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DECISION-per MISHLER, C.J.
(SA4-SA14)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - -x

GEORGE SASSOWER,

Plaintiff,

- against -

ERNEST L. SIGNORELLI, ANTHONY MASTROIANNI, VINCENT G. BERGER, JR., JOHN P. FINNERTY, ALLEN KROOS, ANTHONY WISNOSKI, and LEONARD J. PUGATCH,

Defendants.

- - - - - - - - - - - - - - - - - -x

No. 77-C-1447

Memorandum of Decision and Order

September 20, 1977

A P P E A R A N C E S :

GEORGE SASSOWER, ESQ., Plaintiff Pro Se
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New Rochelle, New York 10804

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ATTORNEY GENERAL OF THE STATE OF NEW YORK
Attorney for Defendants LEONARD J. PUGATCH and ERNEST L. SIGNORELLI
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MISHLER, Ch. J.

Plaintiff, proceeding pro

rights action pursuant to 42 U.S.C. §19[illegible]

moves to dismiss the action under Rule 12(b)(6) of the F.R. Civ.P. on the ground that the complaint fails to state a claim. Defendants Pugatch and Signorelli move under Rule 12(c) of the F.R.Civ.P. for a judgment on the pleadings.

Plaintiff, in turn, moves for a judgment on the pleadings with respect to his second cause of action; for a "formal decree pro confesso"[1] against defendants Mastroianni, Kroos and Finnerty; and for an order enjoining the Surrogate's Court of Suffolk County ("Surrogate's Court") from prosecuting him for criminal contempt.

In 1972, plaintiff was appointed executor of the estate of Eugene Paul Kelly. By order of the Surrogate's Court dated March 9, 1976, plaintiff was removed as executor for failure to render an accounting. The Surrogate's Court appointed defendant Mastroianni, Public Administrator of Suffolk County, as temporary administrator to replace plaintiff. On April 28, 1977, plaintiff was ordered by the Surrogate's Court to transmit to defendant Mastroianni all books, papers and other property of the estate of Kelly. For his repeated refusal to comply with this order, on June 22, 1977, the Surrogate's Court adjudged plaintiff in criminal contempt.

/1 Translated into its modern-day English equivalent, plaintiff seeks a default judgment pursuant to Rule 55(b) of the F.R.Civ.P.

The following day, pursuant to the order of contempt and warrant of commitment, defendants Allen Kroos[2] and Anthony Wisnoski, employees of the Sheriff's Office of Suffolk County, brought plaintiff before the Surrogate's Court. Again, plaintiff refused to submit to the turnover order, whereupon he was remanded to the county jail. That same day, plaintiff filed a petition for a writ of habeas corpus in the Supreme Court of the State of New York, County of Suffolk. On July 28, 1977, the writ was granted and the adjudication of contempt annulled. It is these facts which presumably induced plaintiff to file his pro se complaint.

DEFENDANTS' MOTIONS

Plaintiff's first cause of action is directed against defendant Signorelli, the Surrogate of Suffolk County; defendant Mastroianni,[3] the Public Administrator of Suffolk County; and defendant Berger,[4] the attorney for defendant Mastroianni.

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[2] Defendants' proper names are Allan Croce and Anthony Grzymalski.

[3] The U.S. Marshal's Service Process Receipt and Return indicates that defendant Mastroianni was never served. Thus, he is not a party to this action.

[4] In January, 1977, defendant Berger was retained by defendant Mastroianni pursuant to the Surrogate's Court Procedure Act, §1206(3), to represent him with regard to certain duties in the administration of estates. (Berger Affidavit in Support of Motion to Dismiss, p. 2, ¶4).

The claim consists of a broad attack upon the powers granted to, and exercised by, the Surrogate of Suffolk County. More specifically, plaintiff alleges that the multitude of powers conferred upon defendant Signorelli (i.e., to appoint employees, fix fees and disbursements, adjudicate cases) renders him an impartial judicial officer in adjudications between his appointees and others; that the appointees of defendant Signorelli, to secure future appointments and favorable fees, ". . . subserve their obligations towards their clients in favor of defendant, Ernest L. Signorelli . . ." (Complaint, p. 5, ¶21); and that, as a result of this system, the Surrogate's Court is not constitutionally administered. Plaintiff seeks to enjoin defendant Signorelli from, inter alia, hiring any further employees and awarding any fees except as mandated by statute, and defendant Berger from acting as attorney for the Public Administrator and from receiving any fees from the Surrogate's Court.

This cause of action fails to satisfy the threshold requirement imposed by Article III of the Constitution that those who seek to invoke the power of federal courts must allege an actual case or controversy. Flast v. Cohen, 392 U.S. 83, 94-101, 88 Sup. Ct. 1942, 1949-53 (1968). "[P]laintiffs must allege some threatened or actual injury resulting from the putatively illegal action before a federal court may assume jurisdiction." Linda R.S. v. Richard D. and Texas et al.,

410 U.S. 614, 617, 93 S.Ct. 1146, 1148 (1973). Abstract injury is not enough. It must be alleged that the plaintiff ". . . has sustained or is immediately in danger of sustaining some direct injury" as the result of the challenged statute or official conduct. O'Shea v. Littleton, 414 U.S. 488, 494, 94 S.Ct. 669, 675 (1974), citing Commonwealth of Massachusetts v. Mellon, 262 U.S. 447, 488, 43 S.Ct. 597, 601 (1923).

Plaintiff fails to demonstrate how he has been injured by the alleged partisan administration of the Surrogate's Court. Nowhere in his claim does plaintiff show how he was injured by the impartial adjudications of defendant Signorelli or by the misconduct of defendant Signorelli's appointees. This omission is fatal to plaintiff's claim and mandates its dismissal.

In O'Shea v. Littleton, supra, the Supreme Court based its dismissal of plaintiff's civil rights action upon the same grounds. There, a class action was brought against several defendants, including a magistrate and a judge. The named plaintiffs, seventeen black and two white residents of Cairo, Illinois, alleged that the magistrate and the judge deprived them of their constitutional rights by illegal bond-setting, sentencing, and jury-fee practices. The Supreme Court held that none of the named plaintiffs had established a case or controversy against the judicial officers since the complaint failed to identify any one of the individual plain-

tiffs as himself suffering injury:

> In the complaint that began this action, the sole allegations of injury are that petitioners 'have engaged in and continue to engage in, a pattern and practice of conduct . . . all of which has deprived and continues to deprive plaintiffs and members of their class of their' constitutional rights and, again, that petitioners have 'denied and continue to deny the plaintiffs and members of their class their constitutional rights' by illegal bond-setting, sentencing and jury-fee practices. None of the named plaintiffs is identified as himself having suffered any injury in the manner specified. In sharp contrast to the claim for relief against the State's Attorney where specific instances of misconduct with respect to particular individuals are alleged, the claim against petitioners alleges injury in only the most general terms. Id. at 495, 94 S.Ct. at 676.

Accord, Gardner et al. v. Luckey et al., 500 F.2d 712, 714 (5th Cir. 1974), cert. denied, 423 U.S. 841, 96 S.Ct. 73 (1975).

As a second cause of action, plaintiff alleges that New York law arbitrarily denies bail to persons serving sentences for criminal contempt imposed by the Surrogate's Court. Plaintiff seeks a stay of incarceration pending determination of his appeal from the order of contempt. Since the order of contempt was annulled on July 23, 1977, and plaintiff is no longer incarcerated, this cause of action is dismissed as moot. Holland v.

Purdy, 457 F.2d 802 (5th Cir. 1972) McCarroll v. Morrow, et al., 435 F.2d 560 (5th Cir. 1971). For the same reason, plaintiff's motion for a judgment on the pleadings with respect to this cause of action is denied.

The third cause of action, for which plaintiff demands five million dollars in compensatory and punitive damages, is directed against all defendants. It contains a series of vague and conclusory allegations which are wholly devoid of factual support. Such conclusory statements are insufficient as a matter of law to state a claim for relief under 42 U.S.C. §1983. The Albany Welfare Rights Organization Day Care Center, Inc., et al. v. Schreck, et al., 463 F.2d 620, 623 (2d Cir. 1972), cert. denied, 410 U.S. 944, 93 S.Ct. 1393 (1973); Birnbaum v. Trussell, 347 F.2d 86, 89-90 (2d Cir. 1965).

Although this court is well-apprised of the rule that pro se complaints are to be liberally construed, Haines v. Kerner, 404 U.S. 519, 521, 92 S.Ct. 594, 596 (1972); Shaw v. Briscoe, 541 F.2d 489, 490 (5th Cir. 1976), plaintiff in the instant action is an attorney. Therefore, his pleadings are held to the same high standards as those of any other professional. It is well-established that a

complaint in a civil rights action, particularly one drafted by an attorney, is subject to dismissal unless it specifically pleads a cause of action. Kauffman v. Moss, 420 F.2d 1270, 1275 (3d Cir. 1970), cert. denied, 400 U.S. 846, 91 S.Ct. 93 (1970); Marvasi v. Shorty, 70 F.R.D. 14, 21 (E.D.Pa. 1976). Plaintiff's broad, conclusory allegations, unsupported by specific factual contentions, clearly fail to state a cause of action.

On the other hand, a complaint in a civil rights action is not subject to dismissal at the pleading stage unless it appears beyond a doubt that plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 102 (1957); Williams v. Vincent, 508 F.2d 541, 543 (2d Cir. 1974). For the following reasons, even if sufficient factual allegations were stated, and could be proven, additional grounds require dismissal of this count.

Plaintiff's charges against defendant Signorelli concern acts committed within his judicial role. Therefore, he is absolutely immune from liability for damages under 42 U.S.C. §1983. Pierson v. Ray, 386 U.S. 547, 553-

55, 87 S.Ct. 1213, 1217-18 (1967); Economou v. U.S. Dept. of Agriculture, et al., 535 F.2d 688, 695 (2d Cir. 1976).

Defendants Finnerty (Sheriff of Suffolk County), Kroos and Wisnoski (employees of the Sheriff's Office) are also immune from suit. The affidavits filed by the moving parties disclose that defendants' sole participation consisted of taking plaintiff into custody pursuant to the validly-issued order of contempt and warrant of commitment. It is a well-grounded principle that immunity is extended to police and other court officers for acts performed pursuant to court order. Lockhart v. Hoenstine, 411 F.2d 455, 460 (3d Cir. 1969), aff'd, 546 F.2d 797 (8th Cir. 1976); Hevelone v. Thomas, 423 F. Supp. 7, 9 (D.Neb. 1976); Meyer v. Curran, 397 F. Supp. 512, 519 (E.D.Penn. 1975).[5]

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[5] Defendants' application for a judgment by default against defendant Kroos and Wisnowski is denied. Defendant has failed to enter his default with the clerk in accordance with Rule 55(a). Furthermore, since it appeared at oral argument that some confusion existed with respect to defendants' representation, their failure to answer constitutes excusable neglect under Rule 6(b)(2). On September 6, 1977, defendants Wisnoski and Kroos filed an answer, demanding judgment dismissing the complaint.

Plaintiff's conclusory charges against defendant Pugatch,[16] Deputy Attorney General of the State of New York, relate to his defense of defendant Signorelli in the habeas corpus proceeding. For the reasons stated in Imbler v. Pachtman, ___ U.S. ___, 96 S.Ct. 984, 990-95 (1976), defendant Pugatch is absolutely immune from suit under §1983.

Finally, as for defendant Berger, when plaintiff was asked at oral argument to specify the charges against him, plaintiff stated that this defendant made a remark to the effect that, "[w]e ought to put him [plaintiff] in jail and throw away the keys." Verbal outbursts of this sort are hardly tantamount to a denial of plaintiff's constitutional rights.

For the foregoing reasons, the complaint is dismissed as against all defendants,[17] and it is

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[16] Plaintiff accuses defendant Pugatch of failing to disclose to the court that the order of contempt was "jurisdictionally and constitutionally invalid . . ." (Complaint, p.10, ¶35).

[17] Plaintiff's motion for an order enjoining the contempt proceeding pending in the Surrogate's Court is denied. Huffman v. Pursue, Ltd., 420 U.S. 592, 95 S.Ct. 1200; Younger v. Harris, 401 U.S. 37, 91 S.Ct. 746 (1971).

SO ORDERED.

The Clerk is directed to enter judgment in favor of defendants and against plaintiff dismissing the complaint.

U. S. D. J.