

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Christopher Roller,

Civil No. 05-2177 (JRT/FLN)

Plaintiff,

v.

**REPORT AND
RECOMMENDATION**

George Bush Administration, C/O
George W. Bush, Richard B. Cheney,
Donald Rumsfeld, and
John David Ashcroft,

Defendants.

Pro Se Plaintiff.
Patricia Cangemi for Defendants.

THIS MATTER came before the undersigned United States Magistrate Judge on May 12, 2006, on Defendants' Motion to Dismiss [#17] and Plaintiff's Motion for leave to amend the complaint [#28]. The matter was referred to the undersigned for Report and Recommendation pursuant to 28 U.S.C. § 636 and Local Rule 72.1. For the reasons which follow, this Court recommends Defendants' Motion be granted and Plaintiff's Motion be denied.

I. BACKGROUND

On September 20, 2005, Plaintiff Christopher Roller filed a complaint against Defendants for conspiracy pursuant to 42 U.S.C. § 1985 and 18 U.S.C. § 241. (Docket No. 1.) On January 1, 2006, Plaintiff filed an "Amendment to Complaint" in this action. (Docket No. 15.) In his "Amendment to Complaint," Plaintiff stated: "I found out that Conspiracies to Interfere with Civil Rights (42 U.S.C. §1985) and Conspiracy Against Rights of Citizens (18 U.S.C. § 241) doesn't really infer [sic] me and now I have to amend the complaint for MN § 609.05(6) as the claim for

relief.” (Amended Compl. at 1; Docket No. 15.) Plaintiff’s amended complaint further states that Plaintiff is entitled to relief under Minn. Stat. § 541.05 “on the ground of fraud . . . The deliberate deception has been in hiding godly powers while injuring me in a coverup. This statute gives me 6 years to file this suit from the discovery of the fraud- June 15, 2005.” (Amend. Compl. at 1-2.) Plaintiff’s amended complaint further alleges that Minn. Stat. § 541.31, subd. 2 means that Plaintiff “can apply MN statutes to any state.” (Amend. Compl. at 2.)

In his amended complaint Plaintiff also states that Minnesota Statute “Sections 541.30 to 541.35 apply to claims arising from incidents occurring on or after August 1, 2004. I can apply MN § 541.31 to the defendant because the discovery of the fraud (David Copperfield using godly powers) occurred after August 1, 2004, on June 15, 2005.” (Amend. Compl. at 2.) Plaintiff further states that

MN § 541.05 (6) meet the requirements for extensions of limitations, and MN § 541.31 gives me the ability to litigate action against anyone from any state who has committed fraud against me. This qualifies as personal and subject matter jurisdiction, and \$1 trillion in compensation for aiding and abetting (MN § 609.05 Sub 1) conspired fraud against me as the claim for relief.

(Amend. Compl. at 4-5.)

On April 10, 2006, Plaintiff filed a motion for leave to amend the complaint. Plaintiff stated “[t]here is some confusion from the defense about whether I abandoned the federal statutes when I intended to amend additional statute in amendment . . . So to clarify, I wish to amend the complaint to reinstate the federal statutes mentioned in the initial complaint.” (Docket. No. 28.)

Defendants filed a motion to dismiss Plaintiff’s complaint on March 22, 2006. (Docket No. 17.) In their memorandum in support of their motion, Defendants request that the Court dismiss Plaintiff’s complaint pursuant to Fed. R. Civ. P. 12(b)(1), (2), (5) and (6) for lack of jurisdiction,

improper service and failure to state a claim upon which relief may be granted.

II. STANDARD OF REVIEW

Defendants move to dismiss the Complaint for failure to set forth a jurisdictional basis pursuant to Fed. R. Civ. P. 12(b)(1) and (2). Federal Rule of Civil Procedure 12(b) states: “the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter; (2) lack of jurisdiction over the person.” Fed. R. Civ. P. 12(b)(1) and (2).

Defendants also move to dismiss the Complaint pursuant to Fed. R. Civ. P. 12(b)(5), which states that a defendant may make a motion to dismiss for “(5) insufficiency of service of process.”

Finally, Defendants move to dismiss the Complaint for failure to state a claim upon which relief can be granted pursuant to Federal Rule of Civil Procedure 12(b)(6). A cause of action should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff cannot prove any set of facts in support of her claim that would entitle her to relief. Schaller Tel. Co. v. Golden Sky Sys., Inc., 298 F.3d 736, 740 (8th Cir. 2002) (citations omitted). In analyzing the adequacy of a complaint under Rule 12(b)(6), the Court must construe the complaint liberally and afford the plaintiff all reasonable inferences to be drawn from those facts. See Turner v. Holbrook, 278 F.3d 754, 757 (8th Cir. 2002). For the purpose of a motion to dismiss, facts in the complaint are assumed to be true. In re Navarre Corp. Sec. Litig., 299 F.3d 735, 738 (8th Cir.2002).

Nevertheless, dismissal under Rule 12(b)(6) serves to eliminate actions which are fatally flawed in their legal premises and deigned to fail, thereby sparing litigants the burden of unnecessary pretrial and trial activity. Neitzke v. Williams, 490 U.S. 319, 326-327 (1989). To avoid dismissal, a complaint must allege facts sufficient to state a claim as a matter of law and not merely legal conclusions. Springdale Educ. Ass'n v. Springdale Sch. Dist., 133 F.3d 649, 651 (8th Cir.1998).

Pro se pleadings should be liberally construed, and are held to a less stringent standard when challenged by motions to dismiss. See Haines v. Kerner, 404 U.S. 519, 520 (1972); Horseley v. Asher, 741 F.2d 209, 211 n.3 (8th Cir. 1984). Although it is to be liberally construed, a *pro se* complaint must still contain specific facts to support its conclusions. Kaylor v. Fields, 661 F.2d 1177, 1183 (8th Cir.1981).

III. LEGAL ANALYSIS

Defendants first argue that Plaintiff's complaint must be dismissed because Plaintiff has failed to set forth a jurisdictional basis for allowing the district court to entertain the Plaintiff's complaint. Fed. R. Civ. P. 12(b)(1) and (2). Defendants argue that in the present case Plaintiff sets forth a Minnesota fraud statute that has no application to any of the federal Defendants. Defendants argue that they have not waived sovereign immunity for suit under this statute, and that Plaintiff has not made any showing that he seeks to proceed under the Federal Tort Claims Act, 28 U.S.C. § 2671 et seq.

"It is axiomatic that the United States may not be sued without its consent and that the existence of consent is a prerequisite for jurisdiction." United States v. Mitchell, 463 U.S. 206, 212 (1983). In the present case Defendants have not waived sovereign immunity. The United States Government has waived sovereign immunity in limited cases, including for claims properly brought under the Federal Tort Claims Act, 28 U.S.C. § 2671, et. seq. However, Plaintiff has not sought to proceed against Defendants under the Federal Tort Claims Act, 28 U.S.C. § 2671 et. seq, nor has Plaintiff attempted to plead that his case falls within the purview of the Federal Tort Claims Act.

Therefore, the Court does not have subject matter jurisdiction over Plaintiff's claims alleging fraud under Minn. Stat. § 609.05, and Plaintiff's amended complaint should be dismissed.

It appears to the Court that Plaintiff's amended complaint abandoned his constitutional claims pursuant to 42 U.S.C. §1985 and 18 U.S.C. §241. However, even if Plaintiff's amended complaint retained Plaintiff's constitutional law claims, Plaintiff fails to allege any constitutional claims against any federal Defendant.¹ Although Plaintiff is proceeding *pro se* and therefore his complaint is liberally construed, Plaintiff still shoulders the burden of demonstrating that this Court has jurisdiction over his complaint.

42 U.S.C. §1985 has three sections and Plaintiff did not identify which section he referred to in his initial complaint. However, in his memorandum in opposition to this motion, Plaintiff stated that he was alleging a claim against Defendants under 42 U.S.C. §1985(3). 42 U.S.C. §1985(3) prohibits

two or more persons in any State or Territory [from] conspir[ing] or go[ing] in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws . . .

42 U.S.C. §1985(3).

18 U.S.C. §241 prohibits

two or more persons [from] conspir[ing] to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same.

18 U.S.C. §241. Both 18 U.S.C. §241 and 42 U.S.C. §1985(3) require the object of the conspiracy to be the deprivation of constitutional rights. A liberal reading of Plaintiff's complaint fails to make

¹Indeed, Plaintiff's motion for leave to amend his complaint seeks to reinstate reference to the federal statutes mentioned in his original complaint. As discussed above in the text, even if Plaintiff were permitted to so amend his amended complaint, the Court would still lack jurisdiction over the claims as plead. Plaintiff's motion for leave to amend should, therefore, be DENIED, because the amendment he seeks to make would be futile.

a sufficient showing that Plaintiff intended to make out a constitutional claim against the Defendants. Plaintiff's complaint does not mention any constitutional provision that he alleges Defendants conspired to violate. Since Plaintiff does not allege that any of his constitutional rights have been violated, the Court does not have jurisdiction to hear his claims under 18 U.S.C. §241 and 42 U.S.C. §1985(3). Defendant's Motion to Dismiss must be granted.²

IV. RECOMMENDATION

Based upon all the files, records and proceedings herein, **IT IS HEREBY RECOMMENDED** that Defendants' Motion to Dismiss [#17] be **GRANTED** and Plaintiff's Motion for leave to amend the complaint [#28] be **DENIED**.

DATED: June 30, 2006

s/ Franklin L. Noel
FRANKLIN L. NOEL
United States Magistrate Judge

Pursuant to the Local Rules, any party may object to this Report and Recommendation by filing with the Clerk of Court and serving on all parties, on or before **July 20, 2006**, written objections which specifically identify the portions of the proposed findings or recommendations to which objection is being made, and a brief in support thereof. A party may respond to the objecting party's brief within ten days after service thereof. All briefs filed under the rules shall be limited to 3,500 words. A judge shall make a de novo determination of those portions to which objection is made.

Unless the parties are prepared to stipulate that the District Court is not required by 28 U.S.C. § 636 to review a transcript of the hearing in order to resolve all objections made to this Report and Recommendation, the party making the objections shall timely order and cause to be filed by **July 20, 2006**, a complete transcript of the hearing.

This Report and Recommendation does not constitute an order or judgment of the District Court, and it is, therefore, not appealable to the Circuit Court of Appeals.

² As the Court has determined that it lacks jurisdiction to hear Plaintiff's complaint, the Court need not address any of the other arguments Defendants make in support of their Motion to Dismiss.