff to disclose an intention to violate the law, thereby risking criminal prosecution; and (4) whether plaintiff is a minor. *See Doe v. Porter*, 370 F.3d 558, 560 (6th Cir. 2004).

Failure by a plaintiff to obtain court approval to proceed anonymously deprives the Court of jurisdiction to hear the matter. *See Marsh*, 123 Fed. Appx. At 636-37 (“[f]ailure to seek permission to proceed under a pseudonym is fatal to an anonymous plaintiff’s case, because. . .the federal courts lack jurisdiction over the unnamed parties, as a case has not been commenced with respect to them”). While Defendants have not expressed any objection to Plaintiff proceeding anonymously, the Court nevertheless has an obligation to address the matter given that it affects the Court’s jurisdiction.

While Plaintiff is arguably challenging government activity, none of the other factors weigh in favor of her request. The second factor, whether prosecution of the action will compel Plaintiff to disclose information “of the utmost intimacy,” concerns “matters of a sensitive and highly personal nature, such as birth control, abortion, homosexuality or the welfare rights of illegitimate children or abandoned families.” *G.E.G. v. Shinseki*, 2012 WL 381589 at *2 (W.D. Mich., Feb. 6, 2012). While Plaintiff repeatedly asserts the conclusion that her free speech rights will be chilled if she is required to pursue this action openly, she fails to persuade the Court that pursuit of her claims will compel Plaintiff to reveal information “of the utmost intimacy.”

The Court recognizes that prosecution of this action appears to implicate Plaintiff's medical condition and/or treatment. While the Court is sympathetic to Plaintiff's desire to maintain a certain level of privacy vis-à-vis her medical impairments and/or treatment, Plaintiff can request that such records be submitted to the Court under seal pursuant to Local Rule of Civil Procedure 10. Accordingly, this factor weighs against Plaintiff's request. The final two factors both weigh against Plaintiff's request as neither are applicable to Plaintiff's circumstance.

CONCLUSION

In sum, consideration of the relevant factors weighs against Plaintiff's request to proceed anonymously. Accordingly, the undersigned recommends that Plaintiff's Motion to Retain Anonymity, (ECF No. 12), be **denied**. The undersigned further recommends that **if Plaintiff fails to amend her complaint, to identify herself by her legal name, within twenty-one (21) days after the adoption of the aforementioned recommendation, that this matter be dismissed for lack of jurisdiction.**

OBJECTIONS to this Report and Recommendation must be filed with the Clerk of Court within fourteen (14) days of the date of service of this notice. 28 U.S.C. § 636(b)(1)(C). Failure to file objections within the specified time waives the right to appeal the District Court's order. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir.1981).

Respectfully submitted,

Dated: January 4, 2019

/s/ Ellen S. Carmody
ELLEN S. CARMODY
U.S. Magistrate Judge

Nos. 19-1566/1714

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Jul 10, 2020
DEBORAH S. HUNT, Clerk

JANE DOE,)
Plaintiff-Appellant,)
v.)
BEN CARSON, AS EXECUTIVE DIRECTOR, U.S. DEPARTMENT)
OF HOUSING AND URBAN DEVELOPMENT, ET AL.,)
Defendants-Appellees.)
ORDER)

BEFORE: SUTTON, McKEAGUE, and NALBANDIAN, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the cases. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT

John S. Smith

Deborah S. Hunt, Clerk

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