

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CHARLIE B. BUSH JR.,)
)
 Plaintiff,)
)
 v.)
)
 NEBRASKA, PAUL D. MERRITT,)
 District Judge, ROBERT OTTE,)
 District Judge, JOHN COLBORN,)
 District Judge, and TYLER G.)
 JACOBSEN, Deputy County)
 Attorney,)
)
 Defendants.)

4:09CV3074

**MEMORANDUM
AND ORDER**

Plaintiff filed his Complaint in this matter on April 15, 2009. (Filing No. [1](#).) Plaintiff has previously been given leave to proceed in forma pauperis. (Filing No. [12](#).) The court now conducts an initial review of the Complaint to determine whether summary dismissal is appropriate under [28 U.S.C. §§ 1915\(e\)](#) and [1915A](#).

I. SUMMARY OF COMPLAINT

Plaintiff filed his Complaint on April 15, 2009, against the State of Nebraska and four individuals. (Filing No. [1](#) at CM/ECF p. 1.) Plaintiff is currently confined in the Lancaster County Jail in Lincoln, Nebraska. (Filing No. [5](#) at CM/ECF p. 1.)

Condensed and summarized, Plaintiff alleges that he was unable to satisfy the “SLAVE LABOR Order [sic]” requiring him to pay child support and was committed to the Lancaster County Jail. (Filing No. [1](#) at CM/ECF p. 1.) Plaintiff alleges that the “SLAVE LABOR Order [sic]” violates the Thirteenth Amendment. (*Id.*) Plaintiff seeks injunctive relief in the form of a court order that prevents Defendants from

“further confining Plaintiff in ‘DEBTOR’S PRISON’[sic] [.]” (*Id.* at CM/ECF p. 2.)

II. APPLICABLE LEGAL STANDARDS ON INITIAL REVIEW

The court is required to review prisoner and in forma pauperis complaints seeking relief against a governmental entity or an officer or employee of a governmental entity to determine whether summary dismissal is appropriate. See [28 U.S.C. §§ 1915\(e\)](#) and [1915A](#). The court must dismiss a complaint or any portion thereof that states a frivolous or malicious claim, that fails to state a claim upon which relief may be granted, or that seeks monetary relief from a defendant who is immune from such relief. [28 U.S.C. § 1915\(e\)\(2\)\(B\)](#); [28 U.S.C. § 1915A](#).

Therefore, where a pro se plaintiff does not set forth enough factual allegations to “nudge[] their claims across the line from conceivable to plausible, their complaint must be dismissed” for failing to state a claim upon which relief can be granted. [Bell Atlantic Corp. v. Twombly, 127 S. Ct. 1955, 1974 \(2007\)](#) (overruling [Conley v. Gibson, 355 U.S. 41 \(1967\)](#), and setting a new standard for failure to state a claim upon which relief may be granted). Regardless of whether a plaintiff is represented or is appearing pro se, the plaintiff’s complaint must allege specific facts sufficient to state a claim. See [Martin v. Sargent, 780 F.2d 1334, 1337 \(8th Cir. 1985\)](#). However, a pro se plaintiff’s allegations must be construed liberally. [Burke v. North Dakota Dep’t of Corr. & Rehab., 294 F.3d 1043, 1043-1044 \(8th Cir. 2002\)](#) (citations omitted).

III. DISCUSSION OF CLAIMS

Claims relating to the validity of an individual’s incarceration may not be brought in a civil rights case, regardless of the relief sought. As set forth by the Supreme Court in [Preiser v. Rodriguez, 411 U.S. 475 \(1973\)](#) and [Heck v. Humphrey, 512 U.S. 477 \(1994\)](#), if success on the merits of a civil rights claim would necessarily

implicate the validity of a conviction or continued confinement of a convicted state prisoner, the civil rights claim must be preceded by a favorable outcome in habeas corpus or similar proceedings in a state or federal forum. Absent such a favorable disposition of the charges or conviction, a plaintiff may not use [42 U.S.C. § 1983](#) to cast doubt on the legality of his conviction or confinement. See [Heck, 512 U.S. at 486-87](#).

Here, Plaintiff failed to comply with a court order requiring him to pay child support. (Filing No. [1](#) at CM/ECF p. 1.) Plaintiff alleges this order constitutes slave labor in violation of the Thirteenth Amendment and seeks a court order that directs Defendants to release him from jail. (*Id.* at CM/ECF pp. 1-2.) These claims necessarily implicate the validity of Plaintiff's conviction and incarceration. As set forth above, the court cannot address these claims in an action brought pursuant to [42 U.S.C. § 1983](#). However, the court will dismiss Plaintiff's claims without prejudice to reassertion in a habeas corpus or similar proceeding.¹

IT IS THEREFORE ORDERED that:

1. Plaintiff's Complaint (filing no. [1](#)) is dismissed without prejudice to reassertion in accordance with this Memorandum and Order.
2. All Plaintiff's pending Motions are denied without prejudice to reassertion in his habeas corpus proceeding.
3. A separate judgment will be entered in accordance with this Memorandum and Order.

¹The court notes that Plaintiff has filed a Petition for Writ of Habeas Corpus in Case No. 4:09CV3076. (Case No. 4:09CV3076, Filing No. [8](#).) Thus, it appears that Plaintiff is already pursuing his claims in a separate habeas corpus proceeding.

May 29, 2009.

BY THE COURT:

s/Richard G. Kopf
United States District Judge