

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 17-5708

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Dec 06, 2017
DEBORAH S. HUNT, Clerk

CARROLET THOMAS,

Plaintiff-Appellant,

v.

THE UNIVERSITY OF TENNESSEE HEALTH
SCIENCE CENTER AT MEMPHIS, et al.,

Defendants-Appellees.

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) ON APPEAL FROM THE UNITED
) STATES DISTRICT COURT FOR
) THE WESTERN DISTRICT OF
) TENNESSEE
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ORDER

Before: McKEAGUE and WHITE, Circuit Judges; HOOD, District Judge.*

Carrolet Thomas, a pro se litigant, appeals the district court's judgment dismissing her complaint sua sponte pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim on which relief can be granted. This 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).

Thomas filed this action pursuant to 42 U.S.C. § 1983 against two dozen defendants, alleging that her rights under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") "were violated by many people, in many places, many times." Thomas sought monetary damages and to be free from "personal illegal surveillance." Beyond these statements, Thomas did not provide any details in her complaint, and instead promised that "[e]xhibits with details will be provided on a later date." Thomas subsequently filed a Motion to Opt Out of

*The Honorable Joseph M. Hood, United States District Judge for the Eastern District of Kentucky, sitting by designation.

Alternative Dispute Resolution (“ADR Opt-Out Motion”) and two motions requesting that the presiding judge recuse himself.

The magistrate judge recommended that Thomas’s complaint be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim, reasoning that HIPAA does not provide for a private cause of action, either express or implied, and that Thomas did not provide a factual basis in her complaint that would plausibly suggest an entitlement to relief from violations of HIPAA or personal illegal surveillance. In her objections, Thomas elaborated on the allegations in her complaint, asserting a hostile work environment while she was employed at the University of Tennessee Health Science Center (“UTHSC”) and the possible disclosure of her confidential medical information in violation of HIPAA. The district court overruled the objections, adopted the magistrate judge’s report and recommendation, denied the recusal motions filed by Thomas, dismissed the complaint, and denied Thomas’s ADR Opt-Out Motion as moot.

On appeal, after a lengthy recitation of her experiences at UTHSC, Thomas argues that she did not consent to a magistrate judge deciding dispositive matters, that the twenty-one exhibits she attached to her ADR Opt-Out Motion were not properly considered prior to the dismissal of her complaint, that she believes she is due a fair trial under HIPAA, and that she has another lawsuit pending before the same district court judge.

We review de novo a judgment dismissing a complaint for failure to state a claim upon which relief can be granted under 28 U.S.C. § 1915(e). *Hill v. Lappin*, 630 F.3d 468, 470 (6th Cir. 2010). Section 1915(e) requires district courts to screen cases and sua sponte dismiss those that are frivolous or fail to state a claim for relief. *Id.* In determining whether a complaint states a plausible claim for relief, the court accepts all of its non-conclusory allegations as true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009). A civil complaint survives a motion to dismiss only if it “contain[s] sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face.” *Id.* at 678; see *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Pleadings drafted by pro se litigants should be held to less stringent standards than those drafted by lawyers and should be liberally construed, *Martin v. Overton*, 391 F.3d 710, 712 (6th Cir.

2004), but pro se litigants are not exempt from the requirements of the Federal Rules of Civil Procedure. *Wells v. Brown*, 891 F.2d 591, 594 (6th Cir. 1989).

Thomas did not provide an adequate factual basis for the claims in her complaint. She stated only that:

My HIPAA . . . Rights were violated by many people, in many places, many times. I filed complaints with the Office For Civil Rights in Washington, D.C. but was not given due process.^[1] I also had Congressman Steve Cohen's Office contact the Office For Civil Rights on my behalf and did not receive any response. Defendants list is attached. Exhibits with details will be provided on a later date.

Pleadings that are no more than conclusions are not entitled to the assumption of truth. *Iqbal*, 556 U.S. at 679. "While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations." *Id.* Thomas simply does not provide any factual allegations in her complaint to back up her claims of HIPAA violations or personal illegal surveillance. That she promised to provide details on a later date is not sufficient.

In addition, although we have not held explicitly that there is no private right of action under HIPAA, express or implied, other circuits have so held. *See Bradley v. Pfizer, Inc.*, 440 F. App'x 805, 809 (11th Cir. 2011); *Carpenter v. Phillips*, 419 F. App'x 658, 659 (7th Cir. 2011); *Dodd v. Jones*, 623 F.3d 563, 569 (8th Cir. 2010); *Wilkerson v. Shinseki*, 606 F.3d 1256, 1267 n.4 (10th Cir. 2010); *Miller v. Nichols*, 586 F.3d 53, 59-60 (1st Cir. 2009); *Webb v. Smart Document Solutions, LLC*, 499 F.3d 1078, 1081 (9th Cir. 2007); *Acara v. Banks*, 470 F.3d 569, 571 (5th Cir. 2006) (per curiam). Instead, HIPAA provides for penalties to be imposed by the Secretary of the Department of Health and Human Services ("DHHS"). 42 U.S.C. § 1320d-5(a)(1). If Thomas believes that her HIPAA rights were violated, the proper avenue for redress is to file a complaint with the DHHS. *See* 45 C.F.R. § 160.306. The district court, therefore, did

¹ We note that Thomas' complaints to the Department of Health and Human Services and any alleged mishandling of those complaints is the subject of another pending lawsuit filed by Thomas. *See Thomas v. Dep't of Health & Human Servs.*, 2:17-cv-02264-SHM-tmp (W.D. Tenn.).

not err in dismissing Thomas's claim for monetary damages where no private right of action existed.

Thomas argues that she did not consent to a magistrate judge deciding dispositive matters in her case. Pursuant to 28 U.S.C. § 636(b)(1)(B), "a judge may . . . designate a magistrate judge to conduct hearings, including evidentiary hearings, and to submit to a judge of the court proposed findings of fact and recommendations for the disposition, by a judge of the court, of any motion excepted in subparagraph (A)." Subparagraph (A) includes motions "to dismiss for failure to state a claim upon which relief can be granted." See *Brown v. Wesley's Quaker Maid, Inc.*, 771 F.2d 952, 954 (6th Cir. 1985) (holding that a magistrate judge may provide a report and recommendation regarding dispositive matters); see also Fed. R. Civ. P. 72(b)(3) (outlining the procedures for a magistrate judge referral). Here, pursuant to local Administrative Order 2013-05 (Apr. 29, 2013) for the Western District of Tennessee, the matter was referred to a magistrate judge for case management and for all pretrial matters for determination or for report and recommendation as appropriate. The magistrate judge then provided a report and recommendation to the district court, which subsequently made its own ruling and adopted the report and recommendation. That Thomas did not consent to this report and recommendation, subject to approval by the district court, does not entitle Thomas to relief.

Thomas next contends that the district court denied her due process by failing to properly consider the twenty-one exhibits that she attached to her ADR Opt-Out Motion. These exhibits consisted of copies of Formal Discrimination and Harassment Complaint Forms addressed to the University of Tennessee as well as Health Information Privacy Complaints addressed to the DHHS Office for Civil Rights. The magistrate judge noted in his report and recommendation, which was subsequently adopted by the district court, that he "reviewed the exhibits, and to the extent they provide context, the court has considered them in making the recommendations herein." Thus, Thomas is incorrect that the attachments were not received.

Finally, Thomas argues that the district court's judgment was erroneous because the same district court judge was presiding over her other pending lawsuit. Thomas does not, however, provide any justification as to why this would be grounds for reversal of the district court's

judgment, and we are aware of none. To the extent Thomas argues on appeal that she moved for a change of judge because the presiding judge had prior legal experience with a former Tennessee governor, we agree that those recusal motions were properly denied.

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

ENTERED BY ORDER OF THE COURT

A handwritten signature in black ink, appearing to read "Deborah S. Hunt", is written over a horizontal line.

Deborah S. Hunt, Clerk

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ORDER

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The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

*The Honorable Joseph M. Hood, Senior United States District Judge for the Eastern District of Kentucky, sitting by designation.

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