

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

No. 23-20197

FILED

June 13, 2023

Lyle W. Cayce
Clerk

LARRY D. FORD,

Plaintiff—Appellant,

versus

AMERICAN HOMES 4 RENT; BLACKSTONE GROUP; CAMILLO PROPERTIES; CASTLEROCK COMMUNITIES; LEGEND HOMES CORPORATION; WERRINGTON HOMEOWNER'S ASSOCIATION, INCORPORATED; SPECTRUM ASSOCIATION MANAGEMENT,

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:22-CV-2162

UNPUBLISHED ORDER

Before CLEMENT, GRAVES, and HO, *Circuit Judges.*

PER CURIAM:

This court must examine the basis of its jurisdiction, on its own motion if necessary. *Hill v. City of Seven Points*, 230 F.3d 167, 169 (5th Cir. 2000). In this civil rights action, Plaintiff filed two *pro se* notices of appeal from the magistrate judge's memorandum and recommendation to deny Plaintiff's motion to proceed *In Forma Pauperis*, motion for leave to file an

amended complaint and motion for default judgment and to dismiss the complaint with prejudice.

“Federal appellate courts have jurisdiction over appeals only from (1) a final decision under 28 U.S.C. § 1291; (2) a decision that is deemed final due to jurisprudential exception or that has been properly certified as final pursuant to FED. R. CIV. P. 54(b); and (3) interlocutory orders that fall into specific classes, 28 U.S.C. § 1292(a), or that have been properly certified for appeal by the district court, 28 U.S.C. § 1292(b).” *Askanase v. Livingwell, Inc.*, 981 F.2d 807, 809-10 (5th Cir. 1993). The report and recommendation of a magistrate judge is not a final order, and it does not fall into any of the other categories that would make it appealable. *See United States v. Cooper*, 135 F.3d 960, 961 (5th Cir. 1998).

Accordingly, the appeal is DISMISSED for want of jurisdiction.

OPINION: MEMORANDUM AND RECOMMENDATION
JUNE 20, 2023

United States District Court
Southern District of Texas

ENTERED

June 20, 2023

Nathan Ochsner, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

LARRY D. FORD

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§ CIVIL ACTION NO. H: 22-2162

AMERICAN HOMES 4 RENT, *et al*

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ORDER ADOPTING MEMORANDUM AND ORDER

Pending before the Court in the above referenced proceeding are Plaintiff's Motion to Proceed *In Forma Pauperis*, Motion for Leave to File An Amended Complaint, and Motion for Default Judgment (Doc. Nos. 7, 12, 16) together with Magistrate Judge Sheldon's Memorandum and Recommendation (Doc. No. 19) that the Court deny the motions and that Plaintiff's complaint be dismissed with prejudice. Judge Sheldon further recommended that Plaintiff be deemed a vexatious litigant and that a pre-filing order is appropriate. Plaintiff Larry D. Ford did not object to the Memorandum and Recommendation and the time for doing so has passed.

Upon review, the Court agrees with the Magistrate Judge's conclusion that Ford has been given ample opportunity, in both state and federal court, to litigate his case and cure his pleading deficiencies. Further, based on the many repetitious filings by Plaintiff, the Court declares Plaintiff a vexatious litigant. Accordingly, it is

ORDERED that the Memorandum and Recommendation (Doc. No. 19) is **ADOPTED**. It is

ORDERED that, before Plaintiff can file any further pleadings with this Court, he must seek, in writing, permission from the Miscellaneous District Judge on duty for the month in which the filing would be made. The Clerk's Office will accept no further pleadings from Plaintiff without the permission of the sitting Miscellaneous District Judge.

Plaintiff's case is **DISMISSED WITH PREJUDICE**.

Entry of this Order shall constitute entry of final judgment.

SIGNED at Houston, Texas, this 20 day of June 2023.



ANDREW S. HANEN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

LARRY D. FORD,

Plaintiff,

v.

**AMERICAN HOMES 4 RENT,
et al.,**

Defendants.

CIVIL ACTION NO. 4:22-CV-2162

MEMORANDUM AND RECOMMENDATION

Pending before the Court¹ is Plaintiff's Motion for Leave to Appeal *in forma pauperis*.

(Dkt. No. 24.) Based on a thorough review of the issues on appeal and relevant law, the Court
RECOMMENDS the Motion be **DENIED**.

I. BACKGROUND

Pro se Plaintiff Larry Ford ("Plaintiff") filed this lawsuit on June 30, 2022, in this Court alleging violations of the Fair Housing Act, the Civil Rights Act of 1964, the Elder Justice Act, and various state laws due to violence in his neighborhood. (Dkt. No. 1.) Plaintiff filed an application to proceed *in forma pauperis* ("IFP"). (Dkt. No. 7.) He then filed a Motion for Leave to File an Amended Complaint and a Motion for Default Judgment. (Dkt. Nos. 12, 16.) Defendants filed three Notices of Frivolous Filing by *Pro Se* Plaintiff. (Dkt. Nos. 6, 17, 18.) On April 24, 2023, this Court issued a Memorandum and Recommendation ("M&R") finding Plaintiff's motions should be denied, and the case should be dismissed with prejudice. (Dkt. No. 19.)

¹ The District Court referred the motion to the undersigned on March 20, 2023. (Dkt. No. 15.)

Plaintiff appealed the dismissal of his case and filed the pending Motion for Leave to Appeal IFP without objecting to the M&R and without the District Judge ruling on it. (Dkt. Nos. 22, 24.) Plaintiff does not identify any particular issues on appeal, instead briefly arguing that this Court misapplied the law and never thoroughly reviewed the law or facts. He goes on to argue that many textbooks support his claims, and that Defendants exhibit a lack of integrity and lawlessness. (Dkt. No. 22.) The Court finds the issues on appeal are not taken in good faith and Plaintiff's Motion for Leave to Appeal IFP should be denied.

II. ANALYSIS

Requests to appeal IFP are governed by 28 U.S.C. § 1915 and Federal Rule of Appellate Procedure 24. *Smith v. Dallas Cty. Hosp. Dist.*, No. 13-CV-792, 2015 WL 566673, at *1 (N.D. Tex. Feb. 10, 2015). “A movant seeking leave to proceed IFP on appeal must demonstrate that [he] is a pauper and that [his] appeal is taken in good faith, i.e., that [he] will raise a nonfrivolous issue on appeal.” *Winsley v. Fed. Exp. Corp.*, 393 F. App’x 145, 146 (5th Cir. 2010); *see Johnson v. U.S. Farathane*, No. 18-CV-716, 2018 WL 8805372, at *1 (W.D. Tex. Nov. 29, 2018) (“An appeal is taken in good faith if it presents an arguable issue on the merits and therefore is not frivolous.”). A party who has been permitted to proceed IFP in the district court may automatically proceed IFP on appeal unless the district court “certifies that the appeal is not taken in good faith . . . and states in writing its reasons for the certification or finding.” FED. R. APP. P. 24(a)(3)(A); *see Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997). A finding that Plaintiff’s claims are frivolous and are thus not taken in good faith is appropriate here.

Plaintiff fails to demonstrate that he will raise nonfrivolous issues on appeal because he does not describe his arguments beyond broad assertions of error. This Court has already determined in its recent M&R and in previous nearly identical claims involving the same parties

that Plaintiff's claims lack both factual and legal basis and are therefore frivolous. (Dkt. No. 19 (citing *Ford v. Camillo Properties*, No. CV H-21-3115, 2022 WL 799749, at *1 (S.D. Tex. Mar. 16, 2022); *Ford v. Blackstone Grp. Inc.*, No. 4:19-CV-4422, 2020 WL 5587307, at *1 (S.D. Tex. June 8, 2020).) Likewise, Plaintiff's appeal of these issues is frivolous.

Because all of the issues on appeal are frivolous and thus not taken in good faith, Plaintiff is not entitled to appeal IFP. Plaintiff may challenge this finding by filing a separate IFP motion with the Fifth Circuit within 30 days of service of the District Judge's ruling on this Memorandum and Recommendation. *See Smith*, 2015 WL 566673, at *1; *Ramirez v. Astrue*, No. 07-CV-0183, 2008 WL 3876576, at *2 (W.D. Tex. Aug. 19, 2008).

III. CONCLUSION

Based on the foregoing, the Court **RECOMMENDS** Plaintiff's Motion for Leave to Appeal IFP (Dkt. No. 24) be **DENIED**.

The Clerk shall send copies of this Memorandum and Recommendation to the respective parties who have fourteen days from the receipt thereof to file written objections thereto pursuant to Federal Rule of Civil Procedure 72(b) and General Order 2002-13. Failure to file written objections within the time period mentioned shall bar an aggrieved party from attacking the factual findings and legal conclusions on appeal.

The original of any written objections shall be filed with the United States District Clerk electronically. Copies of such objections shall be mailed to opposing parties and to the chambers of the Undersigned, 515 Rusk, Suite 7019, Houston, Texas 77002.

SIGNED in Houston, Texas on May 15, 2023.



Sam S. Sheldon
United States Magistrate Judge

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ENTERED

April 24, 2023

Nathan Ochsner, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

LARRY D. FORD,

Plaintiff,

v.

**AMERICAN HOMES 4 RENT,
et al.,**

Defendant.

CIVIL ACTION NO. 4:22-CV-2162

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MEMORANDUM AND RECOMMENDATION

Pending before the Court¹ are Plaintiff's Motion to Proceed In Forma Pauperis, Motion for Leave to File an Amended Complaint, and Motion for Default Judgement. (Dkt. Nos. 7, 12, 16.) Based on a thorough review of the issues and relevant law, the Court **RECOMMENDS** the Motions be **DENIED** and Plaintiff's complaint be **DISMISSED WITH PREJUDICE**. The Court further **RECOMMENDS** that Plaintiff be declared a vexatious litigant.

I. BACKGROUND

In *Ford v. Camillo Properties*, No. CV H-21-3115, 2022 WL 799749, at *1 (S.D. Tex. Mar. 16, 2022), a case with an identical complaint to the complaint in this action, Judge Rosenthal summarized Larry F. Ford's ("Plaintiff") allegations as follows:

[Plaintiff], representing himself, sued the defendants because the subdivision where he and his wife own a home has rental properties owned by Camillo Properties. [Plaintiff] alleges that he and his wife wanted to spend their retirement in a subdivision with single family homeowners, but instead are surrounded by rental properties that have brought violence to the neighborhood. [Plaintiff] sued the

¹ The District Court referred the motion to the undersigned on March 20, 2023. (Dkt. No. 15.)

defendants for violations of the Fair Housing Act, the Civil Rights Act of 1964, the Elder Justice Act, and various state laws.

Plaintiff filed this lawsuit on June 6, 2022, in this Court. (Dkt. No. 1.) On July 11, 2022, Plaintiff filed an application to proceed in *forma pauperis* (“IFP”). (Dkt. No. 7.) On January 3, 2023, he then filed a Motion for Leave to File an Amended Complaint. (Dkt. No. 12.) Finally, on April 3, 2023, he filed a Motion for Default Judgment. (Dkt. No. 16.) Because Plaintiff’s claim is frivolous, these motions should be denied and this case should be dismissed.

II. DISCUSSION

A. Plaintiff’s Claim should be Dismissed *Sua Sponte*.

“The ability to proceed IFP is not without limitation.” *Bell v. Cnty. of Galveston*, No. 3:15-CV-0209, 2015 WL 13016010, at *1 (S.D. Tex. Aug. 7, 2015), *aff’d*, 628 F. App’x 295 (5th Cir. 2016). “A court must—at any time—dismiss any IFP action that is frivolous, malicious, fails to state a claim, or seeks monetary relief against a defendant who is immune from such relief.” *Id.* (citing 28 U.S.C. § 1915(e)(2)(b)). “Pursuant to § 1915(e)(2)(B), a claim is frivolous when it lacks an arguable basis either in law or in fact.” *Kempton v. J.C. Penney’s Co.*, No. MC C-13-121, 2013 WL 1869995, at *1 (S.D. Tex. Apr. 18, 2013), *report and recommendation adopted sub nom. Kempton v. JC Penney’s Co.*, No. 2:13-MC-00121, 2013 WL 1932668 (May 7, 2013) (citing *Neitzke v. Williams*, 490 U.S. 319, 325 (1989)). Claims lack this arguable basis when they are “fanciful,” “delusional,” or “based on an indisputably meritless legal theory.” *Denton v. Hernandez*, 504 U.S. 25, 32 (1992); *Harper v. Showers*, 174 F.3d 716, 718 (5th Cir. 1999).

“*Pro se* complaints are liberally construed in favor of the plaintiff, but district courts are given broad discretion in determining when such complaints are frivolous.” *Martinez v. Wells*, No. 3:15-CV-261, 2016 WL 1702596, at *1 (S.D. Tex. Apr. 28, 2016) (citing *Macias v. Raul A. (Unknown) Badge No. 153*, 23 F.3d 94, 97 (5th Cir. 1994)). However, in IFP actions, the Court

has “the unusual power to pierce the veil of the complaint’s factual allegations and dismiss those claims whose factual contentions are clearly baseless” and “is not bound, as it usually is when making a determination based solely on the pleadings, to accept without question the truth of the plaintiff’s allegations.” *Denton*, 504 U.S. at 32 (citations omitted). “Accordingly, the Court *sua sponte* addresses whether [Plaintiff]’s suit should be dismissed under 28 U.S.C. § 1915(e)(2)(B).” *Bell*, 2015 WL 13016010, at *1.

This Court has already determined that Plaintiff’s claims are based on indisputably meritless legal theories. “In *Ford v. Blackstone Grp. Inc.*, No. 4:19-CV-4422, 2020 WL 5587307, at *1 (S.D. Tex. June 8, 2020), Judge Hanen dismissed [Plaintiff]’s claims against Blackstone based on the same facts as those in [the complaint currently before this Court.]” *Ford*, 2022 WL 799749, at *1. Judge Hanen found that “the amended complaint [was] factually and legally insufficient.” *Ford*, 2020 WL 5587307, at *5 (S.D. Tex. June 8, 2020). He further found that “[as pleaded, there was no reason to believe that [Plaintiff] could ever succeed on his claims” and that “based on the record” [Blackstone] was not subject to personal jurisdiction in Texas.” *Id.* In her analysis of an identical complaint to the one considered in this action, Judge Rosenthal held that it “suffer[ed] from the same inadequacies that Judge Hanen identified.” *Ford*, 2022 WL 799749, at *1.

Further, Plaintiff ignored this Court’s direct order to cease submitting “frivolous filings” by filing yet another motion for default judgment in this case. *Id.* at *2 (“Because his motions for default judgment and his misrepresented “settlement agreements” are frivolous filings, Mr. Ford is ordered to stop filing similar motions for default judgment and so called settlement agreements in this court.”). Additionally, Plaintiff’s history of frivolous lawsuits also calls for dismissal. Plaintiff has filed in this Court multiple times, appealed to the 5th Circuit, and filed at “least five

additional lawsuits in Texas state court against the same defendants, based on the same facts.” *See Ford*, 2022 WL 799749, at *1; *see also Valdez v. Comm'r of Soc. Sec.*, No. CIV.A. H-09-0595, 2009 WL 562888, at *1 (S.D. Tex. Mar. 4, 2009) (denying an IFP application and ordering dismissal “because the plaintiff ha[d] a history of filing frivolous complaints”). Thus, this Court recommends that Plaintiff’s suit should be dismissed.

B. Plaintiff Should not be Granted Leave to Amend.

Rule 15 directs courts to “freely give leave [to amend the pleadings] when justice so requires.” FED. R. CIV. P. 15(a)(2); *see Great Plains Trust Co. v. Morgan Stanley Dean Witter & Co.*, 313 F.3d 305, 329 (5th Cir. 2002). It is within the sound discretion of the court to deny leave to amend when, for example, amendment would be futile or when a party fails to submit a proposed pleading or explain how he or she can cure any defects. *See Goldstein v. MCI WorldCom*, 340 F.3d 238, 254–55 (5th Cir. 2003). However, “district courts should not dismiss *pro se* complaints pursuant to Rule 12(b)(6) without first providing the plaintiff an opportunity to amend, unless it is obvious from the record that the plaintiff has pled his best case.” *Hale v. King*, 642 F.3d 492, 503 (5th Cir. 2011). This is true even when a *pro se* plaintiff fails to explain the proposed amendment or request leave to amend. *See Ramirez v. United States*, No. 01-CV-717, 2003 WL 22123463, at *2 (N.D. Tex. Mar. 6, 2003).

Plaintiff has already been given numerous opportunities to plead his case in both state and federal court and cure his pleading deficiencies. Further leave to amend “would be futile and cause needless delay.” *Grant v. Texas State Att'y Gen. Open Gov't Recs. & Consumer Prot. Div.*, No. 5-21-CV-00761-FB-RBF, 2021 WL 8055684, at *5 (W.D. Tex. Nov. 16, 2021) (dismissing IFP case and denying leave to amend where plaintiff’s “claims ha[d] already been litigated and the vast majority [were] legally infirm”), *report and recommendation adopted*, No. SA-21-CV-761-FB,

2021 WL 8055678 (W.D. Tex. Dec. 30, 2021). Thus, this Court recommends that Plaintiff not be granted leave to amend.

C. Pre-Filing Injunction.

“No one, rich or poor, is entitled to abuse the judicial process. Flagrant abuse of the judicial process can enable one person to preempt the use of judicial time that properly could be used to consider the meritorious claims of other litigants.” *Green v. Carlson*, 649 F.2d 285, 287 (5th Cir. 1981) (internal citation omitted). “While the legal system serves many functions, it is not a vehicle for harassing actions at the expense of others.” *Mustapha v. HSBC Bank, USA*, No. 4:12-CV-01924, 2013 WL 632856, at *7 (S.D. Tex. Feb. 20, 2013). “[F]ederal courts [] have the inherent power to impose sanctions against vexatious litigants.” *Newby v. Enron Corp.*, 302 F.3d 295, 302 (5th Cir. 2002). “This includes the authority to enjoin parties, including *pro se* litigants, from making vexatious filings with the court.” *Zawislak v. Mem’l Herman Health Sys.*, No. CV H:21-3098, 2022 WL 4358097, at *1 (S.D. Tex. Sept. 19, 2022) (italicization added).

Accordingly, based on Plaintiff’s history of frivolous filings and blatant disregard of Judge Rosenthal’s order, this Court further recommends that Plaintiff be deemed a vexatious litigant and that a pre-filing order is appropriate. *See Hurt v. Encinia*, No. CIV.A. H-15-2602, 2015 WL 6674820, at *3 (S.D. Tex. Oct. 30, 2015).

III. CONCLUSION

Based on the foregoing, the Court **RECOMMENDS** Plaintiff’s Motion to Proceed In *Forma Pauperis*, Motion for Leave to File an Amended Complaint, and Motion for Default Judgement (Dkt. Nos. 7, 12, 16) be **DENIED** and Plaintiff’s case be **DISMISSED WITH PREJUDICE**. The Court further **RECOMMENDS** that Plaintiff be declared a vexatious litigant.

The Clerk shall send copies of this Memorandum and Recommendation to the respective parties who have fourteen days from the receipt thereof to file written objections thereto pursuant to Federal Rule of Civil Procedure 72(b) and General Order 2002-13. Failure to file written objections within the time period mentioned shall bar an aggrieved party from attacking the factual findings and legal conclusions on appeal.

The original of any written objections shall be filed with the United States District Clerk electronically. Copies of such objections shall be mailed to opposing parties and to the chambers of the Undersigned, 515 Rusk, Suite 7019, Houston, Texas 77002.

SIGNED in Houston, Texas on April 24, 2023.



Sam S. Sheldon
United States Magistrate Judge