

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

TERRENCE J. SPAN,	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 07-1145
	)	
THE HONORABLE JOHN P.	)	
FLAHERTY, et al.,	)	
Defendant.	)	

MEMORANDUM

Gary L. Lancaster,  
District Judge.

August 29, 2007

Before the court are plaintiff's motion for leave to proceed in forma pauperis and pro se complaint. For the reasons that follow, plaintiff's motion will be granted, and his complaint dismissed.

I. BACKGROUND

The gravamen of plaintiff's case is that several years ago he filed a medical malpractice claim in the Court of Common Pleas of Allegheny County, Pennsylvania. Apparently, he lost the case and the Pennsylvania Supreme Court refused to hear his appeal. As a result, he filed suit in this court at Civil Action No. 03-1264 against the Chief Justice and the Associate Justices of the Pennsylvania Supreme Court. He contended that the Supreme Court's failure to hear his appeal violated his constitutional

rights. That case was dismissed in May 2004 on the basis of judicial immunity.

He now brings this suit, also against the Chief Justice and the Associate Justices of the Pennsylvania Supreme Court, contending that his rights were violated in the 03-1264 matter because in that case the Supreme Court members were represented by a staff attorney from the Administrative Office of Pennsylvania Courts. Plaintiff contends that this representation was improper and violated his rights because the Supreme Court members were sued in their "individual capacities," not in their "official capacities."

## II. DISCUSSION

### A. Motion for Leave to Proceed In Forma Pauperis

We first address plaintiff's motion for leave to proceed in forma pauperis.

Congress has authorized the federal courts to allow a party to proceed with the commencement, prosecution, or defense of an action in forma pauperis. 28 U.S.C. § 1915(a). In doing so, Congress recognized the public policy concern that persons who are unable to pay fees or give security should be permitted to prosecute or defend actions that affect their legal rights. Because it appears that plaintiff is unable to pay the costs associated with commencing this action, we will grant him leave to proceed in forma pauperis.

B. Complaint

Next, we turn to plaintiff's complaint.

In enacting section 1915, Congress granted the courts an extra measure of authority when evaluating an in forma pauperis action. Under that section, the court shall dismiss such an action if it determines that the action is frivolous, or fails to state a claim on which relief may be granted. Id. at §§ 1915(e)(2)(b)(I), (ii). If it so finds, the court may dismiss a claim sua sponte, even before the summons issues. Johnstone v. United States, 980 F. Supp. 148, 150 (E.D. Pa. 1997).

A complaint is frivolous if it is "based on an indisputably meritless legal theory," or sets forth "clearly baseless" factual contentions. Neitzke v. Williams, 490 U.S. 319, 327 (1989). Moreover, a complaint fails to state a claim if, with all well-pleaded allegations taken as true, and viewed in the light most favorable to plaintiff, it does not state any valid claim for relief. See ALA, Inc. v. CCAIR, Inc., 29 F.3d 855, 859 (3d Cir. 1994). This is clearly such a complaint.

III. CONCLUSION

For the foregoing reasons, the court will grant plaintiff's motion for leave to proceed in forma pauperis, but will dismiss his complaint as frivolous and as failing to state a claim on which relief may be granted.

An appropriate order follows.

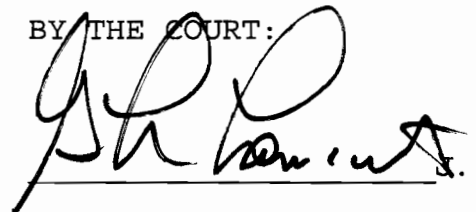
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ORDER

AND NOW, this 29<sup>th</sup> day of August, 2007, upon consideration of plaintiff's motion for leave to proceed in forma pauperis, said motion is hereby GRANTED. It is FURTHER ORDERED that plaintiff's complaint is hereby DISMISSED, with prejudice.

BY THE COURT:



cc: All Counsel of Record