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Appendix A

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22-5011

Jenny Bruns and Jeremy Bruns,
Appellants
v.
USAA, et al.,
Appellees

September Term, 2021
1:20-cv-00501-RCL
Filed On: August 11, 2022

BEFORE: Wilkins, Katsas, and Rao, Circuit Judges

ORDER

Upon consideration of the motions for summary affirmance, the oppositions thereto, and the replies; the motion to dispense with the joint appendix; the motion for interim relief and the oppositions thereto; the motion to disqualify and the opposition thereto; and the court's order to show cause filed on April 6, 2022, it is

ORDERED that the order to show cause be discharged. It is

FURTHER ORDERED that the motions for summary affirmance be granted. The merits of the parties' positions are so clear as to warrant summary action. See Taxpayers Watchdog, Inc. v. Stanley, 819 F.2d. 294, 297 (D.C. Cir. 1987) (per curiam). Appellants have forfeited any challenge to the district court's denial of

their motions to alter or amend the judgment, for sanctions, and for certain disclosures by not addressing those denials in their oppositions to the motions for summary affirmance. See United States ex rel. Totten v. Bombardier Corp., 380 F. 3d 488, 49 (D.C. Cir. 2004). Appellants have addressed the district court's order dismissing their claims, but their arguments against summary affirmance of that order are without merit.

First, appellants argue that they have an interest in seeing one of the defendants criminally punished that is sufficient to establish standing. However, it is well established that "a private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another." Linda R.S. v. Richard D., 410 U.S. 614, 619 (1973).

Second, appellants argue that the district court erred in dismissing their claims against some of the defendants based on the Rooker-Feldman doctrine and claim preclusion. Appellants maintain that those doctrines do not apply because any decisions rendered in their prior state court case are void ab initio because the trial court in that case was required to recuse himself pursuant to Canons 3C and 3D of the North Carolina Code of Judicial Ethics. However, the North Carolina Supreme Court has held that a judge is not required to recuse himself absent a motion from one of the parties and that failure to recuse is not a jurisdictional defect. See In re Z.V.A., 373, N.C. 207, 214 (2019). Appellants did not move for recusal for the trial court judge, and consequently, his continuing to preside over the state case did not render the dismissal of that case void ab initio.

Third, appellants argue that the district court had jurisdiction over some of the private defendants under

inally made, it does not warrant amending a judgment. *Id.* That is the case here—plaintiffs repackage and attempt to relitigate the same issues this Court already decided in its order [85] dismissing plaintiff's [sic] complaint. Accordingly, their motion to alter or amend a judgment is **DENIED**.

Plaintiffs also move to sanction defendants under Federal Rule of Civil Procedure 11, arguing that defendants "assert[ed] frivolous defenses and legal contentions that aren't warranted by existing law." ECF No. 92. But defendants' arguments were not frivolous—in fact, this Court credited defendants' arguments and dismissed the case. The motion for sanctions is therefore **DENIED**.

Finally, plaintiffs move for this Court's disclosure of the undersigned's financial interest in United States Automobile Association ("USAA"), claiming that if the undersigned does have USAA insurance he should disqualify himself. ECF No. 100 [sic] Plaintiffs concede that "mutual fund holdings are explicitly excluded from the definition of having a 'financial interest'" and that generally "holding an insurance policy from a company that is a party . . . isn't a 'financial interest as grounds for disqualification:'" ECF No. 100. Yet plaintiffs still demand that this Court disclose whether the undersigned "carrie[s] USAA automobile insurance." *Id.* They cite as evidence of the Court's partiality that the undersigned has "deep ties to San Antonio," where USAA is headquartered, and that this Court previously dismissed their claim. *Id.*

This motion is **DENIED** because, as plaintiffs concede, neither mutual funds nor insurance policies warrant federal judicial disqualification in this situation. Section § 455, which governs disqualification of judges for potential partiality, instructs that a judge should

disqualify himself if he "or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding." 28 U.S.C. §455(b)(4). But the interest of a policyholder in a mutual insurance company is only a "financial interest" under § 455 (b)(4) if the "outcome of the proceeding could *substantially* affect the value of the interest." 28 U.S.C. § 455(d)(4)(i) (emphasis added).

Similarly, the Guide to Judiciary Policy advises that "when an insurance company is a party, the judge ordinarily need not recuse unless the judge has a financial interest in the company." Guide to Judiciary Policy, vol. 2B, ch. 2, § 220, *Committee on Codes of Conduct Advisory Opinion No. 26: Disqualification Based On Holding Insurance Policy From A Company That Is A Party*. It is only in situations such as when the judge's premiums could be significantly increased or coverage substantially reduced that the judge needs to recuse himself. *Id.* Here, while plaintiffs do request billions of dollars of damages in their complaint, they appear to acknowledge that USAA policy limits were $120,000. ECF No. 1 at 73. And they provide no basis for their outlandish $2.2 billion number. ECF No. 1. [sic] at 345. Thus, even if plaintiffs were successful in this case, $120,000 in damages (or even treble damages of $360,000) would not significantly increase USAA premiums or reduce coverage.

Plaintiffs emphasize that the unique structure of USAA, specifically the fact that it "distributes profits to its members," warrants disqualification under § 455(b). ECF No. 100 at 3. While the specific question of USAA insurance has not come up in this district before, this Court agrees with the United States Army

Court of Criminal Appeals that merely possessing USAA insurance would not warrant disqualification:

> . . . USAA annually decides whether to return a portion of excess company reserves and paid automobile premiums to policyholders, if so, how much . . . Considering the number of policyholders and the amount of the insurance fraud in this case, the financial impact to us cannot be more than a very small fraction of a penny. Therefore, we conclude that we have no financial interest "that could be substantially affected by the outcome of the [appellant's] proceeding." We categorically state that our association with USAA has not and will not compromise our impartiality. Likewise, we are satisfied that the impact of the appellant's misconduct on the net cost of our insurance is so attenuated and miniscule that our impartiality could not reasonably be questioned by informed observers.

United States v. Reed, 55 M.J. 719, 721 (A. Ct. Crim. App. 2001). Likewise, the actual damages alleged here ($120,000) would have so "miniscule" an impact on any potential USAA distributions that any financial interest could not be "substantially affected." 28 U.S.C. § 455(2)(4)(iii). Accordingly, plaintiffs' motion for disclosure is **DENIED**.

It is **SO ORDERED**.

Date: December 21, 2021

/s/ Royce C. Lamberth
Hon. Royce C. Lamberth
United States District Judge

Appendix C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Case No. 20-cv-501 (RCL)

Bruns, *et al.*,
Plaintiffs,
v.
USAA, *et al.*,
Defendants.

Filed 03/29/21

ORDER

Upon consideration of the motion [21] to dismiss filed by defendants Dalton Bryant, Jr., Dalton Bryant, Sr., and Wanda G. Bryant, [sic] the opposition [35] thereto, the reply [37], and the record herein, the Court concludes that the Complaint fails to allege facts that any of the alleged conspirators took an overt act within the District of Columbia that injured the plaintiffs. The Complaint fails to allege any facts establishing that the Court has personal jurisdiction over the Bryants. The Complaint fails to allege any facts to support a finding that the Bryants have engaged in an activity that places them in the ambit of the Long-Arm Statute of the District of Columbia. Accordingly, the Bryants' motion [21] to dismiss is **GRANTED** and the Complaint is hereby **DISMISSED WITH PREJUDICE** as to the Bryants.

Upon consideration of the motion [29] to dismiss filed by John I. Malone, Jr., his reply [44] to an undocketed

opposition, *see* ECF No. 44 at 1, and the record herein, his motion is **GRANTED** since this Court has no personal jurisdiction over defendant Malone. The Complaint as to defendant Malone is hereby **DISMISSED WITH PREJUDICE**.

Upon consideration of the motion [28, as amended by 34] to dismiss filed by the United States Automobile Association ("USAA"), the opposition [38] thereto, the reply [43], the supplemental opposition [45], USAA's supplemental memorandum [61], and the record herein, USAA's amended motion to dismiss is **GRANTED**. Both *res judicata* and Rooker-Feldman [sic] doctrine bar the plaintiffs' claims. Accordingly, the Complaint as to USAA is hereby **DISMISSED WITH PREJUDICE**.

Upon consideration of the motion [39] to dismiss filed by Philip H. Cheatwood, the opposition [51] thereto, the reply [56], and the record herein, the motion to dismiss is **GRANTED**. This Court has no personal jurisdiction over this defendant, who lives and works in North Carolina and who has no contacts with the District of Columbia that would authorize personal jurisdiction under the District's Long-Arm Statute. Accordingly, the Complaint as to defendant Cheatwood is hereby **DISMISSED WITH PREJUDICE**.

Upon consideration of the motion [40] of defendants James Floyd Ammons, Jr., John S. Arrowood, Cheri Beasley, Philip E. Berger, Jr., Wanda G. Bryant, Ann Marie Calabria, Mike Causey, Roy A. Cooper III, Mark A. Davis, Richard Dietz, Robert Christopher Dillon, Richard A. Elmore, Samuel J. Ervin IV, Larry D. Hall, Claire V. Hill, Eric A. Hooks, Robin E. Hudson, Robert N. Hunter, Jr., Lucy Inman, Barbara Jackson, Mark Martin, Linda M. McGee, Michael R. Morgan, Jeffrey Hunter Murphy, Paul Martin Newby, Frank L. Perry,

Josh Stein, Donna Stroud, James H. Trogdon III, John M. Tyson, Thomas M. Woodward, Reuben F. Young, Valerie Zachary to extend until June 1, 2020, are deemed timely filed.

Upon consideration of plaintiffs' motion [42] to disqualify Rubin, Shields, and Rodriguez representing the defendant Officials in their individual capacities, the opposition [47] thereto, and the record herein, the motion is **DENIED**. The State's statutory exercise of its authority under the North Carolina Defense of State Employees Act, N.C. Gen. State § 143-300.3 *et seq.*, is not subject to review in this context.

Upon consideration of plaintiffs' motion [60] for judicial notice of (1) personal jurisdiction for the Bryants, Malone, and Cheatwood, and (2) pro se mailing issues, the oppositions thereto [70, 71, 72], and the record herein, plaintiffs' motion is **GRANTED** for lack of subject matter jurisdiction based on the 11th Amendment. Accordingly, the Complaint as to defendant Causey is hereby **DISMISSED WITH PREJUDICE**.

Upon consideration of the motion [62] to dismiss filed by defendants James Floyd Ammons, Jr., John S. Arrowood, Cheri Beasley, Philip E. Berger, Jr., Wanda G. Bryant, Ann Marie Calabria, Mark A. Davis, Richard Dietz, Robert Christopher Dillon, Richard A. Elmore, Samuel J. Ervin IV, Claire V. Hill, Robin E. Hudson, Robert N. Hunter, Jr., Lucy Inman, Barbara Jackson, Mark Martin, Linda M. McGee, Michael R. Morgan, Jeffrey Hunter Murphy, Paul Martin Newby, Donna Stroud, John M. Tyson, Reuben F. Young, Valerie Zachary, the opposition [82] thereto, and the record herein, the motion is **GRANTED**. The Rooker-Feldman [sic] doctrine bars this Court from reviewing the actions of the North Carolina courts and officials. Accordingly, the Complaint as to these defendants is

hereby **DISMISSED WITH PREJUDICE.**

Upon consideration of the motion [63] to dismiss by defendants Governor Roy A. Cooper III, Attorney General Josh Stein, Secretary Larry D. Hall, and Thomas M. Woodward, the opposition [80] thereto, and the record herein, the motion to dismiss is **GRANTED** under the Rooker-Feldman [sic] doctrine as well as res judicata. Accordingly, the Complaint as to these defendants is hereby **DISMISSED WITH PREJUDICE.**

Upon consideration of the motion [64] to dismiss by defendants Eric A. Hooks and Frank L. Perry, the opposition [81] thereto, and the record herein, the motion to dismiss is **GRANTED**. Again, the Rooker-Feldman [sic] doctrine and res judicata principles are sufficient to justify dismissal and the Court need not address other possible bases. The Complaint as to defendants Hooks and Perry is hereby **DISMISSED WITH PREJUDICE.**

Upon consideration of the motion [66] to dismiss filed by defendant J. Eric Boyette, Secretary of the North Carolina Department of Transportation, who was automatically substituted as a successor in office for James H. Trogdon III,[1] the former Transportation Secretary, the opposition [79] thereto, and the record herein, the motion to dismiss is **GRANTED** for lack of subject matter jurisdiction. Accordingly, the Complaint as to defendant Boyette is hereby **DISMISSED WITH PREJUDICE.**

Upon consideration of the motion [75] to dismiss filed by defendants William p. Barr, Elaine Chao, Jessie K. Liu, Nicole R. Nason, James C. Owens, Kathleen

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[1] *See* Fed. R. Civ. P. 25(d) (providing that a public officer's successor is "automatically substituted as a party" when the public officer originally named as a defendant "ceases to hold office while the action is pending").

Hawk Sawyer, and Robert Wilkie ("the Federal Defendants"), the opposition [78] thereto, the reply [83], and the record herein, the motion to dismiss is **GRANTED** for lack of constitutional standing to bring any federal claim in this case. The Complaint against the Federal Defendants is hereby **DISMISSED WITH PREJUDICE** for lack of subject matter jurisdiction.

Finally, plaintiffs failed to show cause, as directed by this Court's Order [85] filed October 5, 2020, why service has not been effected on defendant Leann Nease Brown. The Complaint against defendant Brown is hereby **DISMISSED WITHOUT PREJUDICE** for failure to timely effect service. *See* Fed. R. Civ. P. 4(m).

All claims now having been decided, this case shall be terminated on the docket of this Court.

It is **SO ORDERED**.

Date: March 29, 2021

/s/ Royce C. Lamberth
Hon. Royce C. Lamberth
United States District Judge

Appendix D

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22-5011

Jenny Bruns and Jeremy Bruns,
Appellants
v.
USAA, et al.,
Appellees

September Term, 2022
1:20-cv-00501-RCL
Filed On: November 7, 2022

BEFORE: Srinivasan, Chief Judge, and Henderson, Millet, Pillard, Wilkins, Katsas, Rao, Walker, Childs, and Pan, Circuit Judges

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ORDER

Upon consideration of the petition for rehearing en banc, and the absence of a request by any member of the court for a vote, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk
BY: /s/
Daniel J. Reidy
Deputy Clerk