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Amro Elansari v. Shay Ramirez

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NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 20-1079

AMRO A. ELANSARI,
Appellant

v.

SHAY O. RAMIREZ; PAYPAL INC.; WEST GOSHEN POLICE;
OFFICER RILEY (INDV. CAPACITY); LT CARROL (INDV. CAPACITY)

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. No. 2:19-cv-06198)
District Judge: Honorable Mark A. Kearney

Submitted for Possible Dismissal Pursuant to 28 U.S.C. § 1915(e)(2)(B)
or Summary Action Pursuant to Third Circuit L.A.R. 27.4 and I.O.P. 10.6
on July 2, 2020

Before: AMBRO, GREENAWAY, JR., and BIBAS, Circuit Judges

(Opinion filed: August 19, 2020)

OPINION*

PER CURIAM

Pro se appellant Amro Elansari appeals from the District Court's order dismissing his complaint as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(i). For the reasons discussed below, we will summarily affirm the District Court's judgment.

In December 2019, Elansari filed a complaint against Shay Ramirez, the West Goshen Police Department, Police Officers Riley and Carroll, and PayPal, Inc. Elansari alleged that Ramirez, who lives in Oregon, agreed to collaborate with Elansari on the development of an internet-based video game. Elansari registered a website, provided Ramirez with access, and paid Ramirez to develop various aspects of the game. Elansari made payments to Ramirez and an associate through PayPal. Ramirez completed the project and asked Elansari for more money. After Elansari refused to pay, Ramirez wiped the server containing the game files and replaced the content of the game's website with curse words and other irrelevant content. Elansari reported Ramirez to the police in Oregon, who informed Elansari that a report would need to be made through Pennsylvania authorities. Elansari then

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

contacted the West Goshen Police Department. Elansari was informed that no action would be taken because the case appeared to be a civil matter.

Elansari's complaint raised claims, under 42 U.S.C. § 1983, that the West Goshen Police Department and its officers violated Elansari's due process rights by failing to protect Elansari from Ramirez and failing to prosecute Ramirez. Elansari also brought claims against Ramirez and PayPal under Pennsylvania criminal statutes, see Pa. Cons. Stat. §§ 7611 and 7612, which criminalize the unlawful use of a computer and attacking a computer network to disrupt service. The District Court screened the complaint and dismissed it as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(i), concluding that there is no constitutional right to the investigation or prosecution of another, and that the Pennsylvania criminal statutes do not provide a basis for civil liability. This appeal ensued.

We have jurisdiction under 28 U.S.C. § 1291. We construe Elansari's pro se complaint liberally, see Erickson v. Pardus, 551 U.S. 89, 94 (2007) (per curiam), and we will summarily affirm the district court's order if "no substantial question is presented" by the appeal. 3d Cir. L.A.R. 27.4(a). "To be frivolous, a claim must rely on an 'indisputably meritless legal theory' or a 'clearly baseless' or 'fantastic or delusional' factual scenario." Mitchell v. Horn, 318 F.3d 523, 530 (3d Cir. 2003) (quoting Neitzke v. Williams, 490 U.S. 319, 327–28 (1989)).

The District Court properly determined that Elansari's claims against the West Goshen Police Department and its officers are frivolous because "a private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another." Linda R.S. v. Richard D., 410 U.S. 614, 619 (1973). To the extent that Elansari claimed that the police

department and its officers failed to protect Elansari from Ramirez, the Due Process Clause generally does not impose upon the state an affirmative duty to protect its citizens from harms caused by private actors. See DeShaney v. Winnebago Cty. Dep't of Soc. Servs., 489 U.S. 189, 195 (1989). And the “state-created danger” exception to that proposition does not apply here, as Elansari failed to allege any affirmative action by the defendants that rendered Elansari more vulnerable to the danger posed by Ramirez. See Bright v. Westmoreland County, 443 F.3d 276, 281 (3d Cir. 2006) (explaining that an essential element of a state-created danger claim is that “a state actor affirmatively used his or her authority in a way that created a danger to the citizen or that rendered the citizen more vulnerable to danger than had the state not acted at all”); see also Morrow v. Balaski, 719 F.3d 160, 177–78 (3d Cir. 2013) (en banc) (concluding that the plaintiff failed to state a state-created danger claim because a school’s inaction and failure to protect a student did not constitute an “affirmative act”).

We also agree with the District Court’s conclusion that the claims against PayPal and Ramirez are frivolous because Pa. Cons. Stat. §§ 7611 and 7612 do not provide an express private right of action, and there is no basis to imply a private right of action here. See D’Errico v. DeFazio, 763 A.2d 424, 429 (Pa. Super. Ct. 2000) (“To determine whether [a criminal] statute implies a private right of action, we must . . . determine 1) whether [the plaintiff is] among the class for whose especial benefit the statute was enacted; 2) whether there is an indication of legislative intent, explicit or implicit, either to create such a remedy

or to deny it; and 3) whether such a remedy is consistent with the underlying purposes of the legislative scheme to imply such a remedy.”).¹

Accordingly, we will affirm the District Court’s judgment.

¹ The District Court properly dismissed the complaint with prejudice, as amendment would have been futile. See Grayson v. Mayview State Hosp., 293 F.3d 103, 108 (3d Cir. 2002).