

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

LIVIA M. SCOTTO,

Plaintiff,

Case No. 3:18-cv-1100-J-34MCR

vs.

UNITED CONTINENTAL HOLDINGS, et al.,

Defendants.

ORDER

THIS CAUSE is before the Court sua sponte. On August 6, 2018, the Honorable Steven D. Merryday, Chief United States District Judge, entered a pre-filing review Order with respect to all pleadings submitted by Plaintiff Livia M. Scotto ("Scotto"). See In Re: Livia M. Scotto, Case No. 8:18-mc-62-T23, Doc. 1 ("Pre-Filing Review Order"). Pursuant to the Pre-Filing Review Order, unless Scotto pays the \$400 filing fee, any complaint submitted by Scotto shall not be scanned or docketed, but will instead be forwarded to the randomly assigned judge for a frivolity review. See Pre-Filing Review Order at 2. If the complaint is found to be frivolous, then the Clerk of Court will be ordered to return Scotto's papers and the case will be closed. See id. at 3. Scotto was advised that if she continues to submit such frivolous pleadings, she will be sanctioned. See id.

On September 12, 2018, Scotto submitted a complaint, along with numerous other submissions. In reviewing these documents, the Court is mindful that "pro se pleadings are held to a less strict standard than pleadings filed by lawyers and thus are construed liberally." Alba v. Montford, 517 F.3d 1249, 1252 (11th Cir. 2008) (citing Tannenbaum v.

United States, 148 F.3d 1262, 1263 (11th Cir. 1998)). Nevertheless, a court is under no duty to “re-write” a plaintiff’s complaint to find a claim. Peterson v. Atlanta Hous. Auth., 998 F.2d 904, 912 (11th Cir. 1993).

A court receiving an application to proceed in forma pauperis must dismiss the case sua sponte if it determines that the action “(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.” 28 U.S.C. § 1915(e)(2)(B). “In addition, a district court may sua sponte consider subject matter jurisdiction at any stage in the litigation and must dismiss a complaint if it concludes that subject matter jurisdiction is lacking.” Jackson v. Farmers Ins. Group/Fire Ins. Exch., 391 F. App’x 854, 856 (11th Cir. 2010) (unpublished) (citations omitted).

With respect to frivolity, the United States Supreme Court has observed that “a litigant whose filing fees and court costs are assumed by the public . . . lacks an economic incentive to refrain from filing frivolous, malicious, or repetitive lawsuits.” Neitzke v. Williams, 490 U.S. 319, 324 (1989). A complaint filed in forma pauperis that fails to state a claim under Rule 12(b)(6), Federal Rules of Civil Procedure (“Rule(s)”), is not automatically frivolous. Id. at 328. Instead, a court will dismiss a claim based on frivolity pursuant to § 1915 when the claim lacks arguable merit in either law or fact. Id. at 325; Mitchell v. Brown & Williamson Tobacco Corp., 294 F.3d 1309, 1315 (11th Cir. 2002) (quoting Bilal v. Driver, 251 F.3d 1346, 1349 (11th Cir. 2001)). Accordingly, § 1915 requires dismissal when: (1) the legal theories advanced are “indisputably meritless,” Nietzke, 490 U.S. at 327; (2) the claims rely on factual allegations that are “clearly baseless,” Denton v.

Hernandez, 504 U.S. 25, 32 (1992); or (3) when it appears that the plaintiff has little or no chance of success, Bilal, 251 F.3d at 1349 (citation omitted).

Upon review, the Court finds that Scotto's incoherent submissions are incomprehensible, frivolous and do not state any claim much less one that is viable. Thus, the Clerk of the Court will be directed to return to Scotto all original documents submitted in this matter and close the file.

In light of the foregoing, it is hereby

ORDERED:

1. Pursuant to the Pre-Filing Review Order, the Court finds that Scotto's submissions are frivolous.
2. The Clerk of the Court is directed to return to Scotto all original documents submitted in this matter and close the file.

DONE AND ORDERED in Jacksonville, Florida this 17th day of September, 2018.


MARCIA MORALES HOWARD
United States District Judge

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Copies to:

The Honorable Steven D. Merryday
Chief United States District Judge

Counsel of Record

Livia M. Scotto