

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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Filed: December 17, 2020

Ms. Hakimah Jabbar
2339 Taylor Avenue
Columbus, OH 43211

Re: Case No. 20-3483, *Hakimah Jabbar v. James Graham*
Originating Case No. : 1:20-cv-00245

Dear Ms. Jabbar,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Julie Anne Connor
Case Manager
Direct Dial No. 513-564-7033

cc: Mr. Matthew Joseph Horwitz
Mr. Richard W. Nagel

Enclosure

Mandate to issue

Appendix A

NOT RECOMMENDED FOR PUBLICATION

No. 20-3483

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

HAKIMAH JABBAR,

Plaintiff-Appellant,

v.

JUDGE JAMES L. GRAHAM,

Defendant-Appellee.

FILED
Dec 17, 2020
DEBORAH S. HUNT, Clerk

ON APPEAL FROM THE UNITED
STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF
OHIO

O R D E R

Before: COOK, WHITE, and MURPHY, Circuit Judges.

Hakimah Jabbar, a pro se Ohio resident, appeals the district court's dismissal of her civil suit against United States District Judge James L. Graham. Jabbar moves for the appointment of counsel. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See Fed. R. App. P. 34(a)*.

Jabbar's case arose from a criminal forfeiture proceeding before Judge Graham. Jabbar filed a third-party petition claiming an interest in property that was subject to the district court's preliminary order of forfeiture, namely \$28,223 in drug proceeds. Judge Graham granted the government's motion to dismiss that petition for failure to comply with 21 U.S.C. § 853(n)(3), because the petition was not signed under penalty of perjury and its "vague allegations [were] not sufficient to assert the existence [of] any legally cognizable property interest on the part of Ms. Jabbar in the forfeited currency." *United States v. Forrest*, Case No. 2:17-cr-158 (S.D. Ohio Jan. 16, 2018) (order).

Days later, Jabbar filed a petition for a civil stalking protection order in Ohio state court against Judge Graham. Judge Graham removed the case to federal court, and the district court

No. 20-3483

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granted his motion to dismiss on judicial-immunity grounds. *Jabbor*¹ v. *Graham*, No. 1:18-cv-95 (S.D. Ohio Aug. 17, 2018) (order).

Meanwhile, in July 2018, the district court issued a final forfeiture order granting title over the currency to the government. *United States v. Forrest*, Case No. 2:17-cr-158 (S.D. Ohio July 30, 2018) (order).

In January 2020, Jabbar filed a second petition for a civil stalking protection order against Judge Graham in state court. The petition claimed that Judge Graham “used gov’t agencies and officials to steal my title, rights, and judicial claim to the forfeited property of Deandre Forrest”; “used agents for local churches to send mail to my house, that was meant for the prosecutor”; and “used these and other source[s] to build a dossier against me, this makes me feel like I am in immediate danger.” The petition also stated that Judge Graham “has refused to hand over DNA analysis reports,” and “has used other people[’s] DNA illegally in a vile sexual mann[e]r.” Judge Graham removed the case to the United States District Court for the Southern District of Ohio under 28 U.S.C. § 1442(a)(3). He then moved to dismiss the case as barred by judicial immunity.

A magistrate judge recommended granting the motion to dismiss because Jabbar’s petition sought relief against Judge Graham for judicial acts in a case in which he had jurisdiction. *Jabbor v. Graham*, No. 1:20-cv-245, 2020 WL 1649802 (S.D. Ohio Apr. 3, 2020) (report and recommendation). Jabbar filed objections, which quote from and otherwise recount the proceedings in the *Forrest* case. Jabbar asserted that Judge Graham committed errors and imposed what amounted to an excessive fine in the forfeiture proceedings. She argued that Judge Graham violated her civil rights while acting under the color of law, and thus that he was not acting in his judicial capacity. The district court overruled Jabbar’s objections, adopted the magistrate judge’s report and recommendation, and granted Judge Graham’s motion to dismiss. *Jabbar v. Graham*, No. 1:20-cv-245, 2020 WL 2044090 (S.D. Ohio Apr. 28, 2020).

¹ Jabbar’s name is spelled this way in various filings on the District Court docket.

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On appeal, Jabbar argues that Judge Graham should be liable because he acted under the color of law. She cites 18 U.S.C. § 242, a criminal statute prohibiting violating a person's constitutional rights under color of law.

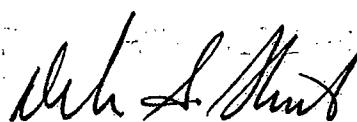
We review de novo a district court's dismissal of a complaint under the doctrine of judicial immunity. *See Leech v. DeWeese*, 689 F.3d 538, 541-42 (6th Cir. 2012). Federal judges are absolutely immune from suit "for their 'judicial acts,' unless performed 'in the clear absence of all jurisdiction.'" *Alexander v. Rosen*, 804 F.3d 1203, 1208 (6th Cir. 2015) (quoting *Stump v. Sparkman*, 435 U.S. 349, 356-57 (1978)).

Jabbar's claims derive from the criminal proceedings before Judge Graham. In her appellate brief, she alleges that the judge "was performing normally in [his] judicial capacity." She also cites to the criminal civil rights statute and asserts that Judge Graham was acting under color of law. Therefore, her claims concern Judge Graham's judicial acts. And she did not allege, nor is it the case, that Judge Graham somehow lacked jurisdiction in the *Forrest* forfeiture proceedings. *See* 28 U.S.C. § 2461(c). Therefore, the district court correctly held that Jabbar's suit was barred by the doctrine of judicial immunity.

Jabbar also moves for the appointment of counsel. But there is no constitutional right to be appointed counsel in a civil case, *see Glover v. Johnson*, 75 F.3d 264, 268 (6th Cir. 1996), and she cites no exceptional circumstances that would justify appointment in her appeal here, *see Lavado v. Keohane*, 992 F.2d 601, 605-06 (6th Cir. 1993).

Accordingly, we **DENY** the motion for counsel and **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION - CINCINNATI

HAKIMAH JABBAR, : Case No. 1:20-cv-245

Plaintiff, : Judge Matthew W. McFarland

v.

JAMES L. GRAHAM, :

Defendant. :

ENTRY AND ORDER ADOPTING REPORT AND RECOMMENDATIONS (Doc. 7)

This case is before the Court on Plaintiff's Objection (Doc. 11) to Magistrate Judge Stephanie K. Bowman's Report and Recommendations (Doc. 7). The Magistrate Judge recommends that Defendants' Motion to Dismiss (Doc. 2) should be granted. Plaintiff filed an Objection to the Report and Recommendations (Doc. 11), making this matter now ripe for review.

As required by 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72(b), the Court has made a de novo review of the record in this case. Upon said review, the Court finds that Plaintiff's Objection (Doc. 11) is not well-taken and is accordingly **OVERRULED**. The Court hereby **ADOPTS** the Report and Recommendations (Doc. 7) in its entirety. Defendants' Motion to Dismiss (Doc. 2) is therefore **GRANTED**. Furthermore, the Court certifies under 28 U.S.C. § 1915(a)(3) that for the reasons identified in the Report and Recommendations, an appeal of this Order would not be taken in good faith.

Attachment B

IT IS SO ORDERED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

By: */s/ Matthew W. McFarland*
JUDGE MATTHEW W. McFARLAND

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

HAKIMAH JABBOR,

Civil Action No. 1:20-cv-245

Plaintiff,

McFarland, J.
Bowman, M.J.

vs.

JAMES GRAHAM,

Defendants.

REPORT AND RECOMMENDATION

Plaintiff Hakimah Jabbor, a resident of Columbus, Ohio brought a state court action against United States District Judge James Graham by filing a Petition for Civil Stalking Production Order. (Doc. 1) The matter was removed to federal court and is now before the Court on Defendant's motion to dismiss. (Doc. 2). To date, Plaintiff has failed to file a memorandum in opposition to the motion to dismiss. For the reasons that follow, the motion to dismiss should be granted.

Plaintiff's pro se petition arises from a criminal forfeiture proceeding pending before Judge Graham. See *United States v. Deandre Forrest*, Case No. 2:17-cr0158-1 (S.D. Ohio).¹ Pursuant to a Preliminary Order of Forfeiture entered in that case, plaintiff filed a third-party petition claiming an interest in the property subject to the Order. (Id. Doc. 56). On January 16, 2018, Judge Graham granted the United States' Motion to Dismiss Jabbar's forfeiture petition for failure to comply with 21 U.S.C. § 853(n). (Order,

¹ Federal Courts may take judicial notice of proceedings in other courts of record. See *Rodic v. Thistledown Racing Club, Inc.*, 615 F.2d 736, 738 (6th Cir. 1980)(quoting *Grandader v. Public Bank*, 417 F.2d 75, 82, 83 (6th Cir. 1969)). See also *National Union Fire Ins. Co. v. VP Bldgs., Inc.*, 606 F. 3d 835, 839 n.2 (6th Cir. 2010); *Lyons v. Stovall*, 188 F.3d 327, 333 n. 3 (6th Cir. 1999).

APPENDIX C

ECF No. 77.) The Court issued a final order of forfeiture on July 30, 2018. (Order, ECF No. 107.)

Thereafter, on January 17, 2020, Jabbar filed a second Petition for a Civil Stalking Protection Order in the Franklin County Court of Common Pleas. (Petition, ECF No. 1-1.) The Petition asserts that Judge Graham “has used gov’t (sic) agencies and officials to steal my title, rights, and judicial claim to the forfeiture property of Deandre Forrest 17-cr-158” Id. Jabbar’s Petition also includes allegations that Judge Graham “used agents for local churches to send mail to my house that was meant for the prosecutor.” Id.

Jabbar’s Petition for an immediate Civil Stalking Protection Order was denied. The Franklin County Court of Common Pleas, however, set a full hearing on the Petition for February 26, 2020. On February 21, 2020, Judge Graham removed Jabbar’s Petition to this Court pursuant to 28 U.S.C. § 1442.

Plaintiff’s petition should be dismissed because it seeks relief from a defendant who is immune from such relief. Plaintiff’s claims against Judge Graham are barred by judicial immunity. Judges are afforded absolute immunity from liability for actions taken while functioning within their judicial capacity. “Like other forms of official immunity, judicial immunity is an immunity from suit, not just from ultimate assessment of damages.”

Mireles v. Waco, 502 U.S. 9, 11 (1991); *Pierson v. Ray*, 386 U.S. 547 (1967); *Barrett v. Harrington*, 130 F3d 246, 255 (6th Cir. 1997). Judges retain absolute immunity from liability even if they act maliciously or corruptly, as long as they are performing judicial acts and have jurisdiction over the subject matter giving rise to the suit against them. *Stump v. Sparkman*, 435 U.S. 349, 356-57 (1978). See also *Brookings v. Clunk*, 389 F.3d 614, 617 (6th Cir. 2004); *Stern v. Mascio*, 262 F. 3d 600, 607 (6th Cir. 2001). It is

clear that the decisions made by Judge Graham in the federal forfeiture proceeding were functions normally performed by judges. *Stump*, 435 U.S. at 362. Plaintiff's state court petition related solely to the forfeiture proceedings in Case No. 2:17-cr-158-1 and did not address any non-judicial or personal acts by Judge Graham. In addition, plaintiff has alleged no facts indicating that Judge Graham acted "in the complete absence of all jurisdiction" in dismissing plaintiff's third-party petition claiming an interest in the property subject to the Preliminary Order of Forfeiture. See *Stern*, 262 F.3d at 607. Therefore, Judge Graham is absolutely immune from civil liability in this matter. Accordingly, Defendant's motion to dismiss should be granted because Plaintiff's petition seeks relief from a defendant who is immune from suit.

In light of the foregoing, it is therefore **RECOMMENDED** that Defendant's motion to dismiss (Doc. 2) be **GRANTED**. It is further **RECOMMENDED** that the Court certify pursuant to 28 U.S.C. § 1915(a) that for the foregoing reasons an appeal of any Order adopting this Report and Recommendation would not be taken in good faith and therefore deny Plaintiff leave to appeal *in forma pauperis*. Plaintiff remains free to apply to proceed *in forma pauperis* in the Court of Appeals. See *Callihan v. Schneider*, 178 F.3d 800, 803 (6th Cir. 1999), overruling in part *Floyd v. United States Postal Serv.*, 105 F.3d 274, 277 (6th Cir. 1997).

s/Stephanie K. Bowman
Stephanie K. Bowman
United States Magistrate Judge

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

HAKIMAH JABBOR,

Civil Action No. 1:20-cv-245

Plaintiff,

McFarland, J.
Bowman, M.J

vs.

JAMES GRAHAM,

Defendants.

NOTICE

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to this Report & Recommendation ("R&R") within **FOURTEEN (14) DAYS** after being served with a copy thereof. That period may be extended further by the Court on timely motion by either side for an extension of time. All objections shall specify the portion(s) of the R&R objected to, and shall be accompanied by a memorandum of law in support of the objections. A party shall respond to an opponent's objections within **FOURTEEN DAYS** after being served with a copy of those objections. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn, 474 U.S. 140 (1985); United States v. Walters, 638 F.2d 947 (6th Cir. 1981).*

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA, :

Plaintiff, : 2:17-cr-158(1)
: JUDGE GRAHAM

v. :

DEANDRE FORREST, :

Defendant. :

PRELIMINARY ORDER OF FORFEITURE

WHEREAS, a federal grand jury sitting in Columbus, Ohio, returned an Indictment (Doc. 15) charging Defendant Deandre Forrest, and others not named herein, with violations of 18 U.S.C. § 922, 18 U.S.C. § 924, 21 U.S.C. § 841 *et seq.*, and 21 U.S.C. § 846. The Indictment also included a forfeiture allegation, Forfeiture A, notifying Defendant Deandre Forrest of the United States' intent to forfeit, pursuant to 21 U.S.C. § 853(a)(1) and (2), all proceeds obtained, directly or indirectly, from the distribution and possession with intent to distribute cocaine base, in violation of 21 U.S.C. § 841(a)(1), and any property used, or intended to be used to commit, or facilitate the commission of such violations, including but not limited to jewelry and \$28,223.00 in United States Currency seized on June 15, 2017, from 1197 S. 22 Street, Columbus, Ohio, during the execution of a search warrant and;

WHEREAS, on December 14, 2017, the jury returned a verdict against Defendant Deandre Forrest finding him guilty of conspiracy to distribute controlled substances in violation of 21 U.S.C. § 846, possession and distribution of controlled substances in violation of 21 U.S.C. § 841 *et seq.*, and possession of a firearm in furtherance of a drug trafficking crime in violation of 18 U.S.C. § 924(c); and,

GRAHAM/ADP

WHEREAS, on December 15, 2017, this Court issued an Order (Doc. 61) finding that, based upon the record at trial, the property described in Forfeiture A of the Indictment, being jewelry¹ and \$28,223.00 in United States Currency, is property constituting or derived from proceeds obtained directly or indirectly as a result of the commission of the offenses alleged in Counts One, Five, and Six of the Indictment, and is property used or intended to be used to commit, or to facilitate the commission of the offenses alleged in Counts One, Five, and Six of the Indictment; and,

WHEREAS, based upon the Indictment, guilty verdict, and evidence presented at trial, the Court has determined that the requisite nexus exists between the \$28,223.00 in United States Currency described in Forfeiture A of the Indictment ("subject property") and Counts One, Five, and Six of the Indictment, that the subject property is forfeitable pursuant to 21 U.S.C. § 853(a)(1) and (2), and that the United States is now entitled to possession of the subject property.

Accordingly, **IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

1. That Defendant Deandre Forrest shall forfeit the following subject property to the United States:

Twenty-Eight Thousand Two Hundred Twenty-Three and 00/100 Dollars (\$28,223.00) in United States Currency.

2. That the United States Marshals Service shall immediately seize the subject property and hold same in his secure custody and control.

¹ The Bureau of Alcohol, Tobacco, Firearms, and Explosives has notified the United States that the jewelry described in Forfeiture A of the Indictment has little to no value. Therefore, the United States has determined that it will not seek forfeiture of any jewelry seized on June 15, 2017, from 1197 S. 22 Street, Columbus, Ohio.

3. That the United States is authorized to conduct any discovery proper in identifying, locating or disposing of the subject property in accordance with Fed. R. Crim. P. 32.2(b)(3).

4. That the United States shall publish, in accordance with the provisions of 21 U.S.C. § 853(n), notice of this Order and notice of its intent to dispose of the subject property in such manner as the Attorney General may direct.

5. That the United States shall also provide written notice to any person who reasonably appears to be a potential claimant with standing to contest the forfeiture in the ancillary proceeding in accordance with Fed. R. Crim. P. 32.2(b)(6).

6. That pursuant to Fed. R. Crim. P. 32.2(b)(4), this Preliminary Order of Forfeiture shall become final as to Defendant Deandre Forrest at the time of sentencing and shall be made part of the sentence and included in the judgment. If no third party files a timely claim, this Order shall become the Final Order of Forfeiture, as provided by Fed. R. Crim. P. 32.2(c)(2).

7. That following the Court's disposition of all petitions filed pursuant to 21 U.S.C. § 853(n), or, if no such petitions are filed, following the expiration of the period for the filing of such petitions, the United States shall have clear title to the subject property.

8. That the Court shall retain jurisdiction to enforce this Order, and to amend it as necessary, pursuant to Fed. R. Crim. P. 32.2(e).

Date: January 3, 2018

s/James L. Graham
JAMES L. GRAHAM
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA, : 2:17-cr-158(1)
: JUDGE GRAHAM
Plaintiff, :
v. :
DEANDRE FORREST, :
: Defendant.

FINAL ORDER OF FORFEITURE

WHEREAS, on January 3, 2018, the Court entered a Preliminary Order of Forfeiture (Doc. 65) ordering Defendant Deandre Forrest to forfeit to the United States the property subject to forfeiture in the forfeiture allegation, Forfeiture A, of the Indictment under 21 U.S.C. § 853(a)(1) and (2); and

WHEREAS, on June 20, 2018, the Court issued its Amended Judgment (Doc. 105) ordering Defendant Deandre Forrest to forfeit to the United States the property described herein; and

WHEREAS, for 30 consecutive days, beginning on January 11, 2018, the United States published notice of this forfeiture on the government's website, www.forfeiture.gov, which provided potential claimants notice of the United States' intent to dispose of the forfeited property in accordance with the law and of their right to petition the court within 60 days of the initial publication date for a hearing to adjudicate the validity of their alleged interest in the forfeited property. (See Doc. 87); and

APPENDIX E

WHEREAS, the United States provided direct written notice of this action along with a copy of the Preliminary Order of Forfeiture to Hakimah Jabbar, a person known to the United States to have a potential interest in the subject property; and

WHEREAS, on December 14, 2017, Hakimah Jabbar filed a “Petition for a Hearing to Adjudicate the Interest in the Property.” (See Doc. 56.) On January 16, 2018, the Court issued an Order dismissing Hakimah Jabbar’s filing for failure to comply with 21 U.S.C. § 853(n)(3). (See Doc. 77); and

WHEREAS, no other petitions asserting a legal interest in the forfeited property were filed and the time for the filing of such petitions has expired; and

WHEREAS, the Court finds that the property is subject to forfeiture under 21 U.S.C. § 853(a)(1) and (2), for violations of 21 U.S.C. § 841 and 21 U.S.C. § 846.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. That all right, title, and interest in and to the following property is hereby
FORFEITED to the United States of America, said property being described as:

Twenty-Eight Thousand Two Hundred Twenty-Three and 00/100 Dollars
(\$28,223.00) in United States currency.

2. That the United States Marshals Service, or their designated agent, shall dispose of the property according to law.

3. That any and all claims and interests in and to the above described forfeited property are forever barred and no right, title or interest in the forfeited property shall exist in any other person or entity, and the United States of America shall have clear title to said property and may warrant good title thereto.

ORDERED this 30th day of July, 2018.


HONORABLE JAMES L. GRAHAM
UNITED STATES DISTRICT COURT JUDGE

Respectfully submitted,

BENJAMIN C. GLASSMAN
United States Attorney

s/Noah R. Litton

NOAH R. LITTON (0090479)
DAVID M. DeVILLERS (0059456)
Assistant United States Attorneys
Attorneys for Plaintiff

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