

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

KERI A. BURR,

Petitioner,

v.

RICHARD L. HUFF, F.B.I.,

Respondent.

ORDER

04-C-53-C

This is a proposed civil action brought by petitioner Keri Burr, a resident of Eau Claire, Wisconsin, who is proceeding pro se against respondent Richard Huff, an agent of the Federal Bureau of Investigation. In her complaint, petitioner alleges among other things that respondent is in violation of the Freedom of Information Act, 5 U.S.C. § 552 (FOIA). Petitioner asks for leave to proceed under the in forma pauperis statute, 28 U.S.C. § 1915. From the financial affidavit petitioner has given the court, I conclude that petitioner is financially unable to prepay the full fees and costs of starting this lawsuit. However, in addressing any pro se litigant's complaint, the court must read the allegations of the complaint generously, See Haines v. Kerner, 404 U.S. 519, 521 (1972), and deny leave to proceed in forma pauperis if the action is legally frivolous or malicious, fails to state a claim

on which relief may be granted, or seeks money damages from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B).

Because it is difficult to understand the factual allegations in petitioner's complaint, I have set out below the full text of the pleading below.

ALLEGATIONS OF FACT

In late 2003 I wrote the F.B.I. field office in Milwaukee, WI requesting records about myself under the Freedom of Information Act. The F.B.I. responded to my letter and claimed that they do not have any records. I know faithfully that is not true; they must have something about me. I also specifically requested records about a bomb complaint made in 2001. I told them I wanted proof of the complaint and that would be enough evidence for me to press charges and inquire about stalking and harrasment charges. I believe the F.B.I. is withholding this information and violating my rights because the complaint was made from a high profile National Football League (NFL) member and his wife. This complaint then caused an inquiry about Wisconsin law makers from Bret and Deanna Farve. The F.B.I. told me I could appeal my decision with the Office of Information and Privacy with the U.S. Justice Department. I sent a copy of the appeal from Richard L. Huff. Richard L. Huff said in his letter he "decided to affirm" the F.B.I. decision that records about Keri A. Burr do not exist. "He carefully considered my appeal," and would not grant the records, pressing charges, and inquiring about new charges against Bret Farve and his wife. They let me live with the slander of a bombing murder, which is not true. How could the U.S. government do this to me. I am a disabled American. I receive SSI. I cannot even pay to have this filed. I am a disabled single mother enclosed is my Social Security income. The bottom line is the State of Wisconsin and the Federal Government will not let me press charges against Deanna Farve; and bring up charges against Bret Farve for stalking me. (sic) (Emphasis in original)

At the end of her complaint, petitioner lists the relief she seeks.

Let the F.B.I. give me all records about myself which I am entitled under the Freedom of Information Act. Tell them I am entitled to press charges against Deanna Farve and Bret Farve for this bomb complaint and for stalking and threatening me. Be exonerated, be put back in good standing with my reputation, let other people know their not going to be hurt. Because of them others think I want to kill them. That is sick. Please waive court costs. How do I sue in according to venue or in California? (sic)

OPINION

The Freedom of Institution Act provides that, "the district court . . . has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant." 5 U.S.C. § 552(a)(4)(B). The Supreme Court has provided guidance as to the meaning of this statute. In Kissinger v. Reporters Committee for Freedom of the Press, 445 U.S. 136, 150 (1980), the Court remarked that, "[u]nder 5 U.S.C. § 552(a)(4)(B) federal jurisdiction is dependent upon a showing that an agency has (1) 'improperly'; (2) 'withheld'; (3) 'agency records.' Judicial authority to devise remedies and enjoin agencies can only be invoked, under the jurisdictional grant conferred by § 552, if the agency has contravened all three components of this obligation." In addition, light was shed on the word "withhold." The Court indicated that the word presumed the federal agency possessed or controlled the item sought. Id. at 151. The Act does not require an agency to either create or retain documents. Id. at 152. The statute merely requires government agencies to disclose documents already in existence.

DeBold v. Stimson, 735 F.2d 1037 (7th Cir. 1984). If no documents exist, nothing can be withheld, and jurisdiction cannot be established.

Apart from her comments, “I know faithfully that is not true; they must have something about me,” petitioner alleges nothing in her complaint from which an inference can be drawn that documents about her actually do exist with the F.B.I. A district court is not bound to accept unquestioningly the truth of a pro se petitioner's allegations. Denton v. Hernandez, 504 U.S. 25, 33 (1992). When a complaint contains factually baseless claims, such as those "describing fantastic or delusional scenarios," a district court can properly deny a petitioner leave to proceed. Neitzke v. Williams, 490 U.S. 319 (1989). "[A] finding of factual frivolousness is appropriate when the facts alleged rise to the level of the irrational or the wholly incredible" Denton, 505 U.S. at 33.

Petitioner's complaint fits this description. In one sentence she writes about the possibility that the F.B.I. has a record concerning her, and in the next she insists that the F.B.I. is somehow preventing her from pressing charges against Green Bay Packer quarterback Brett Favre and his wife for an alleged “bomb complaint” and stalking her. If Brett Favre is taking time out of his schedule to stalk petitioner, there is nothing preventing petitioner from making a complaint directly to local Eau Claire, Wisconsin law enforcement officers, where petitioner resides. She does not need the assistance of the F.B.I. to do so.

Because I am convinced that petitioner's complaint alleges only factually baseless

claims, I must deny her request for leave to proceed in forma pauperis.

ORDER

IT IS ORDERED that petitioner's request for leave to proceed in forma pauperis is DENIED because the allegations of her complaint are legally frivolous. The clerk of court is directed to enter judgment closing this case.

Entered this 6th day of February, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge