APPENDIX A

NOT RECOMMENDED FOR PUBLICATION

No. 21-3463

FILED
Sep 7, 2022
DEBORAH S. HUNT, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ERIC LEE PORTERFIELD,

Plaintiff-Appellant,

v.

U.S. DEPARTMENT OF JUSTICE, et al.,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO

ORDER

Before: SUTTON, Chief Judge; GUY and COLE, Circuit Judges.

Eric Lee Porterfield, a pro se Ohio prisoner, appeals the district court's judgment dismissing his 42 U.S.C. § 1983 action for lack of subject-matter jurisdiction. 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).

Porterfield is serving a sentence of 53 years to life in prison for aggravated murder and other offenses. *See In re Porterfield*, No. 19-3940 (6th Cir. Feb. 19, 2020). In 2015, Porterfield registered his name, "ERIC LEE PORTERFIED," as a trade name with the Ohio Secretary of State. He then filed a § 1983 complaint in the district court, claiming that the United States Department of Justice, the Ohio Department of Rehabilitation and Correction, and Mansfield Correctional Institution have infringed the trademark and tradename interests that he has in his name, presumably by using it in official records or perhaps on institutional websites. Further, Porterfield claimed that he mailed the defendants a cease-and-desist letter and that, by not responding, they tacitly entered into a security agreement and consented to pay him $1,000 per

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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Deborah S. Hunt
Clerk

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Filed: September 07, 2022

Eric Lee Porterfield
Mansfield Correctional Institution
P.O. Box 788
Mansfield, OH 44901

Re: Case No. 21-3463, *Eric Porterfield v. DOJ, et al*
Originating Case No. : 1:19-cv-02516

Dear Mr. Porterfield,

The Court issued the enclosed Order today in this case. Judgment to follow.

Sincerely yours,

s/Sharday S. Swain
Case Manager
Direct Dial No. 513-564-7027

cc: Ms. Sandy Opacich

Enclosure

Mandate to issue

day in order to "lease" his name. Porterfield sought money damages and an injunction prohibiting the defendants from using his allegedly trademarked name.

Porterfield moved to proceed in forma pauperis in the district court, but the court dismissed his complaint pursuant to *Apple v. Glenn*, 183 F.3d 477, 479 (6th Cir. 1999) (per curiam), concluding that his allegations of trademark infringement were "so incoherent, unsubstantial, and frivolous that they do not provide a valid basis to establish this court's subject-matter jurisdiction over any claim in the case." The district court denied Porterfield's subsequent motion for reconsideration. Porterfield's timely appeal followed.

We generally review de novo a district court's dismissal of a complaint for lack of subject-matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1). *Lovely v. United States*, 570 F.3d 778, 781 (6th Cir. 2009). A district court may dismiss a fee-paid complaint for lack of subject-matter jurisdiction "when the allegations of a complaint are totally implausible, attenuated, unsubstantial, frivolous, devoid of merit, or no longer open to discussion." *Apple*, 183 F.3d at 479.

But *Apple* applies to fee-paid complaints, and here, Porterfield is a state prisoner who was proceeding in forma pauperis in the district court. Consequently, the district court should have screened Porterfield's complaint pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A to determine whether it was subject to dismissal because it was "frivolous, [was] malicious, or fail[ed] to state a claim upon which relief may be granted." *See Benson v. O'Brian*, 179 F.3d 1014, 1016 (6th Cir. 1999). Nevertheless, we may affirm the district court's judgment on any basis supported by the record. *Angel v. Kentucky*, 314 F.3d 262, 264 (6th Cir. 2002). And to avoid dismissal under § 1915(e)(2), Porterfield's complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

We conclude that Porterfield's allegations that the defendants violated the claimed intellectual property rights in his name or that the defendants tacitly agreed to pay him $1,000 each day are patently frivolous and therefore failed to state a claim for relief. *See Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *cf. Hill v. Allison*, No. 2:21-cv-1798, 2022 WL 172838, at *2-3 (E.D.

Cal. Jan. 19, 2022) (concluding that a civil detainee failed to state claims for copyright and trademark infringement against state prison employees for using his name on official documents), *R. & R. adopted*, No. 2:21-cv-1798, 2022 WL 1645816 (E.D. Cal. May 24, 2022); *Gibson v. Crist*, No. 3:07cv274/MCR/EMT, 2007 WL 2257522, at *1 (N.D. Fla. Aug. 6, 2007) (collecting cases in which prisoners filed frivolous complaints suing corrections officials for the wrongful use of their allegedly copyrighted name); *Legros v. Tarr*, 540 N.E.2d 257, 263 (Ohio 1989) (noting that implied contracts require a meeting of the minds).

We **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

[redacted]

FILED
Sep 7, 2022
DEBORAH S. HUNT, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 21-3463

ERIC LEE PORTERFIELD,

Plaintiff-Appellant,

v.

U.S. DEPARTMENT OF JUSTICE, et al.,

Defendants-Appellees.

Before: SUTTON, Chief Judge; GUY and COLE, Circuit Judges.

JUDGMENT

On Appeal from the United States District Court
for the Northern District of Ohio at Cleveland.

THIS CAUSE was heard on the record from the district court and was submitted on the briefs without oral argument.

IN CONSIDERATION THEREOF, it is ORDERED that the judgment of the district court is AFFIRMED.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

APPENDIX B

[redacted]

No. 21-3463

FILED
Oct 13, 2022
DEBORAH S. HUNT, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ERIC LEE PORTERFIELD,

Plaintiff-Appellant,

v.

U.S. DEPARTMENT OF JUSTICE, et al.,

Defendants-Appellees.

ORDER

Before: SUTTON, Chief Judge; GUY and COLE, Circuit Judges.

Eric Lee Porterfield, a pro se Ohio prisoner, petitions the court to rehear our order of September 7, 2022, affirming the district court's judgment sua sponte dismissing his 42 U.S.C. § 1983 complaint for lack of subject-matter jurisdiction.

Upon consideration, we **DENY** the petition because Porterfield has not cited any misapprehension of law or fact that would alter our prior decision. *See* Fed. R. App. P. 40(a)(2).

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

APPENDIX C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ERIC LEE PORTERFIELD, *Pro Se*,	)	Case No.: 1:19 CV 2516
	)	
Plaintiff	)	
	)	JUDGE SOLOMON OLIVER, JR.
v.	)	
	)	
U.S. DEPARTMENT OF JUSTICE, *et al.*,	)	
	)	MEMORANDUM OF OPINION
Defendants	)	AND ORDER

Pro Se Plaintiff Eric Lee Porterfield has filed a Complaint in this action against the U.S. Department of Justice, the Ohio Department of Rehabilitation and Correction, and the Mansfield Correctional Institution. (Doc. No. 1.) His Complaint, and the multiple attachments he has submitted with it, are incomprehensible. The Complaint consists of pages of incoherent and conclusory legal assertions and rhetoric, and purports to assert a patently invalid legal claim against the Defendants for conspiracy "to commit Tradename Infringement" and "Breach of Security Agreement" in connection with his name. (*Id.* at 2.)

Although *pro se* pleadings are liberally construed, *Boag v. MacDougall*, 454 U.S. 364, 365 (1982) (per curiam); *Haines v. Kerner*, 404 U.S. 519, 520 (1972), the lenient treatment accorded *pro se* plaintiffs has limits. *See e.g., Pilgrim v. Littlefield*, 92 F.3d 413, 416 (6th Cir.1996). *Pro se* litigants must still meet basic pleading requirements, and courts are not required to conjure allegations on their behalf. *See Erwin v. Edwards*, 22 Fed. App'x 579, 580 (6th Cir. 2001). Federal

courts are courts of limited jurisdiction and have a duty to police the boundaries of their jurisdiction. "[A] district court may, at any time, *sua sponte* dismiss a complaint for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure when the allegations of a complaint are totally implausible, attenuated, unsubstantial, frivolous, devoid of merit, or no longer open to discussion." *Apple v. Glenn*, 183 F.3d 477, 479 (6th Cir.1999).

The court finds this action must be dismissed in accordance with *Apple v. Glenn*. The allegations in the Plaintiff's Complaint are so incoherent, unsubstantial, and frivolous that they do not provide a valid basis to establish this court's subject-matter jurisdiction over any claim in the case.

Conclusion

Accordingly, this action is dismissed for lack of subject-matter jurisdiction pursuant to *Apple v. Glenn*. The court further certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith.

IT IS SO ORDERED.

/s/ SOLOMON OLIVER, JR.
UNITED STATES DISTRICT JUDGE

March 11, 2020