

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH
DAKOTA, SOUTHERN DIVISION

Moses Bob Pessima v. Antionette Katumu Pessima, born Antoinette
Katumu Anderson, and South Dakota Division of Child Support

No. 4:25-CV-04240-CCT (D.S.D. May 19, 2026) · No. No. 4:25-CV-04240-CCT · Decided May 19, 2026

SUMMARY

The United States District Court for the District of South Dakota granted Moses Bob Pessima leave to proceed in forma pauperis and screened his pro se complaint under 28 U.S.C. § 1915(e)(2). The court dismissed without prejudice his claims against the South Dakota Division of Child Support on Eleventh Amendment immunity grounds and dismissed his claims against Antionette Katumu Pessima for failure to state a claim, including failure to plead fraud with particularity. The court entered the order on May 19, 2026.

CASE DETAILS

COURT	United States District Court for the District of South Dakota, Southern Division
WRITING FOR THE COURT	Camela C. Theeler
JURISDICTION	United States District Court for the District of South Dakota, Southern Division
DECIDED	May 19, 2026
DOCKET	No. 4:25-CV-04240-CCT
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff filed a pro se civil-rights and fraud complaint and moved for leave to proceed in forma pauperis. The district court granted in forma pauperis status and screened the complaint under 28 U.S.C. § 1915(e)(2)(B), dismissing all claims without prejudice.
STANDARD OF REVIEW	On in forma pauperis screening, the court accepted well-pleaded factual allegations as true, liberally construed the pro se complaint, and determined whether the claims were frivolous or malicious, failed to state a claim, or sought monetary relief from an immune defendant under 28 U.S.C. § 1915(e)(2)(B).
PRECEDENTIAL VALUE	unpublished district court order; limited persuasive value

PARTIES

Moses Bob Pessima v. Antionette Katumu Pessima, born Antoinette Katumu Anderson, South Dakota Division of Child Support

TOPICS

section 1983 eleventh amendment immunity subject matter jurisdiction civil procedure family law

PRACTICE AREAS

civil rights federal civil procedure family law sovereign immunity

QUESTIONS PRESENTED

1. Whether Pessima should be permitted to proceed in forma pauperis based on his financial affidavit.
2. Whether the South Dakota Division of Child Support was immune from suit under the Eleventh Amendment and therefore subject to dismissal under 28 U.S.C. § 1915(e)(2)(B).
3. Whether Pessima stated a claim under 42 U.S.C. § 1983 against his former wife by adequately alleging state action or joint action with state actors.
4. Whether Pessima pleaded his fraud claims with the particularity required by Federal Rule of Civil Procedure 9(b).
5. Whether the court had subject-matter jurisdiction over the fraud claims against the former wife.

HOLDINGS

1. A plaintiff who demonstrates insufficient funds to pay the filing fee may be granted leave to proceed in forma pauperis, and Pessima's financial affidavit established that he qualified.
2. The South Dakota Division of Child Support, as a division of the South Dakota Department of Social Services and an arm of the State of South Dakota, is protected by Eleventh Amendment immunity from suit under § 1983 absent a valid waiver; Pessima's claims against it were dismissed without prejudice.
3. Pessima failed to state a § 1983 claim against his former wife because he did not allege that she acted under color of state law or participated in joint action with state actors.
4. Pessima failed to plead his fraud claims with the particularity required by Federal Rule of Civil Procedure 9(b), so those claims were dismissed without prejudice.
5. The court declined to allow amendment of the fraud claims because Pessima did not establish either diversity jurisdiction or federal-question jurisdiction over claims concerning state child-support payments.

KEY QUOTATIONS

“To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law.” (Claims Against Antoinette Pessima)

“In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person’s mind may be alleged generally.”
(Claims Against Antoinette Pessima)

FACTUAL BACKGROUND

Pessima alleged that he and Antionette Pessima were married, had one child, and later divorced, with Antionette receiving legal physical custody. He alleged that Antionette falsely reported the start date of his child-support obligation and that the defendants thereby caused financial, licensing, immigration, and other losses. He asserted Fourteenth Amendment equal-protection and liberty or property claims, as well as fraud claims, against Antionette and the South Dakota Division of Child Support.

PROCEDURAL HISTORY

Pessima filed a complaint asserting Fourteenth Amendment equal-protection and fraud-related claims arising from alleged child-support calculations and events involving his former wife. He also filed a motion to proceed in forma pauperis. After reviewing his financial affidavit and screening the complaint, the court granted the motion and dismissed the claims against the South Dakota Division of Child Support and Antionette Pessima without prejudice.

DISPOSITION

other

CASES CITED

- Lee v. McDonald's Corp., 231 F.3d 456, 459 (8th Cir. 2000)
- Williams v. McKenzie, 834 F.2d 152, 154 (8th Cir. 1987)
- Cross v. Gen. Motors Corp., 721 F.2d 1152, 1157 (8th Cir. 1983)
- Martin-Trigona v. Stewart, 691 F.2d 856, 857 (8th Cir. 1982) (per curiam)
- Key v. Does, 217 F. Supp. 3d 1006, 1007 (E.D. Ark. 2016)
- Est. of Rosenberg v. Crandell, 56 F.3d 35, 36 (8th Cir. 1995)
- Erickson v. Pardus, 551 U.S. 89, 94 (2007) (per curiam)
- Bediako v. Stein Mart, Inc., 354 F.3d 835, 839 (8th Cir. 2004)
- Martin v. Sargent, 780 F.2d 1334, 1337 (8th Cir. 1985)
- Ellis v. City of Minneapolis, 518 F. App'x 502, 504 (8th Cir. 2013) (per curiam)
- Williams v. Willits, 853 F.2d 586, 588 (8th Cir. 1988)
- Bramlet v. Wilson, 495 F.2d 714, 716 (8th Cir. 1974)
- Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555-56 (2007)
- Beavers v. Lockhart, 755 F.2d 657, 663 (8th Cir. 1985)
- Abdullah v. Minnesota, 261 F. App'x 926, 927 (8th Cir. 2008) (per curiam)
- Braden v. Wal-Mart Stores, Inc., 588 F.3d 585, 594 (8th Cir. 2009)

- Cory v. White, 457 U.S. 85, 90-91 (1982)
- Greenwood v. Ross, 778 F.2d 448, 453 (8th Cir. 1985)
- Laje v. R.E. Thomason Gen. Hosp., 665 F.2d 724, 727 (5th Cir. 1982)
- Doe v. Nebraska, 345 F.3d 593, 597 (8th Cir. 2003)
- Atascadero State Hosp. v. Scanlon, 473 U.S. 234, 238 n.1 (1985)
- Henley v. Brown, 686 F.3d 634, 640 (8th Cir. 2012)
- Baker v. McCollan, 443 U.S. 137, 144 n.3 (1979)
- West v. Atkins, 487 U.S. 42, 48 (1988)
- Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n, 531 U.S. 288, 295 (2001)
- Dennis v. Sparks, 449 U.S. 24, 27-28 (1980)
- Mershon v. Beasley, 994 F.2d 449, 451 (8th Cir. 1993)
- Manis v. Sterling, 862 F.2d 679, 681 (8th Cir. 1988)
- BJC Health Sys. v. Columbia Cas. Co., 478 F.3d 908, 917 (8th Cir. 2007)
- United States ex rel. Costner v. URS Consultants, Inc., 317 F.3d 883, 888 (8th Cir. 2003)
- Smith v. Humphrey, No. 8:24CV271, 2025 WL 1531694, at *3 (D. Neb. May 29, 2025)
- United States v. Afremov, 611 F.3d 970, 975 (8th Cir. 2010)
- Badgerow v. Walters, 596 U.S. 1, 8 (2022)
- Owen Equip. & Erection Co. v. Kroger, 437 U.S. 365, 373 (1978)

OPINION

Pessima

PER CURIAM.

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

MOSES BOB PESSIMA, 4:25-CV-04240-CCT

Plaintiff,

vs. ORDER GRANTING PLAINTIFF'S

MOTION FOR LEAVE TO PROCEED

ANTIONETTE KATUMU PESSIMA, born IN FORMA PAUPERIS AND § 1915

Antoinette Katumu Anderson; and SCREENING STATE OF SOUTH DAKOTA, Division of Child Support, Defendants. Plaintiff, Moses Bob Pessima, filed a pro se lawsuit. Docket 1. Pessima also filed a motion for leave to proceed in forma pauperis, Docket 2. I. Motion for Leave to Proceed In Forma Pauperis A federal court may authorize the commencement of any lawsuit without prepayment of fees when an applicant submits an affidavit stating he or she is unable to pay the costs of the lawsuit. 28 U.S.C. § 1915(a)(1). “[I]n forma pauperis status does not require a litigant to demonstrate absolute destitution.” Lee v. McDonald’s Corp., 231 F.3d 456, 459 (8th Cir. 2000). But in forma pauperis status is a privilege, not a right. Williams v. McKenzie, 834 F.2d 152,

154 (8th Cir. 1987). Determining whether an applicant is sufficiently impoverished to qualify to proceed in forma pauperis under § 1915 is committed to the sound discretion of the district court. *Cross v. Gen. Motors Corp.*, 721 F.2d 1152, 1157 (8th Cir. 1983). After review of Pessima's financial affidavit, this Court finds that he has insufficient funds to pay the filing fee. See Docket 2. Thus, Pessima's motion for leave to proceed in forma pauperis, Docket 2, is granted. II. 1915 Screening A. Factual Background as Alleged by Pessima

Liberally construing his complaint, Pessima alleges violations of his Fourteenth Amendment equal protection rights, as well as various fraud-related claims. See generally Docket 1. These claims stem from the separation of Pessima from his former wife, Antionette Katumu Pessima ("Antionette") and the fraud Pessima alleges to have occurred when calculating subsequent child support payments. See *id.* at 1, 3. Pessima and Antionette were married in 1998. *Id.* at 5. In 1999, both Pessima and Antionette were living in the United States after moving from Gambia. *Id.* at 6. In June of 1999, Pessima's son was born. *Id.* at 6. As on November 1, 2000, Pessima alleges that he and Antionette were living at the same address with their child. *Id.* at 7. Antionette filed a motion with the Second Judicial Circuit in South Dakota requesting paternity testing, and the testing showed that Pessima was the biological father of his son. *Id.* Pessima states that he and Antionette "were still living together when the September 11, 2001 incident happened in New York[.]" but states that he later "filed for divorce with this court—claiming 'Mental' torture." *Id.* at 7. According to Pessima, he and Antionette have been divorced since 2007, and "[b]oth parties had since been living separately—with [Antionette] having legal physical custody of the parties' only minor child, born as issues of their marriage—with a stipulated Parenting Time and visitation agreement, according to the South Dakota Parenting Guidelines." *Id.* at 8. Pessima's son is no longer a minor, and Pessima states that he is no longer obligated to pay child support. *Id.* at 9. While Pessima details various issues he experienced with visiting his son, see, e.g., *id.* at 8–9, and with his marriage in general, see, e.g., *id.* at 6, the crux of his complaint appears to be that Antionette informed him that he owes past-due child support. *Id.* at 3. Pessima alleges that Antionette "knowingly and willfully entered into a marriage for immigration purposes; and filed for divorce from [Pessima] without proper 'Service', only to 'lie' about abuse when none occurred; remarried and again divorced." *Id.* He also alleges that Antionette "[l]ied to the authorities about the 'Start date' of [Pessima's] Child Support obligation as a Claim—when in fact, both [Pessima] and [Antionette] and the parties' only [then] child were actually physically living together at the same residence[.]" *Id.* (final alteration in original). As a result, Pessima claims that he "has since been suffering the pain and loss of some rights and privileges[.]" such as "loss of Parenting Time, the parties' child not graduating from school, now involved in crimes, assault, damage of property, substance abuse[.]" *Id.* Pessima also states that he has suffered "loss of Citizenship, Licenses, no gainful employment according to [his] Caliber, slander, loss of property and money[.]" *Id.* at 3, 8, 9. Pessima alleges that he "has been denied his Constitutional rights to Freedom and Liberty—to enjoy life and deprivation of property[.]" and that he has been "denied the rights to Equal Protection under the Law." *Id.* at 1, 4. Additionally, he

alleges that by lying about the “start-date” for child support, the defendants committed fraud. *Id.* at 1, 4, 10. Pessima alleges that he will show that the “‘actions’ of both Defendants reflect an intentional, willful, malicious, and reckless disregard of [Pessima’s] inherent human rights, particularly as an alien[.]” *Id.* at 3. Pessima seeks the following injunctive relief: A) Restoration of benefits in Motions to Produce Alien Documents. B) Restoration of licensing Privileges through [Pessima’s] Motions. C) Guaranteeing [his] 14th Amendment—that [his] person shall not be deprived of life, liberty and property in pursuit of happiness. D) Guarantee to follow due Process of Law; the right to be heard in a fair trial; Order to Answer not only 25 but all interrogatories. *Id.* at 3. He also requests “an award of [his] immigration and other eligible benefits, licensing and punitive measures taken against [him].” *Id.* Lastly, Pessima requests a total of \$12,488,000.00, which includes pain and suffering beginning in 1998 and the loss of wages from January 2008 to January of 2026. *Id.* at 11.

B. Legal Standard When a district court determines a plaintiff is financially eligible to proceed in forma pauperis under § 1915(a), a court must then determine whether the complaint should be dismissed under § 1915(e)(2)(B). *Martin- Trigona v. Stewart*, 691 F.2d 856, 857 (8th Cir. 1982) (per curiam); see also *Key v. Does*, 217 F. Supp. 3d 1006, 1007 (E.D. Ark. 2016). A court must dismiss claims if they “(i) [are] frivolous or malicious; (ii) fail[] to state a claim on which relief may be granted; or (iii) seek[] monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B). A court when screening under § 1915 must assume as true all facts well pleaded in the complaint. *Est. of Rosenberg v. Crandell*, 56 F.3d 35, 36 (8th Cir. 1995). Pro se and civil rights complaints must be liberally construed. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam); *Bediako v. Stein Mart, Inc.*, 354 F.3d 835, 839 (8th Cir. 2004) (citation omitted). Even with this construction, “a pro se complaint must contain specific facts supporting its conclusions.” *Martin v. Sargent*, 780 F.2d 1334, 1337 (8th Cir. 1985) (citation omitted); see also *Ellis v. City of Minneapolis*, 518 F. App’x 502, 504 (8th Cir. 2013) (per curiam) (citation omitted). A district court has the duty to examine a pro se complaint “to determine if the allegations provide for relief on any possible theory.” *Williams v. Willits*, 853 F.2d 586, 588 (8th Cir. 1988) (citing *Bramlet v. Wilson*, 495 F.2d 714, 716 (8th Cir. 1974)). A complaint “does not need detailed factual allegations . . . [but] requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do[.]” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal citation omitted). If a complaint does not contain these bare essentials, dismissal is appropriate. See *Beavers v. Lockhart*, 755 F.2d 657, 663 (8th Cir. 1985) (citation omitted). *Twombly* requires that a complaint’s “[f]actual 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[.]” 550 U.S. at 555 (internal citation omitted); see also *Abdullah v. Minnesota*, 261 F. App’x 926, 927 (8th Cir. 2008) (per curiam) (noting that a complaint “must contain either direct or inferential allegations respecting all material elements necessary to sustain recovery under some viable legal theory” (citing *Twombly*, 550 U.S. at 553–63)). Further, “a well-pleaded complaint may proceed even if it strikes a savvy judge that actual

proof of the facts alleged is improbable, and that a recovery is very remote and unlikely.” *Braden v. Wal-Mart Stores, Inc.*, 588 F.3d 585, 594 (8th Cir. 2009) (internal quotation omitted) (quoting *Twombly*, 550 U.S. at 556). C. Legal Analysis

1. Claims Against South Dakota Division of Child Support

Pessima brings claims against the South Dakota Division of Child Support (DCS) for fraud and violations of his Fourteenth Amendment equal protection rights. See Docket 1 at 1. The Eleventh Amendment bars suit against a state entity, as opposed to a state official, regardless of whether money damages or injunctive relief is sought. *Cory v. White*, 457 U.S. 85, 90–91 (1982). In determining whether an entity is entitled to Eleventh Amendment immunity, a court examines the powers and characteristics of the entity that was created by state law to determine if it in reality is acting as the state, the degree of local autonomy and control exercised by the entity, and whether the funds to pay an award are derived from the state treasury. *Greenwood v. Ross*, 778 F.2d 448, 453 (8th Cir. 1985) (citing *Laje v. R.E. Thomason Gen. Hosp.*, 665 F.2d 724, 727 (5th Cir. 1982)). DCS is a division of the South Dakota Department of Social Services (DSS). See Child Support, S.D. Dep’t of Soc. Servs., <https://dss.sd.gov/childsupport/> (last visited May 14, 2026). DSS was created by the state legislature. See SDCL § 1-36-1. DSS, and therefore DCS, is an arm of the State of South Dakota and, as such, is not subject to suit under § 1983. See *Cory*, 457 U.S. at 90–91. Further, Pessima does not allege that the State of South Dakota has waived its immunity. See *Doe v. Nebraska*, 345 F.3d 593, 597 (8th Cir. 2003) (“A state may waive its immunity either by explicitly specifying its intention to subject itself to suit or by voluntarily participating in federal spending programs where Congress expressed a clear intent to condition receipt of federal funds on a state’s consent to waive its sovereign immunity.” (citing *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 238 n.1

(1985)). Therefore, Pessima’s claims against DCS are dismissed without prejudice under 28 U.S.C. §§ 1915(e)(2)(B)(ii) and (iii).

2. Claims Against Antoinette Pessima

Pessima brings claims against Antoinette for fraud and violations of his Fourteenth Amendment equal protection rights. See Docket 1 at 1. The appropriate vehicle for bringing a claim for a constitutional or federal statutory violation is a suit under 42 U.S.C. § 1983. See *Henley v. Brown*, 686 F.3d 634, 640 (8th Cir. 2012) (stating that § 1983 “serves as a vehicle for ‘vindicating federal rights elsewhere conferred by those parts of the United States Constitution and federal statutes that it describes.’” (quoting *Baker v. McCollan*, 443 U.S. 137, 144 n.3 (1979))). “To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law.” *West v. Atkins*, 487 U.S. 42, 48 (1988) (citations omitted). A private individual may be characterized as a state actor “if, though only if, there is such a close nexus between the State and the challenged action that seemingly private behavior may be fairly treated as that of the State itself.” *Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass’n*, 531 U.S. 288, 295

(2001) (citation modified). Therefore, a private party may be held liable under § 1983 if the private party “is a willful participant in joint action with the State or its agents.” *Dennis v. Sparks*, 449 U.S. 24, 27–28 (1980). “[A] plaintiff seeking to hold a private party liable under § 1983 must allege, at the very least, that there was a mutual understanding, or a meeting of the minds, between the private party and the state actor.” *Mershon v. Beasley*, 994 F.2d 449, 451 (8th Cir. 1993). Conclusory allegations of conspiracy are insufficient. *Manis v. Sterling*, 862 F.2d 679, 681 (8th Cir. 1988). Here, Pessima alleges no facts demonstrating that Antionette was a participant in joint action with the state, or that there existed such a close nexus between the state and Antionette such that Antionette’s action could be fairly attributed to the state. Therefore, any claims Pessima intends to assert against Antionette for violations of the constitution or federal statutory rights are dismissed without prejudice for failure to state a claim upon which relief may be granted under 28 U.S.C. § 1915(e)(2)(B)(ii). Additionally, Pessima alleges that Antionette committed fraud¹ when she “[l]ied to the authorities about the ‘Start-date’ of [Pessima’s] Child Support obligation[.]” Docket 1 at 10. “In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person’s mind may be alleged generally.” Fed. R. Civ. P. 9(b). To plead with particularity, the party alleging fraud “must typically identify the ‘who, what, where, when, and how’ of the alleged fraud.” *BJC Health Sys. v. Columbia Cas. Co.*, 478 F.3d 908, 917 (8th Cir. 2007) (quoting *United States ex rel. Costner v. URS Consultants, Inc.*, 317 F.3d 883, 888 (8th Cir. 2003)). To the extent that Pessima alleges that Antionette participated in child support fraud, he has not pled those claims with particularity. Therefore, Pessima’s fraud claims are dismissed without prejudice for failure to state a claim upon which relief may be granted under 28 U.S.C. § 1915(e)(2)(B)(ii). See *Smith v. Humphrey*, No. 8:24CV271, 2025 WL 1531694, at *3 (D. Neb. May 29, 2025) (dismissing a fraud claim on screening because the plaintiff’s fraud allegations were “too vague to state a claim for relief”).¹ Pessima also alleges that Antionette committed “marriage Fraud” when she remarried and then later divorced. Docket 1 at 10. Pessima does not explain how or why this constitutes fraud or how this provides him with a cause of action against Antionette. This Court declines to provide Pessima with an opportunity to amend his complaint and plead his fraud claims with more particularity because this Court would likely lack subject-matter jurisdiction over these claims. “[F]ederal courts are courts of limited jurisdiction.” *United States v. Afremov*, 611 F.3d 970, 975 (8th Cir. 2010). Federal district courts have jurisdiction over two main kinds of cases: “diversity cases—suits between citizens of different States as to any matter valued at more than \$75,000. See 28 U.S.C. § 1332(a). And they have power to decide federal-question cases—suits ‘arising under’ federal law. § 1331.” *Badgerow v. Walters*, 596 U.S. 1, 8 (2022). Because Antionette and Pessima are both citizens of South Dakota, see Docket 1 at 1, Pessima has not established diversity jurisdiction. See *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 373 (1978) (“diversity jurisdiction does not exist unless each defendant is a citizen of a different State from each plaintiff”). Pessima’s fraud claims are related to state child support

payments, and he does not allege that his fraud claims arise under any federal statute. Therefore, he has also failed to establish federal-question jurisdiction. III. Conclusion Thus, it is ORDERED:

1. That Pessima's motion for leave to proceed in forma pauperis, Docket 2, is granted.

2. That Pessima's claims against DCS are dismissed without prejudice under 28 U.S.C. §§ 1915(e)(2)(B)(ii) and (iii).

3. That Pessima's claims against Antionette Pessima are dismissed without prejudice for failure to state a claim upon which relief may be granted under 28 U.S.C. § 1915(e)(2)(B)(ii). Dated May 19, 2026. BY THE COURT: /s/ Camela C. Theeler

CAMELA C. THEELER

UNITED STATES DISTRICT JUDGE