

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

RUSTON RHORER

VERSUS

CIVIL ACTION

SARAH TIRRELL

NUMBER 10-815-BAJ-SCR

OPINION

Pro se plaintiff, Ruston Rhorer, filed this action pursuant to 42 U.S.C. § 1983 against East Baton Rouge Parish Assistant District Attorney Sarah Tirrell. Plaintiff alleged that ADA Tirrell filed a Bill of Information against him charging him with cyberstalking in violation of La.R.S. 14:40.3.

An in forma pauperis suit is properly dismissed as frivolous if the claim lacks an arguable basis either in fact or in law. *Denton v. Hernandez*, 504 U.S. 25, 112 S.Ct. 1728, 1733 (1992); *Neitzke v. Williams*, 490 U.S. 319, 109 S.Ct. 1827, 1831-32 (1989); *Hicks v. Garner*, 69 F.3d 22, 24 (5th Cir. 1995). A court may dismiss a claim as factually frivolous only if the facts are clearly baseless, a category encompassing allegations that are fanciful, fantastic, and delusional. *Denton*, 504 U.S. at 33-34, 112 S.Ct. at 1733. Pleadings which are merely improbable or strange, however, are not frivolous for section 1915(d) purposes. *Id.*; *Ancar v. SARA Plasma, Inc.*, 964 F.2d 465, 468 (5th Cir. 1992). Dismissal under 28 U.S.C. §1915(d)¹ may be made at any time before or after service of process and before or after an answer is filed.

¹ Pursuant to the 1996 amendment to 28 U.S.C. § 1915, subsection (d) was redesignated as subsection (e).

Green v. McKaskle, 788 F.2d 1116, 1119 (5th Cir. 1986).


Immunity is a threshold question which should be resolved as early in the proceedings as possible. See *Siegert v. Gilley*, 500 U.S. 226, 231-33, 111 S.Ct. 1789, 1793 (1991) (“One of the purposes of immunity, absolute or qualified, is to spare a defendant not only unwarranted liability, but unwarranted demands customarily imposed upon those defending a long drawn out lawsuit.”)

Prosecutors are cloaked with absolute immunity for actions taken in initiating a prosecution. *Imbler v. Pachtman*, 424 U.S. 409, 96 S.Ct. 984 (1976); *Rykers v. Alford*, 832 F.2d 895, 897 (5th Cir. 1987).

Because it is clear that the plaintiff’s claim has no arguable basis in fact or in law, the complaint shall be dismissed as frivolous.

Judgment shall be entered accordingly.

Baton Rouge, Louisiana, January 6, 2011.



BRIAN A. JACKSON
UNITED STATES DISTRICT JUDGE
MIDDLE DISTRICT OF LOUISIANA