

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
NORTHWESTERN DIVISION**

CLAYBORN REAVES,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 3:20-cv-01572-AKK
)	
MARC PRESLEY and)	
AMANDA PRESLEY,)	
)	
Defendants.)	

MEMORANDUM OPINION

Clayborn Reaves, proceeding pro se, filed a complaint against Marc Presley and Amanda Presley. Doc. 1. Reaves also filed a request to proceed in forma pauperis and for the appointment of an attorney. Doc. 2. For the reasons set out herein, this case is due to be dismissed without prejudice for failing to state a claim on which relief can be granted, and Reaves’s motions to proceed in forma pauperis and for the appointment of an attorney are moot.

Title 28 U.S.C. § 1915, which governs proceedings in forma pauperis, provides for the commencement of a civil action without prepayment of fees by a “person who submits an affidavit that includes a statement of all assets such [person] possesses [and] that the person is unable to pay such fees or give security therefor.” 28 U.S.C. § 1915(a)(1). Section 1915(e)(2)(B) further provides, however, that a

court shall dismiss the case at any time if it determines it 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.” See 28 U.S.C. § 1915(e)(2)(B).¹ “A claim is frivolous if it is without arguable merit either in law or fact.” *Thomas v. Pentagon Fed. Credit Union*, 393 F. App’x 635, 637 (11th Cir. 2010). A district court retains discretion to dismiss a complaint “when it appears the plaintiff ‘has little or no chance of success,’” meaning review of the complaint reveals “the factual allegations are ‘clearly baseless’ or . . . the legal theories are ‘indisputably meritless.’” *Carroll v. Gross*, 984 F.2d 392, 393 (11th Cir. 1993) (discussing § 1915(d), now § 1915(e)(2)(B)(i)).

In conducting its review of Reaves’s complaint, the court is mindful that complaints by pro se litigants are held to a less stringent standard than pleadings drafted by attorneys and subject to liberal construction. *Boxer X v. Harris*, 437 F.3d 1107, 1110 (11th Cir. 2006), abrogated in part on other grounds by *Wilkins v.*

¹ Title 28 U.S.C. § 1915 provides, in relevant part:

(e)(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that--

(A) the allegation of poverty is untrue; or

(B) the action or appeal--

(i) is frivolous or malicious;

(ii) fails to state a claim on which relief may be granted; or

(iii) seeks monetary relief against a defendant who is immune from such relief.

Gaddy, 559 U.S. 34 (2010), as recognized in *Sconiers v. Lockhart*, 946 F.3d 1256 (11th Cir. 2020). However, the court “may not serve as de facto counsel for a party . . . or rewrite an otherwise deficient pleading in order to sustain an action.” *Ausar-El ex rel. Small, Jr. v. BAC (Bank of America) Home Loans Servicing LP*, 448 F. App’x 1, 2 (11th Cir. 2011) (internal quotations and citations omitted). Furthermore, to survive dismissal for failure to state a claim, “a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation omitted). A plaintiff must assert “more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not” suffice. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

In his complaint, Reaves alleges the Presleys violated the United States Constitution by circulating a petition “against [him] and [his] house,” and requesting his neighbors’ signatures thereupon. Doc. 1 at 5. Reaves contends he “ha[s] never been bothered before [he] filed the lawsuit against the City”, and that “all this is tied to [his] lawsuit against the City.”² *Id.* at 8, 9 (emphasis in original). It seems Reeves may be alleging that the Presleys’ retaliatory petition incites the possibility of a claim pursuant to the First Amendment. However, the complaint fails to articulate a plausible First Amendment claim because it lacks any allegations the Presleys’

² See *Clayborn Dee Reaves v. The City of Tuscumbia, et al.*, No. 3:19-cv-00793-HNJ at doc. 1.

petition constitutes state action. Although “lawsuits against the government can clearly constitute protected First Amendment activity,” *DeMartini v. Town of Gulf Stream*, 942 F.3d 1277, 1289 (11th Cir. 2019), a proper claim under the First Amendment requires the plaintiff to “establish that there is some type of state action at issue.” *GeorgiaCarry.Org, Inc v. Georgia*, 687 F.3d 1244, 1259 n.32 (11th Cir. 2012). “[T]he state action requirement is satisfied when the [defendant] ‘is a state official, . . . has acted together with or has obtained significant aid from state officials, or because his conduct is otherwise chargeable to the State.’” *Motes v. Myers*, 810 F.2d 1055, 1058 (11th Cir. 1987) (alteration in original) (quoting *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 937 (1982)).

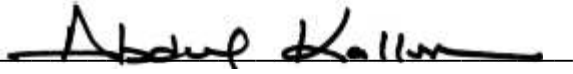
Here, Reaves does not allege the Presleys are state officials. Further, Reaves fails to allege the Presleys “acted together with or . . . obtained significant aid from state officials” in circulating the petition. *Id.* Likewise, Reaves does not plausibly allege the Presleys’ petition “is otherwise chargeable to the State.” *Id.* To the contrary, Reaves’s allegations portray that the Presleys acted as private citizens in circulating the petition. Therefore, as pleaded, Reaves fails to state a plausible First Amendment claim.

CONCLUSION

In summary, the complaint fails to state a claim upon which relief can be granted under the United States Constitution, and no other grounds for federal

jurisdiction exist. Accordingly, the court will dismiss this action. See 28 U.S.C. § 1915(e)(2)(B). The court will enter a separate Final Judgment.

DONE the 15th day of October, 2020.



ABDUL K. KALLON
UNITED STATES DISTRICT JUDGE