

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Gordon P. Gallagher, United States Magistrate Judge

Civil Action No. 19-cv-03534-LTB-GPG

HALINA C. MORLEY,

Plaintiff,

v.

WELD COUNTY, CO, et al.,

Defendants.

RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

This matter comes before the Court on the second amended *Complaint* filed *pro se* by Plaintiff Halina C. Morley on February 21, 2020. (ECF No. 8). The matter has been referred to this Magistrate Judge for recommendation (ECF No. 14).¹

The Court must construe the pleadings liberally because Plaintiff is not represented by an attorney. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). However, the Court should not be an

¹ Be advised that all parties shall have fourteen (14) days after service hereof to serve and file any written objections in order to obtain reconsideration by the District Judge to whom this case is assigned. Fed. R. Civ. P. 72(b). The party filing objections must specifically identify those findings or recommendations to which the objections are being made. The District Court need not consider frivolous, conclusive or general objections. A party's failure to file such written objections to proposed findings and recommendations contained in this report may bar the party from a de novo determination by the District Judge of the proposed findings and recommendations. *United States v. Raddatz*, 447 U.S. 667, 676-83 (1980); 28 U.S.C. § 636(b)(1). Additionally, the failure to file written objections to the proposed findings and recommendations within fourteen (14) days after being served with a copy may bar the aggrieved party from appealing the factual findings and legal conclusions of the Magistrate Judge that are accepted or adopted by the District Court. *Thomas v. Arn*, 474 U.S. 140, 155 (1985); *Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

advocate for a *pro se* litigant. See *Hall*, 935 F.2d at 1110.

The Court has reviewed the filings to date. The Court has considered the entire case file, the applicable law, and is advised of the premises. This Magistrate Judge respectfully recommends dismissing the second amended *Complaint* without prejudice for failure to comply with Rule 8 of the Federal Rules of Civil Procedure.

I. BACKGROUND

Plaintiff initiated this action on December 13, 2019. (ECF Nos. 1, 2). To cure several initial filing deficiencies, Plaintiff filed her first amended *Complaint* on January 15, 2020. (ECF No. 5). On January 22, 2020, the Court issued an order directing Plaintiff to file an amended complaint within 30 days so that a number of pleading issues—including Rule 8—could be addressed. (ECF No. 7). In response, Plaintiff filed a second amended *Complaint* on February 21, 2020. (ECF No. 8). However, the “D. Statement of Claim(s)” section of the second amended *Complaint* stated “Please see attached,” but failed to attach any such statement.

The Court gave Plaintiff another opportunity to file an amended pleading and warned her of the consequences for not doing so: “Plaintiff must include a statement of claims and all of the facts supporting those claims in a single pleading. To be clear, Plaintiff must submit a single, complete complaint as one document, not piecemeal filings. The Court is not required to, and will not, sort through multiple filings to ascertain Plaintiff’s claims.” (ECF No. 9). Plaintiff has failed to file an amended complaint—despite being granted an extension of time—and the time to file an amended pleading has now expired. (See docket). Thus, Plaintiff’s second amended *Complaint* filed on

February 21, 2020 is the operative pleading in this matter.

In that pleading, Plaintiff proceeds under 42 U.S.C. § 1983 against Weld County and forty-seven other defendants. (ECF No. 8 at 1-13). Plaintiff asserts the following claim:

Violations of Constitutional rights under U.S.C. 1983, to include, but not be limited to, unwarranted seizure; breach of duties imposed under special relationship; Monell-related claims; withholding of and deception in the presentation of evidence; failure to provide dependent minor continued safety and security and even minimally adequate care; breach of mandatory duties; failure to preserve parental rights and protections in the care and control of the minor child; failure to notify petitioning parent of (non)emergency-related court appearances; failure to provide due process to petitioning parent.

(*Id.* at 14). As relief, Plaintiff requests general damages, special damages, punitive damages, costs and attorneys' fees. (*Id.* at 15). But, as discussed above, the second amended *Complaint* fails to include any supporting allegations.

II. DISCUSSION

The second amended *Complaint* is deficient because Plaintiff has not complied with the pleading requirements of Rule 8. Complaints must contain a short and plain statement of the facts explaining why a claim succeeds. Fed. R. Civ. P. 8(a)(2). A complaint "must contain (1) a short and plain statement of the grounds for the court's jurisdiction, . . . (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and (3) a demand for the relief sought." *Id.* The philosophy of Rule 8(a) is reinforced by Rule 8(d)(1), which provides that "[e]ach allegation must be simple, concise, and direct." Taken together, Rules 8(a) and (d)(1) underscore the emphasis placed on clarity and brevity by the federal pleading rules. Vague or unintelligible

pleadings violate Rule 8.

The twin purposes of a complaint are to give the opposing parties fair notice of the basis for the claims against them so that they may respond and to allow the Court to establish whether the allegations, if proven, show that the plaintiff is entitled to relief. *See Monument Builders of Greater Kansas City, Inc. v. American Cemetery Ass'n of Kansas*, 891 F.2d 1473, 1480 (10th Cir. 1989). The requirements of Fed. R. Civ. P. 8 are designed to meet these purposes. *See TV Communications Network, Inc. v. ESPN, Inc.*, 767 F. Supp. 1062, 1069 (D. Colo. 1991), *aff'd*, 964 F.2d 1022 (10th Cir. 1992). Plaintiffs must allege in a clear, concise, and organized manner what each defendant did to them, when the defendant did it, how the defendant's action harmed them, what specific legal right they believe the defendant violated, and what specific relief is requested as to each defendant. *Nasious v. Two Unknown B.I.C.E. Agents*, 492 F.3d 1158, 1163 (10th Cir. 2007) (citations omitted).

Vague and conclusory allegations that a plaintiff's rights have been violated do not entitle a *pro se* pleader to a day in court regardless of how liberally the court construes such pleadings. *See Ketchum v. Cruz*, 775 F. Supp. 1399, 1403 (D. Colo. 1991), *aff'd*, 961 F.2d 916 (10th Cir. 1992). Furthermore, the general rule that *pro se* pleadings must be construed liberally has limits and "the court cannot take on the responsibility of serving as the litigant's attorney in constructing arguments and searching the record." *Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005). Thus, "in analyzing the sufficiency of the plaintiff's complaint, the court need accept as true only the plaintiff's well-pleaded factual contentions, not [her]

conclusory allegations.” *Hall*, 935 F.2d at 1110. Neither the Court nor defendants are required to guess in order to determine what claims are being asserted and what specific factual allegations support those claims.

Plaintiff’s second amended *Complaint* fails to allege in a clear, concise, and organized manner what each defendant did to Plaintiff, when the defendant did it, how the defendant’s action harmed her, what specific legal right she believes the defendant violated, and what specific relief she requests as to each defendant. Quite simply, the pleading does not contain a short and plain statement of the facts explaining why a claim succeeds in violation of Rule 8.

III. RECOMMENDATION

For these reasons, this Magistrate Judge respectfully recommends that the second amended *Complaint* (ECF No. 8) be **dismissed without prejudice** for failure to comply with the pleading requirements of Rule 8.

DATED April 8, 2020.

BY THE COURT:

A handwritten signature in black ink, appearing to be 'G.P. Gallagher', written over a horizontal line.

Gordon P. Gallagher
United States Magistrate Judge