FILED: July 18, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-1904
(2:20-cv-01748-BHH-MHC)

C. HOLMES, a/k/a Cynthia Holmes, a/k/a Cynthia Collie Holmes

Plaintiff - Appellant

v.

GRANUAILE, LLC; J. P. WALSH, individually and as related to Granuaile, LLC; L. WALSH, individually and as related to Granuaile, LLC

Defendants - Appellees

ORDER

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Further, the court grants the motion to exceed the page limit for a petition for rehearing, and denies the motion for permission to appeal.

Entered at the direction of the panel: Judge Gregory, Judge Agee, and Senior Judge Keenan.

For the Court

/s/ Patricia S. Connor, Clerk

APP C

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-1904

C. HOLMES, a/k/a Cynthia Holmes, a/k/a Cynthia Collie Holmes,

Plaintiff - Appellant,

v.

GRANUAILE, LLC; J. P. WALSH, individually and as related to Granuaile, LLC; L. WALSH, individually and as related to Granuaile, LLC,

Defendants - Appellees.

Appeal from the United States District Court for the District of South Carolina, at Charleston. Bruce H. Hendricks, District Judge. (2:20-cv-01748-BHH-MHC)

Submitted: May 17, 2023 Decided: June 9, 2023

Before GREGORY, Chief Judge, AGEE, Circuit Judge, and KEENAN, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

C. Holmes, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

APP A

PER CURIAM:

C. Holmes seeks to appeal the district court's orders referring her case to a magistrate judge, denying her motion for reconsideration of the referral order, and denying her motion for a stay pending appeal. This court may exercise jurisdiction only over final orders, 28 U.S.C. § 1291, and certain interlocutory and collateral orders, 28 U.S.C. § 1292; Fed. R. Civ. P. 54(b); *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 545-46 (1949). The orders Holmes seeks to appeal are neither final orders nor appealable interlocutory or collateral orders. Accordingly, we dismiss the appeal for lack of jurisdiction. 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.

DISMISSED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

C. Holmes, *a/k/a Cynthia Holmes, a/k/a Cynthia Holmes, M.D., a/k/a Cynthia Collie Holmes*, Plaintiff, v. Granuaile LLC; J.P. Walsh, *individually and as related to Granuaile LLC*; L. Walsh, *individually and as related to Granuaile LLC*, Defendants.	Civil Action No. 2:20-1748-BHH **ORDER**

This matter is before the Court upon Plaintiff Cynthia Holmes' ("Plaintiff") pro se complaint. In accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2)(d) (D.S.C.), the matter was referred to a United States Magistrate Judge for preliminary review.

On August 5, 2020, Magistrate Judge Molly H. Cherry issued a Report and Recommendation ("Report") outlining the issues and recommending that the Court summarily dismiss Plaintiff's complaint without prejudice. In her Report, the Magistrate Judge explained that this action is barred by the doctrine of *res judicata* based on the final judgment in a prior action filed by Plaintiff against the same parties and alleging the same claims. *See Holmes v. Granuaile LLC, et al.*, No. 2:16-cv-3969-BHH, 2019 WL 350391 (D.S.C. Jan. 29, 2019), *aff'd*, 778 F. App'x 222 (4th Cir. 2019) (hereinafter referred to as "the prior action"). Attached to the Magistrate Judge's Report was a notice advising Plaintiff of the right to file written objections to the Report within fourteen days of being

served with a copy. Due to an inadvertent oversight in the Clerk's Office, Plaintiff's objections were not electronically filed until August 31, 2020, although they were received on August 21, 2020. (*See* ECF No. 23.) On August 27, 2020, the Court issued an order adopting the Magistrate Judge's Report without objection. However, once the Court learned of the error in the late filing of Plaintiff's objections, the Court promptly vacated its order adopting the Report and reopened the matter for consideration of Plaintiff's objections. In the meantime, Plaintiff filed a Rule 59(e) order, which the Court now finds moot based on the Court's oral order vacating the Court's prior written order. (*See* ECF No. 24.)

The Magistrate Judge makes only a recommendation to the Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261 (1976). The Court is charged with making a *de novo* determination only of those portions of the Report to which specific objections are made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

In her objections to the Magistrate Judge's Report, Plaintiff first repeats largely irrelevant portions of previous filings from both this case and from other cases she has filed in this Court. Next, however, Plaintiff raises specific objections to the Magistrate Judge's Report. First, Plaintiff asserts that the Court should wholly disregard the dismissal of her prior action, *see* No. 2:16-cv-3969-BHH, upon which the Magistrate Judge relies in finding that this action is barred by the doctrine of *res judicata*. In support, Plaintiff asserts that the

nuisance cause of action is continuing and ongoing and that, therefore, she is not barred from filing a new claim. In addition, Plaintiff asserts that she did not consent to the referral of this matter to a Magistrate Judge, and she claims that the Magistrate Judge lacks jurisdiction to consider the matter. Plaintiff also objects to the Magistrate Judge's conclusion that this action is frivolous, and she objects to a number of the citations included in the Magistrate Judge's Report. Overall, Plaintiff contends that there was no determination on the merits in the prior action and that *res judicata* therefore does not apply; that her cause of action is ongoing and covers a different time period after the conclusion of her former action; and that this action presents a new nuisance cause of action as a matter of law.

After a thorough review of Plaintiff's objections, the Court finds them wholly without merit. As the Magistrate Judge explained, there was a final judgment on the merits in the prior action as the Court granted summary judgment in favor of the defendants in the prior action. Moreover, despite Plaintiff's arguments to the contrary, the Court notes that Plaintiff's complaint in this action is virtually identical to her amended complaint in the prior action, and the Court fully agrees with the Magistrate Judge that the causes of action in the lawsuit are the same as those adjudicated in the prior action. In addition, this action involves the same parties as the prior action. Accordingly, the Court finds no merit to Plaintiff's objections, and, for the same reasons set forth by the Magistrate Judge, the Court finds that this action is barred by the doctrine of *res judicata* and is subject to summary dismissal without prejudice.

CONCLUSION

Based on the foregoing, it is hereby **ORDERED** that the Magistrate Judge's Report (ECF No. 17) is adopted and specifically incorporated herein; Plaintiff's objections (ECF No. 22) are overruled; Plaintiff's Rule 59(e) motion (ECF No. 28) is denied as moot; and this action is summarily dismissed without prejudice.

AND IT IS SO ORDERED.

/s/Bruce H. Hendricks
United States District Judge

December 15, 2020
Charleston, South Carolina

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

C. Holmes, *a/k/a Cynthia Holmes, a/k/a Cynthia Holmes, M.D., a/k/a Cynthia Collie Holmes*, Plaintiff, v. Granuaile LLC; J.P. Walsh, *individually and as related to Granuaile LLC*; L. Walsh, *individually and as related to Granuaile LLC*, Defendants.	Civil Action No. 2:20-1748-BHH **ORDER**

This matter is before the Court upon Plaintiff Cynthia Holmes' ("Plaintiff") pro se complaint. In accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2)(d) (D.S.C.), the matter was referred to a United States Magistrate Judge for preliminary review.

On August 5, 2020, Magistrate Judge Molly H. Cherry issued a Report and Recommendation ("Report") outlining the issues and recommending that the Court summarily dismiss Plaintiff's complaint without prejudice. In her Report, the Magistrate Judge explained that this action is barred by the doctrine of *res judicata* based on the final judgment in a prior action filed by Plaintiff against the same parties and alleging the same claims. *See Holmes v. Granuaile LLC, et al.*, No. 2:16-cv-3969-BHH, 2019 WL 350391 (D.S.C. Jan. 29, 2019), *aff'd*, 778 F. App'x 222 (4th Cir. 2019). Attached to the Magistrate Judge's Report was a notice advising Plaintiff of the right to file written objections to the Report within fourteen days of being served with a copy. To date, no objections have been

filed.

The Magistrate Judge makes only a recommendation to the Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261 (1976). The Court is charged with making a *de novo* determination only of those portions of the Report to which specific objections are made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of specific objections, the Court reviews the matter only for clear error. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that "in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'") (quoting Fed. R. Civ. P. 72 advisory committee's note).

Here, because no objections were filed, the Court has reviewed the record, the applicable law, and the findings and recommendations of the Magistrate Judge for clear error. Finding none, the Court adopts and incorporates the Magistrate Judge's Report (ECF No. 17), and this action is dismissed as frivolous.

AND IT IS SO ORDERED.

/s/Bruce H. Hendricks
The Honorable Bruce Howe Hendricks
United States District Judge

August 27, 2020
Charleston, South Carolina

AO 450 (Rev. 11/11) Judgment in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of South Carolina

C. Holmes, a/k/a Cynthia Holmes, a/k/a Cynthia Holmes, M.D., a/k/a Cynthia Collie Holmes,
Plaintiff
v.
Granuaile LLC; J.P. Walsh, individually and as related to Granuaile LLC; L. Walsh, individually and as related to Granuaile LLC,
Defendant

Civil Action No. 2:20-cv-1748-BHH

JUDGMENT IN A CIVIL ACTION

The court has ordered that *(check one)*:

☐ the plaintiff *(name)* _____ recover from the defendant *(name)* _____ the amount of _____ dollars ($ _____), which includes prejudgment interest at the rate of _____ %, plus post judgment interest at the rate of _____ % per annum, along with costs.

☐ the plaintiff recover nothing, the action be dismissed on the merits, and the defendant *(name)* _____ recover costs from the plaintiff *(name)* _____ .

☑ other: The Court adopts and incorporates the Report and Recommendation of the Magistrate Judge and this action is dismissed.

This action was *(check one)*:

☐ tried by a jury with Judge _____ presiding, and the jury has rendered a verdict.

☐ tried by Judge _____ without a jury and the above decision was reached.

☑ decided by Judge Bruce Howe Hendricks, United States District Judge, having adopted the Report and Recommendation of the Magistrate Judge and granting the Defendant's Motion for Summary Judgment in its entirety.

Date: August 27, 2020

CLERK OF COURT

s/ V. Druce, Deputy Clerk

Signature of Clerk or Deputy Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

C. Holmes, *a/k/a Cynthia Holmes, a/k/a Cynthia Holmes, M.D., a/k/a Cynthia Collie Holmes,*	C/A No. 2:20-01748-BHH-BM
Plaintiff,	**REPORT AND RECOMMENDATION**
v.	
Granuaile LLC; J.P. Walsh, *individually and as related to Granuaile LLC*; L. Walsh, *individually and as related to Granuaile LLC,*	
Defendants.	

The *pro se* Plaintiff, Cynthia Holmes, brings this civil action asserting claims under state law against Defendants. All pretrial proceedings in this case were referred to the undersigned pursuant to the provisions of 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(D.S.C.).

Although Plaintiff is not proceeding *in forma pauperis*, this filing is nonetheless subject to review pursuant to the inherent authority of this Court to ensure that the case is not frivolous.[1] *See Ross v. Baron*, 493 F. App'x 405, 406 (4th Cir. Aug. 22, 2012); *Fitzgerald v. First East Seventh St. Tenants Corp.*, 221 F.3d 362, 363–64 (2d Cir. 2000); *see also Pillay v. INS*, 45 F.3d 14, 16–17 (2d Cir. 1995)(noting that although 28 U.S.C. § 1915(d) was not applicable where a *pro se* party filed an appeal and paid the filing fee, the court had "inherent authority, wholly aside from any statutory warrant, to dismiss an appeal or petition for review as frivolous"). "[I]t is well established that a court has broad inherent power *sua sponte* to dismiss an action, or part of an action, which

[1] Pre-screening under 28 U.S.C. § 1915 is inapplicable in *pro se*, non-prisoner, fee-paid cases. *See Bardes v. Magera*, No. 2:08-487-PMD-RSC, 2008 WL 2627134, at *8–10 (D.S.C. June 25, 2008) (finding persuasive the Sixth Circuit's opinion in *Benson v. O'Brian*, 179 F.3d 1014 (6th Cir. 1999) that § 1915(e)(2) is inapplicable to actions that are not pursued *in forma pauperis*).

APP B

is frivolous, vexatious, or brought in bad faith." *Brown v. Maynard*, No. L–11–619, 2011 WL 883917, at *1 (D.Md. Mar.11, 2011) (citing cases). Therefore, a court has "the discretion to dismiss a case at any time, notwithstanding the payment of any filing fee or any portion thereof, if it determines that the action is factually or legally frivolous." *Id.*; s*ee also Carter v. Ervin*, No. 14–0865, 2014 WL 2468351 (D.S.C. June 2, 2014); *Cornelius v. Howell*, No. 06–3387, 2007 WL 397449, at *3 (D.S.C. Jan. 8, 2007), *report and recommendation adopted*, 2007 WL 4952430 (D.S.C. Jan. 30, 2007).

I. BACKGROUND

Plaintiff alleges that she owns property on Sullivan's Island, South Carolina, which is adjacent to property "titled in the name of Granuaile, LLC, and/or J. P. Walsh and/or L. Walsh." Complaint, ECF No. 1 at 3. She asserts that this Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332, because there is complete diversity of citizenship (Plaintiff is a citizen of South Carolina, and Defendants are citizens of Ohio) and the amount in controversy exceeds $75,000. *Id.* at 1-3. Plaintiff pleads claims, pursuant to South Carolina law, for trespass, nuisance, negligence, and unjust enrichment.

Plaintiff previously filed an action (the Prior Action) against these same Defendants, specifically Granuaile, LLC; James P. Walsh, *individually and as related to Granuaile LLC*; and L. Walsh, *individually and as related to Granuaile LLC*). *See Holmes v. Granuaile LLC, et al.*, No. CV 2:16-3969-BHH, 2019 WL 350391 (D.S.C. Jan. 29, 2019), *aff'd*, 778 F. App'x 222 (4th Cir. 2019). Plaintiff filed an amended complaint in the Prior Action, which is nearly identical to the Complaint in this case, in which she alleged the same claims for trespass, nuisance, negligence, and unjust enrichment concerning a dispute as to the property adjacent to Plaintiff's property. *Compare* ECF No. 1, *with Holmes,* No. CV 2:16-3969-BHH at ECF No. 36. The motion for

summary judgment of the defendants in the Prior Action was granted,[2] and Plaintiff's motion for reconsideration was denied. *Holmes, supra.* at ECF Nos. 129, 138. The Fourth Circuit affirmed the judgment of the district court. *Holmes v. Granuaile, LLC, et al.,* 778 F. App'x 222 (4th Cir. 2019).

II. LEGAL ANALYSIS

Pro se complaints are held to a less stringent standard than those drafted by attorneys, *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978), and a federal district court is charged with liberally construing a complaint filed by a *pro se* litigant to allow for the development of a potentially meritorious case. *See Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555–56 (2007)); *Hughes v. Rowe*, 449 U.S. 5, 9 (1980). Even so, the requirement of liberal construction does not mean that a court can ignore a clear failure in the pleading to allege facts which set forth a claim cognizable in a federal district court. *See Weller v. Dep't of Soc. Servs.*, 901 F.2d 387 (4th Cir. 1990); *see also Ashcroft v. Iqbal*, 556 U.S. 662 (2009) (outlining pleading requirements under Rule 8 of the Federal Rules of Civil Procedure for "all civil actions"). In this instance, Plaintiff has not set forth a cognizable claim because her Complaint is barred by the doctrine of *res judicata.*

[2] The Court found that the defendants were entitled to summary judgment because Plaintiff failed to present any evidence sufficient to create a genuine issue of material fact as to her claims: "(a) that the construction of the driveway on the neighboring property caused an unreasonable interference with Plaintiff's use and enjoyment of her property; (b) that the Defendants were negligent in the construction of the driveway; (c) that the construction of the driveway resulted in an unlawful trespass by Defendants onto Plaintiff's property; or (d) that the construction of the driveway unjustly enriched Defendants by causing a reduction in the value of her property." *Holmes v. Granuaile LLC*, 2019 WL 350391, at *2.

"Res judicata is applied to prevent the re-litigation of claims, and thus prevent the unsettling of a prior judgment, whether by increasing or decreasing the award or by reversing the result." *In re Heckert*, 272 F.3d 253, 258 (4th Cir. 2001); *Meekins v. United Transp. Union,* 946 F.2d 1054, 1057 (4th Cir. 1991). For the doctrine of *res judicata* to be applicable, there must be: (1) a final judgment on the merits in a prior suit; (2) an identity of the cause of action in both the earlier and later suit; and (3) an identity of parties or their privies in the two suits. *Martin v. Am. Bancorp. Ret. Plan*, 407 F.3d 643, 650 (4th Cir. 2005); *Nash Cnty Bd. of Educ. v. Biltmore Co.*, 640 F.2d 484, 486 (4th Cir. 1981). Further, *res judicata* not only bars claims that were raised and fully litigated, but also "'prevents litigation of all grounds for, or defenses to, recovery that were previously available to the parties, regardless of whether they were asserted or determined in the prior proceeding.'" *Peugeot Motors of Am., Inc. v. E. Auto Distributors, Inc.*, 892 F.2d 355, 359 (4th Cir. 1989) (quoting *Brown v. Felsen*, 442 U.S. 127, 131 (1979)); *see also Meekins*, 946 F.2d at 1057.

Here, there was a final judgment on the merits in the Prior Action, the causes of action in the Prior Action and this lawsuit are the same, and the identity of parties is the same in the two lawsuits. *See* Complaint, ECF No. 1; *Holmes v. Granuaile, LLC, et al.*, No. CV 2:16-3969-BHH. Thus, the doctrine of *res judicata* is applicable to bar Plaintiff's claims, and the present lawsuit is subject to summary dismissal as it is frivolous. *See Brown v. South Carolina*, No. 3:13–2983–MBS-PJG, 2014 WL 4826152, *2 (D.S.C. Sept. 24, 2014) (determining that because *pro se* litigant had filed another case reasserting the same claims against the same parties as in a prior case, "all three elements of res judicata have been met, subjecting Plaintiff's action to summary dismissal as frivolous"], *aff'd*, 589 F. App'x 190 (4th Cir. 2015). "[D]istrict courts are not required to entertain

duplicative or redundant lawsuits." *Cottle v. Bell*, No. 00–6367, 2000 WL 1144623, *1 (4th Cir. Aug.14, 2000); *see also MacKinnon v. City of N.Y.*, 580 F. App'x 44 (2d Cir. 2014) ("[w]e have regularly upheld a district court's authority to dismiss sua sponte a pro se complaint on res judicata grounds"), *cert. denied*, 135 S.Ct. 2316 (2015); *Paul v. de Holczer*, No. 3:15–2178–CMC–PJG, 2015 WL 4545974, *6 (D.S.C. July 28, 2015)(holding that "repetitious litigation of virtually identical causes of action" may be dismissed as frivolous), *aff'd*, 631 F. App'x 197 (4th Cir. Feb. 4, 2016).

III. RECOMMENDATION

Accordingly, it is **RECOMMENDED** that the Court summarily **DISMISS** the above-captioned case without prejudice. *See Ross v. Baron*, 493 F. App'x at 406; *Fitzgerald*, 221 F.3d at 363–64.

Plaintiff is advised that this Report and Recommendation constitutes notice to her of material defects in her filing.[3] Additionally, Plaintiff's attention is directed to the important notice on the next page.

Molly H. Cherry
United States Magistrate Judge

August 5, 2020
Charleston, South Carolina

[3] Plaintiff should note that if she attempts to amend her complaint, she must file a complete, proposed amended complaint. "A plaintiff may not amend a complaint in piecemeal fashion by merely submitting additional factual allegations." *McClary v. Searles*, No. 3:15–cv–77–FDW, 2015 WL 2259312, at *1 n. 1 (W.D.N.C. May 13, 2015). Additionally, an amended complaint replaces the original complaint and should be complete in itself. *See Young v. City of Mount Ranier*, 238 F.3d 567, 572 (4th Cir. 2001)("As a general rule, an amended pleading ordinarily supersedes the original and renders it of no legal effect.")(citation and internal quotation marks omitted).