No._____

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IN THE

SUPREME COURT OF THE UNITED STATES

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TERRY A. BURLISON,

Petitioner,

v.

PAM ANGUS, et al.,

Respondent.

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APPENDIX

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## APPENDIX

## INDEX

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

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No. 18-10427
Non-Argument Calendar

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D.C. Docket No. 5:17-cv-00570-JSM-PRL

TERRY A. BURLISON,

Plaintiff-Appellant,

versus

PAM ANGUS,
individually and in her capacity as a Marion County Deputy Clerk,

Defendant-Appellee.

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Appeal from the United States District Court
for the Middle District of Florida

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(September 11, 2018)

Before MARTIN, JILL PRYOR, and BRANCH, Circuit Judges.

PER CURIAM:

Terry Burlison appeals the district court's *sua sponte* dismissal of his *pro se*[1] civil rights suit under 42 U.S.C. § 1983, in which he sought monetary damages against Pam Angus, a Marion County, Florida, deputy clerk of court. His suit alleges that she issued a writ of possession without judicial authority in favor of his landlords in a state court dispossessory action, which, in turn, caused him to be evicted from his residence in violation of his rights under the Fourth Amendment of the United States Constitution. He argues that the district court committed procedural error when it *sua sponte* dismissed his § 1983 complaint with prejudice without first notifying him of its intent to do so and without giving him an opportunity to respond.

We review a district court's *sua sponte* dismissal for abuse of discretion. *See Tazoe v. Airbus S.A.S.*, 631 F.3d 1321, 1335–36 (11th Cir. 2011). In doing so, we review *de novo* any underlying questions of law in a district court's dismissal of a complaint for failure to state a claim. *Mitchell v. Farcass*, 112 F.3d 1483, 1490 (11th Cir. 1997).

Prior to dismissing a civil action *sua sponte*, a court normally must provide the plaintiff "with notice of its intent to dismiss and an opportunity to respond." *Surtain v. Hamlin Terrace Found.*, 789 F.3d 1239, 1248 (11th Cir. 2015). "An

[1] "Pro se pleadings are held to a less stringent standard than pleadings drafted by attorney and will, therefore, be liberally construed." *Tannenbaum v. United States*, 148 F.3d 1262, 1263 (11th Cir. 1998).

exception to this requirement exists, however, when amending the complaint would be futile, or when the complaint is patently frivolous." *Id.* A district court may dismiss a complaint for failure to state a claim based upon an affirmative defense "when the defense is an obvious bar given the allegations," even if the defendant has not asserted the defense. *Sibley v. Lando*, 437 F.3d 1067, 1070 n.2 (11th Cir. 2005).

Here, the district court did not abuse its discretion when it concluded that Burlison's complaint was patently frivolous because its central claim was obviously barred by judicial immunity, which is a recognized defense to liability under section 1983. *See Bolin v. Story*, 225 F.3d 1234, 1239 (11th Cir. 2000). While court clerks are not entitled to absolute immunity from claims for equitable relief, which Burlison has not sought, they do "have absolute immunity from actions for damages arising from acts they are specifically required to do under court order or at a judge's direction." *Tarter v. Hury*, 646 F.2d 1010, 1013 (5th Cir. Unit A June 1981); *see also Roland v. Phillips*, 19 F.3d 552, 556 n.4 (11th Cir. 1994) (stating that when a court official "acts pursuant to a direct judicial order, absolute quasi-judicial immunity is obvious"). And court clerks are entitled to qualified immunity from all other actions for damages. *Tarter*, 646 F.2d at 1013.

The district court correctly concluded that Burlison's claim against Angus was patently frivolous, and therefore could be dismissed without notice and an

opportunity to respond. Angus, as a deputy clerk of court, was entitled to absolute judicial immunity on Burlison's claim for money damages, because, in issuing the challenged writ of possession in favor of Burlison's landlords, she was following a direct order of a Marion County, Florida, judge. *See Tarter*, 646 F.2d at 1013.

Accordingly, we affirm the district court's *sua sponte* dismissal of Burlison's suit.

**AFFIRMED.**

**UNITED STATES DISTRICT COURT**
**MIDDLE DISTRICT OF FLORIDA**
**OCALA DIVISION**

**TERRY A. BURLISON,**

**Plaintiff,**

**v.** **Case No: 5:17-cv-570-Oc-JSM-PRL**

**PAM ANGUS,**

**Defendant.**

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# ORDER OF DISMISSAL

THIS CAUSE is before the Court *sua sponte*. For the reasons explained below, the Court concludes that this action is barred by the *Rooker-Feldman* doctrine and is due to be dismissed.

## BACKGROUND

Plaintiff filed a *pro se* Complaint against Pam Angus, a deputy clerk at the Fifth Judicial Circuit Court of Florida in Marion County. As best can be discerned from the two-page Complaint (Doc. 1), Plaintiff alleges a claim under 42 U.S.C. § 1983 for violation of Fourth Amendment rights due to an alleged seizure of Plaintiff's property. Plaintiff alleges that "deputy clerk, Pam Angus issued a writ of possession before the entry of a judgment in favor of the landlord which caused Marion County Deputy Sheriff officer Dunlap to evict PLAINTIFF without a valid court order, which caused PLAINTIFF to lose possession of his mobile home." (Doc. 1, p. 2). Plaintiff contends that the "improper eviction" constitutes a seizure of property in violation of the Fourth Amendment. Plaintiff seeks damages in the amount of $3.4 million.

## DISCUSSION

Courts have authority to *sua sponte* dismiss an action, but are required to provide plaintiffs notice of the intent to dismiss and give them an opportunity to respond. *Surtain v. Hamlin Terrace*

*Found.*, 789 F.3d 1239, 1248 (11th Cir. 2015). "An exception to this requirement exists, however, when amending the complaint would be futile, or when the complaint is patently frivolous." *Id.* The Court concludes the Complaint in this case is patently frivolous and that any amendment would be futile. So the Complaint should be dismissed.

Plaintiff sued Pam Angus, both in her individual and official capacity as a deputy clerk of Marion County. At best, Plaintiff alleges Angus issued "a writ of possession before the entry of a judgment," which Plaintiff contends was an improper eviction and a violation of the Fourth Amendment. Plaintiff's claims arise out of a past incident in which he alleges he was improperly evicted from a mobile home following state court eviction proceedings.

It is apparent from the face of the Complaint that, in taking the challenged actions, Angus was acting in her role as a deputy clerk of the Circuit Court. Angus would be entitled to either absolute or qualified immunity for her actions. *See Tarter v. Hury*, 646 F.2d 1010, 1013 (5th Cir. 1981),[1] and *Williams v. Wood*, 612 F.2d 982, 985 (5th Cir. 1980). So the claims against her are patently frivolous.

And a review of the Court's docket reveals that Plaintiff already unsuccessfully attempted to litigate these same claims in this Court in *Burlison v. Williams,* Case No. 5-12-cv-560-Oc-WTH-PRL. In that case, Plaintiff sued a Marion County Court Judge and Plaintiff's former landlords. The Court observed that Plaintiff's claims lacked any legal merit and were barred by the *Rooker-Feldman* doctrine[2] because Plaintiff attempted to overrule or interfere with the final judgment of

[1] In *Bonner v. City of Prichard,* 661 F.2d 1206, 1209 (11th Cir.1981) (en banc), the Eleventh Circuit adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to close of business on September 30, 1981.

[2] The *Rooker-Feldman* doctrine prevents federal courts from exercising jurisdiction over cases brought by "state-court losers" challenging "state-court judgments rendered before the district court proceedings commenced." *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 284 (2005).

possession issued in the state civil eviction matter, *Jeffrey W. Benefield and Cassandra K. Benefield v. Terry A. Burlison*, Case No. 12-1901-SC. (*See* Doc. 26). The Court dismissed the action for lack of subject-matter jurisdiction. (Case No. 5-12-cv-560-Oc-WTH-PRL, Doc. 26).

Plaintiff's claims in this action are yet another thinly veiled attempt to overrule or interfere with the state court proceedings and judgment. *See Mickens v. 10th Judicial Circuit Court*, 458 Fed. Appx. 839, 840-41 (11th Cir. Feb. 23, 2012); *Christophe v. Morris*, 198 Fed. Appx. 818, 825–26 (11th Cir. 2006); *Casale v. Tillman*, 558 F.3d 1258, 1260 (11th Cir. 2009). Just as in the 2012 case, the Court concludes it lacks subject-matter jurisdiction over these frivolous claims. And allowing further amendment would be an exercise in futility because there appears to be no set of facts Plaintiff could allege that would support jurisdiction. So the Court concludes the action should be dismissed.

Accordingly, it is ORDERED AND ADJUDGED that:

1. This action is DISMISSED WITH PREJUDICE for lack of jurisdiction.
2. All pending motions are denied as moot.
3. The Clerk is directed to close this file.

**DONE** and **ORDERED** in Tampa, Florida, this 5th day of January, 2018.

JAMES S. MOODY, JR.
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel/Parties of Record

# UNITED STATES COURT OF APPEALS
# FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

November 14, 2018

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 18-10427-HH
Case Style: Terry Burlison v. Pam Angus
District Court Docket No: 5:17-cv-00570-JSM-PRL

The enclosed order has been entered on petition(s) for rehearing.

See Rule 41, Federal Rules of Appellate Procedure, and Eleventh Circuit Rule 41-1 for information regarding issuance and stay of mandate.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Christopher Bergquist, HH/lt
Phone #: 404-335-6169

REHG-1 Ltr Order Petition Rehearing

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

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No. 18-10427-HH

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TERRY A. BURLISON,

Plaintiff - Appellant,

versus

PAM ANGUS,
individually and in her capacity as a Marion County Deputy Clerk,

Defendant - Appellee.

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Appeal from the United States District Court
for the Middle District of Florida

---

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: MARTIN, JILL PRYOR and BRANCH, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

/s/ Elizabeth L. Branch
UNITED STATES CIRCUIT JUDGE

ORD-42

Additional material from this filing is available in the Clerk's Office.