

SCOTS ON

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 22-12727-J

In re: BEVERLY A. JENKINS,

Petitioner.

On Petition for Writ of Mandamus from the United States District Court for the
Southern District of Florida

Before: BRANCH and LUCK, Circuit Judges.

BY THE COURT:

Beverly Jenkins, proceeding *pro se*, petitions us for a writ of mandamus, arising out of her civil rights action filed in the U.S. District Court for the Southern District of Florida, which the district court dismissed with prejudice. She has paid the filing fees as to her mandamus petition. Liberally construing her petition, Jenkins challenges the district court's dismissal of her case and asks us to compel the district court to vacate its orders and issue a judgment in her favor.

Mandamus is available "only in drastic situations, when no other adequate means are available to remedy a clear usurpation of power or abuse of discretion." *Jackson v. Motel 6 Multipurpose, Inc.*, 130 F.3d 999, 1004 (11th Cir. 1997) (quotation marks omitted). Mandamus may not be used as a substitute for appeal or to control decisions of the district court in discretionary matters. *Id.* The petitioner has the burden of showing that he has no other avenue of relief, and that his right to relief is clear and indisputable. *Mallard v. United States Dist. Court*, 490 U.S. 296, 309 (1989). Where an alternative remedy exists, even if it is unlikely to provide

Objection

by pruse

Appeal No. 22-90019 (1st 22-12727)

Ms. Jenkins, Beverly vs. Signature Healthcare, LLC,7919,
BRANCH "et al" Case No. 22-20241-Civ-Scola-Goodman

relief, mandamus relief is not proper. *See Lifestar Ambulance Svc., Inc. v. United States*, 365 F.3d 1293, 1298 (11th Cir. 2004).

Here, Jenkins is not entitled to mandamus relief, because she had the adequate alternative remedy of challenging the district court's dismissal of her case through an appeal, and she may not now use mandamus as a substitute for appeal. *Jackson*, 130 F.3d at 1004. That Jenkins may not have exercised this adequate alternative remedy does not mean that she lacked the opportunity to do so, and thus, she has failed to show that she had no other avenue of relief. *See id.*; *Mallard*, 490 U.S. at 309; *see also Lifestar Ambulance*, 365 F.3d at 1298.

Accordingly, Jenkins's mandamus petition is hereby DENIED.

Appeal No. 22-90019 (1st 22-12727)

Ms. Jenkins, Beverly vs. Signature Healthcare, LLC,7919.
BRANCH "et al" Case No. 22-20241-Civ-Scola-Goodman

Objection

On file

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 22-12727-J

In re: BEVERLY A. JENKINS,

Petitioner.

On Petition for Writ of Mandamus from the United States District Court for the
Southern District of Florida

Before: BRANCH and LUCK, Circuit Judges.

Objection

pro se

BY THE COURT:

Beverly Jenkins, proceeding *pro se*, petitions us for a writ of mandamus, arising out of her civil rights action filed in the U.S. District Court for the Southern District of Florida, which the district court dismissed with prejudice. She has paid the filing fees as to her mandamus petition.

Liberally construing her petition, Jenkins challenges the district court's dismissal of her case and asks us to compel the district court to vacate its orders and issue a judgment in her favor.

Mandamus is available "only in drastic situations, when no other adequate means are available to remedy a clear usurpation of power or abuse of discretion." *Jackson v. Motel 6 Multipurpose, Inc.*, 130 F.3d 999, 1004 (11th Cir. 1997) (quotation marks omitted). Mandamus may not be used as a substitute for appeal or to control decisions of the district court in discretionary matters. *Id.* The petitioner has the burden of showing that he has no other avenue of relief, and that his right to relief is clear and indisputable. *Mallard v. United States Dist. Court*, 490 U.S. 296, 309 (1989). Where an alternative remedy exists, even if it is unlikely to provide

Objection *pro se*

SCOTUS NO.

relief, mandamus relief is not proper. *See Lifestar Ambulance Svc., Inc. v. United States*, 365 F.3d 1293, 1298 (11th Cir. 2004).

Here, Jenkins is not entitled to mandamus relief, because she had the adequate alternative remedy of challenging the district court's dismissal of her case through an appeal, and she may not now use mandamus as a substitute for appeal. *Jackson*, 130 F.3d at 1004. That Jenkins may not have exercised this adequate alternative remedy does not mean that she lacked the opportunity to do so, and thus, she has failed to show that she had no other avenue of relief. *See id.*; *Mallard*, 490 U.S. at 309; *see also Lifestar Ambulance*, 365 F.3d at 1298.

Accordingly, Jenkins's mandamus petition is hereby **DENIED**.

Objection *Op. pr se*

Appeal No. 22-90019 (1st 22-12727)

Ms. Jenkins, Beverly A. vs. Signature Healthcare, LLC, 7919,
BRANCH "et al" Case No. 22-20241-Civ-Scola-Goodman

case No: 1:22-20241-CIV-SCOLA-GOODMAN

Ms. Jenkins, Beverly A. vs. SIGNATURE HEALTHCARE, LLC, 7919,

SCOTUS NO.

United States District Court
for the
Southern District of Florida

Beverly A. Jenkins, Plaintiff)
v.)
Signature Healthcare, LLC, 7719,) Civil Action No. 22-20241-Civ-Scola
Defendant.)
Objection *Objection*

Order

This matter is before the Court upon the Plaintiff's motion to amend or correct the Court's judgment (**ECF No. 55**) pursuant to Federal Rule of Civil Procedure 52(b) and the Plaintiff's motion for relief from this Court's judgment under Federal Rule of Civil Procedure 60(b). (**ECF No. 57.**) The Court **denies** both motions for the reasons set forth below.

On July 15, 2022, the Court granted the Defendant's motion to dismiss with prejudice (ECF No. 48) on the basis of *res judicata*. The Court entered a judgment pursuant to Rule 58 on July 19, 2022. (ECF No. 53.) It is this judgment that the Plaintiff seeks to amend or correct. As such, the Court construes the Plaintiff's motion as one to alter or amend the Court's judgment pursuant to Rule 59(e). The Plaintiff's first chosen procedural vehicle, Rule 52, governs actions brought to trial without a jury; it does not apply here.

A plaintiff "cannot use a Rule 59(e) motion to relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment." *Michael Linet, Inc. v. Vill. of Wellington, Fla.*, 408 F.3d 757, 763 (11th Cir. 2005). The Plaintiff's motion purports to rehash matters that were the subject of the Court's dismissal order. As such, her motion is inappropriate under Rule 59(e). Indeed, "reconsideration of a previous order is an extraordinary remedy to be employed sparingly." *Bautista v. Cruise Ships Catering & Serv. Int'l, N.V.*, 350 F. Supp. 2d 987, 992 (S.D. Fla. 2004) (Dimitrouleas, J.) (cleaned up).

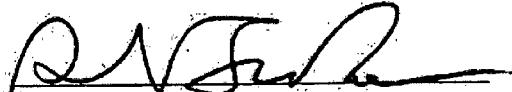
Next, the Court turns to the Plaintiff's motion under Rule 60(b). Such relief is applicable on the basis of: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud, misrepresentation, or misconduct by an opposing party; (4) the judgment being void; (5) the judgment having been satisfied, released, or discharged; or (6) any other reason that justifies relief. Fed. R. Civ. P. 60(b). The Court finds no viable reason why Rule 60(b) would apply here based on the Plaintiff's motion, as the Court understands it. As such, the Court leaves its previous ruling undisturbed.

Appeal No. 22-90019 (1st 22-12727)

Ms. Jenkins, Beverly vs. Signature Healthcare, LLC, 7919,
BRANCH "et al" Case No. 22-20241-Civ-Scola-Goodman

The Plaintiff's motions (**ECF Nos. 55, 57**) are **denied**. This case shall remain closed. The Clerk shall **mail a copy** of this order to the Plaintiff at the address on file.

Done and ordered in Miami, Florida, on August 2, 2022.



Robert N. Scola, Jr.
United States District Judge

SCOTUS NO. _____

Appeal No. 22-90019 (1st 22-12727)
Ms. Jenkins, Beverly vs. Signature Healthcare, LLC, 7919,
BRANCH "et al" Case No. 22-20241-Civ-Scola-Goodman

Objection

At per se

Appeal No. 22-12727

Case 1:22-cv-20241-RNS Document 53 Entered on FLSD Docket 07/19/2022 Page 1 of 1

Ms. Jenkins, Beverly A. v. Signature Healthcare, LLC, 7919,

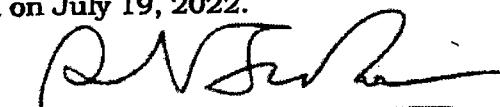
United States District Court
for the
Southern District of Florida

Beverly A. Jenkins, Plaintiff)
v.) Civil Action No. 22-20241-Civ-Scola
Signature Healthcare, LLC, 7719,)
Defendant.

Judgment in a Civil Action

The Court has dismissed this action. (ECF No. 48.) Because the order dismissing this action is a judgment, as defined by Rule 54(a) of the Federal Rules of Civil Procedure, the Court enters judgment in this matter under Rule 58 of the Federal Rules of Civil Procedure. The Court instructs the Clerk to mail copies of this judgment and its dismissal order (ECF No. 48) via U.S. mail to the Plaintiff at the address below.

Done and ordered at Miami, Florida on July 19, 2022.



Robert N. Scola, Jr.
United States District Judge

Copy to:

Beverly A. Jenkins
1136 E. Mowry Dr. # 202 (M)
Homestead, FL 33030

Objection *denied*

Page 7

Appeal No. 22-90019 (1st 22-12727)

Ms. Jenkins, Beverly vs. Signature Healthcare, LLC, 7919,
BRANCH "et al" Case No. 22-20241-Civ-Scola-Goodman

United States District Court
for the
Southern District of Florida

Beverly A. Jenkins, Plaintiff)
v.)
Signature Healthcare, LLC, 7719,)
Defendant.)
} Civil Action No. 22-20241-Civ-Scola

Order Granting Dismissal With Prejudice

This matter is before the Court upon the Defendant's motion to dismiss (ECF No. 36) pro se Plaintiff Beverly Jenkins's third amended complaint. (ECF No. 21.) For the reasons below, the Court **grants** dismissal with prejudice.

Ms. Jenkins sues her former employer, the Defendant LP Homestead, LLC d/b/a Signature HealthCARE of Brookwood Gardens ("Signature"). Signature fired her for, among others, violating the Health Insurance Portability and Accountability Act's ("HIPAA") provisions concerning patient confidentiality. This is not Ms. Jenkins's first time challenging Signature's decision to fire her. In fact, it is at least her third.

Under Federal Rule of Evidence 201, the Court takes judicial notice of two prior instances in which Ms. Jenkins sued Signature on the same nexus of facts before this Court. Indeed, the Court may do so at this juncture pursuant to *Horne v. Potter*. 392 Fed. App'x 800, 802 (11th Cir. 2010).

In 2017, Judge Pedro P. Echarte, Jr. of the Eleventh Judicial Circuit Court of Florida entered summary judgment in Signature's favor when Ms. Jenkins originally sued Signature for firing her. *See Beverly Jenkins v. LP Homestead, LLC d/b/a Signature Healthcare of Brookwood Gardens*, No. 13-024160 CA 20 (Fla. Cir. Ct. Feb. 22, 2017). That did not preclude her from trying again. In 2019 Ms. Jenkins filed another suit, which Judge Oscar Rodriguez-Fonts of the Eleventh Judicial Circuit of Florida dismissed in 2020 on the basis of *res judicata*. *See Beverly Jenkins v. LP Homestead LLC*, No. 2019-028998-CA-01 (Fla. Cir. Ct. June 24, 2020). Likewise, Ms. Jenkins's current iteration of her suit is subject to preclusion.

"In this Circuit, a claim is precluded by prior litigation if: (1) there is a final judgment on the merits; (2) the decision was rendered by a court of competent jurisdiction; (3) the parties, or those in privity with them, are identical in both suits, and (4) the same cause of action is involved in both cases." *Horne*, 392 Fed. App'x at 802. All of these factors apply. The prior disposition of Ms. Jenkins's claims by the Eleventh Judicial Circuit Court of Florida was final. That

Appeal No. 22-90019 (1st 22-12727) Objection *for sc*

**Ms. Jenkins, Beverly vs. Signature Healthcare, LLC, 7919,
BRANCH "et al" Case No. 22-20241-Civ-Scola-Goodman**

SCOTUS NO. | Court properly exercised jurisdiction over her claims. The parties are identical across all three cases. And the same cause of action was at issue.

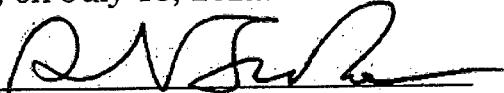
Ms. Jenkins seems to argue that she was deprived of due process before the previous courts that heard her claims and that *res judicata* thus does not apply. (ECF No. 21 ¶ 7.) However, this Court is not the correct forum for Ms. Jenkins to complain of any deficiencies that may have affected her case(s) in state court. Federal courts have limited jurisdiction.

Under the *Rooker-Feldman* doctrine, “a United States District Court has no authority to review final judgments of a state court in judicial proceedings.” *Tindall v. Gibbons*, 156 F. Supp. 2d 1292, 1299 (M.D. Fla. 2001) (quoting *Powell v. Powell*, 80 F.3d 464, 466 (11th Cir. 1996)); see also 28 U.S.C. § 1257. The proper forum for Ms. Jenkins to complain of any deficiencies concerning a State trial court’s disposition of her case is a State appellate court. See *Tindall*, 156 F. Supp. 2d at 1292.

For this reason, the Court finds it is without jurisdiction to hear Ms. Jenkins’s claims and **dismisses** this action with prejudice. At this juncture declines Signature’s invitation to sanction the Plaintiff.

In an abundance of caution, the Court instructs the Clerk to **seal** Ms. Jenkins’s complaints (**ECF Nos. 1, 17, 19, 21**), which Signature indicates contain HIPAA-protected patient information. The Clerk will **close** this case. All pending motions are denied as moot.

Done and ordered in Miami, Florida, on July 15, 2022.


Robert N. Scola, Jr.
United States District Judge

Copy to:

Beverly A. Jenkins
1136 E. Mowry Dr. # 202 (M)
Homestead, FL 33030

Appeal No. 22-90019 (1st 22-12727)
Ms. Jenkins, Beverly vs. Signature Healthcare, LLC, 7919,
BRANCH “et al” Case No. 22-20241-Civ-Scola-Goodman

Objection

On 2nd sc

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