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App. 1

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-2105

DORA L. ADKINS,
Plaintiff – Appellant,

v.

AMERICAN SERVICE CENTER ASSOCIATES,
LLC.; MICHAEL CHARAPP,
Defendants – Appellees.

Appeal from the United States District Court for the
Eastern District of Virginia, at Alexandria. Leonie M.
Brinkema, District Judge. (1:22-cv-00956-LMB-WEF)

Submitted: January 17, 2023 Decided: January 19, 2023

Before KING and THACKER, Circuit Judges, and
TRAXLER, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Dora L. Adkins, Appellant Pro Se.

Unpublished opinions are not binding precedent in
this circuit.

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PER CURIAM:

Dora L. Adkins appeals the district court's order denying her motion for leave to file a complaint and application to proceed on that complaint in forma pauperis.* These rulings were made pursuant to 28 U.S.C. § 1915(e)(2)(B), which requires a district court to dismiss those civil actions filed in forma pauperis that are frivolous or fail to state a claim on which relief may be granted. A claim is frivolous when it lacks an arguable basis in law or fact. *Neitzke v. Williams*, 490 U.S. 319, 322-23 (1989). We review the dismissal of a claim as frivolous for abuse of discretion. *Nagy v. FMC Butner*, 376 F.3d 252, 254-55 (4th Cir. 2004). The dismissal of a claim for failure to state a claim on which relief may be granted is reviewed de novo. *Slade v. Hampton Rds. Reg'l Jail*, 407 F.3d 243, 248 (4th Cir. 2005). Although a pro se litigant's pleadings are to be construed liberally, *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978), her complaint must contain factual allegations sufficient "to raise a right to relief above the speculative level" and that "state a claim to relief that is plausible on its face," *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007). This "plausibility standard requires a plaintiff to demonstrate more than a sheer possibility that a defendant has acted unlawfully." *Francis v. Giacomelli*, 588 F.3d 186, 193 (4th Cir. 2009)

* The district court also directed the clerk not to accept further motions for leave to file or other attempts by Adkins to file a new civil action unless she pays the required filing fee and administrative fee, but Adkins confines her appeal to the district court's denial rulings.

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(internal quotation marks omitted). She must articulate facts that, when accepted as true, demonstrate she has stated a claim entitling her to relief. *Id.*

Adkins' proposed complaint fails to state a plausible claim under Virginia law against Defendants for intentional infliction of emotional distress, *see Delk v. Columbia/HCA Healthcare Corp.*, 523 S.E.2d 826, 833 (Va. 2000); *Jordan v. Shands*, 500 S.E.2d 215, 218-19 (Va. 1998), and is frivolous. Accordingly, we affirm the district court's judgment. *Adkins v. Am. Serv. Ctr. Assocs., LLC.*, No. 1:22-cv-00956-LMB-WEF (E.D. Va. Oct. 19, 2022). We grant Adkins' motion for leave to amend her informal brief and deny her motions to vacate and remand, to remand, for leave to withdraw, for leave to vacate and remand, and to withdraw. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

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FILED: January 19, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-2105
(1:22-cv-00956-LMB-WEF)

DORA L. ADKINS,
Plaintiff - Appellant,
v.
AMERICAN SERVICE CENTER ASSOCIATES,
LLC.; MICHAEL CHARAPP,
Defendants - Appellees.

JUDGMENT

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

DORA L. ADKINS,)
Plaintiff,)
v.) 1:22-cv-956
AMERICAN SERVICE) (LMB/WEF)
CENTER ASSOCIATES, LLC.,)
Defendant.)

ORDER

(Filed Oct. 19, 2022)

The pending Motion for Leave from Court to File an Emergency Complaint (“Motion for Leave”) is pro se plaintiff Dora L. Adkins’ ninth attempt this calendar year to file a civil action in this court.¹ Adkins has been recognized as a serial filer of frivolous lawsuits, by both

¹ Adkins v. Driftwood Special Servicing, LLC, No. 1:22-cv-109 (AJT/IDD); Adkins v. Merrifield Hotel Associates, L.P., No. 1:22-cv-399 (AJT/IDD); Adkins v. Tyson’s Lodging, LLC, No. 1:22-cv-553 (AJT/WEF); Adkins v. Fitness International, LLC, No. 1:22-cv-577 (PTG/1DD); Adkins v. Fitness International, LLC, No. 1:22-cv-749 (PTG/WEF); Adkins v. Ashford TRS Alexandria, LLC, No. 1:22-cv-790 (PTG/WEF); Adkins v. American Service Center Associates of Alexandria, LLC, No. 1:22-cv-915 (RDA/IDD); Adkins v. The Ritz Carlton Hotel Company, LLC, No. 1:22-cv-934 (CMH/WEF); Adkins v. American Service Center Associates, LLC, et al., No. 1:22-cv-956 (LMB/WEF). While this Motion for Leave was pending, Adkins made a tenth effort to file a civil action in this court: Adkins v. Whole Foods Market Group, Inc., 1:22-cv-1114 (LMB/IDD).

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the Virginia Supreme Court and judges of this court. See, e.g., Adkins v. CP/IPERS Arlington Hotel, LLC., 293 Va. 446, 452 (2017) (after reviewing 41 of plaintiff’s past cases, concluding that plaintiff had “a history of (1) filing duplicative vexatious lawsuits, (2) without any objective good faith basis, and (3) at the expense of the court system and opposing parties.”). She also has filed over 20 pro se frivolous complaints in this court since 1997, none of which survived a motion to dismiss. Adkins v. Mercedes-Benz USA, LLC., No. 121CV00419RDAJFA, 2022 WL 609554, at *2 (E.D. Va. Mar. 1, 2022).

The Supreme Court of the United States has come to the same conclusion about this plaintiff, recognizing that she “has repeatedly abused this Court’s process” and, as a result, ordering that “the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the [\$300] docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1.” See 1:22-cv-399 [Dkt. No. 14].

The Complaint for which plaintiff seeks leave to file against defendant, American Service Center Associates, LLC., is yet another example of completely frivolous and fanciful claims that fail to show either a basis for federal jurisdiction or any kind of plausible claim for relief. Specifically, plaintiff claims that defendant committed “Premeditated Actions to Steal Plaintiff’s Personal Information from Plaintiff’s GLA-250 2021 Mercedes-Benz” when she brought the car in for “A-2 Service” on Saturday, August 20, 2022. Plaintiff

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alleges that while she waited for her car to be serviced, Aaron Ortiz, a Service Advisor, came into the waiting room and directed her attention to the “TV Monitoring System of the Service Shop, but Aaron Ortiz, learned that the TV Monitoring System was shut off which he could clearly see before pointing out the TV Monitoring System to Plaintiff.” [Dkt. No. 1-1] at ¶5. According to plaintiff, this interaction “was a give-away” of defendant’s “premeditated actions to steal plaintiffs personal information” because “Aaron Ortiz pretend[ed] not to know that a way for Plaintiff to monitor the A-2 Service on the TV-Monitoring System was intentionally not turned on because EVERY time Plaintiff had [her previous Mercedes-Benz] in for Service Plaintiff could watch the technicians working on [plaintiff’s previous] Mercedes-Benz.” Id. at ¶ 15 (emphasis in original). Plaintiff also alleges that during her August 20, 2022 visit, she recalled that when she had brought her previous car to be serviced by defendant her “Public Library ID Card number was S[T]OLEN out of Plaintiff’s vehicle by ONLY scanning the George Mason Library Card ID number and checking out children’s books and children’s videos . . . if not for GOD, Plaintiff would not have all the details months later after the horrific incident of STOLEN Library Card number from Plaintiff’s [prior Mercedes-Benz] in for service.” Id. at ¶11 (emphasis in original). Plaintiff also alleges that defendant returned her car to her on August 20, 2022 with altered tire pressure, which she discovered when “GOD told the Plaintiff to check the tire pressure inside the vehicle’s technology set-up.” Id. at ¶12 (emphasis in original). Plaintiff alleges that defendant’s

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“alleged behavior constitutes extreme and outrageous conduct when it allegedly knowingly and intentionally caused the Plaintiff extreme pain and suffering knowing an employee could have scanned personal information from Plaintiff’s GLA-250 2021 Mercedes-Benz.” Id. at ¶ 21. Based on the alleged intentional disabling of the TV Monitoring System and incompetent tire inflation, as well as alleged improper servicing of other customers’ cars, plaintiff claims that defendant breached her service contract and engaged in outrageous conduct amounting to intentional infliction of emotion distress. Plaintiff seeks “SIX-BILLION DOLLARS, 3-BILLION for Intentional Infliction of Emotional Distress; 3-BILLION for Punitive Damages, and whatever else this honorable court deems appropriate.” Id. at ¶39 (emphasis in original).

Plaintiff also has filed an Application to Proceed in District Court Without Prepaying Fees or Costs (“Application”) [Dkt. No. 2]. Under 28 U.S.C. §1915(e)(2)(B), before granting such applications, a court must screen the complaint and dismiss it if it is legally or factually frivolous or fails to state a claim on which relief may be granted. This required screening process “is designed largely to discourage the filing of, and waste of judicial and private resources upon, baseless lawsuits that paying litigants generally do not initiate because of the costs of bringing suit and because of the threat of sanctions.” Neitzke v. Williams, 490 U.S. 319, 327 (1989). “An action lacks a factual basis when the Plaintiff makes ‘fanciful,’ ‘fantastic,’ ‘delusional,’ ‘irrational,’ or ‘wholly incredible’ allegations.” Naja v. Zahir, No.

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3:21CV361, 2021 WL 5348671, at *6 (E.D. Va. Nov. 16, 2021) (quoting Denton v. Hernandez, 504 U.S. 25, 25 (1992); Neitzke, 490 U.S. at 325, 328). In addition to her far-fetched factual allegations, the amount of damages plaintiff seeks in her proposed complaint—six billion dollars—is further evidence of the meritless and fanciful nature of the proposed civil action. Complaints similarly seeking damages incommensurate with the harm they allege have been dismissed as frivolous. See, e.g., Anderson v. Pollard, No. 3:20-cv-489, 2020 WL 9349174, at *2 (E.D. Va. 2020) (dismissing a complaint as frivolous partly on the basis of plaintiff alleging \$75,000,000.00 in damages, a “fantastical and delusional” allegation); Smith v. Jehovah’s Witnesses, No. 1:22-cv-123, 2022 WL 500601, at *2 (E.D. Va. Feb. 11, 2022), aff’d, No. 221158, 2022 WL 2915453 (4th Cir. July 25, 2022).

Having screened the proposed complaint and finding that it fails to allege a basis for federal court jurisdiction and any plausible cause of action, plaintiff’s Motion for Leave [Dkt. No. 1] is DENIED as is her Application [Dkt. No. 2] which is moot.

Given the Supreme Court’s recent order requiring plaintiff to pay required filing fees for any non-criminal petition, this Court finds that a similar restriction must be imposed to discourage plaintiff from continuing to waste judicial resources, which have to be expended in the current prefiling review procedures applicable to this plaintiff. The Court also finds that although plaintiff claims to be homeless, she nevertheless should have sufficient funds to pay the required

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fees. For example, she drives a recent model Mercedes-Benz automobile, which she values at \$35,000, claims a monthly retirement income of \$4,929.86, and can afford a \$49.99 monthly gym fee. [Dkt. No. 2] at 2 and 4. For these reasons, it is hereby

ORDERED that the Clerk not accept for filing any further motions for leave to file a complaint or other attempt to file a new civil action by plaintiff unless plaintiff first pays the required \$350 filing fee and \$52 administrative fee.

To appeal this decision, plaintiff must file a written notice of appeal with the Clerk of the Court within thirty (30) days of the date of entry of this Order. A notice of appeal is a short statement indicating a desire to appeal, including the date of the order plaintiff wants to appeal. Plaintiff need not explain the grounds for appeal until so directed by the court of appeals. Failure to file a timely notice of appeal waives plaintiff's right to appeal this decision.

The Clerk is directed to forward copies of this Order to plaintiff, pro se and close this civil action.

Entered this 19th day of October, 2022.

Alexandria, Virginia

/s/ LMB
Leonie M. Brinkema
United States District Judge
