No. 21-1412

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Mar 15, 2022
DEBORAH S. HUNT, Clerk

THOMAS EARL DUNN,

Plaintiff-Appellant,

v.

ELIZABETH POST, MAGISTRATE, ET AL.,

Defendants-Appellees.

ORDER

BEFORE: GILMAN, KETHLEDGE, and MURPHY, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

NOT RECOMMENDED FOR PUBLICATION

No. 21-1412

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

THOMAS EARL DUNN,	)	
	)	
Plaintiff-Appellant,	)	
	)	ON APPEAL FROM THE UNITED
v.	)	STATES DISTRICT COURT FOR
	)	THE EASTERN DISTRICT OF
ELIZABETH POST, Magistrate, et al.,	)	MICHIGAN
	)	
Defendants-Appellees.	)	

ORDER

Before: GILMAN, KETHLEDGE, and MURPHY, Circuit Judges.

Thomas Earl Dunn, a Michigan resident proceeding pro se, appeals the district court's dismissal of his civil rights action against state of Michigan Magistrate Elizabeth Post, in her individual and official capacities, and eleven other individuals and state entities, filed under 42 U.S.C. § 1983 and other provisions of federal and state law. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

Dunn, a self-described "sovereign citizen," initiated the underlying action pro se against Post and the other defendants in 2020. After he applied for and was granted permission to proceed in forma pauperis ("IFP"), Dunn paid the filing fee and—purportedly through counsel—then filed an amended complaint, which the federal magistrate judge characterized as "a 66-page rambling and incoherent diatribe with 32 attached pages, all stemming from a traffic stop." In short, Dunn argued that he was not subject to Michigan's driver's license and proof-of-insurance requirements, and that in enforcing those requirements against him, the defendants deprived him of his

"constitutionally protected property interest in free movement absent a pretermination hearing, under color of law, in violation of the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution." He sought, among other remedies, damages from the defendants "in excess of $250,000.00 for abuse of power, violation of their Oath of Office, conspiracy and due process."

Upon motions to dismiss by several defendants, a magistrate judge concluded that Dunn's complaint both failed to satisfy the basic pleading requirements set forth in Federal Rule of Civil Procedure 8(a) and failed to state a claim upon which relief could be granted pursuant to Federal Rule of Civil Procedure 12(b)(6). Ultimately, though, the magistrate judge recommended that Dunn's amended complaint be dismissed as frivolous. The magistrate judge also recommended that Dunn's outstanding motions for sanctions and for default judgment be denied, that an outstanding motion to strike Dunn's amended pleading be denied as moot, and that Dunn's counsel be sanctioned and ordered to pay reasonable costs and attorney's fees.

The district court overruled Dunn's various objections and adopted the report and recommendation in part, dismissing the amended complaint pursuant to 28 U.S.C. § 1915(e)(2)(B) and denying all pending motions, including the motions to dismiss, as moot. The district court also ordered supplemental briefing on the issue of costs and attorney's fees and directed Dunn's counsel to show cause as to why he should not be sanctioned under Federal Rule of Civil Procedure 11.

Prior to the show-cause hearing, Dunn moved for relief from judgment pursuant to Federal Rule of Civil Procedure 60(b), asserting that the district court "contemptuously mocked the Supreme Law of the Land" and displayed "[p]rejudicial intent to favor at all cost the constitutional wrongs of Michigan State Public Actors, whose unconstitutional Acts directed toward this Complainant violated the Constitution of the United State America [sic], the Michigan State Constitution of 1963, and the respective laws enacted thereunder." After receiving supplemental briefing and holding a show-cause hearing, the district court issued an opinion that reiterated the frivolous nature of Dunn's filings, denied his motion for relief from judgment, and imposed sanctions against his counsel under Rule 11. At the hearing, the attorney stated that he had not

actually drafted Dunn's pleadings, but had given Dunn access to his ECF account and had allowed Dunn to file pleadings under his name.

Dunn now appeals pro se, arguing that the district court erred in dismissing his complaint as frivolous pursuant to § 1915(e)(2)(B). Dunn also alleges a litany of constitutional and statutory violations perpetrated by the district court.

We review de novo a district court's dismissal of an action as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B). *See Hill v. Lappin*, 630 F.3d 468, 470 (6th Cir. 2010). Under that statute, district courts must screen and dismiss an IFP complaint that is frivolous or 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. § 1915(e)(2)(B). A complaint is frivolous "if the plaintiff fails to present a claim with 'an arguable basis either in law or in fact.'" *Brand v. Motley*, 526 F.3d 921, 923 (6th Cir. 2008) (quoting *Neitzke v. Williams*, 490 U.S. 319, 325 (1989)). A claim lacks an arguable basis in law "when 'indisputably meritless' legal theories underlie the complaint." *Id.* (quoting *Neitzke*, 490 U.S. at 327). To survive scrutiny, "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Hill*, 630 F.3d at 471 (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678.

Dunn's appellate filings do not directly address the district court's dismissal of his action as frivolous; instead, Dunn puts forth sweeping and largely incomprehensible arguments without any factual or legal basis. He does appear to specifically challenge the district court's dismissal of his action under § 1915(e)(2)(B), arguing that he eventually paid the filing fee and no longer held IFP status at the time of the district court's ruling. But we "can affirm a decision of the district court on any grounds supported by the record, even if different from those relied on by the district court," *Wallace v. Oakwood Healthcare, Inc.*, 954 F.3d 879, 886 (6th Cir. 2020) (citation omitted), and the magistrate judge correctly concluded that Dunn failed to state a claim under Rule 12(b)(6).

Ultimately, Dunn has identified no constitutional right that would allow him to operate a motor vehicle in Michigan without a valid driver's license, registration, or proof of insurance, nor

has he shown that any part of his underlying action states a plausible claim for relief. Moreover, Dunn's allegations of fraud and bias on the part of the district court are entirely conclusory—they are stated at length, but repetitiously so—and they are also insufficient under the applicable standard. *See Liteky v. United States*, 510 U.S. 540, 554-55 (1994). The district court, therefore, did not err in dismissing Dunn's action. *See, e.g.*, *Brand*, 526 F.3d at 923.

Accordingly, we **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk