AO 450 (SCD 04/2010) Judgment in a Civil Action

Exhibit 3

UNITED STATES DISTRICT COURT
for the
District of South Carolina

Flordeliza A Hawkins,
Plaintiffs
v.

Suntrust Bank; South Carolina Department of Social Services, SCDSS; Anderson County Sheriff's Office, ACSO,
Defendants

Civil Action No. 8:18-cv-00178-DCC

JUDGMENT IN A CIVIL ACTION

The court has ordered that *(check one)*:

■ other: defendants' motions to dismiss are granted.

This action was *(check one)*:

■ Decided by the Honorable Donald C. Coggins, Jr., United States Senior District Judge, presiding, adopting the Reports and Recommendations set forth by the Honorable Jacquelyn D. Austin, United States Magistrate Judge, which recommended granting defendants' motions to dismiss.

Date: October 15, 2018

ROBIN L. BLUME, CLERK OF COURT

Signature of Clerk or Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

Flordeliza A. Hawkins, Plaintiff, v. Suntrust Bank, South Carolina Department of Social Services, Anderson County Sheriff's Office, Defendants.[1]	)	Case No. 8:18-cv-00178-AMQ-JDA **REPORT AND RECOMMENDATION OF MAGISTRATE JUDGE**

This matter is before the Court on a motion to dismiss filed by Defendant Suntrust Bank ("Suntrust") [Doc. 33]; and a motion to dismiss filed by Defendants South Carolina Department of Social Services ("SCDSS") and Anderson County Sheriff's Office ("ACSO") (collectively, "the Agency Defendants") [Doc. 38].[2] Pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2), D.S.C., this magistrate judge is authorized to review all pretrial matters in this case and to submit findings and recommendations to the District Court.

Plaintiff, proceeding pro se, filed this action on January 22, 2018, alleging violations of her constitutional rights. [Doc. 1.] On April 6, 2018, Suntrust filed a motion to dismiss. [Doc. 33.] On April 11, 2018, the Agency Defendants filed a joint motion to dismiss. [Doc. 38.] On April 9, 2018, and April 12, 2018, the Court issued Orders in accordance with

[1]This caption represents the present parties to this action. On May 2, 2018, the undersigned instructed the clerk to amend the caption in accordance with special interrogatories answered by Plaintiff. [Doc. 65.]

[2]On May 25, 2018, the undersigned recommended that Plaintiff's pending motions for summary judgment be denied without prejudice and with leave to refile and that Suntrust's motion for extension of time be found as moot. [Doc. 83.]

Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), advising Plaintiff of the summary judgment/dismissal procedure and of the possible consequences if she failed to adequately respond to the motions. [Docs. 34; 40.] The Court also issued an Amended *Roseboro* Order on April 20, 2018 [Doc. 57], after the Agency Defendants filed a supplemental memorandum in support of their motion to dismiss [Doc. 55]. Plaintiff filed several documents in response to the motions to dismiss filed by Suntrust and the Agency Defendants. [Docs. 51; 59; 60; 64; 68; 70; 78; 80; 87-1[3]; 94; 97.] Suntrust replied to Plaintiff's responses on May 9, 2018 [Doc. 71], and the Agency Defendants replied on May 11, 2018 [Doc. 74]. Accordingly, the motions to dismiss are ripe for review.

BACKGROUND[4]

The precise nature of Plaintiff's claims are difficult to decipher; however, it appears Plaintiff's allegations relate to an eviction that took place on January 15, 2013. [*See* Docs. 1 at 4–5; 1-1.] Plaintiff contends that she and her husband lived at 2130 Cheddar Road in Belton, South Carolina, for more than thirty years. [Doc. 1 at 4.] Plaintiff contends that on January 15, 2013, ACSO wrongfully evicted her and her husband from their home. [*Id.*] She alleges that she and her bedridden husband were forced into the yard even though the weather was cold and rainy. [*Id.*] Plaintiff contends that Suntrust was responsible for the unlawful removal because it evicted them pursuant to an unenforceable contract. [*Id.*]

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[3]On June 4, 2018, Plaintiff filed a motion to amend the Complaint. [Doc. 87.] In an Order denying Plaintiff's motion, the Court indicated that it would "consider Plaintiff's exhibit [Doc. 87-1] in evaluating Defendants' motions to dismiss." [Doc. 95.]

[4]The facts included in this Background section are taken directly from Plaintiff's Complaint. [Docs. 1; 1-1.]

Plaintiff also alleges that ACSO called the rescue squad of Williamston to take her husband to the hospital even though Plaintiff was her husband's power of attorney. [Doc. 1-1 at 1.] Plaintiff contends that—without her permission as his power of attorney—SCDSS took over custody of her husband, allowed a feeding tube to be inserted, and allowed Plaintiff to visit with him only one hour. [Doc. 1 at 4.] Plaintiff contends that the next contact she had regarding her husband was to take him to hospice care. [Doc. 1-1 at 1.] Plaintiff alleges that Defendants' actions caused her husband's death a few days later. [Doc. 1 at 4.]

Although difficult to decipher, Plaintiff appears to allege violations of her Fourth, Tenth, Thirteenth, and Fourteenth Amendment rights as well as her human and disability rights as a result of being evicted from her house on January 15, 2013. [*Id.* at 3.] Plaintiff seeks $3,000,000.00 in damages and the return of her house.[5] [*Id.* at 4–5.]

APPLICABLE LAW

Liberal Construction of Pro Se Complaint

Plaintiff brought this action pro se, which requires the Court to liberally construe her pleadings. *Estelle v. Gamble*, 429 U.S. 97, 106 (1976); *Haines v. Kerner*, 404 U.S. 519, 520 (1972); *Loe v. Armistead*, 582 F.2d 1291, 1295 (4th Cir. 1978); *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978). Pro se pleadings are held to a less stringent standard than those drafted by attorneys. *Haines*, 404 U.S. at 520. The mandated liberal construction means only that, if the Court can reasonably read the pleadings to state a valid

[5]It is not entirely clear from Plaintiff's Complaint the amount of damages she is seeking in the present action. Although Plaintiff states in the relief section of her Complaint that she is seeking $2,000,000.00 in damages [Doc. 1 at 4], she indicates on the next page that she seeks $3,000,000.00 [*id.* at 5].

claim on which the plaintiff could prevail, it should do so. *Barnett v. Hargett*, 174 F.3d 1128, 1133 (10th Cir. 1999). A court may not construct the plaintiff's legal arguments for her. *Small v. Endicott*, 998 F.2d 411, 417–18 (7th Cir. 1993). Nor should a court "conjure up questions never squarely presented." *Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985).

Requirements for a Cause of Action Under § 1983

This action is filed pursuant to 42 U.S.C. § 1983, which provides a private cause of action for constitutional violations by persons acting under color of state law. Section 1983 "'is not itself a source of substantive rights,' but merely provides 'a method for vindicating federal rights elsewhere conferred.'" *Albright v. Oliver*, 510 U.S. 266, 271 (1994) (quoting *Baker v. McCollan*, 443 U.S. 137, 144 n.3 (1979)). Accordingly, a civil action under § 1983 allows "a party who has been deprived of a federal right under the color of state law to seek relief." *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 707 (1999).

Section 1983 provides, in relevant part,

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or any person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . .

42 U.S.C. § 1983. To establish a claim under § 1983, a plaintiff must prove two elements: (1) that the Defendants "deprived [the plaintiff] of a right secured by the Constitution and laws of the United States" and (2) that the Defendants "deprived [the plaintiff] of this constitutional right under color of [State] statute, ordinance, regulation, custom, or usage."

Mentavlos v. Anderson, 249 F.3d 301, 310 (4th Cir. 2001) (third alteration in original) (citation and internal quotation marks omitted).

The under-color-of-state-law element, which is equivalent to the "state action" requirement under the Fourteenth Amendment,

> reflects judicial recognition of the fact that most rights secured by the Constitution are protected only against infringement by governments. This fundamental limitation on the scope of constitutional guarantees preserves an area of individual freedom by limiting the reach of federal law and avoids imposing on the State, its agencies or officials, responsibility for conduct for which they cannot fairly be blamed.

Id. (quoting *Dowe v. Total Action Against Poverty in Roanoke Valley,* 145 F.3d 653, 658 (4th Cir. 1998)) (internal citations and quotation marks omitted). Nevertheless, "the deed of an ostensibly private organization or individual" may at times be treated "as if a State has caused it to be performed." *Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n*, 531 U.S. 288, 295 (2001). Specifically, "state action may be found if, though only if, there is such a 'close nexus between the State and the challenged action' that seemingly private behavior 'may be fairly treated as that of the State itself.'" *Id.* (quoting *Jackson v. Metro. Edison Co.*, 419 U.S. 345, 351 (1974)). State action requires both an alleged constitutional deprivation "caused by the exercise of some right or privilege created by the State or by a rule of conduct imposed by the State . . . or by a person for whom the State is responsible" and that "the party charged with the deprivation [is] a person who may fairly be said to be a state actor." *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 937 (1982). A determination of whether a private party's allegedly unconstitutional conduct is fairly attributable to the State requires the court to "begin[ ] by identifying 'the specific conduct of which the plaintiff

complains.'" *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 51 (1999) (quoting *Blum* v. *Yaretsky*, 457 U.S. 991, 1004 (1982)).

Motion to Dismiss Standards

Rule 12(b)(1)

A motion to dismiss for lack of subject matter jurisdiction filed pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure raises the fundamental question of whether a court has jurisdiction to adjudicate the matter before it. *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 514 (2006). It is the plaintiff's burden to prove jurisdiction, and the court is to "regard the pleadings' allegations as mere evidence on the issue, and may consider evidence outside the pleadings without converting the proceeding to one for summary judgment." *Richmond, Fredericksburg & Potomac R.R. Co. v. United States*, 945 F.2d 765, 768 (4th Cir. 1991). A motion to dismiss for lack of subject matter jurisdiction can arise in two contexts: (1) when the moving party maintains that the complaint "fails to allege facts upon which subject matter jurisdiction can be based" or (2) when the moving party asserts that the "jurisdictional allegations of the complaint [are] not true." *Adams v. Bain*, 697 F.2d 1213, 1219 (4th Cir. 1982). In the first situation, where the moving party asserts that the non-moving party has failed to allege facts establishing subject matter jurisdiction, the court must assume all the facts alleged in the complaint to be true. *Id.* In the second situation, where the moving party disputes the validity of the jurisdictional allegations in the complaint, the court may look beyond the complaint and consider other evidence, such as affidavits, depositions, and live testimony. *Id.* The burden of proof in that situation falls on the plaintiff to demonstrate subject matter jurisdiction. *Id.*

Rule 12(b)(6)

Under Rule 12(b)(6) of the Federal Rules of Civil Procedure, a claim should be dismissed if it fails to state a claim upon which relief can be granted. When considering a motion to dismiss, the court should "accept as true all well-pleaded allegations and should view the complaint in a light most favorable to the plaintiff." *Mylan Labs., Inc. v. Matkari*, 7 F.3d 1130, 1134 (4th Cir. 1993). However, the court "need not accept the legal conclusions drawn from the facts" nor "accept as true unwarranted inferences, unreasonable conclusions, or arguments." *Eastern Shore Mkts., Inc. v. J.D. Assocs. Ltd. P'ship*, 213 F.3d 175, 180 (4th Cir. 2000). Further, for purposes of a Rule 12(b)(6) motion, a court may rely on only the complaint's allegations and those documents attached as exhibits or incorporated by reference. *See Simons v. Montgomery Cty. Police Officers*, 762 F.2d 30, 31 (4th Cir. 1985). If matters outside the pleadings are presented to and not excluded by the court, the motion is treated as one for summary judgment under Rule 56 of the Federal Rules of Civil Procedure. Fed. R. Civ. P. 12(d).

With respect to well-pleaded allegations, the United States Supreme Court explained the interplay between Rule 8(a) and Rule 12(b)(6) in *Bell Atlantic Corp. v. Twombly*:

> Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief," in order to "give the Defendants fair notice of what the . . . claim is and the grounds upon which it rests." While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the "grounds" of his "entitle[ment] to relief" requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. Factual allegations must be enough to raise a right to relief above the speculative level on the assumption that all the allegations in the complaint are true (even if doubtful in fact).

550 U.S. 544, 555 (2007) (footnote and citations omitted); *see also* 5 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1216, at 235–36 (3d ed. 2004) ("[T]he pleading must contain something more . . . than a bare averment that the pleader wants compensation and is entitled to it or a statement of facts that merely creates a suspicion that the pleader might have a legally cognizable right of action.").

"A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the Defendants is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 556). "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a Defendants has acted unlawfully." *Id.* (citing *Twombly*, 550 U.S. at 556). The plausibility standard reflects the threshold requirement of Rule 8(a)(2)—the pleader must plead sufficient facts to show he is entitled to relief, not merely facts consistent with the Defendants's liability. *Twombly*, 550 U.S. at 557 (quoting Fed. R. Civ. P. 8(a)(2)); *see also Iqbal*, 556 U.S. at 678 ("Where a complaint pleads facts that are 'merely consistent with' a Defendants's liability, it 'stops short of the line between possibility and plausibility of "entitlement to relief."'" (quoting *Twombly*, 550 U.S. at 557)). Accordingly, the plausibility standard requires a plaintiff to articulate facts that, when accepted as true, demonstrate that the plaintiff has stated a claim that makes it plausible the plaintiff is entitled to relief. *Francis v. Giacomelli*, 588 F.3d 186, 193 (4th Cir. 2009) (quoting *Iqbal*, 556 U.S. at 678).

DISCUSSION

Suntrust argues that Plaintiff's Complaint should be dismissed because Plaintiff's claims are barred by the *Rooker-Feldman* doctrine [Doc. 33-1 at 5–7] and under the doctrine of res judicata [*id.* at 7–9] and because Suntrust is a private actor [*id.* at 9–11]. The Agency Defendants argue Plaintiff's Complaint should be dismissed because sovereign immunity bars Plaintiff's claims against the Agency Defendants in their official capacities [Doc. 38-1 at 4–6]; the statute of limitations has run on Plaintiff's claims [*id.* at 6–8]; and Plaintiff's claims are barred by the *Rooker-Feldman* doctrine [Doc. 55 at 2–5]. The Court agrees that Plaintiff's claims are barred by the *Rooker-Feldman* doctrine.

The *Rooker-Feldman* doctrine prohibits lower federal courts from "exercising appellate jurisdiction over final state-court judgments." *Lance v. Dennis*, 546 U.S. 459, 463 (2006); *see Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280 (2005); *Davani v. Va. Dep't of Transp.*, 434 F.3d 712, 718–20 (4th Cir. 2006); *Washington v. Wilmore*, 407 F.3d 274, 279–80 (4th Cir. 2005). The Supreme Court has emphasized that *Rooker-Feldman* is a narrow doctrine. *Lance*, 546 U.S. at 464. The doctrine "deprives district courts of subject matter jurisdiction over 'cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.'" *Adkins v. Rumsfeld*, 464 F.3d 456, 463 (4th Cir. 2006) (*quoting Exxon Mobile*, 544 U.S. at 284). Nevertheless, while "a state-court decision is not reviewable by lower federal courts, [ ] a statute or rule governing the decision may be challenged in a federal action." *Skinner v. Switzer*, 562 U.S. 521, 532 (2011).

Here, with respect to Suntrust, Plaintiff appears to contest the Master's Order and Judgment of Foreclosure and Sale entered by the Anderson County Master in Equity ("Foreclosure Order") filed on April 17, 2012.[6] [Doc. 33-2.] Plaintiff requests that this Court undo the Foreclosure Order and return the residence located at 2130 Cheddar Road, Belton, South Carolina, to Plaintiff's possession and ownership. [Doc. 1 at 4.] Plaintiff attempts to couch her claim as a violation of due process and other rights. In other words, she argues that her constitutional, human, and disability rights were violated when the Anderson County Master in Equity foreclosed on her house because she argues that she did not receive notice of the foreclosure proceedings. As such, Plaintiff—in the instant action—is simply the losing party in a state court action, who filed suit in the District Court after the state proceedings ended, complaining of an injury caused by the state court judgment, who is now seeking federal court review and rejection of that judgment. The *Rooker-Feldman* doctrine constrains this Court from conducting any such review. *See Parker v. Spencer*, No. 4:13-cv-00430-RBH, 2015 WL 3870277 (D.S.C. June 23, 2015) (holding that the *Rooker-Feldman* doctrine precluded federal review of a state court

[6]The Court takes judicial notice of documents from the Anderson County Master in Equity, the Ventura County Superior Court of California, and the California Court of Appeals. [*See* Docs. 33-2; 33-8; 97-1]; *see also Philips v. Pitt Cty. Mem. Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009) (courts "may properly take judicial notice of matters of public record"); *Colonial Penn Ins. Co. v. Coil*, 887 F.2d 1236, 1239 (4th Cir. 1989) ("We note that 'the most frequent use of judicial notice is in noticing the content of court records.'"). Further, the Court's consideration of these documents does not require converting the instant motions to ones for summary judgment. [*See* Doc. 68 at 1–2 (Plaintiff requesting that the undersigned take judicial notice of "the facts and conclusion that inter[t]win[e] with the State and Federal Court")]; *see also Richmond*, 945 F.2d at 768 (recognizing that a court may address a motion to dismiss under Federal Rule of Civil Procedure 12(b)(1) by "consider[ing] evidence outside the pleadings without converting the proceeding to one for summary judgment").

judgment of foreclosure). Accordingly, the undersigned recommends granting Suntrust's motion to dismiss.[7]

With respect to the Agency Defendants, Plaintiff appears to contest the Foreclosure Order [Doc. 33-2] as well as the Anderson County Family Court ("Family Court Order"), filed on January 17, 2013 [Doc. 54-2].[8] As an initial matter, Plaintiff appears to challenge ACSO's actions under both the Foreclosure Order and the Family Court Order, but SCDSS'

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[7]Suntrust also argues that Plaintiff's claims should be dismissed because they are barred by res judicata because Plaintiff's claims were fully litigated before the Master in Equity for Anderson County—as recognized by the Ventura County Superior Court of California and the California Court of Appeals. [Doc. 33-1 at 7–9; *see* Docs. 33-2; 33-8; 97-1.] Res judicata bars litigation of claims that were litigated or could have been litigated in an earlier suit. *Nevada v. United States*, 463 U.S. 110, 129–30 (1983). To determine the preclusive effect of a state court judgment, federal courts look to the law of the state where judgment was entered. *Allen v. McCurry*, 449 U.S. 90, 95–96 (1980); *Laurel Sand & Gravel, Inc. v. Wilson*, 519 F.3d 156, 161–62 (4th Cir. 2008). Under South Carolina law, res judicata requires proof of three elements: "(1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit." *Plum Creek Dev. Co. v. City of Conway*, 512 S.E.2d 106, 109 (S.C. 1999). Liberally construed, Plaintiff argues that res judicata does not apply because the instant matter involves the violation of her constitutional rights, *not* the prior foreclosure action. [*See* Docs. 60 at 3; 68-1 at 9; 70 at 1; 78 at 1–2; 97-1 at 13.] The Court disagrees.

All three elements of res judicata have been met in the instant matter: both actions involve Plaintiff and Suntrust; both actions involve the property located at 2130 Cheddar Road in Belton, South Carolina; and the issue of the enforceability of Suntrust's "contract" was fully litigated in the prior foreclosure action. Further, the Ventura County Superior Court of California also found that res judicata barred Plaintiff's challenge to Suntrust's foreclosure of her property as a result of a lawsuit Plaintiff filed in California state court—a decision that was affirmed by the California Court of Appeals. [*See* Docs. 33-2; 33-8.] As the South Carolina Supreme Court has recognized, "[r]es judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties." *Judy v. Judy*, 712 S.E.2d 408, 414 (S.C. 2011) (quoting *Plum Creek*, 512 S.E.2d at 109). Accordingly, the undersigned finds Plaintiff's claims against Suntrust are also subject to dismissal based upon res judicata.

[8]For the same reasons outlined above, *see supra n.6*, the Court takes judicial notice of documents from the Anderson County Family Court [*see* Doc. 54-2].

actions under only the Family Court Order. For the reasons outlined above, the undersigned finds Plaintiff's challenge to ACSO's actions with respect to the Foreclosure Order are barred by the *Rooker-Feldman* doctrine. *See supra* pp. 10–11 (analyzing the application of the *Rooker-Feldman* doctrine to Plaintiff's claims with respect to the Foreclosure Order). Plaintiff also requests that this Court review the Family Court Order and find that the Agency Defendants violated Plaintiff's rights when they called the rescue squad and placed him in emergency SCDSS custody even though she was his power of attorney. [Docs. 1 at 4; 1-1.] Plaintiff attempts to couch her claim as a violation of due process and other rights. In other words, she argues that her constitutional, human, and disability rights were violated when the Anderson County Family Court gave SCDSS emergency custody of her husband because she had power of attorney over him. As such, Plaintiff, as the non-prevailing party in the Anderson County Family Court, filed suit in the District Court after the state proceedings ended, complaining of an injury caused by the state court judgment, seeking federal court review and rejection of that judgment. The *Rooker-Feldman* doctrine constrains this Court from conducting any such review. *See Niblock v. Perry*, No. 3:16-cv-1644, 2018 WL 1448685, at *2 (D.S.C. Mar. 23, 2018) (holding that the *Rooker-Feldman* doctrine precluded federal review of a state family court order regarding emergency custody of minor children). Accordingly, the undersigned recommends granting the Agency Defendants' motion to dismiss.[9]

[9]The Agency Defendants also argue that Plaintiff's claims against them in their official capacities should be dismissed because they are entitled to immunity pursuant to the Eleventh Amendment. [Doc. 38-1 at 4–6.] It appears Plaintiff intended to sue the Agency Defendants in their official capacities, not their individual capacities. [*See* Doc. 62 at 1 (Plaintiff responding to special interrogatories from the Court, and indicating that she was not suing Bartavia Hill because Bartavia was "not acting as an individual

RECOMMENDATION

Wherefore, based upon the foregoing, the Court recommends that Defendants' motions to dismiss [Docs. 33; 38] be GRANTED.

IT IS SO RECOMMENDED.

s/Jacquelyn D. Austin
United States Magistrate Judge

August 10, 2018
Greenville, South Carolina

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capacity . . . [and was] employed by [SCDSS]").]

The Eleventh Amendment prohibits federal courts from entertaining an action against a state. *See, e.g.*, *Alabama v. Pugh*, 438 U.S. 781, 782 (1978) (citations omitted); *Hans v. Louisiana*, 134 U.S. 1, 10–11 (1890). Eleventh Amendment immunity "extends to 'arm[s] of the State,' including state agencies and state officers acting in their official capacity," *Cromer v. Brown*, 88 F.3d 1315, 1332 (4th Cir. 1996) (alteration in original) (internal citations omitted), because "a suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office . . . [and] is no different from a suit against the State itself," *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989) (internal citation omitted). Therefore, Eleventh Amendment immunity protects state agencies and state officials sued in their official capacities from liability for monetary damages under 42 U.S.C. § 1983. *Id.* It is well established in South Carolina that SCDSS and sheriff's offices are considered arms of the state. *See Carroll v. Greenville Cty. Sheriff's Dep't*, 871 F. Supp. 844, 846 (D.S.C. 1994) (finding that "a sheriff's office is an agency of . . . the state," such that "a suit against the sheriff's office is a suit against the state."); *Coffin v. S.C. Dep't of Soc. Svcs.*, 562 F. Supp. 579, 583 (D.S.C. 1983) (finding that SCDSS qualified as an arm of the state for sovereign immunity purposes). Accordingly to the extent Plaintiff has alleged claims against the Agency Defendants in their official capacities, the Agency Defendants are entitled to sovereign immunity pursuant to the Eleventh Amendment, and the claims should be dismissed.

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. "[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see* Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
300 East Washington Street, Room 239
Greenville, South Carolina 29601

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

Flordeliza A. Hawkins, Plaintiff, v. Suntrust Bank, South Carolina Department of Social Services, Anderson County Sheriff's Office, Defendants.	)	Case No. 8:18-cv-00178-DCC **ORDER**

This matter is before the Court on Plaintiff's Motions for Summary Judgment [76, 77], Defendant Suntrust Bank's Motion to Dismiss [33], and Defendants South Carolina Department of Social Services ("SCDSS") and Anderson County Sheriff's Office's ("ACSO") Motion to Dismiss [38]. In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.), this matter was referred to United States Magistrate Judge Jacquelyn D. Austin for pre-trial proceedings and a Report and Recommendation ("Report"). On May 25, 2018, the Magistrate Judge issued a Report recommending that Plaintiff's Motions for Summary Judgment be denied as premature, and on August 10, 2018, she recommended that Defendants' Motions to Dismiss be granted. ECF Nos. 83, 99. No party filed objections to the first Report; Plaintiff filed objections to the second Report, Defendant Suntrust Bank filed a Reply, Plaintiff filed a supplement, and Defendants SCDSS and ACSO filed a Reply. ECF Nos. 103, 104, 106, 108.

LEGAL STANDARD

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The Court is charged with making a de novo determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The Court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* U.S.C. § 636(b). The Court will review the Report only for clear error in the absence of an objection. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that "in the absence of timely filed objection, a district court need not conduct a de novo review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." (citation omitted)).

ANALYSIS

With respect to Defendant Suntrust Bank's Motion to Dismiss, the Magistrate Judge recommends granting the Motion because Plaintiff is seeking to disturb a final state court order, which is barred by the *Rooker-Feldman* doctrine. ECF No. 99. As stated by the Magistrate Judge, Plaintiff appears to contest the Master's Order and Judgment of

Foreclosure and Sale ("the Foreclosure Order") entered by the Anderson County Master in Equity and filed on April 17, 2012.[1] ECF No. 33-2.

Regarding Defendant SCDSS and ACSO's Motion to Dismiss, the Magistrate Judge also recommends granting this Motion pursuant to the *Rooker-Feldman* doctrine. ECF No. 99. She determined that, in Plaintiff's allegations against Defendant ACSO, Plaintiff appears to contest the same Foreclosure Order and an order from the Anderson County Family Court ("the Family Court Order") but Plaintiff only challenges the actions of SCDSS with respect to the Family Court Order.[2]

In her objections, Plaintiff maintains that Defendants violated her constitutional rights. ECF No. 103. She asserts that this case should proceed in the interest of justice. *Id.* In her supplement, she clarifies that she is seeking $3,000,000 in total.

The Court notes that Plaintiff fails to address the merits of the Magistrate Judge's conclusions; however, because she filed objections and in light of her pro se status, the Court has conducted a de novo review of this matter.[3] In her Complaint, Plaintiff requests

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[1] The Magistrate Judge also states that Defendant Suntrust Bank's Motion should be granted because Plaintiff's present claims are barred by res judicata. ECF No. 99 at 11 n. 7. The Court need not reach this argument.

[2] The Magistrate Judge also found that Defendants SCDSS and ACSO are entitled to Eleventh Amendment immunity in their official capacities. For the reasons stated in the Report, the Court agrees that these Defendants are entitled to immunity in their official capacities pursuant to the Eleventh Amendment.

[3] The Court notes that the Magistrate Judge denied Plaintiff's Motion to Amend the Complaint but stated that she considered Plaintiff's exhibit in evaluating the Motions to Dismiss. ECF No. 99 at 2 n. 3. The Court has also reviewed Plaintiff's exhibit in making this ruling. *See* ECF No. 87-1.

that this Court undo the Foreclosure Order and return the foreclosed upon property to Plaintiff's possession and ownership. ECF No. 1 at 4. She further requests that this Court review the Family Court Order and find that Defendants SCDSS and ACSO violated Plaintiff's rights when they called the rescue squad and placed her husband in emergency SCDSS custody even though Plaintiff was his power of attorney. ECF Nos. 1 at 4; 1-1.

The *Rooker-Feldman* doctrine constrains the Court from conducting any such review. The doctrine, precludes "lower federal courts . . . from exercising appellate jurisdiction over final state-court judgments." *Lance v. Dennis*, 546 U.S. 459, 463 (2006). "[I]f in order to grant the federal plaintiff the relief sought, the federal court must determine that the state court judgment was erroneously entered or must take action that would render the judgment ineffectual, *Rooker-Feldman* is implicated, [and] [t]he doctrine applies not only to matters directly addressed by the state court, but also to claims which are inextricably intertwined with state court decisions." *Smalley v. Shapiro & Burson, LLP*, 526 F. Appx. 231, 236 (4th Cir. 2013) (internal citations omitted). The Court finds that the *Rooker-Feldman* doctrine is applicable to the facts in this case. *See Parker v. Spencer*, No. 4:13-cv-00430-RBH, 2015 WL 3870277 (D.S.C. June 23, 2015) (holding that the *Rooker-Feldman* doctrine precluded federal review of a state court judgment of foreclosure); *Niblock v. Perry*, No. 3:16-cv-1644, 2018 WL 1448685, at *2 (D.S.C. Mar. 23, 2018) (holding that the *Rooker-Feldman* doctrine precluded federal review of a state family court order regarding emergency custody of minor children).

Appendix C (2)

CONCLUSION

Accordingly, the Court adopts the Reports of the Magistrate Judge and overrules Plaintiff's objections. Defendant Suntrust Bank's Motion to Dismiss [33] is **GRANTED**, Defendants SCDSS and ACSO's Motion to Dismiss [38] is **GRANTED**, and Plaintiff's Motions for Summary Judgment [76, 77] are **DENIED** as premature. Defendant Suntrust Bank's Motion for Extension of Time [81] is **MOOT**. Plaintiff's Motion [111] is **MOOT** because, as stated in this Order, the Court has conducted a de novo review.

IT IS SO ORDERED.

s/Donald C. Coggins, Jr.
United States District Judge

October 15, 2018
Spartanburg, South Carolina

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.

Appendix B
(A) Appendix B

FILED: April 8, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-2282
(8:18-cv-00178-DCC)

FLORDELIZA A. HAWKINS

Plaintiff - Appellant

v.

SUNTRUST BANK; SOUTH CAROLINA DEPARTMENT OF SOCIAL SERVICES, SCDSS; ANDERSON COUNTY SHERIFF'S OFFICE, ACSO

Defendants - Appellees

J U D G M E N T

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

16-2282

(6) Appendix B

Flordeliza A. Hawkins
735 Berkshire Place
Oxnard, CA 93033

(6) Appendix B

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-2282

FLORDELIZA A. HAWKINS,

Plaintiff - Appellant,

v.

SUNTRUST BANK; SOUTH CAROLINA DEPARTMENT OF SOCIAL SERVICES, SCDSS; ANDERSON COUNTY SHERIFF'S OFFICE, ACSO,

Defendants - Appellees.

Appeal from the United States District Court for the District of South Carolina, at Anderson. Donald C. Coggins, Jr., District Judge. (8:18-cv-00178-DCC)

Submitted: April 4, 2019 Decided: April 8, 2019

Before NIEMEYER and HARRIS, Circuit Judges, and SHEDD, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Flordeliza A. Hawkins, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

Appendix B
(7)

PER CURIAM:

Flordeliza A. Hawkins appeals the district court's order denying relief on her 42 U.S.C. § 1983 (2012) complaint. The district court referred this case to a magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) (2012). The magistrate judge recommended that relief be denied and advised Hawkins that failure to file timely, specific objections to this recommendation could waive appellate review of a district court order based upon the recommendation.

The timely filing of specific objections to a magistrate judge's recommendation is necessary to preserve appellate review of the substance of that recommendation when the parties have been warned of the consequences of noncompliance. *Massey v. Ojaniit*, 759 F.3d 343, 352 (4th Cir. 2014); *see Thomas v. Arn*, 474 U.S. 140, 155 (1985). Hawkins has waived appellate review by failing to file specific objections after receiving proper notice. Accordingly, we grant leave to proceed in forma pauperis and affirm the judgment of the district court.

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

Appendix C (1) Appendix C

FILED: April 23, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-2282
(8:18-cv-00178-DCC)

FLORDELIZA A. HAWKINS

Plaintiff - Appellant

v.

SUNTRUST BANK; SOUTH CAROLINA DEPARTMENT OF SOCIAL SERVICES, SCDSS; ANDERSON COUNTY SHERIFF'S OFFICE, ACSO

Defendants - Appellees

ORDER

Upon consideration of the motion for money damages, the court denies the motion.

For the Court--By Direction

/s/ Patricia S. Connor, Clerk

(1) Appendix B

FILED: April 8, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-2282, Flordeliza Hawkins v. SunTrust Bank
8:18-cv-00178-DCC

NOTICE OF JUDGMENT

Judgment was entered on this date in accordance with Fed. R. App. P. 36. Please be advised of the following time periods:

PETITION FOR WRIT OF CERTIORARI: To be timely, a petition for certiorari must be filed in the United States Supreme Court within 90 days of this court's entry of judgment. The time does not run from issuance of the mandate. If a petition for panel or en banc rehearing is timely filed, the time runs from denial of that petition. Review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only for compelling reasons. (www.supremecourt.gov)

VOUCHERS FOR PAYMENT OF APPOINTED OR ASSIGNED COUNSEL: Vouchers must be submitted within 60 days of entry of judgment or denial of rehearing, whichever is later. If counsel files a petition for certiorari, the 60-day period runs from filing the certiorari petition. (Loc. R. 46(d)). If payment is being made from CJA funds, counsel should submit the CJA 20 or CJA 30 Voucher through the CJA eVoucher system. In cases not covered by the Criminal Justice Act, counsel should submit the Assigned Counsel Voucher to the clerk's office for payment from the Attorney Admission Fund. An Assigned Counsel Voucher will be sent to counsel shortly after entry of judgment. Forms and instructions are also available on the court's web site, www.ca4.uscourts.gov, or from the clerk's office.

BILL OF COSTS: A party to whom costs are allowable, who desires taxation of costs, shall file a Bill of Costs within 14 calendar days of entry of judgment. (FRAP 39, Loc. R. 39(b)).

PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC: A petition for rehearing must be filed within 14 calendar days after entry of judgment, except that in civil cases in which the United States or its officer or agency is a party, the petition must be filed within 45 days after entry of judgment. A petition for rehearing en banc must be filed within the same time limits and in the same document as the petition for rehearing and must be clearly identified in the title. The only grounds for an extension of time to file a petition for rehearing are the death or serious illness of counsel or a family member (or of a party or family member in pro se cases) or an extraordinary circumstance wholly beyond the control of counsel or a party proceeding without counsel.

Each case number to which the petition applies must be listed on the petition and included in the docket entry to identify the cases to which the petition applies. A timely filed petition for rehearing or petition for rehearing en banc stays the mandate and tolls the running of time for filing a petition for writ of certiorari. In consolidated criminal appeals, the filing of a petition for rehearing does not stay the mandate as to co-defendants not joining in the petition for rehearing. In consolidated civil appeals arising from the same civil action, the court's mandate will issue at the same time in all appeals.

A petition for rehearing must contain an introduction stating that, in counsel's judgment, one or more of the following situations exist: (1) a material factual or legal matter was overlooked; (2) a change in the law occurred after submission of the case and was overlooked; (3) the opinion conflicts with a decision of the U.S. Supreme Court, this court, or another court of appeals, and the conflict was not addressed; or (4) the case involves one or more questions of exceptional importance. A petition for rehearing, with or without a petition for rehearing en banc, may not exceed 3900 words if prepared by computer and may not exceed 15 pages if handwritten or prepared on a typewriter. Copies are not required unless requested by the court. (FRAP 35 & 40, Loc. R. 40(c)).

MANDATE: In original proceedings before this court, there is no mandate. Unless the court shortens or extends the time, in all other cases, the mandate issues 7 days after the expiration of the time for filing a petition for rehearing. A timely petition for rehearing, petition for rehearing en banc, or motion to stay the mandate will stay issuance of the mandate. If the petition or motion is denied, the mandate will issue 7 days later. A motion to stay the mandate will ordinarily be denied, unless the motion presents a substantial question or otherwise sets forth good or probable cause for a stay. (FRAP 41, Loc. R. 41).

(3)

U.S. COURT OF APPEAL FOR THE FOURTH CIRCUIT BILL OF COSTS FORM

(Civil Cases)

Directions: Under FRAP 39(a), the costs of appeal in a civil action are generally taxed against appellant if a judgment is affirmed or the appeal is dismissed. Costs are generally taxed against appellee if a judgment is reversed. If a judgment is affirmed in part, reversed in part, modified, or vacated, costs are taxed as the court orders. A party who wants costs taxed must, within 14 days after entry of judgment, file an itemized and verified bill of costs, as follows:

- Itemize any fee paid for docketing the appeal. The fee for docketing a case in the court of appeals is $500 (effective 12/1/2013). The $5 fee for filing a notice of appeal is recoverable as a cost in the district court.
- Itemize the costs (not to exceed $.15 per page) for copying the necessary number of formal briefs and appendices. (Effective 10/1/2015, the court requires 1 copy when filed; 3 more copies when tentatively calendared; 0 copies for service unless brief/appendix is sealed.). The court bases the cost award on the page count of the electronic brief/appendix. Costs for briefs filed under an informal briefing order are not recoverable.
- Cite the statutory authority for an award of costs if costs are sought for or against the United States. See 28 U.S.C. § 2412 (limiting costs to civil actions); 28 U.S.C. § 1915(f)(1) (prohibiting award of costs against the United States in cases proceeding without prepayment of fees).

Any objections to the bill of costs must be filed within 14 days of service of the bill of costs. Costs are paid directly to the prevailing party or counsel, not to the clerk's office.

Case Number & Caption: _____

Prevailing Party Requesting Taxation of Costs: _____

Appellate Docketing Fee (prevailing appellants):			**Amount Requested:** _____			**Amount Allowed:** _____	
Document	**No. of Pages**		**No. of Copies**		**Page Cost (≤$.15)**	**Total Cost**	
	Requested	**Allowed** (court use only)	**Requested**	**Allowed** (court use only)		**Requested**	**Allowed** (court use only)
TOTAL BILL OF COSTS:						$0.00	$0.00

1. If copying was done commercially, I have attached itemized bills. If copying was done in-house, I certify that my standard billing amount is not less than $.15 per copy or, if less, I have reduced the amount charged to the lesser rate.
2. If costs are sought for or against the United States, I further certify that 28 U.S.C. § 2412 permits an award of costs.
3. I declare under penalty of perjury that these costs are true and correct and were necessarily incurred in this action.

Signature: _____ **Date:** _____

Certificate of Service

I certify that on this date I served this document as follows:

Signature: _____ **Date:** _____

Appendix D (1) Appendix D

FILED: April 30, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-2282
(8:18-cv-00178-DCC)

FLORDELIZA A. HAWKINS

Plaintiff - Appellant

v.

SUNTRUST BANK; SOUTH CAROLINA DEPARTMENT OF SOCIAL SERVICES, SCDSS; ANDERSON COUNTY SHERIFF'S OFFICE, ACSO

Defendants - Appellees

MANDATE

The judgment of this court, entered April 8, 2019, takes effect today.

This constitutes the formal mandate of this court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

/s/Patricia S. Connor, Clerk

Appendix D (2)

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-2282

FLORDELIZA A. HAWKINS,

Plaintiff - Appellant,

v.

SUNTRUST BANK; SOUTH CAROLINA DEPARTMENT OF SOCIAL SERVICES, SCDSS; ANDERSON COUNTY SHERIFF'S OFFICE, ACSO,

Defendants - Appellees.

Appeal from the United States District Court for the District of South Carolina, at Anderson. Donald C. Coggins, Jr., District Judge. (8:18-cv-00178-DCC)

Submitted: April 4, 2019 Decided: April 8, 2019

Before NIEMEYER and HARRIS, Circuit Judges, and SHEDD, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Flordeliza A. Hawkins, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

Appendix E Appendix E

FILED: November 9, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-2282
(8:18-cv-00178-DCC)

FLORDELIZA A. HAWKINS

Plaintiff - Appellant

v.

SUNTRUST BANK; SOUTH CAROLINA DEPARTMENT OF SOCIAL SERVICES, SCDSS; ANDERSON COUNTY SHERIFF'S OFFICE, ACSO

Defendants - Appellees

ORDER

The court defers consideration of the application to proceed in forma pauperis pending review of the appeal on the merits.

For the Court--By Direction

/s/ Patricia S. Connor, Clerk

Appendix F Appendix F

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
1100 East Main Street, Suite 501, Richmond, Virginia 23219

November 13, 2018

DOCKETING FORMS
FOLLOW-UP NOTICE

No. 18-2282, Flordeliza Hawkins v. SunTrust Bank
8:18-cv-00178-DCC

TO: SunTrust Bank

REQUESTED FORM(S) DUE: November 16, 2018

The form(s) identified below must be filed in the clerk's office electronically by the due date shown. The forms are available for completion as links from this notice and at the court's Web site.

[X] Disclosure of corporate affiliations

Emily Borneisen, Deputy Clerk
804-916-2704

Docketing 11.16.2018
Appendix F

18-2282

Flordeliza A. Hawkins
735 Berkshire Place
Oxnard, CA 93033

CLERK'S OFFICE
U.S. COURT OF APPEALS
FOR THE FOURTH CIRCUIT
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RICHMOND, VIRGINIA 23219

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