

NONPRECEDENTIAL DISPOSITION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 September 11, 2024*

Decided September 12, 2024

Before

DIANE S. SYKES, *Chief Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

No. 24-1287

WILLIAM H. VIEHWEG,
Plaintiff-Appellant,

v.

INSURANCE PROGRAMS
MANAGEMENT GROUP, LLC, et al.,
Defendants-Appellees.

Appeal from the United States District
Court for the Central District of Illinois.

No. 3:23-cv-3047-MFK

Matthew F. Kennelly,
Judge.

ORDER

William Viehweg alleges that twenty-four defendants violated the Racketeer Influenced and Corrupt Organizations Act (RICO) by attempting to get him to demolish an unsafe garage on his property. *See* 18 U.S.C. § 1964. The district judge granted the defendants' motions to dismiss because Viehweg failed to state a civil RICO claim. That

* 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).

ruling, and three related procedural rulings, were correct; thus we affirm. We decline to sanction Viehweg for filing this appeal, but we warn him against frivolous litigation.

This appeal is the latest episode in a series of lawsuits between Viehweg and city officials in Mount Olive, Illinois, about his garage. *See, e.g., Viehweg v. City of Mount Olive*, 559 F. App'x 550 (7th Cir. 2014). Most recently, Viehweg sued the city, city officials, and an engineering firm that inspected buildings for the city, invoking 42 U.S.C. § 1983 and the Fourteenth Amendment. *See Viehweg v. City of Mount Olive*, No. 21-cv-3126, 2023 WL 3065190 (C.D. Ill. Apr. 21, 2023). He sought leave in that suit to amend his complaint to allege RICO violations against city officials, the engineering firm and its president, an insurance company and its president, and the lawyers representing the defendants in that suit. After the district judge denied Viehweg's request for leave, Viehweg filed this suit. (Viehweg's § 1983 suit was later dismissed.)

In this suit, Viehweg criticizes city officials for notifying him that he needed to demolish his garage, which, under the Illinois Municipal Code, they deemed unsafe. *See* 65 ILCS 5/11-31-1. Viehweg alleges that the notice from city officials—and the barricades and tape that officials placed around his garage—was unauthorized, the defendants served the notice to extort him, and they later attempted to bribe him and obstruct justice during his previous § 1983 suit. According to Viehweg, this activity was criminal and injured him in his “business reputation and character as a self-represented individual” and “in his property, including loss of value and loss of enjoyment.”

Before the district judge addressed whether Viehweg's suit stated a legal claim, he denied several of Viehweg's motions. First, the judge denied Viehweg's motions to disqualify the lawyer-defendants in this suit from representing themselves. Second, the judge denied Viehweg's motion to hold all defendants and a non-defendant attorney in civil contempt of court. Third, the judge denied Viehweg's motion to recuse the district judge for bias against Viehweg. The judge then granted the defendants' motions to dismiss Viehweg's suit for failure to state a claim. *See* FED R. CIV. P. 12(b)(6). The judge reasoned that Viehweg failed to allege that the defendants engaged in racketeering activity, as required for a civil RICO claim, because none of the alleged actions violated Illinois or federal criminal law.

On appeal, Viehweg first argues that his allegations were sufficient to state a civil RICO claim. We review a dismissal under Rule 12(b)(6) *de novo*. *Dix v. Edelman Fin. Servs., LLC*, 978 F.3d 507, 512 (7th Cir. 2020). A RICO violation requires “(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity.” *Menzies v. Seyfarth Shaw LLP*, 943 F.3d 328, 336 (7th Cir. 2019) (quoting *Sedima, S.P.R.L. v. Imrex Co.*,

473 U.S. 479, 496–97 (1985)). It also requires that the plaintiff be “injured in his business or property” by the RICO violation. 18 U.S.C. § 1964(c). The requirement of an injury to business or property limits who may sue. First, the requirement bars recovery for “personal injuries and the pecuniary losses incurred.” *Ryder v. Hyles*, 27 F.4th 1253, 1257 (7th Cir. 2022) (quoting *Doe v. Roe*, 958 F.2d 763, 767 (7th Cir. 1992)). Second, the injury to business or property must be concrete, not speculative. *Evans v. City of Chicago*, 434 F.3d 916, 932 (7th Cir. 2006), *overruled on other grounds by Hill v. Tangherlini*, 724 F.3d 965 (7th Cir. 2013). Third, and relatedly, the damages must be clear and definite. *Id.* (citing *Motorola Credit Corp. v. Uzan*, 322 F.3d 130, 135 (2d Cir. 2003)).

The district judge properly dismissed Viehweg’s suit for failure to state a claim. Although we agree with the judge that Viehweg did not state a claim (because he did not allege racketeering activity), we can reach this result on more straightforward grounds: Viehweg also failed to allege an injury to his business or property under § 1964(c). He alleges that the defendants injured his “business reputation and character as a self-represented individual,” but this allegation has two fatal flaws. First, it is a legal conclusion, and a plaintiff must allege “more than labels and conclusions.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Second, injury to reputation and character as a pro se litigant is akin to a personal injury, which is not actionable under RICO. *See Ryder*, 27 F.4th at 1257. His only allegation about injury to property is also insufficient. Viehweg alleges that, by notifying him about court action to demolish his garage and by placing barricades and tape around it, the defendants caused a “loss of value and loss of enjoyment” in his property. But he does not allege that these actions yielded a definite financial loss. *See Evans*, 434 F.3d at 932. A demolition of his garage by court order is a contingent event that may never occur, and he has not alleged what, if any, financial activity the barricades and tape have prevented. Therefore, he has failed to state a civil RICO claim.

Viehweg next unpersuasively challenges the district judge’s denial of his motion to disqualify the lawyer-defendants who were representing themselves. We review the judge’s denial of the motion to disqualify the attorneys for abuse of discretion. *Watkins v. Trans Union, LLC*, 869 F.3d 514, 518 (7th Cir. 2017). Viehweg repeats the argument that he made in the district court—that 28 U.S.C. § 1654 and the holding of *Kay v. Ehrler*, 499 U.S. 432 (1991), prevent the attorney-defendants from representing themselves in this case—but he is incorrect. The Supreme Court in *Kay* merely held that a self-represented lawyer could not collect a fee award under 42 U.S.C. § 1988. *See Kay*, 499 U.S. at 437–38. Further, *Kay* presumes that attorneys *can* represent themselves in federal court, *see id.*, a viewpoint that vitiates Viehweg’s argument that the defendants

here cannot represent themselves. As for 28 U.S.C. § 1654, that statute says nothing to suggest that an attorney cannot represent himself, and Viehweg cites no authority to support his interpretation of the statute.

Viehweg next argues that the district judge erred in denying his motion to hold all defendants in contempt. To prevail on that motion, Viehweg had to prove by clear and convincing evidence that the defendants violated a court order. *Goluba v. Sch. Dist. of Ripon*, 45 F.3d 1035, 1037 (7th Cir. 1995). Because Viehweg did not point to any court order that the defendants violated, the judge properly denied his motion. *See id.*

Viehweg also argues that the district judge was biased and should have recused himself from the case. We review the denial of a motion to recuse de novo. *See In re Gibson*, 950 F.3d 919, 923 (7th Cir. 2019). As evidence of bias, Viehweg cites the judge's denial of Viehweg's motions to disqualify the lawyer-defendants. But as we have explained, the judge correctly denied those motions, and adverse "judicial rulings alone are almost never a valid basis for a recusal motion." *United States v. Barr*, 960 F.3d 906, 920 (7th Cir. 2020) (citing *Liteky v. United States*, 510 U.S. 540, 555 (1994)). Viehweg also contends that the judge showed bias when he "snapped" at Viehweg at a conference. But "even a stern and short-tempered judge's ordinary efforts at courtroom administration" do not show bias without compelling evidence that the judge harbors personal animus against the litigant. *Id.* (quoting *Liteky*, 510 U.S. at 556). Here, the transcript from that hearing shows that the judge merely instructed Viehweg not to interrupt when the judge was speaking to the parties. Because Viehweg provided no compelling evidence of personal animus, the judge had no reason to recuse himself.

We have one final matter to address. Two appellees (the engineering firm, Henry Meisenheimer & Gender, Inc., and its president, Bradley Hummert) have moved under Rule 38 of the Federal Rules of Appellate Procedure for attorneys' fees and costs. Rule 38 allows us to "award just damages and single or double costs to the appellee[s]" if we rule that an appeal is frivolous. *See* FED. R. APP. P. 38. "An appeal is frivolous within the meaning of Rule 38 when it is prosecuted with no reasonable expectation of altering the district court's judgment and for purposes of delay or harassment or out of sheer obstinacy." *Bluestein v. Cent. Wis. Anesthesiology, S.C.*, 769 F.3d 944, 957–58 (7th Cir. 2014) (collecting cases). Because Rule 38 is permissive rather than mandatory, we may decline to impose fees even if an appeal is frivolous. *Id.* Although these appellees argue that Viehweg litigated this appeal out of sheer obstinacy, it appears to us that Viehweg genuinely misunderstood the legal obstacles to his claim. We therefore decline to impose monetary sanctions, but we sternly warn him that any future litigation based on

these already-litigated events may result in monetary sanctions against him that, if unpaid, can lead to a filing bar. *See Support Sys. Int'l, Inc. v. Mack*, 45 F.3d 185 (7th Cir. 1995).

AFFIRMED