rec'd
4.27.21 AD

Case No. 20-3812

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ORDER

RAY SCOTT HEID

Plaintiff - Appellant

v.

DISTRICT JUDGE ALGENON L. MARBLEY; MAGISTRATE JUDGE ELIZABETH A. PRESTON DEAVERS; CIRCUIT JUDGE KAREN NELSON MOORE; CIRCUIT JUDGE RONALD LEE GILMAN; CIRCUIT JUDGE BERNICE BOUIE DONALD; MINDY ANN WORLY, Assistant Attorney General; MICHAEL DAVIS, Religious Service Administrator

Defendants - Appellees

Appellant having previously been advised that failure to satisfy certain specified obligations would result in dismissal of the case for want of prosecution and it appearing that the appellant has failed to satisfy the following obligation(s):

The proper fee was not paid by March 19, 2021,

It is therefore **ORDERED** that this cause be, and it hereby is, dismissed for want of prosecution.

ENTERED PURSUANT TO RULE 45(a),
RULES OF THE SIXTH CIRCUIT
Deborah S. Hunt, Clerk

Issued: April 23, 2021

A.1

rec'd 2.14.2140

No. 20-3812

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Feb 17, 2021
DEBORAH S. HUNT, Clerk

RAY SCOTT HEID,

Plaintiff-Appellant,

v.

DISTRICT JUDGE ALGENON L. MARBLEY; MAGISTRATE JUDGE ELIZABETH A. PRESTON DEAVERS; CIRCUIT JUDGE KAREN NELSON MOORE; CIRCUIT JUDGE RONALD LEE GILMAN; CIRCUIT JUDGE BERNICE BOUIE DONALD; MINDY ANN WORLY, Assistant Attorney General; MICHAEL DAVIS, Religious Service Administrator,

Defendants-Appellees.

ORDER

Before: SUTTON, COOK, and READLER, Circuit Judges.

Ray Scott Heid, an Ohio prisoner proceeding pro se, moves this court for an extension of time to file a motion for reconsideration of its November 25, 2020, order denying his motion to proceed in forma pauperis. The motion for extension of time is **GRANTED.** Also pending are Heid's motion for reconsideration of the November 25, 2020, order and a motion for leave to expand the issues on appeal. Heid's motion for reconsideration does not show that the court overlooked or misapprehended any point of law or fact in denying his motion to proceed in forma pauperis. *See* Fed. R. App. P. 40(a)(2).

Accordingly, Heid's motion for reconsideration and his motion for leave to expand the issues on appeal are **DENIED.**

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

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rec'd 11-30-2020

No. 20-3812

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Nov 25, 2020
DEBORAH S. HUNT, Clerk

RAY SCOTT HEID,

Plaintiff-Appellant,

v.

DISTRICT JUDGE ALGENON L. MARBLEY, et al.,

Defendants-Appellees.

ORDER

Before: BUSH, Circuit Judge.

Ray Scott Heid, an Ohio prisoner proceeding pro se, appeals the district court's dismissal of his civil rights action, brought pursuant to 42 U.S.C. § 1983. Heid moves to proceed in forma pauperis on appeal.

Heid identifies himself as an "Aryan-American and a religious member of the Christian Separatist Church" and asserts that the Christian Separatist Church "appeal[s] to the Aryan ethos." He has been a plaintiff in multiple lawsuits filed against the Ohio Department of Corrections and its officials alleging violations of his right to practice his Christian Separatist faith and denials of various religious accommodations. These cases include *Christian Separatist Church Society of Ohio, The Wife of Christ, Prosopopoeia v. Ohio Department of Rehabilitation & Corrections*, No. 2:15-cv-02757-ALM-EPD (S.D. Ohio) ("the 2757 case"), and *Damron v. Dodrill*, No. 2:17-cv-00337-ALM-EPD (S.D. Ohio) ("the 337 case"). In the 2757 case, the district court ultimately granted summary judgment in favor of the defendants on the plaintiffs' claim under the Religious Land Use and Institutionalized Persons Act, and this court affirmed. *Christian Separatist Church Soc'y of Ohio, The Wife of Christ, Prosopopoeia v. Ohio Dep't of Rehab. & Corr.*, No. 18-3404 (6th Cir. Feb. 13, 2019) (order). In the 337 case, the district court dismissed the complaint, and

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this court dismissed Heid's appeal for want of prosecution. *Damron v. Dodrill*, No. 18-3281 (6th Cir. Aug. 17, 2018) (order).

In March 2020, Heid filed a § 1983 action in the district court against the following defendants: (1) Chief District Court Judge Algenon L. Marbley; (2) Magistrate Judge Elizabeth Preston Deavers; (3) Circuit Court Judge Karen Nelson Moore; (4) Circuit Court Judge Ronald Lee Gilman; (5) Circuit Court Judge Bernice Bouie Donald; (6) Assistant Attorney General Mindy Ann Worly; and (7) ODRC Religious Service Administrator Michael Davis. Judge Marbley and Judge Deavers presided over both the 2757 case and the 337 case in the district court. Judges Gilman, Moore, and Donald were the three judges on the panel who affirmed the district court's judgment in the 2757 case. Defendant Worly represented the ODRC and its officials in the 2757 case.

Heid alleged that the defendants conspired to recharacterize his claims in the 2757 case and "force[d] [him] to proceed through the course of litigation with a fatally flawed claim, i.e., a request for segregated worship" based on race and/or class. Heid maintained that he did not seek segregated congregate worship but rather congregate worship with other members of his Christian Separatist faith. He further alleged that the judges conspired to rule against him on his various motions to amend his complaint filed in the 2757 case and to dismiss his complaint in the 337 case in order to "keep the[] issues out of court and to deprive [him] of the equal protection of the law because of his ethno-religious beliefs." Heid asserted that the defendants have conspired to deprive him of his First Amendment right to access the courts and his Seventh Amendment right to a jury trial and have intentionally discriminated against him on the basis of his ethnicity and religion in violation of the Fourteenth Amendment's Equal Protection Clause. Heid sought declaratory, injunctive, and monetary relief.

A magistrate judge reviewed Heid's complaint in accordance with the screening provisions of the Prison Litigation Reform Act, 28 U.S.C. §§ 1915(e)(2) and 1915A. First, the magistrate judge recommended dismissal of Heid's claims against Judges Marbley, Deavers, Gilman, Moore, and Donald as barred by the doctrine of judicial immunity. Second, the magistrate judge concluded that Heid failed to sufficiently allege an equal-protection violation because he did not identify any

specific similarly situated person or group who was treated differently from him. And third, the magistrate judge recommended dismissal of Heid's conspiracy claim against Worly and Davis because he failed to plead any specific facts to support the claim.

Heid filed objections, a motion for leave to file an amended complaint, and a motion for leave to amend his objections. In his objections, he argued that, contrary to the magistrate judge's finding with respect to his equal protection claim, his complaint alleged that he was similarly situated to members of other religious groups who were treated differently, including Yahweh followers, Rastafarians, Black Hebrew Israelites, the Nation of Islam, the Moorish Science Temple of America, Protestants, Jehovah's Witnesses, and Catholics. Heid also reiterated his conspiracy claim, asserting that "Worly and Davis . . . participated in the conspiracy by alleging false statements that [Heid] sought racially segregated worship services." In his motion to amend his objections, Heid conceded that his claims for injunctive and monetary relief against the five judges were barred by absolute judicial immunity, but he argued that such concession did not include his claims for declaratory relief. Nevertheless, Heid voluntarily withdrew his claims for declaratory relief against the judges, asserting that a writ of prohibition would be the proper avenue by which to remedy the judges' actions, and he withdrew such claims in his proposed amended complaint.

The district court granted Heid's motion to amend his objections, overruled his objections, denied his motion for leave to amend the complaint, adopted the magistrate judge's report and recommendation, and dismissed the complaint. The court found that all of Heid's claims against the judges were barred by judicial immunity and that the complaint failed to set forth plausible, non-conclusory allegations to support his conspiracy and equal-protection claims. The court determined that Heid's equal-protection claim failed because, although he identified other religious groups that were afforded congregate worship services when he was not, the other "groups do not hold the supremacy of a particular race as a fundamental tenet" and thus were not similarly situated to the Christian Separatist Church in the relevant respects. *See Davis v. Prison Health Servs.*, 679 F.3d 433, 438 (6th Cir. 2012); *see also Murphy v. Mo. Dept. of Corr.*, 372 F.3d 979, 984–85 (8th Cir. 2004) (holding that other religious groups are not similarly situated to the Christian Separatist Church). With respect to Heid's conspiracy claim, the court explained,

"[a]lthough it is true that Davis, Worly, and the Defendant Judges all reached similar conclusions about the racially exclusive effect of [Heid]'s request for religious accommodations, [Heid] makes no non-conclusory allegations that these individuals agreed among themselves to knowingly and improperly characterize [his] request." *See Spadafore v. Gardner*, 330 F.3d 849, 854 (6th Cir. 2003); *Hooks v. Hooks*, 771 F.2d 935, 943-44 (6th Cir. 1985). Pursuant to 28 U.S.C. § 1915(a)(3), the court certified that any appeal would not be taken in good faith.

When a district court certifies that an appeal would not be taken in good faith, the plaintiff may file a motion to proceed in forma pauperis in this court. Fed. R. App. P. 24(a)(5); *Owens v. Keeling*, 461 F.3d 763, 773-76 (6th Cir. 2006). A motion to proceed in forma pauperis may be granted if the court determines that an appeal would be taken in good faith and the movant is indigent. *Id.* at 776. An appeal is not taken in good faith if it is frivolous and thus "lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989).

Heid's appeal of the district court's judgment is frivolous. First, by failing to object to the magistrate judge's recommendation to dismiss the claims against the five judges as barred by judicial immunity and, in fact, conceding the point with respect to his claims for monetary and injunctive relief and then withdrawing his claims for declaratory relief, Heid has forfeited any challenge to the dismissal of these claims. *See* Fed. R. Civ. P. 72(b)(2); *Kensu v. Haigh*, 87 F.3d 172, 176 (6th Cir. 1996); *Miller v. Currie*, 50 F.3d 373, 380 (6th Cir. 1995); *see also Thomas v. Arn*, 474 U.S. 140, 155 (1985). Second, for the reasons stated by the district court, it appears that there is no arguable basis in law for Heid's appeal of the dismissal of his conspiracy and equal-protection claims against Worly and Davis.

For these reasons, Heid's motion to proceed in forma pauperis is **DENIED**. Unless Heid pays the $505 appellate filing fee to the district court within thirty days of the entry of this order, this appeal will be dismissed for want of prosecution.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

RAY SCOTT HEID, *et al.*,

Plaintiffs,

v.

Civil Action 2:20-cv-1512
Judge Sarah D. Morrison
Magistrate Judge Chelsey M. Vascura

DISTRICT JUDGE ALGENON L. MARBLEY, *et al.*,

Defendants.

OPINION & ORDER

Plaintiff Ray Scott Heid's 42 U.S.C. §§ 1983, 1985 Complaint alleged that Defendant Michael Davis, the Ohio Department of Rehabilitation and Correction's Religious Services Administrator, conspired to deprive him of his rights under the First and Seventh Amendments and intentionally discriminated against him on the basis of his ethnicity and religion in violation of the Fourteenth Amendment's Equal Protection Clause. (ECF Nos. 1, 16.)

The Court's July 10, 2020 Opinion and Order ("Order") dismissed the case. (ECF No. 16.) Judgment entered accordingly the same day. (ECF No. 17.) Mr. Heid appealed the Court's Order on July 24, 2020 and filed his Fed. R. Civ. P. 59(e) Motion to Alter or Amend Judgment ("Motion") on August 3, 2020. (ECF Nos. 18, 21.)

Mr. Heid's Motion is now before the Court. (ECF No. 21.) "[T]he normal rule is that, once a party files a notice of appeal, a district court loses jurisdiction over any aspect of the case at issue in the appeal." *Linneman v. Vita-Mix Corp.*, Nos. 19-3993, 19-4249, 2020 U.S. App. LEXIS 25597, at *31-32 (6th Cir. Aug. 12, 2020) (citing *United States v. Carman*, 933 F.3d 614, 617 (6th Cir. 2019)). "However, in civil cases, the timely filing of certain listed motions not only

tolls the time to appeal but also suspends the effectiveness of a notice of appeal until the last of such motions is resolved." *Patterson v. Anderson*, 586 F. App'x 657, 662-63 (6th Cir. 2014) (citation omitted). So, "the timely filing of a motion listed in [Fed. R. App. P.] 4(a)(4)(A)—including a motion to alter or amend judgment under Rule 59—has been held to suspend or render dormant a notice of appeal regardless of whether the motion was filed before or after the notice of appeal." *Patterson*, 586 F. Appx 657, 662-63 (quotation and citation omitted).

Consequently, "[w]hen a party has filed a timely motion to alter or amend a judgment after a notice of appeal has been filed, the district court still retains jurisdiction to consider the motion." *O'Sullivan Corp. v. Duro-Last, Inc.*, 7 F. App'x 509, 519 (6th Cir. 2001) (citations omitted). Mr. Heid's Motion is timely. The Court therefore proceeds to review same.

I. STANDARD OF REVIEW

Rule 59(e) provides that an unsuccessful party may seek reconsideration within twenty-eight days of the entry of judgment. Such a motion may be granted if there is a "clear error of law, newly discovered evidence, an intervening change in controlling law or to prevent manifest injustice." *GenCorp, Inc. v. Am. Int'l Underwriters*, 178 F.3d 804, 834 (6th Cir. 1999) (internal citations omitted). "Rule 59(e) motions cannot be used to present new arguments that could have been raised prior to judgment." *Howard v. United States*, 533 F.3d 472, 475 (6th Cir. 2008) (quoting *York v. Tate*, 858 F.2d 322, 326 (6th Cir. 1988)). Motions to alter or amend "should not provide the parties with an opportunity for a second bite at the apple." *Beamer v. Bd. of Crawford Twp. Trs.*, No. 2:09-cv-213, 2010 U.S. Dist. LEXIS 28400, 2010 WL 1253908, at *2 (S.D. Ohio Mar. 24, 2010) (Smith, J.). "When a motion for reconsideration raises only a disagreement by a party with a decision of the court, that dispute should be dealt with in the

normal appellate process, not on a motion for reargument." *Id.* (internal quotation and citation omitted). A "motion to alter or reconsider a judgment is an extraordinary remedy and should be granted sparingly because of the interest in finality and conservation of scarce judicial resources." *Vanguard Transp. Sys. v. Volvo Trucks N. Am., Inc.*, No. 2:04-cv-889, 2006 U.S. Dist. LEXIS 78824, at *6 (S.D. Ohio Oct. 30, 2006) (Graham, J.) (citation omitted).

II. ANALYSIS

Mr. Heid argues that the Order should be altered, amended or vacated to prevent a clear error of law or manifest injustice. (ECF No. 12 at 3.) In particular, he claims that while the R&R dismissed his claims against Mr. Davis for failure to state a claim, the Court "ostensibly" afforded Mr. Davis judicial immunity in the Order when upholding that determination. *Id.* 3-5. This, Mr. Heid contends, is the clear error of law that must be corrected because it resulted in the manifest injustice of him being unable to respond to the immunity holding. He also argues that if the Order is based on the intracorporate conspiracy doctrine, his claims against Mr. Davis are not barred under that theory because Mr. Davis was not acting within the scope of his employment during the alleged conspiracy. *Id.*

Mr. Heid's arguments fail. The Order upholds dismissal of Mr. Heid's equal protection claims against Mr. Davis because Mr. Heid did not "identify any specific similarly situated person or group who was treated differently than him." (ECF No. 16 at 5.) The Order sustains dismissal of Mr. Heid's conspiracy count against Mr. Davis for lack of plausible allegations that any of the Defendants reached an agreement to deprive Mr. Heid of his rights. *Id.* Hence, no clear error of law was committed and no manifest injustice occurred. Mr. Heid's Motion to Alter or Amend is **DENIED**, and his alternative second motion for leave to seek amendment of his Complaint is **DENIED** for lack of jurisdiction. (ECF No. 21.)

IT IS SO ORDERED.

/s/ Sarah D. Morrison
SARAH D. MORRISON
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

RAY SCOTT HEID, *et al.*,

Plaintiffs,

v.

Civil Action 2:20-cv-1512
Judge Sarah D. Morrison
Magistrate Judge Chelsey M. Vascura

DISTRICT JUDGE ALGENON L. MARBLEY, *et al.*,

Defendants.

REPORT AND RECOMMENDATION

Plaintiff, Ray Scott Heid,[1] an Ohio inmate who is proceeding without the assistance of counsel, brings this action against District Judge Algenon L. Marbley; Magistrate Judge Elizabeth Preston Deavers; Circuit Judges Karen Nelson Moore, Ronald Lee Gilman, and Bernice Bouie Donald; Assistant Ohio Attorney General Mindy Ann Worly; and Ohio Department of Rehabilitation and Correction Religious Services Administrator Michael Davis. This matter is before the Court for the initial screen of Plaintiffs' Complaint under 28 U.S.C. § 1915A to identify cognizable claims and to recommend dismissal of Plaintiff's Complaint, or any portion of it, which is frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(a)–(b); *see also McGore v. Wrigglesworth*, 114 F.3d 601, 608 (6th Cir. 1997). Having

[1] Although the Complaint also lists James E. Damron as a Plaintiff, Heid subsequently filed a motion to strike Damron's name from the Complaint because it was inadvertently copied from a complaint in another case. (ECF No. 6.)

performed the initial screen, for the reasons that follow, the undersigned **RECOMMENDS** that the Court **DISMISS** this action pursuant to § 1915A(b)(1).

I.

Congress enacted 28 U.S.C. § 1915A as part of the Prison Litigation Reform Act in order [*2] to "discourage prisoners from filing [frivolous] claims that are unlikely to succeed." *Crawford-El v. Britton*, 523 U.S. 574, 596 (1998). Congress directed the Courts to "review, before docketing, if feasible or in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity." 28 U.S.C. § 1915A(a). In particular, subsection (b) provides:

> On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint—
>
> (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or—
>
> (2) seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b).

Thus, § 1915A requires *sua sponte* dismissal of an action upon the Court's determination that the action is frivolous or malicious, or upon determination that the action fails to state a claim upon which relief may be granted. *See Hill v. Lappin*, 630 F.3d 468, 470–71 (6th Cir. 2010) (applying Federal Rule of Civil Procedure 12(b)(6) standards to review under 28 U.S.C. §§ 1915A).

To survive a motion to dismiss for failure to state a claim under Rule 12(b)(6) of the Federal Rules of Civil Procedure, a plaintiff must satisfy the basic federal pleading requirements set forth in Federal Rule of Civil Procedure 8(a). Under Rule 8(a)(2), a complaint must contain a "short and plain statement of the claim showing that the pleader is [*3] entitled to relief." Fed. R. Civ. P. 8(a)(2). Although this pleading standard does not require "'detailed factual allegations,' . . . [a] pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a

cause of action,'" is insufficient. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Further, a complaint will not "suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Id.* (quoting *Twombly*, 550 U.S. at 557). Instead, to survive a motion to dismiss for failure to state a claim under Rule 12(b)(6) of the Federal Rules of Civil Procedure, "a complaint must contain sufficient factual matter . . . to 'state a claim to relief that is plausible on its face.'" *Id.* (quoting *Twombly*, 550 U.S. at 570). Facial plausibility is established "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* In considering whether this facial plausibility standard is met, a Court must construe the complaint in the light most favorable to the non-moving party, accept all factual allegations as true, and make reasonable inferences in favor of the non-moving party. *Total Benefits Planning Agency, Inc. v. Anthem Blue Cross & Blue Shield*, 552 F.3d 430, 434 (6th Cir. 2008) (citations omitted). The Court is not required, however, to accept as true mere legal conclusions unsupported by factual allegations. *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 555). In addition, the Court holds *pro se* complaints "to less stringent standards than formal pleadings drafted by lawyers." *Garrett v. Belmont Cty. Sheriff's Dep't*, No. 08-3978, 2010 WL 1252923, at *2 (6th Cir. Apr. 1, 2010) (quoting *Haines v. Kerner*, 404 U.S. 519, 520 (1972)).

II.

Plaintiff's claims in this action center on actions taken by judicial officers and defendants in previous actions filed by Plaintiff. In Southern District of Ohio Case No. 2:15-cv-2757 (the "2757 Case"), Plaintiff was among a group of Ohio state inmates belonging to the Christian Separatist Church ("CSC"), which is "a militantly Christian, White Nationalist organization composed only of white Christian men and women" who hold the view that "true white

Nationalism and Christianity are one in the same philosophy." (Opinion & Order 1–2, Case No. 2:15-cv-2757, ECF No. 110.) Plaintiffs in the 2757 case brought claims against the Ohio Department of Rehabilitation and Corrections ("ODRC") and several of its officials, including Defendant Davis, arising out of ODRC's denial of their request for religious accommodations for separate congregate worship services. (*Id.*) Defendant Worly represented ODRC and its officials in the 2757 case. The 2757 Case was assigned to Defendant Judges Marbley and Deavers at the District Court level, and Judge Marbley ultimately granted summary judgment in favor of ODRC and its officials. (Case No. 2:15-cv-2757, ECF No. 110.) Plaintiff appealed the summary judgment order to the United States Court of Appeals for the Sixth Circuit, where it was assigned to a panel of Defendant Judges Moore, Gilman, and Donald. The Sixth Circuit affirmed the District Court's summary judgment in favor of ODRC and its officials. (Case No. 2:15-cv-2757, ECF No. 121.)

Plaintiff filed a subsequent action in this Court, Case No. 2:17-cv-337 (the "337 Case"), making similar allegations related to denials of various religious accommodations. That case was also assigned to Defendant Judges Marbley and Deavers. Judge Deavers recommended dismissal of the complaint in the 337 case for failure to state a claim pursuant to 28 U.S.C. §§ 1915A and 1915(e)(2), and Judge Marbley adopted that recommendation. (Case No. 2:17-337, ECF Nos. 11, 16.) Plaintiff appealed the dismissal to the Sixth Circuit, but his appeal was dismissed for failure to prosecute. (Case No. 2:17-337, ECF No. 24.)

In this case, Plaintiff alleges that Defendants, through their actions in presiding over or defending against Plaintiff's claims in the 2757 and 337 Cases, conspired to deprive him of his rights under the First and Seventh Amendments and intentionally discriminated against him on the basis of ethnicity and religion in violation of the Fourteenth Amendment's Equal Protection

Clause. Plaintiff seeks injunctive and declaratory relief as well as compensatory, nominal, and punitive damages.

III.

No matter how liberally the Court construes Plaintiff's Complaint, his claims against Defendant Judges Marbley, Deavers, Moore, Gilman, and Donald are barred by the doctrine of judicial immunity. "It is well-established that judges enjoy judicial immunity from suits arising out of the performance of their judicial functions." *Brookings v. Clunk*, 389 F.3d 614, 617 (6th Cir. 2004) (citing *Pierson v. Ray*, 386 U.S. 547, 553-54 (1967)). Judicial immunity is overcome only if the actions taken are not within the judge's judicial capacity or if the actions, "though judicial in nature, [are] taken in the complete absence of all jurisdiction." *Mireles v. Waco*, 502 U.S. 9, 11 (1991) (citations omitted). A review of Plaintiff's Complaint reveals that those exceptions do not apply here. Thus, because the Defendant Judges are entitled to absolute judicial immunity, it is recommended that Plaintiff's claims against Judges Marbley, Deavers, Moore, Gilman, and Donald be dismissed.

As to Plaintiff's remaining claims against Worly and Davis, Plaintiff seeks to assert claims for (1) discrimination on the basis of ethnicity and religion in violation of the Fourteenth Amendment's Equal Protection Clause, and (2) conspiracy to deprive him of his First Amendment right of access to courts and his Seventh Amendment right to a jury trial.

Plaintiff's allegations do not sufficiently allege an equal protection violation. "The Equal Protection Clause safeguards against the disparate treatment of similarly situated individuals as a result of government action that 'either burdens a fundamental right, targets a suspect class, or has no rational basis.'" *Paterek v. Vill. of Armada, Mich.*, 801 F.3d 630, 649 (6th Cir. 2015) (quoting *Ctr. for Bio–Ethical Reform, Inc. v. Napolitano*, 648 F.3d 365, 379 (6th Cir. 2011)). Plaintiff has failed to identify any specific similarly situated person or group who was treated

differently than him. His conclusory assertion of unconstitutional conduct therefore fails to state a claim. *See Iqbal*, 556 U.S. at 678; *Twombly*, 550 U.S. at 555.

Nor has Plaintiff sufficiently pleaded a claim for conspiracy. "A civil conspiracy is an agreement between two or more persons to injure another by unlawful action." *Spadafore v. Gardner*, 330 F.3d 849, 854 (6th Cir. 2003); *see also Hooks v. Hooks*, 771 F.2d 935 (6th Cir. 1985). A plaintiff is required to demonstrate "a single plan, that the alleged coconspirator shared in the general conspiratorial objective, and that an overt act was committed in furtherance of the conspiracy that caused injury to the complainant." *Hooks*, 771 F.2d at 943-44. In addition, "[c]laims of conspiracy must be pled with some specificity: vague and conclusory allegations that are unsupported by material facts are not sufficient to state a § 1983 claim." *Farhat v. Jopke*, 370 F.3d 580, 599 (6th Cir. 2004); *see also Fieger v. Cox*, 524 F.3d 770, 776 (6th Cir. 2008) ("[P]leading requirements governing civil conspiracies are relatively strict." (citation omitted)). Here, Plaintiff makes only conclusory allegations that the defendants conspired to deprive him of his rights and does not plausibly plead any specific facts to support those allegations. He has therefore failed to state a claim for conspiracy. *Farhat*, 370 F.3d 580, 599.

IV.

For the reason's set forth above, it is **RECOMMENDED** that the Court **DISMISS** Plaintiff's claims pursuant to § 1915A(b)(1). It is further **RECOMMENDED** that Plaintiff's Motion for Leave of Court to Request Record Before Court (ECF No. 3), Motion for Leave to Proceed *in Forma Pauperis* (ECF No. 5), and Motion to Strike James E. Damron's Name from the Complaint (ECF No. 6) be **DENIED AS MOOT**.

PROCEDURE ON OBJECTIONS

If any party objects to this Report and Recommendation, that party may, within fourteen (14) days of the date of this Report, file and serve on all parties written objections to those specific

proposed findings or recommendations to which objection is made, together with supporting authority for the objection(s). A Judge of this Court shall make a *de novo* determination of those portions of the Report or specified proposed findings or recommendations to which objection is made. Upon proper [9] objections, a Judge of this Court may accept, reject, or modify, in whole or in part, the findings or recommendations made herein, may receive further evidence or may recommit this matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

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

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