FILED
2019 Apr-25 PM 03:33
U.S. DISTRICT COURT
N.D. OF ALABAMA

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

MARK ANDREW STONEY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.: 2:19-cv-00573-JHE
	)	
LORI A. STONEY, et al.,	)	
	)	
Defendants.	)	

ORDER

On April 15, 2019, Plaintiff Mark Andrew Stoney ("Stoney" or "Plaintiff") filed a motion to proceed *in forma pauperis* requesting to commence this action without prepayment of fees or costs or the giving of security. (Doc. 2). Having reviewed Stoney's motion, the undersigned finds that the plaintiff is indigent. Therefore, the motion is **GRANTED** pursuant to 28 U.S.C. § 1915(a)(1) to the extent the plaintiff may commence this action without prepayment of fees or costs or the giving of security. However, for the reasons discussed below, the undersigned finds multiple claims appear due to be dismissed, and accordingly that this case must be reassigned to a district judge.

When a plaintiff is granted *in forma pauperis* status, a court is required to review the plaintiff's complaint and dismiss it *sua sponte* if it is "frivolous or malicious," "fails to state a claim on which relief may be granted," or "seeks monetary relief against a defendant who is immune from such relief." *See* 28 U.S.C. § 1915(e)(2)(B). "A claim is frivolous if it is without arguable merit either in law or fact." *Thomas v. Pentagon Fed. Credit Union*, 393 F. App'x 635, 637 (11th Cir. 2010). A district court has discretion to dismiss a complaint "when it appears the plaintiff 'has little or no chance of success,'" meaning review of the face of the complaint leads

the district court to conclude "the factual allegations are 'clearly baseless' or that the legal theories are 'indisputably meritless.'" *Carroll v. Gross*, 984 F.2d 392, 393 (11th Cir. 1993) (discussing § 1915(d), now § 1915(e)(2)(B)(i)).

Dismissal under § 1915(e)(2)(B)(ii) is governed by the same standard as dismissal under Rule 12(b)(6) of the Federal Rules of Civil Procedure. *Mitchell v. Farcass*, 112 F.3d 1483, 1490 (11th Cir. 1997). Dismissal under Rule 12(b)(6) is appropriate if a complaint does not "contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing *Twombly*, 550 U.S. at 556). "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.* "[L]abels and conclusions," "a formulaic recitation of the elements of a cause of action," and "naked assertion[s] devoid of further factual enhancement" are insufficient. *Id.* (quoting *Twombly*, 550 U.S. at 555, 557) (internal quotations omitted). "*Pro se* pleadings are held to a less stringent standard than pleadings drafted by attorneys and will, therefore, be liberally construed." *Tannenbaum v. United States*, 148 F.3d 1262, 1263 (11th Cir. 1998). "This leniency, however, does not require or allow courts to rewrite an otherwise deficient pleading in order to sustain an action." *Thomas*, 393 F. App'x 635, 637 (11th Cir. 2010).

Stoney's complaint is sixty pages long. The first seven pages are the form used in this district for *pro se* civil complaints. (*See* doc. 1 at 1-7). On that form, Stoney indicates all of the following are at issue in this case: "18 USC 1201 Kidnapping, 18 USC 241 Conspiracy against Rights, 18 USC 242 Deprivation of Rights Under Color of Law, 18 USC 247 Obstruction of

Persons in Free Exercise of Religious Beliefs, 18 USC 228 Intimidation or Interference with Any Person Seeking to Exercise the First Amendment Right of Religious Freedom with 18 USC 3571 Organization Penalty, 18 USC 249 Hate Crimes Acts, 25 CFR 11.405 Interference with Custody, 18 USC 1961-1968 RICO." (*Id.* at 3). Stoney states his complaint is based on his contention "Lori Stoney kidnapped my daughter with the help of Andrew Stoney, and has used and is still using unknown named person working in Jefferson County to secure the unlawful custody by and through the offices and agents of Jefferson County (herin [sic] John Does and Jane Does 1-24) UNDER COLOR of OFFICE and COLOR of LAW." (*Id.* at 5).

Stoney then directs the court to a "Sworn Affidavit of Criminal Complaint": the next thirty-six pages of the complaint, comprising 122 numbered paragraphs. (*Id*.). According to the affidavit, Stoney has sole physical custody of his minor daughter. (*Id.* at 8, ¶ 6). Notwithstanding this, Lori Stoney and Andrew Stoney (Stoney's parents, *see id.*, ¶ 4) kidnapped his daughter on June 19, 2018, aided by unknown co-conspirators. (*Id.* at 9-10, ¶¶ 9-11). The affidavit purports to charge Lori Stoney and/or Andrew Stoney with a variety of federal and state crimes: assault, in violation of 18 U.S.C. § 113, (*id.* at 10-11, ¶¶ 13-17); kidnapping, in violation of Ala. Code § 13A-6-43, (*id.* at 12, ¶¶ 19-20); perjury, in violation of Ala. Code § 13A-10-101, (*id.*, ¶¶ 21-22); assault in the second degree, in violation of Ala. Code § 13A-6-21 (*id.* at 12-13, ¶ 23); criminal coercion, in violation of Ala. Code § 13A-6-25, (*id.* at 13, ¶ 24); aiding and abetting criminal coercion, in violation of Ala. Code § 13A-2-23, (*id.*, ¶ 25); unlawful imprisonment, in violation of Ala. Code § 13A-6-42, (*id.* at 13-14, ¶ 26); kidnapping, in violation of 18 U.S.C. § 1201, (*id.* at 14-15, ¶ 29); obstruction of persons in the free exercise of religious beliefs, in violation of 18 U.S.C. § 247, (*id.* at 15-16, ¶ 30); conspiracy against rights, in violation of 18 U.S.C. § 241, (*id.* at 16-17, ¶ 31); deprivation of rights under color of law, in violation of 18 U.S.C. § 242, (*id.* at 17, ¶ 32);

interference with custody, in violation of 25 C.F.R. § 11.405, (*id.*, ¶ 33); interference with the exercise of religious freedom, in violation of 18 U.S.C. § 248, (*id.* at 17-21, ¶¶ 34-36); false statements in a government record, in violation of Ala. Code § 13A-10-12(a)(1), (*id.* at 20-30, ¶¶ 37-83); and violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961-1968, (*id.* at 30-32, ¶ 84). Stoney requests a grand jury be convened so that he can testify to the issues he raises in the affidavit. (*Id.* at 37, ¶ 102). Stoney then recounts the specific statutes of which he purports to charge criminal violations. (*Id.* at 40-41, ¶¶ 118-120).

As recounted above, Stoney's complaint alleges violations of various criminal statutes. However, as a private citizen, Stoney does not have the ability to initiate a criminal prosecution. *See, e.g., Linda R. v. Richard V.*, 410 U.S. 614, 619 (1973) ("In American jurisprudence at least, a private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another."); *Lopez v. Robinson*, 914 F.2d 486, 494 (4th Cir. 1990); *Cok v. Cosentino*, 876 F.2d 1, 2 (1st Cir. 1989) ("[A] private citizen has no authority to initiate a federal criminal prosecution."). Nor do any of the statutes Stoney cites (with a single exception)[1] provide a private civil right of

[1] RICO does provide a private right of action for "any person injured in his business or property" by a violation of the statute's criminal prohibitions, *see* 18 U.S.C. § 1962. 18 U.S.C. § 1694(c). But Stoney explicitly seeks to charge Lori Stoney, Andrew Stoney, and an "unincorporated enterprise organization," with "felony counts" under RICO, (*see* doc. 1 at 40-43, ¶¶ 118-20), which is consistent with the criminal charges he seeks in the remainder of the complaint.

Liberally construing Stoney's complaint, he conceivably seeks relief under 18 U.S.C. § 1964. (*See* doc. 1 at 25, ¶ 84) (citing RICO's civil remedies section and stating the district court should "ORDER[] THAT LORI AND ANDREW STONEY IMMEDIATELY GIVE M[redacted] BACK TO ME"). However, he does not appear to allege sufficient facts to support the elements of a civil RICO claim: "(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity," *Lehman v. Lucom*, 727 F.3d 1326, 1330 (11th Cir. 2013) (citation omitted). "A pattern is established by at least two acts of racketeering activity the last of which occurred within ten years . . . after the commission of a prior act of racketeering activity." *Id.* (quoting *McCaleb v. A.O. Smith Corp.*, 200 F.3d 747, 750 (11th Cir. 2000)). Stoney's only allegation of racketeering activity is a single act of kidnapping, (*see* doc. 1 at 9-10, ¶ 9-10), which is insufficient to establish a RICO pattern.

action. Accordingly, Stoney cannot pursue these charges in this court, and they are due to be dismissed.

Although the complaint appears due to be dismissed, the undersigned lacks dispositive jurisdiction to dismiss it. Further, because the complaint is due to be dismissed prior to service on the defendant, the undersigned will not be able to obtain consent from all parties under 28 U.S.C. § 636 in order to exercise dispositive jurisdiction. Therefore, consistent with the General Order For Referral of Civil Matters to the United States Magistrate Judges of the Northern District of Alabama, dated January 2, 2015, the Clerk is **DIRECTED** to reassign the case to a District Judge for all further proceedings.

DONE this 25th day of April, 2019.

JOHN H. ENGLAND, III
UNITED STATES MAGISTRATE JUDGE