PETITION FOR CERTIORARI

From 4th Circuit Court of Appeals, Case #19-1409
Originally filed in North Carolina Federal District Court, Case #2:16-cv-00061-FL

SUSAN W. VAUGHAN
v
SHANNON FOLTZ, et al.

INDEX OF APPENDICES

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-1409

SUSAN W. VAUGHAN, an individual,

Plaintiff - Appellant,

v.

SHANNON FOLTZ, an individual; SAMANTHA HURD, an individual; KRISTEN HARRIS, an individual; KATHLYN ROMM, an individual; RAY MATUSKO; STEPHANIE RYDER, an individual; CHUCK LYCETT, an individual; MELANIE CORPREW, an individual; JAY BURRUS, an individual; OFFICER DOE, an individual; DOES 3-10; MELISSA TURNAGE; KATHERINE MCCARRON; OFFICER MIKE SUDDUTH; OFFICER CARL WHITE; DOUG DOUGHTIE, an individual,

Defendants - Appellees,

and

HON. ROBERT TRIVETTE, an individual; MEADER HARRISS, an individual; HON. AMBER DAVIS, an individual; COURTNEY HULL, an individual; ASST. DIST. ATTORNEY EULA REID, an individual; DARE COUNTY; CURRITUCK COUNTY; KILL DEVIL HILLS; SUSAN HARMON-SCOTT, an individual; MERLEE AUSTIN, an individual,

Defendants.

Appeal from the United States District Court for the Eastern District of North Carolina, at New Bern. Louise W. Flanagan, District Judge. (2:16-cv-00061-FL)

Submitted: September 21, 2020 Decided: October 9, 2020

Appendix A

Before KING, AGEE, and RICHARDSON, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Susan W. Vaughan, Appellant Pro Se. Kathryn Hicks Shields, Assistant Attorney General, NORTH CAROLINA DEPARTMENT OF JUSTICE, Raleigh, North Carolina; Christopher J. Geis, WOMBLE BOND DICKINSON (US) LLP, Winston-Salem, North Carolina; Dan M. Hartzog, Jr., HARTZOG LAW GROUP, Cary, North Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Susan W. Vaughan appeals the district court's orders accepting the recommendation of the magistrate judge, dismissing a portion of Vaughan's 42 U.S.C. § 1983 complaint under 28 U.S.C. § 1915(e)(2)(B), and denying relief on the remainder of Vaughan's complaint. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *Vaughan v. Foltz*, No. 2:16-cv-00061-FL (E.D.N.C. Oct. 27, 2017 & Mar. 19, 2019). We deny as moot Vaughan's motion to file electronically, and 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

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
NORTHERN DIVISION

No. 2:16-CV-61-FL

SUSAN W. VAUGHAN, an individual Plaintiff, v. SHANNON FOLTZ an individual, SAMANTHA HURD an individual, KRISTEN HARRIS an individual, KATHLYN ROMM an individual, RAY MATUSKO an individual, STEPHANIE RYDER an individual, CHUCK LYCETT an individual, MELANIE CORPREW an individual, JAY BURRUS an individual, DOES 1-10 individuals, MELISSA TURNAGE, KATHERINE MCCARRON, OFFICER MIKE SUDDUTH, and OFFICER CARL WHITE, Defendants.	)	ORDER

This matter comes before the court on motion for summary judgment filed by defendants Jay Burrus ("Burrus"), Melanie Corprew ("Corprew"), Shannon Foltz ("Foltz"), Kristen Harris ("Harris"), Samantha Hurd ("Hurd"), Chuck Lycett ("Lycett"), Katherine McCarron ("McCarron"), Kathlyn Romm ("Romm"), Stephanie Ryder ("Ryder"), and Melissa Turnage ("Turnage") (collectively, "DSS defendants") (DE 60); motion for summary judgment filed by defendant Ray Matusko ("Matusko") (DE 65); motion to dismiss filed by defendant Matusko (DE 91); motion to dismiss filed by defendants Mike Sudduth ("Sudduth") and Carl White ("White") (DE 135); and plaintiff's motion for extension of time to serve defendants Sudduth and White with complaint (DE 141). The matters have been fully briefed, and in this posture the issue raised are ripe for ruling.

Appendix A

For the reasons that follow, the court grants DSS defendants' motion for summary judgment, defendant Matusko's motion to dismiss, and defendants Sudduth and White's motion to dismiss; denies as moot defendant Matusko's motion for summary judgment; and denies as moot plaintiff's motion for extension of time.

STATEMENT OF THE CASE

Plaintiff initiated this action by filing motion for leave to proceed in forma pauperis ("IFP") on August 15, 2016, accompanied by proposed complaint.[1] Plaintiff's claims arise in part from defendants' alleged involvement in the removal of plaintiff's adult daughter, Jennifer Vaughan, from plaintiff's home. Plaintiff's claims also arise in part from defendants' alleged involvement in the removal of plaintiff's grandchild, and the child of Jennifer Vaughan, a minor child referred to as "EJV," from plaintiff's home. Plaintiff originally asserted claims against defendants for constitutional violations pursuant to 42 U.S.C. § 1983 as well as conspiracy to violate those rights.

Pursuant to 28 U.S.C. § 636(b)(1)(B) and Federal Rule of Civil Procedure 72(b), United States Magistrate Judge Kimberly A. Swank entered memorandum and recommendation ("M&R") on May 8, 2017, wherein she granted plaintiff's IFP petition and recommended claims against certain defendants alleging violations of plaintiff's Fourth Amendment rights should proceed and plaintiff's remaining claims should be dismissed without prejudice. Plaintiff filed objections to the M&R on May 23, 2017, challenging the magistrate judge's determinations concerning the dismissal

[1] The court recounts the history of this case as relevant to the resolution of the instant pending motions where elsewhere the court has addressed the many discovery and procedural disputes between the parties. See, e.g., Vaughan v. Foltz, No. 2:16-CV-61-FL, 2018 WL 4140093, at *1 (E.D.N.C. Aug. 28, 2018) (DE 119) (in part granting plaintiff's motion for amendment of number of plaintiff interrogatories for DSS defendants and denying plaintiff's motion to strike and request for documents); March 5, 2018 text order (order denying plaintiff's motion to strike); DE 131 (order denying plaintiff's motion to strike); DE 132 (order denying plaintiff's motion for "consideration"); DE 138 (order denying plaintiff's motion to seal); DE 155 (order denying plaintiff's motion to compel); DE 156 (order denying plaintiff's objection to admissibility of evidence and/or motion to strike).

recommendations. On May 24, 2017, this court noted that plaintiff had filed a 50-page objection, on the heels of a 92-page complaint, seeking in part to clarify her operative pleading. The court recommitted the matter to the magistrate judge pursuant to Rule 72(b)(3) to review plaintiff's objections and address the same.

On July 10, 2017, plaintiff filed objections to the supplemental M&R, entered June 22, 2017, again challenging the magistrate judge's determinations concerning the dismissal recommendations. Amended complaint then was filed on August 25, 2017, wherein plaintiff sought in part to add her daughter, Jennifer Vaughan, as plaintiff.

On October 27, 2017, the court adopted some recommendations of the M&R and supplemental M&R, undertook its own frivolity review of plaintiff's amended complaint, and allowed the following two claims to proceed:

1) §1983 claim against defendants Burrus, Coprew, Foltz, Lycett, Ryder, Turnage, McCarron, and Officer Does of the Kill Devil Hills police department arising under the Fourth Amendment and

2) §1983 procedural due process claim against defendants Burrus, Corprew, Foltz, Harris, Hurd, Lycett, Matusko, Romm, and Ryder arising under the Fourteenth Amendment alleging injury to reputation regarding plaintiff's placement on the list of "responsible individuals" pursuant to N.C. Gen. Stat. § 7B-311.

Vaughan v. Foltz, No. 2:16-CV-61-FL, 2017 WL 4872484, at *1 (E.D.N.C. Oct. 27, 2017), reconsideration denied, No. 2:16-CV-61-FL, 2018 WL 1801419 (E.D.N.C. Apr. 16, 2018). With regard to Jennifer Vaughan, the court noted that plaintiff "alleges that defendants Turnage and McCarron are Jennifer Vaughan's appointed guardians," that "Jennifer Vaughan involuntarily was committed, and apparently so remains" and that plaintiff's "attempt to add her daughter as a party plaintiff is a blatant effort to defeat the state authorized guardianship" and "it smacks of the unauthorized practice of law before this court," holding a nullity plaintiff's efforts to add Jennifer

Vaughan to this case. Id. at *3.

Plaintiff thereafter filed motion to amend complaint which the court also construed as motion for reconsideration. The court denied plaintiff's motion for reconsideration on November 22, 2017, and deemed plaintiff's motion to amend, to name "Officer Does" of the Kill Devil Hills police department, as premature and thus denied without prejudice to timely renewal where plaintiff stated she was then in the process of obtaining records which in the future would permit her to name those officers.

On April 9, 2018, DSS defendants filed instant motion for summary judgment. (DE 60). DSS defendants rely upon sworn testimony of defendants Ryder, Burrus, Lycett, McCarron, Corprew, Foltz, Turnage, and Hull, along with the following documents from the state-court custody proceedings concerning EJV ("custody proceedings"): state-court juvenile petition filed by certain DSS defendants; written adjudication stipulation ("stipulation") entered into by plaintiff, Jennifer Vaughan, and certain DSS defendants; and order of adjudication issued by the state court, adjudicating EJV neglected. In defense of the motion, plaintiff relies upon the following: sworn testimony of plaintiff, Jennifer Vaughan, and William D. Banks ("Banks"), plaintiff's neighbor; plaintiff's motion to dismiss filed in the custody proceedings; excerpts from the North Carolina Division of Social Services Family Services Manual; documentation from Center for Neurorehabilitation concerning Jennifer Vaughan; letter from plaintiff to defendants Lycett and McCarron; evaluations of Jennifer Vaughan from CorePsych and Leigh, Brain, &Spine; and excerpts from North Carolina Traumatic Brain Injury Advisory Counsel's 2009-2010 annual report.

On April 11, 2018, defendant Matusko filed instant motion for summary judgment and in support submits statement of material facts. (DE 65). Plaintiff did not file opposition but on

November 29, 2018, as directed by the court,[2] filed consolidated "supplemental response to DSS defendants' and defendant Matusko's motions for summary judgment," (DE 147), with reliance upon the following: email from Molly Harris confirming plaintiff requested pediatrician recommendation in mid-May 2013; various filings in the custody proceedings, including plaintiff's edits to a statement made in court; news article; affidavit of plaintiff; and various discovery responses submitted by defendants.[3]

On May 15, 2018, plaintiff filed motion to amend complaint, in which plaintiff sought to add defendants Sudduth and White, as well as additional defendants, claims, and allegations. (DE 72). The court held, with regard to defendants Suddouth and White, that "[t]o the extent that plaintiff seeks to join these defendants who were previously identified as ["Officer Does"] and streamline allegations associated with this [Fourth Amendment] claim [as well as plaintiff's other remaining claim under the Fourteenth Amendment] . . . plaintiff's motion to amend is granted." (DE 79 at 3-4). Plaintiff filed second amended complaint on June 20, 2018, which is the operative complaint in this case, to the extent allowed by the court.

Following plaintiff's filing of the operative complaint, on July 11, 2018, defendant Matusko filed instant motion to dismiss for failure to state a claim. (DE 91). In defense of motion, plaintiff seeks to rely upon the following materials: select North Carolina General Statutes; plaintiff's

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[2] On August 28, 2018, the court allowed as follows: "Plaintiff has an additional 90 days, up to and including November 12, 2018, wherein she may respond or supplement response to defendants' motions for summary judgment." Vaughan, 2018 WL 4140093, at *3. On September 5, 2018, the court reaffirmed this direction, thereby denying plaintiff's motion for leave to submit response and surreply, filed August 31, 2018. On November 6, 2018, the court granted in part plaintiff's motion for extension of time to file response to summary judgment "solely to the extent that plaintiff is allowed on or before November 30, 2018, to file 1) one supplemental response in opposition to DSS defendants' motion for summary judgment (DE 60) and/or 2) one response in opposition to defendant Matusko's motion for summary judgment (DE 65)." (DE 145 at 5).

[3] Documentation submitted by plaintiff multiple times is identified only once.

petition for judicial review requesting the state court to not place plaintiff on the responsible individuals list ("RIL"); and email correspondence between plaintiff and her former attorney Meader Harriss.

On July 24, 2018, plaintiff filed amended motion for reconsideration, which the court denied on August 23, 2018. (DE 111). On August 13, 2018, DSS defendants renewed their motion for summary judgment, stating "[s]ince the DSS [d]efendants filed their summary judgment motion, the plaintiff has filed a Second Amended Complaint" to which DSS defendants filed answer, but because the second amended complaint "makes the same allegations against the DSS [d]efendants as the First Amended Complaint, on which said defendants filed their summary judgment motion in April," defendants need not refile or submit new motion. (DE 107 at 2).

On September 5, 2018, the court issued text order granting to a limited extent plaintiff's "urgent request for correction of August 28 order," filed September 4, 2018, stating as follows:

> Plaintiff is reminded again that the following two claims have been allowed to proceed: 1) whether plaintiff's Fourth Amendment rights were violated when her home was entered by defendants and 2) whether her reputation was injured, and thus her Fourteenth Amendment rights violated, by allegations concerning her placement on the list of responsible individuals pursuant to N.C. Gen. Stat. § 7B-311. Regarding the latter, the court has dismissed plaintiff's injury to reputation claims except for plaintiff's claim resting upon allegations concerning plaintiff's placement on the list of responsible individuals under N.C. Gen. Stat. § 7B-311, which the court construes to include allegations of serious neglect. The court therefore grants plaintiff's motion requesting "to address how the threat of the RIL and prosecution of serious neglect were fraudulently misused in a way that violated [plaintiff's] due process rights injuring her and her family" only to the extent these allegations are related to plaintiff's surviving claim for injury to her reputation.

On October 1, 2018, defendants Sudduth and White filed instant motion to dismiss complaint as barred by the applicable statute of limitations pursuant to Rule 12(b)(6).[4] On October 9, 2018,

[4] Defendants Sudduth and White also raise motions under Rules 12(b)(2), 12(b)(4), 12(b)(5) for insufficient service of process.

defendants Sudduth and White filed motion for protective order and stay of discovery. On October 22, 2018, plaintiff filed the instant motion for extension of time to serve defendants Sudduth and White with complaint. On November 6, 2018, the court granted defendants Sudduth and White's motion for protective order and stay of discovery and held in abeyance plaintiff's motion for extension for time to be addressed concurrently with defendants Sudduth and White's motion to dismiss.

On March 8, 2019, the court directed submission of two state-court orders discussed by plaintiff and DSS defendants in various filings, which DSS defendants timely submitted to the court on March 11, 2019.

STATEMENT OF THE FACTS

Except as otherwise indicated below, the facts taken in light most favorable to plaintiff and relevant to the resolution of the instant motions are summarized below.[5]

The DSS defendants were involved in the removal of the plaintiff's adult daughter, Jennifer Vaughan, and her minor grandson, EJV, who is Jennifer Vaughan's son, from the plaintiff's home in Kill Devil Hills, North Carolina in August 2013.[6] On August 13, 2013, officials from Dare County Department of Social Services ("Dare County DSS"), accompanied by Kill Devil Hills police officers, removed Jennifer Vaughan from the home, and, on the next day, removed EJV and

[5] Regarding the limited number of facts necessary to resolve defendant Matusko's motion to dismiss, those facts are included as alleged by plaintiff in operative complaint. (DE 80).

[6] Plaintiff offers extensive argument and purported evidence in support of her position that the removals of her daughter and grandson were not justified, were executed by means inconsistent with North Carolina law, and were the product of a conspiracy among defendants. However, except to the extent otherwise addressed herein, the court has previously dismissed plaintiff's claims regarding these allegations and declines to address again these arguments. See Vaughan, 2017 WL 4872484; see also District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482-84 (1983) (holding that federal courts have "no authority to review final judgments of a state court in judicial proceedings").

placed him in foster care.[7] On September 18, 2013, Dare County DSS filed a petition alleging that plaintiff's grandson was dependent and neglected. (DE 108 at 2; DE 62 ¶ 2; DE 63-8 at 5-10 (petition alleging EJV dependent and neglected)). Dare County DSS obtained guardianship over Jennifer Vaughan.

Although the parties disagree as to why, with DSS defendants alleging possible conflict of interest and plaintiff alleging "just another unlawful tactic DSS used," the parties agree that Dare County DSS thereafter transferred responsibility for EJV to Currituck County Department of Social Services ("Currituck County DSS"). (DE 108 at 3-4; DE 62 ¶ 5). After custody proceedings concluded, EJV was adopted by unnamed persons, and Jennifer Vaughan was involuntarily committed at least once. See Vaughan v. Vaughan, 806 S.E.2d 80 (N.C. Ct. App. 2017), review denied sub nom. Matter of E.J.V., 370 N.C. 581, 809 S.E.2d 873 (2018), and cert. denied, 139 S. Ct. 252, 202 L. Ed. 2d 168 (U.S. 2018), reh'g denied, 139 S. Ct. 589, 202 L. Ed. 2d 422 (U.S. 2018).[8]

A. Facts Related to Fourth Amendment Claims

1. July 16, 2013, Incident

In July 2013, social workers and Kill Devil Hills police officers came to plaintiff's house with a court order, which plaintiff only saw briefly; plaintiff allowed entry under duress. (See DE 80 ¶¶ 57-59 ("The following day what appeared to [p]laintiff to be a SWAT Team consisting of several Kill Devil Hills Police officers wearing padded vests and carrying guns, along with several DSS caseworkers, demanded entrance into [p]laintiff's home. They carried an order, a copy of which

[7] Plaintiff disputes the accuracy and necessity of these allegations and the procedures employed to effectuate these removals, but does not dispute that these removals took place. (See DE 108 at 2-3; DE 62 ¶ 3).

[8] Plaintiff disputes the number of times Jennifer Vaughan was thereafter involuntarily committed and the legality of any and all such commitments. (See DE 108 at 4-6).

was NOT given, only shown, quickly, to PLAINTIFF, bearing the signature of then Dare County Clerk of Court . . . .")). Plaintiff alleges, against plaintiff's instructions, defendant Ryder "interrogated" plaintiff concerning vitamins, defendants Ryder and Lycett "interrogated" Jennifer Vaughan, defendant Lycett walked into plaintiff's room, and defendant Ryder went through "cabinets, drawers and [the] refrigerator[.]" (See id. ¶¶ 58-59).[9]

2. August 13, 2013, Incident

Defendants Lycett and Foltz entered plaintiff's home on August 13, 2013, "without warrant or invitation, nevertheless finding EJV well and unharmed, clean and properly clothed and in no need of immediate or other agency assistance" and "seized" Jennifer Vaughan "based on false allegations submitted by DEFENDANT RYDER to fraudulently obtain an order . . . ." (See id. ¶¶ 6, 32).[10]

3. August 14, 2013, Incident

Defendant Foltz and a police officer came to plaintiff's home on August 14, 2013, and, pursuant to a court order, took custody of EJV. (See id. ¶ 82).[11]

4. March 4, 2015, Incident

On March 4, 2015, defendant Turnage and a police officer attempted to enter plaintiff's home, described by plaintiff as follows:

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[9] DSS defendants confirm that defendants Lycett, Ryder, and Foltz entered plaintiff's home on July 16, 2013, under the authority of an administrative search warrant issued by the clerk of court. (DE 62 ¶¶ 17-19).

[10] DSS defendants have put forth evidence that defendants Lycett, Ryder, and Foltz entered plaintiff's home on this date to execute an involuntary commitment order, issued by a magistrate judge, for Jennifer Vaughan. (DE 62 ¶¶ 17-19).

[11] DSS defendants confirm that defendant Foltz entered plaintiff's home on August 14, 2013, in order to take custody of EJV pursuant to order issued by a district court judge. (DE 62 ¶19).

> In March 2015 . . . Kill Devil Hills police officer who refused to identify himself came to PLAINTIFF'S home . . . with Dare DSS social worker MELISSA TURNAGE, demanding, after forcing his foot into [p]laintiff's doorway, preventing the door from closing, entrance into PLAINTIFF'S home to "see the mother." . . . . one officer approached and rammed his foot in the door as the mother was closing it. PLAINTIFF moved quickly to assist the mother, requesting if the police bad papers. The officer answered "no," but refused to remove his foot, while PLAINTIFF managed to move a piece of furniture to help the mother keep the door closed and also helped her push against the officer who continued to try to enter . . . . PLAINTIFF stated numerous times that the officer was violating her constitutional rights, and was trespassing on her property insisting that he remove his foot from her doorway and leave her property.
>
> When PLAINTIFF asked the officer his name, he responded only "What do you want it to be.". . . . Finally, after pushing on the door for at least 10 minutes, long enough to argue with [p]laintiff and have the conversation stated above, and long enough for [p]laintiff to tell the Officer multiple times that he was violating her rights, OFFICER White or Sudduth or unnamed Officers Doe yelled that he'd be back with papers, and he would "break down" PLAINTIFF'S door. The mother and PLAINTIFF were both shaking violently as OFFICER DOE left, and the mother, already trying to recover from trauma, was traumatized all over again.
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> Next, PLAINTIFF called a neighbor and asked him to come over with his video camera . . . . Police officers did indeed return at dark, again traumatizing the mother. Unidentified Kill Devil Hills Officers came to the door and the neighbor began filming. He asked if the officers had papers, and they responded that they did. The neighbor asked to see the papers - to put them up to the door window and· when the officer did; the neighbor began filming, but the officers took it down and said he could not film the paper, which brings into question whether or not they actually had legal warrants . . . . soon thereafter [the officers] began descending the stairs to leave the premises.

(See DE 80 ¶¶ 202-209; DE 108-2 (Jennifer Vaughan's affidavit); DE 108-9 (Banks's affidavit); DE 108-10 (plaintiff's affidavit); DE 62 ¶ 20 (DSS defendants stating "[o]n one occasion, [defendant Turnage] was with a police officer, who knocked on the door and stuck his foot in the doorway when the plaintiff answered but quickly withdrew it, and Turnage remained outside . . . . This incident

occurred on March 4, 2015)).[12]

In sum, although plaintiff alleges other DSS defendants had knowledge of or directed others to enter plaintiff's home illegally the above four times, the parties agree that only four Dare County DSS officials ever physically entered or tried to enter plaintiff's home: defendants Turnage, Lycett, Foltz, and Ryder. (See DE 108 at 13-16; DE 62 ¶¶ 12-15).

B. Facts Related to Fourteenth Amendment Claims for Injury to Reputation

Plaintiff was initially named in a petition alleging serious neglect of EJV. (See DE 63-8 at 5-10). Although plaintiff disputes DSS's authority to so allege and the legality of execution of the petition, the parties agree that after the Currituck County DSS took over EJV's case from Dare County DSS, it filed a petition on September 18, 2013, for a determination of custody of the child. (DE 108 at 23; DE 62 ¶ 26; DE 63-8 at 5-10). Based on her belief at that time, defendant Hull, the DSS attorney, checked a box on the petition form that said plaintiff had "abused or seriously neglected" the child, though it is clear from the form that only serious neglect was alleged, not abuse. (DE 108 at 23; DE 62 ¶ 26; DE 63-8 at 5-10).[13] Thereafter, plaintiff filed a petition for judicial review of the determination that she was a responsible individual. The clerk of superior court for Currituck County, defendant Matusko, did not calendar the petition for judicial review for hearing.

Currituck County DSS never proceeded on the allegation of serious neglect against plaintiff.

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[12] In addition to the incident involving defendant Turnage described above, in which defendant Turnage did not physically enter plaintiff's home, defendant Turnage has physically been in plaintiff's home once, at plaintiff's invitation. Defendant Turnage alleges she has been to plaintiff's home about 15 times, which plaintiff does not dispute, but saw the plaintiff there only twice and went inside just that one time. (DE 62 ¶19; DE 108 at 8-9, 13-15, 19-21).

[13] The box for allegations of abuse or serious neglected was removed from state forms beginning October 1, 2013.

At court hearing on November 18, 2013, the parties entered into a stipulation in which it was agreed that DSS would not move forward on the allegation of serious neglect, although plaintiff alleges she was coerced into signing this stipulation. (DE 63-8 at 11-12; DE 108 at 25-26).

DISCUSSION

A. Standard of Review

1. Motion to Dismiss

"To survive a motion to dismiss" under Rule 12(b)(6), "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 663 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). "Factual allegations must be enough to raise a right to relief above the speculative level." Twombly, 550 U.S. at 555. In evaluating whether a claim is stated, "[the] court accepts all well-pled facts as true and construes these facts in the light most favorable to the plaintiff," but does not consider "legal conclusions, elements of a cause of action, . . . bare assertions devoid of further factual enhancement[,] . . . unwarranted inferences, unreasonable conclusions, or arguments." Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc., 591 F.3d 250, 255 (4th Cir. 2009) (citations omitted).

2. Motion for Summary Judgment

Summary judgment is appropriate where "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The party seeking summary judgment "bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of [the record] which it believes demonstrate the absence of a genuine issue of material fact." Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986).

Once the moving party has met its burden, the non-moving party must then "come forward with specific facts showing that there is a genuine issue for trial." Matsushita Elec. Indus. Co. Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586–87 (1986) (internal quotation omitted). Only disputes between the parties over facts that might affect the outcome of the case properly preclude entry of summary judgment. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986) (holding that a factual dispute is "material" only if it might affect the outcome of the suit and "genuine" only if there is sufficient evidence for a reasonable jury to return a verdict for the non-moving party).

"[A]t the summary judgment stage the [court's] function is not [itself] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." Id. at 249. In determining whether there is a genuine issue for trial, "evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in [non-movant's] favor." Id. at 255; see United States v. Diebold, Inc., 369 U.S. 654, 655 (1962) ("On summary judgment the inferences to be drawn from the underlying facts contained in [affidavits, attached exhibits, and depositions] must be viewed in the light most favorable to the party opposing the motion.").

Nevertheless, "permissible inferences must still be within the range of reasonable probability, . . . and it is the duty of the court to withdraw the case from the [factfinder] when the necessary inference is so tenuous that it rests merely upon speculation and conjecture." Lovelace v. Sherwin-Williams Co., 681 F.2d 230, 241 (4th Cir. 1982) (quotations omitted). Thus, judgment as a matter of law is warranted where "the verdict in favor of the non-moving party would necessarily be based on speculation and conjecture." Myrick v. Prime Ins. Syndicate, Inc., 395 F.3d 485, 489 (4th Cir. 2005). By contrast, when "the evidence as a whole is susceptible of more than one reasonable inference, a [triable] issue is created," and judgment as a matter of law should be denied.

Id. at 489-90.

B. Analysis

The court first addresses plaintiff's claims against defendant Sudduth and White, holding these claims are barred by the applicable statute of limitations. The court next turns to plaintiff's constitutional claims, finding the relevant DSS defendants are entitled to qualified immunity regarding plaintiff's Fourth Amendment and Fourteenth Amendment claims and that plaintiff's Fourteenth Amendment claim against defendant Matusko fails to state a claim upon which relief can be granted.

1. Defendants Sudduth and White

Plaintiff's claims against defendants Sudduth and White are dismissed as barred by the applicable statute of limitations. Plaintiff has been allowed to proceed on claims under § 1983, alleging these two defendants were involved in a March 4, 2015, incident that resulted in a violation of plaintiff's Fourth Amendment rights. (See DE 80 ¶¶ 202-209). This is the only incident described in the complaint involving these two defendants.

Plaintiff's § 1983 claims are subject to the three-year statute of limitations. Section 1983 does not contain a statute of limitations, but "borrow[s]" its statute of limitations from the forum state's "most analogous" statute of limitations. Owens v. Okure, 488 U.S. 235 (1989). Generally, the "most analogous" statute of limitations is the one applicable to personal injury cases. In North Carolina, the statute of limitations for personal injuries is three years. See N.C. Gen. Stat. § 1–52(16).[14] Accrual of the statute of limitations, however, is a matter of federal law. Nat'l Advert. Co. v. City of Raleigh, 947 F.2d 1158, 1162 (4th Cir. 1991). Under federal law, a cause of action

[14] Under N.C. Gen. Stat. § 1–52(13), the statute of limitations for claims against public officers acting under color of office is also three years.

accrues when the plaintiff "possesses sufficient facts about the harm done to him that reasonable inquiry will reveal his cause of action." Nasim v. Warden, Md. House of Corr., 64 F.3d 951, 955 (4th Cir. 1995).

Plaintiff alleges that she told the subject officer on the date of the incident that he was violating her constitutional rights; thus, plaintiff knew of the alleged injury on March 4, 2015, and the statute of limitations for this alleged violation expired on March 4, 2018. Plaintiff did not file a motion seeking to add defendants Sudduth and White as parties until May 15, 2018. (DE 72). The operative complaint naming these defendants was not filed until June 20, 2018, (DE 80), and summonses were not issued until August 6, 2018, (DE 105).

Plaintiff's naming of "Officer Does" in the original complaint does not toll the limitations period for her alleged claims against these defendants. Claims under § 1983 borrow the applicable state law tolling provisions. See Hardin v. Straub, 490 U.S. 536, 539 (1985). While North Carolina law allows a plaintiff to name a defendant as "John Doe" in initial pleadings where the actual name of the defendant is unknown, to be later substituted when the identity of the defendant is learned, the statute does not include a tolling provision. See, e.g., Huggard v. Wake Cty. Hosp. Sys., 102 N.C. App. 772, 775 (1991) (stating that "General Statutes § 1-166 does not by its terms contain a tolling provision . . . . While our legislature has the power to explicitly provide for such a tolling under the 'John Doe' statute, it has not done so"; listing other North Carolina statues with tolling provisions); Denny v. Hinton, 110 F.R.D. 434, 436-37 (M.D.N.C. 1986) (finding "[n]o historical support . . . for the view that fictitious name pleading statutes, such as section 1–166, had a purpose of extending the time within which to bring actions"; concluding North Carolina legislature had not intended to use § 1–166 for such a purpose); see generally N.C. Gen. Stat. § 1–166 (allowing

plaintiff to file suit against a fictitious defendant "[w]hen the plaintiff is ignorant of the name of a defendant"). As previously stated by this court, "[t]his is consistent with the North Carolina Supreme Court's observation that a John Doe complaint cannot be filed 'in the hope that at a later time the attorney filing the action may substitute the real name [of the John Doe] . . . and have the benefit of suspension of the limitation period.'" Lee v. City of Fayetteville, No. 5:15-CV-638-FL, 2016 WL 1266597, at *7 (E.D.N.C. Mar. 30, 2016) (citing Burcl v. N.C. Baptist Hosp., Inc., 306 N.C. 214, 225 n.7 (1982)).

Nor are plaintiff's claims saved by any reliance on equitable tolling. Under North Carolina law, equitable tolling precludes a statute of limitations defense "when a party has been induced by another's acts to believe that certain facts exist, and that party 'rightfully relies and acts upon that belief to his detriment.'" Jordan v. Crew, 125 N.C. App. 712, 720 (1997) (quoting Thompson v. Soles, 299 N.C. 484, 487 (1980)); accord Nowell v. Great Atl. & Pac. Tea Co., 250 N.C. 575, 579 (1959). Here, while plaintiff alleges that the subject officers refused to give their names, plaintiff has not alleged that she was deceived by the subject officers about their identities. Rather, she named defendants Sudduth and White after they were identified "by staff at the department, Mr. Evans." (DE 80 ¶ 304). There is no allegation that anyone induced plaintiff to rely upon false information about the officers' identities that would justify equitable tolling under North Carolina law; as such, equitable tolling does not save plaintiff's claims.[15]

[15] In Aikens v. Ingram, 524 F. App'x 873, 882-83 (4th Cir. 2013) the Fourth Circuit held that "[w]e are thus convinced that North Carolina is among the jurisdictions that embrace the mainstream view that equitable tolling—and not just equitable estoppel—may serve to extend a statute of limitations," applying the following test: "we must consider whether defendants Ingram and von Jess received timely notice of Aikens's claims, whether the defendants have been prejudiced by delay of the litigation, and whether Aikens has acted with diligence." Here, however, as discussed below, the court finds plaintiff did not act with diligence. See also Rouse v. Lee, 339 F.3d 238 (4th Cir. 2003) (to benefit from the doctrine of equitable tolling, one must show: 1) extraordinary circumstances, 2) beyond his control or external to his own conduct, 3) that prevented him from filing on time).

Finally, the court must consider whether plaintiff's claims against defendants Sudduth and White relate back to plaintiff's original complaint. Under Rule 15(c)(1)(c) "an amendment that changes the party against whom a claim is asserted relates back to the date of the original pleading" if 1) the claim in both the original and amended complaint arise out of the "same transaction"; 2) the party to be brought in by the amendment "received notice of the action such that it will not be prejudiced in maintaining a defense to the claim"; and 3) that party "should have known that it would have originally been named a defendant 'but for a mistake concerning the identity of the proper party.'" Goodman v. Praxair, Inc., 494 F.3d 458, 467 (4th Cir. 2007) (en banc) (quoting Fed. R. Civ. P. 15(c)(1)(C)(ii)).

It is well-settled in this circuit that plaintiff should not be permitted to amend her complaint to remove the John Doe defendants and substitute real parties, because their lack of knowledge of the proper defendants is not considered a "mistake" under Rule 15(c)(3). See Locklear v. Bergman & Beving AB, 457 F.3d 363, 366–67 (4th Cir. 2006). To allow "would produce a paradoxical result wherein a plaintiff with no knowledge of the proper defendant could file a timely complaint naming any entity as a defendant and then amend the complaint to add the proper defendant after the statute of limitations had run. In effect, this would circumvent the weight of federal case law holding that the substitution of named parties for 'John Doe' defendants does not constitute a mistake pursuant to Rule 15(c)(3)." Id. at 367.

As stated by this court in Lee,

> Rule 15(c)(1)(C)(ii) requires that the defendant to be added have notice "that but for a mistake, it would have been a party." [Goodman, 494 F.3d] at 471. However, "naming Doe defendants self-evidently is no 'mistake' such that the Doe substitute has received proper notice." Id.; accord Hogan v. Fischer, 738 F.3d 509, 517–18 (2d Cir. 2013); Smith v. City of Akron, 476 F. App'x 67, 69 (6th Cir. 2012); Locklear v. Bergman &Beving AB, 457 F.3d 363, 367 (4th Cir. 2006). A "mistake" is an

> "'error, misconception, or misunderstanding; an erroneous belief.'" Krupski v. Costa Crociere S.p.A., 560 U.S. 538, 548 (2010) (quoting Blacks Law Dictionary 1092 (9th ed. 2009)); accord Goodman, 494 F.3d at 470–71. Plaintiff's ignorance of the proper party's identity is not an error, misconception, or misunderstanding. See Krupski, 560 U.S. at 548; see also Goodman, 494 F.3d at 471 ("The 'mistake' language . . . implies that the plaintiff in fact made a mistake."). Thus, even where plaintiff could demonstrate the proper party had notice, such notice would not be the result of a "mistake."

2016 WL 1266597, at *8.[16]

Plaintiff's claims against defendants Sudduth and White also would not relate back under the federally-created equitable tolling doctrine employed in some courts. See Byrd v. Abate, 964 F. Supp. 140 (S.D.N.Y. 1997); see also Archibald v. City of Hartford, 274 F.R.D. 371, 376–77 (D. Conn. 2011) (collecting cases). In Byrd, the court held that a proposed amendment to a John Doe complaint was timely, even where the statute of limitations had run, because the defendant's counsel "failed to identify the [John Doe] defendant despite [the plaintiff's] [timely] requests for that information." Byrd, 964 F. Supp. at 146. The court implicitly tolled the statute of limitations because defense counsel had delayed and thus had prevented plaintiff from timely amending his John Doe complaint. In particular, the court reasoned that the amendment was timely because the plaintiff had made diligent efforts to obtain the John Doe defendant's true identity, "information uniquely within the knowledge of [defense counsel]." Id.

Assuming, without deciding, that Byrd's tolling rule applies in this instance, the court concludes that it would offer plaintiff no relief. The crux of the Byrd case was the plaintiff's timely

[16] As stated in Lee, there are three basis under North Carolina law that could potentially apply to plaintiff's claim under Rule 15(c)(1)(A): 1) tolling for John Doe complaints, under N.C. Gen. Stat. § 1–166, 2) equitable tolling, and 3) relation back under North Carolina Rule of Civil Procedure 15. The court here rejects each of these, however, for reasons stated above and for the same reasons provided in Lee. 2016 WL 1266597, at *9 ("neither N.C. Gen. Stat. § 1–166 nor equitable tolling offer plaintiff any relief . . . . Because the use of a John Doe defendant is not a mistake, an amended complaint would go beyond correcting a mere 'misnomer' and would not relate back under North Carolina law.").

attempts to obtain discovery. There, the plaintiff filed his complaint in March of 1993, approximately 18 months before the three-year limitations period expired in October of 1994. In January of 1994, the plaintiff's counsel requested the identity of the John Doe defendant. Id. at 145. However, through a series of procedural tactics, defense counsel kept secret that information until January 1995, almost three months after the statute of limitations had run.

Although plaintiff filed her original petition to proceed IFP in this case on August 15, 2016, well before the statute of limitations had run on March 4, 2018, plaintiff has not shown timely attempts to obtain discovery. On November 20, 2017, plaintiff sought to amend complaint to identify "Officer Does," which the court held to be premature, where plaintiff stated "she is now obtaining police records that aid in the identification of the officers." (DE 19 at 2).[17] It was not until May 15, 2018, however, that plaintiff again sought to amend complaint to include defendants Sudduth and White, after the expiration of the statute of limitations period, stating that these defendants had been "recently identified by police department staff as officers coming to [p]laintiff's home on March 4, 2015," but in no way indicating such information had been withheld from plaintiff. (DE 72 at 1).[18]

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[17] Originally, plaintiff identified the March 4, 2015, incident as occurring in February. (See DE 80 ¶ 304 ("The incident regarding the Officers who came to [p]laintiffs home in March (previously thought to be Feb.) 2015 has been described herein above.")). Plaintiff has stated that she "could not be certain of the exact date of the incident until attorney for other defendants disclosed the date in one of its pleadings," stating plaintiff "finally learned of the names after enquiring of the police department via an email, as soon as she knew the correct date of the violation." (DE 141 at 2). Plaintiff has additionally stated that she was unable to determine the exact date because police records requested by plaintiff "as early as November, 2017" for the months of February and March 2015 "failed to report the details of the visit [p]laintiff complains of" and are "misleading in their omissions." (DE 150 at 3). However, review of the police report submitted by plaintiff, (DE 150-2), indicate three logged incidents during this time frame, one of which is defendant Turnage requesting police escort on March 4, 2015, which was assigned to defendant Sudduth's unit. (See DE 150-2 at 4). It is unclear why plaintiff was unable to determine sooner, and in a timely fashion, when the alleged violation occurred.

[18] Plaintiff has offered unpersuasive reasoning for this elapse of time, belied by the record, where plaintiff has stated that after the incident on March 4, 2015, "and earlier similar incidents, [p]laintiff was understandably afraid for her personal safety . . . to go or even call the Kill Devil Hills police department and demand copies of records disclosing

Therefore, plaintiff's operative complaint naming defendants Sudduth and White does not relate back to the filing of any prior complaint, and does not save plaintiff's claims against these defendants. Accordingly, plaintiff's claims against defendant Sudduth and White are dismissed as time-barred. Given the court's holding, it is unnecessary to address defendant Sudduth and White's arguments concerning sufficiency of process. Additionally, the court's holding renders moot plaintiff's motion for extension of time to serve defendants Sudduth and White with complaint.

2. Constitutional Claims

Government officials are entitled to qualified immunity from civil damages so long as "their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). In other words, a government official is entitled to qualified immunity when 1) the plaintiff has not demonstrated a violation of a constitutional right, or 2) the court concludes that the right at issue was not clearly established at the time of the official's alleged misconduct. Pearson v. Callahan, 555 U.S. 223, 232 (2009). For the reasons discussed below, plaintiff has not demonstrated the violation of a constitutional right, and the relevant defendants are therefore entitled to qualified immunity.

a. Fourth Amendment Claims

"The Fourth Amendment protects against unreasonable searches and seizures." Wildauer v. Frederick Cty., 993 F.2d 369, 372 (4th Cir. 1993) (citing United States v. Place, 462 U.S. 696 (1983)). In the context of a qualified immunity analysis, the Fourth Circuit has explained that a magistrate's determination of probable cause supports an inference that an officer's actions in seeking an arrest warrant were objectively reasonable. Torchinsky v. Siwinski, 942 F.2d 257, 261

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the officers' names." (DE 141 at 2; see also, e.g., DE 80 ¶ 304 ("Plaintiff spoke with Sudduth on the phone last week and asked him, point blank if he was the one who rammed his foot in her door.")).

(4th Cir. 1991); see also Goines v. Valley Cmty. Servs. Bd., 822 F.3d 159, 171 (4th Cir. 2016) ("The presumption in Torchinsky thus was not a presumption that probable cause existed, but a presumption of the reasonableness of the officer's reliance on the arrest warrant."). This inference, though, is not dispositive. "The presumption of reasonableness attached to obtaining a warrant can be rebutted where 'a reasonably well-trained officer in [the defendant's] position would have known that his application failed to establish probable cause and that he should not have applied for the warrant.'" Torchinsky, 942 F.2d at 261 (quoting Malley v. Briggs, 475 U.S. 335, 345 (1986)); see also Messerschmidt v. Millender, 132 S. Ct. 1235, 1245 (2012) (quoting United States v. Leon, 468 U.S. 897, 922-923 (1984)) (stating warrant "is the clearest indication that the officers acted in an objectively reasonable manner or, as we have sometimes put it, in 'objective good faith.'").

The presence of a warrant, or parallel court order, is relevant to the court's qualified immunity analysis in this case. See Torchinsky, 942 F.2d at 261 ("Thus, the decision of a detached district judge that Siwinski satisfied the more stringent probable cause standard is plainly relevant to a showing that he met the lower standard of objective reasonableness required for qualified immunity."); Fialdini v. Cote, 594 F. App'x 113, 121 (4th Cir. 2014) (citing Torchinsky, 942 F.2d at 261) ("the fact that three judicial officers—the federal district judge, the Loudoun County district judge, and the magistrate judge all found that probable cause existed is 'plainly relevant to a showing that [Deputy Cote] met the lower standard of objective reasonableness required for qualified immunity.'").

Plaintiff alleges four incidents wherein DSS defendants entered or attempted to enter her home without her permission.[19] The court addresses each incident in turn below.

[19] The Fourth Amendment was not implicated by the one instance in which the plaintiff invited defendant Turnage into her home.

i. July 16, 2013, Incident

As stated above, plaintiff alleges that in July 2013, social workers and Kill Devil Hills police officers came to her house with a court order, which she alleges she only saw briefly, and she let them in under duress. (DE 80 ¶¶ 57-59). Plaintiff argues "[d]efendants have declined to produce copies proving authority to enter and/or search [p]laintiff's home," and therefore "plaintiff asserts that no one forcing entry into her home ever had probable cause, that no one had any right to search through her kitchen cabinets . . . and neither Lycett nor Foltz had any authority to enter, based on an alleged court order seeking only to speak to JV, as it was presented to [p]laintiff in July and August." (DE 108 at 11-12). It appears, in sum, that plaintiff argues the order does not exist, was not supported by probable cause, and DSS defendants did not conduct themselves consistent with what the order directed.

DSS defendants argue that plaintiff has in her possession the relevant administrative search warrant which was signed by the clerk of the court. DSS defendants have provided copy of this warrant to the court in response to the court's request.[20] (See DE 158-2). The warrant authorizes inspection of plaintiff's property based on affidavit evidence. (See id. ("This inspection is authorized to check or reveal the conditions, objects, activities, or circumstances indicated in the accompanying affidavit."). The warrant was issued based on affidavit sworn by defendant Ryder, a medical social worker, wherein defendant Ryder testified, under oath, "there is probable cause for believing" as follows:

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[20] Administrative search warrants are permitted by N.C. Gen. Stat. § 15-27.2 and require a showing by an affiant of probable cause of the existence of facts justifying the search. See Sunkler v. Town of Nags Head, No. 2:01-CV-22-H(2), 2002 WL 32395571, at *4 (E.D.N.C. May 17, 2002), aff'd, 50 F. App'x 116 (4th Cir. 2002) ("The North Carolina statutes authorizing administrative search warrants also echo familiar federal language. . . . The court concludes for the same reasons set forth in section III, supra [discussing Fourth Amendment claim] that probable cause supported the issuance of the administrative search warrant.").

> that there is [an adult protective services] report of a disabled adult, who has a history of mental illness that has gone untreated. Adult resides with her mother who . . . may be abusing and neglecting the adult based on information that DSS has received, DSS has obtained a letter written by the adult stating that she is dying and her mother stole her wallet and keys. Adult has stated, "I'm locked away here." . . . . On 7/15/13 at 11:30 a.m and 2:30 p.m., SW Ryder and SW Bradley attempted a home visit to see the adult. The first attempt, no one would answer the door. On the second attempt, adult mother came out of the home screaming that she had been poisoned by the air conditioner and she has no idea where her daughter was. At this point, SW was in the driveway and adult's mother would not let SW come to the door to see her daughter. Adult's mother would not allow SW to move closer to the front door to have access to the adult. Adult's mother brought adult to the deck and a note was thrown over the banister to SW Ryder. At no time, did SW see the adult. On 7/16/13 at 10:20 a.m. SW Ryder and SW Bradley went back to the home with the Kill Devil Hills Police. At this time, no one would answer the door.

(Id.).

Plaintiff alleges this warrant, and other court orders discussed below, were secured by the relevant DSS defendants through lies or fraud; plaintiff, however, has not submitted evidence in support of these accusations.[21] Additionally, plaintiff has confirmed the existence of the letter received by DDS discussed above and that defendant Ryder tried to see and speak with Jennifer Vaughan, with very limited success, although plaintiff disputes such would justify a court order. (DE 108 at 17; see also DE 108-4 ¶¶ 8-9). Plaintiff has failed to rebut the presumption that the court order at issue was supported by probable cause. Thus, the relevant DSS defendants are entitled to qualified immunity regarding the July 16, 2013, incident.[22]

ii. August 13, 2013, Incident

[21] More specifically, plaintiff alleges in the operative complaint that defendant Ryder "deceived Clerk of Court Merlee Austin by providing false information in support of her application for a warrant to enter PLAINTIFF'S home and interrogate the child's mother, lying that the mother had refused to speak to her." (DE 80 ¶ 262). However, as stated above, plaintiff has submitted affidavit evidence from Jennifer Vaughan stating that Jennifer Vaughan refused to let defendant Ryder physically see her when defendant Ryder had come to plaintiff's home. (See DE 108-4 ¶¶ 8-9).

[22] Regarding this incident and those addressed below, because the court concludes that defendants' actions did not violate the Fourth Amendment, the first prong of the qualified immunity analysis, the court need not consider the second prong of the qualified immunity analysis. Pearson, 555 U.S. at 236, 243–45.

On August 13, 2013, defendants Lycett, Foltz, and Ryder entered plaintiff's home to execute an involuntary commitment order, issued by a magistrate judge, for Jennifer Vaughan. (DE 80 ¶ 6, 32; DE 108 at 18).[23] Although plaintiff, without evidentiary support, argues that this order was "based on false allegations submitted by DEFENDANT RYDER to fraudulently obtain an order," (DE 80 ¶ 32), similar to above regarding the July 16, 2013, incident, no further information is offered regarding what specific false allegations may have been submitted by defendant Ryder.

Defendant Ryder has offered the following affidavit testimony:

> In 2013, I was assigned to work on the case involving Jennifer Vaughan. Dare County DSS' involvement with Jennifer went back to April 2008. Jennifer has a history of mental illness, including schizophrenia, and for a period in 2010 and 2011 the Dare County DSS served as her court-appointed guardian because she was deemed not competent to take care of herself. In July 2013, DSS received a report that Jennifer might be neglected or abused. At the time she was living with her mother, Susan Vaughan . . . .
>
> In August 2013, I went back to the home with two other DSS social workers, Shannon Foltz and Chuck Lycett, to observe the execution of an involuntary commitment order for Jennifer that had been issued by a judge in Dare County District Court. We were accompanied by Kill Devil Hills police officers. The police officers went in first and the social workers followed. We spoke to Jennifer and the police took custody of her and drove her to the hospital, where she was admitted for treatment. The court granted DSS interim guardianship over Jennifer.

(DE 63-1 ¶¶ 3, 5).[24]

Defendants Lycett, Foltz, and Ryder acted pursuant to an order signed by a magistrate judge.

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[23] An involuntary commitment order can be issued by a clerk of superior court or magistrate pursuant to N.C. Gen. Stat. § 122C-261 upon a showing by an affiant of "reasonable grounds" for issuance. "'Reasonable grounds' has been found to be synonymous with 'probable cause'" and North Carolina courts have held "the requirements for a custody order under N.C. Gen. Stat. § 122C-261 are analogous to those where a criminal suspect is subject to loss of liberty through the issuance of a warrant for arrest," stating "[i]n both instances a magistrate or other approved official must find probable cause (though under N.C. Gen. Stat. § 122C-261 the synonymous term reasonable grounds is used) supporting the issuance of the order or warrant." In re Zollicoffer, 165 N.C. App. 462, 466 (2004) (citations omitted); see also In re Moore, 234 N.C. App. 37, 41 (2014) (same).

[24] Plaintiff has directed the court to disregard DSS defendants' affidavits submitted in support of their motion for summary judgment as fraudulent and unable to support the grant of qualified immunity. (See DE 108 at 27-28). However, plaintiff has submitted no evidence in support of her allegations of fraud.

Because plaintiff has not offered evidence to rebut the presumption that these defendants acted pursuant to valid court order supported by probable cause in executing the involuntary commitment order, these defendants are entitled to qualified immunity regarding the August 13, 2013, incident.

iii. August 14, 2013, Incident

Defendant Foltz and a police officer entered plaintiff's home on August 14, 2013, in order to take custody of EJV pursuant to order issued by a district court judge. (DE 80 ¶ 82; DE 108 at 19). Turning to this order, the following was presumably submitted in support of obtaining the nonsecure custody order:

> The Child is in need of assistance from the State,
>
> I. The following reasonable efforts were made to prevent or eliminate the need of the juvenile placement:
>
> • Child Protective Services have been provided since May 2013.
> • Information has been provided about child development
> • Assistance was made for applying for Medicaid for the child
> • Information was provided about how to obtain birth certificate.
> • Social Worker has attempted to meet with mother multiple times at the home.
> • Two Letters have been sent to mother requesting contact.
>
> II. Reasons Why It Is Contrary to Best Interest of Child to be returned to the Parents:
>
> • Jennifer Vaughan has an untreated mental illness, namely schizophrenia. She has been involuntarily committed to Vidant Behavioral Health and is unable to care for her child. Ms. Vaughan is unable to ascertain the needs of her child. Ms. Vaughan had her competency restored on August 5, 2011, but has not been on her medication. Ms. Vaughan identified the putative father on August 14, 2013. No appropriate caretaker has been identified.

(See DE 158-1; see also DE 63-6).[25]

Plaintiff argues that although she has in her possession the order at issue, she has offered

[25] The above is stamped as received by the magistrate judge at the same time and date as the signed order, although the information is not signed or dated and is only labeled as "exhibit A" attached to the signed order. (DE 158-1).

evidence that this order "was obtained by fraud, omission that [p]laintiff was custodian of EJV, and without any emergency or time of day to permit Foltz to seek a nonsecure custody order," arguing that the order is "illegal and void, and [defendant Foltz's] petition contains no allegations, even it true, that meet the requirements of 7B-503 and/or the definitions of neglect and dependency." (DE 108 at 19). Notwithstanding, plaintiff does not dispute that Jennifer Vaughan had a mental illness for which she was not receiving treatment, that she had been involuntarily committed, and that she had not been on medication.[26]

In light of these undisputed facts, the court holds defendant Foltz entitled to qualified immunity for entering plaintiff's home with a court order to take custody of EJV. See Ross v. Klesius, 715 F. App'x 224, 226 (4th Cir. 2017) (citation omitted) (holding that even without court order and "[e]ven assuming, without deciding, that Defendants violated Ross' Fourth Amendment rights, their conduct in entering or directing others' entry into Ross' home to retrieve her foster children, under the circumstances presented, did 'not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'"); see also Martin v. Saint Mary's Dep't of Soc. Servs., 346 F.3d 502, 506 (4th Cir. 2003) (recognizing state's legitimate interest in investigating allegations of child neglect); Wildauer, 993 F.2d at 372 (discussing reduced Fourth Amendment scrutiny applicable to home visits by social workers).[27]

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[26] Plaintiff does dispute, however, what mental illness Jennifer Vaughan suffers from, whether or not she should have been involuntarily committed, and why she had not been taking medication.

[27] Although DSS defendants argue otherwise, it does not appear that the district court's nonsecure custody order presently at issue is equivalent to an arrest warrant as contemplated by Torchinsky that therefore carries a presumption of reasonableness. Section 7B–502 of the North Carolina General Statutes gives the district court authority to issue an order placing a child in nonsecure custody. Section 7B–503(a) sets forth the criteria for nonsecure custody and states: "An order for nonsecure custody shall be made only when there is a reasonable factual basis to believe the matters alleged in the petition are true . . . ." Such a standard is not similar to a magistrate judge finding probable cause for arrest. Torchinsky, 942 F.2d at 261. Thus the court does not apply the presumption of reasonableness; however, as stated above, defendant Foltz is notwithstanding entitled to qualified immunity.

iv. March 4, 2015, Incident

Although plaintiff alleges defendant Turnage directed the actions of police officers during this incident, and more generally that a conspiracy existed among various DSS officials to remove Jennifer Vaughan, plaintiff does not dispute that Jennifer Vaughan was removed pursuant to a court order nor that no DSS defendant entered plaintiff's home during this incident.[28] (See DE 80 ¶¶ 202-209). The court therefore holds defendant Turnage did not violate plaintiff's Fourth Amendment rights during the March 4, 2015, incident, and thus defendant Turnage is entitled to qualified immunity.[29]

In sum, the relevant DSS defendants are entitled to qualified immunity regarding plaintiff's Fourth Amendment claims.[30]

b. Fourteenth Amendment Claims

An injury to reputation claim based on denial of procedural due process is premised on two rights guaranteed by the Fourteenth Amendment: 1) "the liberty to engage in any of the common occupations of life" and 2) "the right to due process [w]here a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him." Sciolino v. City of Newport News, Va., 480 F.3d 642, 646 (4th Cir. 2007) (alteration in original) (citations omitted)

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[28] As stated above, the court has previously dismissed plaintiff's conspiracy claims. (Vaughan, 2017 WL 4872484, at *6 (citing Glassman v. Arlington Cty., VA, 628 F.3d 140, 150 (4th Cir. 2010) ("Therefore, the court holds that plaintiff has failed to assert a constitutionally protected interest in order to state a due process claim regarding the challenged state civil commitment proceedings. Additionally, her allegations of conspiracy related to her deprivation of the constitutionally protected interest must also fail.")).

[29] Because the court has dismissed plaintiff's claims against defendants White and Sudduth as barred by the statute of limitations, the court does not address any potential Fourth Amendment claims against these defendants.

[30] Regarding other DSS defendants, plaintiff argues that "although neither Corprew, McCarron or Burrus ever physically entered plaintiff's home that she is aware of, they are responsible for the actions of their subordinates . . . ." (DE 108 at 14). Because the court has found that the DSS defendants who entered plaintiff's home did not violate plaintiff's Fourth Amendment rights, plaintiff's arguments regarding defendants Corprew, McCarron, and Burrus must fail.

(quoting Bd. of Regents of State Colls. v. Roth, 408 U.S. 564, 572 (1972) and Wisconsin v. Constantineau, 400 U.S. 433, 437 (1971)). However, the Supreme Court has held that reputation alone does not implicate any "liberty" or "property" interest sufficient to invoke the procedural protection for the due process clause and something more than simple defamation, for example "some more tangible interests such as employment," must be involved to establish a claim under § 1983. Paul v. Davis, 424 U.S. 693, 701 (1976). As held by the Fourth Circuit, "a plaintiff bringing a 'stigma-plus' claim under Paul must allege both a stigmatic statement and a state action that distinctly altered or extinguished his legal status." Evans v. Chalmers, 703 F.3d 636, 654 (4th Cir. 2012) (citations omitted).

Section 7B-311 of the North Carolina General Statutes provides in relevant part that the "Department of Health and Human Services shall maintain a central registry of abuse, neglect, and dependency cases and child fatalities that are the result of alleged maltreatment that are reported under the Article . . . . The Department shall also maintain a list of responsible individuals."[31]

Plaintiff argues that her "Fourteenth Amendment rights relate specifically to false, distorted, irrelevant, fabricated and demeaning allegations and unsubstantiated conclusions made by both Dare and Currituck DSS departments," referencing defendant Hull identifying plaintiff as potentially responsible for the "serious neglect" of EJV in the juvenile petition submitted to the state court in

[31] North Carolina has a statutory scheme for placing an individual on the RIL and providing due process to challenge such an inclusion. A person may not be placed on the list unless one of three things occurs: 1) he or she is notified of a right to a hearing on the issue and fails to respond, 2) a court determines after a hearing that the person should be placed on the list, or 3) the person is convicted in criminal court of the same incident that forms the basis for placing him or her on the list. See N.C. Gen. Stat. § 7B-311(b)(1)-(3). Section (c) of the statute makes the list confidential and limits access to it only to persons authorized to view it. N.C. Gen. Stat. § 7B-320, entitled "Judicial Review; Responsible Individuals List," provides individuals a right to challenge a determination that they have been found responsible for abuse or serious neglect. This statute requires that, when a social services agency has determined after investigation that an individual is responsible for abuse or serious neglect, the agency director must deliver written notice of this finding to the individual. N.C. Gen. Stat. § 7B-323, then allows the individual to file with the court a petition for judicial review of the allegation of abuse or serious neglect.

September 2013. (DE 147 at 1).[32] Plaintiff further alleges that "[b]ased on information in the NC DHHS website and state statutes, [p]laintiff believes it's likely that at some point she was placed on the RIL, and certainly the charges against her were never removed from the record, and most probably she has been placed on the Central Registry, identified as a 'perpetrator.'" (DE 108 at 22).

Here, it is unnecessary for the court to address whether plaintiff has provided sufficient evidence of a "state action that distinctly altered or extinguished [her] legal status" in support of her injury to reputation claim where plaintiff has failed to provide sufficient evidence of a "stigmatic statement." See Evans, 703 F.3d at 654.

DSS defendants have put forth undisputed affidavit evidence from Currituck County DSS's attorney, defendant Hull, as follows:

> Upon my instruction, the Currituck County Department of Social Services performed an intensive and extensive investigation and review of the Responsible Individuals List on December 12, 2017, and this investigation revealed that Susan Vaughan is not and never has been on this list. I reviewed the results of this search. The list is maintained by the North Carolina Department of Health and Human Services. Access to it is limited to authorized persons as set out by the North Carolina Administrative Code. This includes state and local social-service officials, including certain county DSS officials and their clerical staff. It is otherwise confidential and not open to public inspection.

(DE 63-8 ¶ 7).

Additionally, during the custody proceedings, plaintiff, Jennifer Vaughan, and certain DSS defendants stipulated as follows:

> All parties stipulate that if the court conducted a hearing the court would find the facts in the Stipulation by clean, cogent and convincing evidence as set forth in this stipulation and would conclude from these facts that the child noted above is neglected, according to N.C.G.S. 7B-101(15), in that the juvenile does not receive

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[32] Although plaintiff brings this claim against multiple defendants, it appears undisputed that only defendant Hull, the Currituck DSS attorney, checked the box on the juvenile petition filed in September 2013. (See DE 63-8 ¶ 4; id. at 5-10).

> proper care from his parent and/or caretaker, that he does not receive proper medical care and lives in an injurious environment to his welfare.
>
> Based on this stipulation, Currituck DSS has agreed not to proceed on the allegations regarding dependency or serious neglect as set forth in any petition filed to date.

(DE 63-8 at 11).

Although plaintiff denies that EJV was neglected and argues she was coerced into signing this stipulation, plaintiff does not dispute that Currituck DSS agreed to not proceed on the allegations regarding dependency or serious neglect.[33] DSS defendants' evidence presented is unrebutted that plaintiff's name has not been placed on the RIL. Therefore, the court finds no genuine issue of material fact in dispute as to whether plaintiff's name was placed on the RIL.

Plaintiff argues in what appears to be the alternative that even if she was not placed on the RIL, she has been treated as if she was on the list and has suffered the same consequences. (See DE 147 at 27 ("whether or not [p]laintiff's name is on the RIL is irrelevant to the consequences [p]laintiff has suffered, because she is being treated as if she is on the RIL anyway, by both DSS departments, and deprived of the same rights the RIL deprives a person of"); see also DE 80 ¶ 221).

However, in order to state this particular type of due process claim, plaintiff in this instance must not only allege that false statements were made about her that placed a stigma on her reputation, but also that such statements were made public in some way. As determined by the Fourth Circuit:

> Our reading of the Hodges' complaint reveals no more than a conclusory allegation of reputational injury which, absent a cognizable stigma and the ensuing loss of a

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[33] Plaintiff previously withdrew claims against her former attorney; accordingly, the court does not address plaintiff's allegations against this attorney who advised her to enter into this stipulation, including plaintiff's allegations of coercion. See Vaughan, 2017 WL 4872484, at *2 n.5 ("The magistrate judge also recommended the dismissal of the following claims which plaintiff has removed from her amended complaint and therefore which the court need not address . . . claims against attorneys Meander Harriss . . . ."); see also Polk County v. Dodson, 454 U.S. 312, 321 (1981) (holding public defenders do not act under color of state law as required under § 1983).

> tangible interest, fails to state a cause of action under § 1983 . . . . given the extensive confidentiality provisions protecting the Hodge investigation report, we see no avenue by which a stigma or defamation labeling the Hodges as child abusers could attach.

Hodge v. Jones, 31 F.3d 157, 165 (4th Cir. 1994); see also Bollow v. Federal Reserve Bank, 650 F.2d 1093, 1101 (9th Cir.1981) ("Unpublicized accusations do not infringe constitutional liberty interests because, by definition, they cannot harm 'good name, reputation, honor, or integrity.'"); Valmonte v. Bane, 18 F.3d 992, 1000 (2d Cir. 1994) ("There is no dispute that Valmonte's inclusion on the list potentially damages her reputation by branding her as a child abuser, which certainly calls into question her good name, reputation, honor, or integrity . . . . Dissemination to potential employers, however, is the precise conduct that gives rise to stigmatization.").[34] Here, DSS defendants have put forth unrebutted affidavit evidence that the petition at issue was never shared with the public or made public in any way. (DE 63-8 ¶ 4 ("The petition is confidential and sealed by the court, so it is not open to public inspection.")).[35]

Finally, plaintiff argues that although she filed a petition for judicial review challenging the allegation as found in the petition, she was not properly informed of her right for judicial review pursuant to North Carolina Gen. Stat. § 7B-320. However, because the court has found no constitutional violation, state regulations do not provide a basis for a due process violation. Weller v. Dept. of Soc. Services, 901 F.2d. 387, 392 (4th Cir. 1990) (holding that if plaintiff "is seeking

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[34] The court rejects plaintiff's repeated arguments that her injury to reputation claim should survive summary judgment simply because DSS defendants filed the petition on September 18, 2013, the petition became part of the record, and the petition remained legally undisturbed until the relevant parties entered stipulation on November 18, 2013.

[35] Although plaintiff argues that "information submitted by county child welfare agencies to the RIL sub-system of the Central Registry is subject to broader disclosure than the Central Registry," (DE 108 at 26 (citing applicable website)), plaintiff offers no evidence that her court proceedings have been revealed to the public beyond the following unsupported allegation: "Personal communication with Clerks of Court, doctors, Social Security agents and others reveal that DSS passed on derogatory information from its records to others." (DE 102 at 20). These unsupported allegations fail to create a triable issue of fact on this claim.

compliance with state law, this is not the proper forum."); see also Riccio v. Cty. of Fairfax, 907 F.2d 1459, 1469 (4th Cir. 1990) ("If the state law grants more procedural rights than the Constitution would otherwise require, a state's failure to abide by that law is not a federal due process issue.").[36]

Similarly, plaintiff alleges that when she filed the petition for judicial review, defendant Matusko never set a hearing date for that petition and did not timely inform the North Carolina Administrative Office of the Courts following her notice of appeal of a state court order relating to the child welfare proceedings. (DE 80 ¶¶ 14, 152, 186). Plaintiff's allegations against defendant Matusko fail to state a claim under 42 U.S.C. § 1983 for injury to reputation after being denied procedural due process for the same reason. Because the court has found no constitutional violation, state regulations do not provide a basis for a due process violation. Weller, 901 F.2d. at 392; Riccio, 907 F.2d at 1469.[37]

In sum, because plaintiff has failed to demonstrate a violation of plaintiff's constitutional rights, the relevant DSS defendants are entitled to qualified immunity and plaintiff has failed to state a claim for relief against defendant Matusko.

3. Confidential Information in Filings

Although inconsistent attempts at redaction have been made by both plaintiff and DSS defendants to redact confidential information regarding EJV in the filings submitted to the court, both plaintiff and DSS defendants have filed information with the court containing information that should have been redacted. More specifically, plaintiff has filed the following documents that have

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[36] Because of the court's holding above, it is unnecessary to address DSS defendants' arguments regarding applicability of absolute prosecutorial immunity. See Vosburg v. Dep't of Social Servs., 884 F.2d 133, 145 (4th Cir.1989).

[37] Defendant Matusko filed motion for summary judgment prior to plaintiff filing the operative complaint and thereafter filed motion to dismiss. Given the court's holding above, granting defendant Matusko's motion to dismiss, the court holds that defendant Matusko's motion for summary judgment is rendered moot.

redacted some but not all confidential information regarding the minor: DE 6-4, DE 6-5, DE 48-1 – DE 48-8, DE 48-10, DE 48-13, DE 48-14, DE 98-3 – DE 98-5, DE 98-9, DE 98-10, DE 98-12, DE 98-13, DE 102-5, DE 102-7, DE 108-3, DE 126-2, DE 126-4. Likewise, DSS defendants have filed the following documents that have redacted some but not all confidential information regarding the minor: DE 63-8, DE 158-1. The majority, but not all, of these documents are documents filed with, or issued by, the state court in the custody proceedings.

Under Rule 5.2(a), the name of an individual known to be a minor should not be used in a court filing, only the minor's initials; and the birth date of any individual should not be used, only the year of birth. This general rule does not apply if the filings constitute "the official record of a state-court proceeding" or "the record of a court or tribunal, if that record was not subject to the redaction requirement when originally filed." Fed.R.Civ.P. 5.2(b)(3), (4). However, the state-court proceedings at issue in this case appear not to have been open to the public. (See, e.g., DE 63-8 at 21 ("it is hereby ORDERED, ADJUDGED and DECREED as follows: 1. That this hearing is closed to the public . . . ."). Additionally, pursuant to North Carolina law, "juvenile court records are generally confidential and withheld from public inspection[.]" United States v. Beckton, No. 7:11-CR-61-BR, 2012 WL 1564522, at *2 (E.D.N.C. May 2, 2012).[38]

Finally, even if the general rule does not apply, the court "may order that a filing be made under seal without redaction," or "require the redaction of additional information." In the event of filing under seal, the "court may later unseal the filing or order the person who made the filing to file a redacted version for the public record." Fed. R. Civ. P. 5.2(d) & (e)(1).

[38] The exception to the redaction requirement under Rule 5.2(h) does not apply. Under that exception, a party waives the protection of the redaction requirements by filing a document "without redaction and not under seal." Here, neither the minor nor the minor's parent is a party.

Here, the court directs the clerk to seal DE 6-4, DE 6-5, DE 48-1 – DE 48-8, DE 48-10, DE 48-13, DE 48-14, DE 98-3 – DE 98-5, DE 98-9, DE 98-10, DE 98-12, DE 98-13, DE 102-5, DE 102-7, DE 108-3, DE 126-2, and DE 126-4, filed by plaintiff, and DE 63-8 and DE 158-1, filed by DSS defendants. The court may later unseal the filings or order the person who made the filing to file a redacted version for the public record.

CONCLUSION

Based on the foregoing,

1. DSS defendants' motion for summary judgment (DE 60) is GRANTED.
2. Defendant Matusko's motion for summary judgment (DE 65) is DENIED AS MOOT.
3. Defendant Matusko's motion to dismiss (DE 91) is GRANTED.
4. Defendants Sudduth and White's motion to dismiss (DE 135) is GRANTED.
5. Plaintiff's motion for extension of time (DE 141) is DENIED AS MOOT.
6. The clerk is DIRECTED to seal DE 6-4, DE 6-5, DE 48-1 – DE 48-8, DE 48-10, DE 48-13, DE 48-14, DE 98-3 – DE 98-5, DE 98-9, DE 98-10, DE 98-12, DE 98-13, DE 102-5, DE 102-7, DE 108-3, DE 126-2 and DE 126-4, filed by plaintiff, and DE 63-8 and DE 158-1, filed by DSS defendants.

Plaintiff's claims against DSS defendants and defendant Matusko are DISMISSED, and plaintiff's claims against defendants Sudduth and White are DISMISSED WITH PREJUDICE. The clerk is DIRECTED to close the case.

SO ORDERED, this the 19th day of March, 2019.

LOUISE W. FLANAGAN
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
NORTHERN DIVISION

SUSAN W. VAUGHAN, an individual Plaintiff, v. SHANNON FOLTZ an individual, SAMANTHA HURD an individual, KRISTEN HARRIS an individual, KATHLYN ROMM an individual, RAY MATUSKO an individual, STEPHANIE RYDER an individual, CHUCK LYCETT an individual, MELANIE CORPREW an individual, JAY BURRUS an individual, DOES 1-10 individuals, MELISSA TURNAGE, KATHERINE MCCARRON, OFFICER MIKE SUDDUTH, and OFFICER CARL WHITE, Defendants.	)	**JUDGMENT** No. 2:16-CV-61-FL

Decision by Court.

This action came before the Honorable Louise W. Flanagan, United States District Judge, for consideration of motion for summary judgment by defendants Jay Burrus, Melanie Corprew, Shannon Foltz, Kristen Harris, Samantha Hurd, Chuck Lycett, Katherine McCarron, Kathlyn Romm, Stephanie Snyder and Melissa Turnage; motion for summary judgment filed by defendant Ray Matusko; motion to dismiss filed by defendant Matusko; motion to dismiss filed by defendants Mike Sudduth and Carl White and plaintiff's motion for extension of time to serve defendants Sudduth and White with complaint.

IT IS ORDERED, ADJUDGED AND DECREED in accordance with the court's order entered March 19, 2019, and for the reasons set forth more specifically therein, that DSS defendants' motion summary judgment is granted, defendant Matusko's motion for summary judgment is denied as moot; defendant Matusko's motion to dismiss is granted, defendants Sudduth and White's motion to dismiss is granted and plaintiff's motion for extension of time is denied as moot. Plaintiff's claims against DSS defendants and defendant Matusko are DISMISSED and plaintiff's claims against defendants Sudduth and White are DISMISSED WITH PREJUDICE.

This Judgment Filed and Entered on March 19, 2019, and Copies To:

Susan W. Vaughan (via U.S. Mail at 613 Fifth Ave, Apt 1, Greensboro, NC 27405)
Christopher J. Geis (via CM/ECF Notice of Electronic Filing)
Grady L. Balentine, Jr. / Kathryn H. Shields (via CM/ECF Notice of Electronic Filing)
Dan McCord Hartzog, Jr. / Katherine Barber-Jones (via CM/ECF Notice of Electronic Filing)

March 19, 2019

PETER A. MOORE, JR., CLERK

/s/ Sandra K. Collins
(By) Sandra K. Collins, Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
NORTHERN DIVISION
No. 2:16-CV-61-FL

SUSAN W. VAUGHAN, Plaintiff, v. SHANNON FOLTZ, SAMANTHA HURD, KRISTEN HARRIS, KATHLYN ROMM, DOUG DOUGHTIE, RAY MATUSKO,[1] STEPHANIE RYDER, CHUCK LYCETT, MELANIE CORPREW, HONORABLE ROBERT TRIVETTE, JAY BURRUS, HONORABLE MEADER HARRISS, HONORABLE AMBER DAVIS, COURTNEY HULL, OFFICER DOE, HONORABLE EULA REID, DARE COUNTY, CURRITUCK COUNTY, KILL DEVIL HILLS, DOE's 1-10, SUSAN HARMON-SCOTT, and MERLEE AUSTIN, Defendants.	)	**ORDER and MEMORANDUM & RECOMMENDATION**

This pro se case is before the court on the application [DE #1] by Plaintiff Susan W. Vaughan to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(a)(1) and for frivolity review pursuant to 28 U.S.C. § 1915(e)(2)(B), the matter having been referred to the undersigned by the Honorable Louise W. Flanagan, United States District Judge.

[1] Plaintiff misspelled Defendant Matusko's name as 'Matsuof' in her complaint. Defendant Matusko is the Clerk of Superior Court of Currituck County, North Carolina.

IFP MOTION

The standard for determining *in forma pauperis* status is whether "one cannot because of his poverty pay or give security for the costs . . . and still be able to provide himself and dependents with the necessities of life." *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339 (1948) (internal quotation marks omitted). Based on the information contained in Plaintiff's affidavit, the court finds that Plaintiff has demonstrated appropriate evidence of inability to pay the required court costs. Thus, Plaintiff's application to proceed *in forma pauperis* is allowed.

DISCUSSION

I. Background

Plaintiff sues Defendants for actions taken in connection with the removal of her grandchild from her physical custody and from her adult daughter's legal custody pursuant to North Carolina child welfare proceedings in Currituck and Dare Counties, and for actions taken in connection with the removal of her adult daughter from her home pursuant to a civil commitment order and accompanying guardianship proceedings in state court.

Plaintiff is the mother of Jennifer Vaughan, who is in turn the mother of a minor child, E.J.V. Jennifer Vaughan is an adult. In August 2013, Plaintiff, her daughter, and her grandchild were residing at Plaintiff's house in Kill Devil Hills, North Carolina. In August 2013, the Dare County Department of Social Services ("DSS") filed a petition alleging that E.J.V. was neglected, thereby initiating a child welfare case involving Jennifer and E.J.V. On August 13, 2013, Dare County DSS, accompanied by Officers of the Town of Kill Devil Hills Police Department, removed

Plaintiff's adult daughter from Plaintiff's home pursuant to what appears to be an involuntary civil commitment order. (Am. Compl. [DE #4] ¶¶ 66-67.) On August 14, 2013, Dare County DSS removed E.J.V. from Plaintiff's physical custody and placed the child into temporary foster care based on allegations that E.J.V. was neglected. Child welfare proceedings in North Carolina district court ensued. It also appears that the Adult Protective Services Division of Dare County DSS obtained guardianship over Plaintiff's adult daughter on or about this time. (Am. Compl. ¶¶ 72-73, 75-76, 87, 92, 94, 105, 128.) Plaintiff steadfastly attended both sets of proceedings. She was, and presumably remains, dissatisfied with the state court's decision not to return E.J.V. to her daughter's custody or to Plaintiff as a caretaker. Plaintiff is also dissatisfied with the manner in which her daughter and grandchild were physically removed from her home, and with the legal process that culminated in legal custody of her grandchild being awarded to Currituck County DSS and guardianship over Jennifer being awarded to Dare County DSS.[2]

II. Standard for Frivolity Review

Notwithstanding the determination that Plaintiff is entitled to *in forma pauperis* status, the court is required to dismiss all or part of an action found to be frivolous or malicious, which fails to state a claim on which relief can be granted, or which seeks money damages from a defendant immune from such recovery. 28 U.S.C. § 1915(e)(2); *Michau v. Charleston County*, 434 F.3d 725, 728 (4th Cir. 2006). A case

[2] The child welfare case was transferred from Dare County to Currituck County due to a conflict of interest caused by Dare County having guardianship over Jennifer Vaughan and legal custody of E.J.V.

is frivolous if it lacks an arguable basis in either law or fact. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). Pro se complaints are entitled to a more liberal treatment than pleadings drafted by lawyers. *See White v. White*, 886 F.2d 721, 722–23 (4th Cir. 1989). However, the court is not required to accept a pro se plaintiff's contentions as true. *Denton v. Hernandez*, 504 U.S. 25, 32 (1992). The court is permitted to "pierce the veil of the complaint's factual allegations and dismiss those claims whose factual contentions are clearly baseless." *Neitzke*, 490 U.S. at 327.

Rule 8 of the Federal Rules of Civil Procedure requires a complaint to give a "short plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8. The statement must give a defendant fair notice of what the claim is and the grounds upon which it rests. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). "A plaintiff must offer more detail . . . than the bald statement that he has a valid claim of some type against the defendant." *Trulock v. Freeh*, 275 F.3d 391, 405 (4th Cir. 2001); *see also White*, 886 F.2d at 723 (affirming district court's dismissal of plaintiff's suit as frivolous where plaintiff's complaint "failed to contain any factual allegations tending to support his bare assertion"). While the court must read the complaint carefully to determine if the plaintiff has alleged facts sufficient to support his claims, *White*, 886 F.2d at 724, the court is not required to act as the pro se plaintiff's advocate or to parse through volumes of documents or discursive arguments in an attempt to discern the plaintiff's unexpressed intent, *Williams v. Ozmint*, 716 F.3d 801, 805 (4th Cir. 2013).

III. Plaintiff's Claims

Although difficult to parse, Plaintiff's complaint appears to raise claims for violation of her constitutional rights pursuant to 42 U.S.C. § 1983, as well as conspiracy to violate those rights. More specifically, Plaintiff asserts that the following rights were violated: (1) her rights to substantive and procedural Due Process pertaining to familial integrity and fair judicial proceedings; (2) her Fourth Amendment right to be free from unreasonable searches and seizures by the government; and (3) her right to the effective assistance of counsel during the child welfare case.

Plaintiff states she is suing the individual defendants in their individual capacities, Currituck County, Dare County, and the Town of Kill Devil Hills. Plaintiff also names the State of North Carolina and North Carolina Indigent Defense Services as defendants at different points in her complaint, although these entities are not identified in the caption of Plaintiff's complaint.

The individual defendants comprise several groups of state and local government employees. Defendants Amber Davis, Eula Reid, and Robert Trivette are state district court judges who presided over various hearings in the underlying child welfare case. Defendants Merlee Austin and Ray Matusko were county clerks of court for Dare and Currituck Counties, respectively, and, in that capacity, were involved in the underlying civil commitment and child welfare cases. Defendants Susan Harmon-Scott (Guardian ad Litem Attorney for Jennifer Vaughan), Meader Harriss (former public defender and appointed counsel for Plaintiff and presently a state district court

judge), and Courtney Hull (private retained counsel for Currituck County Department of Social Services) were all attorneys involved in the guardianship and child welfare cases. Defendants Shannon Foltz, Chuck Lycett, Jay Burrus, Stephanie Ryder, and Melanie Corprew were Dare County DSS Social Workers who were involved in the guardianship and child welfare cases. Defendants Kristen Harris, Samantha Hurd, and Kathlyn Romm were Currituck County DSS Social Workers who were involved in the child welfare case. Defendant Doug Doughtie is Sheriff of Dare County and held this position at the time of Plaintiff's allegations. Defendants Officer Does are unknown officers of the Kill Devil Hills Police Department.

A. Applicable Law

Section 1983 provides a cause of action for "the deprivation of any rights, privileges, or immunities secured by the Constitution and laws" by any person acting "under color of any statute, ordinance, custom, or usage, of any State or Territory." 42 U.S.C. § 1983. To state a claim under § 1983, a plaintiff must allege facts to support the following findings: (1) that he has been deprived of a federal right; and (2) that the person who deprived him of his federal right did so under color of state law. *Gomez v. Toledo*, 446 U.S. 635, 640 (1980). "[P]rivate conduct, no matter how discriminatory or wrongful," is not actionable under § 1983. *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 50 (1999) (quoting *Blum v. Yaretsky*, 457 U.S. 991, 1002 (1982)). In sum, § 1983 is the law that provides the legal basis for people to sue government actors for violations of their constitutionally protected rights.

B. Immunity of Certain Defendants

1. Immunity of State and its Agencies

Plaintiff seeks to sue the State of North Carolina and North Carolina Indigent Defense Services ("IDS")[3] under 42 U.S.C. § 1983 for violation of her right to effective assistance of counsel. (Am. Compl. ¶¶ 22-23.) Plaintiff alleges that the attorney appointed to represent her during the underlying child welfare case was employed by IDS.

The Eleventh Amendment provides that "[t]he Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." U.S. CONST. amend. XI. "Under the Eleventh Amendment, . . . neither a State nor its officials in their official capacity may be sued for damages in federal court without their consent." *Gamache v. Cavanaugh*, 82 F.3d 410, 1996 WL 174623, at *1 (4th Cir. 1996) (unpublished table decision). Moreover, "state agencies are protected from suit by citizens of a state by the doctrine of sovereign immunity." *Teague v. N.C. Dep't of Transp.*, No. 5:07-CV-45-F, 2007 WL 2898707, at *2 (E.D.N.C. Sept. 28, 2007) (citing *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 101 (1984)).

Plaintiff includes no allegations from which it may be inferred that the State of North Carolina has waived its immunity with respect to the claims Plaintiff

[3] IDS is an agency of the State established pursuant to N.C. GEN. STAT. § 7A-498.2 and is vested with statutory authority to establish, supervise, and maintain a system for providing legal representation to indigent persons.

alleges, nor does Plaintiff invoke a federal statute that abrogates North Carolina's sovereign immunity as to the § 1983 claims. Therefore, Plaintiff's claims against North Carolina and IDS should be dismissed for lack of subject matter jurisdiction.

2. **Immunity of Judges**

Plaintiff purports to assert claims against Judges Amber Davis, Eula Reid, and Robert Trivette for certain rulings made by them in proceedings of the district courts of Currituck and Dare counties. "It has long been settled that a judge is absolutely immune from a claim for damages arising out of his judicial actions." *Chu v. Griffith*, 771 F.2d 79, 81 (4th Cir. 1985). "[J]udges of courts of superior or general jurisdiction are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction, and are alleged to have been done maliciously or corruptly." *Stump v. Sparkman*, 435 U.S. 349, 355-56 (1978) (quoting *Bradley v. Fisher*, 80 U.S. 335, 351 (1871)) (internal quotation marks omitted). "A judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he was acted in the clear absence of all jurisdiction." *Id.* at 356-57 (quoting *Bradley*, 80 U.S. at 351) (internal quotation marks omitted).

Here, Plaintiff's claims against these Defendants arise from judicial actions taken in court hearings in the child welfare case involving Plaintiff's grandchild, matters over which they had jurisdiction.[4] Therefore, Judges Amber Davis, Eula

[4] Plaintiff alleges that the state district courts lacked subject matter jurisdiction in the underlying child welfare case. (Am. Compl. ¶¶ 277-81.) That is a matter for the North Carolina courts.

Reid, and Robert Trivette are immune from suit, and the claims against them should be dismissed.

3. Immunity of Clerks of Court

Plaintiff has also sued Merlee Austin and Ray Matusko, the former Clerk of Superior Court for Dare County and current Clerk of Superior Court for Currituck County, respectively. Quasi-judicial immunity protects court clerks when carrying out judicial functions. *See Jarvis v. Chasanow*, 448 F. App'x 406, 2011 WL 4564336, at *1 (4th Cir. 2011) (per curiam) (unpublished) (citing *Briscoe v. LaHue*, 460 U.S. 325, 335 (1983)). Additionally, "court clerks enjoy derivative absolute judicial immunity when they act in obedience to a judicial order or under the court's discretion." *Hamilton v. Murray*, 648 F. App'x 344, 345 (4th Cir. 2016) (per curiam) (unpublished) (citing *McCray v. Maryland*, 456 F.2d 1, 5 (4th Cir. 1972)), *cert. denied*, 137 S.Ct. 1225 (Mar. 6, 2017) (mem.).

Here, Plaintiff alleges that Defendant Matusko failed to transmit a Notice of Appeal to the North Carolina Court of Appeals (Am. Compl. ¶ 14) and failed to schedule a hearing within statutorily mandated time frames (Am. Compl. ¶ 152). These alleged acts arise from the clerk's conduct as a judicial officer. Therefore, Plaintiff's claims against Defendant Matsuko are barred by quasi-judicial immunity. *See, e.g., Green v. North Carolina*, No. 4:08-CV-135-H, 2010 WL 3743767, at *3 (E.D.N.C. Sept. 21, 2010) ("Inasmuch as plaintiff is attempting to make claims which arise out of actions by the superior court judge and/or the clerk of court within their

capacities as judicial officers, these claims are barred by the doctrine of judicial immunity . . . .").

Plaintiff also alleges that Defendant Austin violated her rights by signing an involuntary civil commitment order regarding Plaintiff's adult daughter (Am. Compl. ¶¶ 32, 57, 66) and by presiding over a guardianship proceeding that resulted in guardianship of Plaintiff's adult daughter being awarded to Dare County DSS (Am. Compl. ¶¶ 104-05). Under North Carolina law, Clerks of Superior Court are authorized to issue civil commitment orders, N.C. GEN. STAT. § 122C-261(b), and to preside over incompetency and guardianship proceedings and issue related orders, N.C. GEN. STAT. §§ 35A-1103, -1112, -1114, -1120. These alleged acts arise from the clerk's conduct as a judicial officer authorized by state law to issue such orders. Therefore, Plaintiff's claims against Defendant Austin are barred by quasi-judicial immunity. *See Jarvis*, 448 F. App'x 406, 2011 WL 4564336, at *1; *Green*, 2010 WL 3743767, at *3.

4. **Immunity of Guardian ad Litem**

Plaintiff also alleges Defendant Attorney Susan Harmon-Scott, who was appointed as Guardian ad Litem ("GAL") to Plaintiff's adult daughter, violated her rights by misleading the court and filing a deceptive court report. (Am. Compl. ¶¶ 15, 297.) The Fourth Circuit has held that guardians ad litem in custody cases are immune from § 1983 claims for actions "occur[ing] within the judicial process." *Fleming v. Asbill*, 42 F.3d 886, 889 (4th Cir. 1994); *see also Kolley v. Adult Protective Services*, 786 F. Supp. 2d 1277, 1298-99 (E.D. Mich. 2011) (citing *Fleming* and holding

that a Guardian ad Litem in an adult guardianship case was entitled to immunity for actions that were part of the judicial process). Because the facts alleged by Plaintiff occurred within the judicial process, Defendant Harmon-Scott is immune from § 1983 liability.

5. **Immunity of Social Workers**

Plaintiff sues several Social Workers employed by Currituck and Dare Counties in their individual capacities. Each must be analyzed according to the role he or she played in Plaintiff's allegations.

Fourth Circuit precedent affords government social workers in child welfare cases absolute quasi-judicial immunity for actions taken in connection with the filing of a petition alleging abuse, neglect, or dependency. *Vosburg v. Dep't of Soc. Servs.*, 884 F.2d 133, 137-38 (4th Cir. 1989). Absolute immunity only applies "to those activities of social workers that could be deemed prosecutorial." *Id.* (explaining that social workers in child welfare cases function as advocates for the state and function akin to prosecutors in such cases). Social workers engaged in child abuse or neglect investigation may be entitled to qualified immunity. *Wildauer v. Frederick Cty.*, 993 F.2d 369, 373 (4th Cir. 1993) ("Individuals who investigate child abuse or neglect enjoy at least qualified immunity.").

Plaintiff names three Currituck County DSS Social Workers as Defendants. Plaintiff alleges that (1) Defendant Kristen Harris provided false testimony in the underlying child welfare case (Am. Compl. ¶¶ 10, 144, 189.); Defendant Samantha Hurd made false statements in an abuse/neglect/dependency petition and in

subsequent court reports related to the child welfare case (Am. Compl. ¶¶ 11, 135, 189); and Defendant Kathryn Romm failed to notify Plaintiff that she was the subject of a DSS report and moved to dismiss Plaintiff's petition to adopt her grandchild (Am. Compl. ¶¶ 12, 152, 221). These allegations all involve actions by governmental social workers in the judicial phase of a child welfare case and are thus appropriately characterized as "prosecutorial" rather than "investigative." As such, these Defendants are entitled to absolute quasi-judicial immunity under *Vosburg*. The claims against them should be dismissed.

Plaintiff names five Dare County DSS Social Workers as Defendants. Two of these Defendants are not alleged to have been involved in any investigative acts and would therefore normally be entitled to absolute immunity. However, Plaintiff has alleged that these two Defendants—Jay Burrus and Melanie Corprew—had supervisory power over subordinate social workers who carried out investigative acts. Therefore, the court must also consider whether these Defendant supervisors can be held liable for the unconstitutional acts of their subordinates.

It is well settled that the doctrine of respondeat superior will not serve as the basis for § 1983 liability. *Monell v. Dep't of Soc. Servs. of N.Y.C.*, 436 U.S. 658, 691 (1978). "[E]ach [g]overnment official . . . is only liable for his or her own misconduct." *Ashcroft v. Iqbal*, 556 U.S. 662, 677 (2009). Thus, supervisory officials are not subject to liability because of their authority to control subordinates, but may be held liable only for their own wrongs taken in violation of an individual's constitutional rights. *Id.* A supervisory official may be held liable for the actions of his subordinate only

where he has actual or constructive knowledge of "a pervasive and unreasonable risk of injury" caused by the subordinate, he acts with deliberate indifference to or tacitly authorizes the subordinate's actions, and there is an "affirmative causal link" between the supervisor's actions and the constitutional injury. *Randall v. Prince George's Cty.*, 302 F.3d 188, 206 (4th Cir. 2002).

Plaintiff alleges that Defendant Jay Burrus, Director of Dare County DSS, "played a role in" Defendants Foltz and Lycett's decision to file a child welfare petition and spoke rudely to her in the courtroom hallway after a hearing. (Am. Compl. ¶¶ 7, 106). "Playing a role in" is too flimsy an allegation to support supervisory liability. Plaintiff has not alleged sufficient facts to show there was an affirmative causal link between Defendant Burrus's actions and the alleged Fourth Amendment violations, or that he knew of a pervasive and unreasonable risk of injury posed by Foltz and Lycett. Therefore, any claim based on Defendant Burrus's supervisory control over Defendants Foltz and Lycett should be dismissed. Defendant Burrus is entitled to absolute immunity under *Vosburg* for any other claims because his actions were limited to the judicial phase of the underlying guardianship and child welfare cases.

Plaintiff alleges that Defendant Melanie Corprew supervised Defendant Stephanie Ryder, was required to authorize any actions taken by Defendant Ryder, and was involved in the adult guardianship proceeding before Defendant Austin (the Dare County Clerk of Superior Court). (Am. Compl. ¶¶ 9, 104-05). Even assuming that Defendant Corprew authorized Ryder's actions, Plaintiff has not alleged facts sufficient to believe that Corprew had knowledge Ryder was engaged in conduct that

posed a pervasive and unreasonable risk of injury to people such as Plaintiff. Therefore, any claim based on Defendant Corprew's supervisory control over Defendant Ryder should be dismissed. Defendant Corprew is entitled to absolute immunity under *Vosburg* for any other claims because her actions were limited to the judicial phase of the underlying guardianship and child welfare cases.

Plaintiff alleges that the remaining Dare County DSS Social Workers were involved in a mixture of investigative and prosecutorial actions. Plaintiff alleges that (1) Defendant Shannon Foltz regularly "visited" Plaintiff's home to observe and make inquiries about Plaintiff's daughter and grandchild, included false statements in an abuse/neglect/dependency petition, and provided false testimony (Am. Compl. ¶¶ 39-40, 48-51, 51, 53, 58, 107, 117-18); (2) Defendant Chuck Lycett interrogated Plaintiff's daughter in Plaintiff's house immediately prior to her removal, searched Plaintiff's house during the same time, and provided false testimony (Am. Compl. ¶¶ 59, 107); and (3) Defendant Stephanie Ryder interrogated Plaintiff's daughter in Plaintiff's house immediately prior to her removal, searched Plaintiff's house during the same time, and provided false statements to procure civil commitment and guardianship orders concerning Plaintiff's daughter (Am. Compl. ¶¶ 32, 57, 58, 104). The claims involving false statements to procure judicial orders and false testimony during judicial proceedings should be dismissed as Defendants Foltz, Lycett, and Ryder are entitled to absolute immunity for these actions under *Vosburg*.

However, the alleged searches of Plaintiff's home could reasonably be construed as investigative rather than prosecutorial acts. Therefore, the defendants

involved in these incidents are not entitled to absolute immunity for their respective actions. It is, however, premature to determine whether those individuals would be entitled to qualified immunity pursuant to *Wildauer*. *See Gomez*, 446 U.S. at 640.

C. Section 1983 Claims

Plaintiff's § 1983 claims appear to concern four constitutional rights: (1) the right to substantive due process as it pertains to family integrity; (2) the right to procedural due process as it pertains to the judicial process in state civil commitment and child welfare proceedings; (3) the right to be free from unreasonable searches and seizures by the government; and (4) the right to the effective assistance of counsel. To state a claim under § 1983, a plaintiff must allege facts to support the following findings: (1) that she has been deprived of a federal right; and (2) that the person who deprived her of her federal right did so under color of state law. *Gomez*, 446 U.S. at 640.

1. Due Process Claims

a. Substantive Due Process

"[T]he sanctity of the family unit is a fundamental precept firmly ensconced in the Constitution and shielded by the Due Process Clause of the Fourteenth Amendment." *Renn By and Through Renn v. Garrison*, 100 F.3d 344, 349 (4th Cir. 1996) (quoting *Hodge v. Jones*, 31 F.3d 157, 162 (4th Cir. 1994)). The Supreme Court has characterized "the interest of parents in the care, custody, and control of their children" as "perhaps the oldest of the fundamental liberty interests." *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (plurality opinion). The right to family integrity,

however, is not absolute. *Martin v. Saint Mary's Dep't Soc. Servs.*, 346 F.3d 502, 506 (4th Cir. 2003). "A state has a legitimate interest in protecting children from neglect and abuse and in investigating situations that may give rise to such neglect and abuse." *Id.*

"In many cases, grandparents play an important role [in the everyday tasks of child rearing]." *Troxel*, 530 U.S. at 64. But "[g]randparents have no constitutional right to visitation." *Buck v. Greenlee*, No. 3:10-CV-540-RJC-DSC, 2011 WL 4595262, at *7 (W.D.N.C. Sept. 30, 2011) (citing *Troxel*), *aff'd*, 465 F. App'x 244 (4th Cir. 2012). *A fortiori*, grandparents *qua* grandparents have no constitutional right to familial integrity.[5]

"[M]any Circuit Courts have addressed whether a parent has a constitutionally protected right to the companionship of his or her child, . . . primarily in the context of an adult child, and found that no such right is protected under the Due Process Clause." *Evans v. Pitt Cty. Dep't Soc. Servs.*, 972 F. Supp. 2d 778, 793 (E.D.N.C. 2013), *vacated in part, appeal dismissed in part sub nom. Evans v. Perry*, 578 F. App'x 229 (4th Cir. 2014) (per curiam) (unpublished), and *aff'd in part*, 616 F. App'x 636 (4th Cir. 2015) (mem.) (per curiam) (unpublished). "[T]he cases extending liberty interests of parents under the Due Process Clause focus on relationships with *minor* children." *McCurdy v. Dodd*, 352 F.3d 820, 827 (3rd Cir. 2003); *see also Butera v. District of Columbia*, 235 F.3d 637, 656 (D.C. Cir. 2001) (holding that "a parent

[5] A grandparent may, of course, have legal custody to a minor due to judicial decree.

does not have a constitutionally[]protected liberty interest in the companionship of a child who is past minority and independent").

Here, Plaintiff does not allege she was the legal guardian of her adult daughter. She alleges that her daughter signed a "Power of Attorney" while civilly committed and that Defendant Austin (the Clerk of Dare County Superior Court) ignored this document during the adult guardianship proceedings. (Am. Compl. ¶¶ 81, 105.) While Plaintiff states that her daughter was disabled and residing with her at the time of her commitment, nothing in the complaint indicates that the civil commitment and concomitant removal of Plaintiff's adult daughter violated Plaintiff's substantive due process rights as a parent. Therefore, Plaintiff's substantive due process claims involving her adult daughter's civil commitment and guardianship proceedings should be dismissed.[6]

While Plaintiff's complaint includes conclusory statements as to her status as "primary caretaker and the one having physical and legal custody" of her grandchild (Am. Compl. ¶ 85, 133), no *facts* are included to support her claim to legal custody. Indeed, other facts alleged in the complaint, including the following, suggest that Plaintiff was instead a caretaker[7] to her grandchild and possessed no legal rights concerning the child: (1) that Plaintiff sought "written permission" from her adult daughter to take E.J.V. to a pediatrician (*Id.* ¶ 44); (2) that the petition filed by Dare

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[6] Alternatively, assuming that Plaintiff did have legal guardianship of her adult daughter, this court would be barred from considering her claim pursuant to the *Rooker-Feldman* doctrine.

[7] *See* N.C. GEN. STAT. § 7B-101(3) for a description of "caretaker" under state law.

County DSS alleged neglect and dependency "due to mother's inability to care" (*Id.* ¶ 90); (3) that Plaintiff was not "included across the bar with the other parties" during the child welfare proceedings (*Id.* ¶ 124); and (4) that Plaintiff was recognized as a party to the child welfare case after the initial hearing (*Id.* ¶ 124) and subsequently removed as a party months later (*Id.* ¶ 175).[8] Based on these facts, and the absence of facts indicating that Plaintiff was her grandchild's legal custodian, Plaintiff has not demonstrated a substantive due process right to familial integrity involving her grandchild. Therefore, Plaintiff's claims involving this right should be dismissed.

b. Procedural Due Process

Plaintiff challenges the fairness of the judicial proceedings concerning her adult daughter and her grandchild. These claims depends on Plaintiff's constitutional right to due process under the Fourteenth Amendment.

"To state a procedural due process claim, a plaintiff must show (1) a cognizable liberty or property interest; (2) the deprivation of that interest by some form of state action; and (3) that the procedures employed were constitutionally inadequate." *Evans*, 972 F. Supp. 2d at 797 (quoting *Iota Xi Chapter of Sigma Chi Fraternity v. Patterson*, 566 F.3d 138, 145 (4th Cir. 2009)) (internal quotation marks omitted).

For the reasons discussed above concerning Plaintiff's substantive due process right to familial integrity, Plaintiff lacks a constitutionally recognized interest in

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[8] North Carolina law authorizes courts to designate "caretakers" as parties to a child welfare case in certain situations, and authorizes courts to remove such persons as parties when "the court finds that the person does not have legal rights that may be affected by the action and that the person's continuation as a party is not necessary to meet the juvenile's needs." N.C. GEN. STAT. § 7B-401.1.

(1) the care, custody, and control of her adult daughter, and (2) the care, custody, and control of her grandchild. Therefore, Plaintiff's procedural due process claims concerning the judicial proceedings in her daughter's and grandchild's state court cases should be dismissed as frivolous or for failure to state a claim.

c. *Rooker-Feldman* Bar

Even assuming, however, that Plaintiff had a legally cognizable interest in the care, custody and control of either her daughter or granddaughter, her due process claims would be barred by the *Rooker-Feldman* doctrine, which prohibits federal courts from sitting "in direct review of state court decisions." *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482-84 (1983).

The *Rooker-Feldman* doctrine is a jurisdictional rule that applies in "limited circumstances where a party in effect seeks to take an appeal of an unfavorable state-court decision to a lower federal court." *Lance v. Dennis*, 546 U.S. 459, 466 (2006) (per curiam) (quoting *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 284 (2005)) (internal quotation marks and citation omitted).

The doctrine also prohibits a district court from reviewing constitutional claims that are "inextricably intertwined" with the state court's decision. *Shooting Point, LLC v. Cumming*, 368 F.3d 379, 383 (4th Cir. 2004). A constitutional claim is "inextricably intertwined" with a state court-decision if "success on the federal claim depends upon a determination that the state court wrongfully decided the issues before it." *Id.* (quoting *Plyler v. Moore*, 129 F.3d 728, 731 (4th Cir. 1997)) (internal quotation marks omitted). In other words, the *Rooker-Feldman* doctrine applies

"when the federal action 'essentially amounts to nothing more than an attempt to seek review of [the state court's] decision by a lower federal court.'" *Davis v. Durham Mental Health Devel. Disabilities Substance Abuse Area Auth.*, 320 F. Supp. 2d 378, 388 (M.D.N.C. 2004) (quoting *Plyler*, 129 F.3d at 733).

Plaintiff's due process claims effectively ask this court to review the state-court judgments in the civil commitment and guardianship case concerning Plaintiff's adult daughter and the abuse/neglect/dependency case concerning her grandchild. This court must abstain from such review pursuant to the *Rooker-Feldman* doctrine.

2. Searches

Plaintiff alleges that her Fourth Amendment right to be free from unreasonable governmental searches and seizures was violated at various times by Defendants Foltz, Lycett, and Ryder, an unnamed employee of Dare County DSS, and unnamed Kill Devil Hills Police Officers. "The Fourth Amendment protects against unreasonable searches and seizures." *Wildauer v. Frederick Cty.*, 993 F.2d 369, 372 (4th Cir. 1993) (citing *United States v. Place*, 462 U.S. 696 (1983)). While still governed by the Fourth Amendment, "investigative home visits by social workers are not subject to the same scrutiny as searches in the criminal context." *Id.* at 372 (citing *Wyman v. Jones*, 400 U.S. 309, 318 (1971)). In general, "a dependent child's needs are paramount and almost always take precedence over an adult's asserted rights," but the state cannot rely on that legitimate interest to justify a constitutional violation if it lacked reasonable concern for the child's needs. *Ross v. Cecil Cty. Dep't Soc. Servs.*,

878 F. Supp. 2d 606, 617 (D. Md. 2012) (quoting *Wyman*, 400 U.S. at 318) (internal quotation marks omitted).

Plaintiff alleges that an unidentified Kill Devil Hills Police Officer and an unidentified Dare County DSS Social Worker unlawfully entered her home sometime in February 2015. (Am. Compl. ¶¶ 202-204.) Plaintiff alleges that these persons demanded entrance to her home to speak with her adult daughter, that these persons lacked a court order or other legal process, that Plaintiff's daughter had opened the door for another reason and then subsequently attempted to close it, and that the Police Officer placed his foot in the doorway to prevent Plaintiff and her daughter from closing the door. (*Id.* ¶¶ 203-204.) Plaintiff alleges that a physical struggle ensued, wherein she and her daughter pushed against the door but were prevented from closing it by the Police Officer. (*Id.*) Plaintiff alleges that the Police Officer finally removed his foot and stated that he would return with "with papers" and would "break down" Plaintiff's door. (*Id.* ¶ 204.)

Plaintiff has alleged sufficient facts to withstand frivolity review as to this Fourth Amendment claim. "[P]hysical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed." *Payton v. New York*, 445 U.S. 573, 585 (1980) (quoting *United States v. United States District Court*, 407 U.S. 297, 313 (1972)). Plaintiff has alleged such entry by the government without a warrant and without her consent.

Plaintiff also alleges other unlawful entries of her home by various Dare County DSS Social Workers and Kill Devil Hills Police Officers, although she notes

that these entries may have been conducted pursuant to court orders. (Am. Compl. ¶¶ 57-60, 66-68, 82.) Proper analysis of these incidents requires additional clarity regarding the court orders[9] involved.

Given the facts alleged, the undersigned finds that dismissal on frivolity grounds is not appropriate as to the Fourth Amendment claims.[10]

3. Attorneys

Plaintiff names her former attorney and Currituck County's privately retained attorney as Defendants, claiming they violated her constitutional rights in the state-court proceedings. Because these Defendants did not act under color of state law, they should be dismissed from the lawsuit.

Section 1983 provides a cause of action for "the deprivation of any rights, privileges, or immunities secured by the Constitution and laws" by any person acting "under color of any statute, ordinance, custom, or usage, of any State or Territory." 42 U.S.C. § 1983. Acting "under color of state law" requires a defendant to exercise power "possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law." *West v. Atkins*, 487 U.S. 42, 49 (1988) (quoting *United States v. Classic*, 313 U.S. 299, 326 (1941)). The element "excludes

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[9] Some, but not all, of these documents can be found on the North Carolina Supreme Court and Court of Appeals Electronic Filing Site and Document Library (https://www.ncappellatecourts.org) in the docket for *Vaughan v. Dare & Currituck DSS, et al.*, No. 272P15.

[10] As with the Social Workers involved in these searches, any determination as to qualified immunity of the Defendant Police Officers is premature at this stage of the litigation. *See Gomez*, 446 U.S. at 640.

from its reach 'merely private conduct, no matter how discriminatory or wrongful.'" *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. at 50.

Defense attorneys, whether privately retained or court appointed, do not act under color of state law as required under § 1983. *Polk County v. Dodson*, 454 U.S. 312, 321 (1981). Plaintiff alleges that former public defender and present District Court Judge Meader Harriss was appointed to represent her in the child welfare case. Plaintiff alleges that Defendant Harriss failed to advocate for her expressed wishes and desired legal strategies in violation of her right to the effective assistance of counsel and "colluded with" Currituck County DSS to impinge upon Plaintiff's Due Process rights. (Am. Compl. ¶¶ 151-58.) As court appointed counsel to Plaintiff, Defendant Harriss did not act under color of state law and is therefore an improper defendant. Plaintiff's claims against him should be dismissed as frivolous or for failure to state a claim.

Plaintiff's claim against Defendant Courtney Hull should also be dismissed. Plaintiff alleges that Defendant Hull is a private attorney who represented Defendant Currituck County in the underlying child welfare case. "A private attorney does not become a state actor simply by representing a public body." *Dyer v. Md. State Bd. of Educ.*, 187 F. Supp. 3d 599, 615-16 (D. Md. 2016), *aff'd*, No. 16-1862, --- F. App'x ----, 2017 WL 1423298 (4th Cir. April 21, 2017). Because Defendant Hull did not act under color of state law, she is an improper defendant, and Plaintiff's claims against her should be dismissed.

4. Dare County Sheriff

Although Plaintiff names Dare County Sheriff Doug Doughtie as a defendant, she fails to allege sufficient facts to plead a claim against him. Plaintiff alleges neither that Sheriff Doughtie was personally involved in the alleged unconstitutional searches of her home nor that one of his deputies was involved in said searches. Plaintiff only alleges that Sheriff Doughtie is the chief law enforcement officer for Dare County, that he failed to serve or properly process subpoenas that Plaintiff requested, and that he failed to investigate crimes committed by DSS Social Workers that Plaintiff reported to his office. (Am. Compl. ¶ 13, 121.) These allegations all involve conduct taking place after the alleged unconstitutional searches. There is, therefore, no factual allegation that would show an "affirmative causal link" between Sheriff Doughtie or one of his deputies and the constitutional injury asserted by Plaintiff. *See Randall*, 302 F.3d at 206.

5. *Monell* Claims

Plaintiff sues Currituck County, Dare County, and the Town of Kill Devil Hills for (1) failure to train their respective social workers and law enforcement officers on the constitutional rights of persons who are the subject of adult protection and child welfare cases (Am. Compl. ¶ 285); (2) implementing a policy of "detaining and/or removing children and disabled adults from their families and homes without exigent circumstances . . ., probable cause or consent" (*Id.*); (3) failure to investigate constitutional violations perpetrated by social workers and officers and related failure to discipline for said violations (*Id.*); (4) failure to train employees "in their

duties and obligations to intercede when an agent of another public entity is violating the Constitutional rights of families during a removal of adults or children" (*Id.*); and (5) failure to educate employees about and promulgating a policy regarding victims of Traumatic Brian Injury despite being "repeatedly informed" about the needs of this population (*Id.* ¶ 287).

To plead a § 1983 claim against a municipality or local government entity, a plaintiff must allege facts sufficient to support a finding that the alleged unconstitutional action was taken pursuant to an official policy, procedure, or custom of the local governing body. *Monell*, 436 U.S. at 690-91. To impose § 1983 liability, a plaintiff must show that "a municipal decision reflects deliberate indifference to the risk that a violation of a particular constitutional or statutory right will follow the decision." *Bd. of Cty. Comm'rs v. Brown*, 520 U.S. 397, 411 (1997). "Isolated incidents" of unconstitutional conduct of municipal employees are not sufficient to establish a custom or practice under § 1983. *Lytle v. Doyle*, 326 F.3d 463, 473 (4th Cir. 2003); *Carter v. Morris*, 164 F.3d 215, 220 (4th Cir. 1999).

In the context of a § 1983 claim based on failure to train, "[a] municipality's culpability for a deprivation of rights is at its most tenuous." *Connick v. Thompson*, 563 U.S. 51, 61 (2011). "[A] sufficiently close causal link must be shown between potentially inculpating training deficiency or deficiencies and specific violation." *Spell v. McDaniel*, 824 F.2d 1380, 1390 (4th Cir. 1987). "[T]he specific deficiency or deficiencies must be such as to make the specific violation 'almost bound to happen, sooner or later' rather than merely 'likely to happen in the long run.'" *Id.*

Preliminarily, no Currituck County employee is alleged to have been involved in the Fourth Amendment violations at issue. Therefore, the *Monell* claim against Defendant Currituck County should be dismissed as there is no causal link between that Defendant and the alleged violation. *See Spell*, 824 F.2d at 1390.

As regards Defendants Dare County and the Town of Kill Devil Hills, Plaintiff alleges only isolated incidents of constitutional violations that are all connected with the underlying child welfare case. Plaintiff alleges that these Defendants were "repeatedly informed" of the need for training on Traumatic Brain Injury (Am. Compl. ¶ 287) and engaged in the violation of her and her daughter's rights since 2008 (Am. Compl. ¶ 292). But mere "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678. Absent additional factual allegations to support these broad assertions concerning the most tenuous of § 1983 claims, the undersigned recommends that Plaintiff's *Monell* claims against Defendants Dare County and the Town of Kill Devil Hills be dismissed.

D. Section 1985 Claims

Plaintiff does not explicitly reference § 1985 in her complaint. However, Plaintiff repeatedly states that Defendants conspired to violate her rights. (Am. Compl. ¶¶ 250-51, 254, 273-74.)

Generally, a cause of action exists under § 1985 where two or more people conspire to interfere with an individual's civil rights. 42 U.S.C. § 1985. To state a § 1985 claim, a plaintiff must allege facts sufficient to support a finding that there

existed "an agreement or a 'meeting of the minds' by defendants to violate the claimant's constitutional rights." *Simmons v. Poe*, 47 F.3d 1370, 1377 (4th Cir. 1995).

Having determined that Plaintiff's Fourth Amendment claim survives frivolity review and having liberally construed Plaintiff's complaint, the undersigned recommends that her related § 1985 claim be permitted to go forward as it could reasonably be inferred based upon allegations of those Defendants' concerted actions that a "meeting of the minds" existed to violate the Plaintiff's Fourth Amendment rights.

To the extent Plaintiff's complaint purports to raise any additional § 1985 claims, such claims concern the removal of her daughter from her home and the removal of her grandchild due to a child welfare petition. (Am. Compl. ¶¶ 250-51, 254, 273-74.) Consideration of such a claim would require a determination that Plaintiff had a constitutionally protected liberty interest against which the defendants could have conspired. For the reasons discussed above, Plaintiff lacked a constitutionally protected liberty interest in family integrity pertaining to her adult daughter and grandchild. Accordingly, these § 1985 claims should be dismissed.

E. Claims Summary

Given the liberal construction due Plaintiff's complaint, the undersigned determines that Plaintiff's § 1983 and § 1985 claims asserting Fourth Amendment violations are neither legally frivolous nor factually baseless and, therefore, survive frivolity review. In so finding, the undersigned expresses no opinion concerning the

veracity of Plaintiff's allegations or the reasonableness of the Social Workers' and the Officers' alleged actions in the searches.

Plaintiff's other claims should be dismissed for lack of subject matter jurisdiction, as frivolous or for failure to state a claim.

CONCLUSION

For the reasons stated above, Plaintiff's application to proceed *in forma pauperis* is ALLOWED and the undersigned determines that only Plaintiff's § 1983 and § 1985 claims against Defendants Foltz, Lycett, Ryder, and Does (an unnamed employee of Dare County DSS and unnamed Kill Devil Hills Police Officers) alleging violations of Plaintiff's Fourth Amendment rights survive frivolity review.

Accordingly, it is RECOMMENDED that Plaintiff's § 1983 and § 1985 claims against Defendants Foltz, Lycett, Ryder, and Officer Does of the Kill Devil Hills Police Department arising under the Fourth Amendment be allowed to proceed and that Plaintiff's remaining claims be DISMISSED for lack of jurisdiction or, alternatively, as frivolous or for failure to state a claim as more fully set forth hereinabove.

IT IS DIRECTED that a copy of this Memorandum and Recommendation be served on Plaintiff. Plaintiff is hereby advised as follows:

You shall have until **May 25, 2017**, to file written objections to the Memorandum and Recommendation. The presiding district judge must conduct his or her own review (that is, make a de novo determination) of those portions of the Memorandum and Recommendation to which objection is properly made and may accept, reject, or modify the determinations in the Memorandum and Recommendation; receive further evidence; or return the matter to the magistrate

judge with instructions. *See, e.g.,* 28 U.S.C. § 636(b)(l); Fed. R. Civ. P. 72(b)(3); Local Civ. R. 1.1 (permitting modification of deadlines specified in local rules), 72.4(b), E.D.N.C.

If you do not file written objections to the Memorandum and Recommendation by the foregoing deadline, you will be giving up the right to review of the Memorandum and Recommendation by the presiding district judge as described above, and the presiding district judge may enter an order or judgment based on the Memorandum and Recommendation without such review. In addition, your failure to file written objections by the foregoing deadline may bar you from appealing to the Court of Appeals from an order or judgment of the presiding district judge based on the Memorandum and Recommendation. *See Wright v. Collins*, 766 F.2d 841, 846-47 (4th Cir. 1985).

This 6th day of May 2017.

Kimberly A. Swank

KIMBERLY A. SWANK
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
NORTHERN DIVISION
No. 2:16-CV-61-FL

SUSAN W. VAUGHAN, Plaintiff, v. SHANNON FOLTZ, SAMANTHA HURD, KRISTEN HARRIS, KATHLYN ROMM, DOUG DOUGHTIE, RAY MATUSKO,[1] STEPHANIE RYDER, CHUCK LYCETT, MELANIE CORPREW, HONORABLE ROBERT TRIVETTE, JAY BURRUS, HONORABLE MEADER HARRISS, HONORABLE AMBER DAVIS, COURTNEY HULL, OFFICER DOE, HONORABLE EULA REID, DARE COUNTY, CURRITUCK COUNTY, KILL DEVIL HILLS, DOE's 1-10, SUSAN HARMON-SCOTT, and MERLEE AUSTIN, Defendants.	)	**SUPPLEMENTAL MEMORANDUM & RECOMMENDATION**

This pro se case is before the court on the application [DE #1] by Plaintiff Susan W. Vaughan to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(a)(1) and for frivolity review pursuant to 28 U.S.C. § 1915(e)(2)(B), the matter having been referred to the undersigned by the Honorable Louise W. Flanagan, United States District Judge. On May 8, 2017, the undersigned issued an order granting Plaintiff's

[1] Plaintiff misspelled Defendant Matusko's name as 'Matsuof' in her complaint. Defendant Matusko is the Clerk of Superior Court of Currituck County, North Carolina.

Appendix A

request to proceed *in forma pauperis* and submitted a Memorandum & Recommendation ("M&R") regarding frivolity review of Plaintiff's complaint [DE #5]. Plaintiff timely objected to certain parts of the M&R [DE #23], and Judge Flanagan recommitted the matter to the undersigned to review Plaintiff's objections and to consider whether any finding or recommendation in the M&R should be modified in light of Plaintiff's objections.

DISCUSSION

I. Standard for Frivolity Review

Notwithstanding the undersigned's prior determination that Plaintiff is entitled to *in forma pauperis* status, the court is required to dismiss all or part of an action found to be frivolous or malicious, which fails to state a claim on which relief can be granted, or which seeks money damages from a defendant immune from such recovery. 28 U.S.C. § 1915(e)(2); *Michau v. Charleston County*, 434 F.3d 725, 728 (4th Cir. 2006). A case is frivolous if it lacks an arguable basis in either law or fact. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). Pro se complaints are entitled to a more liberal treatment than pleadings drafted by lawyers. *See White v. White*, 886 F.2d 721, 722–23 (4th Cir. 1989). However, the court is not required to accept a pro se plaintiff's contentions as true. *Denton v. Hernandez*, 504 U.S. 25, 32 (1992). The court is permitted to "pierce the veil of the complaint's factual allegations and dismiss those claims whose factual contentions are clearly baseless." *Neitzke*, 490 U.S. at 327.

Rule 8 of the Federal Rules of Civil Procedure requires a complaint to give a "short plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8. The statement must give a defendant fair notice of what the claim

is and the grounds upon which it rests. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). "A plaintiff must offer more detail . . . than the bald statement that he has a valid claim of some type against the defendant." *Trulock v. Freeh*, 275 F.3d 391, 405 (4th Cir. 2001); *see also White*, 886 F.2d at 723 (affirming district court's dismissal of plaintiff's suit as frivolous where plaintiff's complaint "failed to contain any factual allegations tending to support his bare assertion"). While the court must read the complaint carefully to determine if the plaintiff has alleged facts sufficient to support his claims, *White*, 886 F.2d at 724, the court is not required to act as the pro se plaintiff's advocate or to parse through volumes of documents or discursive arguments in an attempt to discern the plaintiff's unexpressed intent, *Williams v. Ozmint*, 716 F.3d 801, 805 (4th Cir. 2013).

II. Objections to Immunity Recommendations

Plaintiff raises several objections to recommendations regarding certain Defendants' entitlement to absolute immunity. (Pl.'s Response to Order and M&R [DE #6], hereinafter referred to as "Objs.").

A. Immunity of State and its Agencies

Plaintiff questions whether a state would ever consent to suit under § 1983 and whether sovereign immunity extends to cases where a plaintiff alleges violation of her constitutional rights by a state or state agency. (Objs. at 7–8.) As to the first question, any attempt by a state to waive its Eleventh Amendment rights would likely be ineffective. *See Dyer v. Maryland State Bd. of Educ.*, 187 F. Supp. 3d 599, 611 n.16 (D. Md. 2016) (explaining that states are not 'persons' under § 1983 and therefore can

never waive their sovereign immunity with respect to § 1983), *aff'd*, No. 16-1862, ___ F. App'x ____, 2017 WL 1423298 (4th Cir. Apr. 21, 2017) (per curiam) (unpublished). As to the second question, state sovereign immunity extends to cases where a plaintiff alleges violation of her constitutional rights by a state or state agency. *See, e.g., Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 100 (1984) ("[I]n the absence of consent[,] a suit [claiming violation of federal constitutional rights by] the State or one of its agencies or departments . . . is proscribed by the Eleventh Amendment.").

B. Immunity of Judges

Plaintiff objects to the undersigned's determination that the state judges named as defendants are absolutely immune from damages. (Objs. at 8–12.) Specifically, Plaintiff argues that these judges are not entitled to immunity because the state court lacked subject matter jurisdiction over the underlying child welfare case involving Plaintiff's grandchild. (*Id.* at 9–12.) Plaintiff argues that the evidence presented to these judges regarding the alleged neglect or dependency of her grandchild was false and misleading and the judges, therefore, lacked authority over the underlying case. (*Id.*) Moreover, Plaintiff argues that she was denied a right to appeal—either as a caretaker or legal custodian—and that this bolsters her argument that the judges acted "in the absence of all jurisdiction," *see Stump v. Sparkman*, 435 U.S. 349 (1978), thereby rendering their actions subject to suit.

In *Stump*, a state court judge signed an ex parte order authorizing a tubal ligation operation on a fifteen-year-old female at the request of her mother. *Stump*,

435 U.S. at 351. The young woman was lied to by her mother, her doctor, and the hospital, and she was sterilized without her knowledge. *Id.* at 353. Only years later did the woman uncover the truth about what had been done to her, and she subsequently filed a lawsuit alleging that the judge, her mother, her attorney, her doctors, and the hospital where the surgery was carried out violated her constitutional rights. *Id.*

The *Stump* Court concluded that the judge did not act "in clear absence of all jurisdiction." *Stump*, 435 U.S at 357. The Court noted that the judge's "broad jurisdictional grant" as a judge of a court of general jurisdiction—even in the absence of a specific statutory provision permitting him to issue orders of sterilization of minors and even considering the "*procedural errors* he may have committed"—did not prohibit him from issuing such an order. *Id.* at 357–60 (emphasis added). Therefore, the Court held that he was entitled to absolute immunity. *Id.* at 359–60.

The judges Plaintiff has named as defendants are North Carolina district court judges. As such, they have "exclusive, original jurisdiction over any case involving a juvenile who is alleged to be abused, neglected, or dependent." N.C. Gen. Stat. §§ 7B-101, -200(a).

Plaintiff states that she does not "object[] to the [judges'] rulings, but to the authority of these judges to rule in this case" (Objs. at 9–10), but also requests damages from these judges for violation of her constitutional rights. Judges act through their rulings and orders; any injury to Plaintiff caused by any of the defendant judges must have been caused by a judicial ruling or order as Plaintiff has

not alleged any extra-judicial actions. *See Pittman v. Cuyahoga Cnty. Dep't of Children and Family Servs.*, 640 F.3d 716, 729 (6th Cir. 2011) (rejecting a plaintiff-father's substantive due process claim against a county social worker regarding removal of his son because the state juvenile court, not the defendant social worker, had the sole authority to deprive the plaintiff of his constitutional right).[2]

Even assuming, arguendo, that the defendant judges were colluding with county social workers to facilitate the removal of Plaintiff's grandson from her legal custody, those judges would still be entitled to immunity. *See Stump*, 435 U.S. at 363 ("Despite the unfairness to litigants that sometimes results, the doctrine of judicial immunity is thought to be in the best interests of 'the proper administration of justice . . . [, for it allows] a judicial officer, in exercising the authority vested in him [to] be free to act upon his own convictions, without apprehension of personal consequences to himself.") (alterations in original) (quoting *Bradley v. Fisher*, 80 U.S. 335, 347 (1871)); *see also McCray v. Maryland*, 456 F.2d 1, 3 (4th Cir. 1972) ("The absolute immunity from suit for alleged deprivation of rights enjoyed by judges is matchless in its protection of judicial power. It shields judges even against allegations of malice or corruption."), *abrogated on other grounds by Pink v. Lester*, 52 F.3d 73, 77 (4th Cir. 1995).

Based on the facts as alleged by Plaintiff and the Supreme Court's holding in *Stump*, Judges Davis, Trivette, and Reid are entitled to absolute immunity as they

[2] This point regarding the cause of Plaintiff's alleged due process related injuries will be discussed further in Section VII below.

have been sued by Plaintiff for judicial actions taken in the regular course of a petition alleging neglect and dependency of a minor in a judicial district in North Carolina where they hold positions as district court judges.[3] However harsh this result may seem to Plaintiff "and no matter how undesirable the results . . . , absolute immunity represents a balance between . . . evils [as it] has been thought in the end better to leave unredressed the wrongs done by dishonest officers than to subject those who try to do their duty to the constant dread of retaliation." *Sahoo v. Gleaton*, No. 5:16-CV-153-F, 2017 WL 1102623, at *9 (E.D.N.C. Mar. 23, 2017) (alteration in original) (quoting *Imbler v. Pachtman*, 424 U.S. 409, 428 (1976)).

C. Immunity of Clerks of Court

Plaintiff further objects to the recommendation that the defendant Clerks of Court involved in the underlying state court proceedings should be afforded absolute quasi-judicial immunity. (Objs. 12–14.) After consideration of Plaintiff's argument and further research, the undersigned modifies her prior determination and recommends, at this preliminary stage of litigation, that absolute immunity be afforded to Defendant Clerk of Court Austin but not as to Defendant Clerk of Court Matusko.

As stated in the initial M&R, quasi-judicial immunity protects court clerks when carrying out judicial functions, such as acting under the court's direction or in

[3] Plaintiff alleges that Judge Davis took on an "investigative role" by evaluating a juvenile petition and determining whether to issue a nonsecure custody order. (Objs. at 16.) That is not an investigative action. To construe it as such would mean that every judge who *evaluates* such an application is engaged in the investigation of child abuse, neglect, or dependency.

obedience to a judicial order. *See McCray*, 456 F.2d at 5; *Hamilton v. Murray*, 648 F. App'x 344, 345 (4th Cir. 2016) (per curiam) (unpublished) (citing *McCray*), *cert. denied*, 137 S. Ct. 1225 (2017) (mem.); *Jarvis v. Chasanow*, 448 F. App'x 406, 2011 WL 4564336, at *1 (4th Cir. 2011) (per curiam) (unpublished) (citing *Briscoe v. LaHue*, 460 U.S. 325, 335 (1983)).

However, in *McCray*, the Fourth Circuit rejected the argument that court clerks are immune from suit where they fail "to perform a required ministerial act." *McCray*, 456 F.2d at 4. In *McCray*, the plaintiff alleged that a court clerk negligently failed to file his petition for postconviction relief, in violation of state statutory law. *Id.* at 2, 4. The court noted that "[c]lerical duties are generally classified as ministerial" acts, and failure to perform such ministerial acts at common law, even when done negligently, did not entitle state officers to immunity. *Id.* at 4. Notably, the Fourth Circuit abrogated *McCray* in *Pink* when it held that "[t]o the extent that *McCray* authorizes a cause of action for merely negligent conduct that impacts access to the courts, it is inconsistent with the Supreme Court's subsequent decision in *Daniels* [*v. Williams*, 474 U.S. 327 (1986)]." *Pink*, 52 F.3d at 77 (footnote omitted).

Plaintiff challenges Defendant Austin's actions on the grounds that Defendant Austin (1) failed to give Plaintiff proper notice of her adult daughter's interim guardianship proceeding; (2) failed "to observe the legal requirements of incompetence"; (3) failed "to recognize the lack of need for DSS guardianship"; and (4) "made no effort to learn of Plaintiff's Power of Attorney." (Objs. at 13–14.)

Even taking these statements to be true, they do not describe violations of ministerial duties as described in *McCray*.[4] Rather, they are descriptive of actions taken by a court official vested with the authority to preside over guardianship proceedings and to exercise discretion in such proceedings. As such, Defendant Austin is entitled to absolute quasi-judicial immunity.

However, it is unclear from Plaintiff's complaint, as amended, whether Defendant Clerk of Court Matusko's acts could reasonably be considered ministerial rather than quasi-judicial. (Objs. at 12–13; Am. Compl. ¶¶ 14, 152.) Plaintiff has alleged that Defendant Matusko intentionally violated her rights under N.C. Gen. Stat. § 7B-323. The duties of a clerk of court under this statute are manifestly ministerial, as they concern scheduling and docketing a hearing. Thus, it would

[4] Plaintiff appears to claim that she had a right to notice of her adult daughter's interim guardianship proceeding. (*See* Objs. at 14. ("Plaintiff is NOT objecting to Ms[.] Austin 'presiding over a guardianship proceeding,[']' because that was [her] job. Plaintiff objects to Austin failing to give her proper notice of said proceeding . . . .")). However, North Carolina law only requires that the clerk issue written notice to the respondent, i.e. the person alleged to be incompetent. N.C. Gen. Stat. §§ 35A-1101(15) (defining 'respondent' as person alleged to be incompetent), -1108 (notice), -1109 (service in general guardianship proceedings), -1114 (interim guardianship requirements). Even if Plaintiff was designated as her adult daughter's next of kin in the incompetency petition, *the petitioner* (*i.e.* the Adult Protective Services Division of Dare County DSS), not the clerk of court, would have been responsible for mailing copies of the notice of hearing and petition to Plaintiff. *See* N.C. Gen. Stat. § 35A-1109. To the extent Plaintiff may be arguing that the clerk should have designated her as an additional person to receive notice of a petition for interim guardianship under N.C. Gen. Stat. § 35A-1114(c), the plain language of that statute gives the clerk discretion as to which additional persons to serve notice on, thereby making that action non-ministerial. *See* N.C. Gen. Stat. § 35A-1114(c) ("The motion and a notice setting the date, time, and place for the hearing shall be served promptly on the respondent and on his counsel or guardian ad litem and other persons the clerk may designate.").

appear that Plaintiff's allegations take this claim outside the realm of judicial immunity. Accordingly, the undersigned determines that Defendant Matusko should not be afforded absolute quasi-judicial immunity at this stage of the case. Whether Plaintiff presents any non-frivolous claims against Defendant Matusko is, however, a different inquiry that will be discussed below.

D. Guardian Ad Litem Immunity

Plaintiff objects to the recommendation that Defendant Susan Harmon-Scott be afforded absolute quasi-judicial immunity for actions taken in her role as guardian ad litem in the underlying child welfare case regarding Plaintiff's grandchild. (Objs. at 14–15.) Specifically, Plaintiff argues that Defendant Harmon-Scott omitted information regarding Plaintiff's adult daughter from a court report that would have tended to show Plaintiff's adult daughter did not meet the legal requirements to be placed in Adult Protective Services. (*Id.*)

The Fourth Circuit has recognized absolute immunity for guardians ad litem for actions "occur[ing] within the judicial process." *Fleming v. Asbill*, 42 F.3d 886, 889 (4th Cir. 1994). This immunity applies even in the circumstance where a guardian ad litem has "lied to the judge in open court." *Id.*

Here, Plaintiff has alleged that Defendant Harmon-Scott omitted evidence in a court report from people she interviewed regarding Plaintiff's adult daughter. (Objs. at 15.) Assuming this to be true, Defendant Harmon-Scott is entitled to absolute immunity under *Fleming* because the action complained of is part of the judicial process.

E. Immunity of Social Workers

Plaintiff challenges the undersigned's recommendation that social workers be afforded absolute immunity even in circumstances in which they lie or misrepresent facts in order to procure a judicial order authorizing removal of a child and in subsequent court proceedings. In support, Plaintiff cites the Ninth Circuit's recent decision, *Hardwick v. County of Orange*, 844 F.3d 1112 (9th Cir. 2017), for the proposition that social workers should not be entitled to absolute immunity for actions taken in the judicial process if the social workers "fabricate[d] evidence during an investigation or made false statements in a dependency petition affidavit that they signed under penalty of perjury, because such actions aren't similar to discretionary decisions about whether to prosecute." *Hardwick*, 844 F.3d at 1116 (quoting *Beltran v. Santa Clara Cnty.*, 514 F.3d 906, 908 (9th Cir. 2008) (en banc) (per curiam)); *accord Millspaugh v. Cnty. Dep't of Public Welfare of Wabash Cnty.*, 937 F.2d 1172, 1176 (7th Cir. 1991) (holding, based on *Malley v. Briggs*, 475 U.S. 335 (1986), that a social worker's application for a judicial order to initiate a child welfare case was akin to a police officer's warrant application and was therefore not entitled to absolute immunity); *see generally Sahoo*, 2017 WL 1102623, at *9 n.31 (surveying cases that stand for and against affording social workers absolute immunity for misrepresentations in child welfare cases).

In contrast, the Fourth Circuit has held that a social worker is entitled to absolute immunity even when "she made intentional misstatements when preparing and presenting a petition" for a child to be taken into state custody. *Booker v. S.C.*

Dep't of Soc. Servs., 583 F. App'x 147, 148 (4th Cir. 2014) (per curiam) (unpublished) (mem.); *see also Sahoo*, 2017 WL 1102623, at *9 (applying *Booker* and finding that a social worker accused of omitting information in a North Carolina juvenile petition alleging abuse and omitting or misrepresenting facts during testimony in court was entitled to absolute immunity). The Fourth Circuit recently emphasized, however, that "[u]npublished opinions *are not binding precedent in this circuit.*" *United States v. Hall*, ___ F.3d ____, 2017 WL 2367122, at *21 (June 1, 2017) (reversing a district court's admission of evidence under FRE 404(b), in part, because the district court treated an unpublished opinion as binding precedent) (alteration in original) (quoting *United States v. White*, 519 F. App'x 797, 799 (4th Cir. 2013) (per curiam) (unpublished)).

Here, Plaintiff's complaint and objections allege that various social workers lied, omitted exculpatory facts, and misrepresented facts in child welfare and adult guardianship proceedings which led to her adult daughter and grandchild being unlawfully removed from their home where they resided with Plaintiff as a family for a substantial period of time. The initial M&R recommended, based on the Fourth Circuit's published decision in *Vosburg v. Dep't of Soc. Servs.*, 884 F.2d 133 (4th Cir. 1989), that the actions of social workers in the procurement of the judicial orders authorizing removal of Plaintiff's daughter and grandchild be afforded absolute immunity. While *Booker* is directly on point and cites to *Vosburg* for its holding regarding immunity of social workers, the undersigned is mindful that (1) *Booker* is unpublished; (2) the circuit courts of appeals disagree as to whether social workers

should be afforded absolute immunity for lying and omitting relevant information during the initial and continuing phases of child welfare cases;[5] and (3) this matter is before the court for frivolity review. Plaintiff's argument raised in response to the M&R, based on *Hardwick* and bolstered by *Beltran* and *Millspaugh*, presents an arguable legal proposition. As such, it is not frivolous. *See Neitzke*, 490 U.S. at 325. Absent a Fourth Circuit opinion elevating *Booker*'s holding to binding precedent, the undersigned recommends that Plaintiff's claims against the defendant social workers[6] be allowed to proceed at this preliminary stage of the litigation and that the defendant social workers be given the opportunity to respond to Plaintiff's allegations and to raise any potential defenses, including immunity.

III. Attorneys

Plaintiff questions whether the remaining attorney defendants (Hull and Harriss) may be held liable under the theory that they conspired with state actors to deprive Plaintiff of her constitutional rights. (Objs. at 40.) "To establish a conspiracy

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[5] As the district court noted in *Sahoo*, the Supreme Court has never approved granting social workers absolute immunity, and indeed, Justice Thomas has criticized such grants of immunity for lacking an appropriate basis at common law prior to enactment of § 1983. *Sahoo*, 2017 WL 1102623, at *6 n.19 (citing *Hoffman v. Harris*, 511 U.S. 1060 (1994) (Thomas, J., dissenting from denial of certiorari), and surveying related law review articles and case law).

[6] Specifically, these persons include Defendants Harris, Hurd, and Romm from Currituck DSS, and Defendants Burrus, Corprew, Foltz, Lycett, and Ryder from Dare DSS. Because Plaintiff has alleged pervasively that all DSS defendants were aware of the lies and misrepresentations that caused harm to her, and because Plaintiff cites North Carolina juvenile law indicating that DSS directors bear responsibility for the filing of petitions (Objs. at 22–25), the undersigned recommends that the DSS supervisors and directors not be afforded absolute immunity at this stage of the case.

claim under § 1983, a plaintiff 'must present evidence that the [defendants] acted jointly in concert and that some overt act was done in furtherance of the conspiracy which resulted in [the] deprivation of a constitutional right.'" *Massey v. Ojaniit*, 759 F.3d 343, 357–58 (4th Cir. 2014) (alteration in original) (quoting *Hinkle v. City of Clarksburg, W. Va.*, 81 F.3d 416, 421 (4th Cir. 1996)). Such claims carry "a weighty burden" and require "specific circumstantial evidence that each member of the alleged conspiracy shared the same conspiratorial objective." *Hinkle*, 81 F.3d at 421.

Plaintiff has alleged that the various DSS defendants were engaged in a conspiracy to remove her grandchild. (Objs. at 7–8, 13–14, 37–38). However, Plaintiff has not alleged facts showing that Defendant Harriss and Defendant Hull had an agreement or "meeting of the minds" with the defendant social workers. Therefore, these defendants should be dismissed from Plaintiff's complaint for the reasons stated in the initial M&R.[7]

IV. Sheriff Doug Doughtie

In her response to the M&R, Plaintiff clarifies her claims regarding Defendant Sheriff Doug Doughtie by stating that she is suing him for "obstruction of justice" for

[7] Because courts are instructed "to consider the nature of the function performed, not the identity of the actor who performed it" when making an immunity determination, it appears that Defendant Hull, although a private attorney retained by the county, would also be entitled to absolute immunity. *See Shirley v. Drake*, 176 F.3d 475, 1999 WL 202671, at *2 (4th Cir. 1999) (unpublished table decision) (quoting *Kalina v. Fletcher*, 522 U.S. 118, 127 (1997) and citing *Vosburg* for the proposition that "[a]n attorney for the state who represents [a county Department of Social Services] in a proceeding involving the alleged abuse and neglect of a child is entitled to the same protection in her advocacy role that she would have if she were representing the state in a criminal proceeding").

(1) refusing to serve a subpoena on Plaintiff's grandchild's pediatrician seeking certain medical records, and (2) refusing to investigate Plaintiff's report that Defendant Foltz committed perjury. (Objs. at 41–42.)

As to the failure to investigate Plaintiff's complaint regarding Defendant Foltz, there is no constitutional right "as a member of the public at large and as a victim to have [a person] criminally prosecuted." *Sattler v. Johnson*, 857 F.2d 224, 227 (4th Cir. 1988). Nor is there a right to compel a criminal investigation. *Smith v. McCarthy*, 349 F. App'x 851, 859 (4th Cir. 2009) (per curiam) (unpublished) (no right to criminal investigation).

As to the violation of due process caused by refusing to serve a subpoena, Plaintiff states that "Doughtie had no legal grounds to block that subpoenaed information, claiming he, personally had to serve a subpoena and be paid for it, for it to be served legally, in direct contradiction of Rule 45, regarding service of subpoenas." (Objs. at 41.) It appears Plaintiff refers to Rule 45 of the North Carolina Rules of Civil Procedure, which indeed applies to the service of subpoenas. However, N.C. Gen. Stat. § 7A-311 also applies to service of subpoenas and requires an advance payment of thirty dollars for each subpoena served. N.C. Gen. Stat. § 7A-311(a). Moreover, there is no requirement that a person use the county sheriff to serve a subpoena. N.C. R. Civ. P. 45(b)(1) ("Any subpoena may be served by the sheriff, by the sheriff's deputy, by a coroner, or by any person who is not a party and is not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to that person or by registered or certified mail,

return receipt requested."). Thus, the claim against Sheriff Doughtie should be dismissed as frivolous.

V. Injury to Reputation Claims

In her reply to the M&R, Plaintiff clarifies claims for damage to her reputation caused by a denial of due process. (Objs. at 12, 23–24, 35–36, 46.) There appear to be two separate claims regarding injury to reputation: one involving Plaintiff's placement on the list of "responsible individuals" pursuant to N.C. Gen. Stat. § 7B-311 (Objs. at 23–24, 35–36), and the other involving a judicial finding that Plaintiff, as caretaker of her grandchild, was responsible for neglect (Objs. at 12, 46). Construed broadly, Plaintiff alleges that both injuries have interfered with her employment options. (Objs. at 46–47.) Because Plaintiff does not specify whether she is alleging that the constitutional violations implicated her substantive or procedural due process rights, both are evaluated below.

The Fourth Circuit has held that "publication of information regarding child abuse or neglect to entities authorized by law to receive such reports does not state a claim under § 1983." *Wildauer v. Frederick Cnty.*, 993 F.2d 369, 373 (4th Cir. 1993). More specifically, such publication "does not violate *substantive* due process." *Perry v. City of Norfolk*, 194 F.3d 1305, 1999 WL 731100, at *5 (4th Cir. 1999) (unpublished table decision) (emphasis added) (citing *Wildauer*). Therefore, neither of Plaintiff's injury to reputation claims can proceed on the theory that her substantive due process rights were violated.

An injury to reputation claim based on denial of procedural due process is premised on two rights guaranteed by the Fourteenth Amendment:

> (1) the liberty to engage in any of the common occupations of life; and (2) the right to due process [w]here a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him.

Sciolino v. City of Newport News, Va., 480 F.3d 642, 646 (4th Cir. 2007) (alteration in original) (citations omitted) (quoting *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 572 (1972) and *Wisconsin v. Constantineau*, 400 U.S. 433, 437 (1971)). A plaintiff alleging damage to reputation based on procedural due process must allege that the injury implicates "some more tangible interests such as employment." *Perry*, 194 F.3d 1305, 1999 WL 731100, at *5 (4th Cir. 1999) (unpublished) (citing *Paul v. Davis*, 424 U.S. 693, 701 (1976), and assuming that a plaintiff has "a liberty interest in not being listed as a child abuser in [a government registry] . . . because this listing indirectly cost him his job").

As to the claim involving Plaintiff's placement on the "responsible individuals" list, Plaintiff has alleged intentional violations of N.C. Gen. Stat. § 7B-323 regarding her placement on said list and that placement on said list has impaired her employment prospects. (Objs. at 23–24, 29, 46–47.) Moreover, she has identified the defendant social workers and Defendant Matusko as the individuals who caused that injury. Plaintiff alleges that the social workers lied or misrepresented facts in the underlying child welfare matter that resulted in her placement on the list and that Defendant Matusko intentionally failed to perform ministerial duties required by state law involving Plaintiff's rights under N.C. Gen. Stat. § 7B-323. For the reasons

discussed above, these defendants should not be afforded immunity at this stage of the case, and Plaintiff's procedural due process claims against them should be permitted to proceed.[8]

Lastly, Plaintiff's claim involving injury to reputation due to adjudication as a caretaker responsible for serious neglect of her grandchild should be dismissed. The cause of such injury is the judicial order making such a determination. *See Pittman*, 640 F.3d at 729. The defendant judges are entitled to absolute immunity for this action pursuant to *Stump*.

Alternatively, procedural due process in this context requires pre-deprivation notice and an opportunity to be heard. *See Perry*, 194 F.3d 1305, 1999 WL 731100, at *5 (4th Cir. 1999) (unpublished table decision) ("If a liberty interest is implicated, due process requires that [the plaintiff] be given a hearing to contest the determination that he was a child abuser *before* his name could be listed in the [state child abuse] registry." (citing *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976), for the proposition that a hearing is required before a final deprivation of a protected interest)). Here,

[8] Under North Carolina law, the director of DSS transmits information to the state Department of Health and Human Services regarding any person placed on the "responsible individuals" list. N.C. Gen. Stat. § 7B-311, -320, -323. A state district court has the authority to order a person be placed on the responsible individuals list in only two circumstances: (1) when the county director of DSS cannot show that the person sought to be listed has received actual notice and must proceed to an ex parte hearing with a district court judge, or (2) when the person sought to be listed petitions for judicial review. N.C. Gen. Stat. § 7B-323(a1), (d). Even in these circumstances, the DSS director remains the person that transmits the information to the Department of Health and Human Services for placement on the list. Here, Plaintiff has not alleged a violation of § 7B-323(a1) or § 7B-323(d), and therefore, there is no claim that any of the defendant judges violated her right to procedural due process.

Plaintiff was given more process than that: she was also appointed an attorney. Plaintiff complains that this attorney did a poor job and was part of the conspiracy to deprive her of her daughter and grandchild. Nonetheless, given that Plaintiff (1) was present at all hearings but the initial ex parte hearing before the magistrate, (2) was provided an opportunity to be heard, and (3) was appointed an attorney, the undersigned recommends that her injury to reputation claim based on a violation of procedural due process be dismissed as frivolous or for failure to state a claim.

Moreover, if Plaintiff "is seeking compliance with state law, this is not the proper forum." *Weller v. Dep't of Soc. Servs. for City of Baltimore*, 901 F.2d 387, 392 (4th Cir. 1990). "[A] 1983 claim can only be sustained by allegations and proof of a violation of the Constitution or statutes of the United States and specifically may not rest solely on a violation of state statutes." *Clark v. Link*, 855 F.2d 156, 163 (4th Cir. 1988).

VI. First Amendment Claim

Plaintiff raises a First Amendment claim in her reply to the M&R, claiming that Defendant Judge Reid violated her First Amendment rights by "chastis[ing] her at the hearing in which she was unlawfully removed as a party." (Objs. at 47–48.) For the reasons stated above discussing judicial immunity, Defendant Reid should be afforded absolute immunity regarding this claim under *Stump*. Therefore, this claim should be dismissed.

VII. Due Process Claims under § 1983

Plaintiff objects to the recommendation that her due process claims involving the deprivation of her right to familial integrity be dismissed because she, as a grandmother without a judicial order granting her custody of her grandchild, lacks a constitutionally protected interest to familial association with her grandchild. (Objs. at 3–4.) More specifically, Plaintiff raises two arguments in her response to the M&R: (1) that her adult daughter granted her legal custody, and (2) that *Troxel v. Granville* and the cases citing *Troxel* are inapposite because Plaintiff, her daughter, and her grandchild were residing together in one residence and as a single family unit at the time Dare County DSS intervened in their lives.

Distinguishable from the custody argument, Plaintiff advances an argument that, while novel, cannot be said to lack an arguable basis in law or fact: that grandparents who reside with a grandchild assume parent-like responsibilities for that child and share intimate family bonds with that child—all with parental consent and support—have a protected liberty interest in the right to familial integrity under the Fourteenth Amendment. (Objs. at 3.)

Preliminarily, Plaintiff's criticism of the reliance on *Troxel* in the M&R is duly noted and her interpretation of that case is not unique. *See generally* Michelle Ognibene, Comment, *A Constitutional Analysis of Grandparents' Custody Rights*, 72 U. Chi. L. Rev. 1473, 1486–87 (2005) ("*Troxel* . . . did not address the possibility that grandparents might possess a fundamental interest in their grandchildren that does not conflict with the parents' wishes, or that the grandparent might effectively stand

in the shoes of the parent through an established caregiving relationship with the parent's consent. Instead, *Troxel* stands for the much more limited proposition that where grandparents' or others' wishes conflict with the wishes of the parent, the court must defer to the parent."); *see also Johnson v. City of Cincinnati*, 310 F.3d 484, 501 (6th Cir. 2002) (holding that a grandmother who "has been an active participant in the lives and activities of her grandchildren, with the consent and support of the children's mother[,]" has "a fundamental freedom of association right to participate in the upbringing of her grandchildren").

The law has recognized the importance of familial integrity and intimate association, affording these interests the status of constitutionally protected rights under the Fourteenth Amendment. As the Sixth Circuit explained,

> [b]oth Supreme Court precedent and our national tradition suggest that a family member's right to participate in child rearing and education is one of the most basic and important associational rights protected by the Constitution. *Cf. M.L.B. v. S.L.J.*, 519 U.S. 102, 116, 117 S. Ct. 555, 136 L.Ed.2d 473 (1996) (plurality opinion) ("Choices about marriage, family life, and the *upbringing of children* are among associational rights this Court has ranked as of basic importance in our society, rights sheltered by the Fourteenth Amendment against the State's unwarranted usurpation, disregard, or disrespect." (quoting *Boddie v. Connecticut*, 401 U.S. 371, 376, 91 S. Ct. 780, 28 L.Ed.2d 113 (1971)) (internal punctuation omitted) (emphasis added); *Moore* [*v. City of East Cleveland*], 431 U.S. [494],[] 503–04, 97 S. Ct. 1932 [(1977) (plurality opinion)] ("[T]he Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation's history and tradition. It is through the family that we inculcate and pass down many of our most cherished values, moral and cultural." (footnotes omitted); *see also Roberts* [*v. United States Jaycees*], 468 U.S. [609],[] 619–20, 104 S. Ct. 3244 [(1984)] ("Family relationships, by their nature, involve deep attachments and commitments to the necessarily few other individuals with whom one shares not only a special community of thoughts, experiences, and beliefs but also distinctively personal aspects of one's life.").

Johnson, 310 F.3d at 499–500 (6th Cir. 2002) (sixth alteration in original).

The question that Plaintiff presents is whether these rights are extended to grandparents in situations where the grandparent plays an important role in the care and upbringing of the child with parental consent. In *Johnson*, a case involving a grandmother's right to visit her grandchildren despite a city ordinance banning her from doing so because of her criminal record, the Sixth Circuit held that the plaintiff-grandmother had "a fundamental freedom of association right to participate in the upbringing of her grandchildren." *Johnson*, 310 F.3d at 501. In contrast, the Ninth Circuit has ruled—post-*Troxel*—that noncustodial grandparents who had assumed some of the daily parental responsibilities had "neither a substantive due process right to family integrity or association as noncustodial grandparents of children who are dependents of the court, nor of a liberty interest in visiting their grandchildren" based on the particular circumstances of that case. *Miller v. California*, 355 F.3d 1172, 1176 (9th Cir. 2004). Indeed, the case law in this area is unsettled and there appears to be no instructive Fourth Circuit opinion. *See Rees v. Office of Children and Youth*, 744 F. Supp. 2d 434, 444–52 (W.D. Pa. 2010) (surveying in extreme detail First, Third, Sixth, Seventh, Ninth, and Tenth Circuit case law addressing the due process rights of grandparents), *aff'd*, 473 F. App'x 139, 2012 WL 1065858 (3d Cir. 2012) (unpublished). Most helpful is the *Rees* court's analysis that

> certain common themes seem to figure prominently in the cases, most notably the courts' emphasis on whether the plaintiff was a custodial figure or otherwise acting in loco parentis to the children at the time of the state's involvement in their lives; whether and for how long the children had been residing with the plaintiff prior to state intervention;

> whether the plaintiff has a biological link to the children; whether there is a potential conflict between the rights of the plaintiff and the rights or interests of the children's natural parents; and whether the plaintiff has any rights or expectations relative to the children under relevant state law.

Rees, 744 F. Supp. 2d at 451–52. All of the factors identified by the *Rees* court tend to support Plaintiff's claim that she had a constitutionally protected interest regarding association with her grandchild. After further consideration of Plaintiff's arguments, the lack of Fourth Circuit precedent, and the dissonance between the circuit courts of appeals, the undersigned recommends that Plaintiff's § 1983 due process claims not be dismissed on frivolity review for the reason that Plaintiff lacks a constitutionally protected interest with regard to her grandchild.

However, Plaintiff must overcome an additional hurdle for her due process claims to survive frivolity review: whether her constitutionally protected interest in familial integrity was deprived by the defendant social workers or by the state court. After all, § 1983 authorizes a cause of action when state officials *deprive* someone of her constitutionally protected life, liberty, or property without due process of law.

Here, the Sixth Circuit's reasoning in *Pittman* regarding a nearly identical issue is instructive. In *Pittman*, a father sued a county social worker for her role in the removal of his son from the mother's custody and placement of the child with other maternal relatives. *Pittman*, 640 F.3d at 718. The father alleged that the social worker violated "his fundamental right to maintain a parent-child relationship with [his son] . . . in violation of the Fourteenth Amendment guarantee of substantive and procedural due process." *Id.* The father alleged that the social worker

"misrepresented his desire and ability to parent [his son] to [the county social services agency] and the juvenile court" and "impeded his ability to participate in the custody proceedings." *Id.* The Sixth Circuit explained:

> [The social worker] cannot be liable for violating [the father]'s substantive due process rights because, to the extent that [the father] suffered a deprivation of his fundamental right to family integrity, that deprivation was perpetrated by the juvenile court, not by [the social worker]. . . . However, even if [the social worker]'s actions led [the county social services agency] to conclude that [the father] was an unfit caregiver, this did not result in the failure to award or 'to even consider' [the father] for placement or custody. Under Ohio law, the juvenile court decides whether to grant permanent custody to [the county social services agency] or to grant legal custody to a relative. . . . [The county social services agency], like [the father], is merely a party to the juvenile court proceedings, tasked with presenting to the juvenile court its recommendation as to the appropriate course of action in a particular case. *Because the juvenile court has the ultimate decisionmaking power with respect to placement and custody, it alone could deprive [the father] of his fundamental right.*

Pittman, 640 F.3d at 729 (emphasis added) (citations omitted).

A review of North Carolina juvenile law reveals that state district court judges possess similar, if not greater, authority than that of the Ohio judges discussed in *Pittman*. *See* N.C. Gen. Stat. §§ 7B-200 (jurisdiction), -201 (retention and termination of jurisdiction), -202 (mediation agreements regarding child custody must be incorporated into court order), -401.1 (defining parties to abuse, neglect, or dependency case and stating that the county director of social services that files the petition is a party), -502 (court has authority to issue order directing that a juvenile be placed in nonsecure state custody and court has authority to delegate this authority via administrative order that must be publicly filed), -903 (dispositional alternatives available to the court, including various custodial placements), -905

(dispositional order must be written, signed, and entered by district court), -1101 (district court has exclusive original jurisdiction to "hear and determine" any petition relating to a termination of parental rights). Thus, county departments of social services in North Carolina do not have the legal authority to make child custody determinations; they can only petition a district court to make changes to a child's custody via an abuse, neglect, or dependency petition. In light of this, the undersigned finds the Sixth Circuit's reasoning in *Pittman* persuasive and adopts it here. Plaintiff's claim that she was deprived of her due process rights to family integrity would be directed to the defendant judges, who are, as described above, absolutely immune from damages liability.

VIII. *Rooker-Feldman*

A. Due Process Claims

Plaintiff argues that the *Rooker-Feldman* doctrine should not apply to her due process claims. (Objs. at 5, 9, 19, 38.) As she states in her reply to the M&R,

> THIS COMPLAINT IS NOT ABOUT THE DECISIONS MADE AT THE STATE COURT LEVEL. It is about fraud, corruption, and conspiracy to destroy a family for financial gain, and all the violations that were committed in the process – or at least the actual unlawful steps taken by DSS, *the Courts*, and other players that violated Plaintiff's rights and *deprived her of her family* and assaulted her reputation – all of which appear to lead to a conclusion that a conspiracy was involved in the process.

(Objs. at 38 (emphasis added).) As discussed above, the only state actor that could work a deprivation of Plaintiff's constitutional rights regarding family integrity is the state district court judge. And Plaintiff's own statements, an example of which is quoted above, acknowledge this.

This case is nearly identical to *Metcalf v. Call*, No. 2:14-CV-00010-MR-DLH, 2014 WL 12497025 (W.D.N.C. Mar. 31, 2014), *aff'd*, 584 F. App'x 56 (4th Cir. 2014) (mem.). In *Metcalf*, a grandfather a filed a complaint against a state district court judge, a county attorney, and several private attorneys. *See* Complaint, *Metcalf v. Call*, No. 2:14-CV-0010-MR-DLH, 2014 WL 12497025 (W.D.N.C. Mar. 31, 2014), ECF No. 1. The complaint referenced "many aspects of [] two custody suits, legal malpractice, an interim guardianship hearing and upcoming incompetency hearing regarding [Plaintiff]'s son, a divorce case regarding [Plaintiff]'s daughter, and more." *Metcalf*, 2014 WL 12497025, at *2. The federal district court found that "it all relate[d] to the custody of [Plaintiff]'s grandchildren" and that the federal claims were "a mere pretext for the real focus of the Complaint, which challenges the validity of records and proceedings of the North Carolina courts that resulted in" custody of the plaintiff's grandchildren being awarded to their maternal grandmother. *Id.* (quoting *Stratton v. Mecklenburg Cnty. Dep't of Soc. Servs.*, 521 F. App'x 278, 291 (4th Cir. 2013) (per curiam) (unpublished)). In conducting frivolity review of the complaint, the district court held that the plaintiff's claims were barred by *Rooker-Feldman*, judicial immunity, and private actor status. *Id.* at *3. The Fourth Circuit affirmed, albeit in an unpublished memorandum decision. *Metcalf*, 584 F. App'x 56.

Here, the core of Plaintiff's complaint involves the state court's decision to place her grandchild into DSS custody via an adjudication of neglect or dependency. Plaintiff contends that she was her grandchild's legal custodian. Plaintiff was a party to the underlying state court case at least long enough to be appointed legal counsel.

Therefore, *Rooker-Feldman* bars Plaintiff's core claims regarding her constitutional right to familial integrity.

B. State Court Subject Matter Jurisdiction

Plaintiff claims that the state court lacked subject matter jurisdiction in the underlying child welfare and adult guardianship cases because the evidence that the court relied upon was fabricated and otherwise unfairly manipulated by the defendant social workers. (Objs. at 9–11, 36–37.)

"Subject matter jurisdiction" refers to a court's "power to hear and determine cases of the general class or category to which proceedings in question belong." *Subject matter jurisdiction*, BLACK'S LAW DICTIONARY (6th ed. 1990); *see also Standard Oil Co. v. Montecatini Edison S.p.A.*, 342 F. Supp. 125, 129–30 (D. Del. 1972) (citing *Noxon Chemical Products Co. v. Leckie*, 39 F.2d 318, 320 (3d Cir. 1930)). That is, "subject matter jurisdiction" concerns whether a particular court is the right type of court to hear a particular kind of case.

Plaintiff understandably misinterprets "subject matter jurisdiction." Her interpretation is analogous to arguing that a court that presided over a criminal trial which resulted in a conviction lacked subject matter jurisdiction because the prosecutor and his witnesses lied in the trial. Despite her statements to the contrary, Plaintiff's complaint is not about whether the North Carolina district court lacked subject matter jurisdiction over the underlying cases involving her daughter and grandchild; her complaint is that those cases were wrongly decided because the evidence presented was fabricated.

In North Carolina, district courts are courts of general jurisdiction that have "exclusive, original jurisdiction over any case involving a juvenile who is alleged to be abused, neglected, or dependent." N.C. Gen. Stat. §§ 7A-3, 7B-101, 7B-200(a). Even taking Plaintiff's factual allegations to be true, the state court undeniably had subject matter jurisdiction as the underlying state court case involved an allegation of abuse, neglect, or dependency.

Moreover, even if this court believed that the state court lacked subject matter jurisdiction, the *Rooker-Feldman* doctrine would nonetheless bar this court from reviewing that issue. *See Inkel v. Connecticut Dep't of Children & Families*, 421 F. Supp. 2d 513, 522 (D. Conn. 2006) (applying *Rooker-Feldman* where plaintiffs claimed that the submission of false evidence by state child welfare workers operated to deprive the state court of jurisdiction because "[p]laintiffs' remedy for an incorrect or unfair juvenile court decision is to appeal that decision to higher state courts, not to seek federal court intervention by way of a civil rights action"); *Ashton v. Cafero*, 920 F. Supp. 35, 37 (D. Conn. 1996) (holding that *Rooker-Feldman* barred plaintiff's § 1983 and § 1985 claims because those claims depended upon plaintiff's allegation that the state court lacked jurisdiction to enter the order that formed the basis of plaintiff's complaint and "[a] finding of jurisdiction is implicit in the [state court's] decision to issue the order"); *see also* Suzanna Sherry, *Judicial Federalism in the Trenches: the Rooker-Feldman Doctrine in Action*, 74 Notre Dame L. Rev. 1085, 1093–94 (1999) ("[A] lower federal court should not have jurisdiction to override the

original [state] court's determination of its own jurisdiction, at least when the party contesting jurisdiction appeared and litigated the jurisdictional issue.").

IX. *Monell* Claims

In support of her *Monell* claim, Plaintiff argues that the Dare County defendant social workers, judges, and attorney had a local practice to violate state law and the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA). As stated above, a violation of state law cannot provide the basis for a § 1983 claim. The UCCJEA is an interstate compact that North Carolina has joined; it is, therefore, state, not federal, law. *See* N.C. Gen. Stat. §§ 50A-1 to -25. Accordingly, Plaintiff's *Monell* claim should be dismissed as frivolous or for failure to state a claim upon which relief can be granted.

X. Claims Summary

After review, the undersigned hereby supplements the initial M&R and makes the recommendations noted above. In addition to the initial recommendation that Plaintiff's Fourth Amendment claims against Defendants Foltz, Lycett, Ryder, and Officer Does of the Kill Devil Hills Police Department be permitted to proceed, the undersigned now recommends that the Fourth Amendment claims be permitted to proceed against Defendants Burrus and Corprew.

Plaintiff's procedural due process claim involving injury to reputation due to placement on North Carolina's "responsible individuals" list should also be permitted to proceed against all of the defendant social workers (Burrus, Corprew, Foltz, Lycett,

and Ryder from Dare County DSS, and Harris, Hurd, and Romm from Currituck County DSS) as well as Defendant Clerk of Court Matusko.

All of Plaintiff's remaining claims should be dismissed based on absolute immunity, *Rooker-Feldman*, or defendants' private actor status.

CONCLUSION

For the reasons stated above and in the initial M&R, the undersigned determines (1) that Plaintiff's § 1983 and § 1985 claims against Defendants Burrus, Corprew, Foltz, Lycett, Ryder, and Officer Does of the Kill Devil Hills Police Department alleging violations of Plaintiff's Fourth Amendment rights survive frivolity review; and (2) that Plaintiff's § 1983 procedural due process claim alleging injury to reputation against Defendants Burrus, Corprew, Foltz, Harris, Hurd, Lycett, Matusko, Romm, and Ryder survives frivolity review.

Accordingly, it is RECOMMENDED that Plaintiff's § 1983 and § 1985 claims against Defendants Foltz, Lycett, Ryder, and Officer Does of the Kill Devil Hills Police Department arising under the Fourth Amendment be allowed to proceed; that Plaintiff's § 1983 procedural due process claim arising under the Fourteenth Amendment alleging injury to reputation against Defendants Burrus, Corprew, Harris, Hurd, Lycett, Matusko, Romm, and Ryder be allowed to proceed; and that Plaintiff's remaining claims be DISMISSED for lack of jurisdiction or, alternatively, as frivolous or for failure to state a claim as more fully set forth hereinabove.

IT IS DIRECTED that a copy of this Memorandum and Recommendation be served on Plaintiff. Plaintiff is hereby advised as follows:

You shall have until **July 10, 2017**, to file written objections to the Memorandum and Recommendation. The presiding district judge must conduct his or her own review (that is, make a de novo determination) of those portions of the Memorandum and Recommendation to which objection is properly made and may accept, reject, or modify the determinations in the Memorandum and Recommendation; receive further evidence; or return the matter to the magistrate judge with instructions. *See, e.g.,* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3); Local Civ. R. 1.1 (permitting modification of deadlines specified in local rules), 72.4(b), E.D.N.C.

If you do not file written objections to the Memorandum and Recommendation by the foregoing deadline, you will be giving up the right to review of the Memorandum and Recommendation by the presiding district judge as described above, and the presiding district judge may enter an order or judgment based on the Memorandum and Recommendation without such review. In addition, your failure to file written objections by the foregoing deadline may bar you from appealing to the Court of Appeals from an order or judgment of the presiding district judge based on the Memorandum and Recommendation. *See Wright v. Collins*, 766 F.2d 841, 846-47 (4th Cir. 1985).

This 21st day of June 2017.

Kimberly A. Swank

KIMBERLY A. SWANK
United States Magistrate Judge

FILED: November 23, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-1409
(2:16-cv-00061-FL)

SUSAN W. VAUGHAN, an individual

Plaintiff - Appellant

v.

SHANNON FOLTZ, an individual; SAMANTHA HURD, an individual; KRISTEN HARRIS, an individual; KATHLYN ROMM, an individual; RAY MATUSKO; STEPHANIE RYDER, an individual; CHUCK LYCETT, an individual; MELANIE CORPREW, an individual; JAY BURRUS, an individual; OFFICER DOE, an individual; DOES 3-10; MELISSA TURNAGE; KATHERINE MCCARRON; OFFICER MIKE SUDDUTH; OFFICER CARL WHITE; DOUG DOUGHTIE, an individual

Defendants - Appellees

and

HON. ROBERT TRIVETTE, an individual; MEADER HARRISS, an individual; HON. AMBER DAVIS, an individual; COURTNEY HULL, an individual; ASST. DIST. ATTORNEY EULA REID, an individual; DARE COUNTY; CURRITUCK COUNTY; KILL DEVIL HILLS; SUSAN HARMON-SCOTT, an individual; MERLEE AUSTIN, an individual

Defendants

Appendix A

ORDER

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge King, Judge Agee, and Judge Richardson.

For the Court

/s/ Patricia S. Connor, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
NORTHERN DIVISION

No. 2:16-CV-61-FL

SUSAN W. VAUGHAN, an individual Plaintiff, v. SHANNON FOLTZ an individual, SAMANTHA HURD an individual, KRISTEN HARRIS an individual, KATHLYN ROMM an individual, DOUG DOUGHTIE an individual, RAY MATUSKO an individual, STEPHANIE RYDER an individual, CHUCK LYCETT an individual, MELANIE CORPREW an individual, HON. ROBERT TRIVETTE an individual, JAY BURRIS an individual, HON. AMBER DAVIS an individual, OFFICER DOE an individual, HON. EULA REID an individual, DARE COUNTY, CURRITUCK COUNTY, KILL DEVIL HILLS, DOES 1-10 individuals, MELISSA TURNAGE an individual, and KATHERINE MCCARRON, an individual. Defendants.[1]	)	ORDER

This matter comes before the court on frivolity review of plaintiff's pro se complaint, pursuant to 28 U.S.C. § 1915(e)(2)(B). Pursuant to 28 U.S.C. § 636(b)(1)(B) and Federal Rule of Civil Procedure 72(b),United States Magistrate Judge Kimberly A. Swank entered a memorandum and recommendation ("M&R") and supplemental memorandum and recommendation

[1] This court constructively amends the caption of this order to reflect the addition and removal of certain defendants as found in plaintiff's amended complaint. (See Am. Compl. (DE 13)).

Appendix A

("supplemental M&R"), wherein it is recommended that the court dismiss in part plaintiff's claims and allow certain claims to proceed. (DE 5; DE 10). Plaintiff timely filed objections to the M&R and supplemental M&R. (DE 6; DE 11). Thereafter, plaintiff filed an amended complaint, seeking to add as plaintiff her daughter, Jennifer Vaughan. (See Am. Compl. (DE 13)). In this posture, the issues raised are ripe for ruling. The court adopts some of the recommendations of the magistrate judge, albeit in part on different grounds, and undertakes herein its own frivolity review of the amended complaint, pursuant to 28 U.S.C. § 1915(e)(2)(B), dismissing in part plaintiff's claims and allowing certain claims to proceed.

BACKGROUND

Plaintiff initiated this action by filing motion for leave to proceed in forma pauperis ("IFP") on August 15, 2016, accompanied by proposed complaint. All claims arise from defendants' alleged involvement in removal of both plaintiff's adult daughter, Jennifer Vaughan, and plaintiff's granddaughter and the daughter of Jennifer Vaughan, a minor child referred to as "EJV," from plaintiff's home.[2] Plaintiff asserts claims against defendants for constitutional violations pursuant to 42 U.S.C. § 1983 as well as conspiracy to violate those rights. Plaintiff seeks damages, attorneys fees, trial by jury, and injunctive relief.

In August 2013, plaintiff and her daughter, together with EJV, were residing at plaintiff's

[2] Plaintiff alleges claims against seven groups: 1) Dare County, Currituck County, and Kill Devil Hills; 2) state district court judges who presided over various district court hearings concerning the child welfare proceedings, defendants Eula Reid ("Reid"), Robert Trivette ("Trivette"), and Amber Davis ("Davis"); 3) DSS employees associated with the child welfare proceedings, defendants Shannon Foltz ("Foltz"), Chuck Lycett ("Lycett"), Jay Burrus ("Burrus"), Kristen Harris ("Harris"), Samantha Hurd ("Hurd"), and Kathlyn Romm ("Romm"); 4) DSS employees associated with the commitment proceedings, defendants Stephanie Ryder ("Ryder"), Melanie Corprew ("Corprew"), Melissa Turnage ("Turnage"), and Katherine McCarron ("McCarron"); 5) defendant Ray Matusko ("Matusko"), county clerk of Currituck County District Court; 6) defendant Doug Doughtie ("Doughtie"), who held the position of sheriff of Dare County at the time of plaintiff's allegations; and 7) generally named Does 1-10 and officer Does from the Kill Devil Hills police department.

home in Kill Devil Hills, North Carolina.[3] In August 2013, the Dare County Department of Social Services ("DSS") filed a petition alleging that EJV was neglected, thereby initiating a child welfare case involving Jennifer Vaughan and EJV. On August 13, 2013, Dare County DSS, accompanied by officers from Kill Devil Hills Police Department, removed Jennifer Vaughan from plaintiff's home pursuant to what plaintiff suggests was an involuntary civil commitment order. (Am. Compl. (DE 13) at 29). The next day, Dare County DSS removed EJV from plaintiff's physical custody and placed the child into temporary foster care based on allegations that EJV was neglected. Child welfare proceedings in North Carolina district court ensued. It also appears that adult protective services division of Dare County DSS obtained guardianship over Jennifer Vaughan on or about this time. (Id. at 39). Plaintiff attended both sets of proceedings.

Plaintiff is dissatisfied with the state courts' decisions not to return EJV to Jennifer Vaughan's custody or plaintiff's home. Plaintiff is also dissatisfied with the manner in which Jennifer Vaughan, sought to be added as plaintiff, and EJV physically were removed from her home and with the legal process that culminated in legal custody of EJV being awarded to Currituck County DSS, EJV being adopted by persons unknown, guardianship over Jennifer Vaughan being awarded to Dare County DSS, and Jennifer Vaughan being involuntarily committed multiple times.[4]

On May 8, 2017, the magistrate judge granted plaintiff's IFP petition and issued a M&R, recommending that claims against certain defendants alleging violations of plaintiff's Fourth Amendment rights should proceed and that plaintiff's remaining claims should be dismissed without

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[3] The court incorporates the magistrate judge's background as provided in the M&R, as revised here to include information found in plaintiff's amended complaint. (See M&R (DE 5) at 2-3).

[4] The child welfare proceedings were transferred from Dare County to Currituck County due to a conflict of interest caused by Dare County having guardianship over Jennifer Vaughan and legal custody of EJV.

prejudice. Plaintiff filed objections to the M&R on May 23, 2017, challenging the magistrate judge's determinations concerning the dismissal recommendations. On May 24, 2017, this court noted in a text order that plaintiff had filed a 50 page objection, on the heels of a 92 page complaint, seeking in part to clarify her operative pleading. The court recommitted the matter to the magistrate judge pursuant to Federal Rule of Civil Procedure 72(b)(3) to review plaintiff's objections and address the same in supplement to the M&R.

On June 22, 2017, the magistrate judge issued a supplemental M&R, recommending plaintiff's following claims proceed:

1) § 1983 and § 1985 conspiracy claims against DSS defendants Burrus, Corprew, Foltz, Lycett, and Ryder and defendants officer Does of the Kill Devil Hills police department alleging violations of plaintiff's Fourth Amendment rights and

2) § 1983 procedural due process claims against DSS defendants Burrus, Corprew, Foltz, Harris, Hurd, Lycett, Romm, and Ryder and defendant Matusko, clerk of superior court for Dare County, alleging injury to reputation regarding plaintiff's placement on the list of "responsible individuals" pursuant to N.C. Gen. Stat. § 7B-311.

The magistrate judge recommended the following claims be dismissed without prejudice:[5]

1) §1983 substantive and procedural due process claims and related § 1985 conspiracy claims against all DSS defendants arising under the Fourteenth Amendment as it pertains to child welfare proceedings of EJV and civil commitment proceedings as it pertains to plaintiff's daughter, Jennifer Vaughan;

2) claims against defendants Reid, Trivette, and Davis, including a First Amendment claim against Reid;

3) claims against Doughtie, for "obstruction of justice";

[5] The magistrate judge also recommended the dismissal of the following claims which plaintiff has removed from her amended complaint and therefore which the court need not address: claims against the state of North Carolina and North Carolina Indigent Defense Services; claims against Merlee Austin, former clerk of superior court for Dare County; claims against attorney Susan Harmon-Scott, guardian ad litem to Jennifer Vaughan; and claims against attorneys Meader Harriss and Courtney Hull.

4) claims against Currituck County, Dare County, and Kill Devil Hills; and

5) § 1983 procedural due process claims alleging injury to reputation regarding a judicial finding that plaintiff, as caretaker of her grandchild, was responsible for neglect.

On July 10, 2017, plaintiff filed objections to the supplemental M&R, again challenging the magistrate judge's determinations concerning the dismissal recommendations. Amended complaint then was filed on August 25, 2017, seeking in part to add as plaintiff Jennifer Vaughan.[6]

DISCUSSION

A. Standard of Review

The district court reviews de novo those portions of a magistrate judge's M&R to which specific objections are filed. 28 U.S.C. § 636(b). The court does not perform a de novo review where a party makes only "general and conclusory objections that do not direct the court to a specific error in the magistrate's proposed findings and recommendations." Orpiano v. Johnson, 687 F.2d 44, 47 (4th Cir. 1982). Absent a specific and timely filed objection, the court reviews only for "clear error," and need not give any explanation for adopting the M&R. Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005); Camby v. Davis, 718 F.2d 198, 200 (4th Cir.1983). Upon careful review of the record, "the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Under 28 U.S.C. § 1915(e)(2), the court may dismiss an action that is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief.

A complaint may be found frivolous if it "lacks an arguable basis either in law or in fact."

[6] On September 5, 2017, the court allowed plaintiff to file her August 25, 2017 amended complaint as of right, see Fed. R. Civ. Pro. 15, but did not address issues regarding the addition of Jennifer Vaughan as plaintiff.

Neitzke v. Williams, 490 U.S. 319, 325 (1989). Additionally, a complaint fails to state a claim if it does not "contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face," sufficient to "allow[ ] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quotations omitted). In evaluating whether a claim has been stated, "[the] court accepts all well-pled facts as true and construes those facts in the light most favorable to the plaintiff," but does not consider "legal conclusions, elements of a cause of action, . . . bare assertions devoid of further factual enhancement [,] . . . unwarranted inferences, unreasonable conclusions, or arguments." Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc., 591 F.3d 250, 255 (4th Cir. 2009) (citations omitted).

B. Analysis

The court will first address Jennifer Vaughan's competency to be joined as plaintiff. The court will then address immunity concerns and thereafter address the merits of plaintiff's due process, Fourth Amendment, and injury to reputation claims. The court then will address plaintiff's claims against defendants Doughtie, Currituck County, Dare County, and Kill Devil Hills. Finally, the court will address plaintiff's request for preliminary injunction.

1. Competency of Jennifer Vaughan

At the outset, the court must address plaintiff's request to add her daughter Jennifer Vaughan as plaintiff. Plaintiff alleges that defendants Turnage and McCarron are Jennifer Vaughan's appointed guardians. Jennifer Vaughan involuntarily was committed, and apparently so remains. (Am. Compl. (DE 13) at 67).

Plaintiff's attempt to add her daughter as a party plaintiff is a blatant effort to defeat the state

authorized guardianship. Moreover, it smacks of the unauthorized practice of law before this court. Plaintiff, proceeding pro se, is the architect of this lawsuit. She cannot represent anyone other than herself in this instance. See Myers v. Loudon Co. Pub. Sch., 418 F.3d 395, 400 (4th Cir. 2005) ("The right to litigate for oneself, however, does not create a coordinate right to litigate for others."). Plaintiff's attempt to add Jennifer Vaughan to plaintiff's side of the case caption and assert her interests directly in this case must fail. Amendment in this respect is rendered a nullity.

2. Immunity

Turning to immunity concerns, plaintiff in her objections to the supplemental M&R does not raise specific objections to any component of the magistrate judge's immunity analysis except regarding the state district court judges, which the court addresses below. Accordingly, the court reviews the rest of the magistrate judge's immunity analysis for clear error.

Upon careful review of the record and the M&R and supplemental M&R, the court adopts in full the immunity analysis of the magistrate judge that recommended that a finding of immunity for DSS employees, defendant Matusko as county clerk, defendant Doughtie as sheriff, and the unnamed officer Does is premature at this stage in the litigation. (See M&R (DE 5) at 9-15, 22; Supp. M&R (DE 10) at 7-10 (citing Vosburg v. Dep't of Soc. Servs., 884 F.2d 133, 138 (4th Cir. 1989) ("We emphasize, however, that our grant of absolute immunity applies only to those activities of social workers that could be deemed prosecutorial. We in no way intend our decision to be read as holding that such workers are immune from liability arising from their conduct in investigating the possibility that a removal petition should be filed."); McCray v. Maryland, 456 F.2d 1, 4 (4th Cir. 1972) (rejecting argument that court clerks are immune from suit where they fail "to perform a required ministerial act"), abrogated on other grounds, Pink v. Lester, 52 F.3d 73, 77 (4th

Cir.1995); Gomez v. Toledo, 446 U.S. 635, 639-40 (1980) (holding in a § 1983 action against a public official whose position might entitle him to qualified immunity, a plaintiff need not allege that the official acted in bad faith in order to state a claim for relief; burden is on defendant to plead good faith as an affirmative defense)).

Turning to plaintiff's objections to the magistrate judge's immunity analysis, plaintiff argues that her claims against defendants Reid, Trivette, and Davis should not be dismissed based on judicial immunity. Plaintiff suggests that because plaintiff's right of due process was violated during her grandchild's child welfare proceedings and because DSS lacked authority to initiate the original child welfare investigation, the judges that oversaw the case lack subject-matter jurisdiction and therefore cannot maintain judicial immunity. (See Pl.'s Obj. (DE 11) at 1-4, 12-14). Plaintiff offers the following illustration: "For example[,] judges wouldn't have authority over a person accused of eating a peanut better sandwich after dark, just because that person lives in a certain district where a judge normally has jurisdiction, because that act is not a crime." (Id. at 4).

The magistrate judge correctly set out and applied the law of absolute immunity. As set out in the M&R and supplemental M&R, "judges are absolutely immune from suit for a deprivation of civil rights" for actions taken within their jurisdiction. King v. Myers, 973 F.2d 354, 356 (4th Cir. 1992); see Stump v. Sparkman, 435 U.S. 349, 356-57 (1978) ("A judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in the clear absence of all jurisdiction.") (interior citation omitted).

Here, defendant judges are North Carolina district court judges and therefore have "exclusive, original jurisdiction over any case involving a juvenile who is alleged to be abused,

neglected, or dependant." N.C. Gen. Stat. §§ 7B-101, -200a. This includes jurisdiction over cases involving juveniles that are found not to be abused, neglected, or dependant, or in cases where DSS did not conform to the necessary or appropriate procedures in its investigation, because it is the province of North Carolina district court judges to so determine.

Plaintiff numerous times argues that DSS and other authorities failed to conform to the necessary procedures in their investigation of plaintiff and her family and in the hearings that followed. (See, e.g., Pl.'s Obj. (DE 11) at 2-9). Here, whether or not DSS and other authorities, including the defendant judges, conformed with the applicable procedures, statutes, and law in reaching the determination that EJV and Jennifer Vaughan should be removed from plaintiff's home is irrelevant to a determination of subject-matter jurisdiction of North Carolina district courts over such proceedings, as stated above, and does not compromise judicial immunity. See McCray, 456 F. 2d at 3 ("The absolute immunity from suit for alleged deprivation of rights enjoyed by judges is matchless in its protection of judicial power. It shields judges even against allegations of malice or corruption.").

Therefore, the court agrees with the magistrate judge that defendants Reid, Trivette, and Davis retain absolute immunity from plaintiff's claims and that plaintiff's claims against such defendants must be and are hereby dismissed with prejudice.

3. Due Process Claims

Plaintiff's primary claims in this case fall under § 1983 and appear to be assertions that her rights to substantive and procedural due process in state child welfare and state civil commitment proceedings have been violated.

The Due Process Clause of the Fourteenth Amendment prohibits states from depriving "any

person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV. Due process consists of both substantive and procedural due process components, both of which are asserted here. See Sunrise Corp. of Myrtle Beach v. City of Myrtle Beach, 420 F.3d 322, 328 (4th Cir. 2005). "In order to prevail on either a procedural or substantive due process claim, [plaintiffs] must first demonstrate that they were deprived of life, liberty, or property by governmental action." Beverati v. Smith, 120 F.3d 500, 502 (4th Cir. 1997) (interior citation omitted). For a substantive due process claim, a plaintiff must also show that the state's action is so arbitrary and egregious that it "shocks the conscience." Cnty. of Sacramento v. Lewis, 523 U.S. 833, 846 (1998).

a. Due Process Claims Regarding Child Welfare Proceedings

In order to state a substantive or procedural due process claim to survive frivolity review, plaintiff must assert a constitutionally protected liberty interest, and she has failed to do so. See Weller v. Dep't of Soc. Servs. for City of Baltimore, 901 F.2d 387, 391 (4th Cir. 1990) ("In order to rely on the due process clause, Weller must have a protectible interest. In this case, Weller clearly does have a protectible liberty interest in the care and custody of his children. However, other asserted liberty interests are not among those protected by the due process clause.").

Although the Supreme Court has recognized a "fundamental liberty interest of natural parents in the care, custody, and management of their child," Santosky v. Kramer, 455 U.S. 745, 753 (1982), this right does not extend to the child's grandmother who has no constitutionally recognized right to visitation and also, therefore, no constitutionally recognized right to grandparent-grandchild companionship. See Troxel v. Granville, 530 U.S. 57, 71 (2000) (holding state visitation order granting visitation to grandparents was an unconstitutional infringement of the mother's "fundamental right to make decisions concerning the care, custody, and control of her two

daughters"); see also Buck v. Greenlee, No. 3:10-CV-540-RJC-DSC, 2011 WL 4595262, at *7 (W.D.N.C. Sept. 30, 2011) (citing Troxel) ("Grandparents have no constitutional right to visitation"), aff'd, 465 F. App'x 244 (4th Cir. 2012).

In the supplemental M&R, the magistrate judge correctly notes that "the case law in this area is unsettled and there appears to be no instructive Fourth Circuit opinion" regarding the recognition of a grandparent's constitutionally protected interest with regard to the companionship of her grandchild. (Supp. M&R (DE 10) at 22). The magistrate judge therefore recommended that plaintiff's §1983 due process claim not be dismissed because plaintiff lacks a constitutionally protected interest with regard to her grandchild, but because "plaintiff's claims that she was deprived of her due process rights to family integrity would be directed to the defendant judges, who are, as described above, absolutely immune from damages liability." (Id. at 23-25 (citing Pittman v. Cuyahoga County Dept. Of Children and Family Services, 640 F. 3d 716 (6th. Cir. 2011)). The Fourth Circuit, however, has instructed district courts to "exercise judicial self restraint and utmost care in novel substantive due process cases." Waybright v. Frederick County, 528 F.3d 199, 204 (4th Cir. 2008) (citing Collins v. City of Harker Heights, Tex., 503 U.S. 115, 125 (1992) (interior quotations omitted)). The court is unaware of any Supreme Court or Fourth Circuit authority that recognizes a constitutionally protected liberty interest of a grandparent with regard to her grandchild; therefore, the court declines to add such a right within the protections of the due process clause.[7]

[7] The magistrate judge recommended that even if plaintiff had a legally cognizable interest underlying her due process claims, all such claims would be barred by the Rooker-Feldman doctrine. See District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482-84 (1983) (holding that federal courts are prohibited from sitting "in direct review of state court decisions"). Because the court determines that plaintiff has no legally cognizable interest underlying her due process claims, it is unnecessary for the court to determine if such a broad application of the Rooker-Feldman doctrine is consistent with the Fourth Circuit's holding in Thana v. Bd. of License Commissioners for Charles

Therefore, plaintiff has failed to assert a constitutionally protected interest in order to state a due process claim regarding the challenged state child welfare proceedings. Additionally, her § 1983 allegations of conspiracy related to her deprivation of the constitutionally protected interest must also fail. See Glassman v. Arlington Cty., VA, 628 F.3d 140, 150 (4th Cir. 2010) ("Because we hold that the defendants' actions in this case did not result in the 'deprivation of a constitutional right,' we conclude that Glassman's civil conspiracy claim was properly dismissed.").[8]

b. Due Process Claims Regarding State Civil Commitment Proceedings

The magistrate judge correctly set forth that the Supreme Court has not recognized a constitutionally protected right to the companionship of an adult child and has extended liberty interests of parents under the Due Process Clause only for parents' relationships with minor children. See Meyer v. Nebraska, 262 U.S. 390, 399 (1923) (involving a minor child); Prince v. Massachusetts, 321 U.S. 158, 166 (1944) (same); Troxel, 530 U.S. at 66 (same); Wisconsin v. Yoder, 406 U.S. 205, 213-14 (1972) (same); see also Evans v. Pitt Cty. Dep't of Soc. Servs., 972 F. Supp. 2d 778, 783 and 794–95 (E.D.N.C. 2013) ("Plaintiff's normative argument that she should have a liberty interest in her familial [adult] child-parent relationship is simply not supported by constitutional case law."), vacated in part, appeal dismissed in part sub nom. Evans v. Perry, 578 F. App'x 229 (4th Cir. 2014), aff'd in part, 616 F. App'x 636 (4th Cir. 2015).[9]

Cty., Maryland, 827 F.3d 314, 319 (4th Cir. 2016).

[8] The magistrate judge construed plaintiff's civil conspiracy claims to be brought pursuant to 42 U.S.C. § 1985 instead of 42 U.S.C. § 1983. Because a plaintiff must show that the alleged conspiracy brought pursuant to § 1985 was motivated by "some racial, or perhaps otherwise class-based invidiously discriminatory animus," Griffin v. Breckenridge, 403 U.S. 88, 102 (1971), and no such motivations are alleged here, the court analyzes plaintiff's conspiracy allegations pursuant to § 1983.

[9] Additionally, plaintiff alleges no facts in either her complaint or amended complaint or in either of her objections to the M&R or supplemental M&R that she had or has legal guardianship of her daughter or legal custody of her grandchild and alleges facts that indicate otherwise. (See, e.g., Am. Compl. (DE 13) at 17 (plaintiff needed written

Therefore, the court holds that plaintiff has failed to assert a constitutionally protected interest in order to state a due process claim regarding the challenged state civil commitment proceedings. Additionally, her allegations of conspiracy related to her deprivation of the constitutionally protected interest must also fail. See Glassman, 628 F.3d at 150.

4. Fourth Amendment Claims

Plaintiff additionally assert claims against defendants Foltz, Lycett, Ryder, Turnage, McCarron, and unnamed Kill Devil Hills police officers alleging violations of her Fourth Amendment right to be free from unreasonable governmental searches and seizures.

"The Fourth Amendment protects against unreasonable searches and seizures." Wildauer v. Frederick Cty., 993 F.2d 369, 372 (4th Cir. 1993) (citing United States v. Place, 462 U.S. 696 (1983)). While still governed by the Fourth Amendment, "investigative home visits by social workers are not subject to the same scrutiny as searches in the criminal context." Id. at 372 (citing Wyman v. Jones, 400 U.S. 309, 318 (1971)).

Plaintiff alleges that an unidentified Kill Devil Hills police officer along with defendants Turnage and McCarron unlawfully entered her home sometime in February 2015. (Am. Compl. (DE 13) at 70-71).[10] Plaintiff alleges that these persons demanded entrance to her home to speak with Jennifer Vaughan, that these persons lacked a court order or other legal process, that Jennifer Vaughan had opened the door for another reason and then subsequently attempted to close it, and that the police officer placed his foot in the doorway to prevent the door closing. (Id.) Plaintiff

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permission from mother to take EJV to pediatrician); 35 (petition filed by Dare County DSS alleged neglect and dependency "due to mother's inability to care"; 29, 32 and 33 (efforts taken by plaintiff to secure daughter's power of attorney)).

[10] Plaintiff's amended complaint identifies defendants Turnage and McCarron as the previously unnamed employees of Dare County DSS that entered plaintiff's home. (See Am. Compl. (DE 13) at 71; M&R (DE 5) at 21).

alleges that a physical struggle ensued, wherein plaintiff and Jennifer Vaughan pushed against the door but were prevented from closing it by the police officer. (Id.) Plaintiff alleges that the police officer finally removed his foot and stated that he would return with "with papers" and would "break down" plaintiff's door. (Id.). Plaintiff also alleges other unlawful entries of her home by defendants Ryder, Foltz, Lycett, and Kill Devil Hills police officers, although plaintiff notes that these entries may have been conducted pursuant to court orders, which the court does not currently have before it. (Id. at 26-27 and 33).

The court agrees with the magistrate judge that plaintiff has alleged sufficient facts to withstand frivolity review as to these Fourth Amendment claims and that proper analysis of these incidents requires additional clarity regarding the court orders involved. "[P]hysical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed." Payton v. New York, 445 U.S. 573, 585 (1980) (quoting United States v. United States District Court, 407 U.S. 297, 313 (1972)). Plaintiff has alleged such entry by the government in some cases without a warrant and in all cases without consent.

However, the court disagrees with the magistrate judge that plaintiff's conspiracy claims, construed as brought under 42 U.S.C. § 1983, allege facts sufficient to survive frivolity review. (See Am. Compl. (DE 13) at 15 ("All defendants interfered, directly or indirectly in [plaintiff's] constitutional right to be free from unlawful searches and seizures, with [her] right to enjoy the peace and privacy of [her] own home . . . .")). Therefore, plaintiff's § 1983 claims alleging conspiracy to deprive plaintiff of her Fourth Amendment rights are dismissed without prejudice. See Nemet Chevrolet, Ltd., 591 F.3d at 255 (the court does not consider "bare assertions devoid of further factual enhancement").

5. Injury to Reputation Claims

An injury to reputation claim based on denial of procedural due process is premised on two rights guaranteed by the Fourteenth Amendment: 1) "the liberty to engage in any of the common occupations of life" and 2) "the right to due process [w]here a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him." Sciolino v. City of Newport News, Va., 480 F.3d 642, 646 (4th Cir. 2007) (alteration in original) (citations omitted) (quoting Bd. of Regents of State Colls. v. Roth, 408 U.S. 564, 572 (1972) and Wisconsin v. Constantineau, 400 U.S. 433, 437 (1971)). However, the Supreme Court has held that reputation alone does not implicate any "liberty" or "property" interest sufficient to invoke the procedural protection for the due process clause and something more than simple defamation, for example "some more tangible interests such as employment," must be involved to establish a claim under § 1983. Paul v. Davis, 424 U.S. 693, 701 (1976).

Plaintiff alleges that plaintiff's placement on the list of "responsible individuals" pursuant to N.C. Gen. Stat. § 7B-311 has impaired her employment prospects and identifies DSS defendants Burrus, Corprew, Foltz, Harris, Hurd, Lycett, Romm, and Ryder and defendant Matusko as the individuals who caused the injury.[11] Plaintiff alleges that the social workers lied or misrepresented facts in the underlying child welfare matter that resulted in her placement on the list and that defendant Matusko intentionally failed to perform ministerial duties required by state law involving plaintiff's rights under N.C. Gen. Stat. § 7B-323.

Plaintiff does not raise specific objections to any component of the magistrate judge's

[11] N.C. Gen. Stat. § 7B-311 provides in relevant part that the "Department of Health and Human Services shall maintain a central registry of abuse, neglect, and dependency cases and child fatalities that are the result of alleged maltreatment that are reported under the Article . . . . The Department shall also maintain a list of responsible individuals."

analysis regarding plaintiff's injury to reputation claims. Accordingly, the court reviews the magistrate judge's analysis for clear error. Upon careful review of the record and the M&R and supplemental M&R, the court adopts in full the analysis of the magistrate judge that recommended plaintiff's injury to reputation claim regarding plaintiff's placement on the "responsible list" be allowed to proceed against defendants Burrus, Corprew, Foltz, Harris, Hurd, Lycett, Matusko, Romm, and Ryder and all other potential injury to reputation claims be dismissed. (Supp. M&R (DE 10) at 16-19).

6. Claims Against Defendant Doughtie

In objecting to the magistrate judge's recommendation of dismissal of claims against defendant Doughtie, who held the position of Sheriff of Dare County at the time of plaintiff's allegations, plaintiff asserts that the sheriff conspired to obstruct justice by lying to plaintiff that he needed to be paid to serve her subpoena to acquire EJV's medical records to present to the court. (Pl.'s Obj. (DE 11) at 10 ("As the [supplemental] M&R notes, there was no requirement that Plaintiff pay Sheriff Doughtie to serve her subpoena, however Doughtie claimed that it was a requirement for all subpoena service, and therefore used that erroneous excuse to block the fulfilment of that subpoena").

Plaintiff is correct that there is no requirement for the sheriff to serve her subpoena, as noted by the magistrate judge, but there is a requirement under North Carolina law for an advance payment of thirty dollars for each subpoena served. N.C. Gen. Stat. § 7A-311(a). Because plaintiff appears to allege only that the sheriff lied with respect to whether a fee is required for subpoena service, and because such a fee is required, the court agrees with the magistrate judge that plaintiff's claims against the sheriff must and is hereby dismissed without prejudice.

7. Claims against Dare County, Currituck County, and Kill Devil Hills

To plead a § 1983 claim against a municipality or local government entity, a plaintiff must allege facts sufficient to support a finding that the alleged unconstitutional action was taken pursuant to an official policy, procedure, or custom of the local governing body. Monell v. Dep't of Soc. Servs. of N.Y.C., 436 U.S. 658, 691 (1978); see also Spell v. McDaniel, 824 F.2d 1380 (4th Cir. 1987).

Plaintiff does not raise specific objections to any component of the magistrate judge's analysis regarding plaintiff's claims against Dare County, Currituck County, and Kill Devil Hills. Accordingly, the court reviews the magistrate judge's analysis for clear error.

Upon careful review of the record and the M&R and supplemental M&R, the court adopts in full the analysis of the magistrate judge that recommended plaintiff's claims against Dare County, Currituck County, and Kill Devil Hills be dismissed. (See M&R (DE 5) at 24-26; Supp. M&R (DE 10) at 29).

8. Request for Injunction

In her objections to the supplemental M&R and for the first time, plaintiff requests an injunction against Dare County and District 1, to prevent further "involvement in the lives of Plaintiff's family members," noting that adult protective services have again committed Jennifer Vaughan and that DSS has arranged for the adoption of EJV. (See Pl.'s Obj. (DE 11) at 15-16; see also id. at 15 ("Plaintiff believes that District 1 has set up a well-oiled machine of taking children from good families for federal monies, and all involved are responsible for violating Plaintiff's, the mother's and EJV's constitutional rights .")).

Plaintiff must establish the following to obtain a temporary restraining order or a preliminary

injunction: 1) that she is likely to succeed on the merits; 2) that she is likely to suffer irreparable harm in the absence of preliminary relief; 3) that the balance of equities tips in her favor; and 4) that an injunction is in the public interest. Winter v. Natural Resources Defense Council, Inc., 555 U.S. 7, 20 (2008).

Plaintiff's showing is woefully lacking. While certain claims have survived frivolity review, plaintiff has not demonstrated that she is likely to succeed on the merits of the claims remaining, nor, among other things, that her request for an injunction is in the public interest. Accordingly, plaintiff's request for injunctive relied must be and is DENIED.[12]

CONCLUSION

Based on the foregoing, upon de novo review of those portions of the supplemental M&R to which objections were raised, and upon considered review of the remaining portions of the supplemental M&R and M&R, the court ADOPTS IN PART the recommendations of the magistrate judge, albeit in part on different grounds as set forth herein. The court conducts its own frivolity review as to claims not previously considered by the magistrate judge. The following claims upon amended complaint are allowed to proceed:

1) §1983 claim against defendants Burrus, Coprew, Foltz, Lycett, Ryder, Turnage, McCarron, and Officer Does of the Kill Devil Hills police department arising under the Fourth Amendment and

1) §1983 procedural due process claim against defendants Burrus, Corprew, Foltz, Harris, Hurd, Lycett, Matusko, Romm, and Ryder arising under the Fourteenth Amendment alleging injury to reputation regarding plaintiff's placement on the list

[12] Additionally, plaintiff requests attorney's fees in this action. The Civil Rights Attorney Fee Awards Act of 1976 permits courts to grant reasonable fees to the "prevailing party" in certain civil rights actions including those brought pursuant to 42 U.S.C. § 1983. 42 U.S.C. § 1988. However, this explicit statutory authority does not apply to a successful pro se plaintiff. See Kay v. Ehrler, 499 U.S. 432, 438 (1991) (holding that an attorney who successfully represented himself in a civil rights action was not entitled to an award of attorney's fees under 42 U.S.C. § 1988). Here, plaintiff is precluded from receiving attorney's fees because she is not represented by counsel.

of "responsible individuals" pursuant to N.C. Gen. Stat. § 7B-311.

Plaintiff's claims against defendants Reid, Trivette, and Davis are DISMISSED WITH PREJUDICE. Plaintiff's remaining claims are DISMISSED without prejudice. Plaintiff's attempt to join Jennifer Vaughan as a party plaintiff is rendered a nullity.

Plaintiff's request for preliminary injunction is DENIED. Plaintiff's request for attorneys fees is DENIED.

Plaintiff shall prepare summonses for the following defendants who remain: Burrus, Coprew, Foltz, Lycett, Ryder, Turnage, McCarron, Harris, Hurd, Matusko, and Romm. Plaintiff must provide an address for each defendant on the summonses. The clerk is directed to send plaintiff the form for summons with this order. Upon receipt of such proposed summonses, following clerk's signature and seal, the court DIRECTS the clerk to coordinate service of summonses and copies of plaintiff's amended complaint to each defendant by a United States marshal or deputy marshal. See Fed. R. Civ. P. Rule 4(c)(3). Defendants, absent any extension, shall have 21 days from date of service within which to respond to the amended complaint as herein limited. See Fed. R. Civ. P. Rule 12(a).

SO ORDERED, this the 27th day of October, 2017.

LOUISE W. FLANAGAN
United States District Judge

PETITION FOR CERTIORARI

From 4th Circuit Court of Appeals, Case #19-1409
Originally filed in North Carolina Federal District Court, Case #2:16-cv-00061-FL

SUSAN W. VAUGHAN
v
SHANNON FOLTZ, et al.

Appendix, Rule 14.1 (f): LAWS, Constitutional/Statutory Provisions

NCGS 50A-205. Notice; opportunity to be heard; joinder	6, 18, 26, 27, 29
UCCJEA SECTION 209. Information to be submitted to court	3, 4, 6, 17, 18, 20, 22, 25, 29-31 34,39, 40
NCGS 50A-209. Information to be submitted to court	2, 3, 4, 6, 17, 18, 20, 22, 25, 29-31, 34, 39, 40
NCGS 50-13.1(b1)	2, 26

Fourth Amendment – pp. 1, 2, 3, 7, 8, 14, 15, 16, 37-39

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized [emphasis added].

Fourteenth Amendment, Due Process Clause – pp. 2-4, 6-9, 17, 21-24, 26, 27, 29, 31-34, 39, 40

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. [See also how Wallis relates this amendment to this case, p xiii]

42 U.S.C. § 1983 – pp. 4, 7, 8, 38-40 (entire document)

"to redress alleged violations of federal civil rights. That statute provides, in relevant part, that: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." [Cited in Rees]

Adoption and Safe Families Act (ASFA) of 1997- p. 5

"make reasonable efforts and document child specific efforts to place a child for adoption, with a relative or guardian."

NCGS 7B-100 – p. 29

Purpose.

This Subchapter shall be interpreted and construed so as to implement the following purposes and policies:

(1) To provide procedures for the hearing of juvenile cases that assure fairness and equity and that protect the constitutional rights of juveniles and parents;

NCGS 7B-101 Definitions, Neglect – pp. 19

(15) Neglected juvenile. - Any juvenile less than 18 years of age (i) who is found to be a minor victim of human trafficking under G.S. 14-43.15 or (ii) whose parent, guardian, custodian, or caretaker does not provide proper care, supervision, or discipline; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare; or the custody of whom has been unlawfully transferred under G.S. 14-321.2; or who has been placed for care or adoption in violation of law. In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home where another juvenile has died as a result of suspected abuse or neglect or lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home.

NCGS 7B-101 (b) -2013 – pp. 2, 3, 5, 6, 8, 18-21, 26, 27, 29, 31, 33-35

Custodian. the person or agency that has been awarded legal custody of a juvenile by a court or **a person**, other than parents or legal guardian, **who has assumed the status and obligation of a parent**. [emphasis added]

NCGS 108A-101 (e) and 104 – pp. 37, 39

Provision of protective services **with the consent of the person**; withdrawal of consent; caretaker refusal. a) If the director determines that a disabled adult is in need of protective services, he shall immediately provide or arrange for the provision of protective services**, provided that the disabled adult consents** [emphasis added].

NCGS 122C-268 (j) – pp. 11, 38

To support an inpatient commitment order, the court shall find by clear, cogent, and convincing evidence that the respondent is mentally ill and dangerous to self, as defined in G.S. 122C3(11)a., or dangerous to others, as defined in G.S. 122C-3(11)b. The court shall record the facts that support its findings. (1985, c. 589, s. 2; c. 695, s. 8; 1985 (Reg. Sess., 1986), c. 1014, s. 195(b); 1987 (Reg. Sess., 1988), c. 1037, s. 114; 1989, c. 141, s. 11; 1989 (Reg. Sess., 1990), c. 823, s. 7; 1991, c. 37, s. 10; c. 257, s. 2; 1995 (Reg. Sess., 1996), c. 739, s. 11(a), (b); 2000-144, s. 39; 2014-107, s. 6.1; 2017-158, s. 16; 2018-33, s. 29.)

NCGS 7B-320 – pp. 22-24, 30-32, 34, 35, 39

Notification to individual determined to be a responsible individual.

(a) After the completion of an investigative assessment response that results in a determination of abuse or serious neglect and the identification of a responsible individual, the director shall personally deliver written notice of the determination to the identified individual in an expeditious manner [emphasis added].

(c) The notice shall include all of the following:

(1) A statement informing the individual of the nature of the investigative assessment response and whether the director determined abuse or serious neglect or both.

(1a) A statement that the individual has been identified as a responsible individual.

(2) A statement summarizing the substantial evidence supporting the director's determination without identifying the reporter or collateral contacts.

(3) A statement informing the individual that unless the individual petitions for judicial review, the individual's name will be placed on the responsible individuals list as provided in G.S. 7B-311, and that the Department of Health and Human Services may provide information from this list to child caring institutions, child placing agencies, group home facilities, and other providers of foster care, child care, or adoption services that need to determine the fitness of individuals to care for or adopt children.

(4) A clear description of the actions the individual must take to seek judicial review of the director's determination.

(d) In addition to the notice, the director shall provide the individual with a copy of a petition for judicial review form. (2005-399, s. 3; 2010-90, s. 5; 2013-129, s. 4; 2019-33, s. 3.)

NCGS 7B-323 – pp. 22-24, 31-34

Petition for judicial review; district court.

(a) Within 15 days of the receipt of notice of the director's determination under G.S. 7B-320(a) ... an individual may file a petition for judicial review with the district court of the county in which the abuse or serious neglect report arose. The request shall be by a petition for judicial review filed with the appropriate clerk of court's office with a copy delivered in person or by certified mail, return receipt requested, to the director who determined the abuse or serious neglect and identified the individual as a responsible individual..... Failure to timely file a petition for judicial review constitutes a waiver of the individual's right to a district court hearing and to contest the placement of the individual's name on the responsible individuals list [emphasis added].

(a1) If the director cannot show that the individual has received actual notice, the director shall not place the individual on the responsible individuals list until an *ex parte* hearing is held at which a district court judge determines that the director made diligent efforts to find the individual. A finding that the individual is evading service is relevant to the determination that the director made diligent efforts.

(b) The clerk of court shall maintain a separate docket for judicial review actions. Upon the filing of a petition for judicial review, the clerk shall calendar the matter for hearing within 45 days from the date the petition is filed at a session of district court hearing juvenile matters or, if there is no such session, at the next session of juvenile court. The clerk shall send notice of the hearing to the petitioner and to the director who determined the abuse or serious neglect and identified the individual as a responsible individual.

(b1) Upon receipt of a notice of hearing for judicial review, the director who identified the individual as a responsible individual shall review all records, reports, and other information

gathered during the investigative assessment response. If after a review, the director determines that there is not sufficient evidence to support a determination that the individual abused or seriously neglected the juvenile and is a responsible individual, the director shall prepare a written statement of the director's determination and either deliver the statement personally to the individual seeking judicial review or send the statement by first-class mail. The director shall also give written notice of the director's determination to the clerk to be placed in the court file, and the judicial review hearing shall be cancelled with notice of the cancellation given by the clerk to the petitioner [emphasis added].

NCGS 7B-401, 2013 – pp. 7, 28, 29, 35

Pleading and process.

(a) The pleading in an abuse, neglect, or dependency action is the petition. The process in an abuse, neglect, or dependency action is the summons.

NCGS 7B-402-(b) – pp. 3, 4, 6, 17, 18, 20, 25, 30, 31, 39, 40

The petition, or an affidavit attached to the petition shall contain the information required by GS 50A-209.

NCGS 7B-404, 2013 – pp. 6, 7, 17, 18, 25, 28, 29, 35

Immediate Need for Petition When Clerk's Office Is Closed. [DE-98, #9]

(b) The authority of the magistrate under this section is limited to emergency situations...

NCGS 7B-405, 2013 – pp. 6, 7, 17, 18, 25, 28, 29, 35

Commencement of Action. An action is commenced by the filing of a petition in the clerk's office when that office is open or by the acceptance of a juvenile petition by a magistrate when the clerk's office is closed.

NCGS 7B-406, 2013 – pp. 6, 18, 19, 20, 22, 28, 29, 35, 36

Issuance of Summons. [DE-98, #9]

a) Immediately after a petition has been filed alleging that a juvenile is abused, neglected or dependent the clerk shall issue a summons to each party named in the petition, except the juvenile, requiring them to appear for a hearing at the time and place stated in the summons. A copy of the petition shall be attached to each summons. [emphasis added]

NCGS 7B-407 –2013 – pp. 6, 7, 18, 19, 20, 22, 28, 29, 35

Service of Summons. [DE-98, #9]

The summons shall be served under G.S. 1A-1, Rule 5, upon the parent, guardian, custodian, or caretaker, not less than five days prior to the date of the scheduled hearing.

NCGS 7B-500 – pp. 7, 28

Article 5. Temporary Custody; Nonsecure Custody; Custody Hearings [NCGS 7B-500. This section deals with emergency removals, which do not apply to plaintiff's case.]

Taking a juvenile into temporary custody; civil and criminal immunity.

(a) Temporary custody means the taking of physical custody and providing personal care and supervision until a court order for nonsecure custody can be obtained. A juvenile may be taken into temporary custody without a court order by a law enforcement officer or a department of social services worker if there are reasonable grounds to believe that the juvenile is abused, neglected, or dependent and that the juvenile would be injured or could not be taken into custody if it were first necessary to obtain a court order.

NCGS 7B-501 – pp. 7, 27, 28

Duties of person taking juvenile into temporary custody.

a) A person who takes a juvenile into custody without a court order under G.S. 7B-500 shall proceed as follows:

1.Notify the juvenile's parent, guardian, custodian, or caretaker that the juvenile has been taken into temporary custody and advise the parent, guardian, custodian, or caretaker of the right to be present with the juvenile until a determination is made as to the need for nonsecure custody. Failure to notify the parent that the juvenile is in custody shall not be grounds for release of the juvenile.

NCGS 7B-502 – pp. 7, 28

Authority to issue custody orders; delegation.

(a) In the case of any juvenile alleged to be within the jurisdiction of the court, the court may order that the juvenile be placed in nonsecure custody pursuant to criteria set out in G.S. 7B503 when custody of the juvenile is necessary.

NCGS 7B-503 – p. 29

Criteria for nonsecure custody [see NC DHHS Screening Tools]

(a) When a request is made for nonsecure custody, the court shall first consider release of the juvenile to the juvenile's parent, relative, guardian, custodian, or other responsible adult. An order for nonsecure custody shall be made only when there is a reasonable factual basis to believe the matters alleged in the petition are true, and any of the following apply:

(1) The juvenile has been abandoned.

(2) The juvenile has suffered physical injury, sexual abuse, or serious emotional damage as defined by G.S. 7B-101(1) e.

(3) The juvenile is exposed to a substantial risk of physical injury or sexual abuse because the parent, guardian, custodian, or caretaker has created the conditions likely to cause injury or abuse or has failed to provide, or is unable to provide, adequate supervision or protection.

(4) The juvenile is in need of medical treatment to cure, alleviate, or prevent suffering serious physical harm which may result in death, disfigurement, or

substantial impairment of bodily functions, and the juvenile's parent, guardian, custodian, or caretaker is unwilling or unable to provide or consent to the medical treatment.

(5) The parent, guardian, custodian, or caretaker consents to the nonsecure custody order.

(6) The juvenile is a runaway and consents to nonsecure custody.

NCGS 7B-506 (b) – pp. 3, 6, 19-23, 36

(b) At a hearing to determine the need for continued custody, the court shall receive testimony and shall allow the parties the right to introduce evidence, to be heard in the person's own behalf, and to examine witnesses. The petitioner shall bear the burden at every stage of the proceedings to provide clear and convincing evidence that the juvenile's placement in custody is necessary.

NCGS 7B-900.1, 2013 – p. 19

Post-Adjudication Venue

a) At any time after adjudication, the court on its own motion or motion of any party may transfer venue to a different county, regardless of whether the action could have been commenced in that county, if the court finds that the forum is in convenient, that transfer of the action to the other county is in the best interest of the juvenile, and that the rights of the parties are not prejudiced by the change of venue. [emphasis added].

NCGS 7B-1002. Proper parties for appeal – pp. 5, 34

Appeal from an order permitted under G.S. 7B-1001 may be taken by:

(1) A juvenile acting through the juvenile's guardian ad litem previously appointed under G.S. 7B-601.

(2) A juvenile for whom no guardian ad litem has been appointed under G.S. 7B601. If such an appeal is made, the court shall appoint a guardian ad litem pursuant to G.S. 1A-1, Rule 17 for the juvenile for the purposes of that appeal.

(3) A county department of social services.

(4) A parent, a guardian appointed under G.S. 7B-600 or Chapter 35A of the General Statutes, or a custodian as defined in G.S. 7B-101 who is a non-prevailing party.

(5) Any party that sought but failed to obtain termination of parental rights. (1979,

c. 815, s. 1; 1998-202, s. 6; 1999-456, s. 60; 2005-398, s. 11.)

[Note – does not include Plaintiff because DSS hid her status as EJV's Custodian, and referred to PL only as Caretaker, which is not consider a party with right of appeal. Therefore section 7B-320 was PL's only provision to contest the allegations, and she was denied that opportunity.]

28 U.S. Code § 1738A (e) – pp. 7, 20, 27, 28

Title 28 Judiciary and Judicial Procedure

Before a child custody or visitation determination is made, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated and any person who has physical custody of a child.

UCCJEA- pp. 3, 6, 7, 18, 20, 27, 28, 35

The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)

"One key purpose of the UCCJEA is to 'provide a uniform set of *jurisdictional rules* and guidelines for the national enforcement of child custody orders.' *In re J.W.S.*, 194 N.C. App. 439, 446 (2008); *see* GS 50A-101 Official Comment. The UCCJEA defines when a court has subject matter jurisdiction of a child custody proceeding, which includes abuse, neglect, and dependency actions (A/N/D). *See* GS 50A-102(4) "UNC School of Law Blog "Jurisdiction in A/N/D Cases"

In North Carolina, UCCJEA – pp. 6, 27, 29

laws are found under GS Chapter 50A

§ 50A-106.

Effect of child-custody determination. A child-custody determination made by a court of this State that had jurisdiction under this Article binds all persons who have been served in accordance with the laws of this State or notified in accordance with G.S. 50A-108 or who have submitted to the jurisdiction of the court **and who have been given an opportunity to be heard**. As to those persons, the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified. (1979, c. 110, s.1; 1999-223, s. 3.) [bold added].

UCCJEA 102 – p. 29

Definitions. In this Article: (3) "Child-custody determination" means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, and modification order. (4) "Child custody proceeding" means a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence in which the issue may appear.

NCGS 50A 102 – p. 29

"Child-custody proceeding" means a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence in which the issue may appear

UCCJEA SECTION 205 – pp. 6, 18, 26, 27, 29

NOTICE; OPPORTUNITY TO BE HEARD; JOINDER. (a) Before a child-custody determination is made under this [Act], notice and an opportunity to be heard in accordance with the standards of Section 108 must be given to all persons entitled to notice under the law of this State as in child custody proceedings between residents of this State, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child. "Comment" Parents whose parental rights have not been previously terminated and persons having physical custody of the child are specifically mentioned as persons who must be given notice. The PKPA, § 1738A(e), requires that they be given notice in order for the custody determination to be entitled to full faith and credit under that Act.

NCGS 50A-205 – pp. 18, 27

Notice; opportunity to be heard; joinder. (a) Before a child-custody determination is made under this Article, notice and an opportunity to be heard in accordance with the standards of G.S. 50A108 must be given to all persons entitled to notice under the law of this State as in child-custody proceedings between residents of this State, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child [emphasis added].

UCCJEA - SECTION 209 – pp. 3, 4, 6, 17, 18, 20, 22, 25, 29-31, 34, 39, 40

INFORMATION TO BE SUBMITTED TO COURT.

(a) [Subject to [local law providing for the confidentiality of procedures, addresses, and other identifying information], in] [In] a child-custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, **under oath** as **to the child's present address or whereabouts, the places where the child has lived during the last five years, and the names and present addresses of the persons with whom the child has lived during that period**. The pleading or affidavit must state whether the party: (3) knows the names and addresses of any person not a party to the proceeding who has **physical custody of the child** or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons.

(b) If the information required by subsection (a) **is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished** [emphasis added]

The Affidavit form is found here:

https://www.nccourts.gov/assets/documents/forms/cv609.pdf?VrQuFFkIquY0PPw1Z_.tInlRRLHPyWNG '

The information asked for is:

"I, the undersigned affiant, being first duly sworn, say that during the past five (5) years the above-named minor child has lived as follows:"

Period of Residence		Address	Name of Person Lived with	Present Address of Person
From	To			
	Present			

NCGS 50A-209 – pp. pp. 2, 3, 4, 6, 17, 18, 20, 22, 25, 29-31, 34, 39, 40

Information to be submitted to court. (a) In a child-custody proceeding, each party, in its first pleading or in an attached affidavit, **shall give information, if reasonably ascertainable, under oath as to the child's present address or whereabouts, the places where the child has lived during the last five years, and the names and present addresses of the persons with whom the child has lived during that period**. The pleading or affidavit must state whether the party (3) Knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons.

(c) If the information required by subdivisions (a) **is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished** [emphasis added].

NCGS 50-13.1(b1) – pp. 2, 26

Biologically related grandparents lose any rights to visitation with a grandchild if the child is adopted by parents not related to the child.

"Under no circumstances shall a biological grandparent of a child adopted by adoptive parents, neither of whom is related to the child and where parental rights of both biological parents have been terminated, be entitled to visitation rights."

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