Docket #0183 Date Filed: 11/17/2023

United States Courts
Southern District of Texas
FILED
NOV 17 2023
Nathan Ochsner, Clerk of Court

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON

In Re:	Chapter 11
TETHUM CABLE SERVICES	23-90086 (CML)
Debtor	
ANANT KUMAR TIWARI	ADV 23-03072 (CML)
VS	
SAM TIRSCHWELL et al	

Reply to ECF 172

(1) In ECF 121 pp 3-4 ATTACHED.

(a) Counsel clearly argued I proceeded in forma pauperis and my complaint should be Reviewed under 1915(a)(3)

(b) I paid the filing fee on 5/30/23 (ECF 24)

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(2) Likewise – the attached Order at "C" shows that:

(i) the Court DID NOT find my speculative claims vexatious frivolous OR malicious

(ii) the Court DID not decide my speculative claims on the MERIT.

(iii) My speculative claims were at issue when this Bankruptcy was Filed

AT 5 in ECF 172 Counsel again conceals this material FACT

Conclusion

(3) Absent Counsel withdrawing

these Arguments Counsel Any
Witness must be Sanctioned

Respectfully

11/10/23

Office Of Debtor In Custody

prejudice, and futility. *New Orleans Ass'n of Cemetery Tour Guides & Cos. v. New Orleans Archdiocesan Cemeteries*, 56 F. 4th 1026, 1034 (5th Cir. 2023).

IV. ARGUMENT

The Court should deny Plaintiff's Second Motion for Leave, because the First Adversary Complaint is subject to a Motion to Screen. The Motion to Screen sought the screening and dismissal of Plaintiff's claims in the First Adversary Complaint because Plaintiff is a recognized vexatious litigant, who has lied to the Court to obtain relief. Plaintiff's Adversary Complaint rehashes allegations made against the Arizona Defendants and Wexford that were dismissed previously by the courts. *See Tripati v. Wexford Health Sources Inc.*, No. 22-1861, 2022 WL 17690156, at *1 (3d Cir. Dec. 15, 2022). Plaintiff's only statements addressing the Motion to Screen is that bankruptcy courts cannot issue a screening order under 28 U.S.C. 1915. This is simply incorrect.

Under 28 U.S.C. 1915, a bankruptcy court like other courts of the United States has the power to determine whether a litigant can process *in forma pauperis* under 28 U.S.C. 1915(a). As required by statute, the court must perform an analysis not only of the financial situation of the litigant but also related to good faith nature of the proposed filing. Beyond a demonstration of poverty, §1915(a)(3) provides that "[a]n appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. §1915(a)(3). "The bankruptcy court should review any. . . *in forma pauperis* filing to determine if it is in good faith." See In re Hall, 2008 Bankr. LEXIS 4903, *7-8 (Bankr. W.D. Tex. July 10, 2008) quoting *Valente v. Donahue*, 2004 U.S. Dist. LEXIS 11786, at *2 (N.D. Ill. June 25, 2004). Therefore, no leave to amend should be granted until the Court determines whether a screening order should be issued and determines whether Plaintiff's filing is in good faith.

Further, of the four reasons cited by Plaintiff to justify his amendment, none provide a basis for this Court to deviate from the findings of U.S. District Court for the Western District of Pennsylvania and the Third Circuit affirming the dismissal of Plaintiff's claims previously brought against Wexford in the Third Circuit. *See* Tripati v. Wexford Health Sources, Inc., No. 2:20-CV-00427, 2022 WL 1516780, at *2 (W.D. Pa. Feb. 14, 2022) *Tripati v. Wexford Health Sources, Inc.*, No. 22-1861, 2022 WL 17690156 (3d Cir. 2022).

V. CONCLUSION

For the foregoing reasons, Defendant Wexford Health Sources, Inc., respectfully requests that this Honorable Court deny Plaintiff's Motion for Leave to File a Second Amended Adversary Complaint.

Dated: August 21, 2023

Respectfully submitted,

/s/Michael P. Ridulfo
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- and -

Civil Action No. 2: 20-cv-0427

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Tripati v. Wexford Health Servs.

Decided Apr 8, 2020

ANANT KUMAR TRIPATI, Plaintiff, v. WEXFORD HEALTH SERVICES, INC., et al Defendants.

Cynthia Reed Eddy Chief United States Magistrate Judge

*2 28 U.S.C.§1915(g). Plaintiff, Anant Kumar Tripati, is a very litigious state prisoner currently confined in the Arizona State Prison Complex, East Unit, in Florence, Arizona. At least three of his prior actions or appeals qualify as strikes under 28 U.S.C. § 1915(g):

Therefore, Plaintiff may not bring a civil action without complete prepayment of the $350.00 filing fee and $50.00 administrative fee unless he is in imminent danger of serious physical injury. 28 U.S.C. § 1915(g).

William S. Stickman, IV United States District Judge REPORT & RECOMMENDATION

I. Recommendation

For the following reasons, it is respectfully recommended that Plaintiff's Motion for Leave to Proceed in forma pauperis (ECF No. 1) be denied in accordance with 28 U.S.C. § 1915(g) and that this action be dismissed without prejudice to Plaintiff reopening it by paying the full statutory filing fee in the amount of $350.00, plus an administrative filing fee in the amount of $50.00, for a total of $400.00.

II. Report

a. Dismissal Pursuant to 28 U .S.C. § 1915(g)

A prisoner may not bring a civil action or appeal a civil judgment in forma pauperis ("IFP") if: the prisoner has, on 3 or more occasions,

while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

(1) Tripati v. Schriro, No. CV 97-0021-PHX-ROS (D. Ariz. May 22, 1997) (dismissed for failure to state a claim); (2) Tripati v. Felix, No. CV 05-0762-PHX-DGC (D. Ariz. Oct. 14, 2005) (same); and (3) Tripati v. Thompson, No. CV 03-1122-PHX-DGC (D. Ariz. Dec. 28, 2005) (same).3

Abdul-Akbar, 239 F.3d at 315 (internal citation omitted). Imminent danger requires a showing of serious physical injury at the time the complaint is filed. Id. at 312. The imminent danger exception is available only for genuine emergencies where time is pressing and a threat is real and proximate. Long v. Lanigan, et al., CA No. 10-0798, 2010 WL 703181, *2 (D.N.J., Feb. 23, 2010).

1 An attachment to the Complaint reflects that on November 30, 1993, Plaintiff was convicted in Maricopa County, Arizona, and sentenced to 28 years of imprisonment for fraudulent schemes, 20 years for attempted fraudulent schemes, and 4-1/2 years for false swearing, resulting in an aggregate prison sentence of 52-1/2 years without the possibility of parole. Complaint, Exh. 1 (ECF No. 1-4 at 5).

3 In Tripati v. Schriro, 541 U.S. 1039 (2004), the Supreme Court ordered, "As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matter from petitioner unless the docketing fee required by Rule 38(a) is paid and petition submitted in compliance with Rule 33.1." Id. at 1039.

Additionally, the Court of Appeals for the Ninth Circuit issued a pre-filing Order on October 14, 1993, which remains in effect. In re Tripati, No. 93-80317 (9th Cir. Oct. 14, 1993).

b. Imminent Danger

To satisfy the imminent danger element, Plaintiff must allege facts in his complaint showing that he was in imminent danger at the time the complaint was filed; allegations that the prisoner has faced imminent danger in the past are insufficient to trigger the exception to section *3 1915(g). See Abdul-Akbar v. McKelvie, 239 F.3d 307 (3d Cir. 2001) (overruling Gibbs v. Roman, 116 F.3d 83, 86 (3d Cir. 1997)). In making this determination, the court should construe all allegations in a complaint in favor of the plaintiff. Gibbs v. Cross, 160 F.3d 962,965 (3d Cir. 1998); Gibbs v. Roman, 116 F.3d at 86. The Court of Appeals for the Third Circuit has instructed that:

"[i]mminent" dangers are those dangers which are about to occur at any moment or are impending. By using the term "imminent," Congress indicated that it wanted to include a safety valve for the "three strikes" rule to prevent impending harms, not those harms that had already occurred. The imminent danger exception allows the district court to permit an otherwise barred prisoner to file a complaint I.F.P. if the prisoner could be subject to serious physical injury and does not then have the requisite filing fee.

c. Discussion

On March 27, 2020, Plaintiff initiated this case by the filing of a motion for leave to proceed in forma pauperis, and attached to the motion a thirty-two page handwritten pro se civil rights complaint. (ECF No. 1). In his complaint, Plaintiff names approximately 42 defendants including, inter alia, various former and current prison healthcare contractors (including Wexford Health Sources, Inc.; Corizon, Inc.; Centurion of Arizona) and what appears to be current or former employees of those healthcare contractors; six law firms (Broening Oberg Woods & Wilson PC; Jones Skelton Hochuli PLC; Quintairos Prieto Wood & Boyer PA; Renaud Cook Drury Mesaros PA; Struck Wieneke & Love, PLC; and Weber Gallagher Simpson *4 Stapleton Fires & Newby LLP) and multiple attorneys within each of those firms, as well as a number of attorneys with the Arizona Office of Attorney General; and various Arizona Department of Corrections ("ADOC") policymakers.

Complaint, at ¶ 14. Plaintiff further contends that this "misconduct . . . occurred in and out of courtrooms in Pitts, Tenn., Ill., Fl., Az., Mo." Id. at ¶ 20. Similar allegations are made in the complaint against each of the named law firms and the Arizona Attorney General's office. Complaint, at ¶ 8 (emphasis in original). Additionally, Plaintiff contends that, Id. at ¶¶ 46, 47.

Plaintiff alleges four counts in his verified complaint: Count 1 - violations of the Eighth Amendment; Count II -fraudulent concealment, fraud, deceit; Count III - violations of Customary International Law; and Count VI -conspiracy. He asserts that venue is proper in this district because "events have been directed from this district." Complaint at ¶ 6. Distilled to its essence, the complaint alleges that the various healthcare providers, and their attorneys and ADOC policymakers, have engaged in a vast conspiracy "in advance of litigation . . . [and] have deployed their prefabricated defense against me and other pro per (sic) prisoner plaintiffs. They used the Permissible Procedural Devices in bad faith . . . They [] rigged the game from the very beginning. Seeking truthful, accurate, non-tainted evidence has never been their objective. Not mischaracterizing but creating alternative facts." Complaint at ¶¶ 9 and 9A. For example, Plaintiff alleges that "Wexford, Zwick, Forman, Weber Gallagher":

4 Plaintiff contends that he is "an alien within the meaning of [the Alien Tort Claims Act, 28 U.S.C. 1350] and the conduct [of Defendants] violates Customary International Law as well as Articles I, II, III, X, XI, XXVI, [illegible] of the American Declaration and the Law of Nations." Complaint, at ¶53. -------- assembled template and stock pleadings discovery and motions documents for use by local counsel in proper prisoner litigation, that contained false or misleading information about the practices of Wexford. Specifically, concealed all emails, reports and complaints about the practices of Wexford . . .They concealed these to frustrate prisoner litigation. Then they submitted false sworn and unsworn representations including false affidavits, false and incorrect expert reports and discovery

response verifications by Wexford employees, offices, consultants, and experts.

As to his Eighth Amendment claim, Plaintiff asserts that he has, high blood pressure, shakes, tremors, chronic pain, constipation, prostate issues, allergies. I am suppose to have a nephroblast done to my kidneys to see if there is blockage. If there is no blockage found, then something else shall have to be done. Centurion is procrastinating and not sending me to be treated. They are going through the motions to treat me, but their delays show nothing they are doing helps. They have continued with the practice that Wexford began, Corizon continued, and Centurion, like Wexford and Corizon, have refused to prescribe the course of treatment that did manage my condition. As a result of my being denied treatment for my blood pressure, pain, prostrate and other issues, I have been told that I have to have a nephroplast to see if my kidney is blocked and this may cause me serious injury. Had Wexford, Corizon, Centurion continued with the treatment that I received in March 2012 - . . . - continued with the diet - I would not have been in imminent danger. I am 66 years of age and it is very likely that my injury shall be permanent.

Applying the above legal principles, and taking the complaint as a whole, the Court finds that Plaintiff's allegations are insufficient to satisfy the imminent danger requirement of 28 U.S.C. § 1915(g). While he alleges that he is being denied medical care, identical allegations are currently at issue in a pending case filed by Plaintiff in the United States District Court for District of Arizona. In that case, Plaintiff is alleging that he is receiving inadequate healthcare for high blood pressure, unbearable pain, a lung condition, shakes, tremors, and 6 the denial of a proper medical diet. See Tripati v. Corizon, Inc., 4:18-cv-00066 (D. Ariz.). *6

The remaining allegations of the complaint in which he alleges fraudulent concealment, fraud, deceit, violations of customary international law, and conspiracy, do not show that Plaintiff is in imminent danger of serious physical injury.

III. Conclusion

Based on the discussion above, it is respectfully recommended that Plaintiff's Motion for Leave to Proceed in forma pauperis (ECF No. 1) be denied in accordance with 28 U.S.C. § 1915(g) and that this action be dismissed without prejudice to Plaintiff reopening it by paying the full statutory and administrative filing fees, totaling $400.00.

Plaintiff is permitted to file Objections to this Report and Recommendation to the assigned United States District Judge. In accordance with 28 U.S.C. § 636(b), Fed.R.Civ.P. 6(d) and 72(b)(2), and LCvR 72.D.2, Plaintiff, because he is a non-electronically registered party, may file objections to this Report and Recommendation by April 27, 2020. Plaintiff is cautioned that failure to file Objections within this timeframe "will waive the right to appeal." Brightwell v. Lehman, 637 F.3d 187, 193 n. 7 (3d Cir. 2011).

Dated: April 8, 2020

/s Cynthia Reed Eddy
Cynthia Reed Eddy
Chief United States Magistrate Judge

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Inmate [illegible]
ADC # 102041
Arizona State Prison Complex Yuma
Unit Cocopah
[illegible] 8990
[illegible] AZ [illegible]

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