

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

PIERRE JORDAN, #M07905)	
)	
Plaintiff,)	
)	
vs.)	Case No. 17-cv-0625-MJR
)	
DR BROOKHART,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

REAGAN, Chief District Judge:

In *Jordan v. Lamb*, Case No. 17-cv-207-SMY (S.D. Ill. June 14, 2017), Plaintiff Pierre Jordan, an inmate in Lawrence Correctional Center (“Lawrence”), brought suit for deprivations of his constitutional rights pursuant to 42 U.S.C. § 1983. Pursuant to *George v. Smith*, 507 F.3d 605 (7th Cir. 2007), a First Amendment access to courts claim against Defendant Brookhart was severed from that initial action to form the basis for this action, Case No. 17-cv-625-MJR. This case is now before the Court for a preliminary review of that claim pursuant to 28 U.S.C. § 1915A, which provides:

(a) **Screening** – The court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.

(b) **Grounds for Dismissal** – On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint–

- (1) is frivolous, malicious, or fails to state a claim on which relief may be granted; or
- (2) seeks monetary relief from a defendant who is immune from such relief.

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

Neitzke v. Williams, 490 U.S. 319, 325 (1989). Frivolousness is an objective standard that refers to a claim that any reasonable person would find meritless. *Lee v. Clinton*, 209 F.3d 1025, 1026-27 (7th Cir. 2000). 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*, 550 U.S. 544, 570 (2007). The claim of entitlement to relief must cross “the line between possibility and plausibility.” *Id.* at 557. At this juncture, the factual allegations of the *pro se* complaint are to be liberally construed. *See Rodriguez v. Plymouth Ambulance Serv.*, 577 F.3d 816, 821 (7th Cir. 2009).

Upon careful review of the Complaint and any supporting exhibits, the Court finds it appropriate to allow this case to proceed past the threshold stage.

The Complaint

The allegations in Plaintiff’s Complaint (Doc. 2) relevant to this severed action are as follows: Plaintiff was obstructed from having meaningful access to the courts when Dr. Brookhart instructed Law Librarian Caslin to deny his request “to be placed on the legal deadline because they don’t recognize civil and criminal litigation, only prison conditions.” (Doc. 1, p. 19). As a result, Plaintiff missed a filing deadline in his tort case, a fact the opposing counsel cited as grounds for dismissal of the case. *Id.*

Discussion

In its Severance Order (Doc. 1), the Court designated the following count to be severed into this *pro se* action. The parties and the Court will continue to use this designation in all future pleadings and orders, unless otherwise directed by a judicial officer of this Court.

Count 6 – Brookhart violated Plaintiff’s First Amendment rights by denying him access to courts when he instructed the law librarian to deny Plaintiff’s requests with respect to his tort claim, causing him to miss his filing deadline.

As discussed in more detail below, Count 6 will be allowed to proceed in this action

Count 6 – Access to Courts

Plaintiff asserts that Brookhart violated his First Amendment rights by denying him access to courts when he instructed the law librarian to deny Plaintiff's requests with respect to his tort claim, causing him to miss his filing deadline. Prisoners have a fundamental right of meaningful access to the courts. *Bounds v. Smith*, 430 U.S. 817 (1977).

Prison officials have an affirmative duty to provide inmates with reasonable access to courts, which includes providing access to adequate libraries (or counsel). *DeMallory v. Cullen*, 855 F.2d 442, 446 (7th Cir. 1988). The right of access "requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law." *Bounds v. Smith*, 430 U.S. 817, 828 (1977). Nonetheless, reasonable access does not mean unlimited access. *Hossman v. Sprandlin*, 812 F.2d 1019, 1021 (7th Cir. 1987).

Martin v. Davies, 917 F.2d 336, 338 (7th Cir. 1990). Violations of the right of access to the courts may be vindicated in federal court in a civil rights action pursuant to 42 U.S.C. § 1983.

An allegation of actual or threatened detriment is an essential element of a § 1983 action for denial of access to the courts, *Martin* 917 F.2d at 340; *Howland v. Kilquist*, 833 F.2d 639, 642-43 (7th Cir. 1987); *Hossman*, 812 F.2d at 1021-22. Such an allegation must be more than conclusory.

The requirement that prisoners making access-to-courts claims allege specific prejudice should not be understood as an onerous fact-pleading burden; it is simply a requirement that a prisoner's complaint spell out, in minimal detail, the connection between the alleged denial of access to legal materials and an inability to pursue a legitimate challenge to a conviction, sentence, or prison conditions.

Marshall v. Knight, 445 F.3d 965, 968 (7th Cir. 2006). In this case, Plaintiff claims that Brookhart's instructions to the law library staff to deny Plaintiff's request with respect to a tort claim he was litigating resulted in his missing certain filing deadlines for that case. Plaintiff's

missing the deadline was cited as grounds for dismissal of Plaintiff's case.

Plaintiff has stated a colorable access to courts claim, at least at this stage. Count 6 will therefore proceed past the threshold stage.

Pending Motions

Plaintiff's Motion to Proceed *In Forma Pauperis* (Doc. 3) will be addressed in a separate order of the Court.

Disposition

IT IS HEREBY ORDERED that **COUNT 6** shall **PROCEED** against **BROOKHART**.

IT IS FURTHER ORDERED that as to **COUNT 6**, the Clerk of Court shall prepare for **BROOKHART**: (1) Form 5 (Notice of a Lawsuit and Request to Waive Service of a Summons), and (2) Form 6 (Waiver of Service of Summons). The Clerk is **DIRECTED** to mail these forms, a copy of the Complaint (Doc. 2), and this Memorandum and Order to the defendant's place of employment as identified by Plaintiff. If the defendant fails to sign and return the Waiver of Service of Summons (Form 6) to the Clerk within 30 days from the date the forms were sent, the Clerk shall take appropriate steps to effect formal service on that defendant, and the Court will require that defendant pay the full costs of formal service, to the extent authorized by the Federal Rules of Civil Procedure.

With respect to a defendant who no longer can be found at the work address provided by Plaintiff, the employer shall furnish the Clerk with the defendant's current work address, or, if not known, the defendant's last-known address. This information shall be used only for sending the forms as directed above or for formally effecting service. Any documentation of the address shall be retained only by the Clerk. Address information shall not be maintained in the court file or disclosed by the Clerk.

Plaintiff shall serve upon the defendant (or upon defense counsel once an appearance is entered) a copy of every pleading or other document submitted for consideration by the Court. Plaintiff shall include with the original paper to be filed a certificate stating the date on which a true and correct copy of the document was served on the defendant or counsel. Any paper received by a district judge or magistrate judge that has not been filed with the Clerk or that fails to include a certificate of service will be disregarded by the Court.

Brookhart is **ORDERED** to timely file an appropriate responsive pleading to the Complaint and shall not waive filing a reply pursuant to 42 U.S.C. § 1997e(g).

Pursuant to Local Rule 72.1(a)(2), the only count in this severed action, Count 6 against Brookhart, is **REFERRED** to United States Magistrate Judge Stephen C. Williams for further pre-trial proceedings. Further, this matter shall be **REFERRED** to United States Magistrate Judge Williams for disposition, pursuant to Local Rule 72.2(b)(2) and 28 U.S.C. § 636(c), *if all parties consent to such a referral*.

If judgment is rendered against Plaintiff, and the judgment includes the payment of costs under Section 1915, Plaintiff will be required to pay the full amount of the costs, regardless of whether his application to proceed *in forma pauperis* has been granted. *See* 28 U.S.C. § 1915(f)(2)(A).

Finally, Plaintiff is **ADVISED** that he is under a continuing obligation to keep the Clerk of Court and each opposing party informed of any change in his address; the Court will not independently investigate his whereabouts. This shall be done in writing and not later than **7 days** after a transfer or other change in address occurs. Failure to comply with this order will cause a delay in the transmission of court documents and may result in dismissal of this action for want of prosecution. *See* FED. R. CIV. P. 41(b).

IT IS SO ORDERED.

DATED: July 17, 2017

s. MICHAEL J. REAGAN

U.S. Chief District Judge