LEXSEE 2007 U.S. DIST. LEXIS 27163

THOMAS TULLY, Plaintiff, v. MAGISTRATE NAOMI LONG, et al., Defendants.

Civil Action No. 7:07-cv-00165

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA, ROANOKE DIVISION

2007 U.S. Dist. LEXIS 27163

April 11, 2007, Decided
April 12, 2007, Filed

SUBSEQUENT HISTORY: Affirmed by Tully v. Long, 2007 U.S. App. LEXIS 20654 (4th Cir. Va., Aug. 29, 2007)

COUNSEL: [*1] Thomas Tully, Plaintiff, Pro se, Winchester, VA US.

JUDGES: Samuel G. Wilson, United States District Judge.

OPINION BY: Samuel G. Wilson

OPINION

MEMORANDUM OPINION

By: Samuel G. Wilson

United States District Judge

Plaintiff, Thomas Tully, a Virginia inmate proceeding *pro se,* filed this "motion of mandamus," naming Magistrates Naomi Long and Martha Baker, and Judge John J. McGrath, Jr. as defendants. Naomi Long and Martha Baker are Magistrates for Winchester/Frederick County, Virginia. Judge John J. McGrath, Jr., presides in Virginia's 26th Judicial Circuit Court. The court finds that it has no authority to issue a writ of mandamus directing the state court judicial officers in the performance of their duties. In addition, because Tully alleges that the defendants violated his constitutional rights, the court also construes his complaint as a civil rights action, pursuant to 42 U.S.C. § 1983. However, the court finds that the defendants have judicial immunity and, therefore, Tully cannot maintain a civil rights action against them. Accordingly, the court dismisses this action.

I.

Tully alleges that Magistrates Long and Baker denied his numerous [*2] requests to issue arrest warrants against certain individuals whom he alleges stole his personal property and that Judge McGrath dismissed a motion for writ of mandamus which he filed in the Frederick County Circuit Court. He states that the defendants have denied his constitutional rights of equal protection, access to the courts, and due process of law. He asks the court to set a hearing wherein the court should "order the respondents to allow [him] to file the criminal complaints for issuance of warrants of arrest . . . ."

II.

Mandamus relief is available only when the petitioner has a clear right to the relief sought. *See In re First Fed. Sav. & Loan Ass'n,* 860 F.2d 135, 138 (4th Cir. 1988). Further, mandamus relief is a drastic remedy and should only be granted in extraordinary situations. *See Kerr v. United States Dist. Court,* 426 U.S. 394, 402, 96 S. Ct. 2119, 48 L. Ed. 2d 725 (1976); *In re Beard,* 811 F.2d 818, 826 (4th Cir. 1987). Federal courts have no general power to compel actions by state courts. *See Davis v. Lansing,* 851 F.2d 72, 74 (2d Cir. 1988); *Gurley v. Superior Court of Mecklenburg County,* 411 F.2d 586, 587 (4th Cir. 1969). [*3] Nor do they have jurisdiction to review state court orders. *See Dist. Court of Columbia Court of Appeals v. Feldman,* 460 U.S. 462, 482, 103 S. Ct. 1303, 75 L. Ed. 2d 206 (1983); *Jordahl v. Democratic Party of Virginia,* 122 F.3d 192, 199 (4th Cir. 1997). Accordingly, the court denies Tully's motion for a writ of mandamus.

Judicial officers are absolutely immune from suit for a deprivation of civil rights brought under 42 U.S.C. § 1983 for acts committed within their judicial discretion, even if the acts were allegedly done either maliciously or corruptly. *Pierson v. Ray,* 386 U.S. 547, 554, 87 S. Ct. 1213, 18 L. Ed. 2d 288 (1967); *King v. Myers,* 973 F.2d 354, 356 (4th Cir. 1992). Furthermore, Section 309(c) of the Federal Courts Improvement Act of 1996 ("FCIA") bars injunctive relief in any section 1983 action "against

a judicial officer for an act or omission taken in such officer's judicial capacity ... unless a declaratory decree was violated or declaratory relief was unavailable." FCIA, Pub. L. No. 104-317, 110 Stat. 3847 (1996); *Willner v. Frey,* 421 F. Supp. 2d 913 n.18 (2006) (*citing Holbert v. Cohen-Gallet,* 2006 U.S. Dist. LEXIS 1869 (E.D. N.Y. 2006)). [*4] The defendants' denials of Tully's requests for issuance of arrest warrants and a motion for mandamus are clearly functions performed within the defendants' judicial capacity and Tully does not allege that they violated a declaratory decree or that declaratory relief was unavailable to him. Therefore, the defendants are entitled to absolute immunity from civil liability.

III.

For the reasons stated, the court dismisses Tully's action.

The Clerk of the Court is directed to send a certified copy of this Memorandum Opinion and accompanying Order to the plaintiff.

ENTER: This 11th day of April, 2007.

Samuel G. Wilson

United States District Judge

FINAL ORDER

By: Samuel G. Wilson

United States District Judge

In accordance with the accompanying Memorandum Opinion, it is hereby **ORDERED** and **ADJUDGED** that this action is hereby **DISMISSED;** Tully's motion to proceed *in forma pauperis* is **DENIED as MOOT;** and this case shall be **STRICKEN** from the active docket of the court.

The Clerk of the Court is directed to send a certified copy of this Order and accompanying Memorandum Opinion to the plaintiff.

ENTER: This 11th [*5] day of April, 2007.

Samuel G. Wilson

United States District Judge

LEXSEE 2002 U.S. DIST. LEXIS 19914

TREVOR L. BROOKS, Plaintiff, -against- THE NEW YORK STATE SUPREME COURT, APPELLATE DIVISION FIRST DEPT.; THE DISCIPLINARY COMMITTEE, FIRST DEPT.; THOMAS J. CAHILL Chief Counsel and RAYMOND VALLEJO Attorney for Disciplinary Committee; MICHAEL ROSS, Attorney at Law, Defendants.

02-CV-4183 (RR)

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

2002 U.S. Dist. LEXIS 19914

August 16, 2002, Decided
August 16, 2002, Filed

SUBSEQUENT HISTORY: Affirmed by Brooks v. Ross, 2003 U.S. App. LEXIS 16859 (2d Cir. N.Y., Aug. 18, 2003)

DISPOSITION: [*1] Plaintiff's complaint dismissed and request for preliminary injunction denied.

COUNSEL: Trevor Brooks, PLAINTIFF, Pro se, Brooklyn, NY USA.

JUDGES: Reena Raggi, United States District Judge.

OPINION BY: Reena Raggi

OPINION

MEMORANDUM AND ORDER

RAGGI, District Judge:

Plaintiff Trevor L. Brooks, a disbarred attorney proceeding pro se, sues defendants the New York State Supreme Court, Appellate Division First Department ("First Department"), the court's Disciplinary Committee, the Committee's Chief Counsel Thomas J. Cahill, a Committee Attorney Raymond Vallejo, and his own retained counsel Michael Ross, [1] pursuant to 42 U.S.C. §§ 1983 and 1985 for racial discrimination in connection with his disbarment. Plaintiff demands compensatory damages and an injunction ordering his reinstatement to the New York bar.

1 The Court notes that it has received a letter written on behalf of an attorney named Michael Jay Ross. The letter explains that plaintiff's complaint was served on Michael Jay Ross in error and that Michael Jay Ross is a different person from the Michael Ross named in the complaint. According to the letter, a copy of the summons and complaint has been forwarded to the correct defendant. Since this case is being dismissed in its entirety, the Court will take no further action regarding the error in service.

[*2] Brooks was admitted to practice law in the State of New York by defendant First Department in 1976. According to Brooks's Complaint, in 1996, he decided to relocate to Jamaica and requested from the First Department a two-year leave of absence and/or permission to resign from the practice of law. Apparently, at that time, two disciplinary complaints were outstanding against Brooks. The First Department's decision to pursue these complaints, as well as several others filed against Brooks after he relocated to Jamaica, are at issue in this case.

I. Sua Sponte Dismissal

28 U.S.C. § 1915(e)(2) provides that the court shall dismiss a case where it determines that the action is frivolous, or fails to state a claim on which relief may be granted. A complaint "is frivolous where it lacks an arguable basis either in law or in fact"; i.e., where it is "based on an indisputably meritless legal theory" or presents "factual contentions [which] are clearly baseless." Neitzke v. Williams, 490 U.S. 319, 325, 104 L. Ed. 2d 338, 109 S. Ct. 1827 (1989); see Alaji Salahuddin v. Alaji, 232 F.3d 305, 306-7 (2d Cir. 2000); Nance v. Kelly, 912 F.2d 605, 606 (2d Cir. 1990). [*3] Where, as here, the court "can rule out any possibility, however unlikely it might be, that an amended complaint could succeed in stating a claim," dismissal is appropriate. Gomez v. USAA Fed. Sav. Bank., 171 F.3d 794, 796 (2d Cir. 1999); see also Fitzgerald v. First East Seventh Street Tenants Corp., 221 F.3d 362, 363 (2d Cir.

2000) (holding that a district court may dismiss a frivolous claim *sua sponte* even when the plaintiff has paid the required filing fee). Thus, because Brooks has failed to provide a sound legal basis for his claim, this court hereby dismisses his action *sua sponte*.

II. Claims Against the Court and Disciplinary Committee

"Neither a state nor its officials acting in their official capacities are persons under § 1983." Will v. Michigan Dep't of State Police, 491 U.S. 58, 71, 105 L. Ed. 2d 45, 109 S. Ct. 2304 (1989). Section 1983 does not provide a federal forum for litigants who seek a remedy against the State for alleged deprivations of civil liberties, as the Eleventh Amendment bars such suits. Id. at 66. The state court is thus not subject to suit under § 1983, rendering Plaintiff's [*4] claim meritless. See Zuckerman v. Appellate Div., 421 F.2d 625, 626 (2d Cir. 1970) (state court is part of "judicial arm of the state of New York" and thus not subject to suit under § 1983).

Additionally, state court and, by extension, its members, are immune from a suit for damages for their judicial acts performed in their judicial capacities. See Mireles v. Waco, 502 U.S. 9, 11, 116 L. Ed. 2d 9, 112 S. Ct. 286 (1991); Supreme Court of Virginia v. Consumers Union, 446 U.S. 719, 734, 64 L. Ed. 2d 641, 100 S. Ct. 1967 (1980); Stump v. Sparkman, 435 U.S. 349, 356, 55 L. Ed. 2d 331, 98 S. Ct. 1099 (1978). Defendants are alleged to have initiated and conducted disciplinary proceedings against plaintiff in a discriminatory manner in violation of 42 U.S.C. § 1985. These proceedings resulted in the recommended disbarment of plaintiff and said recommendation was confirmed by the New York State Supreme Court, Appellate Division, First Department.

The absolute judicial immunity of the court and its members "is not overcome by allegations of bad faith or malice," nor can a judge "be deprived of immunity [*5] because the action he took was in error . . . or was in excess of his authority." Mireles, 502 U.S. at 11, 13 (quotation omitted). The only way that this immunity can be overcome is if the court is alleged to have taken nonjudicial actions or if the judicial actions taken were "in the complete absence of all jurisdiction." Id. at 11-12.

"State bar disciplinary hearings . . . constitute . . . state judicial proceedings." Whitely v. Comsat Corp., 2001 U.S. Dist. LEXIS 16114, No. 00 Civ. 9401 (WHP), 2001 WL 1135946, at *4 (S.D.N.Y. Sept. 25, 2001) (citing Middlesex County Ethics Committee v. Garden State Bar Association, 457 U.S. 423, 433, 73 L. Ed. 2d 116, 102 S. Ct. 2515 - 434, 457 U.S. 423, 73 L. Ed. 2d 116, 102 S. Ct. 2515 (1982)). In New York, in the matter of attorney disciplinary proceedings, the Appellate Division has exclusive jurisdiction. Paladin v. Finnerty, No. 92 CV 2792 (JG), 1996 WL 1088915, at *2 (E.D.N.Y. Mar. 28, 1996) (citing N.Y. Judiciary Law §§ 90(1) - (2)), aff'd, 104 F.3d 356 (2d Cir. 1996). State bar disciplinary proceedings have been found to be "clearly judicial in nature," and thus quasi-judicial immunity is available to members of [*6] disciplinary committees and panels. Lipin v. Nat'l Union Fire Ins. Co. of Piitsburgh, PA., 202 F. Supp. 2d 126, 134-35 (S.D.N.Y. 2002) (quoting Sassower v. Mangano, 927 F. Supp. 113, 120-21 (S.D.N.Y. 1996)); see also Barbara v. New York Stock Exchange, Inc., 99 F.3d 49, 58 (2d Cir. 1996) (noting that courts of appeals have extended absolute immunity to members of bar association disciplinary committees).

Plaintiff has not alleged that any of the defendants have taken nonjudicial actions or that the actions taken were done in the absence of all jurisdiction. Indeed, initiating a disciplinary proceeding and confirming a recommendation by the hearing Referee and Hearing Panel is well within the jurisdiction of the defendants. Therefore, plaintiff's first cause of action seeking damages is dismissed as against the state court, the Disciplinary Committee, and defendants Cahill and Vallejo.

The Court's inquiry does not end there however, for plaintiff also seeks injunctive relief in the form of reinstatement to the practice of law or a hearing regarding the alleged violations. Plaintiff cites Supreme Court of Virginia v. Consumers Union, 446 U.S. 719, 64 L. Ed. 2d 641, 100 S. Ct. 1967 (1980), [*7] as authority which allows a state court to be sued for declaratory or injunctive relief under section 1983 for acts performed in its enforcement capacity. Subsequent to this decision, the Supreme Court extended this doctrine in Pulliam v. Allen, 466 U.S. 522, 541-42, 80 L. Ed. 2d 565, 104 S. Ct. 1970 (1984), and ruled that prospective injunctive relief could be granted against a judicial officer acting in his or her judicial capacity. However, in 1996 Congress enacted the Federal Courts Improvement Act of 1996 ("FCIA"), Pub.L. No. 104-317, 110 Stat. 3847 (1996) (amending 42 U.S.C. § 1983), which effectively reversed the Court's ruling in Pulliam. Section 309(c) of the FCIA bars injunctive relief in any section 1983 action "against a judicial officer for an act or omission taken in such officer's judicial capacity . . . unless a declaratory decree was violated or declaratory relief was unavailable." Therefore, plaintiff's claim for injunctive relief is also dismissed.

III. Plaintiff's Claim against his Attorney

Plaintiff has also filed a claim against his former attorney, defendant Michael Ross, under 42 U.S.C. § 1983. [*8] His allegations against defendant Ross, however, consist of allegations of professional misconduct rather than constitutional violations. A claim for relief under § 1983 must allege "the deprivation of a right secured by the Constitution or laws of the United

States . . . which has taken place under color of state law." Rodriguez v. Weprin, 116 F.3d 62, 65 (2d Cir. 1997). There are no such allegations here.

Even if Plaintiff had alleged constitutional violations on the part of defendant Ross, such claims would fail to state a claim under § 1983 because a lawyer is generally not considered to be "a state actor 'under color of state law' within the meaning of § 1983." Polk County v. Dodson, 454 U.S. 312, 318, 70 L. Ed. 2d 509, 102 S. Ct. 445 (1981) (recognizing the general consensus among the Courts of Appeals); see generally Cammer v. United States, 350 U.S. 399, 405, 100 L. Ed. 474, 76 S. Ct. 456 (1956) ("The word 'officer' as it has always been applied to lawyers conveys quite a different meaning from the word 'officer' as applied to people serving as officers within the conventional meaning of that term.").

It is well settled [*9] that public defenders, Polk County, 454 U.S. at 325, and court-appointed attorneys, Rodriguez, 116 F.3d at 65, do not act under color of state law when representing criminal defendants. The role of a privately retained attorney is even more remote to the state than that of public defenders and court-appointed attorneys in that he has an obligation to advance the undivided interests of his client, see Polk County, 454 U.S. at 318-319, and his license to practice law does not place him "so close to the core of the political process as to make him a formulator of government policy." In re Griffiths, 413 U.S. 717, 729, 37 L. Ed. 2d 910, 93 S. Ct. 2851 (1973). Consequently, a privately retained attorney does not act under color of state law within the meaning of § 1983 when representing a client in a civil matter. Accordingly, the Court finds that defendant Ross did not act under color of state law and cannot be held liable under section 1983.

Section 1983 "was enacted to redress civil rights violations by persons acting under color of State law" and should not be used by clients disappointed with the performance of their [*10] attorneys. Mitchell v. Cohen, No. 90 CV 1836 (TCP), 1990 WL 100254, at *1 (E.D.N.Y. Jun. 13, 1990). Complaints about the behavior or performance of an attorney should be addressed to the Grievance Committee of the appropriate State Appellate Division. Id.

IV. Younger Abstention

Furthermore, even if plaintiff were not barred for the reason noted above, this Court would have to abstain from considering this case pursuant to Younger v. Harris, 401 U.S. 37, 27 L. Ed. 2d 669, 91 S. Ct. 746 (1971), which holds that federal courts should refrain from interfering with pending state judicial proceedings except under circumstances. "Where vital state interests are involved, a federal court should abstain 'unless state law clearly bars the interposition of the constitutional' claims.'" Middlesex County Ethics Committee v. Garden State Bar Association, 457 U.S. 423, 432, 73 L. Ed. 2d 116, 102 S. Ct. 2515 (1982) (quoting Moore v. Sims, 442 U.S. 415, 423, 60 L. Ed. 2d 994, 99 S. Ct. 2371 (1979)). The State of New York obviously has an important interest in regulating the conduct of attorneys licensed by the state and the [*11] New York courts are "competent to consider and determine federal constitutional questions." Hayes v. N.Y. Atty. Griev. Comm., 2001 U.S. Dist. LEXIS 18607, No. 01- CV-0545E (SR), 2001 WL 1388325, at *3-4 (W.D.N.Y. Nov. 1, 2001). Here, plaintiff notes that he has appealed his disbarment to the New York State Court of Appeals and expects a ruling sometime in August 2002. The Younger doctrine is not only applicable to any ongoing attorney disciplinary proceeding, 2001 U.S. Dist. LEXIS 18607, [WL] at *3, but it is also applicable to the pending appeal in state court. See Davidson v. Garry, 956 F. Supp. 265, 269 n.2 (E.D.N.Y. 1996) (Bartels, J.) (citing New Orleans Public Service, Inc. v. Council of New Orleans, 491 U.S. 350, 368, 105 L. Ed. 2d 298, 109 S. Ct. 2506 (1989) in extending the Younger principles to state civil proceedings), aff'd, 112 F.3d 503 (2d Cir. 1997)). "When Younger abstention is applicable, abstention is mandatory." Hayes, 2001 U.S. Dist. LEXIS 18607, 2001 WL 1388325 at *3 (citing Schlagler v. Phillips, 166 F.3d 439, 441 (2d Cir. 1999)).

V. Conclusion

For all of the above stated reasons, plaintiff's complaint is dismissed and his request for [*12] a preliminary injunction is denied.

SO ORDERED.

Dated: Brooklyn, New York

August 16, 2002

Reena Raggi

United States District Judge

CIVIL JUDGMENT

RAGGI, District Judge:

Pursuant to the order issued August 16, 2002 by the Honorable Reena Raggi, dismissing the complaint and denying the request for a preliminary injunction, it is

ORDERED, ADJUDGED AND DECREED: That the complaint is hereby dismissed and the request for a preliminary injunction is hereby denied.

Reena Raggi

United States District Judge

Dated: Brooklyn, New York

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