

## APPENDIX

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1a

APPENDIX A

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IN THE UNITED STATES COURT OF APPEALS FOR  
THE ELEVENTH CIRCUIT

NO. 21-13978-CC

JAY GOODLEY ,

Plaintiff – Appellant,

versus

CHARLES M. GREENE,

individually and in his official capacity as  
a Justice of the Seventeenth Circuit Court  
of Broward County Florida.

Defendant - Appellee

Appeal from the United States District Court for the  
Southern District of Florida.

BEFORE : ROSENBAUM, GRANT, and EDMONDSON,  
Circuit Judges.

PER CURIAM

The Petition for Panel Rehearing filed by Appellant Jay  
Goodley is DENIED.

ORD-41

2a

APPENDIX B

USCA11 Case: 21-13978 Date Filed: 09/09/2022 Page: 1 of 5

{DO NOT PUBLISH}

In the United States Court of Appeals for the Eleventh  
Circuit

No. 21-13978

Non –Argument Calendar

JAY GOODLEY,

Plaintiff – Appellant

versus

CHARLES M. GREENE,

individually and in his official capacity as a Justice of the  
Seventeenth Judicial Circuit Court of Broward County  
Florida.

Defendant – Appellee

Appeal from the United States District Court for the  
Southern District of Florida. D.C. Docket No.:21-cv-61284-  
RAR

BEFORE: ROSENBAUM, GRANT, and EDMONSON  
Circuit Court Judges.

PER CURIAM:

Plaintiff Jay Goodley, proceeding *pro se*, appeals the district court's dismissal of his *pro se* 42 U.S.C. § 1983 civil action against Charles Greene a judge of the Seventeenth Judicial Circuit Court of Broward County, Florida. 1. The district court determined that Plaintiff's claim against Judge Greene was barred by absolute judicial immunity. No reversible error has been shown; we affirm.

This appeal rises out of a probate case in Florida state court concerning the guardianship of the Plaintiff's mother: a case in which the Plaintiff was a litigant. Plaintiff alleges that Judge Greene was assigned initially to the case but recused himself in February 2018. Despite the recusal, Judge Greene continued to participate

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1 We read liberally briefs filed by *pro se* litigants. See *Timson v. Sampson*, 518 F.3d 870, 874 (11<sup>th</sup> Cir. 2008). We also construe liberally *pro se* pleadings. See *Tannenbaum v. United States* 148 F.3d 1262, 1263 (11<sup>th</sup> Cir. 1998).

intermittently in the probate case, including by performing these acts: (1) holding a telephonic hearing on 6 March 2018; (2) holding an in person hearing on 25 April 2018; (3) entering orders in the probate case on 8 March 2018, 26 February 2020 and on 27 February 2020; and (4) purportedly conferring about the probate case with the presiding judge during an October 2018 hearing. In June 2021, Plaintiff filed this section 1983 complaint against Judge Greene in his individual capacity. Plaintiff alleged Judge Greene violated Plaintiff's rights under the Fourteenth Amendment when Judge Greene participated in the probate case in the clear absence of all jurisdiction. As a result, Plaintiff said he suffered financial losses and pain and suffering. Plaintiff sought declaratory relief as well as well as compensatory and punitive damages. The district court granted Judge Greene's motion to dismiss. In pertinent part, the district court concluded the Plaintiff's claim was barred by absolute judicial immunity.

2. We review de novo a district court's grant of a motion to dismiss, accepting all reasonable inferences in favor of the Plaintiff. *See Randall v. Scott*, 610 F.3d 701,705 (11<sup>th</sup> Cir. 2010). "We review de novo a district court's grant of

2 The district court also concluded that the Plaintiff lacked Article III standing. Construing liberally Plaintiff's complaint – and viewing all factual allegations and inferences in the Plaintiff's favor – we cannot conclude as a matter of law that the Plaintiff failed to allege facts sufficient to show that he suffered an injury in fact as a result of the alleged constitutional violation.

judicial immunity”. *Smith v. Shook*, 237 F. 3d 1322, 1325 (11<sup>th</sup> Cir. 2000). “Judges are entitled to absolute judicial immunity from damages for those acts taken while they are acting in their judicial capacity” unless they acted in “clear absence of all jurisdiction”. *Sibley v. Lando*, 437 F.3d 1067 1070 (11<sup>th</sup> Cir. 2005). “This immunity applies even when the judge’s acts are in error, malicious or where in excess of his or her jurisdiction”. *Id.* In determining whether a judge acted within his judicial capacity, we consider whether the act (1) “constituted a normal judicial function”. (2) “occurred in the judge’s chambers or in open court” (3) “involved a case pending before the judge”, and (4) “arose immediately out of a visit to the judge in his judicial capacity” *Id.* In assessing whether an act is one normally performed by a judge, “we look only to the nature and function of the act, not the act itself”. *Stevens v. Osuna*, 877 F. 3d 1293, 1305 (11<sup>th</sup> Cir. 2017) (quotations omitted). Here, Judge Greene acted clearly within his judicial capacity. The nature and function of the complained of acts – conducting hearings, issuing written orders, and conferring with fellow judges are acts normally performed by judges. Each of the alleged events occurred in open court or in judge’s chambers related to a case pending before the court, and arose out of interactions with Judge Greene in his judicial capacity. We next address whether Judge Greene acted in

“clear absence of all jurisdiction”. Whether a state judge acted in the absence of jurisdiction is a question of state law. *Sibley*, 437 F. 3d at 1071. Under Florida law, “jurisdiction is vested in the court itself and not in any individual judge of the court”. See *Kalmanson v. Lockett*, 848 So.2d 374, 380 (Fla. Dist. Ct. App. 2003). In *Kalmanson*, the state court determined that a state judge who performed judicial acts in a case after recusing himself was still entitled to judicial immunity even if the conduct likely violated Fla. R. Jud. Admin. 2.160 (f). See *id* at 380- 381. Because the judge’s recusal did not diminish the jurisdiction of the circuit court over the case the, state court concluded that the judge’s act were not “taken in clear absence of all jurisdiction”. See *id*. Like the judge in *Kalmanson*, Plaintiff alleges that Judge Greene exceeded his authority – and violated Rule 2.160(f). – by participating in the probate case after recusing himself. Nevertheless, because the state court retained jurisdiction over the case, we cannot conclude that Judge Greene acted in “clear absence of all jurisdiction”. *Kalmanson*, 848 So. 2d at 380-81. That Judge Greene might have exceeded his authority is not enough to strip him of judicial immunity. See *Sibley*, 437 F.3d at 1070. The district court committed no error in concluding that Judge Greene was entitled to judicial immunity from Plaintiff’s section 1983 claim. Plaintiff’s complaint was thus subject to dismissal with prejudice. AFFIRMED

APPENDIX C

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Docket 09/17/2021 Page 1 of 10

UNITED STATES DISTRICT COURT SOUTHERN  
DISTRICT OF FLORIDA CASE NO. 21-CIV- 61284-RAR  
JAY GOODLEY,  
Plaintiff.

vs.

CHARLES M. GREENE, individually and in his official  
capacity as a Justice of the Seventeenth Judicial Circuit  
Court of Broward County, Florida.

Defendant \_\_\_\_\_/

ORDER GRANTING DEFENDANT'S MOTION TO  
DISMISS:

THIS CAUSE comes before the Court on Defendant's  
Motion to Dismiss Complaint {ECF No.9} ("Motion"), filed  
on July 9, 2021. The Court having carefully reviewed  
Defendant's Motion, Plaintiff's Response in Opposition  
{ECF No.11} ("Response"), and Defendant's Reply {ECF  
No.12} ("Reply), and being otherwise fully advised, it is  
hereby; ORDERED AND ADJUDGED that Defendant's  
Motion to Dismiss {ECF No.9} is GRANTED for the  
reason's set forth below.

BACKGROUND

Plaintiff Jay Goodley filed a civil rights action pursuant to  
42 U.S.C. § 1983 alleging deprivation of right under color  
of state law against Defendant, Charles Greene, a judge of  
the Seventeenth Judicial Circuit Court of Broward  
County. See Mot. at 1. This action stems from a probate



matter concerning the guardianship of a relative of the Plaintiff. *See* Mot.at 2. Defendant was briefly assigned to the probate case, in which the Plaintiff was also a litigant. On February 5, 2018, Defendant recused himself from the probate case involving the Plaintiff. {ECF No.9-11 at Case 021-cv-61284 RAR Document 13 Entered on FLSD Docket 09/17/2021 Page 2 of 10

25. 1 Plaintiff alleges that after the Defendant recused himself, he continued to take actions related to the case, causing Plaintiff financial losses as well as pain and suffering. {ECF No. 1} at 2.

#### LEGAL STANDARD

The Court relies on two legal standards in order to address the instant Motion: Article III standing and the doctrine of judicial immunity. Each will be addressed in turn.

##### **I. Article III Standing**

Article III of the United States Constitution limits federal court jurisdiction to actual cases and controversies. U.S. Const. art. III. § 2, cl. 1. Standing, ripeness, and mootness are the three traditional doctrines governing whether a case or controversy exists. *Muransky v. Godiva Chocolatier, Inc.*, 979 F.3d 917, 924 (11<sup>th</sup> Cir. 2020). Standing is treated as a jurisdictional issue and rulings based on such are treated as a motion to dismiss for lack of subject matter jurisdiction under Fed.R.Civ.P.12 (b) (1). *See Cone Corp. v. Fla. Dep't of Transp.*, 921 F.2d 1190, 1203, N.42 (11<sup>th</sup> Cir.1991) (citations and internal quotes omitted).

To demonstrate standing, a “plaintiff must have suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable decision.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 -561 (1992). With respect to “injury in fact”, a plaintiff must plead facts to show that he suffered an “invasion of a legally protected interest” that is “concrete and particularized” and ‘actual or imminent, not conjectural or hypothetical’. *Spokeo, Inc. v. Robins*, 136 S.Ct.1540, 1548 (2016) (quoting *Lujan*, 504 U.S.at 560).

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1 The Court takes judicial notice of Defendants Exhibit A. Docket PRC160001493, pertaining to the probate case in which the Plaintiff was a litigant. {ECF No. 9-1. It is well established that courts may take judicial notice of court documents when a motion to dismiss is before the court. *See Lowman v. City of Riviera Beach*, 713 F.3d 1066, 1075 n.9 (11<sup>th</sup> Cir 2013). Taking judicial notice of a state court docket (a matter of public record) does not convert a motion to dismiss to a motion of summary judgement. *See Klopfenstein v. Deutsche Bank, Sec., Inc.*, 592 F. App’x 812,816 (11<sup>th</sup> Cir 2014).

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An injury must be particularized and concrete, with neither alone being sufficient to establish injury in fact. *Id.* “For an injury to be particularized’, it ‘must affect the plaintiff in a personal and individual way” *Id.* (citations omitted). A concrete injury is one which exists. *Id.* Further, insofar as plaintiff is seeking declaratory relief, he must allege facts that there is a “substantial likelihood

that he will suffer an injury in the future". *Malowney v. Fed. Collection Deposit Grp.*, 193 F. 3d 1342, 1346 (11th Cir. 1999) (citations omitted).

## II. Judicial Immunity

"A judge enjoys absolute immunity from suit for judicial acts performed within the jurisdiction of his court ...regardless of whether he made a mistake, acted maliciously, or exceeded his authority...unless {the judge} acted in clear absence of all jurisdiction". *McCullough v. Finley*, 907 F.3d 1324, 1330-32 (11th Cir. 2018) (citations omitted). A judge acts in the clear absence of all jurisdiction if the matter upon which he acts is clearly outside the subject matter jurisdiction of the court over which he presides. See *Stump v. Sparkman*, 435 U.S. 349,357-359 (1978). The scope of the judge's jurisdiction must be construed broadly where the issue is the immunity of the judge. *Id.* at 356. Four factors inform whether the nature and functions of the alleged acts are judicial. (1) the precise act complained of is a normal judicial function; (2) the events involved occurred in the judge's chambers (3) the controversy centered around a case then pending before the judge; and (4) the confrontation arose directly and immediately out of a visit to the judge in his official capacity. *McCullough*, 907 F.3d at 1331.

## ANALYSIS

Defendant seeks dismissal of the Complaint on five grounds: lack of justiciable controversy, lack of standing, Eleventh Amendment Immunity; the Rooker - Feldman

doctrine; and judicial immunity. Mot. at 3. In response, Plaintiff maintains the Defendant was without judicial  
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jurisdiction consequently, his actions invaded Plaintiff's right to equal protection and procedural due process under the Fourteenth Amendment. Resp. at 15.

As explained below, the Court finds that the Plaintiff has failed to establish Article III standing --- and even if not for lack of standing, the doctrine of absolute judicial immunity bars the Defendant from suit. The Court declines to wade in into Defendant's remaining grounds for dismissal.

**I. Plaintiff Lacks Standing and Fails to Show He is Entitled to Declaratory Relief**

As described above, courts treat a lack of standing as a jurisdictional issue. If the plaintiff fails to demonstrate standing; the case must be dismissed under Rule 12(b)(1). Defendant in his Motion and Reply, challenges the first prong of standing analysis : whether Plaintiff suffered an injury in fact. *See* Mot.at 6-7; Reply at 3-4.

In an effort to establish an injury in fact, Plaintiff asserts that "multiple actions were taken by Judge Charles M. Greene post his recusal by court order .... causing financial losses as well as pain and suffering to the Plaintiff". *See* Compl at 2. In support of this assertion, Plaintiff describes four different actions taken by the Defendant following his recusal. *Id.* at 2-5. But none of the actions satisfy his burden to show standing --- even

when liberally construed. See *Waldman v. Conway*, 871 F.3d 1283, 1289 (11<sup>th</sup> Cir. 2017) (recognizing that “[a] pro se pleading is held to a less stringent standard than a pleading drafted by an attorney and is liberally construed”)(cleaned up). The Court will address each action taken by the Defendant in turn.

**i. March 2018 Orders**

First, Plaintiff takes issue with a March 8, 2018 order signed by Defendant. The order singles Plaintiff out by name. {ECF No. 9-2} at 2. In doing so, Plaintiff claims Defendant was “treating Plaintiff differently than other litigants while it also altered an existing statute along with

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other irregularities”. Compl. at 3. The order states, “[t] he authority of the Emergency Temporary Guardian is hereby extended until the dispositive motions filed on behalf of Jay Goodley are addressed by this Court or a permanent guardian is appointed”. {ECF No.9-2} at 2. Other than noting he was singled out by name, Plaintiff does not explain nor offer any support for how this statement may have caused him harm. 2 The Court therefore fails to see how this statement – which simply acknowledged the existence of outstanding motions in the case affecting the appointment of a permanent guardian alleges either a concrete or particularized injury in fact.

**ii. April 25, 2018 Hearing**

Next, Plaintiff discusses an April 25, 2018 telephonic

hearing, in which the Defendant stated that “once the Court enters an order of recusal, the court is *not* possessed of the jurisdiction .....”. Compl. at 3. During the hearing, Defendant refused to proceed with making any decisions in the case and stated he was “being extremely cautious pursuant to the rules of Judicial Administration”. Resp. at 25; 33. The Court has confirmed that Judge Greene did not enter any orders after the April 25, 2018 hearing. {ECF} No. 9-1} at 22. And again, Plaintiff fails to show how this hearing, where no action was taken harmed him. If anything Defendant acted in accordance with his order of recusal by refusing to proceed further with the case. 3

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2 Plaintiff also claims that Defendant altered the relevant statute pertaining to emergency temporary guardianship and the altering of this law .... may have enriched attorneys .... Resp. at 7. But again, Plaintiff fails to allege any type of particularized or concrete harm that arose from this alleged alteration. A vague assertion that attorneys “may” have been enriched in no way establishes that either (1) attorneys were *actually* enriched; and (2) the enrichment of attorney’s caused injury to the Plaintiff.

3 While not addressed by Plaintiff in his Complaint, it is worth noting that on June 13, 2018, Defendant’s colleague Judge Weinstein, granted Plaintiff Motion to Vacate Orders of Defendant’s post- recusal. {ECF No. 9-3} at 2 (“Motion to Vacate”). Judge Weinstein’s order stated: “(1) All orders signed by Judge Greene after February 5, 2018 shall be vacated and considered null and void; (2) The Rulings contained in the Orders signed by Judge Greene after February 5, 2018 are hereby extended until further order of this Court”. Id. As a judicial officer in the state of Florida, Judge Weinstein is required to “perform the duties of judicial office impartially and diligently”. Code of Judicial

Conduct for the State of Florida Cannon 3. It is this Court's belief that Judge Weinstein did just that, and in performing his own judicial diligence, found that the orders entered by Defendant *were both appropriate and legally sound*. Thus, even if Plaintiff were able

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iii. October 19, 2018 Hearing

The next issue raised by the Plaintiff occurred during an October 19, 2018 hearing held in front of a different jurist---Judge Weinstein. Plaintiff alleges that Judge Weinstein left the courtroom to confer with the Defendant, suggesting that this conferral was related to the Plaintiff's case. Compl.at 4. Defendant notes that this assertion is "pure speculation that the conversation had anything to do with the Plaintiff at all". Mot. at 3. The Court agrees. Defendant and Judge Weinstein preside in the same courthouse together. There are many reasons --- wholly unrelated to Plaintiff or his case --- why Defendant could have requested to see Judge Weinstein. Plaintiff cannot show a particularized injury (*i.e.* affecting the Plaintiff in a "personal and individual way") based upon pure guess work. *See Spokeo*, 136 S. Ct. at 1548.

iv. February 2020 Orders

Finally, Plaintiff takes issue with two orders entered in February 2020. Defendant signed an Agreed Order settling the probate case on February 26, 2020. {ECF No. 9-1} at 4. The next day an order entered vacating the February 26, 2020 order --- apparently in error. *Id*. Consequently, on March 2, 2020 a second Agreed Order was entered settling the case. *Id*. Again, Plaintiff fails to

show this apparent mistake caused him any concrete harm. The mistake was timely corrected within 24 hours. Defendant had no further involvement in the matter, and ultimately the same Agreed Order was adopted, without any further objections noted on the docket. {ECF No.9-1} at 3-4. In sum, none of the four aforementioned actions taken in the Plaintiff's state court probate case evidence any concrete harm. On the contrary - they are precisely the type of "conjectural or

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to somehow assert an injury in fact from the actions taken before Plaintiff's Motion to Vacate was granted, those injuries are no longer redressable as the Seventeenth Judicial Circuit Court of Broward County has taken corrective action it deemed appropriate in this case. *See Lujan*, 504 U.S. at 560-61.

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hypothetical" harm insufficient to confer subject matter jurisdiction due to lack of standing. See *Spokeo*, 136 S.Ct. at 1548. Moreover, insofar as Plaintiff seeks declaratory relief, he has also failed to allege facts showing a "substantial likelihood" that he will suffer injury in the future. *See Maloney*, 193 F. 3d at 1346. In an effort to establish such future injury, Plaintiff attempts to assert that Defendant's position of power will likely cause the Defendant to retaliate against Plaintiff in the future. Resp. at 16. But the record rebuts this argument. The case at issue here was discharged on October 6, 2020. {ECF No. 9-1} at 1. There have been no further proceedings in the matter. *Id.* Thus there is no likelihood



of future harm to the Plaintiff by Defendant.

## **II. Defendant is Entitled to Judicial Immunity**

In order to determine whether Defendant's actions are protected by judicial immunity the Court applies the two part test laid out in *Stump*. *See Stump*, 435 U.S. at 361-62. As explained below, both parts of the test are satisfied here, and Defendant is entitled to judicial immunity.

### **i. All actions taken by Defendant are judicial in nature**

As discussed above, Plaintiff's Complaint focuses on four incidents : The March 6, 2018 hearing and resulting orders; the April 25, 2018 hearing; the October 19, 2018 hearing and two orders issued February 2020. When assessing whether these were judicial acts, the Court looks to the four factors laid out in *McCullough*, 907 F. 3d at 1331. Naturally, judicial proceedings and the entry of judicial orders are normal judicial functions. All of these events occurred within the courthouse. Each hearing and order addressed Plaintiff's state probate matter. And each of these four incidents arose directly out of interactions with Judge Greene or another Judge assigned to the probate case. Thus the *McCullough* factors are satisfied, and each of the Defendant's actions were judicial in nature.

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### **ii. Defendant did not act in clear absence of all jurisdiction**

So long as a judge did not act without clear jurisdiction

judicial acts are protected by absolute judicial immunity. *See Sibley v. Lando*, 437 F.3d 1067, 1072 (11<sup>th</sup> Cir. 2005).

“A judge acts in clear absence of all jurisdiction only if he lacked subject matter jurisdiction”. *McCullough*, 907 F. 3d at 1332 (internal quotations and citation omitted), see also *Stump*, 435 U.S. at 357; accord *Dykes v. Hosemann*, 776 F.2d 942, 943 (11<sup>th</sup> Cir. 1985) (“We ....reassert the common law doctrine that a judge enjoys absolute immunity where he or she had subject matter jurisdiction over the matter forming the basis for such liability”). Plaintiff argues that the Defendant’s February 5, 2018 Order of Recusal stripped him of all jurisdiction over the case, meaning that all judicial acts taken by Defendant after that date were taken were “in the clear absence of all jurisdiction”. Resp.at 6; 13.

“Whether a judge’s grant of a recusal motion divests him of all jurisdiction for the purposes of the judicial immunity analysis is a question of state law, and {Plaintiff} has identified no authority for the proposition that a recusal strips a judge of subject matter jurisdiction”. *Muhammad v. Bethel-Muhammad*, No. 11-0690, 2013 WL 5531395, at \*4 (N.D. Ala.Oct. 7, 2013)(citing *Sibley*, 437 F.3d at 1069-72). In fact Florida law states otherwise.

As an initial matter, there is no doubt that the Seventeenth Judicial Circuit Court of Broward County had proper jurisdiction over the probate matter in which the Plaintiff was a litigant—a fact Plaintiff does not refute. *See Fla.Const.art V,§20; see also Lovett v. Lovett*,

112, So. 768, 775 (Fla.1927) (holding subject matter jurisdiction is conferred on a Florida court by the state constitution and applicable statutes). And under Florida law, jurisdiction is vested in the court itself, *not in any individual judge of the court. Kalmanson v. Lockett*, 848 So. 2d 374, 380 (Fla. 5<sup>th</sup> D.C.A. 2003)(emphasis added)(citations omitted). As explained in *Kalmanson*, the recusal of one judge does not diminish the jurisdiction of the circuit court over the case; indeed *Kalmanson* Case 0:21-civ-61284-RAR document 13 Entered on FLSD Docket 09/17/2021 Page 8 of 10 rejected the argument that a judge is stripped of absolute judicial immunity for the acts taken in his judicial capacity *after* he recuses form a case. *Id.* at 380, see also *Sibley v. Lando* No. 03-21728, 2005 WL 6108991, at \*8-9 (S.D.Fla.Apr. 8, 2005)(holding that a judge was entitled to judicial immunity for acts taken after he recused himself from a case because the acts may have been in excess of his jurisdiction, but were not in clear absence of all jurisdiction).

Here, the Seventeenth Judicial Circuit Court retained jurisdiction throughout the pendency of the probate matter, and because jurisdiction is vested in the court and not in any individual judge. Defendant did not act in the clear absence of all jurisdiction. At a minimum, there is "at least a colorable argument that, even if {Defendant's alleged} return to the case was improper, any such impropriety did not preclude him from having subject matter jurisdiction over the case. ... {and} a colorable

argument is all that {Defendant} needs to retain his judicial immunity". *Muhammad*, 2013 WL 5531395, at \*4 ("Immunity is lost only by an utter, obvious lack of jurisdiction; if jurisdiction existed and {Defendant} merely exceeded that jurisdiction he remains immune. Indeed, even if subject matter jurisdiction was actually lacking but the jurisdictional question is colorable, his immunity is unbroken.").

Ultimately, it is clear that Defendant's acts were done within his judicial capacity, and he did not act in the clear absence of jurisdiction. Thus even if Defendant were to somehow acted erroneously, maliciously or in excess of his authority, judicial immunity still applies. 4

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4 Notably, some courts have held that a claim for prospective declaratory relief is an exception to judicial immunity under 42 U.S.C. § 1983. *See Snow v. King*, No. 17-1048-VEH, 2018 WL 656032 at \*6 (N.D. Ala. Feb. 1, 2018). Here however Plaintiff request for declaratory relief appears to be *retrospective* in nature. Compl. at 5. Thus, Plaintiff's request relief does not bar Defendant from claiming judicial immunity –nor is the Court prevented from holding that judicial immunity applies. *See id*

CONCLUSION

For the foregoing reasons it is hereby ORDERED AND ADJUDGED that Defendant's Motion to Dismiss Complaint {ECF No.9} is GRANTED. The Court notes that dismissal for lack of subject matter jurisdiction is not a judgement on the merits and is entered without prejudice. *Stalley ex rel U.S. v. Orlando Regional Healthcare System, Inc.*, 524 F. 3d 1229, 1232 (11<sup>th</sup> Cir. 2008). But given the Defendant is entitled to judicial immunity, he is immune from suit regarding the judicial acts addressed in the Plaintiff's Complaint. Accordingly, This action is DISMISSED *with prejudice* and the Clerk of the Court is directed to CLOSE this case. DONE AND ORDERED in Fort Lauderdale, Florida, this 17<sup>th</sup> day of September 2021.

"s/". Rodolfo A. Ruiz II

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RODOLFO A. RUIZ II  
UNITED STATES DISTRICT JUDGE

21a

APPENDIX D

FILED BROWARD COUNTY FLORIDA, Brenda D.  
Forman, CLERK 2/6/2018 10.20.21 AM\*\*\*\*

IN THE CIRCUIT COURT OF THE 17<sup>TH</sup> JUDICIAL  
CIRCUIT, IN AND FOR BROWARD COUNTY,  
FLORIDA

PROBATE DIVISION

IN RE: FILE NO: PRC160001493  
KATHERINE KOLEN DIVISION 61J

An alleged incapacitated person.

ORDER OF RECUSAL

THIS COURT has previously recused itself in all cases involving Steven Schwartz, Esq. Upon recusal of Judge Mark Speiser, the undersigned's office was contacted by Debra Slater, Esq., counsel for Emergency Temporary Guardian, Derek Byerly, to set her Petition for Order Authorizing the Return of the Ward's Funds filed November 30, 2017. The instant Petition requests the return which allegedly disbursed without Court Order to Rosenthal Rasco Kaplan LLC in the amount of \$25,000.00, Steven K. Schwartz, P.A. in the amount of \$29,270.05, and Mark Manceri, P.A. in the amount of \$7500.00, pursuant to the Disbursements Detail Sheet marked as Exhibit B to the Petition.

The instant Petition requests clarification as to "why these attorney' fees were being paid, and if they related to the instant guardianship/incapacity proceedings then

authorization for the payments is/was required". The Petition alleges (consistent with the Clerk's Progress Docket) that no orders allowing for the payment of fees was entered by Judge Speiser.

In an abundance of caution, recognizing that Steven K. Schwartz, Esq. may be called to testify to potentially be required to disgorge funds he has previously received as well as other attorneys, to the guardianship, this Court enters its Order of Recusal and directs the Clerk to randomly reassign this case to another judge in the Probate Division.

DONE and ORDERED in Fort Lauderdale, Broward County, this 5<sup>th</sup> day of February 2018.

"s"/. Charles M. Greene

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Honorable Charles M. Greene  
Circuit Court Judge

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APPENDIX E

FILED BROWARD COUNTY, FL Brenda D Forman,  
CLERK 3/12/2018 9:16:45 AM\*\*\*\*

IN THE CIRCUIT COURT FOR BROWARD COUNTY  
FLORIDA PROBATE DIVISION

IN RE:

CATHERINE KOLEN

File No. PRC. 16-493

An Incapacitated Person

AMENDED ORDER OF RECUSAL

On the *Orc Tenus* request by Counsel for DEREK  
BYERLY, the Emergency Temporary Guardian for  
CATHERINE KOLEN, the Ward, for an Amended Order  
of Recusal, the Court having considered the request and  
being otherwise fully advised in the premises, it is  
ORDERED and ADJUDGED as follows:

1. The request to amend *Order of Recusal* is  
GRANTED
2. The February 5, 2018 Order of Recusal resulted as  
November 30, 2017 the Emergency Temporary  
Guardian filed a Petition for Order Authorizing  
return of the Ward's Funds which sought funds to  
potentially be returned to the Ward from Steven K.  
Schwartz, Esq.
3. This Petition will not be raised before this Court  
(Division 61).

ORDERED on of MARCH 08 2018.

“s”/. Charles M. Greene

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Circuit Court Judge



APPENDIX F

Filed: BROWARD COUNTY, FLORIDA. Brenda D.  
Forman CLERK 3/12/18 9:16:45 AM\*\*\*\*

IN THE CIRCUIT COURT FOR BROWARD  
COUNTY PROBATE DIVISION  
RE: CATHERINE KOLEN File No. PRC-16-1493  
An Incapacitated Person Division 61

ORDER ON THE PETITION FOR  
AUTHORIZATION TO PAY EXPENSES OF THE  
WARD OBTAIN ADDITIONAL FUNDS TO PAY  
THE WARDS MONTHLY EXPENSES AND FOR  
INSTRUCTIONS MOVING FORWARD

On the Petition of DEREK BYERLY, Emergency  
Temporary Guardian for, CATHERINE KOLEN,  
the Ward, for an Order on *The Petition for  
Authorization to Pay Expenses of the Ward, Obtain  
Additional Funds to Pay the Wards Month  
Expenses and For Instructions Moving Forward*,  
the Court having reviewed the file, finding that the  
material allegations of the Petition are true, having  
heard argument of counsel, and being otherwise  
fully advised in the premises, it is

ORDERED AND ADJUDGED as follows:

1. That the Petition for Authorization to Pay  
Expenses of the Ward, Obtain Additional Funds  
to Pay the Ward's Monthly Expenses and For  
Instructions Moving Forward is GRANTED.
2. The Emergency Temporary Guardian is  
authorized to obtain \$24,530.03 from the Ward's

25a

brokerage account titled in her name individually regardless of whether currently frozen.

3. The Emergency Temporary Guardian is thereafter authorized to pay the full balance of due Alternative Home Health Care in the amount of \$16,030.03 and the balance to be used to pay the expenses of the Ward.
4. The authority of the Emergency Temporary Guardian is hereby extended until until the dispositive motions filed on behalf of Jay Goodley are addressed by this Court or a permanent Guardian is appointed.
5. The powers granted by the Letters of Emergency Temporary Guardianship and Order Appointing Emergency Temporary Guardian dated June 26, 2017, shall remain in full force and effect.

ORDERED on of MARCH 08, 2018

"s"/. Charles M. Greene

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Circuit Court Judge