

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

HATTIE KING,

Plaintiff,

Case No. 1:13-cv-01238-JDB-egb

v.

JOE TED SCOTT, *et al.*,

Defendants.

REPORT AND RECOMMENDATION

On August 19, 2013, Pro Se Plaintiff Hattie King filed the instant case against Court Security Officers (CSOs) Joe Tedd Scott and "Roten," Deputy United States Marshal Kincaid (sic), and an unknown CSO. On the same date, Ms. King filed a motion to proceed *in forma pauperis*. On August 27, 2013, this Court granted the Motion. This case has been referred to the United States Magistrate Judge for management and for all pretrial matters for determination and/or report and recommendation as appropriate. (Admin. Order 2013-05, April 29, 2013.)

In her complaint, the Pro Se Plaintiff claims numerous violations of Federal statutes and Constitutional Amendments, including 42 USC § 1981, 18 USC § 3500, 18 USC § 1001, 18 USC § 1512, 18 USC § 1513, and the First, Fifth, and Fourteenth

Amendments to the Constitution of the United States. The dates of the incidents that produced these claims were July 27, July 28, and August 12, 2013. Ms. King states that Deputy Marshal Kincaid (sic) and CSO Scott's dress were "inappropriate of the code of justice of the United States Department of Justice." She also claims that Deputy Marshal Kincaid (sic) "pull[ed] at my legal documents to be filed in this court" and that CSOs Scott and Roten told her that she needed to stand outside the building if she wanted to file legal documents. She also complains that the "Court Clerk told plaintiff that she has to write into the court forever."

Ms. King seeks all previously filed "Prayer Reliefs" in old closed cases and monetary relief for all damages.

In assessing whether the complaint in this case states a claim on which relief may be granted, the standards under Rule 12(b)(6) of the Federal Rules of Civil Procedure, as stated in *Ashcroft v. Iqbal*, 556 U.S. 662, 678-679 (2009), and in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-57 (2007), are applied. *Hill v. Lappin*, 630 F.3d 468, 470-71 (6th Cir. 2010). "Accepting all well-pleaded allegations in the complaint as true, the Court 'consider[s] the factual allegations in [the] complaint to determine if they plausibly suggest an entitlement to relief.'" *Williams v. Curtin*, 631 F.3d 380, 383 (6th Cir.

2011)(quoting *Iqbal*, 556 U.S. at 681)(alteration in original). “[P]leadings that . . . are no more than conclusions[] are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations.” *Iqbal*, 556 U.S. at 679; see also *Twombly*, 550 U.S. at 555 n.3 (“Rule 8(a)(2) still requires a ‘showing,’ rather than a blanket assertion, of entitlement to relief. Without some factual allegation in the complaint, it is hard to see how a claimant could satisfy the requirement of providing not only ‘fair notice’ of the nature of the claim, but also ‘grounds’ on which the claim rests.”). “A complaint can be frivolous either factually or legally. Any complaint that is legally frivolous would *ipso facto* fail to state a claim upon which relief can be granted.” *Hill*, 630 F.3d at 470 (citing *Neitzke v. Williams*, 490 U.S. 319, 325, 328-29 (1989)).

Whether a complaint is factually frivolous under §§ 1915A(b)(1) and 1915(e)(2)(B)(i) is a separate issue from whether it fails to state a claim for relief. Statutes allowing a complaint to be dismissed as frivolous give “judges not only the authority to dismiss a claim based on an indisputably meritless legal theory, but also the unusual power to pierce the veil of the complaint’s factual allegations and dismiss those claims whose factual contentions are clearly baseless.” *Neitzke*, 490 U.S. at 327, 109 S. Ct. 1827 (interpreting 28 U.S.C. § 1915). Unlike a dismissal for failure to state a claim, where a judge must accept all factual allegations as true, *Iqbal*, 129 S. Ct. at 1949-50, a judge does not have to accept “fantastic or delusional” factual allegations as true in

prisoner complaints that are reviewed for frivolousness. *Neitzke*, 490 U.S. at 327-28, 109 S. Ct. 1827.

Id. at 471.

"*Pro se* complaints are to be held to less stringent standards than formal pleadings drafted by lawyers, and should therefore be liberally construed." *Williams*, 631 F.3d at 383 (internal quotation marks omitted). *Pro se* litigants, however, are not exempt from the requirements of the Federal Rules of Civil Procedure. *Wells v. Brown*, 891 F.2d 591, 594 (6th Cir. 1989); *see also Brown v. Matauszak*, 415 Fed. App'x 608, 613 (6th Cir. 2011)("[A] court cannot create a claim which [a plaintiff] has not spelled out in his pleading")(internal quotation marks omitted); *Payne v. Sec'y of Treas.*, 73 Fed. App'x 836, 837 (6th Cir. 2003)(affirming *sua sponte* dismissal of complaint pursuant to Fed. R. Civ. P. 8(a)(2) and stating, "[n]either this court nor the district court is required to create Payne's claim for her"); *cf. Pliler v. Ford*, 542 U.S. 225, 231 (2004)("District judges have no obligation to act as counsel or paralegal to *pro se* litigants."); *Young Bok Song v. Gipson*, 423 Fed. App'x 506, 510 (6th Cir. 2011)("[W]e decline to affirmatively require courts to ferret out the strongest cause of action on behalf of *pro se* litigants. Not only would that duty be overly burdensome, it would transform the courts from neutral arbiters of disputes into advocates for a particular party. While courts are

properly charged with protecting the rights of all who come before it, that responsibility does not encompass advising litigants as to what legal theories they should pursue.").

The Court, while reviewing the facts of this case, has been made aware of a Miscellaneous Case opened on August 2, 2013 by the Court. In this case, United States District Judge J. Daniel Breen¹ ordered that Ms. King be prohibited entry into the United States Courthouse unless "she is required to appear as a defendant in a criminal case or has a hearing set in a civil matter pending in this Courthouse." It further required that all business be in writing and submitted via the United States Postal Service or any other mail service. Judge Breen notes that Ms. King has a similar order entered against her in the Memphis Federal Courthouse. (13-mc-8-JDB)

Judge Breen did not enter this order lightly or frivolously. He details an incident report with Ms. King on July 29, 2013, in which she "grabbed her private parts and made an obscene gesture toward the Deputy Marshal and CSO." Additionally, Ms. King has previously been found wandering the Courthouse in an attempt to get into the Chambers of a United States District Judge. (ibid)

¹ On August 26, 2013, Judge Breen became the Chief Judge of the Western District of Tennessee. Since the events in the Complaint took place before the Chief Judge's elevation, we will use Judge Breen as to avoid confusion.

Ms. King cannot claim ignorance of Judge Breen's Order, as she objected to it and the return receipt was received by this Court on August 6, 2013 - a week before the August 12, 2013 incident. (13-mc-8, D.E.s 3, 4)

The Supreme Court has noted that "[i]t has long been understood that '[c]ertain implied powers must necessarily result to our Courts of justice from the nature of their institution,' powers 'which cannot be dispensed with in a Court, because they are necessary to the exercise of all others.' For this reason, 'Courts of justice are universally acknowledged to be vested, by their very creation, with power to impose silence, respect, and decorum, in their presence, and submission to their lawful mandates.' These powers are 'governed not by rule or statute, but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.' *Chambers v. NASCO, Inc.*, 501 U.S. 32 (U.S. 1991) (Internal Citations Omitted)

"It is the primary role and mission of the United States Marshals Service to provide for the security and to obey, execute, and enforce all orders of the United States District Courts, the United States Courts of Appeals, the Court of International Trade, and the United States Tax Court, as provided by law." 28 USCS § 566

Thus, the Deputy United States Marshal (and by extension the Court Security Officers), acting under the authority of the U.S. Marshals Service, which provides Court Security including the contracting of the Court Security Officers, was acting under the direct order of a United States District Judge, in accordance with the orders of this Court. The United States Marshals Service has sovereign immunity and claims against Deputy Marshal Kincaid (sic) and the CSOs are barred. (See *Briggs v. United States Marshals Serv.*, 2007 U.S. Dist. LEXIS 29099 (W.D. Tenn. Apr. 19, 2007))

Therefore, it is recommended that the case be dismissed for failing to state a claim for which relief may be granted pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(ii) and 1915A.

Respectfully submitted this 6th day of February, 2014.

s/Edward G. Bryant

EDWARD G. BRYANT

UNITED STATES MAGISTRATE JUDGE

ANY OBJECTIONS OR EXCEPTIONS TO THIS REPORT AND RECOMMENDATIONS MUST BE FILED WITHIN FOURTEEN (14) DAYS AFTER BEING SERVED WITH A COPY OF THE REPORT AND RECOMMENDATIONS. 28 U.S.C. § 636(b)(1). FAILURE TO FILE THEM WITHIN FOURTEEN (14) DAYS MAY CONSTITUTE A WAIVER OF OBJECTIONS, EXCEPTIONS, AND ANY FURTHER APPEAL.