

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

ANDREW DAVID WETZEL

CIVIL ACTION

VERSUS

NO. 09-6599

RODNEY J. STRAIN, JR., ET AL.

SECTION: "A"(3)

PARTIAL REPORT AND RECOMMENDATION

Plaintiff, Andrew David Wetzel, a state prisoner, filed this *pro se* complaint against Sheriff Rodney J. Strain, Jr., Warden Gregory Longino, the St. Tammany Parish Jail, and the St. Tammany Parish Sheriff's Office. In this lawsuit, plaintiff challenges fees imposed on inmates at the St. Tammany Parish Jail.

Standards of Review

Federal law mandates that federal courts "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." 28 U.S.C. § 1915A(a). Regarding such lawsuits, federal law further requires:

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 upon which relief may be granted; or
- (2) seeks monetary relief from a defendant who is immune from such relief.

28 U.S.C. § 1915A(b).

Additionally, with respect to actions filed *in forma pauperis*, such as the instant lawsuit, federal law similarly provides:

Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that ... the action or appeal –

- (i) is frivolous or malicious;
- (ii) fails to state a claim on which relief may be granted; or
- (iii) seeks monetary damages against a defendant who is immune from such relief.

28 U.S.C. § 1915(e)(2)(B).

A complaint is frivolous “if it lacks an arguable basis in law or fact.” Reeves v. Collins, 27 F.3d 174, 176 (5th Cir. 1994). In making a determination as to whether a claim is frivolous, the Court has “not only the authority to dismiss a claim based on an indisputably meritless legal theory, but also the unusual power to pierce the veil of the complaint’s factual allegations and dismiss those claims whose factual contentions are clearly baseless.” Neitzke v. Williams, 490 U.S. 319, 327 (1989); Macias v. Raul A. (Unknown), Badge No. 153, 23 F.3d 94, 97 (5th Cir. 1994).

A complaint fails to state a claim on which relief may be granted when the plaintiff does not “plead enough facts to state a claim to relief that is plausible on its face. Factual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact).” In re Katrina Canal Breaches Litigation, 495 F.3d 191, 205 (5th Cir. 2007) (citation, footnote, and quotation marks omitted), cert. denied, 128 S. Ct. 1230 and 1231 (2008). The United States Supreme Court recently explained:

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. The plausibility standard is not akin to a “probability requirement,” but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are merely consistent with a defendant’s liability, it stops short of the line between possibility and plausibility of entitlement to relief.

Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949 (2009) (citations and quotation marks omitted).

Although broadly construing plaintiff’s complaint,¹ the Court nevertheless finds that plaintiff’s claims against the St. Tammany Parish Jail and the St. Tammany Parish Sheriff’s Office should be dismissed as frivolous and for otherwise failing to state a claim on which relief may be granted.

The St. Tammany Parish Jail is clearly an improper defendant. “[A] jail is merely a building, not a ‘person’ subject to suit under 42 U.S.C. § 1983.” Smith v. St. Tammany Parish Sheriff’s Office, Civ. Action No. 07-3525, 2008 WL 347801, at *2 (E.D. La. Feb. 6, 2008); see also McK Kendall v. St. Tammany Parish Jail, Civ. Action No. 08-1719, 2009 WL 1158856, at *2-4 (E.D. La. Apr. 28, 2009); Wetzel v. St. Tammany Parish Jail, 610 F. Supp. 2d 545, 548-49 (E.D. La. 2009); Martinez v. Larpenter, Civ. Action No. 05-874, 2005 WL 3549524, at *5 (E.D. La. Nov. 1, 2005); Cullen v. DuPage County, No. 99-C-1296, 1999 WL 1212570, at *1 (N.D. Ill. Dec. 14, 1999); Whitley v. Westchester County Correctional Facility Administration, No. 99-CIV-0420(SS), 1997 WL 659100, at *7 (S.D.N.Y. Oct. 22, 1997); Powell v. Cook County Jail, 814 F. Supp. 757,

¹ The court must liberally construe a *pro se* civil rights complaint. See Moore v. McDonald, 30 F.3d 616, 620 (5th Cir. 1994).

758 (N.D. Ill. 1993); Brooks v. Pembroke City Jail, 722 F. Supp. 1294, 1301 (E.D.N.C. 1989); Mitchell v. Chester County Farms Prison, 426 F. Supp. 271, 274 (E.D. Pa. 1976).

The St. Tammany Parish Sheriff's Office is likewise an improper defendant. "A sheriff's office is not a legal entity capable of being sued" Cozzo v. Tangipahoa Parish Council–President Government, 279 F.3d 273, 283 (5th Cir. 2002); see also Wetzel, 610 F. Supp. 2d at 548; Smith, 2008 WL 347801, at *2; Causey v. Parish of Tangipahoa, 167 F. Supp. 2d 898, 904 (E.D. La. 2001); Ruggiero v. Litchfield, 700 F. Supp. 863, 865 (M.D. La. 1988).

Accordingly, plaintiff's claims against the St. Tammany Parish Jail and the St. Tammany Parish Sheriff's Office should be dismissed.²

RECOMMENDATION

It is therefore **RECOMMENDED** that plaintiff's claims against the St. Tammany Parish Jail and the St. Tammany Parish Sheriff's Office be **DISMISSED WITH PREJUDICE** as frivolous and for otherwise failing to state a claim on which relief may be granted.

A party's failure to file written objections to the proposed findings, conclusions, and recommendation in a magistrate judge's report and recommendation within ten (10) days after being served with a copy shall bar that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court,

² At this point, plaintiff's underlying claims are too nebulous for this Court to assess whether they are frivolous. Accordingly, this Partial Report and Recommendation does not address the substance of those claims or the propriety of naming Sheriff Rodney J. Strain, Jr., or Warden Gregory Longino as defendants. A supplemental report will be issued, if appropriate, once plaintiff's claims are further developed.

provided that the party has been served with notice that such consequences will result from a failure to object. Douglass v. United Services Auto. Ass'n, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc).

New Orleans, Louisiana, this thirteenth day of October, 2009.


DANIEL E. KNOWLES, III
UNITED STATES MAGISTRATE JUDGE