

UNPUBLISHED

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

No. 23-2220

MCKINLEY WRIGHT, JR.,

Plaintiff - Appellant,

v.

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE;
SEFA TRANSPORTATION INC.; THE SUPREME COURT OF SOUTH
CAROLINA; THE SOUTH CAROLINA COURT OF APPEALS; STATE OF
SOUTH CAROLINA ADMINISTRATIVE LAW COURT; STEVEN A. JORDAN,
Attorney for the South Carolina Department of Employment and Workforce;
GRANT M. MILLS, Attorney for SEFA Transportation Inc.,

Defendants - Appellees.

Appeal from the United States District Court for the District of South Carolina, at
Columbia. Mary G. Lewis, District Judge. (3:22-cv-03973-MGL)

Submitted: April 11, 2024

Decided: April 15, 2024

Before AGEE and QUATTLEBAUM, Circuit Judges, and FLOYD, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

McKinley Wright, Jr., Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

McKinley Wright, Jr., appeals the district court's order dismissing his civil complaint without prejudice for lack of subject matter jurisdiction. The district court referred this case to a magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B). The magistrate judge recommended dismissing the case for lack of subject matter jurisdiction and advised Wright that failure to file timely, specific objections to this recommendation could waive appellate review of a district court order based on the recommendation.

The timely filing of specific objections to a magistrate judge's recommendation is necessary to preserve appellate review of the substance of that recommendation when the parties have been warned of the consequences of noncompliance. *Martin v. Duffy*, 858 F.3d 239, 245 (4th Cir. 2017); *Wright v. Collins*, 766 F.2d 841, 846-47 (4th Cir. 1985); *see also Thomas v. Arn*, 474 U.S. 140, 154-55 (1985). Although Wright received proper notice and filed timely objections to the magistrate judge's recommendation, his objections were not specific to the particularized legal recommendations made by the magistrate judge, so appellate review is foreclosed. *See Martin*, 858 F.3d at 245 (holding that, "to preserve for appeal an issue in a magistrate judge's report, a party must object to the finding or recommendation on that issue with sufficient specificity so as reasonably to alert the district court of the true ground for the objection" (internal quotation marks omitted)). Accordingly, we affirm the judgment of the district court.

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

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

McKinley Wright, Jr.,)	C/A No. 3:22-3973-MGL-PJG
)	
Plaintiff,)	
)	
v.)	
)	
South Carolina Department of Employment)	REPORT AND RECOMMENDATION
and Workforce; SEFA Transportation Inc.;)	
The Supreme Court of South Carolina; The)	
South Carolina Court of Appeals; State of)	
South Carolina Administrative Law Court;)	
Steven A. Jordan; Grant M. Mills,)	
)	
Defendants.)	
)	

Plaintiff McKinley Wright, Jr, proceeding *pro se*, brings 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 in accordance with applicable law, the court concludes that this matter should be summarily dismissed for lack of subject matter jurisdiction without prejudice and without issuance and service of process.

I. Factual and Procedural Background

Plaintiff filed this action on a standard complaint form provided by the court. Plaintiff indicates on the form that the basis for the court's jurisdiction in this case is "civil rights" and "discrimination." (Compl., ECF No. 1 at 3.) In a section in which Plaintiff was asked to write a short and plain statement of his claim, he indicates that he seeks to appeal the decision of the South Carolina appellate courts in an appeal from the denial of either a South Carolina Workers' Compensation application or unemployment benefits. (*Id.* at 5-6.) Under a section asking Plaintiff

to describe the relief he seeks, he lists unemployment benefits and describes the amount of the pay and benefits he formerly received while driving for Defendant SEFA Transportation Inc.

Plaintiff indicates he was fired by SEFA Transportation in March 2020 and was denied unemployment benefits and workers' compensation benefits because SEFA Transportation wrongfully accused Plaintiff of misconduct. The exact circumstances surrounding his termination are unclear from the pleading, but Plaintiff indicates it has something to do with the weight of the truck he drove. Plaintiff claims that Defendant Steven A. Jordan, an attorney for the South Carolina Department of Employment and Workforce, and Defendant Grant M. Mills, a lawyer for SEFA Transportation, lied about the truck being overweight. Plaintiff indicates he was fired based on a lie.

II. Discussion

A. Standard of Review

Under established local procedure in this judicial district, a careful review has been made of the *pro se* Complaint. The Complaint has 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 instant case is subject to summary dismissal because Plaintiff fails to demonstrate federal jurisdiction over his claim. Federal courts are courts of limited jurisdiction, "constrained to exercise only the authority conferred by Article III of the Constitution and affirmatively granted by federal statute." In re Bulldog Trucking, Inc., 147 F.3d 347, 352 (4th Cir. 1998). Accordingly, a federal court is required, *sua sponte*, to determine if a valid basis for its jurisdiction exists, "and to dismiss the action if no such ground appears." Id. at 352; see also Fed. R. Civ. P. 12(h)(3) ("If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action."). Although the absence of subject matter jurisdiction may be raised at any time during the case, determining jurisdiction at the outset of the litigation is the most efficient procedure. Lovern v. Edwards, 190 F.3d 648, 654 (4th Cir. 1999).

There is no presumption that a federal court has jurisdiction over a case, Pinkley, Inc. v. City of Frederick, 191 F.3d 394, 399 (4th Cir. 1999), and a plaintiff must allege facts essential to show jurisdiction in his pleadings. McNutt v. Gen. Motors Acceptance Corp., 298 U.S. 178, 189

(1936); see also Dracos v. Hellenic Lines, Ltd., 762 F.2d 348, 350 (4th Cir. 1985) (“[P]laintiffs must affirmatively plead the jurisdiction of the federal court.”). To this end, Federal Rule of Civil Procedure 8(a)(1) requires that the complaint provide “a short and plain statement of the grounds for the court’s jurisdiction[.]”

The two most commonly recognized and utilized bases for federal court jurisdiction are (1) “federal question” under 28 U.S.C. § 1331, and (2) “diversity of citizenship” pursuant to 28 U.S.C. § 1332. As discussed below, the allegations contained in Plaintiff’s [pleading] do not fall within the scope of either of these forms of this court’s limited jurisdiction.

First, federal question jurisdiction requires the plaintiff to show that the case is one “arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. Plaintiff lists “civil rights” and “discrimination” as the bases for the court to exercise federal jurisdiction in this case. (Compl., ECF No. 1 at 3.) However, conclusory statements that Plaintiff believes federal jurisdiction exists are insufficient raise a federal issue. See Burgess v. Charlottesville Sav. & Loan Ass’n, 477 F.2d 40, 43-44 (4th Cir. 1973) (“[T]he mere assertion in a pleading that the case is one involving the construction or application of the federal laws does not authorize the District Court to entertain the suit[,] nor does federal jurisdiction attach on the bare assertion that a federal right or law has been infringed or violated or that the suit takes its origin in the laws of the United States.”) (internal citations and quotation marks omitted). Here, Plaintiff fails to provide any allegations that would plausibly indicate that his civil rights were violated or that he was discriminated against.

More importantly, Plaintiff expressly states that he brings this lawsuit to challenge the denial or rejection of his appeal in South Carolina’s appellate courts, but such relief is not available in federal courts. See generally Friedman’s, Inc. v. Dunlap, 290 F.3d 191, 197 (4th Cir. 2002)

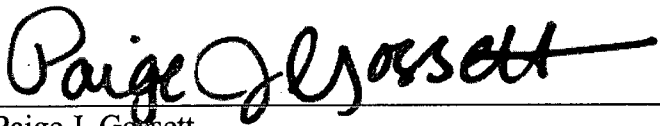
("Under the Rooker-Feldman doctrine, lower federal courts may not consider either issues actually presented to and decided by a state court or constitutional claims that are inextricably intertwined with questions ruled upon by a state court.") (internal citations and quotations omitted); see also Am. Reliable Ins. Co. v. Stillwell, 336 F.3d 311, 316 (4th Cir. 2003) ("Under the Rooker-Feldman doctrine, a party losing in state court is barred from seeking what in substance would be appellate review of the state judgment in a United States district court. We regard the doctrine as jurisdictional."). Therefore, federal question jurisdiction does not exist in this case.

Second, the diversity statute, 28 U.S.C. § 1332(a), requires complete diversity of parties and an amount in controversy in excess of \$75,000. Complete diversity of parties in a case means that no party on one side may be a citizen of the same state as any party on the other side. See Owen Equip. & Erection Co. v. Kroger, 437 U.S. 365, 372-74 nn. 13-16 (1978). Here, Plaintiff indicates that all of the parties are citizens of South Carolina. Therefore, there is no diversity of citizenship between the parties. Additionally, Plaintiff fails to plead that the jurisdictional amount in controversy exceeds \$75,000. Therefore, the court also appears to lack diversity jurisdiction in this case.

III. Conclusion

There being no apparent basis of federal jurisdiction over this matter, the court recommends that this case be summarily dismissed without prejudice and without issuance and service of process for lack of subject matter jurisdiction.

December 9, 2022
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).



**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

MCKINLEY WRIGHT, JR.,
Plaintiff,

vs.

SOUTH CAROLINA DEPARTMENT OF
EMPLOYMENT AND WORKFORCE; SEFA
TRANSPORTATION INC.; THE SUPREME
COURT OF SOUTH CAROLINA; THE
SOUTH CAROLINA COURT OF APPEALS;
STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT;
STEVEN A. JORDAN; GRANT M. MILLS,
Defendants.

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CIVIL ACTION 3:22-3973-MGL-PJG

**ORDER ADOPTING THE REPORT AND RECOMMENDATION
AND DISMISSING THE ACTION WITHOUT PREJUDICE
AND WITHOUT ISSUANCE AND SERVICE OF PROCESS**

Plaintiff McKinley Wright, Jr. (Wright) filed this lawsuit against the above-listed Defendants.

Wright is representing himself.

The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge recommending to the Court this action be dismissed without prejudice and without issuance and service of process for lack of subject matter jurisdiction. The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on December 9, 2022, and the Clerk of Court entered Wright's objections on January 13, 2023. The Court has reviewed the objections, but holds them to be without merit. It will therefore enter judgment accordingly.

As per the law of the Fourth Circuit, this Court need not conduct a de novo review of the record "when a party makes general and conclusory objections that do not direct the court to a specific error in the [Magistrate Judge's] proposed findings and recommendations." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). The Court is required to review the Report and Recommendation only for clear error in the absence of specific objections. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir.2005) (stating that "in 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 to accept the recommendation.") (citation omitted). Nevertheless, in an abundance of caution, the Court has gone ahead and conducted a de novo review of the record in this case.

Here, Wright wholly failed to bring any specific objections to the Report. Instead, he offers nothing more than non-specific objections. Inasmuch as the Court agrees with the Magistrate Judge's analysis of this matter, which the Magistrate Judge sets forth in her comprehensive and well-reasoned Report, it need not repeat her discussion here.

Consequently, because Wright neglects to make any specific objections to the Report, and the Court has failed to find any defect in the Report, the Court will overrule Wright's non-specific objections and accept the Magistrate Judge's recommendation as to the disposition of this case.

Further, inasmuch as the Magistrate Judge warned Wright of the consequences of failing to file specific objections, Report at 6, he has waived appellate review. *See Howard v. Sec'y of Health & Human Servs.*, 932 F.2d 505, 508-09 (6th Cir. 1991) (holding general objections are insufficient to preserve appellate review).

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court overrules Wright's objections, adopts the Report, and incorporates it herein. Therefore, it is the judgment of the Court this action is **DISMISSED WITHOUT PREJUDICE**, and without issuance and service of process for lack of subject matter jurisdiction.

IT IS SO ORDERED.

Signed this 26th day of October, 2023, in Columbia, South Carolina.

/s/ Mary Geiger Lewis

MARY GEIGER LEWIS

UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this Order within thirty days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.

FILED: July 19, 2024

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-2220
(3:22-cv-03973-MGL)

MCKINLEY WRIGHT, JR.

Plaintiff - Appellant

v.

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND
WORKFORCE; SEFA TRANSPORTATION INC.; THE SUPREME COURT
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A. JORDAN, Attorney for the South Carolina Department of Employment and
Workforce; GRANT M. MILLS, Attorney for SEFA Transportation Inc.

Defendants - Appellees

O R D E R

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Agee, Judge Quattlebaum, and Senior Judge Floyd.

For the Court

/s/ Nwamaka Anowi, Clerk

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