

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 16-11291

United States Court of Appeals
Fifth Circuit

FILED

October 30, 2017

Lyle W. Cayce
Clerk

LOU TYLER,

Plaintiff–Appellant,

versus

OCWEN LOAN SERVICING, L.L.C.; DEUTSCHE BANK,

Defendants–Appellees.

Appeal from the United States District Court
for the Northern District of Texas
No. 3:16-CV-1698

Before SMITH, WIENER, and HAYNES, Circuit Judges.

PER CURIAM:*

Lou Tyler moves for leave to proceed *in forma pauperis* (“IFP”) in her appeal of the dismissal of her civil action against Ocwen Loan Servicing,

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

No. 16-11291

L.L.C., and Deutsche Bank. Tyler's motion is a challenge to the district court's determination that her appeal is not taken in good faith. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997).

Before this court, Tyler reasserts her claims that foreclosure on her property would be improper because the defendants are barred from enforcing their interest by the statute of limitations and that they have engaged in a variety of wrongdoings, including harassment, unfair and misleading representations, deceptive practices, illegal attempts to foreclose, non-validation of debt, deliberate mishandling of her mortgage and financial documents, and breach of contract. By merely reasserting her claims, Tyler fails to address the district court's certification that her appeal was not taken in good faith and the district court's reasons for its certification decision. *See Baugh*, 117 F.3d at 202. In particular, she does not factually or legally challenge the district court's determination that Tyler's civil action is barred by res judicata.

Pro se briefs are afforded liberal construction. *See Yohey v. Collins*, 985 F.2d 222, 225 (5th Cir. 1993). Nevertheless, when an appellant fails to identify any error by the district court, it is the same as though the appellant had not appealed that issue. *See Brinkmann v. Dallas Cty. Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987). Because Tyler has failed to challenge the certification that her appeal is not taken in good faith and the reasons for such a certification, she has abandoned the issues in the appeal. *Id.*

The appeal lacks arguable merit and is frivolous. *See Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). Accordingly, Tyler's motions to proceed IFP and a temporary restraining order are DENIED, and the appeal is DISMISSED as frivolous. *See Baugh*, 117 F.3d at 202 & n.24; 5TH CIR. R. 42.2.

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BILL OF COSTS

NOTE: The Bill of Costs is due in this office *within 14 days from the date of the opinion, See FED. R. APP. P. & 5TH CIR. R. 39.* Untimely bills of costs must be accompanied by a separate motion to file out of time, which the court may deny.

_____ v. _____ No. _____

The Clerk is requested to tax the following costs against: _____

COSTS TAXABLE UNDER Fed. R. App. P. & 5 th Cir. R. 39	REQUESTED				ALLOWED (If different from amount requested)			
	No. of Copies	Pages Per Copy	Cost per Page*	Total Cost	No. of Documents	Pages per Document	Cost per Page*	Total Cost
Docket Fee (\$500.00)								
Appendix or Record Excerpts								
Appellant's Brief								
Appellee's Brief								
Appellant's Reply Brief								
Other: _____								
Total \$ _____					Costs are taxed in the amount of \$ _____			

Costs are hereby taxed in the amount of \$ _____ this _____ day of _____, _____.

LYLE W. CAYCE, CLERK

State of _____
County of _____

By _____
Deputy Clerk

I _____, do hereby swear under penalty of perjury that the services for which fees have been charged were incurred in this action and that the services for which fees have been charged were actually and necessarily performed. A copy of this Bill of Costs was this day mailed to opposing counsel, with postage fully prepaid thereon. This _____ day of _____, _____.

(Signature)

*SEE REVERSE SIDE FOR RULES
GOVERNING TAXATION OF COSTS

Attorney for _____

FIFTH CIRCUIT RULE 39

39.1 Taxable Rates. *The cost of reproducing necessary copies of the brief, appendices, or record excerpts shall be taxed at a rate not higher than \$0.15 per page, including cover, index, and internal pages, for any for of reproduction costs. The cost of the binding required by 5TH CIR. R. 32.2.3 that mandates that briefs must lie reasonably flat when open shall be a taxable cost but not limited to the foregoing rate. This rate is intended to approximate the current cost of the most economical acceptable method of reproduction generally available; and the clerk shall, at reasonable intervals, examine and review it to reflect current rates. Taxable costs will be authorized for up to 15 copies for a brief and 10 copies of an appendix or record excerpts, unless the clerk gives advance approval for additional copies.*

39.2 Nonrecovery of Mailing and Commercial Delivery Service Costs. *Mailing and commercial delivery fees incurred in transmitting briefs are not recoverable as taxable costs.*

39.3 Time for Filing Bills of Costs. *The clerk must receive bills of costs and any objections within the times set forth in FED. R. APP. P. 39(D). See 5TH CIR. R. 26.1.*

FED. R. APP. P. 39. COSTS

(a) Against Whom Assessed. The following rules apply unless the law provides or the court orders otherwise;

- (1) if an appeal is dismissed, costs are taxed against the appellant, unless the parties agree otherwise;
- (2) if a judgment is affirmed, costs are taxed against the appellant;
- (3) if a judgment is reversed, costs are taxed against the appellee;
- (4) if a judgment is affirmed in part, reversed in part, modified, or vacated, costs are taxed only as the court orders.

(b) Costs For and Against the United States. Costs for or against the United States, its agency or officer will be assessed under Rule 39(a) only if authorized by law.

©) Costs of Copies Each court of appeals must, by local rule, fix the maximum rate for taxing the cost of producing necessary copies of a brief or appendix, or copies of records authorized by rule 30(f). The rate must not exceed that generally charged for such work in the area where the clerk's office is located and should encourage economical methods of copying.

(d) Bill of costs: Objections; Insertion in Mandate.

- (1) A party who wants costs taxed must – within 14 days after entry of judgment – file with the circuit clerk, with proof of service, an itemized and verified bill of costs.
- (2) Objections must be filed within 14 days after service of the bill of costs, unless the court extends the time.
- (3) The clerk must prepare and certify an itemized statement of costs for insertion in the mandate, but issuance of the mandate must not be delayed for taxing costs. If the mandate issues before costs are finally determined, the district clerk must – upon the circuit clerk's request – add the statement of costs, or any amendment of it, to the mandate.

(e) Costs of Appeal Taxable in the District Court. The following costs on appeal are taxable in the district court for the benefit of the party entitled to costs under this rule:

- (1) the preparation and transmission of the record;
- (2) the reporter's transcript, if needed to determine the appeal;
- (3) premiums paid for a supersedeas bond or other bond to preserve rights pending appeal; and
- (4) the fee for filing the notice of appeal.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

October 30, 2017

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing
or Rehearing En Banc

No. 16-11291 Lou Tyler v. Ocwen Loan Servicing, L.L.C.,
et al
USDC No. 3:16-CV-1698

Enclosed is a copy of the court's decision. The court has entered judgment under FED R. APP. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

FED R. APP. P. 39 through 41, and 5TH CIR. R.s 35, 39, and 41 govern costs, rehearings, and mandates. **5TH CIR. R.s 35 and 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following FED R. APP. P. 40 and 5TH CIR. R. 35 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. 5TH CIR. R. 41 provides that a motion for a stay of mandate under FED R. APP. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

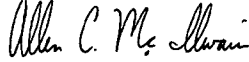
Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under FED R. APP. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari.** Additionally, you MUST confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

The judgment entered provides that plaintiff-appellant pay to defendants-appellees the costs on appeal.

Sincerely,

LYLE W. CAYCE, Clerk



By: Allen C. McIlwain, Deputy Clerk

Enclosure(s)

Mr. Arthur Elex Anthony
Mr. Thomas F. Loose
Ms. Lou Tyler

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 16-11291

D.C. Docket No. 3:16-CV-1698

United States Court of Appeals
Fifth Circuit

FILED

October 30, 2017

Lyle W. Cayce
Clerk

LOU TYLER,

Plaintiff - Appellant

v.

OCWEN LOAN SERVICING, L.L.C.; DEUTSCHE BANK,

Defendants - Appellees

Appeal from the United States District Court for the
Northern District of Texas

Before SMITH, WIENER, and HAYNES, Circuit Judges.

J U D G M E N T

This cause was considered on the record on appeal.

It is ordered and adjudged that the appeal is dismissed as frivolous.

IT IS FURTHER ORDERED that plaintiff-appellant pay to defendants-appellees the costs on appeal to be taxed by the Clerk of this Court.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 16-11291

LOU TYLER,

Plaintiff - Appellant

v.

OCWEN LOAN SERVICING, L.L.C.; DEUTSHE BANK,

Defendants - Appellees

Appeal from the United States District Court
for the Northern District of Texas

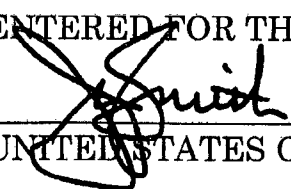
ON PETITION FOR REHEARING

Before SMITH, WIENER, and HAYNES, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing is **DENIED.**

ENTERED FOR THE COURT:


UNITED STATES CIRCUIT JUDGE

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

LOU TYLER,

Plaintiff,

v.

**OCWEN LOAN SERVICING, LLC
and DEUTSHE BANK,**

Defendants.

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Civil Action No. **3:16-CV-1698-L**

MEMORANDUM OPINION AND ORDER

Before the court is Motion for Reconsideration (Doc. 12), filed by pro se Plaintiff Lou Tyler (“Plaintiff”) on August 23, 2016; and Plaintiff’s Motion to Produce the Note (Doc. 13), filed August 23, 2016. After carefully reviewing the motion, record, and applicable law, the court **denies** Plaintiff’s Motion for Reconsideration (Doc. 12); and **denies as moot** Plaintiff’s Motion to Produce the Note (Doc. 13).

The Federal Rules of Civil Procedure do not specifically provide for motions for reconsideration. *Shepherd v. International Paper Co.*, 372 F.3d 326, 328 (5th Cir. 2004). Such motions are analyzed under Rule 59(e) or Rule 60(b). *Hamilton Plaintiffs v. Williams Plaintiffs*, 147 F.3d 367, 371 n.10 (5th Cir. 1998). Rule 59(e) governs when a motion for reconsideration is filed within 28 days of the challenged judgment. Fed. R. Civ. P. 59(e); *Williams v. Thaler*, 602 F.3d 291, 303 (5th Cir. 2010). Plaintiff filed her Motion for Reconsideration seven days after the judgment was entered in this case on July 19, 2016. Rule 59(e), therefore, applies.

“Motions for a new trial or to alter or amend a judgment must clearly establish either a manifest error of law or fact or must present newly discovered evidence.” *Simon v. United States*, 891 F.2d 1154, 1159 (5th Cir. 1990) (citations omitted). Such motions may not be used to relitigate issues that were resolved to the movant’s dissatisfaction. *Forsythe v. Saudi Arabian Airlines Corp.*, 885 F.2d 285, 289 (5th Cir. 1989). A Rule 59 motion may not be used to relitigate old matters, raise arguments, or present evidence that could have been raised prior to entry of judgment. *See generally* 11 C. WRIGHT, A. MILLER & M. KANE § 2810.1 at 127-28 (2d ed. 1995); *see also Simon*, 891 F.2d at 1159. When considering a Rule 59(e) motion to reconsider, a court may not grant such a motion unless the movant establishes: “(1) the facts discovered are of such a nature that they would probably change the outcome; (2) the alleged facts are actually newly discovered and could not have been discovered earlier by proper diligence; and (3) the facts are not merely cumulative or impeaching.” *Infusion Resources, Inc. v. Minimed, Inc.*, 351 F.3d 688, 696-97 (5th Cir. 2003). District courts have “considerable discretion in deciding whether to grant or deny a motion to alter a judgment.” *Hale v. Townley*, 45 F.3d 914, 921 (5th Cir. 1995). In exercising this discretion, a district court must “strike the proper balance between the need for finality and the need to render just decisions on the basis of all the facts.” *Id.* With this balance in mind, the Fifth Circuit has observed that Rule 59(e) “favor[s] the denial of motions to alter or amend a judgment.” *Southern Constructors Group, Inc. v. Dynalectric Co.*, 2 F.3d 606, 611 (5th Cir. 1993).

Plaintiff’s Motion for Reconsideration challenges the dismissal of her claims and this action under the doctrine of res judicata. Plaintiff contends that in dismissing her case without allowing her to present evidence in support of her claims, she was denied her constitutional right to a “day in court.” Pl.’s Mot. 1. Plaintiff, therefore, requests that the court reconsider the merits of her claims.

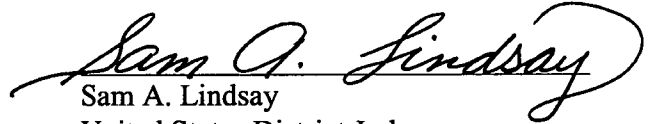
Plaintiff's Motion for Reconsideration also includes a number of general assertions regarding "Ocwen." *Id.* at 2.

Plaintiff's conclusory assertions regarding other mortgage cases and settlements involving "Ocwen" have no relevance to this case. Moreover, the res judicata issue raised by Plaintiff was addressed in the Findings, Conclusions and Recommendation of the United States Magistrate Judge ("Report") entered in this case by Magistrate Judge Paul D. Stickney on July 19, 2016. In that Report, the magistrate judge recommended that Plaintiff's claims against Defendants be dismissed with prejudice as barred by res judicata. Plaintiff could have, but did not file any objections to the Report within the time allowed. On August 16, 2016, the court determined that the magistrate judge's findings and conclusions were correct, and accepted them as those of the court. Further, Plaintiff's Motion for Reconsideration does not establish either a manifest error of law or fact or present newly discovered evidence, and instead merely seeks to relitigate matters that could have been raised before entry of judgment in this case. The court, therefore, concludes that Plaintiff is not entitled to relief under Rule 59 and **denies** her Motion for Reconsideration (Doc. 12). The court's denial of Plaintiff's Motion for Reconsideration moots her Motion to Produce the Note (Doc. 13), which the court **denies as moot**.

Considering the record in this case, the court **certifies** that the appeal of this action is not taken in good faith and **withdraws** Plaintiff's *in forma pauperis* status. *See* 28 U.S.C. § 1915(a)(3); Fed. R. App. 24(a)(3). In support of this certification, the court **accepts and incorporates** by reference the Report and the court's order accepting the Report. *See Baugh v. Taylor*, 117 F.3d 197, 202 n.21 (5th Cir. 1997). Based on the foregoing orders, the court concludes that the appeal of this

action presents no legal point of arguable merit and is, therefore, frivolous. *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983).

It is so ordered this 26th day of August, 2016.


Sam A. Lindsay
United States District Judge

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

LOU TYLER,

Plaintiff,

v.

**OCWEN LOAN SERVICING, LLC
and DEUTSCHE BANK,**

Defendants.

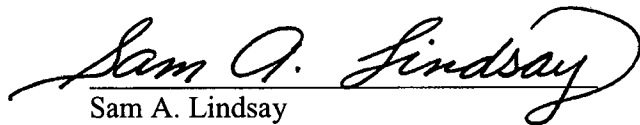
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Civil Action No. 3:16-CV-1698-L

JUDGMENT

This judgment is issued pursuant to the court's order, filed August 16, 2016. It is **ordered, adjudged, and decreed** that this action is **dismissed with prejudice**. It is further **ordered** that the clerk of this court shall transmit a copy of this judgment and a copy of the order dated August 16, 2016, accepting the Findings, Conclusions and Recommendation of the United Magistrate Judge, to Plaintiff Lou Tyler.

Signed this 16th day of August, 2016.



Sam A. Lindsay
United States District Judge

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

LOU TYLER,

Plaintiff,

v.

**OCWEN LOAN SERVICING, LLC
and DEUTSCHE BANK,**

Defendants.

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Civil Action No. 3:16-CV-1698-L

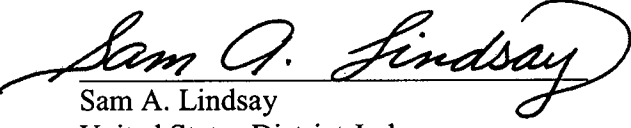
ORDER

On June 22, 2016, *pro se* Plaintiff Lou Tyler (“Plaintiff”) filed this action against Defendants Ocwen Loan Servicing, LLC and Deutsche Bank (collectively, “Defendants”) requesting that the court reconsider and reverse a previous decision entered in favor of Defendants.* The case was referred to Magistrate Judge Paul D. Stickney for initial screening who entered the Findings, Conclusions and Recommendation of the United States Magistrate Judge (“Report”) on July 19, 2016, recommending that the court dismiss Plaintiff’s this action with prejudice as barred by res judicata because Plaintiff asserts the same claims that were or could have been adjudicated in a previous suit, *Tyler v. Ocwen Loan Servicing, LLC*, No. 3:15-CV-1117-N-BK (N.D. Tex. 2015). No objections to the Report were filed.

After reviewing the pleadings, file, record, and Report, the court determines that the findings and conclusions of the magistrate judge are correct, and **accepts** them as those of the court. Accordingly, the court **dismisses with prejudice** this action as barred by res judicata.

* The Report states that Plaintiff filed a petition in state court in June 2016; however, this action commenced in federal court.

It is so ordered this 16th day of August, 2016.


Sam A. Lindsay
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JUL 19 2016

LOU TYLER,
Plaintiff,

v.

OCWEN LOAN SERVICING, LLC and
DEUTSCHE BANK,
Defendants.

No. 3:16-CV-1698-L-BF

**FINDINGS, CONCLUSIONS AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

The District Court referred this civil action, arising out of foreclosure proceedings initiated against certain real property located in Dallas County, Texas, to the United States Magistrate Judge pursuant to the provisions of 28 U.S.C. 636(b) and an order of the Court. *See* Special Order 3. The findings, conclusions, and recommendation of the undersigned follows.

RES JUDICATA

In June 2016, Plaintiff Lou Tyler ("Ms. Tyler"), proceeding *pro se*, filed a petition in state court against Defendants Ocwen Loan Servicing and Deutsche Bank (collectively, "Defendants") alleging harassment, false or misleading representations, unfair practices, illegal attempt to foreclose, deceptive practices, violations of the Real Estate Settlement Procedures Act, and violations of recommendations made by courts, agencies, and legal institutions. Compl. [D.E. 3 at 5]. These allegations are nearly identical to the allegations she made against Defendants in a previous suit. *See Tyler v. Ocwen Loan Servicing, LLC, et al.*, 3:15-cv-01117-N-BK (N.D. Tex. 2015).

In this case, Ms. Tyler's claims against Defendants are barred by the doctrine of res judicata. Under res judicata, a prior judgment bars a subsequent action where: (1) the parties are identical in both suits; (2) the prior judgment was rendered by a court of competent jurisdiction; (3) there was

a final judgment on the merits; and (4) the same cause of action was involved in both cases. *Nilsen v. City of Moss Point*, 701 F.2d 556, 559 (5th Cir. 1983). Further, the doctrine of res judicata “bars all claims that were or *could have been* advanced in support of the cause of action on the occasion of its former adjudication.” *Id.* at 560 (citing *Allen v. McCurry*, 449 U.S. 90, 94 (1980)) (emphasis original).

The parties in the case at hand are identical to the parties in the previous suit. *See Nilsen*, 701 F.2d at 559. In the previous case, Ms. Tyler was the plaintiff, and the defendants were Ocwen Loan Servicing and Deutsche Bank. *See Tyler*, 3:15-cv-01117-N-BK. The Court was of competent jurisdiction when it rendered its previous judgment on Ms. Tyler’s allegations. *See id.* Further, the final judgment entered in the previous case was based on its merits. *See id.* Finally, all the causes of action brought by Ms. Tyler are the same as, or could have been brought, in the previous action. *See id.* Because all of the necessary elements are present, the principle of res judicata applies to this suit. *See Nilsen*, 701 F.2d at 559-561.

RECOMMENDATION

The undersigned recommends that this case be dismissed with prejudice, because the allegations brought by Plaintiff Lou Tyler are barred by res judicata.

SO RECOMMENDED this 19 day of July, 2016.



PAUL D. STICKNEY
UNITED STATES MAGISTRATE JUDGE

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