

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DANIEL TILLI,	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
v.	:	NO. 00-4717
	:	
THE HONORABLE JOSEPH IRENAS and	:	
THE HONORABLE JOEL ROSEN,	:	
	:	
Defendants.	:	

MEMORANDUM

ROBERT F. KELLY, J. SEPTEMBER 27, 2000

Plaintiff, Daniel Tilli ("Mr. Tilli"), a pro se litigant, has filed a request for leave to proceed in forma pauperis in this civil rights lawsuit. In Neitzke v. Williams, 490 U.S. 319 (1989), the Supreme Court in construing the meaning of "frivolous" under 28 U.S.C. § 1915(d) held that "a complaint, containing as it does both factual allegations and legal conclusions, is frivolous where it lacks an arguable basis either in law or in fact." Id. at 325. In addition, a court when reviewing an in forma pauperis complaint is not bound, as it usually is when making a determination based solely on the pleadings, to accept without question the truth of the plaintiff's allegations. Denton v. Hernandez, 504 U.S. 25 (1992). When initially assessing an in forma pauperis complaint, however, a plaintiff's factual allegations must be weighed in favor of the plaintiff. Id. (citation omitted).

In Count I of his Complaint, Mr. Tilli brings what he identifies as a "Bivins action" against United States District Court Judge Joseph Irenas in his individual capacity.¹ Mr. Tilli claims that, in February 1999, Judge Irenas dismissed his 1998 racial discrimination action against the United States Department of Housing and Urban Development and Atlantic City Housing Authority without either a hearing or Mr. Tilli's presence in a courtroom. Mr. Tilli claims that because all the parties in that case had requested a jury trial, Judge Irenas violated his due process, 7th and 14th Amendment rights and caused him injury because he had to pay full rent when his housing voucher was terminated. Mr. Tilli further alleges that Judge Irenas is prejudiced against pro se litigants because he refused to dismiss the counterclaim against Mr. Tilli even when the Atlantic City Housing Authority requested a voluntary dismissal.

In Count II of his Complaint, Mr. Tilli brings an action against United States Magistrate Judge Joel Rosen, whom Mr. Tilli alleges made decisions in the above-mentioned case illegally because Magistrate Rosen was not the judge to whom Mr. Tilli's case was assigned. Mr. Tilli alleges that Judge Rosen lacked complete subject matter jurisdiction and that judicial immunity does not apply to Judge Rosen because Mr. Tilli never

¹This Court assumes that Mr. Tilli is referring to an action filed against a federal official for an alleged constitutional violation. See Bivins v. Six Unknown Named Agents, 403 U.S. 388 (1971).

"dealt with Rosen in his judicial capacity." Mr. Tilli also alleges that Judge Rosen, like Judge Irenas, denied him due process and a jury trial, as guaranteed by the 7th Amendment.

"Judicial immunity is an absolute defense against a section 1983 action for damages allegedly suffered as a result of a judge's decision." Schmidt v. Degen, 376 F. Supp. 664, 667 (E.D. Pa. 1974)(citations omitted). Thus, both judges are immune from liability and from damages under the Civil Rights Act.

Tilli v. County of Northampton, 370 F. Supp. 459, 460 (1974)(citations omitted). In addition, Mr. Tilli's attempt at excepting Judge Rosen from judicial immunity fails since, pursuant to 28 U.S.C. section 636(b)(1), Judge Irenas could designate Judge Rosen to Mr. Tilli's case. Thus, the factual allegations and legal conclusions in the Complaint fail to assert an arguable basis in law and the Complaint will be dismissed.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DANIEL TILLI,	:	
	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	NO. 00-4717
	:	
THE HONORABLE JOSEPH IRENAS and	:	
THE HONORABLE JOEL ROSEN,	:	
	:	
Defendants.	:	

ORDER

AND NOW, this 27th day of September, 2000, it is hereby
ORDERED that:

1. Plaintiff's request to proceed in forma pauperis is
GRANTED; and
2. Plaintiff's Complaint is hereby DISMISSED as
frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(i) since it lacks
an arguable basis in law.

BY THE COURT:

Robert F. Kelly, J.