NOT RECOMMENDED FOR PUBLICATION

No. 23-2093

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RUFUS LAMAR SAVIN SPEARMAN, Plaintiff-Appellant, v. CHAD H. WILLIAMS, Assistant Resident Unit Supervisor, et al., Defendants-Appellees.	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN

ORDER

Before: NORRIS, McKEAGUE, and MATHIS, Circuit Judges.

Rufus Lamar Savin Spearman, a pro se Michigan prisoner, appeals the district court's denial of post-judgment motions that he filed after the dismissal of his claim under the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc, et seq. 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). For the reasons set forth below, we affirm.

At the time giving rise to his allegations, Spearman was confined at the Carson City Correctional Facility. As relevant here, Spearman alleged that, in April 2014, prison officials moved him to a different wing within the same housing unit after his roommate violently attacked him. Spearman alleged that Correctional Officer David Osbourne packed his belongings for the move, but when he received his property later that day, he was missing several items, including his religious scrolls. When Spearman confronted Osbourne about his missing property, Osbourne allegedly accused Spearman of being a "snitch" in the presence of other prisoners. Spearman

alleged that he never received his religious scrolls, which prevented him from practicing his religion.

In October 2017, Spearman filed a 42 U.S.C. § 1983 complaint, which he later amended, raising several constitutional claims against Osbourne and others. He also claimed that Osbourne violated RLUIPA by confiscating his religious literature. He sought damages and injunctive relief. On initial screening under the Prison Litigation Reform Act (PLRA), the district court dismissed most of Spearman's claims, including his RLUIPA claim against Osbourne, as time-barred. *See* 28 U.S.C. §§ 1915(e)(2), 1915A; 42 U.S.C. § 1997e(c). The district court later disposed of Spearman's remaining claims under Federal Rule of Civil Procedure 12(b)(6) or on summary judgment.

On appeal, we concluded that the district court erred in dismissing Spearman's RLUIPA claim as untimely. *Spearman v. Williams*, No. 22-1309, 2023 WL 7000971, at *4, *6 (6th Cir. July 17, 2023) (order). We therefore remanded for further proceedings as to that claim but affirmed in all other respects. *Id.*

On remand, the district court again screened Spearman's amended complaint under the PLRA and dismissed his RLUIPA claim for failure to state a claim, explaining that RLUIPA does not permit individual-capacity suits or official-capacity suits for damages and that any official-capacity claim for injunctive relief was moot. Spearman moved to alter or amend the judgment under Federal Rule of Civil Procedure 59(e), incorporating by reference a separate motion to disqualify the district judge and two magistrate judges assigned to his case based on their alleged bias throughout the proceedings. The district court denied both motions. Spearman then tendered a motion for leave to file a second amended complaint, but a magistrate judge directed the clerk to reject that motion because the case had been closed.

Spearman timely appealed the district court's denial of his Rule 59(e) motion. An appeal from the denial of a timely Rule 59(e) motion ordinarily brings up the underlying judgment for review. *See GenCorp, Inc. v. Am. Int'l Underwriters*, 178 F.3d 804, 833 (6th Cir. 1999). Spearman, however, challenges only the denial of his post-judgment motions, not the dismissal of

his RLUIPA claim. He has thus forfeited appellate review of that decision. *See Scott v. First S. Nat'l Bank*, 936 F.3d 509, 522 (6th Cir. 2019).

We review the district court's denial of Spearman's interrelated Rule 59(e) and disqualification motions for an abuse of discretion. *See GenCorp, Inc.*, 178 F.3d at 832 (Rule 59(e) motion); *Burley v. Gagacki*, 834 F.3d 606, 616 (6th Cir. 2016) (disqualification motion). A federal judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned" or "he has a personal bias or prejudice concerning a party." 28 U.S.C. § 455(a), (b)(1). "The statute is 'not based on the subjective view of a party,'" *Burley*, 834 F.3d at 615-16 (quoting *United States v. Dandy*, 998 F.2d 1344, 1349 (6th Cir. 1993)); rather, "a judge must disqualify himself 'where a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned,'" *id.* at 616 (quoting *United States v. Adams*, 722 F.3d 788, 837 (6th Cir. 2013)).

In support of his disqualification motion, Spearman cites as evidence of judicial bias the magistrate judges' and district judge's adverse rulings throughout the course of the litigation, including the district court's initial screening order, various discovery rulings, and grant of summary judgment. But a judge's rulings and holdings, by themselves, "almost never constitute a valid basis for a bias or partiality motion." *Liteky v. United States*, 510 U.S. 540, 555 (1994). Where, as here, a judicial-bias claim is not based on an extrajudicial source, disqualification is required only where the judge "display[s] a deep-seated favoritism or antagonism that would make fair judgment impossible." *Id.* The district court correctly noted that Spearman failed to cite any evidence of personal bias or prejudice against him or in the defendants' favor. It therefore did not abuse its discretion in denying his disqualification motion. And because Spearman's Rule 59(e) motion merely incorporated the arguments set forth in his disqualification motion, it follows that the district court also did not abuse its discretion in denying his Rule 59(e) motion.

Lastly, Spearman argues that the magistrate judge erred in rejecting his post-judgment motion for leave to file a second amended complaint. But we lack jurisdiction to review the

magistrate judge's order because Spearman did not appeal that order to the district court. *See* Fed. R. Civ. P. 72(a); *Hoven v. Walgreen Co.*, 751 F.3d 778, 782 (6th Cir. 2014).

For these reasons, we **AFFIRM** the district court's denial of Spearman's post-judgment motions.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 23-2093

RUFUS LAMAR SAVIN SPEARMAN,

Plaintiff-Appellant,

v.

CHAD H. WILLIAMS, Assistant Resident Unit Supervisor, et al.,

Defendants-Appellees.

Before: NORRIS, McKEAGUE, and MATHIS, Circuit Judges.

JUDGMENT

On Appeal from the United States District Court
for the Western District of Michigan at Grand Rapids.

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

Kelly L. Stephens

Kelly L. Stephens, Clerk

United States Court of Appeals for the Sixth Circuit

U.S. Mail Notice of Docket Activity

The following transaction was filed on 07/02/2024.

Case Name: Rufus Spearman v. Chad Williams, et al
Case Number: 23-2093

Docket Text:
ORDER filed: We AFFIRM the district court's denial of Spearman's post-judgment motions.Mandate to issue, decision not for publication, pursuant to FRAP 34(a)(2)(C). Alan E. Norris, Circuit Judge; David W. McKeague, Circuit Judge and Andre B. Mathis, Circuit Judge.

The following documents(s) are associated with this transaction:
Document Description: Order

Notice will be sent to:

Rufus Lamar Savin Spearman
Carson City Correctional Facility
10274 Boyer Road
Carson City, MI 48811

A copy of this notice will be issued to:

Ms. Ann E. Filkins
Mr. Adam P. Sadowski

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RUFUS L. SPEARMAN,

Plaintiff,

v.

CHAD H. WILLIAMS, et al.,

Defendants.
/

Case No. 1:17-cv-1070

Honorable Janet T. Neff

OPINION

This is a civil rights action brought by a state prisoner under 42 U.S.C. § 1983. This matter returns to the Court following the decision of the Sixth Circuit Court of Appeals to vacate this Court's dismissal of Plaintiff's claim against Defendant Osbourne under the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc, et seq. ("RLUIPA"), as untimely.

Under the Prison Litigation Reform Act, Pub. L. No. 104-134, 110 Stat. 1321 (1996) (PLRA), the Court is required to dismiss any prisoner action brought under federal law if the complaint is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant immune from such relief. 28 U.S.C. §§ 1915(e)(2), 1915A; 42 U.S.C. § 1997e(c). These provisions of the PLRA are applicable at "any time" during an "action or appeal." 28 U.S.C. §§ 1915(e)(2); *McGore v. Wrigglesworth*, 114 F.3d 601, 608 (6th Cir. 1997). The Court must read Plaintiff's *pro se* complaint indulgently, *see Haines v. Kerner*, 404 U.S. 519, 520 (1972), and accept Plaintiff's allegations as true, unless they are clearly irrational or wholly incredible. *Denton v. Hernandez*, 504 U.S. 25, 33 (1992). Applying these standards, the Court will

dismiss Plaintiff's remaining RLUIPA claim against Defendant Osbourne for failure to state a claim.

Discussion

I. Factual Allegations & Procedural History

Plaintiff is presently incarcerated with the Michigan Department of Corrections (MDOC) at the Oaks Correctional Facility (ECF) in Manistee, Manistee County, Michigan. The events about which he complains occurred at the Carson City Correctional Facility (DRF) in Carson City, Montcalm County, Michigan. Plaintiff originally sued several individual Defendants; however, following remand, the only remaining claim is that Defendant Correctional Officer David Osbourne violated Plaintiff's rights under RLUIPA by confiscating Plaintiff's religious literature. Order, *Spearman v. Williams*, No. 22-1309 (6th Cir. July 17, 2023), (ECF No. 136).

As relevant to Plaintiff's remaining claim, in his amended complaint, Plaintiff alleges that, on April 24, 2014, Plaintiff's roommate attacked him. (Am. Compl., ECF No. 8, PageID.51.) Plaintiff subsequently informed certain officials, including Defendant Osbourne, who all instructed Plaintiff to write a statement requesting protective custody. (*Id.*, PageID.52–53.) Plaintiff was then assigned to a different wing within the same housing unit. (*Id.*, PageID.53.) Defendant Osbourne and another correctional officer packed Plaintiff's belongings for the move. (*Id.*) When Plaintiff arrived in his new housing unit, Plaintiff noticed that items of Plaintiff's personal property were missing, including Plaintiff's religious scrolls. (*Id.*) When Plaintiff confronted Defendant Osbourne about the missing property, Defendant Osbourne accused Plaintiff of being a "snitch." (*Id.*, PageID.53–54.) Plaintiff never received his religious scrolls, preventing Plaintiff from practicing his religion. (*Id.*, PageID.53.)

Plaintiff's amended complaint does not specify whether Plaintiff sues Defendant Osborne in his individual or official capacity. He seeks injunctive relief and compensatory and punitive damages.

On initial screening, the Court "properly determined that most of Spearman's claims are time-barred." Order, *Spearman*, No. 22-1309, (ECF No. 136, PageID.1140). In the Court's opinion and order partially dismissing the case on preliminary review, the Court had dismissed all of Plaintiff's claims that accrued before July 24, 2014, including Plaintiff's RLUIPA claim against Defendant Osbourne, concluding that the applicable statute of limitations barred those claims. The Court did not address Plaintiff's claims that accrued before July 24, 2014, on the merits. The Court later dismissed Plaintiff's claim regarding certain events that occurred on August 18, 2014, for failure to state a claim and granted summary judgment on Plaintiff's remaining claims. Plaintiff appealed.

On appeal, the Sixth Circuit affirmed the dismissal of Plaintiff's § 1983 claims that accrued before June 24, 2014, as untimely. Order, *Spearman*, No. 22-1309, (ECF No. 136, PageID.1141). The Sixth Circuit further concluded that Plaintiff's July 22, 2014, and August 18, 2014, claims were legally insufficient, *id.*, (ECF No. 136, PageID.1141–1142), and that Defendants were entitled to summary judgment as to Plaintiff's August 7 and August 26, 2014, claims, *id.*, (ECF No. 136, PageID.1145).

However, the Sixth Circuit determined that this Court improperly included Plaintiff's RLUIPA claims with Plaintiff's § 1983 claims when making its determination regarding the timeliness of Plaintiff's claims. Explaining that RLUIPA claims are subject to a four-year limitations period—rather than the three-year period applicable to claims under § 1983—the Sixth Circuit concluded that Plaintiff's claim that Defendant Osbourne confiscated his religious

literature in April 2014 was timely, vacating this Court's earlier dismissal and remanding for further proceedings as to that claim only. *Id.*, (ECF No. 136, PageID.1142–1145). The Sixth Circuit did not address whether Plaintiff's RLUIPA claim against Defendant Osbourne sufficiently states a cause of action; therefore, this Court will now do so.

II. Failure to State a Claim

A complaint may be dismissed for failure to state a claim if it fails "to give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). While a complaint need not contain detailed factual allegations, a plaintiff's allegations must include more than labels and conclusions. *Id.*; *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) ("Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice."). The court must determine whether the complaint contains "enough facts to state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 570. "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." *Iqbal*, 556 U.S. at 679. Although the plausibility standard is not equivalent to a "'probability requirement,' . . . it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.* at 678 (quoting *Twombly*, 550 U.S. at 556). "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'show[n]'—that the pleader is entitled to relief." *Id.* at 679 (quoting Fed. R. Civ. P. 8(a)(2)); *see also Hill v. Lappin*, 630 F.3d 468, 470–71 (6th Cir. 2010) (holding that the *Twombly/Iqbal* plausibility standard applies to dismissals of prisoner cases on screening review under 28 U.S.C. §§ 1915A(b)(1) and 1915(e)(2)(B)(ii)).

Following remand, Plaintiff's only remaining claim is that Defendant Osbourne violated Plaintiff's rights under RLUIPA by confiscating Plaintiff's religious literature. RLUIPA prohibits

any government from imposing a "substantial burden on the religious exercise" of a prisoner unless such burden constitutes the least restrictive means of furthering a compelling governmental interest. 42 U.S.C. § 2000cc-1(a). However, RLUIPA does not create a cause of action against an individual in that individual's personal capacity. *Sossamon v. Lone Star State of Texas*, 560 F.3d 316, 331 (5th Cir. 2009), *aff'd Sossamon v. Texas*, 563 U.S. 277 (2011)[1]; *see also Grayson v. Schuler*, 666 F.3d 450, 451 (7th Cir. 2012) ("[RLUIPA] does not create a cause of action against state employees in their personal capacity."); *Washington v. Gonyea*, 731 F.3d 143, 145 (2d Cir. 2013) ("RLUIPA does not provide a cause of action against state officials in their individual capacities . . . .").[2] Therefore, to the extent that Plaintiff brings his RLUIPA claim against Defendant Osborne individually, his claim will be dismissed.

Moreover, RLUIPA does not permit damages claims against prison officials in their official capacities. A suit against an individual in his official capacity is equivalent to a suit brought against the governmental entity. *See Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989); *Matthews v. Jones*, 35 F.3d 1046, 1049 (6th Cir. 1994). In *Sossamon*, the Supreme Court held that RLUIPA did not abrogate sovereign immunity under the Eleventh Amendment. 563 U.S. 277; *see also*

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[1] The Supreme Court granted certiorari only on the question "Whether an individual may sue a State or state official in his official capacity for damages for violation of" RLUIPA. *Sossamon v. Texas*, 560 U.S. 923 (2010). Thus, the Supreme Court left undisturbed and unreviewed the Fifth Circuit's holding that "RLUIPA does not create a cause of action against defendants in their individual capacities." *Sossamon*, 560 F.3d at 331.

[2] In *Haight v. Thompson*, 763 F.3d 554 (6th Cir. 2014), the Sixth Circuit analyzed whether Congress's spending power permitted a RLUIPA damages claim against an individual prison official in the official's personal capacity. The court rested its determination that such claims were not permitted on its conclusion that "appropriate relief" under RLUIPA was not a sufficiently clear statement to authorize such a damages claim. *Id.* at 567–69. The court stopped short of adopting the reasoning that swayed the Fifth Circuit in *Sossamon* and subsequent federal circuit court panels. *Haight*, however, did not squarely present the issue whether a personal capacity suit for injunctive or declaratory relief might be available.

Cardinal v. Metrish, 564 F.3d 794, 801 (6th Cir. 2009) ("[T]he Eleventh Amendment bars plaintiff's claim for monetary relief under RLUIPA."). Therefore, although the statute permits the recovery of "appropriate relief against a government," 42 U.S.C. § 2000cc-2(a), monetary damages are not available under RLUIPA. Thus, even if this Court were to liberally construe Plaintiff's complaint as raising a RLUIPA claim against Defendant Osborne in his official capacity, Plaintiff's claim for monetary damages would be subject to dismissal.

Sovereign immunity, however, would not bar a RLUIPA claim seeking declaratory or injunctive relief against Defendant Osborne in his official capacity. *See Ex Parte Young*, 209 U.S. at 159–60. An official capacity action seeking injunctive relief constitutes an exception to sovereign immunity. *See id.* (holding that the Eleventh Amendment immunity does not bar prospective injunctive relief against a state official). But, importantly, "*Ex parte Young* can only be used to avoid a state's sovereign immunity when a 'complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective.'" *Ladd v. Marchbanks*, 971 F.3d 574, 581 (6th Cir. 2020) (quoting *Verizon Md. v. Pub. Serv. Comm'n of Md.*, 535 U.S. 635, 645 (2002)). Even at the time that Plaintiff filed his amended complaint, Plaintiff was no longer confined at DRF, which is where he avers that Defendant Osborne was employed and where the harm allegedly occurred.

The Sixth Circuit has held that transfer to another correctional facility moots a prisoner's claims for declaratory and injunctive relief. *See Kensu v. Haigh*, 87 F.3d 172, 175 (6th Cir. 1996). Underlying this rule is the premise that such relief is appropriate only where a plaintiff can show a reasonable expectation or demonstrated probability that he is in immediate danger of sustaining direct future injury as the *result* of the challenged official conduct. *Los Angeles v. Lyons*, 461 U.S. 95, 102 (1983). Past exposure to an isolated incident of illegal conduct does not, by itself,

sufficiently prove that the plaintiff will be subjected to the illegal conduct again. *See, e.g.*, *id.*; *Alvarez v. City of Chicago*, 649 F. Supp. 43 (N.D. Ill. 1986); *Bruscino v. Carlson*, 654 F. Supp. 609, 614, 618 (S.D. Ill. 1987), *aff'd*, 854 F.2d 162 (7th Cir. 1988); *O'Shea v. Littleton*, 414 U.S. 488, 495–96 (1974).

Plaintiff has been transferred more than once since the April 2014 events described in the amended complaint, and he has not alleged facts that would show that he will be subjected to further future conduct by Defendant Osbourne. Therefore, Plaintiff does not seek relief properly characterized as prospective. *See Ladd*, 971 F.3d at 581. Thus, the Court will dismiss Plaintiff's RLUIPA claim for injunctive relief against Defendant Osbourne in his official capacity to the extent pled.[3]

Accordingly, for all of the reasons set forth above, Plaintiff's RLUIPA claim against Defendant Osbourne will be dismissed.

Conclusion

Having conducted the review required by the Prison Litigation Reform Act, the Court determines that Plaintiff's action will be dismissed for failure to state a claim, under 28 U.S.C. §§ 1915(e)(2) and 1915A(b), and 42 U.S.C. § 1997e(c). The Court must next decide whether an appeal of this action would be in good faith within the meaning of 28 U.S.C. § 1915(a)(3). *See McGore*, 114 F.3d at 611. Although the Court concludes that Plaintiff's claims are properly dismissed, the Court does not conclude that any issue Plaintiff might raise on appeal would be frivolous. *Coppedge v. United States*, 369 U.S. 438, 445 (1962). Accordingly, the Court does not certify that an appeal would not be taken in good faith. Should Plaintiff appeal this decision, the Court will

[3] Even if *Sossamon* and *Haight* did not bar a claim against Defendant Osbourne, individually, for injunctive relief, Plaintiff's individual capacity claim for injunctive relief would be subject to dismissal as moot for the same reasons outlined here.

assess the $505.00 appellate filing fee pursuant to § 1915(b)(1), *see McGore*, 114 F.3d at 610–11, unless Plaintiff is barred from proceeding *in forma pauperis*, *e.g.*, by the "three-strikes" rule of § 1915(g). If he is barred, he will be required to pay the $505.00 appellate filing fee in one lump sum.

A judgment consistent with this opinion will be entered.

Dated: October 17, 2023

/s/ Janet T. Neff
Janet T. Neff
United States District Judge

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