

Appendix A

- Fourth Circuit Court of Appeals Decisions

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 22-1452

THERESA M. YOUNG,

Plaintiff - Appellant,

v.

MARY SEYMOUR; UNITED STATES OF AMERICA,

Defendants - Appellees.

Appeal from the United States District Court for the District of Maryland, at Greenbelt.
Deborah K. Chasanow, Senior District Judge. (8:22-cv-00241-DKC)

Submitted: September 8, 2022

Decided: September 12, 2022

Before HARRIS and RICHARDSON, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Theresa M. Young, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Theresa M. Young filed a notice of appeal in the underlying civil action after the district court granted the motion to substitute the United States as the Defendant. Although Young does not identify which order she seeks to appeal, this court may exercise jurisdiction only over final orders, 28 U.S.C. § 1291, and certain interlocutory and collateral orders, 28 U.S.C. § 1292; Fed. R. Civ. P. 54(b); *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 545-46 (1949). None of the orders issued in the district court proceedings thus far qualify as a final order or an appealable interlocutory or collateral order. *See Maron v. United States*, 126 F.3d 317, 321 n.4 (4th Cir. 1997); *cf. U.S. Tobacco Coop. Inc. v. Big S. Wholesale of Va., LLC*, 899 F.3d 236, 247 n.3 (4th Cir. 2018) (“Unlike in the case of an order granting Westfall immunity, an order that conclusively denies a federal employee’s request for substitution of the United States as defendant under the Westfall Act . . . is appealable under the collateral order doctrine because it is essentially a denial of a claim of absolute immunity.” (cleaned up)).

Accordingly, we dismiss the appeal for lack of jurisdiction. We deny Young’s motion to seal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED

FILED: November 29, 2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-1452
(8:22-cv-00241-DKC)

THERESA M. YOUNG

Plaintiff - Appellant

v.

MARY SEYMOUR; UNITED STATES OF AMERICA

Defendants - Appellees

M A N D A T E

The judgment of this court, entered September 12, 2022, takes effect today.

This constitutes the formal mandate of this court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

/s/Patricia S. Connor, Clerk

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FILED: November 21, 2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-1452
(8:22-cv-00241-DKC)

THERESA M. YOUNG,

Plaintiff - Appellant,

v.

MARY SEYMOUR; UNITED STATES OF AMERICA,

Defendants - Appellees.

O R D E R

Theresa Young has filed a self-styled “Request for Clarification and Appeal Continuance” (“Motion for Clarification”), a “Request for Seal Reconsideration” (“Motion for Reconsideration”), and a “Petitioner Reconsideration Request Regarding Appeal” (“Rehearing Petition”). In the Motion for Clarification, Young explains that she received a letter from this court, dated August 24, 2022, indicating that her case was transferred to the Merit Systems Protection Board and, days later, she received notice from the court that her appeal had been dismissed. Young therefore requests that this court clarify the status of her appeal and grant her a 21-day continuance to appeal the court’s decision. In the Motion for Reconsideration, Young asks that we reconsider our order denying her motion

to seal the exhibits she submitted with her supplemental brief. Young asks for various forms of relief in the Rehearing Petition, including requesting that her “amended appeal is the appeal that moves forward in the district court.” (ECF No. 19 at 6).

We have considered Young’s filings and deny the Motion for Reconsideration and the Rehearing Petition. We deny Young’s Motion for Clarification, in part, to the extent Young asks for a continuance. We nonetheless grant the Motion for Clarification, in part, to the extent Young seeks this Court’s clarification and (1) note that this court’s docket for the underlying appeal contains no entry dated August, 24, 2022; (2) refer Young to the Notice of Judgment sent to her along with this court’s September 12, 2022, opinion dismissing the underlying appeal; and (3) remind Young that her time to file a petition for a writ of certiorari with the United States Supreme Court continues to run.

For the Court,

/s/ Patricia S. Connor
Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

THERESA YOUNG

v. : Civil Action No. DKC 22-0241

MARY SEYMOUR

ORDER

This tort action was removed from the Circuit Court for Montgomery County, Maryland on February 1, 2022, and assigned to the undersigned on February 18. Many motions are pending and are addressed below.

I. Motions for Change in Judicial Selection

Plaintiff filed two motions requesting a change in judicial selection. The motions are more appropriately construed as motions to recuse. 28 U.S.C. § 455(a) provides that a judge or justice "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." Section 455(b) (1), in turn, requires recusal where a judge "has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding." Generally, to warrant recusal under Section 455(a) or 455(b) (1), the alleged bias or prejudice must stem from an extrajudicial source. *Belue v. Leventhal*, 640 F.3d 567, 572-73 (4th Cir. 2011) (citing *Liteky*

v. United States, 510 U.S. 540, 545 (1994)). In other words, the bias or prejudice must arise from "events, proceedings, or experiences outside the courtroom." *Sales v. Grant*, 158 F.3d 768, 781 (4th Cir. 1998).

Here, Plaintiff requests the undersigned to recuse herself to allow "a judge of diverse background" to be assigned to this case "Due to the inequities that minorities face within the judicial system . . ." Cases are assigned randomly among the district judges without regard to demographics of either the parties or the judges. Plaintiff's motions will be denied because she fails to allege with particularity any bias or prejudice stemming from an extrajudicial source.

II. Plaintiff's Request for a Court-Appointed Attorney

Plaintiff asserts that she "has a right to a court-appointed attorney as a disabled American military veteran with mental trauma." A federal district court's power to appoint counsel under 28 U.S.C. § 1915(e) (1) is a discretionary one and may be considered where an indigent claimant presents exceptional circumstances. See *Cook v. Bounds*, 518 F.2d 779, 780 (4th Cir. 1975); see also *Branch v. Cole*, 686 F.2d 264, 266 (5th Cir. 1982). This case is not unduly complicated, Plaintiff appears able to articulate her claims without notable difficulty and, at present, it is not clear

that a hearing will be necessary to the disposition of this case. Having found no exceptional circumstances warranting the appointment of counsel, the motion will be denied without prejudice.

III. Motion to Substitute

In the current complaint, Plaintiff names, as sole defendant in her individual capacity, Mary Seymour, a now-retired Captain in the United States Navy. Captain Seymour, then serving as Commanding Officer at the United States Naval Support Activities ("NSA") in Bethesda, Maryland, entered a barment order prohibiting Plaintiff from entering NSA. Plaintiff challenges the issuance of that Order in this action. The government filed a motion pursuant to 28 U.S.C. § 2679(b)(1) requesting that the United States of America be substituted as defendant because Captain Seymour was acting within the scope of her office or employment at the time of the incident out of which the claim arose. (ECF No. 4).

The unopposed motion will be granted. The government certified that Defendant Mary Seymour was acting within the scope of her employment (ECF No. 1-4).

IV. Motions for Leave to file an Amended Complaint

Plaintiff filed two motions seeking to amend her complaint by adding an additional defendant and additional claims. Denial of

leave to amend should occur "only when the amendment would be prejudicial to the opposing party, there has been bad faith on the part of the moving party, or the amendment would be futile." *Johnson v. Oroweat Foods Co.*, 785 F.2d 503, 509 (4th Cir. 1986); see also *Mayfield v. National Ass'n for Stock Car Auto Racing, Inc.*, 674 F.2d 369, 379 (4th Cir. 2012). "Delay alone, however, without any specifically resulting prejudice, or any obvious design by dilatoriness to harass the opponent, should not suffice as reason for denial." *Davis v. Piper Aircraft Corp.*, 615 F.2d 606, 613 (4th Cir. 1980); see also *Laber v. Harvey*, 438 F.3d 404, 427 (4th Cir. 2006).

Additionally, Local Rule 103.6.c requires:

Unless otherwise ordered by the Court, the party filing an amended pleading shall file and serve (1) a clean copy of the amended pleading and (2) a copy of the amended pleading in which stricken material has been lined through or enclosed in brackets and new material has been underlined or set forth in bold-faced type.

Because Plaintiff has not provided a version of her amended complaint identifying the amendments, she will be directed to supplement with a version showing the changes within twenty-one (21) days.

V. Plaintiff's Motion for 30-day Response Time for all Papers

Due to mail delays caused by the pandemic, shortages in mail delivery personnel, and other factors, Plaintiff requests that she be "provided with 30 days from the date of mailing of any/all court documents" to respond to all court filings. (ECF No. 20). In other words, Plaintiff requests an automatic extension of all deadlines to 30 days.

Plaintiff's motion will be denied. If additional time is needed to respond to a specific paper, Plaintiff may file a motion that includes an explanation as to why additional time is needed. If Plaintiff is concerned about receiving prompt notification of filings, the court provides self-represented litigants the ability to receive notices of electronic filings via email - see Standing Order 2018-05. This service does not allow self-represented litigants to file documents electronically. If Plaintiff decides to participate, she would still need to make court filings either by hand delivery to the Clerk's Office or by first class mail and must serve opposing parties by first class mail. Further information on this service can be found at <https://www.mdd.uscourts.gov/consent-receive-notices-electronicfiling>.

VI. Motions for Extensions of Time

The Government filed a motion for extension of time to respond to Plaintiff's complaint (ECF No. 3), a motion for extension of time to respond to Plaintiff's motions to remand and to amend the complaint (ECF No. 23), and a motion for extension of time to comply with Local Rule 103.5(a) (ECF No. 24). There will be no prejudice to Plaintiff and the requests are reasonable. Furthermore, the government may have some time to file the remaining state court papers.

Accordingly, it is this 3rd day of March, 2022, by the United States District Court for the District of Maryland, ORDERED that:

1. Plaintiff's motions for change in judicial selection (ECF Nos. 21, 25) BE, and the same hereby ARE, DENIED;
2. Plaintiff's request for a court-appointed attorney (ECF No. 9) BE, and the same hereby IS, DENIED without prejudice;
3. The motion to substitute the United States of America as Defendant (ECF No 4) BE, and the same hereby IS, GRANTED;
4. Mary Seymour is replaced by the United States of America as the party defendant;
5. Plaintiff's motion for 30-day response time for all papers (ECF No. 20) BE, and the same hereby IS, DENIED;

6. Plaintiff IS DIRECTED to supplement her proposed amended complaints, within twenty-one (21) days, with a version in which stricken material has been lined through or enclosed in brackets and new material has been underlined or set forth in bold-faced type pursuant to Local Rule 103.6.(c);

7. The Government's motions for extension of time to respond to Plaintiff's complaint (ECF No. 3) and for an extension of time to respond to Plaintiff's motions to remand and to amend the complaint (ECF No. 23) BE, and the same hereby ARE, GRANTED. The United States of America may have to and including March 23, 2022, to respond to Plaintiff's motions for leave to file an amended complaint and Plaintiff's motion to remand.

8. The Government's motion for an extension of time to comply with Local Rule 103.5(a) (ECF No. 24) BE, and the same hereby IS, GRANTED. The United States of America may have to and including May 1, 2022, to file all papers from the state court action pursuant to Local Rule 103.5; and

9. The Clerk is directed to mail a copy of this Order Plaintiff and to transmit a copy of this Order to counsel for Defendant.

/s/
DEBORAH K. CHASANOW
United States District Judge