

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

DONALD R. MAGEE, JR.

CIVIL ACTION

VERSUS

NO. 16-14697

LELA ALEXANDER, ET AL.

SECTION: "H"(1)

REPORT AND RECOMMENDATION

Plaintiff, Donald R. Magee, Jr., a state prisoner, filed this *pro se* complaint pursuant to 42 U.S.C. § 1983 against Lela Alexander and the Orleans Parish Civil District Court. This lawsuit stems from a dispute concerning that court's records.

I. Standards of Review

Federal law mandates that federal courts "review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity." 28 U.S.C. § 1915A(a). Regarding such lawsuits, federal law further requires:

On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint –

- (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or
- (2) seeks monetary relief from a defendant who is immune from such relief.

28 U.S.C. § 1915A(b).

Additionally, with respect to actions filed *in forma pauperis*, such as the instant lawsuit, federal law similarly provides:

Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that ... the action or appeal –

- (i) is frivolous or malicious;
- (ii) fails to state a claim on which relief may be granted; or
- (iii) seeks monetary damages against a defendant who is immune from such relief.

28 U.S.C. § 1915(e)(2)(B).

A complaint is frivolous “if it lacks an arguable basis in law or fact.” Reeves v. Collins, 27 F.3d 174, 176 (5th Cir. 1994). In making a determination as to whether a claim is frivolous, the Court has “not only the authority to dismiss a claim based on an indisputably meritless legal theory, but also the unusual power to pierce the veil of the complaint’s factual allegations and dismiss those claims whose factual contentions are clearly baseless.” Neitzke v. Williams, 490 U.S. 319, 327 (1989); Macias v. Raul A. (Unknown), Badge No. 153, 23 F.3d 94, 97 (5th Cir. 1994).

A complaint fails to state a claim on which relief may be granted when the plaintiff does not “plead enough facts to state a claim to relief that is plausible on its face. Factual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact).” In re Katrina Canal Breaches Litigation, 495 F.3d 191, 205 (5th Cir. 2007) (citation, footnote, and quotation marks omitted).

The United States Supreme Court has explained:

A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a “probability requirement,” but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are merely consistent with a defendant’s liability, it stops short of the line between possibility and plausibility of entitlement to relief.

Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citations and quotation marks omitted).

Although broadly construing plaintiff's complaint, the undersigned recommends that, for the following reasons, this matter be dismissed as frivolous and/or for failing to state a claim on which relief may be granted.

II. Plaintiff's Claim

In this lawsuit, plaintiff alleges that, on August 10, 2016, he paid \$35.00 to the Orleans Parish Civil District Court for copies of the records concerning a case he filed in that court in 2002. He disputes the accuracy of the records provided to him in response.

As noted, plaintiff brought this action pursuant to 42 U.S.C. § 1983. In pertinent part, that statute provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress

42 U.S.C. § 1983. Accordingly, as the United States Fifth Circuit Court of Appeals has explained:

There are two essential elements to any section 1983 action. First, the conduct complained of must have been committed by a person acting under color of state law; and second, this conduct must have deprived the plaintiff of rights, privileges, or immunities secured by the Constitution or laws of the United States.

Augustine v. Doe, 740 F.2d 322, 324-25 (5th Cir. 1984).

As to the first element, it must be noted that the Orleans Parish Civil District Court is an improper defendant in this action. It is clear that a state court simply is not a "person" or a juridical entity capable of being sued under § 1983. Moity v. Louisiana State Bar Association, 414 F. Supp.

180, 182 (E.D. La.) (“[S]tate courts are not considered ‘persons’ within the meaning of § 1983.”), aff’d, 537 F.2d 1141 (5th Cir. 1976); Thompson v. St. Bernard Parish Court, Civ. Action No. 09-4465, 2010 WL 110797, at *3 (E.D. La. Jan. 11, 2010); Stewart v. Criminal District Court of Louisiana, Civ. Action No. 08-3731, 2008 WL 4758610, at *2 (E.D. La. Oct. 30, 2008); Knight v. Guste, Civ. Action No. 07-1124, 2007 WL 1248039, at *3 (E.D. La. Apr. 27, 2007).

Moreover, in any event, the second element is also lacking here. Although plaintiff attempts to style his claim as one of constitutional magnitude, it is not. Rather, at its core, it concerns a dispute over Louisiana public records, and such disputes do not implicate federal constitutional or statutory rights cognizable under 42 U.S.C. § 1983. See Williams v. Kreider, Civil Action No. 91-4180, 1992 WL 245914 (E.D. La. Sept. 24, 1992), aff’d, 996 F.2d 306 (5th Cir. 1993); see also Lewis v. Jackson, Civ. Action No. 14-0468, 2016 WL 1103904, at *4 (M.D. La. Mar. 1, 2016), adopted, 2016 WL 1092648 (M.D. La. Mar. 21, 2016); Johnson v. Morrell, Civ. Action No. 09-3753, 2009 WL 2599286, at *2 (E.D. La. Aug. 17, 2009); Franklin v. Louisiana, Civ. Action No. 05-3713 (E.D. La. Nov. 9, 2005) (Knowles, M.J.) (adopted by Vance, J., on Feb. 9, 2006).

Lastly, to the extent that plaintiff is asking this Court to exercise supplemental jurisdiction to consider the merits of his state law claims, that invitation should be declined in light of the fact that he has no cognizable federal claim. See 28 U.S.C. § 1367(c)(3) (“The district courts may decline to exercise supplemental jurisdiction over a claim ... if ... the district court has dismissed all claims over which it has original jurisdiction”); see also Jackson v. Mizzel, 361 Fed. App’x 622, 627 (5th Cir. 2010) (“Because [the plaintiff] states not one valid federal claim, the district court properly declined jurisdiction over his Louisiana causes of action.”); Bass v. Parkwood

Hospital, 180 F.3d 234, 246 (5th Cir. 1999) (“When a court dismisses all federal claims before trial, the general rule is to dismiss any pendent claims.”). If plaintiff wishes to pursue claims under state law, he should do so in the state courts.

RECOMMENDATION

It is therefore **RECOMMENDED** that plaintiff’s federal civil rights claims be **DISMISSED WITH PREJUDICE** as frivolous and/or for failing to state a claim on which relief may be granted.

It is **FURTHER RECOMMENDED** that plaintiff’s state law claims be **DISMISSED WITHOUT PREJUDICE**.

A party’s failure to file written objections to the proposed findings, conclusions, and recommendation in a magistrate judge’s report and recommendation within fourteen (14) days after being served with a copy shall bar that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court, provided that the party has been served with notice that such consequences will result from a failure to object. 28 U.S.C. § 636(b)(1); Douglass v. United Services Auto. Ass’n, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc).

New Orleans, Louisiana, this fourth day of November, 2016.



JANIS VAN MEERVELD
UNITED STATES MAGISTRATE JUDGE