

ENTERED

May 16, 2017

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS, *et al*,

Plaintiffs,

VS.

CANDACE KUNZ-FREED, *et al*,

Defendants.

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CIVIL ACTION NO. 4:16-CV-1969

ORDER

Before the Court are Defendants Candace Kunz-Freed and Albert Vacek Jr.'s (collectively, "V&F") Motion to Dismiss for Failure to State a Claim (Doc. #19), V&F's Motion to Dismiss for Lack of Subject Matter Jurisdiction (Doc. #20), Defendant Bobbie G. Bayless's ("Bayless") Motion to Dismiss (Doc. #23), Defendant Jill Willard Young's ("Young") Motion to Dismiss (Doc. #25), Defendant Anita Brunsting's ("Anita") Motion to Dismiss for Plaintiffs' Failure to State a Claim (Doc. #30), Defendant Amy Brunsting's ("Amy") Motion to Dismiss (Doc. #35), Defendants Stephen A. Mendel and Bradley E. Featherston's (collectively, "Mendel & Featherston") Motion to Dismiss (Doc. #36), Defendant Neal Spielman's ("Spielman") Motion to Dismiss (Doc. #39), Spielman's Motion to Dismiss Based on Lack of Subject Matter Jurisdiction (Doc. #40), Defendants Judge Christine Riddle Butts, Judge Clarinda Comstock, and Tony Baiamonte's (collectively, "Harris County Defendants") Motion to Dismiss (Doc. #53), Defendant Jason Ostrom's ("Ostrom") Motion to Dismiss (Doc. #78), Defendant Bernard Lilse Mathews, III's ("Mathews") Motion to Dismiss (Doc. #81), Defendants Gregory Lester's ("Lester") Motion to Dismiss (Doc. #83), Defendant Darlene Payne Smith's ("Smith") Motion to Dismiss (Doc. #84), Plaintiffs' Responses to said Motions (Docs. ##33, 34, 41, 45, 57, 62, 69, 85, 86, 87, 89), and various Defendants' Replies to Plaintiffs' Responses (Docs. #55, 63, 90).

Also before the Court are Young's Motion for Sanctions (Doc. #72), Plaintiffs' Motion for Consolidation (Doc. #43), Plaintiffs' Second Motion for Consolidation (Doc. #61), Young's Response in Opposition to Plaintiffs' Motions for Consolidation (Doc. #70), and Harris County Defendants' Response to Plaintiffs' Motions for Consolidation (Doc. #79).

Having considered the arguments and the applicable law, the Court grants V&F's Motion to Dismiss for Failure to State a Claim (Doc. #19), Bayless's Motion to Dismiss (Doc. #23), Young's Motion to Dismiss (Doc. #25), Anita's Motion to Dismiss (Doc. #30), Amy's Motion to Dismiss (Doc. #35), Mendel & Featherston's Motion to Dismiss (Doc. #36), Spielman's Motion to Dismiss (Doc. #39), Harris County Defendants' Motion to Dismiss (Doc. #53), Ostrom's Motion to Dismiss (Doc. #78), Mathews' Motion to Dismiss (Doc. #81), Lester's Motion to Dismiss (Doc. #83), and Smith's Motion to Dismiss (Doc. #84). As such, Plaintiffs' Motions for Consolidation are denied as moot. The Court also denies Young's Motion for Sanctions.

I. Background

Plaintiffs' Complaint appears to relate to a probate matter in Harris County Probate Court No. 4, which the Plaintiffs generically call "Curtis v. Brunsting." Specifically, Plaintiffs assert almost fifty "claims" against more than fifteen defendants—including eleven lawyers, two judges, and one court reporter. These purported "claims" consist of fantastical allegations that some or all of the Defendants are members of a secret society and "cabal" known as the "Harris County Tomb Raiders," or "The Probate Mafia." Plaintiffs' claims rest on the assertion that this purported shadow organization engages in "poser advocacy" as an "exploitation opportunity" to "hijack" "familial wealth." And, as far as the Court can tell, this "poser advocacy" allegedly occurred in the matter of "Curtis v. Brunsting."

II. Legal Standard

“Federal Rule of Civil Procedure 8(a)(2) requires only ‘a short and plain statement of the claim showing that the pleader is entitled to relief.’” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955, 1964–65 (2007). In considering a 12(b)(6) motion to dismiss a complaint, courts generally must accept the factual allegations contained in the complaint as true. *Kaiser Aluminum & Chem. Sales, Inc. v. Avondale Shipyards, Inc.*, 677 F.2d 1045, 1050 (5th Cir. 1982).

The court does not look beyond the face of the pleadings in determining whether the plaintiff has stated a claim under Rule 12(b)(6). *Spivey v. Robertson*, 197 F.3d 772, 774 (5th Cir. 1999). “[A] complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, [but] a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Twombly*, 127 S. Ct. at 1964–65 (citing *Sanjuan v. Am. Bd. of Psychiatry & Neurology, Inc.*, 40 F.3d 247, 251 (7th Cir. 1994)) (citations omitted). And, “[f]actual allegations must be enough to raise a right to relief above the speculative level.” *Twombly*, 127 S. Ct. at 1965. The supporting facts must be plausible—enough to raise a reasonable expectation that discovery will reveal further supporting evidence. *Id.* at 1959.

“A document filed pro se is ‘to be liberally construed,’ . . . and ‘a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.’” See *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). Nevertheless, the requirement of liberal construction does not mean that the court can ignore a clear failure in the pleadings to allege facts that set forth a claim currently cognizable in a federal district court. *Weller v. Dep’t of Soc. Servs.*, 901 F.2d 387, 390-91 (4th Cir. 1990).

III. Analysis

A. Failure to State a Claim

Plaintiffs' Complaint, even when liberally construed, completely fails to plead anything close to a plausible claim for relief against any of the alleged Defendants. In fact, Plaintiffs' allegations cannot be characterized as anything more than fanciful, fantastic, and delusional. Plaintiffs' allegations consist entirely of outlandish and conclusory factual assertions accompanied by a formulaic recitation of the elements of numerous causes of action unsupported by the alleged facts. Further, most of Plaintiffs alleged "claims" are either based on statutes that do not create a private cause of action, or simply do not exist under Texas or Federal law.

In regards to Plaintiffs' alleged RICO claim, Plaintiffs fail to plead any facts establishing they have standing under § 1964(c) to assert civil RICO claims against any of the Defendants because Plaintiffs fail to plead facts showing a recognizable injury to their business or property caused by the alleged RICO violations. *See* 18 U.S.C. § 1964(c) ("[a]ny person injured in his business or property by reason of a violation of [RICO] may sue"); *Allstate Inc. Co. V. Plambeck*, 802 F.3d 665, 676 (5th Cir. 2015) (citing *Bridge v. Phoenix Bond & Indemn. Co.*, 553 U.S. 639, 654 (2008)) (stating that to plead standing a plaintiff "must show that the [RICO] violation was a but-for and proximate cause of the injury"). Plaintiffs have also failed to plead any facts establishing a plausible claim that any of the Defendants engaged in a "racketeering activity" sufficient to trigger the RICO statute. Accordingly, Plaintiffs' RICO claim fails as a matter of law.

As Plaintiffs' Complaint is completely devoid of any well-pleaded facts establishing a single plausible claim for relief against any of the named Defendants, the Court grants V&F's, Bayless's, Young's, Anita's, Amy's, Mendel & Featherston's, Spielman's, Ostrom's, Mathews',

Lester's, and Smith's Motions to Dismiss for Failure to State a Claim.

B. Immunity

i. Attorney Immunity

Under Texas law, “attorneys are immune from civil liability to non-clients ‘for actions taken in connection with representing a client in litigation.’” *Cantey Hanger, LLP v. Byrd*, 467 S.W.3d 477, 481 (Tex. 2015) (quoting *Alpert v. Crain, Caton & James, P.C.*, 178 S.W.3d 398, 405 (Tex. App.—Houston [1st Dist.] 2005, pet. denied)). Plaintiffs’ allegations against Defendants Young, Smith, Bayless, Spielman, Mendel & Featherston, and Mathews’ (“Attorney Immunity Defendants”), at best, assert wrongdoing based solely on actions taken during the representation of a client in litigation. Such claims are clearly barred by attorney immunity. Accordingly, all of the Attorney Immunity Defendants’ Motions to Dismiss are also granted on this ground.

ii. Judicial Immunity

Judicial Immunity entitles judges to absolute immunity from suit for acts undertaken in their judicial capacity, even if they are done maliciously or corruptly. *Price v. Porter*, 351 F. Spp’x 925, 927 (5th Cir. 2009) (citing *Mireles v. Waco*, 502 U.S. 9, 10 (1991)). The sole exception is when a plaintiff alleges that a judge acted without jurisdiction or in a nonjudicial role. *Id.* Here, the allegations against Judges Butts and Comstock concern only actions taken in their judicial capacity. Accordingly, Judicial Immunity completely forecloses Plaintiffs’ claims against Judge Butts and Judge Comstock.¹

¹ In regards to Tony Baiamonte, a contract court reporter that was hired to steno-graphically record a single hearing in a probate proceeding, there are simply no factual allegations made against him within the complaint. Accordingly, it is difficult to determine whether immunity applies. Regardless, without any factual assertions as to Mr. Baiamonte, the Plaintiffs fail to

C. Frivolous Complaint

As laid out above, Plaintiffs' allegations are frivolous because Plaintiffs have completely failed to allege any facts supporting the delusional scenario articulated in their Complaint, much less facts giving rise to a plausible claim for relief.

"District Courts have the inherent authority to dismiss a pro se litigant's frivolous or malicious complaint sua sponte even when the plaintiff has paid the required filing fee." *Fitzgerald v. First East Seventh Street Tenants*, 221 F.3d 362, 363–64 (2d Cir. 2000); *Pillay v. INS*, 45 F.3d 14, 16–17 (2d Cir. 1995); *Holman v. Wooten*, No. 4:09–1634–CWH, 2010 WL 691263, at *2 (D.S.C. Feb.24, 2010); *Larrimore v. Bank of New York Mellon*, No. 4:09–1647–TLW–TER, 2009 WL 4920776, at *2 (S.D.N.Y. Dec. 11, 2009); *McCracken v. Natale*, No. 04 Civ. 5456, 2008 WL 5274317 (E.D.N.Y. Dec.17, 2008). The Supreme Court, while never having directly ruled on the matter, has also stated (albeit in dicta) that federal courts have the inherent power to dismiss frivolous lawsuits. *See Mallard v. United States District Court for the Southern District of Iowa*, 490 U.S. 296, 307–308, 109 S.Ct. 1814, 104 L.Ed.2d 318 (1989) ("Statutory provisions may simply codify existing rights or powers. Section 1915(d), for example, authorizes courts to dismiss a 'frivolous or malicious' action, but there is little doubt they would have power to do so even in the absence of this statutory provision.").

As Plaintiffs' allegations are undeniably legally insufficient to create a plausible claim, they are clearly frivolous (and borderline malicious). Along with Plaintiffs' absolute failure to plead a plausible claim for relief, most of the defendants are also entitled to attorney, judicial, or qualified immunity. Accordingly, Plaintiffs' claims are also dismissed via this Court's inherent ability to dismiss frivolous complaints.

state a plausible claim against him. Accordingly, Harris County Defendants' Motion to Dismiss is also granted on that ground.

D. Sanctions

Plaintiffs' passionate pleas to this Court during the December 15, 2016 Motion Hearing suggest that Ms. Curtis and Mr. Munson do not understand the legal shortcomings of their Complaint. The Court will therefore give Plaintiffs, as pro se litigants, the benefit of the doubt, and credit their filing of this lawsuit to their misunderstanding of applicable legal rules. Accordingly, the Court denies Young's Motion for Sanctions. That being said, Plaintiffs should now realize that all claims brought in this litigation—or any new claims relating to the subject matter of Plaintiffs' Complaint—lack merit, and cannot be brought to this, or any other court, without a clear understanding that Plaintiffs are bringing a frivolous claim. Accordingly, the Court cautions Plaintiffs from additional meritless filings.

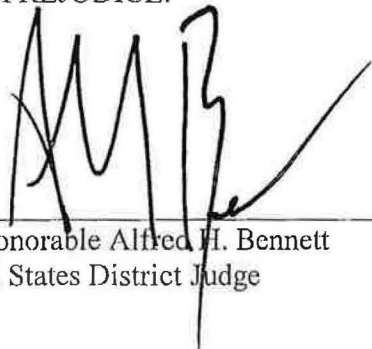
IV. Conclusion

For the foregoing reasons, Defendants' Motions to Dismiss are GRANTED, Young's Motion for Sanctions is DENIED, Plaintiffs' Motions for Consolidation are DENIED as moot, and all of Plaintiffs' claims are DISMISSED WITH PREJUDICE.

It is so ORDERED.

MAY 16 2017

Date



The Honorable Alfred H. Bennett
United States District Judge

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 17-20360

United States Court of Appeals
Fifth Circuit

FILED

June 6, 2018

Lyle W. Cayce
Clerk

CANDACE LOUISE CURTIS; RIK WAYNE MUNSON,

Plaintiffs - Appellants

v.

CANDACE KUNZ-FREED; ALBERT VACEK, JR.; BERNARD LYLE
MATTHEWS, III; NEAL SPIELMAN; BRADLEY FEATHERSTON;
STEPHEN A. MENDEL; DARLENE PAYNE SMITH; JASON OSTROM;
GREGORY LESTER; JILL WILLARD YOUNG; CHRISTINE RIDDLE
BUTTS; CLARINDA COMSTOCK; TONI BIAMONTE; BOBBIE BAYLESS;
ANITA BRUNSTING; AMY BRUNSTING; DOES 1-99,

Defendants - Appellees

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:16-CV-1969

Before HIGGINBOTHAM, DENNIS, and COSTA, Circuit Judges.

PER CURIAM:*

Candace Louis Curtis and Rik Wayne Munson sued more than fifteen individuals – the judges, attorneys, court officials, and parties from a probate proceeding in Harris County – alleging that the defendants collectively

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

No. 17-20360

violated RICO, committed common law fraud, and breached their fiduciary duties. Plaintiffs contend that defendants are part of the “Harris County Tomb Raiders a.k.a Probate Mafia,” which it alleges is a secret society of probate practitioners, court personnel, probate judges, and other elected officials who are running a “criminal theft enterprise” and “organized criminal consortium,” designed to “judicially kidnap and rob the elderly” and other heirs and beneficiaries of their “familial relations and inheritance expectations.” The district court dismissed all claims based on a number of often overlapping grounds: (1) judicial immunity, (2) attorney immunity, (3) failure to state a claim, and (4) the court’s inherent power to dismiss frivolous complaints.

We review de novo a district court's dismissal under Rule 12(b)(6). *Chhim v. Univ. of Tex. at Austin*, 836 F.3d 467, 469 (5th Cir. 2016). Plaintiffs’ appeal focuses on the dismissal of their RICO claim. They set forth the elements of that offense and attempt to address each one. But the factual allegations they use to support those elements are mostly, as the district court put it, “fantastical” and often nonsensical. We agree with the district court that the allegations are frivolous and certainly do not rise to the level of plausibility that the law requires.

AFFIRMED.