

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
BATESVILLE DIVISION**

BRYAN OLMSTEAD
ADC # 144172

PLAINTIFF

V.

1:09CV00035 BSM

THOMAS OLMSTEAD

DEFENDANT

ORDER OF DISMISSAL

Plaintiff, a prisoner at the Tucker Unit of the Arkansas Department of Correction, filed this *pro se* complaint (docket entry #2). Having been carefully reviewed pursuant to 28 U.S.C. § 1915A(a), the complaint is dismissed for failure to state a claim for relief under § 1983.

I. SCREENING

The Prison Litigation Reform Act requires federal courts to screen prisoner complaints seeking relief against a governmental entity, officer, or employee. 28 U.S.C. § 1915A(a). A complaint or portion thereof must be dismissed if the prisoner raises claims that: (a) are legally frivolous or malicious; (b) fail to state a claim upon which relief may be granted; or (c) seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(A)(b).

An action is frivolous if “it lacks an arguable basis either in law or in fact.” *Neitzke*

v. Williams, 490 U.S. 319, 325 (1989). An action fails to state a claim upon which relief can be granted if it does not plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 127 S.Ct. 1955, 1974 (2007). In reviewing a *pro se* complaint under §1915(e)(2)(B), the court must give the complaint the benefit of a liberal construction. *Haines v. Kerner*, 404 U.S. 519, 520 (1972). The court must also weigh all factual allegations in favor of the plaintiff, unless the facts alleged are clearly baseless. *Denton v. Hernandez*, 112 S.Ct. 1728, 1733 (1992); *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974). But regardless whether a plaintiff is represented or appearing *pro se*, his complaint must allege specific facts sufficient to state a claim. *See Martin v. Sargent*, 780 F.2d 1334, 1337 (8th Cir.1985).

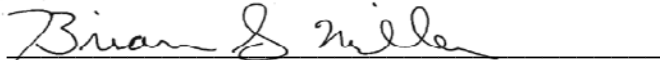
II. DISCUSSION

The complaint at issue states that plaintiff seeks compensation for medical bills, lost work, and other damages from Thomas Olmstead, his father, with whom he apparently engaged in a shoot-out at the family’s funeral home (docket entry #2). Plaintiff’s claims must fail because his father is not a state actor. In order to state a cognizable claim for money damages under 42 U.S.C. § 1983, plaintiff must allege that the conduct of a defendant acting “under color of state law” deprived him of a right, privilege, or immunity secured by the federal Constitution or laws of the United States. 42 U.S.C. § 1983; *Hamilton v. Schriro*, 74 F.3d 1545, 1549 (8th Cir. 1996). If plaintiff believes he has a valid claim for injuries sustained in the incident, he should instead pursue them in state court.

III. CONCLUSION

Plaintiff's complaint is (docket entry #1) hereby dismissed with prejudice for failure to state a claim upon which relief may be granted. Dismissal of this action constitutes a "strike" for purposes of 28 U.S.C. § 1915(g).

DATED this 22nd day of July, 2009.


UNITED STATES DISTRICT JUDGE