

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

JARIEL Q. HOLMES,

Plaintiff,

v.

Case No. 6:18-cv-232-Orl-40GJK

**GUARDIAN BREVARD NEWSPAPER,
PROTECT OUR CHILDREN, INS,**

Defendants.

REPORT AND RECOMMENDATION

This cause came on for consideration without oral argument on the following motion:

**MOTION: APPLICATION TO PROCEED IN DISTRICT COURT
WITHOUT PREPAYING FEES OR COSTS (Doc. No. 2)**

FILED: February 15, 2018

**THEREON it is RECOMMENDED that the motion be DENIED and the
case be DISMISSED with leave to amend the complaint.**

On February 15, 2018, pro se Plaintiff Jariel Q. Holmes instituted this action by filing a Complaint against Guardian Brevard Newspaper and Protect Our Children Ins. Doc. No. 1. On the same day, Plaintiff filed his Application to Proceed in District Court Without Prepaying Fees or Costs. Doc. No. 2.

The United States Congress requires the district court to review a civil complaint filed *in forma pauperis* and dismiss any such complaint that is frivolous, malicious or fails to state a claim. 28 U.S.C. § 1915.¹ The mandatory language of 28 U.S.C. § 1915 applies to all proceedings *in forma pauperis*. Section 1915(e)(2) provides:

Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that --

- (A) the allegation of poverty is untrue; or
- (B) the action or appeal --
 - (i) is frivolous or malicious;
 - (ii) fails to state a claim on which relief may be granted; or
 - (iii) seeks monetary relief against a defendant who is immune from such relief.

Additionally, under Rule 12(h)(3) of the Federal Rules of Civil Procedure, a district court may at any time, upon motion or sua sponte, act to address the potential lack of subject matter jurisdiction in a case. *Herskowitz v. Reid*, 187 F. App'x 911, 912-13 (11th Cir. 2006) (citing *Howard v. Lemmons*, 547 F.2d 290, 290 n.1 (5th Cir. 1977)). “[I]t is well settled that a federal court is obligated to inquire into subject matter jurisdiction sua sponte whenever it may be lacking.” *Univ. of S. Ala. v. Am. Tobacco Co.*, 168 F.3d 405, 410 (11th Cir. 1999). Federal courts are courts of limited jurisdiction; therefore, the Court must inquire into its subject matter jurisdiction, even when a party has not challenged it. *Id.*

The Local Rules of the United States District Court for the Middle District of Florida also govern proceedings *in forma pauperis*. Pursuant to Local Rule 4.07(a), the Clerk docket, assigns to a judge, and then transmits to the judge cases commenced *in forma pauperis*. The district court

¹Section 1915A of 28 U.S.C. requires the district court to screen only prisoner's complaints. Nevertheless, the district court screens other complaints pursuant to 28 U.S.C. § 1915(e)(2) and Local Rule 4.07(a).

assigns to United States Magistrate Judges the supervision and determination of all civil pretrial proceedings and motions. Local Rule 6.01(c)(18). With respect to any involuntary dismissal or other final order that would be appealable if entered by a district judge, the United States Magistrate Judge may make recommendations to the district judge. *Id.* The Court may dismiss the case if satisfied that the action is frivolous or malicious under section 1915, or may enter such other orders as shall seem appropriate. Local Rule 4.07(a).

Plaintiff alleges that every month for eleven years the Guardian Brevard Newspaper published his name and address and stated that Plaintiff is a convicted child molester. Doc. No. 1 at 4. Plaintiff asserts that he has never been convicted of this crime, and Guardian Brevard Newspaper deliberately and maliciously defamed and slandered him. *Id.* at 5.

Plaintiff fails to state any factual allegations providing a basis for federal jurisdiction. *See* Fed. R. Civ. P. 8(a)(1) (“A pleading that states a claim for relief must contain: (1) a short and plain statement of the grounds for the court's jurisdiction”); 28 U.S.C. §§ 1331, 1332 (setting forth the bases for federal question and diversity jurisdiction in the federal district courts). Plaintiff does not present a federal question in the Complaint, and the only reference to the parties’ citizenship is their addresses, which are both in Brevard County, Florida. Doc. No. 1 at 3.

Ordinarily, a pro se party should be given one opportunity to file an amended complaint that states a claim within this Court’s subject-matter jurisdiction on which relief could be granted. *Troville v. Venz*, 303 F.3d 1256, 1260 n.5 (11th Cir. 2002). In an amended complaint, Plaintiff must clearly allege the legal basis of the cause of action (whether a constitutional provision, treaty, statute, or common law) and the state citizenship of the parties. Plaintiff should

not include argument in the amended complaint. Plaintiff may file a renewed motion to proceed *in forma pauperis* with an amended complaint. Therefore, the undersigned recommends that the Court enter an order denying the Application to Proceed in District Court Without Prepaying Fees or Costs and dismissing the case.

Based on the forgoing, it is **RECOMMENDED** that the Court:

1. **DENY** the Application to Proceed in District Court Without Prepaying Fees or Costs (Doc. No. 2);
2. **DISMISS** the case; and
3. Grant Plaintiff leave to file an amended complaint within a time established by the Court along with a renewed motion to proceed *in forma pauperis*, with the warning that failure to file an amended complaint within the time permitted by the Court will result in dismissal of the case without further notice.

NOTICE TO PARTIES

A party has fourteen days from this date to file written objections to the Report and Recommendation's factual findings and legal conclusions. A party's failure to file written objections waives that party's right to challenge on appeal any unobjected-to factual finding or legal conclusion the district judge adopts from the Report and Recommendation. 11th Cir. R. 3-1.

Recommended in Orlando, Florida, on March 2, 2018.



GREGORY J. KELLY
UNITED STATES MAGISTRATE JUDGE

Copies to:

Presiding District Judge
Unrepresented party