

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Collier v. Robertsons

Collier · No. 23-cv-368-GPC · Decided March 14, 2023

SUMMARY

The United States District Court for the Southern District of California granted Irina Collier’s motion to proceed in forma pauperis. The court sua sponte dismissed the complaint with prejudice and without leave to amend under 28 U.S.C. § 1915(e)(2)(B)(ii), finding that the allegations and legal theories were unclear, nonviable, and duplicative of prior litigation arising from a family-law matter. The court denied the motion to appoint counsel as moot.

CASE DETAILS

COURT	United States District Court for the Southern District of California
JURISDICTION	United States District Court for the Southern District of California
DECIDED	March 14, 2023
DOCKET	23-cv-368-GPC
DISPOSITION	dismissed
PROCEDURAL POSTURE	Plaintiff proceeding pro se filed a civil complaint, a motion to proceed in forma pauperis, and a motion to appoint counsel. The district court granted in forma pauperis status, sua sponte dismissed the complaint with prejudice and without leave to amend for failure to state a claim and frivolousness, and denied the motion to appoint counsel as moot.
STANDARD OF REVIEW	Under 28 U.S.C. § 1915(e)(2), an in forma pauperis complaint is subject to mandatory sua sponte screening and dismissal if it is frivolous, malicious, fails to state a claim, or seeks monetary relief from an immune defendant. The failure-to-state-a-claim inquiry is analogous to review under Federal Rule of Civil Procedure 12(b)(6), requiring compliance with Rule 8(a)(2) and plausibility under Twombly and Iqbal.
PRECEDENTIAL VALUE	Unpublished district court order; precedential status unknown.
PARTIES	Irina Collier v. Robertsons et al.

TOPICS

motions to dismiss

pleadings

civil procedure

family law

PRACTICE AREAS

civil procedure

in forma pauperis screening

pleading sufficiency

family law-related federal litigation

QUESTIONS PRESENTED

1. Whether Collier's motion to proceed in forma pauperis should be granted based on her financial affidavit.
2. Whether the complaint should be dismissed sua sponte under 28 U.S.C. § 1915(e)(2) for frivolousness and failure to state a claim.
3. Whether the complaint was duplicative of prior or pending litigation and therefore subject to dismissal as frivolous.
4. Whether appointment of counsel was appropriate after dismissal of the complaint.

HOLDINGS

1. A plaintiff may proceed in forma pauperis upon submitting an affidavit demonstrating inability to pay court costs while providing the necessities of life. Collier's affidavit established that she qualified.
2. The complaint was properly dismissed under 28 U.S.C. § 1915(e)(2)(B) because its factual allegations did not support a cause of action and its legal conclusions did not state a viable claim.
3. Duplicative or repetitious in forma pauperis litigation may be dismissed as frivolous, and Collier's complaint was duplicative of claims previously presented in other courts and actions.
4. Leave to amend was properly denied because the action was frivolous or malicious in character and therefore lacked merit warranting amendment.

KEY QUOTATIONS

“A complaint is frivolous where “it lacks an arguable basis either in law or in fact.”” (at 2)

“When a case may be classified as frivolous or malicious, there is, by definition, no merit to the underlying action and so no reason to grant leave to amend.” (at 5)

FACTUAL BACKGROUND

Collier alleged that the defendants conspired to cover up crimes and engage in internal terrorism, misused government sealing authority, violated various federal laws, and sought to harm or eliminate her family. The complaint and civil cover sheet referred to alleged conduct arising from a California family-law matter involving child custody, but the court could not discern the factual allegations or legal theories. Collier had brought substantially similar claims in other federal courts and in multiple actions in the Southern District of California.

PROCEDURAL HISTORY

On February 27, 2023, Irina Collier filed the complaint against defendants identified as “Robertsons et al.” in the Southern District of California. The court granted her motion to proceed in forma pauperis after finding that she could not pay court costs while meeting life's necessities. Upon mandatory screening under 28 U.S.C. § 1915(e) (2), the court found the complaint unintelligible, unsupported by viable factual or legal allegations, and duplicative of prior litigation, and dismissed it with prejudice without leave to amend.

DISPOSITION

dismissed

CASES CITED

- Andrews v. Cervantes, 493 F.3d 1047, 1051
- Rodriguez v. Cook, 169 F.3d 1176, 1177
- Soldani v. Commissioner of Social Security, 2019 WL 2160380, at *1 (E.D. Cal. Jan. 31, 2019)
- McKinley v. County of Fresno, 2021 WL 3007162, at *1 (E.D. Cal. July 15, 2021)
- Calhoun v. Stahl, 254 JF.3d 845, 845
- Lopez v. Smith, 203 F.3d 1122, 1126-27, 1127 n.8
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 545, 547
- Ashcroft v. Iqbal, 556 U.S. 662, 678
- Nietzsche v. Williams, 490 U.S. 319, 325
- Anderson Adams v. Hernandez, 1993 WL 548812, at *2 (N.D. Cal. Dec. 21, 1993)
- Collier v. Collier, 2023 WL 1767012, at *3 (S.D. Cal. Feb. 3, 2023)
- Cato v. United States, 70 F.3d 1103, 1105 n.2
- Adams v. California Department of Health Services, 487 F.3d 684, 689

OPINION

Collier v. Robertsons

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 11 IRINA COLLIER, Case No.: 23-cv-368-GPC 12 Plaintiff,

ORDER GRANTING PLAINTIFF’S

13 v. MOTION TO PROCEED IN FORMA

PAUPERIS; SUA SPONTE

14 ROBERTSONS et al.,

DISMISSING COMPLAINT; AND

15 Defendants. DENYING MOTION TO APPOINT

COUNSEL AS MOOT

16 17 [ECF Nos. 2, 3] 18 On February 27, 2023, Plaintiff Irina Collier (“Collier” or “Plaintiff”),
proceeding 19 pro se, filed a Complaint against Defendants “Robertsons et al” (“Defendants”).1
ECF 20 No. 1. Plaintiff concurrently filed a Motion to Proceed in forma pauperis (“IFP”) and a 21
22 23 24 1 The Court is unable to decipher exactly who Plaintiff filed suit against. The first page
of her Complaint identifies the Defendants as “Robertsons et al.” ECF No. 1 at 1. The Civil 25
Cover Sheet says “Robinsons et al,” which seems to include U.S. District Court Judge 26 Todd
Robinson; San Diego County Superior Court Judge Alana Robinson; and “Lawyer Chad White.”
ECF No. 1-1. 27 1 Motion to Appoint Counsel. ECF Nos. 2, 3. For the reasons below, the Court
GRANTS 2 Plaintiff’s Motion to Proceed IFP; sua sponte DISMISSES Plaintiff’s Complaint for 3
failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii); and DENIES Plaintiff’s 4 Motion
to Appoint Counsel as MOOT. 5 I. Motion to Proceed In Forma Pauperis 6 All parties instituting
any civil action, suit, or proceeding in a United States 7 District Court, except an application for
writ of habeas corpus, must pay a filing fee of 8 \$402. See 28 U.S.C. § 1914(a).2 An action may
proceed despite a plaintiff’s failure to 9 prepay the entire fee only if she is granted leave to
proceed IFP pursuant to § 1915(a). 10 See *Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir.
2007); *Rodriguez v. Cook*, 169 11 F.3d 1176, 1177 (9th Cir. 1999). The plaintiff must submit an
affidavit demonstrating her 12 inability to pay the filing fee, and the affidavit must include a
complete statement of the 13 plaintiff’s assets. 28 U.S.C. § 1915(a)(1). “To satisfy the
requirements of 28 U.S.C. § 14 1915, applicants must demonstrate that because of poverty, they
cannot meet court costs 15 and still provide themselves, and any dependents, with the necessities
of life.” *Soldani v. 16 Comm’r of Soc. Sec.*, 2019 WL 2160380, at *1 (E.D. Cal. Jan. 31, 2019).
Courts may 17 consider the federal poverty guidelines set by the United States Department of
Health and 18 Human Services as well as income in the context of overall expenses and other
factors, 19 including savings and debts, in ruling on IFP applications. *McKinley v. Cnty. of*
Fresno, 20 2021 WL 3007162, at *1 (E.D. Cal. July 15, 2021). 21 22 23 24 2 Effective December
1, 2020, civil litigants must pay an additional administrative fee of \$52, in addition to the \$350
filing fee set by statute. See 28 U.S.C. § 1914(a) (Judicial 25 Conference Schedule of Fees,
District Court Misc. Fee Schedule, § 14 (eff. Dec. 1, 26 2020)). The \$52 administrative fee does
not apply to persons granted leave to proceed IFP. *Id.* 27 1 Here, the Court finds IFP status is
appropriate. Plaintiff’s affidavit shows that she 2 receives \$6,640 in alimony each month. ECF No.
2 at 1. She states she has not been 3 employed in the past two years and has no money in a
checking account. *Id.* at 2. Plaintiff 4 also states she is “in debt every month” and that she does not
have enough money for 5 “food and transport and medical care.” *Id.* at 5. Thus, the Court finds
that Plaintiff has 6 proven she cannot meet court costs and still provide the “necessities of life” for
herself 7 and her dependent son. *Soldani*, 2019 WL 2160380, at *1. The Court GRANTS 8
Plaintiff’s Motion to Proceed IFP. 9 II. Sua Sponte Dismissal Pursuant to 28 U.S.C. § 1915(e)(2)
10 A complaint filed by any person proceeding IFP pursuant to 28 U.S.C. § 1915(a) is 11 subject
to mandatory sua sponte review and dismissal by the Court if it is “frivolous, or 12 malicious; fails

to state a claim upon which relief may be granted; or seeks monetary relief against a defendant immune from such relief.” 28 U.S.C. § 1915(e)(2)(B); Calhoun v. Stahl, 254 F.3d 845, 845 (9th Cir. 2001) (“[T]he provisions of 28 U.S.C. § 15 1915(e)(2)(B) are not limited to prisoners.”); Lopez v. Smith, 203 F.3d 1122, 1126-27 16 (9th Cir. 2000). 28 U.S.C. § 1915(e)(2) mandates that a court reviewing a complaint filed 17 pursuant to the IFP provisions of 28 U.S.C. § 1915 rule on its own motion to dismiss 18 before directing that the complaint be served by the U.S. Marshal pursuant to Federal 19 Rule of Civil Procedure 4(c)(2). Lopez, 203 F.3d at 1127. 20 The requirements under 28 U.S.C. § 1915(e)(2)(B)(ii) are analogous to those under 21 Federal Rule of Civil Procedure (“Rule”) 12(b)(6). Under Rule 8(a)(2), a pleading must 22 contain “a short and plain statement of the claim showing that the pleader is entitled to 23 relief.” Fed. R. Civ. P. 8(a)(2). While a plaintiff need not give “detailed factual 24 allegations,” a plaintiff must plead sufficient facts that, if true, raise a right to relief above 25 the speculative level.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 545 (2007). To state 26 a claim upon which relief may be granted “a complaint must contain sufficient factual 27 1 matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft 2 v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Twombly, 550 U.S. at 547). A claim is 3 facially plausible when the factual allegations permit “the court to draw the reasonable 4 inference that the defendant is liable for the misconduct alleged.” Id. 5 Plaintiff’s Complaint is difficult to understand. The Complaint caption states the 6 case is for “misuse of the Government privilege to seal to cover up crimes, 13th 7 violations, DVRO violations, [illegible].” ECF No. 1 at 1. She states that “[a]ll of the 8 Defendants in this and the related cases conspired in attempted elimination of the 9 Plaintiff’s family as part of the clandestine internal terror activity, theologically based.”

10 Id. at 2. She requests that the Court “apply ex parte law in DVRO violations,” “stop 11 Robinsons et al. from misusing VA military power to injure Plaintiff’s family with intent 12 to eliminate,” “investigate the misuse of government seal,” “subpoena internal 13 investigations in this and all prior enclosed cases,” “unmask undercover agents used by 14 the opposition to subvert state and US laws,” “stop pre-meditated deadly harms to the 15 Plaintiff’s family,” “stop online education scam,” “apply rules of law and rules of 16 evidence,” “vacate arrest of plaintiff, habeas corpus law was broken,”³ “unmask Chad 17 White as a lawyer for the opposition,” “restrain co-conspirators and their lawyers 18 engaged in breaking all laws in their [illegible] in order to harm Plaintiff’s family.” Id. at 19 3-4. 20 28 U.S.C. § 1915(e)(2)(B)(i) allows courts to dismiss a claim filed IFP if it is 21 frivolous. A complaint is frivolous where “it lacks an arguable basis either in law or in 22 fact.” Nietzke v. Williams, 490 U.S. 319, 325 (1989). In the most succinct form, 23 Plaintiff’s Complaint appears to allege that the Defendants “united to cover up crimes of 24 internal terrorism.” Id. at 1. The Civil Cover Sheet alleges violations of 10 U.S.C. § 920, 25 26 3 Plaintiff does not appear to be presently incarcerated. 27 1 18 U.S.C. § 1017, 18 U.S.C. § 77, VAWA Act. ECF No. 1-1. She states that the 2 government misused the “privilege seal to cover up rape.” Id. Because the Court 3 struggles to make sense of the factual allegations and legal theories

Plaintiff intends to 4 pursue, the Court finds her factual allegations do not support any cause of action and her 5 legal conclusions do not seem viable. 6 Further, IFP complaints that are “[d]uplicative or repetitious litigation of virtually 7 identical causes of action [are] subject to dismissal.” *Anderson Adams v. Hernandez*, 8 1993 WL 548812, at *2 (N.D. Cal. Dec. 21, 1993). “Where a plaintiff repeats pending or 9 previously litigated claims, it is proper to dismiss it as frivolous under 28 U.S.C. § 1915.” 10 *Collier v. Collier*, 2023 WL 1767012, at *3 (S.D. Cal. Feb. 3, 2023) (citing *Cato v. 11 United States*, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995)). “[I]n assessing whether the 12 second action is duplicative of the first, [courts] examine whether the causes of action 13 and relief sought, as well as the parties or privies to the action, are the same.” *Id.* 14 (quoting *Adams v. Cal. Dep’t of Health Servs.*, 487 F.3d 684, 689 (9th Cir. 2007)). 15 As stated by Judge Sabraw, Plaintiff Collier’s claims “are not new to the federal 16 courts.” *Collier*, 2023 WL 1767012, at *3. Plaintiff has brought “nearly identical claims 17 before the Northern District of California, the Ninth Circuit, the Federal Circuit, and the 18 United States Supreme Court.” *Id.* In addition, Plaintiff has brought multiple actions in 19 the Southern District of California. See e.g., *Collier v. White*, 23-cv-385 (S.D. Cal.); 20 *Collier v. Collier*, 23-cv-170 (S.D. Cal.). In this action, Plaintiff brings suit against Judge 21 Todd Robinson, Judge Alana Robinson, and Lawyer Charles White—Defendants Judge 22 Todd Robinson and Judge Alana Robinson have not been sued in this District; however, 23 Chad White has been sued by Plaintiff in this District. See *Collier v. White*, 23-cv-385 24 (S.D. Cal.). Although it is difficult to make out Plaintiff’s cause(s) of action, it appears 25 this action, like the others filed by Collier, “stem[s] from a California family law matter.” 26 *Collier*, 2023 WL 1767012, at *3. Plaintiff seems to allege various federal violations 27 1 || (e.g., 10 U.S.C. § 920; VAWA, (see ECF No. 1-1)), but “the underlying conduct stems 2 an alleged disagreement regarding child custody.” *Jd.* These claims have been 3 || presented in this District and others, and have repeatedly been dismissed as frivolous. 4 || Thus, the Court finds Plaintiff’s Complaint shall be DISMISSED WITH PREJUDICE 5 || and without leave to amend. See *Lopez v. Smith*, 203 F.3d 1122, 1127 n.8 (9th Cir. 2000) 6 || (“When a case may be classified as frivolous or malicious, there is, by definition, no 7 merit to the underlying action and so no reason to grant leave to amend.”).

8 CONCLUSION

9 For the reasons above, Plaintiff’s Motion to Proceed IFP is GRANTED, and the 10 Complaint is DISMISSED WITH PREJUDICE and without leave to amend. Plaintiffs 11 || Motion for Appointment of Counsel is hereby DENIED as MOOT. 12 IT IS SO ORDERED. 13 Dated: March 14, 2023 =< 15 United States District Judge 16 17 18 19 20 21 22 23 24 25 26 27 28 23-cv-368-GPC