

JEFFREY D. HILL,

Plaintiff

vs.

EVELYN DERRICK,

Defendant

: IN THE COURT OF COMMON PLEAS OF
: LYCOMING COUNTY, PENNSYLVANIA

:

:

: NO. 04-00,515

:

:

: MOTION FOR LEAVE TO PROCEED

: IN FORMA PAUPERIS

Date: April 16, 2004

OPINION and ORDER

Before the Court for determination is the Motion for Leave to Proceed In Forma Pauperis of Plaintiff Jeffrey Hill filed March 29, 2004. Hill has averred that he is indigent and financially unable to pay the costs of litigation. In support of this averment, Hill included an Affidavit stating that he is unemployed, has a monthly income of \$591 (SSI- Disability), and that he has no savings or property of value. The Court will deny the Motion. The Court will also dismiss the Complaint as frivolous.

“A party who is without financial resources to pay the costs of litigation is entitled to proceed in forma pauperis.” Pa.R.C.P. 240. When determining whether to permit a party to proceed in forma pauperis, the focus of the court is on whether the individual can pay the costs of litigation. *Crosby Square Apartments v. Henson*, 666 A.2d 737, 738 (Pa. Super. 1995). If the court doubts the veracity of the averments concerning poverty, then the court must hold a hearing to determine the financial status of the party seeking in forma pauperis relief. *Goldstein v. Haband Co.*, 814 A.2d 1214, 1217 (Pa. Super. 2002); *Crosby Square*, 666 A.2d at 738.

When considering a petition to proceed in forma pauperis, a court may deny the petition and dismiss the complaint if the court determines that the claim is frivolous. *Conover v. Mikosky*, 609 A.2d 558 (Pa. Super. 1992); Pa.R.C.P. 240(j). It would be bad policy to allow a party to proceed in forma pauperis and waste court time and the taxpayer's money in the pursuit of a frivolous claim. *Conover*, 609 A.2d at 560. A claim is frivolous if it “ ‘lacks an arguable basis either in law or in fact.’ ” *Thomas v. Holtz*, 707 A.2d 569, 570 (Pa. Cmwlth. 1998) (quoting Pa.R.C.P. 240(j) Note, citing *Neitzke v. Williams*, 490 U.S. 319 (1990)); *Conover*, 609 A.2d at 559. When determining whether a claim is frivolous, the inquiry is not whether the facts alleged can support any theory of relief, but whether the facts alleged can arguably make out the cause of action alleged. *See, Thomas*. 707 A.2d 569; *Commonwealth ex rel. Mindek v. Lilley*, 640 A.2d 508 (Pa. Cmwlth. 1994); *Bronson v. Lechward*, 624 A.2d 799 (Pa. Cmwlth. 1993).

Hill filed a Complaint on March 24, 2004. The genesis of the Complaint involves an incident that occurred on July 21, 2003 at the Muncy Public Library. According to Hill, there were “brats” bouncing a basketball inside the library and swearing. He told them to stop that activity. Hill contends that the librarians, Lori Cressman and Jayne Stugart, were derelict in their duties to permit this type of behavior in the library.

Hill avers that on July 21, 2003 Lori Cressman banned him from the Muncy Public Library. The Complaint does not set forth any facts regarding the events that led up to the expulsion. It can be inferred that it had something to do with the “brats,” but it is not clear exactly what happened on the day in question regarding the interaction between Hill and the library staff. Hill further avers that his banishment was confirmed in written letters from

Evelyn Derrick, President, Board of Trustee of the Muncy Public Library, dated July 21, 2003.

A copy of one of those letters is attached to the Complaint.

On February 10, 2004, Hill sent a letter to Evelyn Derrick by certified mail requesting written reasons for his continued banishment. Hill contends that Evelyn Derrick, the library staff, and members of the Muncy police department are conspiring to cover up their incompetence and deny him his civil rights, thereby causing him physical and emotional pain and suffering. Hill avers that he is still under threat of being charged with defiant criminal trespass if he tries to enter the library, despite there being no charges brought against him by the Muncy Police regarding the July 21, 2003 incident.

Hill's Complaint is entitled "Civil Rights - Racketeering Complaint." Hill alleges that his civil rights have been violated. He does not specify which ones, only that his civil and constitutional rights guaranteed by the constitutions and laws of the United States and the Commonwealth are being violated. However, the thrust of Hill's Complaint is a claim brought under the Racketeer Influence and Corrupt Organization (RICO) Act, 18 U.S.C. §§1961-1968. In Paragraphs 23 through 27 of the Complaint, Hill sets forth his allegations on how Derrick is a racketeering criminal enterprise. Hill also specifically seeks "RICO damages" (treble damages, 18 U.S.C. §1962(c)) on page six of the Complaint. Hill's Complaint asserts a cause of action under the RICO Act and will be analyzed as such.

Hill cannot maintain a cause of action under the RICO Act. The RICO Act permits a private individual to bring a civil action for a violation of the statute, specifically section 1962. 18 U.S.C. § 1962(c). To have standing to bring a claim under the RICO Act, the individual must have suffered an injury to his business or property as a result of the RICO Act

violation. *Maio v. Aetna Inc.*, 221 F.3d 472, 482 (3rd Cir. 2000). An individual cannot recover under the RICO Act for personal or emotional injuries that are alleged to have been caused by the RICO Act violation. *Genty v. Resolution Trust Corp.*, 937 F.3d 899, 918-19 (3rd Cir. 1991); *Zimmerman v. HBO Affiliates Group*, 834 F.2d 1163, 1169 (3rd Cir. 1987).

Hill does not have standing to assert a claim under the RICO Act. Hill has not alleged an injury to his business or property that was caused by the alleged RICO Act violations. Hill seeks compensation for damage to his reputation, physical and mental health, finances, and social life. Hill is seeking recovery for personal and emotional injuries. This is not compensable under the RICO Act. As such, Hill does not have standing to bring the RICO cause of action and the Complaint must be dismissed as frivolous.

Accordingly, the Motion to Proceed In Forma Pauperis is denied and the Complaint is dismissed.

ORDER

The Motion for Leave to Proceed In Forma Pauperis of Plaintiff Jeffrey Hill filed March 29, 2004 is denied.

The Plaintiff's Complaint filed March 24, 2004 is dismissed as frivolous.

BY THE COURT:

William S. Kieser, Judge

cc: Jeffrey D. Hill
306 South Washington Street; Muncy, PA 17756
Evelyn Derrick
509 Sherman Street Extension; Muncy, PA 17756
Judges
Christian J. Kalas, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)