

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 18-1136

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Oct 17, 2018
DEBORAH S. HUNT, Clerk

ROCHELLE DANIEL,)	
)	
Plaintiff-Appellant,)	
)	
v.)	ON APPEAL FROM THE UNITED
)	STATES DISTRICT COURT FOR
GOODYEAR TIRE/CBSD; CITIBANK SOUTH)	THE EASTERN DISTRICT OF
DAKOTA, N.A.,)	MICHIGAN
)	
Defendants-Appellees.)	
)	

ORDER

Before: MOORE and DONALD, Circuit Judges; BERTELSMAN, District Judge.*

Rochelle Daniel, a Michigan resident proceeding pro se, appeals the district court judgment dismissing her suit under the Fair Credit Reporting Act (FCRA) and state law. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

Daniel sued Citibank, N.A., under the name of Goodyear Tire/CBSD (Citibank), for willfully and negligently accessing her credit report without a permissible purpose, in violation of the FCRA, and for invasion of privacy through intrusion upon seclusion. Daniel alleged that Citibank had requested a copy of her credit report despite her having not applied for credit, employment, or insurance from Citibank. She sought monetary damages.

*The Honorable William O. Bertelsman, United States District Judge for the Eastern District of Kentucky, sitting by designation.

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Citibank moved to dismiss under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim. The magistrate judge recommended granting Citibank's motion to dismiss, finding that Daniel's complaint did not allege facts to support a willful violation of the FCRA, emotional-distress damages for a negligent violation of the FCRA, or a claim for intrusion upon seclusion. The district court adopted the magistrate judge's report and recommendation over Daniel's objections and dismissed her complaint. Daniel moved to amend or correct the district court's judgment. The district court denied Daniel's motion. Daniel filed a notice of appeal from the district court's order denying her motion to amend or correct its judgment of dismissal.

On appeal, Daniel reasserts the arguments from her district court pleadings.

Daniel's timely appeal from the district court's denial of her Rule 59(e) motion is treated as an appeal from the district court's underlying judgment. *See Bonner v. Metro. Life Ins.*, 621 F.3d 530, 532 (6th Cir. 2010). We review de novo a district court's dismissal of a claim under Federal Rule of Civil Procedure 12(b)(6). *Thompson v. Bank of Am., N.A.*, 773 F.3d 741, 750 (6th Cir. 2014). To avoid dismissal for failure to state a claim, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A complaint that offers "labels and conclusions," "a formulaic recitation of the elements of a cause of action," or "'naked assertion[s]' devoid of 'further factual enhancement'" will not survive a motion to dismiss. *Id.* (alteration in original) (quoting *Twombly*, 550 U.S. at 555, 557).

Daniel alleged that Citibank: (1) willfully violated 15 U.S.C. § 1681b(a)(3)(A) and (a)(3)(F)(1) when it obtained her credit report without a connection to a business transaction stemming from an application for, a grant of, or an extension or provision of credit initiated by her, and admitted not having a credit application in her name on file; (2) negligently violated 15 U.S.C. § 1681b(a)(3)(A) and (a)(3)(F)(1) when it failed to maintain reasonable procedures to protect against unauthorized access of personal information and accessed her credit report knowing it did not have a legitimate business need in connection with an application for credit initiated by her, causing her mental anguish, frustration, and personal humiliation; and

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(3) intentionally intruded into her right of privacy by obtaining her credit report without legal justification, causing her mental anguish, suspicion, and personal humiliation.

Upon review, we conclude that the district court properly dismissed Daniel's complaint for failure to state a claim. The FCRA, 15 U.S.C. § 1681 *et seq.*, prohibits any person from using or obtaining a consumer report without a permissible purpose. 15 U.S.C. § 1681b(f). Permissible purposes include using the information in connection with a credit transaction involving the consumer, or reviewing or collecting an account. *See* 15 U.S.C. § 1681b(a)(3)(A). The FCRA creates private causes of action against anyone who willfully or negligently accesses a credit report without a permissible purpose. *See* 15 U.S.C. §§ 1681n, 1681o; *Boggio v. USAA Fed. Sav. Bank*, 696 F.3d 611, 615 (6th Cir. 2012). Section 1681o authorizes actual damages, costs of enforcement, and attorney's fees, and § 1681n adds punitive damages. A plaintiff must allege three elements to state a claim for a violation of 15 U.S.C. §§ 1681n and 1681o: "(i) that there was a 'consumer report' within the meaning of the statute; (ii) that the defendant used or obtained it; and (iii) that the defendant did so without a permissible statutory purpose." *Bickley v. Dish Network, LLC*, 751 F.3d 724, 728 (6th Cir. 2014) (quoting *Godby v. Wells Fargo Bank, N.A.*, 599 F. Supp. 2d 934, 938 (S.D. Ohio 2008)).

The district court properly held that Daniel's complaint did not state a claim for willful violation of the FCRA. Willfulness includes both knowing and reckless violations of the FCRA. *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 57-58 (2007); *Boggio*, 696 F.3d at 620. A company acts in reckless disregard of the FCRA if it runs a risk of violating the law "substantially greater than the risk associated with a reading that was merely careless." *Safeco Ins. Co. of Am.*, 551 U.S. at 69. According to Daniel, she learned in April 2013 that Citibank requested a credit report on her in June 2012, although she had never applied to Citibank for credit, employment, or insurance. Sixteen months later, she sent a fax to Citibank for an explanation but got no response. She called Citibank in October 2014. A representative told her that Citibank would only ask for a credit report if she had applied for credit and that Citibank would not have an application on file from so long ago. Based on Citibank's inability to explain its request for her credit report, Daniel claimed that Citibank did so for an improper purpose. The district court

determined that Daniel's factual allegations did not show that Citibank willfully violated the FCRA. The allegation that Citibank had no record of a credit application in Daniel's name more than two years after it requested a credit report does not state a claim for reckless disregard of the FCRA. *See id.* Daniel's recitation of the elements of a willful violation of the FCRA did not "state a claim to relief that [was] plausible on its face." *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570).

The district court also properly held that Daniel's complaint did not state a claim for damages for a negligent violation of the FCRA. Conclusory statements are not enough to support a FCRA claim for emotional distress. *See Smith v. LexisNexis Screening Sols., Inc.*, 837 F.3d 604, 611 (6th Cir. 2016); *Bach v. First Union Nat'l Bank*, 149 F. App'x 354, 361 (6th Cir. 2005). Daniel's complaint alleged that she suffered mental anguish because Citibank invaded her privacy, that she was frustrated when Citibank ignored her faxed inquiry, that she was more frustrated when Citibank's representative was unapologetic and nonchalant, and that her credit report contained derogatory information. The district court held that Daniel did not allege behavior by Citibank that could give rise to emotional distress. Daniel's conclusory allegations of emotional damages for what amounted to, at worst, poor customer service did not state a plausible claim for damages under 15 U.S.C. § 1681o. *See Iqbal*, 556 U.S. at 678; *Twombly*, 550 U.S. at 570.

Finally, the district court properly dismissed Daniel's state-law claim of intrusion upon seclusion. To state a claim for intrusion upon seclusion, the plaintiff must show that the defendant obtained private information through a method objectionable to the reasonable person. *See Tobin v. Mich. Civil Serv. Comm'n*, 331 N.W.2d 184, 189 (Mich. 1982). Daniel's complaint alleged that Citibank obtained her credit report without legal justification because it admitted it did not have a credit application. The district court held that because Daniel alleged only that the fact of obtaining the information was objectionable, rather than the method, she had not properly pleaded a claim of intrusion upon seclusion. Daniel assumed bad faith on Citibank's part based upon the absence of a credit application more than two years after Citibank requested a credit

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report. Her complaint did not state a plausible intrusion-upon-seclusion claim. *See Iqbal*, 556 U.S. at 678; *Twombly*, 550 U.S. at 570.

For the foregoing reasons, we **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT

A handwritten signature in black ink, appearing to read "Deborah S. Hunt", written in a cursive style.

Deborah S. Hunt, Clerk