

## Pearson v. Warren

Decided Aug 16, 2022

8:22-cv-1638-WFJ-JSS

08-16-2022

VERNON JEWEL PEARSON, III, Plaintiff, v.  
ANDREW WARREN, Defendant.

### REPORT AND RECOMMENDATION

Plaintiff moves the court to proceed *in forma pauperis*. (Motion, Dkt. 2.) Upon consideration, it is recommended that the Motion be denied without prejudice and Plaintiff's Complaint (Dkt. 1) be dismissed without prejudice.

### APPLICABLE STANDARDS

Pursuant to 28 U.S.C. § 1915, the court may, upon a finding of indigency, authorize the commencement of an action without requiring the prepayment of fees or security. 28 U.S.C. § 1915(a)(1). A court's decision to grant *in forma pauperis* status is discretionary. *Pace v. Evans*, 709 F.2d 1428, 1429 (11th Cir. 1983). When considering a motion filed under § 1915(a), “[t]he only determination to be made by the court . . . is whether the statements in the affidavit satisfy the requirement of poverty.” *Martinez v. Kristi Kleaners, Inc.*, 364 F.3d 1305, 1307 (11th Cir. 2004) (quoting *Watson v. Ault*, 525 F.2d 886, 891 (5th Cir. 1976)). However, when an application to proceed *in forma pauperis* is filed, the court must review the case and \*1 dismiss it *sua sponte* if the court determines that the action is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B).

Federal Rule of Civil Procedure 8(a) requires that a complaint contain a short and plain statement of the grounds for the court's jurisdiction, a short and plain statement of the claim showing that the pleader is entitled to relief, and a demand for the relief sought. Fed.R.Civ.P. 8(a). A complaint must give “the defendant fair notice of what the . . . claim is and the grounds upon which it rests” and provide “more than labels and conclusions [or] a formulaic recitation of the elements of a cause of action[.]” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007); see also *Weiland v. Palm Beach Cnty. Sheriff's Office*, 792 F.3d 1313, 1320 (11th Cir. 2015) (“Complaints that violate either Rule 8(a)(2) or Rule 10(b), or both, are often disparagingly referred to as ‘shotgun pleadings.’”).

### ANALYSIS

Upon review of the Motion, it appears that Plaintiff may be financially eligible to proceed *in forma pauperis* in this case. Nonetheless, the undersigned recommends that Plaintiff's Complaint be dismissed because it fails to properly state claims as required by the Federal Rules of Civil Procedure. Although pleadings drafted by pro se litigants are liberally construed, *Tannenbaum v. United States*, 148 F.3d 1262, 1263 (11th Cir. 1998), they must still “conform to procedural rules.” *Loren v. Sasser*, 309 F.3d 1296, 1304 (11th Cir. 2002). \*2

Plaintiff's allegations, as set forth in the complaint, fail to satisfy the requirements of Federal Rule of Civil Procedure 8(a). Plaintiff does not provide any information regarding the identity of Defendant Andrew Warren, beyond that he is being sued in his “private capacity” (Dkt. 1 at 1-

2), or provide sufficient factual allegations as to how Defendant's conduct harmed Plaintiff.<sup>1</sup> In Count I, Plaintiff seeks **declaratory relief** regarding the “validity and enforceability of **state of [F]lorida laws**” and asks “to be declared **cestui que vie trust** and an order declaring renunciation of [U.S.] **citizenship** and declare [P]laintiff [a] **State National/Citizen** from Florida USA with restoration of all **property/rights** belonging to [P]laintiff.” (*Id.* at 3-4.) In Count 2, Plaintiff **alleges** that the “**state of [F]lorida**” has “been arresting me since 2008 every year,” resulting in violation of Plaintiff’s **constitutional rights**, including due process and the Thirteenth Amendment, and causing Plaintiff emotional distress. (*Id.* at 4.) He **claims** that the “incident” was caused by the “careless, negligent, grossly careless, and reckless conduct of the Defendant” (*id.*), but does not provide any additional factual allegations regarding the who, what, where, when, or how the **alleged** wrongful arrests, **constitutional** violations, or emotional distress occurred. In Count 3, Plaintiff asserts only that Defendant “is in [b]reach of any such **alleged** \*3 **contract** for **failure** of consideration because they gave nothing to me and have no **claim** in fact.” (*Id.* at 5.) Plaintiff does not provide any additional factual allegations as to the **alleged contract** or Defendant's actions in **breaching** it. As pleaded, Plaintiff's **Complaint** fails to give “the defendant fair **notice** of what the . . . **claim** is and the grounds upon which it rests[.]” *Twombly*, 550 U.S. at 555. The bare-bones allegations in the **complaint** are thus insufficient to satisfy **Rule 8**. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (“[T]he **pleading standard Rule 8** announces does not require ‘detailed factual allegations,’ but it **demands** more than an unadorned, the-defendant-unlawfully-harmed-me accusation.”) (quoting *Twombly*, 550 U.S. at 555).

<sup>1</sup> The court also notes that Plaintiff's identity is unclear from the **complaint**. Plaintiff, “Vernon Jewel Pearson III,” is described in the **complaint** as both a **corporation** and an **individual** acting as attorney-in-fact and

with an **interest** in the **corporation**. (Dkt. 1 at 1) (“Comes now, the plaintiff VERNON JEWEL PEARSON III, [a] **corporation** by and through attorney in fact Vernon Jewel Pearson III . . . .”) Plaintiff also asserts several allegations that could apply to Plaintiff either as a **corporation** or an **individual**. For example, Plaintiff **states** that “Vernon Jewel Pearson III is a **man** and has a proprietary right to Vernon Jewel Pearson III,” “Vernon Jewel Pearson III is the only **real party** in **interest** acting as contributing beneficiary who has put any value into Vernon Jewel Pearson III,” “Vernon Pearson is the only legitimate **claimant** to any **equity** attached to Vernon Jewel Pearson III.” (*Id.* at 1-2.)

Accordingly, it is **RECOMMENDED** that

1. Plaintiff's Motion for Leave to Proceed *in Forma Pauperis* (Dkt. 2) be **DENIED** without **prejudice**.
2. Plaintiff's **Complaint** (Dkt. 1) be **DISMISSED** without **prejudice** and with leave to file an **amended complaint** that complies with the **Federal Rules of Civil Procedure**. See *Bryant v. Dupree*, 252 F.3d 1161, 1163 (11th Cir. 2001) (“Generally, where a more carefully **drafted complaint** might **state a claim**, a plaintiff **must** be given at least one chance to amend the **complaint** before the **district court dismisses** the action with **prejudice**”) (internal quotation and citation omitted). It is recommended that the second **amended complaint**, if any, be due within 20 days of the date this Report and Recommendation becomes final.

\*4

**IT IS SO REPORTED.**

**NOTICE TO PARTIES**

A party has 14 days from this date to file written objections to the Report and Recommendation's factual findings and legal conclusions. A party's failure to file written objections waives that party's right to challenge on appeal any unobjected-to

factual finding or legal conclusion the district judge adopts from the Report and Recommendation. See 11th Cir. R. 3-1. \*5

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