

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CLINTON BROOKS, JR.,

Plaintiff,

vs.

MARIA THIETJE, and LAW OFFICE
OF DEMARS GORDON OLSON,
ZALEWSKI, WYNNER,

Defendants.

4:17CV3016

**MEMORANDUM
AND ORDER**

Plaintiff filed a Complaint on February 3, 2017. ([Filing No. 1.](#)) He was given leave to proceed in forma pauperis. ([Filing No. 5.](#)) The court now conducts an initial review of Plaintiff's Complaint to determine whether summary dismissal is appropriate under [28 U.S.C. § 1915\(e\)\(2\)](#).

I. SUMMARY OF COMPLAINT

Plaintiff alleges that he was seated in a Lancaster County District Court courtroom as "amicus curiae" when Defendant Maria Thietje asked Plaintiff to leave the courtroom so that she could speak to her clients in private. ([Filing No. 1 at CM/ECF p. 1.](#)) Plaintiff complied. (*Id.*) Plaintiff alleges that, ten to fifteen minutes later, he told a woman in the courtroom to google Neb. Rev. Stat. 42 and look for child support. (*Id.*) He told her, "[I]t will tell you what is going on and how to appeal." (*Id.*)

Plaintiff was later convicted in Lancaster County District Court of theft by deception and unauthorized practice of law on facts unrelated to Plaintiff's allegations. See [State v. Brooks](#), 873 N.W.2d 460, 469 (Neb. App. 2016). In imposing Plaintiff's sentences, the state district court considered letters from two

attorneys about Plaintiff giving legal advice on other occasions. *Id.* at 480-81. The second attorney had been in a courtroom where Plaintiff advised people on the amount of child support a court could order someone to pay. *Id.* The state district court sentenced Plaintiff to consecutive terms of 15 to 35 months' imprisonment on the theft conviction and 3 to 3 months' imprisonment on the unauthorized practice of law. *Id.*

Plaintiff appealed his convictions and sentences to the Nebraska Court of Appeals. The court found that the trial court committed plain error by erroneously instructing the jury that it could base its guilty verdict for unauthorized practice of law on Plaintiff's conduct that occurred outside the statute of limitations. *Id.* at 475-77. It, therefore, reversed Plaintiff's conviction for unauthorized practice of law and remanded for a new trial on that charge. *Id.* at 477-78. In doing so, the court determined that there was sufficient evidence adduced at trial to sustain Plaintiff's conviction and, further, his conduct that occurred outside the statute of limitations would be admissible at a new trial to provide "necessary context" to his unauthorized practice of law occurring with the limitations period. *Id.*

Plaintiff alleges that Thietje informed the sentencing judge, prior to sentencing, that Plaintiff gave legal advice. ([Filing No. 1 at CM/ECF pp. 1-2.](#)) He alleges that Thietje "intentionally provoked Judge Otte to sentence Clinton Brooks Jr. to a harsher sentence, causing Clinton Brooks Jr. emotional distress and mental anguish, therefore violating the constitutional rights of freedom of speech in The First Amendment." (*Id.* at CM/ECF p. 2.) He seeks 1 million dollars. (*Id.*)

II. DISCUSSION

The court is required to review in forma pauperis complaints to determine whether summary dismissal is appropriate. *See* 28 U.S.C. § 1915(e). None of the defendants interfered with Plaintiff's First Amendment freedom of speech. Nevertheless, based upon the decision of the Nebraska Court of Appeals, the evidence was sufficient to find that Plaintiff committed the offense of unauthorized

practice of law. His conviction was reversed because of an improper jury instruction, not because he did not do it. The court must dismiss a complaint or any portion of it 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). Prior to filing in federal court, Plaintiff filed suit against Defendants in Lancaster County District Court on the same grounds.¹ The state district court denied Plaintiff in forma pauperis status because Plaintiff's Complaint asserted "legal positions, which are frivolous or malicious," and failed to state a claim upon which relief could be granted.² The court agrees and finds that Plaintiff's claim is frivolous and his Complaint fails to state a claim upon which relief may be granted. The court will not allow Plaintiff to amend his Complaint because amendment would be futile.

IT IS THEREFORE ORDERED that:

1. This case is dismissed with prejudice.
2. The court will enter judgment in a separate document.

Dated this 30th day of March, 2017.

BY THE COURT:

s/ Richard G. Kopf
Senior United States District Judge

¹  PDF of JUSTICE document for *Clinton Brooks Jr v. Maria Thietje and Law Offices of DeMars Gordon Olson and Zalewski*, Lancaster County District Court Case No. CI 16-3094, at <https://www.nebraska.gov/justice//case.cgi>; *Stutzka v. McCarville*, 420 F.3d 757, 760 n.2 (8th Cir. 2005) (court may take judicial notice of judicial opinions and public records).

²  *Id.*