UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

BRIAN P. CARR,

Plaintiff,

v.

Civil No. 08-398-HA

ORDER

THE STATE OF OREGON, et al,

Defendants.

HAGGERTY, Chief Judge:

Plaintiff Brian P. Carr seeks leave to file an Amended Complaint. For the following reasons, plaintiff's Motion for Leave to File an Amended Complaint is denied.

On March 31, 2008, plaintiff filed this action *pro se*, alleging a variety of claims stemming from his arrest in Portland on November 5, 2004, for a violation of a civil restraining order issued by the State of Washington. On June 3, 2008, defendants filed a Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). On June 25, 2008, plaintiff filed a Reply

to defendants' Motion to Dismiss. On August 7, 2008, plaintiff filed his Motion for Leave to File an Amended Complaint. Plaintiff seeks to amend his complaint by adding claims arising from the towing and impoundment of plaintiff's vehicle by the City of Portland. These additional claims are factually unrelated to the claims plaintiff initially pleaded. Defendants oppose plaintiffs Motion to Amend.

After a responsive pleading has been filed, Federal Rule of Civil Procedure 15(a) provides that "a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires." Whether to grant or deny a motion to amend the complaint is a matter of the court's discretion. *Sweaney v. Ada Co.*, 119 F.3d 1385, 1392 (9th Cir. 1997). Although leave to amend is more often than not "freely given," a court will deny leave if the amendment is made in bad faith, is futile, will cause undue delay, or will prejudice the non-moving party. *Bowles v. Reade*, 198 F.3d 752, 757 (9th Cir. 1999); *see also Bonin v. Calderon*, 59 F.3d 815, 845 (9th Cir. 1995). Additionally, denial is proper when the proposed amendment would be frivolous. *United Union of Roofers, Waterproofers, and Allied Trades No. 40 v. Insurance Corp. of Am.*, 919 F.2d 1398, 1402 (9th Cir. 1990).

As noted, plaintiff seeks to amend his complaint by adding claims involving the towing and impoundment of his vehicle. Plaintiff has recovered his vehicle but has been assessed fines associated with parking violations. Plaintiff's Proposed Supplement to Complaint ("Pl. Suppl.") ¶ 67. Plaintiff asserts that his car was stolen and thus is blameless for the parking violations. Pl. Suppl. ¶ 66. Defendant City of Portland informed plaintiff that the citation could be dismissed if the vehicle was stolen. Pl. Suppl. ¶ 71. Plaintiff was told that he would need to supply the

Multnomah County Circuit Court with a copy of the police report documenting that he had reported his vehicle stolen. Pl. Suppl. ¶ 74. Plaintiff alleges that the Parking Unit of the Multnomah County Circuit Court does not provide adequate due process in its administration of parking violations. Pl. Suppl. ¶ 82-84. Plaintiff would like discovery and contends that the $10 fee required to obtain a copy of the police report is excessive. Pl. Suppl. ¶¶ 84,76.

Plaintiff's claims are frivolous. Notwithstanding plaintiff's frustrations with the procedures set out by the Multnomah County Circuit Court, plaintiff's Constitutional due process rights are not implicated. Granting plaintiff leave to file an amended complaint would be futile because plaintiffs proposed amendments are frivolous. *Bonin v. Calderon*, 59 F.3d at 846. Additionally, because defendants have already advanced a substantive, dispositive motion to dismiss plaintiff's complaint, allowing plaintiff to amend his complaint would cause undue delay and result in prejudice to defendants.

Accordingly, this court denies plaintiff's Motion for Leave to File an Amended Complaint. This court offers no comment on plaintiff's options to pursue these claim's elsewhere, or to comply with the procedures of Multnomah County Circuit Court.

NOTICE

Defendants have advanced a motion by which they seek to have plaintiff's case dismissed. Defendant's Motion to Dismiss will, if granted, end plaintiff's case. The Ninth Circuit upholds a "policy of liberal construction in favor of *pro se* litigants." *Rand v. Rowland*, 154 F.3d 952, 957 (9th Cir. 1998). Litigants have a statutory right to self-representation in civil matters, *see* 28 U.S.C. § 1654 (1982), and are entitled to meaningful access to the courts. *Rand*, 154 F.3d at 957, citing *Bounds v. Smith*, 430 U.S. 817, 823 (1977); *Wolff v. McDonnell*, 418

U.S. 539, 579 (1974); *Johnson v. Avery*, 393 U.S. 483 (1969); *Hatfield v. Bailleaux*, 290 F.2d 632, 637 (9th Cir. 1961). "Consequently, we tolerate informalities from civil *pro se* litigants." *Id*. (citations omitted).

Nevertheless, a district court may dismiss an action in accordance with a well-taken motion for dismissal. Because *pro se* plaintiff is at risk of having his case dismissed with prejudice, this court is granting plaintiff fourteen days from this date to amend his reply to defendants' Motion to Dismiss.

CONCLUSION

For the reasons provided, this court concludes plaintiff's Motion for Leave to File an Amended Complaint [33] is DENIED. Plaintiff has fourteen days to amend his Reply to defendants' Motion to Dismiss.

IT IS SO ORDERED.

DATED this 29 day of September, 2008.

/s/ Ancer L. Haggerty
Ancer L. Haggerty
United States District Court