

United States Court of Appeals For the First Circuit

No. 24-1075

IMRE KIFOR,

Plaintiff - Appellant,

v.

THE COMMONWEALTH OF MASSACHUSETTS; GOVERNOR MAURA HEALEY, official capacity; ATTORNEY GENERAL ANDREA CAMPBELL, official capacity; COMMISSIONER GEOFFREY E. SNYDER, official capacity; DEPARTMENT OF REVENUE, CHILD SUPPORT ENFORCEMENT DIVISION; MIDDLESEX PROBATE AND FAMILY COURT; LIFESTANCE HEALTH, f/k/a The Counseling Center of New England; ATRIUS HEALTH; BARBARA A. DUCHESNE; CYNTHIA S. OULTON,

Defendants - Appellees.

Before

Barron, Chief Judge,
Gelpí and Aframe, Circuit Judges.

JUDGMENT

Entered: November 19, 2024

Appellant Imre Kifor appeals pro se from a judgment in the District Court for the District of Massachusetts and from an order denying reconsideration under Federal Rule of Appellate Procedure 59(e). We have jurisdiction under 28 U.S.C. § 1291.

Appellee The Counseling Center of New England has filed a motion for summary disposition. Appellant has filed his opening brief, and briefing is complete. Appellant also has made numerous other filings.

Our review of the dismissal of the complaint is de novo. See Núñez Colón v. Toledo-Dávila, 648 F.3d 15, 19 (1st Cir. 2011). We review the denial of Appellant's post-judgment Rule 59(e) motion for abuse of discretion. See Perez v. Lorraine Enters., Inc., 769 F.3d 23, 28 (1st Cir. 2014).

APPENDIX A - 000001

In light of his pro se status, we read Appellant's arguments and filings liberally. See Erickson v. Pardus, 551 U.S. 89, 94 (2007) (per curiam). After a careful review of the arguments raised by Appellant in his opening brief, we can discern no compelling argument for any reversible error or abuse of discretion.

The motion for summary disposition is **GRANTED**. Any remaining pending motions or requests for relief by Appellant, to the extent not mooted by the foregoing, are **DENIED**. The judgment of the district court is **AFFIRMED**. See Local Rule 27.0(c).

By the Court:

Anastasia Dubrovsky, Clerk

cc:

Imre Kifor
Katherine B. Dirks
Wesley S. Chused
Daniel R. Sonneborn
John P. Puleo

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IMRE KIFOR,)
)
Plaintiff,)
)
)
)
v.) C.A. No. 23-12692-PBS
)
THE COMMONWEALTH OF)
MASSACHUSETTS, et al.,)
)
Defendants.)

MEMORANDUM AND ORDER

December 21, 2023

Saris, D.J.

On November 7, 2023, pro se plaintiff Imre Kifor filed a purported class action complaint accompanied by two affidavits and a motion seeking leave to proceed in forma pauperis. The complaint asserts causes of action for alleged violations of Titles VI and VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, 29 U.S.C. § 621; the Age Discrimination Act, 29 U.S.C. § 6101; 42 U.S.C. §§ 1981 and 1985; and civil RICO, 18 U.S.C. § 1962. Named as defendants are the Commonwealth of Massachusetts; Governor Maura Healy; Attorney General Andrea Campbell; Massachusetts Department of Revenue Commissioner Geoffrey Snyder; Middlesex Probate and Family Court; the Counseling Center of New England; Atrius Health; and Barbara Duchesne and Cynthia S. Oulton.

For the reasons set forth below, the Court will grant the in forma pauperis motion and dismiss this action.

I. Motion for Leave to Proceed in Forma Pauperis

Upon review of Kifor's financial disclosures, the Court concludes that he may proceed without prepayment of the fee. Accordingly, the motion is GRANTED.

II. Review of the Complaint

When a plaintiff is allowed to proceed in forma pauperis, the Court may conduct a preliminary review of the complaint and dismiss sua sponte any claim that is frivolous, 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. See 28 U.S.C. § 1915(e)(2). Although "dismissal on the court's own initiative, without affording the plaintiff either notice or an opportunity to be heard . . . is disfavored in federal practice," "[i]f it is crystal clear that the plaintiff cannot prevail and that amending the complaint would be futile," then a dismissal sua sponte is appropriate.

Gonzalez-Gonzalez v. United States, 257 F.3d 31, 36-37 (1st Cir. 2001).

In conducting this review, the Court liberally construes the complaint because Kifor is proceeding pro se.

A. Kifor's Complaint and Previous Actions in this Court

In this action, Kifor contends that he has an employment relationship with the state, the defendants have forced him into indigency through child support orders and the defendants are engaged in multiple racketeering schemes. With his complaint, Kifor attaches a "right to sue" notice that was issued by the Equal Employment Opportunity Commission ("EEOC") state that the charge of discrimination was dismissed because Kifor was "not in an employment relationship with the Respondent." See Doc. No. 1-2, p. 7.

The Court's records indicate that the instant action is the sixth case Kifor has filed in this Court stemming from his dissatisfaction with the proceedings in the Family Court and the government's efforts to enforce child support orders. See Kifor v. Commonwealth of Massachusetts, et al., C.A. No. 22-11948-PBS (screening dismissal), aff'd (1st Cir. March 20, 2023); Kifor v. Commonwealth of Massachusetts, et al., C.A. No. 22-11141-PBS (screening dismissal), aff'd (1st Cir. Aug. 4, 2023); Kifor v. Commonwealth of Massachusetts, et al., C.A. No. 21-11968-IT (screening dismissal); Kifor v. Commonwealth of Massachusetts, et al., C.A. No. 21-10699-IT (screening dismissal); and Kifor v. Middlesex Probate & Family Ct., C.A. No. 20-11601-PBS (summary dismissal of § 2241 habeas petition).

Since the filing of this action on November 7, 2023, Kifor has filed several supplemental pleadings and notices. See Docket Nos. 6 - 11. Kifor appears to have served each defendant with the form Notice of a Lawsuit and Request to Waive Service of a Summons (AO 298), see Docket No. 6, and counsel for defendant Counseling Center of New England completed the Waiver of Service of Summons (form AO 399). See Docket No. 10.

B. The Complaint is Subject to Dismissal

As an initial matter, the court finds that Kifor, as a pro se plaintiff, cannot act as a class representative. A basic requirement for all class actions is that the named plaintiff can fairly and adequately represent the class. See Fed. R. Civ. P. 23(a)(4). "Although 28 U.S.C. § 1654 permits persons to proceed pro se, this provision does not allow unlicensed lay people to represent other pro se litigants." Murphy v. Baker, No. 19-12481-PBS, 2020 WL 3420632, at *1 (D. Mass. June 22, 2020) (citations omitted). Kifor cannot fairly and adequately represent the interests of the class that he has identified. See Avery v. Powell, 695 F. Supp. 632, 643 (D.N.H. 1988) (a pro se plaintiff did not conform with the class certification requirement that he be able to "fairly and adequately" protect the interests of the class).

Next, the attempt by Kifor to bring the same claims that have already been asserted in his earlier actions are barred by res judicata. The doctrine of res judicata is applicable where the following elements exist: "(1) the earlier suit resulted in a final judgment on the merits, (2) the causes of action asserted in the earlier and later suits are sufficiently identical or related, and (3) the parties in the two suits are sufficiently identical or closely related." Airframe Sys. v. Raytheon Co., 601 F.3d 9, 14 (1st Cir. 2010). Kifor contends that patterns of racketeering involved "2 colluding Mothers, 3 independent Family Court dockets, 4 separate GALs, 7 consecutive judges, 21 doctors and therapists, and over 30 lawyers." Compl. at ¶ 75.

Kifor's complaint fails to state a discrimination claim under Title VII because he is not an employee of the state. See Kifor v. Commonwealth, No. 23-1013 (1st Cir. Mar. 20, 2023) (citing Casey v. Dep't of Health & Hum. Servs., 807 F.3d 395, 404-05 (1st Cir. 2015) (describing standard for establishing employment relationship under Title VII)).

The claims against the claims against the Commonwealth and Probate and Family Court and the monetary damages claims against Governor Healy; Attorney General Campbell; Commissioner Snyder are barred by sovereign immunity. Sovereign immunity deprives

the court of subject matter jurisdiction over a claim. Valentin v. Hosp. Bella Vista, 254 F.3d 358, 362-63 (1st Cir. 2001). To the extent Kifor seeks injunctive relief against state officials for an alleged ongoing violation of a federal law, Kifor has not stated a viable claim for relief under the narrow exception to sovereign immunity.

Moreover, the Rooker-Feldman doctrine or Younger abstention bar Kifor's challenge to state court proceedings. Finally, Kifor's complaint fails to state a claim upon which relief may be granted against the Counseling Center of New England, Atrius Health, Barbara Duchesne and Cynthia S. Oulton.

Because it is "crystal clear" that allowing Kifor to amend the complaint in this action could not cure the pleading deficiencies, the Court will dismiss this action.

III. Filing Injunction Warning

"A district court has the power to enjoin litigants who abuse the court system by filing groundless and vexatious litigation." Stefanik v. Town of Huntington, 536 F. Supp. 2d 106, 114 (D. Mass. 2008) (citing Elbery v. Louison, 201 F.3d 427, 1999 WL 1295871, at *2 (1st Cir. 1999) (per curiam) (table decision)); see also 28 U.S.C. § 1651 (providing that courts may issue all writs necessary or appropriate in aid of their respective jurisdictions). The Court also has the power to

sanction litigants who file pleadings, motions or other papers "for any improper purpose, such as to harass or to cause unnecessary delay or needlessly increase in the cost of litigation." Simon v. Navon, 71 F.3d 9, 17 (1st Cir. 1995) (citing Fed. R. Civ. P. 11). This determination is left to the Court's "considered judgment." Id. Pro se plaintiffs are subject to sanctions, but the Court must consider the state of the pro se party's sophistication and experience, or lack thereof, when determining the nature and severity of sanctions to be imposed. See Lefebvre v. Commissioner, 830 F.2d 417, 420-21 (1st Cir. 1987).

"Vexatious conduct occurs where a party's actions are 'frivolous, unreasonable, or without foundation' even without the presence of 'subjective bad faith.'" Azubuko v. MBNA Am. Bank, 396 F.Supp. 2d 1, 7 (D. Mass. 2005) (quoting Local 285, Serv. Emps. Int'l Union v. Nonotuck Res. Assocs., Inc., 64 F.3d 735, 737 (1st Cir. 1995)). "Courts in this circuit have repeatedly found that a plaintiff who files multiple frivolous and vexatious lawsuits arising out of the same or similar events can be enjoined from filing further lawsuits without leave." Clemens v. Town of Scituate, No. 13-11598-FDS, 2014 WL 12792990, at *6 (D. Mass. June 16, 2014) (collecting cases). However, "[l]itigiousness alone will not support an injunction against a

plaintiff." Otis Elevator Co. v. Int'l Union of Elevator Constructors, Local 4, 408 F.3d 1, 10 (1st Cir. 2005) (quoting Pavilonis v. King, 626 F.2d 1075, 1079 (1st Cir. 1980)).

Here Kifor has filed several unsuccessful lawsuits with allegations arising out of the same or similar events against identical or substantially similar parties. Nonetheless, the dismissal of his earlier actions has not deterred Kifor from again filing suit. Kifor's conduct rises above the level of litigiousness and qualifies as vexatious. His repeated filing of lawsuits concerning his family court matters is an abuse of the process.

Given the number of Kifor's filings to date, the Court is concerned that Kifor will continue to make such filings with this Court that waste both judicial time and resources. Therefore, the Court hereby WARNS Kifor that if he continues to file in this Court any future complaints concerning the proceedings in the state court, he may be restrained from filing any future complaints with this Court as well as become subject to other filing restrictions and sanctions.

IV. Conclusion

For the foregoing reasons, the Court hereby orders:

1. The motion for leave to proceed in forma pauperis is GRANTED.

2. This action is DISMISSED.
3. Plaintiff is warned that if he continues to file any future complaints in this Court concerning the proceedings in state court, he may be restrained from filing any future complaints with this Court as well as become subject to other filing restrictions and sanctions.

SO ORDERED.

/s/ Patti B. Saris
PATTI B. SARIS
UNITED STATES DISTRICT JUDGE

United States Court of Appeals For the First Circuit

No. 24-1075

IMRE KIFOR,

Plaintiff - Appellant,

v.

THE COMMONWEALTH OF MASSACHUSETTS; GOVERNOR MAURA HEALEY, official capacity; ATTORNEY GENERAL ANDREA CAMPBELL, official capacity; COMMISSIONER GEOFFREY E. SNYDER, official capacity; DEPARTMENT OF REVENUE, CHILD SUPPORT ENFORCEMENT DIVISION; MIDDLESEX PROBATE AND FAMILY COURT; LIFESTANCE HEALTH, f/k/a The Counseling Center of New England; ATRIUS HEALTH; BARBARA A. DUCHESNE; CYNTHIA S. OULTON,

Defendants - Appellees.

Before

Barron, Chief Judge,
Gelpí, Montecalvo,
Rikelman, and Aframe, Circuit Judges.

ORDER OF COURT

Entered: January 23, 2025

The petition for rehearing having been denied by the panel of judges who decided the case, and the petition for rehearing en banc having been submitted to the active judges of this court and a majority of the judges not having voted that the case be heard en banc, it is ordered that the petition for rehearing and petition for rehearing en banc be denied.

By the Court:

Anastasia Dubrovsky, Clerk

cc:

Imre Kifor, Katherine B. Dirks, Wesley S. Chused, Daniel R. Sonneborn, John P. Puleo

APPENDIX A - 000004

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