

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
PADUCAH DIVISION**

JERROD DALE

PLAINTIFF

v.

CIVIL ACTION NO. 5:20-CV-P17-TBR

MAYFIELD MESSENGER *et al.*

DEFENDANTS

MEMORANDUM OPINION

This is a *pro se* civil rights action brought by a pretrial detainee pursuant to 42 U.S.C. § 1983. The Court has granted Plaintiff Jerrod Dale leave to proceed *in forma pauperis*. This matter is before the Court for screening pursuant to 28 U.S.C. § 1915A. For the reasons set forth below, this action will be dismissed.

I. SUMMARY OF COMPLAINT

Plaintiff is incarcerated in the Graves County Jail in Mayfield, Kentucky. He completed a 42 U.S.C. § 1983 complaint form to initiate this action. Plaintiff names the Mayfield Messenger and the Paxton Media Group as Defendants.

In the complaint, Plaintiff states as follows:

Plaintiff [] believes that the Mayfield Messenger unduly biased by published articles in Mayfield Messenger and other entities owned by Paxton Media Group []. These articles contained false reportings/findings and unduly biased the community at large for his hopes of having a fair and unbiased trial by jury, his/Jerrod Dales being portrayed as guilty in the public eye without the opportunity for retort violates his right to a fair and speedy trial. This is undue and malicious prosecution, and I believe to be profiling – racial and otherwise.

As relief, Plaintiff seeks damages.

II. LEGAL STANDARD

When a prisoner initiates a civil action seeking redress from a governmental entity, officer, or employee, the trial court must review the complaint and dismiss the complaint, or any portion of it, if the court determines that the complaint is frivolous or malicious, fails to state a

claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. *See* § 1915A(b)(1), (2); *McGore v. Wrigglesworth*, 114 F.3d 601, 604 (6th Cir. 1997), *overruled on other grounds by Jones v. Bock*, 549 U.S. 199 (2007).

In order to survive dismissal for failure to state a claim, “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (citing *Twombly*, 550 U.S. at 556). “[A] district court must (1) view the complaint in the light most favorable to the plaintiff and (2) take all well-pleaded factual allegations as true.” *Tackett v. M & G Polymers, USA, LLC*, 561 F.3d 478, 488 (6th Cir. 2009) (citing *Gunasekera v. Irwin*, 551 F.3d 461, 466 (6th Cir. 2009) (citations omitted)). “But the district court need not accept a ‘bare assertion of legal conclusions.’” *Tackett*, 561 F.3d at 488 (quoting *Columbia Natural Res., Inc. v. Tatum*, 58 F.3d 1101, 1109 (6th Cir. 1995)). “A pleading that offers ‘labels and conclusions’ or ‘a formulaic recitation of the elements of a cause of action will not do.’ Nor does a complaint suffice if it tenders ‘naked assertion[s]’ devoid of ‘further factual enhancement.’” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555, 557).

Although this Court recognizes that *pro se* pleadings are to be held to a less stringent standard than formal pleadings drafted by lawyers, *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Jourdan v. Jabe*, 951 F.2d 108, 110 (6th Cir. 1991), “[o]ur duty to be ‘less stringent’ with *pro se* complaints does not require us to conjure up unpled allegations.” *McDonald v. Hall*, 610 F.2d 16, 19 (1st Cir. 1979) (citation omitted). And this Court is not required to create a claim for Plaintiff. *Clark v. Nat’l Travelers Life Ins. Co.*, 518 F.2d 1167, 1169 (6th Cir. 1975).

To command otherwise would require the Court “to explore exhaustively all potential claims of a *pro se* plaintiff, [and] would also transform the district court from its legitimate advisory role to the improper role of an advocate seeking out the strongest arguments and most successful strategies for a party.” *Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985).

III. ANALYSIS

“Section 1983 creates no substantive rights, but merely provides remedies for deprivations of rights established elsewhere.” *Flint ex rel. Flint v. Ky. Dep’t of Corr.*, 270 F.3d 340, 351 (6th Cir. 2001). Two elements are required to state a claim under § 1983. *Gomez v. Toledo*, 446 U.S. 635 (1980). “[A] plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law.” *West v. Atkins*, 487 U.S. 42, 48 (1988). “Absent either element, a section 1983 claim will not lie.” *Christy v. Randlett*, 932 F.2d 502, 504 (6th Cir. 1991).

Any constitutional claims Plaintiff seeks to bring against Defendants under § 1983 must be dismissed for failure to state a claim upon which relief may be granted because a newspaper and its employee are not state actors. *See, e.g., Davis v. Janczewski*, 22 F. App’x 533, 534 (6th Cir. 2001) (“[D]efendant Janczewski cannot be said to have been acting under color of state law in reporting for a local newspaper.”); *Hall v. Witteman*, No. 07-4128-SAC, 2008 U.S. Dist. LEXIS 77479, at *11-12 (D. Kan. Oct. 1, 2008) (“Generally, a newspaper is a private enterprise, not a state actor and cannot be held liable under § 1983 for publishing the news. This remains true even when the newspaper publishes information received from police or other state officials.”) (internal citations omitted); *see also Tahfs v. Proctor*, 316 F.3d 584, 590 (6th Cir. 2003) (“A plaintiff may not proceed under § 1983 against a private party ‘no matter how

discriminatory or wrongful’ the party’s conduct.”) (quoting *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 50 (1999)) (internal quotation marks and citations omitted).

Moreover, to the extent that Plaintiff is asserting any state-law claims against Defendants, the Court declines to exercise supplemental jurisdiction over such claims. *See* 28 U.S.C. § 1367(c)(3). “Generally, once a federal court has dismissed a plaintiff’s federal law claim, it should not reach state law claims.” *Experimental Holdings, Inc. v. Farris*, 503 F.3d 514, 521 (6th Cir. 2007) (citing *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 726 (1966)); *see also Landefeld v. Marion Gen. Hosp.*, 994 F.2d 1178, 1182 (6th Cir. 1993). Accordingly, any state-law claims against Defendants will be dismissed without prejudice.

IV. CONCLUSION

For the foregoing reasons, this action will be dismissed by separate Order.

Date: April 21, 2020

cc: Plaintiff, *pro se*
Defendants
4413.011

The image shows a handwritten signature in black ink that reads "Thomas B. Russell". The signature is written in a cursive style. Behind the signature is a circular seal of the United States District Court for the Northern District of Ohio, which features an eagle with wings spread, holding an olive branch and arrows, with a shield on its chest. The seal is partially obscured by the signature.

Thomas B. Russell, Senior Judge
United States District Court