No. 20-40642

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Wanda L. Bowling
Plaintiff – Appellant

v.

Lester John Dahlheimer, Jr., Estate; Lester John Dahlheimer Sr., Estate; Paulette Mueller, in her Official and Individual Capacity; Judge Piper McCraw, in her Official and Individual Capacity; Greg Willis, in his Official and Individual Capacity; Craig A. Penfold, in his Official and Individual Capacity; Judge David Evans, in his Official and Individual Capacity; Rhonda Childress-Herres, in her Official and Individual Capacity; Clerk of the Court, 5th District Court of Appeals
Defendants – Appellees

Appeal from the United States District Court
Eastern District of Texas, Case No. 4:18-cv-00610

BRIEF OF APPELLANT

Wanda Bowling- Pro Se
APPELLANT
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CERTIFICATE OF INTERESTED PERSONS

No. 20-40642

WANDA BOWLING,
Plaintiff - Appellant

v.

LESTER DAHLHEIMER JR., et al
Defendants - Appellees

The undersigned counsel of record certifies that the following listed persons and entities listed in the fourth sentence of 5th Cir. Rule 28.2.1. have an interest in the outcome of this case. These representations are made in order that the Judges of this Court may evaluate possible disqualification or recusal:

1. Greg Willis, Defendant
2. Robert Davis, with MATTHEWS, SHEILS, KNOTT, EDEN, DAVIS & BEANLAND, Attorney for Greg Willis
3. Paulette Mueller, Defendant and self representing with UNDERWOOD PERKINS
4. Lester Dahlheimer Jr., Defendant
5. Eli Pierce, Attorney for Lester John Dahlheimer Jr. with UNDERWOOD PERKINS
6. Lester Dahlheimer Sr., Defendant
7. Robert M. Nicoud, Jr., Attorney for Lester Dahlheimer Sr. with NICOUD LAW
8. Rhonda Herres, Defendant
9. David Vassar, Attorney for Rhonda Herres with NESBIT, VASSAR, & MCCOWN

10. Craig Penfold, Defendant
11. Kelli Hinsin, Attorney for Craig Penfold with CARRINGTON, COLEMAN, SLOMAN & BLUMENTHAL
12. Texas District 469th Judge Piper McCraw, Defendant
13. Texas 5th District Appellate Judge David Evans, Defendant
14. Texas 5th District Court of Appeals Clerk, Lisa Matz
15. Scot MacDonal Graydon, with the OAG OF TEXAS, Attorney for McCraw, Evans, and Matz.

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NO ORAL ARGUMENT REQUESTED

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JURISDICTIONAL STATEMENT

TO THE HONORABLE COURT OF APPEALS:

COMES NOW, WANDA BOWLING, files this Brief challenging three final judgements disposing all claims/parties issued by the United States District Court for the Eastern District of Texas, Sherman Division, in Cause No. 4:18-cv-00610, the Honorable Amos Mazzant, United States District Judge, presiding. The three Orders are: **1)** Dkt. # 180 the Memorandum Adopting Report and Recommendation of United States Magistrate Judge entered 8/28/2020, **2)** Dkt. #182 Memorandum Adopting Report and Recommendation of United States Magistrate Judge entered 9/8/2020, and **3)** Dkt. #183 Final Judgment. Appellant filed a timely Notice of Appeal on 9/22/2020. An extension to file a Brief on 12/17/2020 was granted. Word count increase was granted not to exceed 17,500.

The above orders are immediately appealable to the United States Fifth Circuit Court of Appeals under 28 U.S. Code § 1291.

Appellant, brought this case to the US Eastern District Court of Texas under subject matter pursuant to Title 42 United States Code 1983 Civil Action for Deprivation of Rights, Title 42 United States Code 1985 Conspiracy to Interfere with Civil Rights, 28 U.S. Code § 1356 – Seizures not within admiralty and maritime jurisdiction, 28 U.S. Code § 1343 – Civil rights and elective franchise, 28 U.S. Code § 1367 – Supplemental jurisdiction and Title 28, U.S.C. § 754 and 959(a) Trustees and Receivers, and the overarching 28 U.S C. §1331 Federal Question, 4th, 5th , 9th, and 14th Amendments.

STATEMENT OF ISSUES FOR REVIEW

1. First Issue: The court misapplied Rule 54 for Rule 60 motions
2. Second Issue: The court abused it's discretion in denying Bowling's First Amended Complaint.
3. Third Issue: The court abused it's discretion by the dismissal of Appellants claims against Defendants by denying Motions for Relief of Judgment
4. Fourth Issue: The Final Judgement is an error if Issues One through Three have merit.

STATEMENT OF THE CASE

This case arises from a simple Texas divorce for which criminal activity was discovered of a wealthy Republican family(Defendant Dahlheimer Jr. & Sr.). One new and inexperienced Greg Abbott appointed Republican Trial Judge conspired politically with the wealthy instead of judicially with the victim. The judge's unlawful actions were exposed. The more her actions were exposed the more this judge acted unlawfully. The abnormal adjudication hastened other officials to join in to conceal the unlawful conduct. Bowling experienced forces of threats beyond comprehension. To protect herself Bowling was forced to escalate into higher Texas courts and expose certain officials conduct to push off the encroachment of aggression.

Obstruction to bring the unlawful activity to a court continued in the higher courts.

Most of the facts in the section below can be proven by court records, transcripts, video(of harassment), business affidavits already retrieved, texts, emails, etc. There is very little left for theory.

The failure of the federal district court is the biased conduct of a Magistrate who has solid relationships with Defendants. Judge Christine Nowak wrote approximately 250 pages of lengthy distortions of facts in favor of the Defendants and omitted Bowling's arguments to promote dismissal. Nowak's omissions are pinnacle to Bowling's case and were swept under the carpet. The senior Judge Mazzant simply adopted the reports and recommendation. There has been no Trial.

Bowling filed a complaint to the Judicial Conduct and Disability over Nowak's misconduct. Unfortunately for this court, the Judicial Conduct clerk abated their investigation to allow the Fifth Circuit Court judges to do their assessment of Nowak's distortions, this panel.

Judge Christine Nowak should have recused herself due to relationships and conflict of interest *sua sponte. Turner v Pleasant*, 663 F.3d 770 (2011).

Relationships and conflicts: Magistrate Christine Nowak is married to Judge Tom Nowak who works with Defendant McCraw in the same district court.

Defendant Greg Willis's wife , Jill Willis, was on the small commission who appointed Magistrate Nowak to her federal judge seat.

Christine Nowak also serves on the board of 10 advisers for the Collin County Women's Lawyers

Association with Defendant McCraw, Defendant Willis' wife:Jill Willis, and 6 other judges in that same court who work alongside Nowak's husband, Tom Nowak.

Defendant McCraw, Defendant Evans, spouse Tom Nowak, and most of the same judges in the CCWLA, were all appointed by Greg Abbott as "Republican" judges.

Judge Christine Nowak has far too many relationships with the Defendants and the conflict of interests being married to the Greg Abbott Republican appointee club. This is a group of rogue Officials.

Nowak seems to be in conspiracy with the Collin County Trial Court where her spouse and Defendants(McCraw, Willis, Roach) preside. Nowak issued a report and recommendation to wrongly deem Bowling a "Vexatious Litigant" and to place a prefiling injunction against Bowling. Mazzant "adopted" the report. Bowling filed an interlocutory appeal to this court and has been waiting for 8 months for disposition. This gave the state trial court, now Defendant Judge Roach(successor to McCraw), a leg up to issue a vexatious litigant order in the trial court against Bowling in the Trial court because of the Federal Court's Order. Bowling has only had one case in the state and federal. Nowak's push for this order has the appearance of conspiracy with the Trial Court. Nowak can't invoke "Rooker Feldman" doctrines when she is giving the Trial court permission to obstruct Bowling from litigating the issues. Bowling attempted to appeal the same Vexatious Litigant order in the state trial court, but was met with a $25,000.00 charge to appeal the

Vexatious Litigant Order. Bowling's letter to the administrative judge for permission was obstructed by the clerk of the court. This obstruction gives Bowling no remedy for restoration.

Nowak ignored the standard of review of Rule 12(b)(6) dismissal is de novo, viewing the complaint "in the light most favorable to the Plaintiff, taking as true all well-pleaded factual allegations and making all possible inferences from those allegations in his or her favor" *Lee v. City of Chicago*, 330 F.3d 456,459 (7th Cir. 2003). Instead, Nowak created distortions in favor of the Defendants. Nowak's reports are a grave departure from the facts. This is not a conclusive accusation if the departure can be recognized as blatant in the documents, complaint vs the reports..

Nowak denied Bowling electronic filing, denied several TROs where Bowling was displaced from home, twice ignored enjoining Defendant Roach for the ongoing violations, denied a motion to strike prejudicial information(violation of civil right), denied Amended Complaints, and gave only partial extensions which caused hindrance in Bowling ability to properly respond to the volume of pleadings.

Bowling's objections: ROA.491, 1002, 1029, 1041, 1116, 1143, 1306, 1311, 1317, 1349, 1548, 1557, 1650, 1665.

STATEMENT OF FACTS

(articulated in Original Complaint ROA.26-35
First Amended Complaint p. 4-12(stricken) and

Second Amended Complaint ROA.1423-1434)

Federal Case arising from a simple Divorce of 10 years, no children

In March of 2015 Bowling filed for a divorce from Defendant Dahlheimer for violence and adultery. Dahlheimer responded by stalking, vandalizing, and threatening Bowling a number of ways. Bowling's divorce case was transferred from the honorable Judge Becker's court into Judge McCraws court, a newly appointed Republican judge by Greg Abbott. Unlike Becker, McCraw proceeded lawlessly bending over backwards to violate due process and Texas laws, to obstruct hearings for Bowling's pleadings, yet rule adversely without Bowling being heard.

Dahlheimer was eventually arrested for violating the Protection Order(unknowingly stalked Bowling by sitting behind her in church for 7 months). However, McCraw appeared to adjudicate giving Dahlheimer a license to continue threatening Bowling at every chance. Arrogantly, Dahlheimer increased the threats toward Bowling.

After inspecting her finances and undeleting emails on old computers Bowling discovered Dahlheimer Jr and Sr. had stolen interests in Bowling's separate property, forged deeds, forged contracts, used her S Corporation for their business, etc. It appeared this theft began as early as several months after they were married(2004). McCraw ignored Bowling's pleading to compel discovery and allowed Dahlheimer, the new recipient of his Trust Fund, to litigate frivolously (vexatiously) cluttering up court time and draining Bowling's resources. The

frivolous litigation caused Bowling to spend an unmanageable amount of money defending herself against the untenable false claims by Dahlheimer and his vexatious attorney Paulette Mueller. The financial stress forced Bowling to proceed Pro Se, partly. Mueller facilitated and coordinated Dahlheimer' s criminal endeavors to oppress Bowling. McCraw also appeared to conspire with the Dahlheimers and Mueller.

McCraw was asked to recuse herself twice. In both cases McCraw refused to comply with the Recusal rules. McCraw declined to transfer the case to an admin judge and follow due process designed to promote justice for a motion to recuse. In both recusals there was no notice for a hearing, just an order after an occurrence by the same offsite judge that the recusal was tried and denied. There would be no entries on the trial docket of a specified hearing until it had come to pass giving Bowling's attorneys no chance of property removing McCraw. In the mist of McCraw's misconduct, the District Attorney Greg Willis inserted himself. Out of nowhere, Willis, the Collin County District Attorney charged Bowling with an outrageous accusation using fabricated(impossible) evidence and endeavored to incarcerate her. After this incident Bowling demanded answers from the Greg Willis on what he was advocating in this attempt to incarcerate Bowling. Willis never responded.

Bowling furiously defended herself in the divorce only to face a default judgment due to McCraw having the divorce trial without notifying Bowling, same as the recusal hearings. In Bowling's absence McCraw gratifyingly handed over much of

Bowling's premarital property to Dahlheimer including a new Texas property. This was separate property already established as belonging to Bowling in a Summary Judgement hearing two months prior.

The Divorce Decree (July 2016) forced Bowling out of her newly purchased home and forced it up for sale.

Bowling was completely obstructed from restoring her assets. Bowling complied with the Divorce Decree, moved out, and walked away waving the white flag.

Dahlheimer's response to the white flag:

Six(6) days after the Divorce was final Defendants, Dahlheimer and Mueller, vexatiously came after Bowling again trumping up false charges and tried to incarcerate her. The new lawsuit against Bowling(penniless now) was disguised as a "Motion for Enforcement" including false allegations requesting Bowling's incarcerations. Dahlheimer apparently didn't like Bowling's approach of peace.

Dahlheimer's attorney, Paulette Mueller, was all too happy to take Dahlheimer's newly inherited wealth to frivolously litigate. McCraw, who refused to answer Bowling's Request for Findings of Facts and Conclusions of Law, facilitated the vexatious litigation and charged heavily to assist Mueller and Dahlheimer's abuse toward Bowling.

McCraw's newly appointed Craig Penfold, Receiver, incumbered insurance funds($87,000.00) for hail damage to Bowling's house which to this day was not used for the intended repairs and much went missing. In two months, Penfold, who appointed himself Title Company and Real Estate Closing

attorney attempted to force Bowling to sign sales papers to her home adding $143,000.00 of expenses against Bowling's equity for which $111,000.00 was clearly unsubstantiated fraud. Penfold threatened her. Bowling left without signing. Penfold continued to call Bowling and threaten her over the phone. Then he tried to frighten Bowling with a frivolous lawsuit in McCraw's court.

Bowling saw no solution, but to escalate to the Appellate Court to push off whatever Willis, McCraw, Dahlheimer, Mueller, and Penfold would do to her next.

Spending more money on attorney fees, Bowling eventually was granted a Stay Pending Appeal with much thanks to the Appellate court having to intervene to the Trial courts unlawful conduct. The Stay ordered a stay of enforcements of the Decree(including the sale) and all proceedings until the Appeal was complete.

McCraw's response to the STAY was to violate the Stay and adjudicate outside her jurisdiction

McCraw responded to the STAY by violating it. McCraw just re-ordered up the divorce decree and aspired to unlawfully seize more of Bowling's established separate property. McCraw appointed a new Receiver, Rhonda Childress Herres, who proceeded aggressively by threatening Bowling and putting Bowling's house up for sale regardless of the Order to Stay. Herres further appointed herself as buyers Real Estate Agent. In the next few months Herres had conservatorship over the property, but she did nothing to maintain it. The property was declining.

A Rule 11 Agreement gave Bowling exclusive control of her residence/property. Confirmed by legal counsel, Bowling moved back into her damaged home as it had been vacant for 10 months. Bowling began to repair the home.

An unknown authority fostered certain local police to harass Bowling on her property. On several occasions two law enforcement individuals would either just show up at Bowling's door or call her cell phone threatening her to leave the residence immediately or be incarcerated even though legal counsel confirmed Bowling could possess her own property under the Rule 11 Agreement in place. Bowling caught some of this on her video cameras inside her home.

Bowling appealed again to Willis since he is conservator over law enforcement. Willis did not respond. Each new unlawful order McCraw issued was a direct violation of the Stay Pending Appeal. McCraw appeared to act as though she was untouchable as she continued to adjudicate outsider her jurisdiction violating Bowling's federal constitutional rights. Willis appeared to support the unlawful efforts. Bowling spent more money on attorney's fees to move off McCraw's threats. McCraw was finally stopped by a high powered attorney who had clout(previous judge in same court).

What happened in the higher courts of Texas?

Another Greg Abbott appointee, Republican Judge Evans, issued an Appellate opinion that appeared to be a departure from the record. It was at that time Bowling discovered the Appellate Court

lost, deleted, absconded, checked out, or misfiled(obviously tampered with) Bowling's entire clerk record. This record, 3 large files amounting to 87 megabytes, disappeared. This record exposed the corrupt journey in Judge McCraw's Trial Court in collusion with the Dahlheimers, Mueller, and Willis including the extreme adjudication outside of the Trial Court's jurisdiction. The previously designated records(now missing) cost Bowling$1,100.00 to transfer from the Trial court. Three fake files amounting to 4 megabytes had replaced Bowling's clerk records. Bowling purchased and possesses a CD of the records transferred from the Trial clerk to the Appellate Court. Bowling also purchased a CD from the Appellate court with 3 replacement nonsensical files adding up to 4 megabytes. It was clear someone intentionally tampered with the records. Bowling motioned the Fifth District Court of Appeals to correct the record, but Judge Evans DENIED the request(not a discretionary decision). The convenient loss of records concealed the collusion, unlawful conduct, and corruption of the Defendants as well as thwarted any move upward to the Texas Supreme Court who simply denied Bowling's Application for Petition(6/15/2018). Bowling was obstructed again.

Bowling waived the white flag.

Dahlheimer's response to Bowling's white flag, again

Within approximately three weeks after the last appellate order was received, Dahlheimer and Mueller came after Bowling once again with a new "Motion for Enforcement" lawsuit trumping up more

fabricated charges in the Trial court. Judge McCraw much obliged the vexatious litigation.

Again, Bowling saw no solution to protect herself, but to escalate to the Federal Court. Along the journey of abuse and concealment was the Dahlheimers, Mueller, McCraw, Willis, Evans, Appellate Clerk, and two receivers, Herres and Penfold, who stole equity, insurance proceeds, and damaged Bowling's property.

Bowling has always been in a defensive disposition since filing for Divorce. As time moved forward in the journey, more abuse and criminal actions occurred, and once exposed, unlawful concealment followed.

McCraw finally recused herself (8/30/2018) after Bowling motioned for an injunction against her in the Federal court.

*A **HISTORY**: of Greg Willis and McCraw collusion*

Approximately October 2009, Willis was accused of corruption as a judge in the same court as McCraw by a former District Attorney's office. There were many charges including taking bribes in his official position as a Judge in the Collin County Courthouse. The investigation ensued and several prosecutors were called to testify before the Grand Jury including Piper McCraw. At the time McCraw worked for the current District Attorney's office. It was McCraw's testimony at the Grand Jury that betrayed the former District Attorney's investigation against Willis. McCraw's testimony threw the D.A.'s entire case under the bus. McCraw was immediately suspended and eventually fired from the District Attorney's office "for insubordination"(2011). Greg

Willis went on to run for the District Attorney's office of Collin County(2011) and McCraw, same year(2011), endeavored to be a Judge in the Collin County 380th District Court(2011 campaigning for the 2012 term: according to the Texas Ethics Commission financial report). She did not succeed.

Interestingly, Richard Schell who currently serves as a Federal Judge in the U.S. Eastern District of Texas, administered Willis' oath to the District Attorney's office. This should be known.

In 2015, while Willis is serving as District Attorney, McCraw was appointed by Greg Abbott as a Republican Judge in the Collin County 469th District Court. Once appointed, Bowling's case was immediately transferred from Becker's court into McCraw's court. Bowling was one of McCraw's first cases as a judge.

SUMMARY OF ARGUMENT

First Issue: The court errored in applying Rule 54(b) toward Bowling's Motions for Relief of Judgment Rule 60. By doing so the court is evading to address the omissions and distortions of fact detailed in Bowling's motions.

Second Issue: The court abused its discretion by wrongfully denied Bowling's First Amended Complaint which was in response to a Motion to Dismiss within 21 days. The district court's wrongful denial lent to the dismissal of Defendants denial of part of Bowling's Second Amendment.

Third Issue: The court abused its discretion by dismissing all claims for the Defendants. The details

are addressed and reference in Bowling's Motions for Relief of Judgement Rule 60.

Fourth Issue: If the Fifth Circuit Court finds merit in this Appeal for any of the issues 1 through 3, then the Final Judgment should be vacated or amended.

ARGUMENT

FIRST ISSUE

(Appeal of Dkt# 180 applying Rule 54(b) to Rule 60 motion)

The district court abused it's discretion to apply Rule 54(b) to Bowling's Motions for Relief of Judgement Rule 60. ROA.1678

The court's justification for this misapplication was they are deeming the orders to dismiss as not "final judgment". Therefore, the court sidestepped the Rule 60 issues and cursorily applied Rule 54(b), ROA.1680

Standard of Review for Rule 60 and final judgements:

Regarding "Final Judgments" in *Mele v. Fed. Reserve Bank* it found that "pretrial orders that dismiss all claims in an action and enter judgment in favor of a defendant are unquestionably final, appealable orders for purposes of 28 U.S.C. § 1291. *See, e.g., Mele v. Fed. Reserve Bank of N.Y.*, 359 F.3d 251, 253 (3d Cir. 2004) (finding order granting motion for judgment on the pleadings is final order).

If an order is appealable it is viewed as final and can be addressed as final.

Argument and discussion of applying Rule 60 v. Rule 54

Bowling chose not to appeal and give the district court a second chance to correct their judgements based on Bowling's specific findings that comply with a review under Rule 60 relief.

Consequently, the court's reasoning of denial does not fully comply with Rule 54(b). Rule 54's purpose is to allow the district court to correct or reconsider judgment for partial judgements on claims. For instance, if three of five claims in a case was dismissed against a Defendant, the claims would not be appealable until all claims against this one Defendant had been addressed in totality. This is because litigation can have ongoing interdependencies between all claims. This would make rule 54(b) instrumental when the ongoing litigation of remaining claims may change the outcome of dismiss claims because of forthcoming offerings of new information of remaining claims. In Bowling's case ALL claims against the defendants were dismissed which gives Bowling a choice to appeal to the Fifth Circuit Court, or give the district court a chance to correct their judgments. Rule 60 provided the specific requirements giving the district court a pathway to mitigate future remands and possible reprimands from their errors.

In Bowling's Motion for Relief of Judgment she leveraged:

- Rule 60(b)(1) mistake, inadvertence, surprise, or excusable neglect;
- Rule 60(b) (2) newly discovered evidence that, with reasonable diligence, could not

- have been discovered in time to move for a new trial under Rule 59(b);
- Rule 60(b) (6) any other reason that justifies relief.
- Rule 60 (3) set aside a judgment for fraud on the court.

"Rule 54(b) Judgement: Costs" does not provide for the above causes to review.

By negating Bowling's motion for the court to address these pervasive errors based upon Rule 60, the court evaded having to address their errors. Once again, the court omits addressing the departure of facts distorted by the court from the facts presented in Bowling's complaint, claims not disputed by the Defendants.

Whether utilizing Bowling's Motions for Relief of Judgment Rule 60 or using another approach of 54(b), the district court has the inherent power to vacate judgments and correct their errors detailed in Bowling's Motion for Relief of Judgement Rule 60. Thus, these errors are now in appeal.

SECOND ISSUE

(Appeal of Dkt# 180 denying Rule 60 Relief of a wrongly denied First Amended Complaint Dkt# 139)

The district court abused it's discretion by denying Bowling's First Amended Complaint (stricken from the record). Bowling timely submitted her First Amended Complaint as a matter of law

within 21 days as a response to a Motion to Dismiss pleading in compliance with Rule 15(a)(1)(B). The district court did not recognize Bowling's translation of the timeline for technical reasons(although unfounded). The district court, Nowak, denied accepting Bowling's First Amended Complaint (ROA.1137) stating caselaw that is not relative to her own arguments. Bowling immediately, within days, filed a motion(ROA.1143) asking for leave(ROA.1145) to accept the First Amended Complaint and requested the Senior Judge Mazzant review Nowak's order.

Record on Appeal deficit matter: The district court has actively, repetitively, denied supplying the Fifth Circuit court the First Amended Complaint(Dkt#107) for review. There have been numerous requests and designations to send the document for the Record on Appeal, but the district court refuses to send it.

1. Bowling currently has an interlocutory appeal pending in this court 19-40914. The district court sent all of the records, but omitted sending the First Amended Complaint for the Record on Appeal.
2. The reluctance of the District court precipitated Bowling to motion the Fifth Circuit of Appeals(19-40914) to compel the district court to send the disputed document, First Amended Complaint. The 5th Circuit clerk denied the motion. It seems moot to ask the Appellate court again.
3. Bowling then directly requested the district court supplement the ROA with the First Amended Complaint (ROA.1595).

4. The district court did not respond for eight months, however, eventually provided an Order that Denied to supplement(ROA.1670) the First Amended Complaint.
5. This appeal 20-40642: Then Bowling specifically designated the First Amended Complaint for the full case appeal (ROA.1690).
6. The district court again sent the Record on Appeal, but omitted sending the First Amended Complaint.
7. Bowling, again, motioned the district court to supplement the ROA(Dkt #189)
8. The District court did not respond.

With this much effort to belligerently deny transferring this vital document for the record on appeal, one can only suspect they are fully aware they wrongfully denied Bowling's First Amended Complaint which precipitated denying half of Bowling's Second Amended Complaint.

Standard of review for Rule 15

Fed. Rules of Civ Procedure 15 Amended and Supplemental Pleadings states: a) Amendments Before Trial.

> (1) Amending as a Matter of Course. A party may amend its pleading once as a matter of course within:
>
> > (A) 21 days after serving it, or
> > (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21

days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

(2) Other Amendments. In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

Argument over the denial of Bowling's First Amended Complaint

In compliance with 15(a)(1)(b) Bowling filed an Amended Complaint Dkt. #107 on 4/12/2019 in response to a Motion to Dismiss Dkt #99 filed on 3/22/2019. On 4/18/2019 Judge Nowak denied Bowling's Amended Complaint ROA.1130 for the stated reason that Bowling did not request leave of court. Bowling responded with a motion objecting to the requirement to ask for leave (ROA.1143) because Bowling had filed the Amended Complaint in compliance with Rule 15 as a matter of law. In her motion Bowling did ask for leave of court so the First Amended Complaint would be accepted(ROA.1145). Bowling also requested Nowak's denial of the amended complaint to be reviewed by the senior judge, Mazzant(ROA.1143). Mazzant overruled Bowling's objection as well as the requested leave of court ROA.1205. Mazzant errored in saying Bowling hadn't asked for leave. Bowling requested leave in her motion for review ROA.1145. This is an abuse of discretion for denying Bowling's First Amended Complaint and her request for leave.

The district court has not presented caselaw to refute that Bowling was somehow not in compliance to Rule 15. The court did present some misapprehensions of law.

The district court misapprehended their caselaw citing at ROA.1204:

> *Rubenstein v. Keshet Inter Vivos Tr.*, No. 17-61019-Civ-*WILLIAMS/TORRES*, 2017 WL 7792570, at *3 (S.D. Fla. Oct. 18, 2017);

This caselaw does not support this court's translation of FRCP Rule 15(a) and the denial of Bowling's Amended Complaint. This caselaw is about a Motion to Strike an Expert Witness with an emphasis on FRCP Rule 26.

The district court misapprehended this caselaw (ROA.1204):

> *Williams V. Black Entm't Television, Inc.*, No. 13-CV-1459(JS)(WDW), 2015 WL 585419, at *3-4 (E.D.N.Y. Feb. 14, 2014)) (emphasis in original)."

This caselaw does not support this court's translation of FRCP Rule 15(a), and consequently, supports Bowling's objection to this court's denial of Bowling's First Amended Complaint. In the *Williams V. Black Entm't Television, Inc* case the Court accepted the Amended Complaint as a Proposed Amended Complaint as there was no request for leave of court and then GRANTED it. This court should have also GRANTED Bowling's Amended Complaint based on this caselaw especially since it was within 21 days of a Motion to Dismiss

under Rule 12(b) which is translated by many courts under its literal meaning. ROA.1204

The district court misapprehended caselaw(ROA.1205):

> *U.S. ex rel. Carter V. Halliburton Co.*, 144 F. Suppl 3d 869, 877-79 (E.D. Va. 2015), as modified on denial of reconsideration sub nom. *United States ex rel. Carter v. Halliburton Co.*, 315 F.R.D. 56 (E. D. Va. 2017) and aff'd sub nom. *United States ex rel. Carter v. Halliburton Co.*, 866 F. 3d 199 (4th Cir. 2017)

This caselaw does not support this court's translation of FRCP Rule 15(a) and the denial of Bowling's Amended Complaint. The *Carter V. Halliburton Co.* case is relative to the FCA, 31 U.S. Code § 3729. The False Claims Act contains a provision known as the "first-to-file" rule, which bars these private individuals, known as relators, from bringing actions(inclusive of amendments) under the FCA while a related action is pending. These suits are relative to government funds and has nothing to do with Bowling's subject matter. The "first to file" provision in the FCA has nothing to do with Rule 15(a) of the FRCP.

Bowling cannot identify the caselaw recited in Judge Mazzant's denial of Bowing's First Amended Complaint which supports the district courts claim

He cites ROA.1205 :

> *"that the ability to amend as a matter of right concludes 21 days after the first defendant files a responsive pleading or a motion under Rule 12(b), (e), or (f)."*

No such language is found in the caselaw presented in Mazzant's Order.

If this court is going to hold onto to the above translation of Rule 15 to confine Amendments to the tolling timeline *of the first response* to Bowling's Complaint, then this presents an extraordinarily unfair restriction imposed on Bowling or any Plaintiff. The first response(Motion to Dismiss) to Bowling's Complaint was filed on 9/26/2018. This would require Bowling to Amend her Complaint by 10/16/2018 and never again. The case just ended 9/2020 with 189 documents on the docket. To deny Bowling's right to amend her Complaint as a matter of course for any reason, when she did ask for leave of court, with this many pleadings of new arguments is a miscarriage of justice.

The district court appears to have a different standard for the Bowling than the Defendants. Some of the Defendants(Herres, Penfold, and Willis) filed well out of time of their responses, yet the court overlooked their lack of timeliness. ROA.1352-1353 In the district court's example the court is treating a pleading with one translation for a Defendant and another translation for Bowling. A litigant should not be held to one standard when another litigant is held to a different standard. If the court's translation of "timely" is a moving target, it is a miscarriage of justice to deny Bowling's Amended Complaint.

Caselaw and Rule 15 encourage accepting amended complaints as it may be necessary in the interest of justice. The rule clearly states in 15(a)(2) *The court should freely give leave when justice so requires.*

Rule 15 has advisory notes which must be considered:

> *Note to Subdivision (a). The right to serve an amended pleading once as of course is common. 4 Mont.Rev.Codes Ann. (1935) §9186; 1 Ore.Code Ann. (1930) §1–904; 1 S.C.Code (Michie, 1932) §493; English Rules Under the Judicature Act (The Annual Practice, 1937) O. 28, r. 2. Provision for amendment of pleading before trial, by leave of court, is in almost every code.* ***If there is no statute the power of the court to grant leave is said to be inherent. Clark, Code Pleading, (1928) pp. 498, 509.***

The district court abused it's discretion by denying Bowling's First Amended Complaint which was submitted long before any judgments of dismissal were issued(4 months) contrary to what Mazzant infers in his Order.

Bowling filed a Second Amended Complaint and part of it was denied(any arguments over McCraw, Evans, Matz, Willis, Mueller, and Dahlheimer Jr.). Some of the parties are continuing to violate Bowling's rights and it appeared amending to add those violations would be denied. Bowling desires to add more offenses to her lawsuit, but this court continues to communicate to Bowling her "Futility to Amend".

THIRD ISSUE

(Appeal of Dkt# 180 denying Rule 60 Relief
Dkt#138 and #159

for dismissing Bowling's claims against McCraw, Evans, Matz, Willis, Mueller, and Dahlheimer Jr.

AND

Appeal of Dkt#182 for dismissing Bowling's claims against Penfold, Herres, and Dahlheimer Sr.

Issue three(3) is strictly addressing the lack of immunity for specific actions of the dismissed Defendants in this case for which caused damage to Bowling. These were addressed in Bowling's Rule 60 Motions as omissions by the court.

In order to condense, organize, and prove merit of Bowling's arguments the below is an aggregation of the standard of reviews and the application of standard of reviews written in Bowling's pleadings. ALL of the below arguments were omitted from Nowak's Reports and Recommendations and Mazzant's Orders as though these items were not in Bowling's pleadings.

Standard of Review for Sovereign Immunity and Eleventh Amendment

42 U.S.C. § 1983 authorizes claims against state officials allowing Injunctive relief if in their official capacity and compensatory and punitive damages in their individual capacity. The Eleventh Amendment limits official capacity claims against certain state officials(not all) to prospective injunctive relief. It does not affect damage claims against those officials in their individual capacity" *Hafer v. Melo,* 502 U.S. 21, 29-30 (1991); *Scheuer v.*

Rhodes, 416 U.S. 232,237 (1974), *Davis v. Scherer,* 468 U.S. 183 (1984). (ROA.668, ROA.669, ROA.679, ROA.680, ROA.686, ROA.1321)

While state officials can generally invoke sovereign immunity when sued in their official capacity, they cannot do so in one specific instance. In *Ex Parte Young*, the Supreme Court held that a private litigant can bring suit against a state officer for prospective injunctive relief in order to end "a continuing violation of federal law." *Ex Parte Young*, 209 U.S. 123 (1908). (ROA.1008, ROA.1321) A state official who enforces "'an unconstitutional legislative enactment . . . comes into conflict with the superior authority of [the] Constitution,' and therefore is 'stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States.'" *Va. Office for Prot. & Advocacy v. Stewart*, 563 U.S. 247, 254 (2011) (quoting *ex Parte Young*, 209 U.S. at 159-60).

To determine when *Ex Parte Young* applies, courts perform a "straight forward inquiry into whether [the] complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective." *Verizon Md. Inc. v. Public Serv. Comm'n of Md.*, 535 U.S. 635, 645 (2002)(quoting *Idaho* V. *Coeur d'Alene Tribe of Idaho,* 521 U. S. 261, 296, 298-299).

Finally, the states surrendered a portion of the sovereign immunity that had been preserved for

them by the Constitution when the Fourteenth Amendment was adopted. Therefore, Congress may authorize private suits against non- consenting states to enforce the constitutional guarantees of the Fourteenth Amendment. The Eleventh Amendment is a constitutional limit on federal subject matter jurisdiction, and Congress can override it by statute only pursuant to the§ 5 enforcement power of the Fourteenth Amendment. *Fitzpatrick v. Bitzer*, 427 U.S. 445,456 (1976) (under the Fourteenth Amendment, Congress may "provide for private suits against States or state officials which are constitutionally impermissible in other contexts."). (ROA.1008, ROA.1009).

And lastly, another exception to Sovereign immunity is explained in *Lewis v. Clarke*, No. 15-500 (U.S. April 27, 2017) Borrowing from "arm-of-the-state" principles, *infra* Section II.D, the Court reasoned that the "critical inquiry is who may be legally bound by the court's adverse judgment, not who will ultimately pick up the tab." *Lewis*, slip op. at 9.

Discussion and Application of Sovereign Immunity and Eleventh Amendment

Sovereign immunity and the Eleventh Amendment only cover immunity in Official Capacity, NOT individual capacity. In all cases with McCraw, Evans, Lisa Matz(Clerk of the Court), Penfold, and Herres, can be held liable in their individual capacity if other immunity doctrines cannot be applied, *Hafer v. Melo,* 502 U.S. 21, 29-30 (1991), et. al.

42 U.S.C. § 1983 and *Ex Parte Young*, 209 U.S. 123 (1908), however, does allow injunctive relief in official capacity claims by private lawsuits from individuals negatively affected by the constitutional violations of state government officials. Texas declined to cease these individual's ongoing violations of Bowling's constitutional rights and the Texas Abbott officials have probably declined to cease their violations against many others who are being destroyed by the autonomy of the these rogue officials. These defendants can also be held in their official capacity as their actions were intentionally unlawful and ongoing. *Ex Parte Young*, 209 U.S. 123 (1908). Bowling has escalated the ongoing violations to the Federal court and all can be escalated into a writ for the U.S. Supreme Court, *Fitzpatrick v. Bitzer*, 427 U.S. 445,456 (1976).

(NOTE: In the beginning of the federal lawsuit(Aug, Sept, Oct 2018)Bowling filed multiple TRO's to stop the ongoing violations only to be met with Nowak's denial). Much damage has occurred by the ongoing violations.

The deemed state officials in this case, McCraw, Evans, Matz serve specific counties. Ultimately, they are paid out of county funds from their region. Government Code Sec. 74.051(c). Paid by counties in administrative judicial region on a pro rata basis based on population ***Government Code Sec. 74.051(c). Paid by counties in administrative judicial region on a pro rata basis based on population.*** They are not an "Arm of the state" rather they are an arm of the county for which they serve. While the state may issue the check, the funds are from county. The Defendants

are not truly "State Officials" earning Sovereign immunities.

Standard of Review for the Rooker-Feldman Doctrine

Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923) holds that lower United States federal courts-i.e., federal courts other than the Supreme Court should not sit in direct review of state court decisions unless Congress has specifically authorized such relief. In short, federal courts below the Supreme Court must not become a court of appeals for state court decisions. The state court plaintiff has to find a state court remedy, or obtain relief from the U.S. Supreme Court.

Another front that must be made in this argument is if a claim before the federal court is independent of the state court action, then the federal court may have subject matter jurisdiction to hear the claim.

The Rooker-Feldman doctrine has become wayward doctrine that was originally related to the Anti-Injunction Act, a federal statute which prohibits federal courts from issuing injunctions which stay lawsuits that are pending in state courts. Somehow it was altered and expanded. The Supreme Court has continued to narrow the doctrine, as in *Lance v. Dennis*, 546 U.S. 459 (2006).

An element that must be considered is if there was extrinsic fraud(or the possibility) the Rooker-Feldman does not bar a plaintiff's complaint in the Federal District Court. In *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1140 (9th Cir. 2004), the Ninth

Circuit held that Rooker-Feldman doctrine did not apply where plaintiff sought relief from a state court judgment based on extrinsic fraud by her adversaries in those proceedings. The court reasoned that "[e]xtrinisic fraud on a court is, by definition, not an error by [the state] court." *Id.* at 1141. Similarly in *Noel v. Hall,* 341 F.3d 1148, 1155 (9th Cir. 2003), the Court held that the Rooker-Feldman doctrine did not bar the plaintiffs claims alleging that his adversaries in the state court proceedings illegally wire-tapped him because the "plaintiff assert[ed] as a legal wrong an allegedly illegal act or omission by an adverse party." *Id.* at 1164.

Application and Discussion of the Rooker-Feldman Doctrine

The district court stretched the application of the Rooker-Feldman doctrine to deny Bowling's complaint. The Rooker-Feldman doctrine doesn't apply to these defendants because Bowling is not asking the federal court to review state court decisions. Nowhere in Bowling's complaint is there a request to review any final judgments made in the state court. The subject matter for the Federal Court in this Complaint is regarding the actions of individuals that violated Bowling's constitutional rights during the proceedings of the state courts litigation. Bowling's complaints against these defendants are federal violations of Conspiracy to Interfere with Civil rights, Violation of Due process, Unlawful seizure of property, Failure to Intervene, and Fraudulent Concealment for each Defendant McCraw, Evans, Lisa Matz, Penfold, Herres, Mueller, Dahlheimer Jr and Sr. The subject matter

in the federal court has nothing to do with the subject matter in any previous state court decisions. The Rooker Feldman doctrine does not apply here. Even if Bowling was attempting litigate the defendants offenses from the state court it would not be "re-litigation" because Bowling was obstructed from litigating any offenses in the state court by same defendants. This obstruction is clear fraud on the court which an action participating in the obstruct does not have the immunity shield, *Kougasian v. TMSL, Inc.,* 359 F.3d 1136, 1140 (9th Cir. 2004).

Obviously, claims of extrinsic fraud are found throughout Bowling's complaint. Rooker does not apply for this reason either.

28 U.S.C. § 1257(a) provides that review by writ of *certiorari* is available to review inadequate state decisions that have federal grounds. Any lower court to the U.S. Supreme Court should refrain from applying Rooker-Feldman of such state decisions as there is a pathway to federal oversight. To use Rooker to override conferred jurisdiction in the federal district courts is an abuse of discretion.

Bowling's arguments and discussion of the Rooker-Feldman doctrines for each defendant are articulated in these references (ROA.670, 671, 681, 682, 1009, 1010, 1037, 1038, 1044, 1045, 1328, 1329)

Standard of Review Overcoming Judicial and Derived Immunity

Judicial Immunity:

Immunity attaches to the act itself, not the person performing the act. Thus, an act is not

judicial merely because a judge performs it. *Forrester v. White*, 484 U.S. 219, 228-29 (1988).

There are two circumstances where Judicial Immunity is overcome *Mireles v. Waco,* 502 U.S. 9, 11-12 (1991): "a judge is not immune for non-judicial actions, i.e., actions not taken in a judicial capacity" and "a judge is not immune for actions, although judicial in nature, done in complete absence of all jurisdiction".

To define "non-judicial", a judge's actions are considered non-judicial when it does not require an exercise of judicial discretion or a determination of parties' rights which includes ministerial, administrative, and legislative acts(inclusive, but not limited to). These acts are not entitled to Judicial Immunity. *See Forrester v. White,* 484 U.S. at 228-30; *Supreme Court of Virginia v. Consumers Union of the United States, Inc.,* 446 U.S. 719, 731 (1980; *Ex Parte Virginia*, 100 U.S. 339, 348 (1879).

As one court noted, a judge does not "utilize his education, training, and experience in the law" to perform such acts. Typically, a layperson could perform these non-judicial acts. *See Forrester v. White,* 484 U.S. at 229; *Ex Parte Virginia,* 100 U.S. at 348. Because these acts do not involve any exercise of judicial discretion, the goal of judicial independence does not require that the law extend absolute immunity to them. See *McMillan v. Svetanoff*, 793 F.2d at 155.

To define "judicial acts" the Fifth Circuit court, themselves, led other courts in their approach leveraging *McAlester v. Brown*, 469 F.2d 1280, 1282 (5th Cir. 1972) citing 4 factors to determining "judicial acts" (1) whether the precise act complained

of is a normal judicial function; (2) whether the acts occurred in the courtroom or appropriate adjunct spaces such as the judge's chambers, and "looks to the expectations of the parties"; (3) whether the controversy centered around a case pending before the court; and (4) whether the acts arose directly out of a visit to the judge in his official capacity.

In one instance, the Fifth Circuit court, determined that immunity is not available "where the court found the "holding a contempt proceeding and ordering plaintiff incarcerated were not judicial acts where controversy that led to incarceration did not center around any matter pending before the judge, but around domestic problems of plaintiff former wife, who worked at the courthouse." *Harper v. Merckle*, 638 F.2d 848 (5th Cir. 1981). If actions of a Judge are precipitated by extrajudicial influence the acts are not "judicial acts.

AND according to the Fifth Circuit Court in *Brewer v. Blackwell*, 692 F.2d 387 (5th Cir. 1982). "When it is beyond reasonable dispute that a judge has acted out of personal motivation and has used his judicial office as an offensive weapon to vindicate personal objectives, and . . . no party has invoked the judicial machinery for any purpose at all . . .," his acts are nonjudicial. *Harper v. Merckle*, 638 F.2d at 859. See also *Krueger v. Miller*, 489 F. Supp. at 330.

Legal scholars and jurists have characterized non-judicial conduct as 1) conduct not requiring judicial discretion, or 2) highly aberrational behavior. *Gregory v. Thompson*, 500 F.2d 59 (9th Cir. 1982).

To this point, the "aberrational" element must be considered as there is much for this panel to discern in this case. Conduct is "**aberrational**" if it

is "a deviation or departure from what is normal, usual, or expected"(factor 2 in *McAlester v. Brown)* or something that is "**abnormal**, diverging from the norm.

Courts have characterized "highly aberrational" behavior, acts, as non-judicial when judges have engaged in such as performing arrests and summary trials. *Brewer v. Blackwell*, 692 F.2d 387, 396- 98 (5th Cir. 1982) (finding that a justice of the peace's alleged arrest of four men at a garbage dump, who then engaged in an automobile chase with one of the men and conducted a summary trial was not a judicial act); *Harper v. Merckle*, 638 F.2d 848, 859 (5th Cir. 1981) (concluding that a judge's jailing of a man for contempt when he entered the judge's chambers to make an alimony payment to a court employee was not a judicial act); *Lopez v. Vanderwater*, 620 F.2d 1229, 1235 (7th Cir. 1980) (determining that a judge's prosecutorial conduct in determining the charges against an arrested man was not a judicial act); *Zarcone v. Perry*, 572 F.2d 52, 53 (2d Cir. 1978) (describing how a traffic judge had a coffee vendor brought to his chambers handcuffed, and then interrogated and harassed the vendor about coffee the judge considered "putrid"); *Krueger v. Miller,* 489 F. Supp. 321, 329 (E.D. Tenn. 1977) (holding that a justice of the peace acted outside the limits of his lawful authority when he displayed a false badge and arrested a woman).

Other examples include intentionally misleading police officers as to the identity of a person named on an arrest warrant, *King v. Love*, 766 F.2d 962, 968 (6th Cir. 1985).

AND lastly, Judicial immunity does not bar "prospective injunctive relief against a judicial officer acting in her judicial capacity," nor does it bar an award of attorney's fees under 42 U.S.C. § 1988. *Pulliam v. Allen*, 104 S. Ct. 1970, 1981, 1982 (1984).

Derived Immunity:

A number of lower courts have concluded that absolute judicial immunity applies to court-appointed receivers in §1983 cases., *Boullion v. McClanahan*, 639 F.2d 213 (5th Cir. 1981);

Rather than extending absolute judicial immunity to court-appointed receivers, the courts should follow the Supreme Court's admonition that judicial immunity be limited to the core decision-making function. *Antoine v. Byers & Anderson, Inc.*, 508 U.S. 429, 435-37 (1993) (holding the touchstone of the Judicial function is adjudicating private rights). Other functions, albeit essential to the administration of justice, enjoy only qualified immunity. *Forrester v. White*, 484 U.S. at 229 (explaining that even essential administrative acts do not enjoy absolute judicial immunity)

Where a receiver acts within the court's orders, the receiver shares the court's immunity from liability. A receiver's failure to properly perform his or her duties can result in liability to the estate, and in certain circumstances, to the receiver individually. Any acts outside a receiver's jurisdiction only receives Qualified immunity.

Further, in Texas, if an order is appealed with the subject matter such as an appointment of a receiver, the notice of appeal serves as an automatic **stay** of receivership duties. Tex. Civ. Prac. & Rem. Code § 51 Appeals Section 51.014(b) *stays the*

commencement of a trial in the trial court pending resolution of the appeal. Any violation of this law is also a violation of the 14th Amendment rights relative to due process.

Legal authority of Texas Governmental Records

These rules are not discretional therefore they are not judicial.

Texas Rules of Appellate Procedure 34.5. Clerk's Record

(a) *Contents.* Unless the parties designate the filings in the appellate record by agreement under Rule 34.2, the record must include copies of the following:

(1) in civil cases, all pleadings on which the trial was held;

Texas Rules of Appellate Procedure 34.5. Clerk's Record

(d) *Defects or Inaccuracies.* If the clerk's record is defective or inaccurate, the appellate clerk must inform the trial court clerk of the defect or inaccuracy and instruct the clerk to make the correction.

(e) *Clerk's Record Lost or Destroyed.* If a filing designated for inclusion in the clerk's record has been lost or destroyed, the parties may, by written stipulation, deliver a copy of that item to the trial court clerk for inclusion in the clerk's record or a supplement. If the parties cannot agree, the trial court must — on any party's motion or at the appellate court's

request — determine what constitutes an accurate copy of the missing item and order it to be included in the clerk's record or a supplement.

Bowling's argument and discussions over Judicial Immunity can be found in Bowling's pleadings(ROA.41-46, 1st Amended Complaint.36-40, 663-666, 675-678, 1011-1014, 1031-1033, 1322-1328, 1461-1464).

Standard of Review of Criminal exceptions preventing Immunity

Any act of an official that is a criminal act cannot be shielded by immunity.

Texas Penal Code Sec. 32.47. FRAUD includes, fraudulent concealment, forgery, stealing funds, misrepresenting improvements to gain false funds.

Texas Penal Code § 37.10. Tampering with Governmental Records (a) A person commits an offense if he: (1) knowingly makes a false entry in, or false alteration of, a governmental record; (2) makes, presents, or uses any record, document, or thing with knowledge of its falsity and with intent that it be taken as a genuine governmental record; (3) intentionally destroys, conceals, removes, or otherwise impairs the verity, legibility, or availability of a governmental record;

18 U.S. Code § 241 – Conspiracy against rights: If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or

District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

18 U.S Code § 242 Deprivation of rights under color of law. Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.

Application and Discussion of Judicial and Derived Immunity, Governmental Records, and the criminal participation of the Defendants

NONE of the following acts or arguments for each Defendant exists in any of the Magistrates Report and Recommendations nor the Orders Adopting the Magistrates Report and Recommendation. This was the failure of the District Court.

All encompassing, Official Defendants McCraw, Evans, Matz, Penfold, and Herres are not barred from prospective injunctive relief in their official capacity, *Pulliam v. Allen*, 104 S. Ct. 1970, 1981, 1982 (1984).

No Judicial Immunity: Judge McCraw

Claims against McCraw are Conspiracy to Interfere with Civil Rights, Violation of Due process, Unlawful Seizure of Property, Failure to Intervene, and Fraudulent Concealment(added in Second Amended Complaint).

1. In both cases where Motions to Recuse Piper McCraw was requested, McCraw arranged her own recusal trials (12/2016 and 7/2017) which is highly irregular conduct and should not be shielded by immunity, *Brewer v. Blackwell*, 692 F.2d 387, 396- 98 (5th Cir. 1982). McCraw declined to refer both cases to the Administrative judge, instead, McCraw invited her own judge (same judge both times), and did not send out a Notice of Hearing for each of her personally arranged recusal trials. This is highly aberrational(*Gregory v. Thompson*, 500 F.2d 59

(9th Cir. 1982). McCraw lacks jurisdiction in this matter as it is outside her authority to arrange her own recusal hearing. Therefore, she lacks jurisdiction and is not shielded by immunity *Mireles v. Waco,* 502 U.S. 9, 11-12 (1991). It is also clearly intentional concealment of the unlawful conduct she was accused of in the Motions for Recusal(Texas Penal Code Ch 32 Sec. 32.47 Fraud). Further, it is an administrative task to refer her recusal to the Administrative judge and one where she has no discretion or authority to decline(*Forrester v. White,* 484 U.S. at 228-30). McCraw is not immune for the wrong doing of an administrative task.

2. While Bowling was on the stand, testifying to, and submitting evidence to the court, Paulette Mueller grabbed Bowling's evidence from her. McCraw participated in the forthcoming tampering with evidence by "shushing" Bowling's attempt to object. Bowling further was "shushed" when she attempted to identify her evidence Mueller had grabbed and was "admitting in behalf of Bowling". McCraw obstructed Bowling from identifying her evidence and directed told Bowling to identify "<u>just the number</u>" while Mueller supposedly tagged Bowling's evidence and passed it to the court reporter. This is aberrant conduct of a judge and should not be shielded by immunity, *Brewer v. Blackwell,* 692 F.2d 387, 396- 98 (5th Cir. 1982). The judge does not have the judicial "discretion" for this action. The discretion to allow Mueller touch or process any of Bowling's evidence belongs to Bowling's attorney or Bowling if she is Pro Se. Therefore,

McCraw cannot claim she had judicial discretion and does not enjoy immunity. This verbal exchange of Mueller taking Bowling's evidence and McCraw's shushing and misdirecting Bowling to only state "the number" is indisputably caught on the reporter's record. McCraw gave Mueller an opportunity to tamper with Bowling's evidence and Mueller did. Items were submitted as evidence were pleadings the court already possessed and items that needed to be submitted were omitted. The act of shushing Bowling, the intentional prevention of allowing Bowling to describe her evidence, is an act of tampering of governmental records This is not a judicial act. This is a criminal act. McCraw and Mueller tampered with Bowling's evidence(Texas Penal Code § 37.10) on record and prevented Bowling from defending her rights to safety from a well known violent litigant, Lester John Dahlheimer Jr. (*18 U.S. Code § 241 and 18 U.S. Code § 242).* A Judge does not enjoy immunity for an action which is a criminal act. Additionally, the whole scheme of the two conspiring together(McCraw and Mueller) rolled into approximately 15 minutes of abnormal court conduct which should be translated as intentional and aberrational (*Gregory v. Thompson*, 500 F.2d 59 (9th Cir. 1982). The actions were planned.

3. In the wake of waiting for a referral to the Admin Judge for McCraw's first request for recusal, Bowling was surprised with an unsuspecting Notice of hearing from Greg Willis, District Attorney which lured Bowling into court. Not much was stated for the subject matter in the

notice. Without knowing the need for an attorney, Bowling arrives to the court with her brother and was surprised by an invented criminal charge accusing her of "stealing a gun". Willis tried to wrongly incarcerate Bowling using fabricated evidence. If McCraw had anything to do with this surprise attempt to wrongly incarcerate Bowling in the wake of her recusal, then McCraw's actions were not judicial. Therefore, she cannot enjoy judicial immunity in conspiring with Greg Willis. This deserves some discovery. *Brewer v. Blackwell*, 692 F.2d 387 (5th Cir. 1982), Harper v. Merckle, 638 F.2d at 859. See also *Krueger v. Miller*, 489 F. Supp. at 330. While McCraw did not order up the incarceration directly, if she cannot prove Willis's participation as being independent from her personal motives then Harper v. Merckle, 638 F.2d 848 (5th Cir. 1981) applies. This event occurred after Willis was already made aware of the violence by Dahlheimer after his arrest and Dahlheimer's arrogant violations of the Protection Order. Willis should have never advocated over a gun in behalf of Dahlheimer, who had a Protection Order against him. The timing of this hearing proximal to McCraw's first recusal appears to have intent. More on this subject is below under "Greg Willis".

4. McCraw held Bowling's Divorce trial without notifying Bowling. McCraw doesn't have the discretion to call up and hold hearings without notifying all of the parties, including the recusals. The act of notifying the Dahlheimers and not Bowling could not have been an accident, but had motive. *Brewer v. Blackwell*, 692 F.2d 387 (5th

Cir. 1982). et al. McCraw and Mueller had a habit of intentionally playing musical chairs with the hearings to deter Bowling's attendance or thwart her attorney's ability to plan accordingly. The Trial docket does not depict the actual occurrences of notifications and hearings. The setting of hearings is an administrative task for the clerk of the court. McCraw cannot order up and hold a hearing without confirming the clerk has set a time and sent an official notice to all parties. Administrative tasks and supervising a clerk's tasks for notifications are not covered by Judicial immunity. See *Forrester v. White,* 484 U.S. at 228-30, et al. This obstruction denied Bowling the opportunity to recover property stolen by the Dahlheimers in Georgia and Texas among other assets. McCraw actively obstructed Bowling's right to litigate the criminal theft/forgery/fraud of the Dahlheimers. Prior to this secret divorce trial, Bowling's attorney filed a Third Party Fraud motion in her court, but there is nothing in any transcript of a chance to present the case to the court. This intentional obstruction to litigate the criminal activity makes McCraw a conspirator with the criminals under color of law. *18 U.S. Code § 242.* Because this secret trial was after both secret recusal hearings it is not a stretch to see that McCraw was using her authority as a weapon to satisfy her personal motives, although unlawfully, to penalize Bowling which makes the secret trial and unlawful seizure of Bowling's property NOT a judicial act, neutralizing immunity (*Brewer v. Blackwell,* 692 F.2d 387 (5th Cir. 1982) *Harper v. Merckle,* 638

F.2d at 859. See also *Krueger v. Miller*, 489 F. Supp. at 330).

5. McCraw did not have subject matter jurisdiction over Bowling's uncontested separate property established in a Summary Judgment hearing, yet McCraw awarded half of it away to Dahlheimer in the Divorce trial, the same trial where McCraw did not notify Bowling of its occurrence. Dahlheimer had earned $2300.00(only lived there for few months) and Bowling had well over $150,000.00 in equity(her down payment and improvements from separate property funds). In *McAlester v. Brown*, 469 F.2d 1280, 1282 (5th Cir. 1972) elements 2 and 4 are violated as Bowling wasn't invited to the court or chambers where McCraw unlawfully took Bowling's property. Because Bowling's separate property had been established in the Summary Judgment it was not a controversy before the court for McCraw to adjudicate which violates element 3 of *McAlester v. Brown*. Regardless, McCraw kicked Bowling out of her home and forced it up for sale awarding Dahlheimer half of the property proceeds. Based on the known circumstances the unlawful seizure bends toward the criminal element of *18 U.S. Code § 242.*
6. After Bowling appealed several of McCraw's final judgments, Bowling won a Motion to Stay Pending Appeal which stayed enforcements of the Divorce decree, appointment of receiver(he dismissed himself), and sale of the property. All was pled in clear description in Bowling's Motion to Stay Pending Appeal and the Order. Bowling moved back into her damaged property. The

specific judgements in Bowling's Motion to Stay were now for the appellate court jurisdiction, the Fifth District Appellate Court of Texas. Regardless, immediately afterwards and while the Appeal was pending, McCraw re-ordered up the Divorce decree, receiver(Herres), and forced sale of property, actions now well outside her jurisdiction. McCraw simply did not have ANY jurisdiction to adjudicate any of this appealed subject matter(*Mireles v. Waco,* 502 U.S. 9, 11-12 (1991)).

7. During the appeal Bowling was threatened with one order after another to kick Bowling out of her property to proceed against the Order to Stay Pending Appeal. McCraw issued a TRO, Temporary Restraining Order for Bowling to be "restrained from own home". This kind of order doesn't exist in Texas and was a highly abnormal *(Gregory v. Thompson,* 500 F.2d 59 (9th Cir. 1982) for which Bowling had to spend a great deal of money for a high powered attorney to push off McCraw's belligerence and lawlessness. Clearly, any time a high powered attorney accomplished something in Bowling's behalf, like the Stay Pending Appeal, McCraw retaliated unlawfully *Brewer v. Blackwell,* 692 F.2d 387 (5th Cir. 1982) *Harper v. Merckle,* 638 F.2d at 859. See also *Krueger v. Miller,* 489 F. Supp. at 330. McCraw had no right to deprive Bowling from her home or threaten Bowling in any way *18 U.S. Code § 242.*
8. Bowling escalated the unlawful violations to the Appellate Court in a second appeal. Mueller and McCraw actively deceived the Appellate Court, via motions, that the Stay Pending Appeal did not

exist. It is clearly on record 12/15/2016 and stated on the Trial docket. McCraw's deception to the Appellate court lends to serious misleading governmental officials where immunity is not afforded. *King v. Love*, 766 F.2d 962, 968 (6th Cir. 1985) and Texas Penal Code Fraud Sec. 32.47 by concealing the Trial court order from the Appellate court. Concealing the Stay Pending Appeal gave McCraw a license to be an unlawful aggressor, *18 U.S. Code § 242.*

9. During this stay pending appeal the Receiver, Herres, claims McCraw gave her permission to break into Bowling's home. There is no Order to such a deed. This lends to the conspiracy and criminal acts under color of law. *18 U.S. Code § 242.* Incredible damage ensued. McCraw does not enjoy judicial immunity when she acts outside of her jurisdiction. *Mireles v. Waco,* 502 U.S. 9, 11-12 (1991)
10. It is unknown who involved the Plano Police (whether Willis or McCraw), but on two occasions they called Bowling's cell phone and showed up at Bowling's home, asked if they could come in, and began to threatened Bowling to leave her home. There was no Order justifying law enforcement involvement and threats. When Bowling told them to "get out". They did not respond to Bowling's demand to leave which threatened her more. Bowling opened the door and screamed loudly in front of her camera. They left finally. Bowling had cameras inside the home and has all on video. If McCraw OR Willis OR the Receiver Herres had anything to do with the law enforcement corrupt actions, the acts are not

covered by Judicial Immunity. These acts were brought to the court's attention. 18 U.S Code § 241, 18 U.S Code § 242 Bowling stayed in alarm status which was obviously the intended affect.

11. McCraw's trial records disappeared in the Appellate court. The deletion, removal, tampering of the records, thwarted any chance of the Appellate court charging McCraw with abuse of discretion or discipline. McCraw, Mueller, and the Dahlheimers were the only benefactor of the criminally removed records. It concealed their criminal actions, Texas Penal Code Sec. 32.47. FRAUD. Whether McCraw had direct participation or indirect participation for this benefit of the disappearing records, she has no judicial immunity as she was intimate with the disappearance, Texas Penal Code § 37.10. Tampering with Governmental Records. McCraw cannot enjoy judicial immunity when she deprives civil rights to appeal by tampering with records. *18 U.S. Code § 242.*

No Judicial Immunity: Judge Evans

Claims against Evans are Conspiracy to Interfere with Civil Rights, Violation of Due process, Failure to Intervene, and Fraudulent Concealment(added in Second Amended Complaint). Greg Abbott appointed Evans and McCraw.

1. Judge Evans was the Appellate Judge who wrote an Opinion over Bowling's appeal from McCraw's trial court. The opinion reflected a departure from the record on many fronts. Bowling pursued a copy of the Appellate records. The CD given to

her by the Appellate clerk revealed the court did not possess McCraw's trial clerk records. Bowling designated these records, 3 files amounting to 87 megabytes which cost $1,100.00 to transfer to the Appellate Court. What did exist were 3 tiny fake files adding to 4 megabytes. Someone obviously tampered with the records. Bowling motioned the court to correct the records for a rehearing. It was Judge Evans who denied the correction of records for a Rehearing. Judge Evans does not have discretion or authority to deny the correction of Appellate Court records. This is not a judicial task, (*Forrester v. White,* 484 U.S. at 228-30, McMillan v. Svetanoff, 793 F.2d at 155). Any actions upon the request and correction of appellate court records is an administrative task, *Mireles v. Waco,* 502 U.S. 9, 11-12 (1991). Evans actions to deny the correction of records does not enjoy judicial immunity. Evans actively thwarted Bowling's appeal by participating, whether directly or indirectly, in the concealment of McCraw's trial records, Texas Penal Code § 37.10. Tampering with Governmental Records and Texas Penal Code Ch 32 Fraud Sec. 32.47 Concealment. Evan's action is a deprivation of Bowling's rights under color of law while participating in a criminal action 18 U.S Code § 242. Evans was intimate with the fact that the records had been tampered with, yet denied correction. His intention is not in question. Therefore, he participated in the unlawful seizure, thwarted any intervening, and violated the due process of correcting the records.

No Judicial Immunity:
Lisa Matz, Clerk of the Court
for the Fifth District Appellate Court of Texas

Claims against Lisa Matz, Clerk of the Court, are Conspiracy to Interfere with Civil Rights, Violation of Due process, Failure to Intervene, and Fraudulent Concealment(added in Second Amended Complaint).

1. Once Bowling was provided a CD of the deficient appellate records, Bowling made several phone calls to the clerk's office, Lisa Matz. Bowling left messages directly in Matz's voicemailbox. Lisa Matz was made fully aware of the Appellate court's defect in the record and chose not to correct the records, or intervene. Texas law states that upon arrival to the court the clerk of the appellate court is required to audit the records against the "Designation of Records" filed with the court(TRAP 34.5.(d) *Defects or Inaccuracies*). It is assumed the clerk did their job by auditing the record to the designations. Lisa Matz does not have discretion or authority to decline to audit and do nothing if the records disappear. Further, if a defect is identified in the records the clerk is required to correct the records, an administrative task. (34.5(e) *Clerk's Record Lost or Destroyed).* The administrative task of records correction is not covered by judicial immunity. Lisa Matz knew the records were missing and declined to correct the records which lend to her participation in the criminal act of Texas Penal Code § 37.10. Tampering with Governmental Records depriving Bowling from due process in appealing her case as a right *18*

U.S. Code § 242. Lisa Matz also participated in the concealment of McCraw's criminal conduct Texas Penal Code Ch 32 Fraud Sec. 32.47 Concealment.

2. Lisa Matz met Bowling at the Appellate courthouse window one day. Matz posed as an imposter named "Denise" and actively denied allowing Bowling to address the defect with anyone else in the clerk's office. The act of posing as a fake individual to deny appellant from addressing the records defect with anyone else personally at the courthouse is not a judicial act. The act lends to criminally depriving Bowling's right to appeal *18 U.S. Code § 242* and is not covered by immunity. NOTE: Bowling did not know this person was actually Lisa Matz. Bowling discovered the identity on the internet site "Linkin" a few months after filing in the federal courts.
3. Judge Mazzant, federal district judge, made a strange statement for which should be corrected in regards to Lisa Matz, Clerk of the Court. He stated in an Order, "*As the Report found, "Texas Government Code § 51.204..does not give a jural identity to the office or agency Clerk of the Court, or grant the office or agency the poser to use or be sued". "Plaintiff has failed to demonstrate that the Clerk of the Court can initiate litigation on it's own behalf or be sued.*" There is no such language identified in the Texas Government Code § 51.204 Records of Court. There is no state law articulating any Clerk of the Court cannot be an entity sued. Regardless, in Bowling's 1st and 2nd Amended Complaint, Bowling identified Lisa Matz, actor and the official clerk of the court, for

this suit. In *Craig Lynn Beal v. The State of Texas,* Beal successfully sued the State of Texas for denying to correct the records and rehear the case in a Trial Court. It's clearly Texas law, but actors, unknown, in the Supreme Court of Texas(TSC), declined Bowling's petition for review of the denial to correct the records for rehearing. The TSC completely thwarted Bowling's Appeal. The Federal Court is the only remedy in this matter under 42 U.S. Code§ 1983.

No Derived Immunity: Craig Penfold, Receiver 7/2016-12/2016

Claims against Craig Penfold are Violation of Due Process, Conspiracy to interfere with Civil Rights, and Unlawful Seizure of Property.

1. Bowling appealed Craig Penfold's appointment of receivership on 10/11/2016, yet Penfold continued to execute the sale of Bowling's property, tear off the roof of the property, abscond with insurance proceeds, had non essential contractors do unnecessary jobs(jobs producing extreme damage) at the property, threatened Bowling, tried to force a signature giving away a fraudulent $111,000.00 of expenses, and pushed for a suit to force the sale of the property, etc. Penfold had no jurisdiction to execute any duties due to the automatic STAY in place, Tex. Civ. Prac. & Rem. Code § 51 Appeals Section 51.014(b) where it states an initiation of an appeal precipitates an automatic STAY of Receiver activities. There is no derived immunity if

there is no jurisdiction, *Mireles v. Waco,* 502 U.S. 9, 11-12 (1991). Penfold proceeded with incredible force after the notice of appeal and caused a calculated damage, dollar for dollar, of $173,000.00(not including his attempt to take $111,000.00).

2. Penfold also appointed himself closing Real Estate attorney, and Title Company. The unlawful transfer of Title, the detailed closing expenses of a fraudulent $111,000.00, the effort/force to make Bowling sign waivers of liability, and the threats to force her to come into his Title office and sign Title documents are not in a Receiver capacity. These action were inside Penfolds Title Office during a "closing" of Bowling's property. Penfold acted in a capacity of Real Estate attorney and Title Company roles, not Receiver. Penfold clearly interfered with Bowling's civil rights by taking an unsubstantiated $111,000.00 and threatening her by phone and in person. Penfold also should be held liable in a criminal capacity for the gouging damages of the property as well. Both *18 U.S. Code § 241 and 242* should apply in his official and individual capacity.
3. Penfold worked closely with Mueller in conspiracy to interfere with Bowling's civils rights. There is a call log depicting the volumes of phone calls from Mueller to Penfold with details of the conversations. The log loudly reveals conspiracy to interfere with Bowling's civil rights.

4. The fact that Penfold refused to give Bowling back her home when the appeal was filed constitutes unlawful seizure. Penfold unlawfully held onto Bowling's property and locked her out. Much of the damage to the property ensued after the appeal was filed and before Penfold finally released himself. If Penfold had released the property to Bowling after the appeal was filed as lawfully required, much of the damage would not have occurred. Penfold did not have jurisdiction to hold Bowling's property and lock her out, *Mireles v. Waco,* 502 U.S. 9, 11-12 (1991). His actions neutralized derived immunity if he is outside his jurisdiction.
5. Recently, Penfold claimed in court he was owed $23,000.00 of Bowling's equity because of Bowling's previous accusation of proceeds that were forged and stolen. Penfold was released long before the Mortgage Company distributed $42,000.00 to Dahlheimer Jr. and it disappeared(roofer not paid). Penfold was involved or was the receiver during this term nor should he have had any of those proceeds. His inconceivable, untenable, impossible claim in the state court was successful. Judge Roach, successor to McCraw, gave the remainder of Bowling's equity of $23,000.00 to Penfold, unlawfully. Penfold's crooked actions cannot enjoy derived immunity for unlawfully taking of Bowling's equity(unlawful seizure). Both *18 U.S. Code § 241 and 242* should apply in his official and individual capacity.

No Derived Immunity: Rhonda Childress-Herres, Receiver 3/2017 forward

Claims against Rhonda Herres are Violation of Due Process, Conspiracy to interfere with Civil Rights, and Unlawful Seizure of Property.

1. Rhonda Herres conspired with McCraw to hold Bowling's home, lock her out, and pursue the forced sale of her home outside the trial courts jurisdiction. An Order to Stay Pending Appeal was GRANTED(inclusive of Receivership). Jurisdiction belonged to the Appellate court. Regardless, Herres stepped outside her jurisdiction to unlawfully seize Bowling's property *Mireles v. Waco,* 502 U.S. 9, 11-12 (1991). Herres does not earn derived immunity when outside of her jurisdiction. This violation of due process is protected by the 14th Amendment.
2. Herres appointed herself Real Estate buyers agent and acted in a buyers agent capacity. A real estate buyers agent capacity does not earn derived immunity, *Mireles v. Waco,* 502 U.S. 9, 11-12 (1991). Herres did not execute any maintenance for the property. The property further declined.
3. Outside jurisdiction, Herres charged hard to sell Bowling's property regardless of her lack of authority. Herres threatened Bowling by text and email. Bowling took her property back in 5/2017. Herres broke into the house on several occasions(nothing in McCraw's court articulated this as a Receivers duty). Herres also conspired with local police to harass Bowling and threatened to use physical force. No court order existed to support law enforcement harassment or

Herres breaking into the home. Herres criminally interfered with Bowling's civil rights, but did it in an individual capacity for which immunity cannot be applied, 18 U.S. Code § 241. If Herres wants to translate her actions as official then Bowling would request the court consider 18 U.S. Code § 242.

4. During the Federal Court proceedings for which Herres was a defendant, Herres did break into Bowling's home again and destroyed the alarm system. Judge John Roach's order was unlawful and is being appealed at this time at a higher level, but whether he ordered it or not, Herres knew it was unlawful and conspired with others to interfere with Bowling's civil rights, 18 U.S. Code § 242.
5. As self appointed buyers agent, Herres lied, cheated and stole during her entire involvement including hiding the closing financials from Bowling's review for which appeared to have an absent financial documents by "Dahlheimer". Bowling's attorney objected as it looked as though Herres took an extra amount of commission and just gave the home to Dahlheimer, who had little interest in the property. If in discovery these papers conclude Herres did indeed give the property(or sell the remaining mortgate) to Dahlheimer, then this is in violation of her duties and flat out criminal. Herres should not enjoy immunity because this was against the instructions of the court and she should be held criminally liable. Both *18 U.S. Code § 241 and 242.*

6. Bowling cannot identify a Report and Recommendation to dismiss Herres Bowling had nothing from the court to object or respond to regarding Herres. There is an order implying deficiencies around stating a claim, but does not offer what was in question. The order states little and Bowling cannot object to that which is not expressed. Due process appears to be absent. This is why the "Final Judgement" to dismiss Herres should be vacated. It is unknown how to defend the claims if there was no reason for the dismissal.
7. Herres did not respond to her lawsuit to the federal court until Bowling requested a default judgement 4 months after serving Herres. Even though Bowling supplied the court with service papers, Herres denied being served. Then Herres clogged up court time by filing motions to set aside from other cases with strange people's names and scenarios that had nothing to do with Herres and Bowling. This court bent backwards to accommodate Herres who still has not filed any valid defense. The court errored in reversing the requested Default Judgement which is stated in the Final Judgment.

Standard of Review for Prosecutorial Immunity and other Defenses concerning Willis

Prosecutorial Immunity

Prosecutorial immunity does not apply to all prosecutorial conduct. Rather, the reviewing court looks to "the nature of the function performed, not

the identity of the actor who performed it." *Forrester v. White*, 484 U.S. 219,229 (1988). This is called the "functional test" to immunities. When a prosecutor performs "advocative" conduct, that is, he "act[s] within the scope of his duties in initiating and pursuing a criminal prosecution," *Imbler v. Pachtman*, 424 U. S. 409,410 (1976), he is absolutely immune from suit. "Advocative" conduct includes that which is "intimately associated with the judicial phase of the criminal process. *Imbler v. Pachtman*, 424 U.S. at 430-31.

Like judicial immunity, prosecutorial immunity is functional; it attaches only to acts intimately related to the initiation and prosecution of a criminal case. Struggling to define the boundaries of prosecutorial immunity, the Court held that a prosecutor who advised police officers on Fourth Amendment considerations in an ongoing criminal investigation performed an investigatory rather than a prosecutorial function and was, therefore, not entitled to absolute immunity.

Courts have held that, before probable cause is established, an investigating prosecutor performs the role of police officer and is, therefore, not entitled to absolute immunity, *Mitchell v. Forsyth*, 472 U.S. 511, 524 (1985).

Probable cause must be established to assert an act is related to "initiation and prosecution" in order to enjoy absolute immunity. Probable cause determinations are fact dependent and required *Anderson v. Creighton, 483 US. 635 (1987). 94.* Id. *at 641* and the *Fourth Amendment.*

Further decomposing the advocacy function, a prosecutor who suborns perjury at a criminal trial is

absolutely immune, a prosecutor who manufactures false evidence does not enjoy absolute immunity. The former performs a prosecutorial function by presenting evidence, while the latter performs a police investigatory function by gathering evidence. *Buckley v. Fitzsimmons* 509 U.S. 259, 273 (1993).

If the prosecutor swears under oath to false statements of fact in the information, he becomes a complaining witness rather than a prosecutor and, like a complaining witness at common law, is not entitled to absolute immunity. *Kalina v. Fletcher* 522 U.S. 118 (1997).

Another exception to prosecutorial immunity is if a prosecutor is performing an advocative function, he will nonetheless be denied absolute immunity if he intertwines the exercise of his advocation function with impermissible conduct; or if he acts in excess of his statutorily-conferred jurisdiction. Thus, absolute immunity will not shield him if he "has intertwined his exercise of prosecutorial discretion with other, unauthorized conduct." *Bernard v. County of Suffolk*, 356 F.3d 495, 504.

A prosecutor also does not have absolute immunity "for acts that are manifestly or palpably beyond his authority" or are "performed in the clear absence of all jurisdiction." *Schloss v. Bouse*, 876 F.2d 287,291 (2d Cir. 1989). "For example, where a prosecutor has linked his authorized discretion ... to an unauthorized demand absolute immunity will be denied." Id. at 504 (citing *Doe v. Phillips*, 81 F.3d 1204 (2d Cir. 1996).

Bowling's arguments are in the record references: ROA.44-46, 1st Amended Complaint.39-40, 653-656, 1119-1122, 1464-1466)

Personal Involvement

The district court dismissed Bowling's claims against Willis leveraging *Murphy v. Kellar*, 950 F.2d 290, 292 (5th Cir. 1992) which cites, "Because Murphy was unable to specify which defendants participated in which actions that allegedly violated his constitutional rights, this complaint will be dismissed without prejudice." The Murphy court delivered this decision with sound authority for the principle that a plaintiff bringing a section 1983 action must specify the personal involvement of each defendant.

Statute of Limitations

Section 1983 is a federal statute without a prescribed federal limitations period. To determine the length of the statute of limitations in section 1983 cases, federal courts therefore reach down and borrow the forum state's general personal injury limitations period. See *Owens v. Okure*, 488 U.S. 235, 109 S.Ct. 573, 102 L.Ed.2d 594 (1989); *Burrell v. Newsome*, 883 F.2d 416, 418 (5th Cir. 1989).

In the State of Texas, the *statute of limitations* on most personal injury claims is two years from the date that the cause of action accrues. See Texas Civil Practice and Remedies Code, Section 16.003. A cause of action typically "accrues" at the time in which an injury caused by another should be realized. In most cases, this is that

date that the injury occurs, however, one exception is the "Discovery Rule".

Malicious Prosecution

The court cited *E.G. v. Bond*, No. 1:16-CV-068-C, 2017 WL 129019, at *4 (N.D. Tex. Jan. 13, 2017 (citing *Hale v. Harney*, 786 F.2d 688, 690 (5th Cir. 1986) as a standard of review to deny Bowling's claim of Malicious Prosecution.

Application and Discussion of Prosecutorial Immunity and other defenses of Greg Willis

Claims against Willis are Violation of due process, Conspiracy to Interfere with Civil Rights, Failure to Intervene, and Malicious prosecution.

Willis fabricated evidence to the lower Texas trial court to wrongly incarcerate Bowling. The only connection that Willis had to Bowling at that time was the unlawful adjudication in McCraw's court for which McCraw was up for recusal. Willis and Bowling had never met. Willis and McCraw were co-conspirators of corruption in 2011.

1. Willis sent a notice to Bowling called "Property Hearing Notice"(ROA.659) which appears to divulge nothing of the purpose of the hearing. The gun, subject matter, belonged to Bowling, registered with her Georgia CHL(LTC equivalent) and nothing appears threatening on the notice. At that time and not within Bowling's purview, is the Case Detail which was submitted by Willis in a pleading in the federal court(ROA.746). Willis apparently opened a criminal case the same day as the unsuspecting Notice sent to Bowling. Prior to Bowling's attendance in this hearing Willis had already accused Bowling of "Possession

of a Stolen Weapon" based on clearly fabricated evidence(18 U.S Code § 242) that Bowling was divorced from Dahlheimer Jr. and Dahlheimer Jr. had papers or proof he owned or was awarded the gun in the Divorce. The truth is Bowling and Dahlheimer were not divorced and Dahlheimer had no such paperwork proving ownership. Willis's notice is deceitfully luring Bowling into attending the hearing without an attorney, so he would have a more success in wrongfully incarcerating her. The objective of this scheme could not possibly be professional or the act of deceit could not be possible earn prosecutorial immunity. This Notice to Bowling, on it's face, is not initiation and prosecuting a case, *Imbler v. Pachtman*, 424 U. S. 409,410 (1976). Willis cannot enjoy immunity for this action of threatening Bowling. Further, the deceitful Notice prevents Bowling from the protection of her civil rights when the deception deters her from retaining an attorney.

2. Once Bowling arrived to the hearing with her brother, she was accused of stealing a gun(the gun she owned). Willis sought to incarcerate Bowling. What was the motive for the departure of the Notice content to the real intent of the hearing in conjunction with the fabricated evidence? Regardless, this hearing could not be prosecutorial as there was no probable cause *Broam v. Bogan*, 320 F.3d 1023, 1030 (9th Cir. 2003); *Anderson v. Creighton, 483 US. 635 (1987). 94.* Id. *at 641* and the *Fourth Amendment.* When there is not probable cause Willis is in an

investigatory role and does not enjoy immunity for his actions.

3. A "Request for Hearing" supposedly from Mike Vance surfaced during the Federal case (ROA.745). It infers that Mike Vance requested the hearing and offered the fabricated evidence, but it was not signed by Mike Vance(not signed at all). Mike Vance was not at the hearing. The document fabricates probable cause stating "the couple are divorced" and that Mr. Dahlheimer owned or inferred he was awarded the gun. It is inconceivable that Willis was unaware that the "couple" was NOT divorced and that Dahlheimer had no paperwork for the gun. It is also inconceivable that Mike Vance would request a hearing with the chance a gun might be given to Dahlheimer. Mike Vance, who had prior conversations with Bowling about Dahlheimer's violence, knew the divorce was pending and knew Dahlheimer should never be in possession of a gun. Mike Vance would never have requested this hearing. This document was fabricated in it's entirety to look like Willis had probable cause by someone else's investigation. The Notice to Bowling to attend this hearing did not have any of this information in it? If this "Request for Hearing" by Mike Vance was not fabricated then Mike Vance would have requested the hearing before the criminal case was opened(ROA.746), not the same day (Article 47 of the Texas Code of Criminal Procedure). Bowling should have been made aware of such fabrication in her unsuspecting Notice of hearing. It does not appear feasible that the Request for Hearing by

Mike Vance existed. This is impermissible conduct on the part of Willis. The fabrication and its intent aligns with the intent of malicious prosecution and Willis cannot enjoy immunity due to the deceit, *Bernard v. County of Suffolk*, 356 F.3d 495, 504. Bowling's argument ROA.1337

4. The Case Detail is another element of fraud as with Willis's pleading to the federal court. There is an entry stating "Property Awarded" insinuating it changed hands, ROA.746(out of Bowling's and into Dahlheimers) which is absolutely false. Thanks to the constable at the hearing who appeared to be protecting Bowling, Bowling was allowed the chance to call authorities in Georgia to obtain her paperwork to show ownership, *Kalina v. Fletcher* 522 U.S. 118 (1997). Willis deceives the trial court and the federal court and cannot enjoy immunity for his actions. It is not a true statement, however, that the property was "awarded".
5. What is most disturbing is that all the evidence of Dahlheimer's violent history, stalking, arrests, threatening Bowling, confessions, and incidences was submitted separately to Willis, Collin County District Attorney, prior to this hearing. Willis's failure to intervene appears more like doing favors for McCraw whom he owed a debt to for her exonerating him at the Grand Jury from his own corruption as judge(2011). Willis was willing to place a gun into a proven violent stalker as a favor to McCraw. Willis, in essence, gave Dahlheimer a license to continue stalking Bowling and keep her in alarm status.

6. After the hearing of Bowling being accused of a criminal act with the intent of incarceration, Bowling wrote Willis and demanded he explain his actions and malicious litigation in the state court. Willis did not respond. Willis is personally involved as Bowling made sure of it. His failure to intervene is evident of the ongoing violations of the Dahlheimer and law enforcement. Bowling has clearly tied Willis to these actions unlike the district court's argument citing *Murphy v. Kellar*. Bowling's argument ROA.1335.
7. Someone had directed Plano Police to call Bowling on her cell phone and knock on her door(on more than 2 occasions), walk in, and threaten her. The ongoing police harassment, the ongoing failure to assist with criminal break ins/threats/vandalism, and McCraw's ongoing criminal participation with the Dahlheimers were brought up to Willis's office again. Willis's "people" finally allowed Bowling to come into the District Attorney's office to do a full intake of Bowling's concerns about Willis's abuses in his office. Willis's "people" instructed Bowling they would respond back to her with answers. Willis never responded. Willis had direct and personal participation. Willis's participation was ongoing and without explanation. Willis's lack of intervention and possible direct participation is construed as Willis depriving Bowling of her civil rights under color of law, 18 U.S. Code § 242.
8. Bowling had no choice, but to seek remedy in an Appellate Court(2016 less than one year after Willis's hearing) to stop McCraw, thus stop

Willis's threats toward Bowling. Both officials demonstrated bad faith. Willis's deeds were honorably mentioned in Bowling's appeal to the Texas higher courts. Tolling of the statute of limitations would have ended if the Appellate court hadn't ended with severe record defects and a denial to correct the records. The appeal term should not be tolled because of the obstruction of the appeal. Bowling has complied with the statute of limitations in holding Willis accountable for his actions. Bowling escalated to a Federal Court(8/2018) right after the Texas Supreme Court denied Bowling's Petition for Review(6/2018). Bowling's argument ROA.1336.

9. An additional violation of civil rights was Willis's attempt to create prejudice in the Federal court by unlawfully disseminating to the district court prejudicial information(another violation of civil rights ROA.739-740). There was a previous incident, one month after filing for divorce 4/2015, where Bowling had hurriedly entered the Collin County Courthouse to file papers(no hearing) and forgot she had a gun in her purse. Bowling was stopped at the front lobby. Mike Vance was involved. Bowling was never charged for these reasons: (1) Bowling had a license to carry, but Bowling had just recently started to carry it again after locking it up for two years. Her lack of cognizance of the gun was her failure(admittedly serious failure). (2) Dahlheimer was violating a Protection Order at the time toward Bowling's person and home(on record at the courthouse) which precipitated Bowling to start carrying it again to protect herself. (3) There was no

hearing at the courthouse. Bowling was holding papers for filing(no threat or intention there). (4) Bowling had a clean record. The incident was expunged. Bowling motioned the Federal court to strike Willis's dissemination of the incident making any reader prejudice, but Nowak denied Bowling's motion. It is wrong that Bowling has to defend herself again over the terrifying event again to another court. This was a violation of Bowling's civil rights by Willis AND Nowak.

10. Willis attempted to deceive the Federal court in his pleadings on several fronts. Willis claimed that when he charged Bowling with stealing a gun that the gun in question "The gun was eventually returned to the lawful owner" (ROA.740) falsely insinuating to the Federal District court directly that Bowling had indeed stolen the gun(which is blatantly false) and insinuated the gun belonged to someone other than Bowling(which is false). This false statement misleads the Federal District court to believing Bowling was found guilty of stealing a gun. This is a malicious falsification. Willis deceived the District court into believing he had merit to prosecute Bowling. This shows intention to thwart the judicial machinery on two fronts, *Kalina v. Fletcher* 522 U.S. 118 (1997).
11. Willis is aware he had no probable cause to maliciously lure Bowling into a court and incarcerate her. In his Motion to Dismiss(ROA.192) he purposely misstates a recitation of the doctrine of absolute Prosecutorial Immunity.

Willis writes:

> "*as set forth by the United States Supreme Court in Imbler v. Pachtman, 424 U.S. 409 (1976), provides that a state prosecutor who acts within the scope of his duties in initiating,* ***[investigating]*** *and pursuing a criminal prosecution and in presenting the state's case is absolutely immune from a civil suit for damages for alleged deprivations of the defendant's constitutional rights under 42 US.C. §1983.*"

where he purposely inserts the word **[investigating]** which does not exist in the recitation. Willis is rudely aware of his violations of Bowling's civil rights and his lack of immunity.

12. Bowling has been on the defense from Willis's aggression since 2015. Bowling's actions do not mimic "Vexatious Litigation" yet he accused her of it and Nowak recommended the status be GRANTED. Mazzant adopted Nowak's recommendation. Bowling appealed this Vexatious Litigation Order to the U.S. Fifth Circuit Court of Appeals and ALL briefs have been completed for 8 months(19-40914). The Fifth Circuit has held onto the appeal without disposition which lent a hand backwards to McCraw's court, now Judge John Roach, who is issued an order deeming Bowling Vexatious just because of Willis's request was GRANTed by Nowak/Mazzant unlawfully. This screams conspiracy to interfere with civil rights between

Nowak, Willis, and the new Trial court judge Roach who is continuing to violate Bowling's constitutional rights. This also gave the autonomy to Roach who unlawfully distributed the remainder of Bowling's property to others. Roach is making Bowling pay $25,000.00 to appeal his Vexatious Litigation Order to the Texas courts and another $25,000.00 to appeal the unlawful distribution of the remainder of Bowling's property. This is a violation of Bowling civil rights and the Fifth Circuit Court needs to offer remedy. Eight months is a long time to hold onto this very unlawful obstruction of justice and give the state court an excuse to obstruct justice at their level. Any conspiracy of that nature with a federal judge and/or a trial judge would be well outside his role of prosecutor and authority, *Bernard v. County of Suffolk, Doe v. Phillips*, 81 F.3d 1204 (2d Cir. 1996). Willis is not immune for the unlawful obstruction.

13. Punitive Damages are indeed available if this court finds Bowling successfully stated a claim, 42 U.S.C. § 1983.

14. The district court erred in dismissing Bowling's malicious prosecution claims by stating Bowling has no "proof". It would seem that discovery would have to occur before a court can assert "no proof". Nowak further insults Bowling by stating her justification as "instead[of proof], relies[Bowling] on her unfounded suspicions as support for her claim. Then Nowak leverages this caselaw, *E.G. v. Bond*, No. 1:16-CV-068-C, 2017 WL 129019, at *4 (N.D. Tex. Jan. 13, 2017). This recitation has nothing to do with "proof" yet it

does speak to the fact that "specific intent as an element of § 1983 conspiracy remains good law" when it comes to providing a claim. Then, Nowak recites *Hale v. Harney*, 786 F.2d 688, 690 (5th Cir. 1986). This recitation is in regards to the Rooker-Feldman doctrine, not relative to the subject of "proof" and malicious prosecution.

15. The question still remains, what was Greg Willis advocating?

Standard of Review for Res Judicata

Res judicata is the principle that a cause of action may not be relitigated once it has been judged on the merits. "Finality" is the term which refers to when a court renders a final judgment on the merits.

Exceptions to Res Judicata are as follows:

1. Collateral attacks
2. Due process had a liberty taken away
3. Declaratory judgement
4. if claimant was not afforded a full and fair opportunity to litigate the issue decided by a state court

ALL these exceptions are pled in Bowling's complaint.

Bowling has the right to file in this court her complaint of the intentional deprivation of constitutional rights, "*Allen v. McCurry*, 449 U.S. 90, 94, 101 S.Ct. 411 (1980)". The collateral estoppel bar is inapplicable when the claimant did not have a "full and fair opportunity to litigate" the issue decided by the state court. Id. at 101. Thus, a claimant can file a federal suit to challenge the adequacy of state procedures.

Application and Discussion of Res Judicata/Rooker-Feldman defenses for Mueller and Dahlheimer Jr. and Sr.

Claims against Mueller, Dahlheimer Jr. and Dahlheimer Sr. are Violation of Due Process, Conspiracy to Interfere with Civil Rights, Unlawful Seizure of Property through fraud and forgery, and Fraudulent Concealment.

Bowling's arguments for Rooker in respect to Mueller and the Dahlheimers can be found ROA.695, 1553. Bowling's arguments over Res Judicata can be found ROA.696, 1554.

1. The court errored in applying Rooker Feldman as a jurisdictional problem for Bowling to bring her claims. The Divorce ended 7/2016 and the state appeal failed because of the record defect(tampering of the record by actors). Further, none of the claims in the federal court against Mueller and the Dahlheimers are similar to any state court claim allowed to be litigated. During the state appeal and this case in the federal court, Mueller/Dahlheimer filed over 6 lawsuits with intention to wrongly incarcerate Bowling claiming "Motion for Enforcements" with no valid basis or evidence to their fictitious claims. Their vexatious efforts had the intention to threaten Bowling into submission and deplete her funds. Still, none of these claims mirror the claims in the federal court jurisdiction. Rooker Feldman does not apply to Bowling's federal claims.
2. Res Judicata would apply if Bowling wasn't obstructed from litigating the Defendants offenses

in the state courts. If an Order or transcript existed over Bowling's claims of Mueller/Dahlheimers criminal offenses then Res Judicata might be applicable. Any state court claims were obstructed from litigating at a divorce trial where Bowling was not in attendance because she was not afforded a notice of hearing to attend. Bowling's attorneys did indeed accumulate business affidavits and filed some of the claims, but Bowling was obstructed from presenting her case to a court. Other claims in the federal court are violating Bowling's rights because of the obstructions and threatening aggressions. The attempt to correct the lower courts obstruction by appeal in a state appellate court was obstructed by the disappearance of the entire clerk record which implicated the current Defendants. If the Opinion in the state Appellate court was based on the evidentiary records, which were removed, then Res Judicata may have traction, but the Appellate court, Defendant Judge Evans and Matz, refused to correct the records for a rehearing. The clerk records were material to the appeal. The Texas Supreme Court denied Petition for review(no reason stated). The obstruction of justice is the main cause for Bowling's case in the Federal court. Mueller and the Dahlheimer were directly involved in the obstruction. Res Judicata does not apply because of the obstruction to litigate claims and the difference in Bowling's claims in the federal court from the state court.

3. Bowling cannot identify a Report and Recommendation to dismiss Dahlheimer Sr.

Bowling has not pleading to object or respond. Dahlheimer Sr.'s Motion to Dismiss was denied(ROA.1495). There is an order directing Bowling to Amend, but no reason for Dahlheimer Sr.(ROA.1546) which is in direct conflict with the court's validation of Injury-in-Fact(ROA1228, 1518) by Mueller and the Dahlheimers. Bowling's Second Amendment was accepted(ROA.1684). Then the "Final Judgement" was signed without reason of dismissing Dahlheimer Sr. Due process appears to be absent. This is why the "Final Judgement" to dismiss Dahlheimer Sr. should be vacated. It is unknown how to defend the claims if there was no reason for the dismissal, Motion to dismiss was denied and Injury-in-Fact was validated.

4. The court validated Bowling had material Injury-in-Fact against Mueller and the Dahlheimers(ROA.1228, 1518). No need to reiterate their offenses or defend the claims. The court errored in dismissing the case against Mueller and the Dahlheimers. Bowling's previous attorneys collected business affidavits and other evidence to litigate. Bowling deserves the right to present her case and obtain restoration for her losses. Bowling also possesses indisputable evidence of the tampering of records in the Appellate Court. The Mueller/Dahlheimer offenses are brought in through 28 U.S. Code § 1367 Supplemental Jurisdiction.

FOURTH ISSUE

(Appeal of Dkt# 183)

Standard of review: Vacatur of a final judgment based on fraud on the court is warranted only to prevent a grave miscarriage of justice. Id. at 14 (quoting *United States v. Beggerly*, 524 US. 38, 47 (1998)); see id. at 13-15.

***Discussion*:** Dkt #183 entered final judgment for all defendants already dismissed in other Orders, ROA.1685. Considering Bowling's Rule 60 motions and other pleadings, if any issues 1 – 3 in this U.S. Appeal have merit, then this Order entering finality should be vacated or amended.

CONCLUSION AND PRAYER

The District court simply omitted Bowling's entire defense of claims. The Reports and Recommendations are a serious failure(ALL of them).

Therefore, Bowling prays this court reverse and remand Orders Dkt#180, #182, and #183. If the court deems fair, Bowling requests all Nowak's distorted Reports/Recommendation be vacated and all Mazzant's Orders that were precipitated by Nowak's mischaracterizations of the facts and law be vacated. That the court remands all issues to the District court with instructions to administer a fair assessment of the facts and law in the interest of justice.

/s/Wanda Bowling
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No. 20-40642

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Wanda L. Bowling
Plaintiff - Appellant

v.

Lester John Dahlheimer, Jr., Estate; Lester John Dahlheimer Sr., Estate; Paulette Mueller, in her Official and Individual Capacity; Judge Piper McCraw, in her Official and Individual Capacity; Greg Willis, in his Official and Individual Capacity; Craig A. Penfold, in his Official and Individual Capacity; Judge David Evans, in his Official and Individual Capacity; Rhonda Childress-Herres, in her Official and Individual Capacity; Clerk of the Court, 5th District Court of Appeals
Defendants - Appellees

Appeal from the United States District Court
Eastern District of Texas, Case No. 4:18-cv-00610

APPELLANTS REPLY BRIEF

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CERTIFICATE OF INTERESTED PERSONS

No. 20-40642

WANDA BOWLING,
Plaintiff - Appellant

v.

LESTER DAHLHEIMER JR., et al
Defendants - Appellees

The undersigned counsel of record certifies that the following listed persons and entities listed in the fourth sentence of 5th Cir. Rule 28.2.1. have an interest in the outcome of this case. These representations are made in order that the Judges of this Court may evaluate possible disqualification or recusal:

1. Greg Willis, Defendant
2. Robert Davis, with MATTHEWS, SHEILS, KNOTT, EDEN, DAVIS & BEANLAND, Attorney for Greg Willis
3. Paulette Mueller, Defendant and self representing with UNDERWOOD PERKINS
4. Lester Dahlheimer Jr., Defendant
5. Eli Pierce, Attorney for Lester John Dahlheimer Jr. with UNDERWOOD PERKINS
6. Lester Dahlheimer Sr., Defendant
7. Robert M. Nicoud, Jr., Attorney for Lester Dahlheimer Dr. with NICOUD LAW
8. Rhonda Herres, Defendant
9. Patrick Sicotte, Attorney for Rhonda Herres with NESBIT, VASSAR, & MCCOWN

10. Craig Penfold, Defendant
11. Kelli Hinsin, Attorney for Craig Penfold with CARRINGTON, COLEMAN, SLOMAN & BLUMENTHAL
12. Texas District 469th Judge Piper McCraw, Defendant
13. Texas 5th District Appellate Judge David Evans, Defendant
14. Texas 5th District Court of Appeals Clerk, Lisa Matz
15. Scot MacDonal Graydon, with the OAG OF TEXAS, Attorney for McCraw, Evans, and Matz.

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STATEMENT

Complete obstruction in the state courts: Relief is unavailable

Bowling's overarching complaint in the federal court is that Bowling was obstructed in the Texas states court from presenting the embezzlement of her separate properties in Georgia/Texas by the Dahlheimers and obstructed from presenting her rights to community property in a simple divorce. The proceedings were riddled with violations of due process, tampering with records, and unlawful actions. The divorce trial was held without notifying Bowling(no notices went out for the trial). Bowling's appeal in the Texas appellate court over this trial court obstruction, among other offenses, was obstructed due to the convenient disappearance of the entire clerk record(87 megabytes of electronic records, costing $1,100.00 to transfer) from the Trial court into the appellate record which supported her appeal. Those records implicated the corruption of the Defendants. Clearly, a court can issue any kind of opinion, even fictional, if there aren't any records. The request by Bowling to correct the records were simply DENIED and the Texas Supreme Court denied reviewing Bowling's Petition for review. Bowling was threatened and brutalized in court and outside of court by Defendants for escalating into higher courts and no court has yet to allow presenting her case of the constitutional violations.

Recently, the state court(Aug and Sept 2020), Defendant Judge Roach, distributed Bowling's remaining assets of $187,000.00. Defendants Mueller, Dahlheimer Jr., and Penfold gladly split it up between themselves in a phone conference.

Bowling requested Findings of Facts and Conclusions of Law from Roach. He did not respond. Bowling ordered and paid for Transcripts of both phone conferences. Roach's court reporter took Bowling's money, but never produced the transcripts. Then Roach wrongfully placed a prefiling injunction against Bowling with a price tag of 35,000.00 to appeal the latest orders of the unlawful distribution of her $187,000.00 of assets and the unlawful prefiling injunction. The state court is obstructing appeal to conceal the corruption of theft facilitated by the court. Bowling should be given a remedy for restoration of her assets swindled by these Defendants. Bowling should be protected from their aggression. Relief is unavailable at the state level.

Most of the facts below have not been directly denied, they have just been misarticulated, misapprehended, and created in such a posture to mislead the federal court.

ARGUMENT

REPLY TO APPELLEES PIPER MCRAW, DAVID EVANS, LISA MATZ:CLERK OF THE COURT

A. The Rule 54(b) v. Rule 60 argument evaded the true issue:

Appellees want this court to interpret an order to dismiss all claims against Appellees ROA.1206-1219 as "not a final order", therefore, disabling Appellant's Motion for Relief from Judgment Rule 60. This gave the district court an excuse to apply Rule 54(b) incorrectly. Whether the court applied

Rule 54(b) or correctly Rule 60, the district court is still evading to address their(district court) omissions and distortions that are causing a defect of integrity in the federal court. Bowling's Rule 60 motions identified these items and expected the district court to reconcile their discrepancies, yet the Order addressed nothing of the sort. The Order seemed moot.

In the Federal Rules of Civil Procedures, the proper name of the rule is "Rule 60 Relief from Judgment or Order". The rule does not say "Rule 60 Relief from Final Judgment". A Rule 60 Motion can be request relief from an Order.

It is common to use a Rule 60 motion for relief from judgements to vacate orders dismissing all claims against a Defendant. Just because an order can be appealed inclusive of an "interlocutory" status, does not mean the Court cannot entertain a Rule 60 motion applied to the dismissal order. In *OFS Fitel, LLC v. Epstein, Becker & Green, P.C.*, 549 F.3d 1344, 1368-69 (11th Cir. 2008) (quoting *Catlin v. United States*, 324 U.S. 229, 233 (1945)) A federal order is final and appealable only when it "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.

Rule 60(b) affords a "Party or his legal representative" a means of obtaining substantial relief from a "final judgment, order, or proceeding." as stated in the Rule. Appellees did not provide legal authority that specifies Rule 60 can only be applied to a "final judgement".

The district court abused their discretion in an attempt to evade addressing their own integrity issues. It may be a moot argument because Bowling

appealed the "Final Judgment"(Dkt# 183) as well. Unfortunately, this court has to reconcile the discrepancies.

B. Denying Bowling's First Amended Complaint is obstruction:

Bowling's First Amended Complaint was filed in response to several Motions to Dismiss's within 21 days as a matter of law to clarify, align, and correct items in arguments brought out in Appellees Motion to dismiss ROA.1047, ROA.1077 among other pleadings filed.

There were several good reasons for clarifications and events that occurred inspiring the updated Complaint:

- Dahlheimer Sr. attorneys seem to have their facts confused with Dahlheimer Jr. Each Dahlheimer Defendant participated in their offenses differently. It was necessary to amend the Complaint to be absolutely clear distinguishing each party's participation.
- Bowling learned new information that the individual who obstructed her directly in person at the Fifth District Court of Appeals and called herself "Denise" was actually Lisa Matz, the principal Clerk of the Court. Bowling now had hard evidence that Lisa Matz, as an individual, participated in the records tampering and protected the unlawful act. (Bowling googled "Lisa Matz" and identified Ms. Matz by her picture on LinkIn as the imposture "Denise"). Lisa Matz, the state actor, needed to be called out in Bowling's suit rather than the "Clerk of the Court".

- In the previous 21 days several objections to the Report and Recommendations were filed, two Motions to Dismiss, and another Report and Recommendation was filed. These motions were quite the force to misarticulate the original facts in Bowling's Original Complaint. Bowling had spent time at the Library to write a concise, clean, and supported First Amended Complaint for everyone's benefit.
- Bowling corrected an error regarding injunctive relief. While Bowling did not error in requesting injunctive relief, Bowling did error in asking for retroactive relief as well(vacating orders that unlawfully seized her property, which was causing irreparable damage). This retroactive relief is only appropriate if the federal court wrongly denied an injunction for relief filed in their court(which did occur). Retroactive relief from the point of that filing is appropriate.

Amending the original complaint was filed as a matter of law. Asking for leave occurred, but after the denial. These are the facts. The district court's act of denying, striking the First Amended Complaint, and refusing to supply the First Amended Complaint to the record on appeal in the Fifth Circuit is blatant obstruction. It is an abuse of discretion.

C. Appellees omissions and misarticulations are causing a defect of integrity in the federal court

Appellees wish to force a falsely articulated theme into the Fifth Circuit Court of Appeals that

Appellate procedure and Texas law. It's an independent administrative task, not a judiciary task, therefore the action for refusing to correct the implicating records of Defendants is not afforded judicial immunity. Administrative tasks are not covered by judicial immunity. This decision thwarted Bowling's entire appeal and assisted in fraudulent concealment of the lawless actions of the Defendants. The clerk does not have the discretion to decline correction of the records especially since correction was not contested.

2. Appellees claims that:
   "*Bowling pleads no ongoing federal violation and the relief she is seeking is not prospective*".

MISSTATEMENT: Bowling requested injunctive relief in her original complaint ROA.49, First Amended Complaint p. Dkt#107 p.43,44, and Second Amended ROA.1470. Further, there are plenty of pleadings that complain of the ongoing violations in the state court by the efforts in her prefiling injunction(ROA.71, ROA.139, ROA.498). Bowling attempted to remove ongoing violations of the state court in Jan. 2019(4:19-cv-00022) which was wrongly denied. Bowling then filed an independent action to stop the ongoing violations in 2/2019 (4:19-cv-00144). Bowling has called out the current ongoing violations in the above section labeled "*Complete obstruction in the state courts: Relief is unavailable*"

3. Appellees state in their brief:

> *"To the extent that claims against the State Appellees were dismissed for other reasons, because Bowling has not presented arguments on those issues in her opening brief, she has abandoned any appellate review of those issues"*,
>
> and
>
> *An appellant abandons all issues not raised and argued in its initial brief on appeal.... A party who inadequately briefs an issue is considered to have abandoned the claim.*

OMISSION: Appellees fail to identify what "*other reasons*" are in the Order(ROA.1206) to dismiss that which Bowling has not "*presented arguments*". Appellees play musical chairs with their defenses. Appellant has argued all of their defenses in one response pleading or another.

4. Appellees claim:
   Bowling did not dispute the dismissal of claims against Ms. Matz based on qualified immunity in her Appellant's Brief and has abandoned any review of that dismissal.

MISARTICULATION: The Order to dismiss the claims of Lisa Matz Clerk of the Court (ROA.1206) did not reach any arguments regarding qualified immunity. However, Bowling did argue against it's defense in ROA.686, ROA.1043. Also, after the Order to Dismiss was issued Bowling argued against

the qualified immunity defense in her Rule 60 motion ROA.1323

5. Appellees call out Bowling "claims":

> *"Plaintiff was kicked out of her own property 7/19/2016 via order"*

and further argues

> *"The order in question was Judge McCraw's judgment, the Final Decree of Divorce, which is in the record here. ROA.327-340. It is hard to imagine a more direct admission that it is the judgment of which Bowling is complaining in this lawsuit.*

OMISSION: Appellees omit that the property Bowling was kicked out of wasn't in dispute, or in controversy in any court. As a matter of fact the property was deemed separate property in a previous hearing two months prior to the ruling to kick Bowling out of her residence. Because the property was not in controversy, McCraw had no subject matter jurisdiction over the property. The action is not covered by judicial immunity and translates into a federal offense of unlawful seizure of property as it is clearly represented in Bowling's complaint and appeal.

6. Appellees call out Bowling complaint of Defendant Evans:

"the baseless derogatory Opinion of Judge Evans"

OMISSION: Appellees leave out that it was Evan's baseless disparaging Opinion that led to Bowling's investigation and audit of the record on appeal. That was when Bowling learned the 87 megabytes of clerk records had disappeared and three tiny fake files replaced them. This gave Evans an excuse to write such a disparaging Opinion with no evidentiary support. His participation in denying the correction of the records also fraudulently concealed the Defendant's lawless actions and also covered his creative opinion of baseless defamation.

7. Appellees mislead by stating:
   "In Bowling's previous case, this Court clarified for her that "courtroom management and administration fall within a judge's judicial capacity." Bowling v. Roach, 816 F. App'x at 906".

MISARTICULATION: A minor point must be made that Judge Roach's lawsuit is not the "previous case", but a subsequent attempt to add Judge Roach as a Defendant to this same case for ongoing violations.

Further, while it may have some validity that *"courtroom management and administration fall within a judge's judicial capacity.",* all instructions to the clerk are not discretionary judicial actions. Any actions directing administrative tasks are not covered by Judicial immunity. Clerks are bound to procedures by Texas laws and the Rules that are not

discretionary. Administrative tasks are not afforded judicial immunity.

8. Appellees misarticulate McCraw's actions:

> *"Bowling suggests that Judge McCraw displayed "aberrant conduct" when she controlled her courtroom during a contested hearing, including directing a witness to identify evidence by number after it was admitted and for ruling on legal objections regarding the admission of that evidence."*

MISARTICULATION AND OMISSION: This is a distortion of the events and the event was clearly presented in Bowling's complaints. McCraw and Mueller commandeered Bowling's evidence while she was on the stand testifying. Mueller took possession of Bowling's evidence and McCraw shushed Bowling from describing the evidence to be admitted while on the stand, so the transcripts could not reveal what evidence Bowling was trying to admit into evidence. Mueller had free reign to withhold Bowling's evidence from being admitted. Whatever Mueller gave the court reporter was the only items admitted. The physical exchange was not viewable. Unlawfully seizing Bowling's evidence in a courtroom, and shushing her from testifying to it(McCraw exclaims "just the numbers!") certainly is aberrant conduct and severely deviates from what is expected in a courtroom. The unlawful commandeering by both participants is not a judicial action and cannot be covered by judicial immunity. This exchange of commandeering the evidence and McCraw's verbal

obstruction is clearly revealed in the court transcripts, regardless. It was certainly preserved and equates to tampering with evidence(ROA.1370 ¶24, ROA.1435 ¶75, and ROA.1457 ¶202). The damage from obstruction is not covered by judicial immunity. (NOTE: Bowling possesses all of the records/transcripts as she purchased them from the Trial court. They are available for any future trial.)

9. Appellee's complain:

> *"Plaintiff's argument that the judge cannot hold a trial or hearing, because only a clerk can set a matter and notify parties [APPELLANT'S BRIEF, p. 56] is simply nonsensical and incorrect."*

and

> *"Bowling even complains about Judge McCraw holding a trial on the divorce case pending before her. APPELLANT'S BRIEF, p. 55. It is hard to imagine a more judicial act than presiding over a trial."*

OMISSION: Appellees are omitting that McCraw didn't even reach out to the clerks to set a date or time for the divorce trial. McCraw she held the trial without any notifications to any party, but somehow Ex Parte communication made its way to the Defendants Dahlheimer Jr., Dahlheimer Sr., and Mueller. This proceeding could not be a judicial proceeding if it was a "johnny on the spot" trial

without any notifications for the trial in existence. Apparently, McCraw held this trial right after she held another "johnny on the spot" recusal hearing for herself as well.(no notifications for that exists either). A judge does not have discretion to determine if they want the clerk to send out notices or not. Whether it occurred in the courtroom or not it would seem the hearings lack the judicial essence and are void. Holding hearings without notifications appears to be aberrant conduct outside state judicial permission. McCraw's actions thwarted Bowling's ability to present her divorce case(embezzlement and community property). McCraw's action to have a "johnny on the spot" trial of unlawfully seizing Bowling's separate property is not covered by judicial immunity.

10. Appellees complain:

> *"Bowling argues that Judge McCraw lacked all jurisdiction because she entered orders in her divorce proceeding during the pendency of some appeals. APPELLANT'S BRIEF, pp. 58-59."*

OMISSION: Appellees first omit that the events in question were after the divorce proceedings ended 7/2016, and that McCraw's court was under a STAY PENDING APPEAL ROA.788-795(please review the content(Order on Stay ROA.799 and the docket ROA.798). The STAY gave the Texas Appellate court total jurisdiction over the appealed subject matter of the Divorce Decree(appointment of Receiver, forced sale of property, forced removal, etc.) The appellate

court held jurisdiction over the entirety, but while in appellate jurisdiction McCraw decided to re-order up everything in the Divorce Decree and enforce it while completely absent of all jurisdiction. Much damage ensued with her unlawful orders during the STAY. McCraw lacks judicial immunity for the actions causing damage because she did not have jurisdiction over the those matters. The Appellate court had jurisdiction.

11. Appellees complain:

> *"Bowling complains that Justice Evans performed non-judicial acts because he wrote an appellate opinion with which she disagrees and that he "denied the correction of records for a Rehearing" when Bowling made a motion. Bowling argues that Ms. Matz should not have judicial immunity. APPELLANT'S BRIEF, pp. 62-65. This is irrelevant, because claims against Ms. Matz were not dismissed on that basis."*

MISARTICULATION: It is hard to discern what the point is in this blurb. Bowling never complained Evans opinion was a non-judicial act. The confusing paragraph is insinuating Bowling is dissatisfied with Evan's denial to correct the records for a Rehearing. That is true. That particular order to deny correction is nonjudicial. Neither Evans nor Matz have discretion to discern whether they want to correct the records or not. It is Texas law to correct the records, especially since there was no opposition

to correct the records from other parties. This is not a discretionary decision. Evans decision to decline a Rehearing is discretionary, but Evans decision to deny correction of the tampered records is NOT discretionary action. Evans and Matz were made aware of the tampered records, and they chose to conspire with the Defendants/criminal participating in the fraudulent concealment of the implicating records. This decision lacked judicial immunity and completely obstructed Bowling's appeal.

12. Appellees complain:

> *"Bowling's suggestion that the State Employees are in fact county employees fails for two reasons. APPELLANT'S BRIEF, p. 40. First, this was not an argument raised in the district court and it cannot be raised now. Second, it is legally incorrect. Bowling cannot raise this new argument for the first time on appeal."*

and

> *"Bowling has repeatedly admitted that the State Appellees are state officials. ROA.26, APPELLANT'S BRIEF, p. 3. Even if she had not admitted this, as a matter of law, in Texas, "district judges...are undeniably elected state officials."*

MISARTICULATION: Appellees are mistaken. Bowling's point made in her Complaint is that money damages are possible against the state officer, as

long as the damages are attributable to the officer himself, and are not paid from the state treasury, *Scheuer v. Rhodes*, 416 U.S. 232 (1974). The Court in Ex parte Young, supra, recognized a suit challenging the federal constitutionality of a state official's action as not one against the State. Pp. 465 U. S. 97- 103. Bowling indeed raised this argument ROA.1008 and ROA.1321. The salaries paid to Judges are out of their county's budget for which they serve, not state funds. It is for this court to assess if these "state actors" are an "arm-of-the state" or an "arm-of-the-county".

Further, it must be said, that both McCraw and Evans were supposed to be elected officials by the people of their county, however, Greg Abbott thwarted voter's rights by appointing both of these judges. Over Greg Abbott's first term he appointed approximately 25% (109) of the judges as "Republican" judges that should have been elected by the people in each county. It is unknown how much higher the percentage is now that his second term is halfway over. These are not elected officials by the people. Abbott rules over the judiciary. They protect each other for the sake of their appointer Abbott and "Republicanism". The tyrannical scheme is a violation of the United States Bill of Rights. The lack of checks and balances and the Governor's control is causing pockets of corruption throughout Texas courts. These judges are untouchable.

13. Appellees make statements such as:

> *"Bowling did not dispute the dismissal in her Appellant's Brief and has abandoned any review of that dismissal."*

and

> *"Bowling does not argue that Judge McCraw never had subject matter jurisdiction."*

and

> *"Notably, Bowling does not identify anything in the record to indicate she has preserved such matters for appeal."*

and

> *"Bowling pleads no ongoing federal violation and the relief she is seeking is not prospective*".

and

> *"Bowling did not dispute the dismissal in her Appellant's Brief and has abandoned any review of that dismissal."[Regarding Lisa Matz]*

MISARTICULATION: These statements are untrue and appear to be nonsensical. It seems the Attorney General has determined that his "power of

suggestion" may conceal their omissions and misarticulations that has precipitated Bowling's lengthy corrections and repeating herself.

REPLY TO APPELLEE CRAIG PENFOLD

A. Prejudicial

Appellee Craig Penfold misleads this court by bringing up that Bowling has been "*declared a vexatious litigant by at least two courts*" to prejudice this court against Bowling. Nowak, who is under judicial complaint, wrongly declared Bowling a vexatious litigant is the same court for which this appeal arises(Judge Nowak and Mazzant). The Vexatious Litigant Order is currently pending appeal in the Fifth Circuit Court of Appeals. Bowling had only one case in the state court and filed one in the federal court as a result of a corrupt journey in that state proceeding. This hardly rises to a vexatious litigant level. The second "Vexatious Litigant" order was wrongfully issued from the same state court for which these state Defendants originated. One of the Defendants, Judge Roach, who was requested to be added to this case, ordered the injunction to prevent Bowling from appealing his unlawful actions after this court dismissed his case. He distributed 187,000.00 belonging to Bowling to other defendants in this case. Then he declared Bowling Vexatious to prevent her from appealing in the state court. There is a 35,000.00 price tag to appeal his unlawful orders. Obviously, these defendants are working together. Penfold's statement is misleading and prejudicial.

Roach's dismissal and other offenses are pending in the U.S. Supreme Court.

B. Stating a claim for which relief can be granted

Penfold filed numerous motions to dismiss and supplements to his motions to dismiss. In each of Penfold's Motions to Dismiss(and supplements) he has had different defenses and Bowling has responded each time overcoming the musical chairs of can't-make-up-my-mind reasons to dismiss. Bowling has argued plenty to Penfold's moving arguments.

The below procedural history is absent of all Penfolds filings, but the subject matter is pertinent to the points of argument and stating a claim.

Procedural History:

- 8/23/2018 Bowling files Original Complaint ROA.24
- 9/27/2018 Penfold files a Motion to Dismiss, however it appears to be absent from the record on appeal. Bowling requested the district court supplement the record, but was denied, ROA.1595-1596. The missing record on appeal is Dkt#40 where his defenses were Failed to plead facts plausibly, Without relevant elaboration, Plaintiff confusingly aggregates, Fail to satisfy the requisite pleading standards, Vague, Negligence: has not proven all of the elements, Fraud: has not proven all of the elements. These "defenses" were supposed to support his motion to dismiss.

- 11/8/2018(extension granted) Bowling filed a response to this MTD ROA.702
- 4/11/2019 Penfold files another Motion to Dismiss Supplemented ROA.1077
- 4/22/2019 Bowling responds to Penfolds MTD Supp ROA.1138
- 9/16/2019 Bowling files Second Amended Complaint ROA.1362
- 9/30/2019 Penfold files another Motion to Dismiss ROA.1526

There seems to be some question as to whether Bowling fully stated her claims for which relief can be granted. It is up to this court to determine if the district court has made a plain error in judgment. Claims surrounding Penfolds contributions to the violations are in numbered paragraphs starting at ROA.1420 ¶44-46, ¶76, ¶78, ¶113, ¶152-164, ¶245-246, and ¶253.

C. Ongoing violations

Penfold dismissed himself when Bowling's Motion to Stay Pending Appeal was granted in the state trial court 12/16/2016. Penfold withheld approximately 6,000.00 in insurance proceeds(2 checks). On 8/19/2020 Penfold made a surprise appearance on a conference call for the state court and claimed $23,000.00 more of Bowling's assets belonged to him. Without paperwork, being sworn into the proceeding, or producing proof Penfold was issued the $23,000.00 of Bowling's assets. His claim is fraud and he should be prosecuted.

Penfold is a hands-on participant in this racketeering ruse and so far has stolen

approximately $30,000.00 in total from Bowling unlawfully.

Other defenses by Penfold: Rooker Feldman and Derived Immunity defenses were overcome in Bowling's brief and pleadings and need not be repeated.

REPLY TO APPELLEE RHONDA CHILDRESS-HERRES

A. *Service on Rhonda Childress-Herres*

Defendant indisputably confirmed she was served 8/2018. Defendant was knowledgeable of the pending charges against her. Defendant chose to decline answering the lawsuit. Four months after being served Bowling filed for a default judgment against Herres. Herres filed numerous pleadings that were a copy of another case against her, but had no value for this case. The pleadings appears to be of a lawsuit related to Rhonda Childress-Herres, but the actors are different and the subject matter is about "garnishment". It appeared she "purported" service in this lawsuit too. See ROA.874, ROA.892, for the mock pleadings. Dismissing Bowling's claims against Herres because of her claim she wasn't properly served is a reach shy of justice.

B. *Stating a claim for which relief can be granted and no meritorious defense has been offered*

Claims against Herres are detailed in Bowling's Second Amended Complaint. It is up to this court to determine if the district court has made

a plain error in judgment in regards to stating a claim for which relief can be granted. Claims surrounding Rhonda Childress-Herres contributions to the violations are start at ROA.1420 in numbered paragraphs ¶54, ¶57, ¶58, ¶67, ¶165-177, ¶178, and ¶197.

On another note, p. 8 of their Appellee Brief is a claim that Bowling "*purported to claim $440,307.56 in damages against Childress-Herres*". As with their mock pleadings, they are mistaken. Bowling did not "purport" this amount against Herres.

REPLY TO APPELLEES PAULETTE MUELLER AND LESTER JOHN DAHLHEIMER, JR.

A. Rooker-Feldman lacks traction against the actions of the state court obstructors.

Bowling's federal complaint request relief for the constitutional violations related to the obstructions, threats of intimidation, and to restore assets unlawfully swindled by the Appellees. The Divorce Decree and any judgments are approaching 5 years in age. The unconstitutional journey is the subject matter for this court, not review of the judgments. No where in Bowling's complaint does it ask the court to review the judgments. Both the Dahlheimers and Mueller took part in unlawfully embezzling Bowling's assets via fraud for which state court actors participated. This federal lawsuit focuses on the actions of Appellees, not the Orders in the state court.

B. Res Judicata application fails for all three elements

Per Appellees brief: Under Texas law, *res judicata* requires proof of three elements: "(1) a prior final judgment on the merits by a court of competent jurisdiction; (2) identity of parties or those in privity with them; and (3) a second action based on the same claims as were raised or could have been raised in the first action." *Cox v. Nueces Cty.*, 839 F.3d 418, 421 (5th Cir. 2016). With respect to the third element, plaintiffs in Texas are required to bring, in the initial suit, all possible claims arising out of the same "transaction." *See Barr v. Resolution Tr. Corp.*, 837 S.W.2d 627, 630-31 (Tex. 1992). "A subsequent suit will be barred if it arises out of the same subject matter of a previous suit and which through the exercise of diligence[ ] could have been raised in a prior suit." *Id.* at 631.

First Element: Prior judgments in the state court would be required as a claim to the complaint. Prior "judgment" claims are not present within Bowling's Complaint. Bowling clearly plead claims over the actions of Defendants as the constitutional violations of Violation of Due Process, Conspiracy to Interfere with Civil Rights, Unlawful Seizure of Property through fraud and forgery, and Fraudulent Concealment. The unlawful fraud and forgery were never litigated. Further, subject matter in the state court is not remotely the same as the claims in the Federal court. This element of "prior judgements" of the subject matter does not apply.

Second Element: Most of the parties to the Federal lawsuit were not a party to the state court

litigation. Mueller, Willis, Herres, Penfold, McCraw, Roach, Evans, Matz were not parties to any state litigation.

Dahlheimer Jr and Sr. should have been parties to the state court litigation however, the subject matter of those claims was prevented from litigation. McCraw simply signed whatever Mueller gave her to sign as a judgment. Without notifying Bowling of her own divorce trial, and without her attendance, it can be said that the Appellant wasn't even a party to the state court judgment. This element does not apply.

Third Element; As identified in the First Element, the claims in the Federal Court have nothing to do with the claims in any state court. This element does not apply.

REPLY TO APPELLEE LESTER JOHN DAHLHEIMER, SR.(ESTATE)

A. *First Amended Complaint is imperative: inclusive of other parties*

Dahlheimer Sr. reaps no benefit from arguing his claim that the First Amended Complaint is "moot" other than favoring the Judges and other Defendants that would benefit if the Complaint remained stricken. Clearly, the group effort to favor one another is weaved in and out of pleadings and motions.

The First Amended Complaint has corrections and distinctions that are relative to other parties as well as Dahlheimer Sr. Once the court struck it from the record, the clear and concise complaints against

the state actors and other participants were neutralized. When the Second Amended Complaint was filed the court struck out most of the complaints against those same Defendants(McCraw, Evans, Matz, Willis, Mueller, and Dahlheimer Jr.) that are core in collusion to the offenses of Dahlheimer Sr. The importance of preserving the First Amended Complaint is so the complaints of Dahlheimer's surrounding contributors, Defendants, are preserved and the Second Complaint reigns in its entirety.

B. ***Stating a claim for which relief can be granted***

It is up to this court to determine if the district court has made a plain error in judgment in regards to stating a claim for which relief can be granted. Claims surrounding Dahlheimer Sr.'s contributions to the violations start at ROA.1420 and are in numbered paragraphs ¶6,¶19, ¶76, ¶189-196, ¶247, and ¶250.

It has already been established that the court agreed Paulette Mueller and the Dahlheimers caused ***injury-in-fact.***

It should also be established that the violations occurred while Dahlheimer Sr. was living. Elizabeth Dahlheimer, now executrix of Dahlheimer Sr.'s estate, was directly involved as well.

C. ***Rooker-Feldman defense not applicable***

The Dahlheimer's swindling of Bowling assets have yet to be litigated due to the obstruction in the state court. No transcript exists with a hearing on

such charges. Rooker-Feldman has no application in this case.

REPLY TO APPELLEE GREG WILLIS

A. Statement of Important Facts

It's important to understand the serious failure of Willis and the danger he imposed on Bowling(facilitated danger) in the spirit of political collusion with McCraw.

In 2015 the honorable Judge Becker, preceding Judge to defendant Judge McCraw, issued a Protective Order against Lester John Dahlheimer Jr. for his historical violence toward Bowling. Dahlheimer had demonstrated aggravated assault(attempted murder in some courts) by placing his hands around Bowling's throat and squeezing. He also demonstrated premeditation to harm by attacking Bowling from behind knocking her against a wall and to the floor out cold. Dahlheimer also demonstrated the need to continue to attack while Bowling is lying face down on a floor halfway unconscious. A second Protective Order was issued against Dahlheimer Jr. as it was discovered Dahlheimer had been caught stalking Bowling by sitting behind her in the dark at her church(via Pastor testimony). Apparently, according to Bowling's pastor, Dahlheimer had been sitting behind her for 7 months, knowingly violating his Protective Order repetitively. Dahlheimer was

eventually arrested. Dahlheimer then went after Bowling's Pastor, and caused widespread damage. Additionally, Bowling filed contempt charges for Dahlheimer's vandalism, breakins into her home, stalking, and taunting her with threats. The Dahlheimer's wealthy Republican money, appeared to give him a license and the arrogance to do anything he desired. McCraw and Willis seem too impressed with money and the Dahlheimer Family Republican funds. Dahlheimer's contemptuous behavior became increasingly dangerous.

Events in chronological order:

- A hearing was held in defendant McCraw's court over Dahlheimer's violation of the Protective Order and arrest, but McCraw obstructed hearing any testimony of the Dahlheimer's contempt and Dahlheimer's violation/arrest for stalking. **These items were <u>never</u> litigated.**
- Bowling then turned to Greg Willis, personally, for help. She asked for his time at the D.A.'s office, in emails, and phone calls. Greg Willis did not respond.
- Bowling filed a Motion to Recuse McCraw.
- Greg Willis sends to Bowling an unsuspecting request for hearing.
- Bowling arrives to the hearing with her brother, not suspecting the need to hire an attorney because of the generic essence of the notice.
- Upon arrival Bowling was immediately(first words) accused of stealing a gun and there was a demand for her incarceration. This took place 12/2015.

- Three days later, Defendant McCraw holds an impromptu, no notice, recusal hearing for herself and recusal is denied.
- Thereafter, Bowling demanded an explanation from Willis. Eventually, after emails and phone calls, Willis's "people" invited Bowling to come into the D.A.s office to express her concerns. Willis's people promised to obtain answers for why Willis declined to participate in protecting her, why he expunged Dahlheimer's arrest immediately, why was Dahlheimer allowed to continue threatening Bowling when under a Protection Order, what was behind the misleading notice for hearing, the fabrication of untenable evidence, and the effort to incarcerate, etc.
- Willis or his people never responded
- 7/2016 McCraw held another impromptu trial(divorce trial) without notifying Bowling and unlawfully seized Bowling's separate property, property already deemed her separate property in a previous hearing, kicked Bowling out of it, and forced it up for sale.
- Threats by Dahlheimer, Mueller, Penfold, McCraw continued toward Bowling.
- Bowling filed an appeal with the state appellate court 10/2016 and <u>did indeed</u> articulate Willis's unlawful hearing in order for the appellate court to cease the conspiracy of harassment and threats.
- State appellate disposition ended 6/2018 by the convenient loss of implicating clerk records.
- Bowling filed federal lawsuit 8/2018 with claims for the obstructions against Willis and others.

B. Willis's Statement of denials, misarticulations, and omissions

Willis's brief appears to deny certain facts on record and misarticulates other facts.

- Greg Willis appears to deny he expunged Dahlheimer's arrest immediately. This would be on record. On page 2 – 3 in Appellee Brief
- Willis appears to deny sending a notice for appearance that has little indication of what the hearing is about. This is false and on record.
- Willis appears to deny Appellant owned the gun she was accused of stealing. This is false and on record.
- Willis would like the court to believe the Divorce "is" in progress. p. 6 This is false and on record(ended 2016)
- Willis would like the court to believe that "Other cases" in the state court unrelated to the divorce exist and pending". p. 6 This is false and on record, unless this court sees the Protection Orders as "unrelated" to the divorce.
- Willis appears to deny that a Protective Order was already in place by Judge Becker (269-51274-2015) and Willis denied complying with it, as did Defendant McCraw. Dahlheimer violated the

protection order often. Willis has these records.

- NOTE: Willis continues to refer to Bowling's original Complaint which was superseded by Bowling's First Amended Complaint. The District court wrongly denied the Amended Complaint and the denial is pending with this appeal. The District court also declined to provide the Amended Complaint to the Fifth Circuit for the record on appeal. Please refer to the First Amended Complaint for clarification(p. 6, 7, 21-25) and Second Amended Complaint ROA.1425-1426 and ROA.1443-1448 where Bowling was concise regarding the violations by Greg Willis.

Willis appears to omit these detail and does not address them in his brief:

- **Willis charged Bowling with a felony and tried to wrongly incarcerate her without probable cause. Therefore, he was not acting in a prosecutorial function, but an investigatory function which does not enjoy prosecutorial immunity.**
- The notice for the "hearing" issued had nothing about charges against Bowling, yet she was charged with a felony upon arriving to same hearing. The notice is not lawful.
- For this hearing, unlawful criminal trial, held against Bowling, Willis submitted

intentionally fabricated evidence to incarcerate Bowling. Fabricated evidence:

- Bowling was divorced at the time of hearing. NOT TRUE, easy to validate as no divorce decree existed and on record.(same courthouse)
- the gun belonged to Dahlheimer(insinuated awarded to him in the divorce) NOT TRUE, easy to validate no award existed and the gun was owned by Bowling
- Bowling stole the gun, NOT TRUE, easy to prove that Bowling can't steal her own gun, nor did she have possession of the gun.
- Further on p. 7 of Appellee's Brief Willis admits they've(the D.A.'s office) had possession of the gun, yet the official charges against Bowling were "POSSESSION OF A STOLEN PROPERTY" which would be an impossible charge being that the D.A. themselves had possession of the gun.

C. ***Willis's defense of Personal Involvement***

Willis defends this lawsuit by claiming he had no personal involvement. The caselaw provided in support is faulty as these cases determined no personal involvement after discovery and a jury trial. It is premature to invoke this defense without allowing further proceedings.

Bowling involved Willis, by name, personally, at the inception of Dahlheimer's violence toward Bowling before the divorce. Bowling wrote, called, and emailed Willis. Willis's "people" responded and invited her in to meet to express her concerns.

If a District Attorney were to act corruptly, he most certainly would get others to be his front. Bowling deserves the right to get "the others" testimony on record that they acted alone, and against his direction.

Willis was clearly apprised by "his people" of Bowling's concerns. His lack of response in the least is a "Failure to Intervene".

D. Willis's defense of the 11th Amendment

Willis is paid strictly out of the county budget in which he serves. As a district attorney he is not a "state", nor a state employee. Bowling is not suing the County. Therefore Willis, in his official and individual capacity as District Attorney, does not enjoy the protections of the 11th Amendment. The 11th Amendment protects STATE officials.

Further, the 11th Amendment provides injunctive relief and has no impact on a lawsuit for Willis's individual capacity under Title 42 USC § 1983.

E. Willis's Defense of Prosecutorial Immunity

Willis continues page after page applying prosecutorial immunity to himself because of his title. Immunity applies to the function, not the person. Willis claims immunity shelters him even

when he acts "maliciously, wantonly, or negligently". This is not true as immunity is applied to the "act"(function). If the act is outside of "initiation of prosecution", the act is not covered by prosecutorial immunity.

Willis lured Bowling into court with an unlawful request for hearing notice and upon arrival accused her of possession of a stolen weapon, a felony. Willis's multiple deceiving "actions" to lure Bowling into court, without an attorney by way of an unlawful notice, AND the surprise charge of a felony, the pushing for the wrongful incarceration of Bowling, the intentional fabrication of evidence, are **not** actions of "initiating and prosecuting". These are actions in an investigatory function because Willis had no probable cause. Investigatory functions do not enjoy prosecutorial immunity.

Additionally, other actions of conspiracy are not considered a prosecutorial function either. Thus, Willis's conspiracy of directing unlawful police threats toward Bowling, giving Dahlheimer a license to continue threatening Bowling by way of failure to intervene for her safety, are NOT covered by prosecutorial immunity.

F. Willis's defense of Qualified Immunity

The district court's Report and Recommendation AND the Order(judgment) to dismiss Bowling's claims did not reach Willis's argument invoking Qualified Immunity. It appears Willis is resurrecting this defense.

The defense of qualified immunity immediately tests whether the Plaintiff alleged sufficient facts to establish that a reasonable officer

would have believed the conduct in question to have been unlawful under clearly established law.

As stated in her Complaint, responses, and briefs, ANY reasonable officer would know that the offenses below are violations of clearly established law:

- sending the unlawful notice of hearing, without mentioning the felony charge, to lure Bowling into court without protection or defense of an attorney. Even if an attorney arrived with Bowling that day, they would be unprepared to defend Bowling since the felony charge was a surprise. This is on record.
- Charging Bowling with a Felony without probable cause is a clear violation of state and federal laws. This is on record.
- trumping up false evidence against Bowling that is untenable and obviously impossible(on record):
    - Bowling's divorced, on record that she is not
    - gun is owned by Dahlheimer(awarded), on record Bowling owns it
    - Bowling stole it and is in possession of a gun, ***but really the gun is in possession of the Willis's office, on record. Admitted.***
- Items for further proceedings that violate clearly established law: a) directing corrupt law enforcements to threaten Bowling inside her home and then they refuse to leave when told to "get out", threatening her more, would be a clear violation. b) conspiring with McCraw, c)

knowledgably denying protection of Bowling in the spirit of the Dahlheimer wealth.

In the U.S. Fifth Circuit Court case 19-40914 where Bowling is defending a wrongful injunction, there is a listing of Greg Willis's unlawful conduct in Appellants Brief p. 32-42. In lieu of repeating herself again, this brief outlines the misconduct of Willis in detail. Any officer would know these offenses are violations of clearly established law(state and federal).

Caselaw cited in Willis's Appellee Brief are all cases that went through discovery and some through trial. It is premature for the district court to dismiss Bowling's claims against Willis based on Qualified Immunity without allowing the proceedings to move forward into the discovery phase in the very least.

G. Willis's defense of "Official Immunity further bars Appellant's State law claims"

Appellant hasn't asserted any state law claims in the Federal court.

H. Willis's defense of Statute of Limitations

The only statute of limitation that applies to Bowling's claims is a two year statute of limitation for Malicious Prosecution.

Regardless of application, Willis's malicious prosecution occurred 12/2015, but his failure to intervene, conspiracy to interfere with civil rights, was ongoing.

Willis's insinuates Bowling did not mention the malicious prosecution in her appeal filed 10/2016, but that is false. Bowling did indeed articulate this

event in her Texas appellate brief to enlighten the court of the conspiracy, in hopes the Appellate Court could cease the unlawful corrupt collusion with McCraw. Unfortunately, the appellate court conveniently lost all implicating clerk records/evidence. Evan's appellate court opinion, a fallacy as it was, did not address the Willis's offense by omission. Litigation in the appellate court is deemed non-existent, futile, and obstructive. However, the tolling of the offense exists. The appeal ended 6/2018. The subject matter was not addressed. Bowling filed this federal suit 8/2018 and charged Willis with Violation of due process, Conspiracy to interfere with Civil Rights, Failure to Intervene, Malicious prosecution.

I. Willis's defense claiming Malicious Prosecution is not a viable cause of action

Willis asserts there is no free standing claims for Malicious Prosecution in the federal court.

Bowling didn't claim a free standing, independent, claim of Malicious Prosecution. Bowling plead the offense under Fourth Amendment due process, a claim which indeed exist, *Winfrey v. Rogers*, 901 F.3d 483 (5th Cir. 2018). The violation of due process, conspiracy(including the deprivation of attorney protection), and the malicious threat of incarceration is a denial of Bowling's federal rights.

J. Willis's defense that Appellant failed to plead viable Conspiracy claim

Willis appears to redirect this court to the conspiracy of others and omits addressing his own actions in the conspiracy.

The below facts are not addressed in Willis's brief.

Willis has a history of being charged with corruption as a Judge. This is on record. Willis was accused of taking bribes as a Judge in the same court as McCraw. McCraw, although not charged, was accused of corruption with Willis to the point of being terminated from her employment at the previous District Attorney's office for the corruption. This is on record. McCraw testified against her own investigatory team to exonerate corrupt Willis in a grand jury testimony. Willis is then exonerated, becomes the next D.A., and McCraw becomes a Judge(by appointment of Greg Abbott). Willis owes McCraw for her exonerating testimony that got her fired from the D.A.'s office and gave Willis a leg up to become the next D.A. This presents intent.

On the sunset of the newly appointed Judge McCraw's recusal, Willis requested Bowling to appear for a hearing for unknown reasons. The notice(on record) is unlawful due to the fact that there are no charges mentioned on the notice, yet upon arrive to the hearing she was charged with a felony with the force to incarcerate her(admitted). The notice deceivingly led Bowling to believe there was no need for protection of an attorney. Even if Bowling had hired an attorney, the attorney would not be prepared for the surprise charge of a felony. This presents intent. Willis intentionally fabricated evidence to incarcerate Bowling, evidence which was untenable(impossible)(it is on record too)(intent). Many deceiving details were created into an effort to wrongly incarcerate Bowling. These fabricating details demonstrate intent.

Then, on record, there are multiple communications from Bowling to Willis for help, yet he fails to intervene or even address Bowling's concerns. As a matter of fact, twice(upon state appeal and federal complaint), Bowling had two police officers show up at her door, invite themselves in, and proceed to threaten her(on video). No court order or any document existed authorizing the unlawful threats. This unwarranted corrupt behavior from law enforcement demonstrates intent. The chief of police nor Willis never responded to Bowling's complaint of the corrupt law enforcement, yet Willis has authority over such corrupt law enforcement.

The above are not conclusions. The operative facts are on record demonstrating intent.

To properly plead(conspiracy) there must be a showing of specific intent. In *E.G. v. Bond*, No. 1:16-CV-068-C, 2017 WL 129019, at *4 (N.D. Tex. Jan. 13, 2017). "specific intent as an element of § 1983 conspiracy remains good law" when it comes to providing a claim.

K. ***Willis's defense that Appellant failed to plead plausible claims for punitive damages***

It is not plausible to believe that Willis's actions and the details of Bowling's journey with Willis were just a circus of bad mistakes. The record shows intent on multiple fronts to achieve threatening Bowling into submission. It is premature to dismiss punitive damages without allowing discovery to proceed.

L. Willis leans heavily on the "DISPOSITION IN THE DISTRICT COURT"

As stated in Bowling's Brief, Judge Christine Nowak, Magistrate of the U.S. District Court made quite the effort to omit the same subject matter described in the Reply Brief and misarticulate facts to mislead the readers(Judge Mazzant) to unjustly adjudicate.

Judge Nowak was appointed to her judicial seat by Willis's wife, Judge Jill Willis, who also serves in the Collin County court with McCraw and Nowak's husband, Judge Tom Nowak. Nowak cannot be unbiased.

It is an abomination that Nowak did not recuse herself from this case.

CONCLUSION AND PRAYER

Therefore, Bowling prays this court reverse and remand Orders Dkt#180, #182, reinstating the First Amended Complaint lending to the reinstatement of the Second Amended Complaint in its entirety, reverse dismissals of Defendants, and vacate or amend Order Dkt#183 as this court deems equitable and just.

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United States Court of Appeals for the Fifth Circuit.

20-40642

Wanda L. Bowling,
Plaintiff—Appellant,
versus
Lester John Dahlheimer, Jr., *Estate*; Lester John Dahlheimer, Sr., *Estate*; Paulette Mueller, *in her Official and Individual Capacity*; Judge Piper McCraw, *in her Official and Individual Capacity*; Greg Willis, *in his Official and Individual Capacity*; Craig A. Penfold, *in his Official and Individual Capacity*; Judge David Evans, *in his Official and Individual Capacity*; Rhonda Childress-Herres, *in her Official and Individual Capacity*; Clerk of the Court, 5th District Court of Appeals,
Defendants—Appellees.

Appeal from the United States United States District Court for the Eastern District of Texas
USDC No. 4:18-CV-610
United States Court of Appeals Fifth Circuit

FILED
March 7, 2022
Lyle W. Cayce
Clerk

Before Jolly, Willett, and Engelhardt, *Circuit Judges.*
Per Curiam:*

Wanda L. Bowling filed a civil rights complaint against her former spouse, Lester John Dahlheimer, Jr. (Dahlheimer); Elizabeth Dahlheimer, Executrix of the Estate of Lester John Dahlheimer, Sr. (Dahlheimer, Sr.); Dahlheimer's divorce counsel, Paulette Mueller; state judge Piper McCraw; district attorney Greg Willis; state appellate judge David Evans; the state Fifth District Court of Appeals Clerk of the Court (Clerk of Court); and court-appointed receivers, Craig A. Penfold and Rhonda Childress-Herres. Bowling asserted that Dahlheimer misappropriated her assets and that the remaining defendants unlawfully participated in the divorce itself or in subsequent related proceedings. The defendants' motions to dismiss under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) were granted, and the lawsuit was dismissed. Bowling has appealed.

Judicial Bias

As a preliminary matter, Bowling complains that Magistrate Judge Nowack was unfairly biased. Bowling complains that Magistrate Judge Nowack and Judge McGraw serve together on the Collin County Women Lawyers Association, and that many of Magistrate Judge Nowack's recommendations were unfavorable to her. Under 28 U.S.C. § 455, a judge is required to recuse herself from any proceeding in which her impartiality might reasonably be questioned. But a judge's adverse rulings are not enough to show bias. The defendant must come forward with additional evidence of

such a high degree of antagonism as to make fair judgment impossible. *See Liteky v. United States*, 510 U.S. 540, 555 (1994). Nor does Bowling cite any

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

case, or give any reason, why Magistrate Judge Nowack's professional relationship with Judge McGraw made her unable to act impartially in this case. Therefore, these judges' failure to recuse themselves was not an abuse of discretion. *See United States v. Mizell*, 88 F.3d 288, 299 (5th Cir. 1996).

Motions for Reconsideration

Bowling contends that the district court erred in applying Federal Rule of Civil Procedure 54(b) rather than Rule 60 in disposing of her Motions for Relief from Judgment or Order. Rule 54(b) provides, inter alia, that "any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities." Fed. R. Civ. P. 54(b). Under this rule, "the trial court is free to reconsider and reverse its decision for any reason it deems sufficient, even in the absence of new evidence or an intervening change in or clarification of the substantive law." *Austin v. Kroger Texas, L.P.*,

864 F.3d 326, 336 (5th Cir. 2017) (internal quotation marks and citation omitted).
Because the district court had not entered a final judgment, the court correctly applied the more lenient standard in Rule 54(b) in ruling on Bowling's motions for reconsideration. *See McClendon v. United States*, 892 F.3d 775, 781 (5th Cir. 2018).

Amendment of Complaint

The district court struck Bowling's first amended complaint, concluding that it was untimely and was filed without the consent of the defendants and without seeking leave of court. Bowling contends that she was permitted to amend her complaint once as a matter of right under Federal Rule of Civil Procedure 15(a)(1)(B) because the amended complaint was filed within 21 days of the filing of Dahlheimer, Sr.'s motion to dismiss. But the 21-day period to file an amended complaint as of right begins after the first defendant files a responsive pleading. *See* Fed. R. Civ. P. 15 advisory committee's note to 2009 amendment; *Barksdale v. King*, 699 F.2d 744, 747 (5th Cir. 1983); *Williams v. Bd. of Regents of Univ. Sys. of Georgia*, 477 F.3d 1282, 1292 (11th Cir. 2007); *Villery v. District of Columbia*, 277 F.R.D. 218, 219 (D.D.C. 2011); *Rubinstein v. Keshet Inter Vivos Tr.*, No. 17-61019-CIV, 2017 WL 7792570, at *3 (S.D. Fla. Oct. 18, 2017); *Williams v. Black Entm't Television, Inc.*, No. 13-CV-1459, 2014 WL 585419, at *3–4 (E.D.N.Y. Feb. 14, 2014). Because Bowling filed her amended complaint outside of this window, she could not amend as of right and needed leave of court to file an amended complaint. For the reasons discussed below, the district court did not abuse its discretion in striking her first amendment

complaint because various doctrines prevented Bowling from stating a claim against any of the defendants. *See Aldridge v. Mississippi Dep't of Corr.*, 990 F.3d 868, 878 (5th Cir. 2021) (noting that district courts may deny leave to amend if amendment would be futile); Fed. R. Civ. P. 15(2).

Dismissal under Rule 12(b)(1) and (b)(6)

We review a district court's dismissal under Rules 12(b)(1) and (b)(6) de novo, and jurisdictional challenges should be resolved prior to reaching the merits. *See In re Katrina Canal Breaches Litig.*, 495 F.3d 191, 205 (5th Cir. 2007); *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001). Under Rule 12(b)(1), a party may move to dismiss a complaint on the ground that the district court lacks subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). "The district court must dismiss [an] action if it finds that it lacks subject matter jurisdiction." *Randall D. Wolcott, M.D., P.A. v. Sebelius*, 635 F.3d 757, 762 (5th Cir. 2011) (citing Fed. R. Civ. P. 12(h)(3)).

Under Rule 12(b)(6), a party may move to dismiss a complaint for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). A plaintiff fails to state a claim upon which relief can be granted when the claim does not contain "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). When reviewing a dismissal for failure to state a claim, "[w]e accept all well-pleaded facts as true and view those facts in the light most favorable to the plaintiff." *Whitley v. Hanna*, 726 F.3d 631, 637 (5th Cir. 2013). We will "not accept as true conclusory allegations, unwarranted factual inferences, or legal conclusions." *Gentilello v. Rege*,

627 F.3d 540, 544 (5th Cir. 2010) (internal quotation marks and citation omitted).

The district court determined that the official-capacity claims against Judge McCraw, Judge Evans, the Clerk of Court, and Willis were barred by sovereign immunity. Bowling's contention that these defendants are not state actors is meritless. *See Esteves v. Brock*, 106 F.3d 674, 677–78 & n.8 (5th Cir. 1997); *Holloway v. Walker*, 765 F.2d 517, 525 & n.7 (5th Cir. 1985); *see also* Tex. Gov't Code §§ 22.206, 24.642. Although Bowling correctly asserts that the Eleventh Amendment does not bar suits for injunctive or declaratory relief, *see Raj v. Louisiana State Univ.*, 714 F.3d 322, 328 (5th Cir. 2013), she has identified nothing in the record showing an ongoing violation of federal law by these parties that could support an injunction. You can't enjoin the past. You can only receive damages for harm done in the past. And the Eleventh Amendment bars such a suit for damages against state actors.

The district court determined that Bowling's claims against Judge McCraw, Judge Evans, the Clerk of Court, Mueller, Dahlheimer, Penfold, Childress-Herres, and Dahlheimer, Sr., were barred under the *Rooker-Feldman*1 doctrine. The *Rooker-Feldman* doctrine bars federal courts from

1 *See District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923).

hearing challenges to state-court judgments *See Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005); *see also Truong v. Bank of Am.*,

N.A., 717 F.3d 377, 384 (5th Cir. 2013). Put simply, litigants can't appeal unfavorable state court rulings to federal court, unless Congress specifically authorizes such review. *See Truong*, 717 F.3d at 382. That is what Bowling asked the district court to do. The district court did not err in denying that request—and indeed it would have erred if it did otherwise. *See id.* at 381–83.

The district court also determined that Judges McCraw and Evans were entitled to judicial immunity and that Penfold was entitled to derivative judicial immunity. Bowling has not shown that Judge McCraw's and Judge Evans's actions were nonjudicial in nature or taken in the clear absence of all jurisdiction. *See Boyd v. Biggers*, 31 F.3d 279, 284 (5th Cir. 1994). Further, court-appointed receivers such as Penfold "act as arms of the court and are entitled to share the appointing judge's absolute immunity provided that the challenged actions are taken in good faith and within the scope of the authority granted to the receiver." *Davis v. Bayless*, 70 F.3d 367, 373 (5th Cir. 1995); *see also Boullion v. McClanahan*, 639 F.2d 213 (5th Cir. 1981) (recognizing derivative judicial immunity for bankruptcy trustees who act under the supervision of and subject to the orders of the bankruptcy court). Bowling has not shown that the district court erred in dismissing her claims against Judges McCraw and Evans.

Prosecutors also enjoy absolute immunity from suit for actions performed within the scope of their prosecutorial duties. *Imbler v. Pachtman*, 424 U.S. 409, 420–24, 431 (1976). Contrary to Bowling's assertions on appeal, she has not alleged or shown

that Willis's actions were investigatory in nature, and she has failed to allege personal involvement by Willis in a constitutional violation. *See Buckley v. Fitzsimmons*, 509 U.S. 259, 273–74 (1993); *Bigford v. Taylor*, 834 F.2d 1213, 1220 (5th Cir. 1988). The district court did not err in granting immunity to Willis.

Finally, the district court determined that the claims against Dahlheimer were barred by the doctrine of res judicata, that Bowling's complaint failed to state a claim against Penfold, Childress-Herres, or Dahlheimer, Sr., and that the claims against Willis were time barred. We have reviewed the briefings and the record and see no error in these holdings. *See Yohey v. Collins*, 985 F.2d 222, 224–25 (5th Cir. 1993).

The district court's judgment is AFFIRMED.

Statute from below State website;

https://statutes.capitol.texas.gov/Docs/CN/htm/CN.16.htm

Article XVI, Texas Constitution (Tex. Official)

THE TEXAS CONSTITUTION ARTICLE 16.

GENERAL PROVISIONS

Sec. 1. OFFICIAL OATH OF OFFICE. (a) All elected and appointed officers, before they enter upon the duties of their offices, shall take the following Oath or Affirmation:

"I, _____, do solemnly swear (or affirm), that I will faithfully execute the duties of the office of _____ of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State, so help me God."

(b) All elected or appointed officers, before taking the Oath or Affirmation of office prescribed by this section and entering upon the duties of office, shall subscribe to the following statement:

"I, _____, do solemnly swear (or affirm) that I have not directly or indirectly paid, offered, promised to pay, contributed, or promised to contribute any money or thing of value, or promised any public office or employment for the giving or withholding of a vote at the election at which I was elected or as a reward to secure my

appointment or confirmation, whichever the case may be, so help me God."

(c) Members of the Legislature, the Secretary of State, and all other elected and appointed state officers shall file the signed statement required by Subsection (b) of this section with the Secretary of State before taking the Oath or Affirmation of office prescribed by Subsection (a) of this section. All other officers shall retain the signed statement required by Subsection (b) of this section with the official records of the office.

(Feb. 15, 1876. Amended Nov. 8, 1938, and Nov. 6, 1956; Subsecs. (a)-(c) amended and (d)-(f) added Nov. 7, 1989; Subsecs. (a) and (b) amended, Subsecs. (c) and (d) deleted, and Subsecs. (e) and (f) amended and redesignated as Subsec. (c) Nov. 6, 2001.)
(TEMPORARY TRANSITION PROVISION for Sec. 1: See Appendix, Note 3.

Form #2204 Rev. 10/2011

Submit to:
SECRETARY OF STATE
Government Filings Section
P O Box 12887
Austin, TX 78711-2887
512-463-6334

Filing Fee: None

OATH OF OFFICE

This space reserved for office use

ELECTIONS DIVISION
OFFICE OF THE TEXAS SECRETARY OF STATE

SEP 08 2015

RECEIVED

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF TEXAS,
I, Piper McCraw, do solemnly swear (or affirm), that I will faithfully execute the duties of the office of Judge Of The 469th Judicial District Court of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State, so help me God.

Piper McCraw
Signature of Officer

State of Texas)
County of Collin)

Sworn to and subscribed before me this 1st day of September, 2015.

(seal)

John E. McCraw, Sr.
Signature of Notary Public or Other Officer Administering Oath

John E. McCraw, Sr.
Printed or Typed Name

Senior Justice 5th Court of Appeals at Dallas

Form #2202 Rev. 06/2009

Submit to:
SECRETARY OF STATE
Statutory Documents Section
P O Box 13550
Austin, TX 78711-3550
512-463-6334
512-463-0873 - Fax
Filing Fee: None

This space reserved for office use

ELECTIONS DIVISION
OFFICE OF THE TEXAS SECRETARY OF STATE
AUG 26 2015
RECEIVED

STATEMENT OF OFFICER FOR GUBERNATORIAL APPOINTEES

Statement

I, Piper McCraw, do solemnly swear (or affirm) that I have not directly or indirectly paid, offered, promised to pay, contributed, or promised to contribute any money or thing of value, or promised any public office or employment for the giving or withholding of a vote at the election at which I was elected or as a reward to secure my appointment or confirmation, whichever the case may be, so help me God.

Position to Which Elected/Appointed: 469TH Judicial District Court Judge

City and/or County: Collin County, Texas

Execution

Under penalties of perjury, I declare that I have read the foregoing statement and that the facts stated therein are true.

Date: 8/26/15

Piper McCraw
Signature of Officer

Form #2204 Rev. 10/2011

Submit to:
SECRETARY OF STATE
Government Filings Section
P O Box 12887
Austin, TX 78711-2887
512-463-6334

Filing Fee: None

This space reserved for office use

OATH OF OFFICE

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF TEXAS,

I, David W. Evans, do solemnly swear (or affirm), that I will faithfully execute the duties of the office of Justice, Fifth Court of Appeals Place 2 of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State, so help me God.

Signature of Officer

State of Texas)
County of Rockwall)

Sworn to and subscribed before me this 1st day of January, 2013.

Signature of Notary Public or Other Officer Administering Oath

DAVID L. BRIDGES

Printed or Typed Name

JUSTICE, FIFTH DIST. COURT OF APPEALS

Form #2201 Rev. 10/2011

Submit to:
SECRETARY OF STATE
Government Filings Section
P O Box 12887
Austin, TX 78711-2887
512-463-6334
512-463-5569 - Fax
Filing Fee: None

This space reserved for office use

STATEMENT OF OFFICER

Statement

I, David W. Evans, do solemnly swear (or affirm) that I have not directly or indirectly paid, offered, promised to pay, contributed, or promised to contribute any money or thing of value, or promised any public office or employment for the giving or withholding of a vote at the election at which I was elected or as a reward to secure my appointment or confirmation, whichever the case may be, so help me God.

Position to Which Elected/Appointed: Justice, Fifth Court of Appeals Place 2

City and/or County: Collin, Dallas, Greyson, Hunt, Kaufman & Rockwall Counties

Execution

Under penalties of perjury, I declare that I have read the foregoing statement and that the facts stated therein are true.

Date: 31 December 2012 Signature of Officer

Revised 10/2011

Rev. 04/2017

Submit to:
Custodian of election records

Filing Fee: None

OATH OF OFFICE

This space reserved for office use

FILED IN
OFFICE OF THE TEXAS SECRETARY OF STATE

JAN 03 2019

ELECTIONS DIVISION

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF TEXAS,
I, John R. Roach, Jr., do solemnly swear (or affirm), that I will faithfully execute the duties of the office of Judge, 296th Judicial District Court of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State, so help me God.

Signature of Officer

State of Texas)
County of Collin)

Sworn to and subscribed before me this 2 day of January, 2019.

(seal)

Signature of Notary Public or Other Officer Administering Oath

MARK T. KUSCH

Printed or Typed Name

Form #2201 Rev. 09/2017
Submit to:
SECRETARY OF STATE
Government Filings Section
P O Box 12887
Austin, TX 78711-2887
512-463-6334
512-463-5569 - Fax
Filing Fee: None

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FILED IN
OFFICE OF THE TEXAS SECRETARY OF STATE
DEC 10 2018
ELECTIONS DIVISION

STATEMENT OF OFFICER

Statement

I, John R. Mabry, JR., do solemnly swear (or affirm) that I have not directly or indirectly paid, offered, promised to pay, contributed, or promised to contribute any money or thing of value, or promised any public office or employment for the giving or withholding of a vote at the election at which I was elected or as a reward to secure my appointment or confirmation, whichever the case may be, so help me God.

Title of Position to Which Elected/Appointed: JUDGE, 296th JUDICIAL DISTRICT COURT

Execution

Under penalties of perjury, I declare that I have read the foregoing statement and that the facts stated therein are true.

Date: 12-10-18

Signature of Officer

No. _____

In the Supreme Court of the United States

Wanda Bowling,
Petitioner,

vs.

Lester John Dahlheimer, Jr., Estate; Lester John Dahlheimer Sr., Estate; Paulette Mueller; Judge Piper McCraw, in her Official and Individual Capacity; Greg Willis, in his Official and Individual Capacity; Craig A. Penfold, in his Official and Individual Capacity; Judge David Evans, in his Official and Individual Capacity; Rhonda Childress-Herres, in her Official and Individual Capacity; Lisa Matz Clerk of the Court, 5th Dist.Court of Appeals
AND
Texas Governor Greg Abbott in his official and Individual Capacity
Respondents

On Petition for Writ of Certiorari
United States Court of Appeals for the Fifth Circuit and the United States Eastern District Court of Texas

APPENDIX VOLUME II

Wanda Bowling-Petitioner
2024 W. 15th St. STE. F-138
Plano, Texas 75075
(770)335-2539,
wldahlheimer@gmail.com

United States District Court
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION
WANDA BOWLING
v.
LESTER JOHN DAHLHEIMER, JR., ET AL.
Civil Action No. 4:18-CV-610
(Judge Mazzant/Judge Nowak)
MEMORANDUM ADOPTING REPORTS AND RECOMMENDATIONS OF UNITED STATES MAGISTRATE JUDGE

Came on for consideration the following Reports of the United States Magistrate Judge in this action, this matter having been heretofore referred to the Magistrate Judge pursuant to 28 U.S.C. § 636. On March 7, 2019, the Report of the Magistrate Judge (Dkt. #89) was entered containing proposed findings of fact and recommendations that Defendant Judge Piper McCraw's Motion to Dismiss be granted. On March 8, 2019, the Reports of the Magistrate Judge (Dkts. #92; #93) were entered containing proposed findings of fact and recommendations that the Motions to Dismiss filed by Defendants Justice David Evans and the Clerk of the Court each be granted. Lastly, on April 2, 2019, the Report of the Magistrate Judge (Dkt. #103) was entered containing proposed findings of fact and recommendations that Defendant District Attorney Greg Willis's ("DA Willis") Motion to Dismiss be granted. Having received the Reports and Recommendations of the Magistrate Judge, having considered Plaintiff's objections (Dkts. #96; #97; #98;

#109), and having conducted a de novo review, the Court is of the opinion that the Magistrate Judge's Reports should be adopted.

RELEVANT BACKGROUND

The facts are set out in further detail by the Magistrate Judge and need not be repeated here in their entirety.1 On August 23, 2018, Plaintiff filed suit in the Northern District of Texas, against her former spouse Lester John Dahlheimer, Jr. ("Dahlheimer"); the estate of her former father-in-law Lester John Dahlheimer, Sr. ("Dahlheimer, Sr."); Dahlheimer's divorce counsel Paulette Mueller; Judge Piper McCraw; District Attorney Greg Willis; Justice David Evans; the Fifth District Court of Appeals Clerk of the Court; and Court-Appointed Receivers Craig A. Penfold and Rhonda Childress-Herres (Dkt. #2). Plaintiff's claims against these Defendants all relate to or otherwise stem from her underlying divorce proceeding filed in 2015. Specifically, Plaintiff alleges that her former spouse misappropriated Plaintiff's assets throughout their marriage and divorce proceeding, and that the remaining Defendants unlawfully participated, in one manner or another, in either the divorce proceeding or the subsequent enforcement proceedings. Plaintiff's live Complaint asserts the Defendants "violat[ed] Plaintiff's constitutional rights [by] their participation in conspiracy to unlawfully seize property, misc. assets, forgery, fraud, cover up of unlawful conduct, tampering with evidence, FURTHER using threat tactics to bully Plaintiff into quiet submission" (Dkt. #2 at p. 1) (emphasis in original).

On March 7, 2019, and March 8, 2019, respectively, the Magistrate Judge recommended that Judge McCraw and Justice Evans's Motion to Dismiss be granted because Plaintiff's claims against these judges: (1) in their official capacity are barred by sovereign immunity; (2) are barred by Rooker-Feldman; and (3) are barred by absolute judicial immunity (Dkts. #89, #92). Also on March 8, 2019, the Magistrate Judge recommended that the Clerk of the Court's Motion to Dismiss be granted because Plaintiff's claims against the Clerk: (1) are against a non-jural entity, incapable of being sued; (2) in her official capacity are barred by sovereign immunity; (3) are barred by Rooker-Feldman; and (4) fail to state a violation of Plaintiff's constitutional rights under § 1983 (Dkt. #93). Plaintiff filed her Objections to these three Reports on March 21, 2019 (Dkts. #96; #97; #98). Thereafter, on April 2, 2019, the Magistrate Judge further recommended that DA Willis's Motion to Dismiss be granted because Plaintiff's claims against DA Willis: (1) in his official capacity are barred by sovereign immunity; (2) are barred by absolute prosecutorial immunity; and (3) fail to allege any personal involvement of DA Willis, necessary to state a claim under § 1983 (Dkt. #103). Plaintiff filed objections to this Report on April 16, 2019 (Dkt. #109).

1 Plaintiff makes several objections to the factual background in the Report (Dkt. #96 at p. 3); upon independent review, the Court finds Plaintiff's objections to be unfounded and/or irrelevant. Plaintiff's objections are overruled.

PLAINTIFF'S OBJECTIONS

A party who files timely written objections to a magistrate judge's report and recommendation is entitled to a de novo review of those findings or recommendations to which the party specifically objects. 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(2)–(3). Through her filings, Plaintiff has asserted nine (9) objections to the Magistrate Judge's recommendations (Dkts. #89; #92; #93; #103): (1) the Report incorrectly found that Judge McCraw, Justice Evans, the Clerk of the Court, and DA Willis are entitled to sovereign immunity (Dkts. #96 at pp. 6–7; #97 at p. 7; #98 at p. 2; #109 at pp. 4, 7); (2) Rooker-Feldman does not bar Plaintiff's claims against Judge McCraw, Justice Evans, and the Clerk of the Court because "there was extrinsic fraud" (Dkts. #96 at pp. 5, 8–9; #97 at p. 9; #98 at p. 4); (3) Judge McCraw and Justice Evans are not entitled to absolute judicial immunity because both individuals stepped outside of their judicial roles (Dkts. #96 at pp. 10–13; #97 at pp. 3, 7); (4) Plaintiff sufficiently stated a § 1983 claim against the agency of the Clerk of the Court, not Lisa Matz, because "the clerk [] refused to correct the record," thereby "violat[ing] Plaintiff's due process constitutional right" (Dkt. #98 at p. 3); (5) DA Willis is not entitled to prosecutorial immunity (Dkt. #109 at pp. 5–7); (6) Plaintiff has sufficiently pleaded a malicious prosecution claim against DA Willis (Dkt. #109 at pp. 9–10); (7) Plaintiff's claims against DA Willis are not time-barred because Plaintiff previously "presented her claims in her second Motion to Recuse Judge McCraw (7/5/2016), her Appellant Brief (4/2017) and other motions" (Dkt. #109 at p. 10); (8) the Report incorrectly recommended dismissal of Plaintiff's

conspiracy claim because "[c]onspiracy isn't a claim that can be proven by a pleading" (Dkt. #109 at p. 10); and (9) Plaintiff's allegations support a finding of punitive damages against DA Willis (Dkt. #109 at pp. 2–3). The Court now considers these objections.2

Sovereign Immunity

Defendants Judge McCraw, Justice Evans, the Clerk of the Court, and DA Willis all asserted sovereign immunity as a bar to Plaintiff's claims against them in their official capacities. The Reports found that each were entitled to sovereign immunity, resulting in dismissal of any claims against them in their official (but not individual) capacities (Dkts. #89 at pp. 10–11; #92 at pp. 9–10; #93 at p. 13; #103 at p. 9).

As to Judge McCraw, Plaintiff objects that "Judge Nowak elevates Judge McCraw to have sovereignty only God possesses" (Dkt. #96 at p. 6), and asserts that an exception to sovereign immunity are claims brought under the Fourteenth Amendment, which "provide[s] for private suits against States or state official which are constitutionally impermissible in other contexts" (Dkt. #96 at p. 8). Plaintiff is mistaken that raising a claim under the Fourteenth Amendment waives Judge McCraw's sovereign immunity; sovereign immunity is waived and an individual may sue the state where a state consents or

2 Plaintiff raises certain arguments that could be construed as a request to recuse the Magistrate Judge. To the extent Plaintiff asks for recusal, such request is denied at present.

"Congress abrogates the state's sovereign immunity pursuant to [section 5 of] the Fourteenth Amendment." Sias v. Jacobs, 6:17CV413, 2017 WL 8229544, at *3 (E.D. Tex. Dec. 11, 2017), report and recommendation adopted, 6:17CV413, 2018 WL 1335424 (E.D. Tex. Mar. 14, 2018), appeal dismissed, 18-40280, 2018 WL 4677432 (5th Cir. Apr. 20, 2018) (citing Coll. Sav. Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd., 527 U.S. 666, 670 (1999)). There is no such Congressional abrogation before the Court.

Moreover, as to Justice Evans, the Clerk of the Court, and DA Willis, Plaintiff objects that "[t]he Eleventh Amendment limits official capacity claims against certain state officials (not all) to prospective injunctive relief, it does not affect damage claims against those officials in their individual capacity" (Dkts. #97 at p. 7; #98 at p. 2; #109 at p. 7). This statement is consistent with the findings of the Reports; the Magistrate Judge found only Plaintiff's claims against Defendants in their official capacities were barred by sovereign immunity and continued on to discuss Plaintiff's remaining claims against Defendants in their individual capacities. In her objections to the Report addressing her claims against DA Willis, Plaintiff also alleges that sovereign immunity "relates to The Texas Tort Claims Act[,] which has nothing to do with Plaintiff's Complaint" and "Judge Nowak mistranslates Ramming v. US [sic] as applied to proving 'facts' when it is nothing of the sort" (Dkt. #109 at p. 4). These statements are nonsensical. Plaintiff's first objection is overruled.

Rooker-Feldman Doctrine

The Reports further found that Plaintiff's claims against Judge McCraw, Justice Evans, and the Clerk of the Court are barred by the Rooker-Feldman doctrine to the extent that Plaintiff has asserted a collateral attack on the orders issued in Plaintiff's divorce proceeding. Plaintiff argues, in her second objection, that "[t]he Rooker-Feldman doctrine has become perverted" and is not intended for use in cases like the instant matter (Dkts. #96 at p. 8; #97 at p. 9; #98 at p. 4). The Reports specifically addressed this argument:

> Plaintiff contends that "[t]he Rooker-Feldman doctrine has become perverted in that [t]he Rooker-Feldman doctrine was originally related to the Anti-Injunction Act. . . Somehow it was twisted, and is about to be abolished". . . .Contrary to Plaintiff's assertions, "[c]ourts in this circuit have 'consistently applied [and continue to apply] the Rooker-Feldman doctrine as a bar to federal jurisdiction over matters related to the family disputes of divorce and child support.'"

(Dkts. #92 at p. 12; #93 at p. 15). Plaintiff does not raise any new authority or arguments in support of this contention; the Court agrees with the assessment of the Magistrate Judge, courts in this circuit have consistently applied Rooker-Feldman as a bar to federal jurisdiction over matters related to divorce.

Plaintiff next argues Rooker-Feldman is inapplicable because the Reports failed to consider extrinsic fraud (Dkts. #96 at p. 8; #97 at p. 9; #98 at p. 4). In support of her contention, Plaintiff relies on a Ninth Circuit case, Kougasian v. TMSL, Inc., 359

F.3d 1136, 1141 (9th Cir. 2004) (Dkts. #96 at pp. 8–9; #97 at pp. 9–10; #98 at pp. 4–5). The Kougasian court held that "Rooker–Feldman 'does not bar subject matter jurisdiction when a federal plaintiff alleges a cause of action for extrinsic fraud on a state court and seeks to set aside a state court judgment obtained by that fraud.'" Stabler v. Ryan, 949 F. Supp. 2d 663, 666–67 (E.D. La. 2013). However, "Fifth Circuit precedent differs on this point"; "in Truong v. Bank of America, N.A., 717 F.3d 377 (5th Cir. 2013), the Fifth Circuit decided whether the Rooker–Feldman doctrine applied to a complaint alleging that the 'unfair and deceptive' acts of two banks resulted in wrongful foreclosure on the plaintiff's mortgage loan." Id. at 667; see also Houston v. Queen, 8 F. Supp. 3d 815, 823–24 (W.D. La. 2014), aff'd sub nom. Houston v. Venneta Queen, 606 F. App'x 725 (5th Cir. 2015) ("In the Fifth Circuit, the relevant inquiry is whether fraud allegations are independent for purposes of the Rooker–Feldman doctrine. . . .The Houston Brothers' decision to frame their fraud claim as a civil rights action for injuries arising from a state court's judgment does not confer this Court with the jurisdiction necessary to review and invalidate the Judgment of Possession.") (citing Price v. Porter, 351 F. App'x 925, 926–27 (5th Cir. 2009)). "In determining whether Rooker–Feldman forbade the plaintiff from bringing the case, the Fifth Circuit explained: '[o]ne hallmark of the Rooker–Feldman inquiry is what the federal court is being asked to review and reject. A federal district court lacks jurisdiction over challenges to state court decisions in particular cases arising out of judicial proceedings.'" Stabler, 949 F. Supp. 2d at 667 (quoting Truong, 717 F.3d at 382) (emphasis in original). "[T]he second

'hallmark' is 'the source of the federal plaintiff's alleged injury,' and specifically, whether the plaintiff asserts as a legal wrong 'an allegedly erroneous decision by a state court' or 'an allegedly illegal act or omission by an adverse party.'" Id. (quoting Truong, 717 F.3d at 383). "[T]he Fifth Circuit clarified that there is 'no general rule that any claim that relies on a fraud allegation is an "independent claim" for Rooker–Feldman purposes,'" and expressly distinguished cases in which parties brought direct challenges to state court judgments. Id. (quoting Truong, 717 F.3d at n. 3; citing Magor v. GMAC Mortgage, L.L.C., 456 F. App'x 334, 336 (5th Cir. 2011)).

Here, Plaintiff's claims against Judge McCraw, Justice Evans, and the Clerk of the Court are attacks on the state court judgment itself; notably, although Plaintiff avers that "[n]owhere in Plaintiff's Complaint is there a request to review and relitigate any final judgments made in the state court" (Dkts. #96 at p. 9; #97 at p. 10; #98 at p. 5), Plaintiff clearly requests that the orders and judgments entered in the underlying divorce proceedings be vacated, and that the judges recuse themselves from the matter. Plaintiff's claims, even though characterized as civil rights claims, do nothing more than "'invite district court review and rejection' of the state divorce decree." Blessett v. Texas Office of Attorney Gen. Galveston County Child Support Enf't Div., 756 F. App'x 445, 446 (5th Cir. 2019) (quoting Exxon Mobil Corp. v. Saudi Basic Industries Corp., 544 U.S. at 280, 284 (2005)); Sookma v. Millard, 151 F. App'x 299, 300 (5th Cir. 2005) (Rooker–Feldman bars the losing party's claim that the parties to the state suit conspired with the judge to deprive her of civil rights when she sought

to enjoin enforcement of the state court divorce decree and damages).3 Plaintiff's second objection is overruled.4

Judicial Immunity

Plaintiff argues that Judge McCraw and Justice Evans are not entitled to judicial immunity because both judges acted outside of their judicial role and without jurisdiction. Specifically, as to Judge McCraw, Plaintiff argues that Judge McCraw engaged in non-judicial actions by "directing her clerk to deny a hearing," "appoint[ing] her own recusal Judge twice," and recused herself, but then still proceeded over a hearing in state court (Dkt. #96 at pp. 11–12). Considering these allegations, the Report found:

> Judge McCraw's actions—denying requests for hearing, denying requests for injunctive relief, issuing orders, refusing to recuse herself, and

3 Furthermore, the Reports qualified "[t]o the extent that [Plaintiff] ha[s] asserted a collateral attack on the orders issued in [Plaintiff's] divorce, that constitutes a collateral attack on the ruling of the state court and this Court does not have the jurisdiction to grant the requested relief." (Dkt. #89 at p. 16).

4 Plaintiff also argues that the Domestic Relations Exception does not apply in the instant case (Dkts. #96 at p. 9; #97 at p. 8; #98 at p. 3). The Reports found that the Domestic Relations Exception was not applicable in this matter because diversity jurisdiction was not the basis for the Court's subject matter jurisdiction.

> maintaining control of the courtroom and the court's docket—were clearly judicial functions. "In other words, [Plaintiff's] claims against Judge [McCraw] derive from a function normally performed by a judge: the running of a case assigned to [her] state court docket. Plaintiff's claims against Judge [McCraw] arise out of actions that occurred in a courtroom or appropriate adjunct space, and that centered around a case pending before [her]". . . . Indeed, everything Plaintiff complains of relates to actions Judge McCraw took as a judge. If Plaintiff thought decisions in her case were in error, the remedy would have been an appeal or other remedy in state court addressing the merits of her case.

(Dkt. #89 at pp. 20–21). Indeed, as the Report found, Plaintiff's allegations against Judge McCraw are all judicial functions, and therefore are barred by judicial immunity. See Pina-Rodriquez v. Burroughs, 2:13- CV-124-J, 2014 WL 947667, at *10 (N.D. Tex. Mar. 11, 2014). Further, the Report addressed whether Judge McCraw lacked jurisdiction over the underlying state court matter, finding that

> Judge McCraw, as presiding judge for the 469th District Court of the State of Texas, has general subject matter jurisdiction to preside over [Plaintiff's] case. The 469th District Court is a court of general jurisdiction provided by Article V, Section 8, of the Texas Constitution; and has original jurisdiction of a civil matter in which the amount in controversy is more than $500, exclusive of interest. . . . [Plaintiff's] Complaint listed a dispute over the

> homestead, which was worth well over the $500.00 threshold for subject matter jurisdiction

(Dkt. #89 at n. 8). Plaintiff has failed to proffer any authority to the contrary.

Plaintiff similarly argues that Justice Evans is not entitled to judicial immunity because he is not protected for non-judicial actions and acted outside of his jurisdiction. Specifically, Plaintiff asserts that "[Justice] Evans. . . had an administrative obligation to direct the clerks to correct the records" after Plaintiff "motioned the court making it clear the Memorandum had misstatements and no evidentiary foundation" (Dkt. #97 at p. 4), and "[t]his action to correct the records is a DUTY of the clerk of the court. [Justice Evans] controlled the duty of the Fifth District Court of Appeals. [Justice] Evans acted outside of his jurisdiction" (Dkt. #97 at p. 5). The Report addressed these arguments as well, finding:

> Plaintiff's allegations that Justice Evans authored an opinion affirming the trial court, denied her request for hearing on correcting the appellate record, denied her motion to correct the appellate record, and otherwise generally exercised control over his court's docket are all clearly judicial functions. . . . Plaintiff is unable to sue a judge for actions taken as a judge simply because she feels the judge made errors or exceeded his authority.

(Dkt. #92 at p. 20). As the Report found, Plaintiff's allegations against Justice Evans are judicial functions, and therefore are barred by judicial immunity. Paup v. Texas, 6:16-CV-417-RWSKNM, 2017 WL 9289648, at *10 (E.D. Tex. Jan. 31, 2017), report and recommendation adopted, 6:16-CV-417-

RWS-KNM, 2017 WL 1129906 (E.D. Tex. Mar. 27, 2017). The Report also addressed whether Justice Evans lacked jurisdiction over the underlying state court appellate proceedings, finding that:

> Justice Evans, as a justice of the Fifth District Court of Appeals, has appellate jurisdiction to preside over [Plaintiff's] appeal of her divorce. The Fifth District Court of Appeals is a court of general jurisdiction provided by Article V, Section 8, of the Texas Constitution; and has appellate jurisdiction of all civil cases within its district of which the district courts or county courts have jurisdiction when the amount in controversy or the judgment rendered exceeds $250, exclusive of interest and costs. . . [Plaintiff's] Complaint listed a dispute over the homestead in the Dallas area, which was worth well over the $250.00 threshold for subject matter jurisdiction.

(Dkt. #92 at n. 8). Plaintiff has failed to proffer any authority to the contrary. Plaintiff's third objection is overruled.5

Clerk of the Court

As a threshold issue to Plaintiff's objection, Plaintiff confirms that she "is suing the agency Clerk of the Court" (Dkt. #98 at p. 1), not Lisa Matz; Plaintiff avers that if Ms. Matz "is accountable then

5 Plaintiff also argues that Judge McCraw and Justice Evans are not entitled to qualified immunity (Dkts. #96 at p. 13; #97 at p. 5). The Reports did not reach Judge McCraw or Justice Evans's arguments regarding qualified immunity; Plaintiff's objections are overruled.

Plaintiff will add her to the suit." The Clerk of the Court is not a jural entity that can be sued.

As the Report found, "Texas Government Code § 51.204. . . does not give a jural identity to the office or agency Clerk of the Court, or grant the office or agency the power to sue or be sued. Plaintiff has failed to demonstrate that the Clerk of the Court can initiate litigation on its own behalf or be sued" (Dkt. #93 at pp. 10–11). Plaintiff has decried seeking any relief against Ms. Matz. Plaintiff's objection is overruled.

DA Willis Prosecutorial Immunity

Plaintiff argues in her fifth objection that DA Willis is not entitled to prosecutorial immunity because "District Attorney Greg Willis's actions to send an unsuspecting (non-charging) [sic] to Plaintiff to appear, then falsely accuse the Plaintiff of a felony does not even closely mimic 'initiation and prosecution' of a case" (Dkt. #109 at p. 5). To this point, the Report found:

> the acts identified in Plaintiff's complaint were performed in the scope of his prosecutorial functions. . . . to Plaintiff's argument that DA Willis's "request" for her to appear at hearing, such statement appears to be inaccurate and based upon Plaintiff's misunderstanding regarding the DA's office and its relationship to or with the Sheriffs Office. On April 14, 2015, Sergeant M. Vance of the Collin County Sheriffs Office requested a property hearing to determine "the rightful owner of the firearm and ammunition." Plaintiff is listed as a witness. On November 11, 2015, notice of the hearing was sent to Plaintiff and Mr.

> Dahlheimer. The record demonstrates that DA Willis did not send the complained-of request to appear at the state court property hearing, but even had DA Willis sent a subpoena requesting Plaintiff's appearance, such an action would be protected by prosecutorial immunity.

(Dkt. #103 at pp. 14–15).6 Plaintiff does not assert any authority or argument in support of her objection to the above finding. Upon review, as the Report found, Plaintiff's claims against DA Willis, as alleged, involve DA Willis's prosecutorial function. See Hereford v. Say, 5:13-CV-00222-C, 2014 WL 5343328, at *4 (N.D. Tex. Oct. 21, 2014). Plaintiff's objection is overruled.

Personal Involvement

In connection with DA Willis, the Report further recites that "Plaintiff does not raise any factual allegations of individualized conduct taken by DA Willis," and instead, "[t]he majority, if not all, of Plaintiff's allegations directed to DA Willis involve purported actions taken by other assistant district attorneys. . . .§ 1983 does not impose vicarious or respondeat-superior liability on officials" (Dkt. #103 at p. 17).

6 Plaintiff contends that the "defense story about the 'sheriff' is absolute fabrication. Plaintiff cannot identify this story or claim in any pleading. Judge Nowak is either getting her information Ex parte or is simply creating the defense" (Dkt. #109 at p. 6). Plaintiff is mistaken; such information was provided to the Court and to Plaintiff on November 16, 2018 (Dkts. #69 at p. 4; #69-2).

Plaintiff objects to this finding and argues that "Judge Nowak cannot make this judgement until after discovery" (Dkt. #109 at p. 9). Plaintiff is mistaken; this is an argument that is appropriately considered at the motion to dismiss stage. See Pompura v. Willis, 4:16-cv-766 (E.D. Tex 2017). Plaintiff's objection is overruled.

Statute of Limitations

The Report also found Plaintiff's claims against DA Willis were time-barred. Plaintiff argues again that she preserved these claims by raising them "in her second Motion to Recuse Judge McCraw (7/5/2016), her Appellant Brief (4/2017), and other motions" (Dkt. #109 at p. 10). Plaintiff's allegations related to DA Willis in the instant case all took place in 2015. Plaintiff filed suit on August 23, 2018, well over two years following these incidents. Plaintiff did not preserve the tolling of limitations by mentioning such complaints in earlier filings. Plaintiff's objection is overruled.

Conspiracy and Malicious Prosecution

Plaintiff next argues that neither malicious prosecution, nor "[c]onspiracy [are] a claim that can be proven by a pleading. Discovery must be allowed" (Dkt. #109 at pp. 9, 10). Plaintiff is again incorrect; both claims must be properly pleaded prior to discovery, and if they are not, are properly dismissed in a motion to dismiss under Rule 12(b)(6) for failure to state a claim. Specifically, regarding the malicious prosecution claim, the Report noted that "because the Constitution does not include a right to be free from malicious prosecution (as Plaintiff pleads), she has failed to state a claim" (Dkt. #103 at pp. 20–21).

Plaintiff has failed to provide any contrary authority. Further, the Report noted that "Plaintiff has wholly failed to support [Plaintiff's] argument that DA Willis conspired to lodge false accusations against her so as to undermine her divorce proceedings before Judge McCraw" (Dkt. #103 at p. 21). Upon independent review, the undersigned finds that Plaintiff fails to support any conspiracy involving DA Willis with specific factual allegations, and instead, relies primarily on her unfounded suspicions as support for her claim. Such allegations are insufficient to state a claim for relief. E.G. v. Bond, No. 1:16-CV-068-C, 2017 WL 129019, at *4 (N.D. Tex. Jan. 13, 2017) (citing Hale v. Harney, 786 F.2d 688, 690 (5th Cir. 1986)). Plaintiff's objection is overruled.

Punitive Damages

Plaintiff also states that the Magistrate Judge unfairly advocated for the Defendants in the Reports. Upon review of the record, the undersigned finds Plaintiff's allegations to be baseless and unfounded in the record. For example, Plaintiff argues that the Magistrate Judge raised the argument that Plaintiff is not entitled to an award of punitive damages from DA Willis because she fails to state any claim for relief (Dkt. #109 at p. 2). However, in DA Willis's Motion to Dismiss, DA Willis clearly argues, "[f]inally, Plaintiff has failed to allege any viable claims for recovery of punitive damages" (Dkt. #35 at pp. 2, 3, 8, 18). Plaintiff's objections are overruled.

Futility of Amendment

As a final matter, the Reports each found that Plaintiff should be not be given an opportunity to

amend her claims against Judge McCraw, Justice Evans, the Clerk of the Court, and DA Willis because such amendment would be futile in light of the various immunities raised and the applicability of the Rooker-Feldman doctrine. The Court agrees, and further notes that the Magistrate Judge has not foreclosed Plaintiff's ability to request leave to amend her claims against the remaining Defendants following the undersigned's review of the Reports considered herein.

CONCLUSION

Having considered Plaintiff's Objections (Dkts. #96; #97; #98; #109), and having conducted a de novo review, the Court adopts the Magistrate Judge's Reports (Dkts. #89; #92; #93; #103) as the findings and conclusions of the Court.

It is ORDERED that Defendant Judge Piper McCraw's Fed. R. Civ. P. 12(b)(1) and 12(b)(b)(6) Motion to Dismiss (Dkt. #37), Defendant Justice David Evans' Fed. R. Civ. P. 12(b)(1) and 12(b)(6) Motion to Dismiss (Dkt. #38), Fed. R. Civ. P. 12(b)(1) and 12(b)(6) Motion to Dismiss by Defendant Lisa Matz, Clerk of the Court of the 5th District Court of Appeals (Dkt. #39), and Defendant District Attorney Greg Willis' Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6) (Dkt. #35) each be GRANTED. It is further ORDERED that Plaintiff's claims against Judge McCraw, Justice Evans, the Clerk of the Court, and DA Willis (in his official capacity) are DISMISSED WITHOUT PREJUDICE, and Plaintiff's claims against DA Willis (in his individual capacity) are DISMISSED WITH PREJUDICE. Plaintiff's claims against the remaining Defendants, not addressed by the referenced Reports, Lester John Dahlheimer, Jr., the estate of her former father-in-

law Lester John Dahlheimer, Sr., Paulette Mueller, and Court-Appointed Receivers Craig A. Penfold and Rhonda Childress-Herres remain.

IT IS SO ORDERED.

Signed this 7th day of August 2019

Amos Mazzant
Amos Mazzant
United State District Judge

United States District Court
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION
WANDA BOWLING
v.
LESTER JOHN DAHLHEIMER, JR., ET AL.
Civil Action No. 4:18-CV-610
(Judge Mazzant/Judge Nowak)

MEMORANDUM ADOPTING REPORTS AND RECOMMENDATIONS OF UNITED STATES MAGISTRATE JUDGE

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the Magistrate Judge pursuant to 28 U.S.C. § 636. On August 7, 2019, the Report of the Magistrate Judge (Dkt. #124) was entered containing proposed findings of fact and recommendations that Defendants Lester John Dahlheimer, Jr. and Paulette Mueller's Motion to Dismiss Plaintiff's First Original Complaint with Prejudice (Dkt. #41) be granted. Having received the report of the Magistrate Judge, having considered Plaintiff's Objection (Dkt. #137), Defendants' Response (Dkt. #145), and having conducted a de novo review, the Court is of the opinion that the Magistrate Judge's report should be adopted.

RELEVANT BACKGROUND

The facts are set out in further detail by the Magistrate Judge and need not be repeated here in their entirety.1 On August 23, 2018, Plaintiff filed suit in the Northern District of Texas, against her former spouse Lester John Dahlheimer, Jr. ("Dahlheimer"); the estate of her former father-in-law Lester John Dahlheimer, Sr. ("Dahlheimer, Sr."); Dahlheimer's divorce counsel Paulette Mueller; Judge Piper McCraw; District Attorney Greg Willis; Justice David Evans; the Fifth District Court of Appeals Clerk of the Court; and Court-Appointed Receivers Craig A. Penfold and Rhonda Childress-Herres (Dkt. #2). Plaintiffs claims against these Defendants all relate to or otherwise stem from her underlying divorce proceeding filed in 2015. Specifically, Plaintiff alleges that her former spouse misappropriated Plaintiffs assets throughout their marriage and divorce proceeding, and that the remaining Defendants unlawfully participated, in one manner or another, in either the divorce proceeding or the subsequent enforcement proceedings. Plaintiffs live Complaint asserts the Defendants "violat[ed] Plaintiffs constitutional rights [by] their participation in conspiracy to

1 Plaintiff makes several objections to the factual background in the report (Dkt. #137 at pp. 1-3); upon independent review, the Court finds Plaintiffs objections to be unfounded and/or irrelevant. Plaintiffs objections related to the factual recitation contained in the report are overruled.

unlawfully seize property, misc. assets, forgery, fraud, cover up of unlawful conduct, tampering with evidence, FURTHER using threat tactics to bully Plaintiff into quiet submission" (Dkt. #2 at p. 1) (emphasis in original).

On August 7, 2019, the Magistrate Judge recommended that Dahlheimer and Mueller's Motion to Dismiss be granted because: (1) Plaintiffs claims against both Defendants are barred by the Rooker-Feldman doctrine; and (2) res judicata further bars Plaintiffs claims against Dahlheimer (Dkt. #124). Plaintiff filed Objections to the report on September 9, 2019 (Dkt. #137). Thereafter, on September 16, 2019, Defendants filed a Response to Plaintiff's Objections (Dkt. #145).

OBJECTIONS TO REPORT AND RECOMMENDATION

A party who files timely written objections to a magistrate judge's report and recommendation is entitled to a de novo review of those findings or recommendations to which the party specifically objects. 28 U.S.C. § 636(b)(l)(C); Fed. R. Civ. P. 72(b)(2)-(3). Plaintiff objects to the report on multiple grounds, including that: (1) the Magistrate Judge failed to "articulate the lack of Plaintiffs injury-in-fact"; (2) Rooker-Feldman and the Younger abstention doctrine do not bar Plaintiffs claims against Defendants Dahlheimer and Mueller; and (3) res judicata similarly does not bar Plaintiffs claims (Dkt. #137). Defendants Dahlheimer and Mueller respond Plaintiff's objections are not adequately specific, fail to state a basis for the objection, and further fail to identify the portion of the report to which Plaintiff objects (Dkt. #145).

Injury-in-Fact

Plaintiff challenges the Court's "fail[ure] to articulate the lack of Plaintiff's 'Injury-in-Fact'" (Dkt. #137 at p. 3). Defendants point out that the Magistrate Judge found in Plaintiff's favor on this issue (Dkt. #145 at p. 5); the report found Plaintiff had sufficiently pleaded the required elements to establish constitutional standing: injury-in-fact; a traceable causal connection to defendant's actions; and redressability. The report specifically states, "the Court finds that Plaintiff has standing under § 1983 to sue Dahleimer and Mueller for their alleged violation(s) of Plaintiff's constitutional rights" (Dkt. #124 at pp. 9-10). Plaintiffs objection is overruled.

Rooker-Feldman Doctrine

The report further found that Plaintiffs claims against Defendants Dahlheimer and Mueller are barred by the Rooker-Feldman doctrine. Plaintiff argues against the application of the Rooker-Feldman doctrine; specifica11y, Plaintiff urges an inconsistency exists between the recommended disposition in the instant action and another pending case filed by Plaintiff. See Bowling v. Roach, Cause No. 4:19-cv-144-ALM/CAN (E.D. Tex. 2019). In the instant case, the Magistrate Judge recommended Plaintiff's claims be dismissed under Rooker-Feldman, while in the other suit the Magistrate Judge considered the application of the Younger abstention doctrine. Plaintiff urges these findings are irreconcilable (Dkt. #137 at pp. 4-5). Specifically, Plaintiff urges "[the magistrate] articulates Plaintiff's claims are the same subject matter as closed cases in the trial court ... [but in another case, the magistrate] insists there is an

ongoing case of the same subject matter in the trial court ... both conditions cannot be true" (Dkt. #137 at p. 4). No inconsistency exists. As the Magistrate Judge set forth in the report, the application of the respective doctrines hinges on whether the underlying action is considered closed or remains ongoing (Dkt. 124 at p. 13). Here, Plaintiff clearly requests that the orders and judgments in the underlying divorce proceeding be vacated. The divorce itself is closed and a final judgment related to such divorce has been entered. Hence, the Magistrate Judge's decision that Rooker-Feldman prevents this court from reviewing the previous state court's final judgment. Plaintiff's claims, even though characterized as civil rights claims, do nothing more than "'invite district court review and rejection' of the state divorce decree." Blessett v. Texas Office of Attorney Gen. Galveston County Child Support Enf't Div., 756 F. App'x 445, 446 (5th Cir. 2019) (quoting Exxon Mobil Corp. v. Saudi Basic Industries Corp., 544 U.S. at 280,284 (2005)); Sookma v. Millard, 151 F. App'x 299, 300 (5th Cir. 2005) (Rooker□Feldman bars the losing party's claim that the parties to the state suit conspired with the judge to deprive her of civil rights when she sought to enjoin enforcement of the state court divorce decree and damages). Moreover, as noted by the Magistrate Judge, even if such finding is incorrect and the underlying suit could be determined to remain ongoing, this Court should still abstain from deciding predominately state law issues currently being decided by a state court. SeeJasper v. Hardin County Sheriff's Dept., l:11-CV-408, 2012 WL 4480713, at *11 (E.D. Tex. Sept. 5, 2012), report and recommendation adopted, 1:1 l-CV-408, 2012 WL 4472261 (E.D. Tex. Sept. 26, 2012) ("Alternatively, if the divorce matter was fully

resolved, this Court still does not have the authority to interfere with a state court proceeding."). Ultimately, the result is the same-dismissal of the present action is warranted. Plaintiffs objection is overruled.

Res Judicata

Lastly, Plaintiff objects to the Report's "articulation of facts invoking [] [r]es [i]udicata" (Dkt. # 13 7 at p. 5). 2 Plaintiff argues that her claims "[arise] from a corrupt court process with state officials collu[ding to] prevent[ ] her from litigating the fraud/forgery losses against Dahlheimer Jr. and Sr. The claims in this court have nothing to do with divorce or custody" (Dkt. #137 at p. 5). The Magistrate Judge found that, in addition to Rooker-Feldman, res judicata would also bar Plaintiffs claims against Dahlheimer (but not against Mueller) (Dkt. #124 at pp. 17-24). With respect to the third element of res judicata-a second action based on the same claims as the previous suit-a subsequent suit "will be barred if it arises out of the same subject matter of a previous suit and which through the exercise of diligence could have been raised in a prior suit." See Barr v. Resolution Tr. Corp., 837 S.W.2d 627, 631 (Tex. 1992). The Court of Appeals expressly recognized that Plaintiff brought similar claims, based on the same alleged conduct by Defendants, in

2 Plaintiff also argues that the Domestic Relations Exception does not apply in the instant case (Dkt. #137 at p. 5). The Reports found that the Domestic Relations Exception was not applicable in this matter because diversity jurisdiction was not the basis for the Court's subject matter jurisdiction.

both the State District Court and Court of Appeals (Dkt. #41-4 at p. 3). Merely alleging a different cause of action does not entitle a plaintiff to a second or third bite at the apple. Getty Oil Co. v. Ins. Co. of N Am., 845 S.W.2d 794, 798 (Tex. 1992) ("[A] judgment in an earlier suit 'precludes a second action by the parties and their privities not only on matters actually litigated, but also on cause(s) of action or defenses which arise out of the same subject matter .... "). Plaintiffs final objection is overruled.

Futility of Amendment

As a final matter, the report found that Plaintiff should be not be given an opportunity to amend her claims against Defendants Dahlheimer and Mueller because of the applicability of the Rooker-Feldman doctrine. The Court agrees, and further notes that the Court has found Plaintiff will be permitted to amend her claims against the remaining undismissed Defendants.

CONCLUSION

Having considered Plaintiffs Objection (Dkt. #137), Defendant's Response (Dkt. #145), and having conducted a de novo review, the Court adopts the Magistrate Judge's report (Dkt. #124) as the findings and conclusions of the Court.

It is, therefore, ORDERED that Defendants Lester John Dahlheimer, Jr. and Paulette Mueller's Motion to Dismiss (Dkt. #41) is GRANTED. Plaintiffs claims against Defendant Lester John Dahlheimer, Jr. are DISMISSED WITH PREJUDICE and against Defendant Paulette Mueller WITHOUT REJUDICE.

IT IS SO ORDERED.
SIGNED this 27th day of September, 2019.

Amos Mazzant

Amos Mazzant
United State District Judge

United States District Court
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION
WANDA BOWLING
v.
LESTER JOHN DAHLHEIMER, JR., ET AL.
Civil Action No. 4:18-CV-610
(Judge Mazzant/Judge Nowak)

MEMORANDUM ADOPTING REPORTS AND RECOMMENDATIONS OF UNITED STATES

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the Magistrate Judge pursuant to 28 U.S.C. § 636. On August 6, 2020, the report of the Magistrate Judge (Dkt. #172) was entered containing proposed findings of fact and recommendations that Plaintiff's Motions to Reconsider (Dkts. #138; #139; #159) be denied. Having received the report of the Magistrate Judge, having considered Plaintiff's Objections (Dkt. #175), and having conducted a de novo review, the Court is of the opinion that the Magistrate Judge's report should be adopted.

Plaintiff filed the instant suit in the Northern District of Texas on August 23, 2018, against her former spouse and various other State and individual Defendants related to or arising out of Plaintiff's divorce proceedings (Dkt. #2). The Court previously dismissed certain of the named Defendants, including Plaintiff's former spouse Lester John Dahlheimer, Jr., Dahlheimer's divorce

counsel Paulette Mueller, Judge Piper McCraw, District Attorney Greg Willis, Justice David Evans, and the Fifth District Court of Appeals Clerk of the Court (Dkts. #123; #155). Plaintiff thereafter moved the Court to reconsider the dismissals (Dkts. #138; #139; #159). The Magistrate Judge, under Rule 54(b), recommended denial of each of Plaintiff's Motions to Reconsider, finding no basis to reconsider the prior determinations and thoroughly discussing Plaintiff's First Amended Complaint, the Court's purported mistakes, Plaintiff's arguments regarding immunities, the application of *Rooker-Feldman* to Plaintiff's cause, dismissal of the Clerk of Court, limitations, punitive damages, and Plaintiff's purported new evidence (Dkt. #172). Plaintiff filed Objections to the Magistrate Judge's report on August 19, 2020 (Dkt. #175). On August 25, 2020, DA Willis filed a Response to such Objections (Dkt. #179).

OBJECTION TO REPORT AND RECOMMENDATION

A party who files timely written objections to a magistrate judge's report and recommendation is entitled to a de novo review of those findings or recommendations to which the party specifically objects. 28 U.S.C. § 636(b)(1)(C); FED. R. CIV. P. 72(b)(2)–(3).

Plaintiff's Objections to the Magistrate Judge's report are largely comprised of bald assertions that the Magistrate Judge has not accurately characterized Plaintiff's case and/or correctly outlined the underlying history of the cause. More specifically, Plaintiff opens her Objections by stating:

> This court is accountable for the integrity of the orders issued. It has been repeatedly communicated in a volume of filings by Plaintiff Bowling the Reports and Recommendations are grave departures from the truth of factual history and from what is clearly on the record. IN the name of Jesus, good luck.

(Dkt. #175 at p. 1). Plaintiff continues in her aspersions: "This Magistrate [Judge] has written over 300 pages of distortions of proceedings, actions, causes, and history in favor of Defendants" (Dkt. #175 at p. 5). In rejoinder to these statements, DA Willis urges that Plaintiff's Objections are "really nothing more than a rambling narrative about her spin on the underlying procedural history – with the consistent belief that everyone . . . is corrupt and conspiring against her" (Dkt. #179 at p. 2). Upon a studied review, it is clear that Plaintiff's Objections do nothing more than urge again arguments she has already raised numerous times with the Court or which are patently incorrect, save and except her challenge to the Court's consideration of her motions under Rule 54, which the undersigned addresses herein.

Plaintiff sought relief or otherwise invoked Rule 60 in each of the instant motions. Plaintiff expressly advises she is "not asking for 'reconsideration' in the context of Rule 54, but requesting [r]elief based on Rule 60 based on unmistakable error of this court" (Dkt. #175 at p. 6). However, as the Magistrate Judge found, because no final judgment has yet been entered in this case, Rule 54(b), not Rule 60, governs the Court's consideration of Plaintiff's motions. Where a motion

for reconsideration challenges a final judgment, it is treated either as a motion to alter or amend the judgment under Rule 59(e), or as a motion seeking relief from judgment under Rule 60(b). The Fifth Circuit, in recent years, has clarified that where a district court is not asked to reconsider a judgment, the denial of a motion to reconsider must be considered under Rule 54(b):

> In our decision in *Austin v. Kroger Texas, L.P.*, . . . we clarified the relationship between Rules 54(b) and 59(e) [and 60]. Whereas Rule 59(e) [and 60] appl[y] only to final judgments and do[] not permit consideration of arguments that could have been raised previously, Rule 54(b) applies to interlocutory judgments and permits the district court "to reconsider and reverse its decision for any reason it deems sufficient."

McClendon v. United States, 892 F.3d 775, 781 (5th Cir. 2018) (citing *Austin v. Kroger Texas, L.P.*, 864 F.3d 326, 336 (5th Cir. 2017)). The Court finds no reason to reconsider or reverse its decision here even under the more flexible Rule 54(b). Plaintiff's Objections are overruled.

It is therefore **ORDERED** that Plaintiff's Motions to Reconsider (Dkts. #138; #139; #159) are hereby **DENIED**.

IT IS SO ORDERED.

SIGNED this 28th day of August, 2020.

Amos Mazzant

Amos Mazzant
United State District Judge

United States District Court
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION
WANDA BOWLING
v.
LESTER JOHN DAHLHEIMER, JR., ET AL.
Civil Action No. 4:18-CV-610
(Judge Mazzant/Judge Nowak)

MEMORANDUM ADOPTING REPORTS AND RECOMMENDATIONS OF UNITED STATES

Came on for consideration the reports of the United States Magistrate Judge in this action, this matter having been heretofore referred to the Magistrate Judge pursuant to 28 U.S.C. § 636. On August 6, 2020, the report of the Magistrate Judge (Dkt. #173) was entered containing proposed findings of fact and recommendations that Defendants District Attorney Greg Willis, Paulette Mueller, and Lester John Dahlheimer, Jr.'s Motions for Entry of Final Judgment (Dkts. #162; #163; #164) be granted and the Court enter partial final judgment as to these Defendants. On August 12, 2020, a second report of the Magistrate Judge (Dkt. #174) was entered containing proposed findings of fact and recommendations that: Plaintiff Wanda L. Bowling's Motion for Leave (Dkt. #142) be granted; Plaintiff's Second Amended Complaint (Dkt. #143) be deemed properly before the Court "only to the extent that it alleges claims and factual bases against those Defendants Penfold, Dahlheimer, Sr. and Childress-Herres whom have not already been

dismissed from this suit"; Defendant Craig A. Penfold's Motion to Dismiss (Dkt. #157) and Supplement to His Motion to Dismiss (Dkt. #169) each be granted; and Plaintiff's remaining claims in this suit be dismissed without prejudice. Plaintiff's received electronic notice of each of the aforementioned reports (Dkt. #47; *see* docket generally).

Having received the reports of the United States Magistrate Judge, and no objections thereto having been timely filed, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and adopts the Magistrate Judge's reports as the findings and conclusions of the Court. Because with this Memorandum Adopting the Court has now dismissed all parties and claims in this suit, the Court will separately enter a final judgment as to all parties.

It is therefore **ORDERED** that Defendants District Attorney Greg Willis, Paulette Mueller, and Lester John Dahlheimer, Jr.'s Motions for Entry of Final Judgment (Dkts. #162; #163; #164) are **GRANTED**.

It is further **ORDERED** that Plaintiff Wanda L. Bowling's Motion for Leave (Dkt. #142) is granted. Plaintiff's Second Amended Complaint (Dkt. #143) is deemed properly before the Court only to the extent that it alleges claims and factual bases against those Defendants Penfold, Dahlheimer, Sr. and Childress-Herres whom have not already been dismissed from this suit.

It is further **ORDERED** Defendant Craig A. Penfold's Motion to Dismiss (Dkt. #157) and

Supplement to His Motion to Dismiss (Dkt. #169) are each **GRANTED**.

It is finally **ORDERED** that Plaintiff's claims against Defendants Craig A. Penfold, Lester John Dahlheimer, Sr., and Rhonda Childress-Herres are **DISMISSED WITHOUT PREJUDICE**.

IT IS SO ORDERED.

SIGNED this 8th day of September, 2020.

Amos Mazzant

Amos Mazzant
United State District Judge

United States District Court
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION
WANDA BOWLING
v.
LESTER JOHN DAHLHEIMER, JR., ET AL.
Civil Action No. 4:18-CV-610
(Judge Mazzant/Judge Nowak)

FINAL JUDGMENT

On this date the Court considered Defendants District Attorney Greg Willis, Paulette Mueller, and Lester John Dahlheimer, Jr.'s Motions for Entry of Final Judgment (Dkts. #162; #163; #164) and Defendant Craig A. Penfold's Motion to Dismiss (Dkt. #157) and Supplement to His Motion to Dismiss (Dkt. #169). The Court, having reviewed the briefing of the parties and all the relevant arguments and evidence, and being fully advised, is of the opinion that the Motions (Dkts. #157; #162; #163; #164; #169) are meritorious and should be, and hereby are, **GRANTED** as set forth in the Magistrate Judge's Reports and Recommendation.

It is therefore **ORDERED** that each of Plaintiff Wanda L. Bowling's claims against Defendants Paulette Mueller, Judge Piper McGraw, Judge David Evans, the Clerk of the Court, District Attorney Greg Willis in his official capacity, Craig A. Penfold, Lester John Dahlheimer, Sr., and Rhonda Childress-Herres are **DISMISSED WITHOUT PREJUDICE.**

It is further **ORDERED** that each of Plaintiff Wanda L. Bowling's claims against

Defendants District Attorney Greg Willis in his individual capacity and Lester John Dahlheimer, Jr. are **DISMISSED WITH PREJUDICE**.
All relief not previously granted is hereby denied.

IT IS SO ORDERED.
SIGNED this 8th day of September, 2020.

Amos Mazzant
Amos Mazzant
United State District Judge