

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-13810-JJ

MARIAH CAREY ANDERSON,
ALEX ANDERSON,

versus

Plaintiffs - Appellants,

DESIREE PEREZ,
Individually and in her official capacity as
manager,

Defendant - Appellee.

Appeal from the United States District Court
for the Southern District of Florida

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: BRANCH and LUCK, Circuit Judges.*

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 35) The Petition for Rehearing En Banc is also treated as a Petition for Rehearing before the panel and is DENIED. (FRAP 35, IOP2)

*This order is being entered by a quorum pursuant to 28 U.S.C. section 46(d) due to Judge Martin's retirement on September 30, 2021.

ORD-42

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[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-13810
Non-Argument Calendar

D.C. Docket No. 1:20-cv-23696-KMM

MARIAH CAREY ANDERSON,
ALEX ANDERSON,

Plaintiffs-Appellants,

versus

DESIREE PEREZ, individually and in her official capacity as manager,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida

(July 12, 2021)

Before MARTIN, BRANCH, and LUCK, Circuit Judges.

PER CURIAM:

Alex Anderson appeals the district court's dismissal of his civil rights complaint as frivolous under 28 U.S.C. section 1915(e)(2) and the denial of leave to amend. We affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Alex Anderson sued Desiree Perez both "individually and in her official capacity as manager" on behalf of himself and his "wife," Mariah Carey. Anderson also named as defendants Michael Goldfine, Carey's accountant, and a third, unidentified person that Anderson swore was Carey's attorney.

Anderson alleged that he proposed to Carey—and she accepted—on national television in 2005. From 2001 and until 2020, Anderson alleged that he lived with Carey and that they signed two fifteen-year nuptial agreements, one for 2001 until 2015 worth thirty million dollars and a second for the time period from 2016 until 2030 which was worth one hundred million dollars. But the agreements weren't valid, Anderson alleged, because they didn't "conform too [sic] New York State legal requirements" and were not "signed and/or notarized by both parties."

Anderson alleged that he "worked as a paralegal and private investigator for his spouse . . . without commission" at various points between 2007 and 2019. According to Anderson, he assisted Carey with "court filings" in civil cases in New York state and federal court, including Carey's litigation against Universal Music Group. For this work—and as Carey's "husband"—Anderson claimed he was owed

over three hundred thousand dollars from her management team under both 42 U.S.C. section 1983 and Title VII of the Civil Rights Act.

Anderson moved for in forma pauperis status and the district court screened the complaint under section 1915(e). The district court dismissed Anderson's complaint because it was "largely incoherent" and his claim was "precisely the type of delusional claim that [section] 1915 screening seeks to avoid." The district court dismissed the lawsuit with prejudice because giving leave to amend would be futile.

STANDARD OF REVIEW

We review a district court's dismissal of a complaint as frivolous under 28 U.S.C. section 1915(e)(2)(B) for an abuse of discretion. Bilal v. Driver, 251 F.3d 1346, 1349 (11th Cir. 2001). "Discretion means the district court has a range of choice, and that its decision will not be disturbed as long as it stays within that range and is not influenced by any mistake of law." Zocaras v. Castro, 465 F.3d 479, 483 (11th Cir. 2006) (internal quotations omitted). We review de novo "the denial of leave to amend by reason of futility because futility is a legal conclusion that the amended complaint would necessarily fail." L.S. ex rel. Hernandez v. Peterson, 982 F.3d 1323, 1328 (11th Cir. 2020).

DISCUSSION

Anderson raises two arguments on appeal. First, he argues that the district court abused its discretion in dismissing his complaint under section 1915(e).

Second, he argues that the district court erred in denying him leave to amend. We disagree.

When a plaintiff moves for leave to proceed without paying a filing fee, the district court must “screen” his complaint. 28 U.S.C. § 1915(e). Section 1915(e) requires that the district court dismiss the complaint at any time if it is: (i) frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who has immunity. *Id.* § 1915(e)(2)(B).

A complaint is frivolous for section 1915(e) purposes if it is without arguable merit either in law or fact. *See Bilal*, 251 F.3d at 1349. Claims are frivolous, the Supreme Court has explained, if they are “fantastic or delusional scenarios, claims with which federal district judges are all too familiar.” *Neitzke v. Williams*, 490 U.S. 319, 328 (1989).

The district court did not abuse its discretion by dismissing Anderson’s complaint as frivolous. A “successful section 1983 action requires a showing that the conduct complained of . . . was committed by a person acting under color of state law[.]” *Harvey v. Harvey*, 949 F.2d 1127, 1130 (11th Cir. 1992). None of the three defendants—Mariah Carey’s manager, her accountant, and her (unnamed) attorney—are state actors.

Title VII prohibits discriminating, in the employment context, against “any individual . . . because of such individual’s race, color, religion, sex, or national

origin.” 42 U.S.C. § 2000e-2. Anderson alleged that he was employed “as a paralegal and private investigator” by “his spouse” and worked without commission at various points between 2007 and 2019. He doesn’t allege that he was employed by the named defendants. Nor did Anderson allege that he was a member of a protected class or that he was discriminated against because of his membership in a protected class. Without these allegations, the district court did not abuse its discretion in finding that Anderson’s complaint was frivolous.

Anderson also argues that the district court erred by not giving him leave to amend to allege a claim under 42 U.S.C. section 1985(3) or 18 U.S.C. section 241. Although a plaintiff usually should be given leave to amend his complaint, a court need not do so if the amendment would be futile. Cockrell v. Sparks, 510 F.3d 1307, 1310 (11th Cir. 2007).

Here, amendment would be futile. Anderson’s 99-page complaint and sprawling 286-page Appendix—including an affidavit from a private investigator in New York attesting that Anderson has previously been charged with stalking and that his threats should be taken seriously, a New York Family Court judgment finding that Anderson isn’t married to Mariah Carey, and a doctor’s note from Anderson’s visit to a dentist—show that neither section 1985(3) (conspiracy to interfere with civil rights) or 18 U.S.C. section 241 (conspiracy against rights) applies to Anderson’s allegations. Section 241 is a criminal statute and doesn’t

provide a civil cause of action. See Hanna v. Home Ins. Co., 281 F.2d 298, 303 (5th Cir. 1960) (“The sections of Title 18 may be disregarded in this suit. They are criminal in nature and provide no civil remedies.”). And section 1985(3) requires a conspiracy to violate civil rights because of “some racial, or perhaps otherwise class-based, invidiously discriminatory animus[.]” Lucero v. Operation Rescue, 954 F.2d 624, 627 (11th Cir. 1992). Anderson hasn’t alleged, either here or in the district court, whether he belongs to a protected class or how the defendants discriminated against him because of his membership in it.

AFFIRMED.

[DO NOT PUBLISH]

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AFFIRMED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 1:20-cv-23696-KMM

MARIAH CAREY (ANDERSON), *et al.*,

Plaintiffs,

v.

DESIREE PEREZ, *et al.*,

Respondents.

ORDER ON MOTION TO APPEAL IN FORMA PAUPERIS

THIS CAUSE came before the Court upon *pro se* Plaintiff Alex Anderson, Jr.'s ("Plaintiff") Motion for Leave to Appeal *In Forma Pauperis*. ("Mot") (ECF No. 7). On September 3, 2020, Plaintiff filed a 42 U.S.C. § 1983 Complaint ("Compl.") (ECF No. 1) and a Motion for Leave to Proceed *In Forma Pauperis*. (ECF No. 4). On September 10, 2020, the Court dismissed the Complaint as frivolous. ("Order of Dismissal") (ECF No. 5). On October 9, 2020, Plaintiff filed a Notice of Appeal (ECF No. 5) followed by the instant Motion.

To appeal *in forma pauperis*, a party must file in the district court a motion and an affidavit that "(A) shows . . . the party's inability to pay or to give security for fees and costs; (B) claims an entitlement to redress; and (C) states the issues that the party intends to present on appeal." Fed. R. App. P. 24(a). Here, Plaintiff brings suit on behalf of himself and "Mariah Carey (Anderson), also known as international recording artist Mariah Carey." Compl. ¶ 1. Plaintiff asserts that he is the "legal and lawful husband and spouse of music icon Mariah Carey." *Id.* ¶ 2. While Plaintiff does not include affidavits related to Mariah Carey's alleged indigency, Plaintiff provided an affidavit showing his inability to pay fees and costs. *See generally* Mot. Specifically, the Motion sets forth that Plaintiff is unemployed but received \$700.00 in monthly income from the Social

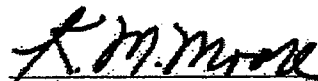
32, (A+)

Security Administration's Supplemental Security Income Benefits Program and expects to receive \$700.00 in the next month. *Id.* at 7. Therefore, Plaintiff's annualized income is approximately \$8,400.00. *Id.* Moreover, Plaintiff states that he has no assets or cash, except for the \$52 million-dollar music contract that is the subject of this litigation, and pays \$350.00 per month in expenses. *Id.* at 8-9. Having examined the Motion and compared his assets and liabilities, the Court finds that Plaintiff is financially eligible to appeal *in forma pauperis*.

Additionally, and in consideration of Plaintiff's *pro se* status, the Court liberally construes Plaintiff's Notice of Appeal as having sufficiently stated a claim of entitlement to redress and the issues Plaintiff intends to present on appeal. *See Estelle v. Gamble*, 429 U.S. 97, 106 (1976). Accordingly, Plaintiff has satisfied Rule 24(a) and is eligible to appeal *in forma pauperis*. Fed. R. App. P. 24(a).

UPON CONSIDERATION of the Motion, the pertinent portions of the record, and being otherwise fully advised in the premises, it is hereby ORDERED AND ADJUDGED that the Motion (ECF No. 7) is GRANTED. Plaintiffs may appeal *in forma pauperis*.

DONE AND ORDERED in Chambers at Miami, Florida, this 21st day of October, 2020.



K. MICHAEL MOORE
CHIEF UNITED STATES DISTRICT JUDGE

c: All counsel of record.

33. (At)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 1:20-cv-23696-KMM

MARIAH CAREY (ANDERSON), *et al.*,

Plaintiffs,

v.

DESIREE PEREZ, *et al.*,

Defendants.

ORDER

THIS CAUSE came before the Court upon a *sua sponte* examination of the record. On September 3, 2020, *pro se* Plaintiff Alex Anderson ("Anderson"), on behalf of himself and "Mariah Carey (Anderson), also known as international recording artist Mariah Carey" ("Plaintiffs"), filed the 42 U.S. Code § 1983 Civil Rights Complaint ("Compl.") (ECF No. 1) and a Motion for Leave to Proceed *In Forma Pauperis* (ECF No. 4). Because Anderson moved to proceed *in forma pauperis*, the Complaint is subject to screening pursuant to 28 U.S.C. § 1915(e)(2). *See* 28 U.S.C. § 1915(e)(2).

Pursuant to 28 U.S.C. § 1915(e)(2), a court is permitted to dismiss a case at any time if the court determines that the action (i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief. *See* § 1915(e)(2). An action is deemed frivolous if "the facts alleged are 'clearly baseless,' a category encompassing allegations that are 'fanciful,' 'fantastic,' and 'delusional.' . . . [A] finding of factual frivolousness is appropriate when the facts alleged rise to the level of the irrational or the wholly incredible." *Denton v. Hernandez*, 504 U.S. 25, 32-33 (1992) (internal citations omitted); *see also Porter v. Governor of Fla.*, 667 F. App'x 766, 767 (11th Cir. 2016).

59. (A+)

Under § 1915(e)(2)(B)(i), courts may dismiss claims that are “without arguable merit either in law or fact.” *Bilal v. Driver*, 251 F.3d 1346, 1349 (11th Cir. 2001).

A *pro se* litigant is entitled to the court’s liberal construction of the complaint. *Haines v. Kerner*, 404 U.S. 519, 520–21 (1972). However, even under the liberal construction afforded to *pro se* litigants, the Court need not sustain an action upon a wholly deficient pleading. *See Petersen v. Smith*, 762 F. App’x 585, 593 (11th Cir. 2019). Even under the relaxed pleading standard afforded to a *pro se* litigant, the Complaint fails to meet the foregoing standards.

The Complaint, which spans ninety-nine (99) handwritten pages, is largely incoherent. Anderson also filed a Supplement to Complaint (ECF No. 3) which consists of over 500 pages of poorly scanned, often illegible, exhibits. Anderson asserts that he is the “legal and lawful husband and spouse of music icon Mariah Carey.” Compl. ¶ 2. Anderson explains that he and Mariah Carey married in 2007, but that the marriage has been “kept out of the public eye” and has only been revealed to “close friends and relations . . . such as veteran news journalist Katie Couric, . . . Beyoncé, and . . . Shawn Jay-Z Carter.” *Id.* ¶¶ 19, 24. The Complaint purports to be brought by both Anderson and Mariah Carey. *See generally id.* However, Anderson alleges that he has been homeless—but employed as Carey’s “paralegal”—since 2017, and is seeking “spousal maintenance support” from Carey. *Id.* ¶¶ 25, 32. The core allegations of the Complaint are difficult to discern, but Anderson appears to allege that Defendants conspired to deprive Anderson of spousal support pursuant to pre- and post-nuptial agreements. *See, e.g., id.* ¶ 63.

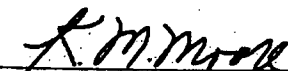
The Complaint fails to advance claims that have merit in fact or law. First, that Anderson and Mariah Carey have been married since 2007 is precisely the type of delusional claim that § 1915 screening seeks to avoid. *See Brennan v. Aldazabal*, 772 F. App’x 852, 852 (11th Cir. 2019)

(quoting *Neitzke v. Williams*, 490 U.S. 319, 328 (1989) (“[F]rivolous claims include claims

'describing fantastic or delusional scenarios.'"). Second, baseless, far-fetched, and conclusory allegations of conspiracies are rightly dismissed as frivolous. *See Watson v. Broward Cty. Sheriff's Off.*, 808 F. App'x 891, 894 (11th Cir. 2020) (citing *Denton*, 504 U.S. at 32-33) (affirming the district court's dismissal of claims consisting of "'fanciful,' 'fantastic,' and 'delusional' scenarios wherein the judges, state attorneys, public defenders, and law enforcement" conspired against the plaintiff); *Porter*, 667 F. App'x at 767. Furthermore, "a successful section 1983 action requires a showing that the conduct complained of [] was committed by a person acting under color of state law." *Harvey v. Harvey*, 949 F.2d 1127, 1130 (11th Cir. 1992). However, Defendants all appear to be private, non-governmental actors, whose actions as alleged cannot be fairly attributable to the state. *See id.* As such, the Court finds that the Complaint is subject to dismissal under § 1915(e)(2) because Anderson's claims are baseless and delusional.

Accordingly, UPON CONSIDERATION of the Complaint, the pertinent portions of the record, and being otherwise fully advised in the premises, it is hereby ORDERED AND ADJUDGED that the 42 U.S. Code § 1983 Civil Rights Complaint (ECF No. 1) is DISMISSED WITH PREJUDICE.¹ The Clerk of the Court is instructed to CLOSE this case. All pending motions are DENIED AS MOOT.

DONE AND ORDERED in Chambers at Miami, Florida, this 10th day of September, 2020.



K. MICHAEL MOORE
CHIEF UNITED STATES DISTRICT JUDGE

c: All counsel of record, Plaintiff, *pro se*

¹ Because Anderson's allegations are frivolous, amendment of the Complaint is futile. Therefore, dismissal of this case with prejudice is appropriate. *See Hall v. United Ins. Co. of Am.*, 367 F.3d 1255, 1263 (11th Cir. 2004) (citation omitted) ("[A] district court may properly deny leave to amend the complaint under Rule 15(a) when such amendment would be futile.").