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No. _____

In the Supreme Court of the United States

DeAndre' and Constance F. Russell,

Petitioner(s) pro se'

V.

United States of America/ State of Alabama

Respondents

October 12, 2021

**On Petition for a Writ of Certiorari to the
United States Court of Appeals for the
Eleventh Circuit**

APPENDIX A

(CORRECTED)

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-11747
Non-Argument Calendar

D.C. Docket No. 5:19-cv-01597-LCB

DEANDRE RUSSELL,
CONSTANCE RUSSELL,

~~Plaintiffs-Appellants,~~

versus

UNITED STATES OF AMERICA,
STATE OF ALABAMA,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Alabama

(February 1, 2021)

Before JILL PRYOR, EDMONDSON, and BLACK, Circuit Judges.

PER CURIAM:

Plaintiffs DeAndre' and Constance Russell, proceeding pro se,¹ appeal the district court's dismissal -- for lack of standing -- of their amended² complaint for declaratory and injunctive relief. No reversible error has been shown; we affirm.

Plaintiffs filed this civil action against the United States, the State of Alabama, and members of the United States Congress and the Alabama Legislature. Briefly stated, Plaintiffs challenge as unconstitutional the Federal Judiciary Act of 1925 and its amendments ("the Judiciary Act"). Plaintiffs say the Judiciary Act permits appellate courts to "evade review of . . . important cases or controversies" by issuing what Plaintiffs call a "no opinion ruling": a decision affirming a lower court judgment or denying a writ of certiorari without discussion.

¹ We construe liberally pro se pleadings. Tannenbaum v. United States, 148 F.3d 1262, 1263 (11th Cir. 1998).

² Plaintiffs filed their initial complaint in September 2019. On 11 October 2019, Plaintiffs moved -- pursuant to Fed. R. Civ. P. 15(a)(1) -- for leave to amend their complaint to "present a more definite and precise statement of clarity." On 23 October (fewer than 21 days after service of process) Plaintiffs filed a "Motion to Clarify and Summarize their Complaint with a More Definite Statement." In their 23 October filing, Plaintiffs summarized and elaborated on the claims presented in their initial complaint. The district court construed Plaintiffs' 23 October filing as a supplement to the initial complaint -- filed as a matter of course under Rule 15(a)(1) -- and thus deemed as moot Plaintiffs' 11 October motion for leave to amend.

Plaintiffs contend these “no opinion rulings” violate due process because — in denying claims or review without opinion — appellate courts decide impermissibly what cases are of public importance and deprive litigants of a meaningful opportunity to have their claims “heard and decided.” By passing the Judiciary Act, Plaintiffs say Congress violated 42 U.S.C. § 1983, Articles I, II, and III of the United States Constitution, the Due Process Clause, and the Equal Protection Clause.

About standing, Plaintiffs alleged they suffered injuries when their purportedly meritorious claims were denied without opinion by federal and state appellate courts. Plaintiffs say the United States Supreme Court twice denied without opinion petitions for certiorari filed by DeAndre’ and that the Alabama Supreme Court denied without opinion a petition for review filed by Constance.

As relief, Plaintiffs sought (1) a declaration that the Judiciary Act is unconstitutional; (2) an injunction enjoining federal and state appellate courts from issuing “no opinion rulings”; (3) a temporary stay in Plaintiffs’ 2011 and 2014 bankruptcy proceedings and in “all lawsuits and State Court proceedings filed by” Plaintiffs; (4) attorney’s fees and costs; and (5) other relief deemed “just and proper.” Plaintiffs asked for no monetary damages or relief from an existing judgment of any court.

The district court determined that Plaintiffs lacked standing and, thus, granted the government's motion to dismiss. The district court found Plaintiffs had alleged no concrete and particularized injury and, instead, asserted only a generalized grievance about the government that was insufficient to establish Article III standing. This appeal followed.

Supplement to the Appellate Record:

As an initial matter, Plaintiffs seek to supplement the appellate record with documents -- including the complained-of "no opinion rulings" -- filed in the civil actions underlying Plaintiffs' complaint. We have said that we will "rarely supplement the record to include material that was not before the district court, but we have the equitable power to do so if it is in the interests of justice" and we will make that determination on a case-by-case basis. See Schwartz v. Millon Air, Inc., 341 F.3d 1220, 1225 n.4 (11th Cir. 2003). Even when the additional information is not dispositive, "we may allow supplementation in the aid of making an informed decision." Id. We may also take judicial notice of a document filed in another federal or state court "to establish the fact of such litigation and related filings." See United States v. Jones, 29 F.3d 1549, 1553 (11th Cir. 1994); Lozman v. City of

Riviera Beach, 713 F.3d 1066, 1075 n.9 (11th Cir. 2013)) (taking judicial notice of court documents filed in a state eviction action); Fed. R. Evid. 201(b) (“The court may judicially notice a fact that is not subject to reasonable dispute because it . . . can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.”)).

Plaintiffs’ pro se complaint references more than one proceeding in which Plaintiffs say they were denied relief without opinion but lists only one identifiable case number. Because the additional information Plaintiffs now seek to add to the record will aid our decision-making — and because we may take judicial notice of the fact of the issuance of the pertinent court orders — we will allow Plaintiffs to supplement the record on appeal.

Reading Plaintiffs’ complaint together with Plaintiffs’ supplemental record filings, Plaintiffs have identified three civil actions underlying their due process claims: (1) a Chapter 13 bankruptcy proceeding filed by DeAndre’ in 2011; (2) a 2013 civil action filed by DeAndre’ against his creditor, his bankruptcy lawyer, and the bankruptcy trustees in the United States District Court for the Northern District of Alabama; and (3) a 2005 garnishment action filed against Constance in Alabama state court. In each case, DeAndre’ or Constance ultimately petitioned the United States Supreme Court for a writ of certiorari. And, in each case, the

Supreme Court denied certiorari without opinion. See Russell v. First Resol. Inv. Corp., 140 S. Ct. 213 (2019), reh'g denied, 140 S. Ct. 633 (2019); Russell v. Redstone Fed. Credit Union, 139 S. Ct. 457 (2018), reh'g denied, 139 S. Ct. 1245 (2019); Russell v. Geddes, 571 U.S. 835 (2013). The most recent of these denials was issued in December 2019: before the district court dismissed Plaintiffs' complaint in April 2020 and before this appeal was filed.

Standing:

We review de novo a dismissal for lack of standing. Scott v. Taylor, 470 F.3d 1014, 1017 (11th Cir. 2006).

"The party invoking federal jurisdiction bears the burden of establishing" standing. Lujan v. Defs. of Wildlife, 504 U.S. 555, 561 (1992).³ To establish Article III standing, a plaintiff must establish three elements: (1) he has suffered an injury-in-fact, (2) a causal connection between the injury and the complained-of conduct, and (3) the injury is capable of being redressed by the court. Id. at 560-61. To show an injury-in-fact, a plaintiff must demonstrate that he suffered "an

³ Contrary to Plaintiffs' contention on appeal, a ruling about standing may be made at all stages of litigation, including at the pleading stage, the summary judgment stage, or at trial. See Lujan, 504 U.S. at 561-62.

invasion of a legally protected interest” that is “concrete and particularized” and “actual or imminent.” Id. at 560.

In addition to showing a past injury, a plaintiff seeking prospective injunctive or declaratory relief must also “show a sufficient likelihood that he will be affected by the allegedly unlawful conduct in the future.” Houston v. Marod Supermarkets, Inc., 733 F.3d 1323, 1328-29 (11th Cir. 2013) (injunctive relief); Malowney v. Fed. Collection Deposit Grp., 193 F.3d 1342, 1347 (11th Cir. 1999) (declaratory relief). In other words, a plaintiff has standing to seek prospective relief only if he can show “a real and immediate — as opposed to a merely conjectural or hypothetical — threat of future injury.” Houston, 733 F.3d at 1329 (emphasis in original); Malowney, 193 F.3d at 1347.

Construed liberally, Plaintiffs’ complaint might allege sufficiently a past injury. Plaintiffs contend that the Judiciary Act and the issuance of “no opinion rulings” violate due process. Plaintiffs further allege that they personally suffered a due process violation when their claims were denied without opinion by federal and state appellate courts.

That Plaintiffs have alleged sufficiently a past injury is only the first step in our standing inquiry. Because Plaintiffs seek only prospective declaratory and

injunctive relief,⁴ they must allege facts that also establish a “real and immediate” threat of future injury. Plaintiffs have failed to satisfy that burden.

Never have Plaintiffs alleged that they are still at imminent risk of a future due process violation. The three civil actions underlying Plaintiffs’ complaint are already final: Plaintiffs thus face no threat of alleged future injury from the issuance of a “no opinion ruling” in those cases. Nor have Plaintiffs alleged that they have other pending lawsuits that might give rise to a reasonable expectation that Plaintiffs are likely to be subject to future injury from the issuance of a “no opinion ruling.”⁵

⁴ Plaintiffs sought no relief from an existing court judgment or damages for their alleged past injuries. Plaintiffs’ complaint included a request for a temporary stay in the then-unidentified underlying civil proceedings. Such relief was unavailable, however, because final judgment had already been entered in each of the three underlying proceedings before the district court rendered its decision.

Plaintiffs’ complaint also asked for other relief “as the Court deems just and proper.” We do not, however — for the purpose of our standing inquiry — construe this language to encompass a request for damages or other relief from an existing judgment. We have said that the “mere incantation of such boilerplate language” cannot convert the nature of relief sought. See *Rosen v. Cascade Int’l*, 21 F.3d 1520, 1526 n.12 (11th Cir. 1994) (vacating a grant of a preliminary injunction when plaintiffs sought only money damages and other “just and proper” relief: asking for “just and proper” relief “does not convert a legal cause of action into a legitimate request for equitable relief.”). We have also stressed that if a plaintiff fails to satisfy his burden of alleging facts sufficient to establish Article III standing, “this court lacks the power to create jurisdiction by embellishing a deficient allegation of injury.” See *Elend v. Basham*, 471 F.3d 1199, 1206 (11th Cir. 2006). Nor does the leniency we afford *pro se* pleadings give us “license to serve as *de facto* counsel for a party, or to rewrite an otherwise deficient pleading in order to sustain an action.” *Campbell v. Air Jam., Ltd.*, 760 F.3d 1165, 1168-69 (11th Cir. 2014).

⁵ In their September 2019 initial complaint, Plaintiffs alleged that Constance had petitioned the United States Supreme Court for review of the Alabama Supreme Court’s “no opinion ruling.”

Plaintiffs have alleged no “real or immediate” threat of future injury.

Plaintiffs thus lack Article III standing to bring this action for prospective declaratory or injunctive relief. Cf. Malowney, 193 F.3d at 1348 (because plaintiffs showed no substantial likelihood of future injury, a declaration that the challenged statute “as applied in the past to these plaintiffs is unconstitutional would be nothing more than a gratuitous comment without any force or effect.” (quotation and alteration omitted)). We affirm the district court’s dismissal for lack of standing.

AFFIRMED.

The Supreme Court denied certiorari on 7 October 2019 (before Plaintiffs amended their complaint on 23 October) and denied rehearing on 9 December 2019. That lawsuit was done and was thus not pending when the district court dismissed for lack of standing. Article III’s case-or-controversy requirement demands that standing “persist throughout all stages of litigation.” Va. House of Delegates v. Bethune-Hill, 139 S. Ct. 1945, 1950-51 (2019).

No. _____

In the Supreme Court of the United States

DeAndre' and Constance F. Russell,

Petitioner(s) pro se'

v.

United States of America/ State of Alabama

Respondents

October 12, 2021

**On Petition for a Writ of Certiorari to the
United States Court of Appeals for the
Eleventh Circuit**

APPENDIX B

(CORRECTED)

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-11747-HH

DEANDRE RUSSELL,
CONSTANCE RUSSELL,

Plaintiffs - Appellants,

~~VERSUS~~

UNITED STATES OF AMERICA,
STATE OF ALABAMA,

Defendants - Appellees.

Appeal from the United States District Court
for the Northern District of Alabama

BEFORE: JILL PRYOR, EDMONDSON, and BLACK, Circuit Judges.

PER CURIAM:

The Petition for Panel Rehearing filed by Deandre Russell and Constance Russell is DENIED.

No. _____

In the Supreme Court of the United States

DeAndre' and Constance F. Russell,

Petitioner(s) pro se'

V.

United States of America/ State of Alabama

Respondents

October 12, 2021

**On Petition for a Writ of Certiorari to the
United States Court of Appeals for the
Eleventh Circuit**

**APPENDIX C
(CORRECTED)**

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION**

DEANDRE' RUSSELL, *et al.*,

Plaintiffs,

v.

**UNITED STATES OF AMERICA, *et*
al.,**

Defendants.

Case No.: 5:19-cv-1597-LCB

MEMORANDUM OPINION

The Plaintiffs, DeAndre' and Constance Russell, appearing *pro se*, filed a complaint on September 27, 2019.¹ (Doc. 1). In the style of their case, the Plaintiffs list the United States of America and the State of Alabama as defendants. However, in the section of their complaint entitled "Defendant(s)," the Plaintiffs describe the defendants as "All members of the United States Congress (pass (sic), recent and present years)" that voted in the affirmative to pass the Federal Judiciary Act of 1925 and its subsequent Amendments. (Doc. 1, p. 5). The Plaintiffs also name as defendants "All Members of the Alabama Legislators (sic) (pass (sic), recent and

¹ The Plaintiffs also filed a "Motion with (sic) Leave to Amend" on October 11, 2019, (Doc. 10) followed a "Motion to Clarify and Summarize their Complaint With a More Definite Statement" on October 23, 2019. (Doc. 13). As its title reflects, the latter is not a motion but a summary of the Plaintiffs' argument. It does not add or remove any claims. The Court will thus treat it as a supplement to the original complaint pursuant to Fed. R. Civ. P. 15(a)(1). Accordingly, the motion for leave to amend (Doc. 10) is **MOOT**.

present) who are following in a *Lock-Step Doctrine*, of the U.S. Congresses (sic) Federal Judicial (sic) Act of 1925 and all its Amendments.....” *Id.*

The Plaintiffs purport to bring their claims pursuant to 42 U.S.C. § 1983, and allege that the appellate court practice of issuing decisions without a written opinion, what the Plaintiffs refer to as “no opinion rulings,” violates various constitutional rights. The Plaintiffs assert that the Federal Judiciary Act, as amended, allows for this practice. In their complaint, the Plaintiffs state that “Congress cannot create a federal law that leaves full discretion to the Appellate (State and Federal) Justices, to decide whether a case may or may not be important enough for adjudication, based on no set standard of what constitutes important enough.” (Doc. 1, p. 6-7). The Plaintiffs similarly allege that the appellate court practice of discretionary review deprives them and others of those same rights. The Plaintiffs are seeking a declaratory judgment holding the Judiciary Act of 1925 unconstitutional and an injunction directing all federal and state appellate courts to issue written opinions on every case that comes before them. The Plaintiffs also appear to be asking this Court to enjoin the practice of discretionary review by all appellate courts in the nation, including the United States Supreme Court.

The complaint contains little in the way of background. Although not specifically alleged, the Plaintiffs appear to have appealed an adverse ruling from a lower state and/or federal court to an intermediate appeals court, which then affirmed

the ruling of the trial court without publishing a written opinion.² One of the Plaintiffs also asserts that she has filed a petition for a writ of certiorari in the United States Supreme Court. As best the Court can discern, the Plaintiffs have alleged that Congress, by passing the Judiciary Act of 1925, has violated various constitutional rights because that Act allows intermediate appellate courts to issue “no opinion rulings” and gives certain appellate courts the discretion to decline to hear an appeal. (Doc. 1, p. 6). The Plaintiffs also allege that the Alabama Legislature has violated the same constitutional rights by allowing the same procedures in state court.³

Discussion

Federal courts must determine that they have jurisdiction before hearing a case. *Steel Co. v. Citizens for Better Env't*, 523 U.S. 83, 94–95 (1998). Article III of the Constitution limits the jurisdiction of federal courts to “Cases” and “Controversies.” *Lance v. Coffman*, 549 U.S. 437, 439 (1998) (citing U.S. Const. art. III, § 2). One component of the case or controversy requirement is standing, which requires a plaintiff to demonstrate injury in fact, causation, and redressability. See *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992).

² The complaint references a bankruptcy proceeding but also references an appeal to the Alabama Court of Civil Appeals. Thus, it can be inferred that there were at least two separate proceedings from which one or both of the Plaintiffs appealed. Again, the Plaintiffs do not give any details about the proceedings from which they appealed.

³ The Plaintiffs do not identify a specific state law.

In its motion to dismiss, the Defendant asserted, among other things, that this case is due to be dismissed pursuant to Fed. R. Civ. P. 12(b)(1) because, it says, the Plaintiffs lack standing. The United States Supreme Court has held that in order to meet the standing requirement of Article III of the United States Constitution, a plaintiff must establish the following:

- (1) it has suffered an "injury in fact" that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical;
- (2) the injury is fairly traceable to the challenged action of the defendant; and
- (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc., 528 U.S. 167, 180-81 (2000). "The party invoking federal jurisdiction bears the burden of establishing these elements. Since they are not mere pleading requirements but rather an indispensable part of the plaintiff's case, each element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, i.e., with the manner and degree of evidence required at the successive stages of the litigation." *Lujan*, 504 U.S. at 561 (internal citations omitted).

In reviewing the Plaintiffs' complaint, the Court finds that they have alleged only a generalized injury by claiming that the practice of "no opinion rulings" and discretionary appellate review deprives them of various constitutional rights

including the right to due process. Although the Plaintiffs vaguely refer to cases they were actually involved in, they do not provide any detail about those proceedings. Their grievance is not a concrete, particularized, actual, or imminent

injury. Instead, Plaintiffs sweepingly claim that all citizens of the United States suffer when they receive a “no opinion” ruling from an appellate court.

Accordingly, the Plaintiffs have failed to allege any concrete and particularized injuries. The Supreme Court has consistently held that “a plaintiff raising only a generally available grievance about government—claiming only harm to his and every citizen's interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large—does not state an Article III case or controversy.” *Lance v. Coffman*, 549 U.S. at 439 (1998)(citing *Lujan*, 504 U.S. at 573–574).

In order to establish Article III standing, a plaintiff must satisfy all three elements laid out by the Supreme Court in *Lujan*. Because the Plaintiffs have failed to allege facts supporting the first element, the Court need not consider whether the remaining factors are satisfied. Thus, by holding that the Plaintiffs have failed to allege an injury in fact, the Court is not implying that they have met the remaining elements of Article III standing. The Court makes no findings on those issues. Accordingly, the Defendant's motion to dismiss (Doc. 15) is due to be granted.

Although the Plaintiffs' lack of standing is dispositive in this case, the Court points out that the Plaintiffs' grievance with "no opinion rulings" appears to be based on their misunderstanding of that procedure. The Plaintiffs seem to be under the impression that, when an appellate court issues a decision without a written opinion, that court is not actually adjudicating the case on the merits. See e.g. (Doc. 1, p. 9)(asserting that the Judiciary Act of 1925 gives appellate courts "the authority to say 'no I/We, the justices of these high courts, have nothing to say about your case, even if your case has merit.'"). The Plaintiffs even assert their belief that due process would be satisfied if appellate courts would issue an opinion stating as follows: "no petitioner, we looked at your case and saw where the lower courts done (sic) nothing wrong, therefore we will not take up or further your case." (Doc. 1, p. 10-11). What the Plaintiffs do not understand is that when a case is affirmed without opinion, that is precisely what the appellate court is saying. Rulings issued by appellate courts without contemporaneous published opinions have been considered on the merits by those courts.

Plaintiffs' Other Motions

The Plaintiffs also filed two motions which appear to be requesting a change of venue. See (Docs. 3 and 11). In their "Motion to Place Constitutional Complaint in Proper Court Pursuant to 28 § 1631" (Doc. 3), the Plaintiffs asked the Court to transfer their case to the proper jurisdiction if the Court determined that it did not

have jurisdiction. Similarly, in their “Motion to Change Venue” (Doc. 11), the Plaintiffs, citing 28 U.S.C. § 1404, stated that it would be improper for a court in Alabama to hear this case because, they say, their complaint centers around alleged wrongs committed by courts in Alabama (both state and federal). However, the Plaintiffs did not identify the venue that they believe to be proper. Nevertheless, these motions are **DENIED**. Because the Plaintiffs lack standing to bring the claims asserted in their complaint, this case would not be proper in any jurisdiction.

The Plaintiffs also filed a “Motion for Adjudication by (3) Panel Judge of a Constitutional Complaint” (Doc. 4). Citing 28 U.S.C. § 2281⁴, the Plaintiffs ask that this case be assigned to a three-judge panel of district judges because of the significance of their claim. The Plaintiffs appear to be referring to 28 U.S.C. 2284(a), which provides: “A district court of three judges shall be convened when otherwise required by Act of Congress, or when an action is filed challenging the constitutionality of the apportionment of congressional districts or the apportionment of any statewide legislative body.” This case meets none of those criteria. Accordingly, this motion is **DENIED**.

The Plaintiffs also filed a “Motion to Correct the Record of Plaintiff(s) Complaint” (Doc. 8), which appears to notify the Court that they properly served the

⁴ 28 U.S.C. § 2281 was repealed in 1976.


defendants and that one of the Plaintiffs' name was incorrect on certain filings. To the extent this was intended to be a motion to amend the complaint to correct a party's name, the motion is **GRANTED**. Finally, the Plaintiffs filed a "Motion to Present the Good Faith of their Filed Constitutional Complaint" (Doc. 18), in which the Plaintiffs stated that their complaint was made in good faith and was not intended to cause any undue delay in their underlying proceedings. However, this motion does not appear to actually ask for any type of relief. To the extent it could be construed to ask for any type of relief, the motion is **DENIED**.

The Court also notes that, two weeks after they filed their original complaint, the Plaintiffs filed a "Motion for Preliminary Injunctive and Restraining Order Relief" (Doc. 9). This motion sought a preliminary injunction staying one or both of the Plaintiffs' bankruptcy proceedings. The other relief sought in the motion is unclear. Nevertheless, because the Court has determined that the Plaintiffs lack standing and are consequently not entitled to any relief, this motion is **DENIED**.

Conclusion

For the foregoing reasons, the Defendant's motion to dismiss (Doc. 15) is due to be **GRANTED** and this case **DISMISSED WITH PREJUDICE**. A separate order will be entered.

DONE and **ORDERED** April 9, 2020.



LILES C. BURKE
UNITED STATES DISTRICT JUDGE

No. _____

In the Supreme Court of the United States

DeAndre' and Constance F. Russell,

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APPENDIX D

(CORRECTED)

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION**

DEANDRE' RUSSELL, *et al.*,

Plaintiffs,

v.

UNITED STATES OF AMERICA, *et*
al.,

Defendants.

Case No.: 5:19-cv-1597-LCB


ORDER

For the reasons stated in the accompanying memorandum opinion, the Defendant's motion to dismiss (Doc. 15) is **GRANTED**, and this case is hereby **DISMISSED WITH PREJUDICE**.

Additionally, the Plaintiffs' "Motion to Correct the Record of Plaintiff(s) Complaint" (Doc. 8) is **GRANTED**. The Plaintiffs' motions regarding a change of venue (Docs. 3 and 11), "Motion for Adjudication by (3) Panel Judge of a Constitutional Complaint" (Doc. 4), "Motion to Present the Good Faith of their Filed Constitutional Complaint" (Doc. 18), and "Motion for Preliminary Injunctive and Restraining Order Relief" (Doc. 9), are **DENIED**.

The Clerk is directed to close this file. Costs are taxed as paid.

DONE and **ORDERED** April 9, 2020.



LILES C. BURKE
UNITED STATES DISTRICT JUDGE