

UNPUBLISHED

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

No. 24-6679

STEVEN JAMES KELLY,

Plaintiff - Appellant,

v.

AMERICAN BAR ASSOCIATION,

Defendant - Appellee.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Richard E. Myers, II, Chief District Judge. (5:24-ct-03047-M)

Submitted: October 29, 2024

Decided: November 18, 2024

Before HARRIS, HEYTENS, and BERNER, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Steven James Kelly, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Steven James Kelly appeals the district court's order dismissing without prejudice his complaint for lack of subject matter jurisdiction, or alternatively, as frivolous and for failure to state a claim on which relief can be granted. We have reviewed the record and discern no reversible error. Accordingly, we affirm the district court's order. *Kelly v. Am. Bar Ass'n*, No. 5:24-ct-03047-M (E.D.N.C. June 28, 2024). 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

FILED: November 18, 2024

UNITED STATES COURT OF APPEALS
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No. 24-6679
(5:24-ct-03047-M)

STEVEN JAMES KELLY

Plaintiff - Appellant

v.

AMERICAN BAR ASSOCIATION

Defendant - Appellee

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

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:24-CT-03047-M

STEVEN KELLY,)
Plaintiff,)
v.) ORDER
AMERICAN BAR ASSOCIATION,)
Defendant.)

On February 26, 2024, Steven James Kelly (“plaintiff”), a civil detainee at F.M.C. Butner, see United States v. Kelly, No. 5:22-HC-02025-BO (E.D.N.C. June 29, 2023), Order [D.E. 26], filed *pro se* this lawsuit against the American Bar Association pursuant to 28 U.S.C. § 1332(d)(2), Compl. [D.E. 1] at 4, a motion to proceed *in forma pauperis*, Mot. [D.E. 2], and an incomplete prisoner trust fund account statement, see [D.E. 3]. The court now conducts its initial review of the complaint under 28 U.S.C. § 1915 and, for the reasons discussed below, dismisses the action.

Legal Standard:

When reviewing applications for leave to proceed *in forma pauperis*, the court “shall dismiss” any case that is “frivolous or malicious,” that “fails to state a claim on which relief may be granted,” or that “seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B). A frivolous case “lacks an arguable basis either in law or in fact.” Neitzke v. Williams, 490 U.S. 319, 325 (1989). Legally frivolous claims are “based on an indisputably meritless legal theory and include claims of infringement of a legal interest which clearly does not exist.” Adams v. Rice, 40 F.3d 72, 75 (4th Cir. 1994) (quotations omitted). Factually frivolous claims lack an “arguable basis” in fact. Neitzke, 490 U.S. at 325.

The standard used to evaluate the sufficiency of the pleading is flexible, and a *pro se* complaint, “however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.” Erickson v. Pardus, 551 U.S. 89, 94 (2007) (per curiam) (quotation omitted). A *pro se* plaintiff’s pleading, however, must contain “more than labels and conclusions,” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007); see Giarratano v. Johnson, 521 F.3d 298, 304 n.5 (4th Cir. 2008), and the court need not accept as true any legal conclusions or unwarranted factual inferences, see Ashcroft v. Iqbal, 556 U.S. 662, 677–83 (2009); Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc., 591 F.3d 250, 255 (4th Cir. 2009).

Plaintiff’s Complaint:

Plaintiff asserts he filed this class-action suit on behalf of himself and “others similarly situated,” generally alleges that there are inadequate safeguards of “inalienable rights” which “were violated in Law’s [sic] of Man,” including the “right to be safe in person, home and family” and the “right to live in any geographical location (country) you choose [sic],” and seeks to rely on the first ten amendments to the Constitution, a.k.a. the Bill of Rights. Compl. [D.E. 1] at 1–4.

Plaintiff contends that jurisdiction is proper because the amount in controversy “exceeds \$5 million (to the unknown) [sic] exclusive of interest and cost,” and “at least one plaintiff and one defendant are citizens of different states” because “there are more than 1,000,000 (to the unknown) [sic] punitive [sic] class members.” Id. at 4–5. Plaintiff also contends that venue is proper because “defendant conducts substantial Business in this District (Eastern District of North Carolina) is the principal place of Business for the Defendant’s [sic].” Id. at 5.

Although his meaning is unclear, plaintiff appears to allege that his criminal proceedings and instant civil commitment violate his constitutional rights. See id. at 6–17 (alleging, *inter alia*: he is prevented from petitioning the Government, in violation of the First Amendment; he may not

possess a firearm, in violation of the Second Amendment; he was held for 429 days without arrest or arraignment, in violation of the Fifth Amendment; he was forced to have an attorney in his civil commitment case, in violation of the Sixth Amendment; he did not receive a jury trial for his civil commitment, in violation of the Seventh Amendment; and his mental hospital placement is cruel and unusual punishment, in violation of the Eighth Amendment).

As to his legal experience, plaintiff specifically alleges, *inter alia*: he has “been a been a parlegal [sic] for: American Civel [sic] Liberty’s [sic] Union ? [sic] The Constitutional Society, out of the State of Ohio? [sic]”; he “gave thease [sic] people ‘Grover’ [his] email address so she could cheack [sic], or a simpel [sic] phone call or letter to verify. The emailer’s [sic] list”; “I have parleagled [sic] other entity’s [sic] & I have represented other people in court [sic]”; and “I’m incompetent in court, I don’t know proceden’s [sic].” Id. at 12.

Plaintiff asserts, “the entire class action complaint comes down to 3 questions”

- 1) Was U.S. 18 perposed [sic] to Congress and if so what is the Ratification date, I’m say [sic] it was never perposed [sic] thair for [sic] never Ratified. What is the exact dates [sic].
- 2) Is Butner Medical facility Accredited or not. My answer: No, waiting for Accreditation [sic] . . .
- 3) Is thair [sic] a copy of minimum standards in the Law Library, and is it Being [sic] followed. My answer: No.

Id. at 17.

As to who, in his opinion, is “actualy [sic] responsible,” plaintiff contends the “common denominator” is the “Amirican [sic] Bar Ass.” Id. at 18. Plaintiff also generally contests his criminal history, his civil commitment, and his psychiatric diagnoses. See id. at 18–21.

As to damages and injuries, plaintiff asks: “how do you give a person back thair [sic] life that died in a federal hosp. or a State Hosp. [sic]”; “how do you put a price on your inallenable [sic] right’s [sic], Family, Home, Property, Business?” Id. at 21.

Plaintiff further states, *inter alia*:

Let's recap this, I've been shot, my home property were [sic] taken, 3 of my children murdered, 1 sexuale [sic] assalted [sic] to the point of Phisical [sic] Reconstruction. All of this is proven, In most cases here is were [sic] the evidence is, Thay [sic] refuse to get it. I was not allowed to contact any one in my family till after I was cively [sic] committed. I have this in 2 evaluation's [sic] I got told it's a crimminal [sic] act for them to get me address & phone NO. Thease [sic] are the vary same people I'm tryen [sic] to deal with on this stuff.

Is this why I have it in Job log's [sic] in 2009 in Ticonderoga, Asbetos [sic] Log's [sic] with New York State Department of labor that I'm going to be civel [sic] committed, Arrested by federal Agent's [sic], put into a Federal [sic] medical center & cively [sic] committed all in violation of matibal [sic] orders of Pertection [sic].

When you superceed [sic] the political structure and the judicial stuctior [sic] & Implement Your own[,] it is Tyranny. This is not the first time this has happened in the United States of America.

Id. at 21–22.

Plaintiff contends that he represents a class of “All resident's [sic] of the United States whose inalienable [sic] right's [sic] were vilated [sic], Law's [sic] of Man, Constitution of the United States By the act of Tyranny [sic],” and the suit is proper under Federal Rule of Civil Procedure 23 “because there is a well-defined community of interest in the litigation, the proposed class is easily ascertainable, and plaintiff is a proper representative of the class [sic].” Id. at 23.

Plaintiff alleges that “questions of law and fact” common to the class include, *inter alia*:

- 1) Whether defendant engaged in the conduct alleged here;
- 2) Whether defendant conduct [sic] constituted an unfair legal practice (as defined below) actionable under Law's [sic] of man, Constitution of the United States,
- 3) Whether defendant had a legal duty to adequately protect Plaintiff & Class member's [sic] inalienable [sic] right's [sic];
- 4) Whether defendant breached it's [sic] legal duty by failing to adequately protect Plaintiff's & class member's [sic] inalienable [sic] Right's [sic];
- 5) Whether Plaintiff & class members are entitled to recover actual damages . . . ;
- 6) Whether & when defendant know [sic] or should have know [sic] that plaintiff & class member's inalienable [sic] right's [sic] were Being vilated [sic];
- 7) Whether plaintiff and class member's [sic] are entitled to equitable relief . . . ;

- 8) Typicality; plaintiff's claims are typical of those of other class member's [sic] because Plaintiff inalienable [sic] right's [sic] like that of every other class member, was compromised [sic] in a court of law;
- 9) Adequacy of Representation; Plaintiff will fairly and Adequately represent and protect the interest of the members of the class. Plaintiff's counsel is competent;
- 10) Predominance; defendant has engaged in a common course of conduct toward Plaintiff and the class members in that all the plaintiff's and class members' inalienable [sic] Right's [sic] (Law's of Man, Constitution of the United States) [sic] were vilated [sic] in the same way [sic] . . . ;
- 11) Superiority; A class action is Superior to other available method's [sic] for the fair and efficient adjudication of the controversy . . . ;
- 12) . . . defendant has acted or have [sic] refused to act on grounds generally applicable to the class;
- 13) . . . all members of the perposed [sic] class is readily ascertainable . . . ; and
- 14) plaintiff reserves the right to add representatives

Id. at 24–27.

Plaintiff lists, as his first cause of action, “negligence,” because defendant, *inter alia*: “owed a duty to protect plaintiff and the class to exercise reasonable care safeguarding class's inalienable [sic] Rights 'Laws of Man, Constitution of the United States'”; “also had the duty to implement process to Stop Human Right's [sic] vilations [sic] and act opon [sic] them in a timely manner”; “owed a duty to timely disclose the Human Right's [sic] vilation's [sic]”; “knew of the sarios [sic] harm's [sic] that could resalt [sic] throught [sic] the wrongful disclosure of the vilation [sic] of Human Right's [sic]”; failed “to comply with CongresHinal [sic] mandate [sic]”; and acted “with a willful and consciou [sic] disregard of the rights or safety of Plaintiff and the class and subjected plaintiff and the class to unjust hardship.” Id. at 28.

Plaintiff lists, as his second cause of action, “Violation of Law's [sic] of man, Constitution of the United States,” because, *inter alia*: “Defendant is a 'person' as described in: American Bar Association [sic]”; “Defendant's practices were injurios [sic] to the public interest because they injured other persons, had the capacity to injure other person's [sic], and have the capacity to injure other person's [sic]”; defendant's “wrongful actions, inactions, omissions, want of ordinary care,

misrepresentations, practices and non-disclosures also constitute ‘unfair or deceptive act’s [sic] or practices’ in violation of the Law’s [sic] of Man and the Constitution of the United States”; “the gravity of Defendant’s wrongful conduct outweighs [sic] any alleged Benefits [sic] attributable to such conduct”; unless defendant is “restrained and enjoined [sic] . . . more Human Right’s [sic] vilations [sic] will occur”; and “Have all paper’s [sic] and afect’s [sic] put Before [sic] the court cheacked [sic] for the plaintiff’s (Steven James Kelly) Nucular [sic] Signature [sic] that was previasly [sic] used in the Cheif [sic] Justices [sic] Court Room, 1 First St., Wash. DC. In 1972 & 1974 cheacked [sic] for athanticity [sic].” Id. at 29–30.

For relief, plaintiff seeks, *inter alia*: an order certifying this class-action suit and appointing plaintiff as class counsel, judgment in favor of the class and awarding of appropriate monetary relief, costs, attorney’s fees, and any other relief the court deems appropriate. See id. at 31–32.

In his attached civil cover sheet, plaintiff asserts that the basis of jurisdiction is “Federal Question,” that the “nature of the suit” is “Racketeer Influenced and Corrupt Organizations [sic],” that the U.S. Civil Statute under which he is filing is “Tyranny [sic],” and, as a brief description of cause, “Super Sead [sic] Judicial & Political Power.” See Compl. Attach. [D.E. 1-2] at 1.

Discussion:

Plaintiff’s claims fail for several reasons. First, because he proceeds *pro se*, plaintiff may not assert claims on behalf of others in a class-action suit. See Myers v. Loudon Co. Pub. Sch., 418 F.3d 395, 401 (4th Cir. 2005) (noting a *pro se* plaintiff’s right to litigate for himself does not create a right to litigate for others); Oxendine v. Williams, 509 F.2d 1405, 1407 (4th Cir. 1975) (per curiam) (“Ability to protect the interests of the class depends in part on the quality of counsel . . . and we consider the competence of a layman representing himself to be clearly too limited to allow him to risk the rights of others” (internal citation omitted)); see also Lescs v. Martinsburg

Police Dep't, 138 F. App'x 562, 564 (4th Cir. 2005) (per curiam) (unpublished) ("[I]t is plain error to certify a class when a pro se litigant seeks to represent the class" (citation omitted)); Fowler v. Lee, 18 F. App'x 164, 165 (4th Cir. 2001) (per curiam) (unpublished) ("[T]his circuit does not certify a class where a pro se litigant will act as representative of that class." (citation omitted)).

Next, to invoke the power of a federal court, plaintiff must establish that he has standing under Article III of the Constitution. U.S. Const. art. III, § 2 (empowering the federal judiciary to resolve "Cases" and "Controversies"); see Spokeo, Inc. v. Robins, 578 U.S. 330, 338 (2016), as revised (May 24, 2016) (noting that "[s]tanding to sue is a doctrine rooted in the traditional understanding of a case or controversy" that a plaintiff bears the burden of establishing); Doe v. Obama, 631 F.3d 157, 160 (4th Cir. 2011) (noting that "'standing is an essential and unchanging part' of that case-or-controversy requirement, one that 'state[s] fundamental limits on federal judicial power in our system of government'" (citations omitted)); White Tail Park, Inc. v. Stroube, 413 F.3d 451, 458–59 (4th Cir. 2005) (noting that "the standing limitation is derived from the cases or controversies requirement of Article III").

To establish Article III standing, plaintiff must show that:

(1) [he] has suffered an "injury in fact" that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc., 528 U.S. 167, 180–81 (2000); see TransUnion LLC v. Ramirez, 594 U.S. 413, 422 (2021); Lujan v. Defs. of Wildlife, 504 U.S. 555, 560 (1992) (describing "the irreducible constitutional minimum of standing").

Here, because plaintiff fails to plausibly allege a "concrete injury in fact" that is "fairly traceable" to the American Bar Association, he has not met his burden of establishing the elements of Article III standing. See Spokeo, 578 U.S. at 338; Lujan, 504 U.S. at 560–61. Thus, the court

lacks subject-matter jurisdiction. Ali v. Hogan, 26 F.4th 587, 595 (4th Cir. 2022); South Carolina v. United States, 912 F.3d 720, 726 (4th Cir. 2019) (“Standing implicates the court’s subject matter jurisdiction.”); see Constantine v. Rectors & Visitors of George Mason Univ., 411 F.3d 474, 480 (4th Cir. 2005) (noting subject-matter jurisdiction cannot be waived, and that “[a] federal court has an independent obligation to assess its subject-matter jurisdiction” and may do so *sua sponte*).

Alternatively, much of the complaint, which is not a model of clarity, appears to be fanciful. See Denton v. Hernandez, 504 U.S. 25, 32 (1992) (finding dismissal appropriate on initial review for “claims describing fantastic or delusional scenarios”). Even to the extent plaintiff’s claims are not frivolous, his bald, conclusory allegations still fail to state a discernable claim upon which relief may be granted. See Iqbal, 556 U.S. at 678 (“Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.”); Twombly, 550 U.S. at 555 (“Factual allegations must be enough to raise a right to relief above the speculative level”).

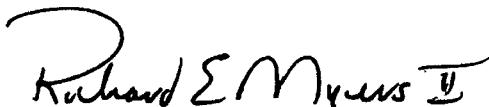
Next, to the extent plaintiff instead seeks to proceed in a civil-rights action under Bivens v. Six Unknown Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971) (“Bivens”), the Federal Tort Claims Act (“FTCA”), 28 U.S.C. §§ 2671–80, or 42 U.S.C. § 1983, the American Bar Association, “a private voluntary professional association,” Pub. Citizen v. U.S. Dep’t of Just., 491 U.S. 440, 443 (1989), is not a defendant amenable to such claims, see 28 U.S.C. § 2679 (providing the United States is the proper defendant for an FTCA claim); Iqbal, 556 U.S. at 676 (noting that, to state a Bivens claim, “a plaintiff must plead that each Government-official defendant, through the official’s own individual actions, has violated the Constitution.”); West v. Atkins, 487 U.S. 42, 48 (1988) (“To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law.”).

Finally, because plaintiff's complaint cannot be cured by amendment, dismissal is appropriate, see Goode v. Cent. Virginia Legal Aid Soc'y, Inc., 807 F.3d 619, 628 (4th Cir. 2015), and the court declines to exercise supplemental jurisdiction over any lingering state-law claims, see 28 U.S.C. § 1367(c)(3) (granting courts discretion to decline supplemental jurisdiction over a pendent State claim where the court has dismissed all claims over which it has original jurisdiction); United Mine Workers of Am. v. Gibbs, 383 U.S. 715, 726 (1966) (noting "pendent jurisdiction is a doctrine of jurisdictional discretion" and that, "if the federal claims are dismissed before trial, even though not insubstantial in a jurisdictional sense, the state claims should be dismissed as well"); Hinson v. Norwest Fin. S.C., Inc., 239 F.3d 611, 617 (4th Cir. 2001) (holding the district court possesses "inherent power to dismiss the case . . . provided the conditions set forth in § 1367(c) for declining to exercise supplemental jurisdiction have been met").

Conclusion:

For the above reasons, the court: DISMISSES WITHOUT PREJUDICE the complaint for lack of subject-matter jurisdiction or, alternatively, as either frivolous or for failure to state a claim upon which relief may be granted under 28 U.S.C. § 1915(e)(2)(B)(i), (ii); DENIES AS MOOT the motion to proceed *in forma pauperis* [D.E. 2]; and DIRECTS the clerk to close the case.

SO ORDERED this 27th day of June, 2024.


RICHARD E. MYERS II
Chief United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

STEVEN KELLY,
a/k/a Steven James Kelly,
Plaintiff,

v.
AMERICAN BAR ASSOCIATION,
Defendant.

Judgment in a Civil Case

Case Number: 5:24-CT-3047-M

Decision by Court.

This action came before the Honorable Richard E. Myers II, Chief United States District Judge, for frivolity review pursuant to 28 U.S.C. § 1915.

IT IS ORDERED AND ADJUDGED that this action is hereby dismissed without prejudice for lack of subject-matter jurisdiction or, alternatively, as either frivolous or for failure to state a claim upon which relief may be granted under 28 U.S.C. § 1915(e)(2)(B)(i), (ii).

This Judgment Filed and Entered on June 28, 2024, with service on:

Steven Kelly 26340-104 Butner - F.M.C. P.O. Box 1600 Butner, NC 27509 (via U.S. Mail)

June 28, 2024

Peter A. Moore, Jr.
Clerk of Court

By:


Deputy Clerk

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