

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ANTHONY J. BRODZKI,)	
)	
Plaintiff,)	
)	
v.)	Civ. No. 11-841-SLR
)	
CBS SPORTS,)	
)	
Defendant.)	

MEMORANDUM ORDER

At Wilmington this ~~15th~~^{3rd} day of January, 2012;

IT IS ORDERED that the complaint is dismissed as frivolous and malicious pursuant to 28 U.S.C. § 1915, for the reasons that follow:

1. **Background.** Plaintiff Anthony J. Brodzki ("plaintiff") filed this action on September 19, 2011, pursuant to 42 U.S.C. § 1983, alleging civil rights violations as well as the torts of defamation, slander, and loss of reputation. Plaintiff filed a similar complaint against CBS Sports on December 28, 2010. *See Brodzki v. CBS Sports*, Civ. No. 10-1141-SLR. That complaint was dismissed as frivolous on April 6, 2011. Plaintiff appears pro se and has been granted leave to proceed in forma pauperis.

2. **Standard of Review.** This court must dismiss, at the earliest practicable time, certain in forma pauperis actions that are frivolous, malicious, fail to state a claim, or seek monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915(e)(2). The court must accept all factual allegations in a complaint as true and take them in the light most favorable to a pro se plaintiff. *Phillips v. County of Allegheny*, 515 F.3d 224, 229 (3d Cir. 2008); *Erickson v. Pardus*, 551 U.S. 89, 93 (2007). Because

plaintiff proceeds pro se, his pleading is liberally construed and his complaint, "however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. at 94 (citations omitted).

3. An action is frivolous if it "lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). Under 28 U.S.C. § 1915(e)(2)(B)(i), a court may dismiss a complaint as frivolous if it is "based on an indisputably meritless legal theory" or a "clearly baseless" or "fantastic or delusional" factual scenario. *Neitzke*, 490 at 327-28; *Wilson v. Rackmill*, 878 F.2d 772, 774 (3d Cir. 1989); see, e.g., *Deutsch v. United States*, 67 F.3d 1080, 1091-92 (3d Cir. 1995) (holding frivolous a suit alleging that prison officials took an inmate's pen and refused to give it back).

4. "A separate standard for maliciousness is not as well established." *Abdul-Akbar v. Department of Corr.*, 910 F. Supp. 986 (D. Del., 1995), *aff'd*, 111 F.3d 125 (3d Cir. (table decision), *cert. denied*, 522 U.S. 852 (1997)). A court that considers whether an action is malicious must, in accordance with the definition of the term "malicious," engage in a subjective inquiry into the litigant's motivations at the time of the filing of the lawsuit to determine whether the action is an attempt to vex, injure, or harass the defendant. *Deutsch*, 67 F.3d at 1086. Other circuits have offered more objective instances of malicious claims. For example, a complaint is malicious when it "duplicates allegations of another [] federal lawsuit by the same plaintiff." *Pittman v. Moore*, 980 F.2d 994, 995 (5th Cir. 1993). A district court may dismiss a complaint as malicious if it threatens violence or contains disrespectful references to the court. *Crisafi v. Holland*, 655 F.2d 1305 (D.C. Cir. 1981). Additionally, a district court may dismiss a complaint as

malicious if it is plainly abusive of the judicial process or merely repeats pending or previously litigated claims. *Crusafi*, 655 F.2d at 1309; *Van Meter v. Morgan*, 518 F.2d 366 (8th Cir. 1975); *Duhart v. Carlson*, 469 F.2d 471 (10th Cir. 1972); *see also Banks v. Gillie*, 2004 WL 5807334 (E.D. La. Feb. 25, 2004) (duplicative and repetitive complaints are considered malicious for purposes of § 1915); *McGill v. Juanita Kraft Postal Serv.*, No. 3:03-CV-1113-K, 2003 WL 21355439, at *2 (N.D. Tx. June 6, 2003) (complaint is malicious when it “duplicates allegations of another pending federal lawsuit by the same plaintiff or when it raises claims arising out of a common nucleus of operative facts that could have been brought in the prior litigation”) (quotations omitted).

5. The legal standard for dismissing a complaint for failure to state a claim pursuant to § 1915(e)(2)(B)(ii) is identical to the legal standard used when ruling on Rule 12(b)(6) motions. *Tourscher v. McCullough*, 184 F.3d 236, 240 (3d Cir. 1999) (applying Fed. R. Civ. P. 12(b)(6) standard to dismissal for failure to state a claim under § 1915(e)(2)(B)). However, before dismissing a complaint or claims for failure to state a claim upon which relief may be granted pursuant to the screening provisions of 28 U.S.C. § 1915, the court must grant plaintiff leave to amend his complaint unless amendment would be inequitable or futile. *See Grayson v. Mayview State Hosp.*, 293 F.3d 103, 114 (3d Cir. 2002).

6. A well-pleaded complaint must contain more than mere labels and conclusions. *See Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007). The assumption of truth is inapplicable to legal conclusions or to “[t]hreadbare recitals of the elements of a cause of action supported by

mere conclusory statements.” *Id.* at 1949. When determining whether dismissal is appropriate, the court conducts a two-part analysis. *Fowler v. UPMC Shadyside*, 578 F.3d 203, 210 (3d Cir. 2009). First, the factual and legal elements of a claim are separated. *Id.* The court must accept all of the complaint’s well-pleaded facts as true, but may disregard any legal conclusions. *Id.* at 210-11. Second, the court must determine whether the facts alleged in the complaint are sufficient to show that plaintiff has a “plausible claim for relief.”¹ *Id.* at 211. In other words, the complaint must do more than allege plaintiff’s entitlement to relief; rather it must “show” such an entitlement with its facts. *Id.* “[W]here the well-pleaded facts do not permit the court to infer more than a mere possibility of misconduct, the complaint has alleged - but it has not shown - that the pleader is entitled to relief.” *Iqbal*, 129 S.Ct. at 1949 (quoting Fed. R. Civ. P. 8(a)(2)).

7. **Discussion.** Plaintiff resides in North Richland Hills, Texas. He alleges that on an unknown date, during several pre-game shows last season, broadcaster Dan Marino (“Marino”) referred to him as a pedophile. Plaintiff sues defendants for slander,

¹A claim is facially plausible when its factual content allows the court to draw a reasonable inference that the defendant is liable for the misconduct alleged. *Iqbal*, 129 S.Ct. at 1949 (quoting *Twombly*, 550 U.S. at 570). The plausibility standard “asks for more than a sheer possibility that a defendant has acted unlawfully.” *Id.* “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.’” *Id.*

defamation, and loss of reputation.² He seeks damages and an injunction to “stop CBS from all privacy infringement, mind and body.” (D.I. 2)

8. **Civil Rights.** Although not stated in the complaint, the civil cover sheet indicates that plaintiff filed this lawsuit pursuant to 42 U.S.C. § 1983. When bringing a § 1983 claim, a plaintiff must allege that some person has deprived him of a federal right, and that the person who caused the deprivation acted under color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988). Defendant is not a state actor and, therefore, the civil rights claim fails.

9. **Torts.** Plaintiff also alleges the commission of several torts. Plaintiff’s scant allegations, however, do not adequately plead the elements of defamation,³ slander,⁴ or loss of reputation. Based upon the allegations and the absence of a viable claim that could be alleged in an amended complaint, the complaint will be dismissed as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B).

10. **Malicious litigant.** Last year, plaintiff filed a nearly identical lawsuit against CBS Sports. Plaintiff’s pattern of filing repetitive claims or claims arising out of a common nucleus of operative facts, even though those claims have been dismissed,

²The CBS Corporation is incorporated in the State of Delaware, and its corporate headquarters are in New York. *Emerson Elec. Co. v. Le Carbone Lorraine, S.A.*, 500 F. Supp. 2d 437, 441 (D.N.J. 2007).

³Under Delaware law, generally, the elements of defamation are: (1) a defamatory communication; (2) publication; (3) the communication refers to the plaintiff; (4) a third party’s understanding of the communication’s defamatory character; and (5) injury. *Bickling v. Kent Gen. Hosp., Inc.*, 872 F.Supp. 1299, 1307 (D. Del. 1994).

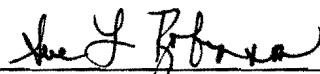
⁴Oral defamation. See *Spence v. Funk*, 396 A.2d 967, 970 (Del. 1978).

falls squarely in the category of malicious litigation. Finally, as previously determined by this court, the allegations are fantastic, delusional, irrational, and frivolous. Based upon plaintiff's repetitive lawsuit, the complaint will also be dismissed as malicious pursuant to 28 U.S.C. § 1915(e)(2)(B).

11. Plaintiff has a history of filing frivolous lawsuits. According to the National Case Party Index database, beginning in 2009 and to date, plaintiff has filed more than 152 civil actions and 20 appeals. The United States District Court for the Northern District of Illinois issued a vexatious litigant order against plaintiff, *In Re: Anthony J. Brodzki*, Civ. No. 10-04591, on July 23, 2010. In addition, plaintiff was sanctioned by the United States District Court for the Northern District of Texas based upon his history of submitting multiple frivolous lawsuits. *Brodzki v. North Richland Hills Police Dep't*, 2010 WL 1685798 (N.D. Tex. Apr. 19, 2010), *aff'd*, 413 F. App'x 697 (5th Cir. 2011). The court notes that many of plaintiff's prior lawsuits were found to be frivolous and have been described as "wholly within the realm of fantasy." *See Brodzki v. Regional Justice Ctr.*, Civ. No. 10-01091-LDG-LRL (D. Nev. July 22, 2010). Plaintiff continues to file fantastical, delusional, irrational, and frivolous lawsuits. Indeed, plaintiff has repeatedly filed lawsuits in this court against various media outlets making the same or similar frivolous allegations of slander and defamation.

12. **Conclusion.** For the above reasons, the complaint is dismissed as malicious and frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B). Amendment of the complaint would be futile. *See Alston v. Parker*, 363 F.3d 229 (3d Cir. 2004); *Grayson v. Mayview State*

Hosp., 293 F.3d 103, 111 (3d Cir. 2002); *Borelli v. City of Reading*, 532 F.2d 950, 951-52 (3d Cir. 1976).


UNITED STATES DISTRICT JUDGE