

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

CATHY RAY, and)
DEBBIE GONZALEZ)
)
Plaintiffs,)
) CASE NO. 2:18-cv-828-MHT-GMB
v.)
)
PATE’S CHAPEL BAPTIST)
CHURCH AND CEMETERY,)
)
Defendant.)

REPORT AND RECOMMENDATION OF THE MAGISTRATE JUDGE

Pursuant to 28 U.S.C. § 636(b)(1) this case was referred to a United States Magistrate Judge for review and submission of a report with recommended findings of fact and conclusions of law. Doc. 3. Plaintiffs Cathy Ray and Debbie Gonzalez assert claims styled as negligence and intent to defraud, outrage, and civil rights and civil rights infringement against Defendant Pate’s Chapel Baptist Church and Cemetery (“Pate’s Chapel”). Doc. 5. Pending before the court is Defendant’s Motion to Dismiss. Doc. 6. After careful consideration of the parties’ submissions, the applicable law, and the record as a whole, the undersigned Magistrate Judge RECOMMENDS that the Motion to Dismiss (Doc. 6) be GRANTED in part and DENIED in part. The Magistrate Judge also RECOMMENDS that the pending Motion for Leave to Proceed *in forma pauperis* (Doc. 2) be GRANTED.

I. JURISDICTION AND VENUE

The court has subject matter jurisdiction over the claims in this lawsuit pursuant to

28 U.S.C. § 1332. The parties do not contest personal jurisdiction or that venue is proper in the Middle District of Alabama. The court finds adequate allegations to support both.

II. FACTUAL AND PROCEDURAL BACKGROUND

Pate's Chapel Baptist Church operates and maintains Pate's Chapel Cemetery in Chilton County, Alabama. Doc. 5 at 1. Ray, Gonzalez, and Theresa Zipler are sisters and the daughters of John Cecil Ray, who is buried in Pate's Chapel Cemetery. Doc. 6-1 at 3.¹ Both Ray and Gonzalez live in Florida. Doc. 5 at 1.

In July 2014, Ray called the head of the committee responsible for oversight of Pate's Chapel, Howard Smith, and talked with him about placing a marker on her father's grave. Doc. 5 at 2. Smith told Ray that her father was not buried in Pate's Cemetery. Doc. 5 at 2. Ray assured Smith that, in fact, her father had been buried in the cemetery, next to his mother, Margaret Ray. Doc. 5 at 2. Smith told Ray that a plot map of the cemetery did not list her father as having been buried there, nor did the map indicate that there was room for a grave next to Margaret Ray. Doc. 5 at 2. Despite the plot map, Smith did suggest that a grave could be located next to Margaret Ray because he knew that the ground had been disturbed in that area. Doc. 5 at 2–3. Smith also told Ray that she had his permission to place a marker on the gravesite that she believed to be her father's final resting place. Doc. 5 at 3.

On November 20, 2014, Ray, Gonzalez, and their sister Theresa Zipler filed a

¹ “[W]here the plaintiff refers to certain documents in the complaint and those documents are central to the plaintiff's claim, then the Court may consider the documents part of the pleadings for purposes of Rule 12(b)(6) dismissal, and the defendant's attaching such documents to the motion to dismiss will not require conversion of the motion into a motion for summary judgment.” *Brooks v. Blue Cross & Blue Shield of Fla., Inc.*, 116 F.3d 1364, 1369 (11th Cir. 1997).

complaint against Pate's Chapel in the Circuit Court of Chilton County, Alabama. Doc. 6-1. They alleged a negligence and/or wantonness claim, an outrage claim, and a breach of contract claim. Doc. 6-1. The facts supporting these claims principally related to the July 2014 conversation between Ray and Smith described above. *See* Doc. 6-1 at 4–6. While the case was ongoing, on January 31, 2015, some of the plaintiffs' family members, Mary Alice Ray and her two daughters, placed a marker on what they believed to be Plaintiffs' father's gravesite without the sisters' permission. Doc. 5 at 4. Pate's Chapel knew they planned to place the marker, and allowed Mary Alice and her daughters to place it on the wrong gravesite. Doc. 5 at 4. Pate's never told Plaintiffs about the marker or asked for their permission to place the marker. Doc. 5 at 4.

In October 2017, Pate's Chapel filed a Motion for Summary Judgment in state court in response to the sisters' claims. Doc. 1-6. On November 29, 2017, the Chilton County Circuit Court held a hearing on the Motion for Summary Judgment, and granted the motion as to all of the sisters' claims. Doc. 1-6. The sisters appealed the case to the Alabama Court of Civil Appeals, who transferred the case to the Alabama Supreme Court on June 15, 2018 for lack of jurisdiction. Doc. 5 at 7. The Supreme Court transferred the case back to the Court of Civil Appeals pursuant to Alabama Code § 12-2-7(6). Docs. 5 at 7 & 6-4 at 2. The Court of Civil Appeals ultimately affirmed the grant of summary judgment (Doc. 6-4), and issued a Certificate of Judgment on August 1, 2018. Case No. CV-14-900237, Chilton County Circuit Court, Doc. 134. The sisters did not take any further action in state court.

Instead, on September 24, 2018, Ray and Gonzalez filed the instant action in this

court. They allege that Pate's Chapel was negligent and intended to defraud them, exhibited outrageous conduct, and violated their civil rights. Doc. 5. They ask for damages including that the gravesite marker placed by their family members be removed, compensatory damages, punitive damages, attorney's fees, and a new trial. Doc. 5.

III. STANDARD OF REVIEW

In considering a motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, the court must "take the factual allegations in the complaint as true and construe them in the light most favorable to the plaintiff." *Pielage v. McConnell*, 516 F.3d 1282, 1284 (11th Cir. 2008). To survive a motion to dismiss, a complaint must include "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is "plausible on its face" if "the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The complaint "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555. Factual allegations need not be detailed, but "must be enough to raise a right to relief above the speculative level," *Twombly*, 550 U.S. at 555, and "unadorned, the-defendant-unlawfully-harmed-me accusation[s]" will not suffice. *Iqbal*, 556 U.S. at 678.

In addition to the pleading requirements of *Twombly* and *Iqbal*, a plaintiff's *pro se* status must be considered when evaluating the sufficiency of a complaint. "A document filed *pro se* is 'to be liberally construed,' and 'a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by

lawyers.” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)). Yet any leniency cannot serve as a substitute for pleading a proper cause of action. *See Odion v. Google Inc.*, 628 F. App’x 635, 637 (11th Cir. 2015) (recognizing that although courts must show leniency to *pro se* litigants, “this leniency does not give a court license to serve as *de facto* counsel for a party, or to rewrite an otherwise deficient pleading in order to sustain an action”) (internal quotation marks omitted). “While the pleadings of *pro se* litigants are liberally construed, they must still comply with procedural rules governing the proper form of pleadings.” *Hopkins v. St. Lucie Cnty. Sch. Bd.*, 399 F. App’x 563, 565 (11th Cir. 2010) (internal citations and quotation marks omitted).

IV. DISCUSSION

“The doctrine of *res judicata* prohibits the relitigation of all matter which was or could have been litigated in the prior action.” *Families v. U.S. Dep’t of Army*, 380 F. Supp. 2d 1233, 1259 (N.D. Ala. 2005) (internal quotation and citation omitted). “When we are asked to give *res judicata* effect to a state court judgment, we must apply the *res judicata* principles of the law of the state whose decision is set up as a bar to further litigation.” *Kizzire v. Baptist Health Sys., Inc.*, 441 F.3d 1306, 1308 (11th Cir. 2006) (internal quotation and citation omitted). Under Alabama law, the essential elements of *res judicata* are (1) a prior judgment on the merits, (2) rendered by a court of competent jurisdiction, (3) with substantial identity of the parties, and (4) with the same cause of action presented in both cases. *Id.* at 1308–09 (internal quotation and citation omitted). “If all four elements are met, any claim that was, or could have been, adjudicated in the prior action is barred

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