

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

SUSAN LLOYD,

Plaintiff-Appellant

v.

JUDGE BECKY DOHERTY, et al

Defendants- Appellees

ON APPEAL FROM THE UNITED STATES

DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OHIO

No. 18-3552

Filed November 27, 2018

O R D E R

Before: CLAY, GILMAN, and WHITE, Circuit Judges

Susan Lloyd, a pro se Ohio litigant, appeals the district courts judgment dismissing her complaint, which alleged various constitutional, federal and state-law claims.

This case has been referred to a panel of the Court that upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

Lloyd filed this action in 2017 against Becky Doherty, a judge in the Portage County Court of common Pleas; Natasha Natale, a magistrate judge in the Portage County Court of Common Pleas; Kelley Hershberger, a court reporter in the Portage County Court of Common Pleas; and John and Jane Doe, alleged to be employees of

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the Portage County Court of common Pleas. Lloyd sued each defendant in his or her individual and official capacities. She seeks damages, as well as declaratory and injunctive relief. Lloyds complaint raises four claims, each arising out of conduct allegedly taken by Defendants during the course of two state-court actions that Lloyd filed against her neighbor, Joshua Thornsbery. In these state-court actions, Lloyd alleged that Thornsbery trespassed onto her property and harassed, threatened and terrorized her.

Lloyds first claim alleges violations of the First Amendment. Lloyd alleges that she had written comments on the "Portage Countys (sic) courthouse" Facebook page, in which she wrote that Judge Doherty and Magistrate Judge Natale had ignored certain evidence and had allowed people to harass, stalk, and threaten her. According to Lloyd, Judge Doherty, Magistrate Judge Natale, and John and Jane Doe deleted these comments. Lloyd also alleges that she was blocked from further commenting on the Facebook page. These acts, Lloyd claims, violate her free speech rights under the First Amendment.

In Lloyds second claim, she alleges violations of the Fifth, Eighth, and Ninth Amendments and "other" constitutional rights under 42 USC 1983. As to Judge Doherty and Magistrate Judge Natale, Lloyds primary claims are that they: refused to allow her to introduce certain Facebook posts into evidence; harassed her regarding her placement of security cameras at her house; forced her to redo a 200-page complaint; had ex parte communications with the defendants and their attorneys; defamed her, insinuated that she is mentally ill; threatened to sanction

her for no reason; refused to recuse themselves; ignored several motions that she had filed; and forced her and her attorney to attend two hearings that Judge Doherty and Magistrate Judge Natale knew had been cancelled. With respect to Lloyds second claim against Hershberger, Lloyd alleges that Hershberger altered a transcript to exclude a statement made by Doherty in which Judge Doherty allegedly said that Lloyd was "abusing the court system".

Lloyds third claim is for alleged violations of Title II of the Americans with Disabilities Act ("ADA") and Section 504 of the Rehabilitation Act of 1973 ("Rehabilitation Act"). Lloyd alleges that she is disabled and requires the use of service dogs. According to Lloyd, Judge Doherty and Magistrate Judge Natale discriminated against her by refusing to allow her service dogs into the courtroom. Lloyd also alleges that magistrate Judge Natale gave her "dirty looks in the hallway (of the courthouse) for having her dogs present."

Finally, Lloyd asserts a fraud claim against Judge Doherty. Lloyd claims that Judge Doherty advertises that she runs a "drug court" but that this advertisement is inaccurate- and thus fraudulent- insofar as Judge Doherty had ignored "hard core evidence of illegal drug use by Thornsbery" during the state-court proceedings.

All defendants except John and Jane Doe (who were not served and are not parties to this appeal) moved to dismiss Lloyds complaint. In granting the motion, the district court: (1) dismissed Lloyds First Amendment claim against all defendants for failure to state a plausible claim for relief (2) dismissed Lloyds 1983, ADA, and Rehabilitation Act claims against judge Doherty and Magistrate Judge

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Natale on the ground that they are barred by the Younger abstention, *Rooker-Feldman*, and absolute judicial immunity doctrines; (3) dismissed Lloyds 1983 claim against Hershberger on the ground that she failed to allege a cognizable constitutional claim; and (4) dismissed Lloyds fraud claim against Judge Doherty for failure to state a claim on the ground that Judge Doherty is entitled to judicial immunity. After entry of judgment, Lloyd filed a motion for recusal, in which she argued that "Judge Adams mental state is being called into question" and requested that he recuse himself from the case. She also filed a motion for reconsideration of the judgment dismissing her complaint. The district court denied both motions.

We review de novo a district court's dismissal of a complaint pursuant to Federal Rule of civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted. To avoid dismissal, "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 US 662, 678 (2009) quoting *Bell Atl Corp v Twombly*, 550 US 554, 570 (2007). We also review de novo a district court's application of the Younger abstention doctrine. *Loch V Watkins*, 337 F 3d 574, 577-78 (6th Circ 2003)

Lloyds First Amendment claims- that she was blocked from the "Portage Countys courthouse" Facebook page and that her comments were deleted from the page- were properly dismissed for failure to state a claim. The allegation that she was blocked from the Facebook page fails to state a plausible claim for relief

1. See *Younger v. Harris*, 401 US 37 (1971)

2. See *DC Court of Appeals v. Feldman*, 460 US 462 (1983); *Rooker v. Fid Tr Co.* 263 US 413(1923)

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because she does not allege that Judge Doherty, Magistrate Judge Natale, or Hershberger were responsible for blocking her. And Lloyd concedes on appeal that she does not know the identity of the person or persons who blocked her. "It is not proper for courts to assume the plaintiff could prove facts that she had not alleged". *Cline V Rogers*, 87 F3d 176, 184 (6th Circ 1996) (third alteration in original)(quoting *Associated Gen. Contractors v Cal State Council of Carpenters*, 459 US 519, 526(1983)

Although Lloyd alleges that Judge Doherty and Magistrate Judge Natale deleted her comments from the Facebook page, this allegation is based on nothing but her unsupported assumptions and suspicions and, therefore, is insufficient to state a claim for relief. See *Twombly* 550 US at 555 (to survive a motion to dismiss, the factual allegations must be enough to raise a right to relief above a speculative level); *Geiger v Prison Realty Tr., Inc.*, 13 F. App'x 313, 315 (6th Circ 2001)(observing that a speculative contention fails to state a First Amendment claim). She alleges no plausible facts to show that the "Portage Countys courthouse" Facebook page is in fact the official page of the Portage County Court of Common Pleas, that Judge Doherty and Magistrate Judge Natale were the ones who deleted her comments from the page. Indeed, Lloyd also alleges that John and Jane Doe deleted her comments, which undermines her position that Judge Doherty and Magistrate Judge Natale were responsible for the same. Because Lloyds allegations in support of her First Amendment claim do not meet *Iqbal*'s plausibility standard, the district

court properly dismissed the claim. Lloyds second claim, which challenges Defendants conduct during the state- court proceedings under 1983, either is barred by the doctrines of *Younger* abstention and absolute judicial immunity or fails to state a cognizable federal or constitutional claim.

Subject to three exceptions, described below, abstention under *Younger* is appropriate "when the state proceeding (1) is currently pending (2) involves an important state interest, and (3) affords the plaintiff an adequate opportunity to raise constitutional claims." *Coles v. Granville*, 448 F3d 853, 865 (6th Circ 2006) The *Younger* doctrine has been extended to apply to state civil proceedings. See *Middlesex Cty Ethics Comm v Garden State Bar Ass'n* 457 US 423, 432 (1982)

Lloyd does not challenge the district court's decision to abstain under *Younger* and therefore has forfeited her right to have that decision reviewed on appeal. See *Radvansky V City of Olmsted Falls*, 395 F3d, 291, 311 (6th Circ 2005)(holding that the appellants "failure to raise an argument in his appellate brief constitutes a waiver of the argument on appeal"). In any event, the district court did not err in finding that the *Younger* conditions are satisfied in this case.

First, Lloyd filed her federal complaint while her two state court cases were still pending. The fact that the state appellate court has since dismissed Lloyds appeals in both cases is immaterial. "if a state proceeding is pending at the time the action is filed in federal court, the first criteria for *Younger* abstention is satisfied." *Fed Express Corp v ten Pub Serv Comm'n* 925 F2d 962, 969 (6th Circ 1991)(emphasis added) see also *Zalman v Armstrong* 802 F 2d 199, 204-05 (6th Circ

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1986) explaining that the Younger abstention doctrine applies even when the state proceeding was dismissed after the federal action was filed). Second the state proceedings involved an important state issue- namely to adjudicate Lloyds claims that Thornsbery trespassed on her property and harassed, threatened and terrorized her. Third, Lloyd did not allege any facts indicating she would not have an adequate opportunity to raise her constitutional claims in the state appellate courts. This court, moreover, "presumes that the state courts are able to protect the interests of the federal plaintiff" and has held before that the "open courts" provision of the Ohio Constitution ensures the presentation of such claims. *Kelm v Hyatt* 44 F3d 415, 420 (6th Circ 1995)

Given that all three Younger conditions are satisfied, abstention is appropriate in the absence of one of three exceptions to the Younger abstention doctrine (1) the state proceeding is motivated by a desire to harass or is construed in bad faith" *Huffman V Pursue, Ltd*, 420 US 592, 611 (1975) (2) "the challenged statute is flagrantly and patently violative of express constitutional prohibitions" *Moore v Sims* 442 US 415, 424 (1979)(quoting *Huffman* 420 US at 611) or (3) there is an "extraordinarily pressing need for immediate federal equitable relief." *Kugler v Helfant* 421 US 117, 125 (1975) These exceptions "have been narrowly construed." *Zalman* 802 F2d at 205

Lloyd alleges that Judge Doherty and Magistrate Judge Natale "harassed" her regarding the security cameras that she placed around her home, "defamed" her, "insinuated without evidence that she is mentally ill" and "verbally assaulted"

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her; and that their conduct was "willful, egregious and malicious". To the extent that these allegations can be construed as an argument that the bad faith/harassment exception to the *Younger* abstention doctrine applies, the argument fails. As we have explained the Supreme Court has applied the bad faith/harassment exception "to only one specific set of facts: where state officials initiate repeated prosecutions to harass an individual or deter his conduct, and where the officials have no intention of following through on these prosecutions."

Ken-NK Inc v Vernon Township, 18F. App'x 319, 324-25 n.2 (6th Circ 2001) (citing Erwin Chemerinsky, federal jurisdiction 13.4 at 806-08 (3d ed. 1999) see also e.g. *McNatt v Texas* 37 F 3d 629 (5th Circ 1994) (holding that the bad faith/harassment exception to *Younger* is extremely narrow and applies only in cases of proven harassment or prosecutions undertaken without hope of obtaining valid convictions. In this case, the alleged harassment and other "willful, egregious and malicious" conduct does not rise to the level required by the exception because there have not been repeated prosecutions of Lloyd.

Because none of these exceptions apply, Lloyds 1983 claim is subject to *Younger* abstention. The portion of this claim that sought equitable relief therefore was properly dismissed. See e.g. *Kelm* 44 F3d at 422 (affirming the district court's dismissal of claims for injunctive relief on abstention grounds). Instead of dismissing this claim in its entirety however, the district court arguably should See *Lloyd v. Thornsberry* No 2017-P-0029, 2018 WL 3536755 (Ohio Ct App July 23, 2018); *Lloyd v. thornsberry* No. 2017 P-0101, 2018 WL 3207143 (Ohio Ct App June 29, 2018)

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have stayed the case pending resolution of the state court proceedings because Lloyd sought monetary damages in addition to equitable relief. See *Doe V Univ of Ky* 860 F 3d, 365, 372 (6th Circ 2017) (we have consistently held that if a court abstains under Younger, it should stay any claim for damages rather than evaluate the merits and dismiss the case.")

Nevertheless, we find that any error is harmless because Lloyds 1983 claim for monetary damages against Judge Doherty and Magistrate Judge Natale was subject to dismissal by virtue of their absolute judicial immunity. A judge performing a judicial act is absolutely immune from a suit seeking monetary damages. See *Mireles v Waco* 502 US 9, 9-10 (1991) "whether an act is judicial depends on the "nature" and "function" of the "act", not the act itself." *Barnes v. Winchell*, 105 F3d 1111, 1116 (6th Circ 1997)(quoting *Mireles* , 502 US at 13) Moreover even Lloyd alleges that Judge Doherty and Magistrate Judge Natale engaged in improper conduct, a judge will not be deprived of immunity because the action he took was in error, was done maliciously or was in excess of his authority. *Stump v Sparkman* 435 US 349, 356(1978) Absolute judicial immunity is overcome only when a judge engages in non-judicial actions or when the judge acts in the complete absence of jurisdiction. *Mireles* 502 US at 12

Lloyds 1983 claim against judge Doherty and Magistrate Judge Natale is based almost entirely on acts they committed during the pendency of the stae-court proceedings. For instance, Lloyd alleges that Judge Doherty and Magistrate Judge Natale improperly excluded certain evidence, neglected to rule on certain motions,

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and erred in denying Lloyds motion for recusal. These acts and omissions unquestionably involve judicial acts taken in the cases over which Judge Doherty and Magistrate Judge Natale presided. And Lloyd has neither alleged nor argued that Judge Doherty and Magistrate Judge Natale acted in the absence of jurisdiction. Judge Doherty and Magistrate Natale are therefore entitled to absolute judicial immunity on Lloyds 1983 claim for damages allegedly incurred as a result of their judicial acts.

Lloyds 1983 claim also alleges that Judge Doherty and Magistrate Judge Natale "defamed" and "harassed" her and that Judge Doherty "verbally assaulted" her. Although these alleged acts arguably are non-judicial in nature, and would thus not be subject to absolute judicial immunity, relief nevertheless is unwarranted because the allegations with respect to these acts give rise to state law tort claims, and 1983 does not provide redress solely for violations of state law. See *Pyles v Raisor*, 60F3d 1211, 1215 (6th Circ 1995) rather 1983 requires an alleged violation of a right secured by the Federal Constitution or laws of the United States. *Sigley v. City of Parma Heights*, 437 F 3d 527, 533 (6th Circ 2006). Lloyds 1983 claim against Judge Doherty and Magistrate Judge Natale was therefore properly dismissed.

The only allegation underlying Lloyds 1983 claim against Hershberger is that Hershberger "illegally changed a transcript" to delete a statement Judge Doherty allegedly made that Lloyd was "abusing the court system". However, a plaintiff does not have a constitutional right to a totally accurate transcript of her criminal

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trial *Ralph v Mackowiak* No. 11-1010, slip op at 2 (6th Cir Dec 20, 2011)(citing *Tedford v hepting* 990 F2d 745, 747 (3^d Cir 1993)much less to such a transcript of her civil proceedings. Because Hershbergers alleged act of altering the transcript even if intentional- does not amount to a violation of federal law or Lloyds constitutional rights, Lloyds 1983 claim based on this conduct was properly dismissed See *Sigley* 437 F3d at 533

Lloyds ADA and rehabilitation Act claims like her 1983 claims are barred by the *Younger* abstention doctrine; all three *Younger* conditions are satisfied, and none of the three exceptions to the doctrine apply. Lloyds conclusory allegation that Judge Doherty and Magistrate Judge Natales conduct was "willful, egregious and malicious" are insufficient to invoke the bad faith/harassment exception to the *Younger* abstention doctrine for the reasons set forth above.

Although the district court arguably should have stayed the case to the extent that Lloyds ADA and Rehabilitation Act claims sought monetary damages, see *Doe*, 860 F3d at 372 we find that any error was harmless because these claims were subject to dismissal by virtue of Judge Doherty and Magistrate Natales absolute judicial immunity. See *Badillo v. Thorpe*, 158 F App'x 208, 211 (11th Cir 2005)(per curiam)(holding that the plaintiffs claims against a state-court judge for alleged violations of the ADA and the Rehabilitation Act were barred by the doctrine of absolute judicial immunity); *Duvall v. County of Kitsap*, 260 F 3d 1124, 1133 (9th Cir. 2001) (same). The alleged acts underlying these claims- that Judge Doherty and Magistrate Judge Natale prevented Lloyd from bringing her service

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dogs with her into the courtroom during the state court proceedings- were acts that these defendants took in their official judicial capacities with proper jurisdiction.

See Mireles, 502 US at 11-13. These claims were therefore properly dismissed.

The district court did not err in dismissing Lloyds fraud claim against judge Doherty on the ground that the judge is entitled to absolute immunity on this claim pursuant to Ohio's tort immunity statute. See Ohio Rev Code 2744.03(A)(6). Under this statute, Judge Doherty is immune from suit arising out of her official duties unless her "acts or omissions were manifestly outside the scope of her employment or official responsibilities" or were "with malicious purpose, in bad faith, or in a wanton or reckless manner." *Id.*

Lloyd also alleges that Judge Doherty committed fraud by "advertising" that she runs a "drug court" but that the judge ignored evidence during one of the state-court proceedings that Thornsbery engages in illegal drug use. Judge Doherty, however, was performing in her official function as a state-court judge when she engaged in this alleged conduct and although Lloyd alleges that Judge Doherty acted "maliciously" there are no facts alleged to support such a conclusory allegation. The district courts determination that Judge Doherty is entitled to absolute judicial immunity from Lloyds fraud claim was proper.

Even if Judge Doherty were not entitled to immunity, we find that Lloyds allegations were insufficient to state a claim for fraud. Ohio law defines fraud as: (a) a representation or, where there is duty to disclose, concealment of a fact, (b) which is material to the transaction at hand (c) made falsely, with knowledge of its

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falsity, or with utter disregard and recklessness as to whether it is true or false that knowledge may be inferred (d) with the intent of misleading another into relying upon it (e) justifiable reliance upon the representation or concealment and (f) a resulting injury proximately caused by the reliance.

Gaines v Preterm-Cleveland, Inc. 514 NE 2d 709, 712 (Ohio 1987) Federal Rule of Civil Procedure 9(b) moreover, requires a party alleging fraud to "state with particularity the circumstances constituting fraud" Fed R Civ 9(b)

Lloyds allegations-namely that Judge Dohertys advertise(ment) that she runs a "drug court" is fraudulent because she ignored evidence of Thornsberys illegal drug use- do not establish any of these elements, let alone with particularity. For instance, the fact that Judge Doherty ignored this drug-use evidence, even if true, does not render her alleged statement that she runs a drug court false. Moreover, there is no cause of action for fraud where the alleged fraudulent statement was directed to the plaintiff but rather to a third party (in this case the advertisement to the public). *See Lucarell v Nationwide Mut Ins* 97 NE 3d 458, 473 (Ohio 2018) Lloyds fraud claim was therefore properly dismissed for her failure to plead the necessary elements.

At various points in her appellate brief, Lloyd challenges the district courts decision to deny her motion for recusal, repeatedly reiterating her argument that Judge Adams is "mentally incompetent". But Lloyds challenge to the district courts order denying her motion for recusal is not properly before this Court because Lloyd did not file a notice of appeal or amended notice of appeal from this order as

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required by Federal Rule of Appelate Procedure 4(a)(4)(B)(ii) Even if we had jurisdiction to review the decision to deny Lloyds motion for recusal, which is reviewed for an abuse of discretion, *Decker v GE Healthcare Inc* 770 F3d 378, 388 (6th Circ 2014) denial of the motion was proper because Lloyd has neither alleged nor shown that Judge Adams exhibited any personal or extrajudicial bias against her. See *United Stated v Jamieson* 427, F3d 394, 405 (6th Circ 2005)

Accordingly, we AFFIRM the district courts Judgment.

ENTERED BY ORDER OF THE COURT

/s/ Deborah S. Hunt

Deborah S. Hunt, Clerk

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

Susan Lloyd,

Plaintiff

v.

Judge Becky Doherty, et al

Defendants

Case No 5:17CV2694

Filed May 23, 2018

Before Judge John R. Adams

MEMORANDUM OF OPINION AND ORDER

(Resolving docs 2,5,11)

Background

Plaintiff Susan Lloyd has filed this *pro se* action against Portage County Court of Common Pleas Judge Becky Doherty, Magistrate Natasha Natale and Court Reporter Kelley Hershberger, (Doc No 1) Defendants filed a motion to dismiss all claims pursuant to Fed R. Civ P 12(b)(6). (Doc No 11). After consideration of the law and argument presented, the motion to dismiss is GRANTED. Further, Plaintiff filed a motion to proceed in forma pauperis but later paid the filing fee(Doc

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No 2). She then filed a motion to withdraw her request to proceed in forma pauperis. (Doc No 5). Said motion to withdraw is hereby GRANTED.

In her Complaint, the Plaintiff alleges conduct taken by the Defendants during the course of two civil actions she filed against her neighbor, Joshua Thornsbery, in the Portage County Court of Common Pleas. She filed a damages action for trespass and nuisance against Mr Thornsbery in case 2016 CV 00230 and she filed an action seeking a civil stalking order in Case 2017 CV00390. The Plaintiff has filed appeals in both of those cases, which are pending in the state court of appeals.

In the underlying Complaint, the Plaintiff alleges Judge Doherty and Magistrate Natale "made decisions in back rooms" and were biased and prejudiced against her in the Portage County cases. (Doc No 1 at 35). Plaintiff alleges that Judge Doherty and Magistrate Natale required her to "redo" her complaint(after she initially filed a pleading that exceeded 200 pages) refused to allow Facebook posts to be used during trial, refused to rule on her motions or recuse themselves, scheduled hearings that were subsequently canceled, ordered her to take down security cameras facing Mr Thornsberys yard, and refused to credit evidence allegedly favorable to her. Additionally, she complains Judge Doherty "verbally assaulted" her while she was in the courthouse waiting to pay for a transcript and wrongfully speculated that she may be mentally ill. She alleges that defendant Hershberger altered a transcript to exclude a statement made by Judge Doherty where she alleged that plaintiff was abusing the court system.(Id at 14,15)

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Plaintiff asserts four claims for relief: 1.) the defendants violated her constitutional rights under the First and Fourteenth Amendments because plaintiff posted comments on the court Facebook page alleging that state proceedings were being deleted and she was then blocked from the page. 2.) the Defendants violated her rights under the Fifth, Eighth, and Ninth Amendments by their alleged unfair and biased treatment of her during the Portage County proceedings; 3.) Judge Doherty and Magistrate Natale violated her rights under the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation act (Rehabilitation Act) because they refused to allow her to bring a service dog into the courtroom and 4) Judge Doherty committed fraud because the judge "advertises in multiple places that she runs a drug court" but in Plaintiffs cases, Judge Doherty allegedly ignored "hard core evidence of illegal drug use" by Mr. Thiornsbury. (Id at 56, Claim 40. The plaintiff seeks compensatory and punitive damages, a declaration that the Defendants have violated federal law, an order that Defendants be recused from Case 2016CV00230 and that the case be transferred out of Portage County and an order that her "freedom of speech to portage county Facebook page" be restored and that the Defendants be prevented from "further retaliation and defamation" against her. The Defendants filed a motion to dismiss all of Plaintiffs claims pursuant to Fed R Civ P. 12(b)(6) (Doc No 11). The Plaintiff responded to the motion and it has now been fully briefed. For the reasons stated below, the Defendants motion is GRANTED and this action is DISMISSED.

Standard of Review

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A complaint is subject to dismissal under Fed R. Civ 12(b)(6) if it fails to state a claim upon which relief can be granted. To survive under the Rule, a complaint "must present enough facts to state a claim to relief that is plausible on its face."

When its factual allegations are presumed true and all reasonable inferences are drawn in the non-moving party's favor. *Total Benefits Planning Agency, Inc. v.*

Anthem Blue Cross and Blue Shield, 552 F3d 430, 434 (6th Circ 2008) citing Bell Atlantic Corp v Twombly 550 US 544(2007)

"A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v Iqbal* 556 US 662, 678(2009) (internal quotation marks omitted) Although pleadings and documents filed by *pro se* litigants are "liberally construed" and held to less stringent standards than formal pleadings drafted by lawyers, *pro se* plaintiffs must still meet basic pleading requirements and courts are not required to conjure allegations on their behalf. *See Erickson v Pardus* 551 US 89, 94 (2007); *Erwin v. Edwards*, 22 F App'x 579, 580 (6th Circ 2001)

Analysis

Giving all the pleadings appropriate deference, Plaintiffs complaint must be dismissed in its entirety Fed R. Civ P 12(b)(6)

First, Plaintiffs Claims 2 and 3 do state claims for which this court may grant relief. To the extent that the Plaintiff alleges Defendants have violated her civil rights by their conduct or rulings made during the proceedings, the doctrine of abstention prohibits this Court from hearing her claims. Under *Younger v Harris* 401 US 37

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(1971) and *Pennzoil Co v Texaco, Inc.* 481 US 1,17 (1987) federal courts must abstain from hearing challenges to pending state proceedings where the states interest is so important that exercising federal jurisdiction would disrupt the comity between federal and state courts. Abstention is warranted where there exists:1) an ongoing state proceeding(2) an important state interest; and (3) an adequate opportunity in the state judicial proceedings to raise constitutional challenges.

Gorenc V City of Westland 72 f App'x 336, 338 (6th Circ 2003)

Abstention is warranted under these factors because Plaintiff's underlying state court cases implicates important state interests and there is no reasonable suggestion in her pleadings that she lacks an adequate opportunity to raise her constitutional concerns in the state courts through procedures available to her. This Court will not interfere with pending state civil matters.

In addition, to the extent the Plaintiff is asking this Court to overturn or reverse any specific ruling or order entered by the Portage County court of Common Pleas, including Claims 2 and 3, her claims are barred by the *Rooker-Feldman* doctrine, which prohibits federal courts from sitting in direct review of state court judgments. See *Carter v Burns*, 524 F 3d 796, 798 (6th Circ 2008) ("The Rooker Feldman doctrine denies federal jurisdiction to cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court reviews and rejection of those judgments") quoting *Exxon Mobil Corp b Saudi Basic Indus. Corp* 544 US 280, 284 (2005)

As the Sixth Circuit stated in *Agg V Flanagan*, 855 F 2d, 336, 339 (6th Circ 1988) An incorrect decision by the Ohio court does not constitute a deprivation of due process of law that the federal courts must redress. The proper course to correct a mistake is by appeal. It is only the claim that Ohio's procedures do not allow a vindication of plaintiff's rights that states a cognizable due process violation (in federal court)

There is no reasonable suggestion in the Plaintiffs pleadings that Ohio lacks procedures to address her concerns. Accordingly, the proper course is for her to raise the concerns in the Ohio courts through state procedures available to her. This Court lacks authority to hear her claims.

Furthermore, the Court finds the Plaintiff has not alleged any plausible claims to the extent she seeks damages under 42 USC 1983. It is well-established that judges and other judicial employees enjoy absolute immunity from suits pertaining to the performance of their judicial and quasi judicial duties. *Wappler v Carniak*, 24F App'x 294, 295-96 (6th Circ 2001). The conduct of Judge Doherty and Magistrate Natale of which the Plaintiff complains in Claims 2 and 3 falls within the scope of their official judicial or quasi-judicial duties for which they are absolutely immune from suit. See *Cooper v Rapp*, 702 F App'x 328 (6th Circ 2017)(state court judge entitled to absolute judicial immunity in 1983 action brought by state-court litigant and attorney alleging that judge violated their constitutional rights in granting summary judgment and imposing sanctions against them)

The only apparent conduct she alleges ⁵⁷ against defendant Hershberger is that Hershberger altered a transcript to exclude a statement made by Judge Doherty that the Plaintiff was abusing the court system. This conduct alone, however is insufficient to state a cognizable constitutional violation. See eg *Harmon v Franklin Court Reporters*, case No 3:15 CV 758, 2015 WL 4917068 at *2 (M.D. Tenn Aug 15, 2015)(a plaintiff does not enjoy a constitutional right not to be portrayed in a negative light. There is also no constitutional right to a perfectly accurate transcript.

The plaintiff has also failed to allege a plausible constitutional claim under the First Amendment in Claim 1. First as the Defendants correctly assert, the Plaintiff has not alleged facts plausibly suggesting that any of them were personally involved with the Portage county Courthouse Facebooks page, or that any of them had any involvement whatsoever in deleting comments she posted on the site or in blocking her from the page. The Sixth circuit Court of Appeals has consistently held that claims under 1983 "cannot be founded upon conclusory, vague or general allegations but must instead allege facts that show the existence of the asserted constitutional rights violation recited in the complaint and what each defendant did to violate the asserted right. *Terrance v Northville Reg Psych Hosp* 286 F3d, 834, 842(6th Circ 2002) see also *Marcilis v twp of Redford*, 693 F 3d 589 596 (6th Circ 2012)(quoting *Lanman v Hinson*, 529 F3d 673, 684 (6th Circ 2008) ("damage claims against government officials arising from alleged violations of constitutional rights must allege, with particularity, facts that demonstrate what each defendant did")

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"merely listing names in the caption of the complaint and alleging constitutional violations in the body of the complaint is not enough to sustain recovery under 1983" *Gilmore v Corr Corp of Am* 92 F App'x 188, 190 (6th Circ 2004) see also *Frazier v Michigan* 41F App'x 762, 764 (6th Circ 2002) (affirming dismissal of claims where the complaint did not allege with any degree of specificity which of the named Defendants were personally involved in or responsible for each alleged violation of federal rights)

Second, a government "may police the boundaries of a limited public forum it has created" through a social media website such as Facebook without violating the First Amendment. See *Davison V Plowman* 247 F Supp 3d 767, 776 (ED Va 2017) Speech that falls outside of the "bounds of the designated forum" may be restricted or blocked if the restriction imposed is viewpoint neutral and reasonably related to the purpose of the forum. See *id* at 776-77. The plaintiffs allegations as to the comments she posted on the portage County Courthouse Facebook page are simply too unclear and conclusory for the Court to conclude she might have any plausible First Amendment claim in connection with the restrictions imposed on her.

Finally, the Plaintiff has not alleged a plausible state-law claim for fraud against Judge Doherty. The Plaintiffs allegations do no treasonably suggest the elements of common law fraud, what is more, Judge Doherty is entitled to absolute immunity under ORC 2744.03 See *Easterling v Brogan* No 24902, 2012 WL 1484511 (Ohio Ct App 2d Dist April 27, 2012)

Conclusion

For all the reasons stated above, the Plaintiffs Complaint fails to state a claim for which relief may be granted, and the Defendants Motion to Dismiss the Complaint pursuant to Fed R Civ P 12(b)(6) is granted. The Court further certifies pursuant to 28 USC 1915(a)(3) that an appeal from this decision could not be taken in good faith.

IT IS SO ORDERED

Date May 23, 2018 /s/ john R. Adams

JOHN R. ADAMS

US DISTRICT JUDGE

C
IN THE COURT OF COMMON PLEAS
PORTAGE COUNTY, OHIO

SUSAN LLOYD

Plaintiff

V.

JOSHUA THORNSBERY

Defendant

Case 2016CV00230

Before Judge Becky L. Doherty

Filed November 29, 2018

JOURNAL ENTRY

This matter is before the Court sua sponte. Upon review, this Court recuses herself from future hearings on this case. Plaintiff filed an affidavit of prejudice with the Supreme Court of Ohio whereby the Supreme Court determined that Plaintiff failed to establish that disqualification was necessary on July 27, 2017. (Supreme Court case No 17-AP-062

Plaintiff filed legal action against Judge Doherty and Magistrate Natale in the United States District Court for the northern District of Ohio. The Motion to Dismiss filed by Judge Doherty and Magistrate Natale was granted. (Case No 5:17-cv-02694). Plaintiff then appealed the ruling which was affirmed by the United States Court of Appeals for the Sixth circuit on November 27, 2018. (Case No 18-3552)

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Judge Doherty wishes to avoid any possible appearance of impropriety.

IT IS THEREFORE ORDERED that the undersigned judge hereby recuses herself from this matter and asks the Ohio Supreme Court to appoint an out of county visiting judge to handle this matter.

/s/ Becky Doherty

Judge BeckyL. Doherty