

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

WILLIAM D. EDWARDS,)
Plaintiff,)
v.) No. 4:16-CV-820 RWS
MISSOURI DEPARTMENT OF)
CORRECTIONS, et al.,)
Defendants.)

MEMORANDUM AND ORDER

Plaintiff, a prisoner, seeks leave to proceed in forma pauperis in this civil action under 42 U.S.C. § 1983. Having reviewed plaintiff's financial information, the Court assesses a partial initial filing fee of \$25, which is twenty percent of his average monthly deposit. See 28 U.S.C. § 1915(b). Additionally, the Court will order plaintiff to file an amended complaint.

Standard of Review

Under 28 U.S.C. § 1915(e), the Court is required to dismiss a complaint filed in forma pauperis if it is frivolous, malicious, or fails to state a claim upon which relief can be granted. To state a claim for relief under § 1983, a complaint must plead more than “legal conclusions” and “[t]hreadbare recitals of the elements of a cause of action [that are] supported by mere conclusory statements.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A plaintiff must demonstrate a plausible claim for relief, which is more than a “mere possibility of misconduct.” *Id.* at 679. “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.* at 678. Determining whether a complaint states a plausible claim for relief [is] a

context-specific task that requires the reviewing court to draw on its judicial experience and common sense. *Id.* at 679.

The Complaint

Plaintiff brings this action against the Missouri Department of Corrections (MoDOC), the Eastern Reception Diagnostic and Correctional Center (ERDCC), and the St. Louis City Justice Center (SLCJC). Plaintiff was in a car accident before he was incarcerated. He fractured his pelvis and lower leg. His injuries required surgery. Plaintiff alleges that nurses and doctors at SLCJC and ERDCC have mistreated his injuries and that he was not provided with a wheelchair. Plaintiff seeks monetary and injunctive relief.

Discussion

The named defendants are not subject to suit. MoDOC is not a “person” for the purposes of § 1983. *E.g.*, *Barket, Levy & Fine, Inc. v. St. Louis Thermal Energy Corp.*, 948 F.2d 1084, 1086 (8th Cir. 1991) (agency exercising state power is not “person” subject to § 1983 suit). A suit against ERDCC is, in effect, a suit against the State of Missouri. The State of Missouri, however, is absolutely immune from liability under § 1983. See *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 63 (1989). And plaintiff’s claim against SLCJC is legally frivolous because it cannot be sued. *Ketchum v. City of West Memphis, Ark.*, 974 F.2d 81, 82 (8th Cir. 1992) (departments or subdivisions of local government are “not juridical entities suable as such.”). As a result, the complaint is subject to dismissal under 28 U.S.C. § 1915(e).

Because plaintiff is proceeding pro se, the Court will allow plaintiff to file an amended complaint. **Plaintiff is warned that the filing of an amended complaint replaces the original complaint, and so he must include each and every one of his claims in the amended complaint.** *E.g.*, *In re Wireless Telephone Federal Cost Recovery Fees Litigation*, 396 F.3d

922, 928 (8th Cir. 2005). **Any claims from the original complaint that are not included in the amended complaint will be considered abandoned.** Id. Plaintiff must name as defendants the individual persons who allegedly mistreated him. And he must allege how each and every defendant is directly responsible for the alleged harm. In order to sue defendants in their individual capacities, plaintiff must specifically say so in the complaint. If plaintiff fails to sue defendants in their individual capacities, this action may be subject to dismissal.

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion to proceed in forma pauperis [ECF No. 2] is **GRANTED**.

IT IS FURTHER ORDERED that the plaintiff must pay an initial filing fee of \$25 within thirty (30) days of the date of this Order. Plaintiff is instructed to make his remittance payable to "Clerk, United States District Court," and to include upon it: (1) his name; (2) his prison registration number; (3) the case number; and (4) that the remittance is for an original proceeding.¹

IT IS FURTHER ORDERED that the Clerk is directed to send plaintiff a prisoner civil complaint form.

IT IS FURTHER ORDERED that plaintiff must file an amended complaint within twenty-eight (28) days from the date of this Order.

¹ Prisoners must pay the full amount of the \$350 filing fee. After payment of the initial partial filing fee, the prisoner is required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner will deduct the payments and forward them to the Court each time the amount in the account exceeds \$10. 28 U.S.C. § 1915(b)(2).

IT IS FURTHER ORDERED that if plaintiff fails to comply with this Order, the Court will dismiss this action without further proceedings.

Dated this 13th day of June, 2016.



RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE