

UNPUBLISHED**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 23-7165

ANDRIVIA FRANCES WELLS,

Plaintiff - Appellant,

v.

MECKLENBURG COUNTY CLERK OF PROBATE ESTATES; MEMPHIS L. SMITH, JR.; AUDRIS VERONICA FORD ASMOND,

Defendants - Appellees.

Appeal from the United States District Court for the Western District of North Carolina, at Charlotte. Max O. Cogburn, Jr., District Judge. (3:23-cv-00356-MOC-SCR)

Submitted: March 28, 2024

Decided: April 2, 2024

Before KING and RUSHING, Circuit Judges, and MOTZ, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Andrivia Frances Wells, Appellant Pro Se. J.P. McGuire Boyd, Jr., WILLIAMS MULLEN, Richmond, Virginia, for Appellee Audris Veronica Ford Asmond.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Andrivia Wells seeks to appeal the district court's order dismissing her 42 U.S.C. § 1983 action for failure to state a claim. 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 October 18, 2023. Wells filed the notice of appeal on November 20, 2023. Because Wells 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.

DISMISSED

FILED: May 1, 2024

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(3:23-cv-00356-MOC-SCR)

ANDRIVIA FRANCES WELLS

Plaintiff - Appellant

v.

MECKLENBURG COUNTY CLERK OF PROBATE ESTATES; MEMPHIS L. SMITH, JR.; AUDRIS VERONICA FORD ASMOND

Defendants - Appellees

O R D E R

The court denies the petition for rehearing.

Entered at the direction of the panel: Judge King, Judge Rushing, and Senior Judge Motz.

For the Court

/s/ Nwamaka Anowi, Clerk

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:23-cv-356-MOC**

ANDRIVIA F. WELLS,)
Plaintiff, pro se,)
vs.) ORDER
MECKLENBURG COUNTY CLERK)
OF PROBATE ESTATES, ET AL.,)
Defendants.)

THIS MATTER is before the Court on a Motion to Dismiss by Defendant Audris Veronica Ford Asmond. (Doc. No. 7). After that motion was filed, the Court sent pro se Plaintiff Wells a Roseboro order informing her of her right to respond. Plaintiff timely filed a Response. (Doc. No. 10). Defendant filed a reply to that response. Defendant's motion to dismiss is now ripe for disposition.

Under Federal Rule of Civil Procedure 8(a)(2), a complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Federal Rule of Civil Procedure 12(b)(6) permits a defendant to move for dismissal where the Plaintiff fails to satisfy the command of Rule 8(a)(2) and “state a complaint on which relief can be granted.”

To survive a Rule 12(b)(6) motion to dismiss, a complaint need not contain “detailed factual allegations” but must include “more than labels and conclusions.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007). Put otherwise, Plaintiff must provide “enough facts to state a claim to relief that is plausible on its face.” Id. at 570.

Furthermore, while the Court may construe Plaintiff's complaint liberally because she is

a pro se plaintiff, the complaint must still allege “facts sufficient to state all the elements of [his] claim” to survive a motion to dismiss. Williams v. Wal-Mart Stores East, L.P., No. 5:18-CV-33-BO, 2018 WL 3341181, at *2 (E.D.N.C. July 6, 2018) (quoting Bass v. E.I. DuPont de Nemours & Co., 324 F.3d 761, 765 (4th Cir. 2003)).

Plaintiff’s complaint is devoid of any mention of Defendant Ford. (See Doc. No. 8).

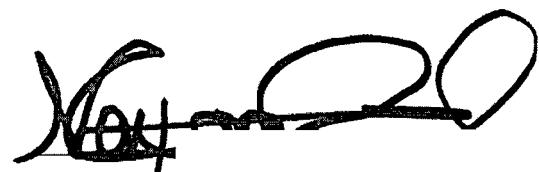
Plaintiff thus fails to state a plausible claim for relief against Defendant Ford.

Furthermore, dismissal is appropriate as to all named Defendants because this Court lacks subject matter jurisdiction. Although Plaintiff sues under federal causes of action (Doc. No. 1), the Supreme Court has articulated a “probate exception” to the federal question jurisdiction extended to Article III courts by 28 U.S.C. § 1331. That exception “reserves to state probate courts the probate or annulment of a will and the administration of a decedent’s estate.” Marshall v. Marshall, 547 U.S. 293, 296 (2006). The probate exception to federal question jurisdiction applies in “two categories of cases: (1) those that require the court to probate or annul a will or to administer a decedent’s estate, and (2) those that require the court to dispose of property in the custody of a state probate court.” Lee Graham Shopping Ctr., LLC v. Est. of Kirsch, 777 F.3d 678, 681 (4th Cir. 2015). The relief requested by Plaintiff here (to “recover marital estate property”) would potentially require this court to “annul” or “administer” Mr. Smith’s estate.

Because “Plaintiff does not allege any facts showing Defendant’s involvement in the distribution of Mr. Smith’s estate” (Doc. No. 11) Plaintiff fails to state a plausible claim for relief against any of the Defendants.

IT IS, THEREFORE, ORDERED that defendants’ Motion to Dismiss (Doc. No. 7) is GRANTED and this action is DISMISSED WITH PREJUDICE.

Signed: October 18, 2023



Max O. Cogburn Jr.
United States District Judge



**Additional material
from this filing is
available in the
Clerk's Office.**