

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

SEAN ANTHONY RIKER,

Plaintiff,

v.

TAYLOR ANNE RIKER,

Defendant.

ORDER

11-cv-602-slc¹

In this proposed civil action for monetary and injunctive relief, plaintiff Sean Anthony Riker, an inmate at the Wisconsin Secure Program Facility, contends that his ex-wife, defendant Taylor Anne Riker, falsely told the police that plaintiff had downloaded child pornography on his computer. Plaintiff brings a claim against defendant for slander and asks that the court order defendant to be prosecuted for possession of child pornography. Plaintiff is proceeding under the in forma pauperis statute, 28 U.S.C. § 1915, and has made an initial partial payment.

Plaintiff's claim against defendant is a state law claim. Thus, the requirements of 28 U.S.C. § 1332 must be satisfied for the court to exercise jurisdiction over this case. Plaintiff

¹ For the purpose of issuing this order, I am assuming jurisdiction over the case.

is seeking \$1 million in damages from defendant, so the amount in controversy requirement is met. *Back Doctors Ltd. v. Metropolitan Property and Casualty Insurance Co.*, 637 F.3d 827, 831 (7th Cir. 2011) (amount in controversy requirement of § 1332 is satisfied if it is legally possible for plaintiff to recover that amount, even if recovery of that amount is improbable). On October 7, 2011, I ordered plaintiff to provide this court with verification of the diversity of citizenship between himself and defendant.

Plaintiff has responded, averring that he is a citizen of Wisconsin and defendant is a citizen of Colorado. Thus, the parties are completely diverse. Now I can screen plaintiff's proposed complaint to determine whether any portion is legally frivolous, malicious, fails to state a claim upon which relief may be granted or asks for money damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. § 1915A. 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).

After reviewing the complaint, I conclude that plaintiff may proceed with his claim against defendant for slander.

In his complaint, plaintiff alleges the following facts.

ALLEGATIONS OF FACT

On November 10, 2009, plaintiff Sean Riker was arrested and incarcerated in Racine

County on several criminal charges. On December 19, 2009, defendant Taylor Riker, plaintiff's wife at the time, told the police that plaintiff had downloaded child pornography on the home computer. Plaintiff hired an investigator to do a forensic computer analysis of their computer and the investigator determined that the pornographic images had been downloaded while plaintiff was incarcerated. Plaintiff was never charged with any crime related to possession of the child pornography, but defendant's accusation is in his criminal record and he worries that he will be charged someday.

DISCUSSION

Plaintiff is suing defendant for slander, which is a form of the common law tort of defamation. Because the tort occurred in Wisconsin, Wisconsin law applies to this claim. Schindler v. Seiler, 474 F.3d 1008, 1010 (7th Cir. 2007). To prove a claim of defamation under Wisconsin law, a plaintiff must adduce evidence showing that an allegedly defamatory statement (1) was spoken to someone other than the person defamed; (2) is false; (3) is unprivileged; and (4) tends to harm the defamed person's reputation so as to lower him in the estimation of the community or to deter third persons from associating or dealing with him. Tongerson v. Journal/Sentinel, Inc., 210 Wis. 2d 524, 534, 563 N.W.2d 472, 477 (1997); Hart v. Bennet, 2003 WI App 231, ¶ 21, 267 Wis. 2d 919, 941, 672 N.W.2d 306, 317.

At this stage, I can infer that defendant's statements to the police that plaintiff possessed child pornography would lower plaintiff's reputation in the community or deter people from associating with him. In addition, plaintiff alleges that the statements were false. Thus, plaintiff may proceed on his slander claim against defendant.

Plaintiff has filed a supplement to his complaint, dkt. #9, requesting that the court order the state and FBI to investigate defendant's possession of child pornography and other criminal behavior. This request will be denied. The court does not tell law enforcement agencies which cases they should investigate. Plaintiff is free to file a request or complaint with the appropriate investigatory agencies.

ORDER

IT IS ORDERED that

1. Plaintiff Sean Riker is GRANTED leave to proceed on his claim of slander against defendant Taylor Riker.
2. Copies of plaintiff's complaint and this order are being forwarded to the United States Marshal for service on defendant.
3. For the remainder of the lawsuit, plaintiff must send defendant a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer, if any, will be representing defendant, he should serve the lawyer directly rather than defendant.

The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to defendant or to defendant's attorney.

4. Plaintiff should keep a copy of all documents for his own files. If plaintiff does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.

5. Plaintiff is obligated to pay the unpaid balance of his filing fee in monthly payments as described in 28 U.S.C. § 1915(b)(2). This court will notify the officials at the Wisconsin Secure Program Facility of that institution's obligation to deduct payments until the filing fee has been paid in full.

Entered this 2d day of November, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge