Appendix A

BUTLER COUNTY AREA III COURT
West Chester, Ohio 45069
(513) 867-5070

THE LANDINGS AT BECKETT RIDGE:		**Case No. CVG1901594**
Plaintiff,	:	
vs.	:	**DECISION AND ENTRY**
ROSALIND HOLMES, et al.	:	**(FINAL APPEALABLE ORDER)**
Defendants.	:	

This matter came on pursuant to objections to the Magistrate's Decision filed by Rosalind Holmes, in which the magistrate ordered Rosalind Holmes to vacate the premises due to non-payment of rent. The Landings At Becket Ridge, through counsel, has opposed the objections.

The parties do not dispute that Holmes has already vacated the premises pursuant to the magistrate's decision. It is well settled law that when a tenant vacates the premises pursuant to an eviction action, any further proceedings are moot. "Once the landlord has been restored to the property, the [result of the] forcible entry and detainer action becomes moot because, having been restored to the premises, there is no further relief that may be granted." *Tenancy, LLC. v. Roth*, 5th Dist., 2019-Ohio-4042, ¶29.

Accordingly, because Holmes is no longer living on the premises, there is no relief that this court can provide her. Her objections are hereby OVERRULED, and the Magistrate's Decision will stand as an order of the court.

Judge Dan Haughey

cc: Dave Donnett, Esq.
Rosalind Holmes

✓ A copy of the Decision of Magistrate in the above-captioned matter was mailed to Plaintiff and Defendant this 4 day of March, 2020.

J Ballinger
Deputy Clerk

Appendix B

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

THE LANDINGS AT BECKETT RIDGE, : CASE NO. CA2020-04-050

Appellee, : JUDGMENT ENTRY

- vs -

ROSALIND HOLMES,

Appellant. :

Upon consideration of the appeal and briefs before this court, and the Opinion issued the same date of this Judgment Entry, it is the order of this court that the judgment or final order appealed from be, and the same hereby is, dismissed as moot as there is no longer an existing case or controversy for this court to resolve on appeal.

It is further ordered that a mandate be sent to the Butler County Area III Court for execution upon this judgment and that a certified copy of this Judgment Entry shall constitute the mandate pursuant to App.R. 27.

Costs to be taxed to the appellant.

Robert A. Hendrickson, Presiding Judge

Stephen W. Powell, Judge

Mike Powell, Judge

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

THE LANDINGS AT BECKETT RIDGE,	:	CASE NO. CA2020-04-050
Appellee,	:	OPINION 12/28/2020
- vs -	:	
ROSALIND HOLMES,	:	
Appellant.	:	

CIVIL APPEAL FROM BUTLER COUNTY AREA III COURT
Case No. CVG1901594

David D. Donnett, 1212 Sycamore Street, Suite 33, Cincinnati, Ohio 45202, for appellee

Rosalind Holmes, 2455 Fox Sedge Way, Apt. S, West Chester, Ohio 45069, pro se

M. POWELL, J.

{¶ 1} Appellant, Rosalind Holmes, appeals a decision of the Butler County Area III Court granting a complaint for forcible entry and detainer filed by appellee, The Landings at Beckett Ridge, LLC ("Landings").

{¶ 2} Holmes leased an apartment from Landings. She failed to pay the December 2019 rent. On December 7, 2019, Landings served Holmes with the statutory three-day

notice to leave the premises. When Holmes failed to vacate the apartment, Landings filed a complaint for forcible entry and detainer on December 15, 2019. The complaint only sought restitution of the premises. The matter was scheduled for a hearing on January 8, 2020.

{¶ 3} On December 26, 2019, Jenn Taylor, Landings' property manager, sent an email to Holmes, advising her that

> At this time, the December balance and January rent will need to be paid in full to cancel the eviction process. The total balance is $3,156.82[.] * * *
>
> Please keep in mind that eviction court is scheduled for January 8th. If the above balance is not paid before eviction court we will be unable to accept rent after that morning and will have to continue with the eviction process.
>
> Let us know if there are any questions you have and an intended date to pay rent.

{¶ 4} On January 7, 2020, Holmes successfully moved to continue the eviction hearing to January 15, 2020, due to health issues. On January 14, 2020, Holmes tendered a $3,500 cashier's check for the unpaid rent balance; Landings refused to accept the check.

{¶ 5} On January 15, 2020, the eviction hearing proceeded before a magistrate. Holmes' sole defense was that she had tendered her unpaid rent to Landings the day before and that it was refused. Taylor advised the magistrate that no rent was accepted following the service of the three-day notice to leave. She further advised the magistrate that she had sent an email to Holmes "on the 23rd of the month explaining how much was due before January 8th, the original court date[,] and asked that it be paid before then and * * * after that date we would not be accepting rent." Taylor confirmed that Landings did not receive rent payment from Holmes before January 8, 2020. The magistrate found that Holmes was properly served with the notice to leave the premises, she had failed to timely pay the rent due, and Landings was entitled to restitution of the premises. The magistrate ordered

Holmes to vacate the apartment by January 24, 2020.

{¶ 6} Holmes filed objections to the magistrate's decision. Holmes argued for the first time that Landings' eviction proceedings and refusal to accept the rent payment were retaliatory in violation of R.C. 5321.02(A). Holmes claimed that Landings was retaliating against her because she had sent a letter to the U.S. Department of Commerce, Office of the Inspector General, in November 2019 complaining that Landings "had placed an illegal surveillance in [her] apartment" and requesting an investigation. Holmes further claimed she sent the letter after Landings failed to address her complaints about the "illegal surveillance." Holmes did not seek a stay on the writ of restitution and did not post a bond.

{¶ 7} A hearing on Holmes' objections was held on February 14, 2020. Holmes pressed her retaliation claim. Counsel for Landings advised the trial court that Landings was not served with a copy of Holmes' objections and that it had never heard about Holmes' complaint to the department of commerce. Counsel argued that Holmes' objections were moot because the writ of restitution had been executed and Holmes had vacated the premises.

{¶ 8} Landings and Holmes both filed posthearing memoranda. Landings reiterated the arguments raised during the objections hearing. Holmes argued that Landings improperly failed to submit the December 26, 2019 email at the eviction hearing, waived the three-day notice to leave the premises when it sent the email agreeing to accept late payment of the rent in lieu of proceeding with the eviction, and breached the email/contract when it refused to accept Holmes' $3,500 check on January 14, 2020.

{¶ 9} By decision and entry filed on March 4, 2020, the trial court found the case to be moot as Holmes had vacated the apartment:

> The parties do not dispute that Holmes has already vacated the premises pursuant to the magistrate's decision. It is well settled law that when a tenant vacates the premises pursuant to an

> eviction action, any further proceedings are moot. * * * Accordingly, because Holmes is no longer living on the premises, there is no relief that this court can provide her. Her objections are hereby OVERRULED, and the Magistrate's Decision will stand as an order of the court.

{¶ 10} Holmes now appeals, pro se, the trial court's judgment, raising four assignments of error which will be considered out of order.

{¶ 11} Assignment of Error No. 2:

{¶ 12} THE TRIAL COURT ERRED BY ISSUING A RULING THAT THE CASE WAS MOOT.

{¶ 13} Holmes argues the trial court erred in ruling that the case was moot because two exceptions to the mootness doctrine apply, namely, the issue is capable of repetition yet evading review and the case involves a matter of public or great general interest. An appellate court reviews a trial court's determination that a matter is moot under a de novo review. *Gold Key Realty v. Collins*, 2d Dist. Greene No. 2013 CA 57, 2014-Ohio-4705, ¶ 22.

{¶ 14} "A forcible entry and detainer action is intended to serve as an expedited mechanism by which an aggrieved landlord may recover possession of real property." *Miele v. Ribovich*, 90 Ohio St.3d 439, 441, 2000-Ohio-193. A forcible entry and detainer action decides only the right to immediate possession of property and nothing else. *Seventh Urban, Inc. v. Univ. Circle Property Dev., Inc.*, 67 Ohio St.2d 19, 25 (1981), fn. 11.

{¶ 15} Once a landlord has been restored to the property, the forcible entry and detainer becomes moot because, having been restored to the premises, there is no further relief that may be granted to the landlord. *Showe Mgt. Corp. v. Hazelbaker*, 12th Dist. Fayette No. CA2006-01-004, 2006-Ohio-6356, ¶ 7. Because Holmes has vacated the apartment and Landings retook possession of the apartment, the forcible entry and detainer action is now moot. Nonetheless, an appellate court may decide an otherwise moot case

where the issues are capable of repetition, yet will continue to evade review, or where the case involves a matter of public or great general interest. *Id.*; *Rithy Properties, Inc. v. Cheesman*, 10th Dist. Franklin No. 15AP-641, 2016-Ohio-1602, ¶ 20.[1]

{¶ 16} The "capable of repetition, yet evading review" exception "applies only in exceptional circumstances in which the following two factors are both present: (1) the challenged action is too short in its duration to be fully litigated before its cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again." *State ex rel. Calvary v. Upper Arlington*, 89 Ohio St.3d 229, 231, 2000-Ohio-142.

{¶ 17} While the "procedures set forth in R.C. Chapter 1923 ensure that forcible entry and detainer actions proceed expeditiously in the trial court, * * * R.C. 1923.14(A) provides a defendant with the means to suspend the execution of a judgment of restitution" by obtaining a stay of execution and filing any required bond. *Rithy Properties*, 2016-Ohio-1602 at ¶ 23. Hence, "a forcible entry and detainer action is not too short in duration to be fully litigated through appeal." *Id.*; *Blank v. Allenbaugh*, 11th Dist. Ashtabula No. 2018-A-0022, 2018-Ohio-2582; *AKP Properties, L.L.C. v. Rutledge*, 5th Dist. Stark No. 2018CA00058, 2018-Ohio-5309. Moreover, there is no reasonable expectation that Holmes will be subject to a forcible entry and detainer action again as she concedes she "will be unlikely to rent another apartment from [Landings]." Accordingly, we conclude that the "capable of repetition, yet evading review" exception to the mootness doctrine does not apply to this case.

{¶ 18} The "public or great general interest" exception "should be used with caution

1. The proper terminology in the second exception to the mootness doctrine above is "public or great general interest," not the phrase "great public or general interest" used in *Franchise Developers, Inc. v. Cincinnati*, 30 Ohio St.3d 28 (1987). *In re Appeal of Suspension of Huffer from Circleville High School*, 47 Ohio St.3d 12, 14 (1989), fn. 5.

and only on rare occasions." *Rithy Properties* at ¶ 24. "Generally, the invocation of this exception remains the province of the highest court in the state, rather than the intermediate appellate courts, whose decisions do not have binding effect over the entire state." *Id.*

{¶ 19} Holmes asserts that Landings' retaliation against her for reporting the "illegal and unwarranted surveillance placed in [her] rental unit to allow [Landings], the F.B.I. and others to harass and spy on [her]" presents issues of public and great general interest. In our view, however, Holmes' argument is specific to the circumstances of her case and does not present questions of great public importance to justify overcoming the mootness doctrine. *See Gold Key Realty*, 2014-Ohio-4705; *Rithy Properties*, 2016-Ohio-1602 (finding that the importance of the issue failed to meet the high threshold necessary to fit within this exception to the mootness doctrine). Accordingly, we conclude that the "public or great general interest" exception to the mootness doctrine does not apply to this case.

{¶ 20} Holmes' second assignment of error is overruled.

{¶ 21} Assignment of Error No. 1:

{¶ 22} THE JUDGMENT OF THE TRIAL COURT FAILED TO ACKNOWLEDGE FRAUDULENT CONCEALMENT COMMITTED BY APPELLEES.

{¶ 23} Assignment of Error No. 3:

{¶ 24} THE JUDGMENT OF THE TRIAL COURT FAILS TO ACKNOWLEDGE LANDLORD BREACH OF CONTRACT AND WAIVER OF SERVICE.

{¶ 25} Assignment of error No. 4:

{¶ 26} THE JUDGMENT OF THE TRIAL COURT IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶ 27} In her first assignment of error, Holmes challenges the trial court's judgment, arguing that Landings fraudulently failed to disclose the December 26, 2019 "email agreement" and Holmes' illegal surveillance complaints during the eviction hearing.

{¶ 28} In her third assignment of error, Holmes challenges the trial court's judgment, arguing that it failed to acknowledge that (1) the December 26, 2019 email was a contract which Landings breached by refusing to accept Holmes' $3,500 check, and (2) the email constitutes a waiver of the three-day notice to leave the premises.

{¶ 29} In her fourth assignment of error, Holmes argues that the judgment granting restitution of the premises to Landings is against the manifest weight of the evidence because (1) Landings failed to provide the December 26, 2019 email and Holmes' illegal surveillance complaints at the eviction hearing, (2) Holmes' lease agreement included a very vague and ambiguous buyout provision, and (3) the final account statement Holmes received from Landings was further evidence of Landings' retaliation given Landings' breach of contract when it refused payment of the rent on January 14, 2020.

{¶ 30} As stated above, once a landlord has been restored to the property, the forcible entry and detainer action becomes moot because, having been restored to the premises, there is no further relief that can be granted. *Hazelbak*, 2006-Ohio-6356 at ¶ 7. The *only* method by which a defendant appealing a judgment of forcible entry and detainer may prevent the cause from becoming moot is stated in R.C. 1923.14. *Front St. Bldg. Co., L.L.C. v. Davis*, 2d Dist. Montgomery No. 27042, 2016-Ohio-7412, ¶ 18. "The statute provides a means by which the defendant may maintain, or even recover, possession of the disputed premises during the course of his appeal by filing a timely notice of appeal, seeking a stay of execution, and posting a supersedeas bond." *Id.*; *Colonial American Dev. Co. v. Griffith*, 48 Ohio St.3d 72 (1990). If the defendant fails to avail himself of this remedy, all issues relating to the action are rendered moot by his eviction from the premises. *Cherry v. Morgan*, 2d Dist. Clark Nos. 2012 CA 11 and 2012 CA 21, 2012-Ohio-3594, ¶ 5.

{¶ 31} Holmes failed to seek a stay of execution in the trial court and post a supersedeas bond following the filing of her appeal, and none of the exceptions to mootness

apply herein. Accordingly, the instant appeal is moot. Since Holmes' appeal is moot, we do not reach the merits of her first, third, and fourth assignments of error.

{¶ 32} We recognize that Holmes was acting pro se in the trial court and is acting pro se in this appeal. However, litigants who proceed pro se are held to the same standard as those who are represented by counsel. *Chambers v. Setzer*, 12th Dist. Clermont No. CA2015-10-078, 2016-Ohio-3219, ¶ 10. "Pro se litigants are not to be accorded greater rights and must accept the results of their own mistakes and errors, including those related to correct legal procedure." *Cox v. Zimmerman*, 12th Dist. Clermont No. CA2011-03-022, 2012-Ohio-226, ¶ 21.

{¶ 33} Appeal dismissed.

HENDRICKSON, P.J. and S. POWELL, J., concur.

Appendix C

BUTLER COUNTY AREA III COURT
West Chester, Ohio 45069
(513) 867-5070

THE LANDINGS AT BECKETT RIDGE:		**Case No. CVG1901594**
Plaintiff,	:	
vs.	:	
		DECISION OF MAGISTRATE
ROSALIND HOLMES.	:	
Defendant.	:	

Upon due consideration of defendant's Civ.R. 60(B)(3), (5) claim to Vacate the Judgment of March 4, 2020, the court hereby recommends that the Motion be OVERRULED. Not only is the motion not timely,[1] but it appears to relitigate the same issues that Holmes raised on her objections before the trial court and in her appeal to the 12th District Court of Appeals. CA2020-04-050, 2020-Ohio-6900. That appeal was dismissed because this matter was moot. Despite Holmes's current arguments, this matter remains moot because she vacated the premises.

Magistrate Fred Miller

cc: Dave Donnett, Esq.
Rosalind Holmes

[1] A Civ.R. 60(B)(3) claim must be filed within one year of the judgment that is sought to be vacated. Here, that judgment was issued on March 4, 2020, and the Motion to Vacate was filed on July 9, 2021, well in excess of one year of the trial court's final judgment.

X A copy of the Decision of Magistrate in the above-captioned matter was mailed to Plaintiff and Defendant this 23rd day of August, 2021.

B. Thornsburg
Deputy Clerk

NOTICE IS HEREBY GIVEN THAT UNLESS OBJECTIONS, IN WRITING, STATING THE REASON THEREFOR (OR TO THE ATTORNEY FOR SAID PARTY IF APPLICABLE) ARE FILED WITH THE COURT, WITH A COPY TO OPPOSING PARTY, WITHIN FOURTEEN (14) DAYS OF THE FILING OF THE REPORT, AN ORDER WILL BE MADE AS RECOMMENDED ABOVE. ANY OBJECTION TO A FINDING OF FACT SHALL BE SUPPORTED BY A TRANSCRIPT OF ALL THE EVIDENCE SUBMITTED TO THE MAGISTRATE RELEVANT TO THAT FACT OR, IF A TRANSCRIPT IS UNAVAILABLE, YOUR AFFIDAVIT OF THAT EVIDENCE SPECIFYING THE ERRORS MADE BY THE MAGISTRATE.

A PARTY SHALL NOT ASSIGN AS ERROR ON APPEAL THE COURT'S ADOPTION OF ANY FINDING OF FACT OR CONCLUSION OF LAW IN THAT DECISION UNLESS THE PARTY TIMELY AND SPECIFICALLY OBJECTS TO THAT FINDING OR CONCLUSION AS REQUIRED BY CIV. R. 53(D)(3).

BUTLER COUNTY AREA III COURT
West Chester, Ohio 45069
(513) 867-5070

THE LANDINGS AT BECKETT RIDGE: **Case No. CVG1901594**

Plaintiff, :

vs. :

ROSALIND HOLMES. : **DECISION AND ENTRY OVERRULING MOTION FOR RECONSIDERATION (FINAL APPEALABLE ORDER)**

Defendant. :

On September 21, 2021, this court overruled Rosalind Holmes's Civ.R. 60(B) Motion to Vacate Judgment. This was designated a final, appealable order. On September 23, 2021, Ms. Holmes filed an Emergency Motion for Reconsideration and a request for stay pending appeal.

As has been explained before to Ms. Holmes by this court, the civil rules do not contemplate a Motion for Reconsideration of a final judgment. Any such motion and judgment stemming from a reconsideration is a nullity and has no legal effect. *Pitts v. Ohio Dept. of Transportation*, 67 Ohio St.2d 378, 382, 423 N.E.2d 1105 (1981)(second syllabus); *State v. Taggart*, 12th Dist., 2021-Ohio-1350, ¶12.

The court therefore OVERRULES Ms. Holmes's Emergency Motion for Reconsideration. The court further declines to stay its order pending appeal.

Courtney Caparella-Kraemer

Judge Courtney Caparella-Kraemer

cc: Dave Donnett, Esq.
Rosalind Holmes

X A copy of the Decision and Entry in the above-captioned matter was mailed to Plaintiff and Defendant this 27 day of September, 2021.

Deputy Clerk

Appendix D

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

THE LANDINGS AT BECKETT RIDGE, :

Appellee, : CASE NO. CA2021-09-118

- vs - : JUDGMENT ENTRY

ROSALIND HOLMES, :

Appellant. :

The assignments of error properly before this court having been ruled upon, it is the order of this court that the judgment or final order appealed from be, and the same hereby is, affirmed.

It is further ordered that a mandate be sent to the Butler County Area III Court for execution upon this judgment and that a certified copy of this Judgment Entry shall constitute the mandate pursuant to App.R. 27.

Costs to be taxed in compliance with App.R. 24.

Stephen W. Powell, Presiding Judge

Robert A. Hendrickson, Judge

Matthew R. Byrne, Judge

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

THE LANDINGS AT BECKETT RIDGE,	:	
Appellee,	:	CASE NO. CA2021-09-118
	:	OPINION
- vs -		4/18/2022
	:	
ROSALIND HOLMES,	:	
Appellant.	:	

CIVIL APPEAL FROM BUTLER COUNTY AREA III COURT
Case No. CVG 1901594

David D. Donnett, for appellee.

Rosalind Holmes, pro se.

S. POWELL, P.J.

{¶ 1} Appellant, Rosalind Holmes, appeals the decision of the Butler County Area III Court denying her Civ.R. 60(B) motion for relief from the trial court's judgment granting a complaint for forcible entry and detainer filed by appellee, The Landings at Beckett Ridge, LLC ("Landings"). For the reasons outlined below, we affirm the trial court's decision.[1]

{¶ 2} Several years ago, Holmes leased an apartment from Landings located at

1. Pursuant to Loc.R. (6)(A), we sua sponte remove this appeal from the accelerated calendar for the purpose of issuing this opinion.

4899 Destination Circuit in West Chester, Butler County, Ohio. Holmes failed to pay Landings rent due for the month of December 2019. Because of this, on December 7, 2019, Landings served Holmes with the statutory three-day notice to leave the premises. Shortly thereafter, when Holmes failed to vacate the premises, Landings filed a complaint for forcible entry and detainer seeking restitution of the premises. The trial court scheduled the matter for an eviction hearing to take place on January 8, 2020.

{¶ 3} On December 26, 2019, Jenn Taylor, Landings' property manager, sent an e-mail to Holmes advising Holmes as follows:

> At this time, the December balance and January rent will need to be paid in full to cancel the eviction process. The total balance is $3,156.82 * * *.
>
> Please keep in mind that eviction court is scheduled for January 8th. If the above balance is not paid before eviction court we will be unable to accept rent after that morning and will have to continue with the eviction process.
>
> Let us know if there are any questions you have and an intended date to pay rent.

{¶ 4} On January 7, 2020, Holmes moved to continue the eviction hearing scheduled to take place the next day, January 8, 2020. The trial court granted Holmes' motion and rescheduled the eviction hearing to take place the following week, on January 15, 2020. The day before the rescheduled eviction hearing was to take place, January 14, 2020, Holmes tendered a $3,500 cashier's check to Landings for the unpaid rent balance. Per the terms of the e-mail Taylor sent to Holmes on December 26, 2019 set forth above, Landings refused to accept the cashier's check from Holmes.

{¶ 5} On January 15, 2020, the rescheduled eviction hearing took place before a trial court magistrate. During this hearing, Landings' property manager, Taylor, testified and advised the magistrate that she had sent the above e-mail to Holmes on December 26, 2019 "explaining how much was due before January 8th, the original court date[,] and asked

that it be paid before then and * * * after that date we would not be accepting rent." Taylor also testified and confirmed for the magistrate that Landings did not receive the necessary rent payment from Holmes before the January 8, 2020 deadline set forth in the December 26, 2019 e-mail.

{¶ 6} Upon hearing from both parties, the magistrate issued a decision finding Holmes was properly served with the notice to leave the premises. The magistrate also found Holmes had failed to timely pay the rent due to Landings and that Landings was entitled to restitution of the premises as requested in its complaint. Holmes filed objections to the magistrate's decision. To support her objections, Holmes argued that Landings' eviction proceedings and refusal to accept her $3,500 cashier's check was done in retaliation for her sending a letter to the U.S. Department of Commerce, Office of the Inspector General, complaining that Landings "had placed an illegal surveillance in [her] apartment" and requesting an investigation.

{¶ 7} On February 14, 2020, the trial court held a hearing on Holmes' objections to the magistrate's decision. During this hearing, Landings argued that Holmes' objections were now moot because Holmes had since vacated the premises. Holmes did not dispute that she had, in fact, vacated the premises. Approximately three weeks later, on March 4, 2020, the trial court issued a decision finding the case moot given the fact that Holmes had already vacated the premises. In so holding, the trial court stated:

> The parties do not dispute that Holmes has already vacated the premises pursuant to the magistrate's decision. It is well settled law that when a tenant vacates the premises pursuant to an eviction action, any further proceedings are moot. * * * Accordingly, because Holmes is no longer living on the premises, there is no relief that this court can provide her. Her objections are hereby OVERRULED, and the Magistrate's Decision will stand as an order of the court.

Holmes appealed the trial court's decision to this court, raising four assignments of error for

review. This included one assignment of error, i.e., assignment of error number four, wherein Holmes argued the trial court's decision granting restitution of the premises to Landings was against the manifest weight of the evidence.

{¶ 8} On December 28, 2020, this court issued a decision dismissing Holmes' appeal as moot. *Landings at Beckett Ridge v. Holmes*, 12th Dist. Butler No. CA2020-04-050, 2020-Ohio-6900. In reaching this decision, this court stated:

> Once a landlord has been restored to the property, the forcible entry and detainer becomes moot because, having been restored to the premises, there is no further relief that may be granted to the landlord. * * * Because Holmes has vacated the apartment and Landings retook possession of the apartment, the forcible entry and detainer action is now moot.

(Internal citations deleted.) *Id.* at ¶ 15. This court also stated that, since Holmes' appeal was moot, we would not reach the merits of Holmes' fourth assignment of error challenging the trial court's decision being against the manifest weight of the evidence. *Id.* at ¶ 31 ("[s]ince Holmes' appeal is moot, we do not reach the merits of her first, third, and fourth assignments of error").

{¶ 9} On July 9, 2021, Holmes filed a Civ.R. 60(B) motion for relief from the trial court's decision issued over a year earlier, on March 4, 2020. Holmes brought this motion pursuant to Civ.R. 60(B)(3) and (5). Approximately six weeks later, on August 23, 2021, a trial court magistrate issued a decision recommending the trial court deny Holmes' Civ.R. 60(B) motion in its entirety. In so recommending, the magistrate stated:

> Upon due consideration of defendant's Civ.R. 60(B)(3), (5) motion to Vacate the Judgment of March 4, 2020, the court hereby recommends that the Motion be OVERRULED. Not only is the motion not timely, but it appears to relitigate the same issues that Holmes raised on her objections before the trial court and in her appeal to the 12th District Court of Appeals. CA2020-04-050, 2020-Ohio-6900. That appeal was dismissed because this matter was moot.

{¶ 10} On August 26, 2021, Holmes filed an objection to the magistrate's decision.

As part of her objection, Holmes argued the magistrate erred by finding her Civ.R. 60(B) motion was untimely filed "because of the global health crisis created by the COVID-19 pandemic in which Americans were cautioned against leaving their homes, traveling, entering public facilities on an as needed basis, etc." The following month, on September 21, 2021, the trial court denied Holmes' objection to the magistrate's decision. In so holding, the trial court stated:

> The court has reviewed the entire record in this case, including Holmes's arguments before the Magistrate and pursuant to her objections. The court hereby OVERRULES her objections for all the reasons provided by the Magistrate in his August 23 Decision.

{¶ 11} The trial court also stated:

> Further, the court does not find that the COVID pandemic has prevented Holmes from obtaining documents and from timely filing a 60(B) motion. The court takes judicial notice that Holmes has actively filed numerous Complaints and motions and has actively participated throughout the pandemic, not only in this case, but in other cases in this court.

{¶ 12} On September 22, 2021, Holmes filed a notice of appeal from the trial court's decision.[2] Holmes' appeal now properly before this court, Holmes raises two assignments of error for this court's review.

{¶ 13} Assignment of Error No. 1:

{¶ 14} THE TRIAL COURT ERRED BY DENYING APPELLANT'S MOTION FOR RELIEF FROM JUDGMENT.

2. We note that, since filing her notice of appeal, Holmes has filed numerous additional motions with this court. This includes Holmes filing two "emergency" motions requesting this court issue a stay and/or temporary restraining order pending appeal, two motions requesting this court reconsider our decision denying her second "emergency" motion for a stay and/or temporary restraining order pending appeal, a motion requesting this court issue an "emergency decision" on her two motions for reconsideration of this court's decision denying her second "emergency" motion for a stay and/or temporary restraining order pending appeal, and two "notifications" informing this court that "there is no just reason" for this court to "delay in issuing an order" on her two "emergency" motions for reconsideration, one of which Holmes "respectfully request[ed]" this court to issue an order on her "emergency" motions for reconsideration "NOW."

{¶ 15} In her first assignment of error, Holmes argues the trial court erred by denying her Civ.R. 60(B) motion for relief from judgment. We disagree.

{¶ 16} "Civ.R. 60(B) represents a balance between 'the legal principle that there should be finality in every case, so that once a judgment is entered it should not be disturbed, and the requirements of fairness and justice, that given the proper circumstances, some final judgments should be reopened.'" *Mallik v. Jeff Wyler Fairfield, Inc.*, 12th Dist. Butler No. CA2000-06-106, 2000 Ohio App. LEXIS 5238, *13 (Nov. 13, 2000), quoting *Advance Mortgage Corp. v. Novak*, 53 Ohio App.2d 289, 291 (8th Dist.1977). "[A] court must carefully consider the two conflicting principles of finality and perfection when reviewing a motion for relief from judgment." *Wedemeyer v. USS FDR (CV-42) Reunion Assoc.*, 3d Dist. Allen No. 1-10-46, 2010-Ohio-6266, ¶ 12, citing *Strack v. Pelton*, 70 Ohio St.3d 172, 175 (1994). "But, as has been established, it is finality over perfection in the hierarchy of values." *U.S. Bank, N.A. v. Muma*, 12th Dist. Butler No. CA2020-05-060, 2021-Ohio-629, ¶ 21, citing *Tillimon v. Coutcher*, 6th Dist. Lucas No. L-19-1156, 2020-Ohio-3215, ¶ 31 ("although the trial court tipped the balance toward perfection, we must follow binding precedent and tip the balance toward finality instead"). This is because it is finality, not perfection, that "'requires that there be some end to every lawsuit, thus producing certainty in the law and public confidence in the system's ability to resolve disputes.'" *Viox v. Metcalfe*, 12th Dist. Clermont No. CA97-03-026, 1998 Ohio App. LEXIS 800, *12-13 (Mar. 2, 1998), quoting *Knapp v. Knapp*, 24 Ohio St.3d 141, 144-145 (1986).

{¶ 17} "To prevail on a Civ.R. 60(B) motion, the moving party must demonstrate that (1) he [or she] has a meritorious defense or claim to present if relief is granted, (2) he [or she] is entitled to relief under one of the grounds stated in Civ.R. 60(B), and (3) the motion is made within a reasonable time." *Total Quality Logistics, LLC v. ATA Logistics, Inc.*, 12th Dist. Clermont No. CA2019-09-071, 2020-Ohio-1553, ¶ 7, citing *GTE Automatic Electric,*

Inc. v. ARC Industries, Inc., 47 Ohio St.2d 146 (1976), paragraph two of the syllabus. Because all three criteria must be satisfied for the trial court to grant relief, the moving party's failure to meet any one of these three factors is fatal. *Scrimizzi v. Scrimizzi*, 12th Dist. Warren No. CA2018-11-131, 2019-Ohio-2793, ¶ 51 ("[f]ailure to meet any one of these three factors is fatal, for all three must be satisfied in order to gain relief"), citing *First Fin. Bank, N.A. v. Grimes*, 12th Dist. Butler No. CA2010-10-268, 2011-Ohio-3907, ¶ 14. "The decision to grant or deny a Civ.R. 60(B) motion lies within the trial court's discretion, and the decision will be reversed only for an abuse of discretion." *Reynolds v. Turull*, 12th Dist. Butler No. CA2018-10-197, 2019-Ohio-2863, ¶ 10. "An abuse of discretion connotes more than an error of law or judgment; it implies the trial court acted unreasonably, arbitrarily, or unconscionably." *Middletown App., Ltd. v. Singer*, 12th Dist. Butler Nos. CA2018-08-165 and CA2018-11-224, 2019-Ohio-2378, ¶ 12, citing *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶ 18} After a full and thorough review of the record, we find no abuse of discretion in the trial court's decision denying Holmes' Civ.R. 60(B) motion for relief from judgment. This is because, despite Holmes' claims, the trial court's decision is not unreasonable, arbitrary, or unconscionable. In so holding, we agree with the trial court's decision finding Holmes' Civ.R. 60(B) motion was untimely filed. We also agree with the trial court's decision finding Holmes has not demonstrated that she has a meritorious defense or claim to present if relief is granted or that she is entitled to relief under any one of the grounds stated in Civ.R. 60(B). We reach this decision because, as the record indicates, Holmes has already vacated the premises.[3] This is significant because, as this court previously advised Holmes

3. Based on the address Holmes' provided to this court, Holmes does not live at the apartment she leased from Landings located at 4899 Destination Circuit in West Chester, Butler County, Ohio. Holmes instead lives in Tennessee.

in *Holmes*, "once a landlord has been restored to the property, the forcible entry and detainer action becomes moot because, having been restored to the premises, there is no further relief that can be granted." *Id.*, 2020-Ohio-6900 at ¶ 30, citing *Showe Mgt. Corp. v. Hazelbaker*, 12th Dist. Fayette No. CA2006-01-004, 2006-Ohio-6356, ¶ 7. Therefore, finding no error in the trial court's decision denying Holmes' Civ.R. 60(B) motion for relief from judgment, Holmes' first assignment of error lacks merit and is overruled.

{¶ 19} Assignment of Error No. 2:

{¶ 20} THE JUDGMENT OF THE TRIAL COURT IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶ 21} In her second assignment of error, Holmes argues the trial court's decision granting restitution of the premises to Landings was against the manifest weight of the evidence. However, as this court previously explained in *Holmes*, the forcible entry and detainer action is now moot given the fact that Holmes has already vacated the premises and Landings retook possession. *Id.*, 2020-Ohio-6900 at ¶ 15, 31. Therefore, for the same reasons this court already stated in *Holmes*, Holmes second assignment of error alleging the trial court's decision granting restitution of the premises to Landings was against the manifest weight of the evidence is moot.

{¶ 22} Judgment affirmed.

HENDRICKSON and BYRNE, JJ., concur.

Appendix E

Supreme Court of Ohio Clerk of Court - Filed August 16, 2022 - Case No. 2022-0662

The Supreme Court of Ohio

The Landings at Beckett Ridge

v.

Rosalind Holmes

Case No. 2022-0662

ENTRY

Upon consideration of the jurisdictional memoranda filed in this case, the court declines to accept jurisdiction of the appeal pursuant to S.Ct.Prac.R. 7.08(B)(4).

(Butler County Court of Appeals; No. CA2021-09-118)

Maureen O'Connor
Chief Justice

Appendix F

BUTLER COUNTY AREA III COURT
West Chester, Ohio 45069
(513) 867-5070

ROSALIND HOLMES	:	**Case No. CVF2001041**
Plaintiff,	:	
vs.	:	**DECISION OF MAGISTRATE**
LAKEFRONT AT WEST CHESTER	:	
Defendant.	:	

This matter came on for a trial on March 1, 2021, pursuant to an Amended Complaint filed by Rosalind Holmes. Present in court were Rosalind Holmes, unrepresented, and Lakefront at West Chester ["Lakefront"], represented by Amy Higgins.

BACKGROUND

Holmes is a tenant at Lakefront. She has asserted several causes of action against it: failure to keep the premises in a fit and habitable condition, in violation of R.C. 5321.04(A)(2); common law trespass; statutory trespass, in violation of R.C. 5321.04(A)(8); breach of implied warranty of habitability; and landlord retaliation, in violation of R.C. 5321.02(A).

Holmes moved into an apartment owned by Lakefront in May 2020. Within a month, she noticed a roach infestation, so she notified management about it. Ultimately, she deposited her rent with the court because of her dissatisfaction with management's response. This court conducted a hearing on that issue in Case Number RE 2000007 on December 30, 2020, and, on January 5, 2021, this court found, among other things, that all issues regarding the rent infestation had been appropriately addressed by Lakefront. This court ordered all rent deposits to

be returned to Lakefront. Holmes did not object to or otherwise appeal that Decision. A copy of that Decision is attached hereto.

At the outset of the hearing in this case, Lakefront requested that the cause of action regarding the roach infestation be dismissed, because it had already been decided by this court in the rent escrow case. Holmes did not object to this request. The court agreed that it need not hear any testimony regarding roach infestation and warranty of habitability because those issues had already been decided and there were no objections or appeal from that decision.

TRESPASS

Regarding the trespass claims, Holmes testified that on numerous occasions, she would find strange things that led her to believe that someone from Lakefront had surreptiously entered her apartment without her permission. Thus, when she went to lock her door on the morning of October 28, 2020, she found that her key did not work. She went to the office, which rekeyed her lock for her, and then her key did work. She believed that she could infer from this that Lakefront had somehow entered her home.

There was testimony from the property manager, Jessica Betts, that only staff had access to the keys, that there was a strict policy of not letting an unauthorized person have the keys, and that nobody from Lakefront had entered Holmes's apartment without her permission. Betts said that periodically a key will not work in a lock because a change in the weather may cause a pin to slightly shift position. In her five years' experience, this sort of thing happened 25-30 times.

As further proof of a trespass, Holmes testified that someone had emptied out her makeup kit in her bedroom. She provided a photograph of the empty box. She also said that one day her vacuum cleaner was missing, but then it was returned at some later date. Upon examining the contents of the cleaner, she saw dirt and debris that did not belong to her. She provided a

photograph of those contents. Again, she inferred that someone from Lakefront had snuck into her apartment, took her makeup, and also took her cleaner, used it, and then secretly returned it. Betts denied that anyone from Lakefront took her vacuum; they have their own cleaning equipment to be used as needed.

Holmes also believed that the FBI had obtained search warrants to enter her home, and that Lakefront had somehow assisted it in doing so. She testified that she had had similar issues of unwarranted intrusion in two previous apartments where she had lived. Both Banks and Jacqueline Keller, the regional manager of PLK, the management company, denied having any such conversations with the FBI or any other governmental agency, nor were they aware of any employee who may have assisted the FBI.

Holmes has claimed that Lakefront both trespassed on her property and that it aided the FBI in trespassing. But she admitted that she never saw anyone from Lakefront on her property at any times when they were not otherwise invited. She could only assume that they were there because of the missing makeup, missing and used vacuum cleaner, and non-working lock on her door. She emphasized Banks's admission that Banks does not guard the apartment keys at all times, thereby letting Holmes surmise that someone may have surreptiously taken the keys, entered her apartment, and then returned the keys. But that is all conjecture. The burden of proving a trespass rests with Holmes, and without more, this court cannot find that she has met that burden of proof. The court finds that Holmes did not prove a common-law trespass or a violation of R.C. 5321.04(A)(8), which forbids a landlord from entering a tenant's premises without at least twenty-four hours' notice.

FIT AND HABITABLE CONDITION

R.C. 5321.04(A)(2) requires a landlord to keep the premises "in a fit and habitable condition." The implied warranty of habitability imposes similar requirements. See *Lloyd v. Roosevelt Properties, Ltd.*, 8th Dist., 2018-Ohio-3163. As noted above, the court has already decided that Lakefront did not violate this statute or its common law duty. Lakefront promptly and responsibly addressed any infestation, and Holmes did not raise any issues of further infestation that may have arisen since the December 30, 2020 hearing. The court finds that Holmes has failed to prove any new infestation that has been disregarded by Lakefront, and the court finds that Lakefront did properly address any old infestation.

RETALIATION

Because Holmes was frustrated with the perceived lack of response to the roach problem, she gave notice to Lakefront on August 3, 2020 that she would be vacating the premises in 30 days, on September 4. Lakefront acknowledged receipt of the notice. Def's ex. A. On September 5, when Holmes had not moved out, Banks notified her that she would need to leave, because, in reliance on the notice, Lakefront had rented the apartment to someone else. Other than that conversation, there was no evidence of any steps taken by Lakefront to evict Holmes. In fact, Lakefront changed its mind and allowed her to remain in her apartment. She is still there today. It was this conversation that forms the basis of Holmes's claim of retaliation.

Holmes claims that Lakefront has violated R.C. 5321.02(A)(2), which provides that "a landlord may not retaliate against a tenant by. . .bringing or threatening to bring an action for possession of the tenant's premises because. . .[t]he tenant has complained to the landlord of any violation of section 5321.04 of the Revised Code." But, under the circumstances of this case, the

court cannot find that Banks's comments to Holmes about needing to move out constitute a violation of the statute.

There was never any eviction action brought against Holmes. And Banks's statement to Holmes was not a threat to bring an eviction action because of any complaints regarding an infestation. Rather, it was Holmes herself who had given notice to Lakefront that she intended to vacate by September 4. In reliance on that statement, Lakefront had rented the apartment to someone else. Lakefront needed the vacancy so the new tenant could move in. Banks was merely reminding Holmes of this, not retaliating against her for her earlier complaints. And it turns out that Lakefront did not force Holmes out anyway. Even though it had rented the apartment to another, Lakefront allowed Holmes to remain there, where she still is today. The court therefore finds that Lakefront did not violate R.C 5321.02(A)(2).[1]

DAMAGES

Finally, even had Holmes proved any of the allegations in her Amended Complaint, she provided no evidence or testimony regarding any damages that she may have suffered as a result of such conduct by Lakefront. R.C. 5321.02(B) limits recovery for a retaliation action to "actual damages" suffered by the tenant. A statutory trespass by a landlord will allow the tenant to recover "actual damages." R.C. 5321.04(B). Common law also requires proof of damages for a trespass and for a breach of warranty of habitability. *Fantozzi v. Henderson*, 8th Dist., 2006-Ohio-5590, ¶15 (trespass); *Lloyd v. Roosevelt Properties, Ltd.*, 8th Dist., 2018-Ohio-3163, ¶31(implied warranty of habitability). Holmes has provided no proof of any "actual damages" pursuant to those statutes or the common law.

[1] The statute also states that a landlord cannot retaliate by increasing a tenant's rent or by decreasing services due to the tenant, but Holmes provided no evidence or testimony about those types of retaliation.

The failure of a landlord to provide safe and habitable premises pursuant to R.C. 5321.04(A) allows a tenant to deposit her rent with the court, obtain an order requiring the landlord to remedy the condition, or terminate the lease agreement. R.C. 5321.07(B). Holmes did deposit her rent with the court, but, as already ruled by the court in RE200007, Holmes did not prove her entitlement to any of those remedies. The court ordered the return of the rent to Lakefront. Thus, even had there been a violation of the statute, Holmes has not proved entitlement to any damages.

CONCLUSION

Taking into account all the evidence and testimony in this case, the court must find that Holmes has failed to prove by a preponderance of the evidence any of the allegations contained in her Amended Complaint. Accordingly, it is the recommendation of the court that the Amended Complaint be DISMISSED. Plaintiff to pay court costs.

Magistrate Fred Miller

cc: Rosalind Holmes
Amy Higgins, Esq.

X A copy of the Decision of Magistrate in the above-captioned matter was mailed to Plaintiff and Defendant this 5th day of March, 2021.

B. Thomsburg
Deputy Clerk

NOTICE IS HEREBY GIVEN THAT UNLESS OBJECTIONS, IN WRITING, STATING THE REASON THEREFOR (OR TO THE ATTORNEY FOR SAID PARTY IF APPLICABLE) ARE FILED WITH THE COURT, WITH A COPY TO OPPOSING PARTY, WITHIN FOURTEEN (14) DAYS OF THE FILING OF THE REPORT, AN ORDER WILL BE MADE AS RECOMMENDED ABOVE. ANY OBJECTION TO A FINDING OF FACT SHALL BE SUPPORTED BY A TRANSCRIPT OF ALL THE EVIDENCE SUBMITTED TO THE MAGISTRATE RELEVANT TO THAT FACT OR, IF A TRANSCRIPT IS UNAVAILABLE, YOUR AFFIDAVIT OF THAT EVIDENCE SPECIFYING THE ERRORS MADE BY THE MAGISTRATE.

A PARTY SHALL NOT ASSIGN AS ERROR ON APPEAL THE COURT'S ADOPTION OF ANY FINDING OF FACT OR CONCLUSION OF LAW IN THAT DECISION UNLESS THE PARTY TIMELY AND SPECIFICALLY OBJECTS TO THAT FINDING OR CONCLUSION AS REQUIRED BY CIV. R. 53(D)(3).

Appendix G

BUTLER COUNTY AREA III COURT
West Chester, Ohio 45069
(513) 867-5070

ROSALIND HOLMES	:	**Case No. CVF2001041**
Plaintiff,	:	
vs.	:	**ENTRY OVERRULING OBJECTIONS**
LAKEFRONT AT WEST CHESTER	:	**(FINAL APPEALABLE ORDER)**
Defendant.	:	

This matter came on pursuant to objections filed by Rosalind Holmes on March 17, 2021 to the March 5, 2021 Decision of the Magistrate. In that Decision the magistrate recommended that Holmes's Amended Complaint against Lakefront of West Chester be dismissed. The court conducted a hearing on those objections on April 16, 2021.

This court has reviewed the transcript of proceedings provided by Holmes and has also considered the written objections and response provided by Holmes and counsel for Lakefront, as well as the oral arguments of both Holmes and counsel for Lakefront. After thoroughly and independently considering the entire record in this case, along with Holmes's arguments, the court hereby OVERRULES her objections and adopts the Magistrate's Decision as an order of the court for all the reasons contained in that Decision. The Amended Complaint is hereby DISMISSED at plaintiff's costs.

Acting Judge Jeff Bowling

cc: Rosalind Holmes
Amy Higgins, Esq.

X A copy of the Entry Overruling Objections in the above-captioned matter was mailed to Plaintiff and Defendant this 27th day of April, 2021.

B. Thornsburg
Deputy Clerk

Appendix H

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

FILED
2021 DEC 27 PM 3:04
MARY L. SWAIN
BUTLER COUNTY
CLERK OF COURTS

ROSALIND HOLMES,

Appellant,

vs.

LAKEFRONT AT WEST CHESTER,

Appellee.

CASE NO. CA2021-05-046
REGULAR CALENDAR

ENTRY DENYING EMERGENCY MOTION TO SUPPLEMENT THE RECORD AND FOR THIS COURT TO TAKE JUDICIAL NOTICE

FILED BUTLER CO.
COURT OF APPEALS
DEC 27 2021
MARY L. SWAIN
CLERK OF COURTS

The above cause is before the court pursuant to a document styled "emergency motion to supplement the record and for this court to take judicial notice, motion to waive fees and cost" filed by appellant, Rosalind Holmes, on December 17, 2021. This appeal was submitted to the court for decision on October 14, 2021.

The parties have filed their briefs and this matter has been submitted to the court for decision. Appellant will not be permitted to supplement the record at this point in the proceeding. The court will take judicial notice of other proceedings filed in this court if appropriate.

With the exception of the court's reservation of the ability to take judicial notice, the above motion is DENIED.

IT IS SO ORDERED.

Mike Powell, Judge

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

LAKEFRONT OF WEST CHESTER, LLC,

Appellee,

vs.

ROSALIND HOLMES,

Appellant.

CASE NO. CA2021-09-108
REGULAR CALENDAR

ENTRY DENYING EMERGENCY MOTION TO RECONSIDER GRANTING MOTION TO SUPPLEMENT THE RECORD

The above cause is before the court pursuant to a pleading styled "emergency motion to reconsider granting appellant's motion to supplement the appeal records and emergency motion to take judicial notice of the transcript of proceedings" filed by appellant, Rosalind Holmes, on December 9, 2021.

On December 8, 2021, this court filed an entry denying appellant's motion to supplement the record with a copy of a transcript of proceedings that occurred in the Butler County Area III Court on July 7, 2021. The motion was denied for the reason that appellant had failed to timely complete the record on appeal.

The motion to reconsider the denial of appellant's motion to supplement the record is DENIED. Appellant failed to timely file the transcript as part of the record on appeal.

IT IS SO ORDERED.

Stephen W. Powell, Judge

Robin N. Piper, Judge

Appendix I

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

ROSALIND HOLMES,

Appellant,

CASE NO. CA2021-05-046

JUDGMENT ENTRY

- vs -

LAKEFRONT AT WEST CHESTER,

Appellee.

The assignments of error properly before this court having been ruled upon, it is the order of this court that the judgment or final order appealed from be, and the same hereby is, affirmed.

It is further ordered that a mandate be sent to the Butler County Area III Court for execution upon this judgment and that a certified copy of this Judgment Entry shall constitute the mandate pursuant to App.R. 27.

Costs to be taxed in compliance with App.R. 24.

Robin N. Piper, Presiding Judge

Mike Powell, Judge

Matthew R. Byrne, Judge

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

ROSALIND HOLMES,	:	
Appellant,	:	CASE NO. CA2021-05-046
	:	OPINION
- vs -	:	1/18/2022
	:	
LAKEFRONT AT WEST CHESTER,	:	
Appellee.	:	

CIVIL APPEAL FROM BUTLER COUNTY COURT AREA III
Case No. CVF2001041

Rosalind Holmes, pro se.

Greenberger & Brewer LLP, and Amy L. Higgins, for appellee.

BYRNE, J.

{¶1} Rosalind Holmes appeals a decision of the Butler County Area III Court that dismissed her claims against her landlord, Lakefront at West Chester, LLC. For the reasons described below, we affirm the area court's decision.

I. Facts and Procedural History

{¶2} In November 2020, Holmes filed a pro se complaint in the area court against Lakefront at West Chester, LLC ("Lakefront"). In December 2020, she filed a first amended

complaint. Holmes alleged that she rented an apartment from Lakefront and found a roach infestation upon moving in. She further alleged that she requested that Lakefront investigate her mailbox lock "suddenly being changed." Finally, she alleged that there was an "ongoing conspiracy" and "warrantless surveillance" being conducted against her by "the Federal Bureau of Investigation and others," including warrantless surveillance under the Foreign Intelligence Surveillance Act and Executive Order 12333. She claimed to have informed a Lakefront employee about this conspiracy. However, the Lakefront employee dismissed Holmes' concerns and failed to investigate. Holmes alleged that Lakefront was allowing people to enter her apartment "while [she] is sleeping, taking a shower etc. and while she is gone." The complaint also described several specific instances during which Holmes believed someone entered her apartment, including to spit in her bread and to steal her food.

{¶3} Holmes alleged the following causes of action: (1) failure to keep the premises in a fit and habitable condition (in violation of R.C. 5321.04[A][2]), (2) common law trespass, (3) breach of the implied warranty of habitability, and (4) landlord retaliation (in violation of R.C. 5321.02).

{¶4} Holmes had been depositing her rent with the area court in lieu of paying rent to Lakefront due to the roach infestation issue. Prior to trial, the area court held a hearing on the issue of the infestation and found that Lakefront had appropriately addressed the issue. Accordingly, the area court ordered all rent deposits to be released to Lakefront. Holmes did not object to the magistrate's decision.

{¶5} The case proceeded to a trial in March 2021. Initially, the magistrate noted that due to the prior hearing, Holmes' claims for failure to keep the premises in a fit and habitable condition and breach of the implied warranty of habitability were previously resolved and the court would hear no evidence on those claims. Holmes agreed and stated

that trespass and landlord retaliation were the only claims for which she intended to present evidence.

II. Trial Testimony

A. Rosalind Holmes' Testimony

{¶6} Holmes testified that in October 2020, as she was leaving her apartment, she found that her door key did not work, and she could not lock her door. She contacted Lakefront and the assistant property manager gave her a new key. Because her door key did not work upon her exiting the apartment, Holmes believed that a Lakefront employee had changed her lock while she was sleeping.

{¶7} Holmes testified that items were stolen from her apartment. This occurred either while she was sleeping or while she was gone from the apartment. She claimed that someone entered her apartment in October and November 2020, and dumped her makeup out of her makeup box. Holmes also testified that someone had taken her "bathroom cleaners" and that her vacuum cleaner disappeared from her apartment and later reappeared. Holmes testified that she took her vacuum cleaner to a repair shop, and the repair shop discovered debris in the vacuum that she believed was not hers, because her home was very clean.

{¶8} Holmes introduced three photographs into evidence. One depicted the makeup box, one depicted the vacuum cleaner with dust and debris emerging from the roller, and one was a picture of dust and debris. Presumably this was the same dust and debris from the vacuum cleaner. Holmes also introduced several emails that consisted of her communications with Lakefront employees concerning these issues.

B. Jacqueline Keller's Testimony

{¶9} Holmes next called Jacqueline Keller. Keller was the regional manager of PLK Communities ("PLK"), which is the property management company that manages

Lakefront. Keller recalled talking with Holmes about Holmes' belief that PLK was colluding with the FBI or a government entity. Keller stated that she had never received a warrant concerning searching Holmes' apartment from any government agency. Keller testified that she had never been approached by anyone working for the government asking questions about Holmes.

{¶10} Keller testified that the only persons with access to the key to Holmes' apartment were the members of the property management team, and that the keys were held in a lockbox in an office protected by a security alarm. Keller denied giving anyone access to Holmes' key and stated that the only time a PLK/Lakefront employee ever entered Holmes' apartment was pursuant to a work order submitted by Holmes.

C. Jessica Banks' Testimony

{¶11} Holmes next called Jessica Banks, the Lakefront property manager. Banks testified that she had never received a search warrant from any government entity regarding Holmes' apartment. Furthermore, no Lakefront employee had ever asked her to provide them with access to Holmes' apartment. She denied receiving any information about Holmes from any outside party.

{¶12} Banks testified that Holmes provided Lakefront with notice that she was vacating her apartment by September 4, 2020. Banks then put Holmes on the notice-to-vacate list and rented her apartment to another future tenant. When Holmes failed to vacate the apartment on September 4, Banks vaguely recalled calling Holmes and telling her she needed to leave the apartment. However, after Banks consulted with her regional manager, the decision was made to allow Holmes to stay in the apartment.

{¶13} Banks testified that she recalled there being an issue with Holmes' door key. She received an email from Holmes about her door lock. She was not in the office that day but asked her staff to take care of it. Her staff put in a work order and maintenance workers

found that a pin was out of position. Banks assumed that the maintenance workers rekeyed the lock. Holmes' new key was then left with the assistant property manager in the leasing office. Banks also testified that there was an issue with Holmes' mailbox lock, but that this had to do with a screw coming loose and maintenance was able to fix the issue just by tightening the screw. Thus, the mailbox lock was not rekeyed.

{¶14} Concerning what happened with Holmes' door lock, Banks testified that on a quickset bolt, occasionally the locking pins would slip. She stated that this could be due to changes in the weather. She testified this kind of occurrence was not unusual. Lakefront had 296 units and Banks had been a property manager at other apartment complexes over the prior five years. She estimated that she had seen locking pins slip in this manner 25 to 30 times.

{¶15} Banks testified that no one from Lakefront went into Holmes' unit or gave a key to anyone else to enter Holmes' unit. Furthermore, she testified that no one from Lakefront used Holmes' vacuum cleaner or cleaning supplies, and that Lakefront had its own vacuum cleaner and cleaning supplies.

III. Magistrate's and Area Judge's Decisions

{¶16} Following the hearing, the magistrate issued a decision recommending that Holmes' amended complaint be dismissed. Regarding the trespass claim, the magistrate found that Holmes failed to meet her burden to prove a common law trespass or that a violation of R.C. 5321.04(A)(8) occurred. The magistrate noted that Holmes had admitted that she never saw anyone from Lakefront in her apartment at any times when they were not invited, and that she could only assume that they entered the premises without her permission. The magistrate concluded that Holmes offered only conjecture that someone entered her apartment. The magistrate noted Banks' testimony that no one at Lakefront would have given anyone else access to Holmes' apartment. The magistrate also noted

Keller's and Bank's denials of having been involved in or assisted in any efforts to gain access to Holmes' apartment by the FBI.

{¶17} Regarding Holmes' claim for retaliation, the magistrate found that the only putative evidence of "retaliation" that was presented at the trial was testimony that Banks informed Holmes that she needed to leave the apartment. But Banks made this statement in the context of Holmes having told Lakefront she was vacating the premises by September 4 and Lakefront having re-rented the unit in reliance upon that notice. Other than this single conversation, Holmes presented no evidence of retaliation or any other improper attempt to evict Holmes. The magistrate noted that Lakefront in fact decided to allow Holmes to stay in the apartment even though Holmes had previously indicated she would move out, and that she was still living in the apartment at the time of trial. The magistrate found that Holmes had not met her burden to prove retaliation.

{¶18} The magistrate also briefly addressed those claims that it had already resolved and that Holmes agreed were not before the court at the trial. The magistrate reiterated that those claims were without merit.

{¶19} Finally, the magistrate noted that Holmes failed to present any evidence of damages resulting from any of Lakefront's actions.

{¶20} Holmes timely filed objections to the magistrate's decision. In April 2021, the area court judge overruled Holmes' objections and adopted the magistrate's decision as its own, thereby dismissing Holmes' amended complaint, including all her claims.

{¶21} Holmes appeals, raising two assignments of error.

IV. Law and Analysis

{¶22} Assignment of Error No. 1:

{¶23} THE TRIAL COURT ABUSED ITS DISCRETION IN VIOLATION OF OHIO RULE OF EVIDENCE 602.

{¶24} Holmes contends that the area court abused its discretion by considering portions of Banks' testimony. She argues that this testimony was inadmissible pursuant to Evid.R. 602 because it was not based on Banks' personal knowledge. Lakefront argues that Holmes failed to object to the testimony, and, even if she had, the testimony was admissible.

A. Standard of Review

{¶25} Decisions regarding the admission of evidence are within the sound discretion of the trial court and may not be reversed absent an abuse of discretion. *Proctor v. NJR Properties, L.L.C.*, 175 Ohio App.3d 378, 2008-Ohio-745, ¶ 14 (12th Dist.), citing *O'Brien v. Angley*, 63 Ohio St.2d 159, 163 (1980). An abuse of discretion implies that the court's attitude is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

B. Analysis

{¶26} Holmes challenges Banks' testimony concerning Holmes' apartment door being rekeyed and the issues with the mailbox lock. Holmes argues that this testimony was not based on Banks' first-hand knowledge and that it was merely an assumption. However, Holmes did not object to this testimony at the time of trial. "The failure to object to evidence at the trial constitutes a waiver of any challenge* * *." *Wilhoite v. Kast*, 12th Dist. Warren No. CA2001-01-001, 2002 WL 4524, *9 (Dec. 31, 2001).

{¶27} Not only did Holmes not object to Banks' testimony at trial, she also did not challenge the testimony in her objections to the magistrate's decision. The first time that Holmes ever mentioned Evid.R. 602 was in her reply memorandum in support of her objections to the magistrate's decision. Moreover, Banks was Holmes' witness, and it was Holmes who first elicited the testimony she now challenges when she asked Banks whether she recalled there being an issue with the door key. We find that Holmes waived her Evid.R.

602 argument for purposes of appellate review, with the exception for a review for plain error. *Wilhoite* at *9; *In re Swader*, 12th Dist. Warren No. CA2000-04-036, 2001 WL 121084, *6-7 (Feb. 5, 2001), citing Evid.R. 103(A)(1); *State v. Crawford*, 60 Ohio App.3d 61, 62 (6th Dist.1989). Plain error in the civil context is "extremely rare" and this court must find that the error involves "exceptional circumstances" where the error "rises to the level of challenging the legitimacy of the underlying judicial process itself." *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 122 (1997).

{¶28} Nothing about the admission of Bank's testimony indicates the "exceptional circumstances" where this court would find an error challenging the legitimacy of the judicial process. This is because even if the challenged testimony was in fact inadmissible and even if Holmes had not waived her argument challenging that testimony, the admission of that testimony did not change the outcome in this case.[1]

{¶29} The primary basis for the court's decision on the trespass claim was that Holmes failed to meet her burden of proof to demonstrate a trespass occurred. Indeed, the only evidence offered by Holmes with respect to trespass was her entirely speculative testimony about Lakefront entering her apartment or assisting an unknown governmental agency in entering her apartment. The only other "evidence" of trespass submitted by Holmes were three emails in which Holmes communicated with Lakefront concerning the lock or infestation issues, and three photographs depicting an empty makeup box, a vacuum cleaner clogged with some dust or debris, and a picture of some dust or debris. None of this evidence proved Holmes' trespass claim.

{¶30} The court did not need to rely on, much less consider, Banks' testimony

1. Any putative error here would also qualify as harmless error. An error is harmless in the civil context if it "does not affect [the] substantial rights of the complaining party, or the court's action is not inconsistent with substantial justice." *O'Brien*, 63 Ohio St.2d at 164, citing Civ.R. 61. Accord *In re P.R.P.*, 12th Dist. Butler No. CA2017-02-026, 2018-Ohio-216, ¶ 39-41.

concerning what happened with the locks to find that Holmes failed to meet her burden of proof. Accordingly, Holmes has not demonstrated the "exceptional circumstances" necessary to demonstrate an error that challenges the legitimacy of the judicial process. Therefore, she has not shown plain error and we overrule Holmes' first assignment of error.

{¶31} Assignment of Error No. 2:

{¶32} THE JUDGMENT OF THE TRIAL COURT IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶33} Holmes argues that the trial court's judgment in favor of Lakefront was not supported by the weight of the evidence.

C. Standard of Review

{¶34} "The standard of review for a manifest weight challenge in a civil case is the same as that applied to a criminal case." *Skyward Learning Servs., Inc. v. Gray*, 12th Dist. Butler No. CA2019-08-140, 2020-Ohio-1182, ¶ 10; *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, ¶ 17. When considering a challenge to the manifest weight of the evidence, this court weighs the evidence and all reasonable inferences, considers the credibility of witnesses, and determines whether in resolving conflicts in the evidence, the finder of fact clearly lost its way and created a manifest miscarriage of justice warranting reversal and a new trial ordered. *Hacker v. House*, 12th Dist. Butler No. CA2014-11-230, 2015-Ohio-4741, ¶ 21, citing *Eastley* at ¶ 20; *Carson v. Duff*, 12th Dist. Fayette Nos. CA2017-03-005 and CA2017-03-007, 2017-Ohio-8199, ¶ 11.

D. Analysis

{¶35} Holmes' argument in support of this assignment of error is difficult to understand. What can be discerned is that she is arguing that *Lakefront* failed to present credible evidence that it did not trespass on her property and that *Lakefront* did not prove that it did not retaliate against her based on telling her she needed to leave the apartment.

These arguments fundamentally misunderstand the applicable burden of proof.[2] At trial the burden was on *Holmes* to prove a trespass and retaliation, not on Lakefront to disprove a trespass and retaliation. As described in response to the first assignment of error, Holmes failed to submit any evidence of a trespass other than her own unfounded and uncorroborated speculation. Holmes also offered no evidence to establish that any retaliation occurred. To the contrary, the evidence indicated that Lakefront allowed her to remain in the apartment despite her notice to vacate.

{¶36} To the extent Holmes vaguely references issues directed toward habitability in her appellate brief, those issues are not properly before us because Holmes did not object to the magistrate's decision finding that Holmes failed to prove her habitability claims. Holmes specifically agreed with the magistrate that those claims had already been ruled upon and she registered no objection to the contrary.

{¶37} The area court did not lose its way in finding for Lakefront and dismissing Holmes' amended complaint. We overrule Holmes' second assignment of error.

{¶38} Judgment affirmed.

PIPER, P.J., and M. POWELL, J., concur.

2. Holmes' arguments in both the first and second assignment of error suggest that she believes that Lakefront had the burden of proof in this case. Holmes is mistaken. But while Holmes is mistaken, litigants who proceed pro se are held to the same standard as those who are represented by counsel. *Stiles v. Hayes*, 12th Dist. Madison No. CA2015-01-007, 2015-Ohio-4141, ¶ 18. As a result, a pro se litigant is presumed to have knowledge of the law and correct legal procedures so that she remains subject to the same rules and procedures to which represented litigants are bound. *Id.* "Pro se litigants are not to be accorded greater rights and must accept the results of their own mistakes and errors, including those related to correct legal procedure." *Cox v. Zimmerman*, 12th Dist. Clermont No. CA2011-03-022, 2012-Ohio-226, ¶ 21.

Appendix J

Appellant raised two assignments of error in her appeal. First, appellant argued that the trial court erred by considering testimony about changing the lock on her apartment mailbox and rekeying the door lock that was inadmissible pursuant to Evid.R. 602 (lack of personal knowledge). This court found that appellant had not objected to this testimony at trial, and had not established plain error because the challenged testimony did not affect the outcome of the case.

In her second assignment of error, appellant appeared to argue that Lakefront had not met its burden of proof to demonstrate that it had not retaliated against her. This court's opinion pointed out that appellant's argument demonstrated a fundamental misunderstanding of the burden of proof because the burden was on appellant to prove her case.

In her application for reconsideration, appellant argues that she did not waive the Evid.R. 602 argument that she raised on appeal; that Lakefront violated R.C. 5321.15 (regarding landlord self-help) when it changed the locks; and that it was reasonable for her to believe that a Lakefront employee entered her apartment and changed the locks without authorization. Appellant argues that she presented evidence of retaliation because "Lakefront authorized the change to appellant's mailbox lock without providing her prior notice, explanation or obtaining her consent."

Appellant's arguments fail to demonstrate an obvious error in the court's decision or raise an issue for consideration which was either not considered at all or not fully considered. Holmes fails to articulate, and it is not otherwise clear, how a change to her mailbox lock demonstrates retaliation. Appellant also claims that Lakefront retaliated against her by calling her and telling her she needed to move out,

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

ROSALIND HOLMES,

Appellant,

vs.

LAKEFRONT AT WEST CHESTER,

Appellee.

CASE NO. CA2021-05-046
REGULAR CALENDAR

ENTRY DENYING APPLICATION FOR RECONSIDERATION

The above cause is before the court pursuant to an application for reconsideration filed by appellant, Rosalind Holmes, on March 14, 2022. In an opinion filed on January 18, 2022, this court affirmed a decision by the Butler County Area III Court that dismissed appellant's claims for trespass and retaliation against her landlord, Lakefront at West Chester.

When this court reviews an application for reconsideration it determines whether the application calls the attention of the court to an obvious error in its decision, or raises an issue for consideration which was either not considered at all or not fully considered by the court when it should have been. *BAC Home Loans Servicing, LP v. Kolenich*, 12th Dist. Butler No. CA2012-01-001, 2013-Ohio-155. An application for reconsideration is not designed for use in instances where a party simply disagrees with the conclusions reached and the logic used by an appellate court. *State v. Owens*, 112 Ohio App.3d 334 (11th Dist. 1996).

but the Area III Court found that this was in the context of appellant having previously told Lakefront that she was leaving, and after Lakefront had re-rented her apartment to another tenant.

Based upon the foregoing, the application for reconsideration is DENIED.

IT IS SO ORDERED.

Matthew R. Byrne, Judge

Robin N. Piper, Judge

Mike Powell, Judge

Appendix K

Supreme Court of Ohio Clerk of Court - Filed August 30, 2022 - Case No. 2022-0793

The Supreme Court of Ohio

Lakefront of West Chester, LLC	Case No. 2022-0793
v.	ENTRY
Rosalind Holmes	

Upon consideration of the jurisdictional memoranda filed in this case, the court declines to accept jurisdiction of the appeal pursuant to S.Ct.Prac.R. 7.08(B)(4).

(Butler County Court of Appeals; No. CA2021-09-108)

Maureen O'Connor
Chief Justice

Appendix L

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

LAKEFRONT AT WEST CHESTER, LLC,
Plaintiff,

vs.

ROSALIND HOLMES,
Defendant.

Case No. 1:21-cv-444
Dlott, J.
Litkovitz, M.J.

REPORT AND RECOMMENDATION

Defendant Rosalind Holmes filed a pro se motion to remove a state court civil action to the United States District Court. (Doc. 1-2; Doc. 8). This matter is before the Court on Ms. Holmes's motion "for Removal to Federal Court" (Doc. 1-2; Doc. 8), plaintiff Lakefront at West Chester, LLC ("Lakefront")'s motion to remand this matter to the Butler County, Ohio Area III Court on the grounds that this federal court lacks subject matter jurisdiction over the state court case (Doc. 2), and Ms. Holmes's "motion in opposition of remand" (Doc. 12). This matter is also before the Court on plaintiff's motions to file under seal (Doc. 3), to appoint counsel (Docs. 4, 11), and to authorize electronic filing privileges (Doc. 9) and on Lakefront's motion for bond under Ohio Rev. Code § 1923.08 (Doc. 14).

Ms. Holmes is a party-defendant in a state court eviction action in the Butler County, Ohio Area III Court. Lakefront filed a complaint for eviction and money damages against Ms. Holmes on June 16, 2021. (Doc. 8 at PAGEID 125-129). The complaint alleges that Ms. Holmes was served with a written notice of termination of tenancy on March 22, 2021 to vacate by May 20, 2021. Ms. Holmes failed to vacate the premises and was served with a notice to vacate for holding over the term on June 5, 2021. That tenancy expired on June 8, 2021, prompting the filing of the forcible entry and detainer action by Lakefront. (*Id.*)

On June 30, 2021, Ms. Holmes filed her motion for removal in this federal court. (Doc. 1-2). Ms. Holmes alleges removal of the state court forcible entry and detainer action to this federal court is appropriate based on her "affirmative defense" of "Housing Discrimination under 42 U.S.C. 3601(a)(b) & -- 42 U.S.C. 3601," which she states arises under the federal question jurisdiction of the Court. (Doc. 8 at PAGEID 110).

This Court lacks subject matter jurisdiction over this removed state court eviction action. Removal is governed by 28 U.S.C. § 1441 which provides in relevant part: "[A]ny civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending." 28 U.S.C. § 1441(a). Thus, "[o]nly state-court actions that originally could have been filed in federal court may be removed to federal court by the defendant." *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987). The defendant carries the burden of showing that removal is proper and that the federal court has original jurisdiction to hear the case. *See Vill. of Oakwood v. State Bank and Tr. Co.*, 539 F.3d 373, 377 (6th Cir. 2008) (citing *Ahearn v. Charter Twp. of Bloomfield*, 100 F.3d 451, 453-54 (6th Cir. 1996)). The removal statute is to be strictly construed and where jurisdiction is in doubt, the matter should be remanded to the state court. *See Brierly v. Alusuisse Flexible Packaging, Inc.*, 184 F.3d 527, 534 (6th Cir. 1999).

The Court cannot discern a basis for federal question jurisdiction in this matter. District courts have original federal question jurisdiction over cases "arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. In determining whether an action has been properly removed to federal court, the Court must examine the face of the state court plaintiff's

well-pleaded complaint. Under the well-pleaded complaint rule, district courts have federal question removal jurisdiction over "only those cases in which a well-pleaded complaint establishes either that federal law creates the cause of action or that the plaintiff's right to relief necessarily depends on resolution of a substantial question of federal law." *Franchise Tax Bd. v. Constr. Laborers Vacation Tr.*, 463 U.S. 1, 27-28 (1983). In other words, a case arises under federal law when an issue of federal law appears on the face of the plaintiff's well-pleaded complaint. *Caterpillar*, 482 U.S. at 392; *Metro. Life Ins. Co. v. Taylor*, 481 U.S. 58, 63 (1987). The plaintiff is the master of the claim and may avoid federal jurisdiction by exclusive reliance on state law. *See Caterpillar*, 482 U.S. at 392. *See also Berera v. Mesa Med. Grp., PLLC*, 779 F.3d 352, 357 (6th Cir. 2015) ("Under the well-pleaded complaint rule, the plaintiff 'is master to decide what law he will rely upon.'") (quoting *Loftis v. United Parcel Serv., Inc.*, 342 F.3d 509, 515 (6th Cir. 2003)). In addition, "it is now settled law that a case may *not* be removed to federal court on the basis of a federal defense . . . even if the defense is anticipated in the plaintiff's complaint, and even if both parties concede that the federal defense is the only question truly at issue." *Caterpillar*, 482 U.S. at 393 (emphasis in the original) (citing *Franchise Tax Bd.*, 463 U.S. at 12). *See also Beneficial Nat'l Bank v. Anderson*, 539 U.S. 1, 6 (2003); *Metro. Life*, 481 U.S. at 63; *Chase Manhattan Mortg. Corp.* v. Smith, 507 F.3d 910, 914-15 (6th Cir. 2007).

Ms. Holmes has failed to establish this Court has original federal question jurisdiction over this case. The state court complaint does not show this case arises under the Constitution or laws of the United States. Ms. Holmes appears to contend that Lakefront violated her civil rights in connection with the state court eviction proceeding. However, even if Ms. Holmes asserts a

2. Lakefront's motion to remand this matter to the Butler County, Ohio Area III Court (Doc. 2) be **GRANTED**.

3. Plaintiff's motions to file under seal (Doc. 3), to appoint counsel (Docs. 4, 11), and to authorize electronic filing privileges (Doc. 9) and Lakefront's motion for bond under Ohio Rev. Code § 1923.08 (Doc. 14) be **DENIED** as moot.

4. This matter be **DISMISSED** from the docket of the Court for lack of subject matter jurisdiction.

5. This matter be **REMANDED** to the state court. *See* 28 U.S.C. § 1447(c).

Date: 7/16/2021

Karen L. Litkovitz
United States Magistrate Judge

federal defense to the state court eviction action, the existence of a defense based upon federal law is insufficient to support removal jurisdiction. *Franchise Tax Bd.*, 463 U.S. at 8-12; *Chase Manhattan Mortg. Corp.*, 507 F.3d at 914-15. Therefore, Ms. Holmes has failed to meet her burden of showing federal question jurisdiction in this matter.

In her response in opposition to Lakefront's motion to remand, Ms. Holmes alleges that the "U.S. District Court has jurisdiction over Lakefront's artfully plead (sic) state law answer and counterclaim because it arises out of incidents and or occurrences described in Rosalind Holmes' Title VIII housing discrimination complaint." (Doc. 12 at PAGEID 187). Ms. Holmes contends:

> Since Lakefront's eviction proceedings arise from the same incidents or occurrences as described in Rosalind Holmes' Title VIII housing discrimination complaint they are properly classified as an answer and counterclaim. In both eviction pleadings, Lakefront improperly failed plead any defenses to or mention Rosalind Holmes' May 7, 2021, Title VIII housing discrimination complaint filed against them. Therefore, Plaintiffs have attempted to avoid federal jurisdiction by filing independent eviction actions without ever pleading any defenses to or mentioning Rosalind Holmes' related complaint of Title VIII housing discrimination. Moreover, Lakefront's improperly drafted independent eviction actions are answers and counterclaims artfully crafted to evade federal jurisdiction. "A plaintiff cannot avoid federal court simply by omitting a necessary federal question in the complaint; in such a case the necessary federal question will be deemed to be alleged in the complaint." 15 Moore's Federal Practice 103.43.

(Doc. 12 at PAGEID 189).

Ms. Holmes is correct that there are exceptions to the well-pleaded complaint rule, including the artful-pleading doctrine:

> Under the artful-pleading doctrine, "plaintiffs may not avoid removal jurisdiction by artfully casting their essentially federal law claims as state-law claims." . . . Where it appears that the plaintiff may have carefully crafted her complaint to circumvent federal jurisdiction, "we consider whether the facts alleged in the complaint actually implicate a federal cause of action."

Berera, 779 F.3d at 358 (quoting *Mikulski v. Centerior Energy Corp.*, 501 F.3d 555, 560, 561 (6th Cir. 2007)). However, Lakefront's state court complaint is not camouflaged to avoid stating a federal claim. The state court complaint alleges that Ms. Holmes failed to vacate the premises after the termination of her tenancy, which does not implicate any federal claim. Rather, it is Ms. Holmes who is attempting to raise a federal defense of housing discrimination in response to the eviction action. The artful-pleading doctrine simply does not apply in this situation.

Ms. Holmes also contends that Lakefront was required to bring its eviction action as a compulsory counterclaim in response to her state court housing discrimination complaint, *see Holmes v. Lakefront at West Chester*, No. CV 2021 05 0639 (Butler County Court of Common Pleas May 7, 2021),[1] which was filed on May 7, 2021.[2] Even if Ms. Holmes were correct, this would not permit Ms. Holmes to remove the eviction counterclaim to federal court. The federal removal statute provides: "[A]ny civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending." 28 U.S.C. § 1441(a). Under the plain terms of the statute, the right to remove is limited to "the defendant or defendants." *Id.* This means that a plaintiff

[1] Ms. Holmes's complaint alleges she was discriminated against on the basis of her race, African American, and retaliated against for engaging in protected activities. The complaint alleges that Ms. Holmes discovered water bugs in her apartment; that her mailbox lock had been changed without her knowledge or consent; that someone had been opening and closing her front door without her consent and she had been experiencing similar harassment at every apartment community in which she had lived; that Lakefront had engaged in a conspiracy with the Federal Bureau of Investigation, the City of Cincinnati, the State of Ohio, and others to retaliate against her for filing a federal discrimination lawsuit and an attorney misconduct complaint; that someone broke into her apartment and stole legal paperwork and files; and that "the FBI, City of Cincinnati, State of Ohio and others including Lakefront and PLK have engaged in warrantless surveillance of plaintiff's (sic) and entry," among other claims. (*Id.*, complaint ¶ 17).

[2] "Federal courts may take judicial notice of proceedings in other courts of record." *Rodic v. Thistledown Racing Club, Inc.*, 615 F.2d 736, 738 (6th Cir. 1980) (quoting *Granader v. Pub. Bank*, 417 F.2d 75, 82 83 (6th Cir. 1969)). *See also Nat'l Union Fire Ins. Co. v. VP Bldgs., Inc.*, 606 F.3d 835, 839 n.2 (6th Cir. 2010); *Lyons v. Stovall*, 188 F.3d 327, 332 n.3 (6th Cir. 1999).

who files suit in state court is precluded from removing a case to federal court, even if that person is later named as a counterclaim defendant. *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108 (1941). *See also Home Depot U. S. A., Inc. v. Jackson*, 139 S. Ct. 1743, 1748 (2019) ("§ 1441(a) does not permit removal by any counterclaim defendant, including parties brought into the lawsuit for the first time by the counterclaim."). Because Ms. Holmes is the plaintiff in the state court civil rights action, she would not be authorized to remove the case from state to federal court even if Lakefront filed its eviction action against Ms. Holmes as a counterclaim.

In addition, Ms. Holmes may not remove the state court action based on the Court's diversity jurisdiction under 28 U.S.C. § 1332. Removal based on diversity of citizenship is proper only where the defendants are not citizens of the forum state. The removal statute provides that a civil action "may not be removed if any of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought." 28 U.S.C. § 1441(b)(2). Even if there is complete diversity among the parties, the presence of a properly joined and served resident defendant bars removal. *Chase Manhattan Mortg. Corp.*, 507 F.3d at 914; *Fed. Nat'l Mortg. Ass'n v. LeCrone*, 868 F.2d 190, 194 (6th Cir. 1989). Because Ms. Holmes is an Ohio resident, removal on the basis of diversity jurisdiction is barred under 28 U.S.C. § 1441(b).

Accordingly, the Court lacks subject matter jurisdiction over this action.

IT IS THEREFORE RECOMMENDED THAT:

1. Ms. Holmes's motion to remove a state court civil action to the United States District Court (Doc. 1-2; Doc. 8) and "motion in opposition of remand" (Doc. 12) be **DENIED**.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

LAKEFRONT AT WEST CHESTER, LLC,
Plaintiff,

vs.

ROSALIND HOLMES,
Defendants.

Case No. 1:21-cv-444
Dlott, J.
Litkovitz, M.J.

NOTICE

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to this Report & Recommendation ("R&R") within **FOURTEEN (14) DAYS** after being served with a copy thereof. That period may be extended further by the Court on timely motion by either side for an extension of time. All objections shall specify the portion(s) of the R&R objected to, and shall be accompanied by a memorandum of law in support of the objections. A party shall respond to an opponent's objections within **FOURTEEN DAYS** after being served with a copy of those objections. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn,* 474 U.S. 140 (1985); *United States v. Walters,* 638 F.2d 947 (6th Cir. 1981).

Appendix M

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Lakefront at West Chester, LLC.,	:	
	:	
Plaintiff,	:	
	:	Case Number: 1:21cv444
vs.	:	
	:	Judge Susan J. Dlott
Rosalind Holmes,	:	
	:	
Defendant.	:	

ORDER

This matter is before the Court pursuant to the Order of General Reference in the United States District Court for the Southern District of Ohio Western Division to Karen L. Litkovits, United States Magistrate Judge . Pursuant to such reference, the Magistrate Judge reviewed the pleadings and filed with this Court on July 19, 2021 Report and Recommendations (Doc. 16). Subsequently, the defendant filed objections and amended objections to such Report and Recommendations (Docs. 21 and 24).

The Court has reviewed the comprehensive findings of the Magistrate Judge pursuant to Federal Rule of Civil Procedure 72(b)(3) and considered de novo all of the filings in this matter. Upon consideration of the foregoing, the Court does determine that such Recommendations should be adopted.

1. Accordingly, Ms. Holmes's motion to remove a state court civil action to the United States District Court (Doc. 1-2; Doc. 8) and "motion in opposition of remand" (Doc. 12) are **DENIED.**

2. Lakefront's motion to remand this matter to the Butler County, Ohio Area III Court

(Doc. 2) is **GRANTED.**

3. Holmes's motions to file under seal (Doc. 3), to appoint counsel (Docs. 4, 11), to authorize electronic filing privileges (Doc. 9), and to withdraw notice of removal (Doc. 17), as well as her amended motion for removal to federal court (Doc. 19) are **DENIED** as moot.

4. Lakefront's motion for bond under Ohio Rev. Code § 1923.08 (Doc. 14) and motion to strike (Doc. 22) are **DENIED** as moot.

5. This matter is **DISMISSED** from the docket of the Court for lack of subject matter jurisdiction.

6. This matter is **REMANDED** to the state court. *See* 28 U.S.C. § 1447(c).

IT IS SO ORDERED.

Susan J. Dlott
United States District Court

Appendix N

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Deborah S. Hunt
Clerk

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Filed: August 17, 2021

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1055 St. Paul Place
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Ms. Rosalind Holmes
4557 Wyndtree Drive
Apartment 145
West Chester, OH 45069

Re: Case No. 21-3731, *Lakefront at Westchester, LLC v. Rosalind Holmes*
Originating Case No. 1:21-cv-00444

Dear Ms. Holmes and Counsel,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Virginia Lee Padgett
Case Manager
Direct Dial No. 513-564-7032

cc: Mr. Richard W. Nagel

Enclosure

No mandate to issue

No. 21-3731

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

LAKEFRONT AT WEST CHESTER, LLC,

Plaintiff-Appellee,

v.

ROSALIND HOLMES,

Defendant-Appellant.

ORDER

Before: SUTTON, Chief Judge; GIBBONS and DONALD, Circuit Judges.

Defendant Rosalind Holmes appeals a district court order remanding the underlying action to state court based on lack of subject matter jurisdiction. Holmes moves, as she does in appeal No. 21-3175, for an emergency stay of the August 18, 2021, eviction proceeding against her, and requests related injunctive relief. She also moves to seal her motion to stay, as it refers to her confidential medical records; however, she has already filed her motion in redacted form.

We have appellate jurisdiction over "final decisions of the district courts." 28 U.S.C. § 1291; *Rowland v. S. Health Partners, Inc.*, 4 F.4th 422, 425 (6th Cir. 2021). "A final decision is one that 'ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.'" *Rowland*, 4 F.4th at 425 (quoting *Catlin v. United States*, 324 U.S. 229, 233 (1945)). "A remand order based on the lack of subject matter jurisdiction is not a final judgment for the purposes of 28 U.S.C. § 1291." *Am. Mar. Officers v. Marine Eng'rs Beneficial Ass'n, Dist. No. 1*, 503 F.3d 532, 535 (6th Cir. 2007); *see Baldridge v. Ky.-Ohio Transp., Inc.*, 983 F.2d

1341, 1343 (6th Cir. 1993). Despite Holmes's repeated assertions that her housing discrimination defense suffices to establish a federal question in this eviction proceeding, the district court properly remanded the matter to the state court for lack of subject-matter jurisdiction. *See Holmes Grp., Inc. v. Vornado Air Circulation Sys., Inc.*, 535 U.S. 826, 831 (2002).

Accordingly, the appeal is **DISMISSED**, *sua sponte*, for lack of jurisdiction. The motions to stay and to seal are **DENIED AS MOOT.**

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

Appendix O

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Deborah S. Hunt
Clerk

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Filed: August 17, 2021

Ms. Kathleen Marie Anderson
Barnes & Thornburg
600 One Summit Square
Fort Wayne, IN 46802

Ms. Rosalind Holmes
4557 Wyndtree Drive
Apartment 145
West Chester, OH 45069

Re: Case No. 21-3715, *Rosalind Holmes v. USA, et al*
Originating Case No. : 1:20-cv-00825

Dear Sir or Madam,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/C. Anthony Milton
Case Manager
Direct Dial No. 513-564-7026

cc: Mr. Richard W. Nagel

Enclosure

No mandate to issue

No. 21-3715

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ROSALIND HOLMES,

Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA, et al.,

Defendants-Appellees.

ORDER

Before: SUTTON, Chief Judge; GIBBONS and DONALD, Circuit Judges.

Following the voluntary dismissal of her final remaining claim, Plaintiff Rosalind Holmes appeals, for the third time, a district court order dismissing twenty-three of her twenty-four claims against Defendants and, for the second time, a magistrate judge's order denying her motions for appointment of counsel and to seal in this action arising from alleged violations of the United States Constitution, federal statutes, and Ohio state law. Holmes moves to stay an alleged upcoming August 18, 2021, eviction proceeding against her pending this court's review of her appeal on the merits and requests related injunctive relief. Although the eviction proceeding stems from a discrete action filed in county court, she claims that, because the case involves a substantial federal question, the United States District Court can exercise its inherent powers to remedy the issue. She also moves to seal her motion to stay, as it refers to her confidential medical records; however, she has already filed her motion in redacted form.

This court has appellate jurisdiction over "final decisions of the district courts." 28 U.S.C. § 1291; *Rowland v. S. Health Partners, Inc.*, 4 F.4th 422, 425 (6th Cir. 2021). "A final decision is one that 'ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.'" *Rowland*, 4 F.4th at 425 (quoting *Catlin v. United States*, 324 U.S. 229, 233 (1945)). With certain narrow exceptions not applicable here, "the finality requirement establishes a one-case, one-appeal rule." *Page Plus of Atlanta, Inc. v. Owl Wireless, LLC*, 733 F.3d 658, 659 (6th Cir. 2013). "This rule 'guards against piecemeal appeals that permit litigants to second-guess the district court at each turn, harming the district court's ability to control the litigation in front of it and consuming finite appellate court resources along the way.'" *Rowland*, 4 F.4th at 425 (quoting *Page Plus*, 733 F.3d at 659).

We have twice held that a voluntary dismissal without prejudice under Federal Rule of Civil Procedure 41 does not create a final order under 28 U.S.C. § 1291. *See Page Plus*, 733 F.3d at 659–60; *Rowland*, 4 F.4th at 425–26. We reasoned that we lack jurisdiction over an appeal following a voluntary dismissal under Rule 41 where a litigant seeks to "circumvent the requirements of Rule 54(b)" because "[s]uch attempts at obtaining an effectively interlocutory appeal contravene the purpose of the finality requirement." *Rowland*, 4 F.4th at 424, 426. Further, when a claim is dismissed without prejudice and, thus, "may 'come back on a second appeal,' it is appropriate to conclude that 'the decision cannot be considered final.'" *Id.* at 428 (quoting *Page Plus*, 733 F.3d at 661).

Notably, Congress created two "safety valves" in the event that the finality requirement "bar[s] appeals where the benefits of an immediate appeal from a non-final order outweigh the costs": Federal Rule of Civil Procedure 54(b), which "permits a district court to enter final judgment 'as to one or more, but fewer than all, claims or parties' when 'there is no just reason

for delay'"; and 28 U.S.C. § 1292(b), which "permits a district court to certify an order involving a central, controlling question of law for immediate appeal when such an appeal 'may materially advance the ultimate termination of the litigation.'" *Page Plus*, 733 F.3d at 659–60 (first quoting Fed. R. Civ. P. 54(b); then quoting 28 U.S.C. § 1292(b)). But neither safety valve applies here. In addition, we have acknowledged in passing that "appellate jurisdiction might possibly still exist where . . . the parties voluntarily dismiss all remaining claims without prejudice before appealing the claims actually resolved below." *Rowland*, 4 F.4th at 427 (citing *Page Plus*, 733 F.3d at 661). In other words, "finality might be established" in extenuating circumstances. *Id.*

But these qualifications create a possibility of finality, not a guarantee. And we see no extenuating circumstances here. Here, as in *Rowland*, Holmes dismissed her remaining claim "for the purpose of pursuing what would otherwise be an interlocutory appeal on other issues." *Id.* at 426. Following two unsuccessful appeals of the district court's partial dismissal order and its denial of her motion for a final appealable order under Rule 54(b), Holmes has now voluntarily dismissed her final—and presumably only viable—claim in an attempt to once again appeal the district court's dismissal of her other twenty-three claims. However, because her dismissal is without prejudice, she is not precluded from re-filing her claim against Georgia Pacific. Any other approach would facilitate an end run around Rule 54 in most cases, including this one. *Id.* at 427; *Page Plus*, 733 F.3d at 661–62.

We also lack jurisdiction to review Holmes's appeal from the magistrate judge's order denying her motions for appointment of counsel and to seal. Any review of the magistrate judge's order must first be sought in the district court. *Ambrose v. Welch*, 729 F.2d 1084, 1085 (6th Cir. 1984) (per curiam).

Accordingly, the appeal is **DISMISSED**, *sua sponte*, for lack of jurisdiction. The motions to stay and to seal are **DENIED AS MOOT**.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

Appendix P

86

Butler County
Area III Court

1

AUG 19 2021

FILED

BUTLER COUNTY COURT, AREA III
9577 Beckett Rd - Suite 300
West Chester, Ohio 45069

Lakefront At West Chester, Llc	:	Case CVG 2100651
-VS-	:	
Holmes, Rosalind	:	FORCIBLE ENTRY
	:	DETAINER ACTION

* * * * * * * * * * * *

This matter came on for hearing on the Plaintiff/Landlord's (hereinafter referred to as landlord) first cause of action on 08/18/2021 .

The court finds that all Defendants/Tenants (hereinafter referred to as tenant) have been properly served within the time, and in the manner, prescribed by law and that all parties were properly notified of the date and time of this hearing.

_____ The landlord having failed to appear this cause is hereby dismissed without prejudice. _____

_____ The landlord having failed to prove the allegations of the complaint by the required degree of proof, this case is hereby dismissed. _____

__X__ The tenant has failed to file a responsive pleading and having failed to appear at this hearing they are in default and the allegations contained in landlord's complaint are therefore admitted by the tenant to be true. _____ IBT

_____ The landlord and tenant having both appeared and after considering the pleadings and testimony of the parties and witnesses, if any, and exhibits, if any, the court finds:

_____ That the tenant was served with the notice required by ORC section 1923.04 at least three days prior to the filing of the complaint herein and that the landlord is entitled to restitution of the premised due to:

_____ The tenant's failure to timely pay rent that was due.

__X__ Court was set for 8:30am, but not heard till 9:00am. Defendant did not appear for the hearing. Deny request for stay. Lease ended in May 2021 and Defendant is still on property. Last rent paid through May 20, 2021. Has not paid any rent or posted a bond with this court or Federal court. Plaintiff provided all proper notices to Defendant.

_____ In favor of the tenant and orders the case dismissed with costs to the landlord.

_____ The case is hereby dismissed at the request of the plaintiff.

It is therefore ordered that the tenant vacate the premises by the __27__ day of August, 2021 by Noon PM

It is further ordered that a hearing on the plaintiff's second cause of action is set for ____ day of _____, _____ at _____ AM/PM

IBT

Magistrate

THIS IS A FINAL APPEALABLE ORDER OF THE COURT.

IBT

Judge, C. Caparella-Kraemer

Appendix Q

BUTLER COUNTY AREA III COURT
West Chester, Ohio 45069
(513) 867-5070

LAKEFRONT OF WEST CHESTER, LLC.	:	**Case No. CVG2100651**
Plaintiff,	:	
vs.	:	**DECISION AND ENTRY DENYING MOTION TO SET ASIDE**
ROSALIND HOLMES	:	
Defendant.	:	**(FINAL APPEALABLE ORDER)**

This matter has come before the court pursuant to Rosalind Holmes's Motion To Set Aside Eviction Judgment. The court has thoroughly reviewed the record in this case, and, for the following reasons, the court denies her motion.

This eviction action was filed on June 16, 2021. The allegations were that Holmes's lease term was up and that Lakefront was not going to renew it with her. The matter was scheduled for a hearing on June 30, but the day before, on June 29, Holmes filed a Notice of Filing of Removal, claiming that she was attempting to have the eviction matter removed to federal court. The court continued the case until July 7 in order for the parties to provide authority regarding Holmes's ability to remove a state eviction action to federal court.

At the July 7 hearing, the magistrate did grant Holmes's request for a stay and ordered plaintiff to notify this court once the federal court had decided the issue.

On July 19, the federal magistrate judge issued a Report and Recommendation that the motion to remove be denied and that the eviction case be remanded to this court. On July 20, this court, having been informed of the magistrate judge's Recommendation, scheduled the eviction hearing for August 18, 2021. Notice of this hearing was sent to both parties. On August

3, 2021, the federal court adopted in full the Report and Recommendation of the magistrate judge, and formally remanded the eviction case to this court.

On August 10, Holmes filed in this court a Notice of Filing Of A Motion For A Stay And Temporary Restraining Order In The U.S. District Court. In effect, Holmes was requesting a second stay of the eviction proceedings. Crucially, as it pertains to the current motion to set aside the eviction, Holmes, in her Conclusion at page 3, states: "Defendant respectfully provides notice to this Court that she will not be attending the August 18, 2021 eviction proceedings in the Area III Court." And on August 16, two days before the eviction hearing, Holmes filed a Notice Of The Filing Of An Emergency Motion For A Stay And Temporary Restraining Order And For A Temporary Stay Pending Consideration Of The Motion In The U.S. Court Of Appeal For The Sixth Circuit. Also on page 3 of that document, Holmes again announced that she would not be attending the August 18 eviction hearing.

On August 18, the court called the case to be heard. Plaintiff was present and so was counsel for plaintiff. Holmes was not present, nor did she call in to the court explaining that she was sick and unable to appear. The case was called for a hearing shortly after 9:00 a.m., even though it had been scheduled for 8:30 a.m. The court heard evidence in Holmes's absence that her lease was up in May, that she had paid rent through May 21, which was the end of her lease term, that she had not paid any rent since that date, that Lakefront provided Holmes with a 30 day notice to vacate, followed by a 3 day notice, and that Holmes was still occupying the property. In light of this testimony, the magistrate ordered Holmes to vacate the property by August 27, 2021 at noon.

On August 24, Holmes filed the current motion to set aside the eviction judgment. She claims in her motion that she was sick on August 18 with upper respiratory symptoms, vomiting,

etc. and that she was incapable of attending the hearing. She attached a note from Urgent Care, which says nothing about what symptoms Holmes may have had, what diagnosis the doctor provided, or any other information about her illness. The note is dated on August 19, the day **after** the eviction hearing, and states that Holmes can return to work on August 21.

The above facts indicate that there has been substantial delay in what is supposed to be an expeditious and summary proceeding. See *Showe Management Corp. v. Mountjoy*, 12th Dist., 2020-Ohio-2772. This court granted Holmes a stay until the federal court determined that it would not hear the case. And then Holmes notified the court—twice—that she had no intention of appearing at the August 18 eviction hearing. At the time of the hearing, Holmes did not call in to the court to explain that she was ill, could not attend, and request a further delay for that reason. Instead, she waited until the day after the hearing to go to Urgent Care. Given Holmes's earlier statements in her filings that she did not intend to attend the hearing, the court is skeptical about the true nature of her illness.

The court has considered all the above facts and determines that this case has been delayed long enough. Holmes has had ample opportunity to oppose the eviction and has succeeded in delaying it for three months. The court is not convinced that she was ill and could not attend the August 18 hearing. Accordingly, Holmes's request to set aside the eviction is hereby DENIED.

Courtney Caparella-Kraemer /BT

Judge Courtney Caparella-Kraemer

cc: Amy Higgins, Esq.
Rosalind Holmes

X A copy of the Decision and Entry Denying Motion to Set Aside in the above-captioned matter was mailed to Plaintiff and Defendant this 26th day of August, 2021.

B. Thornsburg
Deputy Clerk

Appendix R

BUTLER COUNTY AREA III COURT
West Chester, Ohio 45069
(513) 867-5070

LAKEFRONT OF WEST CHESTER, LLC.	:	**Case No. CVG2100651**
Plaintiff,	:	
vs.	:	
ROSALIND HOLMES	:	**ENTRY DENYING MOTION TO RECONSIDER**
Defendant.	:	

On August 26, 2021, this court issued a Decision and Entry in which the court denied Rosalind Holmes's Motion to Set Aside her Eviction. The court denoted the Entry as a Final Appealable Order. On August 30, 2021, Holmes filed a Motion to Reconsider this court's August 26 Entry. In support of her motion, Holmes attached additional documentation of her illness that she claimed prevented her from appearing at the court's August 18 hearing. She also attached an email that she had sent to Lakefront to corroborate her complaint that Lakefront was harassing her by allowing foul odors to circulate through her air conditioning vents. Finally, she attached some documents purporting to verify that she had contacted the court on two occasions on August 18.

Despite Holmes's claims that she was unable to attend the August 18 hearing, this court denied her Motion to Set Aside the eviction on August 26. This was a final, appealable order. Holmes has now asked the court to reconsider that final order. But the law is quite clear that a court has no authority to reconsider its decision once it has been incorporated into a final, appealable order. Any decision purporting to reconsider it is a nullity and is ineffective. *Pitts v. Ohio Department of Transportation*, 67 Ohio St.2d 378, 423 N.E.2d 1105 (1981)(syllabus); *State*

v. Taggart, 12th Dist., 2021-Ohio-1350, ¶12. This court therefore has no authority to reconsider its August 26 Decision, and, for that reason, the Motion to Reconsider is hereby DENIED.

Judge Courtney Caparella-Kraemer

cc: Amy Higgins, Esq.
Rosalind Holmes

X A copy of the Entry Denying Motion to Reconsider in the above-captioned matter was mailed to Plaintiff and Defendant this 1 day of September, 2021.

Deputy Clerk

IN THE COURT OF APPEALS OF BUTLER COUNTY, OHIO

LAKEFRONT AT WEST CHESTER, LLC,	CASE NO. CA2021-09-108 ACCELERATED CALENDAR
Appellee,	
vs.	ENTRY DENYING EMERGENCY MOTION FOR STAY PENDING APPEAL
ROSALIND HOLMES,	
Appellant.	

The above cause is before the court pursuant to an emergency motion for stay pending appeal filed by appellant, Rosalind Holmes, on September 3, 2021.

Upon consideration of the foregoing, the motion is DENIED.

IT IS SO ORDERED.

Robin N. Piper, Judge

Mike Powell, Judge

Appendix S

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ROSALIND HOLMES,

Plaintiff,

vs.

LAKEFRONT AT WEST CHESTER, LLC,

Defendant.

Case No. 1:21-cv-505

Black, J.
Bowman, M.J.

REPORT AND RECOMMENDATION

Plaintiff, a resident of Cincinnati, brings this action against Lakefront at West Chester, LLC. By separate Order issued this date, plaintiff has been granted leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. This matter is before the Court for a *sua sponte* review of plaintiff's complaint to determine whether the complaint, or any portion of it, should be dismissed because it is frivolous, malicious, fails to state a claim upon which relief may be granted or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. §1915(e)(2)(B).

In enacting the original *in forma pauperis* statute, Congress recognized that a "litigant whose filing fees and court costs are assumed by the public, unlike a paying litigant, lacks an economic incentive to refrain from filing frivolous, malicious, or repetitive lawsuits." *Denton v. Hernandez,* 504 U.S. 25, 31 (1992) (quoting *Neitzke v. Williams,* 490 U.S. 319, 324 (1989)). To prevent such abusive litigation, Congress has authorized federal courts to dismiss an *in forma pauperis* complaint if they are satisfied that the action is frivolous or malicious. *Id.*; *see also* 28 U.S.C. § 1915(e)(2)(B)(i). A complaint may be dismissed as frivolous when the plaintiff cannot make any claim with a rational or arguable

basis in fact or law. *Neitzke v. Williams*, 490 U.S. 319, 328-29 (1989); *see also Lawler v. Marshall*, 898 F.2d 1196, 1198 (6th Cir. 1990). An action has no arguable legal basis when the defendant is immune from suit or when plaintiff claims a violation of a legal interest which clearly does not exist. *Neitzke*, 490 U.S. at 327. An action has no arguable factual basis when the allegations are delusional or rise to the level of the irrational or "wholly incredible." *Denton*, 504 U.S. at 32; *Lawler*, 898 F.2d at 1199. The Court need not accept as true factual allegations that are "fantastic or delusional" in reviewing a complaint for frivolousness. *Hill v. Lappin*, 630 F.3d 468, 471 (6th Cir. 2010) (quoting *Neitzke*, 490 U.S. at 328).

Congress also has authorized the *sua sponte* dismissal of complaints that fail to state a claim upon which relief may be granted. 28 U.S.C. § 1915 (e)(2)(B)(ii). A complaint filed by a *pro se* plaintiff must be "liberally construed" and "held to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)). By the same token, however, the complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)); *see also Hill*, 630 F.3d at 470-71 ("dismissal standard articulated in *Iqbal* and *Twombly* governs dismissals for failure to state a claim" under §§ 1915A(b)(1) and 1915(e)(2)(B)(ii)).

"A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 556). The Court must accept all well-pleaded factual allegations as true, but need not "accept as true a legal conclusion

couched as a factual allegation." *Twombly*, 550 U.S. at 555 (quoting *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). Although a complaint need not contain "detailed factual allegations," it must provide "more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 555). A pleading that offers "labels and conclusions" or "a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555. Nor does a complaint suffice if it tenders "naked assertion[s]" devoid of "further factual enhancement." *Id.* at 557. The complaint must "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." *Erickson*, 551 U.S. at 93 (citations omitted).

Here, Plaintiff's complaint arises out of Plaintiff's eviction from Defendant's property. Plaintiff asserts the eviction violates her civil rights and also asks the court to issue a temporary restraining order preventing the eviction. Upon careful review, the undersigned finds that Plaintiff's complaint fails to state a claim upon which relief may be granted in this federal court.

Notably, the Court will not interfere with any pending state eviction proceedings. A federal court must decline to interfere with pending state proceedings involving important state interests unless extraordinary circumstances are present. See *Younger v. Harris*, 401 U.S. 37, 43-45 (1971). Abstention is appropriate if: (1) state proceedings are on-going; (2) the state proceedings implicate important state interests; and (3) the state proceedings afford an adequate opportunity to raise federal questions. *Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982).

To the extent eviction or other state proceedings are pending against the plaintiff in connection with her ownership or occupancy of property, all three factors supporting

abstention exist. The matters presented in the plaintiff's Complaint implicate important state interests, see *Doscher v. Menifee Circuit Court*, No. 03-5229, 2003 WL 22220534 (6th Cir. Sept. 24, 2003); and there is no indication the plaintiff could not raise valid federal concerns in the context of an ongoing state proceeding.

Accordingly, the complaint fails to state a claim upon which relief may be granted and should be dismissed under 28 U.S.C. §1915(e)(2)(B).

Accordingly, for these reasons, it is therefore **RECOMMENDED** this action be **DISMISSED** with **PREJUDICE** for failure to state a claim for relief. It is further **RECOMMENDED** that the Court certify pursuant to 28 U.S.C. § 1915(a) that for the foregoing reasons an appeal of any Order adopting this Report and Recommendation would not be taken in good faith and therefore deny Plaintiff leave to appeal *in forma pauperis*.

s/ Stephanie K. Bowman
Stephanie K. Bowman
United States Magistrate Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ROSALIND HOLMES,

Plaintiff,

vs.

LAKEFRONT AT WEST CHESTER, LLC,

Defendant.

Case No. 1:21-cv-505

Black, J.
Bowman, M.J.

NOTICE

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to this Report & Recommendation ("R&R") within **FOURTEEN (14) DAYS** after being served with a copy thereof. That period may be extended further by the Court on timely motion by either side for an extension of time. All objections shall specify the portion(s) of the R&R objected to, and shall be accompanied by a memorandum of law in support of the objections. A party shall respond to an opponent's objections within **FOURTEEN DAYS** after being served with a copy of those objections. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

Appendix T

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Rosalind Holmes,	:	Case No. 1:21-cv-505
Plaintiff,	:	Judge Timothy S. Black
vs.	:	Magistrate Judge Stephanie K. Bowman
Lakefront at West Chester, LLC	:	
Defendant.	:	

DECISION AND ENTRY
ADOPTING THE REPORT AND RECOMMENDATIONS
OF THE UNITED STATES MAGISTRATE JUDGE (Doc. 8)

This case is before the Court pursuant to the Order of General Reference to United States Magistrate Judge Stephanie K. Bowman. Pursuant to such reference, the Magistrate Judge reviewed the pleadings filed with this Court and, on August 23, 2021 submitted a Report and Recommendations (the "Report"). (Docs. 8). Plaintiff Rosalind Holmes submitted her objection to the Report on August 25, 2021. With her objections, Plaintiff has also submitted a second motion for temporary restraining order and preliminary injunction (Doc. 9), and an emergency motion to appoint counsel. (Doc. 11).

As required by 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72(b), the Court has reviewed the comprehensive findings of the Magistrate Judge and considered *de novo* all of the filings in this matter. Upon consideration of the foregoing, the Court finds that the Report is adopted and Plaintiff's objections are overruled. Plaintiff's motions filed after the Magistrate Judge issued the Report are also denied.

Plaintiff Rosalind Holmes, proceeding *pro se*, brings this action against Defendant Lakefront at West Chester, LLC. According to Plaintiff's filings, she currently resides at one of Defendant's properties and is asking this Court to stay her eviction and/or eviction proceedings. Plaintiff's recent filings indicate that she has now been evicted and ordered to vacate her premises by August 27, 2021. (Doc. 9 at PageID# 1419).

In the Report, the Magistrate Judge first found that Plaintiff's complaint failed to state a claim upon which relief may be granted. (Doc. 8 at 3). This Court agrees. Plaintiff's 378-page complaint with exhibits is a recitation of her litigation history with Defendant.[1] Even liberally construing Plaintiff's complaint, she fails to state a claim. Moreover, Plaintiff's objection does nothing to cure this deficiency or otherwise convince this Court that Plaintiff has stated a plausible claim for relief. (Doc. 51).

The Magistrate Judge also noted that *Younger* abstention applies in this case. (Doc. 8 at 3). As explained by the Sixth Circuit:

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[1] *See, e.g., Holmes v. Lakefront at West Chester*, 1:21-cv-444 (S.D. Ohio Aug. 3, 2021) (Dlott, J.; Litkovitz, M.J.), *appeal dismissed at* No. 21-3731 (6th Cir. Aug. 17, 2021); *Holmes v. U.S.A., et al.*, No. 1:20-cv-825 (S.D. Ohio) (McFarland, J.; Litkovitz, M.J.), *appeals at* No. 21-3715, 21-03521, 21-03491, 21-03206 (6th Cir.); *Holmes v. Lakefront at West Chester*, No. CV 2021-05-0638 (Butler Cty. Ct. Com. Pl. filed May 7, 2021) (located at https://pa.butlercountyclerk.org/eservices/searchresults.page) (last accessed 8/26/2021); *see also Lakefront at West Chester v. Holmes*, CVG 2100528 (Butler Cty. Area III Ct. filed June 16, 2021); *Lakefront at West Chester v. Holmes*, CVG 2100528 (Butler Cty. Area III Ct. filed May 14, 2021); *Holmes v. Lakefront at West Chester*, No. CVF2001041, RE000007 (Butler Cty. Area III Ct. filed Nov. 2, 2020), *appeal at* CA-2021-05-0046 (Ohio 12th Dist. Ct. App.) (all Butler County Area III cases located at: http://docket.bcareacourts.org/) (last accessed 8/26/2021).

This Court may take judicial notice of court records that are available online to members of the public. *See Lynch v. Leis*, 382 F.3d 642, 648 n.5 (6th Cir. 2004) (citing *Lyons v. Stovall*, 188 F.3d 327, 332 n.3 (6th Cir. 1999)).

> We generally are obliged to decide cases within the scope of federal jurisdiction. However, in certain circumstances, allowing a federal suit to proceed threatens undue interference with state proceedings, and the proper course is for the federal court to abstain from entertaining the action. The *Younger* breed of abstention requires abstention in three different circumstances.... The Supreme Court has noted that these three categories are the exception rather than the rule. First, we may abstain under *Younger* when there is an ongoing state criminal prosecution. Second, we may abstain when there is a civil enforcement proceeding that is akin to a criminal prosecution. Third, we may abstain when there is a civil proceeding involving certain orders that are uniquely in furtherance of the state courts' ability to perform their judicial functions.

Aaron v. O'Connor, 914 F.3d 1010, 1016 (6th Cir. 2019) (internal quotations and citations omitted).

Once a court determines that a case falls into one of the three exceptional categories and *Younger* abstention may apply, the Court should "next analyze[s] the case 'using a three-factor test laid out in *Middlesex County Ethics Committee v. Garden State Bar Ass'n*, 457 U.S. 423 (1982)." *Id.* (quotation omitted). "If (1) state proceedings are currently pending; (2) the proceedings involve an important state interest; and (3) the state proceedings will provide the federal plaintiff with an adequate opportunity to raise his constitutional claims, we may abstain from hearing the federal claim." *Id.* (quotation omitted). The Magistrate Judge found all three factors present when noting *Younger* abstention applies.

Since the Magistrate Judge issued the Report, Plaintiff now states that her eviction proceedings have concluded, and she was evicted. (Doc. 9 at 1). Thus, *Younger* no

longer applies to her eviction proceedings because those proceedings are no longer currently pending.[2]

To the extent her eviction proceedings have not concluded, her primary request for relief – an injunction and stay of her eviction proceedings – is prohibited by the Anti-Injunction Act. *See* 28 U.S.C. § 2283 ("A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."); *see also Wells v. DLJ Mortg. Capitol Inc.*, No. 1:14-CV-767, 2014 WL 5587561, at *2 (S.D. Ohio Nov. 3, 2014) (request to stay state court eviction proceeding prohibited pursuant to Anti-Injunction Act); *E3A v. Bank of Am., N.A.*, No. 13–10277, 2013 WL 784339 (E.D. Mich. Mar.1, 2013) (request to stay writ of eviction prohibited pursuant to the Anti-Injunction Act) (citing *Cragin v. Comerica Mortgage Co.*, No. 94–2246, 1995 WL 626292 (6th Cir. Oct. 24, 1995) (finding that the Anti-Injunction Act "generally precludes federal injunctions that would stay pending foreclosure proceedings in the state courts.")).

Finally, a facial reading of Plaintiff's complaint indicates that Plaintiff is asking this Court to grant her relief from injuries caused in her state court proceedings, including

[2] To the extent her proceedings are still pending, there is a strong argument *Younger* applies. Although Plaintiff fails to state a claim, she lists two causes of action for housing discrimination based on race. Discrimination claims may be asserted as part of an eviction proceeding in Ohio courts. *See, e.g., Lable & Co. v. Flowers*, 661 N.E.2d 782, 786 (Ohio Ct. App. 1995) ("A legitimate argument can be made that defendant was required to raise her discrimination claim in response to the eviction proceeding as a compulsory counterclaim."). Thus, she has an adequate opportunity to assert her discrimination claims in her state court proceedings to the extent those proceedings are still pending.

her now-concluded eviction proceeding. The *Rooker-Feldman* doctrine prohibits federal courts, other than the United States Supreme Court, from performing appellate review of state court rulings. *Lawrence v. Welch*, 531 F.3d 364, 368 (6th Cir. 2008); *see also Givens v. Homecomings Fin.*, 278 F. App'x 607, 609 (6th Cir.2008) (affirming dismissal under *Rooker-Fedlman* where the primary relief that plaintiff requested was a temporary injunction that would "enjoin Defendants from physically entering onto plaintiff[']s property" and that would "dispos[e] ... of any other civil or procedural action regarding the subject property").

However, notwithstanding *Younger*, *Rooker-Feldman*, and the Anti-Injunction act, the Court has *sua sponte* reviewed Plaintiff's complaint pursuant to 28 U.S.C. § 1915. Plaintiff's claims are dismissed for failure to state a claim. 28 U.S.C. § 1915(e)(2)(B)(ii).

Accordingly, for the reasons stated above:

1. The Report and Recommendations (Doc. 8) is **ADOPTED**, as expanded upon here;

2. Plaintiff's objection (Doc. 51) is **OVERRULED**;

3. Plaintiff's motion for an emergency stay and temporary restraining order; amended motion for a stay, emergency temporary restraining order and/or preliminary injunctive relief; and emergency motion for the appointment of counsel (Docs. 3, 9, 11) are **DENIED**;

4. Plaintiff's complaint is **DISMISSED with prejudice**;

5. The Court **CERTIFIES** that, pursuant to 28 U.S.C. § 1915(a), any appeal of this Order would not be taken in good faith and therefore **DENIES** Plaintiff leave to appeal *in forma pauperis*; and

6. The Clerk shall enter judgment accordingly, whereupon this case is **TERMINATED** from the docket of this Court.

Furthermore, while the Court gives some deference to *pro se* litigants, it will not permit any litigant to use the Court's resources to address filings clearly designed to harass the Court, opposing counsel, or the opposing party. Federal courts have both the inherent power and constitutional obligation to protect their jurisdiction from conduct which impairs their ability to carry out Article III functions. *See, e.g., Hiles v. NovaStar Mortg.*, No. 1:12-cv-392, 2016 WL 454895 (S.D. Ohio Feb. 5, 2016).

There is "nothing unusual about imposing prefiling restrictions in matters with a history of repetitive or vexatious litigation." *Feathers v. Chevon U.S.A., Inc.*, 141 F.3d 264, 269 (6th Cir. 1998). To achieve these ends, the Sixth Circuit has approved enjoining vexatious and harassing litigants by requiring them to obtain leave of court before submitting additional filings. *Filipas v. Lemons*, 835 F.2d 1145, 1146 (6th Cir. 1987).

Plaintiff has already filed two motion for emergency relief in this case alone, requesting the undersigned to stay her eviction proceedings. She has also filed notices of appeal in her other two federal court cases, requesting that the Sixth Circuit stay her eviction. *See Holmes v. Lakefront at West Chester*, 1:21-cv-444 (S.D. Ohio Aug. 3, 2021), *appeal dismissed at* No. 21-3731 (6th Cir. Aug. 17, 2021); *Holmes v. U.S.A., et al.*, No. 1:20-cv-825 (S.D. Ohio), *appeal dismissed at* No. 21-3715 (6th Cir. Aug. 17, 2021). Based on these repetitive tactics, Plaintiffs must seek leave of Court before submitting any additional filings in this case.

IT IS SO ORDERED.

Date: 8/26/2021

s/Timothy S. Black
Timothy S. Black
United States District Judge

Appendix U

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Deborah S. Hunt
Clerk

100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Tel. (513) 564-7000
www.ca6.uscourts.gov

Filed: September 07, 2021

Ms. Rosalind Holmes
4557 Wyndtree Drive
Apartment 145
West Chester, OH 45069

Re: Case No. 21-3791, *Rosalind Holmes v. Lakefront At West Chester, LLC*
Originating Case No. : 1:21-cv-00505

Dear Ms. Holmes,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Roy G. Ford
Case Manager
Direct Dial No. 513-564-7016

cc: Mr. Richard W. Nagel

Enclosure

No. 21-3791

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ROSALIND HOLMES,)
)
Plaintiff-Appellant,)
)
v.) ORDER
)
LAKEFRONT AT WEST CHESTER, LLC,)
)
Defendant-Appellee.)

Before: GIBBONS and DONALD, Circuit Judges.

Plaintiff Rosalind Holmes appeals a district court order dismissing with prejudice her claims against Lakefront at West Chester, LLC ("Lakefront") relating to her state court eviction proceedings. She now moves for an emergency stay of her eviction by the Butler County Sheriff's Office, which is scheduled for today, September 7, 2021, and for related injunctive relief.

We consider four factors in determining whether a stay pending appeal should issue: 1) "whether the stay applicant has made a strong showing that [s]he is likely to succeed on the merits"; 2) the likelihood the "applicant will be irreparably injured absent a stay"; 3) "whether issuance of the stay will substantially injure" other interested parties; and 4) "where the public interest lies." *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987). The first two factors "are the most critical." *Nken v. Holder*, 556 U.S. 418, 434 (2009). "These factors are not prerequisites that must be met, but are interrelated considerations that must be balanced together." *Mich. Coal. of*

Radioactive Material Users v. Griepentrog, 945 F.2d 150, 153 (6th Cir. 1991). While the party seeking a stay "need not always establish a high probability of success on the merits," the party "is still required to show, at a minimum, 'serious questions going to the merits.'" *Id.* at 153–54 (quoting *In re DeLorean Motor Co.*, 755 F.2d 1223, 1229 (6th Cir. 1985).

The district court found that it was precluded from granting the relief Holmes sought—from injuries she suffered in her state court proceedings—by the *Rooker-Feldman* doctrine, which prohibits federal courts, other than the United States Supreme Court, from performing appellate review of state court rulings. *Lawrence v. Welch*, 531 F.3d 364, 368 (6th Cir. 2008). Notwithstanding *Rooker-Feldman*, the district court dismissed Holmes's claims for failure to state a claim upon which relief could be granted. Holmes alleges that her claims in the district court were not barred by *Rooker-Feldman* because they alleged wrongdoing and fraud in the state court proceedings, which are independent from the injury caused by the state court's ruling. *See id.* at 369 (distinguishing that claims that defendants committed fraud in the state court proceedings establish an independent injury not caused by the state court judgment and are not barred by *Rooker-Feldman*). However, the relief Holmes sought in the district court was the same she is requesting here: a stay of her eviction from Lakefront pursuant to the state court's judgment against her. When "the source of the injury is the state court decision, then the *Rooker-Feldman* doctrine would prevent the district court from asserting jurisdiction." *Id.* at 368. Holmes sought relief in the district court from the state court's order of her eviction. Thus, the district court was precluded from reviewing the state court's decision. Further, the district court found no merit to Holmes's claims. While Plaintiff alleges significant harm, she has not shown the requisite likelihood of success on the merits of her appeal. *See Tiger Lily, LLC v.*

United States Dept. of Hous. and Urban Dev., 992 F.3d 518, 524 (6th Cir. 2021) ("Given that the [movant] is unlikely to succeed on the merits, we need not consider the remaining stay factors.").

Accordingly, the motion for an emergency stay is **DENIED.**

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

Appendix V

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Deborah S. Hunt
Clerk

Tel. (513) 564-7000
www.ca6.uscourts.gov

Filed: June 21, 2022

Ms. Rosalind Holmes
630 Bell Road
Apartment 160
Antioch, TN 37013

Re: Case No. 21-3791, *Rosalind Holmes v. Lakefront At West Chester, LLC*
Originating Case No. : 1:21-cv-00505

Dear Ms. Holmes,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Roy G. Ford
Case Manager
Direct Dial No. 513-564-7016

cc: Mr. Richard W. Nagel

Enclosure

No. 21-3791

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ROSALIND HOLMES,

Plaintiff-Appellant,

v.

LAKEFRONT AT WESTCHESTER, LLC,

Defendant-Appellee.

ORDER

Before: LARSEN, Circuit Judge.

Rosalind Holmes, proceeding pro se, appeals a district court judgment dismissing her housing discrimination complaint under 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim on which relief may be granted. The district court denied Holmes leave to proceed in forma pauperis on appeal by certifying that an appeal would not be taken in good faith. *Id.* § 1915(a)(3). Holmes now requests permission from this court to proceed in forma pauperis on appeal. *See* Fed. R. App. P. 24(a)(5). She also requests appointment of counsel.

Holmes filed a complaint against Lakefront at Westchester, LLC (Lakefront). Holmes rented an apartment from Lakefront in May 2020. She alleged that, almost immediately after moving into her apartment, she began to experience various unacceptable issues with her apartment, which she reported to Lakefront. Holmes filed numerous civil actions against Lakefront in federal and state court arising out of her housing issues, claiming discrimination, retaliation, and various other claims. Lakefront filed an eviction action against Holmes in state court.

Holmes asserted claims for discrimination, retaliation, intentional infliction of emotional distress, and breach of contract. She sought monetary and injunctive relief, including a stay of the state-court eviction action filed against her by Lakefront. In an amended motion for injunctive

relief, Holmes stated that she was evicted in August 2021 and that she moved to set aside the state-court judgment, and she asked the district court to stay the state-court eviction proceedings.

On initial screening, a magistrate judge recommended dismissing Holmes's complaint under § 1915(e)(2)(B) for failure to state a claim for relief. Over Holmes's objections, the district court adopted the magistrate judge's report and recommendation, dismissed Holmes's complaint, and barred Holmes from filing additional pleadings in the case without leave of court. The district court reasoned that Holmes's complaint recited "her litigation history" and did not state a claim for relief; that to the extent the state-court eviction action was still pending, her request for a stay of that action and injunctive relief was barred by the Anti-Injunction Act; and to the extent that she sought review of state-court proceedings, including the eviction action, her complaint was barred by the *Rooker-Feldman*[1] doctrine.

This court may grant a motion to proceed in forma pauperis if it determines that an appeal would be taken in good faith and the movant is indigent. *See Owens v. Keeling*, 461 F.3d 763, 776 (6th Cir. 2006). A frivolous appeal, one that "lacks an arguable basis either in law or in fact," would not be taken in good faith. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *see also Coppedge v. United States*, 369 U.S. 438, 445 (1962).

A complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). It must contain "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Although "detailed factual allegations" are not required, a complaint must contain "more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Id.* (quoting *Twombly*, 550 U.S. at 555).

Generally, courts liberally construe pro se pleadings and hold them "to a less stringent standard than pleadings prepared by attorneys." *Frengler v. Gen. Motors*, 482 F. App'x 975, 976 (6th Cir. 2012). But this liberal construction is not without limit. *Id.* at 977. "Even a pro se

---

[1] *See D.C. Ct. of Appeals v. Feldman*, 460 U.S. 462, 486 (1983); *Rooker v. Fid. Tr. Co.*, 263 U.S. 413, 415-16 (1923).

pleading must provide the opposing party with notice of the relief sought, and it is not within the purview of the district court to conjure up claims never presented." *Id.*

Holmes's complaint failed to state a plausible claim for relief. Holmes's complaint asserts three claims under federal law, each premised on Lakefront's alleged racially discriminatory actions with respect to her lease. But the complaint includes no factual allegations creating a "reasonable inference" that Lakefront acted in a discriminatory manner. *Iqbal*, 556 U.S. at 678. Holmes alleges that Lakefront failed to perform certain maintenance in her apartment, entered her apartment without permission, retaliated against her for making complaints, and harassed her in the eviction proceedings, but she never alleges that Lakefront took any of those actions based on racial animus. *See id.* at 681; *HDC, LLC v. City of Ann Arbor*, 675 F.3d 608, 613-14 (6th Cir. 2012) ("[B]road and conclusory allegations of discrimination cannot be the basis of a complaint . . . ."). With the federal claims dismissed, the district court need not exercise supplemental jurisdiction over Holmes's two remaining state-law claims. 28 U.S.C § 1367(c)(3). An appeal in this case would be frivolous. *See Neitzke*, 490 U.S. at 325.

Accordingly, the motions to proceed in forma pauperis and to appoint counsel are **DENIED**. Unless Holmes pays the $505 filing fee to the district court within thirty days of the entry of this order, this appeal will be dismissed for want of prosecution.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

Appendix W

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Deborah S. Hunt
Clerk

100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Tel. (513) 564-7000
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Filed: August 10, 2022

Ms. Rosalind Holmes
6673 Boxwood Lane
Apartment C
Liberty Township, OH 45069

Re: Case No. 21-3791, *Rosalind Holmes v. Lakefront At West Chester, LLC*
Originating Case No. : 1:21-cv-00505

Dear Ms. Holmes,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Roy G. Ford
Case Manager
Direct Dial No. 513-564-7016

cc: Mr. Richard W. Nagel

Enclosure

No. 21-3791

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ROSALIND HOLMES,

Plaintiff-Appellant,

v.

LAKEFRONT AT WESTCHESTER, LLC,

Defendant-Appellee.

ORDER

Before: SUTTON, Chief Judge; GUY and COLE, Circuit Judges.

Rosalind Holmes, proceeding pro se, moves the court to reconsider its June 21, 2022, order denying her motion to proceed in forma pauperis on appeal from the dismissal of her housing discrimination complaint under 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim on which relief may be granted. Holmes's motion to reconsider also moves this court to take judicial notice of a state-court case, grant relief from judgment, and stay this case.

Holmes's motion does not show that the court "overlooked or misapprehended" any "point of law or fact" when it issued its order. *See* Fed. R. App. P. 40(a)(2). The motion for reconsideration, judicial notice, relief from judgment, and a stay is **DENIED**.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

Appendix X

IN THE COURT OF APPEALS OF BUTLER COUNTY, OHIO

LAKEFRONT AT WEST CHESTER, LLC,	:	CASE NO. CA2021-09-108 ACCELERATED CALENDAR
Appellee,	:	
vs.	:	ENTRY DENYING EMERGENCY MOTION FOR STAY PENDING APPEAL
ROSALIND HOLMES,	:	
Appellant.	:	

The above cause is before the court pursuant to an emergency motion for stay pending appeal filed by appellant, Rosalind Holmes, on September 3, 2021.

Upon consideration of the foregoing, the motion is DENIED.

IT IS SO ORDERED.

Robin N. Piper, Judge

Mike Powell, Judge

IN THE COURT OF APPEALS OF BUTLER COUNTY, OHIO

LAKEFRONT AT WEST CHESTER LLC,

Appellee,

vs.

ROSALIND HOLMES,

Appellant.

CASE NO. CA2021-09-108

ACCELERATED CALENDAR

ENTRY DENYING EMERGENCY MOTION FOR STAY PENDING APPEAL

The above cause is before the court pursuant to an emergency motion for stay pending appeal filed by appellant, Rosalind Holmes, on September 3, 2021.

Upon consideration of the foregoing, the motion is DENIED.

IT IS SO ORDERED.

Robin N. Piper, Judge

Mike Powell, Judge

Appendix Y

IN THE COURT OF APPEALS OF BUTLER COUNTY, OHIO

LAKEFRONT AT WEST CHESTER, LLC,

Appellee,

vs.

ROSALIND HOLMES,

Appellant.

CASE NO. CA2021-09-108
REGULAR CALENDAR

ENTRY DENYING SECOND EMERGENCY MOTION FOR STAY AND/OR TEMPORARY RESTRAINING ORDER

The above cause is before the court pursuant to a second emergency motion for a stay and/or temporary restraining order pending appeal filed by appellant, Rosalind Holmes, on October 29, 2021. Appellant's first emergency motion for a stay pending appeal was denied by this court on September 3, 2021.

In her second emergency motion for stay, appellant essentially seeks reconsideration of the denial of her first emergency motion for stay, contending that the Butler County Area III Court did not have jurisdiction over her case. Appellant states that she "refiled" a Title VIII housing discrimination complaint in Federal District Court on August 6, 2021. However, it appears that the complaint has been dismissed and filing restrictions imposed upon appellant due to her history of repetitive, vexatious litigation.

Appellant has presented no basis for granting an emergency motion to stay her eviction, or any resulting consequences thereof. Her second emergency motion for a stay and/or temporary restraining order is DENIED.

IT IS SO ORDERED.

Robin N. Piper, Judge

Stephen W. Powell, Judge

Appendix Z

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

LAKEFRONT OF WEST CHESTER, LLC,

Appellee,

vs.

ROSALIND HOLMES,

Appellant.

CASE NO. CA2021-09-108
REGULAR CALENDAR

ENTRY DENYING EMERGENCY MOTION TO VOID JUDGMENT, ISSUE A WRIT OF PROHIBITION AND SEAL RECORDS AND DENYING MOTION TO RECONSIDER DENIAL OF APPELLANT'S SECOND MOTION FOR STAY AND/OR TEMPORARY RESTRAINING ORDER

The above cause is before the court pursuant to a pleading styled "emergency motion to void the judgment of the Butler County Area III Court, issue a writ of prohibition, seal the records of the case, and in the alternative reconsideration of appellant's second motion for a stay and/or temporary restraining order." The motion was filed by appellant, Rosalind Holmes, on December 6, 2021.

The underlying eviction action was filed against appellant on June 16, 2021. The complaint alleged that appellant's lease was up and that appellee, Lakefront of West Chester, LLC, did not intend to renew it. Appellee had provided appellant with written notice on March 22, 2021 that she was to vacate the premises by May 20, 2021.

On June 29, 2021, appellant filed a notice of removal, indicating that she intended to remove the eviction action to federal court. On July 29, 2021, a federal magistrate judge issued a report and recommendation that appellant's motion to

remove be denied. The report and recommendation was adopted by the United States District Court on August 3, 2021.

The Butler County Area III Court scheduled an eviction hearing on August 18, 2021. On August 16, 2021, appellant filed a notice in Area III Court indicating that she was filing of an emergency motion for stay and temporary restraining order and for temporary stay pending consideration of the motion in the U.S. Court of Appeals for the Sixth Circuit. Appellant informed the Area III Court that she would not be attending the August 18, 2021 eviction hearing.

Appellant did not appear for the August 18, 2021 eviction hearing; Lakefront and its attorney were present. Following presentation of evidence by Lakefront, the Area III Court magistrate granted the eviction and ordered appellant to vacate the property by August 27, 2021.

On August 24, 2021, appellant filed a motion to set aside the eviction judgment stating that she was sick on August 18 and unable to attend the eviction hearing. She attached a note from Urgent Care dated August 19, 2021, the day after the eviction hearing. The Area III Court subsequently denied appellant's motion to set aside the eviction, and motion to reconsider the denial of the motion to set aside the eviction hearing.

On September 1, 2021, appellant filed a motion to set aside the judgment pursuant to Civ.R. 60(B) and requested a stay pending appeal. The motion and request for stay were denied on September 2, 2021, after which appellant filed this appeal. In the entry appealed from, the Area III Court noted that appellant had been living at the property without a lease since May, 2021 and apparently had not been paying rent

since that time. The Area III Court also agreed with the federal district court judge that appellant should be labeled a vexatious litigator.

Since filing her notice of appeal on September 10, 2021, appellant has filed two emergency motions for stay pending appeal in this court which have both been denied.

In her current emergency motion, appellant asks this court to reconsider denial of her second motion for stay and/or temporary restraining order. The basis for appellant's request is apparently that the eviction action should have been transferred to the common pleas court because, after the eviction complaint was filed against her, appellant filed a complaint against appellee alleging landlord discrimination and retaliation under Title VIII and R.C. 4112 in the Butler County Court of Common Pleas. See *Holmes v. Lakefront at West Chester*, Butler CP No. CV 2021-05-0639.

It appears from the docket that this issue was addressed by the Area III Court and appellant's motion to transfer the eviction action was denied. The Area III Court concluded that it had jurisdiction.

Although jurisdiction may be raised at any time, including on appeal, such is not a basis to reconsider denial of appellant's second emergency motion for stay and/or temporary restraining order. Further, the additional relief requested by appellant in her December 6 emergency motion, i.e., void the judgment of the Butler County Area III Court, issue a writ of prohibition, and seal the records of the case, is not properly before the court at this time. Appellant has been evicted. Her eviction has not been overturned. She has not successfully shown that the Area III Court lacked jurisdiction to issue the order of eviction.

Based upon the foregoing, appellant's emergency motion is DENIED in its entirety.

IT IS SO ORDERED.

Stephen W. Powell, Judge

Robin N. Piper, Judge

Appendix AA

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

LAKEFRONT OF WEST CHESTER, LLC,

Appellee,

- vs -

ROSALIND HOLMES,

Appellant.

: CASE NO. CA2021-09-108

: JUDGMENT ENTRY

It is the order of this court that this appeal is dismissed as moot for the reasons discussed in the Opinion filed the same date as this Judgment Entry.

It is further ordered that a mandate be sent to the Butler County Area III Court for execution upon this judgment and that a certified copy of this Judgment Entry shall constitute the mandate pursuant to App.R. 27.

Costs to be taxed to the appellant.

Stephen W. Powell, Presiding Judge

Robert A. Hendrickson, Judge

Matthew R. Byrne, Judge

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

LAKEFRONT OF WEST CHESTER, LLC,

Appellee,

- vs -

ROSALIND HOLMES,

Appellant.

CASE NO. CA2021-09-108

OPINION
5/9/2022

APPEAL FROM BUTLER COUNTY AREA III COURT
Case No. CVG2100651

Rosalind Holmes, pro se.

BYRNE, J.

{¶1} Rosalind Holmes appeals from a decision of the Butler County Area III Court. In that decision, the area court denied Holmes' motion to stay the execution of a writ of restitution that the court previously granted to Holmes' landlord, Lakefront at West Chester, LLC ("Lakefront"). For the reasons described below, we dismiss this appeal as moot.

{¶2} In June 2021, Lakefront filed a complaint against Holmes in the area court. Lakefront brought a claim for forcible entry and detainer.[1] Lakefront alleged that it was the owner of 4557 Wyndtree Drive, #145 ("the premises") and that Holmes was a tenant of the

1. In a second claim not relevant to this appeal, Lakefront asked for unpaid rent and late fees for the month of June 2021 and for ongoing rent and late fees until Holmes vacated the premises.

premises. Lakefront stated that on March 22, 2021, it served Holmes with written notice that it did not intend to renew her lease of the premises as of May 20, 2021. Lakefront further alleged that Holmes had failed to vacate the premises by May 20, 2021, and that Lakefront had served her with a hold-over notice and asked her to leave the premises or face eviction proceedings.

{¶3} Holmes failed to answer the complaint. Instead, proceeding pro se, she removed the eviction proceeding to federal district court. The federal district court subsequently found removal to have been improper and remanded the case to the area court.

{¶4} The area court scheduled an eviction hearing for August 18, 2021. Holmes failed to appear at the hearing on that date. In an entry resulting from the eviction hearing, the court found that Holmes had failed to file a responsive pleading; had failed to appear for the eviction hearing, was in default, and that the court considered the allegations of the complaint admitted. The court further found that Lakefront had provided Holmes with all proper notices for the eviction. The court ordered Holmes to vacate the premises by August 27, 2021. The court also separately issued Lakefront a writ of restitution.

{¶5} Holmes then moved the area court to set aside the eviction judgment. The court denied the motion to set aside. Holmes then moved the court to reconsider its decision denying the motion to set aside. The court denied this motion as well. Holmes then moved the court to set aside the judgment under Civ.R. 60(B) and to stay execution of the writ of restitution. The court denied this motion in a decision and entry. Holmes appealed from this final decision and entry, presenting the following assignments of error.

{¶6} Assignment of Error No. 1:

{¶7} THE TRIAL COURT ABUSED [ITS] DISCRETION IN VIOLATION OF OHIO REVISED CODE 1907.03, JURISDICTIONAL PRIORITY RULE AND OHIO RULES OF

CIVIL PROCEDURE 12(H)(3).

{¶8} Assignment of Error No. 2:

{¶9} THE TRIAL COURT IMPROPERLY DENIED APPELLANT'S MOTION TO SET ASIDE JUDGMENT UNDER RULE 60(B)(1) & (3).

{¶10} Assignment of Error No. 3:

{¶11} THE JUDGMENT OF THE TRIAL COURT IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶12} Holmes' three assignments of error present various arguments challenging the area court's decision granting the forcible entry and detainer portion of Lakefront's complaint, granting a writ of restitution of the premises to Lakefront, and denying her motion to stay execution of the writ. As a preliminary matter, we must determine whether the appeal is properly before this court or whether the appeal is moot. A case is moot when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome. *Villas at Pointe of Settlers Walk Condominium Assn. v. Coffman Dev. Co., Inc.*, 12th Dist. Warren No. CA2009-12-165, 2010-Ohio-2822, ¶ 9. We may consider the trial record as well as matters outside the trial record to determine whether an appeal is moot. *In re C.L.W.*, 12th Dist. Clermont No. CA2021-05-013, 2022-Ohio-1273, ¶ 29, fn. 1.

{¶13} In an appeal from a different eviction case (also involving Holmes), we summarized the relevant legal concepts:

> "A forcible entry and detainer action is intended to serve as an expedited mechanism by which an aggrieved landlord may recover possession of real property." *Miele v. Ribovich*, 90 Ohio St.3d 439, 441, 2000-Ohio-193. A forcible entry and detainer action decides only the right to immediate possession of property and nothing else. *Seventh Urban, Inc. v. Univ. Circle Property Dev., Inc.*, 67 Ohio St.2d 19, 25 (1981), fn. 11.
>
> Once a landlord has been restored to the property, the forcible entry and detainer becomes moot because, having been restored to the premises, there is no further relief that may be

> granted to the landlord. *Showe Mgt. Corp. v. Hazelbaker*, 12th Dist. Fayette No. CA2006-01-004, 2006-Ohio-6356, ¶ 7. Because Holmes has vacated the apartment and Landings retook possession of the apartment, the forcible entry and detainer action is now moot.

Landings at Beckett Ridge v. Holmes, 12th Dist. Butler No. CA2020-04-050, 2020-Ohio-6900, ¶ 14-15.

{¶14} The record in this case reflects that Holmes vacated the premises after the court issued the writ of restitution and after the court issued its entry denying Holmes' motions to set aside and stay execution. Specifically, the sheriff's return on the writ indicates that Holmes moved out of the premises on or before September 9, 2021. This would be consistent with Holmes' filings with the area court after that date, which indicate a mailing address for Holmes at an apartment located in Tennessee.

{¶15} Because Holmes vacated the premises and Lakefront retook possession, the forcible entry and detainer portion of Lakefront's complaint is now moot. *Landings*, 2020-Ohio-6900 at ¶ 15. *Accord Landings at Beckett Ridge v. Holmes*, 12th Dist. Butler No. CA2021-09-118, 2022-Ohio-1272, ¶ 21; *Tenancy, L.L.C. v. Roth*, 5th Dist. Stark No. 2019 CA 00034, 2019-Ohio-4042, ¶ 29-30 (holding that when tenant filed Civ.R. 60[B] motion for relief from judgment challenging trial court's grant of writ of restitution to landlord, the case was moot because the tenant had moved out of the rented premises).[2] We therefore decline to address Holmes' three assignments of error and dismiss this appeal as moot.

{¶16} Appeal dismissed.

S. POWELL, P.J. and HENDRICKSON, J., concur.

---

2. In *Landings*, 2020-Ohio-6900, we examined whether the "capable of repetition, yet evading review" exception might apply to permit appellate review notwithstanding the underlying mootness of the issue. *Id.* at ¶ 15-17. We found that there was no reasonable expectation of repetition due to Holmes being unlikely to rent from the same landlord and that this was not one of the rare, exceptional cases of public or great general interest demanding resolution despite mootness. *Id.* at ¶ 17. On appeal, Holmes has not argued the issue of mootness or exceptions to mootness. For the same reasons set forth in *Landings*, 2020-Ohio-6900, we do not extend the "capable of repetition, yet evading review" exception to this case.

Appendix BB

Supreme Court of Ohio Clerk of Court - Filed August 17, 2022 - Case No. 2022-0683

The Supreme Court of Ohio

Rosalind Holmes

v.

The Honorable, Judge C. Caparella- Kraemer

Case No. 2022-0683

IN PROHIBITION

ENTRY

This cause originated in this court on the filing of a complaint for a writ of prohibition.

Upon consideration of respondent's motion to dismiss, it is ordered by the court that the motion to dismiss is granted. Accordingly, this cause is dismissed.

It is further ordered that relator's motion for leave to amend the complaint for writ of prohibition is denied.

Maureen O'Connor
Chief Justice

Appendix CC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ROSALIND HOLMES,
Plaintiff,

vs.

UNITED STATES OF AMERICA, et al.,
Defendants.

Case No. 1:20-cv-825

McFarland, J.
Litkovitz, M.J.

REPORT AND RECOMMENDATION

On October 20, 2020, plaintiff Rosalind Holmes, a resident of West Chester, Ohio, filed a complaint against 35 defendants, including the United States of America, former Federal Bureau of Investigation (FBI) director James Comey, former director of the National Security Agency Admiral Michael Rodgers, and former Attorney General Eric Holder; former FBI agents; the City of Cincinnati, City officials, and City council members; plaintiff's former attorney and law firm; former Ohio Disciplinary Counsel officials; "Lakefront" and Lakefront Property and Regional Managers; the Director of the University of Cincinnati Health Dental Center; PLK Communities; and the State of Ohio. (Docs. 1-1, 5). On initial screening of plaintiff's complaint under 28 U.S.C. § 1915(e)(2)(B), the undersigned issued a Report and Recommendation recommending that plaintiff's complaint be dismissed for lack of federal jurisdiction and for failure to state a claim upon which relief may be granted. (Doc. 7).

Plaintiff filed objections to the Report and Recommendation (Doc. 8) and an amended complaint (Doc. 9) on November 12, 2020. In view of the filing of plaintiff's amended complaint, which is permitted "once as a matter of course" pursuant to Fed. R. Civ. P. 15(a)(1), the District Judge determined that the Report and Recommendation should be denied as moot. (Doc. 10).

This matter is now before the Court for a *sua sponte* review of plaintiff's amended

complaint (Doc. 9) to determine whether the amended complaint, or any portion of it, should be dismissed because it is frivolous, malicious, fails to state a claim upon which relief may be granted or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B).

This matter is also before the Court on plaintiff's motion for equitable tolling, breach of contract, injunctive relief. (Doc. 6).

I. Standard of Review

In enacting the original *in forma pauperis* statute, Congress recognized that a "litigant whose filing fees and court costs are assumed by the public, unlike a paying litigant, lacks an economic incentive to refrain from filing frivolous, malicious, or repetitive lawsuits." *Denton v. Hernandez,* 504 U.S. 25, 31 (1992) (quoting *Neitzke v. Williams,* 490 U.S. 319, 324 (1989)). To prevent such abusive litigation, Congress has authorized federal courts to dismiss an *in forma pauperis* complaint if they are satisfied that the action is frivolous or malicious. *Id.*; *see also* 28 U.S.C. § 1915(e)(2)(B)(i). A complaint may be dismissed as frivolous when the plaintiff cannot make any claim with a rational or arguable basis in fact or law. *Neitzke v. Williams,* 490 U.S. 319, 328-29 (1989); *see also Lawler v. Marshall*, 898 F.2d 1196, 1198 (6th Cir. 1990). An action has no arguable legal basis when the defendant is immune from suit or when plaintiff claims a violation of a legal interest which clearly does not exist. *Neitzke,* 490 U.S. at 327. An action has no arguable factual basis when the allegations are delusional or rise to the level of the irrational or "wholly incredible." *Denton,* 504 U.S. at 32; *Lawler,* 898 F.2d at 1199. The Court need not accept as true factual allegations that are "fantastic or delusional" in reviewing a complaint for frivolousness. *Hill v. Lappin*, 630 F.3d 468, 471 (6th Cir. 2010) (quoting *Neitzke*, 490 U.S. at 328).

Congress also has authorized the *sua sponte* dismissal of complaints that fail to state a

claim upon which relief may be granted. 28 U.S.C. § 1915(e)(2)(B)(ii). A complaint filed by a pro se plaintiff must be "liberally construed" and "held to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam) (quoting *Estelle v. Gamble,* 429 U.S. 97, 106 (1976)). By the same token, however, the complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)); *see also Hill*, 630 F.3d at 470-71 ("dismissal standard articulated in *Iqbal* and *Twombly* governs dismissals for failure to state a claim" under §§ 1915A(b)(1) and 1915(e)(2)(B)(ii)).

"A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 556). The Court must accept all well-pleaded factual allegations as true, but need not "accept as true a legal conclusion couched as a factual allegation." *Twombly*, 550 U.S. at 555 (quoting *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). Although a complaint need not contain "detailed factual allegations," it must provide "more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 555). A pleading that offers "labels and conclusions" or "a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555. Nor does a complaint suffice if it tenders "naked assertion[s]" devoid of "further factual enhancement." *Id.* at 557. The complaint must "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." *Erickson*, 551 U.S. at 93 (citations omitted).

II. Plaintiff's Amended Complaint

Plaintiff, an African American, was employed by the City of Cincinnati from November

2008 to December 2016. In her 109 page, 414 paragraph amended complaint, plaintiff has named several new defendants in addition to the 35 previously named defendants: Jessica Banks, Lakefront at West Chester Property Manager; Jacque Keller, Lakefront at West Chester Regional Manager; Lakefront at West Chester; Georgia Pacific; Georgia Pacific Does; Enterprise Rent A Car; and Enterprise Rent A Car Does. The amended complaint, which is brought against federal, state, and City of Cincinnati officials and private individuals, alleges numerous federal and state law violations. Plaintiff alleges, inter alia, that governmental officials failed to properly investigate her complaints of unwarranted and illegal surveillance and discrimination. She alleges that starting in 2009 through the present, defendants have engaged in a conspiracy to violate her rights. She further alleges claims of employment discrimination under state and federal law against the City of Cincinnati and Georgia Pacific. (Doc. 9, ¶ 7).

The amended complaint alleges, "Under Section 702 of the Foreign Intelligence Surveillance Act, the government conducts warrantless surveillance on U.S. soil of vast quantities of communications entering and leaving the United States—including communications sent and received by Americans, like plaintiff." (Doc. 9, ¶ 59). Plaintiff alleges that she "reported this unauthorized surveillance to the appropriate authorities, who failed to investigate her repeated complaints of constitutional violations." (*Id.*, at ¶ 67).

In 2014, she contacted the Cincinnati mayor, other City officials, and City council members to complain about the "unauthorized surveillance taking place on her devices." (*Id.*, at 68-69). Plaintiff alleges that City officials failed to investigate her complaints about the unauthorized surveillance and "conspiracy." She also alleges she was wrongfully accused of workplace violence in October 2014. Plaintiff states that officials failed to properly investigate the accusation and conducted a "sham" hearing. The amended complaint also recounts

numerous instances of "gross negligent misconduct and fraud" by City officials, which allegedly began in 2009.

Paragraphs 78 through 92 of the amended complaint contain allegations concerning a "history of gross negligent misconduct and fraud by City officials" spanning from December 2009 through October 2013 relating to plaintiff's employment with the City.

Plaintiff further alleges that in 2014 and 2015, she reported the unauthorized surveillance and discrimination to the Fairfield, Ohio police, to a special agent with the Cincinnati FBI, to congressional representatives, and to the Department of Justice. (*Id.*, ¶¶ 94-103). The amended complaint states that "[f]rom February 2015 to December 2019, plaintiff continued to provide the DOJ [Department of Justice], OIG [Office of Inspector General], and elected officials such as President Trump, and Senator Sherrod Brown with documentation and information describing the ongoing harassment, discrimination, conspiracy and constitutional violations." (*Id.*, ¶ 104). She alleges that the FBI failed to investigate her complaints and engaged in a conspiracy to deprive her of her constitutional rights. (*Id.*, ¶¶ 105-107).

Plaintiff states that in April 2020, she made a request under the Freedom of Information Act to the FBI and OIG for "any and everything pertaining to her." (*Id.*, ¶ 109). In response, plaintiff was advised that the FBI and OIG were unable to identify records responsive to her request. Plaintiff alleges this was not truthful as she had previously contacted the Cincinnati division of the FBI and made a report to an unknown investigator, which included supporting documentation. Plaintiff states the Inspector General for the Department of Commerce (DOC) acknowledged receiving her letter, but she did not know what the department did with her letter. Plaintiff concluded that based on the FBI, OIG, and DOC's responses, no investigations into plaintiff's complaints were conducted. (*Id.*, ¶¶ 109-110).

Plaintiff further alleges that Elizabeth Tuck (Loring), her former attorney, failed to adequately represent her before the Equal Employment Opportunity Commission (EEOC) in connection with plaintiff's allegations of employment discrimination against the City of Cincinnati. She alleges that defendant Tuck filed duplicate EEOC charges without plaintiff's authorization. The amended complaint alleges that defendant Tuck represented plaintiff from November 2012 through June 2014, and that defendants Randy Freking, Kelly Mulloy Myers and George Reul, partners of the Freking, Myers & Reul law firm, failed to properly train, supervise and correct the negligent actions of defendant Tuck. (*Id.*, ¶¶ 111-121).

The amended complaint also alleges that in September 2014, the Ohio Disciplinary Counsel wrongfully accused plaintiff of submitting fraudulent emails to the Disciplinary Counsel in connection with her complaint against defendant Tuck. Plaintiff alleges that Catherine Russo, Scott Drexel, and Joseph Caligiuri knew that the fraud accusations against plaintiff were false; knowingly memorialized and publicized the false fraud accusations; and did so to benefit the City of Cincinnati, Tuck, and Freking, Myers, & Reul. (*Id.*, ¶¶ 122-137).

Plaintiff alleges that in July 2018, she was routinely followed and monitored by an unknown FBI agent. She also alleges that from October 2018 to March 2019, she was continuously denied employment and terminated from numerous jobs due to defendants' continuous campaign against her. (*Id.*, ¶¶ 138-157). She further alleges that she contacted an attorney on June 13, 2019 to request legal assistance, but "[t]he government did not want plaintiff to obtain legal representation , so they retaliated against plaintiff." (*Id.*, ¶ 160).

Plaintiff also alleges that in June 2019 defendants conspired with the University of Cincinnati Medical Center to have plaintiff dismissed from its low-cost Dental Center in the middle of having a dental implant developed for her front tooth. (*Id.*, ¶¶ 161). She alleges that

she has been incapable of obtaining a dental implant. (*Id.*).

Plaintiff alleges that in July 2019, the "defendants continued to harass plaintiff by conspiring with the Psychiatric Unit of a local hospital." (Id., ¶ 162). The amended complaint states, "Specifically, defendants had plaintiff involuntarily committed to the Psychiatric Unit where drugs were forced onto plaintiff for no reason." (*Id.*). Plaintiff alleges that while she was involuntarily committed to the Psychiatric Unit, representative from Enterprise Rent A Car contacted her several times about returning her rental vehicle. Plaintiff alleges she did not have access to her cell phone and could not contact Enterprise Rent A Car or return the car in a timely manner. (*Id.*, ¶ 164).

Plaintiff alleges that in March 2020, she contacted organizations "to request legal assistance with the ongoing conspiratorial campaign of unlawful actions taken against plaintiff by the FBI and others. The government immediately conspired with Enterprise Rent A Car and retaliated against plaintiff for attempting to obtain legal assistance from the organizations." (*Id.*, ¶ 166). She alleges that defendants have conspired with Enterprise Rent-A-Car and had plaintiff placed on the "Do Not Rent List." (*Id.*, ¶ 167). The amended complaint alleges that Enterprise advised plaintiff she owed an amount of $671.00, which she denies, and failed to provide her with a legitimate reason for placing her on the "Do Not Rent List." (*Id.*, ¶ 168).

The amended complaint further alleges that plaintiff was hired as a Plant Accountant for Georgia Pacific on October 29, 2019 and fired on November 15, 2019. (*Id.*, ¶ 172). On November 15, 2019, plaintiff was advised she was being terminated because she did not "fit within [the] culture." (*Id.*, ¶ 173). The divisional controller and senior human resources manager refused to provide plaintiff with any explanation or reasons for the termination. (*Id.*). On November 19, 2019, plaintiff "filed a complaint with the Ohio Civil Rights Commission

[OCRC] and the EEOC for race, sex, and retaliation based on her prior federal discrimination lawsuit filed against the City of Cincinnati case number 1:14 CV 00582." (*Id.*, ¶ 174). During the OCRC investigation, Georgia Pacific filed a position statement with an explanation for plaintiff's termination: "Given the amount of unsolicited feedback received about Charging Party's behavior within the first two weeks of employment, . . . Regional Controller concluded that Charging Party's interactions with colleagues were extraordinarily discourteous and unprofessional, and that Plaintiff's lack of interest and attentiveness during training sessions with Ms. Cobb indicated that she was not receptive to coaching and training." (*Id.*, ¶ 175, Ex. K). Plaintiff provided a rebuttal to this statement, alleging Georgia Pacific's reason for termination was false. (Id., ¶ 176, Ex. L). Plaintiff states she informed the OCRC that she was questioned by the Plant Accountant about her previous federal discrimination lawsuit against the City of Cincinnati. Plaintiff alleges this disclosure was a motivating factor for her termination. She alleges she never received warnings or counseling from Georgia Pacific prior to her termination. (*Id.*, ¶¶ 177-183). Plaintiff also alleges that during her employment with Georgia Pacific, she was treated less favorably than similarly situated non-African American employees with respect to her termination. (*Id.*, ¶ 403).

The amended complaint further alleges that from July 2019 to the present, plaintiff has moved on three occasion due to defendants' conspiratorial actions. Plaintiff alleges that defendants have engaged in a conspiracy with the property management company of each apartment community where plaintiff has lived to have her wrongfully evicted. In July and August 2020, plaintiff advised the managers of Lakefront about the "ongoing conspiracy and warrantless surveillance being conducted by the government." (*Id.*, ¶ 190). The managers dismissed plaintiff's claims as unfounded. Plaintiff alleges that in September 2020, the

Lakefront Property Manager ordered plaintiff to move out immediately in retaliation for plaintiff's communications with a local TV news outlet's investigation team. Later, plaintiff was told she could stay, but only after plaintiff had given all of her furniture away. Plaintiff further alleges that after she included Jessica Banks and Jacque Keller as defendants in her complaint, she notice that someone had entered her apartment and tampered with her belongings. (*Id.*, ¶¶ 191-196).

The amended complaint alleges:

> Defendants have ruined plaintiff's life and career by preventing her from gaining employment, having her fired off several jobs, spreading false accusations, rumors, thereby isolating plaintiff from meaning relationships with others and ruining every relationship in her life including her marriage and divorce. Plaintiff has already suffered from the irreparable harm to her financial stability; good reputation due to Defendants' conspiratorial false fraud accusations, continual discrimination, retaliation, and warrantless surveillance. In addition, defendants have planted camera's and other devices in plaintiff's home to continuous (sic), monitor, harass, manage, conspire, dictate and control plaintiff['s] entire life. The only way to repair the damage to plaintiff is to grant immediate injunctive and declaratory relief and to provide plaintiff with a new identity. For clarification, this is not an all-inclusive description of defendants' conspiratorial actions. However, it is just a summary of defendants, unlawful behavior directed at plaintiff.

(*Id.*, ¶ 197). Plaintiff alleges that from July 2009 through the present, all of the defendants subjected her to discriminatory, conspiratorial, and malicious actions and have violated her rights. (*Id.*, ¶¶198-244).

Based on the foregoing, plaintiff brings the following causes of action: Count I: Federal Constitutional Claim – Equal Protection and Due Process – Abuse of Power; Count II: Federal Constitutional Claim – Equal Protection and Due Process – Gross Negligence; Count III: Federal Constitutional Claim – Equal Protection and Due Process Violation – Discrimination; Count IV: Federal Constitutional Claim – Unlawful Search and Seizure; Count V: Federal Constitutional Claim – Equal Protection and Due Process Federal Conspiracy; Count VI: Federal Tort Claims

Act - Invasion of Privacy – intrusion upon Seclusion; Count VII: Federal Tort Claims Act – Invasion of Privacy – False Light; Count VIII: Federal Tort Claims Act – Tortious Interference; Count IX: Federal Tort Claims Act – Intentional Infliction of Emotional Distress; Count X: Federal Tort Claims Act – Gross Negligence; COUNT XI: Plaintiff Rosalind Holmes v. Defendants Comey, Holder, and Rogers Federal Constitutional Claim – Return and Expungement of Information Unlawfully Searched and Seized; COUNT XII: Discrimination, 42 U.S.C. § 1981 – Discrimination & Retaliation; COUNT XIII: Discrimination – 42 U.S.C. § 1983 Deprivation of Rights; COUNT XIV: Discrimination – 42 U.S.C. § 1985 Conspiracy to Interfere with Civil Rights; and COUNT XV: Conspiracy – 42 U.S.C. § 1986 Action for Neglect to Prevent. Counts XVI through XXIII allege claims under Ohio law. Count XXIV alleges race discrimination against Georgia Pacific and the City of Cincinnati under Title VII and Ohio law.

III. Resolution

At this stage in the proceedings, without the benefit of briefing by the parties to this action, the undersigned concludes that plaintiff's employment discrimination claim against defendant Georgia Pacific is deserving of further development and may proceed at this juncture. *See* 28 U.S.C. § 1915(e)(2)(B). However, the remainder of plaintiff's amended complaint fails to state a claim with an arguable basis in law over which this federal Court has subject matter jurisdiction.

First, to the extent plaintiff may be invoking the diversity jurisdiction of the Court under 28 U.S.C. § 1332(a) with respect to her state law claims, the amended complaint reveals such jurisdiction is lacking. In order for diversity jurisdiction pursuant to § 1332(a) to lie, the citizenship of the plaintiff must be "diverse from the citizenship of each defendant" thereby ensuring "complete diversity." *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68 (1996) (citing *State*

Farm Fire & Cas. Co. v. Tashire, 386 U.S. 523, 531 (1967)); *see also Napletana v. Hillsdale College*, 385 F.2d 871, 872 (6th Cir. 1967); *Winningham v. North American Res. Corp.*, 809 F. Supp. 546, 551 (S.D. Ohio 1992). In this case, there is no complete diversity because plaintiff and numerous defendants are residents of the State of Ohio. Therefore, this Court lacks subject matter jurisdiction on the basis of diversity of citizenship over any state law claims plaintiff may be alleging.

Second, the Court is without federal question jurisdiction over the amended complaint with the exception of plaintiff's race discrimination claim against Georgia Pacific. District courts have original federal question jurisdiction over cases "arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. In order to invoke the Court's federal question jurisdiction pursuant to 28 U.S.C. § 1331, plaintiff must allege facts showing the cause of action involves an issue of federal law. *See Metro. Life Ins. Co. v. Taylor*, 481 U.S. 58, 63 (1987).

The majority of plaintiff's causes of action do not state claims for relief because they are time-barred. Plaintiff's civil rights claims under § 1983 are governed by Ohio's two-year statute of limitations applicable to personal injury claims. *See, e.g., Browning v. Pendleton*, 869 F.2d 989, 992 (6th Cir. 1989) (holding that the "appropriate statute of limitations for 42 U.S.C. § 1983 civil rights actions arising in Ohio is contained in Ohio Rev. Code § 2305.10, which requires that actions for bodily injury be filed within two years after their accrual"); *see also Wallace v. Kato*, 549 U.S. 384, 387 (2007) (and Supreme Court cases cited therein) (holding that the statute of limitations governing § 1983 actions "is that which the State provides for personal-injury torts"); *Zundel v. Holder*, 687 F.3d 271, 281 (6th Cir. 2012) ("the settled practice . . . to adopt a local time limitation as federal law if it is not inconsistent with federal law or policy to do so" is

applicable "to § 1983 actions and to *Bivens* actions because neither the Federal Constitution nor the § 1983 statute provides timeliness rules governing implied damages") (internal citation and quotation marks omitted). Plaintiff's § 1985 and *Bivens*[1] claims likewise have a two-year statute of limitations. *See Dotson v. Lane*, 360 F. App'x 617, 620 n.2 (6th Cir. 2010) (§ 1985); *Zappone v. United States*, 870 F.3d 551, 559 (6th Cir. 2017) (*Bivens*). Plaintiff's § 1986 claim has a one-year statute of limitations. *See* 42 U.S.C. § 1986 ("[N]o action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued."). Although the statute of limitations is an affirmative defense, when it appears clear on initial screening of the complaint that the action is time-barred, the complaint may be dismissed for failure to state a claim upon which relief may be granted. *See Jones v. Bock*, 549 U.S. 199, 215 (2007). *Cf. Fraley v. Ohio Gallia Cnty.*, No. 97-3564, 1998 WL 789385, at *1-2 (6th Cir. Oct. 30, 1998) (holding that the district court "properly dismissed" the *pro se* plaintiff's § 1983 civil rights claims under 28 U.S.C. § 1915(e)(2)(B) because the complaint was filed years after Ohio's two-year statute of limitations had expired); *Anson v. Corr. Corp. Of America*, No. 4:12cv357, 2012 WL 2862882, at *2-3 (N.D. Ohio July 11, 2012) (in *sua sponte* dismissing complaint under 28 U.S.C. § 1915(e), the court reasoned in part that the plaintiff's *Bivens* claims asserted "six years after the events upon which they are based occurred" were time-barred under Ohio's two-year statute of limitations for bodily injury), *aff'd*, 529 F. App'x 558 (6th Cir. 2013).

Here, it is clear from the face of the amended complaint that plaintiff's federal claims regarding incidents from 2009 through October 2018 are time-barred. Plaintiff filed the instant case on October 20, 2020, long after the two-year limitations period expired for most of her claims in this case. Therefore, plaintiff's claims which occurred prior to October 2018 are

[1] *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

subject to dismissal at the screening stage on statute of limitations grounds.

Plaintiff contends that these claims should not be time barred under the doctrine of equitable tolling. (Doc. 6). The Court disagrees.

Equitable tolling generally "applies when a litigant's failure to meet a legally-mandated deadline unavoidably arose from circumstances beyond that litigant's control." *Graham-Humphreys v. Memphis Brooks Museum of Art, Inc.*, 209 F.3d 552, 560-61 (6th Cir. 2000) (citing *Baldwin County Welcome Ctr. v. Brown*, 466 U.S. 147, 151 (1984)). Plaintiff bears the burden of establishing equitable tolling applies to her claims. *Jackson v. United States*, 751 F.3d 712, 718-19 (6th Cir. 2014). To carry her burden, plaintiff must demonstrate more than just "a garden variety claim of excusable neglect." *Zappone v. United States*, 870 F.3d 551, 556 (6th Cir. 2017) (quoting *Chomic v. United States, 311* F.3d 607, 615 (6th Cir. 2004)).

Equitable tolling is applied sparingly. *Zappone*, 870 F.3d at 556 (citing *Jackson*, 751 F.3d at 718). Whether to apply equitable tolling in a given case "lies solely within the discretion of the trial court." *Betts v. C. Ohio Gaming Ventures, LLC*, 351 F. Supp. 3d 1072, 1075 (S.D. Ohio 2019) (citing *Truitt v. Cty. of Wayne*, 148 F.3d 644, 648 (6th Cir. 1998)). Courts in the Sixth Circuit consider five factors to determine whether the equitable tolling doctrine should be applied. *Zappone,* 870 F.3d at 556 (citing *Jackson*, 751 F.3d at 718) (citing *Truitt*, 148 F.3d at 648). The factors are: (1) lack of notice of the filing requirement; (2) lack of constructive knowledge of the filing requirement; (3) diligence in pursuing one's rights; (4) absence of prejudice to the defendant; and (5) the plaintiff's reasonableness in remaining ignorant of the particular legal requirement. *Truitt*, 148 F.3d at 648. These factors are considered on a case-by-case basis. *Id.* They are not necessarily comprehensive, and the court may consider additional factors. *Betts*, 351 F. Supp. 3d at 1075 (citing *Allen v. Yukins*, 366 F.3d 396, 401 (6th Cir.

2004)). *See also Graham-Humphreys*, 209 F.3d at 560-61 (citing *Truitt*, 148 F.3d at 648). Often "the most significant consideration in courts' analyses" will be the plaintiff's "'failure to meet a legally-mandated deadline' due to 'unavoidab[le] . . . circumstances beyond'" the plaintiff's control, not any one of the five *Truitt* factors. *Zappone,* 870 F.3d at 556 (quoting *Graham-Humphreys*, 209 F.3d at 560-61) (citations omitted).

Plaintiff alleges that equitable tolling of the statute of limitations should be applied in this case for the following reasons:

> Defendants actively misled plaintiff and prevented her from exercising her rights. Throughout plaintiff's federal discrimination lawsuit defendants actively engaged in a secret conspiracy designed to violate plaintiff's constitutional rights and cover-up their unlawful actions. Specifically, from the period of July 2014 to the present, defendants engaged in a conspiracy of false fraud allegations and warrantless surveillance with the Ohio Office of Disciplinary Counsel, Elizabeth Tuck, Freking, Myers, Reul and the FBI. Defendants, willfully, deliberately with reckless disregard failed to disclose this information to plaintiff, prior to settlement of her federal discrimination lawsuit. Plaintiff was completely unaware of defendant's conspiracy with the FBI, Elizabeth Tuck, Freking, Myers, Reul and the Disciplinary Counsel, when she agreed to settle her federal discrimination lawsuit. Plaintiff would not have agreed to settle her federal discrimination lawsuit had she known of defendant's conspiratorial behavior. Moreover, Plaintiff pursued her claims with diligence, from the period of July 2009 to the present. Plaintiff filed several complaints alleging among others, unauthorized surveillance, conspiracy, retaliation, discrimination and attorney misconduct to the City of Cincinnati, FBI, and the Ohio Disciplinary Counsel. Plaintiff has written letters to Congressman John Boehner, President Barack Obama, Senator Sherrod Brown, the U.S. Department of Justice and Office of the Inspector General for the DOJ as described above asking for an investigation. Despite plaintiff's diligent efforts to discover her claims by contacting government regulators and officials she was incapable of discovering her claims, because of defendants' deceitfulness. Thus, plaintiff has provided satisfactory evidence to prove the elements of a fraudulent concealment by defendants.

(Doc. 6 at PAGEID 1145-1146).

Plaintiff has failed to allege facts justifying equitable tolling in this case. Her conclusory allegations of a secret conspiracy, warrantless surveillance, and retaliation are insufficient to meet her burden to show her failure to meet the statutory deadlines for filing her causes of action

were due to circumstances beyond her control. *Zappone,* 870 F.3d at 556. Nor has plaintiff shown that she satisfied the five *Truitt* factors. Plaintiff fails to present an argument or explanation why the facts of this case warrant the benefit of equitable tolling. Because plaintiff's federal claims are time-barred and the doctrine of equitable tolling does not apply, her claims pre-dating October 2018 should be dismissed.

Moreover, to the extent plaintiff seeks to resurrect her discrimination claims against the City of Cincinnati that she settled in a previous case (*Holmes v. Cincinnati*, No. 1:14-cv-582), the doctrine of equitable tolling is not applicable. Plaintiff essentially seeks to vacate the settlement of a previous lawsuit against the City of Cincinnati based on an alleged "secret conspiracy to violate" her rights. Filing a second complaint is not the proper vehicle for seeking relief from a previously settled lawsuit against the same defendant.

With respect to the claims that may not be time-barred, the undersigned is unable to discern from the facts alleged in the amended complaint any federal statutory or constitutional provision that applies to give rise to an actionable claim for relief. Plaintiff alleges that from October 2018 to March 2019, she was continuously denied employment and terminated from numerous jobs due to defendants' continuous campaign against her; that in June 2019 defendants conspired with the University of Cincinnati Medical Center to have plaintiff dismissed from its low-cost Dental Center; that defendants conspired with Enterprise Rent-A-Car to have plaintiff placed on the "Do Not Rent List"; and that defendants engaged in a conspiracy with the property management company of each apartment community where plaintiff has lived to have her wrongfully evicted.

Plaintiff's conspiracy claims must be dismissed. Plaintiff's amended complaint provides no factual content or context from which the Court may reasonably infer that the defendants

conspired against plaintiff to violate her constitutional rights. *Iqbal*, 556 U.S. at 678. Plaintiff's allegations of conspiracy are unsupported by specific facts, amount to legal conclusions couched as factual allegations, and are insufficient to give the defendants or the Court notice of the factual basis for plaintiff's conspiracy claims. *Twombly*, 550 U.S. at 555. "It is 'well-settled that conspiracy claims must be pled with some degree of specificity and that vague and conclusory allegations unsupported by material facts will not be sufficient to state such a claim under § 1983.'" *Fieger v. Cox*, 524 F.3d 770, 776 (6th Cir. 2008) (quoting *Gutierrez v. Lynch*, 826 F.2d 1534, 1538 (6th Cir. 1987)). Plaintiff has not alleged factual allegations to support the inference that a single conspiratorial plan existed, that the alleged co-conspirators shared in the general conspiratorial objective, and that an overt act was committed in furtherance of the conspiracy. *See Anderson v. Cnty. of Hamilton*, 780 F. Supp.2d 635, 643-44, 652 (S.D. Ohio 2011) (and cases cited therein). Plaintiff's allegations are simply too conclusory to state a claim of a conspiracy to violate a right protected by § 1983. Accordingly, plaintiff's claims of conspiracy under Section 1983 should be dismissed against all of the defendants.

Section 1985 of Title 42 provides a cause of action for conspiracy to deprive an individual equal protection of the law. *See* 42 U.S.C. § 1985(3). To state a § 1985(3) claim, plaintiff must show that (1) two or more persons conspired (2) for the purpose of depriving the plaintiff of the equal protection of the laws due to racial or class-based discriminatory animus, (3) an act "in furtherance of the object of such conspiracy" and (4) an injury to the plaintiff resulting from such act. *See United Bhd. of Carpenters, Local 610 v. Scott*, 463 U.S. 825, 828-29 (1983). *See also Ashbiegu v. Purviance*, 76 F. Supp. 2d 824, 830 (S.D. Ohio 1998). As with her Section 1983 conspiracy claim, plaintiff has failed to plead specific facts in support of her § 1985 conspiracy claims as related to the incidents that are not time-barred. Plaintiff has alleged

no facts showing that defendants' actions were in any way motivated by racial or class-based animus. In addition, the amended complaint fails to state a claim under 42 U.S.C. § 1985(2), which pertains to conspiracies aimed at deterring witnesses or jurors in federal court. Plaintiff's amended complaint contains no allegations whatsoever that could plausibly be construed as stating a claim under this subsection for claims that are not time-barred. Therefore, plaintiff's conspiracy claims under Section 1985 should be dismissed.

As plaintiff has no viable claim under 42 U.S.C. § 1985, she also has no claim under 42 U.S.C. § 1986. "Section 1986 establishes a cause of action against anyone, who has knowledge of a conspiracy under § 1985, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do." *Radvansky v. City of Olmstead Falls,* 395 F.3d 291, 314 (6th Cir. 2005) (internal quotation marks omitted). Because the amended complaint does not state a claim under § 1985, it necessarily follows that there can be no liability under § 1986. *Id.* at 315. Therefore, plaintiff's claim under 42 U.S.C. § 1986 should also be dismissed for failure to state a claim for relief.

The Court notes that plaintiff's 24 causes of action do not include a claim for a violation of the Freedom of Information Act. In any event, it appears that plaintiff fails to state a claim for relief under the FOIA because she has failed to allege that she made a proper FOIA request; the records requested fall within the purview of the statute; and she has exhausted the available administrative remedies prior to bringing an action in federal court. *See Sykes v. United States*, 507 F. App'x. 455, 463 (6th Cir. 2012).

In sum, with the exception of plaintiff's employment discrimination claim against Georgia Pacific, the amended complaint provides no factual content or context from which the Court may reasonably infer that the named defendants violated plaintiff's rights. *Iqbal*, 556 U.S.

at 678. Accordingly, plaintiff's amended complaint should be dismissed for lack of federal jurisdiction and for failure to state a claim upon which relief may be granted.

IV. Plaintiff's motion for equitable tolling, breach of contract, injunctive relief (Doc. 6)

As discussed above, plaintiff's motion for equitable tolling should be denied. The remainder of plaintiff's motion should also be denied as the sole cause of action remaining after screening, her employment discrimination claim against Georgia Pacific, is unrelated to the relief requested in this motion. In addition, the reasons for the Court's recommendation for dismissal of the remainder of plaintiff's claims are unrelated and distinct to the "defenses" and relief plaintiff seeks through her motion. For example, plaintiff asserts "equitable estoppel as a defense in deciding whether to grant certain defendants dismissal based upon them having vacated or loss of their positions through the elections process or otherwise." (Doc. 6 at 29). This "defense" has no bearing on whether any of the claims against the named defendants should be dismissed. Therefore, the motion (Doc. 6) should be denied.

IT IS THEREFORE RECOMMENDED THAT:

1. Plaintiff's amended complaint be **DISMISSED** with prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B), **with the exception of** plaintiff's employment discrimination claim against Georgia Pacific.

2. Plaintiff's motion for equitable tolling, breach of contract, injunctive relief (Doc. 6) be **DENIED.**

3. The Court certify pursuant to 28 U.S.C. § 1915(a) that for the foregoing reasons an appeal of any Order adopting this Report and Recommendation would not be taken in good faith and therefore deny plaintiff leave to appeal *in forma pauperis*. Plaintiff remains free to apply to proceed *in forma pauperis* in the Court of Appeals. *See Callihan v. Schneider*, 178 F.3d 800,

803 (6th Cir. 1999), overruling in part *Floyd v. United States Postal Serv.*, 105 F.3d 274, 277 (6th Cir. 1997).

IT IS THEREFORE ORDERED THAT:

1. As plaintiff has previously been granted leave to proceed *in forma pauperis*, within **thirty (30) days** of receipt of this Order, plaintiff is **ORDERED** to submit a copy of her amended complaint, a completed summons form, and a United States Marshal form for defendant Georgia Pacific for purposes of service of process by the United States Marshal.

2. The **Clerk of Court** is **DIRECTED** to send to plaintiff a summons form and a United States Marshal form for this purpose. Upon receipt of the completed summons and United States Marshal forms, the Court shall order service of process by the United States Marshal in this case.

3. Plaintiff shall inform the Court promptly of any changes in her address which may occur during the pendency of this lawsuit.

Karen L. Litkovitz
United States Magistrate Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ROSALIND HOLMES,
Plaintiff,

vs.

UNITED STATES OF AMERICA, et al.,
Defendants.

Case No. 1:20-cv-825

McFarland, J.
Litkovitz, M.J.

NOTICE

Pursuant to Fed. R. Civ. P. 72(b), **WITHIN 14 DAYS** after being served with a copy of the recommended disposition, a party may serve and file specific written objections to the proposed findings and recommendations. This period may be extended further by the Court on timely motion for an extension. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendation is based in whole or in part upon matters occurring on the record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon, or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party□s objections **WITHIN 14 DAYS** after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

Appendix DD

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION - CINCINNATI**

ROSALIND HOLMES,	:	Case No. 1:20-cv-825
Plaintiff,	:	Judge Matthew W. McFarland
v.	:	
UNITED STATES OF AMERICA, *et al.*,	:	
Defendants.	:	

ENTRY AND ORDER ADOPTING REPORT AND RECOMMENDATION (Doc. 13)

This case is before the Court on Plaintiff's Objections (Doc. 14) to Magistrate Judge Karen L. Litkovitz's Report and Recommendation (Doc. 13). Magistrate Judge Litkovitz found that the majority of Plaintiff's amended complaint "fails to state a claim with an arguable basis in law over which this federal Court has subject matter jurisdiction." (Doc. 13.) As such, Magistrate Judge Litkovitz recommends that Plaintiff's amended complaint, with the exception of Plaintiff's employment discrimination claim against Georgia Pacific (Count XXIV), be dismissed with prejudice. Plaintiff filed Objections (Doc. 14), making this matter ripe for the Court's review.

As required by 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72(b), the Court has made a de novo review of the record in this case. Upon said review, the Court finds that Plaintiff's Objections (Doc. 14) are not well-taken and are thus **OVERRULED**. The Court therefore **ADOPTS** the Report and Recommendation (Doc. 13) in its entirety. As

such, the Court hereby **ORDERS** that:

(1) Plaintiff's amended complaint (Doc. 9), with the exception of Plaintiff's employment discrimination claim against Georgia Pacific (Count XXIV), is **DISMISSED WITH PREJUDICE** pursuant to 28 U.S.C. § 1915(e)(2)(B); and

(2) Plaintiff's motion for equitable tolling, breach of contract, injunctive relief (Doc. 6) is **DENIED**.

Furthermore, the Court **CERTIFIES**, pursuant to 28 U.S.C. § 1915(a), that any appeal of this Order would not be taken in good faith and therefore **DENIES** Plaintiff leave to appeal *in forma pauperis*. Plaintiff remains free to apply to proceed *in forma pauperis* in the Court of Appeals.

IT IS SO ORDERED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

By: Matthew W. McFarland
JUDGE MATTHEW W. McFARLAND

Appendix EE

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Deborah S. Hunt
Clerk

100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Tel. (513) 564-7000
www.ca6.uscourts.gov

Filed: April 02, 2021

Ms. Rosalind Holmes
4557 Wyndtree Drive
Apartment 145
West Chester, OH 45069

Re: Case No. 21-3206, *Rosalind Holmes v. USA, et al*
Originating Case No. 1:20-cv-00825

Dear Ms. Holmes:

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Monica M. Page
Case Manager
Direct Dial No. 513-564-7021

cc: Mr. Richard W. Nagel

Enclosure

No mandate to issue

NOT RECOMMENDED FOR PUBLICATION

No. 21-3206

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ROSALIND HOLMES, Plaintiff-Appellant, v. UNITED STATES OF AMERICA, et al., Defendants-Appellees.	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO

ORDER

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

This matter is before the court upon initial consideration to determine whether this appeal was taken from an appealable order.

On February 26, 2021, the district court partially dismissed Rosalind Holmes's civil-rights action. On March 1, 2021, Holmes filed a notice of appeal from the partial dismissal order.

This court lacks jurisdiction over this appeal. The February 26 order disposed of fewer than all of the claims and parties involved in this action and did not direct entry of a final, appealable judgment under Federal Rule of Civil Procedure 54(b). *See* Fed. R. Civ. P. 54(b); *Solomon v. Aetna Life Ins. Co.*, 782 F.2d 58, 59-60 (6th Cir. 1986). Nor was the partial dismissal an immediately appealable "collateral order" under the doctrine announced in *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541, 546-47 (1949). The district court has not entered its final

decision during the pendency of this appeal; therefore, we lack appellate jurisdiction over this interlocutory appeal. *See Gillis v. U.S. Dep't of Health & Human Servs.*, 759 F.2d 565, 568-69 (6th Cir. 1985).

Accordingly, it is ordered that the appeal is **DISMISSED**.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Deborah S. Hunt
Clerk

100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Tel. (513) 564-7000
www.ca6.uscourts.gov

Filed: July 12, 2021

Ms. Rosalind Holmes
4557 Wyndtree Drive
Apartment 145
West Chester, OH 45069

Re: Case No. 21-3491, *Rosalind Holmes v. USA, et al*
Originating Case No.: 1:20-cv-00825

Dear Ms. Holmes,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Sharday S. Swain
Case Manager
Direct Dial No. 513-564-7027

cc: Mr. Richard W. Nagel

Enclosure

No mandate to issue

NOT RECOMMENDED FOR PUBLICATION

No. 21-3491

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ROSALIND HOLMES,

Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA, et al.,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO

ORDER

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

This matter is before the Court upon initial consideration to determine whether this appeal was taken from an appealable order.

On February 26, 2021, the district court partially dismissed Rosalind Holmes's civil rights action. We previously dismissed an appeal from the partial dismissal order for lack of appellate jurisdiction. *See Holmes v. United States*, No. 21-3206 (6th Cir. Apr. 2, 2021) (order). On May 25, 2021, Holmes filed another notice of appeal from the partial dismissal order (No. 21-3491, the current appeal).

This Court lacks jurisdiction over appeal No. 21-3491. The February 26 order disposed of fewer than all of the claims and parties involved in this action and did not direct entry of a final, appealable judgment under Federal Rule of Civil Procedure 54(b). *See* Fed. R. Civ. P. 54(b);

Solomon v. Aetna Life Ins. Co., 782 F.2d 58, 59-60 (6th Cir. 1986). Nor was the partial dismissal an immediately appealable "collateral order" under the doctrine announced in *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541, 546-47 (1949). The district court has not entered its final decision during the pendency of this appeal; therefore, we lack appellate jurisdiction over this interlocutory appeal. *See Gillis v. U.S. Dep't of Health & Human Servs.*, 759 F.2d 565, 568-69 (6th Cir. 1985).

Accordingly, it is ordered that appeal No. 21-3491 is **DISMISSED**.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Deborah S. Hunt
Clerk

100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Tel. (513) 564-7000
www.ca6.uscourts.gov

Filed: July 12, 2021

Ms. Rosalind Holmes
4557 Wyndtree Drive
Apartment 145
West Chester, OH 45069

Re: Case No. 21-3521, *Rosalind Holmes v. USA, et al*
Originating Case No. : 1:20-cv-00825

Dear Ms. Holmes,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Sharday S. Swain
Case Manager
Direct Dial No. 513-564-7027

cc: Mr. Richard W. Nagel

Enclosure

No mandate to issue

NOT RECOMMENDED FOR PUBLICATION

No. 21-3521

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ROSALIND HOLMES,	)	
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	ON APPEAL FROM THE UNITED
	)	STATES DISTRICT COURT FOR
UNITED STATES OF AMERICA, et al.,	)	THE SOUTHERN DISTRICT OF
	)	OHIO
Defendants-Appellees.	)	
	)	
	)	

ORDER

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

This matter is before the Court upon initial consideration to determine whether this appeal was taken from an appealable order.

On February 26, 2021, the district court partially dismissed Rosalind Holmes' civil rights action. We previously dismissed an appeal from the partial dismissal order for lack of appellate jurisdiction. *See Holmes v. United States*, No. 21-3206 (6th Cir. Apr. 2, 2021) (order). On April 15, 2021, a magistrate judge denied, *inter alia*, Holmes' motions to appoint counsel and to file medical documents and exhibits under seal. On May 31, 2021, Holmes filed a notice of appeal from the magistrate judge's order (No. 21-3521, the current appeal).

We lack jurisdiction over appeal No. 21-3521. Any review of the magistrate judge's order must first be sought in the district court. *Ambrose v. Welch*, 729 F.2d 1084, 1085 (6th Cir. 1984) (per curiam).

Accordingly, it is ordered that appeal No. 21-3521 is **DISMISSED**.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

Appendix FF

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ROSALIND HOLMES,
Plaintiff,

vs.

UNITED STATES OF AMERICA, et al.,
Defendants.

Case No. 1:20-cv-825
McFarland, J.
Litkovitz, M.J.

ORDER

This matter is before the Court on several motions. Most recently, plaintiff has moved for an oral hearing on all outstanding motions. (Doc. 26) (referencing Doc. 1 at PAGEID 10-14; Docs. 11, 19-20, 23-24). Because the Court will dispose of each outstanding motion in this Order, oral argument is not "essential to the[ir] fair resolution" and plaintiff's motion for an oral hearing will be denied as moot. *See* S.D. Ohio Civ. R. 7.1.

Plaintiff has requested that "the Court . . . wait until after a decision has been rendered [on her appeal (*see* Doc. 21) of the District Court's order (Doc. 18) adopting this Court's Report and Recommendation (Doc. 13)] to send the amended complaint [(Doc. 9)]." (Doc. 19).[1] Plaintiff has relatedly moved for certification under Rule 54(b) of the Federal Rules of Civil Procedure that the District Court's order was a final appealable order entered with no just reason for delay, notwithstanding the fact that it disposed of fewer than all of plaintiff's claims. (Doc. 23). The United States Court of Appeals for the Sixth Circuit dismissed plaintiff's appeal (Doc. 25), mooting both motions.

Plaintiff also filed an amended motion to appoint counsel and request for oral hearing (Doc. 24), referencing a prior such motion made October 20, 2020 as part of her *in forma pauperis* motion and upon which the District Court has not ruled. (*Id.* at PAGEID 1496; *see also*

[1] The Court denied a prior, similar request. (*See* Doc. 17).

Doc. 1 at PAGEID 10-14). The law does not require the appointment of counsel for indigent plaintiffs in cases such as this, *see Lavado v. Keohane*, 992 F.2d 601, 604-05 (6th Cir. 1993), nor has Congress provided funds with which to compensate lawyers who might agree to represent those plaintiffs. The appointment of counsel in a civil proceeding is not a constitutional right and is justified only by exceptional circumstances. *Id.* at 605-06. *See also Lanier v. Bryant*, 332 F.3d 999, 1006 (6th Cir. 2003). Moreover, there are not enough lawyers who can absorb the costs of representing persons on a voluntary basis to permit the Court to appoint counsel for all who file cases on their own behalf. The Court makes every effort to appoint counsel in those cases which proceed to trial and in exceptional circumstances will attempt to appoint counsel at an earlier stage of the litigation. No such circumstances appear in this case. Pursuant to S.D. Ohio Civ. R. 7.1, the Court finds that oral argument is not "essential to the fair resolution" of this case and plaintiff's motions to appoint counsel (Doc. 1 at PAGEID 10-14; Doc. 24) will be denied.

Also included in plaintiff's *in forma pauperis* motion is a motion for permission to file electronically. (Doc. 1 at PAGEID 14). As plaintiff demonstrates a willingness and capability to file documents electronically, this motion will be granted. Documents filed electronically shall conform substantially to the requirements of the Local Rules and to the format for the ECF system set out in the most current editions of the ECF Policies and Procedures Manual issued by the Clerk. *See* S.D. Ohio Civ. R. 5.1(c). Plaintiff shall make herself familiar with the Court's ECF policies and procedures, which can be found on the Court's website under "Electronic Case Filing." *See* https://www.ohsd.uscourts.gov/cm-ecf-button2. By registering, plaintiff consents to receive notice of filings pursuant to the Federal Rules of Civil Procedure via the Court's electronic filing system. Permission to file electronically may be revoked at any time.

On December 16, 2020, plaintiff moved for leave to file medical documents and exhibits in support of her motion for temporary restraining order and declaratory relief under seal. (Doc. 11). (*See* Doc. 6 at PAGEID 1150-1195) ("Motion for Preliminary Injunctive and Declaratory Relief"). A plaintiff shoulders a strict and heavy burden on a motion to seal, which may be granted only upon a detailed presentation—tailored to the particular documents to be sealed—of the compelling reasons and legal basis for such relief. *See Shane Grp., Inc. v. Blue Cross Blue Shield of Mich.*, 825 F.3d 299, 305 (6th Cir. 2016) (citing *In re Knoxville News–Sentinel Co.*, 723 F.2d 470, 476 (6th Cir. 1983)). The District Court, however, denied plaintiff's motion for temporary restraining order (Doc. 6). (Doc. 18). Leaving aside whether plaintiff meets the onerous burden associated with a motion to seal, this motion is moot.

Finally, plaintiff has moved for leave to amend her complaint. (Doc. 20). The attached proposed amended complaint (Doc. 20-1) is limited to defendant Georgia Pacific and counts related to federal and state law discrimination under Title VII, 42 U.S.C. § 1981, and Ohio Rev. Code § 4112. Plaintiff also includes one count (Count VI) for the intentional infliction of emotional distress stemming from the alleged discrimination. The Court is to "freely give leave [to amend a pleading] when justice so requires." Fed. R. Civ. P. 15(a)(2). Plaintiff's proposed amended complaint narrows her claims to those involving employment discrimination consistent with this Court's prior Report and Recommendation (Doc. 13). Therefore, the Court grants plaintiff's motion for leave to file an amended complaint.

IT IS THEREFORE ORDERED THAT:

1. Plaintiff's motion for leave to file amended complaint (Doc. 20) is **GRANTED**.
2. Plaintiff's motions to seal (Doc. 11), for extension of time (Doc. 19), for Rule 54(b) certification (Doc. 23), and for an oral hearing on all outstanding motions (Doc. 26)

are **DENIED AS MOOT**.

3. Plaintiff's motions to appoint counsel (Doc. 1 at PAGEID 10-14; Doc. 24) are **DENIED**.
4. Plaintiff's motion for permission to file electronically (Doc. 1 at PAGEID 14) is **GRANTED**. Upon entry of this Order, the Clerk of Court is **DIRECTED** to undertake the necessary steps to register plaintiff to allow her access to the CM/ECF system and to provide plaintiff with the necessary login information.
5. The United States Marshal shall serve a copy of the amended complaint, summons, the Order granting plaintiff *in forma pauperis* status, and this Order on defendant Georgia Pacific as directed by plaintiff, with costs of service to be advanced by the United States.
6. Plaintiff shall inform the Court promptly of any changes in her address which may occur during the pendency of this lawsuit.

IT IS SO ORDERED.

Date: 4/14/2021

Karen L. Litkovitz
United States Magistrate Judge

Appendix GG

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ROSALIND HOLMES,
Plaintiff,

vs.

UNITED STATES OF AMERICA, et al.,
Defendants.

Case No. 1:20-cv-825
McFarland, J.
Litkovitz, M.J.

ORDER

This matter is before the Court on plaintiff Rosalind Holmes's motion for a final appealable order pursuant to Federal Rule of Civil Procedure 54(b). (Doc. 30). In particular, plaintiff seeks the entry of final judgment regarding the dismissal (Doc. 18) of Counts I-XXIII in her first amended complaint (Doc. 9) and the dismissal of her motion to appoint counsel (Doc. 27). (*See* Doc. 30 at PAGEID 1572-73). The Sixth Circuit dismissed plaintiff's prior appeal for lack of jurisdiction. (Doc. 25).

Rule 54(b) states:

> When an action presents more than one claim for relief--whether as a claim, counterclaim, crossclaim, or third-party claim--or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay. Otherwise, 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). The Court's power under this Rule is "largely discretionary . . . to be exercised in light of 'judicial administrative interests as well as the equities involved' . . . and giving due weight to 'the historic federal policy against piecemeal appeals.'" *Reiter v. Cooper*, 507 U.S. 258, 265 (1993) (quoting *Curtiss-Wright Corp. v. Gen. Elec. Co.*, 446 U.S. 1, 8 (1980)) (internal quotation marks omitted). Rule 54(b) "does not tolerate immediate appeal of every

action taken by a district court." *Gen. Acquisition, Inc. v. GenCorp, Inc.*, 23 F.3d 1022, 1026 (6th Cir. 1994). In addition, certification under Rule 54(b) is not necessarily appropriate "even if [judgments on individual claims] are in some sense separable from the remaining unresolved claims." *Curtiss-Wright Corp.*, 446 U.S. at 8.

Here, neither judicial administrative interests nor the equities involved favor an immediate appeal from the order dismissing the majority of plaintiff's claims in her first amended complaint. As the undersigned concluded, these claims did not fall within the jurisdiction of the federal courts and were not premised on "factual content or context from which the Court [could] reasonably infer that the named defendants violated plaintiff's rights." (Doc. 13 at PAGEID 1425-26). Plaintiff's motion for a final appealable order regarding the dismissal of Counts I-XXIII in her first amended complaint (Doc. 18) will be denied.

"[A]n order denying appointment of counsel does not conclusively determine the disputed question prior to the district court's final disposition of the case unless the district court's order was expressly made final." *Henry v. City of Detroit Manpower Dep't*, 763 F.2d 757, 762 (6th Cir. 1985) (citing *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546 (1949)). Here, the Court's disposition of plaintiff's request to appoint counsel is not final. The Court's order referenced the fact that it "makes every effort to appoint counsel in those cases which proceed to trial and in exceptional circumstances. . . ." (Doc. 27 at PAGEID 1552). Should the circumstances of this case change, the Court would be willing to revisit its determination. As such, an appeal at this juncture would be premature. Plaintiff's motion for a final appealable order regarding the denial of her motion for appointment of counsel (Doc. 27) will be denied.

For the reasons above, plaintiff's motion for a final appealable order (Doc. 60) is **DENIED**.

IT IS SO ORDERED.

Date: 5/7/2021

Karen L. Litkovitz
United States Magistrate Judge

Appendix HH

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ROSALIND HOLMES,
Plaintiff,

Case No. 1:20-cv-825
McFarland, J.
Litkovitz, M.J.

vs.

GEORGIA PACIFIC,
Defendant.

ORDER AND REPORT AND RECOMMENDATION

This matter is before the Court on plaintiff Rosalind Holmes's "Motion to Set Aside" (Doc. 61), "Motion to Reconsider Rule 54(B) Certification Under Rule 59" (Doc. 63), "Amended Motion to Set Aside Under 59(E)" (Doc. 64), "Emergency Motion to File Under Seal (Doc. 43), and "Emergency Motion to Schedule an Oral Hearing on all Outstanding Motions" (Doc. 66). Defendant Georgia Pacific filed a response (Doc. 62) to plaintiff's first motion to set aside (Doc. 61).

Briefly summarized, plaintiff filed a twenty-four count amended complaint against dozens of defendants alleging numerous federal and state law violations. (Doc. 9). A series of prior recommendations and orders of the undersigned magistrate judge and the district judge authorized plaintiff to pursue, of those twenty-four claims, only her employment discrimination claim against defendant Georgia Pacific. (*See* Docs. 13, 18, 27-28). On July 21, 2021, plaintiff filed a notice of voluntary dismissal of the authorized, operative complaint asserting this claim (Doc. 28). (Doc. 52). On August 3, 2021, plaintiff filed a notice of appeal pertaining to (1) the dismissal of the twenty-three other claims that had been included in her first (and now superseded) amended complaint (Doc. 9) and (2) this Court's prior order (Doc. 27) denying her

motions to appoint counsel (Docs. 1, 24) and file temporary restraining order under seal (Doc. 11).

The Sixth Circuit dismissed the appeal for lack of jurisdiction. (Doc. 60). It explained that plaintiff had already filed two unsuccessful appeals of the district judge's partial dismissal order and order denying her motion for a final appealable order under Rule 54(b), and plaintiff's latest attempt to secure an appeal related to the twenty-three dismissed claims was likewise futile. (*Id.* at PAGEID 2292). The Sixth Circuit held that "because [plaintiff's] dismissal [of the remaining viable claim] is without prejudice, she is not precluded from re-filing her claim against Georgia Pacific. Any other approach would facilitate an end run around Rule 54. . . ." (*Id.*) (citing *Rowland v. S. Health Partners, Inc.*, 4 F.4th 422, 427 (6th Cir. 2021), and *Page Plus of Atlanta, Inc. v. Owl Wireless, LLC*, 733 F.3d 658, 661-62 (6th Cir. 2013)).[1] Plaintiff's pending motions are filed in response to the Sixth Circuit's order and seek, again, a final appealable order as to the twenty-three dismissed claims and, most logically understood as alternatively, a return to the status quo prior to her notice of voluntary dismissal.

In her "Motion to Reconsider Rule 54(B) Certification Under Rule 59" (Doc. 63), plaintiff seeks reconsideration of this Court's denial of Rule 54(b) certification in order for the District Court to "direct the entry of final judgment on counts I – XXIII that this Court dismissed in its Order adopting the Report and Recommendation of Magistrate Judge Litkovitz. (Doc #18)." (*Id.* at PAGEID 2306). This Court denied plaintiff's first motion for Rule 54(b) certification on April 15, 2021 (*see* Docs. 23, 27) and a second such motion on May 10, 2021 (*see* Docs. 30, 31). Under Rule 59(e), "[a] motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment." In addition to plaintiff's motion to reconsider

[1] The Sixth Circuit concluded that it lacked jurisdiction over the second part of the appeal (the undersigned magistrate's prior order (Doc. 27)) because that order had not been subjected to prior district judge review. (*Id.*).

falling well outside that time frame (having been filed August 31, 2021), the Court has already addressed the substantive reasons why Rule 54(b) certification is not appropriate in this case:

> [N]either judicial administrative interests nor the equities involved favor an immediate appeal from the order dismissing the majority of plaintiff's claims in her first amended complaint. As the undersigned concluded, these claims did not fall within the jurisdiction of the federal courts and were not premised on "factual content or context from which the Court [could] reasonably infer that the named defendants violated plaintiff's rights." (Doc. 13 at PAGEID 1425-26).

(Doc. 31 at PAGEID 1581). This motion (Doc. 63) should be denied.

Both of plaintiff's motions to set aside (Docs. 61, 64) seek, in effect, to undo her notice of voluntary dismissal (Doc. 52) in the wake of the Sixth Circuit's dismissal of her appeal (Doc. 60). Plaintiff argues that denial of the relief requested would leave her in "the wholly untenable and unfair position of being forever incapable of appealing this Court's dismissal of twenty-three of her twenty-four claims against Defendants." (Doc. 61 at PAGEID 2295). Georgia Pacific argues in response that plaintiff's action was wholly voluntary and that a tactical error does not warrant 60(b)(6) relief. It was apparently in response to these arguments that plaintiff filed her amended motion to set aside using Rule 59 as opposed to Rule 60(b).[2] Plaintiff's second motion also relies on the district courts' actions following the dismissed appeals in *Page Plus* and *Rowland*, each discussed in the order dismissing plaintiff's appeal (Doc. 60). *See supra* p. 2. In both cases, the Sixth Circuit dismissed appeals in which the parties had agreed to voluntarily dismiss certain claims in order to secure a final judgment on other claims. Upon remand from the Sixth Circuit, the district courts in *Page Plus* and *Rowland* ultimately set aside the voluntary dismissals that precipitated the appeals so that the cases could proceed. *See Page Plus*, N.D.

[2] Construing pro se plaintiff's filings liberally, the Court considers these motions as seeking relief in the alternative. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)) ("A document filed *pro se* is 'to be liberally construed'. . . .").

Ohio case no. 3:11-cv-2757, Doc. 146 (Dec. 6, 2013) (Zouhary, J.); *Rowland*, E.D. Ky. case no. 3:18-cv-33, Doc. 98 (Sept. 3, 2021) (Van Tatenhove, J.).[3]

The appropriate lens through which to view plaintiff's motions to set aside her notice of voluntary dismissal is Rule 60(b). *See Warfield v. AlliedSignal TBS Holdings, Inc.*, 267 F.3d 538, 542 (6th Cir. 2001) (holding that courts have discretion to set aside a voluntary dismissal with prejudice if the dismissal was done under duress or mistake of fact).[4] *See also Patrick Collins, Inc. v. Lowery*, No. 1:12-cv-00844, 2013 WL 6383860, at *2 (S.D. Ind. Dec. 4, 2013) (citing *Schmier v. McDonald's LLC*, 569 F.3d 1240, 1242 (10th Cir. 2009)) ("[T]he plaintiff may move to vacate the notice under Rule 60(b) of the Federal Rules of Civil Procedure."). *Cf.* 8 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 41.33 (3d ed. 2013) ("[T]he plaintiff may not *unilaterally* withdraw . . . the notice [of voluntary dismissal.") (emphasis added).

Under Rule 60(b), the "court may relieve a party or its legal representative from a final judgment, order, or proceeding for[,]" as relevant here, "any other reason that justifies relief." Fed. R. Civ. P. 60(b)(6). This is a "catchall provision" to be employed only in exceptional or extraordinary circumstances where principles of equity mandate relief. . . ." *Kelmendi v. Detroit Bd. of Educ.*, 780 F. App'x 310, 312 (6th Cir. 2019) (quoting *Miller v. Mays*, 879 F.3d 691, 698 (6th Cir. 2018)). A movant under Rule 60(b) must demonstrate entitlement to relief by clear and

[3] On remand in *Page Plus*, Judge Zouhary cited *In re Saffady*, 524 F.3d 799, 803 (6th Cir. 2008), for the proposition that courts have "inherent power to vacate orders prior to entry of final judgment" under "Rule 59. . . ." N.D. Ohio case no. 3:11-cv-2757, Doc. 146 at PAGEID 2711. Judge Zouhary also wrote that any decision other than to allow the parties to vacate their stipulated order of dismissal "would leave [plaintiff] in the wholly untenable and unfair position of being forever incapable of appealing this Court's order granting summary judgment against it." *Id.* On remand in *Rowland*, Judge Van Tatenhove did not cite a particular rule under which he granted the plaintiff's motion to set aside the Rule 41(a)(2) stipulation of dismissal but did so, instead, pursuant to "the path suggested to her by the Sixth Circuit[,]" which was to first litigate the state-law claims (that had been dismissed by stipulation) and then appeal from the final disposition of all of her claims. E.D. Ky. case no. 3:18-cv-33, Doc. 98 at PAGEID 2404 (citing *Rowland*, 4 F. 4th at 430).

[4] While the Court was unable to locate a Sixth Circuit decision regarding a notice of voluntary dismissal *without* prejudice, it appears that the weight of circuit authority holds that a Rule 41(a)(1)(i) dismissal without prejudice qualifies as a final judgment, order, or proceeding for purposes of Rule 60(b). *See Yesh Music v. Lakewood Church*, 727 F.3d 356, 360-63 (5th Cir. 2013) (and cases cited therein).

convincing evidence. *See Info-Hold, Inc. v. Sound Merch., Inc.*, 538 F.3d 448, 454 (6th Cir. 2008) (citations omitted).

The Court finds that the interest of justice and equities weigh in favor of allowing plaintiff to withdraw her notice of voluntary dismissal. To rule otherwise would deprive plaintiff of any opportunity to appeal the dismissal of the twenty-three other claims from her amended complaint (Doc. 9). Georgia Pacific, subject to plaintiff's refiling of her viable claim in any event, would not be prejudiced by this result. In *Fuller v. Quire*, 916 F.2d 358, 359-60 (6th Cir. 1990), the Sixth Circuit considered the district court's reopening of a case under Rule 60(b)(6) where the plaintiff's case had been dismissed for lack of prosecution due to apparent attorney malpractice by his prior attorney. The Sixth Circuit concluded:

> The district judge found as a reason "the interest of justice," after considering the broad equities of the case. The facts show that the suit was some distance from where the plaintiff lives, that the plaintiff *repeatedly attempted to find out about his case*, and that there is *no showing of undue prejudice to the defendant.* Clearly, the trial court did not err in exercising its power under the provisions of Rule 60(b)(6).

Id. at 361 (emphasis added). Unlike in *Kelmendi*, where the Sixth Circuit found that Rule 60(b)(6) could not be used to remedy the plaintiff's failure to file a timely appeal, plaintiff here has repeatedly attempted (albeit procedurally incorrectly) to preserve her right to appeal the dismissed twenty-three claims. 780 F. App'x at 312. Plaintiff's notice of voluntary dismissal "did not serve the purpose intended" and "fairness and [] the interest of justice" suggest that her motions to withdraw the notice (Docs. 61, 64) should be granted pursuant to Rule 60(b)(6). *Page Plus*, N.D. Ohio case no. 3:11-cv-2757, Doc. 146 at PAGEID 2711.

Finally, plaintiff moves for an oral hearing on the motions discussed above, as well as plaintiff's earlier emergency motion to file under seal an emergency motion for an indicative order under Rule 62.1 (Doc. 43). This latter emergency motion was filed on June 30, 2021, prior

to plaintiff's notice of voluntary dismissal. Once plaintiff filed the Rule 41(a)(1) dismissal, "the lawsuit [was] no more"—a result that was "self-effectuating. . . ." *Aamot v. Kassel*, 1 F.3d 441, 444, 445 (6th Cir. 1993). But to the extent that withdrawal of plaintiff's notice of voluntary dismissal would revive this motion, plaintiff shoulders a strict and heavy burden on a motion to seal, which may be granted only upon a detailed presentation—tailored to the particular documents to be sealed—of the compelling reasons and legal basis for such relief. *See Shane Grp., Inc. v. Blue Cross Blue Shield of Mich.*, 825 F.3d 299, 305 (6th Cir. 2016) (citing *In re Knoxville News–Sentinel Co.*, 723 F.2d 470, 476 (6th Cir. 1983)).

Plaintiff's "Emergency Motion to File Under Seal" is 176 pages long, including a proposed amended 522-count complaint against dozens of defendants and several hundred pages of exhibits. (*See* Doc. 43). As best the Court can tell, she seeks to seal:

- emails, phone records, and medical records related to proposed additional defendants Dr. Jonathan Lazzaro, Atrium Medical Center, Premier Health, Carissa Piper, Butler Behavioral Health, Dr. Quinton Moss, Modern Psychiatry and Wellness and the West Chester Ohio Police (*id.* at PAGEID 1626-27);
- certain information related to her proposed motion to amend complaint to add UC Health, UC Health Psychiatric Emergency Services, and Does UC Health PES as defendants, and medical records from those defendants (*id.* at PAGEID 1629-31).

Other than referring to the medical records as confidential and reflecting upon her competency, she does not explain how such medical records are relevant to her proposed amended complaint—except to the extent that they would explain why she should be appointed counsel.[5]

[5] Plaintiff's motion contains a request for the appointment of counsel. (*Id.* at PAGEID 1619). As this Court has previously held, plaintiff's circumstances do not warrant the appointment of counsel. (*See* Doc. 27 at PAGEID 1552). *See also Stewart v. United States*, No. 2:13-cv-02896, 2017 WL 939197, at *1 n.1 (W.D. Tenn. Mar. 7, 2017) (being "mentally ill" does not warrant the appointment of counsel).

(*Id.* at PAGEID 1618-19). Plaintiff's motion to seal does not meet the Sixth Circuit's standard articulated in *Shane Group* and will be denied. Pursuant to S.D. Ohio Civ. R. 7.1, the Court finds that oral argument is not "essential to the fair resolution" of this motion (Doc. 43) and her request for the same (Doc. 66) will be denied.

IT IS THEREFORE ORDERED THAT:

(1) plaintiff's "Emergency Motion to File Under Seal" (Doc. 43) is **DENIED**; and

(2) plaintiff's "Emergency Motion to Schedule an Oral Hearing on all Outstanding Motions" (Doc. 66) is **DENIED**.

IT IS THEREFORE RECOMMENDED THAT:

(1) plaintiff's "Motion to Reconsider Rule 54(B) Certification Under Rule 59" (Doc. 63) be **DENIED**; and

(2) plaintiff's "Motion to Set Aside" (Doc. 61) and "Amended Motion to Set Aside Under 59(E)" (Doc. 64) be **GRANTED**.

Date: 12/14/2021

Karen L. Litkovitz
United States Magistrate Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ROSALIND HOLMES,
Plaintiff,

Case No. 1:20-cv-825
McFarland, J.
Litkovitz, M.J.

vs.

GEORGIA PACIFIC,
Defendant.

NOTICE

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to this Report & Recommendation within FOURTEEN (14) DAYS after being served with a copy thereof. This period may be extended further by the Court on timely motion by either side for an extension of time. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendation is based in whole or in part upon matters occurring on the record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon, or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections WITHIN 14 DAYS after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

Appendix II

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI**

ROSALIND HOLMES,	:	Case No. 1:20-cv-825
Plaintiff,	:	Judge Matthew W. McFarland
v.	:	
GEORGIA PACIFIC,	:	
Defendant.	:	

ORDER OVERRULING OBJECTIONS (Docs. 72) AND ADOPTING REPORT AND RECOMMENDATION (Doc. 68)

This action is before the Court on Plaintiff Rosalind Holmes's Motion to File Under Seal and Motion for Reconsideration, filed February 28, 2022 and March 16, 2022 (Docs. 72, 74). First, Plaintiff, in her Motion for Reconsideration (Doc. 74), requests this Court to construe the Motion to File Under Seal (Doc. 72) as her objections to Magistrate Judge Karen L. Litkovitz's Order and Report and Recommendation, filed December 14, 2021 (Doc. 68). For good cause shown, Plaintiff's Motion for Reconsideration is **GRANTED**. This Court shall construe Plaintiff's Motion to File Under Seal (Doc. 74) as her objections to Magistrate Judge Litkovitz's Order and Report and Recommendation (Doc. 68).

Second, Magistrate Judge Litkovitz recommended that Plaintiff's Motion to Reconsider Rule 54(B) Certification Under Rule 59 be denied and Plantiff's Motion to Set Aside and Motion to Set Aside Under Rule 59 be granted. Plaintiff objected, by way of her Motion to File Under Seal, to Magistrate Judge Litkovitz's Order and Report and

Recommendation, which is ripe for the Court's review.

Plaintiff's objections re-argue that certain filings should be filed under seal. Plaintiff acknowledges in her Motion for Reconsideration (Doc. 74) that her Motion to File Under Seal, being construed as her objections, "is very similar to the initial Emergency Motion to file under Seal (Doc. 43) which Magistrate Litkovitz had already issued a report and recommendation (Doc 68)." (Plaintiff's Motion for Reconsideration, Doc. 74, Pg. ID # 2535.) Magistrate Judge Litkovitz denied Plaintiff's Emergency Motion to File Under Seal (Doc. 43) in her Order Report and Recommendation (Doc. 68) because such motion did not satisfy the Sixth Circuit's standard articulated in *Shane Group, Inc. v. Blue Cross Blue Shield of Michigan*, 825 F.3d 299 (6th Cir. 2016).

Thus, because Plaintiff's Motion to File Under Seal (Doc. 72) is nearly identical to her Emergency Motion to File Under Seal (Doc. 43), which was recently denied by Magistrate Judge Litkovitz, none of Plaintiff's objections confront the reasoning or conclusions of Magistrate Judge Litkovitz's Report and Recommendation. Plaintiff fails to identify anything specific she believes may be incorrect in Magistrate Judge Litkovitz's findings. *See Miller v. Currie*, 50 F.3d 373, 380 (6th Cir. 1995). Such nonspecific objections are, in effect, restatements of prior arguments and amount to a failure to object. *Bradley v. United States*, No. 18-1444, 2018 WL 5084806, at *3 (6th Cir. Sept. 17, 2018); *Cole v. Yukins*, 7 F. App'x 354, 356 (6th Cir. 2001).

As required by 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72(b), the Court has made a *de novo* review of the record in this case. Upon such review, the Court finds that Plaintiff's Objections (Docs. 72) are not well-taken and are accordingly

OVERRULED. In summary, the Court **ADOPTS** the Report and Recommendations (Doc. 68) in its entirety and **ORDERS** the following:

(1) Plaintiff's Motion for Reconsideration (Doc. 74) is **GRANTED**;

(2) Plaintiff's Motion to Reconsider Rule 54(B) Certification Under Rule 59 (Doc. 63) is **DENIED**;

(3) Plaintiff's Motion to Set Aside (Doc. 61) is **GRANTED**; and

(4) Plaintiff's Motion to Set Aside Under 59(E) (Doc. 64) is **GRANTED**.

IT IS SO ORDERED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

By: _____
JUDGE MATTHEW W. McFARLAND

Appendix JJ

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ROSALIND HOLMES,

Plaintiff,

vs.

GEORGIA PACIFIC,

Defendant.

Case No. 1:20-cv-825
McFarland, J.
Litkovitz, M.J.

REPORT AND RECOMMENDATION TO DENY MOTION TO PROCEED ON APPEAL *IN FORMA PAUPERIS*

This matter is before the Court on plaintiff's motion for leave to proceed *in forma pauperis* on appeal pursuant to 28 U.S.C. § 1915. (Doc. 87).

Pursuant to 28 U.S.C. § 1915(a)(3), "[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." *See also* Fed. R. App. P. 24(a). Good faith in this context is demonstrated when the party seeks appellate review of an issue that is not frivolous. *See Coppedge v. United States*, 369 U.S. 438, 445 (1962). An appeal is frivolous where the appeal lacks an arguable basis either in law or fact. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989).

On May 31, 2022, the District Judge adopted the Report and Recommendation of the Magistrate Judge recommending that Ms. Holmes' "Motion to Reconsider Rule 54(B) Certification Under Rule 59" (Doc. 63) be denied. *See* Doc. 75. For the reasons set forth in the undersigned's December 14, 2021 Order denying plaintiff leave to file documents under seal and the Report and Recommendation of the same date recommending that plaintiff's "Motion to Reconsider Rule 54(B) Certification Under Rule 59" be denied (Doc. 68), the undersigned recommends that the district court certify that Ms. Holmes' *in forma pauperis* appeal would not be taken in good faith within the meaning of 28 U.S.C. § 1915(a)(3). Accordingly, Ms. Holmes' motion for leave to proceed *in forma pauperis* on appeal (Doc. 87) should be **DENIED**.

IT IS THEREFORE RECOMMENDED THAT:

1. The Court certify that Ms. Holmes' *in forma pauperis* appeal would not be taken in good faith within the meaning of 28 U.S.C. § 1915(a)(3).

2. Ms. Holmes' motion for leave to proceed *in forma pauperis* on appeal (Doc. 87) be **DENIED**.

3. Ms. Holmes be advised of the following:

Pursuant to Fed. R. App. P. 24(a)(4), Ms. Holmes may file, within thirty (30) days after service of any Order adopting the Report and Recommendation to deny Ms. Holmes leave to appeal *in forma pauperis*, a motion with the Sixth Circuit Court of Appeals for leave to proceed as a pauper on appeal. *Callihan v. Schneider*, 178 F.3d 800, 803 (6th Cir. 1999), *overruling in part Floyd v. United States Postal Service*, 105 F.3d 274 (6th Cir. 1997). Ms. Holmes' motion must include a copy of the affidavit filed in the District Court and the District Court's statement of the reasons for denying pauper status on appeal. *Id.*; *see* Fed. R. App. P. 24(a)(5).

Ms. Holmes is notified that if she does not file a motion within thirty (30) days of receiving notice of the District Court's decision as required by Fed. R. App. P. 24(a)(5), or fails to pay the required filing fee of $505.00 within this same time period, the appeal will be dismissed for want of prosecution. *Callihan*, 178 F.3d at 804. Once dismissed for want of prosecution, the appeal will not be reinstated, even if the filing fee or motion for pauper status is subsequently tendered, unless Ms. Holmes can demonstrate that she did not receive notice of the District Court's decision within the time period prescribed for by Fed. R. App. P. 24(a)(5). *Id.*

Date: 7/13/2022

Karen L. Litkovitz

Karen L. Litkovitz, Magistrate Judge
United States District Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ROSALIND HOLMES,

Plaintiff,

vs.

GEORGIA PACIFIC,

Defendant.

Case No. 1:20-cv-825
McFarland, J.
Litkovitz, M.J.

NOTICE

Pursuant to Fed. R. Civ. P. 72(b), **WITHIN 14 DAYS** after being served with a copy of the recommended disposition, a party may serve and file specific written objections to the proposed findings and recommendations. This period may be extended further by the Court on timely motion for an extension. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendation is based in whole or in part upon matters occurring on the record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon, or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party=s objections **WITHIN 14 DAYS** after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION - CINCINNATI**

ROSALIND HOLMES,	:	Case No. 1:20-cv-825
Plaintiff,	:	Judge Matthew W. McFarland
vs.	:	
GEORGIA PACIFIC,	:	
Defendant.	:	

ORDER ADOPTING REPORT AND RECOMMENDATION (Docs. 88)

This action is before the Court upon the Report and Recommendation (the "Report") (Doc. 88) of United States Magistrate Judge Karen L. Litkovitz, to whom this case is referred pursuant to 28 U.S.C. § 636(b). In the Report, Magistrate Judge Litkovitz recommended that the Court certify that Plaintiff's *in forma pauperis* appeal would not be taken in good faith within the meaning of 28 U.S.C. § 1915(a)(3) and deny Plaintiff's Motion for Leave to Proceed *In Forma Pauperis* on Appeal (Doc. 87). Plaintiff filed an Objection to the Report (Doc. 91). Thus, this matter is ripe for the Court's review.

As required by 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72(b), the Court has made a de novo review of the record in this case. Upon said review, the Court finds that Plaintiff's Objection is not well-taken and are accordingly **OVERRULED**. Thus, the Court **ADOPTS** Magistrate Judge Litkovitz's Report and Recommendation (Doc. 88) in its entirety and **ORDERS** the following:

(1) The Court **CERTIFIES** that Plaintiff's *in forma pauperis* appeal would not be taken in good faith within the meaning of 28 U.S.C. § 1915(a)(3); and

(2) The Court **DENIES** Plaintiff's Motion for Leave to Proceed *In Forma Pauperis* on Appeal (Doc. 87).

Additionally, the Court **ADVISES** Plaintiff that, pursuant to Fed. R. App. P. 24(a)(4), Plaintiff may file, within thirty (30) days after service of this Order, a motion with the Sixth Circuit Court of Appeals for leave to proceed as a pauper on appeal. *Callihan v. Schneider*, 178 F.3d 800, 803 (6th Cir. 1999), *overruling in part Floyd v. United States Postal Service*, 105 F.3d 274 (6th Cir. 1997). Plaintiff's motion must include a copy of the affidavit filed in this Court and this Court's statement of the reasons for denying pauper status on appeal. *Id.*; *see* Fed. R. App. P. 24(a)(5).

Lastly, the Court **ADVISES** Plaintiff that, if she does not file a motion within thirty (30) days of receiving notice of the District Court's decision as required by Fed. R. App. P. 24(a)(5), or fails to pay the required filing fee of $505.00 within this same time period, the appeal will be dismissed for want of prosecution. *Callihan*, 178 F.3d at 804. Once dismissed for want of prosecution, the appeal will not be reinstated, even if the filing fee or motion for pauper status is subsequently tendered, unless Plaintiff can demonstrate that she did not receive notice of this Court's decision within the time period prescribed for by Fed. R. App. P. 24(a)(5). *Id.*

IT IS SO ORDERED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

By: Matthew W. McFarland
MATTHEW W. McFARLAND
UNITED STATES DISTRICT JUDGE

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

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