

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CYRILL ATHANASIOS)
KOLOCOTRONIS,)
)
Plaintiff,)
)
v.) Civil Action No. 02-1426-SLR
)
DUPONT MEDS and FULTON STATE)
HOSPITAL,)
)
Defendants.)

MEMORANDUM ORDER

Plaintiff Cyrill Athanasios Kolocotronis is a pro se litigant who is presently incarcerated at the Fulton State Hospital in Fulton, Missouri. Plaintiff has filed this action pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 12102, et seq., the Americans with Disabilities Act ("ADA"). He has also requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

I. BACKGROUND

Upon receipt of the complaint and believing that plaintiff was a prisoner, the court researched his litigation history and discovered that he has had at least six civil actions dismissed as frivolous.¹ Therefore, on August 22, 2002, the court denied

¹ See Kolocotronis v. Club of Rome, No. 96-70 (N.D. Tx. August 30, 1996); Kolocotronis v. Nixon, No. 96-868 (W.D. Mo. June 13, 1996); Kolocotronis v. Breath Assure, No. 96-488 (W.D. Mo. April 25, 1996); Kolocotronis v. Bradbury, No. 91-4322 (W.D. Mo. Oct. 2, 1991); Kolocotronis v. Wimp, No. 91-4105 (W.D. Mo.

plaintiff's request to proceed in forma pauperis and ordered him to pay the \$150.00 filing fee within thirty days or the complaint would be dismissed. On September 10, 2002, plaintiff filed a letter motion for reconsideration arguing that he is not a prisoner for Prisoner Litigation Reform Act ("PLRA") purposes and that he should not be required to pay the full filing fee pursuant to 28 U.S.C. § 1915(g). (D.I. 4)

Plaintiff is currently confined at the Fulton State Hospital "pursuant to a finding, in February 1960, that he was not guilty of a certain criminal charge by reason of insanity." Kolocotronis v. Morgan, 247 F.3d 726, 278 (8th Cir. 2001). The PLRA defines the term "prisoner" as follows:

(h) As used in this section, the term "prisoner" means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or terms and conditions of parole, probation, pretrial release, or diversionary program.

28 U.S.C. § 1915(h). See also 28 U.S.C. § 1915A(c) (containing the same definition). Therefore, plaintiff is not a "prisoner" for the purposes of the PLRA and is not subject to the "three strikes" rule of 28 U.S.C. § 1915(g). Accordingly, the court shall grant plaintiff's motion for reconsideration. However, for

April 24, 1991); Kolocotronis v. Paris, No. 91-4079 (W.D. Mo. April 4, 1991).

the reasons discussed below, the complaint shall be dismissed as frivolous and for lack of personal jurisdiction.

II. STANDARD OF REVIEW

The court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331. Reviewing complaints filed pursuant to 28 U.S.C. § 1915 is a two step process. First, the court must determine whether plaintiff is eligible for pauper status. Based on the information provided in his in forma pauperis affidavit, the court concludes that plaintiff has insufficient funds to pay the requisite filing fee. Accordingly, the court shall grant his request to proceed in forma pauperis.

Second, the court must "screen" the complaint to determine whether it is frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant immune from such relief pursuant to 28 U.S.C. § 1915(e)(2)(B). The United States Supreme Court has held that 28 U.S.C. § 1915(e)(2)(B)'s term "frivolous" when applied to a complaint, "embraces not only the inarguable legal conclusion, but also the fanciful factual allegation," such that a claim is frivolous within the meaning of § 1915(e)(2)(B) if it "lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989).²

² Neitzke applied § 1915(d) prior to the enactment of the PLRA. Section 1915 (e)(2)(B) is the re-designation of the former § 1915(d) under the PLRA. Therefore, cases addressing the

When reviewing complaints pursuant to 28 U.S.C. § 1915(e)(2)(B), the court must apply the standard of review set forth in Fed. R. Civ. P. 12(b)(6). See Neal v. Pennsylvania Bd. of Probation and Parole, No. 96-7923, 1997 WL 338838 (E.D. Pa. June 19, 1997) (applying Rule 12(b)(6) standard as appropriate standard for dismissing claim under § 1915A).³ Under this standard, the court must "accept as true the factual allegations in the complaint and all reasonable inferences that can be drawn therefrom." Nami v. Fauver, 82 F.3d 63, 65 (3d Cir. 1996). Pro se complaints are held to "less stringent standards than formal pleadings drafted by lawyers and can only be dismissed for failure to state a claim if it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" Estelle v. Gamble, 429 U.S. 97, 106 (1976) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)).

III. DISCUSSION

meaning of frivolous under the prior section remain applicable. See § 804 of the PLRA, Pub.L.No. 14-134, 110 Stat. 1321 (April 26, 1996).

³ The bases for dismissal under § 1915A are virtually identical to § 1915(e)(2)(B). Section 1915A(a) requires the court to screen prisoner complaints seeking redress from governmental entities, officers or employees before docketing, if feasible and to dismiss those complaints which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant immune from such relief. Therefore, the court applies the § 1915A standard of review when screening non-prisoner complaints pursuant to § 1915(e)(2)(B).

A. The Complaint

Plaintiff alleges that he has "taken coumadin for years [and] has paid part of his bill, [sic] Here, does ask for his money back, plus punitive, emotional, U.S. civil rights [and] ADA damages of at least \$10,000.00." He further alleges that the defendant Fulton State Hospital "manipulated the library, here, to not let him read about DuPont settling this case, [sic] for 44½ million [for] months after claims should be filed!" (D.I. 2)

B. Plaintiff's Claims against "DuPont Meds"

Although plaintiff has named "DuPont Meds" as a defendant, it appears that he means DuPont Pharmaceuticals Company. To state a claim under 42 U.S.C. § 1983, plaintiff must allege "the violation of a right secured by the Constitution or 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) (citing Parratt v. Taylor, 451 U.S. 527, 535 (1981) (overruled in part on other grounds Daniels v. Williams, 474 U.S. 327, 330-31 (1986))). To act under "color of state law" a defendant must be "clothed with the authority of state law." West, 487 U.S. at 49. Clearly, "DuPont Meds" is a private corporation and has not acted under "color of state law." Consequently, plaintiff's § 1983 claim against

"DuPont Meds" has no arguable basis in law or in fact. Therefore, this claim shall be dismissed as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B).

Similarly, in order to state a claim under the ADA, plaintiff must allege that he is a qualified individual with a disability, who has been "excluded from participation in or [has been] denied the benefits of the services, programs or activities of a **public entity**, or [has been] subjected to discrimination by any such entity." 42 U.S.C. § 12132 (emphasis added). The ADA defines the term public entity as:

- (A) any State or local government;
- (B) any department, agency, special purpose district, or other instrumentality of a State or States or local government; and (C) the National Railroad Corporation and any commuter authority (as defined in section 502(8) of Title 45).

42 U.S.C. § 12131. Again, "DuPont Meds" is not a public entity as defined by the ADA. Consequently, plaintiff's ADA claim against "DuPont Meds" has no arguable basis in law or in fact. Therefore, this claim shall be dismissed as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B).

C. Lack of Personal Jurisdiction Over Fulton State Hospital

Finally, the court has an obligation to review issues of personal jurisdiction and can dismiss cases sua sponte where it

finds jurisdiction lacking. See Meritcare, Inc. v. St. Paul Mercury Ins. Co., 166 F.3d 214, 217 (3d Cir. 1999) (citing cases). Here, the Fulton State Hospital is located in Missouri. When determining the presence of personal jurisdiction, the court must conduct a two-step analysis. First, the court must determine whether the long arm statute of the state in which the court sits authorizes jurisdiction. Second, the court must determine whether exercising jurisdiction comports with the requirements of the Due Process Clause of the Fourteenth Amendment. See Compaq Computer Corp. v. Packard Bell Elec., Inc., 948 F.Supp. 338, 342 (D. Del. 1996) (citation omitted).

Plaintiff alleges that the Fulton State Hospital prevented him from obtaining information about a lawsuit involving the defendant, "DuPont Meds," by manipulating the hospital library. Under the Delaware long arm statute, the court may exercise personal jurisdiction over a nonresident defendant when the defendant:

Causes tortious injury in the State or outside of the State by an act or omission outside the State if the person regularly does or solicits business, engages in any other persistent course of conduct in the State or derives substantial revenue from services, or things used or consumed in the State.

Del. C. Ann. tit. 10 § 3104(c)(4). Nothing in plaintiff's complaint indicates that the Fulton State Hospital regularly does or solicits business in Delaware, engages in any other course of

conduct in Delaware, or derives substantial revenue from things or services in Delaware. Consequently, the court can not exercise personal jurisdiction over the Fulton State Hospital under Del. C. Ann. tit. 10 § 3104(c)(4).

Furthermore, personal jurisdiction over the Fulton State Hospital is not warranted under the Due Process Clause of the Fourteenth Amendment. In order to satisfy the constitutional requirements of personal jurisdiction, plaintiff must show that the Fulton State Hospital has "minimum contacts" in Delaware and has "purposefully avail[ed] ... [itself] of the privileges of conducting activities within [Delaware]." Asahi Metal Industry Co. Ltd. v. Superior Court, 480 U.S. 102, 108-09 (1987). Nothing in plaintiff's complaint indicates that the Fulton State Hospital has established a relationship with the State of Delaware sufficient to establish constitutionally permissible personal jurisdiction. There is no evidence that this defendant conducts any business in or with individuals or entities in Delaware. There is no constitutional basis for the court to exercise personal jurisdiction for the defendant Fulton State Hospital. Therefore, plaintiff's claim against the Fulton State Hospital shall be dismissed for lack of personal jurisdiction.

NOW THEREFORE, at Wilmington this 20th day of November, 2002, IT IS HEREBY ORDERED that:

1. Plaintiff's motion for reconsideration (D.I. 4) is

GRANTED.

2. Plaintiff's motion to proceed in forma pauperis (D.I. 2) is GRANTED.

3. Plaintiff's civil rights claim against "Dupont Meds" is hereby DISMISSED as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B).

4. Plaintiff's ADA claim against "Dupont Meds" is hereby DISMISSED as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B).

5. Plaintiff's claim against the Fulton State Hospital are DISMISSED for lack of personal jurisdiction.

6. The clerk of the court shall cause a copy of this Memorandum Order to be mailed to plaintiff.

Sue L. Robinson
UNITED STATES DISTRICT JUDGE