APPENDIX

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-12732
Non-Argument Calendar

D.C. Docket No. 8:15-cv-02787-VMC-AEP

ANGELA W. DEBOSE,

Plaintiff - Appellant,

versus

USF BOARD OF TRUSTEES, et al.,

Defendants,

UNIVERSITY OF SOUTH FLORIDA BOARD OF TRUSTEES,
ELLUCIAN COMPANY, L.P.,

Defendants - Appellees.

Appeal from the United States District Court
for the Middle District of Florida

(January 21, 2021)

Before JILL PRYOR, NEWSOM, and LUCK, Circuit Judges.

PER CURIAM:

Angela DeBose, proceeding *pro se*, appeals the denial of her post-trial Fed. R. Civ. P. 60(d) motion for fraud on the court, the denial of her request for an evidentiary hearing, and the denial of her motion to reassign or recuse the magistrate judge in an employment-discrimination lawsuit, No. 15-cv-02787 (*DeBose I*). DeBose also challenges the dismissal of her "Independent Action for Relief from Judgment to Remedy Fraud on the Court," which she filed in No. 19-cv-01132 (*DeBose II*). DeBose presents five issues on appeal. First, she argues that the district court erred in *DeBose II* by dismissing her claim without considering its merits. Second, she argues that the district court abused its discretion by denying her Rule 60(d) motion because evidence in the record demonstrates the existence of fraud. Third, DeBose argues that the district court abused its discretion by failing to hold an evidentiary hearing in conjunction with her Rule 60(d) motion for fraud on the court. Fourth, DeBose argues that the magistrate judge abused his discretion when he delayed denying her motion to reassign or recuse him and then denied the motion as moot. Finally, DeBose moves for sanctions. For the reasons explained below, we affirm, and we deny DeBose's motion for sanctions.

I

DeBose's litigation has a long and eventful history, the relevant portions of which we discuss below. DeBose filed a lawsuit in *DeBose I* against her former employer, the University of South Florida Board of Trustees (USFBOT) and Ellucian Company, for unlawful discrimination, retaliation, breach of contract, tortious interference with a business relationship, and civil conspiracy. DeBose later filed a motion for sanctions against USFBOT for destroying discoverable documents, including her employment files and contracts. The magistrate judge denied the motion, holding that DeBose had not established bad faith on the part of USFBOT. DeBose filed another motion for sanctions, which the magistrate judge again denied, citing DeBose's failure to provide new or additional evidence that USFBOT acted in bad faith. Ellucian and USFBOT moved for summary judgment on several of DeBose's claims, which the district court granted in part and denied in part.

DeBose then filed a "Motion for Relief from Judgment for Fraud" for the concealment of her 2015 employment contract. The district court denied the motion. DeBose filed a third motion for sanctions, which the district court denied as a "thinly-veiled" attempt to challenge the district court's summary-judgment order. The case proceeded to trial, where the jury returned a verdict in favor of DeBose on her retaliation claim. DeBose filed a fourth motion for sanctions

against USFBOT. The district court granted USFBOT's motion for judgment as a matter of law, overturned the jury's verdict on DeBose's retaliation claim, and denied DeBose's motion for sanctions.

Debose filed an "Independent Action for Relief from Judgment to Remedy Fraud on the Court" in *DeBose II*, alleging that USFBOT and others had engaged in a scheme to commit perjury and fraud. The district court dismissed *Debose II*, holding that DeBose was seeking relief pursuant to Rule 60(b) based on fraud on the court and that the "crux" of *DeBose II* was that the judgment in *DeBose I* had been tainted by fraud. The district court concluded that DeBose could file a motion in *DeBose I* pursuant to Rule 60(b).

DeBose then filed an "Independent Action for Relief from Judgment to Remedy Fraud on the Court" under Rule 60(d)(1) and Rule 60(d)(3) in *DeBose I*. DeBose also filed a "Motion for Reassignment of a New Magistrate or Alternatively Recusal of Judge Anthony E. Porcelli" and a "Motion for Evidentiary Hearing with Witness Testimony." Because the district court denied the Rule 60(d) motion and the motion for an evidentiary hearing, the magistrate judge denied DeBose's motion to reassign or recuse as moot. DeBose now appeals.

II

The first issue on appeal is whether this Court has jurisdiction to consider the district court's order denying DeBose's "Independent Action for Relief from

Judgment to Remedy Fraud on the Court" in *DeBose II*. This Court must examine jurisdiction *sua sponte*, *Adams v. Monumental Gen. Cas. Co.*, 541 F.3d 1276, 1277 (11th Cir. 2008), and it reviews jurisdictional issues *de novo*. *Id.*

Under 28 U.S.C.§ 1291, appellate courts "shall have jurisdiction of appeals from all final decisions of the district courts of the United States[.]" However, "a timely and properly filed notice of appeal is a mandatory prerequisite to appellate jurisdiction." *Holloman v. Mail-Well Corp.*, 443 F.3d 832, 844 (11th Cir. 2006). The Supreme Court, which has identified the timely filing of a notice of appeal as a jurisdictional requirement, has made clear that courts have "no authority to create equitable exceptions to jurisdictional requirements." *Bowles v. Russell*, 551 U.S. 205, 214 (2007). Federal Rule of Appellate Procedure 3(c)(1) sets out three requirements for a notice of appeal: it must (1) "specify the party or parties taking the appeal by naming each one in the caption or body of the notice"; (2) "designate the judgment, order, or part thereof being appealed"; and (3) "name the court to which the appeal is taken." "Although we generally construe a notice of appeal liberally, we will not expand it to include judgments and orders not specified unless the overriding intent to appeal these orders is readily apparent on the face of the notice." *Osterneck v. E.T. Barwick Indus., Inc.*, 825 F.2d 1521, 1528 (11th Cir. 1987), *aff'd sub nom. Osterneck v. Ernst & Whinney*, 489 U.S. 169 (1989).

Here, DeBose never filed a notice of appeal in *DeBose II*. DeBose did file a notice of appeal in *DeBose I*, but that notice does not specify her intent to appeal the order in *DeBose II*, nor is such intent "readily apparent on the face of the notice." *Osterneck*, 825 F.2d at 1528. Accordingly, this Court lacks jurisdiction to review the district court's order dismissing DeBose's "Independent Action for Relief from Judgment to Remedy Fraud on the Court" in *DeBose II*.

III

Second, we consider whether the district court abused its discretion in denying DeBose's Rule 60(d) motion in *DeBose I*. We review the denial of a Rule 60(b)(3) motion for an abuse of discretion. *Cox Nuclear Pharm., Inc. v. CTI, Inc.*, 478 F.3d 1303, 1314 (11th Cir. 2007). We thus apply this same standard to our review of the denial of DeBose's Rule 60(d)(3) motion, which, like Rule 60(b)(3), concerns "fraud on the court."

A movant who seeks relief from the judgment based on fraud on the court must establish fraud by clear and convincing evidence. *Id.* at 1314. Fraud on the court embraces "only that species of fraud which does or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases." *Travelers Indem. Co. v. Gore*, 761 F.2d 1549, 1551 (11th Cir. 1985) (holding that perjury does not constitute fraud on the court under Rule 60(d)(3))

(quotation marks omitted). It is thus only egregious misconduct—such as an "unconscionable plan or scheme" to influence the court's decision—that constitutes fraud on the court. *See Rozier v. Ford Motor Co.*, 573 F.2d 1332, 1338 (5th Cir. 1978). We have made clear that a plaintiff "cannot use an independent action as a vehicle for the relitigation of issues." *Travelers*, 761 F.2d at 1552.

Here, DeBose has heavily litigated USFBOT's alleged fraud, shredding of documents, and presenting false affidavits and perjurious testimony. DeBose's Rule 60(d)(3) motion concerns these same issues. DeBose would not be entitled to relief under Rule 60(d)(3) on this ground alone. *See Travelers*, 761 F.2d at 1552. But even if DeBose's Rule 60(d)(3) motion did not relitigate old issues, it fails for an independent reason—DeBose does not establish anything resembling an "unconscionable plan or scheme" by clear and convincing evidence. Although DeBose claims that she has new evidence of fraud on the court, this evidence either duplicates existing evidence or could have been previously submitted to the district court. The district court therefore did not abuse its discretion in denying DeBose's Rule 60(d) motion for fraud on the court.

IV

We must also determine whether the district court erred by denying DeBose's Rule 60(d) motion without an evidentiary hearing in *DeBose I*. We review a

district court's refusal to hold an evidentiary hearing for abuse of discretion. *Cliff v. Payco Gen. Am. Credits, Inc.*, 363 F.3d 1113, 1121 (11th Cir. 2004). We have held that where "[a]n evidentiary hearing would have served no useful purpose in aid of the court's analysis," a court does not abuse its discretion by failing to hold one. *Cano v. Baker*, 435 F.3d 133, 1342–43 (11th Cir. 2006). Here, the issues that DeBose presented had been repeatedly litigated in the district court, and DeBose presented no new substantive evidence. Accordingly, an evidentiary hearing would have served no useful purpose and the district court did not abuse its discretion by failing to hold one.

V

We next determine whether the magistrate judge erred by denying DeBose's motion to reassign or recuse as moot. We review the denial of a reassignment or recusal motion for abuse of discretion. *Loranger v. Stierheim*, 10 F.3d 776, 779 (11th Cir. 1994). A federal court may not decide moot questions. *See St. Pierre v. United States*, 319 U.S. 41, 42 (1943). An action is generally considered moot when any determination of the matter will have no practical effect on the parties. *See United States Parole Comm'n v. Geraughty*, 445 U.S. 388, 396 (1980). Here, DeBose filed a motion to reassign or recuse the magistrate judge prior to the rulings on her Rule 60(d) motion and her motion for an evidentiary hearing. Once rulings had been made on the Rule 60(d) motion and the motion for evidentiary

hearing by the district court judge—and not, notably, by the magistrate judge—any ruling on the motion to reassign or recuse would have no practical effect on the parties. The magistrate judge thus did not abuse his discretion by denying the motion as moot. Accordingly, we affirm.

VI

Finally, we address DeBose's motion for sanctions in this appeal. Rule 38 provides that "[i]f a court of appeals determines that an appeal is frivolous, it may, after a separately filed motion or notice from the court and reasonable opportunity to respond, award just damages and single or double costs to the appellee." Fed. R. App. P. 38. For purposes of Rule 38 sanctions, a claim is frivolous if it is "utterly devoid of merit." *Bonfiglio v. Nugent*, 986 F.2d 1391, 1393 (11th Cir. 1993). By its plain terms, however, Rule 38 applies against appellants and in favor of appellees. Accordingly, we deny DeBose's motion for sanctions.

VII

To sum up, we conclude that: (1) this Court lacks jurisdiction to review the district court's order dismissing DeBose's "Independent Action for Relief from Judgment to Remedy Fraud on the Court" in *DeBose II*; (2) the district court did not abuse its discretion in denying DeBose's Rule 60(d) motion; (3) the district court did not abuse its discretion by denying DeBose's Rule 60(d) motion without an evidentiary hearing; (4) the magistrate judge did not abuse his discretion by

denying DeBose's motion to reassign or recuse as moot; and (5) DeBose's motion for sanctions is denied.

AFFIRMED and **DENIED**.

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-12732-DD

ANGELA W. DEBOSE,

Plaintiff - Appellant,

versus

USF BOARD OF TRUSTEES, et al.,

Defendants,

UNIVERSITY OF SOUTH FLORIDA BOARD OF TRUSTEES,
ELLUCIAN COMPANY, L.P.,

Defendants - Appellees.

Appeal from the United States District Court
for the Middle District of Florida

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

Before JILL PRYOR, NEWSOM, and LUCK, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 35) The Petition for Panel Rehearing is also denied. (FRAP 40)

ORD-46

A-4 16a

THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ANGELA DEBOSE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**CASE NO. 8:15-cv-02787-VMC-AEP**
	)	
UNIVERSITY OF SOUTH FLORIDA BOARD OF TRUSTEES, UNIVERSITY OF SOUTH FLORIDA,	)	
	)	
Defendant.	)	
_____/		

NOTICE OF APPEAL

Plaintiff Angela DeBose hereby gives Notice of Appeal to the U.S. Court of Appeals for the Eleventh Circuit from the **June 23, 2020 Order [607] (Exhibit A)**, denying Plaintiff's motion for relief, which she brought as an "Independent Action" [588] in equity, as provided for by Federal Rule of Civil Procedure 60(d)(1), to remedy the errors in "*DeBose I*" and also denying Plaintiff's May 12, 2020 Motion for an Evidentiary Hearing [600].

On May 10, 2019, Ms. DeBose filed her complaint and independent action, with new evidence of the Defendant's and its representatives' fraud or misconduct. The case style, *Angela DeBose v. University of South Florida Board of Trustees and Greenberg Traurig, P.A.*[1], was filed under Case No. 8:19-cv-01132-JSM-AEP. The district court in that action dismissed Ms. DeBose's Independent Action *without prejudice*, insisting that Ms. DeBose file with the district court in the instant case, *DeBose I*, before Judge Elizabeth A. Kovachevich. After multiple times challenging the district court in Case No. 8:19-cv-01132-JSM-AEP to allow her to proceed, Ms.

[1] In *DeBose I*, the district court failed to issue the summons to serve process on Greenberg Traurig, P.A. The district court failed to address in its orders why the summons failed to issue.

DeBose filed her Rule 60(d) Independent Action in *DeBose I*, with Judge Virginia M. Covington presiding. Rule 60 of the Federal Rules of Civil Procedure provides for "Relief from a Judgment or Order" by motion (Part (b)) or by independent action (Part (d)). Part (d) is commonly referred to as Rule 60's "savings clause" and states: "This rule does not limit a court's power to entertain an independent action to relieve a party from a judgment, order, or proceeding." Fed.R.Civ.P. 60(d)(1). Such an action has no time limitation. Additionally, Ms. DeBose also appeals the **June 24, 2020 Order [608] (Exhibit B)**, denying as "moot" her May 25, 2020 motion to reassign a new magistrate to replace Magistrate Judge Anthony E. Porcelli, pursuant to 28 U.S. Code § 455 and *Marshall v. Jerrico Inc.*, 446 US 238, 242, 100 S.Ct. 1610, 64 L. Ed. 2d 182 (1980). On June 26, 2020, Plaintiff moved the district court to reconsider its orders [607, 608]. The district court denied Plaintiff's motion for reconsideration on several erroneous grounds, including an inaccurate finding that Plaintiff filed the independent action but only after the Eleventh Circuit panel affirmed the district court's decision to overturn the jury verdict in favor of Ms. DeBose and grant Defendant USFBOT's motion for judgment as a matter of law (JMOL). Therefore, finally, Ms. DeBose also appeals the **July 10, 2020 Order [611] (Exhibit C)**, denying her motion for reconsideration.

Submitted July 21, 2020

Respectfully submitted,

/s/ Angela DeBose
Angela DeBose

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this **21st** day of July, 2020, the above and foregoing was filed electronically, which will email the following: Richard C. McCrea, Jr., Greenberg Traurig, P.A., 101 East Kennedy Boulevard, Suite 1900, Tampa, Florida 33602-5148; email: (mccrear@gtlaw.com); and other counsel of record.

/s/ Angela DeBose
Angela DeBose, Plaintiff

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ANGELA W. DEBOSE,

Plaintiff,

v. Case No: 8:15-cv-2787-T-33AEP

UNIVERSITY OF SOUTH FLORIDA BOARD OF TRUSTEES, et al.,

Defendants.

_____/

ORDER

This cause comes before the Court pursuant to pro se Plaintiff Angela DeBose's Motion for Independent Action for Relief from Judgment to Remedy Fraud on the Court (Doc. # 588), filed on May 12, 2020, DeBose's Motion for an Evidentiary Hearing (Doc. # 600), filed on June 6, 2020, and DeBose's Motion for Extension of Time to File a Second Amended Appeal (Doc. # 603), filed on June 9, 2020. Defendant University of South Florida Board of Trustees (USFBOT) has responded to all three motions. (Doc. # 599, 604, 605). For the reasons detailed herein, the Motions are denied.

I. Background

This case has a long and complex history, one that the parties are familiar with. For now, it is sufficient to say that, following her termination from USF, DeBose brought this lawsuit against both USFBOT and Ellucian Company, L.P., a software developer whose products are used for academic and administrative recordkeeping. (Doc. # 45). This Court granted summary judgment to Defendants on several counts, including all counts against Ellucian. (Doc. # 210). After a jury found for DeBose on the remaining counts, the Court granted judgment as a matter of law to USFBOT and denied DeBose's post-trial motions. (Doc. ## 471, 548, 549). DeBose appealed to the Eleventh Circuit and, on April 28, 2020, the Eleventh Circuit affirmed in full. (Doc. # 587).

Shortly after the Eleventh Circuit handed down its decision, DeBose filed the instant Motion for Independent Action, which argued that, due to various alleged frauds that USFBOT and related entities had perpetrated on the Court, the Court should allow DeBose to pursue an independent action for relief from judgment and/or should set aside the judgment, pursuant to Federal Rule of Civil Procedure 60(d). Although DeBose raises multiple allegations of fraud in her Motion, the thrust of her argument is that USFBOT engaged in wrongful

and nefarious conduct in order to impede discovery and the administration of justice in this case, including, among other things, wrongly destroying her personnel file, including various employment contracts, presenting false testimony to the Court, and convincing the Court to wrongfully exclude certain witnesses and evidence proffered by DeBose. (Doc. # 588).

In its response, USFBOT outlines in great detail the procedural history of this case, including the numerous motions and other filings submitted by DeBose in which she alleged that USFBOT had destroyed or withheld evidence, persuaded witnesses to lie under oath and otherwise suborned perjury. (Doc. # 599 at 3-9). As the response explains, and as the record bears out, this Court repeatedly rejected DeBose's arguments because the allegations were never accompanied by competent evidence or were "thinly veiled" attempts to attack substantive orders. See, e.g., (Doc. # 548 at 9) ("The Court and the assigned Magistrate Judge have exhaustively addressed on multiple occasions the issues and arguments raised by the instant Motion for Sanctions. Since the outset of this litigation, DeBose has failed to substantiate her allegations against the Board related to her 'employment contracts,' whether it be in the form of their

concealment, destructions, or breach."); (Doc. # 144 at 7-8) ("In essence, Plaintiff, based upon unsupported hearsay statements and conjecture, requests that the Court conclude that numerous individuals . . . all agreed to lie under oath and agreed to execute elaborate steps to shred information directly relevant to Plaintiff's claims in this case. The Court is unpersuaded by Plaintiff's renewed Motion. Rather, yet again, Plaintiff has simply failed to provide any competent evidence to demonstrate that Defendant acted with bad faith in the shredding of her departmental personnel file.").

USFBOT therefore argues that DeBose's instant Motion for Independent Action is an improper effort to relitigate issues already decided by the Court and, in any event, does not meet the "heightened Rule 60(d) fraud standard." (Doc. # 599 at 13-17).

DeBose also seeks an evidentiary hearing pertaining to her request for an independent action and has requested that the Court enlarge her time to file an amended notice of appeal in appellate case number 18-13545. (Doc. ## 600, 603). USFBOT has responded in opposition to these Motions as well (Doc. ## 604, 605), and the Motions are all ripe for review.

II. Legal Standard

Federal Rule of Civil Procedure 60(d) authorizes a Court to (1) "entertain an independent action to relieve a party from a judgment, order, or proceeding," or (2) "set aside a judgment for fraud on the court." Fed. R. Civ. P. 60(d)(1), (3).

Because an independent action under Rule 60(d) is an equitable one, the proponent must show a meritorious claim or defense and that the judgment should not, in equity and good conscious, be enforced. Travelers Indem. Co. v. Gore, 761 F.2d 1549, 1151 (11th Cir. 1985) (citation omitted); Jeffus v. Att'y Gen. for State of Fla., No. 6:10-cv-1174-Orl-28, 2011 WL 2669147, at *2 (M.D. Fla. July 6, 2011). "The Supreme Court has made clear that such independent actions must, if Rule 60(b) is to be interpreted as a coherent whole, be reserved for those cases of injustices which, in certain instances, are deemed sufficiently gross to demand a departure from rigid adherence to the doctrine of res judicata." Aldana v. Del Monte Fresh Produce N.A., Inc., 741 F.3d 1349, 1359 (11th Cir. 2014) (quoting United States v. Beggerly, 524 U.S. 38, 46 (1998)) (internal quotations and citation omitted). Indeed, "relief under Rule 60(d) is reserved for the rare and exceptional case where a failure to

act would result in a miscarriage of justice." Jeffus, 2011 WL 2669147, at *2; see also Fox v. Brewer, 620 F.2d 177, 180 (8th Cir. 1980) (noting that Rule 60(d) "provides for extraordinary relief on a showing of exceptional circumstances").

As to Rule 60(d)(3), courts have similarly found that "only the most egregious misconduct, such as bribery of a judge or members of a jury, or the fabrication of evidence by a party in which an attorney is implicated, will constitute a fraud on the court." Galatolo v. United States, 394 F. App'x 670, 672 (11th Cir. 2010); see also Gupta v. Walt Disney World Co., 519 F. App'x 631, 632 (11th Cir. 2013) (movant must show an "unconscionable plan or scheme" to improperly influence the court's decision).

III. Analysis

There are no extraordinary circumstances here that warrant relief under Rule 60(d). DeBose accuses USFBOT of suborning perjury and fabricating evidence. But "[p]erjury and fabricated evidence do not constitute fraud upon the court, because they 'are evils that can and should be exposed at trial,' and '[f]raud on the court is therefore limited to the more egregious forms of subversion of the legal process, . . . those we cannot necessarily expect to be

exposed be the normal adversary process.'" Council v. Am. Fed'n of Governmental Emps., 559 F. App'x 870, 873 (11th Cir. 2014) (quoting Travelers Indemnity Co., 761 F.2d at 1552). In a similar vein, the simple nondisclosure of facts or withholding of discovery does not establish fraud on the court. See BDT Invs., Inc. v. Lisa, S.A., No. 18-22005-CIV, 2019 WL 7344829, at *9 (S.D. Fla. Oct. 25, 2019) ("The mere nondisclosure of allegedly pertinent facts also does not ordinarily rise to the level of fraud on the court."); Bryant v. Troutman, No. 3:05-cv-162-J-20MCR, 2006 WL 1640484, at *1 (M.D. Fla. June 8, 2006) (holding that party's averments that their adversary lied under oath, gave misleading answers, thwarted their discovery efforts, and concealed certain pertinent evidence did not rise to the level of fraud on the court).

But more importantly, DeBose's allegations have already been considered, weighed, and rejected by this Court on multiple occasions. As explained above, the Court consistently found that DeBose's claims were unsupported by competent evidence. In the instant Motion, DeBose claims that she has "new evidence." The Court's review of the deposition transcripts and affidavits attached to the Motion, however, reveals that these documents either were or could have been

previously submitted to the Court, or contain information that is duplicative of other accusations already lodged by DeBose earlier in the litigation.

Under such circumstances, DeBose cannot demonstrate a miscarriage of justice, as required for relief under Rule 60(d). See Council, 559 F. App'x at 873 (rejecting a Rule 60(d)(3) claim where the claimant made conclusory averments, unsupported by probative facts, that the other party committed perjury and fabricated evidence).

Instead, the Court agrees with USFBOT that the instant request for an independent action is an attempt to re-litigate issues that have been, or could have been, raised by DeBose while the litigation was active. See Travelers Indem. Co., 761 F.2d at 1552 (explaining that a plaintiff "cannot use an independent action as a vehicle for the relitigation of issues"); Maye v. United States, No. 8:10-cv-2327-T-30TBM, 2010 WL 4279405, at *2 (M.D. Fla. Oct. 25, 2010) ("A party cannot relitigate 'in the independent equitable action issues that were open to litigation in the former action where he had a fair opportunity to make his claim or defense in that action.'"). For these reasons, DeBose's request for an independent action must be denied.

Furthermore, DeBose has requested an evidentiary hearing on her motion for an independent action. (Doc. # 600). For the reasons described herein, her Motion is meritless and, as such, the Court will not hold an evidentiary hearing. See Cano v. Baker, 435 F.3d 1337, 1342-43 (11th Cir. 2006) (the district court did not abuse its discretion by denying request for an evidentiary hearing where holding such a hearing would not aid the court's analysis on a question of law).

Finally, DeBose seeks an extension of time in which to file an amended notice of appeal in appellate case number 18-13545. (Doc. # 603). By way of background, in 2018, DeBose appealed this Court's July 20, 2018, order denying her motion for sanctions and its subsequent order denying her motion for reconsideration of its July 20 order. (Doc. ## 293, 296, 316, 527). As the Eleventh Circuit correctly pointed out, neither of these orders were final, appealable orders at the time DeBose filed her notice of appeal. (Id.). Accordingly, the Eleventh Circuit dismissed the appeal for lack of jurisdiction, although it noted that nothing prevented DeBose from appealing the final judgment. (Id.). The final judgment in favor of USFBOT was entered on February 14, 2019. (Doc. # 549).

Typically, under the Federal Rules of Appellate Procedure, notices of appeal must be filed within 30 days from entry of the judgment or order appealed from. Fed. R. App. P. 4. A district court can extend that time if a party files a motion within 30 days after the deadline expires and it shows "excusable neglect or good cause." Fed. R. Civ. P. 4(a)(5). In addition, the time to file an appeal may be reopened for 14 days if: (1) the moving party did not receive notice of the entry of judgment or order appealed within 21 days after entry; (2) the motion is filed within 180 days after the judgment or order is entered or within 14 days of when the moving party received notice of the entry; and (3) no party would be prejudiced. Fed. R. App. P. 4(a)(6). Even if all three prongs are met, however, a district court retains the discretion to deny a motion to reopen. Watkins v. Plantation Police Dep't, 733 F. App'x 991, 994 (11th Cir. 2018).

DeBose did not file her motion within 30 days of entry of the judgment here, nor 30 days after that time expired. Moreover, DeBose had the opportunity to appeal these orders within her plenary appeal, but she did not do so. Nor can DeBose plausibly allege that she did not receive notice of the orders she seeks to appeal or the final judgment. What's

more, Rule 4(a)(6) does not provide DeBose relief because the final judgment against USFBOT was entered more than 180 days ago. In short, the Federal Rules of Appellate Procedure do not allow this Court to reopen or extend the time for DeBose to file the requested amended notice of appeal.

Accordingly, it is now

ORDERED, ADJUDGED, and **DECREED:**

(1) Plaintiff Angela DeBose's Motion for Independent Action for Relief from Judgment to Remedy Fraud on the Court (Doc. # 588) is **DENIED.**

(2) DeBose's Motion for an Evidentiary Hearing (Doc. # 600) is **DENIED.**

(3) DuBose's Motion for Extension of Time to File a Second Amended Appeal (Doc. # 603) is **DENIED.**

DONE and **ORDERED** in Chambers, in Tampa, Florida, this 23rd day of June, 2020.

Virginia M. Hernandez Covington

VIRGINIA M. HERNANDEZ COVINGTON
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ANGELA DEBOSE,

Plaintiff,

v. Case No. 8:15-cv-2787-T-33AEP

UNIVERSITY OF SOUTH FLORIDA BOARD OF TRUSTEES, et al.,

Defendants.
_____/

ORDER

This matter comes before the Court upon consideration of pro se Plaintiff Angela DeBose's Motion for Reconsideration of its prior Orders denying various motions filed by DeBose. (Doc. # 609). For the reasons that follow, the Motion is denied.

I. Background

After the Eleventh Circuit issued a written opinion affirming this Court's grant of summary judgment in Defendants' favor on certain claims, affirming this Court's entry of judgment as a matter of law in favor of Defendant University of South Florida Board of Trustees ("USFBOT"), and affirming this Court's denial of DeBose's request for attorneys' fees and costs, (Doc. # 587), DeBose filed a motion

for independent action for relief pursuant to Federal Rule of Civil Procedure 60(d). (Doc. # 588). DeBose also filed, in short succession, a motion for the recusal or reassignment of the magistrate judge in this matter, a motion for evidentiary hearing, and a motion for extension of time to file an amended notice of appeal. (Doc. ## 596, 600, 603).

On June 23, 2020, this Court entered an Order denying DeBose's motion for independent action and also denying her motions for an evidentiary hearing and leave to file an amended notice of appeal. (Doc. # 607). This Court explained that DeBose had failed to meet the high standard required to grant Rule 60(d) motions because she merely sought to relitigate matters already considered and rejected by this Court in the years-long litigation leading up to the motion. (Id.). On June 24, 2020, United States Magistrate Judge Porcelli, having had the motion for recusal referred to his chambers, denied the motion for reassignment or recusal as moot. (Doc. # 608). On June 26, 2020, DeBose filed a motion for reconsideration of this Court's Orders of June 23 and 24, 2020. (Doc. # 609).

USFBOT has filed a response in opposition (Doc. # 610), and the Motion is ripe for review.

II. Legal Standard

"Federal Rules of Civil Procedure 59(e) and 60 govern motions for reconsideration." Beach Terrace Condo. Ass'n, Inc. v. Goldring Invs., No. 8:15-cv-1117-T-33TBM, 2015 WL 4548721, at *1 (M.D. Fla. July 28, 2015). "The time when the party files the motion determines whether the motion will be evaluated under Rule 59(e) or Rule 60." Id. "A Rule 59(e) motion must be filed within 28 days after the entry of the judgment." Id. "Motions filed after the 28-day period will be decided under Federal Rule of Civil Procedure 60(b)." Id.

Here, the Motion was filed within 28 days of the Court's Order, so Rule 59 applies. "The only grounds for granting a Rule 59 motion are newly discovered evidence or manifest errors of law or fact." Anderson v. Fla. Dep't of Envtl. Prot., 567 F. App'x 679, 680 (11th Cir. 2014)(quoting Arthur v. King, 500 F.3d 1335, 1343 (11th Cir. 2007)).

Granting relief under Rule 59(e) is "an extraordinary remedy to be employed sparingly in the interests of finality and conservation of scarce judicial resources." United States v. DeRochemont, No. 8:10-cr-287-T-24MAP, 2012 WL 13510, at *2 (M.D. Fla. Jan. 4, 2012)(citation omitted). Furthermore, "a Rule 59(e) motion [cannot be used] to relitigate old matters, raise argument or present evidence that could have been raised

prior to the entry of judgment." Michael Linet, Inc. v. Vill. of Wellington, 408 F.3d 757, 763 (11th Cir. 2005).

III. Analysis

While DeBose raises various points in her Motion, all of her arguments crystallize to a single contention - that this Court erred in denying her motion for independent action. However, DeBose has not pointed to any new evidence in support of her Motion. Moreover, DeBose's arguments are, essentially, a rehash of the arguments raised in her Rule 60(d) motion. DeBose has spent considerable time and energy over the course of this litigation attempting to convince the Court that sanctions are in order against USFBOT for spoliation of evidence and various other infractions. As explained in its prior Order, this Court has considered and rejected these arguments on multiple occasions. Such arguments are not permissible on a Rule 59(e) motion.

In sum, DeBose has not met her burden of demonstrating that newly discovered evidence or manifest errors of law or fact merit reconsideration of the Court's June 23, 2020, or June 24, 2020, Orders under Rule 59(e). Her motion for reconsideration must be denied.

Accordingly, it is now

ORDERED, ADJUDGED, and **DECREED:**

Angela DeBose's Motion for Reconsideration (Doc. # 609) is **DENIED**.

DONE and **ORDERED** in Chambers in Tampa, Florida, this 8th day of July, 2020.

Virginia M. Hernandez Covington

VIRGINIA M. HERNANDEZ COVINGTON
UNITED STATES DISTRICT JUDGE

Additional material from this filing is available in the Clerk's Office.