

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals**For the Seventh Circuit****Chicago, Illinois 60604**

Submitted March 21, 2025*

Decided March 21, 2025

BeforeMICHAEL B. BRENNAN, *Circuit Judge*DORIS L. PRYOR, *Circuit Judge*NANCY L. MALDONADO, *Circuit Judge*

No. 24-1429

JOHN E. COVINGTON,
*Plaintiff-Appellant,**v.*ANDREA LYNN CHASTEEN, et al.,
*Defendants-Appellees.*Appeal from the United States District
Court for the Northern District of
Illinois, Eastern Division.

No. 1:22-cv-5083

Steven C. Seeger,
*Judge.***ORDER**

John Covington appeals the dismissal of his federal complaint alleging that the Circuit Court Clerk of Will County, Illinois, (in her individual and official capacities) and an employee of the Clerk's Office violated his constitutional rights and intentionally inflicted emotional distress upon him. *See* 42 U.S.C. § 1983. The district

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

court granted the defendants' motion to dismiss, and we affirm the judgment because Covington failed to state a claim for relief.

In reviewing a dismissal under Rule 12(b)(6) of the Federal Rules of Civil Procedure, we accept the complaint's factual allegations as true and draw all reasonable inferences in the plaintiff's favor. *Chaidez v. Ford Motor Co.*, 937 F.3d 998, 1004 (7th Cir. 2019). Covington had several cases before the Will County Circuit Court, including a tort action he initiated in 2020. From November 2020 through May 2022, Covington, a Black man, received from the Clerk's Office letters about the case with the word "KLAN" printed at the bottom. In July 2021, Covington tried to file with the Clerk's Office a fee waiver application and other documents to appeal an eviction action. An employee, Krystal Swanberg, refused to accept the documents on four occasions—twice through the court's website and twice at the e-filing station in the Clerk's Office. Covington says that the Will County Circuit Court Clerk, Andrea Lynn Chasteen, watched from the back of the office when Swanberg denied his filings and that Swanberg acted "at the direction of" Chasteen.

Covington sued the Clerk's Office, Chasteen, and Swanberg in federal district court, raising federal and state-law claims. He alleged that sending him documents with the racially offensive word "KLAN" on them intentionally inflicted emotional distress and violated his equal protection rights under the Fourteenth Amendment, and that the rejection of his filings deprived him of access to the courts in violation of the First and Fourteenth Amendments. *See* 42 U.S.C. § 1983. He further asserted that the Clerk and her employees had not only a racial motive but also intended to retaliate against him for winning a foreclosure case in Will County in 2018.

Early on, Covington moved to disqualify the district judge. He asserted—with little explanation—that the judge had political and religious affiliations that rendered him incapable of fairly resolving Covington's claims. The judge denied the motion as frivolous, stating that political or religious beliefs were not grounds for disqualification.

Of its own accord, the district court ordered the defendants to file a statement explaining whether "KLAN" was printed on correspondence with Covington, and if so, why. The court had "questions and concerns about the authenticity" of the documents appended to his second amended complaint. The defendants explained that Covington's documents were authentic, and that the Clerk's Office had a policy of creating computer login credentials for its staff members using the first and last letters of their first and last names, and that "KLAN" was the login credential of an employee assigned to his case. (Another staff member was "LAZY.") They further explained, and

provided evidence, that the state judge in Covington's tort case had told him why his documents from the Clerk's Office had "KLAN" printed on them. In the operative fourth amended complaint, filed shortly before the supplemental statement, Covington alleged that the explanation about the initials was pretext for discrimination and that the Clerk maintained a practice that produced hate speech.

The defendants eventually moved to dismiss the fourth amended complaint for failure to state a claim. They argued that Covington's allegations did not support a reasonable inference that they violated his constitutional rights because he already conceded that the use of "KLAN" was not racially motivated; he did not establish that his inability to access the courts affected the outcome of any lawsuit; and he made only bare assertions that the defendants had the necessary intent to cause him emotional distress. Covington did not respond to the motion to dismiss, though the court had advised him that failing to respond would waive any arguments against dismissal.

The district court granted the motion to dismiss. The court first concluded that Covington failed to allege facts plausibly suggesting that the use of "KLAN" was intended to be hateful. In fact, the court stated, both parties confirmed that the Clerk's Office used the letters solely as a login credential, which was automatically printed on certain documents. The court further determined that Covington failed to plausibly allege that he was denied access to the courts, because rejecting a court filing is not on its own a constitutional violation. Finally, the court relinquished supplemental jurisdiction over the state-law emotional-distress claim, 28 U.S.C. § 1367(c)(3), and denied Covington's motion for leave to file a fifth amended complaint because further amendment would be futile.

On appeal, Covington first argues that the district court erred by not warning him of the consequences of failing to respond properly to a motion to dismiss under Rule 12(b) of the Federal Rules of Civil Procedure. Rule 12(b), however, says nothing about warning litigants, even pro se litigants, of the consequences of failing to respond to dismissal motions. Even so, the court here advised Covington about the risks of not responding; when dismissing the second amended complaint, the court stated that "failure to respond is a waiver of any arguments against dismissal." And regardless, the court must accept a complaint's allegations as true when deciding a motion to dismiss, and it cannot grant the motion solely because the plaintiff does not respond. *See Marcure v. Lynn*, 992 F.3d 625, 631 (7th Cir. 2021).

Next, Covington contends that the district judge should have recused himself under 28 U.S.C. § 455 for bias. But he cites no evidence that the judge had a

disqualifying conflict listed in § 455(b). And, for purposes of § 455(a), a judge's political and religious background (about which Covington has explained little) are too attenuated to cause a reasonable, well-informed observer to question the judge's impartiality in a lawsuit primarily about racial discrimination. See *United States v. Barr*, 960 F.3d 906, 919–20 (7th Cir. 2020); *Fries v. Helsper*, 146 F.3d 452, 456 (7th Cir. 1998) (political affiliation). Further, adverse rulings are not, without more, grounds for recusal. See *Thomas v. Dart*, 39 F.4th 835, 844 (7th Cir. 2022).

Covington's arguments on the merits are also unavailing. We review the dismissal of his constitutional claims de novo. See *Chaidez*, 937 F.3d at 1004. First, he did not state a claim that the defendants violated his equal protection rights by treating him unequally on the basis of his race. As the district court correctly explained, his conclusory statements about the hateful nature of the employee's login credential are not enough to state a plausible claim that the defendants "treated him differently from persons of a different race" and did so "purposefully." *Xiong v. Wagner*, 700 F.3d 282, 295 (7th Cir. 2012) (citation omitted). The fourth amended complaint acknowledges that the unfortunate combination of letters resulted from a practice of arranging employee initials. And Covington did not factually support his assertions that the practice was a pretext and that the defendants harbored racial animus when they used the login credential. See *Home Care Providers, Inc. v. Hemmelgarn*, 861 F.3d 615, 625 (7th Cir. 2017) ("general speculation" about defendants' motives not sufficient to state claim). Nor did he allege that the defendants treated non-Black litigants more favorably, and the established policy on creating credentials detracts from the plausibility of such an assertion.

Likewise, Covington's allegations are too thin to state a plausible access-to-the-courts claim. A litigant has a constitutional right not to be hindered in pursuit of a non-frivolous legal claim, and to state a claim, the plaintiff must allege that the defendants' actions adversely affected "his effort to vindicate his rights through litigation." *Jones v. Van Lanen*, 27 F.4th 1280, 1287 (7th Cir. 2022). But Covington did not state how his attempted filings related to any lawsuit or whether he lost the ability to pursue any non-frivolous claim or defense. The rejection of legal filings does not itself give rise to a denial-of-access claim, which is "ancillary to the underlying claim." *Christopher v. Harbury*, 536 U.S. 403, 415 (2002).

AFFIRMED