

No. 23-11481-AA

SUPREME COURT OF THE UNITED STATES

REGINALD JOHNSON

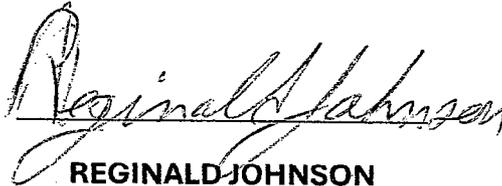
Petitioner,

V.

THE CITY OF SATSUMA & MAURICE KIRK HARLESS

Respondent.

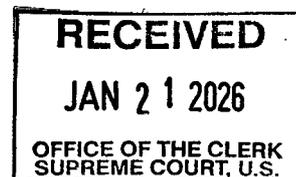
APPENDIX



REGINALD JOHNSON

11627 IDLEBROOK DR.

HOUSTON TEXAS 77070



No. 23-11481-AA

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1. Plaintiff Motion for Equal Protection of the Law

Dated 08/5/200

2. Plaintiff Motion for a Default Judgment

Dated 09/18/2022

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4. Report and Recommendation

Dated 12/30/2024

IN THE UNITED STATE DISTRICT COURT
SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

REGINALD JOHNSON :
Plaintiff :
VS. : Civil Action No 22-CV-00
: 255-KD-MU
CITY OF SATSUMA & :
MAURICE KIRK HARLESS. :
Defendants :

PLAINTIFF'S MOTION FOR EQUAL PROTECTION OF
THE LAW

Come now Plaintiff Pro Se Reginald Johnson and motion for Equal.
Protection of the law under Federal Rule of Civil Procedure Rule 7
(b)(1)(a)(b)(c) because plaintiff and family are being singled out and
treated differently because of the color of our skin.

Plaintiffs make this motion for equal protection of the law due to
The City of Satsuma and others having knowledge of a felony recognized
by a United State Courts, the City of Satsuma concealed.
this felony did not make known the same to a federal judge, or other.
person in authority.

recognized by a United State Court, The City if Satsuma concealed
this felony and did not make know the same to a federal judge, or
other person in authority. On or about July of 2004 plaintiff family
mail receptacle was relocated illegally from 42 Hildreth Dr. which
run in front of the family's home in Satsuma Alabama and place
in the back yard of the plaintiff family home without permission
from any authorities. This is a criminal act under United State
Postal Service Federal Code Title 18 U.S.C. 1705. Plaintiff,
respectfully ask this Court to uphold the law under the Unite
States Constitution Article 6 Section 2, whereby all judges are
bound to apply the law in equity.

Also consider that the concealment of this felony is a violation
of Title 18 U.S.C. 4, whereby all person involved, shall be fined, or
Imprisoned. Moreover, this is a Conspiracy against plaintiff rights,
Where MKH Properties and the City of Satsuma are working together
to hinder plaintiff freedom of rights and privileges secured to him

under the 14th Amendment of the United States Constitution(see
Title 18 U.S.C. 241). The justice system in the United States has a
duty to uphold its integrity, so all American van be treated fairly.

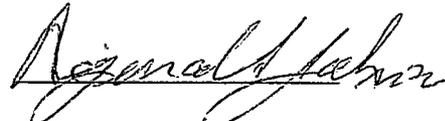
CERTIFCATE OF SERVICE

I certify that a copy of the foregoing document was served on the
Defendant's Attorney via U.S. mail on August 5, 2022

Galloway, Wettermark & Rutens. LLP

P.O. Box 16629

Mobile, Alabama 36616



Reginald Johnson

IN THE UNITED STATE DISTRICT COURT
SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

REGINALD JOHNSON :
Plaintiff :
VS. : Civil Action No 22-CV-00
: 255-KD-MU
CITY OF SATSUMA & :
MAURICE KIRK HARLESS. :
Defendants :

PLAINTIFF'S MOTION FOR A DEFAULT

Come Now Plaintiff Pro Se Reginald Johnson and motion this court for a default judgment against Maurice Kirk Harless and M.K.H. Properties LLC. This Motion is made pursuant to Federal Rule of Civil Procedure 55 (a)(b)(1).

On June 29th, 2022 Plaintiff filed his complaint upon the defendant Maurice Kiek Harless the owner of MKH Properties, for vindication of

Plaintiff Federally protected rights under Title 42 U.S.C. 1983, which is

A civil rights law passed by Congress that provides a remedy to person who have been deprived of their federal rights under color of law.

Summons in this civil action was issued on July 7th, 2022, from The United States District Court for the Southern District of Alabama for Maurice Kirk Harless, to serve an answer to court and upon the Plaintiffs.

A copy of the complaint was mailed to the defendant Maurice Kirk Harless registered agent at 2 North Jackson Street Suite 605 Montgomery Alabama 36104 on July 11, 2022. And was received on July 15, 2022.

Also, a copy of the complaint was mailed via FedEx to the defendant Home a 482 Grand Oaks Dr. Brentwood, Tennessee 37027 and was Delivered on August 18th, 2022. (see Federal Rule of Civil Procedure Rule 4(e)(2)(B)(C) and exhibit #2

Plaintiff additionally mailed a copy of the complaint by U.S. Postal Service certified mail to the defendant at 482 Gand Oaks Dr. Brentwood Tennessee on August 15th, 2022.

Pursuant to FRCP Rule 55 (a) , when a party against whom a judgment For affirmative relief is sought has failed to plead or otherwise defend, And that failure is shown by a affidavit, the clerk must enter the party's

Default. Plaintiffs seek five Million dollars \$ 5,000,000,00 in damages for compensatory damages for all injuries and deprivation suffered because of the defendant lack of application of the constitutional rights owed to the plaintiffs.

Plaintiff's is entitled to punitive damages because the defendant conduct is and was irresponsible, unsympathetic, and unresponsive to the federally protected rights of these plaintiffs. The defendant, based on his action and behavior, appears to be motivated by racial animus. Plaintiffs request monetary damages for intentional discrimination, as is applicable in Federal courts Jurisdiction. This court have the power to award any appropriate relief in a cognizable cause of action brought pursuant to a federal statute.


Reginald Johnson

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

REGINALD JOHNSON)
 Plaintiff,)
 V.) CIV. A. NO. 22-0255-KD-MU
CITY OF SATSUMA, ALABAMA,))
et al)
 Defendants.)

REPORT AND RECOMMENDATION

On June 29, 2022 Plaintiff Reginald Johnson filed his complaint Against the City of Satsuma, Alabama, and Maurice Kirk Harless. Doc. 1 at pp. 2-3). This matter is before the Court on Defendant City of Satsuma, Alabama’s Motion to Dismiss and/or for More Definite Statement (Doc. 3 Plaintiff’s Motion to Vacate Judgment for Fraud on the Court Under Rule 60(b)(3) in United States District Court (Doc. 5), Plaintiff’s Motion in Opposition to Defendant’ Motion to Dismiss (Doc. 6), Defendant Maurice Kirk Harless’ Rule 12(b)(5) Motion to Dismiss for insufficient Service of Process and brief in support thereof (Docs. 9 and 12), Defendant City of Satsuma, Alabama’ Response to Motion to Vacate Judgment an Reply to Plaintiff’s Response to Motion

2.

To Dismiss or for More Definite Statement (Docs. 14 and 15, Plaintiff's Motion for Equal Protection of the Law (Doc. 16), Plaintiff's Objection to Defendant {Harless's] Motion to Dismiss (Doc.17), Plaintiff's Motion to Amend Complaint for a More Definite Statement as Motioned for in the Defendant's Response to the Court (Doc. 18), Plaintiff's Response to Defendant City of Satsuma (Doc. 19), Defendant Maurice Kirk Harless's Reply in Support of Rule 12(b)(5) Motion to Dismiss for Insufficient Service of Process (Doc, 20), Plaintiff's Motion for a Default Judgment (Doc,21), Response to Motion for Default Judgment by Defendant Maurice Kirk Harless (Doc. 22), and Plaintiff's Response Doc.23). These motions have been referred to the undersigned for a Report and recommendation pursuant to 28 U.S.C. – 636(b)(3) and Local Rule 72.2(c)(1). For the reasons set forth herein, the undersigned Magistrate Judge **RECOMMENDS** that Defendant City of Satsuma, Alabama's Motion (Doc. 3) be **GRANTED**; Plaintiff's Motion to Vacate Judgment for Fraud on the Court Under Rule 60(b)(3) in United States District Court (Doc. 5) be **DENIED**; Defendant Maurice Kirk

3.

Hardless's Rule 12(b)(5) motion to Dismiss for Insufficient Service of Process (Doc.9) be **GRANTED**; Plaintiff Motion for Equal Protection of the Law (Doc 16) be **DENIED**; Plaintiff's Motion to Amend Complaint for a More Definite Statement As Motioned for in the Defendant's Response to the Court (Doc. 18) be **DENIED**; and Plaintiff's Motion for a Default Judgment (Doc. 21) be **DENIED**. It is further **RECOMMENDED** That Plaintiff's complaint against the City of Satsuma, Alabama And Maurice Kirk Harless be **DISMISSED, with prejudice**, and That plaintiff be enjoined from refiling this complaint in or any Other Court against Maurice Kirk Harless and MKH Properties.

I. Factual and Procedural Background

Having read the previous filings and orders in the action that Plaintiff Reginald Johnson has filed in this Court concerning the Property at issue in the instant action, the Court adopts the facts Contained in those orders and set forth a summary here, See Reginald Johnson, et al., v. Randall Champion, et al, 1:12-cv-00334 -WS-M; Reginald Johnson v. Marilyn E. Wood, al, 1: 05-cv-00391-KD-B Reginald Johnson v. City of Satsuma, 1:04-cv-00445-CG-M; Reginald Johnson v. Mobile County, et al., 1:99-cv-00574-CB-M:

4.

In 1935, Lula G. Powers sued Ernest Johnson (Plaintiff's father) and Anita Burden Plaintiff's aunt) in Mobile County Circuit to quiet title to 5-acre parcel of real property described as:

That certain parcel of land beginning at the Southeast corner of the Southeast quarter of the Northeast of Section 14, Township 2 South, Range 1 West, running thence North along the Section line distant 660 feet to a point; thence West 330 feet to a Point; thence South 660 feet to a point; thence East 330 feet to the place of beginning, being partly enclosed by a fence, containing a house, barn and cultivated fields, in Mobile County, Alabama

See Power v. Burden, 236 Ala. 697, So. 909 (Ala. 1938).

After conducting a trial, the trial court entered judgment in favor of Johnson and Burden finding that they owned the 5-acre parcel. The Alabama Supreme Court affirmed the judgment. The 5-acre parcel abuts an approximate

27-acre parcel described as:

That portion of the Southeast Quarter of the Northeast Quarter of Section 14, Township 2 South, Rang 1 West, And that portion of the Southwest Quarter of the Northeast Quarter of Section 14, Township 2 South, Range 1 West, lying East of the Old John Craft Highway and the Southern Railroad, excepting therefrom approximately .56 acres now Or formerly owned by Jewel E. Gunter and 5 acres in the Southeast corner of the Southeast Quarter of the Northeast Quarter now or formerly owned by Johnsson or a Burden. Said 5 acres being 330 feet East and West and 660 feet North and South as measured from the Southeast corner of The Northeast Quarter of said Section 14.

(Reginald Johnson v. Marilyn E. Wood, et al., 1:05-cv-00391 KD-B, Doc. 139 at p.6). Defendants and others who have been opposing parties to Plaintiff in previous litigation maintain that the 27-acre parcel was owned by the Powers family, (ld), Plaintiff has disputed that claim in the litigation.

(ld.)

6.

In 1972, Viola Fink and Isaac Burden filed a suit for division of the 5-acre parcel against Plaintiff and other in Mobile County Circuit. (ld. At p. 7), On October 2, 1972, by final decree, the Mobile County Circuit divided the parcel into five 1-acre parcels.

(ld,) Based on a review of the filing in these earlier action, it appears that the " Johnson home" is located on one of those 1-acre parcels. In 1984, Powers family conveyed the 27-acre parcel to Larry J. Harless and M Vann Bush, (ld). In 1986. Harless and Bush conveyed the 27-acre parcel to Gilbert Imported Hardwood, Inc. ("GIH") and in 1993, GIH conveyed it to Gilbert Leasing Company, Inc (ld),

In 1987, Plaintiff sued Tarlton Dudley Powers, Jr. Paul Harrison Powers, and Larry J, Harless in the Mobile County Circuit Court seeking to quiet title to portion of the 27-acre parcel. (ld. At p.8). The defendants moved to dismiss for failure to state a claim and on September 1 1988, the court granted the motion but gave Plaintiff 30 days to amend his complaint. (ld). When he failed to do so, his complaint was dismissed with prejudice. (ld), Subsequently, Plaintiff prepared and recorded three "deed" purported to convey title to some or all of the 27-acre parcel. (ld).

7.

The first deed purported to convey property located in the 27- acre Parcel from Ernest Johnson to his wife Rosemary. (Id). The second deed purported to convey property including the 5-acre parcel and the 27-acre parcel from Ernest Johnson again to his wife Rosemary. (Id). The third deed, filed in 1995, purported to convey the northwest Portion of the 27-acre parcel from Rosemary Johnson to Plaintiff, her Son (Id). In 1997, Gilbert Leasing Company, Inc, filed suit in Mobile County Circuit Court against Rosemary Johnson to quiet title to the 27-acre parcel. (Id). Although not a named defendant, Plaintiff signed And filed numerous pleadings in the case on behalf of his mother and Identified himself as a defendant in the style of the case. (Id), On July 6, 1998, the court entered its judgment, based on an agreement by the Parties, and the testimony and evidence submitted in the case," that Gilbert Leasing Company, Inc. Held title to the 27-acre parcel and that The two deeds prepared by Plaintiff which purported to convey title f From Ernest Johnson to Rosemary Johnson dd not, in fact, convey lawful title because Ernest Johnso n never had valid title to the 27-acre parcel, (Id. At p 9), The agreement between the parties was reached after trial commenced, (Reginald Johnson v, Mobile County

et al., 1:99-cv-00574-CB-M, 41 at pp. 2-3). Plaintiff has argued during the lawsuits he has filed in this Court for the past 23 years that his mother was suffering from dementia and did not fully understand the impact of the proceedings. (See Reginald Johnson, et al., v. Randall Champion, et al., 1:12-cv-00334-WS-M, Doc.136 at pp. 15-16, n22). However, the transcript from the 1997 state court action reflects that Rosemary Johnson was represented by counsel in that action and her attorney made an oral motion to dismiss the action, and thereafter, the parties entered into the agreement. (Id.). The transcript further reflects that the trial judge was made aware of Rosemary Johnson's mental capacity and found that her responses were lucid and that she understood the agreement into which she was entering. (Id.).

As a result of the state court's order, the tax assessor's office removed Rosemary Johnson's name from the tax rolls associated with the 27-acre parcel in 1998. (See Reginald Johnson v. Marilyn E. Wood, et al., 1:05-cv-00391-KD-B, Doc. 141 at p. 6). At some point after entry of the 1998 order, Plaintiff presented the 1995 deed, which purported to transfer five acres of the 27-acre parcel from Rosemary Johnson to him, to the tax assessor and demanded that his name be Added on the tax rolls for that parcel of property. (Id.). Base on his

demand and the 1995 deed, Plaintiff's name was added to the assessment on that parcel, and he paid taxes on that parcel from 1999 to 2004, which subjected that property to a double assessment. (Id.). In 2004, when Gilbert Leasing attempted to transfer the 27-acre parcel to MKH, the title company brought the double assessment, the prior quiet title action, and the resulting 1998 judgment to the attention of the tax assessor. (Id. At p. 9). On July 1, 2004, the Revenue Commissioner removed Plaintiff's name from that parcel based on the 1998 state court order. (Id.).

On June 21, 1999, Plaintiff filed a complaint in Court against Gilbert Leasing, Inc., Harless/Stokke, Inc., and Mobile County for "Discrimination, Violation of Civil Liberties, Fraud, Slander of Title, Trespass and Mental Anguish." (Reginald Johnson v. Mobile County, et al., 1:99-cv-00574-CB-M, Doc.1).

Plaintiff later amended his complaint by filing a Document entitled "Fraud, Slander of Title and Trespass." (Id. at Doc. 14). On April 13, 2000, District Judge Charles Butler issued an order granting summary judgment against Plaintiff on the ground that his claims were barred by the res judicata effect of the 1998 judgment in the Mobile County Circuit Court.

(Id. At Doc. 41). Judge Butler found that the pleading filed by Reginald and Rosemary in 1997 state court suit contained allegation similar, if not identical, to the allegations made by Reginald in this 1999 federal court action. (Id.). At deposition and at trial of the 1997 state court action, Rosemary testified that she made no claim to the Gilbert property and only claimed a one-acre parcel of the five-acre tract excluded from the conveyance to Gilbert. (Id.). Thus, the final judgment ordered that the deeds prepared by Reginald and signed by his father Ernest as grantor to Rosemary as grantee and recorded in the Probate Court did not constitute color of title to the property described therein and did not vest title in Rosemary because these deeds were legally ineffective to convey any property interest to Rosemary. (Id.).

In the 1999 federal court action, Plaintiff alleged that he acquired the subject property in a deed from Rosemary which had received by deed from Ernest- the deed that was rendered void in the 1997 state court action. (Id.). Plaintiff alleged that in 1984 the property was fraudulently conveyed to Larry Harless and Vann Bush by Tarlton and Elizabeth Powers and assessed in the name of Gilbert Import Hardwoods and that GIH transferred title to Gilbert Leasing. (Id.), He also alleged that in the prior state court action Gilbert was

adjudged to be the owner of the property at issue based on the testimony of Rosemary who was legally incompetent. (ld.).

Judge Butler found that res judicata barred the Federal action because the parties and the causes of action (quiet title and ejectment) were identical. (ld.). Judge Butler specifically did not address any civil rights violation because he found that the amended complaint superseded the original complaint and Plaintiff did not reassert those claims in the amended complaint. (ld.).

On December 21, 2000, Gilbert Leasing Company, Inc conveyed the 27-acre parcel to MKH Properties. (Reginald Johnson v. Marilyn E. Wood, et al., 1:05-cv-00391-KD-B, Doc. 139 at p. 10).

On July 10, 2001, Plaintiff filed a document entitled " Affidavit of Forgery" in the Mobile County Probate Court records. (ld.). The Affidavit alleged forgery of the two deeds in the chain of title for the 27-acre parcel that immediately preceded the deed to Gilbert Imported Hardwoods that was upheld by the Mobile County Circuit Court in the 1998 case,(ld,) Thereafter, on October 30, 2001, Johnson filed an "Affidavit" in the Mobile County Probate Court records, alleging that Ernest Johnson and Rosemary owned the 27-acre parcel which was

the subject of the 1998 Mobile County Circuit Court Judgment. (ld.). On December 4, 2001, Shirley A. Johnson-Young and Viola Shaw (Plaintiff's sisters) filed suit in Mobile Circuit Court against MKH Properties, Maurice K. Harless, and William T. McGowin, alleging that they owned the 27-acre parcel. (ld. At p. 11). The circuit court granted the defendant's motion for summary judgment based on the res judicata bar of the 1998 Mobile County Circuit judgment. (ld.). Plaintiffs appealed, and the judgment of the trial court was affirmed on appeal. (ld.).

On March 6, 2002, Plaintiff filed a document in the records of the Mobile County Probate Court, purporting to be a criminal complaint to the Federal Bureau of Investigation ("FBI") against Maurice K. Harless, initial member of MKH Properties, LLC, and Attorney William T. McGowin, IV, organizer of MKH Properties. (ld.). The "complaint" asked the FBI to arrest Harless and McGowin for discrimination and warned that if Harless or McGowin, "or any other Ku Klux Klan" entered the 27-acre parcel, Plaintiff would take action" in self-defense." (ld). Plaintiff mailed said document to United States Supreme Court Chief Justice William Rehnquist, United State Attorney General John Ashcroft, the NAACP, the ACLU

The Associated Press, and the Houston Chronicle. (ld).

On July 29, 2002, Plaintiff filed a second "Affidavit" in the records of the Mobile County Probate Court, opposing Maurice K. Harless's application for a preliminary subdivision plat on the 27-acre parcel, alleging that MKH Properties' deed deed was obtained by fraud. (ld.). He mailed a copy of that " to the City Clerk for the City of Satsuma. (ld.)

Johnson filed suit in this Court against the City of Satsuma Claims for discrimination, denial of equal protection under the Fourteenth Amendment, and mental anguish on July 6, 2004.

Reginald Johnson v. City of Satsuma, 1:04-cv-00445-CG-M.

He alleged that the city discriminated against him by granting M.K. Harless or M.K.H. Properties permission to build a subdivision on his property. (ld. At Doc. 1). He also alleged that he and His family had been discriminated against because of their race. (ld.). The City filed a motion to dismiss which was converted to a motion for summary judgment. (ld, at Docs. 5, 19).

After setting forth the facts, the Court found that although the action was captioned as against the City, Plaintiff was actually attacking Gilbert's claims to ownership by relying on deeds that were held to be invalid in the 1997 state court action.(ld., Doc. 19).

Nothing that res judicata applies” not only to the precise legal theory presented in the prior case, but to all legal theories and claims arising out of the same nucleus of operative fact, “NAACP v Hunt, 891 F.2d 1555, 1561 (11th Cir. 1990), the Court granted summary judgment in favor of the city, finding that Plaintiff raised no claims in the suit before the Court that could not have been brought in his previous federal actions.

On June 30, 2005, Plaintiff filed suit in this Court against Marilyn Wood, the revenue commissioner, and MKH Properties alleging claims of discrimination, unlawful trespass, violation of his Fifth, Ninth, and Fourteenth Amendment rights, and mental anguish. *Reginald Johnson v Marilyn E. Wood, et al.*, 1:05-cv-003 91-KD-B. Plaintiff alleged that Wood removed his name from the tax roll thereby depriving him of his property without due process of law and violated his equal protection rights. (Id. At Doc. 1). He also alleged that Wood and MKH conspired to illegally obtain his property, and he alleged unlawful trespass against MKH. (Id.).

Plaintiff asserted that his family has absolute legal title to the Property according to the 1938 court decision in *Powers v. Burden and Johnson*. (Id.) Plaintiff retained counsel and amended the complaint on January 30, 2006, adding Mobile County and the

state of Alabama an defendant. (ld. At Doc, 48). The State was voluntarily dismissed on April 3, 2006. (ld. At Doc. 65). Plaintiff averred that MKH acquired property through a sale based upon the fraudulent transfer of property from African American property owners to Caucasians and thus acquired property based upon racially discriminatory deprivation of rights. (ld. At Doc.48).

According to Plaintiff, the heirs of the property were denied substantive due process rights because the Courts failed to chronicle The involvement of racial discrimination in property transfers from approximately 1935 to 1972. (ld.); Plaintiff as a "representative heir" sought to restore his right to the property as deprived by state sanctioned race discrimination by the count and state which violated his due process and equal protection rights. (ld.). He sought a Declaratory Judgment requiring the property be returned to him and his family and a permanent injunction enjoining the defendants from continuing to violate his and his family's civil rights. (ld.)

In granting summary judgment in favor of MKH and against Plaintiff, the Court held that Plaintiff lacked standing to assert any claim against MKH un 42 U, S.C. -1981 on the basis of the

contract by which MKH acquired title to the 27-acre parcel and found that, if Plaintiff was asserting any claims under 1981 against MKH, those claims would fail because MKH was not a state actor. (ld. at Doc. 139).

On January 10, 2007, Plaintiff filed a motion to void set aside the 1997 state court judgment against Rosemary Johnson. (ld. Doc. 158). The Court explained to Plaintiff that the Court's inquiry in the federal court action was limited to whether Ms. Wood had violated Plaintiff's constitutional rights when she removed his name from the tax record for the subject property in 2004. (ld.). The Court granted summary judgment in favor of Ms. Wood, finding that Plaintiff failed to state a constitutional claim against her because he was unable to show that he had a legitimate interest in the property at issue, (ld). MKH had asserted counterclaims against Plaintiff for slander of title, Injunction, trespass, conversion, and tortious interference with business relations. (ld. at Doc. 75). After trial, Judgment was entered In favor of MKH on its counterclaims. (ld.at Doc.205). The jury awarded MKH \$ 86,500 based on evidence at trial that Plaintiff's actions (as outlined above) caused MKH 's delay in obtaining approval of its subdivision application before the City of Satsuma Planning Board, which resulted in MKH incurring additional

Interest expense on funds it had borrowed to finance the acquisition of the 27-acre parcel and construction of a planned subdivision, loss of at least one sale of a subdivided lot, and substantial attorneys' fees. (Id, at Doc, 204, 205). The Court also found that injunctive relief was appropriate. (Id, at Docs. 211, 213). The Court enjoined Plaintiff, his agents, and Anyone acting at his direction from filing, in Mobile County Probate Court, any or any complaint, claim for relief, grievance, writ, petition, accusation, affidavit, charge, or any other document with respect to the real property at issue in the case, (Id,).

On May 21, 2012, Plaintiff again filed an action in this Court.

The original complaint was filed by Plaintiff and his sister, Shirley Johnson-Young against Officer Randall Champion, a Satsuma police officer. Johnson, et al. v. Champion, 1:12-cv-00334-WS-M, Doc. 1. In the original complaint, Plaintiffs alleged that, on or about November 25, 2010, they decided "to take action on "a fence that had been illegally erected on their property by Mr. Harless, their next-door neighbor, which impeded the ingress to and egress their property. (Id.). Harless

is the owner of MKH. According to Plaintiffs' complaint, the fence blocked a path to their property that had been used in the past for USPS Mail Delivery, City of Satsuma garbage pick-up, Alabama Power Company, and all family members and visitors to their property. (Id.). The erection of the fence limited them to using only the back entry to their property. (Id.). While attending a hearing in federal court in Mobile on June 4, 2011, Plaintiff were handcuffed, detained, and eventually charged with second degree criminal mischief for cutting sections of the fence. (Id.). They asserted claims for a violation of their constitutional rights under – 1983, assault and battery, and false arrest and illegal imprisonment.

On October 17, 2012, Plaintiff filed an amended complaint, naming Champion, City of Satsuma Officials, City of Satsuma Police Department, City of Satsuma Roads/Zoning Employees, Maurice Kirk Harless, and MKH Properties as defendants. (Id. at Doc. 17). In addition to the allegations concerning the details arrest, Plaintiffs added the following: The erection of the fence/barricade by Mr. Harless was supported by officials from the City of Satsuma and police officers from the City of Satsuma

Police Department. Hilliard (Hilderth) Drive is a dedicated Public roadway by virtue of its "use existence." Prior to the erection of the barricade, Hilliard Drive had been in place for more than one hundred years and used by US mail, the City of Satsuma Police Department, the City of Satsuma Fire Department, the Mobile County Road grader, emergency Medical personnel, the gas and power companies, the city of Satsuma garbage pick-up, their family, and their neighbors.

Hilliard Drive was the only access to the front of the homes on this road. The City of Satsuma allowed this dedicated road to be barricaded. Prior to the erection of the barricade, the city of Satsuma allowed someone to erect barbed wire fencing around their family home and someone working on behalf of Mr. Harless and MKH blocked the road, thereby denying access to the homes, by putting a truck across the road, putting stakes in the road, and putting a pile of dirt in the road.

Eventually, someone working on behalf of Mr. Harless and MKH built a six-foot privacy fence across the road and around the house on this roadway. The city allowed this barricaded to stand and told members of the Johnson family that if they

called about the barricade again, they would be arrested.

The city permitted someone working in connection with Mr. Harless and MKH to cut an opening behind the Johnson Home from Powers Road as a means to access the home on Hilliard Drive from the back. The city sent the Johnson family a letter stating that the new address for the home would be the "rough cut trail" to the back of the home. The City, Mr. Harless, or someone working in concert with the City illegally moved Plaintiff's family U.S. mailbox from the front of the home and placed it behind the home, near the back door, without the consent of the U.S. Postal Service the City failed or refused to open the barricade, Shirley Johnson-Young removed the barricade. The barricade also affected the person who rented the house at the end of Hilliard Drive who had to park his car in the back yard of the Johnson home and walk over to his house. The Amended Complaint set forth causes of action for 1) false arrest and false imprisonment based upon the plaintiff's arrest by Satsuma police officer Randall Champion: 2) denial of Equal Protection based on their contention that the road in front of their House was barricaded and ingress and egress to the home was

moved to the back of the home back of the home because they are African-American and were treated differently than Caucasians; 3) violation of their Civil rights under – 1983; 4) Conspiracy between the City and Harless/MKH to violate their Constitutional rights; and 5); a claim under-1705 for tampering with their mailbox. (Id).

On January 2, 2014, the Court granted summary judgment in favor of the defendants who remained in the suit at that juncture, the City of Satsuma , MKH Properties, and Maurice Kirk Harless. (Id. at 136). In its order, the Court noted that the fence was erected is entirely on the 27-acre track belonging to MKH (as conclusively determined in prior litigation) and that the erection of the fence and the resulting relocation of the ingress to the Johnson home and the mailbox occurred in 2003, approximately nine years prior to the 2012 lawsuit being filed. (Id. at p. 6). The Court found that the plaintiffs' claims were rooted in the premise that the plaintiffs owned the 27-acre parcel, such that MKH was not entitled to build a privacy fence blocking the front of the Johnson home. (Id. at pp. 12-13). "Just as Judge Butler found in the 1999 Lawsuit, and as Judge Granade found in the 2004 lawsuit

and as Judges DuBose and Bivins found in the 2005 Lawsuit, Judge Steel also found that the 1998 state court judgment was entitled to preclusive effect, thus barring the plaintiffs from relitigating claims of an ownership interest or property rights in the 27-acre parcel. (Id. at p. 14). Accordingly, the Court granted the defendants motions for summary judgment finding that the plaintiffs' claims were barred by the doctrine of res judicata. (Id. at p. 21).

In response to a motion for sanctions filed by the defendants, the Court enjoined Reginald Johnson and Shirley Johnson from filing any Action, as defined in the Order, against M.K. Harless or MKH Properties, LLC without prior screening and authorization by the United States District Court for the Southern District of Alabama. (Doc. 161 at pp. 6-7). The Order specifically states that, if Reginald Johnson or Shirley-Young wished to initiate a new Action, they must file a proposed complaint in a filing styled as a "Notice of Filing Proposed Complaint for Judicial Screening" and should attach the proposed complaint as an exhibit to the Notice. (Id. at p. 7). The Order further stated that the Notice should be filed in the court file styled as "Reginald Johnson, et al." and after filing, the proposed complaint would be screened by the Court. (Id.)

The Order specifically state that reviewing the proposed complaint, the Court would determine if the proposed complaint stated an arguable claim for relief that is not barred by res judicata, and if it did so, the plaintiff would be authorized to file the complaint in the forum of their choice. (ld). If, however, the screening showed that the proposed complaint did not state arguable claims for relief or it was obviously irreconcilable with prior federal and state-court judgments, then the Court would enter an order enjoining the plaintiff from pursuing that complaint in any forum. (ld.)

II. Legal Analysis

A. Claims Against Maurice Kirk Harles

Defendant Harless has filed a motion to dismiss Plaintiff complaint against him for insufficient service of process, Pursuant to Rule 12(b) (5) of the Federal Rule of Civil Procedure. (Doc, 9). As United States, District Court Judge L. Scott Coogler of the Northern District of Alabama recently observed:

24.

A Rule 12(b)(4) or 12(b)(5) motion to dismiss to challenges
The court's personal jurisdiction over a defendant for
Insufficient process and insufficient service of process
respectively. To invoke the court's personal jurisdiction
on a defendant requires service of process; so, if a plaintiff
fails to properly serve a defendant according to one of the
methods of service in Rule 4. The court will, on a timely
motion, dismiss all claims against the defendant. And,
when a defendant challenges service of process, **the
plaintiff bears the burden of showing that the defendant
was properly served under Rule 4.** Bridges v. Oie, No. 6:19-
CV-01399-LSC, 2020 WL 3207278, at * 1 (N.D.Ala. June 15,
2020) (internal citational omitted) (emphasis added). "Valid
service of process is an indispensable prerequisite to the
assertion of personal jurisdiction over a defendant." Hyundai
Merch. Marine Co. v. Grand China Shipping (Hong Kong) Co.
, 878F. Supp. 2d 1252, 1260-61 (S.D. Ala. 2012). A "Court may
consider [documents outside the pleadings] when determining
whether [an action] should be dismissed for insufficient service
of process." Ford v. Navika Capital Grp., LLC, No. 14-00311-

KD-C,

2016 WL 1069676, at * 8 (S.D. Ala Mar. 17, 2016)(citing Foster v. Bridgestone Ams. Inc., No. 11-0175-WS-N, 2011 WL 36069-83, at *1 n.2 (S.D. Ala. Aug. 15, 2011)(“ In the context of a Rule 12(b)(5) motion such as that presented here, courts routinely consider matters outside the four corners of the pleadings to ascertain whether service of process has been properly completed.’).

The fact that Plaintiff is proceeding pro se does not excuse Any failure on his part to conform to procedural rules. *Albra, v, Advan, Inc.*, 490 F. 3d 826, 829 (11th Cir. 2007)(affirming dismissal of pro se action for insufficient service of process, noting that pro se litigants are required to conform to procedural rules); *Loren v. Sasser*, 309 F.3d 1296, 1304 (11th Cir. 2002) (holding that “[holding that “{d}espite construction leniency afforded pro se litigants, we nevertheless have required them to conform to procedural rules”). “Once a pro se... litigant is in court, he is subject to the relevant law and rules of court, including the Federal Rules of Civil Procedure. “ *Moon v. Newsome*, 863 F .2d 835, 837 (11th Cir.1989).

Because Plaintiff names Maurice Kirk Harless, an a Defendant Federal Rule of Civil Procedure 4(e) applies.... .an individual... may be served in a judicial district of the United States by: (1) following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district is located or where service is made; or (2) doing any of the following; (A) delivering a copy of the summons and of the complaint to the individual personally; (B) leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or (C) delivering a copy of each to an agent authorized by appointment or by law to receive service of process. Fed. R. Civ. 4(e) (1).

Likewise, Rule 4(c) of the Alabama Rules of Civil Procedure Provides that service on an individual may be made "by serving the individual or by leaving a copy of the summons and the complaint at the individual's dwelling house or usual place of abode with some person of suitable age and discretion them residing therein or by delivering a copy of the summons and the complaint to an agent authorized by appointment or by law to receive service or process. "Ala, R. Civ. P 4(c)(1). Under the

Alabama Rule of Civil Procedure, the summons and complaint may be served in accordance with Rule 4(c) by process server or by certified mail. Ala. R. Civ. P. 4(i)(1) and (2).

In this case, the return of service filed by Plaintiff on August 5, 2022. Shows that he attempted service of the summons and complaint on Harless by certified mail to CT Corporation formerly known as National Registered Agents, Inc.). (doc. 7).

Harless submitted a declaration in support of his motion to dismiss Stating that neither CT Corporation or National Registered Agents, Inc. are nor have ever been an agent authorization or National Registered Agents, Inc. are nor have ever been an agent authorized By appointment or law to receive service of process on his behalf in his individual capacity. (Doc. 12-1). He further stated that the summons and complaint were not delivered to him personally and were not left at his dwelling place or usual place of abode with him or any other person. (Id.) Plaintiff admitted in his response to Hartless's motion that he mailed the summons and complaint, via Certified mail, to the registered agent for MKH Properties, which He states is owned by Harless. (Doc, 17 at p.2.). However, MKH Properties is a separate entity from Harless, and therefore, service

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on MKH Properties is not service on Harless.

Plaintiff further asserted that, on August 15, 2022, in an attempt to correct service after Harless filed his motion, he mailed the summons to Hartless's home address: 482 Grand Oak Dr. Brentwood, TN, 37027-5652. (ld. at p.3).

Plaintiff did not state that he had properly mailed the summons via certified mail, as allowed by Rule 4(i)(2) of the Alabama Rules of Civil Procedure, nor has he filed any proof of service or a green card indicating proper service on Harless. (ld.; Docket Sheet),

Because Plaintiff has not met his burden to prove that He has made proper service on Harless, an individual, the Court agrees that Defendant Hartless's motion to dismiss is well-taken. Normally, the Court would allow a pro se Plaintiff an opportunity to properly serve the defendant; however, for the reason set forth below, the Court finds that any opportunity to correct service would be futile.

In the complaint currently before the Court, Plaintiff has alleged substantially similar, and in most instances, identical, fact and causes of action against Hatless as

those set forth in his 2012 case in this Court. See Doc. 1 at pp. 7-16. Accordingly, pursuant to the Order entered by Judge

Steele in that action, Reginald Johnson, et al., v. Randall Champion, et al., Civil Action 12-0334-WS-M, Doc 161, Plaintiff was required to file a "Notice of Filing Proposed Complaint for Judicial Screening" with the proposed complaint attached as An exhibit in the court file styled as Reginald Johnson, et al., v. Randall Champion, et al., Civil Action 12-0334-WS-M. Plaintiff did not do so. However, in the interest of judicial expediency, the Court will consider the complaint filed in this action (Doc. 1) to be a Notice of Filing Proposed Complaint for Judicial Screening as to the claims asserted against Harless.

Having reviewed the instant complaint, the Court finds that it is a clear attempt to reassert the same allegations and causes of action against Harless as those asserted in the 2012 action. The instant complaint and claims for relief set forth therein are "obviously irreconcilable with prior federal and state-court judgments. "Therefore, the undersigned **RECOMMENDS** that Plaintiff be enjoined from pursuing the Instant complaint against Harless and/or MKH Properties in This Court or any other forum and that the instant complaint

Against Maurice Kirk Harless be **DISMISSED, with prejudice.**

B. Claims Against the City of Satsuma

Defendant City of Satsuma, Alabama (“the City”) filed a Motion to Dismiss and/or for More Definite Statement on July 18, 2022, in which it asserts that Plaintiff’s complaint fails to state a Claim upon which relief can be granted. (Doc. 3) To survive a Rule 12(b)(6) motion to dismiss, a plaintiff must plead “only enough fact to state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570(2007); see also *Ashcroft v. Iqbal*, 556 U.S. 662, 678(2009) (“To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as the true, to ‘state a claim to relief that is plausible when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged... [This standard] ask for more than a sheer possibility that a defendant has acted unlawfully.” *Id.* At 678. That is, “[f]actual allegation must be enough to raise a right to relief above the speculative level, “and must be a “Plain statement’ possesses[ing] enough heft to ‘sho[w] that the Pleader is entitled to relief.” *Twombly*, 550 U.S. at 555, 557

(second brackets in original). “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statement, do not suffice.” *Iqbal*, 556 U.S. at 678. In Determining whether a claim is stated, the factual allegations are accepted as true, except for conclusory assertions or a recitation of a cause of action’s elements, and the allegations must be considered in the light most favorable to the plaintiff. See *id.*; *Mitchell v. Farcass*, 112 F.3d 1483, 1490 (11th Cir. 1997).

However, in addition, “[a] complaint is subject to dismissal for failure to state a claim when its allegations, on their face, show that an affirmative defense bars recovery on the claim,” *Douglas v. Yates*, 535 F. 3d 1316, 1321 (11th Cir. 2008) (quoting *Cottone v. Jenne*, 326 F.3d 1352, 1357 (11th Cir. 2003), or “when, on the basis of a dispositive issue of law, no construction of the factual allegations will support the cause of action,” *Marshall Cnty. Bd. Of Educ. v. Marshall Cnty. Gas Dist.* 992 F 2d 1171, 1174 (11th Cir. 1993).

In the instant complaint, as in Plaintiff’s previous complaints, Plaintiff is attempting to hold the City liable for the erection of a fence by Harless and/or MKH on their own land,

the 27-acre parcel which has been the subject of much prior litigation. The City, in its motion, seek dismissal based on the fact that the complaint does not clearly set forth the fact that support his claim itself. The City notes that it cannot be expected to "conduct an extensive search into all of the prior lawsuits that are referenced and the resolution of those lawsuits [to] determine how they relate to this lawsuit." (Doc. 3 at p.6). However, there is no need for the city to do so as the Court has done so above. "

Just as Judge Butler found in the 1999 Lawsuit, and as Judge Granada found in the 2004 Lawsuit, and as Judges DuBose and Bivins found in the 2005 Lawsuit," and Judge Steele found in the 2012 Lawsuit, this Court reiterates that the 1998 state court Judgment was entitled to preclusive effect, thus barring Plaintiff from relitigating claims of an ownership interest or property rights in the 27-acre parcel. Plaintiff's claims against the City here are clearly barred by the doctrine of res judicata, just as they were in 2012.

For these reason, the undersigned finds that the complaint against the City of Satsuma is patently frivolous and leave to amend would be futile. Therefore, it is **RECOMMENDED** that the motion to dismiss filed by the City of Satsuma be **GRANTED** and that Plaintiff's

Complaint against the City of Satsuma (Doc. 1) be **DISMISSED, with prejudice.**

C. Motions Filed by Plaintiff

Since the filing of his complaint, Plaintiff has filed the following:

1) Motion to Vacate judgment for Fraud on the Court Under Rule 60(d)(3) in United States District Court (Doc.5); 2) Plaintiff's Motion for Equal Protection of the Law (Doc. 16); 3) Plaintiff's Motion to Amend Complaint for a More Definite Statement as Motioned for in the Defendant's Response to the Court (Doc. 18); and 4) Plaintiff's Motion for a Default Judgment (Doc. 21). The Court will address each of these motions.

1. Motion to Vacate Judgment

On August 2, 2022, Plaintiff filed a Motion to Vacate Judgment for Fraud on the Court Under Rule 60(d)(3) in United States District Court. (Doc. 5). In his motion, he argues that the Order entered By District Court Judge Steele on November 5, 2013, is due to be vacated for fraud on the Court because his attorney made statements to the Court with no input from him or his sisters and never made Plaintiff or sisters aware of this Order. (Id. at pp. 2-3). The November 5, 2013 Order (Doc. 124) denied Plaintiff's motion for leave to file an

amended complaint to add claims of fraud and conspiracy in the action entitled Johnson, et al . v. Champion, 1:12-cv-00334-WS-M, Plaintiff's motion to amend was denied because his motion was not timely filed and because he could not meet the good cause standard necessary to modify the schedule for filing an amendment to the complaint. (ld. at Doc. 124, pp. 1-2). A review of the motion and Order refute Plaintiff's argument here that Judge Steele's holding was induced by fraudulent statement made by his attorney. The fact that he and his sisters were allegedly not made aware of the Order is not a proper ground for vacating an order that is a matter of public record. Accordingly, the Court **RECOMMENDS** that Plaintiff's Motion to Vacate Judgment for Fraud on the Court Under Rule 60(d)(3) in the United States District Court (D0c. 5) be **DENIED**.

2. Motion for Equal Protection of the Law

Plaintiff's Motion for Equal Protection of the Law (Doc. 16) is Merely a reiteration of claims made in Plaintiff complaint. See Doc,1 at pp. 10-16. For the reasons stated above, see supra at pp. 19-22, the Court **REVOMMENDS** that Plaintiff's Motion for Equal Protection of the law (Doc. 16) be **DENIED**.

3. Motion to Amend Complaint for a More Definite Statement

The Court **RECOMMENDS** that Plaintiff's Motion to Amend Complaint for a More Definite Statement as Motioned for in the Defendant's Response to the Court (Doc. 18) be **DENIED** as futile as set forth above. See supra at pp. 19-22.

4. Motion for a Default Judgment

On September 20, 2022, Plaintiff filed a Motion for a Default Judgment against Defendant Maurice Kirk Harless and non-party MKH Properties LLC, pursuant to Rule 55 of the Federal Rules of Civil Procedure. (Doc 21), Plaintiff avers, via affidavit, that Harless was served with the summons and complaint but has filed a response. (Doc, 21-1). However, the record reflects that Harless filed a motion to dismiss for insufficient service of process, pursuant to Rule 12(b)(5) of the Federal Rules of Civil Procedure, on August 5, 2022. (Doc,9). "Default can be entered only when a defendant has failed to plead or otherwise defend." *Mantz v. Soc. Admin.*, No. 21-12789, 2022 WL 2859460, at*2 (11th Cir. July 21, 2022). "[T]he phrase otherwise defend' includes the filing of a timely motion to dismiss." *Id* (citing *Bass v. Hoagland*, 172 F.2d 205, 211 (5th Cir. 1949) (holding that '[t]he words 'otherwise

defend (refer to attacks on the service, or motions to dismiss ...). The record further reflects that MKH Properties LLC was not named as a defendant in Plaintiff's complaint, no summons was issued for MKH Properties LLC, and no return of service was filed for MKH Properties LLC. (Doc. 1, Doc. 2. Docket Sheet) Accordingly, because Harless has filed a Proper response and because no response were required from non-party MKH Properties LLC, neither is in default. Therefore, the Court **RECOMMENDS** that Plaintiff's Motion For a Default Judgment (Doc. 21) be **DENIED**.

D. Request for Sanctions

In his response to Plaintiff's motion for default judgment, Harless asserts that Plaintiff should be sanctioned for filing the motion because it was frivolous and in bad faith. (Doc. 22). Under Rule 11(c)(2), "{a} motion for sanctions Must be separately from any other motion..." therefore, Defendant's request that Plaintiff should be sanctioned is **DENIED**, without prejudice.

III. Conclusion

For the reason set forth herein, the undersigned

RECOMMENDS as follows: 1) that Plaintiff be **ENJOINED** from Pursuing the instant complaint against Harless and/or MKH Properties in this Court or any other forum and that the instant Complaint against Maurice Kirk Harless (Doc. 1) be **DISMISSED, With prejudice;** 2) that the motion to dismiss filed by the City Of Satsuma be **GRANTED** and that Plaintiff's complaint against The City of Satsuma (Doc.1) be **DISMISSED, with prejudice;** 3) that Plaintiff's Motion to Vacate Judgment for Fraud on the Court Under Rule 60(d)(3) in United States District Court (Doc. 5) Be **DENIED;** 4) that Plaintiff's Motion for Equal Protection of the Law (Doc. 16) be **DENIED;** 5) that Plaintiff's Motion for Amend Complaint for a More Definite Statement as Motioned for in the Defendant's Response to the Court (Doc. 18) be **DENIED** as futile; And 6) that Plaintiff's Motion for a Default Judgment (Doc, 21) be **DENIED,**

NOTICE OF RIGHT TO FILE OBJECTIONS

A copy of this report and recommendation shall be served on all Parties in the manner provided by law Any party who objects to this recommendation or anything in it must, within fourteen (14) days of the date of service of this document, file specific written

objections with the Clerk of this of this Court. See 28 U.S.C. -636 (b)(1); Fed. R. Civ. P. 72(b); S.D. Gen. LR 72(c)(1) & (2). The parties Should note that under Eleventh Circuit Rule 3-1. “[a] party failing to object to a magistrate judge’s findings or recommendations contained in a report and recommendation in accordance with the provisions of 28 U.S.C. -636(b)(1) waives the right to challenge on appeal the district court’s order based on unobjected-to factual and legal conclusion if the party was informed of the period for objecting and the consequences on appeal for failing to object. In the absence of a proper objection, however, the court may review on appeal for plain error if necessary, in the interest of justice.’ 11th Cir. R. 3-1. To be specific, an objection must identify the specific finding of recommendation to which objection is made, state the basis for the objection, and specify the place in the Magistrate Judge’s report and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the Magistrate Judge is not specific.

DONE and ORDERED this the 25th day of **October, 2022**

s/P. BRADLEY MURRAY

UNITED STATES MAGISTRATE JUDGE

40.

3) Plaintiff's Motion to Vacate Judgment for Fraud on the Court Under 60(d)(3) in United States Court (Doc. 5) is **DENIED**;

4) Plaintiff's Motion for Equal Protection of the Law(Doc. 16) is **DENIED**;

5) Plaintiff's Motion to Amend Complaint for a More Definite As Motioned for in the Defendant's Response to the Court (Doc. 18) is **DENIED** as futile; and

6) Plaintiff's Motion for a Default Judgment (Doc. 21) is **DENIED** ;

DONE and ORDERED this the 13th day of **December 2022**.

/s/ Kristi K. DuBose

KRISTI K. DuBOSE

UNITED STATE DISTRICT JUDGE

**IN THE
UNITED STATE COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
No. 23-11481
Non- Argument Calendar**

REGINALD JOHNSON,

Plaintiff-Appellant

Verus

**THE CITY OF SATSUMA, ALABAMA,
MAURICE KIRK HARLESS,
Owner of MKH Properties,**

Defendant-Appellees

Appeal from the United States District Court
For the Southern District of Alabama

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In the

United States Court of Appeals

For the Eleventh Circuit

No. 23-11481

Non-Argument Calendar

REGINALD JOHNSON,

Plaintiff-Appellant,

versus

THE CITY OF SATSUMA, ALABAMA,

MAURICE KIRK HARLESS,

Owner of MKH Properties,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Alabama

Before ROSENBAUM, ABUDU, and BLACK, Circuit Judges.

PER CURIAM:

Reginald Johnson, *pro se*, appeals from the district court's order dismissing with prejudice his claims that Maurice Harless and the City of Satsuma, Alabama (the City) violated his equal protection rights and discriminated against him based on race by acting together to block a front entry to his home. He contends he stated a viable claim that Harless violated his constitutional rights and presented a constitutional claim against the City that was not previously litigated. He also asserts the district judge should have recused herself or been disqualified from considering his complaint due to bias. After review, we affirm.

I. BACKGROUND

A. *Prior Litigation*

This action arises from a long-running dispute over ownership rights and title to a parcel of land. In 1998, the Circuit Court of Mobile County, Alabama issued a judgment quieting title to a parcel owned by Gilbert Leasing Company (Gilbert), in which Rosemary Johnson (Rosemary) claimed an interest. Rosemary and her husband owned and resided on an adjacent property, Parcel A, and accessed the front entry of their home through a road on the disputed parcel, Parcel B. Gilbert sued Rosemary to determine ownership of Parcel B, and the court decreed that two deeds

conveying Parcel B to Rosemary did not convey color of title or vest in Rosemary any interest in the parcel. The sole privilege reserved for Rosemary was the right for her home to encroach upon Parcel B during her lifetime. Gilbert later sold Parcel B to MKH Properties, LLC (MKH), owned by Harless. MKH developed the land into a subdivision and, in 2003, erected a fence on its property closing access to the front of the Johnson home. As an accommodation, MKH graded, straightened, and widened a driveway that connected the rear of the Johnson home to a road. Johnson, Rosemary's son, continued to litigate ownership rights to Parcel B through various means.

In 2004, Johnson filed a complaint against the City in the Southern District of Alabama, alleging it discriminated against him and his family based on race by permitting Harless and MKH to build a subdivision on his property. The district court granted summary judgment to the City because Johnson's complaint was barred by *res judicata*, as the 1998 state court judgment concluded that Johnson had no property interests in Parcel B, Johnson had substantial identity with Rosemary because the parties were in privity and had identical interest, and Johnson's 2004 claim arose from the same nucleus of operative facts as the state judgment.

In September 2012, Johnson and his sister filed an amended complaint in the Southern District of Alabama, alleging a fence erected by MKH and Harless impeded the front entry to their property, which had been used for ingress and egress and for services such as mail delivery, garbage pick-up, and power. Johnson and his

sister alleged Harless received support from the City in imposing these restrictions and the City and Harless discriminated against them based on race in violation of their rights under the Equal Protection Clause. The district court granted summary judgment in favor of the City, MKH, and Harless because Johnson effectively sought to relitigate ownership of Parcel B. It entered a comprehensive order (the January 2014 Order) detailing Johnson's litigation history.¹ It stated that Johnson's statutory and constitutional claims were "firmly rooted in the premise" that Johnson and his family had some property interest in Parcel B, such as a right-of-way or driveway, that prevented MKH from building a fence there.

It determined that all elements of *res judicata* were present, and the 1998 state court decision was a prior judgment on the merits by a court of competent jurisdiction. It stated the actions involved substantially the same parties because, although the 1998 case was filed against Rosemary, Johnson and his sister participated in the litigation, were in privity to Rosemary as her heirs, and had identical interests in Parcel B. Finally, it determined that Johnson's claims in the 2012 case arose out of the same nucleus of operative facts as the 1998 case because they rested on the same premise that Johnson and his sister had a lawful property interest in Parcel B that prevented MKH from building a fence across it and entitled them to travel onto it. It concluded "the issue of [Johnson's and his family's] ownership interest in Parcel B was conclusively decided in the

¹ In addition to the 1998, 2004, and 2012 cases detailed in this section, there were also federal cases filed in 1999 and 2005, and a state case filed in 2001.

[1998 litigation] and the subsequent four lawsuits. . . . That issue has been definitively, conclusively and repeatedly decided against them in prior litigation, and they are legally bound by these determinations.” Accordingly, the district court granted the City’s, MKH’s, and Harless’s motions for summary judgment and dismissed Johnson’s claims with prejudice as barred by the doctrine of *res judicata*.

In response to a motion for sanctions filed by Harless, the district court issued an order in May 2014 (the May 2014 order) that prohibited Johnson from filing any action against Harless or MKH regarding Parcel B without screening and prior authorization by the United States District Court for the Southern District of Alabama. The district court stated specifically that, should Johnson wish to initiate a new action, he must file notice of a proposed complaint with the complaint attached into the original docket for the clerk of the court to review and if, after review, the complaint appears to state an arguable claim to relief that is “not obviously barred by principles of *res judicata*,” the court will issue an order authorizing filing of the complaint. The court further stated, in bold and italic font, that Johnson was responsible for reading the order and abiding by its terms and would be held accountable if he did not. The district court imposed the injunction in light of Johnson’s “pattern of abusive filings, unchecked litigiousness, and reckless disregard of court rulings [that] has continued, unabated and unapologetically, for nearly 15 years.”

B. Current Litigation

In June 2022, Johnson filed a *pro se* complaint, claiming Harless and City officials violated the Equal Protection Clause by discriminating against him and his family based on race. Johnson did not file a notice and a copy of the complaint for judicial screening into the docket of the 2012 district court case, as required by the May 2014 order. Johnson also moved to vacate the May 2014 order and accompanying judgment on the grounds of fraud, appearing to allege his prior attorney entered into an agreement with the City without authorization and did not disclose the May 2014 order to him.

On October 25, 2022, a magistrate judge entered a report and recommendation (R&R) recommending Johnson's complaint be dismissed. First, as to Johnson's claims against Harless, the magistrate judge determined Johnson failed to properly serve Harless but that, regardless, the claims were due to be dismissed under the prefiling injunction in the May 2014 order because Johnson was attempting to reassert the same claims against Harless that were irreconcilable with prior federal and state court judgments. Second, the magistrate judge determined Johnson's claims against the City were due to be dismissed for failure to state a claim as barred by *res judicata* because the rights of MKI I to erect a fence on its land and, more generally, Johnson's lack of ownership rights in Parcel B, had been fully litigated many times. Third, he recommended denying Johnson's motion to vacate the May 2014 order because there was no evidence that any fraudulent statements by Johnson's attorney influenced the proceedings and the order was a matter of public record.

The magistrate judge informed Johnson of his right to file objections to the R&R within 14 days and stated that failure to do so would waive his right to challenge on appeal the district court's order based on unobjected-to factual and legal conclusions on appeal except that the Court may review for plain error if necessary in the interests of justice. Johnson did not object to the R&R.

On December 13, 2022, the district court, noting that no objections had been filed, adopted the R&R and entered an order and judgment dismissing with prejudice Johnson's claims against Harless and the City and enjoining Johnson from further pursuing the claims against Harless. Additionally, in relevant part, it denied Johnson's motion to vacate the May 2014 order and denied his motion to amend his complaint as futile. On January 3, 2023, Johnson filed an objection to the district court's order dismissing his complaint and enjoining his claims against Harless, reasserting the claims in his complaint and motion to vacate the judgment and arguing that imposing the injunction and denying him leave to amend his complaint violated his constitutional rights. In July 2023, the district court struck the objection as untimely.

II. DISCUSSION

A. *Dismissal of Claims Against Harless*

A party who fails to object to a magistrate judge's findings or recommendations contained in an R&R "in accordance with the provisions of 28 U.S.C. § 636(b)(1) waives the right to challenge on appeal the district court's order based on unobjected-to factual and legal conclusions if the party was informed of the time period for

objecting and the consequences on appeal for failing to object.” 11th Cir. R. 3-1. If the party fails to object, “the court may review on appeal for plain error if necessary in the interests of justice.” *Id.* “Under the civil plain error standard, we will consider an issue not raised in the district court if it involves a pure question of law, and if refusal to consider it would result in a miscarriage of justice.” *Roy v. Ivy*, 53 F.4th 1338, 1351 (11th Cir. 2022) (quotation marks omitted). Specifically, under plain-error review, the aggrieved party must show: (1) error, (2) that is plain, (3) that affects substantial rights, and (4) that would seriously affect “the fairness, integrity or public reputation of judicial proceedings.” *United States v. Lejarde-Rada*, 319 F.3d 1288, 1290 (11th Cir. 2003) (quotation marks omitted).

Despite being warned of the consequences, Johnson did not object to the R&R, including its legal conclusion that his claims against Harless were substantially similar to his prior claims against Harless and MKH and were due to be dismissed with prejudice under the May 2014 order, with Johnson enjoined from raising them in the future. He filed objections to the dismissal of his claims against Harless, but only after the district court entered a final order and judgment, and the district court struck the objections as untimely. Johnson does not challenge on appeal the district court’s refusal to entertain his untimely objections. Thus, the district court’s unobjected-to fact findings and legal conclusions in dismissing Johnson’s claims against Harless should be reviewed for, at most, plain error and only if this Court concludes the refusal to

consider them would result in a miscarriage of justice. *See* 11th Cir. R. 3-1; *Roy*, 53 F.4th at 1351.

Even reviewing for plain error, the district court did not plainly err in dismissing Johnson's claims against Harless with prejudice and enjoining him from pursuing them further. *See Lejarde-Rada*, 319 F.3d at 1290. The district court had the authority to impose prescreening measures on Johnson in the May 2014 order in light of his many filings. *See Johnson v. 27th Ave. Caraf, Inc.*, 9 F.4th 1300, 1317-18 (11th Cir. 2021) (acknowledging district courts may screen complaints from vexatious litigants so long as access to the courts is not completely foreclosed). And Johnson did not appeal from the May 2014 order or otherwise challenge the screening requirement. Although Johnson describes his claim against Harless in the current complaint as a constitutional claim of racial discrimination and not a claim to property rights in Parcel B like many of his prior claims against Harless and MKH, it still relies on the premise that Johnson and his family have a valid property right in Parcel B to cross the land when entering and exiting the front of the house, which was denied in the 1998 state judgment. Thus, the instant claim falls within the scope of the May 2014 order.

Although Johnson contends he could not have complied with the pre-filing injunction in the May 2014 order because he was not aware of it, the order explicitly stated he would be held responsible for reading the order and adhering to its terms in future cases and forewarned him of the prescreening procedures. *See Moon v. Newsome*, 863 F.2d 835, 837 (11th Cir. 1989) ("While dismissal is an

extraordinary remedy, dismissal upon disregard of an order, especially where the litigant has been forewarned, generally is not an abuse of discretion.”). Moreover, while Johnson contends he presented sufficient evidence to establish a likelihood of success on the merits, which would meet the requirement in the May 2014 order that his claims must have arguable merit, he still did not submit his complaint for prescreening. *See Foudy v. Indian River Cnty. Sheriff's Off.*, 845 F.3d 1117, 1126 (11th Cir. 2017) (stating a district court has inherent power to manage its own docket, including by dismissing a complaint for failure to comply with a court order). Therefore, the district court did not err, much less plainly err, in dismissing Johnson’s claims against Harless with prejudice for failure to comply with the May 2014 order. *See Lejarde-Rada*, 319 F.3d at 1290.

B. Dismissal of Claims Against the City

As with the claims against Harless, because Johnson failed to object to the R&R, the district court’s dismissal of Johnson’s claims against the City based on *res judicata*, including its privity determination, should be reviewed for at most plain error. *See* 11th Cir. R. 3-1. The district court did not plainly err in dismissing Johnson’s claims against the City with prejudice. Johnson raised his specific race discrimination claim against the City in the 2004 case and in the 2012 case, with the court concluding both times that it was barred by *res judicata*. Under Alabama’s elements of *res judicata*, the same reasoning applies to this case. *See Cmty. State Bank v. Strong*, 651 F.3d 1241, 1263 (11th Cir. 2011) (stating in assessing the preclusive effect of a state court judgment, a federal court must

apply the rendering state's law of preclusion). The 1998 state court consent judgment was a final judgment on the merits, rendered by a court of competent jurisdiction, that addressed the Johnson family's ownership and right to use Parcel B and involved a party in privity to Johnson that represented his interests, Rosemary. See *Chapman Nursing Home, Inc. v. McDonald*, 985 So. 2d 914, 919 (Ala. 2007) (providing under Alabama law, the elements of *res judicata* are: "(1) a prior judgment on the merits, (2) rendered by a court of competent jurisdiction, (3) with substantial identity of the parties, and (4) with the same cause of action presented in both actions").

Moreover, while Johnson frames his claim in terms of racial discrimination and equal protection as opposed to property rights, it is still based on the fundamental premise that he and his family have the right to use Parcel B to enter and exit their home as some form of covenant or easement, and the 1998 judgment conclusively determined there is no such right. Any claim that Johnson is being denied that right arises from the same operative facts and is clearly irreconcilable with the previous judgment. See *id.* at 921 (stating *res judicata* applies not only to the precise legal theory of claim presented in the prior case, but to all legal theories and claims arising out of the same nucleus of operative facts). The primary right asserted—to use Parcel B—is identical in the 1998 case and the instant claim. See *id.* (explaining the principal test for comparing causes of action in a *res judicata* determination is whether the primary right and duty or wrong are the same in both actions). Therefore, the district court did not err, much less plainly err, in determining that

Johnson raised the same claim in both actions and dismissing Johnson's complaint.² See *Lejarde-Rada*, 319 F.3d at 1290.

C. *Recusal*

A federal judge must recuse herself "in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455(a). Recusal under § 455(a) is required only when the alleged bias is personal in nature, that is, stemming from an extrajudicial source. *Bolin v. Story*, 225 F.3d 1234, 1239 (11th Cir. 2000). Adverse rulings alone, either in the same or a related case, almost never constitute a valid basis for recusal. *Id.* The standard is "whether an objective, disinterested, lay observer fully informed of the facts underlying the grounds on which recusal was sought would entertain a significant doubt about the judge's impartiality." *Id.* at 1239 (quotation marks omitted).

Johnson failed to demonstrate the district judge plainly erred in not recusing herself from the proceedings. See *Hamm v. Members of Bd. of Regents of State of Fla.*, 708 F.2d 647, 651 (11th Cir. 1983) (stating where a party fails to invoke the statutes that provide for disqualification or recusal in the district court, we review for plain error). While Johnson argues the district judge was biased against him because she had adjudicated several of his prior claims related to Parcel B, her decisions in other cases are not an extrajudicial

² As the district court determined, leave to amend would be futile in this instance because the complaint as amended would still be subject to dismissal as barred by *res judicata* since there is no version of Johnson's claims against the City that does not rely on a claimed right to use of Parcel B.

source of alleged bias. *See Bolin*, 225 F.3d at 1239. Her adverse rulings against Johnson in prior cases are not a valid basis for a recusal. *See id.* Additionally, Johnson presented no evidence in support of his conclusory allegation the district judge was biased and has provided no reasons for a lay observer to doubt the district judge's impartiality.

III. CONCLUSION

The district court did not plainly err in dismissing with prejudice Johnson's claims against Harless and enjoining him from persisting in those claims because they fell within the scope of a court order imposing a prefilings injunction in a prior case and Johnson did not comply with the order's instructions. The district court also did not plainly err in dismissing with prejudice Johnson's claims against the City because those claims were barred by *res judicata*. Finally, Johnson did not present evidence of the district judge's bias such that she should have recused herself. We affirm the district court.³

AFFIRMED.

³ We deny Harless's motion to supplement the record on appeal as moot. *See May v. Morgan Cnty., Ga.*, 878 F.3d 1001, 1007 n.7 (11th Cir. 2017) (providing when the existing record resolves an appeal on the merits, a motion to supplement the record is due to be dismissed).