

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 02-14049-CIV-MOORE/O'SULLIVAN

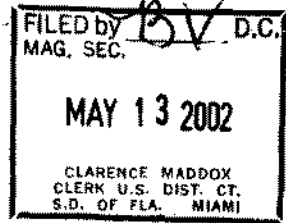
MARCELLUS M. MASON, JR.

Plaintiff,

v.

HIGHLANDS COUNTY BOARD
OF COUNTY COMMISSIONERS,
HONORABLE DONALD L. GRAHAM,
HONORABLE FRANK LYNCH JR.,
BRIAN KOJI and MARIA SOROLIS,

Defendants.



REPORT AND RECOMMENDATION

This matter is before the Court on Defendants Graham and Lynch's Motion to Dismiss and to Enjoin Plaintiff From Filing Similar Lawsuits (DE # 40, 4/12/02) and Defendants Brian Koji and Maria Sorolis' Motion to Dismiss Amended Complaint (DE #3, 2/15/02). These motions were referred to the undersigned by the Honorable K. Michael Moore pursuant to 28 U.S.C. § 636(b)(1)(A). Upon a review of the motions and the responses thereto, the court file, applicable law and the litigation history of this plaintiff, the undersigned respectfully recommends that said motions be **GRANTED**.

STANDARD OF REVIEW

In determining whether an action should be dismissed for failure to state a claim, the court must accept the material facts alleged in the complaint as true, and not dismiss unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Bradberry v. Pinellas County, 789 F.2d 1513, 1515 (11th Cir. 1986), Hishon v. King & Spalding, 467 U.S. 69, 73 (1984),

A large, stylized handwritten signature in black ink, appearing to be 'S2' with a flourish at the end.

Quinones v. Durkis, 638 F. Supp. 856 (S.D. Fla. 1986). Moreover, all reasonable inferences must be drawn and viewed in a light most favorable to the plaintiff, and the court should consider only those facts alleged in the complaint. However, while a Rule 12(b)(6) dismissal may not be based on a "judge's disbelief of a complaint's factual allegations," conclusions of law and "unwarranted deductions of fact" pleaded in the complaint need not be accepted as true.¹ Although *pro se* complaints are held "to less stringent standards than formal pleadings drafted by lawyers," that does not mean they are held to no standard at all. Haines v. Kerner, 404 U.S. 519, 520 (1972) (*per curiam*), Edison v. Arenas, 155 F.R.D. 215, 219 (M.D. Fla. 1994).

DISCUSSION

Plaintiff Marcellus Mason has filed more than one dozen cases and/or counterclaims in this District, all against either the Highlands County Board of Commissioners, the Highland County Library Cooperative and/or various board members or employees of the County and the library.² Each of these cases relate to his prior employment by Highlands County and their treatment of him after his termination.

Mason's Second Amended Complaint in the instant case is premised on actions taken by the District Court in Case No. 99-14027-CIV-GRAHAM/LYNCH. That case, which sought injunctive and monetary relief under Title VII of the Civil Rights Act of

¹First Nationwide Bank v. Gelt Funding Corp., 27 F.3d 763, 771 (2d Cir. 1994) (quoting 2A James Wm. Moore et. al, Moore's Federal Practice § 12.08, at 2266-69 (2d ed. 1984).

²See DE #40, fn2.

1964, was ultimately dismissed by the Court on June 20, 2001 (99-CIV-14027, DE #246). The Eleventh Circuit Court of Appeals denied an appeal of this case on December 18, 2001 (*Id.* at DE #887).

On September 20, 2001, in response to Mason's repeated attempts to directly communicate with the defendants rather than their attorneys, his filing of multiple frivolous pleadings and deliberately and needlessly protracting the litigation in order to harass the parties, the Court *sua sponte* made a formal written finding of "bad faith" by Mason and enjoined him from filing any additional pleadings in that or any other case which relates in anyway to Mason's former employment. The Court outlined a specific set of instructions to be followed and conditions under which any additional pleadings could be filed by Mason (*Id.* at DE #878 at 5, 8-10).

In that Omnibus Order, however, Mason was not enjoined from filing any additional pleadings in Case No. 01-14224-CV-Middlebrooks, an action identical to the instant case, which had been previously filed against Judges Graham and Lynch and the lawyers involved in that underlying case (Case No. 99-14027, DE # 878 at 4, fn1). Judge Middlebrooks ultimately dismissed that case (Case No. 01-14224, DE #5).

The prohibitions commanded in the Omnibus Order apparently had little impact, if any, on the plaintiff. In a second order, styled Omnibus Order Notifying Plaintiff of Contempt Procedure, dated February 4, 2002, the District Court outlined a pattern of conduct that indicates that Mason clearly violated the court's original Omnibus Order (Case No. 99-14027, DE # 895). As a result, Mason is now facing a criminal contempt proceeding. On April 8, 2002, the Federal Public Defender's Office was appointed to represent the plaintiff in connection with his possible violation of outstanding court

1964, was ultimately dismissed by the Court on June 20, 2001 (99-CIV-14027, DE #246). The Eleventh Circuit Court of Appeals denied an appeal of this case on December 18, 2001 (id. at DE #887).

On September 20, 2001, in response to Mason's repeated attempts to directly communicate with the defendants rather than their attorneys, his filing of multiple frivolous pleadings and deliberately and needlessly protracting the litigation in order to harass the parties, the Court *sua sponte* made a formal written finding of "bad faith" by Mason and enjoined him from filing any additional pleadings in that or any other case which relates in anyway to Mason's former employment. The Court outlined a specific set of instructions to be followed and conditions under which any additional pleadings could be filed by Mason (id. at DE #878 at 5, 8-10).

In that Omnibus Order, however, Mason was not enjoined from filing any additional pleadings in Case No. 01-14224-CV-Middlebrooks, an action identical to the instant case, which had been previously filed against Judges Graham and Lynch and the lawyers involved in that underlying case (Case No. 99-14027, DE # 878 at 4, fn1). Judge Middlebrooks ultimately dismissed that case (Case No. 01-14224, DE #5).

The prohibitions commanded in the Omnibus Order apparently had little impact, if any, on the plaintiff. In a second order, styled Omnibus Order Notifying Plaintiff of Contempt Procedure, dated February 4, 2002, the District Court outlined a pattern of conduct that indicates that Mason clearly violated the court's original Omnibus Order (Case No. 99-14027, DE # 895). As a result, Mason is now facing a criminal contempt proceeding. On April 8, 2002, the Federal Public Defender's Office was appointed to represent the plaintiff in connection with his possible violation of outstanding court

orders (see id. at DE #905).

Apparently unperturbed by the veritable injunction in this Court against his cause in this matter, plaintiff continued his vexatious quest in state court. Then, based on removal by the federal judge defendants, plaintiff's complaint is once again before this Court. Plaintiff's 170-paragraph Second Amended Complaint alleges that the defendants wilfully violated his First Amendment protections as well as his civil rights under 42 U.S.C. §§1983, 1985 and 1986 (DE #31 at ¶3). This action is predicated on orders "rendered by the Lynch/Graham duo" in Case No. 99-14027-CV-GRAHM (DE #31 at ¶4). The plaintiff characterizes those orders, dated June 19, 2000 and July 25, 2000, which ultimately resulted in the dismissal of the underlying complaint, as "patently illegal" and "blatantly violates this Plaintiff's First Amendment rights." Id.

Paragraphs 1-109 of the Second Amended Complaint re-alleges plaintiff's claims of employment discrimination under state and federal law as a result of his being denied employment by Highlands County. With respect to defendants Graham and Lynch, plaintiff alleges that the order issued by Magistrate Judge Lynch on June 19, 2000, was illegal because he failed to cite legal authority for the order (DE #31 at ¶¶120-123, 138-142); that neither of the defendants had "legal authority to discipline or otherwise control" the plaintiff (DE #31 at ¶129); and that the defendants' actions were "willful, illegal, petulant, childish, irresponsible, and vindictive, and moronic." (DE #31 at ¶149) The complaint also alleges that the defendants are "a discredit to the federal judiciary," "are not [the plaintiff's] daddy" and "are out of control and need to be reined in" (DE #31 at ¶¶156, 164, 165).

Defendants bring the present motions to dismiss arguing, among other claims, that the claim is barred by the *res judicata* effect of prior adverse judgments, that the complaint fails to state a cause of action, that the complaint violates express orders of this Court, that subject matter jurisdiction is lacking, that Section 1983 claims may not be brought against non-governmental individuals, and for Judges Graham and Lynch, absolute judicial immunity. Many of these arguments support the undersigned's conclusion that plaintiff's complaint should be dismissed as frivolous for failure to state a claim upon which relief can be granted.³

Although there appears to be several good reasons for dismissing the instant complaint, the undersigned finds the most comprehensive reason to be because it is utterly devoid of any arguable basis in fact or legal theory upon which to base a cause of action and should be dismissed as frivolous for failure to state a claim upon which relief can be granted.

The United States Supreme Court noted in Neitzke v. Williams, 490 U.S. 319, 326-28 (1989), that frivolous actions are subject to dismissal for failure to state a claim. Frivolous actions which fail to state a claim lack any arguable basis in law or fact. With regard to claims for damages against immune parties, the Supreme Court has made clear that such claims lack an arguable basis in law and thus, may be dismissed as frivolous. Id. at 327 (giving "claims against which it is clear that the defendants are

³ Michael Zachary, Dismissal of Federal Actions and Appeals under 28 U.S.C. §§ 1915(e)(2) and 1915A(b), 42 U.S.C. § 1997e(c) and the Inherent Authority of the Federal Courts: (A) Procedures for Screening and Dismissing Cases; (B) Special Problems Posed by the "Delusional" or "Wholly Incredible" Complaint, 43 N.Y.L. Sch. L. Rev. 975 (1999-2000).

immune from suit" as example of claims which may be dismissed as "based on an indisputably meritless legal theory.") See *also*, Mireless v. Waco, 502 U.S. 9 (1991) (per curiam); Mitchell v. Forsyth, 472 U.S. 511 (1985); Stump v. Sparkman, 435 U.S. 349 (1978); Henzel v. Gerstein, 608 F.2d 654 (5th Cir. 1979); Elder v. Athens-Clarke County, GA, 54 F.3d 694 (11th Cir. 1995).

Even in light of Mason's *pro se* status, his complaint fails to meet the relatively liberal rules of pleading under Rule of Civil Procedure 8. The complaint is frivolous because it lacks an arguable basis either in law or in fact.⁴ It contains conclusory, unsupported allegations which are not even remotely substantiated by any factual basis. By filing this vexatious lawsuit, plaintiff has once again unabashedly violated the spirit, if not the letter, of this Court's September 20, 2001 Order. It offends the interests of justice to require the judiciary to expend resources on frivolous law suits and defendants should not be required to bear the expense and onerous burden of responding to Mason's incessant, frivolous and harassing complaints.

CONCLUSION


The interests of justice require the Court to stop this pattern of abusive and wasteful litigation. This will be addressed, no doubt, at Mason's contempt hearing. In the meantime, it is the recommendation of the undersigned that Defendants Graham and Lynch's Motion to Dismiss and to Enjoin Plaintiff From Filing Similar Lawsuits (DE # 40, 4/12/02) and Defendants Brian Koji and Maria Sorolis' Motion to Dismiss Amended Complaint (DE #3, 2/15/02) be **GRANTED** and this case be **DISMISSED WITH**

⁴See, Neitzke v. Williams, 490 U.S. 319, 325 (1989)

PREJUDICE and that all other pending motions be denied as moot.

The parties may serve and file written objections to this Report and Recommendation with the Honorable Judge K. Michael Moore, United States District Judge, within ten (10) days of receipt. See 28 U.S.C. § 636(b)(1)(c); *United States v. Warren*, 687 F.2d 347, 348 (11th Cir. 1982). Failure to file timely objections shall bar the parties from attacking on appeal the factual findings contained herein. *LoConte v. Dugger*, 847 F.2d 745 (11th Cir. 1988), cert. denied, 488 U.S. 958 (1988); *RTC v. Hallmark Builders, Inc.*, 996 F.2d 1144, 1149 (11th Cir. 1993).

RESPECTFULLY SUBMITTED, this 13 day of May, 2002.



JOHN J. O'SULLIVAN
UNITED STATES MAGISTRATE JUDGE

Copies to:
United States District Court Judge Moore
All Counsel of Record
Marcellus M. Mason, Jr., *pro se*