UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-2257

HELENE MCCARTHY-STAPLES,

Plaintiff - Appellant,

v.

M. BRADLEY BRICKHOUSE; COLLEEN T. DICKERSON; FRANK J. DRISCOLL, JR.; LISA A. BROCCOLETTI; MARLANDE SLEDGE; SUSANNE FERRANTELLI; PAMELA JACK; ALICIA R. WELLONS; TABETHA L. TURNER; CHRISTIANNA DOUGHERTY-CUNNINGHAM; MARK D. STILES,

Defendants - Appellees.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Elizabeth W. Hanes, District Judge. (2:21-cv-00383-EWH-RJK)

Submitted: February 21, 2023 Decided: February 23, 2023

Before NIEMEYER and DIAZ, Circuit Judges, and MOTZ, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Helene McCarthy-Staples, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Helene McCarthy-Staples appeals the district court's order dismissing her 42 U.S.C. § 1983 complaint pursuant to 28 U.S.C. § 1915(e)(2) and declining to exercise supplemental jurisdiction over her state law claims. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *McCarthy-Staples v. Brickhouse*, No. 2:21-cv-00383-EWH-RJK (E.D. Va. Nov. 22, 2022). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division

HELENE MCCARTHY-STAPLES,
Plaintiff,

v. Civil Action No. 2:21cv383

M. BRADLEY BRICKHOUSE, *et al.*,
Defendants.

DISMISSAL ORDER

This matter is before the Court to review the sufficiency of a Second Amended Complaint filed by *pro se* Plaintiff Helene McCarthy-Staples ("Plaintiff") in response to an Order to Show Cause issued by the Court. For the reasons set forth in more detail below, Plaintiff's federal claims are DISMISSED with prejudice pursuant to 28 U.S.C. § 1915(e)(2). The Court declines to exercise supplemental jurisdiction over Plaintiff's state law claims, and as a result, the state law claims are DISMISSED without prejudice for lack of jurisdiction.

I. Relevant Factual and Procedural Background

Plaintiff initiated this action by filing an application to proceed *in forma pauperis* ("First IFP Application"), along with a proposed Complaint. First IFP Appl., ECF No. 1; Proposed Compl., ECF No. 1-1. Upon review of Plaintiff's First IFP Application, the Court determined that certain financial information set forth therein required clarification and/or correction. Order at 1, ECF No. 2. As a result, the Court denied Plaintiff's First IFP Application and ordered Plaintiff to either pay the requisite filing fees or submit another IFP Application to the Court within thirty days. *Id.* at 2.

Plaintiff timely filed a second application to proceed *in forma pauperis* ("Second IFP Application"). Second IFP Appl., ECF No. 3. Plaintiff attached two proposed filings to her Second

IFP Application and subsequently filed a proposed Amended Complaint and four additional proposed filings. Proposed Filings, ECF Nos. 3-1 through 3-7. Satisfied that Plaintiff qualified for *in forma pauperis* status, the Court granted Plaintiff's Second IFP Application and directed the Clerk to file Plaintiff's proposed filings. Order Show Cause at 2, ECF No. 4. However, the Court stated: "Plaintiff's filings suffer from defects that must be addressed before this action may proceed." *Id.*

The Court issued an Order to Show Cause, in which it explained that when a plaintiff is granted authorization to proceed *in forma pauperis*, the Court is required, pursuant to 28 U.S.C. § 1915(e)(2), to review the operative complaint and determine, among other things, whether it states a claim on which relief may be granted. *Id.*; *see Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007) (explaining that a complaint must set forth "enough facts to state a claim to relief that is plausible on its face"). If the complaint fails to state a plausible claim for relief, the Court is obligated to dismiss the action. Order Show Cause at 2 (citing 28 U.S.C. § 1915(e)(2)).

Upon review of Plaintiff's multiple filings, the Court determined that it was unclear which document Plaintiff intended to serve as the operative complaint in this action and which specific claims Plaintiff intended to assert against each named Defendant. *Id.* at 2–3. As a result, the Court concluded that Plaintiff had not stated any plausible claims for relief against Defendants and that dismissal of this action was warranted under 28 U.S.C. § 1915(e)(2). *Id.* at 3.

Although dismissal of this action was warranted, the Court, in deference to Plaintiff's *pro se* status, provided Plaintiff with an opportunity to file a Second Amended Complaint. *Id.* The Court stated:

> Plaintiff is ORDERED to SHOW CAUSE why this action should not be dismissed by filing a Second Amended Complaint within thirty days from the date of entry of this Order to Show Cause. Plaintiff is ADVISED that the Second Amended Complaint will supersede Plaintiff's prior filings and will become the operative complaint in this action. As such, the Second Amended Complaint must:

(i) be clearly labeled as Plaintiff's Second Amended Complaint;

(ii) clearly identify all Defendants against whom Plaintiff intends to assert claims;

(iii) clearly state, with specificity, each claim that Plaintiff intends to assert against each Defendant;

(iv) clearly identify a valid basis for the Court's jurisdiction over all asserted claims; and

(v) clearly set forth all factual allegations upon which each asserted claim is based.

Id. Additionally, the Court advised Plaintiff that this case may be dismissed if she failed to comply with the terms of the Order to Show Cause. *Id.* (citing Fed. R. Civ. P. 41(b)).

II. Plaintiff's Second Amended Complaint

Plaintiff timely filed a Second Amended Complaint. Second Am. Compl. at 1–6, ECF No. 13; Attach. at 1–257, ECF No. 13-1. Plaintiff's Second Amended Complaint, including attachments, is 263 pages in length and difficult to decipher; however, it is clear that Plaintiff seeks to challenge the results of certain proceedings in the Virginia state courts regarding the guardianship of Plaintiff's husband, Samuel Staples.[1] Attach. at 1 (referring to her husband's guardianship and the "incessant lack of results" received in the Virginia Beach Circuit Court and the Virginia Beach Juvenile and Domestic Relations District Court).

Plaintiff alleges that in 2017, she hired M. Bradley Brickhouse, a private attorney, to represent her in an action before the Virginia Beach Circuit Court, in which Plaintiff sought to be

[1] The Court notes that Plaintiff's Second Amended Complaint falls far short of complying with the pleading standards required by Rules 8 and 10 of the Federal Rules of Civil Procedure. *See* Second Am. Compl. at 1–6, ECF No. 13; Attach. at 1–257, ECF No. 13-1; *see also* Fed. R. Civ. P. 8(a)(2) (requiring that a pleading include "a short and plain statement of the claim showing that the pleader is entitled to relief"); Fed. R. Civ. P. 8(d)(1) (requiring that a pleading include allegations that are "simple, concise, and direct"); Fed. R. Civ. P. 10(b) (explaining that "[a] party must state its claims . . . in numbered paragraphs, each limited as far as practicable to a single set of circumstances"). For this reason alone, the Court finds that dismissal of this action is warranted.

appointed the guardian and conservator for Mr. Staples. Attach. at 2–3, 6–14, 110. The Virginia Beach Circuit Court appointed Colleen T. Dickerson, an attorney, to serve as Mr. Staples's guardian ad litem during the guardianship proceedings. *Id.* at 27–31, 110. Ms. Dickerson "refused to endorse [Plaintiff] as the fiduciary to be appointed over [Mr. Staples]," and Plaintiff non-suited the guardianship action. *Id.* at 110.

Subsequently, the City of Virginia Beach, through its Department of Human Services, Adult Protective Services Unit, petitioned the Virginia Beach Circuit Court to appoint a guardian and conservator for Mr. Staples. *Id.* at 107. Ms. Dickerson was again appointed to serve as Mr. Staples's guardian ad litem during the guardianship proceedings. *Id.* at 43. On August 25, 2017, the Virginia Beach Circuit Court entered a Final Order, in which it determined, among other things, that (i) Mr. Staples "has a severe and persistent mental illness that significantly impairs his capacity to exercise judgment or self-control"; (ii) Mr. Staples's "condition is unlikely to improve in the foreseeable future"; and (iii) Catholic Charities of Eastern Virginia, Inc. ("Catholic Charities") "is willing and able to serve . . . as guardian and conservator" for Mr. Staples and "has a plan for [Mr. Staples's] treatment." *Id.* at 111–13. Based on these determinations, the Virginia Beach Circuit Court appointed Catholic Charities as the guardian and conservator for Mr. Staples. *Id.* at 113–14.

On occasion, Catholic Charities, on behalf of Mr. Staples, petitioned the Virginia Beach Juvenile and Domestic Relations District Court to issue protective orders against Plaintiff. *Id.* at 63–65, 143–45, 162–64. To support the petitions, certain representatives of Catholic Charities stated that Plaintiff was mentally abusive to Mr. Staples and interfered with Mr. Staples's care. *Id.* at 65, 145, 164. Pursuant to one of the protective order petitions, Lisa Broccoletti, an attorney, was appointed to serve as a guardian ad litem for Mr. Staples. *Id.* at 54–55. Ms. Broccoletti interviewed the relevant parties and recommended that a permanent protective order be issued against Plaintiff. *Id.*

Over the years, those serving as Mr. Staples's guardian, conservator, and/or guardian ad litem, including Catholic Charities, Ms. Dickerson, and Ms. Broccoletti, drafted several reports regarding Mr. Staples's condition. *See generally id.* at 1–257. Some of the reports contained negative comments regarding Plaintiff's influence on Mr. Staples. Additionally, one report drafted by Ms. Dickerson included negative comments from Mr. Staples's daughters, Alicia Wellons and Tabetha Staples. *Id.* at 195.

In her Second Amended Complaint, Plaintiff names eleven individuals as Defendants in this action, including: (i) Mr. Brickhouse; (ii) Ms. Dickerson; (iii) Frank J. Driscoll, Jr., a private attorney who represented Catholic Charities in certain state court proceedings; (iv) Ms. Broccoletti; (v) Marlande Sledge, a representative of Catholic Charities; (vi) Susanne Ferrantelli, a representative of Catholic Charities; (vii) Pamela Jack, a representative of Catholic Charities; (viii) Ms. Wellons; (ix) Ms. Turner; (x) Christianna Dougherty-Cunningham, an Associate City Attorney for the City of Virginia Beach; and (xi) Mark D. Stiles, the City Attorney for the City of Virginia Beach (collectively "Defendants"). Second Am. Compl. at 1–6; Attach. at 1–257. Plaintiff appears to assert federal claims against Defendants pursuant to 42 U.S.C. § 1983 for the alleged violation of Plaintiff's constitutional rights. Attach. at 1–257. Plaintiff also appears to assert certain state law claims, including a breach of contract claim against Mr. Brickhouse; defamation claims against Ms. Dickerson, Ms. Broccoletti, Ms. Sledge, Ms. Ferrantelli, Ms. Jack, Ms. Wellons, and Ms. Turner; and embezzlement-related claims against Ms. Sledge, Ms. Ferrantelli, and Ms. Jack. *Id.* at 6, 34–35, 52–53, 79–80, 120–21, 158–59, 191–92, 203–04.

III. Analysis

A. Plaintiff's Federal Claims

As summarized above, Plaintiff appears to assert federal claims against Defendants pursuant to § 1983 for the alleged violation of Plaintiff's constitutional rights. Attach. at 1–257.

Section 1983 provides, in relevant part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . .

42 U.S.C. § 1983. To state a claim under § 1983, Plaintiff must allege that: (i) a right secured by the Constitution or laws of the United States was violated; and (ii) the alleged deprivation was committed by a person acting under color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988). The conduct necessary to implicate § 1983 "must be 'fairly attributable to the State.'" *DeBauche v. Trani*, 191 F.3d 499, 506 (4th Cir. 1999) (quoting *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 937 (1982)). "The person charged must either be a state actor or have a sufficiently close relationship with state actors such that a court would conclude that the non-state actor is engaged in the state's actions." *Id.*

Upon review, the Court finds that Plaintiff cannot state a plausible § 1983 claim against any of the named Defendants. Specifically, the Court finds that Plaintiff has not alleged facts sufficient to establish that Ms. Wellons, Ms. Turner, Mr. Brickhouse, Mr. Driscoll, Ms. Dickerson, Ms. Broccoletti, Ms. Sledge, Ms. Ferrantelli, or Ms. Jack can properly be considered to be state actors. *See e.g. Worthington v. Palmer*, No. 3:15cv410, 2015 U.S. Dist. LEXIS 159441, at *15 (E.D. Va. Nov. 24, 2015) (explaining that "an attorney, whether retained, court-appointed, or public defender, does not act under color of state law"); *Meeker v. Kercher*, 782 F.2d 153, 155 (10th Cir. 1986) (stating that "a guardian ad litem is not acting under color of state law for purposes of § 1983"); *Page v. Charleston Cnty. Family Ct.*, No. 2:20-852, 2020 U.S. Dist. LEXIS 153757, at *11 (D.S.C. Mar. 19, 2020) (stating that guardians ad litem "are not state actors for purposes of § 1983"); *Shermot v. Bucci*, No. 20cv2719, 2020 U.S. Dist. LEXIS 113553, at *13 (E.D. Pa. June

30, 2020) (stating that "[m]ost courts that have addressed the issue have concluded that private entities performing guardianship duties are not exercising a public function absent additional facts reflecting state involvement"); *Heinemann v. Patchey*, No. 3:16cv774, 2017 U.S. Dist. LEXIS 42787, at *10 (D. Conn. Mar. 24, 2017) (explaining that "court-appointed administrators, guardians, or conservators for adults . . . do not act under color of state law"); *Browder v. Anderson*, No. 5:07cvP202-R, 2008 U.S. Dist. LEXIS 1884093, at *9–10 (W.D. Ky. Apr. 28, 2008) (noting that guardians are not typically considered state actors "because they are acting in the interests of an individual and not the state").

Further, the Court finds that Plaintiff's § 1983 claims, as asserted against Ms. Dougherty-Cunningham and Mr. Stiles, necessarily fail on immunity grounds. Plaintiff's § 1983 claims against Ms. Dougherty-Cunningham and Mr. Stiles appear to be based on their alleged involvement, as city attorneys, in Mr. Staples's various guardianship-related proceedings. Attach. at 107–16 (attaching a Final Order from the Virginia Beach Circuit Court that notes that "the City of Virginia Beach, by and through its Department of Human Services, Adult Protective Services Unit," sought the appointment of a guardian and conservator for Mr. Staples); *id.* at 216–39 (claiming that the Virginia Beach City Attorneys' Office wrongfully moved to dismiss a guardianship-related petition filed by Plaintiff in the Virginia Supreme Court).

It is well-settled that "prosecutors are absolutely immune from damages liability when they act as advocates for the State." *Savage v. Maryland*, 896 F.3d 260, 268 (4th Cir. 2018) (citing *Imbler v. Pachtman*, 424 U.S. 409, 427 (1976)). The decision to grant such immunity "rests on an 'important public policy' justification." *Id.* (citing *Carter v. Burch*, 34 F.3d 257, 261 (4th Cir. 1994)). The United States Court of Appeals for the Fourth Circuit has explained:

> "The 'public trust of the prosecutor's office would suffer' were the prosecutor to have in mind his 'own potential' damages 'liability' when making prosecutorial decisions—as he might well were he subject to § 1983 liability." *Van de Kamp v.*

> *Goldstein*, 555 U.S. 335, 341–42, 129 S. Ct. 855, 172 L. Ed. 2d 706 (2009) (quoting *Imbler*, 424 U.S. at 424). The Supreme Court recognized that this immunity would leave the "genuinely wronged" without a remedy against prosecutors acting for malicious or unlawful purposes. *Imbler*, 424 U.S. at 427. But the importance of shielding prosecutorial decision-making from the influence of personal liability concerns, the Court concluded, outweighed that harm. *See Carter*, 34 F.3d at 261 (describing *Imbler's* reasoning).

Id.

Courts have applied the doctrine of absolute immunity to government attorneys involved in civil cases when the attorneys are functioning as an advocate of the state during judicial proceedings. *See Shirley v. Drake*, No. 98-1750, 1999 U.S. App. LEXIS 7209, at *5–6 (4th Cir. Apr. 12, 1999) (finding that "[a]n attorney for the state who represents [the Department of Social Services] in a proceeding involving the alleged abuse and neglect of a child is entitled to the same protection in her advocacy role that she would have if she were representing the state in a criminal proceeding"); *see also Rogers v. Cumberland Cnty. Dep't of Soc. Servs.*, No. 5:20cv477, 2022 U.S. Dist. LEXIS 51499, at *32–33 (E.D.N.C. Feb. 1, 2022) (finding that an attorney for the Department of Social Services was entitled to absolute immunity for actions allegedly taken in a child custody matter), *adopted by* Order, *Rogers*, No. 5:20cv477 (E.D.N.C. Mar. 22, 2022), ECF No. 83; *Roach v. Clark*, No. 5:15cv408, 2015 U.S. Dist. LEXIS 86444, at *17 (N.D.N.Y. Apr. 22, 2015) (noting that "[c]ounty attorneys who initiate and prosecute child protective orders or litigate family court petitions, are also entitled to absolute immunity"), *adopted by* 2015 U.S. Dist. LEXIS 86078 (N.D.N.Y. July 2, 2015); *Scott v. Adult Protective Servs.*, No. 7:01cv96, 2001 U.S. Dist. LEXIS 21080, at *16 (N.D. Tex. Dec. 19, 2001) (finding that district attorneys were entitled to absolute immunity for their alleged involvement in "seeking and obtaining State guardianship" over a plaintiff's husband). Here, the Court finds that Ms. Dougherty-Cunningham and Mr. Stiles are

entitled to absolute immunity for their alleged involvement in the various guardianship-related proceedings involving Mr. Staples.[2]

Assuming, for the sake of argument, that Plaintiff's § 1983 claims did not fail for the above reasons, the Court further finds that Plaintiff has not alleged sufficient facts in her Second Amended Complaint to show that any of the named Defendants violated her constitutional rights. *See* Second Am. Compl. at 1–6; Attach. at 1–257; *see also Twombly*, 550 U.S. at 570 (explaining that a complaint must allege "enough facts to state a claim to relief that is plausible on its face").

For all of the reasons discussed above, the Court finds that Plaintiff's Second Amended Complaint fails to state any § 1983 claim against Defendants upon which relief may be granted. Therefore, the Court further finds that it is obligated to dismiss Plaintiff's § 1983 claims pursuant to 28 U.S.C. § 1915(e)(2). *See* 28 U.S.C. § 1915(e)(2) (explaining that when a plaintiff is granted authorization to proceed *in forma pauperis*, the Court is required to "dismiss the case at any time" if the complaint "fails to state a claim on which relief may be granted").

B. Plaintiff's State Law Claims

This action is before the Court based on federal question jurisdiction.[3] *See generally* Attach. at 1–257. With the dismissal of Plaintiff's § 1983 claims, only state law claims remain. *See* Attach. at 6, 34–35, 52–53, 79–80, 120–21, 158–59, 191–92, 203–04. Although the Court may

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[2] The Court notes that the § 1983 claims asserted against Ms. Dickerson and Ms. Broccoletti, who served as guardians ad litem for Mr. Staples, also fail on immunity grounds. The Fourth Circuit has explained that guardians ad litem should be afforded the immunity from § 1983 liability that is provided to "judges, prosecutors, witnesses, and other actors in the judicial process." *Fleming v. Asbill*, 42 F.3d 886, 889 (4th Cir. 1994). The Fourth Circuit has stated that a guardian ad litem must "be able to function without the worry of possible later harassment and intimidation . . . . Consequently, a grant of absolute immunity would be appropriate. A failure to grant immunity would hamper the duties of a guardian ad litem in his role as an advocate." *Id.*

[3] Diversity jurisdiction does not apply to this action because complete diversity of citizenship does not exist between the parties. *See* Second Am. Compl. at 1–4, ECF No. 13; *see also* 28 U.S.C. § 1332.

exercise supplemental jurisdiction over any remaining state law claims after all federal claims have been dismissed, the decision to do so "rests within the sole discretion of the Court." *Jones v. Tyson Foods*, 378 F. Supp. 2d 705, 710 (E.D. Va. 2004) (citing 28 U.S.C. § 1367(c)(3)); *see Jordahl v. Democratic Party*, 122 F.3d 192, 203 (4th Cir. 1997). Supplemental jurisdiction "is a doctrine of flexibility, designed to allow courts to deal with cases involving pendent claims in the manner that most sensibly accommodates a range of concerns and values." *Shanaghan v. Cahill*, 58 F.3d 106, 110 (4th Cir. 1995) (quotation omitted). In determining whether to exercise supplemental jurisdiction, the Court analyzes "convenience and fairness to the parties, the existence of any underlying issues of federal policy, comity, and considerations of judicial economy." *Id.*

Based on an analysis of the above factors, the Court declines to exercise supplemental jurisdiction over the state law claims asserted by Plaintiff. Accordingly, Plaintiff's state law claims will be dismissed without prejudice for lack of jurisdiction. *See Hinton v. Hearns*, No. 1:08cv608, 2008 U.S. Dist. LEXIS 50768, at *16–17 (E.D. Va. July 2, 2008) (declining to exercise supplemental jurisdiction over state law claims after dismissing a *pro se* plaintiff's federal claims pursuant to the Court's statutory screening obligations); *see also Jehovah v. Clarke*, No. 7:14cv538, 2015 U.S. Dist. LEXIS 61034, at *20–21 (W.D. Va. May 11, 2015) (same).

IV. Conclusion

For the reasons set forth above, Plaintiff's federal claims are DISMISSED with prejudice pursuant to 28 U.S.C. § 1915(e)(2).[4] The Court declines to exercise supplemental jurisdiction over

[4] As noted above, the Court has already provided Plaintiff with an opportunity to amend the operative complaint in this action on more than one occasion. Despite these amendment opportunities, Plaintiff has not adequately stated a § 1983 claim against Defendants upon which relief may be granted. Thus, the Court finds that it would be futile to provide Plaintiff with further amendment opportunities and exercises its discretion to dismiss Plaintiff's § 1983 claims pursuant to 28 U.S.C. § 1915(e)(2) with prejudice. *Smith v. Forrester*, No. 4:18cv3317, 2019 U.S. Dist. LEXIS 35042, at *5 (D.S.C. Feb. 6, 2019) (explaining that when a district court dismisses an action pursuant to 28 U.S.C. § 1915(e)(2) after affording the plaintiff an opportunity an amend, "the

Plaintiff's state law claims, and as a result, the state law claims are DISMISSED without prejudice for lack of jurisdiction.

Plaintiff may appeal this Dismissal Order by forwarding a written notice of appeal to the Clerk of the United States District Court, Norfolk Division, 600 Granby Street, Norfolk, Virginia 23510. The written notice must be received by the Clerk within thirty days of the date of entry of this Dismissal Order.

The Clerk is DIRECTED to send a copy of this Dismissal Order to Plaintiff.

It is SO ORDERED.

/s/

Elizabeth W. Hanes
United States District Judge

Norfolk, Virginia
Date: November 22, 2022

district court has the discretion to afford [the plaintiff] another opportunity to amend[,] or [it] can dismiss the complaint with prejudice" (quotation omitted)), *adopted by* 2019 U.S. Dist. LEXIS 33852 (D.S.C. Mar. 4, 2019).