

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY

STATUS REPORT OF CASE ON APPEAL

Docket: PIKEVILLE

Date: JANUARY 9, 1984

To: Judge G. WIX UNTHANK

Re: (style) J & K HOME IMPROVEMENT CO., INC. (No.) 83-55  
West Virginia Corporation, LENVILL SPENCER, President VS:  
OHIO CASUALTY GROUP, LOWE'S LUMBER  
Date of Entry of Order/Judgment appealed: December 14, 1983

Date Notice of Appeal filed: January 9, 1984

By: Plaintiff - Defendant - Both

Appeal dismissed on motion of: Appellant - By Agreement

6CCA Action:

Judgment - Date filed District Court: \_\_\_\_\_

Order - Date filed District Court: May 31, 1984

Mandate - Date filed District Court: \_\_\_\_\_

Affirmed - Reversed - Modified May 3, 1984  
(date filed)

Dismissed for lack of prosecution: \_\_\_\_\_  
(date filed)

LESLIE G. WHITMER, CLERK  
BY: Melinda C. Bevins  
Deputy Clerk

*Copy: G. Wix Unthank  
1-9-84  
mb*



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY

STATUS REPORT OF CASE ON APPEAL

Docket: PIKEVILLE

Date: JULY 23, 1984

To: Judge G. WIX UNTHANK

Re: (style) J & K HOME IMPROVEMENT CO., (No.) 83-55  
WEST VIRGINIA CORPORATION; LENVILL SPENCER, PRESIDENT

Date of Entry of Order/Judgment appealed: JULY 13, 1984

Date Notice of Appeal filed: JULY 23, 1984

By: Plaintiff - Defendant - Both

Appeal dismissed on motion of: Appellant - By Agreement

6CCA Action:

Judgment - Date filed District Court: \_\_\_\_\_

Order - Date filed District Court: \_\_\_\_\_

Mandate - Date filed District Court: \_\_\_\_\_

Affirmed - Reversed - Modified \_\_\_\_\_  
(date filed)

Dismissed for lack of prosecution: \_\_\_\_\_  
(date filed)

*Malinda C. Blevins*  
Deputy Clerk







Denial of a motion to amend the complaint is discretionary with the district court. Estes v. Kentucky Utilities Company, 636 F.2d 1131 (6th Cir. 1980); Neighborhood Development Corporation v. Advisory Council on Historic Preservation, 632 F.2d 21 (6th Cir. 1980). In this case, the amended complaint restated the allegation in the original complaint that defendants had used the Kentucky criminal court to try to collect a civil debt, and further alleged that defendants obtained indictments against plaintiff, denied him medication and a special diet while in jail, and breached their contracts with him. The district court denied the motion to amend and proceed in forma pauperis on the grounds that the amended complaint was frivolous under 28 U.S.C. §1915(d).

A case is frivolous and can be dismissed if it appears beyond doubt that the plaintiff can prove no set of facts which would entitle him to relief. Malone v. Colyer, 710 F.2d 258, 261 (6th Cir. 1983). Here, plaintiff has alleged nothing to demonstrate that defendants deprived plaintiff of rights secured by the Constitution or laws of the United States or that defendants acted under color of state law. Parratt v. Taylor, 451 U.S. 527 (1981); Bier v. Fleming, 717 F.2d 308 (6th Cir. 1983). Under these circumstances, it is apparent that plaintiff can prove no set of facts which would entitle him to relief, and the district court did not abuse its discretion in denying plaintiff's motion to amend his complaint.



Neighborhood Development Corporation v. Advisory Council  
on Historic Preservation, supra; Jackson v. Salon, 614  
F.2d 15 (1st Cir. 1980).

Accordingly, it is ORDERED that plaintiff's motion to proceed in forma pauperis is granted, plaintiff's motions for appointment of counsel and "not to dismiss" are denied, and the district court's judgment is affirmed. Sixth Circuit Rule 9(d)(2).

ENTERED BY ORDER OF THE COURT

John P. Helman  
Clerk



NOT RECOMMENDED FOR FULL-TEXT PUBLICATION No. 84-5045

Sixth Circuit Rule 24 limits citation to specific situations. Please see Rule 24 before citing in a proceeding in a court in the Sixth Circuit. If cited, a copy must be served on other parties and the Court.

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

FILED

MAY - 3 1984

J & K HOME IMPROVEMENT COMPANY, INC., )  
WEST VIRGINIA CORPORATION, LENVILL SPENCER, )  
PRESIDENT, )

Plaintiff-Appellant, )

v. )

OHIO CASUALTY GROUP AND LOWES LUMBER, )

Defendants-Appellees. )

JOHN P. HEHMAN, Clerk  
RECEIVED MAY 08 1984

ORDER

Judge Unthank  
INFORMATION COPY  
DIS. CT # 83-61

BEFORE: KENNEDY and CONTIE, Circuit Judges; and JOINER,  
District Judge\*

This case has been referred to a panel of the Court pursuant to Sixth Circuit Rule 9(a). Upon examination of the motions, plaintiff's briefs and the record, the panel agrees unanimously that oral argument is not needed. Rule 34(a), Federal Rules of Appellate Procedure.

Plaintiff appeals from the district court's order denying his motion to file an amended complaint and proceed in forma pauperis after the initial pro se complaint brought under 42 U.S.C. §1983 had been dismissed. Plaintiff has filed with this Court a motion to proceed in forma pauperis on appeal, a motion for appointment of counsel and a motion "not to dismiss." Defendant Ohio Casualty Group has filed a motion to dismiss the appeal for lack

\*The Honorable Charles W. Joiner, U.S. District Judge for the Eastern District of Michigan, sitting by designation.



of jurisdiction on the grounds that the notice of appeal was not timely filed.

Defendant is correct in stating in its motion that the notice of appeal, filed January 9, 1984, was not timely to preserve appeal from the order entered March 16, 1983, dismissing the original complaint. However, the order appealed from is the order of December 14, 1983, dismissing the amended complaint. The notice of appeal was timely filed from that order. The defendant's motion to dismiss the appeal is therefore denied.

Denial of a motion to amend the complaint is discretionary with the district court. Estes v. Kentucky Utilities Company, 636 F.2d 1131 (6th Cir. 1980); Neighborhood Development Corporation v. Advisory Council on Historic Preservation, 632 F.2d 21 (6th Cir. 1980). In this case, the amended complaint restated the allegation in the original complaint that defendants had used the Kentucky criminal court to try to collect a civil debt, and further alleged that defendants obtained indictments against plaintiff, denied him medication and a special diet while in jail, and breached their contracts with him. The district court denied the motion to amend and proceed in forma pauperis on the grounds that the amended complaint was frivolous under 28 U.S.C. §1915(d).

A case is frivolous and can be dismissed if it appears beyond doubt that the plaintiff can prove no set of facts which would entitle him to relief. Malone v. Colyer,



710 F.2d 258, 261 (6th Cir. 1983). Here, plaintiff has alleged nothing to demonstrate that defendants deprived plaintiff of rights secured by the Constitution or laws of the United States or that defendants acted under color of state law. Parratt v. Taylor, 451 U.S. 527 (1981); Bier v. Fleming, 717 F.2d 308 (6th Cir. 1983). Under these circumstances, it is apparent that plaintiff can prove no set of facts which would entitle him to relief, and the district court did not abuse its discretion in denying plaintiff's motion to amend his complaint. Neighborhood Development Corporation v. Advisory Council on Historic Preservation, supra; Jackson v. Salon, 614 F.2d 15 (1st Cir. 1980).

Accordingly, it is ORDERED that plaintiff's motion to proceed in forma pauperis is granted, defendant's motion to dismiss the appeal is denied, plaintiff's motions for appointment of counsel and "not to dismiss" are denied, and the district court's judgment is affirmed. Sixth Circuit Rule 9(d)(2).

ENTERED BY ORDER OF THE COURT

John P. DeLuca  
Clerk



NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 83-5476

Sixth Circuit Rule 24 limits citation to specific situations. Please see Rule 24 before citing in a proceeding in a court in the Sixth Circuit. If cited, a copy must be served on other parties and the Clerk. This notice is to be prominently displayed if this decision is reproduced.

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

FILED

APR 20 1984

JOHN P. HEHMAN, Clerk

J & K HOME IMPROVEMENT CO., INC., )  
 )  
Plaintiff, )  
 )  
LENVILL SPENCER, )  
 )  
Plaintiff-Appellant, )  
 )  
v. )  
 )  
RUBY RILEY and LYNN COMBS, )  
 )  
Defendants-Appellees. )

O R D E R

83-44

Eastern District of Kentucky  
CLERK

JUN 18 1984

AT PIKEVILLE  
LESLIE G. WHITMER  
CLERK, U. S. DISTRICT COURT

BEFORE: KEITH and MARTIN, Circuit Judges; and HILLMAN, District Judge\*

This appeal has been referred to a panel of the Court pursuant to Sixth Circuit Rule 9(a). After examination of the briefs and record, this panel agrees unanimously that oral argument is not needed. Rule 34(a), Federal Rules of Appellate Procedure.

Plaintiff appeals from the district court's order denying his motion to file an amended complaint and proceed in forma pauperis after the initial pro se complaint brought under 42 U.S.C. §1983 had been dismissed for failure to allege action under color of state law. Plaintiff has filed with this Court a motion for appointment of counsel and a motion "to introduce the Amended Complaint, Brief and Writ of Habeas Corpus into evidence."

Denial of a motion to amend the complaint is discretionary with the district court. Neighborhood Development Corporation v. Advisory Council on Historic Preservation, 632 F.2d 21 (6th Cir. 1980). Hodges v. Rose, 570 F.2d 643 (6th Cir. 1978). In this case, the amended complaint restated the allegation in the original complaint that defendants had breached their contract with plaintiff and further alleged that plaintiff had been injured while working on defendants' property. The district

\*The Honorable Douglas W. Hillman, U.S. District Judge for the Western District of Michigan, sitting by designation.



court denied the motion to amend and proceed in forma pauperis on the grounds that the complaint was frivolous under 28 U.S.C. §1915(d).

A case is frivolous and can be dismissed if it appears beyond doubt that the plaintiff can prove no set of facts which would entitle him to relief. Malone v. Colyer, 710 F.2d 258, 261 (6th Cir. 1983). Here, plaintiff has alleged nothing to demonstrate that defendants were acting under color of state law, an essential element in an action under 42 U.S.C. §1983. Parratt v. Taylor, 451 U.S. 527, 535 (1981). In addition, breach of contract and personal injury claims do not state federal statutory or constitutional violations and so are not cognizable in an action under §1983. See, Parratt v. Taylor, supra, 451 U.S. at 543; Braden v. Texas A & M University System, 636 F.2d 90 (5th Cir. 1981); Ohio Inns, Inc. v. Nye, 542 F.2d 673 (6th Cir. 1976). Under these circumstances, it is apparent that plaintiff can prove no set of facts which would entitle him to relief, and the district court did not abuse its discretion in denying plaintiff's motion to amend his complaint. Neighborhood Development Corporation v. Advisory Council on Historic Preservation, supra; Jackson v. Salon, 614 F.2d 15 (1st Cir. 1980).

Accordingly, it is ORDERED that plaintiff's motions are denied and the district court's judgment is affirmed. Sixth Circuit Rule 9(d)(2).

ENTERED BY ORDER OF THE COURT

John P. Hehman  
Clerk

ISSUED AS MANDATE: JUNE 12, 1984  
COSTS: NONE

A TRUE COPY

Attest:

JOHN P. HEHMAN, Clerk

By Charles R. Bennett  
Deputy Clerk