No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

WASHINGTON, D.C.

_____

UNITED STATES ex. rel./Townsend("Pro se litigant")—PETITIONER

Vs.

NATIONAL LABOR RELATIONS BOARD ("NLRB")—General Counsel, et al.—
RESPONDET(s).

APPENDIX RECORD

[ATTACHED TO: Petitioners' Writ of Certiorari]

ATTACHMENT

Appendix A

Decision of Court of Appeals for the Eleventh Circuit, 1 of 3 pgs.; dated May 23, 2019.

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

August 12, 2019

Clerk - Northern District of Georgia
Richard B. Russell Bldg & US Courthouse
2211 UNITED STATES COURTHOUSE
75 TED TURNER DR SW
STE 2211
ATLANTA, GA 30303-3309

Appeal Number: 19-11086-A
Case Style: Aretha Townsend v. National Labor Relations Board
District Court Docket No: 1:18-cv-05750-LMM

The enclosed copy of the Clerk's Entry of Dismissal for failure to prosecute in the above referenced appeal is issued as the mandate of this court. See 11th Cir. R. 41-4.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Denise E. O'Guin, A
Phone #: (404) 335-6188

Enclosure(s)

DIS-2 Letter and Entry of Dismissal

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 19-11086-A

UNITED STATES EX REL.,

Plaintiff,

ARETHA TOWNSEND,

Plaintiff - Appellant,

versus

NATIONAL LABOR RELATIONS BOARD,
(NLRD), General Counsel,

Defendant - Appellee.

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

ENTRY OF DISMISSAL: Pursuant to the 11th Cir.R.42-1(b), this appeal is DISMISSED for want of prosecution because the appellant Aretha Townsend has failed to pay the filing and docketing fees to the district court within the time fixed by the rules., effective August 12, 2019.

DAVID J. SMITH
Clerk of Court of the United States Court
of Appeals for the Eleventh Circuit

by: Denise E. O'Guin, A, Deputy Clerk

FOR THE COURT - BY DIRECTION

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 19-11086-A

UNITED STATES EX REL.,

Plaintiff,

ARETHA TOWNSEND,

Plaintiff-Appellant,

versus

NATIONAL LABOR RELATIONS BOARD,
(NLRD), General Counsel,

Defendant-Appellee.

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

ORDER:

In December 2018, Aretha Townsend filed the instant civil complaint, which she self-styled as a "Wrongful Dismissal," "Amended Redress," and "Reply Brief" against the National Labor Relations Board ("NLRB"). As background, in August 2016, Townsend filed a separate complaint in the district court against the NLRB. *Townsend v. Nat'l Labor Relations Bd.*, CM/ECF for U.S. Dist. Ct. for N.D. of GA, No. 1:16-cv-03169-WSD ("*Townsend I*"). Her complaint in *Townsend I* alleged that her employers, Dawn Foods, Inc., and Ambassador Staffing Corp., had retaliated against her and wrongfully terminated her. She stated that following her termination, she filed a charge with the NLRB, alleging that her employer had terminated her in

violation of the National Labor Relations Act ("NLRA"). The NLRB's Regional Director declined to issue a complaint on Townsend's charge, and the NLRB's Office of General Counsel upheld the Regional Director's decision on appeal. In *Townsend I*, Townsend sought reversal of that NLRB decision. She also moved the district court for leave to proceed *in forma pauperis* ("IFP"). The district court *sua sponte* dismissed Townsend's complaint as frivolous, noting that it had dismissed that complaint because the General Counsel's decision to decline to file a complaint was unreviewable by federal courts. The court denied her IFP status on appeal.

Returning to the instant December 2018 complaint, Townsend reiterated the arguments set forth in her initial complaint in *Townsend I* as to why the General Counsel should have filed a complaint. She also appeared to be seeking to appeal the district court's decision denying her previous complaint in *Townsend I*. She moved the district court for IFP status as well. The district court *sua sponte* construed her complaint as a Rule 60(b), Fed. R. Civ. P., motion and dismissed it as frivolous, concluding that she impermissibly filed the Rule 60(b) motion in a separate case from *Townsend I* and that she had failed to show extraordinary circumstances that would entitle her to relief. Townsend appealed, and now seeks IFP status from this Court.

Because Townsend has moved for leave to proceed on appeal, her appeal is subject to a frivolity determination. *See* 28 U.S.C. § 1915(e)(2)(B). "[A]n action is frivolous if it is without arguable merit either in law or fact." *Napier v. Preslicka*, 314 F.3d 528, 531 (11th Cir. 2002) (quotations omitted). This Court reviews the denial of a Rule 60(b) motion for an abuse of discretion. *See Cano v. Baker*, 435 F.3d 1337, 1341-42 (11th Cir. 2006). To demonstrate that the district court abused its discretion in denying a Rule 60(b) motion, a movant "must demonstrate a justification so compelling that the district court was required to vacate its order." *Id.* at 1342 (quotation and alteration omitted).

The district court did not abuse its discretion by denying Townsend's construed Rule 60(b) motion. Townsend's Rule 60(b) motion for reconsideration was filed in a new case, which was, by itself, grounds for dismissal. *Bankers Mortg. Co. v. United States*, 423 F.2d 73, 78 (5th Cir. 1970). Moreover, Townsend's motion, which reiterated her claims that already had been rejected by the district court in *Townsend I*, failed to cite extraordinary circumstances warranting the reopening of judgment. *Gonzalez v. Crosby*, 545 U.S. 524, 535 (2005) (noting that a movant seeking relief under Rule 60(b) must show extraordinary circumstances justifying the reopening of final judgment). Accordingly, Townsend failed to present any nonfrivolous issues on appeal. Her motion for IFP status is DENIED.

/s/ Robin S. Rosenbaum
UNITED STATES CIRCUIT JUDGE

Appendix B

Decision (Petitioners' Motion), Court of Appeals for the Eleventh Circuit, 1page, attached letter from Clerk of Court; dated July 16, 2019.

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 19-11086-A

UNITED STATES EX REL.,

Plaintiff,

ARETHA TOWNSEND,

Plaintiff-Appellant,

versus

NATIONAL LABOR RELATIONS BOARD,
(NLRD), General Counsel,

Defendant-Appellee.

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

Before: ROSENBAUM and BRANCH, Circuit Judges.

BY THE COURT:

Aretha Townsend has filed a motion for reconsideration, pursuant to 11th Cir. R. 27-2, of this Court's order dated May 23, 2019, denying her motion for leave to proceed *in forma pauperis* in her appeal of the district court's *sua sponte* dismissal as frivolous of her civil complaint, which the district court construed as a Fed. R. Civ. P. 60(b) motion for reconsideration. Because Townsend has not alleged any points of law or fact that this Court overlooked or misapprehended in denying her motion, her motion for reconsideration 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

July 16, 2019

Aretha Townsend
PO BOX 1197
AUSTELL, GA 30168

Appeal Number: 19-11086-A
Case Style: Aretha Townsend v. National Labor Relations Board
District Court Docket No: 1:18-cv-05750-LMM

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.

Pursuant to Eleventh Circuit Rule 42-1(b) you are hereby notified that upon expiration of fourteen (14) days from this date, this petition will be dismissed by the clerk without further notice unless the docketing fee is paid to the clerk of this court.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Denise E. O'Guin, A/lt
Phone #: (404) 335-6188

MOT-2 Notice of Court Action

Appendix C

Decision (Petitioners' Re-filed Complaint—Amended Redress), District Court for the Northern District of Georgia, 1 of 8pgs; dated January 23, 2019.

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

ARETHA TOWNSEND, Plaintiff, v. NATIONAL LABOR RELATIONS BOARD, Defendant.	:	CIVIL ACTION NO. 1:18-CV-05750-LMM

ORDER

This case comes before the Court on a frivolity determination pursuant to 28 U.S.C. § 1915(e)(2). On January 2, 2019, Magistrate Judge Catherine M. Salinas granted Plaintiff *in forma pauperis* status for the purpose of allowing a frivolity determination. The case was then transferred to the undersigned on January 2, 2019. After due consideration, the Court enters the following Order:

I. LEGAL STANDARD

28 U.S.C. § 1915(e)(2) requires a federal court to dismiss an action if it (1) is frivolous or malicious, or (2) fails to state a claim upon which relief may be granted. The purpose of Section 1915(e)(2) is "to discourage the filing of, and waste of judicial and private resources upon, baseless lawsuits that paying litigants generally do not initiate because of the costs of bringing suit and because of the threat of sanctions for bringing vexatious suits under Federal Rule of Civil Procedure 11." Neitzke v. Williams, 490 U.S. 319, 327 (1989). A dismissal

pursuant to Section 1915(e)(2) may be made *sua sponte* by the Court prior to the issuance of process, so as to spare prospective defendants the inconvenience and expense of answering frivolous complaints. Id. at 324.

A claim is frivolous "where it lacks an arguable basis either in law or in fact." Id. at 325. In other words, a complaint is frivolous when it "has little or no chance of success"—for example, when it appears "from the face of the complaint that the factual allegations are clearly baseless[,] the legal theories are indisputably meritless," or "seeks to enforce a right that clearly does not exist." Carroll v. Gross, 984 F.2d 392, 393 (11th Cir. 1993) (internal quotations omitted); see Neitzke, 490 U.S. at 327. Claims premised on allegations that are "fanciful" or "fantastic" are subject to dismissal for frivolity. Denton v. Hernandez, 504 U.S. 25, 32 (1992) (quoting Neitzke, 490 U.S. at 325). In the context of a frivolity determination, the Court's authority to "'pierce the veil of the complaint's factual allegations' means that a court is not bound, as it usually is when making a determination based solely on the pleadings, to accept without question the truth of the plaintiff's allegations." Denton, 504 U.S. at 32 (quoting Neitzke, 490 U.S. at 325).

A complaint fails to state a claim when it does not include "enough factual matter (taken as true)" to "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-56 (2007) (noting that "[f]actual allegations must be enough to raise a right to relief above the speculative level," and the complaint "must contain

something more . . . than . . . statement of facts that merely creates a suspicion [of] a legally cognizable right of action"); see also Ashcroft v. Iqbal, 556 U.S. 662, 680-685 (2009); Oxford Asset Mgmt. v. Jaharis, 297 F.3d 1182, 1187-88 (11th Cir. 2002) (stating that "conclusory allegations, unwarranted deductions of facts[,] or legal conclusions masquerading as facts will not prevent dismissal"). While the Federal Rules do not require specific facts to be pled for every element of a claim or that claims be pled with precision, "it is still necessary that a complaint 'contain either direct or inferential allegations respecting all the material elements necessary to sustain a recovery under some viable legal theory.'" Fin. Sec. Assurance, Inc. v. Stephens, Inc., 500 F.3d 1276, 1282-83 (11th Cir. 2007). A plaintiff is required to present "more than an unadorned, the-defendant-unlawfully-harmed-me accusation" and "'naked assertion[s]' devoid of 'further factual enhancement'" do not suffice. Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 555).

The Court recognizes that Plaintiff is appearing *pro se*. Thus, the Complaint is more leniently construed and "held to less stringent standards than formal pleadings drafted by lawyers." Erickson v. Pardus, 551 U.S. 89, 94 (2007) (citations and internal quotation marks omitted); Tannenbaum v. United States, 148 F.3d 1262, 1263 (11th Cir. 1998). However, nothing in that leniency excuses a plaintiff from compliance with threshold requirements of the Federal Rules of Civil Procedure. See Moon v. Newsome, 863 F.2d 835, 837 (11th Cir. 1998), cert. denied, 493 U.S. 863 (1989). Neither does this leniency require or allow courts

"to rewrite an otherwise deficient pleading [by a *pro se* litigant] in order to sustain an action." Campbell v. Air Jamaica Ltd., 760 F.3d 1165, 1169 (11th Cir. 2014) (quoting GJR Invs., Inc. v. Cty. of Escambia, 132 F.3d 1359, 1369 (11th Cir. 1998)).

II. DISCUSSION

On August 29, 2016, Plaintiff filed an action in this district seeking review of the decision by the General Counsel of the National Labor Relations Board ("General Counsel") not to issue a complaint on her behalf. See Townsend v. NLRB, No. 1:16-cv-3169-WSD (N.D. Ga.) ("Townsend I"). On April 26, 2017, the Court dismissed Plaintiff's action pursuant to 28 U.S.C. § 1915(e)(2)(B) because the General Counsel's decision to decline to file a complaint is unreviewable by federal courts. Townsend I, Dkt. No. [5] at 3. Plaintiff filed a notice of appeal on May 5, 2017 and filed an application to appeal *in forma pauperis* (Plaintiff's "application") on May 19, 2017. Townsend I, Dkt. Nos. [11, 12]. The Court denied Plaintiff's application because Plaintiff's appeal was "not taken in good faith" as it lacked an affidavit reciting the issues to be reviewed upon appeal and was not "capable of being convincingly argued." Townsend I, Dkt. No. [12] at 3-4.

A. Motion for Reconsideration

Plaintiff seeks review of the order in Townsend I dismissing her application to appeal *in forma pauperis*. Dkt. No. [3] at 1. After thoroughly reviewing the Complaint, the Court construes Plaintiff's self-styled "Wrongful Dismissal" and "Amended Redress . . . and Reply Brief" as a Motion for Reconsideration

pursuant to Fed. R. Civ. P. 60(b). See Dkt. No. [3] at 1, 18, 25. However, a "motion for relief from final judgment [under Fed. R. Civ. P. 60(b)] must be filed in the district court and in the action in which the original judgment was entered." Bankers Mortg. Co. v. United States, 423 F.2d 73, 78 (5th Cir. 1970). Plaintiff's Motion fails because she filed her Motion in a different action than the one for which she seeks review. Id.

Plaintiff's Complaint can also be construed liberally as an independent action for relief pursuant to the "savings clause" in Fed. R. Civ. P. 60(d)(1). However, relief under this provision is "reserved for those cases of 'injustices which, in certain instances, are deemed sufficiently gross to demand a departure' from rigid adherence to the doctrine of res judicata." United States v. Beggerly, 524 U.S. 38, 46 (1998) (quoting Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238, 244 (1944)). Further, "[an] independent action can not be made a vehicle for the relitigation of issues." Bankers Mortg. Co., 423 F.2d at 79. A party may not use an independent action to argue "issues that were open to litigation in the former action where he had a fair opportunity to make his claim or defense in that action." Id.; see also Gonzalez v. Sec'y for Dep't of Corr., 366 F.3d 1253, 1291-92 (11th Cir. 2004) (explaining that Rule 60's savings clause "was never intended to permit parties to relitigate the merits of claims or defenses, or to raise new claims or defenses that could have been asserted during the litigation of the case."). In Plaintiff's notice of appeal of the Townsend I Court's dismissal of her original complaint, Plaintiff alleged that the General Counsel's "unreviewable

discretion" was unconstitutional. Townsend I, Dkt. No. [7] at 5. Plaintiff reiterates the very same argument as her basis for requesting the Court to reconsider the denial of her previous application. Dkt. No. [3] at 11. Plaintiff cannot use Fed. R. Civ. P. 60(d) as a vehicle for relitigating claims that failed in a previous matter. Bankers Mortg. Co., 423 F.2d. at 79.

B. Filing Restriction

Pursuant to the All Writs Act, district courts may enjoin litigants with a documented history of abusive litigation practices from pursuing further actions. See 28 U.S.C. § 1651(a); Vendo Co. v. Lekto-Vend Corp., 433 U.S. 623, 639 n.9 (1977) ("Federal courts are able to enjoin future repetitive litigation."). The Eleventh Circuit has explained:

> The [All Writs] Act allows courts to safeguard not only ongoing proceedings, but potential future proceedings, as well as already-issued orders and judgments. This includes the power to enjoin litigants who are abusing the court system by harassing their opponents. A court has a responsibility to prevent single litigants from unnecessarily encroaching on the judicial machinery needed by others, and a litigant can be severely restricted as to what he may file and how he must behave in his applications for judicial relief.

Maid of the Mist Corp. v. Alcatraz Media, LLC, 338 F. App'x 940, 942 (11th Cir. 2010) (internal quotations and citations omitted). Nonetheless, a litigant may not be "completely foreclosed from *any* access to the court." Id.

The Court has reviewed Plaintiff's filing activity in this district. Since August 2015, Plaintiff has filed suit against various Defendants in eight separate

cases, including the instant case.[1] All of these cases have been dismissed as frivolous. Further, as she did in the present case, Plaintiff filed one of these suits in an attempt to relitigate the same claims already raised and rejected in a prior suit. See Townsend v. Staples, Inc., No. 1:15-cv-2835-WSD (N.D. Ga.); Townsend v. Staples, Inc., No. 1:18-cv-2635-LMM (N.D. Ga.).

Because of Plaintiff's long history of filing frivolous complaints against numerous defendants, the Court finds it appropriate to restrict Plaintiff from submitting further *pro se* filings in this or any other matter in the Northern District of Georgia without first obtaining leave of the Court. See Dinardo v. Palm Beach Cty. Circuit Court Judge, 199 F. App'x 731, 735-37 (11th Cir. 2006) (upholding a similar filing restriction where the plaintiffs in the action "had filed seven different *pro se* lawsuits in the District Court for the Southern District of Florida against various public officials and judicial officers over the preceding year"); see also Martin-Trigona v. Shaw, 986 F.2d 1384, 1387-88 (11th Cir. 1993) ("This Court has upheld pre-filing screening restrictions on litigious plaintiffs.") (citing Copeland v. Green, 949 F.2d 390, 391 (11th Cir. 1991) (per curiam) and

[1] These cases include Townsend v. Staples, Inc., No. 1:15-cv-2835-WSD (N.D. Ga.) (filed Aug. 11, 2015); Townsend v. NLRB, No. 1:16-cv-3169-WSD (N.D. Ga.) (filed Aug. 29, 2016); Townsend v. Waterford Point, *et al.*, No. 1:16-cv-4610-LMM (N.D. Ga.) (filed Dec. 15, 2016); Townsend v. Ga. State Revenue Dep't, No. 1:17-cv-0152-LMM (N.D. Ga.) (filed Jan. 13, 2017); Townsend v. Educ. Mgmt. Corp., *et al.*, No. 1:17-cv-0639-LMM (N.D. Ga.) (filed Feb. 21, 2017); Townsend v. Staples, Inc., No. 1:18-cv-2635-LMM (N.D. Ga.) (filed May 29, 2018); and Townsend v. Capital One Auto's, *et al.*, No. 1:18-cv-3952-LMM (N.D. Ga.) (filed Aug. 20, 2018).

Cofield v. Ala. Pub. Serv. Comm., 936 F.2d 512, 517-18 (11th Cir. 1991)). The Court finds that this restriction appropriately balances Plaintiff's right of access to the courts with the Court's need to manage its docket and limit abusive filings. See Cofield, 936 F.2d at 517 (citing In re McDonald, 489 U.S. 180 (1989) (per curiam)).

Accordingly, the Clerk is **DIRECTED** to **DISMISS** this action **WITHOUT PREJUDICE** as frivolous. The Clerk is **DIRECTED** to **CLOSE** this case.

In light of Plaintiff's documented history of frequent and frivolous litigation, **IT IS FURTHER ORDERED** that Plaintiff must either be represented by counsel or obtain leave of court before filing any documents in this matter or in any other matter before the Northern District of Georgia. The Clerk's Office is **DIRECTED** to submit any document that Plaintiff wishes to file to the Court for preliminary review.

IT IS SO ORDERED this 23rd day of January, 2019.

Leigh Martin May
Leigh Martin May
United States District Judge