APPENDIX A

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[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 19-11751
Non-Argument Calendar

D.C. Docket No. 1:19-cv-00375-SCJ

LEAH CALDWELL,

Plaintiff-Appellant,

versus

JUDGE DORIS L. DOWNS,
WENDY L. SHOOB,

Defendants-Appellees.

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

(October 15, 2019)

Before WILSON, WILLIAM PRYOR and GRANT, Circuit Judges.

PER CURIAM:

Leah Caldwell appeals the district court's dismissal of her pro se complaint, which alleged violations under 42 U.S.C. § 1983. Caldwell argues that the district court erred in two ways. First, by transferring her case from the Eastern District of California to the Northern District of Georgia. And second, by dismissing her complaint for failure to state a claim under 28 U.S.C. § 1915(e)(2)(B)(ii). Because we conclude that Caldwell has not alleged sufficient facts to support a federal claim for relief against any defendant in this case, we affirm the district court's dismissal of her complaint. We need not and do not consider Caldwell's transfer of venue claim.

STANDARDS OF REVIEW

A court must dismiss an *in forma pauperis* complaint "at any time if the court determines that . . . the action or appeal . . . fails to state a claim on which relief may be granted." 28 U.S.C. § 1915(e)(2)(B)(ii). We review de novo a district court's sua sponte dismissal of an *in forma pauperis* complaint for failure to state a claim under § 1915(e)(2)(B)(ii), taking the allegations in the complaint as true. *Alba v. Montford*, 517 F.3d 1249, 1252 (11th Cir. 2008).

To state a claim under § 1983, a plaintiff must allege that a person acting under color of state law committed an act that deprived her of some right protected by the Constitution or laws of the United States. *See* 42 U.S.C. § 1983. "All constitutional claims brought under § 1983 are tort actions, subject to the statute of

limitations governing personal injury actions in the state where the § 1983 action has been brought." *McNair v. Allen*, 515 F.3d 1168, 1173 (11th Cir. 2008).

"The standards governing dismissals under Rule 12(b)(6) apply to § 1915(e)(2)(B)(ii)." *Alba*, 517 F.3d at 1252. To survive a motion to dismiss, the plaintiff's complaint must contain facts sufficient to support a plausible claim for relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *see also Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007).

BACKGROUND

The allegations in Caldwell's dismissed complaint concern events surrounding a 2005 child-custody hearing. Caldwell alleges that Georgia state judges Doris L. Downs and Wendy L. Shoob[1] violated her constitutional rights when: (1) Judge Shoob called an emergency hearing and "issued an illegal gag order unlawfully restricting [Caldwell's] civil rights"; (2) Judge Downs "issued an unlawful, [handwritten] bench warrant ordering [Caldwell's] arrest"; (3) Leah J. Zammit[2] and a then-unknown passenger allegedly stalked Caldwell by car for several miles, during which time the passenger "directed [Caldwell's] arrest," and ordered that Caldwell's children be placed in their father's vehicle; and (4) while in jail, Caldwell was "forced to sign [Judge Downs's] order to switch custody."

[1] Both Judge Shoob and Judge Downs serve on the Superior Court of Fulton County.
[2] Zammit served as counsel for Caldwell's ex-husband at the custody hearing.

Though these events occurred in 2005, Caldwell asserts that she did not know the identity of the passenger until 2017, when she saw an online video of Judge Downs. Her complaint requested $391,729.90 in damages against Judge Downs and Judge Shoob.

Caldwell's complaint was initially filed in the Eastern District of California, but a magistrate judge transferred the case to the Northern District of Georgia under 28 U.S.C. § 1406(a).

DISCUSSION

The district court dismissed Caldwell's complaint for three reasons, but we only need to consider two of those grounds here.[3]

I.

Caldwell argues that the district court erred when it found absolute judicial immunity barred her claims against Judge Downs and Judge Shoob. Judges have absolute immunity from liability under § 1983 for actions performed in their judicial capacity, provided the actions are not done in the clear absence of all jurisdiction. *Roland v. Phillips*, 19 F.3d 552, 555 (11th Cir. 1994). We have said:

> Whether a judge's actions were made while acting in his judicial capacity depends on whether: (1) the act complained of constituted a normal judicial function; (2)

[3] Zammit was included as a defendant in one of Caldwell's amended complaints, but the district court dismissed that claim. We need not discuss whether that dismissal was appropriate because Caldwell did not brief that issue before this Court, and issues not briefed on appeal are deemed abandoned. *See Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008).

> the events occurred in the judge's chambers or in open court; (3) the controversy involved a case pending before the judge; and (4) the confrontation arose immediately out of a visit to the judge in his judicial capacity.

Sibley v. Lando, 437 F.3d 1067, 1070 (11th Cir. 2005). Judicial immunity applies even when the judge's actions are "in error, malicious, or ... in excess of his or her jurisdiction." *Bolin v. Story*, 225 F.3d 1234, 1239 (11th Cir. 2000).

Assuming that Caldwell's allegations are true—as our precedent demands we must—it is obvious that the district court did not err when it dismissed Caldwell's claims against Judge Shoob and Judge Downs. Caldwell has not presented sufficient facts that the judges acted outside their judicial capacity. As the district court noted, signing orders and issuing bench warrants for a party's failure to appear are run-of-the-mill judicial functions. Rather than allege judicial impropriety, Caldwell's allegations show that both judges acted in relation to Caldwell's pending child-custody hearing. And if Judge Downs was present at Caldwell's out-of-court arrest, her mere presence would not violate Caldwell's constitutional rights, nor would her presence deprive her actions of their judicial character. *See id.*, 225 F.3d 1239.

Because the allegations against Judge Downs and Judge Shoob are insufficient to support a plausible claim for relief, we conclude that the district court properly dismissed her claim as it related to these defendants.

II.

Moreover, the statute of limitations bars this suit. Caldwell's claims are governed by Georgia law, under which the applicable statute of limitations is two years. O.C.G.A. § 9-3-33. Thus, Caldwell needed to file her suit within two years from the date the limitations period began to run. The clock will not begin to run "until the plaintiffs know or should know (1) that they have suffered the injury that forms the basis of their complaint and (2) who has inflicted the injury." *Chappell v. Rich*, 340 F.3d 1279, 1283 (11th Cir. 2003). Equitable tolling is only appropriate when a plaintiff "untimely files because of *extraordinary circumstances* that are both beyond his control and unavoidable even with diligence." *Arce v. Garcia*, 434 F.3d 1254, 1261 (11th Cir. 2006). "The plaintiff bears the burden of showing that such extraordinary circumstances exist." *Id.*

Caldwell claims these events happened in 2005, but she filed her case in 2017. Like the district court, we reject the argument that the statute of limitations should be tolled because Caldwell did not know Judge Downs was the passenger in Zammit's car until she saw a video in 2017. The facts supporting Caldwell's cause of action were apparent or should have been apparent "to a person with a reasonably prudent regard for his rights." *Mullinax v. McElhenney*, 817 F.2d 711, 716 (11th Cir. 1987). It is clear from her complaint that in 2005 Caldwell knew the identity of Judge Shoob, she knew that her rights had been violated by some

unknown person, and she knew that Judge Downs's name was on her arrest warrant and hearing paperwork. This was sufficient information to file suit within the limitations period.

Because she has not provided any credible reason why her claims would have tolled during that 12-year period, we conclude that the limitations period began to run in 2005, and therefore, that Caldwell's suit is barred by the statute of limitations.

CONCLUSION

We find that the district court did not err by dismissing Caldwell's § 1983 action pursuant to § 1915(e)(2)(B)(ii). Caldwell did not allege sufficient facts to show that Judge Downs and Judge Shoob are not entitled to absolute judicial immunity and, further, the suit is barred by the statute of limitations. The district court's dismissal of her complaint made her motion to transfer moot, so we need not discuss that here.

AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 19-11751-HH

LEAH CALDWELL,

Plaintiff - Appellant,

versus

JUDGE DORIS L. DOWNS,
WENDY L. SHOOB,

Defendants - Appellees.

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

Before: WILSON and JILL PRYOR, Circuit Judges.

BY THE COURT:

Appellant's "Motion to Set Aside Clerks' Entry of Dismissal" is GRANTED. Appellant may proceed on appeal without filing an appendix, and the appeal is REINSTATED.

APPEAL NUMBER 19-11751-FF

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

LEAH S. CALDWELL,

Appellant – Plaintiff

v.

DORIS L. DOWNS,

WENDY L. SHOOB

Appellees – Defendants

MOTION TO SET ASIDE CLERKS' ENTRY OF DISMISSAL

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MOTION TO SET ASIDE CLERKS' ENTRY OF DISMISSAL

In the name of God, I, Leah S. Caldwell, the Appellant and Plaintiff, filed with the court a timely and correct brief with an appendix or table of authorities on June 14th, 2019 pursuant to the 11th Cir.R 42-2(C) and 42-3(C) enumerated as page ii in the Table of Contents.

In correspondence dated June 18th, 2019, the Clerk of Court, David Smith and his Deputy Clerk, Janet Mohler returned to the Appellant an unfiled paper described as a certificate of interested persons which Appellant mailed back to the court. The letter did not state that an appendix was missing or that the "Table of Authorities" was not an interchangeable or acceptable title for what is also called the appendix. The Appellant received no other notification concerning this matter prior to the dismissal.

Considering that the Pro Se Appellant in forma pauperis litigating outside her jurisdiction received no notification from the court concerning the missing document, Federal Civil Procedure, Rule 30 (f) provides that "the court may...dispense with the appendix and permit an appeal to proceed on the original record with any copies of the records or relevant parts that the court may order the parties to file."

This appeal which addresses several serious issues including the conflict of interest between an adjudicating District Judge and the Appellee Doris L. Downs warrants proper adjudication on its merits and not on miscommunication.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 19-11751-FF

LEAH CALDWELL,

Plaintiff - Appellant,

versus

JUDGE DORIS L. DOWNS,
WENDY L. SHOOB,

Defendants - Appellees.

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

ENTRY OF DISMISSAL: Pursuant to the 11th Cir.R. 42-2(c), this appeal is DISMISSED for want of prosecution because the appellant Leah Caldwell failed to file an appendix within the time fixed by the rules, effective July 09, 2019.

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

by: Janet K. Mohler, FF, Deputy Clerk

FOR THE COURT - BY DIRECTION

12a

Appeal Number 19-11751- FF

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

LEAH S. CALDWELL, Appellant-Plaintiff

v.

DORIS L. DOWNS, Appellee-Defendant
WENDY L. SHOOB, Appellee-Defendant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

APPELLANT BRIEF

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SUMMARY OF THE ARGUMENT

Stalking and concealment by a superior court judge directly violates 42 USC 1983.

On June 17, 2005, Appellee Doris L. Downs unlawfully concealed her identity from the Appellant, rode illegally in the opposing counsel's vehicle stalking the Appellant and her children until the Appellant's vehicle was surrounded by Fulton County Officers in Atlanta Georgia. Appellee Doris L. Downs then unlawfully directed the Appellant's arrest in person which also violated the above code.

The illegal orders subsequently signed by Appellee Wendy L. Shoob as a result of this unlawful arrest and orchestrated as a condition of release, denied the plaintiff her God-given right and her civil right to contact and be with her children which again violates 42 USC 1983.

Appellant's 14th Amendment right to jurisdiction in the state of California where the Appellant resides and to equal protection within the law were violated by the transfer of this case to the Northern District of Georgia.

Appellant's original complaint was filed on June 16th, 2017 in California. In the original filing, the court was notified that diversity existed and jurisdiction was granted because the Appellant was located in California and the Appellees in Georgia. Removal on the basis of diversity needed to have been effected within

one year after the complaint was filed in any event or by June 15th, 2018 (28 USC 1445) (Fed Civ 2: 3401) and no such order was submitted

The second amended complaint dated January 11th, 2019 was filed in response to Magistrate Allison Claire's December 14th, 2018 order and not as a pretext to transfer the complaint to Georgia. The Federal Rules of Civil Procedure state that if the original complaint was removable on federal question grounds then later developments creating diversity, such as an amended complaint, do not re-trigger the right to remove. Removal applied when the case was first transferrable which was on or before June 15th, 2018 (Fed Civ 2:3389).

THE ARGUMENT

The transfer of this case from the Eastern District of California to the Northern District of Georgia was a violation of the Civil Rights Act of 1866 and therefore the Appellants 14th Amendment Rights.

The Civil Rights Act of 1866 was enacted "To protect all Persons in the United States in their Civil Rights, and furnish the Means of their Vindication" and that "all persons born in the United States are hereby declared to be citizens ...and shall have the same right...as is enjoyed by white citizens..." Section 3 further delineates, "...that the district courts of the United States...shall have...cognizance of all crimes and offences committed against the provisions of this act...and have the right to remove such cause for trial to the proper district or circuit court..." The Civil Rights Act of 1866 was codified into the 14th Amendment in 1868.

According to 28 USC 455, section a states that "Any justice, judge, or magistrate or judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." Section c from the same statute states that "a judge should inform himself about his personal and fiduciary financial interests." Section e further adds that where disqualification arises ...(a) waiver may be accepted provided it is preceded by a full disclosure on the record of the basis for disqualification.

No disclosure was ever presented prior to or after closure of the district case: 1:19-cv-00375-SCJ.

From approximately 1978 to 1984, Judge Steven C. Jones "ran the Child Support Recovery Office for the local Clark County District attorney" according to his Wikipedia profile. Appellee Doris Downs worked an attorney for the same Child Support Recovery Office in Fulton County from 1981 to 1984 according to her Fulton County profile. Both justices worked for the same organization, had a material and financial interest in this work as employees and therefore, it is reasonable to concur, would have developed a professional relationship due to the nature of their work in the Child Support Recovery Office for a concentric period of four years.

Even if Judge Steven Jones and Appellee Doris Downs did not know each other, Judge Jones should have disclosed his relationship to the Appellant and either requested a waiver or disqualified himself from the case as the facts stated above directed for it is reasonable to question Judge Jones' impartiality given his mutual professional and financial relationship with Appellee Doris Downs.

Additionally, both Appellee Doris Downs and Judge Steven Jones graduated

from University of Georgia in 1977 and 1978 respectively with Bachelor of Arts degrees. Both graduated from the same university with their law degrees as well. Once again, there may have not been a personal or professional, but that disclosure needed to have been made as both Judge Jones and Appellee Doris Downs upon graduation from the University of Georgia in Athens went to work for the same Child Support Recovery Office.

CONCLUSION

The case needs to be returned to the Eastern District of California where the Plaintiff resides and where jurisdiction originated 6/17/2017 and established 6/16/2018 ((28 USC 1446) (Fed Civ 2:3401)(Fed Civ 2:3389).

The vacated order of the Northern District Court of Georgia dated 4/5/2019 was improperly adjudicated (28 USC 455) and the return of the case to the Eastern District of California directs the answer to appeals pending and concerning the inappropriate transfer of the case to the vacated order in the Northern District of Georgia.

APPENDIX B

TABLE OF CONTENTS

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

LEAH CALDWELL,

Plaintiff,

v.

JUDGE DORIS L. DOWNS and
JUDGE WENDY L. SHOOB,

Defendants.

CIVIL ACTION FILE
No. 1:19-cv-0375-SCJ

ORDER

This matter is before the Court for consideration of Plaintiff's Motion to Transfer filed on February 25, 2019. Doc. No. [14]. However, due to the unique procedural posture of this case, the Court must first address whether or not Plaintiff's Second Amended Complaint complies with the previous court orders regarding amendment or whether Plaintiff's complaint is due to be dismissed pursuant to 28 U.S.C. § 1915(e)(2).

I. BACKGROUND

A. Procedural History

Plaintiff filed this action, claiming violations of her constitutional rights under 42 U.S.C. § 1983, *pro se* in the Eastern District of California on June 16, 2017. Doc. No. [1]. Simultaneously, Plaintiff filed an application and motion to proceed in forma pauperis ("IFP"). Doc. No. [3]. The Magistrate granted Plaintiff's motion to proceed IFP and conducted the required review of the complaint under 28 U.S.C. § 1915(e)(2). Doc. No. [4]. The allegations in Plaintiff's complaint concern events surrounding a child-custody hearing that took place in 2005 and Plaintiff's subsequent arrest. See Doc. No. [1], pp. 3–4. The Magistrate's review determined that Plaintiff named defendants (two Georgia Superior Court judges) who were immune from suit. Id. at 3–4. Therefore, the Magistrate dismissed Plaintiff's complaint and provided Plaintiff thirty days to file an amended complaint. Id. at 6.

Plaintiff filed an amended complaint on July 19, 2017. Doc. No. [5]. Her amended complaint did not include many of her original factual allegations. Instead, it contained more generalized allegations that the Defendants had acted "in clear absence of all subject matter jurisdiction." See id. at 3. Inexplicably, it also contained an argument for dismissal of Plaintiff's own case

pursuant to Article III, Section 2, Clause 2 of the United States Constitution and the Scott v. Sanford decision of 1857. Id. at 4–6.

After review of the first amended complaint, the Magistrate determined that Plaintiff's complaint still named defendants who were immune from suit without adding any factual allegations that would overcome the judges' judicial immunity. Doc. No. [6]. Therefore, on July 25, 2017, the Magistrate recommended dismissal of the action without prejudice. Id. at 2. Plaintiff filed objections to the Magistrate's Report and Recommendation on August 14, 2017, in which she stated "Defendant Downs and Leah Zammit, driving Zammit's white Mercedes SUV located and followed directly behind the plaintiff's vehicle (stalking) for several miles acting as self-appointed vigilantes trailing and cornering the plaintiff and her children on the streets of Atlanta . . . ." Doc. No. [7], p. 4. Over a year later, on August 23, 2018, the District Judge, noting this statement, rejected the Magistrate's recommendation. Doc. No. [8]. The District Judge referred the matter back to the Magistrate for evaluation of whether the additional allegations in Plaintiff's objections warranted further leave to amend. Id.

On December 14, 2018, the Magistrate Judge granted Plaintiff a second opportunity to amend her complaint. The Magistrate noted that "if plaintiff

were to simply add the new allegations included in her objections to an amended complaint, the amended complaint would still not be sufficient." Doc. No. [9], p. 4. The Magistrate's order outlined Plaintiff's failure to identify a particular constitutional violation and to link the defendants' actions to that constitutional violation. Id. Furthermore, Plaintiff's additional allegations in her objections did not indicate that Judge Shoob had acted outside her role as a judicial officer. Id.

Plaintiff filed a second amended complaint on January 11, 2019. Doc. No. [10]. This complaint still names Judge Downs and Judge Shoob as defendants, but adds Defendant Leah J. Zammit. It also provides additional factual allegations not previously relayed in either of her two prior complaints. All allegations still concern the 2005 events surrounding a child-custody hearing, Plaintiff's failure to appear at that hearing, and Plaintiff's subsequent arrest. Id. at 3–4. One week after Plaintiff's complaint was filed, without addressing the sufficiency of the allegations in Plaintiff's amended complaint, the Magistrate ordered the case transferred to the Northern District of Georgia pursuant to 28 U.S.C. § 1406(a). Doc. No. [11].

B. Factual Allegations[1]

The Court takes the allegations in Plaintiff's complaints as true for purpose of this order. Accordingly, Plaintiff alleges as follows:

Plaintiff and her ex-husband started divorce proceedings in 2003. Doc. No. [1], p. 3. In 2004, Defendant Judge Downs recused herself from Plaintiff's divorce case. Id. Defendant Judge Shoob ended up presiding over the divorce proceedings, which were finalized in February of 2005. Id. The final divorce settlement awarded shared custody of the couple's two children.

In April of 2005, Judge Shoob "called for an emergency hearing" and "issued an illegal gag order unlawfully restricting the plaintiff's civil rights." Id. A follow-up hearing was scheduled for June 17, 2005. Id. Judge Shoob was not at the follow-up hearing, and it was presided over by Judge Downs. Id. Defendant Zammit served as counsel for Plaintiff's ex-husband at the hearing. See Doc. No. [10], pp. 3, 4.

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1 Plaintiff's second amended complaint omits facts contained in her original complaint. However, in keeping with the practice of construing *pro se* pleadings liberally, the Court considers all of the allegations contained in Plaintiff's original, first amended, and second amended complaints to determine whether or not Plaintiff has stated a claim for which relief can be granted. See Doc. Nos. [1]; [5]; [10].

The morning of the hearing, Plaintiff's son became ill, and she took him to the hospital for treatment. Id. at 3. Plaintiff notified the court that she would be unable to attend the hearing due to a medical emergency. Id. at 3–4. The hearing was not rescheduled. Doc. No. [1], p. 3. After Plaintiff did not show up for the hearing Judge Downs issued a bench warrant for her arrest and granted full custodial rights to Plaintiff's ex-husband. Id. at 3–4.

When Plaintiff's son was released from the hospital, she drove him and her daughter home. Doc. No. [10], p. 4. On the way, she stopped near the library and saw her ex-husband's vehicle pass by. Id. After leaving the library, she noticed a vehicle tailing her, sometimes quite closely. Id. She recognized the driver as Defendant Zammit, but did not recognize the passenger. Id. As Plaintiff drove by the jail, the passenger in the tailing vehicle "began frantically waving to a police officer adjacent to the jail." Id. Plaintiff drove onto a main road, where she was surrounded by police vehicles. Id. She pulled into a parking lot, and the police ordered her from her vehicle and arrested her. Id. Her children were removed from the vehicle, and the passenger from the trailing vehicle ordered the children "to be put into their father's Jeep Cherokee." Id. at 5.

Plaintiff was taken to Fulton County jail, where she was "forced to sign defendant Doris Downs' order to switch custody." Doc. No. [1], p. 4. She remained in jail "without charge" for several days, until Judge Shoob held a closed hearing and ordered her release. Id. Several days after that, Plaintiff was released from jail. Id. Plaintiff never knew who the passenger of the vehicle was until 2017, when she watched an online video in which she recognized the passenger as Judge Downs. Doc. No. [10], p. 5.

II. LEGAL STANDARD

The federal IFP statute requires courts to dismiss cases that are (1) frivolous or malicious; (2) fail to state claim for which relief may be granted; or (3) seek monetary relief against a defendant who is immune from suit. 28 U.S.C. § 1915(e)(2). If the complaint is filed by a *pro se* plaintiff, it is entitled to review under the lenient standard afforded parties who lack a legal education. Haines v. Kerner, 404 U.S. 519, 520 (1972); Tannenbaum v. United States, 148 F.3d 1262, 1263 (11th Cir. 1998).

The second and third grounds for dismissal require the court to accept the factual allegations made in the complaint as true. See Jackson v. Capraun, 534 F. App'x 854, 855, 859 (11th Cir. 2013) (evaluating immunity of defendants while accepting allegations in the complaint as true); Mitchell v. Farcass, 112

F.3d 1483, 1490 (11th Cir. 1997) ("The language of section 1915(e)(2)(B)(ii) tracks the language of Federal Rule of Civil Procedure 12(b)(6), and we will apply Rule 12(b)(6) standards in reviewing dismissals under 1915(e)(2)(B)(ii)."). To state a claim for which relief may be granted, it is not enough for the allegations in the complaint to make a claim conceivable; the factual allegations must support a claim that is plausible. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009); Bell Atl. Corp. v. Twombly, 550 U.S. 433, 570 (2007). When analyzing the claims alleged, the court disregards legal conclusions couched as factual allegations. Iqbal, 556 U.S. at 678. Because immunity is an affirmative defense, the immunity of a defendant must be apparent from the face of the complaint in order to warrant dismissal. See Quiller v. Barclays Am./Credit, Inc., 727 F.2d 1067, 1069 (11th Cir. 1984), cert. denied, 476 U.S. 1124 (1986).

III. DISCUSSION

Congress, through 42 U.S.C. § 1983, has provided a damages remedy to individuals whose constitutional rights are violated by state officials. 42 U.S.C. § 1983. "To state a claim for relief under section 1983, a plaintiff must allege that person acting under color of state law deprived him of a federal right." McIndoo v. Broward County, 750 F. App'x 816, 819 (11th Cir. 2018). Therefore,

a plaintiff's claims must both implicate a federal right and be directed at a state actor. Id.

Judges, however, are entitled to absolute immunity for actions they take in their judicial capacity. Bolin v. Story, 225 F.3d 1234, 1239 (11th Cir. 2000). "This immunity applies even when the judge's acts are in error, malicious, or were in excess of his or her jurisdiction." Id. The Supreme Court's two-part test for judicial immunity asks, first, if the judge dealt with the plaintiff in a judicial capacity. Harris v. Deveaux, 780 F.2d 911, 914 (11th Cir. 1986) (citing Stump v. Sparkman, 435 U.S. 349, 362 (1978)). If not, the judge's actions are not covered by immunity. Id. If so, the second prong of the test asks if the judge acted in the "clear absence of all jurisdiction." Stump, 1435 U.S. at 357.

Claims brought under § 1983 are subject to the statute of limitations for personal injury claims in the state where the action is brought. McNair v. Allen, 515 F.3d 1168, 1173 (11th Cir. 2008). Georgia's statute of limitations for personal injury claims is two years. O.C.G.A. § 9-3-33. "[T]he statute of limitations does not begin to run until the facts that would support a cause of action are apparent or should be apparent to a person with a reasonably prudent regard for his rights." Porter v. Ray, 461 F.3d 1315, 1323 (11th Cir. 2006) (quoting Lovett v. Ray, 327 F.3d 1181, 1182 (11th Cir. 2003)).

With these standards for stating a § 1983 claim in mind, the Court analyzes the sufficiency of the allegations in Plaintiff's complaint.

A. Constitutional/Federal Right

Plaintiff's complaint does not make clear what constitutional or federal right her § 1983 claim is based upon. Her original complaint and first amended complaint merely invoke § 1983, without referring to any statutory or constitutional rights that the Defendants' actions violated. Her second amended complaint, however, mentions an "unlawful arrest and switch of custody," and "her God-given right and her civil right to contact and be with her children." Doc. No. [10], p. 3. Therefore, the Court will construe Plaintiff's complaint as alleging a violation of the Fourth Amendment protection against unlawful seizure (i.e., arrest) and a violation of Plaintiff's constitutionally-protected interest in the custody of her children. See U.S. CONST. amend. IV; see also Doe v. Kearney, 329 F.3d 1286, 1293 (11th Cir. 2003) ("The Supreme Court has held that parents have a constitutionally protected liberty interest in the care, custody and management of their children.").

B. State Actor

For the purposes of § 1983, Judges Downs and Shoob certainly qualify as state actors. However, Plaintiff's second amended complaint names a new

Defendant, Leah J. Zammit, who is described as "opposing counsel" in Plaintiff's divorce case. See Doc. No. [10], p. 3. Private citizens only qualify as state actors in rare circumstances. Rayburn ex rel. Rayburn v. Hogue, 241 F.3d 1341,1347 (11th Cir. 2001); see also NBC, Inc. v. Comm'ns Workers of Am., 860 F.2d 1022, 1026-27 (11th Cir. 1988) (describing the three conditions under which a private party may be viewed as a state actor). None of those rare circumstances are present in the facts alleged in this case. Defendant Zammit represented Plaintiff's ex-husband in the custody proceedings. She followed Plaintiff in her car, and she was present at Plaintiff's arrest. Without more, Zammit's actions do not make her a state actor or subject her to § 1983 liability.

C. **Immunity**

As for Defendants Downs and Shoob, their actions are subject to protection under the doctrine of judicial immunity. First, both judges' actions arose out of their judicial capacity. Whether or not a judge's conduct constitutes a judicial act depends upon factors such as if the act is a normal judicial function, where the act occurred, and whether the act is related to a case pending before the judge. See Harris, 780 F.2d at 914. Plaintiff asserts that Judge Downs "directed the Plaintiff's arrest in person" after having "issued an

unlawful, hand-written bench warrant," and that Judge Shoob subsequently signed illegal orders. Doc. Nos. [1], p. 3; [10], p. 3.

Both issuing bench warrants for a party's failure to appear at a hearing and signing orders regarding a change in child custody are normal judicial functions. These acts were taken in conjunction with Plaintiff's pending child custody hearing. The issuance of the bench warrant and the signing of the custodial order occurred at the courthouse (or within chambers). Plaintiff takes the position that Judge Downs's presence at her ultimate arrest deprives the acts of which she complains of their judicial character. However, Judge Downs being present when the police arrested Plaintiff pursuant to a previously-issued bench warrant does not make the issuance of the bench warrant a non-judicial function. Thus, the first prong of the judicial immunity test is met.

Second, Defendants Downs's and Shoob's acts were within the bounds of their subject matter jurisdiction. A judge only acts in the "clear absence of all jurisdiction" when they completely lack subject matter jurisdiction. Dykes v. Hosemann, 776 F.2d 942, 948 (11th Cir. 1985). The Georgia Constitution vests exclusive jurisdiction over divorce cases in superior courts. GA. CONST. art. 6, § 4, ¶I. Therefore, Judge Downs's and Shoob's actions and involvement in

Plaintiff's divorce and custody hearings fell within their subject matter jurisdiction as Superior Court judges.

Plaintiff contends that Judge Downs "exercised 'a clear lack of all subject matter jurisdiction' when [she] . . . exited the court room in her judicial capacity, entered the private vehicle of opposing counsel . . . stalked and then arrested the Plaintiff outside of her judicial capacity." However, Judge Downs's location outside of the courtroom does not change her subject matter jurisdiction. She issued a bench warrant in the courtroom that fell within her subject matter jurisdiction. As noted above, her presence at Plaintiff's arrest does not change the judicial character of issuing a warrant. Nor does it change the subject matter jurisdiction pursuant to which the warrant was issued. Furthermore, the police (not Judge Downs) arrested Plaintiff, and they did so pursuant to a validly-issued bench warrant. This is not a case where a judge ordered the police to arrest someone on the spot, outside of a courtroom, with no previous judicial process. As such, Judge Downs's presence at Plaintiff's arrest does not deprive Judge Downs's actions of their judicial character or of the subject matter jurisdiction underlying those actions.

D. **Statute of Limitations**

Finally, and perhaps most importantly, Plaintiff's claims are barred by the two-year statute of limitations for § 1983 claims in Georgia. The events that Plaintiff complains of occurred in 2005. Plaintiff filed her case in 2017. Twelve years passed between the occurrence of the events that Plaintiff asserts violated her constitutional rights and her filing suit.

As previously noted, "the statute of limitations does not begin to run until the facts that would support a cause of action are apparent or should be apparent to a person with a reasonably prudent regard for his rights." Porter, 461 F.3d at 1323. Plaintiff says that she did not know who the blond passenger was, until seeing her in 2017 in an online discussion. This, however, is not sufficient to toll the statute of limitations. First, Plaintiff did know the identity of Judge Shoob and Defendant Zammit at the time of the events in 2005, but did not bring suit. Second, not knowing who it was that violated your rights is very different from not knowing that your rights have been violated. A person with a prudent regard for her rights would have filed suit following her 2005 arrest within the relevant statute of limitations. The suit could have named a "Jane Doe" defendant, until such time as discovery revealed the defendant's identity. Furthermore, Plaintiff's allegations of the "illegal" character of Judge

Downs's action turn on her prior recusal from Plaintiff's divorce case. Judge Downs's name would have been on the arrest warrant and hearing paperwork from 2005. It would not have been necessary for Plaintiff to recognize the blond passenger in order to challenge Judge Downs's involvement in her case.

IV. CONCLUSION

The Court finds that Plaintiff's complaint fails to state a claim for which relief can be granted, both as against Defendant Zammit (who is not a state actor) and because Plaintiff's claims are barred by the statute of limitations. The Court also finds that Plaintiff's complaint names defendants (Judge Downs and Judge Shoob) who are immune from suit. Therefore, pursuant to 28 U.S.C. § 1915(e)(2), Plaintiff's complaint is **DISMISSED**. Plaintiff's Motion to Transfer is **MOOT**. Doc. No. [14].

IT IS SO ORDERED this 8th day of April, 2019.

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

166

Leah S. Caldwell
5960 S. Land Park Drive, #350
Sacramento City and County
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(916) 531-7472

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

Leah S. Caldwell, PLAINTIFF, PRO SE

APPEAL TO 11TH CIRCUIT COURT
NO. 1:19-cv-0375-SCJ

-against-

DORIS L. DOWNS, DEFENDANT
WENDY L. SHOOB, DEFENDANT

APPEAL TO 11TH CIRCUIT COURT

In the name of God, I, Leah S. Caldwell, the Plaintiff in the above-named proceeding appeal the order of Steven C. Jones, United States District Judge as Plaintiff's 14th Amendment rights to jurisdiction in the state of California where Plaintiff resides and Plaintiff's right to equal protection of the law have been abridged.

Plaintiff's original complaint was filed on June 16th, 2017 in California. In the original filing, the court was notified that diversity existed jurisdiction was granted because the Plaintiff was located in California and the Defendants in Georgia. Removal on the basis of diversity needed to have been effected within one year after the complaint was filed in any event or by June 15th, 2018 (28 USC 1446) (Fed Civ 2:3401) and no such order was submitted.

The second amended complaint dated January 11th, 2019 was filed in response to Magistrate Allison Claire's December 14th, 2018 order and not filed as a pretext to transfer the complaint to Georgia. The Federal Rules of Civil Procedure clearly state that if the original complaint was removable on federal question grounds then later developments creating diversity, such as an amended complaint, do not re-trigger the right to remove. Removal applied when the case was first transferrable which was on or before June 15th, 2018. (Fed Civ 2:3389)

Judge Claire stated that the pro se Plaintiff filed an application to proceed in forma pauperis pursuant to 28 U.S.C. 1915. The Plaintiff's application was granted for reasons of financial hardship and to alleviate court filing costs. Transferring the complaint to Georgia would not alleviate costs, but instead exacerbate them requiring the Plaintiff to incur costly interstate travel, lodging, transportation and other expenses further hindering fair adjudication and making it financially difficult to obtain justice in this pivotal, civil rights case.

Stalking the Plaintiff and concealment of identity while stalking by an acting superior court judge in clear absence of all jurisdiction and is not protected under the doctrine of judicial immunity.

Doris L. Downs had concealed her identity from the Plaintiff while stalking her and her children. Plaintiff correctly filed her complaint of civil rights violations pursuant 42 Civ 1983 when Plaintiff discovered the identity of Doris L. Downs online in 2017 and therefore this filing falls within the statute of limitations.

Wendy L. Shoob, who issued the final and unjust order of custody switch, violated Plaintiff's Civil Rights pursuant to 42 Civ 1983.

Plaintiff establishes that this case, transferred in forma pauperis from the State of California, remain current in the Court of Appeals pursuant to 28 U.S.C.1915.

V. Certification and Closing

Under Federal Rule of Civil Procedure II, by signing below, I certify to the best of my knowledge, information and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a non-frivolous argument for extending, modifying, or reversing existing law; (3) the factual, contentions have evidentiary support or if specifically, so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery and (4) the complaint otherwise complies with the requirements of Rule II.

I agree to provide the Clerk's Office with any changes to my address where case-related progress may be sent. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal so stay vigilant.

APPENDIX C

TABLE OF CONTENTS

1c

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

LEAH CALDWELL,

Plaintiff,

v.

DORIS L. DOWNS and WENDY L. SHOOB,

Defendants.

No. 2:17-cv-1250 KJM AC

ORDER

Plaintiff, proceeding pro se, filed the above-entitled action. The matter was referred to a United States Magistrate Judge under Local Rule 302(c)(21).

On July 25, 2017, the magistrate judge filed findings and recommendations, which were served on plaintiff and which contained notice to plaintiff that any objections to the findings and recommendations were to be filed within fourteen days. ECF No. 6. On August 14, 2017, plaintiff filed objections to the findings and recommendations. Objections, ECF No. 7.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this court has conducted a *de novo* review of this case. *See Britt v. Simi Valley Unified Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983). The court presumes findings of fact are correct. *See Orand v. United States*, 602 F.2d 207, 208 (9th Cir. 1979).

/////

2c

Having reviewed the file, the court finds plaintiff's verified objections raise new information that may change the magistrate judge's recommendation because plaintiff appears to provide facts indicating certain of Judge Doris Brown's actions may have exceeded the bounds of judicial immunity. *See* Objections at 4 (declaring, under penalty of perjury, that Judge Downs "entered the private vehicle of opposing counsel," "followed directly behind the plaintiff's vehicle (stalking) for several miles . . . cornering the plaintiff and her children on the streets" and "ordered the children into the plaintiff's ex-husband's car in a commercial parking lot."). *Cf. Supreme Court of Virginia v. Consumers Union of United States, Inc.*, 446 U.S. 719, 731 (1980) (judges "promulgating" code of conduct for attorneys do not get judicial immunity because "promulgating rules" is a legislative function; but they do get legislative immunity); *Forrester v. White*, 484 U.S. 219, 228-29 (1988) (judges "enforcing" the Bar Code would be treated like prosecutors for immunity purposes.).

In light of plaintiff's objections, without making any credibility determinations, the court DECLINES to adopt the findings and recommendations and instead REFERS the matter back to the magistrate judge for further proceedings to develop the record as necessary for consideration of whether the information contained in plaintiff's objections justifies granting further leave to amend, or whether the legal analysis supporting the findings and recommendations merely requires supplementation.

IT IS SO ORDERED.

This resolves ECF No. 6.

DATED: August 22, 2018.

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

LEAH CALDWELL,

Plaintiff,

v.

DORIS DOWNS, et al.,

Defendants.

No. 2:17-cv-01250-KJM-AC

ORDER

Plaintiff, who is proceeding in pro se, filed an application to proceed in forma pauperis pursuant to 28 U.S.C. § 1915, which this court granted on the basis of a first complaint. ECF No. 3. Plaintiff has since filed a Second Amended Complaint, ECF No. 10, which is the operative complaint in this case. The Second Amended Complaint makes it clear that all defendants are residents of the state of Georgia, and that all events at issue took place in Atlanta, Georgia. ECF No. 10 at 2, 3-5.

The federal venue statute provides that a civil action "may be brought in (1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) if there is no district in which an action may otherwise be brought as provided in this action, any judicial district in which any defendant is subject to the court's personal

jurisdiction with respect to such action." 28 U.S.C. § 1391(b).

In this case, the claim arose in Atlanta, Georgia, which is in the Northern District of Georgia. All defendants are from Georgia. Therefore, plaintiff's claim should have been filed in the United States District Court for the Northern District of Georgia. In the interest of justice, a federal court may transfer a complaint filed in the wrong district to the correct district. See 28 U.S.C. § 1406(a); Starnes v. McGuire, 512 F.2d 918, 932 (D.C. Cir. 1974).

Accordingly, IT IS HEREBY ORDERED that this matter is transferred to the United States District Court for the Northern District of Georgia.

DATED: January 17, 2019

Allison Claire

ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE

5c

Leah S. Caldwell
5960 S. Land Park Drive, #350
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California 95822
(916) 531-7472

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

Leah S. Caldwell, PLAINTIFF, PRO SE

-against-

DORIS L. DOWNS, DEFENDANT
WENDY L. SHOOB, DEFENDANT
LEAH J. ZAMMIT, DEFENDANT

MOTION TO KEEP COMPLAINT IN EASTERN DISTRICT OF CALIFORNIA

~~Complaint for a Civil Case~~

Case No. 2:17-cv-01250-KJM-AC

Jury Trial: Yes

6c

APPEAL TO DISTRICT JUDGE

In the name of God, I, Leah S. Caldwell, the Plaintiff in the above-named proceeding respectfully appeal to District Judge Kimberly J. Mueller to keep this complaint in the United States District Court of the Eastern District of California where the Plaintiff, a resident of California, correctly filed the original complaint and to strike the order transferring this case to the Northern District of Georgia.

Plaintiff's original complaint was filed on June 16th, 2017. In the original filing, the court was notified that diversity existed because the Plaintiff was located in California and the Defendants in Georgia. This transparency continued through the second, amended complaint filing even with the addition of a third defendant also located in Georgia.

As such, removal on the basis of diversity needed to have been effected within one year after the complaint was filed in any event or by June 15th, 2018 (28 USC 1446) (Fed Civ 2:3401) and no such order was submitted.

The second amended complaint dated January 11th, 2019 was filed in response to Magistrate Allison Claire's December 14th, 2018 order and not filed as a pretext to transfer the complaint to Georgia. The Federal Rules of Civil Procedure clearly state that if the original complaint was removable on federal question grounds then later developments creating diversity, such as an amended complaint, do not re-trigger the right to remove. Removal applied when the case was first transferrable which was on or before June 15th, 2018. (Fed Civ 2:3389)

Judge Claire stated that the pro se Plaintiff filed an application to proceed in forma pauperis pursuant to 28 U.S.C. 1915. The Plaintiff's application was granted for reasons of financial hardship and to alleviate court filing costs. Transferring the complaint to Georgia would not alleviate costs, but instead exacerbate them requiring the Plaintiff to incur costly interstate travel, lodging, transportation and other expenses further hindering fair adjudication and making it financially difficult to obtain justice in this pivotal, civil rights case.

Plaintiff requests an extension of 30 days from the January 18th, 2019 order to submit this appeal to District Judge Kimberly J. Mueller. The pro se Plaintiff was unfamiliar with differing court filing timelines and unaware of Rule 72 (Fed. Civ. Title IX, Special Proceedings) since the previous orders including Judge Claire's December 14th, 2018 order included clear notification of a 30-day time frame in which to respond. Plaintiff answered in accordance with the stated time frame and upon receiving the January 18th, 2019 order, Plaintiff again responded within 30 days. Inconsistent with the previous orders, no clear response time was delineated in this order to transfer.

Another inconsistency occurred when the original motion filed February 8th, 2019 was returned to the Plaintiff on February 13th, 2019 with the date-stamp crossed out and whited out which appears to be in violation of legal procedure.

As such and pursuant to Title 28, U.S.C. Sec 636(c)(2), I acknowledge the availability of the United States Magistrate Judge Allison Claire, but I hereby decline to consent.

The motion filed on February 8th, 2019 in response to the Judge Claire's order requires an appeal directed to District Judge Kimberly J. Mueller. Plaintiff therefore appeals to District Judge Kimberly J. Mueller to grant an extension of time for this pro se Plaintiff to file an appeal keeping this complaint in the Eastern District of California in forma pauperis and striking the order to transfer the case to Georgia.

Plaintiff further appeals to District Judge Kimberly J. Mueller and the court to move forward toward discovery in the violation of the Plaintiff's civil rights as unlawful stalking, concealment, arrest and switch-of-custody by superior court judges and a counselor directly violates 42 U.S. Code 1983.

V. Certification and Closing

Under Federal Rule of Civil Procedure II, by signing below, I certify to the best of my knowledge, information and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a non-frivolous argument for

8c

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

Leah S. Caldwell, PLAINTIFF, PRO SE

Complaint for a Civil Case

Case No. 2:17-cv-01250-KJM-AC

Jury Trial: Yes

-against-

DORIS L. DOWNS, DEFENDANT
WENDY L. SHOOB, DEFENDANT
LEAH J. ZAMMIT, DEFENDANT

9c

MOTION TO STRIKE ORDER

In the name of God, I, Leah S. Caldwell, the Plaintiff in the above-named proceeding respectfully move to keep these proceedings in the United States District Court of the Eastern District of California where the Plaintiff, a resident of California, correctly filed the original complaint and to strike the order transferring this case to the Northern District of Georgia.

Plaintiff's original complaint was filed on June 16th, 2017. In the original filing, the court was notified that diversity existed because the Plaintiff was located in California and the Defendants in Georgia. This transparency continued through the second amended complaint filing even with the addition of a third defendant also located in Georgia.

As such, removal on the basis of diversity needed to have been effected within one year after the complaint was filed in any event or by June 15th, 2018 (28 USC 1446) (Fed Civ 2:3401) and no such order was submitted by the court.

The second amended complaint dated January 11th, 2019 was filed in response to Magistrate Judge Allison Claire's December 14th, 2018 order. The Federal Rules of Civil Procedure clearly state that if the original complaint was removable on federal question grounds, then later developments creating diversity such as an amended complaint do not re-trigger the right to remove. Removal needed to have taken place when the case was first transferrable which in this case was on or before June 15th, 2018. (Fed Civ 2:3389)

Magistrate Judge Allison Claire stated that Plaintiff, who is proceeding in Pro Se, filed an application to proceed in forma pauperis pursuant to 28 U.S.C.1915. The Plaintiff's application was granted for reasons of financial hardship and to alleviate court filing costs. Transferring the complaint to Georgia would not alleviate costs, but would exacerbate them requiring the Pro Se Plaintiff to incur costly interstate travel, lodging, transportation and other expenses further hindering fair adjudication and making it financially difficult to obtain justice in this pivotal civil rights case.