IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-15050-AA

VALERIE ARROYO,

Plaintiff-Appellant,

versus

JOSEPH COLBERT, JR.,
SALVADOR J. PERILLO,
Attorney at Law,
ANDREW WOODS,
Attorney at Law,
COBB COUNTY CLERK OF SUPERIOR COURT CIVIL & DEEDS DIVISION,
GEORGIA STATE BAR ASSOCIATION, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia

Before: MARTIN, ROSENBAUM and BRANCH, Circuit Judges.

BY THE COURT:

This appeal is DISMISSED, *sua sponte*, for lack of jurisdiction. On March 29, 2018, the district court dismissed Arroyo's initial complaint as frivolous and ordered her to file an amended complaint within 21 days of its order to cure the deficiencies. Arroyo had the choice either to amend her complaint within the period allotted by the district court's dismissal order or to treat the order as final and file a timely appeal. *Van Poyck v. Singletary*, 11 F.3d 146, 148 (11th Cir. 1994). Because Arroyo did not file an amended complaint within 21 days, the dismissal order became final on April 19, 2018, giving her 30 days to file a notice of appeal. *See*

On June 29, 2018, the district court denied Arroyo's motion for relief from judgment pursuant to Federal Rule of Civil Procedure 60(b), which she had filed on May 7, 2018, and concluded that it would not reopen the case based on Arroyo's filing of an untimely amended complaint. The district court's order did not toll the time to appeal from the prior dismissal. *See* Fed. R. App. P. 4(a)(4)(A)(vi) (stating that, to toll the appeal period from a final judgment, a Rule 60(b) motion must be filed within 28 days of the judgment). Arroyo had 30 days to appeal this order. *See* 28 U.S.C. § 2107(a); Fed. R. App. P. 4(a)(1)(A).

Because the notice of appeal was not filed until December 3, 2018, it was untimely to appeal from the district court's dismissal of the initial complaint or the district court's order denying Arroyo's motion for relief from judgment. Accordingly, we lack jurisdiction over this appeal. *See Green v. Drug Enf't Admin.*, 606 F.3d 1296, 1300 (11th Cir. 2010); *see also Hamer v. Neighborhood Hous. Servs. of Chicago*, 138 S. Ct. 13, 20 (2017).

All pending motions are DENIED as MOOT. No motion for reconsideration may be filed unless it complies with the timing and other requirements of 11th Cir. R. 27-2 and all other applicable rules.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

VALERIE ARROYO, Plaintiff, v. JOSEPH COLBERT, JR.; SALVADOR J. PERILLO; ANDREW WOODS; COBB COUNTY CLERK OF SUPERIOR COURT; GEORGIA STATE BAR ASSOCIATION; GEORGIA JUDICIAL QUALIFICATION COMMISSIONER; THE STATE OF GEORGIA; GEORGIA DEPARTMENT OF LAW; Defendants.	:	CIVIL ACTION NO. 1:18-CV-00848-SCJ

ORDER

On February 26, 2018, the Honorable Alan J. Baverman, United States Magistrate Judge, granted Plaintiff's request to proceed *in forma pauperis* ("IFP") pursuant to 28 U.S.C. § 1915(a) and submitted this action to this Court for a frivolity review pursuant to 28 U.S.C. § 1915(e)(2)(B). Doc. No. [4].

Said code section provides, in relevant part, that a court shall dismiss an IFP claim if the Court determines that the action: "(i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B). A claim is

frivolous if it is without arguable merit either in law or fact and has no reasonable factual or legal basis. Bilal v. Driver, 251 F.3d 1346, 1349 (11th Cir. 2001); see also Clark v. State of Ga. Pardons and Paroles Bd., 915 F.2d 636, 639 (11th Cir. 1990) ("A lawsuit is frivolous if the 'plaintiff's realistic chances of ultimate success are slight.'"). However, before dismissing a a *pro se* complaint with prejudice, the Court must afford the plaintiff an opportunity to amend the complaint to cure any deficiencies. Bryant v. Dupree, 252 F.3d 1161, 1163 (11th Cir.2001). Because Plaintiff's complaint suffers from a wide array of maladies, the Court outlines each and gives her an opportunity to amend.

As an initial matter, all of the problems with Plaintiff's complaint are exacerbated by the fact that the complaint is a shotgun pleading in at least two respects. First, it realleges all preceding counts in each successive count, thereby "causing each successive count to carry all that came before and the last count to be a combination of the entire complaint." Weiland v. Palm Beach Cty. Sheriff's Office, 792 F.3d 1313, 1321–22 (11th Cir. 2015). Second, it is "replete with conclusory, vague, and immaterial facts not obviously connected to any particular cause of action." Id. at 1322. The combination of these two means that most counts "contain irrelevant factual allegations and legal conclusions," and the Court is left with the "onerous task" of sifting out irrelevancies and trying to identify which facts support what

claims as to each defendant. See Strategic Income Fund, LLC, v. Spear, Leeds & Kellogg Corp., 305 F.3d 1293, 1295 (11th Cir. 2002).

Parsing Plaintiff's complaint as best the Court can, it appears the Court may not have subject-matter jurisdiction over this case. Plaintiff asserts that the Court has federal-question jurisdiction because she alleges Defendants failed "to abide by the law, civil rules, and procedures of the State of Georgia Judicial System, the Civil Rights Act, and the U.S. Constitution of the Amendments [*sic*]." See Doc. No. [2], p. 4. But her claims are principally against her former landlord and the attorneys who represented him in her eviction proceedings and related cases. See id. pp. 2–5. Plaintiff cannot assert a violation of the Civil Rights Act—42 U.S.C. § 1983—because they are private actors and their actions are not "fairly attributable to the State." See, e.g., Lugar v. Edmondson Oil Co., 457 U.S. 922, 936–37, 102 S. Ct. 2744, 2753–54, 73 L. Ed. 2d 482 (1982).

It is clear from Plaintiff's complaint that she is attempting to use this Court to attack the rulings of the Cobb County Superior Court. See, e.g., Doc. No. [2], p. 15, ¶41 (characterizing the judge's actions as "unjust, improper, and unethical"). The Civil Rights Act is not "a device for collateral review of state court judgments." Sibley v. Lando, 437 F.3d 1067, 1070 (11th Cir. 2005). If Plaintiff believes the Cobb County Superior Court erred, her recourse is to appeal the decision to the Georgia

Court of Appeals, not to file a suit in this Court. Because she has the right to appeal the decision complained of, Plaintiff has an "adequate remedy at law," and is not entitled to equitable relief from this Court. See Bolin v. Story, 225 F.3d 1234, 1243 (11th Cir.2000); see also Sibley, 437 F.3d at 1073-74. To the extent that Plaintiff tries to bring any claims challenging the State Court judgment, dismissal will be proper. Lance v. Dennis, 546 U.S. 459, 463, 126 S. Ct. 1198, 1201, 163 L. Ed. 2d 1059 (2006) (under "the Rooker-Feldman doctrine, lower federal courts are precluded from exercising appellate jurisdiction over final state-court judgments").

Nor can Plaintiff bring civil rights claims against the judge in her Cobb County case, even if she believes the judge's actions were "unjust, improper, and unethical." See Doc. No. [2], p. 15, ¶41. "Judges are entitled to absolute judicial immunity from damages for those acts taken while they are acting in their judicial capacity unless they acted in the 'clear absence of all jurisdiction.'" Bolin, 225 F.3d at 1239 (citations omitted). Absolute judicial immunity applies even when the plaintiff alleges that the judge's actions were erroneous or malicious. Id. This Court does not ask whether the actions were appropriate, but rather limits its inquiry to whether the actions were "a judicial activity." Sibley, 437 F.3d at 1071.[1]

[1] To the extent that Plaintiff asserts a state tort claim for intentional infliction of emotional distress, this claim might also barred by absolute judicial immunity for the same reasons given above. See Doc. No. [2], pp. 20-21. The Georgia Supreme Court has adopted the federal test for determining if a judge is entitled to immunity from state tort claims, and

Even if the Court attempted to consider the substance of Plaintiff's arguments, they do not appear to state a claim for relief. Contrary to Plaintiff's suggestions, her rights were "not violated merely because [her] case [was] dismissed before trial." Yeyille v. Miami Dade Cty. Pub. Sch., 643 F. App'x 882, 885 (11th Cir. 2016). Nor will this Court consider any arguments that the Cobb County Court misapplied Georgia law or violated Georgia rules of civil procedure. Bolin, 225 F.3d at 1239. Nor can Plaintiff demand the criminal prosecution of individuals for alleged obstruction of justice. See Bordenkircher v. Hayes, 434 U.S. 357, 364, 98 S. Ct. 663, 668, 54 L. Ed. 2d 604 (1978) (noting that "the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in [a prosecutor's] discretion"); Otero v. U.S. Atty. Gen., 832 F.2d 141, 141 (11th Cir. 1987) (noting that "a private citizen has no judicially cognizable interest in the prosecution or non-prosecution of another").

Plaintiff baldly claims that "Defendants breach[ed] their fiduciary duties," but nowhere demonstrates that any Defendant owed her a fiduciary duty. See Doc. No. [2], p. 20, ¶64. Plaintiff likely cannot bring claims against the Georgia Department of Law, because the organization must be a distinct legal entity capable of being sued, not "merely the vehicle through which the [State] government fulfills

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has specifically applied the immunity doctrine to claims of intentional infliction of emotional distress. Heiskell v. Roberts, 295 Ga. 795, 800-01, 764 S.E.2d 368, 374 (2014)

its . . . functions." See Shelby v. City of Atlanta, 578 F. Supp. 1368, 1370 (N.D. Ga. 1984). While "the State Bar of Georgia is a legal entity capable of suing and being sued," any case challenging "the action or inaction of the State Bar or any person in connection with a disciplinary proceeding" can only be brought before the Supreme Court of Georgia. Wallace v. State Bar of Georgia, 268 Ga. 166, 167, 486 S.E.2d 165, 167 (1997).

Even the form of Plaintiff's complaint must be fixed. It is not double-spaced, as required by the Local Rules. N.D. Ga. Loc. R. 5.1(C)(2). In addition to being single-spaced, the Complaint is repeat with gargantuan paragraphs that violate the requirement that allegations "be simple, concise, and direct." See Doc. No. [2], pp. 4–10; see also Fed. R. Civ. P. 8(d)(1). If the complaint were double-spaced and the paragraphs were broken into separate, concise allegations, the 26-page length would balloon pointing to yet another problem – the complaint is by no means "a short and plain statement" of Plaintiff's claims. See Fed. R. Civ. P. 8(a). Even looking to the content of the allegations, dismissal would be proper because Plaintiff's complaint is almost entirely "conclusory allegations, unwarranted deductions of facts or legal conclusions masquerading as facts." Oxford Asset Mgmt., Ltd. v. Jaharis, 297 F.3d 1182, 1188 (11th Cir. 2002).

The problems identified above are by no means exhaustive. They barely scratch the surface. Plaintiff must correct them and set forth clear, direct, concise factual allegations demonstrating a legal entitlement to relief from the Court. Additionally, her allegations must link her claims to specific facts supporting each element of each claim and explaining how each Defendant is personally liable. Plaintiff will be given an opportunity to amend her complaint, but is warned that a failure to cure the deficiencies identified above may result in dismissal with prejudice. See Bryant, 252 F.3d at 1163.

CONCLUSION

As a final matter, Plaintiff has filed a Motion for a Temporary Restraining Order (Doc. No. [3]), asking the Court to enjoin Defendants. To be entitled to a preliminary injunction, a party must show: (1) a substantial likelihood of success on the merits; (2) irreparable harm to the moving party unless the injunction issues; (3) that the threatened injury to the moving party outweighs the harm to the non-moving party if the injunction issues; and (4) that the injunction will not disserve the public interest. MacGinnitie v. Hobbs Grp., LLC, 420 F.3d 1234, 1240 (11th Cir. 2005). Plaintiff addresses only two of these elements, proclaiming without any explanation that she "is likely to prevail on the merits of this action and will suffer immediate and irreparable injury if the Motion is denied." Doc. No. [3], p. 2. This

falls woefully short of "clearly carr[ing] the burden of persuasion" as to these elements in order to be entitled to the "extraordinary and drastic remedy" of injunctive relief. United States v. Jefferson Cty., 720 F.2d 1511, 1519 (11th Cir. 1983). Accordingly, Plaintiff's Motion for a Temporary Restraining Order (Doc. No. [3]) is **DENIED**.

In light of the deficiencies in the complaint, this case is **DISMISSED without prejudice**. Plaintiff has **21 days** from the date of this order to re-plead her claims, fixing all of the deficiencies outlined above. The Court **DIRECTS** the Clerk to close this case. Upon the filing of an amended complaint, the Clerk shall re-open this case and submit the complaint to the Court for frivolity review pursuant to 28 U.S.C. § 1915(e)(2)(B).

IT IS SO ORDERED, this 28th day of March, 2018.

s/Steve C. Jones
HONORABLE STEVE C. JONES
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-15050-AA

VALERIE ARROYO,

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JOSEPH COLBERT, JR.,
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Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia

Before: MARTIN, ROSENBAUM and BRANCH, Circuit Judges.

BY THE COURT:

Appellant's February 21, 2019, motion for reconsideration of our February 12, 2019, order dismissing this appeal as untimely is DENIED.

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

March 19, 2019

Valerie Arroyo
617 SPRINGFIELD DR
CONCORD, NC 28027

Appeal Number: 18-15050-AA
Case Style: Valerie Arroyo v. Joseph Colbert, Jr., et al
District Court Docket No: 1:18-cv-00848-SCJ

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause.

The enclosed order has been ENTERED.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: T. L. Searcy, AA/lt
Phone #: (404) 335-6180

MOT-2 Notice of Court Action

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