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

CANDACE WATSON,

Plaintiff,

vs. No.: 1:14-cv-1034-JDT-egb

LEWIS L COBB,
Individually in his official capacity as attorney for City of Jackson, TN,
John/Jane Doe
c/o/ Lewis L. Cobb, Jr. esq. legal assistants/paralegals for Lewis L. Cobb, Jr. Esq., individually in his/her official capacity,

Defendants.

REPORT AND RECOMMENDATION

On February 12, 2014, the *Pro Se Plaintiff* filed this instant complaint, alleging, *inter alia,* violations against her relating to the Privacy Act of 1974, 5 U.S.C. § 552a et seq, the 4th, 5th, 11th, and 13th Amendments of the United States Constitution, 42 U.S.C. § 1983, 42 U.S.C. § 12188, 42 U.S.C. § 1985, and 42 U.S.C. § 1986.

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.)

BACKGROUND

The Court will use the Court of Appeals of Tennessee's description of the case:

> On November 17, 2008, Plaintiff/Appellant Candace Watson filed a complaint against the Defendant/Appellee City of Jackson ("the City") for injuries she allegedly sustained while employed by the City. According to her complaint, while working in a City building, Ms. Watson was injured when she slipped and fell on a recently waxed floor. Ms. Watson alleged that the fall caused her neck, back, leg, and arm pain, which continued at the time of the filing of the complaint.
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> The City filed an answer on January 16, 2009, specifically raising the defenses of contributory negligence and comparative fault. . . .
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> On December 27, 2012, the City filed a Motion for Summary Judgment, arguing that the undisputed evidence showed that there was no hazardous condition on the floor, until after Ms. Watson left work on the day of the alleged incident. Specifically, the City argued that Ms. Watson had alleged that a hazardous condition existed because City staff was waxing the floor prior to her departure; however, deposition testimony allegedly undisputedly showed that no waxing took place until after Ms. Watson left for the day. The City also argued that the evidence showed that if there was any negligence on the part of the City, the evidence nevertheless undisputedly showed that the negligence of Ms. Watson made her more than fifty percent responsible for her injuries, precluding recovery. Ms. Watson filed a response to the Motion for Summary Judgment on January 23, 2013. In her response, Ms. Watson denied that the undisputed facts entitled the City to judgment in its favor. On February 15, 2013, the trial court denied the City's Motion for Summary Judgment, finding a dispute as to the material facts in the case.
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> A trial was held on March 8, 2013. Ms. Watson testified on her own behalf. … [O]n May 14, 2013, the trial entered its final judgment in favor of the City. The trial court also entered an order awarding the City discretionary costs.

Watson v. City of Jackson No. W2013–01364–COA–R3–CV 2014 WL 4202466 (Tenn.Ct.App., Aug. 26, 2014)quoting Watson v. City of

Jackson, No. W2014–00100–COA–10B–CV, 2014 WL 575915 (Tenn.Ct.App. Feb. 13, 2014)

Plaintiff appealed the case twice to the Tennessee Court of Appeals.

> The Court is required to screen in forma pauperis complaints and to dismiss any complaint, or any portion thereof, if the action—
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> (i) is frivolous or malicious;
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> (ii) fails to state a claim on which relief may be granted; or
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> (iii) seeks monetary relief against a defendant who is immune from such relief.
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> 28 U.S.C. § 1915(e)(2).

In assessing whether the complaint in this case states a claim on which relief may be granted, the standards under Fed. R. Civ. P. 12(b)(6), as stated in Ashcroft v. Iqbal, 556 U.S. 662, 667-79, 129 S. Ct. 1937, 1949-50, 173 L. Ed. 2d 868 (2009), and in Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555-57, 127 S. Ct. 1955, 1964-66, 167 L. Ed. 2d 929 (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, 129 S. Ct. at 1951) (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 681, 129 S. Ct. at 1950; *see also* Twombly, 550 U.S. at 555 n.3, 127 S. Ct. at 1964-65 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. *See* Neitzke [v. Williams], 490 U.S. [319,] 325, 109 S. Ct. at 1827 [(1989)]. Any complaint that is legally frivolous would ipso facto fail to state a claim upon which relief can be granted. See id. at 328-29, 109 S. Ct. 1827." Hill, 630 F.3d at 470.

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 (quoting Martin v. Overton, 391 F.3d 710, 712 (6th Cir. 2004)). 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), *reh'g denied* (Jan. 19, 1990); *see also* Song v. Gipson, No. 09-5480, 2011 WL 1827441, at *4 (6th Cir. May 12, 2011); Brown v. Matauszak, No. 09-2259, 2011 WL 285251, at *5 (6th Cir. Jan. 31, 2011) (affirming dismissal of pro se complaint for failure to comply with "unique pleading requirements" and stating "a court cannot 'create a claim which [a plaintiff] has not spelled out in his pleading'") (quoting Clark v. Nat'l Travelers Life Ins. Co., 518 F.2d 1167, 1169 (6th Cir. 1975)) (alteration in original); Payne v. Secretary of Treas., 73 F. 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, 124 S. Ct. 2441, 2446, 159 L. Ed. 2d 338 (2004) ("District judges

have no obligation to act as counsel or paralegal to pro se litigants.").

ANALYSIS

The Court construes this Complaint as an appeal of the Circuit Court's decision. The facts alleged were also brought before the Court of Appeals of Tennessee, which has ruled against the Plaintiff (*see Watson v. City of Jackson No. W2013–01364–COA–R3–CV 2014 WL 4202466 (Tenn.Ct.App., Aug. 26, 2014)*. While her arguments are couched in citations to Federal laws, the Plaintiff's complaints are, in essence, a rehashing of her state appeal. This Court notes that she has not thoroughly exhausted her state court remedies and even if there were issues that this Court had jurisdiction over, it would be improper for this Court to rule on them while the case is still being litigated. Thus, this Court recommends that this action be dismissed *sua sponte*.

Respectfully submitted this, the 13th day of January, 2015.

s/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.