

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA

Coleman v. Leavitt

Coleman · No. 2:25-cv-01997-RFB-MDC · Decided December 5, 2025

OPINION

Coleman

PER CURIAM.

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 Oronde Coleman, Case No.: 2:25-cv-01997-RFB-MDC 4 Plaintiff,

5 vs. ORDER GRANTING PLAINTIFF'S

APPLICATION TO PROCEED IN FORMA

6 Michelle Leavitt, Judge, PAUPERIS (ECF NO. 1) AND DISMISSING

PLAINTIFF'S COMPLAINT WITHOUT

7 Defendant.

PREJUDICE (ECF NO. 1-1)

8 9 Pending before the Court is pro se prisoner plaintiff Oronde Coleman's Application to Proceed

10 In Forma Pauperis ("IFP") (ECF No. 1). The Court GRANTS plaintiff's IFP application and
dismisses 11 plaintiff's Complaint (ECF No. 1-1) without prejudice for the reasons below.

12 DISCUSSION

13 I. WHETHER PLAINTIFF CAN PROCEED IFP

14 Under 28 U.S.C. § 1915(a)(1), a plaintiff may bring a civil action "without prepayment of fees
or

15 security thereof" if the plaintiff submits a financial affidavit that demonstrates the plaintiff "is
unable to 16 pay such fees or give security therefor." If the plaintiff is a "prisoner" as defined by
28 U.S.C. § 17 1915(h), as amended by the Prison Litigation Reform Act ("PLRA"), he remains
obligated to pay the 18 entire fee in installments, regardless of whether his action is ultimately
dismissed. See 28 U.S.C. § 19 1915(b)(1) & (2); Taylor v. Delatoore, 281 F.3d 844, 847 (9th Cir.
2002). 20 Under the PLRA, a prisoner seeking leave to proceed IFP must submit a "certified copy
of the 21 trust fund account statement (or institutional equivalent) for the prisoner for the six-
month period 22 immediately preceding the filing of the complaint." 28 U.S.C. § 1915(a)(2);
Andrews v. King, 398 F.3d 23 1113, 1119 (9th Cir. 2005). From the certified trust account
statement, the Court must assess an initial 24 payment of 20% of (a) the average monthly deposits
in the account for the past six months, or (b) the 25 1 1 average monthly balance in the account for
the past six months, whichever is greater, unless the prisoner 2 has no assets. See 28 U.S.C. §
1915(b)(1); 28 U.S.C. § 1915(b)(4). The institution having custody of the 3 prisoner must collect

subsequent payments, assessed at 20% of the preceding month's income, in any 4 month in which the prisoner's account exceeds \$10, and forward those payments to the Court until the 5 entire filing fee is paid. See 28 U.S.C. § 1915(b)(2). 6 Plaintiff is incarcerated. Plaintiff submitted the prisoner IFP application, a copy of declaration 7 and the financial certificate, the financial certificate is signed by the appropriate official, and a certified 8 copy of the trust fund account statement. ECF No. 1. The authorized officer who filled out the financial 9 certificate calculated that her initial filing fee should be \$8.00. Id. at 4. Since plaintiff's calculated filing 10 fee is less than \$10, the Court will waive the initial filing fee at this time. Plaintiff will remain obligated 11 going forward to pay the full filing fee in installments any month that her account exceeds \$10. The 12 Court grants plaintiff's IFP application.

13 II. COMPLAINT

14 A. Legal Standard 15 Upon granting a request to proceed in forma pauperis, the Court must screen the complaint 16 pursuant to 28 U.S.C. § 1915(e). The Court will review the complaint to determine whether the 17 complaint is frivolous, malicious, fails to state a claim in which relief may be granted, or seeks monetary 18 relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B). The Federal 19 Rules of Civil Procedure Rule 8(a)(2) provides that a complaint must contain "a short and plain 20 statement of the claim showing that the [plaintiff] is entitled to relief." The Supreme Court's decision in 21 *Ashcroft v. Iqbal* states that to satisfy Rule 8's requirement, a complaint's allegations must cross "the 22 line from conceivable to plausible." 556 U.S. 662, 680 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 23 550 U.S. 544, 547 (2007)). Dismissal for failure to state a claim under § 1915 incorporates the same 24 standard for failure to state a claim under Federal Rule of Civil Procedure Rule 12(b)(6). *Watson v. 25 2 1 Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012) A complaint should be dismissed under Rule 12(b)(6) "if it 2 appears beyond a doubt that the plaintiff can prove no set of facts in support of her claims that would 3 entitle him to relief." *Buckley v. Los Angeles*, 968 F.2d 791, 794 (9th Cir. 1992). 4 "A document filed pro se is "to be liberally construed" and a pro se complaint, however 5 inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." 6 *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976) 7 (internal citations omitted)). If the Court dismisses a complaint under § 1915(e), the plaintiff should be 8 given leave to amend the complaint with directions as to curing its deficiencies, unless it is clear from 9 the face of the complaint that deficiencies could not be cured through amendment." *Cato v. United 10 States*, 70 F.3d 1103, 1106 (9th Cir. 1995). At issue is whether plaintiff's complaint 11 states a plausible claim for relief. 12 B. Plaintiff's Claim Is Barred Because Defendant Has Judicial Immunity 13 Plaintiff brings suit under 42 U.S.C. § 1983 and alleges that defendant committed "judicial 14 misconduct" in violating his Sixth and Fourteenth Amendment rights while defendant presided as a state 15 court judge over criminal proceedings where plaintiff was facing state law charges. ECF No. 1-1. 16 Plaintiff alleges that during those proceedings, defendant ignored his pleas to invoke his rights to a 17 speedy trial, prevented him

from using material exculpatory evidence, and otherwise acted improperly. 18 Id. However, Judges are absolutely immune from liability in civil rights suits for actions taken in their 19 judicial capacity unless the judge was acting in the clear absence of all jurisdiction. See *Mireles v. Waco*, 20 502 U.S. 9, 11-12 (1991). This absolute immunity “insulates judges from charges of erroneous acts or 21 irregular action, even when it is alleged that such action was driven by malicious or corrupt motives... 22 or when the exercise of judicial authority is flawed by the commission of grave procedural errors.” *In re 23 Castillo*, 297 F.3d 940, 947 (9th Cir. 2002) (citations omitted) (internal quotation marks omitted); see 24 also *Mireles*, 502 U.S. at 11. Here, defendant was acting in her judicial capacity when she committed the 25 3 1 alleged violations of plaintiff’s rights and plaintiff does not allege any facts that defendant was acting 2 outside her official capacity. See ECF No. 1-1. While plaintiff can appeal judicial decisions adverse to 3 him through the traditional state appellate process, he cannot file “collateral attacks on final judgments 4 through civil suits[.]” *In re Castillo*, 297 F.3d at 547. Therefore, plaintiff’s claim against defendant is 5 barred because defendant has judicial immunity for actions done in her official capacity as a state court 6 judge. 7 C. Plaintiff’s Claim Are Also Likely Barred By The Heck Doctrine 8 Based on the facts of plaintiff’s proposed complaint, his claim may also be barred under the 9 Heck doctrine. Pursuant to Heck, if a judgment for damages necessarily would imply the invalidity of a 10 criminal conviction or sentence, the action does not arise until the conviction or sentence has been 11 reversed on direct appeal, expunged by executive order, declared invalid by an authorized state tribunal, 12 or called into question by the issuance of a federal habeas writ. See *Heck v. Humphrey*, 512 U.S. 477, 13 486-87 (1994). In short, a civil rights action filed by a state prisoner “is barred (absent prior 14 invalidation) – no matter the relief sought (damages or equitable relief), no matter the target of 15 the prisoner’s suit (state conduct leading to conviction or internal prison proceedings) – if success in that 16 action would necessarily demonstrate the invalidity of confinement or its duration.” *Wilkinson v. 17 Dotson*, 544 U.S. 74, 81-82 (2005). Plaintiff alleges here that defendant did not admit evidence that 18 would have “exonerated” him and acted improperly during his criminal proceedings when making his 19 claim. ECF No. 1-1. Plaintiff succeeding in his claim would mean that defendant violated his 20 constitutional rights during his criminal proceedings and would thus necessarily demonstrate the 21 invalidity of his conviction in those proceedings. Therefore, plaintiff’s claims are also likely barred by 22 the Heck doctrine. See *Heck*, 512 U.S. 477. 23 // 24 // 25 4 1 D. Plaintiff’s State Law Allegations 2 Plaintiff also alleges that defendant violated his rights under the Nevada Constitution. See ECF

3 No. 1-1. To the extent that plaintiff makes out a state law claim, his claims are barred by jurisdiction.

4 Although supplemental jurisdiction may allow for plaintiff to bring state law claims, plaintiff cannot 5 bring these claims under Section 1983 because his federal claims fail. See 28 U.S.C. § 1367 (“[T]he 6 district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if the 7 district court has dismissed all claims over which it has original jurisdiction.

Therefore, the Court dismisses plaintiff's state law claims unless a federal claim(s) is allowed to proceed.¹ 9 E. Amended Complaint 10 The Court will give plaintiff an opportunity to try to amend his complaint and properly allege 11 claims in accordance with this Order. Plaintiff is reminded to ensure that his amended complaint does 12 not violate Plaintiff is also cautioned that "when a plaintiff files an amended complaint, '[t]he amended 13 complaint supersedes the original, the latter being treated thereafter as non-existent.'" Rhodes v. 14 Robinson, 621 F.3d 1002, 1005 (9th Cir. 2010) (quoting Loux v. Rhay, 375 F.2d 55, 57 (9th Cir.1967)). 15 An amended complaint must be "complete in itself, including exhibits, without reference to the 16 superseded pleading." LR 15-1(a). In other words, the amended complaint is an entirely new document 17 that completely sets forth the facts and claims for relief. 18 Finally, plaintiff must not state the full name of an alleged sexual assault victim as he does in his 19 current complaint. See Doe v. JBF RAK LLC, No. 2:14-cv-00979-RFB-GWF, 2014 WL 5286512, at *5 20 (D. Nev. October 15, 2014) (noting that the public has a strong interest in protecting the identities of 21 sexual assault victims). Plaintiff can use initials, generally refer to the charges he was incarcerated over, 22 23 24 1 Plaintiff's alleging violations of "civil rights" and "human rights" also fail because he does not provide 25 any legal authority that these allegations are based on. 5 1 } or explain why he needs to name the victim in his complaint. Because plaintiff's current complaint 2 identifies an alleged victim, the Court will also strike it from the record.

3 CONCLUSION

4 The Court grants plaintiff's IFP application. The Court dismisses without prejudice plaintiffs 5 complaint and gives him an opportunity to file an amended complaint addressing the deficiencies noted 6 this Order.

7 ACCORDINGLY,

8 IT IS ORDERED that: 9 1. Plaintiff's Motion/Application to Proceed In Forma Pauperis (ECF No. 1) is GRANTED. 10 2. Plaintiff's Complaint (ECF No. 1-1) is DISMISSED WITHOUT PREJUDICE. The Clerk 11 of the Court is kindly instructed to STRIKE the Complaint from the record. 12 3. Plaintiff has until Friday, February 6, 2025, to file an amended complaint addressing the 13 issue addressed above. Failure to timely file an amended complaint addressing the 14 deficiencies noted in this Order may result in a recommendation for dismissal with prejudice. 15 4. If Plaintiff files an amended complaint, the Clerk of Court is directed NOT to issue summons 16 on the amended complaint. The Court will issue a screening order on the amended complaint 17 and address the issuance of summons at that time, if applicable. 18 DATED: December 5, 2025 19 IT IS SO ORDERED. 21 wan hlhsgdete ☐☐ Uned sage Judge

NOTICE

23 Pursuant to Local Rules IB 3-1 and IB 3-2, a party may object to orders and reports and 95 recommendations issued by the magistrate judge. Objections must be in writing and filed with the Clerk 1 of the Court within fourteen days. LR IB 3-1, 3-2. The Supreme Court has held that the courts of appeal 2 may determine that an appeal has been waived due to the failure to file

objections within the specified 3 time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). 4 This circuit has also held that (1) failure to file objections within the specified time and (2) 5 failure to properly address and brief the objectionable issues waives the right to appeal the District 6 Court's order and/or appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 7 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983). 8 Pursuant to LR IA 3-1, the plaintiff must immediately file written notification with the court of any 9 change of address. The notification must include proof of service upon each opposing party's attorney, 10 or upon the opposing party if the party is unrepresented by counsel. Failure to comply with this rule may 11 result in dismissal of the action. 12 13 14 15 16 17 18 19 20 21 22 23 24 25 7