Appendix A

FILED: March 15, 2024

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-1005
(2:23-cv-00800-SAL)

REVEREND DR. SAMUEL T. WHATLEY

Plaintiff - Appellant

v.

ELMORE COUNTY PROBATE OFFICE; JOHN THORNTON

Defendants - Appellees

JUDGMENT

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ NWAMAKA ANOWI, CLERK

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-1005

REVEREND DR. SAMUEL T. WHATLEY,

Plaintiff - Appellant,

v.

ELMORE COUNTY PROBATE OFFICE; JOHN THORNTON,

Defendants - Appellees.

Appeal from the United States District Court for the District of South Carolina, at Charleston. Sherri A. Lydon, District Judge. (2:23-cv-00800-SAL)

Submitted: March 12, 2024 Decided: March 15, 2024

Before GREGORY, RICHARDSON, and BENJAMIN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Samuel T. Whatley, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Reverend Dr. Samuel T. Whatley appeals the district court's order accepting the recommendation of the magistrate judge and dismissing without prejudice* Whatley's civil action, which summarily alleged that a fraudulent property deed was recorded in 2023. We have reviewed the record and find no reversible error. Accordingly, we affirm the district court's judgment. *Whatley v. Elmore Cnty. Prob. Off.*, No. 2:23-cv-00800-SAL (D.S.C. Dec. 13, 2023). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

* The district court's dismissal without prejudice is a final order because the court dismissed the complaint "without granting leave to amend." *Britt v. DeJoy*, 45 F.4th 790, 791 (4th Cir. 2022) (en banc) (order).

Appendix B

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Reverend Dr. Samuel T. Whatley, Plaintiff, v. Elmore County Probate Office; John Thornton, Defendants.	C/A No. 2:23-cv-800-SAL **ORDER**

This matter is before the court for review of the Report and Recommendation of United States Magistrate Judge Paige J. Gossett, made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2)(e) (D.S.C.) ("Report"). [ECF No. 17.] In the Report, the magistrate judge recommends summarily dismissing this matter without issuance and service of process. *Id.* at 4. Included with the Report was a notice advising Plaintiff of the procedures and requirements for filing objections to the Report. *Id.* at 5. Plaintiff filed objections. [ECF No. 20.] This matter is ripe for review.

REVIEW OF A MAGISTRATE JUDGE'S REPORT

The magistrate judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with this court. *See Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). The court is charged with making a de novo determination of only those portions of the Report that have been *specifically* objected to, and the court may accept, reject, or modify the Report, in whole or in part. 28 U.S.C. § 636(b)(1). Absent objections, the court need not provide an explanation for adopting the Report and must "only satisfy itself that there is no clear error on the face of the record in order to accept the

recommendation." *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (citing Fed. R. Civ. P. 72 advisory committee's note).

"An objection is specific if it 'enables the district judge to focus attention on those issues—factual and legal—that are at the heart of the parties' dispute.'" *Dunlap v. TM Trucking of the Carolinas, LLC*, No. 0:15-cv-04009, 2017 WL 6345402, at *5 n.6 (D.S.C. Dec. 12, 2017) (citation omitted). Thus, "[i]n the absence of *specific* objections . . . this court is not required to give any explanation for adopting the recommendation." *Field v. McMaster*, 663 F. Supp. 2d 449, 451–52 (D.S.C. 2009).

Because Plaintiff is proceeding *pro se*, the court is charged with liberally construing the pleadings to allow Plaintiff to fully develop potentially meritorious claims. *See Cruz v. Beto*, 405 U.S. 319 (1972); *Haines v. Kerner*, 404 U.S. 519 (1972). That said, the requirement of liberal construction does not mean that the court can ignore a clear failure in the pleading to allege facts which set forth a claim currently cognizable in a federal district court. *Weller v. Dep't of Soc. Servs.*, 901 F.2d 387, 390–91 (4th Cir. 1990).

DISCUSSION

Plaintiff initiated this action by filing a standard civil complaint form against Defendants on February 28, 2023. [ECF No. 1.] He subsequently filed an amended complaint correcting the spelling of Defendant John Thornton's name. [ECF No. 7.] In the amended complaint, Plaintiff claims there is diversity of citizenship between the parties, and the amount in controversy is $17 million dollars. *Id.* at 3–4. Plaintiff sets forth his claim as follows: "Fraudulent property deed recorded in January 2023 that was over ten years old (2013) and not valid when a legal and verified property deed was recorded in January 2022." *Id.* at 4. Plaintiff describes his requested relief as

"[f]ollowing the January 2022 deed entitled to the plaintiff. Retraining of Defendant No. 2 and or proof of competency to maintain the position and or Defendant No. 1 response." *Id.*

Since Plaintiff is proceeding in forma pauperis in this action, his complaint was reviewed pursuant to 28 U.S.C. § 1915. The magistrate judge assigned to this case then recommended Plaintiff's complaint be dismissed as frivolous because he "does not raise an identifiable legal cause of action or state what facts would support a cause of action. Plaintiff indicates that a fraudulent deed was recorded in 2023 but does not explain how the deed affects him, nor does he explain how the named defendants were involved in the purportedly fraudulent deed." [ECF No. 17 at 3.] As explained by the magistrate judge, Plaintiff fails to allege either his standing to bring this action or the court's jurisdiction over this case. *Id.* The court agrees with the magistrate judge's recitation of the applicable law and her assessment of Plaintiff's complaint and adopts it and incorporates it here.

In his objections, Plaintiff first faults the Report for misquoting the complaint. He contends the Report

> failed to accurately read the complaint as the RR stated 'Fraudulent property deed recorded in January 2023 that was over ten years old (2013) and valid when a legal and verified property deed was recorded in January 2022" when it *originally* stated "Fraudulent property deed recorded in January 2023 that was over ten years old, (2013) and *not* valid when a legal and verified property deed was recorded in January 2022[.]"

[ECF No. 20 at 1 (emphasis in original).] Plaintiff has identified a typo in the Report, but it has no effect on the ultimate recommendation. The reason Plaintiff's complaint has been recommended for dismissal is not because of a misunderstanding concerning the validity of the deed—it is because Plaintiff has not identified a cause of action or adequately pleaded his connection or the Defendants' connection to the recording of the so-called fraudulent deed. Plaintiff attaches some documents to his objections, presumably related to the deed. See ECF No.

20 at 4–9. However, despite Plaintiff's pro se status, the court is not permitted to create Plaintiff's complaint when his pleadings are deficient. *See Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985) ("[Case law] directs district courts to construe pro se complaints liberally. It does not require those courts to conjure up questions never squarely presented to them. District judges are not mind readers. Even in the case of pro se litigants, they cannot be expected to construct full blown claims from sentence fragments . . . ."). His objection is overruled.

Plaintiff next asserts "[t]he RR insinuates that defendants are immune, that the case is frivolous or malicious, and failed to state a claim despite the ruling in *Chisholm v. Georgia* (1793) clearly outlining no immunity in addition to the local government's own database showing the registered deeds having two different names listed within the year." [ECF No. 20 at 1.] But there is nothing about immunity in the Report. Instead, the Report recommends dismissal because Plaintiff fails to adequately plead a cause of action or sufficient facts alleging he was harmed and that Defendants caused the harm. Plaintiff objects to the finding that his complaint is frivolous, but, as explained above, there is no error in the reasoning or recommendation by the magistrate judge. *See Neitzke v. Williams*, 490 U.S. 319, 325 (1989) ("[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."). His objection is overruled.

Finally, Plaintiff identifies a typo in the Report's case caption. This typo has no bearing on the Report's identification of the deficiencies with Plaintiff's case or the recommendation. His objection is overruled.

CONCLUSION

For the reasons set forth above, the Report [ECF No. 17] is adopted and incorporated. As a result, Plaintiff's complaint is **SUMMARILY DISMISSED** without prejudice and without issuance and service of process.

IT IS SO ORDERED.

December 13, 2023
Columbia, South Carolina

Sherri A. Lydon
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESOTN DIVISION

Reverend Dr. Samuel T. Whatley, Plaintiff, v. Elmore County Probate Office; John Thornton, Defendants.	)	C/A No. 2:23-800-SAL-PJG **REPORT AND RECOMMENDATION**

Plaintiff Reverend Dr. Samuel T. Whatley, proceeding *pro se*, filed this civil action. This matter is before the court pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.) for initial review pursuant to 28 U.S.C. § 1915. Having reviewed the Complaint and the Amended Complaint[1] in accordance with applicable law, the court concludes that this case should be summarily dismissed without prejudice and issuance and service of process.

I. Factual and Procedural Background

Plaintiff filed this case on a standard complaint form for a civil case. Plaintiff lists as defendants the Elmore County Probate Office in Wetumpka, Alabama and John Thornton, an Alabama Probate Judge. In the section directing Plaintiff to provide a short and plain statement of his claim, Plaintiff states "Fraudulent property deed recorded in January 2023 that was over ten years old (2013) and valid when a legal and verified property deed was recorded in January 2022." (Compl., ECF No. 1 at 4.) In the section directing Plaintiff to briefly and precisely state what relief he seeks from the court, Plaintiff states, "Following the January 2022 deed entitled to the plaintiff.

[1] Plaintiff filed an Amended Complaint that only corrected the spelling of Defendant Thornton's name.

Retraining of Defendant No. 2 and or proof of competency to maintain the position and or Defendant No. 1 response."

II. Discussion

A. Standard of Review

Under established local procedure in this judicial district, a careful review has been made of the *pro se* pleadings. The pleadings have been filed pursuant to 28 U.S.C. § 1915, which permits an indigent litigant to commence an action in federal court without prepaying the administrative costs of proceeding with the lawsuit. This statute allows a district court to dismiss the case upon a finding that the action "is frivolous or malicious," "fails to state a claim on which relief may be granted," or "seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B).

To state a claim upon which relief can be granted, the plaintiff must do more than make mere conclusory statements. See Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009); Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). Rather, the complaint must contain sufficient factual matter, accepted as true, to state a claim that is plausible on its face. Iqbal, 556 U.S. at 678; Twombly, 550 U.S. at 570. The reviewing court need only accept as true the complaint's factual allegations, not its legal conclusions. Iqbal, 556 U.S. at 678; Twombly, 550 U.S. at 555.

This court is required to liberally construe *pro se* complaints, which are held to a less stringent standard than those drafted by attorneys. Erickson v. Pardus, 551 U.S. 89, 94 (2007); King v. Rubenstein, 825 F.3d 206, 214 (4th Cir. 2016). Nonetheless, the requirement of liberal construction does not mean that the court can ignore a clear failure in the pleading to allege facts which set forth a claim cognizable in a federal district court. See Weller v. Dep't of Soc. Servs.,

901 F.2d 387 (4th Cir. 1990); see also Ashcroft v. Iqbal, 556 U.S. 662, 684 (2009) (outlining pleading requirements under Rule 8 of the Federal Rules of Civil Procedure for "all civil actions").

B. Analysis

The court concludes that this case should be dismissed as frivolous. See Denton v. Hernandez, 504 U.S. 25, 31 (1992) (providing that a claim is frivolous if "it lacks an arguable basis either in law or in fact") (quoting Neitzke v. Williams, 490 U.S. 319, 325 (1989)). Plaintiff's pleadings fail to comply with the basic rules of pleading. See Fed. R. Civ. P. 8 (requiring that a pleading contain "a short and plain statement of the claim showing that the pleader is entitled to relief"); Iqbal, 556 U.S. at 678 (stating Federal Rule of Civil Procedure 8 does not require detailed factual allegations, but it requires more than a plain accusation that the defendant unlawfully harmed the plaintiff, devoid of factual support). Plaintiff does not raise an identifiable legal cause of action or state what facts would support a cause of action. Plaintiff indicates that a fraudulent deed was recorded in 2023 but does not explain how the deed affects him, nor does he explain how the named defendants were involved in the purportedly fraudulent deed.

Consequently, Plaintiff fails to plead facts that show that the court has jurisdiction over this case. See Fed. R. Civ. P. 8(a)(1) (requiring the complaint provide "a short and plain statement of the grounds for the court's jurisdiction[.]"); Dracos v. Hellenic Lines, Ltd., 762 F.2d 348, 350 (4th Cir. 1985) ("[P]laintiffs must affirmatively plead the jurisdiction of the federal court."); see also In re Bulldog Trucking, Inc., 147 F.3d 347, 352 (4th Cir. 1998) (requiring the court to *sua sponte* determine if a valid basis for its jurisdiction exists, "and to dismiss the action if no such ground appear"). Plaintiff asserts that the parties have diversity of citizenship, but he does not raise any legal causes of action that would show that he has standing to present a justiciable controversy over the fraudulent recording of the property deed. See Pye v. United States, 269 F.3d 459, 466

(2001) ("Standing is a threshold jurisdictional question which ensures that a suit is a case or controversy appropriate for the exercise of the courts' judicial powers under the Constitution of the United States.") (citing Steel Co. v. Citizens for a Better Environment, 523 U.S. 83, 102 (1998)); White Tail Park, Inc. v. Stroube, 413 F.3d 451, 458 (4th Cir. 2005) (stating that standing requires a plaintiff to show that he suffered an injury in fact—an invasion of a legally protected interest which is concrete and particularized; that there is a causal connection between the injury and the conduct complained of; and that the injury will likely be redressed by a favorable decision); see also Ali v. Hogan, 26 F.4th 587, 595 (4th Cir. 2022) (stating that standing is a question of jurisdiction that may be raised by the court *sua sponte*). Consequently, Plaintiff fails to plead facts that could establish that Plaintiff raises a legal cause of action for which he has standing, or that the court would have jurisdiction over such a cause of action.

III. Conclusion

Accordingly, the court recommends that this case be summarily dismissed without prejudice and without issuance and service of process.

Paige J. Gossett

March 8, 2023
Columbia, South Carolina

Paige J. Gossett
UNITED STATES MAGISTRATE JUDGE

Plaintiff's attention is directed to the important notice on the next page.

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. "[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
901 Richland Street
Columbia, South Carolina 29201

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984).

Additional material from this filing is available in the Clerk's Office.