

~~CONFIDENTIAL~~

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-1723

CARL WOMACK,

Plaintiff - Appellant,

v.

JOHANNA FINKELSTEIN, Acting in her capacity as a Clerk of Court for
Buncombe County NC,

Defendant - Appellee.

Appeal from the United States District Court for the Western District of North Carolina, at
Asheville. Martin K. Reidinger, District Judge. (1:19-cv-00150-MR-WCM)

Submitted: November 19, 2019

Decided: November 21, 2019

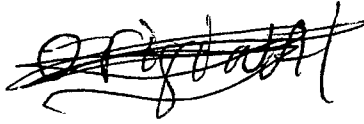
Before WILKINSON and RICHARDSON, Circuit Judges, and TRAXLER, Senior Circuit
Judge.

Affirmed by unpublished per curiam opinion.

Carl Womack, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

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PER CURIAM:

Carl Womack appeals the district court's order dismissing on 28 U.S.C. § 1915(e)(2)(B) (2012) review his 42 U.S.C. § 1983 (2012) complaint and his petition for "Enforcement of Olmstead Act[] and Community Based Health Care." We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *Womack v. Finkelstein*, No. 1:19-cv-00150-MR-WCM (W.D.N.C. June 6, 2019). 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

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~~Original~~

THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL CASE NO. 1:19-cv-00150-MR-WCM

CARL WOMACK,

Plaintiff,

vs.

JOHANNA FINKELSTEIN,

Defendant.

ORDER

THIS MATTER is before the Court on the Plaintiff's Application to Proceed without Prepayment of Fees or Costs [Doc. 2] and the Plaintiff's "Petition for Enforcement of Olmstead Act, and Community Based Health Care" [Doc. 3].

I. FACTUAL AND PROCEDURAL BACKGROUND

This is the fourth lawsuit brought by the Plaintiff Carl Womack related to state court proceedings in which his mother, Ruth Womack, was placed in protective custody with the Rutherford County Department of Social Services and ultimately declared to be incompetent. In the first action, the Plaintiff and Ruth Womack asserted claims under 42 U.S.C. § 1983 and other federal civil rights statutes against the Rutherford County Clerk of Court and

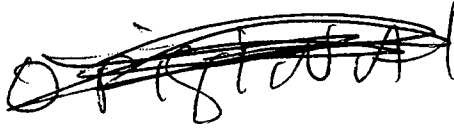
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~~ORIGINAL~~

Buncombe County, Johanna Finkelstein. Specifically, the Plaintiff alleges that the Defendant violated his First Amendment right to petition the Government for a redress of grievances and committed obstruction of justice by failing to schedule a hearing on a motion filed by the Plaintiff for the removal of his mother's guardian. [Doc. 1 at 4, 6-7]. The Plaintiff further alleges that the Defendant violated his constitutional rights by denying a number of his motions during proceedings related to the restoration of his mother's competency. [Id. at 7]. Finally, while conceding that such does not constitute a violation of his civil rights, the Plaintiff alleges that the Defendant conspired with his mother's guardian and others to commit Medicaid fraud. [Id. at 4]. The Plaintiff alleges that he was discriminated against on the basis of his class, as the Defendant and others involved in the restoration proceeding were lawyers. [Id. at 7-8].

In addition to his Complaint, the Plaintiff also has filed a Petition seeking release of his mother from the nursing home where she resides as well as an award of damages. [Doc. 3]. In this Petition, the Plaintiff notes that he has appealed the state court rulings that have been made against him to the North Carolina Court of Appeals. [Id. at 10].

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clearly baseless," including such claims that describe "fantastic or delusional scenarios." Neitzke, 490 U.S. at 327, 328.

Rule 8 of the Federal Rules of Civil Procedure provides that "[a] pleading states a claim for relief must contain (1) a short and plain statement of the grounds for the court's jurisdiction ... [and] (2) a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(1), (2). A complaint fails to state a claim where it offers merely "labels and conclusions," "a formulaic recitation of the elements of a cause of action," or "naked assertion[s]" devoid of "further factual enhancement." See Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (internal quotation marks omitted)).

III. DISCUSSION

By the present action, the Plaintiff again seeks to challenge the actions of an assistant clerk of court taken during the course of the state court proceedings related to his mother's competency. Judges possess absolute immunity for judicial acts and can be subject to liability only in the "clear absence of all jurisdiction." Stump v. Sparkman, 435 U.S. 349, 356-57 (1978). "Similarly, court clerks enjoy derivative absolute judicial immunity when they act in obedience to a judicial order or under the court's direction."



rights.” Johnson v. De Grandy, 512 U.S. 997, 1005-06 (1994). “The Rooker-Feldman doctrine bars lower federal courts from considering not only issues raised and decided in state courts, but also issues that are ‘inextricably intertwined’ with the issues that are before the state court.” Washington v. Wilmore, 407 F.3d 274, 279 (4th Cir. 2005) (quoting Feldman, 460 U.S. at 486). As the Fourth Circuit has explained, “if the state-court loser seeks redress in the federal district court for the injury caused by the state-court decision, his federal claim is, by definition, ‘inextricably intertwined’ with the state-court decision, and is therefore outside the jurisdiction of the federal district court.” Davani v. Va. Dep’t of Transp., 434 F.3d 712, 719 (4th Cir. 2006).

In the present case, the Plaintiff challenges the actions of the Clerk of Court in the course of state court proceedings regarding his mother. Because the Plaintiff does not allege any injury independent of what flows from the result of this state-court action¹, the Court concludes that these claims must be dismissed pursuant to the Rooker-Feldman doctrine for lack

¹ While the Plaintiff alleges that the Defendant and others conspired to commit Medicaid fraud, he concedes that this alleged conduct did not injure him or otherwise cause a deprivation of his constitutional rights. [Doc. 1 at 4]. The Plaintiff therefore does not appear to have standing to assert such a claim.

APPENDIX B 4

the courts and other parties resulting from the party's filings; and (4) the adequacy of alternative sanctions." Id. "Ultimately, the question the court must answer is whether a litigant who has a history of vexatious litigation is likely to continue to abuse the judicial process and harass other parties." Vandyke v. Francis, No. 1:12-CV-128-RJC, 2012 WL 2576746, at *2 (W.D.N.C. July 3, 2012) (quoting Black v. New Jersey, No. 7:10-CV-57-F, 2011 WL 102727, at *1 (E.D.N.C. Jan. 11, 2011)).

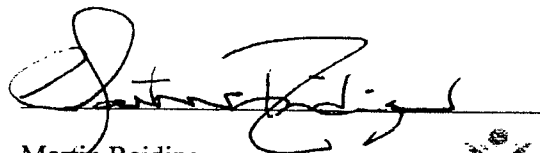
Applying these factors to the present case, the Court concludes that the imposition of a pre-filing review is warranted. The Plaintiff has made a series of repetitive, frivolous filings challenging the state court proceedings regarding the competency of his mother. Despite three prior Orders clearly explaining the baselessness of the Plaintiff's filings, the Plaintiff continues to file his meritless pleadings. These filings are burdensome on the Court, as they have caused the Court to expend considerable time and resources in addressing them. In light of these circumstances, the Court concludes that the Plaintiff will continue his abusive behavior if he is not subjected to a pre-filing review system.

Before imposing a pre-filing limitation, the Court must offer a litigant the opportunity to explain why the Court should not impose such a pre-filing

APPENDIX BS

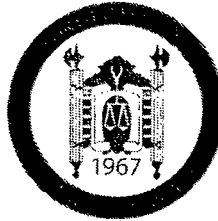
IT IS SO ORDERED.

Signed: June 4, 2019


Martin Reidinger
United States District Judge



PP Pearl x BE
11



North Carolina Court of Appeals

DANIEL M. HORNE JR., Clerk

Court of Appeals Building
One West Morgan Street
Raleigh, NC 27601
(919) 831-3600

From Buncombe
(19SP20)

Fax: (919) 831-3615
Web: <https://www.nccourts.gov>

Mailing Address:
P. O. Box 2779
Raleigh, NC 27602

No. 19-731

IN THE MATTER OF:

R.W.

ORDER

The following order was entered:

The motion filed in this cause on the 2nd of October 2019 and designated 'Appellee Respondent's Motion to Dismiss Appeal' is allowed. Appeal dismissed. Appellant to pay costs.

And it is considered and adjudged further, that the Appellant, Carl Womack, do pay the costs of the appeal in this Court incurred, to wit, the sum of Nine Dollars and 00/100 (\$9.00), and execution issue therefor.

By order of the Court this the 23rd of October 2019.

WITNESS my hand and official seal this the 23rd day of October 2019.

Daniel M. Horne Jr.
Clerk, North Carolina Court of Appeals

Copy to:

Mr. Carl Womack, For Womack, Carl
Mr. Joshua Howell, Attorney at Law, For Rutherford County DSS
Ms. Susan C. Lewis, GAL, For R.W.
Hope For The Future Inc.
Ms. June Sims
Ms. Annick I. Lenoir-Peek, Deputy Parent Defender, For R.W.
Mr. Victor Garlock, Attorney, For R.W. (Estate of)
Hon. Steven D. Cogburn, Clerk of Superior Court

NC STATE

Appendix A-1

10FL

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
BEFORE THE CLERK
19 E 63

IN THE MATTER OF:
RUTH C. WOMACK,
An incompetent person

ORDER DETERMINING SALE OF
THE WARD'S REAL PROPERTY
WOULD PROMOTE HER BEST
INTERESTS

MERRIMON B. OXLEY,
GUARDIAN OF THE ESTATE FOR
RUTH C. WOMACK,
Moving Party.

THIS MATTER coming on to be heard and being heard on the Motion filed pursuant to North Carolina General Statute section 35A-1302 by Merrimon B. Oxley, Guardian of the Estate for Ruth Womack, an incompetent person, for determination that the sale of the Ward's real property would materially promote the Ward's interests.

MOTIONS TO CONTINUE

Prior to the start of the hearing, Carl Womack, the Ward's son, moved to continue this matter on the basis that Erica Erickson, an attorney Mr. Womack asserted represented his mother, the Ward, was not present. The Court found the following: from a review of the file Erica Erickson was served with the Motion for the sale of real property on or about November 19, 2018 and she was served with the Notice of Hearing for the said motion on or about February 1, 2019. Ms. Erickson has not filed a notice of appearance in this matter nor has Ms. Erickson notified the Court that she intended to attend this hearing. Therefore, Carl Womack's first motion to continue is denied.

Carl Womack then a made a motion to continue due to the Guardian of the Person for the Ward not being present. The Court finds the following: the Guardian of the Person was not subpoenaed and there is no requirement that the Guardian of the Person be present for this hearing. Therefore, Mr. Womack's second motion to continue is denied.

MOTION TO TRANSFER TO FEDERAL COURT

Carl Womack then made a motion to transfer this matter to federal court. The Court finds that federal court does not have jurisdiction in guardianship matters, and therefore the said motion is denied.

Appendix B-NC State Estate

34 NC CASE # 19 E 63

30. That if 141 Parmer Rd. property were sold there would be Medicaid consequences but overall the proceeds from any such sale could be used to benefit the Ward and to pay her debts. The Ward receiving some benefit from her property is better than the Ward not realizing any benefit from her property if the real property remains unsold.

31. That the Guardian ad Litem, Susan C. Lewis, has provided necessary services for the benefit of the Ward.

Based on the foregoing Findings of Fact, the Court makes the following
CONCLUSIONS OF LAW:

1. That the Court has jurisdiction in this matter.
2. That all of the necessary parties were provided proper notice of hearing. *not true*
3. That the sale of the Ward's real property would materially promote the Ward's interest. *Not true*
4. That the Guardian ad Litem, Susan C. Lewis, provided necessary services for the benefit of the Ward.

WHEREFORE, based on the foregoing Finding of Fact and Conclusions of Law, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. That the sale of Ruth Womack's real property located at 141 Parmer St., Forest City, Rutherford County, North Carolina would materially promote the Ward's interest and the Guardian of the Estate should be allowed to proceed with the Petition to Sell Real Property presently pending in Cleveland County, North Carolina.
2. That the Guardian ad Litem fees for Susan C. Lewis' services shall be taxed to the Ward's estate.

This the 28th day of March 2019.

Signed the 23 day of April 2019.

Appendix B NC State
ESTATE - 2

Johanna Finkelstein
Assistant Clerk of Court

Finkelstein ruling put my mother's health at Risk. Selling the property would cause her to lose her Medicaid. She is 93. Plus her only real bills total 2,000 and is offered

STATE OF NORTH CAROLINA

Buncombe

County

File No.

19 SP 20

In The General Court Of Justice
Superior Court Division
Before The Clerk

IN THE MATTER OF

Full Name And Address Of Ward

Ruth Womack

White Oak Manor

188 Oscar Justice Rd.

Rutherfordton, NC 28139

Date Of Birth

Drivers License No. Of Ward

State

ORDER ON
MOTION IN THE CAUSE FOR
RESTORATION TO COMPETENCY

G.S. 35A-1130, -1295

This matter is before the Court on a motion in the cause to restore the ward to competency. This Court has jurisdiction of the subject matter of this proceeding and of the person of the ward; a copy of the Motion In The Cause and a notice of this hearing were properly served on all persons entitled thereto; and this county is a proper venue.

☒ Trial By Court

A hearing was held before the Court and, after hearing evidence, the Court ☐ does ☐ does not find by a preponderance of the evidence that the ward is competent.

☐ Trial By Jury

A hearing was held before the Clerk of Superior Court and a jury of six persons. After hearing the evidence and the instructions of the Court, and upon deliberation, the jury ☐ did ☐ did not find by a preponderance of the evidence that the ward is competent.

ORDER

☐ The motion is allowed and it is adjudged that the ward is competent; it is ORDERED that the ward is restored to competency. The ward is authorized to manage his/her affairs, make contracts, control and sell his/her property, both real and personal, and exercise all rights as if he/she had never been adjudicated incompetent.

☒ The motion is denied.

Pursuant to G.S. 35A-1116, costs are: ☐ waived. ☒ taxed to: ☐ petitioner. ☐ ward.

NOTE: When the ward is restored to competency pursuant to G.S. 35A-1130, every guardianship shall be terminated and all Article 9, Chapter 35A powers and duties of the guardian shall cease. However, a guardian of the estate or a general guardian is still responsible for all accountings required by Article 10 of Chapter 35A until the guardian is discharged by the clerk. G.S. 35A-1295. "Within 60 days after a guardianship is terminated under G.S. 35A-1295, the guardian shall file a final account for the period from the end of the period of his most recent annual account to the date of that event. If the clerk, after review of the guardian's account, approves the account, the clerk shall enter an order discharging the guardian from further liability." G.S. 35A-1266.

Date

03/07/2019

Signature

☒ Assistant CSC☐ Clerk Of Superior Court

NOTE TO CLERK: If the ward is adjudicated restored to competency, then in all cases send a certified copy of this Order to the Division of Motor Vehicles, 3712 Mail Service Center, Raleigh, NC 27699-3112. G.S. 35A-1130(d).

CERTIFICATION

I certify that this Order On Motion In The Cause For Restoration To Competency is a true and complete copy of the original on file in this case.

Date

Name (type or print)

Signature

☐ Deputy CSC ☐ Asst. CSC☐ Clerk Of Superior Court

SEAL

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**Additional material
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available in the
Clerk's Office.**