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for the Third Circuit

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Steven Fleming v. Thomas Blewitt

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BLD-052

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 10-3260

STEVEN PAUL FLEMING,
Appellant

v.

THOMAS M. BLEWITT, U.S. MAGISTRATE JUDGE, MIDDLE DISTRICT OF PA,
SCRANTON, PA; THOMAS I. VANASKIE, MIDDLE DISTRICT OF PA, SCRANTON, PA;
JUDGE J. CURTIS JOYNER, DISTRICT COURT; JUDGE FISHER 3RD CIRCUIT,
PHILADELPHIA, PA; JUDGE MCKEE, 3RD CIRCUIT, PHILADELPHIA, PA; JUDGE
CHAGARES, 3RD CIRCUIT, PHILADELPHIA, PA

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil No. 10-cv-02048)
District Judge: Honorable Freda L. Wolfson

Submitted for Possible Summary Action
Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6
November 24, 2010

Before: SLOVITER, JORDAN and GREENAWAY, JR., Circuit Judges

(Opinion filed: December 7, 2010)

OPINION

PER CURIAM

Steven Paul Fleming, proceeding pro se, appeals from the District Court's dismissal of his complaint. For the reasons that follow, we will summarily affirm the judgment of the District Court.

Fleming initiated the instant action in the United States District Court for the Eastern District of Pennsylvania on April 30, 2010.¹ In his complaint, he named as defendants Magistrate Judge Blewitt, District Judges Vanaskie² and Joyner, and Third Circuit Judges Fisher, McKee and Chagares. All of these judges had presided over cases previously filed by Fleming. Fleming has been an active litigant in the United States District Courts for the Eastern and Middle Districts of Pennsylvania. He has filed complaints regarding his diagnosis of paranoid schizophrenia by the Department of Veterans Affairs and the loss of his aviation license by the Federal Aviation Administration. Many of his complaints are related to alleged cocaine smuggling by Air America, which was based in Scranton, Pennsylvania. For various reasons, none of Fleming's previous lawsuits has proceeded to trial.

¹ While the complaint was filed in the Eastern District of Pennsylvania, due to the allegations of judicial bias, Chief Judge McKee appointed Judge Wolfson of the District of New Jersey to preside over this case. See 28 U.S.C. § 292(b).

² Judge Vanaskie has since been elevated to this court.

In the instant complaint, Fleming alleged that he has not been allowed to submit evidence in support of his claims, that he has not been allowed to address a jury, that the judges to whom his cases have been assigned have been biased against him, and that they have thereby violated his right to due process. The District Court granted his motion to proceed in forma pauperis and dismissed his complaint for failure to state a claim upon which relief could be granted. See 28 U.S.C. § 1915(e)(2)(B). Fleming named six federal judges as defendants. As the District Court explained, absent certain very limited exceptions, a judicial officer cannot be held liable for actions taken in his capacity as a judge. See Capogrosso v. Supreme Court of New Jersey, 588 F.3d 180, 184 (3d Cir. 2009). As Fleming failed to allege that the named defendants took any action outside their capacity as judges, we agree that the District Court properly dismissed his complaint for failure to state a claim. Because this appeal presents no “substantial question,” we will summarily affirm the judgment of the District Court. See 3d Cir. LAR 27.4 & I.O.P. 10.6. Fleming’s motion for the appointment of counsel is denied.