

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

STEWART A. WEBB,

Plaintiff,

CIVIL ACTION

v.

No: 12-2588-EFM-GLR

KATHRYN H. VRATIL, et al.,

Defendants.

REPORT AND RECOMMENDATION

NOTICE

Within fourteen days after a party is served with a copy of this Report and Recommendation, that party may, pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72, file written objections to the Report and Recommendation. A party must file any objections within the fourteen-day period allowed if that party wants to have appellate review of the proposed findings of fact, conclusions of law, or the recommended disposition. If no objections are timely filed, no appellate review will be allowed by any court.

REPORT AND PROPOSED FINDINGS

Plaintiff commenced this action *pro se* on September 5, 2012, by filing a Complaint for Injunctive Relief Against the Hon. Kathryn H. Vratil and the U.S. District Court of the State of Kansas.¹ He purports to bring the action pursuant to the First and Sixth Amendments of the United States Constitution.² He brought the same action against the same defendants in 2009.³ Pursuant

¹See Compl. (ECF 1).

²See *id.* at 6.

³See *Webb v. Vratil*, No. 09-2603-FJG (D. Kan. filed Nov. 24, 2009).

to 28 U.S.C. § 1915(e)(2)(B), the Court found the prior action frivolous and dismissed it “without prejudice to the filing of a paid complaint.”⁴

Contemporaneously with this recommendation, the Court has granted Plaintiff leave to proceed with this action without prepayment of the filing fee. His complaint is subject to screening under 28 U.S.C. § 1915(e)(2)(B). Because Plaintiff proceeds *pro se*, his pleadings are liberally construed.⁵ Liberal construction, however, “does not relieve the plaintiff of the burden of alleging sufficient facts on which a recognized legal claim could be based.”⁶ Nor does his *pro se* status permit him to pursue repetitive litigation.⁷

A court properly dismisses an action as frivolous or malicious under § 1915(e)(2)(B)(i), when the action duplicates the allegations of a prior, unsuccessful action against the same defendants.⁸ “A complaint that rehashes previously litigated issues may be dismissed as frivolous or malicious.”⁹ The complaint in this action does no more than reassert claims that were dismissed as frivolous in Plaintiff’s prior action against the same defendants. Although the prior action was dismissed without prejudice to Plaintiff filing a fee-paid complaint, Plaintiff has not paid the filing fee. He has instead again filed the action in forma pauperis. Accordingly, the Court should dismiss this action as frivolous or malicious pursuant to § 1915(e)(2)(B)(i), and pursuant to § 1915(a)(3) and Fed. R. App.

⁴See *Webb v. Vratil*, No. 09-2603-FJG, unpub. ord. (D. Kan. Dec. 14, 2009), *appeal dismissed as frivolous*, 372 F. App’x 909, 910 (10th Cir. 2010).

⁵*Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991).

⁶*Id.*

⁷See *McWilliams v. State of Colo.*, 121 F.3d 573, 574 (10th Cir. 1997).

⁸See *id.* at 574-75; *Bailey v. Johnson*, 846 F.2d 1019, 1021 (5th Cir.1988).

⁹*Griffin v. Zavaras*, 336 F. App’x 846, 849 (10th Cir. 2009) (citing cases).

P. 24(a)(3), certify that any appeal taken in this case would not be taken in good faith.

RECOMMENDATION

It is hereby recommended that the Court dismiss this action as frivolous or malicious pursuant to 28 U.S.C. § 1915(e)(2)(B)(i). Consistent with the dismissal of Plaintiff's prior action against these same defendants, the dismissal should be without prejudice to Plaintiff commencing a new, fee-paid action against the defendants on the same factual allegations. Lastly, pursuant to 28 U.S.C. § 1915(a)(3) and Fed. R. App. P. 24(a)(3), the Court should consider certifying that any appeal taken in this case is not taken in good faith.

Respectfully submitted on this 28th day of September, 2012, in Kansas City, Kansas.

S/Gerald L. Rushfelt
Gerald L. Rushfelt
United States Magistrate Judge