

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GARY RAY BETTENCOURT,
Plaintiff,
v.
BRIAN MCCABE, et al.,
Defendants.

No. 1:17-cv-00646-DAD-SAB
ORDER FINDING APPEAL FRIVOLOUS
AND REVOKING IN FORMA PAUPERIS
STATUS
(Doc. No. 25)

This action proceeded by way of a first amended complaint, filed by plaintiff, a state prisoner proceeding pro se and *in forma pauperis*, on August 23, 2017. (Doc No. 12.) On September 20, 2017, the assigned magistrate judge issued findings and recommendations recommending that the first amended complaint be dismissed without leave to amend and that plaintiff’s state law claims be dismissed without prejudice. (Doc No. 13.) These findings and recommendations were adopted by the undersigned on December 26, 2017, and the case was dismissed. (Doc. No. 15.)

Though somewhat unclear, the essential basis of plaintiff’s complaint related to the probate of John S. Bettencourt’s will and plaintiff’s attempts to file documents in the actions before the Merced County Superior Court concerning the probate of the will and/or collection of a trust that he alleges he is owed pursuant to the will. (*See* Doc. No. 13 at 2–3.) As thoroughly

1 detailed by the magistrate judge in the findings and recommendations and subsequently adopted
2 by this court, plaintiff failed to state any cognizable claim which could proceed in federal court on
3 the bases alleged. (*See* Doc. Nos. 13, 15.)

4 Plaintiff subsequently appealed the dismissal order. Plaintiff’s notice of appeal, which
5 includes almost 200 pages of various documents, states that the district court and the California
6 Court of Appeal for the Fifth Appellate District have violated various unspecified federal laws.
7 (Doc No. 22 at 2.) Plaintiff alleges that the defendants in this action are liable for the \$16,400 in
8 property sales he is owed as an heir of John S. Bettencourt’s estate. (*Id.* at 5–7.) Plaintiff asserts
9 that because the Merced County Superior Court clerks waited two years to file his petitions,
10 someone was able to withdraw his trust funds. (*Id.* at 8.) On April 5, 2018, the Ninth Circuit
11 Court of Appeals referred the matter back to this court for a determination as to whether *in forma*
12 *pauperis* status should continue on appeal or whether the appeal is frivolous or taken in bad faith.
13 (Doc No. 25.)

14 “An appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it
15 is not taken in good faith.” 28 U.S.C. § 1915(a)(3). “The test for allowing an appeal *in forma*
16 *pauperis* is easily met . . . [t]he good faith requirement is satisfied if the appellant seeks review of
17 any issue that is ‘not frivolous.’” *Gardner v. Pogue*, 558 F.2d 548, 550–51 (9th Cir. 1977)
18 (quoting *Coppedge v. United States*, 369 U.S. 438, 445 (1962)); *see also Hooker v. Am. Airlines*,
19 302 F.3d 1091, 1092 (9th Cir. 2002) (holding that if at least one issue or claim is non-frivolous,
20 the appeal must proceed *in forma pauperis* as a whole). An action is frivolous “where it lacks an
21 arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325, (1989). In other
22 words, the term “frivolous”, as used in § 1915 and when applied to a complaint, “embraces not
23 only the inarguable legal conclusion, but also the fanciful factual allegation.” *Id.*

24 Plaintiff seeks to appeal the dismissal of this action because he alleges that he has stated a
25 claim regarding \$16,400 that he is allegedly owed as an heir to John S. Bettencourt’s estate.
26 While plaintiff claims that the Merced County Superior Court clerks delayed his cases there, as
27 the magistrate judge found in the findings and recommendations, the clerks are entitled to quasi-
28 judicial immunity as to any claims brought against them in their individual capacities related to

1 determining what documents should be filed and what documents should be returned to the filer
2 because of deficiencies. *See Mullis v. U.S. Bankr. Court for Dist. of Nevada*, 828 F.2d 1385,
3 1390 (9th Cir. 1987); *Fixel v. United States*, 737 F. Supp. 593, 597 (D. Nev. 1990), *aff'd sub nom.*
4 *Fixel v. U.S. Dist. Court of Nevada*, 930 F.2d 27 (9th Cir. 1991). In addition, the judges of the
5 Merced County Superior Court are entitled to judicial immunity as to the claims brought against
6 them in their individual capacity regarding what documents or pleadings should be filed and
7 whether a judge should recuse himself or herself. *See Duvall v. Cty. of Kitsap*, 260 F.3d 1124,
8 1133 (9th Cir. 2001). Further, the Eleventh Amendment bars claims brought against judges and
9 clerks in their official capacities for monetary damages. *See Simmons v. Sacramento Cty.*
10 *Superior Court*, 318 F.3d 1156 (9th Cir. 2003); *Franceschi v. Schwartz*, 57 F.3d 828, 831 (9th Cir
11 1995); *Greater Los Angeles Council on Deafness, Inc. v. Zolin*, 812 F.2d 1103, 1110 (9th Cir.
12 1987). Therefore, plaintiff would have no legal basis in this action to seek damages against the
13 Merced County Superior Court judges and clerks.

14 In addition, as the magistrate judge observed in the findings and recommendations, to the
15 extent plaintiff is requesting that the district court order the Merced County Superior Court to file
16 certain petitions or requests in the civil or probate actions, this court would be interfering with the
17 ongoing adjudication of state court issues in Merced County Superior Court, which it typically
18 may not do. *See Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432
19 (1982); *Dubinka v. Judges of the Superior Court of State of Cal. for Cty. Of Los Angeles*, 23 F.3d
20 218, 223 (9th Cir. 1994) (citations omitted). As the findings and recommendations noted, the
21 remedy for any disagreement with the Merced County Superior Court clerks and judges'
22 decisions regarding whether to file documents, decisions regarding whether to grant plaintiff's
23 requests, or decisions on the probate of the will is an appeal in state court, and not a federal action
24 in the district court. Well-established principles of federalism and comity require the district
25 court to abstain from interfering in the ongoing state court proceedings in Merced County
26 Superior Court.

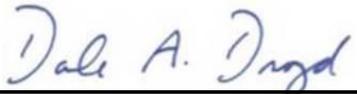
27 Finally, plaintiff's state law claims for breach of a fiduciary duty do not invoke federal
28 question jurisdiction and plaintiff has not alleged diversity jurisdiction. Plaintiff was informed

1 about diversity jurisdiction in the order dismissing his original complaint, but he did not allege
2 diversity jurisdiction in his first amended complaint.

3 In sum, there is no basis in fact or in law for this appeal. Thus, the court concludes that
4 plaintiff's appeal is frivolous and not taken in good faith. Accordingly, plaintiff's *in forma*
5 *pauperis* status is revoked. The Clerk of the Court is directed to serve a copy of this order on
6 plaintiff, as well as the Ninth Circuit Court of Appeals.

7 IT IS SO ORDERED.

8 Dated: April 10, 2018


UNITED STATES DISTRICT JUDGE

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28