FILED
United States Court of Appeals
Tenth Circuit

September 13, 2018

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

JOHN S. MYZER,

Plaintiff - Appellant,

v.

GEORGE W. BUSH, et al.,

Defendants - Appellees.

F

No. 18-3067
(D.C. No. 2:03-CV-02504-KHV-JPO)
(D. Kan.)

ORDER AND JUDGMENT*

Before **BRISCOE**, **HOLMES**, and **MATHESON**, Circuit Judges.

Pro se litigant John Myzer appeals from the district court's denial of his motion for reconsideration of an order that the district court issued in 2004. The district court denied the motion because it was not made within a reasonable time as required by Federal Rule of Civil Procedure ("Rule") 60(c) and, alternatively, because it lacked merit. Exercising

---

* After examining the briefs and appellate record, this panel has determined unanimously to honor Plaintiff-Appellant John Myzer's request for a decision on the briefs without oral argument. *See* FED. R. APP. P. 34(f); 10TH CIR. R. 34.1(G). This case is therefore submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

jurisdiction under 28 U.S.C. § 1291, we **affirm** the district court's denial of Mr. Myzer's motion for reconsideration.

I

In 2003, Mr. Myzer sued President George W. Bush and numerous other individuals, alleging that the defendants participated in a conspiracy to conceal his true identity in order to prevent him from receiving his inheritance. He claimed that, as part of the conspiracy, his biological parents were murdered shortly after his birth and that he was raised by various people who pretended to be his parents. Mr. Myzer moved to amend his complaint over thirty times to join additional defendants, including "the United States government, each of the fifty states of the union, the government of the United Kingdom, every school plaintiff ever attended, every health and/or medical provider who has ever treated plaintiff, and the entire food and beverage industry." R. at 26 (R. & R., dated Aug. 17, 2004). Significantly, he listed numerous other parties, but failed to name them, list their residences, or allege any basis for jurisdiction over them. Mr. Myzer never properly served any of the defendants. In October 2004, the district court dismissed Mr. Myzer's complaint for not stating a valid claim for relief and not setting forth the basis for subject-matter jurisdiction. *Id.* at 38 (Order, dated Oct. 25, 2004) (hereinafter "2004 Order").

Fourteen years after the district court issued the 2004 Order, Mr. Myzer filed a motion for reconsideration under Rules 60(b)(4) and 60(b)(6). He argued that the 2004 Order was void pursuant to Rule 60(b)(4), for two reasons: (1) the district court lacked

personal jurisdiction because none of the defendants were ever served; and (2) the district court deprived him of due process both by failing to order a marshal to serve process on the defendants and by dismissing the case with prejudice without holding a full hearing on the merits. Mr. Myzer also argued that the 2004 Order was invalid pursuant to Rule 60(b)(6) because he "lacked the capacity to defend or understand his rights" during the case. R. at 46 (Mem. in Supp. of Mot., dated Feb. 5, 2018). He justified the fourteen-year delay in filing the motion for reconsideration by claiming that he was mentally incapacitated during that time as a result of the defendants' illegal actions. *Id.*

In denying Mr. Myzer's motion for reconsideration, the district court generally held that the motion was not made within a reasonable time as required by Rule 60(c), concluding that Mr. Myzer's general reference to being incapacitated between the time of the 2004 Order and his motion was not a sufficient justification for the delay. Alternatively, the district court held that the motion was without merit. More specifically, Mr. Myzer's Rule 60(b)(4) arguments failed, the district court held, because he had consented to personal jurisdiction and, given that Mr. Myzer did not file suit *in forma pauperis*, the district court in 2004 was not obliged to order a marshal to serve process. His Rule 60(b)(6) arguments failed, the district court added, because Mr. Myzer's general claim of incapacity was insufficient to justify relief.

On appeal, Mr. Myzer raises the same arguments that he presented to the district court, as well as an assertion that the district court erred in basing its 2004 Order in part on a lack of subject-matter jurisdiction.[1]

II

A

In general, "[a] district court . . . has substantial discretion to grant relief as justice requires under Rule 60(b)," *Fed. Deposit Ins. Corp. v. United Pac. Ins. Co.*, 152 F.3d 1266, 1272 (10th Cir. 1998); we reverse the district court's ruling on a Rule 60(b) motion only when there has been a "manifest abuse of discretion," *Sec. Mut. Cas. Co. v. Century Cas. Co.*, 621 F.2d 1062, 1068 (10th Cir. 1980). "A district court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence." *Fed. Deposit Ins. Corp.*, 152 F.3d at 1272 (quoting *Lyons v. Jefferson Bank & Tr.*, 994 F.2d 716, 727 (10th Cir. 1993)).

---

[1] We assume without deciding that Mr. Myzer has not forfeited his subject-matter-jurisdiction argument by failing to present it before the district court. *Cf. In re Worldwide Web Sys., Inc.*, 328 F.3d 1291, 1299 (11th Cir. 2003) ("[O]bjections to personal jurisdiction (unlike subject matter jurisdiction) are generally waivable . . . . Valdez waived his insufficient service of process argument under Rule 60(b)(4) by failing to include it in his Rule 60(b) motion to the bankruptcy court [sitting as the trial court]."). *Compare, e.g., Grupo Dataflux v. Atlas Glob. Grp., L.P.*, 541 U.S. 567, 571 (2004) ("Challenges to subject-matter jurisdiction can of course be raised at any time prior to final judgment."), *with United States v. Williams*, 893 F.3d 696, 701 (10th Cir. 2018) ("By failing to raise the issue in district court, Mr. Williams forfeited his present argument."), *and Richison v. Ernest Grp., Inc.*, 634 F.3d 1123, 1128 (10th Cir. 2011) (Gorsuch, J.) ("[I]f the theory simply wasn't raised before the district court, we usually hold it forfeited."). For reasons noted *infra*, this argument does not withstand scrutiny in any event.

Where a party moves for relief on the ground that a judgment is void under Rule 60(b)(4), however, this court must apply the de novo standard of review; where Rule 60(b)(4) is properly invoked, "relief is not a discretionary matter" but instead is "mandatory." *Marcus Food Co. v. DiPanfilo*, 671 F.3d 1159, 1166 (10th Cir. 2011) (quoting *Hukill v. Okla. Native Am. Domestic Violence Coal.*, 542 F.3d 794, 797 (10th Cir. 2008)).

According to Rule 60(c)(1), both Rule 60(b)(4) and Rule 60(b)(6) motions "must be made within a reasonable time." FED. R. CIV. P. 60(c)(1). However, this Court has ruled that Rule 60(b)(4) motions are effectively subject to no time limit. Or, put another way, any time period preceding the filing of a Rule 60(b)(4) motion is reasonable as a matter of law because such a motion claims that the underlying judgment is void *ab initio*. *See V.T.A., Inc. v. Airco, Inc.*, 597 F.2d 220, 224 n.9 (10th Cir. 1979) ("[I]f a judgment is void, it is a nullity from the outset and any 60(b)(4) motion for relief is therefore filed within a reasonable time."). Nevertheless, a motion under Rule 60(b)(4) "is not a substitute for a timely appeal," *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 270 (2010), and "the concept of setting aside a judgment on voidness grounds is narrowly restricted" in the "interest of finality," *V.T.A., Inc.*, 597 F.2d at 225.

"Where a party delays in filing" a Rule 60(b)(6) motion, "it must offer sufficient justification for the delay." *Cummings v. Gen. Motors Corp.*, 365 F.3d 944, 955 (10th Cir. 2004), *abrogated on other grounds by Unitherm Food Sys., Inc. v. Swift-Eckrich, Inc.*, 546 U.S. 394, 399 (2006).

B

The district court did not abuse its discretion in finding that Mr. Myzer's motion for reconsideration, insofar as it invoked Rule 60(b)(6), was not made within a reasonable time, given that it was filed fourteen years after the 2004 Order. Although there is little guidance on what specifically is a reasonable time to file a Rule 60(b)(6) motion, panels of our court have regularly found that district courts did not abuse their discretion when denying such motions on timeliness grounds when the delays were shorter than Mr. Myzer's delay. *See United States v. Bell*, 526 F. App'x 880, 881–82 (10th Cir. 2013) (unpublished) (Gorsuch, J.) (thirteen-year delay); *United States v. Eaton*, 506 F. App'x 837, 839 (10th Cir. 2013) (unpublished) (nearly twelve-year delay); *United States v. Stover*, 532 F. App'x 807, 807 n.1 (10th Cir. 2013) (unpublished) (nearly eleven-year delay); *Thompson v. Workman*, 372 F. App'x 858, 861 (10th Cir. 2010) (unpublished) (eight-year delay); *West v. Champion*, 363 F. App'x 660, 664–65 (10th Cir. 2010) (unpublished) (eight-year delay).[2]

Furthermore, Mr. Myzer provides no "sufficient justification for the delay." *Cummings*, 365 F.3d at 955. His stated justification is an allegation of mental incapacitation, as a result of the defendants' actions, from November 2004 to December 2017. Aplt.'s Br. at 17–18; R. at 46 ("The Plaintiff has remained in a disabling state of

---

[2] Though non-precedential, we find the unpublished authorities cited herein apposite and persuasive. *See, e.g.*, *United States v. Engles*, 779 F.3d 1161, 1162 n.1 (10th Cir. 2015); *United States v. Austin*, 426 F.3d 1266, 1274 (10th Cir. 2005).

ignorance and incapacity in the intervening years because he resumed belief in a false identity: an identity well-corroborated by the deliberate and wrongful acts of the Defendants . . . ."). However, we have indicated that mental incapacity will equitably toll limitations periods only when there are "exceptional circumstances." *Biester v. Midwest Health Servs.*, 77 F.3d 1264, 1268 (10th Cir. 1996); *accord Alvarado v. Smith*, 713 F. App'x 739, 742 (10th Cir. 2017) (unpublished); *Reupert v. Workman*, 45 F. App'x 852, 854 (10th Cir. 2002) (unpublished). And the mere allegation of mental incapacity does not show that exceptional circumstances are present. *See Biester*, 77 F.3d at 1268; *accord Alvarado*, 713 F. App'x at 743; *Wiegand v. Zavares*, 320 F. App'x 837, 839 (10th Cir. 2009) (unpublished); *Smith v. Saffle*, 28 F. App'x 759, 760 (10th Cir. 2001) (unpublished). Mr. Myzer presents a generalized contention that he was incapacitated but points to no evidence to validate his ostensible incapacity. Nor does he offer details regarding how the defendants' actions allegedly caused his mental incapacity, except to say equivocally that it "*may have been* the product of involuntarily administered psychotropic drugs or other illegal means." Aplt.'s Br. at 2 (emphasis added). Under these circumstances, we cannot conclude that the district court abused its discretion in holding that Mr. Myzer's general allegation of mental incapacity was not the sort of "exceptional circumstance[]," *Biester*, 77 F.3d at 1268, needed to excuse the fourteen-year delay between the 2004 Order and the motion for reconsideration.

C

The district court also did not err in denying Mr. Myzer's motion for

reconsideration to the extent that it invoked Rule 60(b)(4). Mr. Myzer appears to contend that the 2004 Order is void because the district court lacked personal jurisdiction over him and because he did not receive the due process to which he was entitled. We disagree with each of these contentions and address them in turn. We also consider whether Mr. Myzer's newly presented subject-matter jurisdiction argument can properly be considered under Rule 60(b)(4).[3] We conclude that it cannot.

Though a district court's determination is certainly void where the court lacks personal jurisdiction, *see United States v. Bigford*, 365 F.3d 859, 865 (10th Cir. 2004), Mr. Myzer expressly consented to the district court's exercise of personal jurisdiction over him by filing suit in that court, *see Williams v. Life Sav. & Loan*, 802 F.2d 1200, 1202 (10th Cir. 1986) (stating that "jurisdiction over a party may be conferred upon a court . . . by voluntary appearance of a party"); *accord Rollins v. Ingersoll-Rand Co.*, 240 F. App'x 800, 802 (10th Cir. 2007) (unpublished) ("[A] plaintiff's filing suit constitutes consent to a district court's exercise of jurisdiction over him or her."). Accordingly, Mr. Myzer's argument on this score is without merit.

Mr. Myzer's due-process arguments also fall short. He alleges that the district court should have ordered a U.S. marshal or appointed another government official to

---

[3] It is unclear exactly what subprovision of Rule 60(b) this argument is intended to invoke. However, as we observed previously, it is too late for Mr. Myzer to proceed under Rule 60(b)(6), or indeed any other subprovision of Rule 60(b), *see* FED. R. CIV. P. 60(c)(1), absent exceptional circumstances that Mr. Myzer neither adequately alleges nor supports.

serve process on the defendants. But a district court is only required to appoint an official to serve process in circumstances where the plaintiff is authorized to proceed *in forma pauperis*. *See* FED. R. CIV. P. 4(c)(3). And, since Mr. Myzer did not file suit *in forma pauperis*, the district court was not obliged to make such an appointment here. Mr. Myzer also claims that the court denied him due process by dismissing the case with prejudice under Rule 12(b)(6) without a full hearing on the merits. But a dismissal under Rule 12(b)(6) is considered an adjudication on the merits, *see* FED. R. CIV. P. 41(b), and Mr. Myzer presents no authority indicating that a full hearing was required prior to the dismissal.

Finally, Mr. Myzer's newly presented subject-matter jurisdiction argument fails to the extent that it might be intended to invoke Rule 60(b)(4). According to Mr. Myzer, in its 2004 Order, the district court erroneously ruled that it lacked subject-matter jurisdiction. However, a judgment is not void within the meaning of Rule 60(b)(4) merely because it is or may be erroneous; rather, it must be determined that the rendering court was "powerless" to enter judgment. *V.T.A., Inc.*, 597 F.2d at 224. More specifically, a judgment is void under Rule 60(b)(4) "only if the court which rendered it lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process of law." *United States v. Buck*, 281 F.3d 1336, 1344 (10th Cir. 2002) (quoting *In re Four Seasons Sec. Laws Litig.*, 502 F.3d 834, 842 (10th Cir. 1974)); *see also Oakes v. Horizon Fin., S.A.*, 259 F.3d 1315, 1319 (11th Cir. 2001) (a "mere error" in the exercise of jurisdiction does not warrant relief under Rule 60(b)(4)).

Mr. Myzer contends that the district court failed to exercise subject-matter jurisdiction that it possessed, not that it exercised subject-matter jurisdiction that it lacked. His subject-matter jurisdiction argument therefore does not properly invoke Rule 60(b)(4).

III

For the foregoing reasons, we affirm the district court's denial of Mr. Myzer's motion for reconsideration.

ENTERED FOR THE COURT

Jerome A. Holmes
Circuit Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

D

JOHN S. MYZER,	)	
	)	
Plaintiff,	)	
	)	**CIVIL ACTION**
v.	)	
	)	**No. 03-2504-KHV**
GEORGE W. BUSH, et al.,	)	
	)	
Defendants.	)	
	)	

ORDER

John S. Myzer brings suit against President George W. Bush and others, alleging that numerous conspirators have engaged in a scheme to conceal plaintiff's true identity and prevent him from receiving his rightful inheritance. On August 17, 2004, Magistrate Judge James P. O'Hara recommended that the Court dismiss plaintiff's complaint with prejudice. Report And Recommendation (Doc. #63). This matter comes before the Court on plaintiff's Objections And Comments (Doc. #64) filed August 23, 2004. For reasons stated below, the Court overrules plaintiff's objections, and approves and adopts Judge O'Hara's recommendation. Accordingly, the Court dismisses plaintiff's complaint with prejudice.

Background

Judge O'Hara set forth the background facts in his Report and Recommendations (Doc. #63) and the Court incorporates those facts by reference. In his report, the magistrate stated:

> In response to questions posed by the undersigned during the July 27, 2004 status conference, plaintiff stated that this matter is essentially about an estate. Plaintiff claims that various conspirators, potentially numbering (he says) literally in the hundreds of thousands, have engaged in an elaborate scheme to conceal plaintiff's true identity from him in order to deprive plaintiff of his inheritance. Plaintiff asserts that his biological parents were killed

by "adventurers" and that he was raised by several different people who alternately assumed the names Marguerite and Sherman Myzer; he also claims that Mr. and Mrs. Myzer were not actually married, but that they maintained this facade for the sole purpose of perpetrating a fraud on plaintiff.

Plaintiff names sixty-four separate defendants in his complaint and makes several claims against some or all of the defendants. The undersigned will not set forth all of plaintiff's claims, as they are set out in some detail in the August 3, 2004 order (doc. 57). The facts relevant to this report and recommendation, however, are as follows. Plaintiff has filed approximately thirty-one motions to amend his complaint to join additional defendants. These defendants include, but are not limited to, the United States government, each of the fifty states of the union, the government of the United Kingdom, every school plaintiff ever attended, every health and/or medical provider who has ever treated plaintiff, and the entire food and beverage industry. In most cases, specific parties are not named, and in all cases, no basis for jurisdiction or even the residence of the proposed defendant is alleged.

. . . .

As set forth in the undersigned's August 3, 2004 order, plaintiff's complaint does not satisfy the minimal notice pleading standards of Fed. R. Civ. P. 8(a), nor does it set forth a basis for asserting diversity subject matter jurisdiction.

. . . .

As detailed in the undersigned's August 3, 2004 order, plaintiff's original complaint fails to adequately set forth a basis for subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1). Because plaintiff's complaint also fails to meet the minimal notice pleading standards of Fed. R. Civ. P. 8(a), it likewise fails to state a claim upon which relief can be granted under Fed. R. Civ. P. 12(b)(6).

. . . .

It is the opinion of the undersigned that, because plaintiff has not cured the numerous defects listed above and set forth in the order of August 3, 2004, this case should be dismissed by Judge Vratil under Fed. R. Civ. P. 12. Further, because this court already has afforded plaintiff ample opportunities to remedy the pleading and jurisdictional defects in plaintiff's complaint, the undersigned recommends that the dismissal be with prejudice.

Id. at 2, 3-4, 5, 7.

Analysis

Plaintiff asks the Court to reject the magistrate's report and recommendation because (1) the findings of fact are not based on evidence; and (2) the magistrate has not explained the factual basis for his conclusions.

The standard for district court review of a magistrate judge's report and recommendation is contained in 28 U.S.C. § 636, which provides as follows:

> A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.

28 U.S.C. § 363(b)(1)(C).

The Court has reviewed the magistrate's report and recommendation and plaintiff's objections.

The Court finds that the magistrate has adequately set forth the factual background of this case and that no "evidence" is required to analyze the deficiencies in plaintiff's pleadings. The report and recommendation correctly finds that plaintiff fails to adequately set forth a basis for subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1) and that plaintiff's complaint fails to state a claim upon which relief can be granted under Fed. R. Civ. P. 12(b)(6). Plaintiff's objections are without merit. The Court therefore overrules plaintiff's objections, and approves and adopts Judge O'Hara's report and recommendation.

Plaintiff requests that the Court allow the case to remain on the docket until service information becomes available. Plaintiff's request is moot in light of the Court's rulings on plaintiff's other objections. Service information is irrelevant, however, because the complaint is fatally deficient under Rule 12(b)(6) and plaintiff has refused opportunities to cure the facial deficiencies of this complaint.

IT IS THEREFORE ORDERED that plaintiff's Objections And Comments (Doc. #64) filed August 23, 2004 be and hereby is **OVERRULED**. The Court approves and adopts Judge O'Hara's Report And Recommendation (Doc. #63) filed August 17, 2004, and dismisses with prejudice plaintiff's complaint.

Dated this 25th day of October, 2004 at Kansas City, Kansas.

s/ Kathryn H. Vratil
Kathryn H. Vratil
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

E

JOHN S. MYZER,	)	
	)	
Plaintiff,	)	
	)	**CIVIL ACTION**
v.	)	
	)	**No. 03-2504-KHV**
GEORGE W. BUSH, et al.,	)	
	)	
Defendants.	)	
	)	

MEMORANDUM AND ORDER

On October 8, 2003, plaintiff brought suit against President George W. Bush and others, alleging that numerous conspirators engaged in a scheme to conceal plaintiff's true identity and prevent him from receiving his rightful inheritance. On October 25, 2004, the Court dismissed plaintiff's suit with prejudice because, among other things, plaintiff did not set forth a basis for subject matter jurisdiction and failed to state a claim upon which relief could be granted. Memorandum And Order (Doc. #138) at 3-4. This matter is before the Court on plaintiff's Motion For Reconsideration (Doc. #144) filed February 5, 2018, which asks the Court to set aside that order pursuant to Rule 60(b), Fed. R. Civ. P.

Procedural Background

In his Report And Recommendation (Doc. #63) filed August 17, 2004, Judge O'Hara summarized the suit's relevant procedural history as follows:

> Plaintiff claims that various conspirators, potentially numbering (he says) literally in the hundreds of thousands, have engaged in an elaborate scheme to conceal plaintiff's true identity from him in order to deprive plaintiff of his inheritance. Plaintiff asserts that his biological parents were killed by "adventurers" and that he was raised by several different people who alternately assumed the names Marguerite and Sherman Myzer; he also claims that Mr. and Mrs. Myzer

> were not actually married, but that they maintained this facade for the sole purpose of perpetrating a fraud on plaintiff.
>
> Plaintiff names sixty-four separate defendants in his complaint and makes several claims against some or all of the defendants. . . . Plaintiff has filed approximately thirty-one motions to amend his complaint to join additional defendants. These defendants include, but are not limited to, the United States government, each of the fifty states of the union, the government of the United Kingdom, every school plaintiff ever attended, every health and/or medical provider who has ever treated plaintiff, and the entire food and beverage industry. In most cases, specific parties are not named, and in all cases, no basis for jurisdiction or even the residence of the proposed defendant is alleged.

Id. at 2. Further, Judge O'Hara stated that plaintiff (1) did not properly serve any defendants; (2) refused to amend his complaint to satisfy Rule 8(a), Fed. R. Civ. P.; and (3) did not set forth any basis for subject matter jurisdiction. Id. at 3-5, 7. On October 25, 2004, for reasons above, the Court dismissed plaintiff's complaint with prejudice. Memorandum And Order (Doc. #138) at 3-4.

More than 14 years after the Court entered judgment against him, plaintiff seeks reconsideration pursuant to Rules 60(b)(4), (6), Fed. R. Civ. P. Memorandum In Support Of Motion (Doc. #145) filed February 5, 2018 at 1-2. In particular, plaintiff argues that the judgment is void because the Court lacked personal jurisdiction and did not afford him due process. Id. at 1-3. He also asserts that the Court should set aside the judgment because "plaintiff lacked the capacity to defend or understand his rights" during his suit. Id. at 4.

Legal Standard

The Court has discretion to grant or deny a motion to vacate judgment under Rule 60(b). See Fed. Deposit Ins. Corp. v. United Pac. Ins. Co., 152 F.3d 1266, 1272 (10th Cir. 1998). Relief under Rule 60(b) is extraordinary and may only be granted in exceptional circumstances. See Yapp v. Excel Corp., 186 F.3d 1222, 1231 (10th Cir. 1999). Under Rule 60(b), the Court may relieve a party

from a final judgment, order or proceeding for the following reasons:

> (1) mistake, inadvertence, surprise, excusable neglect;
>
> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
>
> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
>
> (4) the judgment is void;
>
> (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
>
> (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b).

Analysis

A motion under Rule 60(b) must be made within a reasonable time. Fed. R. Civ. P. 60(c). Plaintiff filed his Motion For Reconsideration (Doc. #144) more than 14 years after the judgment which he seeks to set aside. See Memorandum And Order (Doc. #138); see also Order (Doc. #143) filed December 10, 2004 (dismissing appeal). Plaintiff's delay appears unreasonable on its face. See United States v. Taylor, 295 F. App'x 268, 270 (10th Cir. 2008) (ten-year delay between judgment and Rule 60 motion unreasonable) (unpublished); see also Cummings v. General Motors Corp., 365 F.3d 944, 954-55 (10th Cir. 2004) abrogated on other grounds by Unitherm Food Sys. v. Swift-Eckrich, Inc., 546 U.S. 394, 399 (2006) (unreasonable to wait seven months after discovery of new evidence); see also Sec. Mut. Cas. Co. v. Century Cas. Co., 621 F.2d 1062, 1067-68 (10th Cir. 1980) (untimely when unexplained 115-day gap between Rule 60 motion and judgment). Nevertheless, the Court must consider whether plaintiff has a "sufficient justification for the delay."

Cummings, 365 F.3d at 955. Plaintiff asserts that he "has remained in a disabling state of ignorance and incapacity" from the time of his judgment until his Rule 60 motion. Memorandum In Support (Doc. #145) at 4. Unsupported references to mental incompetence do not toll limitations periods. See Smith v. Saffle, 28 F. App'x 759, 760 (10th Cir. 2001) (unpublished); see Biester v. Midwest Health Servs., 77 F.3d 1264, 1268 (10th Cir. 1996) (must show "exceptional circumstances" for tolling). Plaintiff's vague, unsupported assertion does not justify the extensive gap between the Court's judgment and his Rule 60 motion. See Mukes v. Warden of Joseph Harp Corr. Ctr., 301 F. App'x 760, 762-64 (10th Cir. 2008) (Rule 60 motion untimely despite claims of mental incompetence) (unpublished). Thus, the Court overrules plaintiff's motion as untimely.[1]

IT IS THEREFORE ORDERED that plaintiff's Motion For Reconsideration (Doc. #144) filed February 5, 2018 is **OVERRULED**.

---

[1] Alternatively, the motion lacks merit. Plaintiff seeks reconsideration pursuant to Rule 60(b)(4) because the Court (1) lacked personal jurisdiction and (2) denied him due process. First, plaintiff consented to the exercise of personal jurisdiction by choosing to file suit in the District of Kansas. Rollins v. Ingersoll-Rand Co., 240 F. App'x 800, 802 (10th Cir. 2007) ("plaintiff's filing suit constitutes consent to a district court's exercise of jurisdiction over him or her") (unpublished). Second, plaintiff contends that the Court denied him due process when it failed to appoint a government official to serve process on defendants. This argument rests on the false assertion that plaintiff filed suit in forma pauperis. See Fed. R. Civ. P. 4(c)(3) (plaintiff may request service by appointed official if proceeding in forma pauperis); see also Order (Doc. #57) filed August 3, 2004 at 4 ("[plaintiff] does not proceed in forma pauperis") (emphasis in original).

Plaintiff also argues that the Court should set aside its judgment under Rule 60(b)(6) because he "lacked the capacity to defend or understand his rights" during the original suit. The Tenth Circuit has held that general claims of mental incompetence and ignorance of the law do not qualify as "extraordinary cases" which justify Rule 60(b)(6) relief. See Klein v. United States, 880 F.2d 250, 259 (10th Cir. 1989); see Mukes, 301 F. App'x at 763; see Cothrum v. Hargett 178 F. App'x 855, 858-59 (10th Cir. 2006) (unpublished). Accordingly, plaintiff's claims lack merit.

Dated this 9th day of March, 2018 at Kansas City, Kansas.

s/ Kathryn H. Vratil
Kathryn H. Vratil
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

A

JOHN S. MYZER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 03-2504-KHV
	)	
GEORGE BUSH, et al.,	)	
	)	
Defendants.	)	

ORDER

Pursuant to Fed. R. Civ. P. 15, this case comes before the court on the motions (**docs. 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18**) of plaintiff for leave to amend and supporting memorandum (**doc. 19**), motion for additional time to serve process (**doc. 8**), and motion for service (**doc. 10**).

Plaintiff seeks leave to amend his complaint to join numerous parties as defendants in this case. Fed. R. Civ. P. 15(a) provides:

> A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served . . .

Plaintiff has not previously amended his complaint and no responsive pleading has been filed. Therefore, plaintiff may file his amended complaint without leave of court. The court, however, directs that plaintiff file his amended complaint, which shall include all the additional defendants and claims, no later than **June 23, 2004**.

Plaintiff requests an extension of time to effectuate service of process **(doc. 8)**. While plaintiff would typically be required to serve defendants with the amended complaint within 10 days after it is filed, the circumstances in this case warrant an extended period for service. Accordingly, plaintiff is granted until **August 20, 2004**, to effectuate service of process on all defendants. On or before **August 27, 2004**, plaintiff shall file the proofs of service of his amended complaint.

Finally, plaintiff requests that the court order the U.S. Marshal to serve process on defendants. Fed. R. Civ. P. 4(c) provides that the court "may direct that the United States Marshal . . . serve process (emphasis added.)" The court finds that plaintiff has failed to establish that he is unable to serve process upon defendants, especially in light of the extended deadline. If plaintiff is unable to personally serve defendants, plaintiff may serve defendants by waiver in accordance with Fed. R. Civ. P. 4(d) or by utilizing a process server.

In consideration of the foregoing,

IT IS HEREBY ORDERED:

1. Plaintiff's motions (**docs. 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18**) for leave to amend are denied as moot.
2. Plaintiff's motion for additional time to serve process (**doc. 8**) is granted.
3. Plaintiff's motion for service (**doc. 10**) is denied.
4. Copies of this order shall be served on *pro se* plaintiff by regular and certified mail.

Dated this 14th day of June, 2004, at Kansas City, Kansas.

s/ James P. O'Hara
James P. O'Hara
U.S. Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

JOHN S. MYZER,)
)
Plaintiff,)
)
v.) Case No. 03-2504-KHV
)
GEORGE BUSH, et al.,)
)
Defendants.)

ORDER

The court held a status conference in this matter on July 27, 2004, for the purpose of assessing the current posture of the case and determining how best to manage this case to ensure an efficient disposition. Plaintiff, who is proceeding pro se, appeared at the conference. To date, plaintiff has not requested summonses or served process on any of the defendants to this action. Therefore, no other party appeared at the status conference. During the conference, the undersigned magistrate judge explained to plaintiff some of the concerns he had about this matter.

Plaintiff stated at the conference that this matter is essentially about an estate. Plaintiff claims that various conspirators, potentially numbering in the hundreds of thousands, have engaged in an elaborate scheme to conceal plaintiff's true identity from him in order to deprive plaintiff of his inheritance. Plaintiff asserts that his biological parents were killed by "adventurers" and that he was raised by several different people who alternately assumed the names Marguerite and Sherman Myzer; he also claims that Mr. and Mrs. Myzer were not

actually married, but that they maintained this facade for the sole purpose of perpetrating a fraud on plaintiff.

Plaintiff claims that, although all public records indicate he was born in 1966 under the name John Sanford Myzer, he was actually born in 1963 to parents who, at various times, used the names George W. Bush and Patricia Hearst. Plaintiff has named Mr. Bush and Ms. Hearst as defendants in this action. Plaintiff has also named 62 people who he claims posed as relatives (aunts, uncles, cousins, and siblings).[1] Plaintiff also brings his claims against his four unnamed biological grandparents, who he alleges are deceased, as well as any of their heirs. Finally, plaintiff claims that various people have assumed his identity for the purpose of carrying out this fraud, and he wishes to name these people as well, but has not included their names because they are unknown to him.

Plaintiff has also filed 29 motions to amend his complaint to join additional defendants.[2] These defendants include, but are not limited to, the United States government, each of the fifty states of the union, the government of the United Kingdom, every school plaintiff ever attended, every health and/or medical provider who has ever treated plaintiff, and

---

[1] Plaintiff claims that he does not know whether George W. Bush was the name with which his father was born. Nevertheless, plaintiff has included among the 62 "fictitious" relatives George H. W. Bush, Barbara Bush, Laura Bush, and Jeb Bush.

[2] This issue was discussed at length during the status conference. Plaintiff argues that a motion to join additional parties is not a motion to amend, and he refuses to "amend" his complaint. As the undersigned attempted to explain to plaintiff, any alteration to either the claims or the parties to an action is an amendment of the original complaint. Plaintiff may disagree with this statement, but it is a statement of fact, not merely of this court's opinion, and it is not open to interpretation. If plaintiff wishes to add additional parties and/or claims to his case, he must file an amended complaint. *See, e.g., MomsWIN, LLC v. Lutes*, 211 F.R.D. 650 (D. Kan. 2002).

the entire food and beverage industry. Because no defendant has been served, Fed. R. Civ. P. 15(a) provides that plaintiff "may amend [his] pleading once as a matter of course at any time before a responsive pleading is served." That is, because no defendant has filed an answer, plaintiff is allowed to amend his complaint once without leave of court. For that reason, the court has denied each of plaintiff's motions to amend as moot, and has instructed plaintiff to compile all of the proposed defendants and claims into one amended complaint, and to file that complaint with the court. Plaintiff has refused to do so.[3]

As the undersigned explained at the status conference, most of plaintiff's claims make little sense to the court. In addition to the various fraud claims plaintiff has made, plaintiff claims that he was kidnaped, and that the estate of his unknown parents has been divided between the conspirators through some unknown litigation in an undisclosed jurisdiction. Also, plaintiff claims that the defendants (he does not specify which defendants) fed him foods laced with toxic chemicals and mind-altering substances in an effort to kill plaintiff. Plaintiff claims that, because he was actually born in 1963, he was eight years old when he began kindergarten; he claims that he was deprived of an educational opportunity by being delayed in

---

[3] Plaintiff has explained that he believes amending a complaint is a serious action, and that he believes the current complaint is sufficient to set forth his claims. Plaintiff also claims that he does not want to run into any statute of limitations problems that an amendment might raise. The court directs plaintiff to review Fed. R. Civ. P. 15(c), which sets forth the guidelines for relation back of amendments to the date of the original pleading. The court understands that plaintiff believes he does not have access to a law library (he alleges that all of the materials in the University of Missouri at Kansas City library have been altered as a part of the scheme to prevent him from bringing this suit). Plaintiff is advised that various free information sites on the Internet, including www.findlaw.com, have searchable databases and online access to the Federal Rules of Civil Procedure.

beginning his education. Plaintiff also claims that, at some point prior to 1968, when plaintiff was no more than five years old, plaintiff was "forced to undergo a vasectomy operation as the Sentence for a crime that he believes he did not commit."[4] Plaintiff claims that defendants knew of this operation, but failed to disclose it to plaintiff. Plaintiff's final, and most bizarre, claim alleges that the defendants

> repeatedly, intentionally, and knowingly fed the dead corpses of his children to him, and, in doing so, they treated both the Plaintiff and the corpses with indignity, indecency, and in an extremely outrageous manner.[5]

Plaintiff proceeds *pro se* in this case, but he does not *proceed in forma pauperis*. That is, plaintiff paid the $150.00 filing fee when he filed his complaint. If plaintiff were proceeding *in forma pauperis*, then 28 U.S.C. § 1915(d) would allow the court to dismiss this case, *sua sponte* and without affording plaintiff an opportunity to correct any deficiencies, i.e., section 1915(d) allows courts to dismiss "claims describing fantastic or delusional scenarios,"[6] and the undersigned believes plaintiff's claims clearly fall into this category. However, because plaintiff paid the filing fee in this case, a *sua sponte* dismissal must be based on Fed. R. Civ. P. 12(b).[7] As it currently stands, plaintiff's complaint contains deficiencies that might subject it to dismissal under Rule 12(b)(1) for lack of subject matter

---

[4] Doc. 1, at 8.

[5] Doc. 1, at 6-7.

[6] *Neitzke, et al., v. Williams*, 490 U.S. 319, 328 (1989).

[7] *See Walton v. Shanelec*, 19 F. Supp. 2d 1209, 1211 (D. Kan. 1998) ("district court may dismiss *sua sponte* a *pro se* complaint for failure to state a claim").

jurisdiction, and/or under Rule 12(b)(6) for failure to state a claim upon which relief may be granted.

Failure to State a Claim

"The court will dismiss a cause of action for failure to state a claim only when it appears beyond a doubt that the plaintiff can prove no set of facts in support of the theory of recovery that would entitle him or her to relief, or when an issue of law is dispositive."[8] For purposes of considering the motion to dismiss, "the court accepts as true all well-pleaded facts, as distinguished from conclusory allegations, and all reasonable inferences from those facts are viewed in favor of the plaintiff."[9]

In order to state a claim, the complaint must set forth facts in a manner that satisfies the minimal requirements of notice pleading. Fed.R.Civ.P. 8(a)(2) requires that a complaint contain "a short and plain statement of the claim[s] showing that the pleader is entitled to relief." The court must liberally construe the pleadings of a *pro se* litigant.[10] However, "pro se litigants must comply with the minimal standards of notice pleading required in Rule 8(a)."[11] "A complaint that is nothing more than an ambiguous, rambling narrative of charges and conclusions against numerous persons, organizations and agencies, which fails to plainly and

---

[8] *Safetech Int'l., Inc. v. Air Products and Controls, Inc.*, No. 02-2216, 2004 WL 306693, at *2 (D. Kan. Jan. 26, 2004).

[9] *Id.*

[10] *Whitney v. State of New Mexico*, 113 F.3d 1170, 1173 (10th Cir.1997).

[11] *Betts v. Allied Cementing Co., Inc.*, 1989 WL 118509 (D. Kan. 1989) (citing *Holsey v. Collins*, 90 F.R.D. 122, 128 (D. Md. 1981)).

concisely state the claims asserted, and fails to give the dates and places of the alleged events of which plaintiff complains, falls short of the liberal and minimal standards set out in Rule 8(a)."[12]

After reviewing plaintiff's complaint, the court concludes that plaintiff has not satisfied the requirements of Rule 8(a). Plaintiff's complaint sets forth virtually no dates or locations and fails to set forth certain facts which are material to his claims. For example, plaintiff seeks to set aside judgments entered regarding his inheritance. However, plaintiff does not set forth the dates when those judgments were entered, the identities of the parties to those actions, or the jurisdiction of the court(s) entering the judgments. Without these basic facts, no defendant would have proper notice of the claims plaintiff alleges or the relief he seeks.

Further, plaintiff's complaint does not specify which defendants are alleged to have engaged in which acts. Instead, plaintiff merely alleges that the defendants, as a group, engaged in activities which form the basis of his claims.[13] In fact, only Mr. Bush is named as a defendant in the caption of the case; under Fed. R. Civ. P. 10(a), the names of all parties must appear in the caption. Persons and entities not listed in the caption of the complaint are not parties to the lawsuit.[14] By failing to name each of the defendants in the caption, and by failing

---

[12] *Id.*

[13] *See* Fed. R. Civ. P. 10(b) and *Veltmann v. Walpole Pharmacy, Inc.*, 928 F. Supp. 1161, 1164 (M.D. Fla. 1996) (dismissal appropriate where the complaint fails to separate each alleged act by each defendant).

[14] *See W.N.J. v. Yocom*, 257 F.3d 1171, 1172 (10th Cir. 2001) (federal courts lack jurisdiction over unnamed parties since a case has not been commenced with respect to them). In all other pleadings filed after the complaint, "it is sufficient to state the name of the first party on each side with an appropriate

to specify which claims involve which defendants, plaintiff has not pleaded his claims with sufficient detail to put any of the defendants on notice as to the claims against them.

Finally, plaintiff does not set forth the legal basis for the majority of his claims. While several of plaintiff's allegations might support various criminal charges, the court is unaware of civil statutes or common law theories under which plaintiff might be able to state a claim. Additionally, as to plaintiff's request to set aside judgments, plaintiff does not allege that any of the judgments at issue were entered by this court; as this court would not have jurisdiction to vacate the judgment of another court, plaintiff has not pleaded the legal basis for his claim.

Lack of Subject Matter Jurisdiction

Plaintiff claims that subject matter jurisdiction in this case is proper under 28 U.S.C. § 1332, which confers jurisdiction upon a federal court if the plaintiff is not a resident of the same state as any of the defendants.[15] "As a general rule, a plaintiff invoking diversity of citizenship jurisdiction pursuant to 28 U.S.C. § 1332 must specifically allege the citizenship of each defendant."[16] In plaintiff's complaint, he states that he is a resident of Missouri and that defendant Marguerite Myzer is a resident of Kansas. Plaintiff does not indicate the states of residence of the other defendants. Therefore, it is impossible for the court to determine if complete diversity exists and, as a corollary, whether this court has subject matter jurisdiction.

---

indication of other parties" (e.g., "et al."). Fed. R. Civ. P. 10(a).

[15] Plaintiff also alleges that a number of his claims arise under the U.S. Constitution. (Doc. 1, at 1) Again, however, plaintiff does not detail which of his claims implicate constitutional issues.

[16] *Thurston v. Page,* 920 F. Supp. 152, 154 (D. Kan. 1996).

Order

It is the opinion of the undersigned magistrate judge that, if plaintiff does not cure the numerous defects listed above and the ultimate insufficiency of his complaint, this case should be dismissed by the Hon. Kathryn H. Vratil under Fed. R. Civ. P. 12.

IT IS THEREFORE ORDERED THAT, BY AUGUST 17, 2004, PLAINTIFF SHALL FILE AN AMENDED COMPLAINT THAT CURES EACH OF THE DEFICIENCIES SET FORTH ABOVE. IF PLAINTIFF FAILS TO DO SO, THEN THE UNDERSIGNED MAGISTRATE JUDGE WILL RECOMMEND THAT THE ASSIGNED DISTRICT JUDGE DISMISS THIS CASE, WITH PREJUDICE.

The clerk shall serve copies of this order on *pro se* plaintiff.

Dated this 3rd day of August, 2004, at Kansas City, Kansas.

s/ James P. O'Hara
James P. O'Hara
U.S. Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

JOHN S. MYZER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 03-2504-KHV
	)	
GEORGE BUSH, et al.,	)	
	)	
Defendants.	)	

REPORT AND RECOMMENDATION

On August 3, 2004, the undersigned magistrate judge issued an order which required John S. Myzer, the pro se plaintiff in this case, to file an amended complaint by August 17, 2004, to cure various pleading deficiencies (doc. 57). On August 13, 2004, plaintiff filed his response to the court's August 3, 2004 order (doc. 59). Having reviewed plaintiff's response, the undersigned respectfully recommends that the Hon. Kathryn H. Vratil, U.S. District Judge, dismiss this case with prejudice.

Background

The court held a status conference in this matter on July 27, 2004, for the purpose of assessing the current posture of the case and determining how best to manage this case to ensure an efficient disposition. Plaintiff appeared at the conference. No other party appeared because to date plaintiff has not requested summonses or served process on any of the defendants to this action. The court previously had granted plaintiff an extension to August 20, 2004 to effectuate service on all defendants, and further ordered that plaintiff file proof of

service by August 27, 2004 (*see* doc. 20).

In response to questions posed by the undersigned during the July 27, 2004 status conference, plaintiff stated that this matter is essentially about an estate. Plaintiff claims that various conspirators, potentially numbering (he says) literally in the hundreds of thousands, have engaged in an elaborate scheme to conceal plaintiff's true identity from him in order to deprive plaintiff of his inheritance. Plaintiff asserts that his biological parents were killed by "adventurers" and that he was raised by several different people who alternately assumed the names Marguerite and Sherman Myzer; he also claims that Mr. and Mrs. Myzer were not actually married, but that they maintained this facade for the sole purpose of perpetrating a fraud on plaintiff.

Plaintiff names sixty-four separate defendants in his complaint and makes several claims against some or all of the defendants. The undersigned will not set forth all of plaintiff's claims, as they are set out in some detail in the August 3, 2004 order (doc. 57). The facts relevant to this report and recommendation, however, are as follows. Plaintiff has filed approximately thirty-one motions to amend his complaint to join additional defendants. These defendants include, but are not limited to, the United States government, each of the fifty states of the union, the government of the United Kingdom, every school plaintiff ever attended, every health and/or medical provider who has ever treated plaintiff, and the entire food and beverage industry. In most cases, specific parties are not named, and in all cases, no basis for jurisdiction or even the residence of the proposed defendant is alleged.

Because no defendant has been served yet, Fed. R. Civ. P. 15(a) provides that plaintiff

"may amend [his] pleading once as a matter of course at any time before a responsive pleading is served." That is, because no defendant has filed an answer, plaintiff is allowed to amend his complaint once without leave of court. For that reason, the court has denied each of plaintiff's motions to amend as moot, and has instructed plaintiff to compile all of the proposed defendants and claims into one amended complaint, and to file that complaint with the court. To date, plaintiff has failed to do so.

Plaintiff only has attempted to serve[1] the complaint on the United States of America, which is not yet a defendant to this action, as plaintiff has yet to file an amended complaint naming the United States. Plaintiff claims that the United States is the only potential defendant he has the ability to serve, as all other defendants' addresses are unknown to him. The undersigned attempted to explain to plaintiff that this case cannot move forward until at least one defendant is served which, according to plaintiff, may only happen once the United States is joined as a defendant. Therefore, plaintiff's continued failure to file an amended complaint is working to stall this case indefinitely.

In addition to plaintiff's desire to add parties, the court has outlined numerous deficiencies that must be cured by way of an amended complaint. As set forth in the undersigned's August 3, 2004 order, plaintiff's complaint does not satisfy the minimal notice pleading standards of Fed. R. Civ. P. 8(a), nor does it set forth a basis for asserting diversity

[1] That is to say, plaintiff states he has mailed a copy of the complaint to the government address available to him. Plaintiff has not requested a summons, so this service is not valid under Fed. R. Civ. P. 4.

subject matter jurisdiction. For these reasons, the undersigned directed plaintiff to file his amended complaint by August 17, 2004.

As earlier indicated, on August 13, 2004, plaintiff filed a response to the court's August 3, 2004 order, which he styled "Reservation of Jurisdiction" (doc. 59). By way of that response, plaintiff has stated that he "refuses to amend his Complaint, maintains that his action has been filed in the only forum accessible to him, and that the Complaint and other pleadings state his grievances with sufficient clarity. Further . . . the Plaintiff reserves jurisdictional issues for a later proceeding in another tribunal."[2] Plaintiff also asks the court to declare invalid the United States Constitution, "all purported laws or legal documents that furnished a basis for it," and "all statutes, precedents, legal decisions, and legal documents adopted pursuant to the Constitution."[3]

Regarding the court's observation that only defendant George W. Bush is listed in the caption, plaintiff states that he has not listed other defendants because he does not know their identities. This does not explain his failure to include the additional sixty-three defendants whom plaintiff specifically lists within the text of his complaint. Plaintiff does not respond to the court's order that he allege the citizenship of each of the defendants in order to set forth a basis for jurisdiction, except to say that jurisdictional issues should be decided in a later proceeding by another tribunal.

Sua Sponte Dismissal

---

[2] Doc. 59 at 1.

[3] *Id.* at 3.

As stated in the August 3, 2004 order, plaintiff proceeds *pro se* in this case, but he does not *proceed in forma pauperis*. That is, plaintiff paid the $150.00 filing fee when he filed his complaint. If plaintiff were proceeding *in forma pauperis*, then 28 U.S.C. § 1915(d) would allow the court to dismiss this case, *sua sponte* and without affording plaintiff an opportunity to correct any deficiencies, i.e., section 1915(d) allows courts to dismiss "claims describing fantastic or delusional scenarios,"[4] and the undersigned believes plaintiff's claims clearly fall into this category. However, because plaintiff paid the filing fee in this case, a *sua sponte* dismissal must be based on Fed. R. Civ. P. 12(b).[5]

As detailed in the undersigned's August 3, 2004 order, plaintiff's original complaint fails to adequately set forth a basis for subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1). Because plaintiff's complaint also fails to meet the minimal notice pleading standards of Fed. R. Civ. P. 8(a), it likewise fails to state a claim upon which relief can be granted under Fed. R. Civ. P. 12(b)(6).

"The court will dismiss a cause of action for failure to state a claim only when it appears beyond a doubt that the plaintiff can prove no set of facts in support of the theory of recovery that would entitle him or her to relief, or when an issue of law is dispositive."[6] For purposes of considering the motion to dismiss, "the court accepts as true all well-pleaded facts, as

---

[4] *Neitzke, et al., v. Williams*, 490 U.S. 319, 328 (1989).

[5] *See Walton v. Shanelec*, 19 F. Supp. 2d 1209, 1211 (D. Kan. 1998) ("district court may dismiss *sua sponte* a *pro se* complaint for failure to state a claim").

[6] *Safetech Int'l., Inc. v. Air Products and Controls, Inc.*, No. 02-2216, 2004 WL 306693, at *2 (D. Kan. Jan. 26, 2004).

distinguished from conclusory allegations, and all reasonable inferences from those facts are viewed in favor of the plaintiff."[7]

In order to state a claim, the complaint must set forth facts in a manner that satisfies the minimal requirements of notice pleading. Fed.R.Civ.P. 8(a)(2) requires that a complaint contain "a short and plain statement of the claim[s] showing that the pleader is entitled to relief." The court must liberally construe the pleadings of a *pro se* litigant.[8] However, "pro se litigants must comply with the minimal standards of notice pleading required in Rule 8(a)."[9] "A complaint that is nothing more than an ambiguous, rambling narrative of charges and conclusions against numerous persons, organizations and agencies, which fails to plainly and concisely state the claims asserted, and fails to give the dates and places of the alleged events of which plaintiff complains, falls short of the liberal and minimal standards set out in Rule 8(a)."[10] For the reasons set forth in the undersigned's order of August 3, 2004 (doc. 57), the undersigned concludes that plaintiff has not satisfied the requirements of Rule 8(a).

Plaintiff claims that subject matter jurisdiction in this case is proper under 28 U.S.C. § 1332, which confers jurisdiction upon a federal court if the plaintiff is not a resident of the

---

[7] *Id.*

[8] *Whitney v. State of New Mexico*, 113 F.3d 1170, 1173 (10th Cir.1997).

[9] *Betts v. Allied Cementing Co., Inc.*, 1989 WL 118509, at *1 (D. Kan. 1989) (citing *Holsey v. Collins*, 90 F.R.D. 122, 128 (D. Md. 1981)).

[10] *Id.*

same state as any of the defendants.[11] "As a general rule, a plaintiff invoking diversity of citizenship jurisdiction pursuant to 28 U.S.C. § 1332 must specifically allege the citizenship of each defendant."[12] In plaintiff's complaint, he states that he is a resident of Missouri and that defendant Marguerite Myzer is a resident of Kansas. Plaintiff, however, does not indicate the states of citizenship of any of the other defendants. Therefore, because plaintiff has refused to amend his complaint to include this information, it is impossible for the court to determine if complete diversity exists and, as a corollary, whether this court has subject matter jurisdiction.

Recommendation

It is the opinion of the undersigned that, because plaintiff has not cured the numerous defects listed above and set forth in the order of August 3, 2004, this case should be dismissed by Judge Vratil under Fed. R. Civ. P. 12. Further, because this court already has afforded plaintiff ample opportunities to remedy the pleading and jurisdictional defects in plaintiff's complaint, the undersigned recommends that the dismissal be with prejudice.

Notice

Plaintiff is hereby notified that, within ten days after he is served with a copy of this report and recommendation, he may, pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72, file written objections to the report and recommendation. Plaintiff must file any objections

---

[11] Plaintiff also alleges that a number of his claims arise under the U.S. Constitution (Doc. 1, at 1). Again, however, plaintiff does not detail which of his claims implicate constitutional issues.

[12] *Thurston v. Page,* 920 F. Supp. 152, 154 (D. Kan. 1996).

within this ten-day period if he wants to have appellate review of the proposed findings of fact, conclusions of law, or the recommended disposition. If no objections are timely filed, no appellate review will be allowed by any court.

The clerk shall serve copies of this order on pro se plaintiff.

Dated this 17th day of August, 2004, at Kansas City, Kansas.

s/ James P. O'Hara
James P. O'Hara
U.S. Magistrate Judge