

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-00438-BNB

MATTHEW A. SMITH,

Plaintiff,

v.

ALFRED M. ARRAJ FEDERAL COURT, CO,

Defendant.

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ORDER OF DISMISSAL

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Plaintiff, Matthew A. Smith, has filed *pro se* a Complaint (ECF No. 1) and a Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 (ECF No. 3). The Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 (ECF No. 3) will be granted.

Pursuant to § 1915(e)(2)(B)(i), the Court must dismiss the action if Mr. Smith's claims are frivolous. A legally frivolous claim is one in which the plaintiff asserts the violation of a legal interest that clearly does not exist or asserts facts that do not support an arguable claim. See *Neitzke v. Williams*, 490 U.S. 319, 327-28 (1989). For the reasons stated below, the Court will dismiss the action as legally frivolous.

The Court must construe the Complaint liberally because Mr. Smith is not represented by an attorney. See *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10<sup>th</sup> Cir. 1991). If the Complaint reasonably can be read "to state a valid claim on which the plaintiff could prevail, [the Court] should do so

despite the plaintiff's failure to cite proper legal authority, his confusion of various legal theories, his poor syntax and sentence construction, or his unfamiliarity with pleading requirements." *Hall*, 935 F.2d at 1110. However, the Court should not be an advocate for a *pro se* litigant. *See id.*

Mr. Smith's Complaint in this action stems from the fact that a prior lawsuit he filed in the District of Colorado raising claims of employment discrimination against his former employer was dismissed with prejudice and summary judgment was entered in favor of his former employer. *See Smith v. United Parcel Service*, No. 12-cv-01578-LTB (D. Colo. Nov. 15, 2013), *appeal filed*, No. 13-1483 (10<sup>th</sup> Cir. Nov. 18, 2013). Mr. Smith contends that summary judgment should have been entered in his favor in 12-cv-01578-LTB and that his claims were misunderstood. According to Mr. Smith, "[a]s for what is at question in this case there were improper procedures obvious unfair decision made by the court compelled evidence necessary to further support his claims. Both parties should have had equal procedural practice by the law." (ECF No. 1 at 2.) He seeks damages as relief.

The instant action is legally frivolous. The remedy available to Mr. Smith if he disagrees with the Court's decision in 12-cv-01578-LTB is to seek review of that decision in the United States Court of Appeals for the Tenth Circuit, which he has done. Mr. Smith cites no jurisdictional authority that would allow him to file a separate action for damages against the federal district court because his claims were dismissed. Therefore, the Complaint is legally frivolous and will be dismissed.

Furthermore, the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith and therefore *in forma pauperis*

status will be denied for the purpose of appeal. See *Coppedge v. United States*, 369 U.S. 438 (1962). If Plaintiff files a notice of appeal he also must pay the full \$505 appellate filing fee or file a motion to proceed *in forma pauperis* in the United States Court of Appeals for the Tenth Circuit within thirty days in accordance with Fed. R. App. P. 24.

Finally, Mr. Smith has filed two other actions in the District of Colorado seeking damages from a state court and a state agency based on disagreements with decisions made by those entities that were dismissed summarily for lack of subject matter jurisdiction. See *Smith v. Colo. Dep't of Labor and Emp't*, No. 13-cv-02946-LTB (D. Colo. Nov. 1, 2013), *appeal filed*, No. 13-1462 (10<sup>th</sup> Cir. Nov. 5, 2013); *Smith v. Adams Cnty. Combined Court*, No. 13-cv-02945-LTB (D. Colo. Nov. 1, 2013), *aff'd*, No. 13-1463 (10<sup>th</sup> Cir. Jan. 22, 2014) (concluding appeal is wholly frivolous). Mr. Smith is warned that he may be sanctioned, including the imposition of filing restrictions, if he persists in engaging in abusive litigation tactics by filing frivolous lawsuits. Accordingly, it is

ORDERED that the Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 (ECF No. 3) is granted. It is

FURTHER ORDERED that the Complaint and the action are dismissed as legally frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(i). It is

FURTHER ORDERED that leave to proceed *in forma pauperis* on appeal is denied without prejudice to the filing of a motion seeking leave to proceed *in forma pauperis* on appeal in the United States Court of Appeals for the Tenth Circuit.

DATED at Denver, Colorado, this 24<sup>th</sup> day of February, 2014.

BY THE COURT:

s/Lewis T. Babcock  
LEWIS T. BABCOCK, Senior Judge  
United States District Court