

THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

DARREL R. FISHER,)
Plaintiff,)
v.) Case No. 23-CV-00511-W-FJG-P
MAGISTRATE JUDGE ROBERT)
LARSON,)
Defendant.)

ORDER

Plaintiff is confined at the Federal Medical Center in Butner, North Carolina. He has filed this case pro se, seeking monetary and other relief for claimed violations of his rights under federal law. *See* Doc. 1.

Plaintiff requests leave to proceed without prepayment of the fees associated with the filing of this case. For the purpose of this request, the Court assumes Plaintiff is a civilly committed person and not subject to the provisions of the Prison Litigation Reform Act (PLRA). *See Fisher v. Connor*, No. 18-0521-CV-W-ODS-P (W.D. Mo. Aug. 20, 2018) (order dismissing case summarily, noting that Plaintiff is a mental patient and not subject to provisions of the PLRA). Therefore, as in *Kolocotronis v. Morgan*, 247 F.3d 726, 728 (8th Cir. 2001), Plaintiff is “an ordinary civil litigant seeking to proceed *in forma pauperis*;” as such, the Court may grant Plaintiff leave to proceed *in forma pauperis* depending upon his ability to pay fees. 28 U.S.C. § 1915(a)(1). Having reviewed the record, the Court will grant Plaintiff provisional leave to proceed *in forma pauperis*.

Plaintiff names Robert Larson, Magistrate Judge for the United States District Court for the Western District of Missouri. Doc. 1 at 1. As best as can be discerned, Plaintiff challenges, *inter alia*, Judge Larson’s 2010 report and recommendation to commit Plaintiff to the custody of the Attorney General for hospitalization and treatment. *See* Doc. 1-1 at 2-5.

To state a claim under *Bivens*, “a plaintiff must plead that each Government official defendant, through the official’s own individual actions, has violated the Constitution.” *Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009). A defendant must have been personally involved in the

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

No: 23-2971

Darrel R. Fisher

Appellant

v.

Robert E Larsen, WDMO, Magistrate Judge

Appellee

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:23-cv-00511-FJG)

ORDER

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

December 12, 2023

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

/s/ Michael E. Gans

Appendix C

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 23-2971

Darrel R. Fisher

Plaintiff - Appellant

v.

Robert E Larsen, WDMO, Magistrate Judge

Defendant - Appellee

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:23-cv-00511-FJG)

JUDGMENT

Before COLLTON, GRUENDER and BENTON, Circuit Judges.
Before COLLTON, GRUENDER and BENTON, Circuit Judges.

The court has reviewed the original file of the United States District Court. Appellant's application to proceed in forma pauperis is granted.

It is ordered by the court that the judgment of the district court is summarily affirmed.

See Eighth Circuit Rule 47A(a).

October 24, 2023

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

/s/ Michael E. Gans

Appendix A

deprivation of plaintiff's rights to be liable, *Martin v. Sergeant*, 780 F.2d 1334, 1337 (8th Cir. 1985), and pleadings must offer more than labels and conclusions; formulaic recitations of the elements of a cause of action are not sufficient. *Iqbal*, 556 U.S. at 678. A plaintiff must demonstrate a plausible claim for relief, which is more than a "mere possibility of misconduct." *Id.* at 679. "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." *Id.* at 678. "Determining whether a complaint states a plausible claim for relief [is] a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Id.* at 679.

At the outset, Plaintiff's claims are conclusory and frivolous. See *Iqbal*, 556 U.S. at 678 (Plaintiff must plead more than "threadbare recitals of a cause of action's elements, supported by mere conclusory statements."). A claim is frivolous if it lacks an arguable basis in fact or in law. *Neitzke*, 490 U.S. at 325. The term "frivolous" in this context "embraces not only the inarguable legal conclusion, but also the fanciful factual allegation." *Id.*; see also *Wilson v. Johnston*, 68 Fed. Appx. 761 (8th Cir. 2003) (court may dismiss complaint proceeding *in forma pauperis* as "frivolous, and disregard clearly baseless, fanciful, fantastical, or delusional factual allegations"). Therefore, Plaintiff's claims are subject to dismissal.

Regardless, Plaintiff complains only of judicial acts on behalf of Judge Larson. A judge is absolutely immune from liability if (1) the judge has subject-matter jurisdiction, and (2) the acts complained of were judicial acts. *Smith v. Bacon*, 699 F.2d 434, 436 (8th Cir. 1983). Absolute judicial immunity "must be construed broadly." *Stump v. Sparkman*, 435 U.S. 349, 355-56 (1978) (citation omitted). Whether an act is judicial relates "to the nature of the act itself, *i.e.*, whether it is a function normally performed by a judge, and to the expectations of the parties, *i.e.*, whether they dealt with the judge in his official capacity." *Mireles v. Waco*, 502 U.S. 9, 11 (1991) (citation omitted). Further, a judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in the 'clear absence of all jurisdiction.'" *Stump*, 435 U.S. at 355-56 (citation omitted).

Here, Plaintiff fails to allege any claims that demonstrate actions sufficient to defeat the absolute immunity afforded to Judge Larson. Rather, from the face of the complaint, it is evident Judge Larson was performing functions that are normally performed by judges—entering rulings

in and managing Plaintiff's case or cases. *See Schottel v. Young*, 687 F.3d 370, 373 (8th Cir. 2012). Plaintiff, therefore, seeks relief from a defendant who is immune from relief.

Accordingly, it is **ORDERED** that Plaintiff is granted provisional leave to proceed *in forma pauperis*, and this case is dismissed as legally frivolous and for failure to state a claim upon which relief may be granted.

/s/ Fernando J. Gaitan, Jr.

FERNANDO J. GAITAN, JR., JUDGE
UNITED STATES DISTRICT COURT

DATED: August 7, 2023

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 23-3540

Darrel R. Fisher

Plaintiff - Appellant

v.

J. Doe

Defendant - Appellee

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:23-cv-00684-FJG)

JUDGMENT

Before LOKEN, GRUENDER, and KELLY, Circuit Judges.

The court has carefully reviewed the original file of the United States District Court and
orders that this appeal be dismissed for lack of jurisdiction.

The motion for leave to proceed in forma pauperis is denied as moot.

December 14, 2023

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

/s/ Michael E. Gans