Eighth Circuit Appeal Court Decision

APPENDIX (A)

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 21-3736

James Eric Moore

Plaintiff - Appellant

v.

Jason Koenigsfeld; Collins Community Credit Union

Defendants - Appellees

Appeal from U.S. District Court for the Northern District of Iowa - Cedar Rapids
(1:21-cv-00052-CJW)

JUDGMENT

Before LOKEN, KELLY, and GRASZ, Circuit Judges.

The motion to supplement the record is denied. This court has reviewed the original file of the United States District Court. It is ordered by the court that the judgment of the district court is summarily affirmed. See Eighth Circuit Rule 47A(a).

March 01, 2022

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

District court decision

APPENDIX (B)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION

JAMES MOORE, Plaintiff, vs. JASON KOENIGSFELD, and COLLINS COMMUNITY CREDIT UNION, Defendants.	No. 21-CV-52-CJW-KEM **ORDER**

I. INTRODUCTION

This matter is before the Court on plaintiff James Moore's ("plaintiff") pro se motion to proceed in forma pauperis and his complaint. (Docs. 1, 1-1).[1] In his complaint, brought under Title 42, United States Code, Section 1981, plaintiff alleges that defendants illegally "seized" his Paycheck Protection Plan ("PPP") check for a short period of time based on plaintiff's race. (Doc. 1-1, at 5–8). Plaintiff seeks millions of dollars in actual and punitive damages for alleged intentional racial discrimination. (*Id.*, at 9). The complaint describes defendant Jason Koenigsfeld ("Koenigsfeld") as a "consultant supervisor" employed by defendant Collins Community Credit Union ("CCCU"). (*Id.*, at 5).

For the following reasons, the Court **grants** plaintiff's motion to proceed in forma pauperis, and upon initial review **dismisses** his complaint for failure to state a claim.

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[1] On May 21, 2021, plaintiff also filed a "motion to amend the complaint" (Doc. 2) and a second "motion to amend complaint" (Doc. 3). The Court will consider all three pleadings together as plaintiff's complaint.

II. MOTION TO PROCEED IN FORMA PAUPERIS

Plaintiff seeks to proceed in forma pauperis without paying the filing fee. (Doc. 1); *see also* 28 U.S.C. § 1914(a) (requiring filing fee).[2] For a court to authorize the commencement of an action without the prepayment of the filing fee, a person must submit an affidavit that includes a statement of all the assets the person possesses. *See* 28 U.S.C. § 1915(a)(1). In his filing, plaintiff states he has no income and few assets. (Doc. 1). Thus, his motion to proceed in forma pauperis (Doc. 1) is **granted**. The Clerk of Court is directed to consider the complaint (Doc. 1-1) as filed without the prepayment of fee.

III. INITIAL REVIEW STANDARD

There is some debate about a court's ability to dismiss, preservice, a meritless case filed by a non-prisoner. When a court allows a prisoner to proceed in forma pauperis, there is clear statutory authorization to conduct an "initial review" to see whether the claim is viable. 28 U.S.C. § 1915A. Neither Section 1915 nor Section 1915A, however, explicitly authorizes a court to conduct an initial review in non-prisoner cases. *Johnson v. Bloomington Police*, 193 F. Supp.3d 1020, 1023 (D. Minn. 2016) (citing *Porter v. Fox*, 99 F.3d 271, 273 (8th Cir. 1996)). Nevertheless, even in the case of a non-prisoner plaintiff, a court may dismiss a filing if it is clearly frivolous. *Porter*, 99 F.3d at 273. Frivolousness is a higher standard than mere failure to state a claim under the Federal Rules of Civil Procedure. "[A] complaint, containing as it does both factual allegations and legal conclusions, is frivolous where it lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). Additionally,

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[2] The Section 1983 fee includes the $350 filing fee mandated by Title 28, United States Code, Section 1914(a) and the additional $52.00 administrative fee required when filing all civil actions. *See* 28 U.S.C. § 1914, *Judicial Conference Schedule of Fees*, No. 14 ("Administrative fee for filing a civil action, suit, or proceeding in a district court, $52[.]").

Section 1915 states that a court may dismiss, at any time, an in forma pauperis case that fails to state a claim under the Federal Rules of Civil Procedure. *See* 28 U.S.C. § 1915(e)(2)(B)(ii); *Benter v. Iowa, Dep't of Transp.*, 221 Fed. App'x 471 (8th Cir. 2007). Thus, many courts, including this Court, rely on Section 1915(e)(2) to dismiss, preservice, in forma pauperis complaints that clearly fail to state cognizable claims.

"A pro se complaint must be liberally construed, and pro se litigants are held to a lesser pleading standard than other parties." *Topchian v. JPMorgan Chase Bank, N.A.*, 760 F.3d 843, 849 (8th Cir. 2014) (internal quotation marks and citations omitted). A "liberal construction" means that if the essence of an allegation is discernible, the district court should construe the plaintiff's complaint in a way that permits his or her claim to be considered within the proper legal framework. *Solomon v. Petray*, 795 F.3d 777, 787 (8th Cir. 2015). Nevertheless, pro se complaints must set forth enough factual allegations to "nudge[ ] their claims across the line from conceivable to plausible," or "their complaint must be dismissed." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *see also 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."). "The essential function of a complaint under the Federal Rules of Civil Procedure is to give the opposing party 'fair notice of the nature and basis or grounds for a claim, and a general indication of the type of litigation involved.'" *Topchian*, 760 F.3d at 848 (quoting *Hopkins v. Saunders*, 199 F.3d 968, 973 (8th Cir. 1999)). Thus, even self-represented complaints are required to allege facts which, if true, state a claim for relief as a matter of law. *Martin v. Aubuchon*, 623 F.2d 1282, 1286 (8th Cir. 1980). *See also Stone v. Harry*, 364 F.3d 912, 914-15 (8th Cir. 2004) (refusing to supply additional facts or to construct a legal theory for the self-represented plaintiff that assumed facts that had not been pleaded).

IV. ANALYSIS

In his complaint, plaintiff describes events surrounding the direct deposit of a PPP check for $20,833 in his CCCU checking account and his attempts to withdraw money from the account. (Doc. 1-1, at 5). Plaintiff apparently had a "casual conversation" with Koenigsfeld about other people "doing wrong" in connection with PPP payments. (*Id.*). Koenigsfeld apparently assured plaintiff that Koenigsfeld did not believe plaintiff was doing anything wrong. (*Id.*). Plaintiff references his own perception that "the internet constantly shows pictures of black people who commit fraud pertaining to the paycheck protection program loans but do not show pictures of white people who commit the same type of fraud with respect to the paycheck protection program loans." (*Id.*). Plaintiff alleges that he told Koenigsfeld that plaintiff had urgent bills to pay and asked when he could withdraw money from the PPP payment. (*Id.*). Koenigsfeld stated he did not know. (*Id.*). Plaintiff alleges he returned the following Monday to withdraw funds, but could not and that Koenigsfeld did not know when it would be possible. (*Id.*). Plaintiff asked for a loan to cover his urgent bills, but the loan was not extended and plaintiff was unable to withdraw the money the following day, Tuesday, as well. (*Id.*). Plaintiff alleges that when he confronted Koenigsfeld with some papers explaining the law and Koenigsfeld then "got on the computer and the plaintiff['s] checking account was unseized." (*Id.*).[3]

Title 42, United States Code, Section 1981 provides that all persons within the jurisdiction of the United States shall have "the same right . . . to make and enforce contracts . . . as is enjoyed by white citizens." 42 U.S.C. § 1981(a). The language, "make and enforce contracts," includes "the making, performance, modification, and

[3] Plaintiff alleges in his "Motion to Amend Complaint," however, that he has not yet received the funds and seeks to include that amount as actual damages. (Doc. 2, at 1).

termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship." 42 U.S.C. § 1981(b). Section 1981's purpose is to "prohibit discrimination in the 'performance, modification and termination of contracts' and to protect 'the enjoyment of all benefits, privileges, terms and conditions of the contractual relationship.'" *Williams v. Lindenwood Univ.*, 288 F.3d 349, 355 (8th Cir. 2002) (quoting 42 U.S.C. § 1981(b)).

The Court looks to the elements of a prima facie claim of racial discrimination under Section 1981 to analyze whether plaintiff's complaint states a plausible claim for relief. The Court considers whether: "(1) he is a member of a racial minority, (2) the defendant intended to discriminate against him on the basis of race, and (3) the discrimination concerned an area enumerated by the statute." *Williams*, 288 F.3d at 355.

Here, plaintiff complains about the actions of one CCCU employee, not about CCCU or its policies. The Court questions whether CCCU may be held liable under Section 1981 for the allegedly discriminatory actions of one of its employees under a theory of respondeat superior. Liability under Section 1981 "requires a showing of intentional discrimination, which is seemingly incompatible with respondeat superior principles." *See Daniels v. Dillard's, Inc.*, 373 F.3d 885, 888, n.4 (8th Cir. 2004) (citation omitted) (questioning whether Dillards could be held liable under Section 1981 for the allegedly discriminatory actions of an unidentified sales clerk, but leaving resolution of the question "to another day"). In any event, because the Court finds plaintiff's complaint fails to state a claim against the employee, the Court need not reach the question of whether CCCU could be held liable for the conduct of one of its employees.

Turning now to a discussion of the prima facie elements of discrimination under Section 1981, plaintiff alleges he is a member of a racial minority. (Doc. 1-1, at 5). Thus, plaintiff's complaint alleges facts establishing the first element of a claim under

Section 1981. Plaintiff's complaint has also alleged facts showing that the alleged discrimination concerned an area enumerated by the statute, satisfying the third element. It is with regard to the second element, discriminatory intent, that plaintiff's complaint fails to allege facts which, if taken as true, would show defendants intended to discriminate against plaintiff on the basis of race. The only factual allegation pertaining to race is plaintiff's allegation that he has seen references on the internet about PPP fraud that picture only African-Americans and not white people. Plaintiff does not allege defendant Koenigsfeld was aware of plaintiff's race, said anything about his race, or referenced others of plaintiff's race committing PPP fraud. Plaintiff has not alleged facts showing in any way that the CCCU's hold on his PPP check was motivated by plaintiff's race. Indeed, plaintiff has not even alleged facts showing that Koenigsfeld was the person who placed the hold on plaintiff's PPP check or had any personal ability to affect the hold on plaintiff's PPP check. Further, plaintiff has not alleged that Koenigsfeld or CCCU has treated white customers differently. In short, the Court finds that plaintiff fails to state a viable claim for relief because he alleges no facts permitting the conclusion that defendant Koenigsfeld engaged in purposeful, racially discriminatory conduct. *See General Bldg. Contractors Ass'n, Inc. v. Pennsylvania*, 458 U.S. 375 (1982) (holding that Section 1981 is violated only by purposeful discrimination).

Plaintiff's repeated conclusory assertion that he was the subject of intentional racial discrimination does not make it so. That is nothing more than an assumption or conclusion; it is not a statement of fact. *See Denton v. Hernandez*, 504 U.S. 25, 32-34 (1992) (stating that a court may dismiss complaint of plaintiff proceeding in forma pauperis as frivolous and may disregard clearly baseless, fanciful, fantastic, or delusional factual allegations); *Jones v. Norris*, 310 F.3d 610, 612 (8th Cir. 2002) (dismissing complaint as frivolous and stating that "[a] complaint is frivolous when it lacks an arguable basis in either law or fact") (citing *Neitzke v. Williams*, 490 U.S. 319, 325

(1989)). Thus, having liberally construed plaintiff's complaint, the Court concludes it alleges nothing more than a "mere possibility of misconduct," and therefore fails to demonstrate a plausible claim for relief. *Iqbal*, 556 U.S. at 679.

V. CONCLUSION

For these reasons:

1. Plaintiff's motion to proceed in forma pauperis (Doc. 1) is **granted**. The Clerk of Court is directed to file the complaint (Doc. 1-1) without the prepayment of fees.
2. After initial review, plaintiff's complaint is **dismissed without prejudice**.
3. Plaintiff's motions to amend complaint at Docs. 2 and 3 are **denied as moot**.

IT IS SO ORDERED this 12th day of October, 2021.

C.J. Williams
United States District Judge
Northern District of Iowa

Eighth Circuit rehearing en banc

APPENDIX (C)

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 21-3736

James Eric Moore

Appellant

v.

Jason Koenigsfeld and Collins Community Credit Union

Appellees

Appeal from U.S. District Court for the Northern District of Iowa - Cedar Rapids
(1:21-cv-00052-CJW)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

April 11, 2022

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

District Court reconsideration

APPENDIX (D)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION

JAMES ERIC MOORE, Plaintiff, vs. JASON KOENIGSFELD, and COLLINS COMMUNITY CREDIT UNION, Defendants.	No. 21-CV-52-CJW-KEM **ORDER**

This matter is before the Court on plaintiff James Moore's ("plaintiff") pro se motion to Set Aside and Reconsider (Doc. 7) this Court's order of October 12, 2021, (Doc. 4), dismissing his complaint for failure to state a claim. Plaintiff also filed a pro se supplement to his motion. (Doc. 8). The Court **denies** plaintiff's motion to set aside or reconsider its prior order.

Plaintiff argues that the Court erred in interpreting his complaint in several regards. First, plaintiff asserts that the Court should presume defendants acted on the basis of racial prejudice because they "did not deny plaintiff['s] statement that they had no legal or banking policy authority to freeze plaintiff['s] checking account and did not attempt to explain to plaintiff their authority for the adverse action[.]" (Doc. 7, at 3). Second, plaintiff argues that he alleged facts showing defendants knew his race because he allegedly had face-to-face contact with defendant Koenigsfeld, "therefore clearly defendant [k]new plaintiff was black." (*Id.*). Third, plaintiff argues he made a claim under Title 12, United States Code, Section 4002 and a retaliation claim under Title 42,

United States Code, Section 1981 that the Court did not address. (*Id.*). Plaintiff's supplemental filing further argues his first point of error. (Doc. 8).

As to plaintiff's first claim of error, the Court continues to find that his complaint fails to allege facts from which any reasonable jury could conclude defendants acted on the basis of plaintiff's race. That the bank employee failed to respond to plaintiff's request for an explanation does not constitute evidence that the bank temporarily held plaintiff's check because of plaintiff's race. Plaintiff has an affirmative duty to allege facts which, if true, would show defendants' actions were based on racial discrimination. Here, plaintiff simply asked the Court to assume racial animus. That the Court will not do.

Plaintiff's second claim of error is that the Court should have found he alleged defendants knew his race because he had face-to-face contact with defendant Koenigsfeld. By making this argument, plaintiff is engaging in a form of racism himself. Plaintiff does not state what it is about his appearance that put, or should have put, defendant Koenigsfeld on notice about plaintiff's race. A person's race may or may not be obvious based on observation. Some African-Americans have dark skin, some do not. A person's race is not defined by the color of the skin or other characteristics, nor should people make assumptions about a person's race based on skin color or other characteristics. Plaintiff simply did not allege facts that would show that his race was or should have been readily apparent to defendant Koenigsfeld. Perhaps it was, but plaintiff failed to allege facts showing that.

The Court reiterates, from its prior order, that the only factual allegation pertaining to race is plaintiff's allegation that he has seen references on the internet about PPP fraud that picture only African-Americans and not white people. Plaintiff does not allege defendant Koenigsfeld was aware of plaintiff's race, said anything about plaintiff's race, or referenced others of plaintiff's race committing PPP fraud. Plaintiff has not alleged

facts showing in any way that the CCCU's hold on his PPP check was motivated by plaintiff's race. Indeed, plaintiff has not even alleged facts showing that Koenigsfeld was the person who placed the hold on plaintiff's PPP check or had any personal ability to affect the hold on plaintiff's PPP check. Further, plaintiff has not alleged that Koenigsfeld or CCCU has treated white customers differently. In short, the Court finds that plaintiff failed to state a viable claim for relief because he alleged no facts permitting the conclusion that defendant Koenigsfeld engaged in purposeful, racially discriminatory conduct. *See General Bldg. Contractors Ass'n, Inc. v. Pennsylvania*, 458 U.S. 375 (1982) (holding that Section 1981 is violated only by purposeful discrimination).

Plaintiff's repeated conclusory assertion that he was the subject of intentional racial discrimination does not make it so. That is nothing more than an assumption or conclusion; it is not a statement of fact. *See Denton v. Hernandez*, 504 U.S. 25, 32-34 (1992) (stating that a court may dismiss complaint of plaintiff proceeding in forma pauperis as frivolous and may disregard clearly baseless, fanciful, fantastic, or delusional factual allegations); *Jones v. Norris*, 310 F.3d 610, 612 (8th Cir. 2002) (dismissing complaint as frivolous and stating that "[a] complaint is frivolous when it lacks an arguable basis in either law or fact") (citing *Neitzke v. Williams*, 490 U.S. 319, 325 (1989)). Thus, having liberally construed plaintiff's complaint, the Court concludes it alleges nothing more than a "mere possibility of misconduct," and therefore fails to demonstrate a plausible claim for relief.

Last, the Court did not err by ignoring plaintiff's alleged Title 12, United States Code, Section 4002 or Section 1981 retaliation claims. As for the former, plaintiff's claim fails for the same reasons as his Section 1981 claim; absent alleging facts showing that the bank wrongfully barred plaintiff from withdrawing funds from his account, plaintiff cannot show defendants failed to comply with Title 12, United States Code, Section 4002. Further, plaintiff failed to allege facts showing that the paycheck protection

loan at issue here constitutes a government issued check covered by Section 4002. As to the latter, plaintiff did not allege facts that, if true, would show that he made a claim under Section 1981 against defendants for which they retaliated against him. Plaintiff's complaint alleges the bank improperly seized his check and did not credit his account based on plaintiff's race. He did not allege facts showing that he accused defendants of racial discrimination or that defendants took any additional adverse action against him based on such allegations.

Thus, the Court **denies** plaintiff's motion to set aside and reconsider its order. (Doc. 7).

IT IS SO ORDERED this 4th day of November, 2021.

C.J. Williams
United States District Judge
Northern District of Iowa

HOS