

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

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|-----------------------|---|----------------------------|
| TRACY L. COONS, |) | |
| |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Case No. 10-CV-826-GKF-FHM |
| |) | |
| STATE OF OKLAHOMA; |) | |
| GOVERNOR OF OKLAHOMA, |) | |
| |) | |
| Defendants. |) | |

OPINION AND ORDER

Before the court is the Motion to Dismiss [Dkt. #17] filed by defendants, State of Oklahoma and Governor of Oklahoma. Defendants seek dismissal of the pro se plaintiff’s Amended Complaint pursuant to Fed.R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted.

Plaintiff’s Amended Complaint alleges his Fourteenth Amendment rights were violated when defendants denied plaintiff “a complete legal representation by an attorney” in a divorce action in Tulsa County District Court, Case No. FD-2003-2065. [Dkt. #2, Amended Complaint at 1-2]. He contends he is mentally ill. [*Id.* at 2].He seeks an order requiring the State of Oklahoma to purchase for him property comparable to real estate awarded in the divorce to his

ex-wife, and to reimburse him for rental income, bail money, pension, income and costs. [*Id.* at 3]. Plaintiff has attached the Decree of the Divorce to his complaint. [*Id.*, Ex. A].

Defendants contend the Amended Complaint should be dismissed because they have Eleventh Amendment Immunity and because the complaint fails to plead facts demonstrating that plaintiff is entitled to relief.

Eleventh Amendment Immunity

Plaintiff appears to have brought this action pursuant to 42 U.S.C. § 1983 for alleged violation of his constitutional rights. However, states and state officials acting within the scope of their official capacity are entitled to Eleventh Amendment immunity in § 1983 cases. *Will v. Michigan Department of State Police*, 491 U.S. 58, 65, 71 (1989); *Harris v. Champion*, 51 F.3d 901, 905-06 (10th Cir. 1995). Therefore, defendants' motion must be granted.

Failure to State a Claim

Rule 8(a)(2) of the Federal Rules of Civil Procedure provides that a complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." The United States Supreme Court clarified this standard in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007), ruling that to withstand a motion to dismiss, a complaint must contain enough allegations of fact "to state a claim to relief that is plausible on its face." 550 U.S. 544, 570 (2007). "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitle[ment] to

relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Id.* at 555 (internal quotations omitted). On a motion to dismiss, courts “are not bound to accept as true a legal conclusion couched as a factual allegation.” *Id.* Under the *Twombly* standard, “the complaint must give the court reason to believe that *this* plaintiff has a reasonable likelihood of mustering factual support for *these* claims.” *Robbins v. Oklahoma*, 519 F.3d 1242, 1247 (10th Cir. 2008), quoting *Ridge at Red Hawk, L.L.C. v. Schneider*, 493 F.3d 1174, 1177 (10th Cir. 2007) (emphasis in original). “The burden is on the plaintiff to frame a complaint with enough factual matter (taken as true) to suggest that he or she is entitled to relief.” *Robbins*, 519 F.3d at 1247, citing *Twombly*, 127 S.Ct. at 1965 (internal quotations omitted). “Factual allegations must be enough to raise a right to relief above the speculative level.” *Id.*

Although the new *Twombly* standard is “less than pellucid,” the Tenth Circuit Court of Appeals has interpreted it as a middle ground between “heightened fact pleading,” which is expressly rejected, and complaints that are no more than “labels and conclusions,” which courts should not allow. *Robbins*, 519 F.3d at 1247, citing *Twombly*, 127 S.Ct. at 1964, 1965, 1974. Accepting the allegations as true, they must establish that the plaintiff plausibly, and not just speculatively, has a claim for relief. *Robbins*, 519 F.3d at 1247. “This requirement of plausibility serves not only to weed out claims that do not (in the absence of additional allegations) have a reasonable prospect of success, but also to inform the defendants of the actual grounds of the claim against them.” *Id.* at 1248. The Tenth Circuit Court of Appeals instructed in *Robbins* that “the degree of specificity necessary to establish plausibility and fair notice, and therefore the need to include sufficient factual allegations, depends on context. . . .[and] the type

of case.” *Id.* (citing *Phillips v. County of Allegheny*, 515 F.3d 224, 231-32 (3d Cir. 2008)). A simple negligence action may require significantly less allegations to state a claim under Rule 8 than a case alleging anti-trust violations (as in *Twombly*) or constitutional violations (as in *Robbins*). *Id.*

Plaintiff’s Amended Complaint fails to meet the standard set out in *Twombly*. The pleading is so incoherent, it is impossible to discern the actual grounds of plaintiff’s claim or claims against defendants.

Conclusion

For the foregoing reasons, defendants’ Motion to Dismiss [Dkt. #17] is granted.

ENTERED this 21st day of September, 2011.


Gregory K. Frizzell
United States District Judge
Northern District of Oklahoma