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App 1

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No: 23-5976

Filed: May 20, 2024

DAVID THOMAS HARRIS BRANTLEY

Plaintiff- Appellant

v.

UNITED STATES OF AMERICA;

GOVERNMENT OF CANADA

Defendants- Appellees

MANDATE

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Pursuant to the court's disposition that was filed
03/27/2024 the mandate for this case hereby issues
today.

COSTS: None

NOT RECOMMENDED FOR PUBLICATION

No. 23-5976

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

DAVID THOMAS HARRIS BRANTLEY)

Plaintiff-Appellant,)

v.)

UNITED STATES OF AMERICA;)

GOVERNMENT OF CANADA,)

Defendants-Appellees)

ON APPEAL FROM THE UNITED
STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF KENTUCKY

ORDER

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David Thomas Harris Brantley, a pro se Kentucky resident, appeals the district court's judgment dismissing his complaint. The 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.

Invoking diversity jurisdiction, Brantley sued the United States and Canadian governments in the United States District Court for the Southern District of Indiana. Brantley's complaint, while largely incoherent, appeared to challenge the loss of his parental rights in state court. Brantley sought money damages and the "[re]turn of [his] two genetic children." The complaint was transferred to the Western District of Kentucky—the judicial district

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where the events giving rise to Brantley's claims purportedly occurred. *See* 28 U.S.C. 1391(b).

Once the case was transferred, the district court granted Brantley leave to proceed in *forma pauperis* and screened his complaint pursuant to 28 U.S.C. 1915(e)(2)(B). The district court concluded that Brantley's allegations were nonsensical and patently frivolous and, in any event, that both the United States and Canada are immune from suit. The court also held that, to the extent Brantley filed notices and motions regarding a pending state-court, child-custody proceeding, *Younger* abstention doctrine barred any relief related to that proceeding. It dismissed Brantley's complaint under Federal Rule of Civil Procedure 12(b)(1) and 1915(e)(2)(B).

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On appeal, Brantley challenges only the district court's finding that his allegations were "fantastic" and "delusional." Because Brantley does not challenge the district court's alternative finding that the United States and Canadian Governments are immune from suit, he has forfeited appellate review of that finding, which is dispositive of his appeal. *See Geboy v. Bringano*, 489F.3d 752, 767 (6th Cir. 2007) (holding that a pro se litigant forfeits appellate review of a finding if he fails to "advance [] any sort of argument for the reversal of the district court's rulings").

Accordingly, we **AFFIRM** the district court's judgement.

ENTERED BY ORDER OF THE COURT

Kelly L. Stevens, Clerk

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FILED

Mar 27,2024

KELLY L. STEPHENS

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

No. 23-5934

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ANTHONY ANDERSON,

Defendant-Appellant.

Before: SUHRHEINRICH, MOORE, AND GILMAN,

Circuit Judges.

JUDGEMENT

On Appeal from the UNITED STATES DISTRICT

COURT for the Western District of Kentucky at

Louisville.

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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, Clerk

FILED

Mar 26, 2024

KELLY L. STEPHENS, Clerk

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF KENTUCKY

LOUISVILLE DIVISION

DAVID THOMAS HARRIS BRANTLEY Plaintiff

v. Civil Action No. 3:23-cv-278-RGJ

UNITED STATES GOVERNMENT, et al. Defendants

* * * * *

ORDER

This matter is before the Court on Plaintiff David Thomas Harris Brantley's *pro se* motion to proceed on appeal in *forma pauperis*. [DE 26].

Under Federal Rule of Appellate Procedure 24(a), if the district court certifies that an appeal would not be taken in good faith, or otherwise denies leave to appeal *in forma Pauperis*, the appellant must

file his motion in the appellate court. *See Fed. R. App. P.* 24(a)(4)-(5). For the reasons stated in the court's October 13, 2023, Memorandum Opinion and Order dismissing this action [DE 22; DE 23}, the Court **CERTIFIES** that the appeal is frivolous and not taken in good faith. *See Coppedge v. United States*, 369 U.S. 438, 445 (1962) (explaining that good faith is demonstrated when a petitioner "seeks appellate review of any issue not frivolous").

IT IS THEREFORE ORDERED THAT
Plaintiff's motion to proceed on appeal *in forma pauperis* [DE 26] is **DENIED**.

In order for Plaintiff to proceed with the appeal in this action, Plaintiff must either (1) pay the **\$505.00 appellate filing fee in full to the Clerk of the District Court within 30 days of service of**

this Order or (2) file a motion to proceed on appeal in forma pauperis in the United States Court of Appeals for the Sixth Circuit within 30 days of service of this Order in accordance with Fed. R. App. P. 24(a)(5). See *Callihan v. Schneider*, 178 F. #d 800, 803 (6th Cir. 1999).

Should Plaintiff choose to pay the full \$505.00 appellate filing fee rather than file a motion to proceed on appeal *in forma pauperis* in the Court of Appeals, he may send payment to: United States District Court, Western District of Kentucky, 601 W. Broadway, Ste. 106, Louisville, KY 40202. Checks shall be made payable to **Clerk, U.S. District Court**. Alternatively, Plaintiff may call the Clerk's Office and pay the filing fee by using credit or debit card.

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Plaintiff failure to pay the \$505.00 appellate filing fee or to file an application to proceed on appeal *in forma pauperis* with the United States Court of Appeals for the Sixth Circuit within 30 days **may result in the dismissal of the appeal. See Callihan, 178 F. 3d at 804.**

Date: November 7, 2023

Rebecca Grady Jennings, District Judge

United States District Court

cc: Plaintiff

Defendants

Clerk, Sixth Circuit (No. 23-5976)

A961.014

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF KENTUCKY

LOUISVILLE DIVISION

DAVID THOMAS HARRIS BRANTLEY Plaintiff

v. Civil Action No. 3:23-cv-278-RGJ

UNITED STATES GOVERNMENT,*et al.* Defendant

* * * * *

MEMORANDUM OPINION

This matter came before the court on initial review of David Thomas Harris Brantley's *prose, in forma pauperis* complaint pursuant to 28U.S.C. 1915(e)(2). [DE 1]. For the reasons set forth below, the Court will dismiss Plaintiff's claims.

I.

On April 10, 2023, Plaintiff initiated this *pro se* action in the Southern District of Indiana. [DE 1]. On June 1, 2023, the Southern District of Indiana transferred this action to the Western District of Kentucky. Since that time, Plaintiff filed several additional notices and motions. [DE 16, DE 18, DE 19, DE 20, DE 21].

Plaintiff, a citizen of Kentucky, sues the United States Government based on diversity jurisdiction. [DE 1 at 1-3, 10]. In explaining his claim, Plaintiff states:

- Perceptive Evidence, genetic Masonic Buddhist, of childhood in Toronto Canada said kidnapping and Proceeding life in United States.
- Loss of Parental Rites—Jefferson County Attorney's Office, Louisville Ky—Without said Pedophilia conviction.
- Childhood Rape with Hospital admits and surgery. Kosair Children's Hospital—

- Punctured Lung; Jewish Hospital—left knee surgery to remove broken hypodermic Needle.
- Unindicted—Federal Grand Jury fifth district approximately 2008.
- Use of informants for said arrest 1989 without actual Police and Miranda Rites.
- Heroin Test, Jefferson County Police Louisville Kentucky. Apprehended at Religious Practice. Tested Blood/Urine without Material Evidence. Passed and released.
- Recruited unsuccessfully to NDSL, National Leadership Seminar as a Youth in Boy Scouts of America: Neo Nazi Youth Program.
- Present in multiple surgical Procedures while Medtronic Infuse Bone Morphogenic Protein was used and promoted off label.
- Attended Sophomore/Danek sales training pre 1988 Olive Branch Mississippi.
- Loss of employment—Olympus Biotech—for underperformance. Only promoted and did on label cases—Femoral Non-Unions with plate.
- Independent Contractor Sofamore/Danek Pre 1998 when Infuse Bone Morphogenic Protein was first licensed. Pre-off label Marketing.
- Johnson and Johnson Independent contractor for twelve plus years. Not recognized as pensioned at six years.
- Johnson and Johnson off label marketing literature of Healos/Cellect as autograft replacement. FDA cleared as Bone Void Filler.

- Childhood taken to multiple Alcoholics Anonymous/Al Anon meetings but not for treatment—constitutes pedophilia.
- Pyronox—Fire proof safes and files as child—John D. Brush Company, Fire King International and Kentucky Safe.
- Biomet Spine dissolution of contract without cause. Two year contract—Second year unpaid balance \$ Two Hundred Thousand Dollars.
- Mike O'Connell campaign forced donations from spouse to keep employment.
- First wife sister forced incest/pedophilia for approximately four years most days after school, middle and high school.
- Brain washing Video—Bruce Cohens—with sex of Animals and human involvement.
- Genetic Testing was never produced for marital couple and children per divorce.
- State of poverty per legal definition.
- Out sourced police dogs at concert venue in Boulder Colorado.
- Insufflation of pigs at a surgeon training lab at Ethicon Johnson and Johnson, Blue Ashe Ohio.

[DE 1 at 12-15]. As relief, Plaintiff seeks “[r]eturn of two genetic children,” “[t]en thousand per hour...for total time involved in said events,” and “Masonic Atrocity wage—Modern Slave Act.” [Id. At 5].

II.

Because Plaintiff is proceeding *in forma pauperis*, the Court must review the complaint under 28 U.S.C. 1915(e). *McGore v. Wrigglesworth*, 114 F.3d 601, 608-09 (6th Cir. 1997), *overruled on the grounds by Jones v. Bock*, 549 U.S. 199 (2007). On review, a district court must dismiss a case at any time if it determines that the action is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C 1915(e)(2)(B).

Although courts are to hold *pro se* pleading “to less stringent standards than formal pleadings drafted by lawyers,” *Haines v. Kerner*, 404 U.S. 519 (1972), this duty to be less stringent “does not require [the Court] to conjure up unpled allegations,”

McDonald v. Hall, 610 F.2d 16, 19 (1st Cir. 1979), or to create a claim for a plaintiff. *Cark v. Nat'l Travelers Life ins. Co.*, 518 F.2d 1167, 1169 (6th Cir. 1975). To command otherwise would require courts “to explore exhaustively all potential claims of a *pro se* plaintiff, [and] would also transform the district court from its legitimate advisory role to the improper of an advocate seeking out the strongest arguments and most successful strategies for a party.” *Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985).

To command otherwise would require courts “to explore exhaustive all potential claims of a *pro se* plaintiff, [and] would also transform the district court from its legitimate advisory role to the improper role of an advocate seeking out the strongest arguments and most successful strategies for a party.” *Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985).

A claim is legally frivolous when it lacks an arguable basis either in law or in fact. *Neitzke v. Williams*, 490 U.S.319,325 (1989). The Court may, therefore, dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless. *Id.* at 327. “Examples of the former class are claims against which it is clear that the defendants are immune from suit... and the claims of infringement of a legal interest which clearly does not exist[.]” *Id.* “Examples of the latter class are claims describing fantastic or delusional scenarios, claims with which federal District Judges are all too familiar,” *Id.* at 328; *Denton v. Hernandez*, 504 U.S. 25, 33 (1992) (indicating that an action has no arguable factual basis when the allegations are delusional or “rise to the level of the irrational or wholly incredible”). The

Court need not accept as true factual allegations that are “fantastic or delusional” in reviewing a complaint for frivolousness. *Hill v. Lappin*, 630 F.3d 468, 471 (6th Cir. 2010)) ((quoting *Neitzke*, 490 U.S. at 328)).
See also Watkins v. NBC, No. 3:19-CV-12-RGJ, 2019 WL 267738, at *1 (W.D. Ky. Jan. 18, 2019).

III.

The Court finds that the complaint contains no coherent factual allegations to support a theory upon which a valid legal claim may rest against the United States and Canadian government. While the complaint is legible, “the words often do not form coherent sentences, nor do they convey clear thought,” *Clervrain V. Sawyer*, No. 1:20-CV-348, 2020 WL 3424893, *2 (W.D. Mich. June 23, 2020). Instead, Plaintiff’s complaint is comprised of exactly the type

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of “fantastic” and Delusional” factual allegations that warrant dismissal for frivolousness. *See, e.g., Burley v. Unknown Defendants*, No. 2:15-CV-143, 2015). Therefore, the complaint must be dismissed as frivolous.

Furthermore, “a district court may, at any time, *sua sponte* dismiss a complaint for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure when the allegations of complaint are totally implausible, attenuated, unsubstantial, frivolous, devoid of merit, or no longer open to discussion.” *Apple v. Glenn*, 183 F.3d 477, 479 (6th Cir. 1999) ((citing *Hagans v. Lavine*, 415 U.S. 528, 536-37 (1974)). Even liberally construing the *pro se* complaint, which the Court concludes that the allegations meet this standard, as well.

Additionally, both Defendants are immune from suit. Generally, sovereign immunity shields the United States from suit except where it is explicitly waived. *FDIC v. Meyer*, 510 U.S. 471, 475 (1994). Such a waiver must be “unequivocally expressed” and “cannot be implied.” *United States v. King*, 395 U.S. 1, 4(1969). Here, Plaintiff fails to allege the legal foundation for his claims against the United States, and nothing in the complaint indicates that his cause of action arises under the Federal Tort Claims Act (“FTCA”), or that he is seeking to recover tax refunds. *See, e.g., Finger v. United States*, No. 4:20-CV-1013-SRC, 2020 WL 7240355, at *2 (E.D. Mo. Dec.9, 2020) (citing *White v. United States*, 959 F.3d 328, 332 (8th Cir. 2020); *Barse v. United States*, 957 F.3d 883, 885 (8th Cir. 2020)).

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Likewise, the Foreign Sovereign Immunities Act (“FSIA”) bars any claims against Canada set forth in the complaint. 28 U.S.C. 1330(b), 1602-1611. The FSIA is the “sole basis for obtaining jurisdiction over a foreign state in our courts.” *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 434 (1989). “[J]urisdiction over a foreign sovereign is obtainable only when a specific objection of the FSIA applies.” *Dekoven v. Bell*, 140 F. Supp. 2d 748, 759 (E.D. Mich.2001); *see also Aden v. Somalia Permanent Mission to U.N.*, No. 3:15-CV-00513, 2015 WL 2193858, at *2(M.D. Tenn. May 11, 2015) (citing 28 U.S.C. 1604). Plaintiff fails to articulate the legal foundation for his claims against Canada, and nothing in the complaint qualifies in any respect to an exception to the FSIA which require Canada to answer his claims.

Finally, Plaintiff recently filed notices and motions suggesting that he is seeking injunctive relief asking this federal Court to interfere in pending state-court, child-custody proceeding. Even if Plaintiff had sued the proper governmental individuals or entities, the relief sought is barred by the *Younger* abstention. The “*Younger* abstention requires federal court to abstain from granting injunctive or declaratory relief would interfere with pending state judicial proceedings” *O'Neill v. Coughian*, 511 F.3d 638, 643 (6th Cir.2008) (citing *Younger* v. Harris, 401 U.S. 37, 40-41 (1971)). “The Sixth Circuit has enunciated three factors used to determine whether to abstain from hearing a case pursuant to *Younger*: ‘(1) there must be on-going state judicial proceedings; (2) those proceedings must implicate important state interests; and (3) there must be adequate opportunity in the

State proceedings to raise constitutional challenges.””

Harden v. Stoker, No. 3:15-CV-P312-DJH, 2015 WL 7302775, at *3 (W.D. Ky. Nov. 18, 2015). (quoting *O’Neill*, 511 F.3d at 643). Here, there is an on-going judicial proceeding. Additionally, the Sixth Circuit recognizes that “traditional domestic relations issues qualify as important state issues under the second element of *Younger*.” *Kelm v. Hyatt*, 44 F.3d 415, 420 (6th Cir. 1995). Further, Plaintiff has an adequate opportunity in the state proceeding to raise any constitutional challenges.

IV.

The Court will enter a separate Order dismissing the action for the reason stated herein.

Date: October 12, 2023

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Rebecca Grady Jennings, District Judge

United States District Court

cc: Plaintiff, pro se

A961.014

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF KENTUCKY

LOUISVILLE DIVISION

DAVID THOMAS HARRIS BRANTLEY Plaintiff

v. Civil Action No. 3:23-cv-278-RGJ

UNITED STATES GOVERNMENT,*et al.* Defendants

* * * * *

ORDER

For the reason set forth in the Memorandum
Opinion entered this date, and the Court being
otherwise sufficiently advised,

IT IS ORDERED that the instant action is
DISMISSED PURSUANT TO 28 U.S.C.
1915(e)(2)(B)(i) as frivolous and pursuant to Fed. R.

Civ. P. 12(b)(1) for lack of subject-matter jurisdiction in accordance with *Apple v. Glenn*, 183 F.3d 477, 479 (6th Cir. 1999).

All pending motions are DENIED as moot.

There being no just reason for the delay in its entry, this is a **final Order**.

This Court **certifies** that an appeal *in forma pauperis* would not be taken in good faith. *See* 28 U.S.C. 1915(a)(3).

Date: October 12, 2023
Rebecca Grady Jennings, District Judge

United States District Court

cc: Plaintiff, pro se

A961.014

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF INDIANA

NEW ALBANY DIVISION

DAVID THOMAS HARRIS BRANTLEY,)

Plaintiff,)

v.)

UNITED STATES GOVERNMENT, and)

CANADIAN GOVERNMENT,)

Defendants.)

)

)

) No. 4:23-cv-00055-TWP-KMB

)

)

)

ORDER ON MOTION TO CHANGE VENUE

This matter is before the Court on a Motion to Change Venue filed by *pro se* Plaintiff David Thomas Harris Brantley (“Plaintiff”) (Filing No.8). On April 10, 2023, Plaintiff filed a civil action Complaint against Defendants United States Government and the Canadian Government (Filing No. 1). The Complaint alleges that Plaintiff is a citizen of the Commonwealth of Kentucky, he provides a Kentucky address for his residence, and alleges events that occurred in Kentucky. Most of the events are alleged to have occurred in Louisville, Kentucky, where Plaintiff lives. There are no factual allegations of events occurring in Indiana, and there are no

connections to the State of Indiana. *See id.* The Court agrees with Plaintiff that his Complaint should have been filed in the United States Court for the Western District of Kentucky, not in the Southern District of Indiana.

Plaintiff's Motion to Change Venue (Filing No.8) is **granted**, and this case shall be transferred to the Western District of Kentucky. The Clerk is **DIRECTED TO TRANSFER** this matter to the United States District Court for the Western District of Kentucky, Louisville Division, and **CLOSE** the matter on this court's docket. All other pending motions will remain pending to be resolved by the receiving court.

SO ORDERED.

Date: 05/30/2023

Hon. Tanya Walton Pratt, Chief Judge

United States District Court

Southern District of Indiana

Distribution:

David Thomas Harris Brantley

3501 Saint Andrews Village Circle

Louisville, KY 40241

UNITED STATES DISTRICT COURT

For the

Southern District of Indiana

DAVID THOMAS HARRIS BRANTLEY)

Plaintiff(s),)

vs.)

UNITED STATES GOVERNMENT, et al.)

Defendant(s).)

)

)

) 4:23-cv-00055-TWP-KMB

)

)

NOTICE OF DEFICIENCY

Your civil rights complaint has been received. You shall have **through May4, 2023** in which to correct the deficiencies identified below:

[x] You must either pay \$402.00 filing fee for this action or demonstrate that you lack the financial ability to do so by filing a motion for leave to proceed without the prepayment of the filing fee (*in forma pauperis*). A form motion for leave to proceed without the prepayment of the filing fee is being provided for your use.

NOTE TO PRISONER: If you seek leave to proceed without prepaying the filing fee, and you are a prisoner, your motion must be accompanied by a copy of the transactions associated with your

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Institution trust account for the 6—month period preceding the filing fee of this action on 4/11/2023.

[] Your motion to proceed *in forma pauperis* cannot be ruled on because you have not submitted a copy of the transaction history associated with your institution trust account for the 6—month period preceding the filing of this action on 4/11/2023.

[] The complaint was not signed.

Failure to correct the deficiency may subject the case to dismissal for failure to prosecute.

Date: 4/13/2023

Roger A.G. Sharpe, Clerk of Court