

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

GARY N. NOOSBOND,

Plaintiff,

OPINION AND ORDER

v.

12-cv-386-wmc

STATE OF WISCONSIN DEPARTMENT
OF WORKFORCE DEVELOPMENT and
CAPITOL POLICE,

Defendants.

Because plaintiff Gary N. Noosbond seeks leave to proceed with this proposed civil action against the State of Wisconsin Department of Workforce Development and the State Capitol Police without prepayment of fees and costs, the court must screen the proposed complaint and dismiss any portion that is frivolous, 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. *See* 28 U.S.C. § 1915(e)(2). Even under the exceedingly lenient standard to which Noosbond is entitled at this preliminary stage of litigation, his request for leave to proceed must be denied because he does not articulate a coherent, viable claim.

ALLEGATIONS OF FACT

In addressing any *pro se* litigant's complaint, the court must construe the allegations generously. *See Haines v. Kerner*, 404 U.S. 519, 521 (1972). To the extent

that they can be discerned, the court, therefore, accepts all well-pleaded allegations as true for purposes of this order and assumes the following probative facts.¹

Noosbond is a resident of Racine, Wisconsin, who suffers from an unspecified disability. Although unclear from the complaint, it appears that Noosbond sought some form of assistance from the Wisconsin Department of Workforce Development Division of Vocational Rehabilitation (“DVR”) in obtaining either employment or unemployment benefits.

In September of 2011, Noosbond apparently travelled to the DVR’s Madison office, but only after he was unsuccessful in obtaining benefits through a DVR office in Milwaukee. After observing that Noosbond was eligible for Social Security disability benefits and that he had an “old file” elsewhere, an employee at the Madison DVR office advised Noosbond that he needed to present “a letter from a psychologist (at his own expense) stating [whether] he [was] able to engage in appropriate behaviors for employment” before he could be eligible for the program or service he was seeking. Noosbond responded that this was “ridiculous” and became “loud.”

Over the next few months, Noosbond’s contacts with the DVR office in Madison evidently escalated from merely loud to threatening. On November 7, 2011, Noosbond was arrested in Madison by officers with the State Capitol Police Department. As the

¹ Noosbond attaches several exhibits to his complaint, including a one-page record of his contacts with the DVR in early September 2011 and a formal “Service of Warning-Stalking Letter,” which is accompanied by supporting documentation. The court has supplemented the facts with information from these exhibits. *See* FED. R. CIV. P. 10(c); *see also* *Witzke v. Femal*, 376 F.3d 744, 749 (7th Cir. 2004) (explaining that documents attached to the complaint become part of the pleading, meaning that a court may consider those documents to determine whether plaintiff has stated a valid claim). All other facts are taken from the complaint itself.

result of his repeated “unnecessary and uninvited contact with the DVR,” Noosbond also was issued a formal warning that his conduct constituted “stalking” in violation of Wis. Stat. § 940.32. In that warning, which Capitol Police served on Noosbond at the Dane County Jail on November 10, 2011, Noosbond was accused of causing DVR employees “serious emotional distress” and “fear of bodily injury.” Due to his behavior, the DVR also obtained a restraining order against Noosbond. Noosbond was further told that DVR employees would contact the Capitol Police and that he could be prosecuted if he persisted with his behavior.

In his pending complaint, Noosbond contends that DVR employees do not perform their jobs “correctly” and that they have “discriminated” against him because he has a disability. Specifically, Noosbond maintains that he should not have been asked to find a psychologist at his own expense. Finally, he asks the court to “take care of” the arrest that occurred on November 7, 2011.

OPINION

A complaint may be dismissed for failure to state a claim where the plaintiff alleges too little, failing to meet the minimal federal pleading requirements found in Fed. R. Civ. P. 8. In particular, Rule 8(a) requires a “short and plain statement of the claim’ sufficient to notify the defendants of the allegations against them and enable them to file an answer.” *Marshall v. Knight*, 445 F.3d 965, 968 (7th Cir. 2006). While it is not necessary for a plaintiff to plead specific facts, *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007), “[t]hreadbare recitals of the elements of a cause of action, supported by

mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2007) (citing *Twombly*, 550 U.S. at 555) (observing that courts “are not bound to accept as true a legal conclusion couched as a factual allegation”).

Here, Noosbond appears to claim that he was subjected to discrimination in violation of the Americans with Disabilities Act, Title II of which provides that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132. Assuming that Noosbond is a “qualified individual with a disability” for purposes of the ADA, he does not allege facts showing that he was refused services or participation in a public program for discriminatory reasons. At most, he alleges that the oral instructions that he received at the second DVR office he visited (repeatedly) were not to his liking. A better approach, and in any event the only one with even the *potential* to create a viable claim, would be for Noosbond to submit a formal, written application for benefits (with counsel if possible) and to appeal a denial if necessary.

Similarly, while Noosbond appears to claim that his arrest by Capitol Police was false, exhibits attached to the complaint demonstrate that his conduct was construed to violate Wisconsin law. Because probable cause is an absolute defense to any claim against police officers for wrongful arrest, *see Thayer v. Chiczewski*, 705 F.3d 237, 246 (7th Cir. 2012), Noosbond’s claim against the Capitol Police also fails as a matter of law.

Because Noosbond alleges no other set of comprehensible facts that might constitute a cognizable claim under federal or state law, the court concludes that this case should be dismissed.

ORDER

IT IS ORDERED that:

- (1) Plaintiff Gary Noosbond's request for leave to proceed is DENIED and his complaint is DISMISSED for failure to state a claim.
- (2) All pending motions are DENIED as moot.

Entered this 16th day of September, 2013.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge