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Appendix A

Rule 14.1(i)(i)—USCA5 ruling

Mar. 11, 2021 – Ruling.

Case: 20-50707 Document: 00515776694 Page: 1
Date Filed: 03/11/2021

**United States Court of Appeals
for the Fifth Circuit**

No. 20-50707
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
March 11, 2021
Lyle W. Cayce
Clerk

WESLEY PERKINS, NON-FIDUCIARY ARRESTEE AND
POLITICAL “TARGET”,

Plaintiff—Appellant,

versus

JUDGE JOHN MISCHTIAN, COUNTY COURT AT LAW 2,
BELL COUNTY, TEXAS, OFFICIAL [?] AND
INDIVIDUALLY; BELL COUNTY, TEXAS,

Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:20-CV-296

Before DAVIS, STEWART, and DENNIS, *Circuit Judges*.
PER CURIAM:*

Proceeding pro se, Wesley Perkins filed a civil complaint in the United States District Court for the Western District of Texas. After Perkins failed [1 2] to serve the defendants within 90 days or to timely respond [sic] to the district court's order to show cause, the court dismissed the case for lack of proper service pursuant to Federal Rule of Civil Procedure 4(m). The court then denied Perkin's [sic] Rule 60(b) motion for relief from judgment, and Perkins timely appealed.

On appeal, Perkins raises no arguments as to why his claim should not have been dismissed for lack of proper service. Instead, Perkins contends that the district court judge should have been disqualified for reasons that are unclear, including because the court referred the matter to arbitration without Perkins's consent. The court did not refer the case to arbitration. Finding Perkins's arguments meritless, we AFFIRM.

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Circuit Rule 47.5.4.

Mar. 11, 2021 – Judgment.

Case: 20-50707 Document: 00515776727 Page: 1
Date Filed: 03/11/2021

**United States Court of Appeals
for the Fifth Circuit**

No. 20-50707
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
March 11, 2021
Lyle W. Cayce
Clerk

WESLEY PERKINS, NON-FIDUCIARY ARRESTEE AND
POLITICAL “TARGET”,

Plaintiff—Appellant,
versus

JUDGE JOHN MISCHTIAN, COUNTY COURT AT LAW 2,
BELL COUNTY, TEXAS, OFFICIAL [?] AND
INDIVIDUALLY; BELL COUNTY, TEXAS,

Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:20-CV-296

Before DAVIS, STEWART, and DENNIS, *Circuit Judges.*

J U D G M E N T

This cause was considered on the record on appeal and the briefs on file.

IT IS ORDERED and ADJUDGED that the judgment of the District Court is AFFIRMED. [1 2]

IT IS FURTHER ORDERED that plaintiff-appellant pay to defendants-appellees the costs on appeal to be taxed by the Clerk of this Court.

Rule 14.1(i)(ii)—Additional Orders

W.D.Tex.

2020 JULY 17 – SUA SPONTE DISMISSAL.

Case 1:20-cv-00296-RP Document 24 Filed 07/17/20
Page 1 of 2

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

WES PERKINS,	§	
Plaintiff,	§	
v.	§	1:20-CV-296-RP
	§	
JUDGE JOHN MISCHTIAN,	§	
<i>in his individual and official</i>	§	
<i>capacity,</i> and BELL	§	
COUNTY, TEXAS,	§	
Defendants.	§	

ORDER

On March 20, 2020, Plaintiff Wesley Perkins (“Perkins”) filed his complaint in this case. (Dkt. 1). “If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” Fed. R. Civ. P. 4(m). More than 90 days have passed since Perkins filed his complaint.

On June 30, 2020, the Court ordered Perkins to show cause on or before July 10, 2020, as to why his claims should not be dismissed under Rule 4(m). (Order, Dkt. 12, at 3). That Rule specifies that “if the plaintiff shows good cause for the failure [to serve], the court must extend the time for service for an appropriate period.” Fed R. Civ. P 4(m). The Court warned Perkins that failure to show good cause “may result in the dismissal of this action.” (Order, Dkt. 12, at 3 (citing Fed R. Civ. P 4(m); Fed. R. Civ. P. 41(b); *Larson v. Scott*, 157 F.3d 1030, 1031 (5th Cir. 1998))). Perkins has not responded to the order to show cause. [1 2]

Accordingly, **IT IS ORDERED** that this action is **DISMISSED WITHOUT PREJUDICE**.

SIGNED on July 17, 2020.

/s/ Roo Ptn
ROBERT PITMAN
UNITED STATES DISTRICT JUDGE

2020 JULY 17 – FINAL JUDGMENT.

Case 1:20-cv-00296-RP Document 25 Filed 07/17/20
Page 1 of 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

WES PERKINS,	§	
Plaintiff,	§	
v.	§	1:20-CV-296-RP
	§	
JUDGE JOHN MISCHTIAN,	§	
<i>in his individual and official</i>	§	
<i>capacity,</i> and BELL	§	
COUNTY, TEXAS,	§	
Defendants.	§	

FINAL JUDGMENT

On July 17, 2020, the Court dismissed Perkins's claims against Defendants under Federal Rule of Civil Procedure 4(m) after Perkins did not serve Defendants within 90 days and did not timely respond to the Court's related order to show cause, (Order, Dkt. 12, at 3). As nothing remains to resolve, the Court renders final judgment under Federal Rule of Civil Procedure 58.

IT IS ORDERED that the case is **CLOSED**.

SIGNED on July 17, 2020.

/s/ Roo Ptn
ROBERT PITMAN
UNITED STATES DISTRICT JUDGE

2020 AUGUST 21 – RULE 60(b) RELIEF DENIED.

Case 1:20-cv-00296-RP Document 29 Filed 08/21/20
Page 1 of 3

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

WES PERKINS,	§	
Plaintiff,	§	
v.	§	1:20-CV-296-RP
	§	
JUDGE JOHN MISCHTIAN,	§	
<i>in his individual and official</i>	§	
<i>capacity, and BELL</i>	§	
COUNTY, TEXAS,	§	
Defendants.	§	

ORDER

On July 17, 2020, the Court dismissed Plaintiff Wesley Perkins’s (“Perkins”) complaint under Federal Rule of Civil Procedure 4(m) after Perkins did not serve Defendants within 90 days and did not timely respond to the Court’s related order to show cause. (Order, Dkt. 12, at 3; Final J., Dkt. 25, at 1). Now before the Court is Perkins’s motion for relief from final judgment under Federal Rule of Civil Procedure 60(b). (Dkt. 28). Perkins is proceeding pro se in this matter. After considering Perkins’s arguments, the record, and the relevant law, the Court denies Perkins’s motion.

“[T]he Federal Rules of Civil Procedure do not recognize a general motion for reconsideration.” *St. Paul Mercury Ins. Co. v. Fair Grounds Corp.*, 123

F.3d 336, 339 (5th Cir. 1997). “A motion filed after judgment requesting that the court reconsider its decision in light of additional evidence constitutes either a motion to ‘alter or amend’ under Fed. R. Civ. P. 59(e) or a motion for ‘relief from judgment’ under Fed. R. Civ. P. 60(b).” *Texas A&M Research Found. v. Magna Transp., Inc.*, 338 F.3d 394, 400 (5th Cir. 2003). The date when the relief-seeking party files the motion determines which rule applies: if the motion is filed within 28 days after the entry of final judgment, it is subject [1 2] to Rule 59(e); otherwise it is subject to Rule 60(b). *Id.*¹ More than 28 days have passed since the Court entered final judgment in this matter, so Perkins has properly moved for post-judgment relief under Rule 60(b). (See Final J., Dkt. 25 (filed on July 17, 2020)).

A court may relieve a party from a final judgment under Rule 60(b) for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been

¹ *Texas A&M Research Found.* discussed the 10-day period specified in the version of Rule 59(e) in effect when it was decided in 2003. 338 F.3d at 400. In 2009, Rule 59 was amended to extend the 10-day period to 28 days. Fed. R. Civ. P. 59 advisory committee’s note to 2009 amendment. However, the logic of the *Texas A&M Research Found.* rule still applies to the extended period.

satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief.

Rule 60(b) is considered “an extraordinary remedy” and “the desire for a judicial process that is predictable mandates caution in reopening judgments.” *Carter v. Fenner*, 136 F.3d 1000, 1007 (5th Cir. 1998).

Perkins has not established the requirements for relief under Rule 60(b). He argues that he is entitled to Rule 60(b) relief because he mistakenly missed the deadline for filing a notice of appeal because of “distractions” related to the COVID-19 pandemic. (Mot., Dkt. 28, at 1–2). Importantly, Perkins does not address the reason this Court dismissed his complaint: his failure to serve Defendants and respond to this Court’s related order to show cause. (See Order, Dkt. 12, at 3). He neither marshals new evidence, nor alleges fraud or other misconduct by an opposing party. See Fed. R. Civ. P. 60(b)(2)–(3). Instead, he argues that the dismissal order in this case is void because the undersigned is disqualified. (Mot., Dkt. 28, at 2). In support, he reprises his argument that the undersigned unlawfully referred dispositive motions in this matter to United States Magistrate Judge [⊥ 3] Mark Lane. (*Id.* at 3–4). But United States District Judge David Ezra already found that none of Perkins’s allegations in his previous motion to disqualify presented a legitimate ground for disqualification. (Order, Dkt. 20, at 4 (“[N]o reasonable person, knowing all the facts and circumstances surrounding these matters, would question [the undersigned’s] impartiality or

fairness.”)). And, as this Court has repeatedly explained, the District Court may designate a magistrate judge under 28 U.S.C. § 636(b)(1)(B) to “submit . . . proposed findings of fact and recommendations.” (See Orders, Dkt. 10, 12, 23).

Perkins’s request for Rule 60(b) relief is baseless. Accordingly, **IT IS ORDERED** that the [?] Perkins’s Rule 60(b) motion, (Dkt. 28), is **DENIED**.

IT IS FURTHER ORDERED that Perkins is warned that filing or pursuing any further frivolous lawsuits may result in (1) the imposition of court costs under 28 U.S.C. § 1915(f); (2) the imposition of significant monetary sanctions under Fed. R. Civ. P. 11; (3) the imposition of an order barring him from filing any lawsuits in this Court without first obtaining the permission from a District Judge of this Court or a Circuit Judge of the Fifth Circuit; or (4) the imposition of an order imposing some combination of these sanctions.

SIGNED on August 21, 2020.

/s/ Roo Ptn

ROBERT PITMAN
UNITED STATES DISTRICT JUDGE

**REGARDING REFERRAL TO AND PARTICIPATION
BY THE/AN UN-CONSENTED-TO MAGISTRATE
(ARBITER) AND DISQUALIFICATION.**

**2020 APRIL 8 – YEAHEL’S “AT FILING”
REFERRAL “ORDER.”**

Case 1:20-cv-00296-RP Document 4 Filed 04/08/20
Page 1 of 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

FILED
2020 APR -8 PM 3: 02
CLERK US DISTRICT COURT
WESTERN DISTRICT OF TEXAS
By /s/ LO [?]

Deputy

WES PERKINS, §
PLAINTIFF, §
§
V. §
§
JOHN MISCHTIAN, §
JUDGE COUNTY COURT §
AT LAW 2, BELL COUNTY, §
TEXAS, OFFICIALLY AND §
INDIVIDUALLY, AND §
BELL COUNTY, TEXAS, §
DEFENDANTS. §

CAUSE NO.
1:20-CV-296

ORDER

IT IS HEREBY ORDERED that all pending and future nondispositive motions in this case are **REFERRED** to United States Magistrate Mark Lane for resolution. *See* 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72; Loc. R. W.D. Tex. App. C, R. 1(c).

IT IS FURTHER ORDERED that all pending and future dispositive motions are **REFERRED** to United States Magistrate Judge Mark Lane for Report and Recommendation. *See* 28 U.S.C. § 636(b)(1)(B); Fed. R. Civ. P. 72; Loc. R. W.D. Tex. App. C, R. 1(d).

SIGNED this 8th day of April, 2020.

/s/ Lee Yeakel

LEE YEAKEL

UNITED STATES DISTRICT JUDGE

**2020 JUNE 24 – PARTICIPATION BY THE UN-
CONSENTED-TO MAGISTRATE (ARBITER).**

Case 1:20-cv-00296-RP Document 10 Filed 06/24/20
Page 1 of 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

WES PERKINS
Plaintiff,

V.

§

§

§ NO. 1:20-cv-296

§

-RP-LY

A-12

JOHN MISCHTIAN, §
COUNTY COURT AT LAW §
2, BELL COUNTY, TEXAS, §
OFFICIALLY AND §
INDIVIDUALLY, AND §
BELL COUNTY, TEXAS, §
Defendants. §

ORDER

Before the court is Wes Perkins’s (“Perkins”) Motion to Withdraw Yeakel’s Illegal Referral Order (Dkt. #8). Perkins appears to object to the District Court’s referral of dispositive matters in the above-styled case to the Magistrate Court. Dkt. #8. Perkins is correct that 28 U.S.C. § 636(b)(1)(A) permits district court judges to designate magistrate judges to “hear and determine” nondispositive pretrial matters. However, 28 U.S.C. § 636(b)(1)(B) permits district court judges to designate magistrate judges to “submit ... proposed findings of fact and recommendations” concerning dispositive pretrial matters. *See also* W.D. Tex. Loc. R., App’x C, r. 1(c)-(d). Moreover, while Perkins makes it plain that he does not consent to a magistrate judge, such non-consent does not prevent the undersigned from performing the tasks outlined in the above two statutes. *See* 28 U.S.C. § 636(c)(1); *see also* W.D. Tex. Loc. R., App’x C, r. 1(i). Accordingly, Perkins objections are not well-founded, and his Motion to Withdraw is **DENIED**. Dkt. #8.

SIGNED June 24, 2020.

/s/ M L
MARK LANE
UNITED STATES MAGISTRATE JUDGE

**2020 JUNE 30 – MOTION TO WITHDRAW
REFERRAL “ORDER” DENIED; MOTION TO STRIKE
PARTICIPATION BY UN-CONSENTED-TO ARBITER
DENIED.**

Case 1:20-cv-00296-RP Document 12 Filed 06/30/20
Page 1 of 3

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

WESLEY PERKINS,	§	
Plaintiff,	§	
v.	§	1:20-CV-296-RP
	§	
JUDGE JOHN MISCHTIAN,	§	
<i>in his individual and official</i>	§	
<i>capacity,</i> and BELL COUNTY,	§	
TEXAS,	§	
Defendants.	§	

ORDER

On June 15, 2020, Perkins filed a motion to withdraw the District Court’s referral order, which referred all pretrial matters in this case to Judge Lane. (Mot. Withdraw, Dkt. 8). Perkins specifically objected to the District Court’s referral of all pending and future dispositive matters to Judge Lane for report and recommendation. (*Id.* at 2; *see also* Order, Dkt. 4, at 1). Judge Lane denied Perkins’s motion, explaining that 28 U.S.C. § 636(b)(1)(B) permits district court judges to designate magistrate judges to “submit ... proposed findings of fact and recommendations” concerning dispositive pretrial matters,

whether or not the parties consent. *See also* W.D. Tex. Loc. R., App'x C, r. 1 (c)-(d). (Order, Dkt. 10, at 1). Perkins now moves to strike Judge Lane's order, which the Court construes as an appeal. (Mot. Strike, Dkt. 11). Having considered Perkins's motion, the law, and the record in this case, the Court will deny the motion.

A district judge may reconsider any pretrial matter determined by a magistrate judge where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law. 28 U.S.C. § 636(b)(1)(A). District courts apply a "clearly erroneous" standard when reviewing a magistrate judge's ruling under the referral authority of that statute. *Castillo v. Frank*, 70 F.3d 382, 385 (5th Cir. 1995). The clearly erroneous or contrary to law standard of review is "highly deferential" and [1 2] requires the court to affirm the decision of the magistrate judge unless, based on the entire evidence, the court reaches "a definite and firm conviction that a mistake has been committed." *Gomez v. Ford Motor Co.*, No. 5:15-CV-866-DAE, 2017 WL 5201797, at *2 (W.D. Tex. Apr. 27, 2017) (quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948)). The clearly erroneous standard "does not entitle the court to reverse or reconsider the order simply because it would or could decide the matter differently." *Id.* (citing *Guzman v. Hacienda Records & Recording Studio, Inc.*, 808 F.3d 1031, 1036 (5th Cir. 2015)).

Having reviewed Judge Lane's order, the Court finds no clear error. As Judge Lane rightly notes, under 28 U.S.C. § 636(b)(1)(B), the District Court may designate a magistrate judge to "submit ... proposed findings of fact and recommendations"

concerning dispositive pretrial matters.¹ (Order, Dkt. 10, at 1). The Court understands that Perkins does not consent to the referral in this case. Mot. Strike, Dkt. 11, at 2). But Perkins's decision not to consent has no bearing at all on the District Court's decision to make a referral. While a magistrate judge may not decide case-dispositive motions without the parties' consent, a magistrate judge may, on a district court judge's referral, submit a report and recommendation concerning a case-dispositive matter for the District Court's review. *Compare* 28 U.S.C. § 636(b)(1)(B), *with* 28 U.S.C. § 636(c)(1); *see also* W.D. Tex. Loc. R., App'x C, r. 1(i). Perkins's objections to judge Lane's Order are therefore unfounded and the Court will deny his motion.

In reviewing the record in this case, the Court also notes that Perkins has failed to timely serve Defendants Judge John Mischian and Bell County, Texas (together, "Defendants"). "If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff— must dismiss the action without prejudice against that defendant [⊥ 3] or order that service be made within a specified time." Fed. R. Civ. P. 4(m). More than 90 days have passed since Perkins filed his complaint.² Thus, the Court will order Perkins to

¹ Should Perkins object to Judge Lane's proposed findings and recommendations, he may timely file specific, written objections and, in doing so, secure de novo review of any dispositive motion by the District Court. 28 U.S.C. § 636(b).

² Perkins filed an amended complaint on June 15, 2020, which did not add additional defendants. (Am. Compl., Dkt. 7). Accordingly, Perkins's amended complaint does not extend the deadline by

show cause as to why his claims should not be dismissed for failure to timely serve the Defendants in this case.

Accordingly, the Court **AFFIRMS** Judge Lane's Order denying Perkins's motion to withdraw, (Dkt. 10), and **DENIES** Perkins's motion to strike, (Dkt. 11).

IT IS FURTHER ORDERED that Perkins shall show cause in writing on or before **July 10, 2020**, as to why his claims against Defendants should not be dismissed for failure to timely effectuate service. Failure to do so may result in the dismissal of this action. *See* Fed. R. Civ. P. 41(b) (action may be dismissed for want of prosecution or failure to comply with court order); *Larson v. Scott*, 157 F.3d 1030, 1031 (5th Cir. 1998) (district court has authority to dismiss case for want of prosecution or failure to comply with court order).

SIGNED on June 30, 2020.

/s/ Roo Ptn

ROBERT PITMAN

UNITED STATES DISTRICT JUDGE

which Perkins must effect service. *See* 4B Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure Civil* § 1137 (4th ed. 2020) ("Filing an amended complaint does not toll the Rule 4(m) service period and thereby provide an additional 90 days for service.").

2020 JULY 13 – MOTION TO DISQUALIFY DENIED.

Case 1:20-cv-00296-RP Document 20 Filed 07/13/20
Page 1 of 4

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

WESLEY PERKINS,	§ No. 1:20-CV-0296-
	§ OLG-ML
Plaintiff,	§
	§
v.	§
	§
JOHN MISCHTIAN, <i>et al.</i> ,	§
	§
Defendants.	§

ORDER DENYING MOTION TO DISQUALIFY

Before the Court is a Motion to Disqualify filed by Plaintiff Wes Perkins (“Plaintiff” or “Perkins”). (Dkt. # 14.) On July 9, 2020, this Motion was referred by the Honorable Chief Judge Orlando L. Garcia to the undersigned for determination. (Dkt. # 17.) Pursuant to Local Rule CV-7(h), the Court finds this matter suitable for disposition without a hearing. After careful consideration, the Court **DENIES** the motion for the following reasons.

BACKGROUND

Plaintiff brings this motion to disqualify the “presently assigned § 451 judge,” which at the time was Judge Robert Pitman. (Dkt. # 14.) The matter

was originally assigned to Judge Lee Yeakel. Perkins asserts that the Western District of Texas has an “insatiable desire to prohibit trial” and that without Perkins’s consent, Judge Yeakel referred “both non-dispositive and [2] dispositive matters.” (Id. (emphasis omitted).) Plaintiff asserts that he “does not consent to non-judicial decision-making” and that his matter should not be referred “at any time, to any arbiter (a/k/a magistrate).” (Id. (emphasis omitted).) In arguing that Judge Pitman should be disqualified, Perkins asserts that Judge Pitman “by compelling arbitration, about anything, is overtly defying Perkins’s right to a trial at all” and thus Judge Pitman “has rendered himself incapable of providing Perkins a fair and impartial trial.” (Id. (emphasis and internal punctuation marks omitted).)

LEGAL STANDARD

Under 28 U.S.C. § 144, whenever a party files a timely and sufficient affidavit that the presiding judge has a personal bias or prejudice either for or against said party, such judge shall proceed no further, and another judge shall decide the issue. A judge must be disqualified where “his impartiality might reasonably be questioned” or where he “has a personal bias or prejudice concerning a party.” 28 U.S.C. § 455(a) & (b)(1). Under either § 144 or § 455, “the alleged bias must be personal, as distinguished from judicial in nature.” United States v. Scroggins, 485 F.3d 824, 830 (5th Cir. 2007) (internal citations omitted). A judicial ruling alone “almost never constitute[s] a valid basis for a bias or partiality motion.” United States ex rel Gage v. Davis S.R. Aviation, L.L.C., 658 F. App’x 194, 198–99 (5th Cir. 2016) (internal quotation marks omitted). The [3]

alleged bias or prejudice must stem from an extra-judicial source, resulting in an opinion “on some basis other than what the judge learned from his participation in the case,” United States v. MMR Corp., 954 F.2d 1040, 1045–46 (5th Cir. 1992) (quoting United States v. Grinnell Corp., 384 U.S. 563, 583 (1966)), and therefore, a motion to disqualify ordinarily “may not be predicated on the judge’s rulings in the instant case.” Scroggins, 485 F.3d at 830 (internal quotations omitted). The determination of whether disqualification is appropriate is within the sound discretion of the judge. In re Hipp Inc., 5 F.3d 109, 116 (5th Cir. 1993).

ANALYSIS

Plaintiff seeks to disqualify Judge Pitman because “by compelling arbitration” Judge Pitman has “overtly defied Perkins’s right to a trial at all” and thus “rendered himself incapable of providing Perkins a fair and impartial trial.” (Dkt. # 14 (emphasis and internal punctuation marks omitted).) This Court cannot find anywhere in the record an instance where Judge Pitman denied Perkins his right to a trial and demanded arbitration. Without any support, Perkins’s conclusory statement is unlikely to cause “a reasonable and objective person” to “harbor doubts concerning the judge’s impartiality.” See Patterson v. Mobil Oil Corp., 335 F.3d 476, 484 (5th Cir. 2003) (quoting In re Chevron U.S.A. Inc., 121 F.3d 163, 165 (5th Cir. 1997)). [⊥ 4]

CONCLUSION

Having reviewed Plaintiff’s motion and the entire record, this Court finds that none of Plaintiff’s alle-

gations present a legitimate ground for the disqualification of Judge Pitman under Section 144, Section 455, or subsequent case law. The Court finds that no reasonable person, knowing all the facts and circumstances surrounding these matters, would question Judge Pitman's impartiality or fairness to Plaintiff. Thus, the Court **DENIES** Plaintiff's Motion.

IT IS SO ORDERED.

DATED: San Antonio, Texas, July 13, 2020.

/s/ D Ezra

David Alan Ezra
Senior United States District Judge

**2020 JULY 17 – REASSERTED MOTION TO
WITHDRAW REFERRAL “ORDER” DENIED.**

Case 1:20-cv-00296-RP Document 23 Filed 07/17/20
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**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

WESLEY PERKINS, §
Plaintiff, §
v. § 1:20-CV-296-RP
§
JUDGE JOHN MISCHTIAN, §
in his individual and official §
capacity, and BELL COUNTY, §
TEXAS, §
Defendants. §

ORDER

On June 15, 2020, Perkins filed a motion to withdraw the District Court's referral order, which referred all pretrial matters in this case to Judge Lane. (Mot. Withdraw, Dkt. 8). Perkins specifically objected to the District Court's referral of all pending and future dispositive matters to Judge Lane for report and recommendation. (*Id.* at 2; *see also* Order, Dkt. 4, at 1). Judge Lane denied Perkins's motion, explaining that 28 U.S.C. 636(b)(1)(B) permits district court judges to designate magistrate judges to "submit... proposed findings of fact and recommendations" concerning dispositive pretrial matters, whether or not the parties consent. *See also* W.D. Tex. Loc. R., App'x C, r. 1(c)-(d). (Order, Dkt. 10, at 1). Perkins then moved to strike Judge Lane's order, which the Court construed as an appeal. (Order, Dkt. 12, at 1). The Court affirmed Judge Lane's order and denied Perkins's motion to strike. (*Id.* at 3). Perkins now brings a second motion to withdraw the "illegal referral order" to judge Lane. (2nd Mot. Withdraw, Dkt. 16, at 2).

Perkins's second motion to withdraw the referral order in this case raises the same argument he raised in his prior motion, specifically that the District Court judge lacked authority to refer all pretrial matters in this case to judge Lane without his consent. (*Compare id.*, with Mot. Withdraw, Dkt. 8). As this Court explained to Perkins in its two previous orders, District Court judges may [1 2] designate a magistrate judge to "submit ... proposed findings of fact and recommendations" concerning dispositive pretrial matters, with or without Perkins's consent. 28 U.S.C. § 636(b)(1)(B); (*See* Order, Dkt. 10, at 1; Order, Dkt. 12, at 2). Perkins's

objection to the referral order in this case is unfounded and the court will once more deny his motion.

The court reminds Perkins that the Fifth circuit's directly applicable opinion in *Perkins v. Ivy*, 772 F. App'x 245, 246 (5th Cir. 2019) bars this very argument. Should Perkins continue to knowingly advance duplicative legal arguments, he is warned that he may face sanctions up to and including being barred from commencing litigation in the Western District without advance permission from a judge.

Accordingly, **IT IS ORDERED** that Perkins's motion to withdraw the magistrate referral in this case, (Dkt. 16), is **DENIED**.

SIGNED on July 17, 2020.

/s/ Roo Ptn

ROBERT PITMAN

UNITED STATES DISTRICT JUDGE

Rule 14.1(i)(iii)—Rehearing

None.

Rule 14.1(i)(iv)—Judgment of Different Date

None.

Rule 14.1(i)(v)—Statutes

Challenged, as applied.

TEX. TRANSP. CODE § 502.001(45) (“VEHICLE”).

“**Vehicle**” means a device in or by which a person or property is or may be transported or drawn [i.e., towed] on a public highway

28 U.S.C.A. § 636(b)(1)(A).

(b)(1) Notwithstanding any provision of law to the contrary,

(A) a judge may designate a magistrate to hear and determine any pretrial matter pending before the court, *except* a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action.

Pub. L. No. 94-577, 90 Stat. 2729 (Oct. 21, 1976)
(*emphasis* added).

28 U.S.C.A. § 636(c) (IN RELEVANT PART).

§ 636(c)(1) “Upon the consent of the parties.” ...
“Upon the consent of the parties.”

§ 636(c)(2) If a magistrate judge is designated to exercise civil jurisdiction under paragraph (1) of this subsection, the clerk of the court shall, at the time the action is filed, notify the parties **of the availability of a magistrate judge** to exercise such jurisdiction. **The decision of the parties shall be communicated to the clerk of the court.** Thereafter, either the district court judge or the magistrate judge may again advise the parties **of the availability of the magistrate judge**, but in so doing, **shall also advise the parties that they are free to withhold consent without adverse substantive consequences.** *Rules of court for the reference of civil matters to magistrate judges shall include procedures to protect the voluntariness of the parties' consent.*

28 U.S.C.A. § 636(c)(1), (c)(2) (all emphasis added).

Misapplied.

28 U.S.C.A. § 455(a).

(a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

28 U.S.C.A. § 455(a) (unchanged since 1990).

Rule 14.1(i)(vi)—Additional materials

Reference to the Record will suffice.