NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with Fed. R. App. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted November 2, 2020*
Decided November 4, 2020

Before

FRANK H. EASTERBROOK, *Circuit Judge*

MICHAEL S. KANNE, *Circuit Judge*

DIANE P. WOOD, *Circuit Judge*

No. 20-1452

KHALED SHABANI,
Plaintiff-Appellant,

v.

CITY OF MADISON, *et al.*,
Defendants-Appellees.

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

No. 19-cv-65-bbc

Barbara B. Crabb,
Judge.

ORDER

This is one of several lawsuits that Khaled Shabani brought against the City of Madison and its police officers. He asserts that, on various occasions, officers falsely arrested him, failed to intervene to prevent an officer's use of excessive force against

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* We have agreed to decide the case without oral argument because the briefs 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).

him, and retaliated against him for his prior suits. The district court entered summary judgment for the defendants, concluding that his false-arrest claim was barred by the doctrine of claim preclusion and unsupported by any evidence, and that his remaining claims also lacked evidentiary support. He filed a notice of appeal, but later moved to reopen the case so that he could submit evidence. The district court noted that Shabani neither substantiated his motion nor specified the relief he sought, so it denied the motion.

Construing Shabani's appellate brief liberally, *see Anderson v. Hardman*, 241 F.3d 544, 545 (7th Cir. 2001), we discern only one argument: that the district court's allegedly erroneous denial of his motion to reopen prevented him from introducing evidence to defeat summary judgment. But we lack jurisdiction to review this denial because Shabani filed his motion to reopen after filing his notice of appeal. His failure to file a separate notice of appeal from that decision means that we cannot review it. *See Sosebee v. Astrue*, 494 F.3d 583, 590 (7th Cir. 2007).

Otherwise, Shabani's brief fails to develop any basis for disturbing the district court's judgment. He does not specify any errors in the court's decision, nor does he engage the court's rationale for ruling against him. As we have explained, "a brief must contain an argument consisting of more than a generalized assertion of error, with citations to supporting authority." *Anderson*, 241 F.3d at 545, *see also* Fed. R. App. P. 28(a)(8)(A).

This appeal is frivolous. And it is just one among many frivolous suits that Shabani has filed in the past few years. He lost a suit in 2016 against the Madison Police Department and did not appeal. He filed two suits this year that were promptly dismissed by the district judge as frivolous, and in each the judge certified that an appeal also would be frivolous. Shabani appealed anyway, but this court agreed with the judge in each of those cases and denied his motions to proceed *in forma pauperis*. Meanwhile Shabani has filed and lost at least eight similar suits in state court. It is thus evident that he is abusing the privilege of litigating *in forma pauperis*. We now order that in all of his future civil suits—in district courts of this circuit, as well as in the court of appeals—he prepay the filing fees in full. In other words, his entitlement to litigate *in forma pauperis* is revoked because of his persistent misuse of that option.

DISMISSED

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604

Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

FINAL JUDGMENT

November 4, 2020

Before: FRANK H. EASTERBROOK, Circuit Judge
MICHAEL S. KANNE, Circuit Judge
DIANE P. WOOD, Circuit Judge

No. 20-1452	KHALED SHABANI, Plaintiff - Appellant v. CITY OF MADISON, et al., Defendants - Appellees
Originating Case Information:	
District Court No: 3:19-cv-00065-bbc Western District of Wisconsin District Judge Barbara B. Crabb	

The appeal is **DISMISSED**, with costs, in accordance with the decision of this court entered on this date.

This appeal is frivolous. And it is just one among many frivolous suits that Shabani has filed in the past few years. We now order that in all of Khaled Shabani's future civil suits—in district courts of this circuit, as well as in the court of appeals—he prepay the filing fees in full. In other words, his entitlement to litigate *in forma pauperis* is revoked because of his persistent misuse of that option.

form name: **c7_FinalJudgment**(form ID: **132**)

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604

Office of the Clerk
Phone: (312) 435-5850
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ORDER

May 8, 2020

No. 20-1452	KHALED SHABANI, Plaintiff - Appellant v. CITY OF MADISON, et al., Defendants - Appellees

Originating Case Information:

District Court No: 3:19-cv-00065-bbc
Western District of Wisconsin
District Judge Barbara B. Crabb

The following is before the court: **LETTER**, filed on May 7, 2020, by the pro se appellant.

It is unclear exactly what relief the appellant seeks in the letter. To the extent that the appellant would like this filing to serve as his opening brief,

IT IS ORDERED that the request is **DENIED**. The "brief" is procedurally deficient and fails to comply with the court's rules. Accordingly, the court will take no action on the appellant's letter. The clerk will send the appellant this court's brief information sheet for pro se litigants, so that the appellant may familiarize himself with the court's expectations for briefs. Briefing will proceed as follows:

1. The brief and required short appendix of the appellant are due by June 15, 2020.

2. The brief of the appellees is due by July 15, 2020.

3. The reply brief of the appellant, if any, is due by August 5, 2020.

Important Scheduling Notice !

Hearing notices are mailed shortly before the date of oral argument. Criminal appeals are scheduled shortly after the filing of the appellant's main brief; civil appeals are scheduled after the filing of the appellee's brief. If you foresee that you will be unavailable during a period in which your appeal might be scheduled, please write the clerk advising him of the time period and the reason for your unavailability. The court's calendar is located at http://www.ca7.uscourts.gov/cal/argcalendar.pdf. Once an appeal has been scheduled for oral argument, it is very difficult to have the date changed. See Cir. R. 34(e).

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

KHALED SHABANI,

OPINION AND ORDER

Plaintiff,

19-cv-65-bbc

v.

CITY OF MADISON, MICHAEL KOVAL, DAMION FIGUEROA, KEVIN COSTIN and HAMP JOHNSON,

Defendants.

Pro se plaintiff Khaled Shabani is proceeding on (1) First Amendment claims that defendants City of Madison, Damion Figueroa, Kevin Costin, Hamp Johnson and Michael Koval retaliated against him in various ways for his filing of lawsuits and other complaints against members of the police department; (2) a Fourth Amendment claim that defendant Figueroa falsely arrested him for disorderly conduct on December 22, 2017; and (3) a Fourth Amendment claim that defendants Costin and Johnson failed to intervene to prevent an undercover officer's use of excessive force against plaintiff. Before the court is defendants' motion for summary judgment. Dkt. #27. Because plaintiff's false arrest claim is barred by the doctrine of claim preclusion and plaintiff has failed to produce any evidence to establish the key elements of any of his claims, I am granting the motion and entering judgment in favor of defendants.

Although plaintiff filed a short brief in response to defendants' motion for summary judgment and made statements in response to some of defendants' proposed findings of fact, he did not file an affidavit, present any other admissible evidence or file any proposed

findings of fact of his own to support his claims. This court's summary judgment procedures, which were attached to the July 11, 2019 preliminary pretrial conference order entered in this case, dkt. #18, warn litigants that "[u]nless the responding party puts into dispute a fact proposed by the moving party, the court will conclude that the fact is undisputed." Proc. to be Followed on Motions for Summ. Judg., § II.C. at p. 6. The procedures also instruct parties that "[a]ll facts necessary to sustain a party's position on a motion for summary judgment must be explicitly proposed as findings of fact," and "[t]he court will not search the record for factual evidence. Even if there is evidence in the record to support your position on summary judgment, if you do not propose a finding of fact with the proper citation, the court will not consider that evidence when deciding the motion. Your brief is the place to make your legal argument, not to restate the facts." Id. at p. 1.

The Court of Appeals for the Seventh Circuit "has routinely held that a district court may strictly enforce compliance with its local rules regarding summary judgment motions." Abraham v. Washington Group International, Inc., 766 F.3d 735, 737 (7th Cir. 2014). See also Schmidt v. Eagle Waste & Recycling, Inc., 599 F.3d 626, 630-31 (7th Cir. 2010) (holding that the district court did not err when it deemed the defendant's proposed findings of fact admitted and refused to consider additional facts for the plaintiff's failure to follow the local procedures on proposed findings of fact). Therefore, in accordance with this court's summary judgment procedures, I have considered as undisputed any facts proposed by defendants that are supported properly and sufficiently by admissible evidence.

From defendants' proposed findings of fact, I find the following facts to be material

and undisputed unless otherwise noted.

UNDISPUTED FACTS

A. The Parties

Plaintiff Khaled Shabani is a Wisconsin resident and has worked as a stylist at Ruby's Salon on State Street in Madison. (Plaintiff alleged in his complaint that he owns Ruby's, but the parties have not proposed any findings of fact bearing on the ownership of the salon.) At all times relevant to this lawsuit, defendants were employees of defendant City of Madison: Michael Koval was the chief of police and Damion Figueroa, Kevin Costin and Hamp Johnson were police officers.

B. 2015 Injuries to Plaintiff's Daughter

Plaintiff has a minor child, R., with his ex-wife, Mafaz Naji. Naji is a registered nurse who works at a local hospital in Madison. She has always had primary physical custody of R. In early October 2015, when R. was about two and a half years old, she fell off a swing at a playground near Naji's home and sustained a small scrape and bruising to her upper right cheek and eye. Naji was with R. at the time of the fall and personally observed the injuries. Naji's training and experience as a nurse led her to believe that R. did not need any medical treatment for these injuries. About a week after this incident, Naji met plaintiff at a local restaurant so he could see R. Plaintiff asked what had happened to R.'s eye and Naji told him about the swing set accident at the playground. Plaintiff took multiple photographs

of the eye injury. Even though Naji explained how R. was injured, plaintiff kept saying that the injury was caused by a man on State Street, and Naji could not convince him otherwise. Naji has reviewed a document and photo that plaintiff filed on May 11, 2017, in a prior lawsuit. The bruising to R.'s right eye that is shown in the photo appeared to be the same injury that Naji saw R. sustain at the playground. According to Naji, R. did not sustain any other injuries to the eye.

C. Plaintiff's December 22, 2017 Arrest

On December 22, 2017, defendant Figueroa was dispatched to West Wilson Street in Madison to make contact with a man who wanted to report that a stylist at Ruby's Salon had intentionally cut the man's ear during a haircut. Officers Baker and Liston (who is not a defendant) also responded. The complainant told Figueroa that while he was getting his haircut by a stylist named "Khaled," the stylist seemed agitated and in a hurry and told him to stop fidgeting. The complainant reported that the stylist (who was later identified as plaintiff) then held the complainant's head, grabbed and twisted his ear and intentionally cut his right ear with scissors. The complainant also told Figueroa that plaintiff shaved a line down the middle of his head with the "zero" attachment even though the complainant had asked for the "two" attachment several times. When the complainant became upset and was leaving the salon, plaintiff shouted "You wanted a zero right?" several times.

Figueroa observed dried blood on the complainant's right ear and the condition of his hair, which corroborated the complainant's account. After interviewing plaintiff about the

incident, Figueroa concluded that the complainant was credible. Plaintiff did not provide much information, telling Figueroa only that it was an accident and that he did not know why the complainant left. Figueroa arrested plaintiff at approximately 6:21 p.m., for the crimes of mayhem, Wis. Stat. § 940.21, and disorderly conduct, Wis. Stat. §947.01. Before leaving the scene, Figueroa spoke with another stylist at Ruby's who confirmed that plaintiff had used a zero attachment even though she had heard the client ask for a two attachment. This witness also said that plaintiff should not cut hair and that he "needs a mental health doctor."

D. March 23, 2018

On March 23, 2018, defendants Costin and Johnson were dispatched to the Naf Naf Grill on State Street in Madison because of a disturbance. When Costin arrived at 9:09 p.m., he made contact with plaintiff, who reported that someone had battered him. Costin asked plaintiff if he needed an ambulance, but plaintiff refused one. Costin obtained a description of the suspect and provided it to Johnson, who arrived on scene less than a minute later. Johnson searched the restaurant and the surrounding area but did not see anyone meeting the suspect's description. Johnson left about 10 minutes later.

Costin obtained a detailed statement from plaintiff about what happened, interviewed two staff members from the restaurant and arranged for an investigator from the Madison police department to photograph plaintiff's injuries. When Costin returned to the central district station, he reviewed city cameras from the 500 and 600 blocks of State Street to try

to locate either the suspect or plaintiff. However, Costin was unable to locate the assailant.

Neither Costin nor Johnson were was acting as an undercover cop when interacting with plaintiff. They did not witness or encourage anyone to hit or attack plaintiff and they did not hit or attack plaintiff themselves.

E. Plaintiff's Previous Related Lawsuits

Prior to filing this lawsuit, plaintiff sued the Madison police department and several police officers (who are not defendants in this case) in W.D. Wis. Case No. 16-cv-471-bbc, which this court dismissed on September 5, 2017 for failure to state a claim upon which relief may be granted. In that lawsuit, plaintiff generally alleged intimidation, harassment, threats and violation of civil rights, including allegations that law enforcement personnel had beat his child, causing an eye injury. Plaintiff then filed a lawsuit against many of the same defendants in the Circuit Court for Dane County (case no. 17-CV-2990), which that court dismissed on January 12, 2018. In that lawsuit, plaintiff also generally alleged harassment, abuse of his child and violation of his civil rights, all by law enforcement. Plaintiff filed an appeal, which the Wisconsin Court of Appeals dismissed on December 11, 2018 in case no. 2018AP000317.

Plaintiff also sued three police officers (nondefendants) in the Circuit Court for Dane County case no. 18-CV-740, which Judge Rhonda Lanford dismissed on May 15, 2018. In that lawsuit, plaintiff made general allegations of defamation and false arrest regarding the December 22, 2017 incident. The Wisconsin Court of Appeals dismissed plaintiff's appeal

on October 17, 2018, in case no. 2018AP1948. Plaintiff filed a second lawsuit for false arrest in the Circuit Court for Dane County (case no. 18-CV-2469) against defendant Figueroa. The circuit court granted summary judgment in favor of Figueroa on April 26, 2019. Plaintiff did not file an appeal.

OPINION

A. Summary Judgment Standard

Summary judgment is appropriate only if the moving party can demonstrate "that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Federal Rule of Civil Procedure 56(a); Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). Defendants are entitled to judgment as a matter of law if plaintiff "has failed to make a sufficient showing on an essential element of [his] case with respect to which [he] has the burden of proof." Celotex, 477 U.S. at 323. "[A] complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." Id. "As the 'put up or shut up' moment in a lawsuit, summary judgment requires a non-moving party to respond to the moving party's properly-supported motion by identifying specific, admissible evidence showing that there is a genuine dispute of material fact for trial." Grant v. Trustees of Indiana University, 870 F.3d 562, 568 (7th Cir. 2017).

B. False Arrest

Plaintiff alleges that defendant Figueroa falsely arrested him in front of his salon on December 22, 2017. Defendants contend that this claim is barred by the doctrine of claim preclusion, which precludes a lawsuit "if the claim on which it is based arises from the same incident, events, transaction, circumstances, or other factual nebula as a prior suit that had gone to final judgment." Okoro v. Bohman, 164 F. 3d 1059, 1062 (7th Cir. 1999) (citing Wilson v. City of Chicago, 120 F.3d 681, 687 (7th Cir. 1997)); Andersen v. Chrysler Corp., 99 F.3d 846, 852-53 (7th Cir. 1996); Hermann v. Cencom Cable Associates, Inc., 999 F.2d 223, 226 (7th Cir. 1993); Restatement (Second) of Judgments § 24 (1982). A final judgment has preclusive effect if it is "on the merits," meaning that it resolves the dispute between the litigants. Okoro, 164 F. 3d at 1062.

It is undisputed that plaintiff filed two lawsuits in the Circuit Court for Dane County, alleging false arrest with respect to the incident that occurred on December 22, 2017. On April 26, 2019, in case no. 18-CV-2469, the circuit court granted summary judgment in favor of defendant Figueroa as to plaintiff's false arrest claim against him. Plaintiff did not appeal that judgment, and the time for appeal has passed, making the judgment final. Therefore, the judgment entered in Dane County case no. 18-CV-2469 is a final judgment on the merits that has preclusive effect, barring the same claim that plaintiff attempts to bring against Figueroa in this case.

Even if plaintiff's claim is not barred by claim preclusion, there is no evidence that defendant Figueroa acted unconstitutionally in arresting plaintiff on December 22, 2017.

To prevail on a Fourth Amendment claim for wrongful or false arrest, plaintiff must show there was no probable cause for his arrest. Williams v. Rodriguez, 509 F.3d 392, 398 (7th Cir. 2007); Mustafa v. City of Chicago, 442 F.3d 544, 547 (7th Cir. 2006) ("Probable cause to arrest is an absolute defense to any claim under Section 1983 against police officers for wrongful arrest[.]"). Probable cause exists if "at the time of the arrest, the facts and circumstances within the officer's knowledge . . . are sufficient to warrant a prudent person, or one of reasonable caution, in believing, in the circumstances shown, that the suspect has committed, is committing, or is about to commit an offense." Gonzalez v. City of Elgin, 578 F.3d 526, 537 (7th Cir. 2009) (quoting Michigan v. DeFillippo, 443 U.S. 31, 37 (1979)). "[Probable cause] is a fluid concept that relies on the common-sense judgment of the officers based on the totality of the circumstances." United States v. Reed, 443 F.3d 600, 603 (7th Cir. 2006).

In this case, plaintiff was arrested for mayhem in violation of Wis. Stat. § 940.21 ("Whoever, with intent to disable or disfigure another, cuts or mutilates the . . . ear of another.") and disorderly conduct in violation of Wis. Stat. § 947.01 ("Whoever, in a public or private place, engages in violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct under circumstances in which the conduct tends to cause or provoke a disturbance."). It is undisputed that defendant Figueroa had received a report that plaintiff was agitated while cutting a customer's hair; that he intentionally grabbed, twisted and cut the customer's ear; shaved a line down the customer's head using a zero attachment even though the customer had requested a two attachment; and shouted after the customer

as he left the salon. Figueroa personally observed dried blood on the complainant and the condition of the complainant's hair. A witness also confirmed the complainant's version of the haircut. A reasonable jury would conclude from these facts that defendant Figueroa had probable cause to arrest plaintiff for mayhem and disorderly conduct. Therefore, Figueroa is entitled to summary judgment on the merits of plaintiff's false arrest claim.

C. Failure to Intervene in Excessive Force

Plaintiff's allegations that defendants Costin and Johnson organized an attack on him by an undercover police officer, or at least failed to intervene to stop the attack, implicate his rights under the Fourth Amendment, which prevents police officers from using "unreasonable" force in light of the "facts and circumstances of the particular case." Kingsley v. Hendrickson, ___ U.S. ___, 135 S. Ct. 2466, 2473 (2015). Factors that may be relevant to this determination include: the relationship between the need for the use of force and the amount of force used; the extent of the plaintiff's injury; any effort made by the officer to temper or to limit the amount of force; the severity of the security problem at issue; the threat reasonably perceived by the officer; and whether the plaintiff was actively resisting. Id. "A police officer can be liable for another officer's excessive force . . . if that officer had a realistic opportunity to intervene and stop the first officer's actions. A 'realistic opportunity' means a chance to warn the officer using excessive force to stop." Miller v. Gonzalez, 761 F.3d 822, 826 (7th Cir. 2014). See also Pullen v. House, 88 F. Supp. 3d 927, 944 (W.D. Wis. 2015) (citing same).

Plaintiff has failed to present any evidence to support his vague allegation that he was

attacked by an undercover officer on March 23, 2018. The undisputed facts show that defendants Costin and Johnson arrived at the Naf Naf Grill after the assault had occurred and the assailant had left the scene. It is also undisputed that Costin and Johnson were not acting undercover at the time of the incident, that they did not see anyone hit or attack plaintiff and that they did not organize or encourage anyone to attack plaintiff. Without more than mere speculation about his assailant being an undercover police officer, plaintiff cannot show that Costin and Johnson are in any way liable for the use of excessive force on plaintiff. Accordingly, defendants Costin and Johnson are entitled to summary judgment with respect to plaintiff's claims against them.

D. First Amendment Retaliation

Plaintiff alleged in his complaint that defendants retaliated against him in the following ways because he filed several lawsuits against Madison police officers in the past:

- Defendant Figueroa falsely arrested plaintiff on December 22, 2017.
- Defendants Costin and Johnson organized an attack on plaintiff on March 22, 2018.
- Defendant Koval ordered or encouraged the other defendants to harass plaintiff in the above-described ways, and in 2015, he ordered unidentified officers to beat plaintiff's three-year old child, who suffered an eye injury.

To prevail on a First Amendment retaliation claim, plaintiff must prove three things: (1) he was engaging in activity protected by the Constitution; (2) defendants' conduct was sufficiently adverse to deter a person of "ordinary firmness" from engaging in the protected

activity in the future; and (3) defendants subjected plaintiff to adverse treatment because of plaintiff's constitutionally protected activity. Gomez v. Randle, 680 F.3d 859, 866-67 (7th Cir. 2012); Bridges v. Gilbert, 557 F.3d 541, 555-56 (7th Cir. 2009). To hold the City of Madison liable for the alleged retaliation, plaintiff must show that a city-wide policy, custom or widespread practice or an official with final policy-making authority caused the constitutional violation in question. Monell v. Department of Social Services, 436 U.S. 658, 690-91 (1971); Dixon v. County of Cook, 819 F.3d 343, 348 (7th Cir. 2016).

Although it is undisputed that plaintiff filed lawsuits against various police officers between 2016 and 2018, he has failed to present any evidence that defendant Figueroa falsely arrested him, that defendants Costin and Johnson organized an attack on him or that police officers beat his child. In fact, as explained above, there is no evidence that plaintiff suffered any adverse action at the hands of a City of Madison police officer. Accordingly, defendants City of Madison, Koval, Figueroa, Costin and Johnson are entitled to summary judgment with respect to plaintiff's First Amendment retaliation claims.

ORDER

IT IS ORDERED that the motion for summary judgment filed by defendants City of Madison, Michael Koval, Damion Figueroa, Kevin Costin and Hamp Johnson, dkt. #27, is

GRANTED. The clerk of court is directed to enter judgment in favor of defendants and close this case.

Entered this 12th day of March, 2020.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

KHALED SHABANI,

Plaintiff,

Case No. 19-cv-65-bbc

v.

CITY OF MADISON, MICHAEL KOVAL, JENNIFER KRUGER FAVOUR, POLICE AND FIRE COMMISSION, CITY OF MADISON POLICE DEPARTMENT, DAMION FIGUEROA, KEVIN COSTIN, HAMP JOHNSON, JESSICA SOSKA, JEFF PHARO, JASON SWEENY, SGT. BAKER, SGT. BERKOVITZ, CAPT. FREEDMAN, PROFESSIONAL STANDARDS AND INTERNAL AFFAIRS UNIT, KRAIG KALKA, KENNETH BROWN, JULIE AHNEN, STATE OF WISCONSIN, AND WISCONSIN DEPARTMENT OF JUSTICE,

Defendants.

JUDGMENT IN A CIVIL CASE

IT IS ORDERED AND ADJUDGED that judgment is entered in favor of defendants dismissing this case.

/s/
Peter Oppeneer, Clerk of Court

3/12/2020
Date

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604

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www.ca7.uscourts.gov

December 11, 2020

By the Court:

No. 20-2037	KHALED SHABANI, Plaintiff - Appellant v. STATE OF WISCONSIN and WISCONSIN DEPARTMENT OF JUSTICE, Defendants - Appellees

Originating Case Information:

District Court No: 3:20-cv-00404-bbc
Western District of Wisconsin
District Judge Barbara B. Crabb

This cause, docketed on June 17, 2020, is **DISMISSED** for failure to timely pay the required docketing fee, pursuant to Circuit Rule 3(b).

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

KHALED SHABANI,

Plaintiff,

v.

STATE OF WISCONSIN and WISCONSIN DEPARTMENT OF JUSTICE,

Defendants.

OPINION AND ORDER

20-cv-404-bbc

In this civil action for monetary and injunctive relief, pro se plaintiff Khaled Shabani alleges that defendant Wisconsin Department of Justice violated his constitutional rights and discriminated against him by not prosecuting the Madison Police Department and defendant State of Wisconsin for unconstitutionally provoking judges to dismiss the cases he has filed about the police. Because plaintiff is proceeding without prepayment of the filing fee, his complaint must be screened under 28 U.S.C. § 1915(e) to determine whether his complaint is frivolous, malicious, fails to state a claim upon which relief may be granted or seeks money damages from a defendant who is immune from such relief.

In screening any pro se litigant's complaint, the court must read the allegations of the complaint generously. Haines v. Kerner, 404 U.S. 519, 521 (1972). Having reviewed plaintiff's complaint under this standard, I conclude that plaintiff's allegations do not state a federal claim upon which relief may be granted. Therefore, the complaint will be dismissed.

OPINION

Plaintiff broadly asserts that defendant Wisconsin Department of Justice failed to prosecute the Madison Police Department and judges with defendant State of Wisconsin wrongly dismissed cases that he filed against police officers. As an initial matter, plaintiff cannot proceed on any claims against the State of Wisconsin or the Wisconsin Department of Justice because these proposed defendants are state entities that may not be sued under 42 U.S.C. § 1983. Will v. Michigan Department of State Police, 491 U.S. 58, 67 (1989) (only "persons" may be sued under § 1983); Thomas v. Illinois, 697 F.3d 612, 613 (7th Cir. 2012). In addition, the Eleventh Amendment bars suits by private citizens against a state entity in federal court. Will, 491 U.S. at 64; Edelman v. Jordan, 415 U.S. 651, 663 (1973); Ryan v. Illinois Department of Children and Family Services, 185 F.3d 751, 758 (7th Cir. 1999).

However, even if plaintiff had named the individuals allegedly responsible for the alleged actions against him, his allegations do not state any constitutional claim for relief. Plaintiff's claims that state officials failed to prosecute the Madison Police Department and that state court judges wrongly dismissed his case are barred by the doctrines of judicial and prosecutorial immunity. These doctrines bar constitutional claims for actions taken by judges within the scope of their judicial authority and actions taken by prosecutors in their roles as advocates in court proceedings. Rehberg v. Paulk, 566 U.S. 356, 363 (2012); Buckely v. Fitzsimmons, 509 U.S. 259, 273 (1993) (discussing prosecutorial immunity).

In addition, this court does not have the authority to order the prosecution of city

police officers, which is a decision left to the discretion of state and local officials. This court also lacks the authority to review the decision of a state court judge. Under the Rooker-Feldman doctrine, a party "complaining of an injury caused by [a] state-court judgment" cannot seek redress in a lower federal court. Exxon Mobil Corp. v. Saudi Industries Corp., 544 U.S. 280, 291-92 (2005); D.C. Court of Appeals v. Feldman, 460 U.S. 462, 482 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413, 416 (1923). Rather, litigants who believe that a state court proceeding has violated their rights must appeal that decision through the state court system and then, if appropriate, to the United States Supreme Court. Golden v. Helen Sigman & Associates, Ltd., 611 F.3d 356, 361-62 (7th Cir. 2010). Therefore, if plaintiff wants to challenge the decision of a state court judge, he must do so in state court.

ORDER

IT IS ORDERED that plaintiff Khaled Shabani's complaint is DISMISSED for failure to state a claim upon which relief may be granted.

Entered this 28th day of May, 2020.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

KHALED SHABANI,

Plaintiff,

Case No. 20-cv-404-bbc

v.

STATE OF WISCONSIN AND
WISCONSIN JUSTICE DEPARTMENT,

Defendants.

JUDGMENT IN A CIVIL CASE

IT IS ORDERED AND ADJUDGED that judgment is entered dismissing this case.

/s/
Peter Oppeneer, Clerk of Court

5/28/2020
Date

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604

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Phone: (312) 435-5850
www.ca7.uscourts.gov

December 11, 2020

By the Court:

No. 20-2627	KHALED SHABANI, Plaintiff - Appellant v. KRAIG KALKA and KENNETH BROWN, Defendants - Appellees
Originating Case Information:	
District Court No: 3:20-cv-00470-bbc Western District of Wisconsin District Judge Barbara B. Crabb	

This cause, docketed on August 27, 2020, is **DISMISSED** for failure to timely pay the required docketing fee, pursuant to Circuit Rule 3(b).

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UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604

Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

ORDER

November 25, 2020

Before

FRANK H. EASTERBROOK, *Circuit Judge*
AMY J. ST. EVE, *Circuit Judge*

No. 20-2627	KHALED SHABANI, Plaintiff - Appellant v. KRAIG KALKA and KENNETH BROWN, Defendants - Appellees
Originating Case Information:	
District Court No: 3:20-cv-00470-bbc Western District of Wisconsin District Judge Barbara B. Crabb	

Upon consideration of the **MOTION TO WAIVE DOCKETING FEE PAYMENT**, construed as a motion to reconsider the October 30, 2020 order denying appellant's motion to proceed in forma pauperis on appeal, filed on November 23, 2020, by the pro se appellant,

IT IS ORDERED that the motion is **DENIED**.

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604

Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

ORDER

September 15, 2020

By the Court:

No. 20-2627	KHALED SHABANI, Plaintiff - Appellant v. KRAIG KALKA and KENNETH BROWN, Defendants - Appellees
Originating Case Information:	
District Court No: 3:20-cv-00470-bbc Western District of Wisconsin District Judge Barbara B. Crabb	

The following is before the court: **LETTER**, filed on September 14, 2020, by pro se Appellant Khaled Shabani.

On August 31, 2020, the district court revoked its order authorizing the appellant to proceed in forma pauperis on appeal. The appellant has filed a motion to proceed in forma pauperis in this court, which will be resolved as this court's docket permits.

IT IS ORDERED that briefing is **SUSPENDED** pending resolution of the appellant's fee status. The appellant's letter will be filed without further court action.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

KHALED SHABANI,

OPINION AND ORDER

Plaintiff,

20-cv-470-bbc

v.

KRAIG KALKA and KENNETH BROWN,

Defendants.

KHALED SHABANI

Plaintiff,

20-cv-404-bbc

v.

STATE OF WISCONSIN and WISCONSIN DEPARTMENT OF JUSTICE,

Defendants.

Pro se plaintiff Khaled Shabani has filed notices of appeal in the above-captioned cases, and he has not paid the appellate filing fees. This court previously permitted plaintiff to proceed in forma pauperis in both cases. However, under 28 U.S.C. § 1915(a)(3) and Fed. R. App. P. 24(a)(3), a party may not proceed on appeal without prepaying the filing fee if the district court certifies that the appeal is not taken in good faith. Both of these cases were screened and found to be frivolous. Plaintiff's allegations were largely incomprehensible and did not provide a plausible basis to suggest that any of the defendants had violated his constitutional rights. An appeal of a frivolous case is not taken in good faith. Fontanez v.

Time Warner Cable, 618 Fed. Appx. 288, 289 (7th Cir. 2015) ("[B]ecause the district court found that [the] suit was frivolous, it should have certified that [the] appeal was taken in bad faith and revoked the order authorizing [the plaintiff] to proceed in forma pauperis on appeal."). Therefore, I will certify that the appeals in case nos. 20-cv-404-bbc and 20-cv-470-bbc are not taken in good faith and will revoke the previous orders authorizing plaintiff to proceed in forma pauperis.

ORDER

IT IS ORDERED that the court certifies that plaintiff Khaled Shabani's appeals in case nos. 20-cv-404-bbc and 20-cv-470-bbc are not taken in good faith. The court's previous orders authorizing plaintiff to proceed in forma pauperis are REVOKED.

Entered this 31st day of August, 2020.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

KHALED SHABANI,

OPINION AND ORDER

Plaintiff,

20-cv-470-bbc

v.

KRAIG KALKA and KENNETH BROWN,

Defendants.

Pro se plaintiff Khaled Shabani filed a civil action under 42 U.S.C. § 1983, contending that defendants Kraig Kalka and Kenneth Brown violated his constitutional rights by harassing and intimidating him and his daughter in numerous ways. On June 11, 2020, I dismissed plaintiff's complaint under Rule 8 of the Federal Rules of Civil Procedure because his complaint did not provide enough information for me to determine whether subject matter jurisdiction exists or whether plaintiff would be entitled to any relief against either of the named defendants, but I gave plaintiff an opportunity to file an amended complaint that explained his claims more clearly. Dkt. #5. In response, plaintiff has filed a proposed amended complaint. Dkt. #6. Because plaintiff is proceeding without prepayment of the filing fee, his amended complaint must be screened under 28 U.S.C. § 1915(e) to determine whether his complaint is frivolous, malicious, fails to state a claim upon which relief may be granted or seeks money damages from a defendant who is immune from such relief.

Having read the allegations of the amended complaint generously, as I am required to do for pro se litigants, Haines v. Kerner, 404 U.S. 519, 521 (1972), I conclude that

plaintiff's allegations do not state a federal claim upon which relief may be granted. Therefore, the amended complaint will be dismissed.

OPINION

Plaintiff asserts that defendants Kraig Kalka and Kenneth Brown, who are police officers with the Madison Police Department, violated his civil rights by standing and walking in front of his hair salon on State Street in Madison, Wisconsin and waving and pointing at him on numerous occasions between 2014 and May 1, 2020. Although he alleges that defendants led him to believe that they wanted to arrest him, he does not allege that they ever arrested him, verbally threatened him or touched him in any way.

"[P]olice harassment, without more, cannot form a basis for a § 1983 cause of action." Harris v. City of West Chicago, Illinois, 2002 WL 31001888, at *3 (N.D. Ill. Sept. 3, 2002) (quoting Arnold v. Truemper, 833 F. Supp. 678, 682 (N.D. Ill. 1993)). See also Dick v. Gainer, 1998 WL 214703, at *5 (N.D. Ill. Apr. 23, 1998) ("There is no constitutional right to be free from threats of arrest; an actual civil rights violation must occur before a cause of action arises under § 1983."). "[C]itizens do not have a constitutional right to courteous treatment by the police. Verbal harassment and abusive language, while 'unprofessional and inexcusable,' are simply not sufficient to state a constitutional claim under 42 U.S.C. § 1983." Slagel v. Shell Oil Refinery, 811 F. Supp. 378, 382 (C.D. Ill. 1993), aff'd, 23 F.3d 410 (7th Cir. 1994). See also Arnold, 833 F. Supp. at 683 ("Inconvenience, aggravation and alleged injuries to reputation caused by police officers do not amount to [a constitutional]

violation."). In this case, plaintiffs' allegations that defendants walked or stood in front of his store and waved and pointed at him do not rise to the level of a constitutional violation. Harris, 2002 WL 31001888, at *3 (frequent drive-bys, shining spotlight in windows and verbal threat to "watch it—we're going to get you and your family" did not rise to level of constitutional violation); Goldberg v. Weil, 707 F. Supp. 357, 361 (N.D. Ill. 1989) (dismissing harassment claim based on allegations police banged on plaintiff's doors, jumped over locked fence into backyard, shouted at her and threatened her with arrest).

As in his previous lawsuit filed in this court, case no. 19-cv-65-bbc, plaintiff also alleges that he believes that defendants beat his daughter in the eye in October 2015. However, as I explained to plaintiff in orders issued in his previous lawsuit, he lacks standing to pursue a constitutional claim on his daughter's behalf. Therefore, plaintiff's amended complaint will be dismissed for failure to state a federal claim upon which relief may be granted.

ORDER

IT IS ORDERED that plaintiff Khaled Shabani's amended complaint is DISMISSED for failure to state a claim upon which relief may be granted.

Entered this 28th day of July, 2020.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge