
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

DAVID J. HESS,

Plaintiff,

v.

ROBERT S. MUELLER,

Defendants.

MEMORANDUM DECISION AND
ORDER DISMISSING PLAINTIFF'S
COMPLAINT

Case No. 2:17-CV-899 TS

District Judge Ted Stewart

This matter is before the Court for review of Plaintiff's *pro se* Complaint. Plaintiff filed his Complaint after receiving permission to proceed *in forma pauperis*. Under the *in forma pauperis* statute, the Court shall, at any time, *sua sponte* dismiss a case if the Court determines the complaint is frivolous, malicious, or fails to state a claim upon which relief can be granted.¹

The United States Supreme Court has construed the meaning of "frivolous" within the context of the *in forma pauperis* statute, holding that "a complaint, containing as it does both factual allegations and legal conclusions, is frivolous where it lacks an arguable basis either in law or in fact."² "[T]he statute accords judges not only the authority to dismiss a claim based on an indisputably meritless legal theory, but also the unusual power to pierce the veil of the complaint's factual allegations and dismiss those claims whose factual contentions are clearly

¹ See 28 U.S.C. § 1915(e)(2)(B)(i), (ii).

² *Neitzke v. Williams*, 490 U.S. 319, 325 (1989).

baseless.”³ Examples of baseless factual contentions are those that describe “fantastic or delusional scenarios.”⁴ “[A] finding of factual frivolousness is appropriate when the facts alleged rise to the level of the irrational or the wholly incredible.”⁵

In this case, Plaintiff seeks to assert a claim against the assets of former FBI Director Robert S. Mueller based on Mr. Mueller’s alleged taking of property from foreign nationals while acting as FBI Director. Plaintiff further complains of Mr. Mueller’s role in an anthrax investigation. Plaintiff accuses Mr. Mueller in the death Dr. Bruce Edwards Ivins, who committed suicide after the Department of Justice linked him to the anthrax investigation. Finally, Plaintiff complains about Mr. Mueller’s current role as Special Counsel. Plaintiff claims: “I am the punish er, The Punish er, punishes. I punish. That is my job. I am doing my job.”⁶

Having carefully reviewed Plaintiff’s Complaint, the Court finds that it meets the definition of frivolous. Specifically, the Court finds that the “facts alleged rise to the level of irrational or the wholly incredible.”⁷ Even if not frivolous, Plaintiff has failed to state a claim against Mr. Mueller. Therefore, dismissal is warranted. While generally the Court would allow Plaintiff, who is proceeding pro se, an opportunity to amend his Complaint to cure any deficiencies, granting such leave would be frivolous in this case.

³ *Id.* at 327.

⁴ *Id.* at 328.

⁵ *Denton v. Hernandez*, 504 U.S. 25, 33 (1992).

⁶ Docket No. 3, at 2.

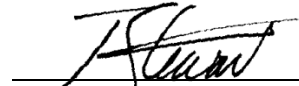
⁷ *Denton*, 504 U.S. at 33.

It is therefore

ORDERED that Plaintiff's Complaint is DISMISSED WITH PREJUDICE.

DATED this 28th day of August, 2017.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Stewart", written over a horizontal line.

Ted Stewart
United States District Judge