

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

RICHARD JOHN BAUER,

Petitioner,

v.

TERRY KURT, States Attorney,
JERRY WESTEMEIR, Chief of Police,
JUDGE VICTOR V. SPRENGELMEYER,
CHIEF JUDGE WILLIAM A. KELLY,
JAY DICKERSON, KEITH BRANDEL,
P. CARTER NEWTON and SHARON WAND,

Respondents.

ORDER

08-cv-498-bbc

This is a proposed civil action for monetary relief, in which petitioner Richard Bauer seeks leave to proceed under the in forma pauperis statute, 28 U.S.C. § 1915. In addressing any pro se litigant's complaint, the court must read the allegations of the complaint generously. Haines v. Kerner, 404 U.S. 519, 521 (1972). However, pursuant to 28 U.S.C. § 1915(e)(2), if a litigant is requesting leave to proceed in forma pauperis, the court must deny leave to proceed if the action is frivolous or malicious, fails to state a claim upon which relief may be granted or seeks money damages from a defendant who is immune to such

relief. I conclude that petitioner must be denied leave to proceed and this action must be dismissed because petitioner has failed to state a claim upon which relief may be granted against several respondents and because the remaining two respondents are protected from suit by absolute immunity.

Although this is not the first time petitioner has sued members of Illinois's court system, see Bauer v. Hornyak, No. 07-C-055-C, slip op. (W.D. Wis. Apr. 30, 2007), petitioner again fails to state a claim upon which relief may be granted and seeks money damages from immune defendants. The crux of petitioner's complaint is his allegations of "corruption of the 15th Judicial Circuit and the 2d District Appellate Court," which he supports by alleging that he "can prove an enormous amount of corruption involving the 15th Judicial Circuit of Illinois." Under the most generous reading of petitioner's complaint, his allegations amount to an assertion of a claim that he was denied due process with respect to a criminal trespass charge and revocation of his probation.

Before addressing petitioner's potential claim, I conclude that all respondents except respondents Judge Victor Sprenglemeyer and States Attorney Terry Kurt must be dismissed from the lawsuit because petitioner does not allege that they had any personal involvement in depriving him of a constitutional right. 42 U.S.C. § 1983 governs alleged violations of an individual's constitutional rights. It is well established that liability under this statute must be based on a respondent's personal involvement in the constitutional violation.

Gentry v. Duckworth, 65 F.3d 555, 561 (7th Cir. 1995); Del Raine v. Williford, 32 F.3d 1024, 1047 (7th Cir. 1994); Morales v. Cadena, 825 F.2d 1095, 1101 (7th Cir. 1987). Petitioner fails to mention how respondents Jerry Westemier, P. Carter Newton, Chief Judge William A. Kelly, Jay Dickerson, Keith Brandel or Sharon Wand were involved in the prosecution of the criminal trespass charge against him. In fact, petitioner does not even mention respondents Westemier, Newton or Wand in the body of his complaint, and he only mentions respondents Kelly, Dickerson and Brandel as persons who are “also defendants.” Accordingly, petitioner fails to state a claim against these respondents and they must be dismissed from the case.

Turning to the respondents whose personal involvement petitioner does allege, petitioner’s claim fails because both respondents are protected by absolute immunity. Respondent Judge Victor Sprenglemeyer has absolute judicial immunity from liability for his judicial acts. The doctrine of judicial immunity establishes the absolute immunity of judges from liability for their judicial acts, even when they act maliciously or corruptly. Mireles v. Waco, 502 U.S. 9 (1991). This immunity is not for the protection or benefit of a malicious or corrupt judge, but for the benefit of the public, which has an interest in a judiciary free to exercise its function without fear of harassment by unsatisfied litigants. Pierson v. Ray, 386 U.S. 547, 554 (1967). Because petitioner’s claim against respondent Sprenglemeyer is based on his dissatisfaction with the judge’s revocation of petitioner’s probation, there is

no arguable basis in fact or law for his claim against this respondent.

Petitioner's claim against respondent States Attorney Terry Kurt stems from Kurt's decision to prosecute petitioner on an allegedly false criminal trespass charge as well as his pursuit of an allegedly invalid revocation of petitioner's probation. However, petitioner's allegations establish that respondent Kurt's actions were taken in his role as advocate for the state of Illinois. Therefore, Kurt is protected from suit by the doctrine of absolute prosecutorial immunity. Kalina v. Fletcher, 522 U.S. 118 (1997) (state prosecuting attorney who acted within scope of prosecutorial duties in initiating and pursuing criminal prosecution not amenable to suit under § 1983); see also Buckley v. Fitzsimmons, 59 U.S. 259, 273 (1993) (stating that "acts undertaken by a prosecutor in preparing for the initiation of judicial proceedings or for trial, and which occur in his role as an advocate for the State, are entitled to the protections of absolute immunity"). Therefore, petitioner is barred from bringing his claim against respondent Kurt.

ORDER

IT IS ORDERED that Petitioner Richard John Bauer's request for leave to proceed in forma pauperis is DENIED and this case is DISMISSED for failure to state a claim upon which relief may be granted. The clerk of court is directed to close this case.

Entered this 26th day of August, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge