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UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 22-2141

DORA L. ADKINS,
Plaintiff - Appellant,
v.
WHOLE FOODS MARKET GROUP, INC.,
Defendant - Appellee.

Appeal from the United States District Court for the
Eastern District of Virginia, at Alexandria. Leonie M.
Brinkema, District Judge. (1:22-cv-01114-LMB-IDD)

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Affirmed by unpublished per curiam opinion.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.

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Unpublished opinions are not binding precedent in this circuit.

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 and closing the case. After review of the record, we conclude that the district court's closure was 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) (internal quotation marks omitted). She must articulate facts that, when accepted

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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 Defendant 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. Whole Foods Mkt. Grp., Inc.*, No. 1:22-cv-01114-LMB-IDD (E.D. Va. Oct. 25, 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 vacate and remand, for leave to withdraw, 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

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No. 22-2141
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DORA L. ADKINS,
Plaintiff - Appellant,

v.

WHOLE FOODS MARKET GROUP, INC.,
Defendant - Appellee.

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

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

DORA L. ADKINS,)
Plaintiff,)
v.) 1:22-cv-1114 (LMB-IDD)
WHOLE FOODS MARKET)
GROUP, INC.,)
Defendant.)

ORDER

(Filed Oct. 25, 2022)

Acting pro se, frequent filer Dora L. Adkins (“plaintiff” or “Adkins”) has filed a Motion for Leave From the Court to File a Complaint (“Motion”), to which she appended a proposed Complaint against Whole Foods Market Group. She also has filed an Application to Proceed in District Court Without Prepaying Fees or Costs (“Application”).¹

¹ On October 19, 2022, in response to plaintiff’s pattern of filing numerous frivolous lawsuits, this Court directed the Clerk to refuse for filing any further motions for leave to file a complaint or other attempts to file a new civil action by Adkins unless she first pays the required \$350 filing fee and \$52 administrative fee. Adkins v. American Service Center Associates, LLC, 1:22-cv-956, Order dated October 19, 2022. Because the pending Motion and Application were filed before that Order was entered, the Court has screened the proposed Complaint against Whole Foods Market Group, to determine whether it is legally or factually frivolous without requiring plaintiff to pay the required fees.

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Although the proposed Complaint adequately alleges the requirements for diversity jurisdiction, as this Court has previously found regarding other proposed Complaints filed by this plaintiff, the Complaint fails to allege facts that make out a plausible claim for which relief can be granted. Specifically, the Complaint alleges that on October 1, 2022, plaintiff “suffered a severe and debilitating Emotional injury from a premeditated attempt . . . to accuse” her of taking two free samples of sauce from a vendor’s promotional display table. [Dkt. No. 1-1] at ¶1. She alleges that a Whole Foods employee attempted to check her bag while she was checking out at a self-checkout station and told plaintiff “you have to pay for anything with a bar-code.” Id. at ¶4. The proposed Complaint does not allege that anything more happened, and plaintiff left the store with the contents of her shopping bag. She returned an hour or so later to purchase additional items and “observed two employees . . . allegedly taking cell photos of plaintiff as she rang up two items.” Id. at ¶5. Plaintiff went to the Customer Service Center to report the behavior of the employee involved in the first incident and to report the employees taking photos, but when the manager asked her to identify the employees about whom she had complaints, plaintiff declined to do so. Id. at ¶7. As she has alleged in other complaints, plaintiff claims that divine intervention alerted her to the defendant’s wrongdoing, alleging that “GOD let’s Plaintiff know immediately the entire incident was a set-up against the Plaintiff.” Id. at ¶9. Plaintiff attempts to sue the defendant for intentional infliction of emotional distress, seeking \$200 million dollars—\$100

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million in compensatory and \$100 million in punitive damages.

To make out a claim of intentional infliction of emotional distress, a complaint must allege facts which make a plausible showing that “(1) the wrongdoer’s conduct was intentional or reckless; (2) the conduct was outrageous or intolerable; (3) there was a causal connection between the wrongdoer’s conduct and the resulting emotional distress; and (4) the resulting emotional distress was severe.” Carter v. Khan, No. 1:15-CV-00572 JCC, 2015 WL 6738607, at *13 (E.D. Va. Nov. 4, 2015), aff’d, 693 F. App’x 268 (4th Cir. 2017) (internal quotations and citations omitted).

The proposed Complaint fails to allege that the conduct of any Whole Foods employee met the elements. Moreover, the Complaint is devoid of any allegations showing the kind of injury required to sustain what is a disfavored cause of action in Virginia. Lastly, the grossly disproportionate amount of damages that plaintiff seeks is further support for finding the proposed Complaint fanciful and meritless. See 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 seeking \$75,000,000.00 in damages). For all these reasons, it is hereby

ORDERED that plaintiff’s Motion [Dkt. No. 1] and her Application [Dkt. No. 2] be and are DENIED.

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

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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 plaintiffs right to appeal this decision.

The Clerk is directed to mail a copy of this Order to plaintiff Dora L. Adkins, *pro se*, and to close this civil action.

Entered this 25th day of October, 2022.

Alexandria, Virginia

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