

APPENDIX

UNPUBLISHED
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-6614

LOIS YANKAH,

Plaintiff - Appellant,

V.

SGT. MOORE, Sergeant; SGT. RONEY, Sergeant; SGT. NICKLEBERRY,
Sergeant; LT. PETERSON, Lieutenant; SGT. JONES, Sergeant; SGT. THOMAS,
Officer; OFFICER PEGRAM, Officer; OFFICER WILKINS, Officer; OFFICER
MCCLOUD, Officer; SERGEANT SPRATLEY, Sergeant; SERGEANT KING,
Sergeant; SERGEANT LOVING, Sergeant; LIEUTENANT WYCHE, Lieutenant;
LIEUTENANT COL. MINTON, Assistant Superintendent; OFFICER COPELAND,
Pod Officer; OFFICER MCKLIN, Pod Officer; OFFICER BEACH, Pod Officer;
OFFICER BARBOUR, Pod Officer; OFFICER RICHARD ROE,
Officer,

Defendants - Appellees,

and

MAJOR FLIPPIN, Major; OFFICER MACKLIN, Officer, OFFICER SEWARD;
CAPTAIN MACK, Captain;

Defendants.

No. 21-6451

LOIS YANKAH,

Plaintiff - Appellant,

V.

SGT MOORE, Sergeant; SGT RONEY, Sergeant; SGT NICKLEBERRY, Sergeant;
LT PETERSON, Lieutenant; SGT JONES, Sergeant; OFFICER RICHARD ROE,
Officer; SGT THOMAS, Officer; OFFICER PEGRAM, Officer; OFFICER WILKINS,
Officer; OFFICER MCCLOUD, Officer; SERGEANT SPRATLEY,
Sergeant; SERGEANT KING, Sergeant; SERGEANT LOVING, Sergeant;
LIEUTENANT WYCHE, Lieutenant; LIEUTENANT COL. MINTON, Assistant
Superintendent; OFFICER COPELAND, Pod Officer; OFFICER MCKLIN, Pod
Officer; OFFICER BEACH, Pod Officer,

Defendants - Appellees,

and

OFFICER SEWARD, Booking Officer; CAPTAIN

MACK, Captain; MAJOR FLIPPIN, Major; OFFICER MACKLIN, Officer,

Defendants.

Appeals from the United States District Court for the Eastern District of Virginia,
at Norfolk. Mark S. Davis, Chief District Judge. (2:18-cv-00177-MSD-DEM)

Submitted: September 15, 2021
Decided: September 29, 2021

Before NIEMEYER and WYNN, Circuit Judges, and TRAXLER, Senior Circuit
Judge.

No. 20-6614, affirmed; No. 21-6451, dismissed by unpublished per curiam opinion.

Lois A. Yankah, Appellant Pro Se.
P. O'Herron, THOMPSON MCMULLAN PC, Richmond, Virginia, for Appellees.

Michael Gordon Matheson, John
P. O'Herron, THOMPSON MCMULLAN PC, Richmond, Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PERCURIAM:

In these consolidated cases, Lois Yankah appeals orders entered in her 42 U.S.C. § 1983 proceeding. For the reasons that follow, in Appeal No. 20-6614, we affirm, and we dismiss Appeal No. 21-6451.

In Appeal No. 20-6614, Yankah appeals the district court's orders dismissing her 42 U.S.C. § 1983 action as a sanction for misconduct in litigation and denying her Fed. R. Civ. P. 59(e) motion to alter or amend the judgment. We have reviewed the record and find the district court did not abuse its discretion. Accordingly, we affirm. *Yankah v. Sergeant Moore*, No. 2:18-cv-00177-MSD-DEM (E.D. Va. Apr. 2, 2020).

In Appeal No. 21-6451, Yankah seeks to appeal the order denying her Fed. R. Civ. P. 60(b) motion. We dismiss the appeal for lack of jurisdiction because the notice of appeal was not timely filed.

In civil cases, parties have 30 days after the entry of the district court's final judgment or order to note an appeal, Fed. R. App. P. 4(a)(1)(A), unless the district court extends the appeal period under Fed. R. App. P. 4(a)(5) or reopens the appeal period under Fed. R. App. P. 4(a)(6). "[T]he timely filing of a notice of appeal in a civil case is a jurisdictional requirement." *Bowles v. Russell*, 551 U.S. 205, 214 (2007).

The district court entered its order on February 19, 2021 and any notice of appeal was due on March 22, 2021. Yankah filed the notice of appeal on March 23, 2021. Because Yankah failed to file a timely notice of appeal or to obtain an extension or reopening of the appeal period, we dismiss the appeal. 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.

APPEAL NO. 20-6614, AFFIRMED; APPEAL NO. 21-6451, DISMISSED

APPENDIX 2

FILED: November 2, 2021

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-6614 (L)

(2:18-cv-00177-MSD-DEM)

LOIS YANKAH

Plaintiff - Appellant

V.

SGT. MOORE, Sergeant; SGT. RONEY, Sergeant; SGT. NICKLEBERRY,
Sergeant; LT. PETERSON, Lieutenant; SGT. JONES, Sergeant; SGT. THOMAS,
Officer; OFFICER PEGRAM, Officer; OFFICER WILKINS, Officer; OFFICER
MCCLOUD, Officer; SERGEANT SPRATLEY, Sergeant; SERGEANT KING,
Sergeant; SERGEANT LOVING, Sergeant; LIEUTENANT WYCHE,
Lieutenant; LIEUTENANT COL. MINTON, Assistant Superintendent;
OFFICER COPELAND, Pod Officer; OFFICER MCKLIN, Pod Officer;
OFFICER BEACH, Pod Officer; OFFICER BARBOUR, Pod Officer; OFFICER
RICHARD ROE,
Officer

Defendants - Appellees

and

OFFICER SEWARD; CAPTAIN MACK, Captain; MAJOR FLIPPIN, Major;
OFFICER MACKLIN, Officer

Defendants

No. 21-6451

(2:18-cv-00177-MSD-DEM)

LOIS YANKAH

Plaintiff - Appellant

V.

SGT MOORE, Sergeant; SGT RONEY, Sergeant; SGT NICKLEBERRY, Sergeant; LT PETERSON, Lieutenant; SGT JONES, Sergeant; OFFICER RICHARD ROE, Officer; SGT THOMAS, Officer; OFFICER PEGRAM, Officer; OFFICER WILKINS, Officer; OFFICER MCCLOUD, Officer; SERGEANT SPRATLEY, Sergeant; SERGEANT KING, Sergeant; SERGEANT LOVING, Sergeant; LIEUTENANT WYCHE, Lieutenant; LIEUTENANT COL. MINTON, Assistant Superintendent; OFFICER COPELAND, Pod Officer; OFFICER MCKLIN, Pod Officer; OFFICER BEACH, Pod Officer

Defendants - Appellees

and

OFFICER SEWARD, Booking Officer; CAPTAIN MACK, Captain; MAJOR FLIPPIN, Major; OFFICER MACKLIN, Officer

Defendants

ORDER

The petition for rehearing en bane was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en bane.

For the Court

/s/ Patricia S. Connor, Clerk

APPENDIX 3

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF VIRGINIA
Norfolk Division

LOIS YANKAH,

Plaintiff,

v. ACTION NO. 2:18cv1 77

OFFICER SEWARD, et al.,

Defendants.

DISMISSAL ORDER

Plaintiff a former state inmate, and currently a fugitive from justice filed this prose action alleging violations of her constitutional rights by numerous officers at Riverside Regional Jail.

Defendants Moore, Roney, Nickleberry, Peterson, Jones, Thomas, Pegram, McCloud Spratley, King Loving, Wyche, Minton, Copeland and Bach (collectively Defendants') filed a Motion for Judgment on the Pleadings based on Plaintiff's status as a fugitive .ECF No. 27. Defendants subsequently filed a Motion to Involuntarily Dismiss with Prejudice because Plaintiff is a fugitive and has twice provided the Court with a fictitious address. ECF No. 29. Plaintiff filed a Response to the Motion to Involuntarily Dismiss. ECF No. 32. Plaintiff filed a Response to the Motion for Judgment on the Pleadings. ECF No. 33. Defendants filed a Reply to both of Plaintiff's Responses. ECF No. 35. On August 5, 2019, Plaintiff filed a Motion to Stay, requesting that this matter be stayed until her criminal case was

resolved. ECF No. 41. Defendants filed a Response to Plaintiffs Motion to that in which they explain that Plaintiff is again a fugitive from justice. ECF No. 42. Plaintiff has not filed a Reply. Defendant Macklin filed an Answer. ECF No. 38. Defendants Wilkins and Barbour have not appeared in this action they have not received service.

On August 28 2018 Plaintiff verbally notified the court that she had been released from incarceration but did not provide a written notice of a change of address until September 26 2018. ECF No. 16. Plaintiff provided the Court with an address in Chicago, Illinois. The Court noted that the address was the address of a law firm and raised a concern as to whether an attorney was assisting Plaintiff. ECF No. 18. On May 10 2019, Plaintiff provided the Court with an address in North Aurora, Illinois. ECF No. 31. Plaintiff's address of record continues to be 1264 Kilberry Lane, North Aurora, Illinois 60542.

On May 31 2019, Plaintiff verbally advised the Court that she had been reincarcerated. However Plaintiff did not change her address. On June 18 2019 Plaintiff verbally advised the Court that she had been released and that her address of record is correct, However Plaintiff does not reside at 1264 Kilberry Lane North Aurora Illinois. The Aurora Police Department was unable to serve Plaintiff with warrants because Plaintiff does not live there. ECF No. 35.

Plaintiff remains a fugitive. Plaintiff was released from custody in May of 2019, after posting bond. She was to appear for a Docket Call on July 15, 2019.

Plaintiff failed to appear and a capias was issued for her arrest. ECF No. 42-1.

Shortly thereafter, Plaintiff filed her Motion to Stay and has not been heard from since that motion was filed.

Plaintiff has been a fugitive from justice for almost the entire duration of this litigation. Defendants have vigorously defended against this action including engaging in numerous attempts to locate Plaintiff. Plaintiff has failed to provide this Court and Defendants with a valid address where she could be served.

Plaintiff wishes to stay this civil litigation until the resolution of her criminal case, while at the same time evading attempts by the authorities to bring her to trial on those criminal charges.

The Court has determined that dismissal is proper under this Court's inherent power to sanction misconduct in litigation. *United States v. Shaffer Equip. Co.* 11 F.3d 450 461-63 (4th Cir. 1993). A court's inherent power to sanction misconduct in litigation includes the power to dismiss an action 'if the party seeking relief is a fugitive while the matter is pending.' *Degen v. United States*, 517 U.S. 820, 824 (1996). This general principle has been labeled as the 'fugitive disqualification doctrine.' *Id.* at 823. When a court is contemplating dismissal of a case based on misconduct by a party, a court must take into consideration the following factors:

(1) the degree of the wrongdoer's culpability; (2) the extent of the client's blameworthiness if the wrongful conduct is committed by its attorney; (3) the prejudice to the judicial process and the administration of justice; (4) the prejudice to the victim; (5) the availability of other sanctions to rectify the wrong by

punishing culpable persons on compensating harmed persons, and deterring similar conduct in the future; and (6) the public interest.

Shaffer Equip. Co. 11 F.3d at 462-463. Plaintiff's culpability is irrefutable. She has evaded justice delayed this action and now seeks an open-ended stay of this civil action while continuing to evade the criminal justice system. There is no attorney misconduct to be considered. Plaintiff has prejudiced the Court and Defendant to the point here they cannot act in furtherance of administration of justice with respect to this matter short of dismissing this action. No sanctions other than dismissal of this action are available. As the Plaintiff cannot be located there is no way to impose a monetary sanction to compensate Defendants for the harm she has caused by protracting this litigation or to enforce any other type of sanction. Finally it is in the public interest to discourage those who engage in a flight from justice. *Jaffe v. Accredited 11r. & Cas. Co.*, 294 F.3d 584, 596 (4th Cir. 2002). Courts have also noted the "inequity of allowing a fugitive to call upon the resources of the Court for determination of his claim." *Id.* Inc Degan federal Courts have required a sufficient nexus between the criminal matter and the civil action in order to apply the fugitive disenfranchisement doctrine. *Id.* 596-97. In this case there is a significant nexus. Plaintiff's civil case arises from events that allegedly occurred during her incarceration while awaiting bond on the criminal charges from which he is a fugitive

For the foregoing reasons, Plaintiff's Motion to Stay, ECF No. 41, is DENIED. This matter is DISMISSED pursuant to the Court's inherent power

to sanction misconduct in litigation. All other motions are DISMISSED as MOOT. It is ORDERED that this action is DISMISSED with prejudice as to all Defendants. The Clerk is DIRECTED to enter judgment as to all Defendants.

Plaintiff is ADVISED that she may appeal from this Dismissal Order by forwarding a written notice of appeal to the Clerk of the United States District Court United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510. This written notice must be received by the Clerk within thirty (30) days from the date of this Dismissal Order. If Plaintiff wishes to proceed in forma pauperis on appeal, the application to proceed in forma pauperis is to be submitted to the Clerk, United States Court of Appeals, Fourth Circuit, 1100 E. Main Street, Richmond, Virginia 23219.

IT IS SO ORDERED.

/s/ 

Mark S. Davis

CHIEF UNITED STATES DISTRICT JUDGE
Norfolk Virginia
January 29, 2020

APPENDIX 4

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF VIRGINIA
Norfolk Division

LOIS YANKAH,

Plaintiff,

v. ACTION NO. 2:18cv177

OFFICER SEWARD, et al.,

Defendants.

FINAL ORDER

Plaintiff, a former state inmate, and currently, a fugitive from justice, filed this prose action alleging violations of her constitutional rights by numerous officers at Riverside Regional Jail.

Plaintiff has been a fugitive from justice for almost the entire duration of this litigation. Plaintiff failed to provide this Court and Defendants with a valid address where she could be served. Plaintiff sought to stay this civil litigation until the resolution of her criminal case, while at the same time evading attempts by the authorities to bring her to trial on those criminal charges

By Dismissal Order entered January 29, 2020, the Court dismissed this action pursuant to the Court's inherent power to sanction misconduct in litigation. ECF No. 43. On February 13, 2020, Plaintiff filed a Motion for Rehearing. ECF No. 45. The Court CONSTRUES the Motion for Rehearing as a Motion Alter or Amend

a Judgment pursuant to Rule 59(e) of the Federal Rules of Civil Procedure (hereinafter "Motion for Reconsideration"). Plaintiff filed exhibits to her Motion for Reconsideration. ECF No. 46. Defendants filed a Memorandum in Opposition. ECF No. 47. Plaintiff filed a Response. ECF No. 48. It appears that Plaintiff received Defendants' Memorandum in Opposition, despite Defendants not mailing their Opposition to

Plaintiffs address of record. Defendants were advised by the Clerk to send a revised certificate of service showing that their Memorandum in Opposition had been mailed to Plaintiffs address of record. Defendants have not done so. While the Court is aware that Plaintiff does not reside at her address of record, litigants must serve all filings on their opponent at the address of record. Therefore, the Court will not consider Defendants' Memorandum in Opposition in ruling on Plaintiffs Motion for Reconsideration.

Federal Rule 59(e) authorizes a party to file a "motion to alter or amend a judgment ... no later than 28 days after the entry of the judgment." Fed. R. Civ. P. 59(e). As the United States Court of Appeals for the Fourth Circuit explains:

While the Rule itself provides no standard for when a district court may grant such a motion, courts interpreting Rule 59(e) have recognized three grounds for amending an earlier judgment: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice.

Hutchinson v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993). "[R]econsideration of a judgment after its entry is an extraordinary remedy which should be used

sparingly." *Pacific Ins. Co. v. Am. Nat'l Fire Ins. Co.*, 148 F.3d 396,403 (4th Cir. 1998).

Plaintiff claims that dismissal of the action will result in manifest injustice.

Plaintiff claims that she is not trying to delay this matter, she simply needs to concentrate on her criminal matter. Plaintiff also asserts that she should be allowed to remain a fugitive so that she can avoid deportation and retaliation from Chesterfield County. This is a novel legal theory that the Court finds unpersuasive. Plaintiff seeks to use the justice system against Defendants while flaunting her disregard for the legal system when she is the Defendant. Plaintiff has not shown that dismissal of this action will result in manifest injustice. Therefore, Plaintiff's Motion for Reconsider, ECF No. 45, is DENIED.

Plaintiff is ADVISED that she may appeal from this Final Order by forwarding a written notice of appeal to the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510. This written notice must be received by the Clerk within thirty (30) days from the date of this Final Order. If Plaintiff wishes to proceed Informa pauperis on appeal, the application to proceed in forma pauperis is to be submitted to the Clerk, United States Court of Appeals, Fourth Circuit, 1100 E. Main Street, Richmond, Virginia 23219.

The Clerk is DIRECTED to send this Final Order to Plaintiff and counsel for Defendants.

IT IS SO ORDERED.

/s/ mds

Mark S. Davis
CHIEF UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
April 2, 2020