

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

ANN MARIE AUSTIN and
KEITH R. GEHRKE,¹

Petitioners,

v.

PHILLIP MORRIS, USA,

Respondent.

OPINION
AND
ORDER

08-cv-0244-bbc

This is a proposed civil action for injunctive relief. Petitioner Ann Marie Austin, a resident of Madison, Wisconsin, seeks leave to proceed without prepayment of fees and costs or providing security for such fees and costs, pursuant to 28 U.S.C. § 1915. From the affidavit of indigency accompanying petitioner's proposed complaint, I conclude that petitioner is unable to prepay the fees and costs of instituting this lawsuit.

In addressing any pro se litigant's complaint, the court must construe the complaint

¹ Although Keith R. Gehrke is named as a petitioner in this action, he has neither signed the complaint nor submitted an affidavit of indigency. Accordingly, he will not be considered as a petitioner in this action.

liberally, Haines v. Kerner, 404 U.S. 519, 521 (1972). The court will grant leave to proceed if there is an arguable basis for a claim in fact or law. Neitzke v. Williams, 490 U.S. 319 (1989). In making this determination, I will consider both the complaint petitioner filed on April 25, 2008, and the materials she added to it on April 30, 2008. Unfortunately, as the sampling of petitioner's allegations set forth below reveals, the complaint and its amendments are unintelligible and fail to make out a claim for relief. Petitioner alleges,

Since 1989 to 1997, I was violated as a woman in Madison WI as a woman in non-traditional employment and livelihood, the equal right to reinstate as everyone else and sue for my CDL. I paid storage for my property and stored all contents at triple AAA Monona Self-Storage until it was robbed and illegally auctioned in December 2004.

Well in 1996 I moved from WI to AZ to get married and have a family. I transferred direction of property to AZ 3000 miles to my business trailer and my service companions trailer about 1/8 to 1/4 of the intellectual business and educational and personal property to AZ.

Meaning the property that I took to AZ is interstate and intrastate commercial law that WI supersedes the state of AZ jurisdiction because the property has a WI business Tax ID number. I was born in WI my birthright and my property rights of personal rights and intellectual and commercial and civil rights as a WI resident were violated in AZ 6-2003 and debilitated by criminal acts done against me and my service animal certified for my spine, who had another 2 years to live due to a robbery. He was debilitated and died Sept. 5th 2007 and they (?) stole his leather leashes and harnesses. He's in a cemetery freezer waiting to be buried. Also regarding the loss of my business trailer and after a loss of my 5th pregnancy, loss of twins 4-10-2000, in a car wreck which I was not at fault and my mother had a stroke in WI 3000 miles away 3-2003 and unable to be there. Due to the robbery, while kids and certain official sheriff and fire departments the county of Apache and Navajo were emptying my trailer out for their public profit with no search warrant

while my mother was dying and after loss of pregnancy and the right to reproduce. My 1st, 4th, 5th, 6th, 8th, 13th #2, 14th, Internship, stole away 30 years of work as an aspiring journalist from the UW and all my intellectual property, ideas in progress, invasion of privacy, stealing my social security number for illegal investigating, malicious prosecution, reselling property from Madison to Phillip and Morris, medical records, which all this caused wrongful deaths in my life, interfering with my time and second livelihood, another new start meaning the pursuit of happiness. Multiple criminal acts. I worked 30 years for closure like Drew Barrymore and her mother who robbed her or Suzanne Somers. . . .

In her request for relief, petitioner asks that the court

. . . order a writ of replevin and or to subpoena Phillip and Morris for my original picture for evidence for excessive multiple mass damages requesting 12 billion dollars for the invasion of privacy, copyright royalties, criminal acts and the media releases. The court to find out who in AZ got into my business trailer and my WI storage in Dane county? . . . To honor my lawsuit as is for now and to please grant me the grace of 90 days or a year to amend this lawsuit and time to get a pro bono attorney for good cause. And time to get the letter of affidavits in verifying Keith and others in the photo in Phillip and Morris picture so I can sue for my picture, and for excessive civil damages, violation of my pursuit of happiness and harassment and defamation and injured. . . .

DISCUSSION

District courts must dismiss a complaint for lack of subject matter jurisdiction where the claims are “so insubstantial, implausible, foreclosed by prior decisions of [the United States Supreme Court], or otherwise completely devoid of merit as not to involve a federal controversy.” Steel Company v. Citizens for a Better Environment, 118 S. Ct. 1003, 1010 (1998)(citing Oneida Indian Nation of N.Y. v. County of Oneida, 414 U.S. 661, 666

(1974)).

It is impossible to make out from petitioner's complaint what possible claim she might have against the respondent. Her allegations are rambling and disclose a series of painful events in petitioner's life that appear to have nothing to do with the named respondent. Even when petitioner refers to the respondent in her allegations, it is impossible to know what it is that she is charging respondent with having done. In other words, petitioner's complaint is so devoid of substantiating or plausible factual allegations that her case must be dismissed for lack of subject matter jurisdiction. Id.; Lee v. Clinton, 209 F.3d 1025 (7th Cir. 2000) (in forma pauperis statute not intended to promote legally frivolous claims).

ORDER

IT IS ORDERED that petitioner's request for leave to proceed in forma pauperis is DENIED and this case is DISMISSED for lack of jurisdiction.

Entered this 6th day of May, 2008

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge