

United States Court of Appeals
for the Fifth Circuit

No. 21-40539

United States Court of Appeals
Fifth Circuit

FILED

May 2, 2022

Lyle W. Cayce
Clerk

JONATHAN D. STEPHEN, JR.,

Plaintiff—Appellant,

versus

PALESTINE POLICE DEPARTMENT; ASHTON RODRIGUEZ;
ZACHARY SMITH,

Defendants—Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 6:21-CV-92

Before JONES, DUNCAN, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:

We remanded this case to the district court because it was unclear from the record whether Plaintiff, a pro se prisoner, placed his notice of appeal in the prison mail system on or before June 23, 2021, the last day for filing the notice. The district court ordered the Texas Office of the Attorney General to submit the appropriate outgoing legal mail logs to show when Plaintiff delivered the notice of appeal to mailroom officials.

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

May 02, 2022

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 21-40539 Stephen v. Palestine Police Dept
USDC No. 6:21-CV-92

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk

Christina Gardner

By: Christina A. Gardner, Deputy Clerk
504-310-7684

Mr. Jonathan D. Stephen Jr.

No. 21-40539

After reviewing the mail logs and an affidavit from the Mailroom Supervisor, the district court found that the notice of appeal was placed in the mail on July 1, 2021. The court's findings are not clearly erroneous. When set by statute, the time limitation for filing a notice of appeal in a civil case is jurisdictional. *Hamer v. Neighborhood Hous. Servs. of Chi.*, 138 S. Ct. 13, 17 (2017); *Bowles v. Russell*, 551 U.S. 205, 214 (2007). The lack of a timely notice mandates dismissal of the appeal. *United States v. Garcia-Machado*, 845 F.2d 492, 493 (5th Cir. 1988).

Accordingly, the appeal is DISMISSED for want of jurisdiction.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS

No. 6:21-cv-00092

Jonathan Dewayne Stephen, Jr.,
Plaintiff,

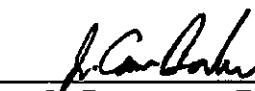
v.

Palestine Police Department et al.,
Defendants.

FINAL JUDGMENT

The court, having rendered its decision by separate opinion, hereby enters judgment that the complaint is dismissed with prejudice. Any pending motions are denied as moot. The clerk of court is directed to close this case.

So ordered by the court on May 24, 2021.



J. CAMPBELL BARKER
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS

No. 6:21-cv-00092

Jonathan Dewayne Stephen, Jr.,

Plaintiff,

v.

Palestine Police Department et al.,

Defendants.

ORDER

Plaintiff Jonathan Dewayne Stephen, Jr., proceeding pro se and in forma pauperis, filed this lawsuit pursuant to 42 U.S.C. § 1983. The case was referred to United States Magistrate Judge John D. Love. Doc. 12.

On April 27, 2021, the magistrate judge issued a report recommending that plaintiff's claims against the Palestine Police Department should be dismissed with prejudice for failure to state a claim upon which relief can be granted pursuant to 28 U.S.C. § 1915A(b)(1). Doc. 17. The report further concluded that plaintiff's complaints against Officers Rodriguez and Smith should be summarily dismissed as malicious under 28 U.S.C. § 1915(e)(2)(B). *Id.*

Plaintiff filed objections to the report. Doc. 20. The court reviews the objected-to portions of a magistrate judge's report de novo. *See* Fed. R. Civ. P. 72(b)(3); 28 U.S.C. § 636(b)(1). The magistrate judge recommended dismissal of plaintiff's claims against the Palestine Police Department because it is a non-jural entity, thus plaintiff failed to state a claim against the Department upon which relief can be granted. Doc. 17 at 3. As to defendants Rodriguez and Smith, the magistrate judge recommended that plaintiff's claims against them be dismissed as malicious because they had been previously adjudicated in other actions. *Id.* at 4 (citing *Stephen v. Palestine Police Dep't et al.*, No. 6:19-cv-00092-JCB-JDL, 2020 U.S. Dist. LEXIS 202421, at *4 (E.D. Tex. Sept. 1, 2020)).

al., No. 6:18-CV-00652 (E.D. Tex. 2020); *Stephen v. E. Tex. Med. Ctr., Palestine et al.*, No. 6:20-CV-00023 (E.D. Tex. 2020)).

Plaintiff's objections address neither of these grounds for dismissal. Instead, he urges that the court has jurisdiction over his claims against Rodriguez and Smith under 42 U.S.C. § 1983. Doc. 20 at 1. The magistrate judge's recommendation, however, did not turn on a lack of jurisdiction. Rather, the magistrate judge recommended dismissal because plaintiff asserts duplicative claims that have already been adjudicated. *See* Doc. 17 at 4 (citing *Pittman v. Moore*, 980 F.2d 994, 995 (5th Cir. 1993)). This was not in error. *See Wilson v. Lynaugh*, 878 F.2d 846, 850 (5th Cir. 1989) ("[C]omplaints may be dismissed . . . when they seek to relitigate claims which allege substantially the same facts . . . which have already been unsuccessfully litigated.").

For these reasons, having reviewed the magistrate judge's report de novo, the court accepts the magistrate judge's recommendation. Plaintiff's claims against the Palestine Police Department are dismissed with prejudice for failure to state a claim under 28 U.S.C. § 1915A(b)(1). Plaintiff's claims against defendants Rodriguez and Smith are summarily dismissed as malicious under 28 U.S.C. § 1915(e)(2)(B).

So ordered by the court on May 24, 2021.



J. CAMPBELL BARKER
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

JONATHAN DEWAYNE STEPHEN, JR. §

VS. § CIVIL ACTION NO. 6:21cv092

PALESTINE POLICE DEPARTMENT, §
ET AL §

REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Plaintiff Jonathan Dewayne Stephen, Jr., a prisoner in the Buster Cole Unit in Bonham, Texas, proceeding *pro se* and *in forma pauperis*, filed this civil rights lawsuit pursuant to 42 U.S.C. § 1983. The lawsuit was referred for findings of fact, conclusions of law, and recommendations for the disposition of the case.

Procedural History and Factual Background.

Plaintiff filed his original complaint on November 9, 2020. Plaintiff is suing the Palestine Police Department, Officer Aston Rodriguez, and Officer Zachery Smith. He asserts that on October 1, 2017, the Palestine Police Department attempted to arrest him under the assumption that he was intoxicated. He contends that there was no probable cause to arrest him. During the arrest, Plaintiff asserts that Officer Rodriguez used unnecessary force on him. He seeks compensatory damages.

Preliminary Screening.

At the time that Plaintiff filed his original complaint, he was a prisoner in the custody of the Texas Department of Criminal Justice, who has been permitted to proceed *in forma pauperis*. Because he is proceeding *in forma pauperis*, his complaint is also subject to screening under 28 U.S.C. § 1915(e)(2). Section 1915(e)(2)(B) provides for *sua sponte* dismissal of the complaint, or any portion thereof, if the Court finds it is frivolous or malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary relief against a defendant who is immune from such relief. *Samford v. Dretke*, 562 F.3d 674, 678 (5th Cir. 2009).

A complaint is frivolous when it “lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). A claim lacks an arguable basis in law when it is “based on an indisputably meritless legal theory.” *Id.* at 327. A complaint fails to state a claim upon which relief may be granted when it fails to plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); accord *Ashcroft v. Iqbal*, 566 U.S. 662, 678 (2009). A complaint lacks an arguable basis in fact if, after providing the plaintiff the opportunity to present additional facts when necessary, the facts alleged are clearly baseless.” *Rogers v. Boatright*, 709 F.3d 403, 407 (5th Cir. 2013) (internal quotation marks and citation omitted).

In reviewing the pleadings, the Court is mindful of the fact that Plaintiff proceeds *pro se*. Complaints filed by *pro se* litigants are entitled to a liberal construction and, “however, inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (internal quotation marks and citation omitted). Even

under this lenient standard, a *pro se* plaintiff must allege more than “‘labels and conclusions’ or a ‘formulaic recitation of the elements of a cause of action.’” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555). “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Id.* (citation omitted). Additionally, regardless of how well-pleaded the factual allegations may be, they must demonstrate that the plaintiff is entitled to relief under a valid legal theory. *See Neitzke*, 490 U.S. at 327; *McCormick v. Stadler*, 105 F.3d 1059, 1061 (5th Cir. 1997).

Discussion and Analysis.

1. Palestine Police Department

Plaintiff’s suit against the Palestine Police Department is not viable. Plaintiff raised this same claim against the Palestine Police Department in his previous lawsuit, Cause No. 6:20cv23, *Stephen v. Palestine Police Department, et al.* The Palestine Police Department is not a jural entity and cannot be sued directly. A plaintiff may not bring a civil rights claim against a servient political agency or department unless such agency or department enjoys a separate and distinct legal existence. *Hicks v. Tarrant Cnty. Sheriff’s Dep’t*, 352 F. App’x 876, 878 (5th Cir. 2009), citing *Darby v. Pasadena Police Dep’t*, 939 F.2d 311, 313 (5th Cir. 1991) (holding that under Texas law, a city is “allowed to designate whether one of its own subdivisions can be sued as an independent entity.”); *see also Propes v. Plano Police Dep’t*, No.: 4:03cv87, 2005 WL 1177880 (E.D. Tex. May 18, 2005). Plaintiff’s suit against the Palestine Police Department should be dismissed as failing to state a claim upon which relief can be granted.

2. *Officers Rodriguez and Smith*

Plaintiff states that he is suing Officers Rodriguez and Smith for alleged unnecessary use of force on October 1, 2017; however, Plaintiff was arrested by Officers Rodriguez and Smith on September 1, 2017. *See* Civil Action No. 6:18cv652, Dkt. #31. Plaintiff has already raised these same claims against these officers in his previous lawsuit, *Stephen v. Palestine Police Department, et al.*, Civil Action No. 6:18cv652, filed on December 21, 2018. His claims in both lawsuits are based on the same facts. *See, e.g., Johnson v. Hays County*, No. A-14-CA-834 LY, 2014 WL 5524144, at *5 (W.D. Tex. Oct. 31, 2014) (“A suit is duplicative when the same proof is needed to support the claims in both suits or, in other words, the facts essential to the second suit were present in the first suit.” (citations omitted)); *Brown v. Texas Bd. of Nursing*, No. 3:13-cv-1004-P, 2013 WL 3227631, at *4 (N.D. Tex. June 26, 2013) (“As Judge Stickney explained to Plaintiff Yvonne Brown in a prior action, the inclusion of additional defendants and allegations to a common nucleus of operative fact does not prevent this case from summary dismissal, since the claims in this case remain essentially duplicative of those previously raised.”).

The Fifth Circuit Court of Appeals has held that a complaint which duplicates claims asserted in an earlier case may be summarily dismissed. *See Pittman v. Moore*, 980 F.2d 994, 995 (5th Cir. 1993); *Wilson v. Lynaugh*, 878 F.2d 846, 849 (5th Cir.), *cert. denied*, 493 U.S. 969 (1989). As the Fifth Circuit held in *Pittman*, the ordinary course for a district court confronted with a duplicative later-filed action is to dismiss the later-filed action. *Pittman*, 980 F.2d at 995. “[T]he court should insure [sic] that the plaintiff obtains one bite at the litigation apple—but not more.” *Id.* A review of Plaintiff’s filings in the three cases—Civil Action No. 6:18cv652, Civil Action

No. 6:20cv023, and Civil Action 6:2cv092—confirms that each complaint includes substantially similar claims all challenging Plaintiff's September 1, 2017 arrest by these police officers. In Civil Action No. 6:18cv652, Plaintiff's use of force claim was reviewed pursuant to Fed. R. Civ. P. 56 and dismissed with prejudice. Here, Plaintiff's duplicative complaint against these officers should be summarily dismissed as malicious under 28 U.S.C. § 1915(e)(2)(B).

Recommendation.

It is recommended that Plaintiff's claims against the Palestine Police Department should be dismissed with prejudice pursuant to 28 U.S.C. § 1915A(b)(1). It is finally recommended that Plaintiff's complaints against Officers Rodriguez and Smith should be summarily dismissed as malicious under 28 U.S.C. § 1915(e)(2)(B).

Within fourteen (14) days after receipt of the Magistrate Judge's Report, any party may serve and file written objections to the findings and recommendations contained in the Report.

A party's failure to file written objections to the findings, conclusions and recommendations contained in this Report within fourteen days after being served with a copy shall bar that party from *de novo* review by the district judge of those findings, conclusions and recommendations and, except on grounds of plain error, from appellate review of unobjected-to factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*), superseded by statute on other grounds, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).

So ORDERED and SIGNED this 27th day of April, 2021.


JOHN D. LOVE
UNITED STATES MAGISTRATE JUDGE