

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-00442-BNB

MATTHEW A. SMITH,

Plaintiff,

v.

ALFRED M. ARRAJ FEDERAL COURT, CO,

Defendant.

ORDER OF DISMISSAL

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 or malicious. 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 and malicious.

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 (10th 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 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 (10th 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.

One day prior to filing the instant action, Mr. Smith initiated a separate action by filing a Complaint that appears to be identical to the Complaint in this action. *See Smith v. Alfred M. Arraj Federal Court*, CO, No. 14-cv-00438-LTB (D. Colo. Feb. 24, 2014).

“Repetitious litigation of virtually identical causes of action may be dismissed under § 1915 as frivolous or malicious.” *McWilliams v. Colorado*, 121 F.3d 573, 574 (10th Cir. 1997) (quotation marks and alteration omitted). To determine whether a pleading repeats pending or previously litigated claims, the Court may consult its own

records. See *Duhart v. Carlson*, 469 F.2d 471, 473 (10th Cir. 1972). The Court has consulted its records and finds that the Complaint in this action is repetitive of the Complaint filed in case number 14-cv-00438-LTB. Therefore, the instant action will be dismissed as legally frivolous and malicious.

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 multiple lawsuits in the District of Colorado seeking damages from courts and a state agency based on disagreements with rulings made by the courts and the state agency. The Court dismissed for lack of subject matter jurisdiction the actions Mr. Smith filed against a Colorado state court and a Colorado state agency. 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 (10th 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 (10th Cir. Jan. 22, 2014) (concluding appeal is wholly frivolous). Most recently, the Court dismissed case number 14-cv-00438-LTB as legally frivolous and warned Mr. Smith in that action about the possibility of imposing sanctions. The Court reiterates that warning here: the Court can and will impose appropriate sanctions if Mr. Smith persists in engaging in abusive litigation tactics by filing frivolous lawsuits. Accordingly,

it is

ORDERED that the Complaint and the action are dismissed as legally frivolous and malicious 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 27th day of February, 2014.

BY THE COURT:

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