

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

JAMES GEORGE DOURIS :
 :
 v. : CIVIL ACTION
 :
 : NO. 05-CV-2727
 NEWTOWN BOROUGH, INC., :
 ET AL. :

SURRICK, J.

MARCH 14, 2006

MEMORANDUM & ORDER

Presently before the Court is Plaintiff James George Douris's pro se Motion To Proceed In Forma Pauperis, an affidavit in support thereof, and a copy of his Complaint against Newtown Borough, Inc., ("Newtown") and five of its police officers. (Doc. No. 1.) For the following reasons, Plaintiff is not entitled to in forma pauperis status. In addition, Plaintiff's Complaint will be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(i).

I. BACKGROUND

This is the eighth lawsuit filed in this Court by Plaintiff since 1999. On July 1, 1999, Douris filed a complaint against Bucks County and two individual defendants, alleging abuse of process, malicious prosecution, conspiracy, as well as violations of 42 U.S.C. § 1983, the Americans with Disabilities Act ("ADA"), the Age Discrimination in Employment Act ("ADEA"), the Pennsylvania Human Relations Act ("PHRA"), and the Pennsylvania Constitution. *Douris v. County of Bucks*, Civ. A. No. 99-3357, 2001 U.S. Dist. LEXIS 9282, at *1-2 (E.D. Pa. July 3, 2001). On August 2, 2001, the Honorable Robert F. Kelly denied Plaintiff's motion for a new trial and entered judgment against Plaintiff and in favor of defendants. The Court also affirmed the taxation of costs against Plaintiff. The Third Circuit

Court of Appeals affirmed. *Douris v. County of Bucks*, Civ. A. No. 99-3357, 2003 U.S. Dist. LEXIS 2518 (E.D. Pa. Feb. 19, 2003), *aff'd*, 85 Fed. App'x 870 (3d Cir. 2003).

On November 15, 2001, Douris and his wife filed a complaint against the Borough of Doylestown and six individuals, alleging wrongful use of process and violations of the ADA, PHRA, Pennsylvania's Regulatory Building Code Standards, and Pennsylvania's Right to Know Law. Plaintiffs also alleged violations of the First, Fourth, and Fourteenth Amendments to the United States Constitution pursuant to 42 U.S.C. § 1983 and conspiracy to violate civil rights pursuant to 42 U.S.C. § 1985. On January 31, 2003, Chief Judge James T. Giles concluded that there existed no genuine issues of material fact and granted summary judgment in favor of defendants and against Plaintiff. This decision was affirmed by the Third Circuit. *Douris v. Dougherty*, Civ. A. No. 01-5757, 2003 U.S. Dist. LEXIS 1576 (E.D. Pa. Jan. 31, 2003), *aff'd*, 90 Fed. App'x 434 (3d Cir. 2004).

In April 2002, Douris filed a complaint against Pennsylvania Governor Mark Schweiker, Bucks County, the Bucks County District Attorney's Office, and four additional individuals, alleging malicious prosecution, abuse of process, conspiracy, the existence of a constitutionally inadequate state appeals process, as well as violations of the First Amendment, Pennsylvania Constitution, ADA, and PHRA. On October 21, 2003, the Honorable Michael M. Baylson granted summary judgment in favor of defendants and against Plaintiff. This decision was affirmed by the Third Circuit. *Douris v. Schweiker*, Civ. A. No. 02-1749, 2003 U.S. Dist. LEXIS 19514 (E.D. Pa. Oct. 21, 2003), *aff'd*, 200 Fed. App'x 126 (3d Cir. 2004).

In May 2003, Plaintiff filed a complaint against Genuardi's Family Markets, alleging violations of the First Amendment, ADA, and PHRA. On September 20, 2004, the Honorable

Herbert J. Hutton granted defendant's motion for summary judgment and dismissed all of Douris's claims. Again, the Third Circuit affirmed. *Douris v. Genuardi's Family Mkts.*, Civ. A. No. 03-3076, 2004 U.S. Dist. LEXIS 19339 (E.D. Pa. Sept. 20, 2004), *aff'd*, 132 Fed. App'x 425 (3d Cir. 2005).

On November 19, 2003, Douris filed a complaint against the Office of the Pennsylvania Attorney General, the Bucks County District Attorney's Office, and two individuals, Diane Gibbons, the District Attorney for Bucks County, and Arlene Angelo, an employee in that office, in their individual capacities. Plaintiff alleged violations of the ADA and PHRA. On January 22, 2004 the Motion To Dismiss filed by the Office of the Pennsylvania Attorney General was granted. On February 19, 2004 the Motion To Dismiss filed by Gibbons and Angelo was granted. On July 6, 2004 Defendants' Motion For Summary Judgment was granted and Plaintiff's Complaint was dismissed.¹ On July 6, 2004, this Court granted defendants' motion for summary judgment and Plaintiff's complaint was dismissed. The Third Circuit affirmed. *Douris v. Office of Pa. Att'y Gen.*, Civ. A. No. 03-5661, 2004 U.S. Dist. LEXIS 12769 (E.D. Pa. July 6, 2004), *aff'd*, 150 Fed. App'x 113 (3d Cir. 2005).

Finally, on May 28, 2004, Douris filed a complaint against Bucks County, Doylestown Borough, their employees and the law firms and attorneys who represented them, seeking compensatory damages, punitive damages, attorney's fees and injunctive relief for defendants' asserted violation of his rights under the United States Constitution, Pennsylvania Constitution,

¹ Among the meritless claims made by Plaintiff in this lawsuit was the claim that the restroom provided by Bucks County at one of its facilities was inadequate. Plaintiff alleged that as a result of his disability he could not use his hands and that a bidet should have been provided to accommodate him.

ADA, Rehabilitation Act of 1973, Title VII of the Civil Rights Act of 1964, ADEA, and PHRA. Plaintiff also alleged that defendants violated his United States Veterans Benefits Employment Rights.² On January 31, 2005 defendants' motions to dismiss were granted. The Third Circuit affirmed. *Douris v. Bucks County*, Civ. A. No. 04-232, 2005 U.S. Dist. LEXIS 1279 (E.D. Pa. Jan. 31, 2005), *aff'd*, 145 Fed. App'x 735 (2005).

In his present Complaint, Douris alleges that he was issued five parking citations by Newtown police officers for parking his parents' vehicle in a no-parking zone adjacent to his parents' home. (Compl., Doc. No. 1 ¶¶ 10, 24, 28, 42, 49.) Subsequently, each of the five parking citations was dismissed. (*Id.* ¶ 11.) Douris alleges that the parking tickets issued to him restricted his "right to be free to park" on Newtown's streets.

Plaintiff alleges that he is disabled, that Defendants violated his rights under the ADA, 42 U.S.C. § 12101, *et seq.*, that Defendants deprived of his rights under 42 U.S.C. § 1983, and that Defendants violated provisions of Pennsylvania law.³ (*Id.* ¶ 49.) Plaintiff also submitted a sworn statement in support of his request to proceed in forma pauperis. In the statement, Plaintiff declares that he has been unemployed since 1995, that he has not received any money within the previous twelve months, and that he does not possess any assets. (Doc. No. 1.) In each of the

² Among the meritless claims made by Plaintiff in this lawsuit was the claim that Bucks County was discriminating against him by requiring him to put coins in the parking meters. Plaintiff claims that as a result of his disability he could not use his hands to put money in the meters. He did not explain how he could drive a motor vehicle into the parking space despite this inability to use his hands.

³ Plaintiff alleges, *inter alia*, violations of the PHRA, 43 Pa. Cons. Stat. § 951, *et seq.*, and Article I, § 1 of the Pennsylvania Constitution. (Compl., Doc. No. 1 ¶¶ 22, 37, 49.)

lawsuits filed in 2003 and 2004, Douris requested and was granted leave to proceed in forma pauperis.

II. LEGAL STANDARD

Courts in this Circuit evaluate motions to proceed in forma pauperis under 28 U.S.C. § 1915 through a two-step analysis. “First, the district court evaluates a litigant’s financial status and determines whether (s)he is eligible to proceed in forma pauperis under § 1915(a).” *Roman v. Jeffes*, 904 F.2d 192, 194 n.1 (3d Cir. 1990). Second, the court turns to the complaint to determine whether, pursuant to 28 U.S.C. § 1915(e)(2)(B), it is frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who may be immune from such relief. *See Roman*, 904 F.2d at 194 n.1; *Johnson v. Sadler*, Civ. A. No. 04-1366, 2004 U.S. Dist. LEXIS 6245, at *2 (E.D. Pa. Apr. 7, 2004). The determination of whether to grant or deny an in forma pauperis petition lies within the sound discretion of the district court. *Jones v. Zimmerman*, 752 F.2d 76, 78 (3d Cir. 1985).

III. LEGAL ANALYSIS

A. 28 U.S.C. § 1915(a)

In determining a plaintiff’s eligibility to proceed under 28 U.S.C. § 1915(a) the court should consider whether the plaintiff is employed, his annual salary, and any property or assets that he may possess. *Wexler v. Bell Atl.*, Civ. A. No. 99-4816, 1999 U.S. Dist LEXIS 16140, at *1-2 (E.D. Pa. Oct. 16, 1999). Here, Plaintiff has submitted an affidavit declaring that he is unemployed, has been so since 1995, and that he possesses no property or assets. (Doc. No. 1.) However, the Third Circuit has recognized that “‘extreme circumstances’ might justify denying an otherwise qualified affiant leave to proceed in forma pauperis.” *Deutsch v. United States*, 67

F.3d 1080, 1085 (3d Cir. 1995). While the court in *Deutsch* did not delineate what constitutes “extreme circumstances,” it cited the case of *In re Sindram*, 498 U.S. 177 (1991), in which the Supreme Court stated that “the Court has a duty to deny in forma pauperis status to those individuals who have abused the system.” *Deutsch*, 67 F.3d at 1084 n.5 (quoting *Sindram*, 498 U.S. at 180). As noted above, this is the eighth lawsuit filed by Plaintiff in this district since 1999. In each instance, Plaintiff’s claims were determined to be without merit and that determination was affirmed by the Third Circuit Court of Appeals. Significant time and resources have been spent on Plaintiff’s claims all of which were meritless and many of which were ridiculous. Douris has “abused the system.” The instant Complaint is yet another example of Plaintiff’s abuse. *See Wexler v. Citibank*, Civ. A. No. 94-4172, 1994 U.S. Dist. LEXIS 14992, at *20 (E.D. Pa. Oct. 24, 1994) (courts’ leniency towards pro se litigants does not “grant pro se litigants a license to abuse the judicial process with impunity”). Accordingly, we conclude that Douris is not entitled to proceed in forma pauperis in this matter.

B. 28 U.S.C. § 1915(e)(2)(B)

Even if Douris were entitled to in forma pauperis status, a review of his Complaint leads to the inescapable conclusion that the Complaint must be dismissed as frivolous under 28 U.S.C. § 1915(e)(2)(B)(i). A complaint is frivolous if “it lacks an arguable basis either in law or in fact.” *Johnson*, 2004 U.S. Dist. LEXIS 6245, at *2 (quoting *Neitzke v. Williams*, 490 U.S. 319, 325 (1989)). Each of the claims in Plaintiff’s complaint is without arguable basis.

1. Plaintiff’s Claim under 42 U.S.C. § 1983

To state a claim under 42 U.S.C. § 1983, a plaintiff must establish that he or she was “deprived of a right secured by the Constitution or laws of the United States, and that the alleged

deprivation was committed under color of state law.” *Am. Mfg. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 49-50 (1999). Although Defendants acted under color of state law by issuing parking tickets to Plaintiff, their actions have not deprived Plaintiff of any federal right. In support of his § 1983 claim, Douris argues that the parking tickets issued to him restricted his “right to be free to park” on Newtown’s streets. (Compl., Doc. No. 1 ¶ 10.) We are aware of no federally mandated “right to park.” Douris has failed to state a legitimate claim for relief. Plaintiff also contends that the parking tickets issued to Douris violated his procedural due process rights. (Compl., Doc. No. 1 ¶ 35.) The doctrine of procedural due process entitles one to a hearing prior to the deprivation of a liberty or property interest. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (internal citations omitted). In this case, Plaintiff was not only afforded hearings at which he was given an opportunity to contest the validity of the citations, he was successful in his challenge. (Compl., Doc. No. 1 ¶¶ 11, 41, 46.) Plaintiff has been afforded all of the process that he was due. Finally, Plaintiff asserts that Defendants violated his right to equal protection. (*Id.* ¶¶ 39, 49.) Plaintiff’s Complaint fails to establish any support for this conclusion.

Accordingly, Plaintiff’s claims under 42 U.S.C. § 1983 are without merit and will be dismissed.

2. Plaintiff’s ADA Claim

In relevant part, Title II of the ADA provides, “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132. To prevail on a claim under Title II of the ADA, a plaintiff must demonstrate:

(1) that she is a qualified individual with a disability; (2) that she was either excluded from the participation in or denied the benefits of some public entity's services, programs or activities, or was otherwise discriminated against by the public entity; and, (3) that such exclusion, denial of benefits or discrimination was by reason of the plaintiff's disability.

Douris v. Dougherty, 192 F. Supp. 2d 358, 367 (E.D. Pa. 2002) (internal citations omitted).

Congress enacted the ADA in an effort to “provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.” 42 U.S.C. § 12101(b)(1). While courts must construe the ADA broadly, *Kinney v. Yerusalim*, 812 F. Supp. 547, 551 (E.D. Pa. 1993) (citing *Tcherepnin v. Knight*, 389 U.S. 332 (1967)), the purpose of the ADA is only served by placing “those with disabilities on equal footing, not [by giving] them an unfair advantage.” *Kornblau v. Dade County*, 86 F.3d 193, 194 (11th Cir. 1996). “[N]othing in the [ADA], its purpose, or the regulations can reasonably be read to give disabled parkers access to areas that would not be available to them if they were not disabled.” *Id.* Here, Plaintiff alleges that “if unlimited handicapped parking was provided, [he] would not have gotten these parking tickets.” The gist of Plaintiff's claim is that Defendants violated the ADA by issuing him citations for parking his vehicle in a no-parking zone. (Doc. No. 1 ¶ 21, 23, 49.) The ADA does not provide the handicapped with the right to park their vehicles in no-parking zones merely because they may suffer from a disability. Accordingly, Plaintiff's ADA claim is without merit and will be dismissed.⁴

An appropriate Order follows.

⁴ We decline to exercise jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367(c)(3).

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

JAMES GEORGE DOURIS :
 :
 : CIVIL ACTION
 v. :
 :
 : NO. 05-CV-2727
 NEWTOWN BOROUGH, INC., :
 ET AL. :
 :

ORDER

AND NOW this 14th day of March, 2006, upon consideration of Plaintiff James George Douris's Complaint, Motion to Proceed In Forma Pauperis, and affidavit in support thereof (Doc. No. 1), it is ORDERED that Plaintiff's Motion To Proceed In Forma Pauperis is DENIED. It is further ORDERED that Plaintiff's Complaint is DISMISSED as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(i).

IT IS SO ORDERED.

BY THE COURT:

S/ R. Barclay Surrick

R. Barclay Surrick, Judge