APPENDIX

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Nos. 21-5106/5219

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

FILED: APRIL 14, 2022
DEBORAH S. HUNT, Clerk

STEVEN CHRISTOPHER KNAPPP,
Plaintiff-Appellant,

v.

METROPOLITAN GOVERNMENT OF NASHVILLE & DAVIDSON COUNTY,
Defendants-Appellees.

BEFORE: NORRIS, WHITE, and THAPAR, Circuit Judges.

ORDER

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the cases. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT

s/Deborah S. Hunt, Clerk
Deborah S. Hunt, Clerk

APPENDIX B

NOT RECOMMENDED FOR PUBLICATION

Nos. 21-5106/5219

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

FILED: FEB 10, 2022
DEBORAH S. HUNT, Clerk

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE

STEVEN CHRISTOPHER KNAPPP,
Plaintiff-Appellant,

v.

METROPOLITAN GOVERNMENT OF NASHVILLE & DAVIDSON COUNTY,
Defendants-Appellees.

O R D E R

Before: NORRIS, WHITE, and THAPAR, Circuit Judges.

Steven Christopher Knapp, proceeding pro se, appeals the district court's judgment dismissing his civil-rights complaint, filed pursuant to 42 U.S.C. § 1983 (Case No. 21-5106), and orders denying his motion to set aside the judgment and denying reconsideration of that motion (Case No. 21-5219). This case has been referred to a panel of the court that, upon examination, unanimously agrees that

oral argument is not needed. *See* Fed. R. App. P. 34(a).

In June 2019, Knapp filed a 608-page complaint against the Metropolitan Government of Nashville and Davidson County; the Metro Development and Housing Agency; the Ryman Lofts at Rolling Mill Hill, L.P.; City Real Estate Advisors, Inc.; Freeman Webb Co., Realtors; the Law Office of Hall and Associates, Inc.; the MDHA Board of Commissioners; and 15 individual defendants. He attached several hundred pages of exhibits. The defendants moved to dismiss the complaint, arguing, in part, that it did not comply with Federal Rule of Civil Procedure 8(a)(2) and (d)(1)'s requirements that a complaint contain a short and plain statement of the plaintiff's claims and simple, concise, and direct allegations.

Knapp moved for leave to file an amended complaint. He attached a 30-page amended complaint. However, the first sentence stated that "[t]he entire original complaint . . . inclusive of each and every one of its 2505 paragraphs is hereby adopted and incorporated herein by reference."

On May 28, 2020, a magistrate judge denied without prejudice the defendants' motions to dismiss. She nevertheless found that Knapp's original complaint was "excessive and unreasonable" and that it was "unreasonable for Plaintiff to expect either the Court or Defendants to read a complaint of such length." The magistrate judge gave Knapp until June 26, 2020, to file an amended complaint, explained what was required to satisfy Rule 8, and warned that failure to comply could result in "outright dismiss[al]." The magistrate judge extended the filing deadline three times at Knapp's request, ultimately ordering that the amended complaint be filed by October 30, 2020.

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On October 14, 2020, Knapp filed a motion to set aside the May 28, 2020, order under Federal Rule of Civil Procedure 60(b)(4), arguing that the order was void because the magistrate judge shirked her "ministerial duty" to read his complaint and adjudicate the claims raised therein. On October 29, 2020, he filed a "notice of non-compliance with void order," stating that he "respectfully decline[d] to comply with the Magistrate Judge's Order . . . as it pertains to filing the First Amended Verified Complaint on October 30th, 2020." The defendants moved to dismiss the complaint under Federal Rule of Civil Procedure 41(b), based on Knapp's failure to comply with the magistrate judge's May 28, 2020, order. The magistrate judge gave Knapp until November 23, 2020, "to file a single, collective response to the motions to dismiss." Knapp responded by filing four motions challenging the legitimacy of the magistrate judge's orders. On the day that his response was due, Knapp filed a "notice of non-compliance," stating that he would not comply with the magistrate judge's order to respond to the defendants' motions to dismiss.

On December 4, 2020, the magistrate judge recommended dismissing Knapp's complaint under Federal Rules of Civil Procedure 16 and 41(b), based on his failure to comply with her orders. Over Knapp's objections, the district court adopted the magistrate judge's report and recommendation, finding that it had jurisdiction over the case, that the magistrate judge did not deprive Knapp of due process, that the May 28, 2020, order was not void, and that dismissal under Rules 16(f)(1), 37(b)(2)(A)(v), and 41(b) was an appropriate sanction for Knapp's refusals to comply with the magistrate judge's orders. It dismissed the case with prejudice.

APPENDIX B

Knapp moved to "set aside" the district court's judgment under Rule 60(b)(4), arguing that the order was void because it deprived him of due process. He also filed an appeal, which we held in abeyance pending the district court's ruling on Knapp's post-judgment motion. Ultimately, the district court denied the motion, and Knapp moved for reconsideration. The district court denied that motion for lack of jurisdiction. Knapp then appealed the order denying his motion to set aside the judgment and the order denying his motion for reconsideration. We consolidated Knapp's appeals.

On appeal, Knapp requests oral argument and argues that: (1) the district court erred in concluding that "only a complaint that is 'simple'" meets Rule 8's pleading requirements;; (2) his original complaint, though lengthy, complied with Rule 8 because it was coherent and intelligible and put the defendants on notice of the claims against them; (3) the district court violated his due- process and equal-protection rights by failing to consider the merits of his claims and forcing him to comply with "void" orders;; (4) the district court was biased;; and (5) the district court abused its discretion by denying his motion to set aside the judgment.

A district court may dismiss a case under Federal Rule of Civil Procedure 16(f)(1) if a party "fails to obey a . . . pretrial order." Fed. R. Civ. P. 16(f)(1)(C) (cross-referencing, among other rules, Fed. R. Civ. P. 37(b)(2)(A)(v)). Similarly, Federal Rule of Civil Procedure 41(b) authorizes a district court to dismiss a case "[i]f the plaintiff fails to . . . comply with . . . a court order." Fed. R. Civ. P. 41(b). We review dismissals under Rule 16(f) and Rule 41(b) for an abuse of discretion. *Mager v. Wis. Cent. Ltd.*, 924

F.3d 831, 837 (6th Cir. 2019) (Rule 16(f)); *Knoll v. Am. Tel. & Tel. Co.*, 176 F.3d 359, 363 (6th Cir. 1999) (Rule 41(b)). An abuse of discretion occurs "if we have a definite and firm conviction that the trial court committed a clear error of judgment." *Knoll*, 176 F.3d at 363.

When determining whether dismissal was an appropriate sanction under either Rule 16(f)(1) or Rule 41(b), we consider:

> (1) whether the party's failure is due to willfulness, bad faith, or fault;; (2) whether the adversary was prejudiced by the dismissed party's conduct;; (3) whether the dismissed party was warned that failure to cooperate could lead to dismissal; and (4) whether less drastic sanctions were imposed or considered before dismissal was ordered.

Mager, 924 F.3d at 837 (quoting *United States v. Reyes*, 307 F.3d 451, 458 (6th Cir. 2002)) (Rule 16(f)); *see also Stough v. Mayville Cmty. Schs.*, 138 F.3d 612, 615 (6th Cir. 1998) (Rule 41(b)). "[N]o one factor is dispositive." *Reyes*, 307 F.3d at 458.

Knapp does not challenge the district court's findings that (1) his failure to comply with the May 28, 2020, order was willful, in bad faith, and his own fault; (2) the defendants were prejudiced by his actions because the case could not move forward; (3) he was warned of the consequences of failing to comply; and (4) a less drastic sanction would not be effective. He therefore has forfeited any such arguments. *See Ohio State Univ. v. Redbubble, Inc.*, 989 F.3d 435, 443 (6th Cir. 2021). In light of the district court's findings, dismissing Knapp's case with prejudice was not an abuse of discretion. *See*

Mager, 924 F.3d at 837; *Stough*, 138 F.3d at 615. Knapp raises challenges to the magistrate judge's order itself, but these arguments are moot in light of the proper grant of dismissal under Rules 16(f)(1) and 41(b).

To the extent that Knapp argues that he did not have to comply with the magistrate judge's order because it is void, his argument is meritless. First, although Knapp contends that the magistrate judge erroneously construed Rule 8, "[a] judgment is not void . . . simply because it is . . . erroneous." *United Student Aid, Funds, Inc. v. Espinosa*, 559 U.S. 260, 270 (2010) (citation omitted). Second, an order may be void if the judge who entered it "acted in a manner inconsistent with due process of law." *Doe v. Lexington-Fayette Urb. Cnty. Gov't*, 407 F.3d 755, 761 (6th Cir. 2005) (quoting *Antoine v. Atlas Turner, Inc.*, 66 F.3d 105, 108 (6th Cir. 1995)). That did not happen here, because the magistrate judge was not required to review a complaint that did not comply with the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 41(b). Furthermore, the magistrate judge gave Knapp notice that his complaint did not comply with Rule 8 and an opportunity to amend.

Knapp separately argues that the district court was biased against him. But the perceived slights that he cites in his appellate brief do not show "a deep-seated favoritism or antagonism that would make fair judgment impossible." *Liteky v. United States*, 510 U.S. 540, 555 (1994).

Next, Knapp argues that the district court abused its discretion in denying his motion to set aside the judgment of dismissal, which he filed pursuant to Rule 60(b)(4). "We review de novo a district court's denial of a Rule 60(b)(4) motion." *Gen. Star Nat'l Ins. v. Administratia Asigurarilor de Stat*,

289 F.3d 434, 437 (6th Cir. 2002). Under Rule 60(b)(4), a district court may grant relief from judgment if "the judgment is void." Fed. R. Civ. P. 60(b)(4). "A judgment is void under Rule 60(b)(4) 'if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if it acted in a manner inconsistent with due process of law.'" *Antoine*, 66 F.3d at 108 (quoting *In re Edwards*, 962 F.2d 641, 644 (7th Cir. 1992)). Knapp's motion to set aside the judgment did not allege that the district court lacked jurisdiction, nor did it raise a due-process argument relating to the district court's entry of the final judgment. The district court therefore did not err by denying the motion.

Finally, Knapp has forfeited review of the district court's order denying his motion to reconsider the denial of his motion to set aside the judgment, because he has failed to challenge the district court's dispositive finding that it lacked "jurisdiction over a motion to reconsider a motion listed in Fed. R. App. P. 4(a)(4)(A)(vi)." *See Ohio State Univ.*, 989 F.3d at 443.

Accordingly, we **DENY** Knapp's request for oral argument and **AFFIRM** the district court's judgment and orders.

s/Deborah S. Hunt
ENTERED BY ORDER OF THE COURT
Deborah S. Hunt, Clerk

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

FILED: FEB 8, 2021

STEVEN CHRISTOPHER KNAPPP
v.
METROPOLITAN GOVERNMENT OF
NASHVILLE & DAVIDSON COUNTY, *et al.*

NO. 3:19-0542

ORDER AND MEMORANDUM OPINION

Pending before the Court is Plaintiff's Motion to Set Aside Judgment (Doc. No. 352), by which he asks the Court to set aside its Order (Doc. No. 350, "Order of Dismissal") dismissing this case with prejudice, and Plaintiff's Motion to Award Costs and Services of Process (Doc. No. 354). Plaintiff has also filed a Notice of Appeal (Doc. No. 356) with respect to the Order of Dismissal, and his appeal has been assigned Sixth Circuit case number 21-5106. The Sixth Circuit has held the appeal in abeyance until after the Court rules on any pending motions identified under Fed. R. App. P. 4(a)(4). (Doc. No. 358; Sixth Circuit Case No. 21-5106, Doc. No. 3). Plaintiff's Motion to Set Aside Judgment is identified under Fed. R. App. P. 4(a)(4)(A)(vi).

For the reasons discussed herein, both of Plaintiff's motions are denied.

APPENDIX C

A. Motion to Set Aside Judgment

Plaintiff brings his Motion to Set Aside Judgment under Fed. R. Civ. P. 60(b)(4) requesting the Court to set aside its previous order dismissing this case with prejudice due to Plaintiff's contumacious conduct throughout litigation. (Doc. No. 352 at 1).

Fed. R. Civ. P. 60(b)(4) allows for relief from judgment when "the judgment is void." The Sixth Circuit has explained that an order is void "under 60(b)(4) [only] if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if it acted in a manner inconsistent with due process of law." *Antoine v. Atlas Turner, Inc.*, 66 F.3d 105, 108 (6th Cir. 1995) (internal quotation marks and citation omitted).

Plaintiff claims repeatedly throughout his briefing that this Court has denied him due process and that this Court lacks jurisdiction. Instructively, in the memorandum opinion accompanying the Order of Dismissal now contested by Plaintiff as allegedly void, the Court noted that Plaintiff, relying on Fed. R. Civ. P. 60(b), has already claimed that various other interlocutory orders he does not wish to comply with are void; such reliance was improper, however, because Rule 60(b) applies only to final judgments or orders (such as the one that actually is at issue here) and not to interlocutory orders. (Doc. No. 349 at 5). The Court explained additionally that in any event, those interlocutory orders would not be void under Rule 60(b)(4), because, contrary to Plaintiff's continuing protestations, "[t]his Court clearly has jurisdiction over this matter, and there has been no action on the part of this Court inconsistent with due process." (*Id.* at 5-6). Since

then, there has been no action or event that deprived this Court of jurisdiction, and this Court has continued to act consistent with due process.

Regarding jurisdiction, Plaintiff argues that this Court's order for Plaintiff to shorten his Complaint was an improper usurpation of the legislature's power, that the Court must prove to him that it has jurisdiction, and that the Court lacks subject matter jurisdiction to enter a ruling in this matter based on Rule 8. (Doc. No. 353). These arguments are without merit. The Court has not acted in a legislative capacity, and the Court is fully empowered to enter orders pursuant to Rule 8 (and to the other rules of federal procedure).

Regarding due process, Plaintiff repeatedly attacks the Court's Order of Dismissal because allegedly it was somehow the result of pre-judgment adverse to Plaintiff, was vague, was unequal with respect to the parties, and was issued without enough explanation. However, in its Order of Dismissal the Court fully explained the legal support for its dismissal of Plaintiff's claims, citing to the Federal Rules of Civil Procedure, applicable case law, and filings on the docket. (Doc. No. 349). The Magistrate Judge also fully explained the legal support for her recommendation of dismissal of Plaintiff's claims. (Doc. No. 333). The Court will not provide Plaintiff with additional legal analysis of his claims when the previous analyses were both thorough and correct. In a different order, the Court has additionally already explained that it is not treating the parties unequally. (Doc. No. 338 at 2 n.3).

Plaintiff spends much of his Motion rehashing his arguments from his previous filings or making new arguments related to orders other than the

Order of Dismissal at issue on a 60(b)(4) motion. Most of Plaintiff's arguments, therefore, do not attack the Order of Dismissal itself as void. For example, Plaintiff argues that the Court misinterprets Rule 8 in ordering an amended Complaint, and he requests that Magistrate Judge Holmes file a sworn declaration that she has thoroughly read and considered all of Plaintiff's briefings. The Court disregards these and the other irrelevant augments by Plaintiff, as they do not explain why the Order of Dismissal is (as he alleges) void.

Additionally, the Court notes that Plaintiff doubles down in his briefing on insulting both the undersigned and the Magistrate Judge—part of the contumacious conduct that previously led to the Order of Dismissal Plaintiff now seeks to set aside. In his Motion, Plaintiff describes the Court (and the undersigned specifically by name) as having: "negative prejudgments, coercion, and willful, partisan ignorance," "untenable prejudice," "arbitrary, disrespectful, and authoritarian fashion which erodes the rule of law and public confidence in the judiciary," "pattern of poor judgment," "learned nothing, hiding behind 'authority' and 'blame shifting' to avoid doing justice while ignoring Supreme Court and the Sixth Circuit's binding

authority on various issues." (Doc. No. 352).[1] Indeed, casting aspersions left and right, Plaintiff launches a more pointed personal attack against the undersigned than the ones he has launched in prior filings.

Plaintiff's current litigation strategy appears to be to demean the very district and magistrate judges from whom he asks for a favorable ruling. Clearly, he does not subscribe to the old maxim that you catch more flies with honey than vinegar—which is just as well, because assigned federal judges must not be either induced with proverbial honey or daunted by proverbial vinegar. Instead, they need to call it like they see it, as they have done throughout this case. Plaintiff cannot validly attempt to declare a previous order of this Court void by hurling insults and *ad hominem* attacks at the undersigned and at the Magistrate Judge. The Court will neither take the bait and respond to Plaintiff's provocations nor countenance Plaintiff's attempt to change the subject from the problems with his own litigative theory and tactics. Plaintiff's conduct only emphasizes that the Order of Dismissal, in addition to not being void, was entirely warranted in dismissing this case with prejudice.

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[1] The Court provides only an abbreviated list of the insults hurled at the Court in the Motion to reflect the type of language contained therein. This language and similar language have been repeated throughout Plaintiff's various filings. The problem with such language is less that some of it breaches the decorum expected in federal court (which it does) or that the undersigned is too fragile to take it (which he isn't), and more that it ultimately does not help him make the showings he need to make in order to have success in the lawsuit that he brought.

Setting aside the unique unpleasantness Plaintiff has injected into this case, the Court here needs only to decide the specific question of whether Plaintiff has shown grounds to set aside the Order of Dismissal. He has not, for the reasons discussed herein. Thus, the Court **DENIES** Plaintiff's Motion to Set Aside Judgment. Plaintiff is not entitled to relief from this Court, and he instead must take his complaints about the Order of Dismissal, the undersigned, and the Magistrate Judge to the Sixth Circuit.

B. Motion to Award Costs and Services of Process

"As a general rule, the district court loses jurisdiction over an action once a party files a notice of appeal, and jurisdiction transfers to the appellate court." *Lewis v. Alexander*, 987 F.2d 392, 394 (6th Cir.

1993).[2] However, "federal courts repeatedly have held that the filing of a notice of appeal in the underlying action does not affect the district court's jurisdiction to consider a post- judgment motion for attorneys fees." *Jankovich v. Bowen*, 868 F.2d 867, 871 (6th Cir. 1989); *see also Fieldturf, Inc. v. Sw. Recreational Indus., Inc.*, 212 F.R.D. 341, 343 (E.D. Ky. 2003) ("A far more sensible application has been adopted by the Sixth Circuit Court of Appeals, that while divested of jurisdiction over the substantive matters in a case, a district court is in the best position to decide certain collateral matters as fees, costs, and sanctions, particularly as the district court presided over the relevant discovery."). In *Jankovich*, the Sixth Circuit explained that: "[W]hile it is well established that the effective filing of a notice of appeal transfers jurisdiction from the district court

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[2] Though this quoted principle may seem to indicate that the Court should not have ruled on the Motion to Set Aside Judgment (Doc. No. 352), the Sixth Circuit has held the appeal in abeyance until after the Court rules on any pending motions identified under Fed. R. App. P. 4(a)(4). (Doc. No. 358; Sixth Circuit Case No. 21-5106, Doc. No. 3). Fed. R. App. P. 4(B)(i) states that "[i]f a party files a notice of appeal after the court announces or enters a judgment—but before it disposes of any motion listed in Rule 4(a)(4)(A)—the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered." Plaintiff's Motion to Set Aside Judgment, being premised on Rule 60 of the Federal Rules of Civil Procedure, is a motion of the type listed in Fed. R. App. P. 4(a)(4)(A). *See* Fed. R. App. P. 4(a)(4)(A)(vi). Presumably because of this provision of the Federal Rules of Appellate Procedure, the Sixth Circuit specifically indicated to this Court that it would not accept jurisdiction until Plaintiffs' Motion to Set Aside Judgment was decided.

to the court of appeals to all matters involved in the appeal, that rule of exclusive jurisdiction is based on judicial prudence and is not absolute. Rather, this judicially-created doctrine is designed to avoid the confusion and inefficiency of two courts considering the same issues simultaneously." *Id.* (internal citations omitted).

The Court previously noted in an Order that Plaintiff's motion to award costs and services of process filed earlier in this litigation would be denied without prejudice "with leave to be re- filed at a later date in conjunction with the conclusion of the case in this Court. Upon the conclusion of this case and the resolution of Plaintiff's claims, whether that be in favor of Plaintiff or in favor of Defendants, the Court will address any requests or motions related to expenses, costs, and fees in this case." (Doc. No. 240). The undersigned upheld this ruling of the Magistrate Judge on a motion to reconsider and noted therein that "Fed. R. Civ. P. 4(d) has no relation to the merits of a plaintiff's claim." (Doc. No. 257 at 7). Consideration of the service of process issue would not duplicate the efforts of the Sixth Circuit. Therefore, the Court finds that it has jurisdiction over the Motion to Award Costs and Services of Process.

The Court has the inherent power to manage its own docket. *Webster v. Spears*, 664 F. App'x 535, 539 (6th Cir. 2016); *Anthony v. BTR Auto. Sealing Sys., Inc.*, 339 F.3d 506, 516–17 (6th Cir. 2003). Because of the pending litigation in the Sixth Circuit, the Court will deny this Motion without prejudice to be refiled after completion of the appellate process. As noted, the Court has indicated that it will rule upon the service of process and other fees issues at the conclusion of this case. It would be inefficient for the

Court to consider the Motion at present, as the pending Sixth Circuit ruling conceivably could entail that this case is not concluded.[3]

Therefore, the Motion to Award Costs and Services of Process is **DENIED** without prejudice so that Plaintiff may refile after the appeals process in this matter has concluded.

CONCLUSION

For the reasons discussed herein, the Court hereby **DENIES** Plaintiff's Motion to Set Aside Judgment (Doc. No. 352). The Court hereby **DENIES** without prejudice Plaintiff's Motion to Award Costs and Services of Process (Doc. No. 354) with leave to be refiled after the appeals process is finished and this case is concluded.

IT IS SO ORDERED.

s/Eli Richardson
ELI RICHARDSON
UNITED STATES DISTRICT JUDGE

[3] The Court has previously noted that the potential complexity of this motion exceeds the complexity of the typical motion for costs and service of process fees. (Doc. No. 257 at 8).

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

FILED: JAN 7, 2021

STEVEN CHRISTOPHER KNAPPP
v.
METROPOLITAN GOVERNMENT OF
NASHVILLE & DAVIDSON COUNTY, *et al.*

NO. 3:19-0542

MEMORANDUM OPINION

Pending before the Court is a Report and Recommendation ("R&R") from the Magistrate Judge recommending dismissal of this case. (Doc. No. 333). Plaintiff has filed objections and a memorandum in support thereof. (Doc. Nos. 339, 340, collectively, "Objections to the R&R").

When a magistrate judge issues a report and recommendation regarding a dispositive pretrial matter, the district court must review de novo any portion of the report and recommendation to which a proper objection is made. Fed. R. Civ. P. 72(b)(3). The district judge may accept, reject, or modify the recommended disposition, review further evidence, or return the matter to the magistrate judge with instructions. Id. Fed. R. Civ. P. 72(b)(2) provides that a party may file "specific written objections" to a report and recommendation, and Local Rule 72.02(a) provides that such objections must be written and must state with particularity the specific

portions of the Magistrate Judge's report or proposed findings or recommendations to which an objection is made.[1]

Pursuant to 28 U.S.C. § 636(b)(1)(C) and Fed. R. Civ. P. 72(b)(3), the Court has reviewed *de novo* the Report and Recommendation, the Objections to the R&R, and the file. For the reasons set forth below, the Objections to the R&R of the Plaintiff are overruled, and the R&R is adopted and approved. This matter will be dismissed with prejudice in accordance with the R&R.

BACKGROUND

In this action, *pro se* Plaintiff Steven Christopher Knapp filed a Complaint (Doc. No. 1) alleging claims against 21 named Defendants and one "anonymous" Defendant. In 1066 pages (608 for the Complaint itself and 458 for exhibits), Plaintiff's Complaint makes many allegations, including, among other things, fraud and retribution. Defendants are the Metropolitan Government of Nashville and Davidson County, Metro Development and Housing Agency, as well as various companies and individuals. Plaintiff seeks various forms of compensatory and non-compensatory damages, as well as equitable relief.

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[1] The Local Rule also provides that any objections must be accompanied by sufficient documentation including, but not limited to, affidavits, pertinent exhibits, and if necessary, transcripts of the record to apprise the District Judge of the bases for the objections. Also, a separately filed supporting memorandum of law must accompany the objections. Local Rule 72.02(a).

APPENDIX D

Due to the length of the Complaint, in an Order dated May 28, 2020, the Magistrate Judge gave Plaintiff an opportunity to amend in lieu of a dismissal, noting the requirements of Fed. R. Civ. P. 8 and potentially fatal issues with some of the legal claims and relief sought. (Doc. No. 202, "May 28 Order"). Once filed, Plaintiff's amended complaint would replace his original complaint. *See Parry v. Mohawk Motors of Mich., Inc.*, 236 F.3d 299, 306 (6th Cir. 2000). The Order also served to put Plaintiff "on notice" that the Magistrate Judge would dismiss the amended complaint under Rule 8 if it suffered from the same issues as the original Complaint, since he was given an opportunity to cure. The Magistrate Judge subsequently granted Plaintiff extensions to file his first amended complaint, first until July 17, 2020, and then until October 30, 2020. (Doc. Nos. 219, 240). Plaintiff subsequently filed a Motion to Set Aside the May 28 Order (Doc. No. 271). On October 29, 2020, Plaintiff filed a "Notice of Non-Compliance with Void Order" and informed the Court that he would continue litigating his claims without complying with the May 28 Order. (Doc. No. 282). Various Defendants filed motions to dismiss following Plaintiff's Notice of Non-Compliance. (Doc. Nos. 283, 285, 291, 297, 299). The Magistrate Judge ordered Plaintiff to file a single, collective response to the motions to dismiss. (Doc. No. 306). Plaintiff responded by filing a motion to show cause as to why he should comply with the order (Doc. No. 308), a motion to strike (Doc. No. 310), a motion to review the order (Doc. No. 312), and a motion claiming that the Magistrate Judge's order was void (Doc. No. 315).

Pending before the Court is an R&R from the Magistrate Judge recommending dismissal of this case. (Doc. No. 333). Plaintiff timely filed objections

to the R&R, which this Court struck from the record for lack of compliance with the local rules, as the objections exceeded 150 pages. (Doc. No. 335). In its order, the Court reminded Plaintiff of Local Rule 72.02, specified page limitations in accordance therewith, and gave Plaintiff two weeks to re-file his objections. (*Id.*). Plaintiff filed a Motion for Reconsideration of the order (Doc. No. 336), which the Court denied. (Doc. No. 338). Plaintiff then timely filed Objections to the R&R and a memorandum in support thereof in compliance with the Court's order. (Doc. Nos. 339, 340).

The same day that he filed his Objections to the R&R, Plaintiff filed several other motions. Plaintiff filed Objections to the District Judge's Order Denying Leave to File Excess Pages and a memorandum in support thereof (Doc. Nos. 341, 342, collectively, "Objections to the Order"), a Second Motion to Set Aside First and Second Void Orders and a memorandum in support thereof (Doc. Nos. 343, 344), a Motion for Leave to Suspend Local Rule 7.02(a)(2) with Respect to Plaintiff's Contemporaneously filed Motion to Stay Entry of Final Order of Dismissal With Prejudice (Doc. No. 345), and a Motion to Stay Entry of Final Order of Dismissal With Prejudice Pending Submission and Resolution of Petition for Writ of Mandamus to the Court of Appeals for the Sixth Circuit and a memorandum in support thereof (Doc. No. 346, 347).

In addition to the various motions to dismiss, the Report and Recommendation, and the motions Plaintiff filed with his Objections to the R&R, there are a variety of other pending motions in this case. Plaintiff has filed: Motion for Preliminary Injunctive Relief (Doc. No. 61); Motion for Review re Report and Recommendation (recommending denial of the

preliminary injunction) (Doc. No. 251); Motion for Reconsideration, Correction, and Objection (Doc. No. 261); Motion for Declaratory Judgment as to Defendant MDHA's Waiver of All Defenses Except Defenses under Rule 12(b)(4) and 12(b)(5) (Doc. No. 264); Consolidated Motion to Set Aside Order for Lack of Procedural Due Process of Law and Compel Defendants' Answer (Doc. No. 271); Motion to Show Cause as to Why Licensed Defendants and Retained Counsel Should Not Be Subject to a Formal Complaint with the Tennessee Supreme Court's Board of Professional Responsibility (Doc. No. 280); Motion for Leave to File the Consolidated Motion for Summary Judgment on the Issues of State Action and Public Forum Analysis as to the Common Areas and Hallways of Ryman Lofts in Excess of Page Limit (Doc. No. 286); Consolidated Motion for Summary Judgment on the Issues of State Action and Public Forum Analysis as to the Common Areas and Hallways of Ryman Lofts (Doc. No. 287); Motion for Leave to Extend Filing Deadline (Doc. No. 301); Motion to Show Cause (Doc. No. 308); Motion To Strike (Doc. No. 310); Motion for Review and Objection to Order (Doc. No. 312); Motion to Set Aside Void Order and Incorporated Memorandum of Law (Doc. No. 315); Motion to Admit All Exhibits into Evidence (Doc. No. 321); Motion to Grant Unopposed Relief (Doc. No. 326); and Motion to Strike for Violation of Local Rule 7.01(A)(4), Harassment, and Illegitimacy (Doc. No. 331).

DISCUSSION

The Magistrate Judge issued the R&R due to "Plaintiff's clearly stated refusal to comply with an

Order from the Court to file an amended complaint and his continued defiance of the Court's orders."[2] (Doc. No. 333 at 1). Summarized, Plaintiff's primary objections are that 1) the Magistrate Judge is unfair and biased and so this Court lacks jurisdiction, 2) the Magistrate Judge pre-judged Plaintiff's claims and did not adequately supervise litigation, 3) the Magistrate Judge unfairly applied Rule 8 to Plaintiff, 4) the Magistrate Judge inappropriately characterized potential issues with the Complaint and coerced Plaintiff to abandon claims, 5) the issue of voidness may be raised at any time, 6) the Magistrate Judge unlawfully attempts to self-confer jurisdiction and declare the previous orders valid, 7) the Magistrate Judge ignores Defendants' improper fabrications of the record, and 8) the R&R attempts to "scrub clean" the "taint" of the discriminatory due process violations of the May 28 Order and to vilify a pro se plaintiff (Doc. Nos. 339, 340). Despite the R&R clearly laying out Plaintiff's conduct that warrants dismissal of this case, Plaintiff has continued the same kind of conduct in objecting to the R&R and in continuing to litigate this case.

Plaintiff's reliance on Fed. R. Civ. P. 60(b) to claim that the May 28 Order is void is misplaced. Whereas that rule applies only to a final judgment, order, or proceeding, the May 28

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[2] Though the Magistrate Judge's R&R focuses on Plaintiff's defiance of the May 28 Order (ordering Plaintiff to comply with Rule 8 and to file an amended complaint) and his repeated declarations that it is void, Plaintiff also filed a similar motion attacking the validity of the November 9 Order requiring him to respond to Defendants' motions to dismiss. (Doc. No. 315).

APPENDIX D

Order is an interlocutory order not subject to Rule 60(b). Additionally, an order is void "under 60(b)(4) [only] if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if it acted in a manner inconsistent with due process of law." *Antoine v. Atlas Turner, Inc.*, 66 F.3d 105, 108 (6th Cir. 1995) (internal quotation marks and citation omitted). This Court clearly has jurisdiction over this matter, and there has been no action on the part of this Court inconsistent with due process. In his Objections to the R&R, Plaintiff continues to defy the Court's orders and claim that previous orders of this Court are void:

> Magistrate Judge Barbara S. Holmes and the Court are without jurisdiction to dismiss this action with prejudice as a sanction for lawful, respectful, and procedurally proper resistance to the void *ab initio* First and Second Void Orders which are void due to negative pre-judgment, judicial coercion, and lack of neutrality, which violate Plaintiff's fundamental 5th and 14th Amendment rights to a fair tribunal, a neutral jurist, due process, and equal protection of law . . . The Court cannot unfairly thumb the scales of justice in Defendants' favor and then pretend it has acted fairly. Plaintiff objects to the R&R's false discrediting, negative character attacks, and vilification while failing to show the First and Second Void Orders' (Dkt. 202, 306) are anything other than absolute legal nullities . . ."

(Doc. No. 340 at 1). Though Plaintiff—via conclusory, unsupported, and false aspersions cast upon the Magistrate Judge—consistently declares that the May 28 Order is void, the Order is not void, and Plaintiff cannot unilaterally declare it as such and refuse to comply.

Fed. Rule Civ. P. 16(f)(1)(C) allows a Court, on a motion or sua sponte, to issue any just orders if a party fails to obey a scheduling or other pretrial order. Sanctions in Rule 37(b)(2)(A), which are specifically allowed by Rule 16(f)(1), include dismissing the proceedings in whole or in part. Additionally, Rule 41(b) allows the Court to dismiss an action when the plaintiff fails "to comply with these rules or a court order." The Court also possesses inherent authority to enforce its own orders and to sanction a party that does not comply with the orders. *See Chambers v. NASCO*, Inc., 501 U.S. 32, 42 (1991).

The Sixth Circuit has stated that four factors should be considered in determining if dismissal is an appropriate sanction for failure to comply with a Court order:

> (1) whether the party's failure is due to willfulness, bad faith, or fault; (2) whether the adversary was prejudiced by the dismissed party's conduct; (3) whether the dismissed party was warned that failure to cooperate could lead to dismissal; and (4) whether less drastic sanctions were imposed or considered before dismissal was ordered.

Mager v. Wisconsin Cent. Ltd., 924 F.3d 831, 837 (6th Cir. 2019) (quoting *United States v. Reyes*, 307 F.3d 451, 458 (6th Cir. 2002)). "Although no one factor is dispositive, dismissal is proper if the record demonstrates delay or contumacious conduct." Id. (quoting Reyes, 307 F.3d at 458). "Contumacious conduct refers to behavior that is perverse in resisting authority and stubbornly disobedient." Id. (quoting *Carpenter v. City of Flint*, 723 F.3d 700, 705 (6th Cir. 2013)).

Considering the first factor, "[t]o show that a party's failure to comply was motivated by bad faith, willfulness, or fault, the conduct 'must display either an intent to thwart judicial proceedings or a reckless disregard for the effect of [his] conduct on those proceedings.'" *Id.* (quoting *Carpenter*, 723 F.3d at 705). Plaintiff's conduct shows exactly that. The contumacious conduct of Plaintiff has continued after the filing of the R&R. As noted, Plaintiff has continued to refuse to comply with the May 28 Order. In addition to refusing to comply with the May 28 Order, Plaintiff's willful and contumacious conduct has continued in two other ways despite the entry of the R&R: his contemptuous statements regarding this Court, and his attempts to control how this Court rules and conducts the judicial process.

In the R&R, the Magistrate Judge noted that "[a]lthough Plaintiff states in many of his filings that he does not intend to act contumaciously, disrespectfully, or to be dilatory, his actual conduct in the case shows otherwise. In addition to Plaintiff's willful noncompliance with the Court's Orders, statements that he makes in his filings further evidence his contempt toward the Court." (Doc. No. 333 at 10). Plaintiff has continued to make

statements that show contempt toward the Court after the filing of the R&R. In his Objections to the R&R, Plaintiff states that the Magistrate Judge is "closed-minded, biased," "merely throwing a judicial temper tantrum,"[3] "has forfeited her authority," and has "discriminatory bias [that] is clear, convincing, shocking, and disqualifying." (Doc. No. 340 at 9, 25). In addition to the Objections to the R&R, Plaintiff filed objections to this Court's order requiring that Plaintiff adhere to the page limitations for objections. But filing "objections" to a district judge's order is not a cognizable response to a district judge's order. Moreover, Plaintiff already filed a motion to reconsider (Doc. No. 336) regarding the same order (which this Court denied at Docket No. 338), and thus it seems that Plaintiff has craftily sought to bring a second motion to reconsider in any manner non-compliant with the applicable rules, which itself is suggestive of Plaintiff's lack of respect for this Court, given that the Court has already reconsidered its previous order that was predicated on Plaintiff's lack of compliance with this Court's local rules. In his Objections to the Order, Plaintiff uses language similar or identical to that described as contumacious and disrespectful in the R&R, characterizing the undersigned (referred to by Plaintiff primarily as the "District Judge" or "District Court" rather than by name) as "fundamentally biased, illegitimate, and without jurisdiction," "authoritarian[]," and "false" and "deceptive" in his

[3] If anyone in these proceedings is throwing a temper tantrum, suffice it to say that it is not the Magistrate Judge.

characterization of this case.[4] (Doc. No. 342 at 1, 4, 5).

The problem here is not that Plaintiff disagrees with the Magistrate Judge and the undersigned. He is free to do so and is entitled to his opinion, and the undersigned has no expectations that Plaintiff will like a particular ruling from this Court. Nor is the problem that Plaintiff's stated views are unsupported, uninformed, and just plain wrong (which they are). The problem instead is that his stated views are yet further indicia that his failure to comply with Court orders satisfies the standard for dismissal under Rule 41(b) in that it (a) has been motivated by bad faith (animus towards the Court) and willfulness, and (b) displays an intent to thwart judicial proceedings (which, after all, he considers to be "illegitimate" in this case) or a reckless disregard for the effect of his conduct on these proceedings.

Plaintiff has also continued to indicate that he will not comply with this Court's orders, that he does not recognize the jurisdiction of this Court, and that he should be able to dictate the judicial process and the outcome of this case. The Magistrate Judge noted in the R&R that this was problematic, stating that:

> Plaintiff has clearly decided that he will not comply with the Court's Orders, which he deems void and illegitimate, and he appears to

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[4] Though the Court has selected quotations from the Objections to the Order to illustrate Plaintiff's contumacious and disrespectful language, the Court notes that Plaintiff uses much of the same language throughout various other filings. (*E.g.* Doc. Nos. 345, 346, 347).

> want to litigate the case on his own terms, as exemplified in recent motions in which he requests that *the Court* "show cause" *to him* why he should comply with the Court's own Orders, see motion to show cause (Docket Entry No. 308) at 1; memorandum in support (Docket Entry No. 327) at 7, and requests that certain of his motions be deemed unopposed despite the Court's entry in the November 9 Order of a stay on the filing of responses and replies.

(Doc. No. 333 at 12) (emphasis added). In his memorandum in support of his Objections to the Order, Plaintiff again makes clear his position regarding this Court and this Court's ability to issue orders that would bind Plaintiff in this case:

> Plaintiff respectfully declines to be victimized or prejudiced by the District Court's arbitrary, unconstitutional willful ignorance of binding legal authority any further. Neither the Magistrate Judge or the District Judge has explained how the First and Second Void Orders (Dkt. 202, 306) are anything other than absolute legal nullities, purporting to self-declare jurisdiction and declare those "orders" valid. "Because I said so" is insufficient to confer Constitutionally recognized jurisdiction upon this Court. Plaintiff respectfully rejects the District Court's authoritarianism.

(Doc. No. 342 at 4). Plaintiff concludes his Objections to the Order by again stating that he "**DEMANDS** Defendants' Answer," (*id.* at 25), again blatantly ignoring a stay entered by the Magistrate Judge (Doc. No. 306). Additionally, Plaintiff filed a

Motion for Leave to Suspend Local Rule 7.01(A)(2) (Doc. No. 345). In this motion, Plaintiff again shows a lack of respect for the Court's decision-making process. He "insist[s]" on a particular outcome to his motion (i.e., in his favor) and a particular way in which the Court should so rule. Therein, Plaintiff states that: "The District Court has shown itself to be biased, discriminatory, and inequitable. Thus, Plaintiff must now respectfully insist on Plaintiff's Motion to Stay be adjudicated in the same exact manner as Defendant CREA's, as required by due process and equal protection of law." (Doc. No. 345 at 2). In order for the Court to so rule, Plaintiff requests: leave to omit a supporting memorandum of law, leave to omit an affirmative legal argument to satisfy any legal element, and the Court's refusal to consider any opposition from the Defendants. (Id. at 1-2). Notably, Plaintiff is already contemplating this Court entering a dismissal of prejudice will be "an ineffective and void Final Order." (Doc. No. 347 at 3).

As to the second Rule 41(b) factor, prejudice, the R&R noted that the case has essentially reached a standstill, prejudicing Defendants, because of Plaintiff's refusal to comply with the May 28 Order. (Doc. No. 333 at 11). Since Plaintiff still refuses to file an amended complaint, this case indeed remains at a standstill. The R&R additionally notes correctly that "Plaintiff continues to file motions that raise other issues, requiring Defendants to devote time and attention to collateral matters when the threshold issue of a proper complaint remains outstanding." (Id.). Plaintiff's flurries of filings on collateral issues have continued after the R&R, including: a motion for reconsideration (Doc. No. 336), Objections to the Order echoing the motion for reconsideration (Doc. No. 341), a second motion to

set aside what Plaintiff believes to be void orders (Doc. No. 343), a motion to suspend Local Rule 7.01(a)(2) (Doc. No. 345), and a motion to stay the entry of a final order (Doc. No. 346).

As to the third factor, notice, the R&R noted that Plaintiff had not been given a prior specific warning that dismissal may result from refusing to comply with the Court's May 28 Order, but that several Defendants filed motions to dismiss, that Plaintiff contemplates dismissal in his own filings, and that the R&R itself provides a warning with a 14-day window for Plaintiff to file objections. (Doc. No. 333 at 11). Plaintiff is clearly on notice at this juncture that his contumacious conduct will result in dismissal, and yet, in objecting to the R&R, he has continued to display the
same conduct that prompted the R&R in the first place.

As to the final factor, the R&R noted that since Plaintiff refuses to file an operative
pleading, "there appears to be no other sanction that would be effective in compelling Plaintiff's compliance." (Doc. No. 333 at 11). This Court agrees that any lesser sanction would be ineffective, as Plaintiff is refusing to comply with an order that concerns an operative pleading. The fact that any lesser sanction would be ineffective is merely highlighted by Plaintiff's response to the R&R, rather than indicating that a lesser sanction could induce him to change his unacceptable conduct of this litigation, Plaintiff has instead revealed that he will not be deterred even by the threat of the greater sanction of dismissal. The Court would be very inclined to impose lesser sanctions if so doing would have the desired effect, but demonstrably it would not.

The Court thus finds that all the factors clearly weigh in favor of this Court dismissing the case with prejudice due to Plaintiff's contumacious conduct.

Plaintiff cannot continue to litigate this case but simultaneously unconditionally reserve the right to not obey orders of this Court. The problems presented in the R&R, namely that Plaintiff refuses to comply with Court orders, continue to permeate this case as evidenced by Plaintiff's conduct in filing his Objections to the R&R. Plaintiff simply cannot invoke the jurisdiction of this Court and then proceed to litigate on his own terms and declare that this Court does not have jurisdiction or the authority to take certain actions that he disagrees with. The Court cannot and will not countenance Plaintiff filing motion after motion seeking various orders (with which he obviously expects Defendants to comply) while reserving for *himself* the right not to comply with court orders as he chooses. Plaintiff's recent filings show no indication that he is ready or willing to comply with Court orders, and the Court finds that it is appropriate to dismiss this case as a sanction under Fed. R. Civ. P. 16(f)(1), 37(b)(2)(A)(v), 41(b), and in accordance with its own inherent authority. Though, as noted previously, there are several motions to dismiss pending in this case, the Court herein does not specifically rule upon any of the motions to dismiss and instead will dismiss this action *sua sponte*.

CONCLUSION

For the reasons discussed herein, the Court adopts the Magistrate Judge's Report and Recommendation. (Doc. No. 333). This matter will be dismissed with prejudice.

APPENDIX D

The Court additionally will deny Plaintiff's request to ignore Local Rule 7.01 (Doc. No. 345) and to enter a stay instead of dismissal with prejudice (Doc. No. 346).[5]

As a result of the dismissal with prejudice, the other pending motions in this case will be denied as moot. (Doc. Nos. 61, 251, 261, 264, 271, 280, 286, 287, 301, 308, 310, 312, 315, 321, 326, 331, 341 (construed by this Court to be an additional motion to reconsider), and 343). The Court will not rule on the pending Report and Recommendation regarding the preliminary injunction, as it is also now moot. (Doc. No. 250). Defendants' various pending motions to dismiss likewise are denied as moot based on the adoption of the R&R and dismissal of this case with prejudice. (Doc. Nos. 283, 285, 291, 297, 299).

An appropriate order will be entered.

s/Eli Richardson
ELI RICHARDSON
UNITED STATES DISTRICT JUDGE

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[5] Plaintiff argues that he cannot get the same relief on his mandamus if he appeals a final order of dismissal with prejudice. Plaintiff contemplates seeking from the Sixth Circuit "an authoritative opinion on the multiple judicial due process violations." (Doc. No. 347 at 4). The Court sees no reason why granting a stay, as opposed to entering an order of dismissal, would give Plaintiff the opportunity to seek different relief at the appellate level.

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