

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 10-1185

RONNIE CLARKE,

Plaintiff - Appellant,

v.

RICHMOND BEHAVIORAL HEALTH AUTHORITY; JACK O. LANIER, DrPH, MHA, FACHE, Current Chief Executive Officer; CHARLES D. STORY, III, Current Human Resources Director; MICHAEL TUTT, Current Retention and Recruitment Coordinator; ALL RICHMOND BEHAVIORAL HEALTH AUTHORITY BOARD MEMBERS; FRANCES M. CHRISTIAN, Ph.D., Chairperson, Richmond Behavioral Health Authority Board Member; WAYNE BLANKS, Vice Chairperson, Richmond Behavioral Health Authority Board Member; TRACEY CAUSEY, Treasury/Secretary, Richmond Behavioral Health Authority Board Member; HENRY F. BULIFANT, IV, Richmond Behavioral Health Authority Board Member; LINDA CARR, Richmond Behavioral Health Authority Board Member; MARGARET N. CROWE, Richmond Behavioral Health Authority Board Member and Former Chairperson; STEVEN DANISH, Ph.D., Richmond Behavioral Health Authority Board Member; ANDREW C. EPPS, III, Richmond Behavioral Health Authority Board Member; SAMUEL LILLARD, Richmond Behavioral Health Authority Board Member; WILLIAM MIMS, Richmond Behavioral Health Authority Board Member; NAPOLEON PEOPLES, Ph.D., Richmond Behavioral Health Authority Board Member; ROSE STITH SINGLETON, Richmond Behavioral Health Authority Board Member,

Defendants - Appellees.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Robert E. Payne, Senior District Judge. (3:09-cv-00743-REP)

Submitted: August 25, 2010

Decided: November 18, 2010

Before NIEMEYER, DUNCAN, and AGEE, Circuit Judges.

Vacated and remanded by unpublished per curiam opinion.

Ronnie Clarke, Appellant Pro Se. Lisa H. Leiner, HARMAN,
CLAYTOR, CORRIGAN & WELLMAN, Richmond, Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Ronnie Clarke appeals the district court's order denying his motion to proceed in forma pauperis. Clarke filed the motion along with a complaint alleging that Defendant retaliated against him in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C.A. §§ 2000e to 2000e-17 (West 2003 & Supp. 2010). Clarke has also moved to proceed in formal pauperis on appeal. For the reasons that follow, we grant Clarke's application to proceed in forma pauperis on this appeal and vacate and remand the matter to the district court.*

A district court has discretion to grant or deny an application for in forma pauperis status. See 28 U.S.C. § 1915(a) (2006); Dillard v. Liberty Loan Corp., 626 F.2d 363, 364 (4th Cir. 1980). The district court's discretion is limited to a determination of the applicant's poverty, good faith, and the meritorious character of the claim. Dillard, 626 F.2d at 364 (citing Kinney v. Plymouth Rock Squab Co., 236 U.S. 43, 46 (1915)). Thus, when a district court determines that a petition is frivolous, the court may deny leave to proceed in forma pauperis. Graham v. Riddle, 554 F.2d 133, 134 (4th Cir. 1977); see also 28 U.S.C. § 1915(e)(2)(B)(i) (2006) (requiring a

* "The denial by a District Judge of a motion to proceed in forma pauperis is an appealable order." Roberts v. U. S. Dist. Ct. for N. Dist. of Cal., 339 U.S. 844, 845 (1950).

district court to dismiss a complaint if, at any time, it finds the complaint to be frivolous).

Based on the record before the court, it is unclear to us that Clarke's complaint was "fundamentally the same" as the claim he filed in his previous action against Defendant. To the contrary, the complaint appears to address conduct that occurred after, and in retaliation for, the conduct complained of in his prior action. Moreover, it does not appear beyond doubt that Clarke's complaint lacks "an arguable basis in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989); McLean v. United States, 566 F.3d 392, 399 (4th Cir. 2009) ("Examples of frivolous claims include those whose factual allegations are so nutty, delusional, or wholly fanciful as to be simply unbelievable.") (internal quotation marks and citations omitted). In so holding, we express no opinion as to the viability of Clarke's claims, or whether dismissal for some other reason under § 1915 would have been inappropriate.

Accordingly, we grant Clarke's application to proceed in forma pauperis on appeal, vacate the district court's order dismissing Clarke's complaint as frivolous, and remand for further proceedings consistent with this opinion. We dispense with oral argument because the facts and legal contentions are

adequately presented in the materials before the court and argument would not aid the decisional process.

VACATED AND REMANDED