

FILED: February 26, 2018

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 17-2261  
(2:17-cv-00486-AWA-RJK)

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VERONICA M. JOHNSON

Plaintiff - Appellant

v.

THE COMMONWEALTH OF VIRGINIA; WILLIAM S. MOORE, JR.

Defendants - Appellees

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JUDGMENT

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In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

APPENDIX A

**UNPUBLISHED**

**UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

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**No. 17-2261**

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VERONICA M. JOHNSON,

Plaintiff - Appellant,

v.

THE COMMONWEALTH OF VIRGINIA; WILLIAM S. MOORE, JR.,

Defendants - Appellees.

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Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Arenda L. Wright Allen, District Judge. (2:17-cv-00486-AWA-RJK)

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Submitted: February 22, 2018

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Decided: February 26, 2018

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Before TRAXLER and DUNCAN, Circuit Judges, and HAMILTON, Senior Circuit Judge.

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Affirmed by unpublished per curiam opinion.

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Veronica Moody Johnson, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Veronica Moody Johnson appeals the district court's order dismissing her 42 U.S.C. § 1983 (2012) complaint under 28 U.S.C. § 1915(e)(2)(B) (2012). We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *Johnson v. Virginia*, No. 2:17-cv-00486-AWA-RJK (E.D. Va. Oct. 25, 2017). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

*AFFIRMED*

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
Norfolk Division

VERONICA M. JOHNSON,

Plaintiff,

Case No. 2:17cv486

v.

THE COMMONWEALTH OF VIRGINIA, *et al.*

Defendants.

**JUDGMENT IN A CIVIL CASE**

**Decision by the Court.** This action came for decision before the Court. The issues have been considered and a decision has been rendered.

**IT IS ORDERED AND ADJUDGED GRANTING** that the Court hereby DISMISSES this action without prejudice pursuant to 28 U.S.C. § 1915(e)(2).

DATED: October 25, 2017

FERNANDO GALINDO, Clerk

By \_\_\_\_\_/s/ \_\_\_\_\_  
E. Price, Deputy Clerk

APPENDIX B

**Other Orders/Judgments**2:17-cv-00486-AWA-RJKJohnson v. The Commonwealth  
of Virginia, et al **CASE CLOSED  
on 10/25/2017**

CLOSED,JURY,PRO SE

**U.S. District Court****Eastern District of Virginia -****Notice of Electronic Filing**

The following transaction was entered on 10/25/2017 at 3:02 PM EDT and filed on 10/25/2017

**Case Name:** Johnson v. The Commonwealth of Virginia, et al

**Case Number:** 2:17-cv-00486-AWA-RJK

**Filer:**

**WARNING: CASE CLOSED on 10/25/2017**

**Document Number:** 6

**Docket Text:**

**CLERK'S JUDGMENT. Signed by Clerk on 10/25/2017. (epri)**

**2:17-cv-00486-AWA-RJK Notice has been electronically mailed to:**

**2:17-cv-00486-AWA-RJK Notice has been delivered by other means to:**

Veronica M. Johnson  
166 Yorkshire Road  
Portsmouth, VA 23701

The following document(s) are associated with this transaction:

**Document description:** Main Document

**Original filename:** n/a

**Electronic document Stamp:**

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
Norfolk Division

VERONICA M. JOHNSON,

Plaintiff,

v.

FILED
OCT 25 2017
CLERK, US DISTRICT COURT NORFOLK, VA

ACTION NO. 2:17cv486

THE COMMONWEALTH OF VIRGINIA, *et al.*,

Defendants.

**DISMISSAL ORDER**

On September 11, 2017, Plaintiff Veronica M. Johnson (“Plaintiff”), appearing *pro se*, filed an Application to Proceed in District Court Without Prepaying Fees or Costs (“IFP Application”),<sup>1</sup> along with a proposed Complaint. IFP Appl., ECF No. 1. On September 18, 2017, the Court granted Plaintiff’s IFP Application and directed the Clerk to file Plaintiff’s Complaint; however, the Court also explained that Plaintiff’s Complaint “suffer[ed] from defects that must be addressed before this action can proceed.” Order to Show Cause at 1, ECF No. 2.

In her Complaint, Plaintiff alleged that her former spouse owed her \$83,500.00 in unpaid spousal support. Compl. at 3-5, ECF No. 3. Pursuant to the governing divorce decree, “the support obligation as it becomes due and unpaid creates a judgment by operation[] of law.” *Id.* at 4 (emphasis in original). On September 2, 2015, Plaintiff filed a motion with the Portsmouth Circuit Court seeking a judgment against her former spouse for the unpaid support obligation. *Id.* at 3. Plaintiff claimed that Portsmouth Circuit Judge William S. Moore, Jr. refused to grant Plaintiff’s motion and “deferred his ruling on the [m]otion until October 2, 2015, waiting 30

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<sup>1</sup> When a party proceeds in district court without prepaying fees or costs, it is said that the party is proceeding *in forma pauperis*. As such, the Court will refer to Plaintiff’s fee waiver application as an “IFP Application.”

(thirty days), stating he needed time to determine if he had jurisdiction.” *Id.* at 10-11.

Plaintiff further claimed:

On October 2, 2015, Judge Moore dismissed [Plaintiff’s] [m]otion to enter an order of judgment for spousal support arrears against defendant by operation of law and told [P]laintiff, “I am going to dismiss this, without prejudice. You can file in Juvenile Court, and they will give you whatever the appropriate order is.”

*Id.* at 11. Unhappy with Judge Moore’s decision, Plaintiff filed a petition for writ of mandamus against Judge Moore in the Virginia Supreme Court.<sup>2</sup> *Id.* at 5. On February 26, 2016, Judge Moore entered the requested spousal support judgment. *Id.* Plaintiff asserted that “JUSTICE DELAYED IS JUSTICE DENIED.” *Id.* (capitalization in original).

Based on these factual allegations, Plaintiff brought this lawsuit against the Commonwealth of Virginia and Judge Moore pursuant to 42 U.S.C. § 1983. *Id.* at 1. Plaintiff claimed that the actions of Judge Moore, a judicial officer for the Commonwealth of Virginia, violated Plaintiff’s procedural due process rights and equal protection rights under the Fourteenth Amendment to the United States Constitution. *Id.* 2-7. Plaintiff further claimed that she was a “political activist” who is considered to be an “effective troublemaker” by many of the “powers that be” in Portsmouth. *Id.* at 7. Plaintiff believed that Judge Moore violated her constitutional rights “to appease his ‘inner circle’ of powerful associates” and to keep Plaintiff “in her place.” *Id.* at 10. In her Prayer for Relief, Plaintiff sought \$5 million in compensatory and punitive damages, as well as costs. *Id.* at 21.

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<sup>2</sup> According to the Virginia Supreme Court’s online case information records, Plaintiff’s petition was “refused” on May 31, 2016. *See In re William S. Moore, Jr.*, No. 151912 (Va. May 31, 2016).

After carefully reviewing Plaintiff's Complaint, it appeared to the Court that this action should be dismissed pursuant to 28 U.S.C. § 1915(e)(2).<sup>3</sup> Order to Show Cause at 2-4, ECF No. 2. The Court issued an Order to Show Cause on September 18, 2017, in which it explained to Plaintiff why dismissal appeared warranted. *Id.* First, the Court explained that Plaintiff cannot state a § 1983 claim against the Commonwealth of Virginia because (i) “[t]he Eleventh Amendment bars a private individual from suing a state . . . in federal court, unless the state consents to be sued in federal court or Congress has abrogated the states' Eleventh Amendment immunity;” and (ii) “the Commonwealth of Virginia has not consented to suits under § 1983 and Congress has not abrogated the Commonwealth of Virginia's Eleventh Amendment immunity for § 1983 cases.” *Id.* at 3 (internal citations omitted). Next, the Court explained that Plaintiff's § 1983 claim against Judge Moore is barred by judicial immunity. Specifically, the Court stated:

Similarly, Plaintiff cannot assert a § 1983 claim against Judge Moore because judges are absolutely immune from suits under § 1983 for acts committed within their judicial discretion. *Stump v. Sparkman*, 435 U.S. 349, 355–56 (1978); *see also* 42 U.S.C. § 1983 (stating that the court shall not grant relief “in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity”). “Absolute judicial immunity exists ‘because it is recognized that judicial officers in whom discretion is entrusted must be able to exercise discretion vigorously and effectively, without apprehension that they will be subjected to burdensome and vexatious litigation.’” *Lesane v. Spencer*, No. 3:09cv012, 2009 U.S. Dist. LEXIS 114247, at \*6 (E.D. Va. Dec. 8, 2009) (citations omitted). A judge is entitled to immunity even if “the action he took was in error, was done maliciously, or was in excess of his authority . . . .” *Stump*, 435 U.S. at 356. Only two exceptions apply to judicial immunity: (1) nonjudicial actions; and (2) those actions “though judicial in nature, taken in complete

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<sup>3</sup> Section 1915(e)(2) requires a district court to dismiss an action at any time if the “court determines that . . . the action . . . fails to state a claim on which relief may be granted.” 28 U.S.C. § 1915(e)(2).

absence of all jurisdiction.” *Mireles v. Waco*, 502 U.S. 9, 11–12 (1991) (citation omitted).

*Id.* at 3–4. The Court determined that the factual allegations of Plaintiff’s Complaint “[did] not suggest that the exceptions to judicial immunity [were] triggered in this case,” and, as a result, the Court advised Plaintiff that Judge Moore was immune from her § 1983 claim. *Id.* at 4.

Despite these findings, the Court chose not to immediately dismiss Plaintiff’s action. Instead, in deference to Plaintiff’s *pro se* status, the Court provided Plaintiff with an opportunity to respond to the defects noted by the Court. The Court stated:

... Plaintiff is **ORDERED** to **SHOW CAUSE** why this action should not be dismissed by filing an Amended Complaint within thirty days of the date of entry of this Order to Show Cause. The Amended Complaint must clearly state all causes of action Plaintiff intends to assert against each Defendant, identify a valid basis for this Court’s jurisdiction over such causes of action, and set forth all factual allegations upon which Plaintiff’s causes of action are based.

*Id.* The Court warned Plaintiff that “this case will be dismissed without prejudice if she fails to comply with this Order to Show Cause.” *Id.*

Plaintiff filed an Amended Complaint on October 11, 2017. Am. Compl., ECF No. 4. In her Amended Complaint, Plaintiff no longer asserts any claims against the Commonwealth of Virginia; however, Plaintiff continues to assert claims against Judge Moore pursuant to § 1983.<sup>4</sup> *Id.* The facts alleged by Plaintiff remain the same. Plaintiff claims that Judge Moore violated her constitutional rights when he (i) refused to initially grant Plaintiff’s motion for unpaid

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<sup>4</sup> In her initial Complaint, Plaintiff alleged violations of procedural due process and equal protection under the Fourteenth Amendment. Compl. at 2, 5, ECF No. 3. In her Amended Complaint, Plaintiff asserts a number of additional violations, including substantive due process and fundamental fairness under the Fourteenth Amendment, the arbitrary taking of property under the Fifth Amendment, the right to be self-represented under the Sixth Amendment, and the right to free speech under the First Amendment. Am. Compl. at 2–5, ECF No. 4. All such alleged violations are brought against Judge Moore pursuant to § 1983.

spousal support; (ii) deferred his ruling for thirty days “to determine if he had jurisdiction;” (iii) dismissed Plaintiff’s motion without prejudice and advised Plaintiff to “file in Juvenile Court;” and (iv) vacated his prior order and granted Plaintiff’s motion for spousal support.<sup>5</sup> *Id.* at 17-19. Plaintiff argues that judicial immunity should not bar her claims against Judge Moore because (i) the motion for spousal support was “ministerial” in nature and called for Judge Moore to perform only a “non-judicial” act; and (ii) Judge Moore “had no subject matter jurisdiction over the parties because the rights and liabilities of the parties had already been adjudicated by the Portsmouth Circuit Court on July 20, 2012 and recorded in the mandate of the Final Decree of Divorce which was before [Judge Moore] to enforce.” *Id.* at 7-8. The Court disagrees.

When analyzing the applicability of judicial immunity, the United States Supreme Court explains that “the factors determining whether an act by a judge is a ‘judicial’ one relate to the nature of the act itself, *i.e.*, whether it is a function normally performed by a judge, and to the

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<sup>5</sup> Plaintiff attached a number of exhibits to her Amended Complaint, including a transcript from a February 26, 2016 hearing before Judge Moore during which Judge Moore explained:

This matter, in summary, ma’am, you filed your motion for judgment for spousal support arrears back on September 4, 2015. I continued the case to October 2nd to consider your motion, and I entered an order dismissing your action for lack of jurisdiction. I decided that I was incorrect in my ruling, ma’am, and I entered an order on November 5th vacating that order, and I attempted to put it back on the docket so I could enter a judgment that you had requested, and I think you are entitled to, and set it for December 11th. You didn’t appear. You noted an appeal to the Supreme Court, and you have an absolute right to appeal. I am not sure that’s the proper place, but that’s not for me to decide. And then, as a courtesy to you, on December 16th we sent another letter to you and gave you the hearing date for today. I am glad you are here. I am in a position to grant your motion for judgment in the amount of \$83,500 and enter the order today.

Transcript of Proceedings at 3-4, attached as Ex. H to Am. Compl., ECF No. 4-8.

expectations of the parties, *i.e.*, whether they dealt with the judge in his judicial capacity.” *Stump*, 435 U.S. at 362-63 (adding that “[d]isagreement with the action taken by the judge, however, does not justify depriving that judge of his immunity”). Here, despite Plaintiff’s belief, it is clear that Judge Moore’s handling of Plaintiff’s motion for spousal support was a judicial act. Further, even if Judge Moore’s initial decision to dismiss Plaintiff’s motion was in error, it cannot be said that Judge Moore acted in the “complete absence of all jurisdiction” when he heard and ultimately resolved Plaintiff’s motion. *See id.* at 356-57 (explaining that “[a] judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in the ‘clear absence of all jurisdiction’”).

Despite being afforded an opportunity to address the immunity issues raised by the Court, Plaintiff has not established the applicability of any exception to Judge Moore’s judicial immunity. As the Court previously explained to Plaintiff, 28 U.S.C. § 1915(e)(2) mandates the dismissal of an action “if the court determines that . . . the action . . . fails to state a claim on which relief may be granted.” Order to Show Cause at 2-3, ECF No. 2 (quoting 28 U.S.C. § 1915(e)(2)). Here, the Court determines that Plaintiff cannot state a § 1983 claim against Judge Moore because such claim is barred by judicial immunity. Accordingly, the Court **DISMISSES** this action without prejudice pursuant to 28 U.S.C. § 1915(e)(2).

Plaintiff may appeal from this Dismissal Order by forwarding a written notice of appeal to the Clerk of the United States District Court, Norfolk Division, 600 Granby Street, Norfolk, Virginia 23510. The written notice must be received by the Clerk within thirty days from the date of entry of this Dismissal Order.

The Clerk is **DIRECTED** to send a copy of this Dismissal Order to Plaintiff.

IT IS SO ORDERED.



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Arenda L. Wright Allen  
United States District Judge

Norfolk, Virginia

Oct 25, 2017

**Other Orders/Judgments**

2:17-cv-00486-AWA-RJK  
Johnson v. The Commonwealth  
of Virginia, et al

JURY,PRO SE

**U.S. District Court**

**Eastern District of Virginia -**

**Notice of Electronic Filing**

The following transaction was entered on 10/25/2017 at 2:57 PM EDT and filed on 10/25/2017

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**Case Number:** 2:17-cv-00486-AWA-RJK

**Filer:**

**WARNING: CASE CLOSED on 10/25/2017**

**Document Number:** 5

**Docket Text:**

**DISMISSAL ORDER: The Court DISMISSES this action without prejudice pursuant to 28 U.S.C. § 1915(e)(2). A copy of this Order was sent to plaintiff as DIRECTED on 10.25.17. Signed by District Judge Arenda L. Wright Allen and filed on 10/25/2017. (epri)**

**2:17-cv-00486-AWA-RJK Notice has been electronically mailed to:**

**2:17-cv-00486-AWA-RJK Notice has been delivered by other means to:**

Veronica M. Johnson  
166 Yorkshire Road  
Portsmouth, VA 23701

The following document(s) are associated with this transaction:

**Document description:** Main Document

**Original filename:** n/a

**Electronic document Stamp:**

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FILED: March 27, 2018

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 17-2261  
(2:17-cv-00486-AWA-RJK)

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VERONICA M. JOHNSON

Plaintiff - Appellant

v.

THE COMMONWEALTH OF VIRGINIA; WILLIAM S. MOORE, JR.

Defendants - Appellees

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O R D E R

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The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc.

For the Court

/s/ Patricia S. Connor, Clerk

APPENDIX C