STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SUMTER	)	C/A NO.: 2022-CP-43-01552
	)	
Gersh Zavodnik and Tatiana Zavodnik,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	**ORDER GRANTING DEFEFENDANT CAMPBELL'S MOTION TO DISMISS AND SANCTIONING PLANTIFFS**
Kristi F. Curtis, Her Circuit (Circuit Court 3 of Common Pleas), James C. Campbell (Clerk of the Court), Anthony (Tony) Morales (aka Tony Morales, aka Richard Anthony Morales aka Anthony Richard Morales aka Tony Morales), G. Murrell Smith (aka G. Murrell Smith, Jr.), Smith Robinson Holler DuBose and Morgan, LLC (aka Smith Robinson Law Firm, aka Smith Robinson LLC, aka Smith Robinson Law), Frederick N. Hanna (aka Fred Hanna), and Jennifer Lisandrelli,	)	
	)	
Defendants.	)	

The matters before the Court on Defendant James C. Campbell's (hereinafter, "Clerk Campbell") Notice of Motion and Motion to Dismiss, which contained a request for sanctions, and Motion for a More Definite Statement filed February 6, 2023. A duly noticed hearing was held remotely via Web-Ex on February 21, 2023. Present at the hearing were counsel for Clerk Campbell, G. Murrell Smith and Frederick N. Hanna, and pro se Plaintiff Gersh Zavodnik.[1] The Court has carefully considered the motions, the arguments of the parties offered during the hearing, and the relevant law. The Court hereby **GRANTS** Clerk Campbell's Motion to Dismiss with prejudice and sanctions Plaintiffs Gersh Zavodnik and Tatiana Zavodnik (collectively,

[1] Plaintiff Gersh indicated that he had several "witnesses" with him attending the hearing remotely. However, because Plaintiff Gersh indicated he did know how to turn on his camera and no one other than Plaintiff Gersh spoke, it is unclear who else attended.

"Plaintiffs") in the manner described below. In light of this ruling, it is unnecessary for the Court to rule on Clerk Campbell's Motion for a More Definite Statement.

BACKGROUND

Plaintiffs' claims against Clerk Campbell arise out of events that allegedly occurred in *Zavodnik v. Morales*, C/A 2020-CP-43-01819 ("the Underlying Case"). Plaintiffs allege that Clerk Campbell intentionally tampered with the record of proceedings in the Underlying Case. For example, Plaintiffs contend Clerk Campbell tampered with the docket, shuffled filings, altered records, and denied Plaintiffs access to public records in the Underlying Case. *See* Amended Compl. at ¶¶ 17, 20, 24, 248.

Plaintiffs filed their Amended Complaint in this case on January 26, 2023. It appears that Counts 1 through 3 of Plaintiffs' Amended Complaint relate to Clerk Campbell: "Declaratory Relief," "Fraud On Court & On Us," and "Abuse of Process By Defendant Curtis, Her Court & Defendant Campbell." Counts 4 and 5 of Plaintiffs' Amended Complaint also appear to relate to Clerk Campbell: "Unlawful & Unwarranted Denial Of Public Records Requests Act" and "Deprivations Of Our Due Process & Equal Protection Rights." On February 6, 2023, Clerk Campbell filed the instant Motion, requesting the Court to dismiss Plaintiffs' Amended Complaint and sanction Plaintiffs.

ANALYSIS

I. Clerk Campbell's Motion to Dismiss

In his Motion to Dismiss, Clerk Campbell contends Plaintiffs' Amended Complaint fails to state a valid claim for relief against him. Specifically, Clerk Campbell argues Plaintiffs' claims are barred by the doctrine of judicial immunity, Plaintiffs' claims are barred by the South Carolina Tort Claims Act, and Plaintiffs fail to state a claim for declaratory relief.

Ruling upon a motion to dismiss for failure to state a claim, the court must determine whether the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory. *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). Applying this standard, the Court agrees with Clerk Campbell and finds dismissal is warranted for the following reasons.

A. Judicial Immunity

"Judicial immunity affords absolute immunity from suit." *O'Laughlin v. Windham*, 330 S.C. 379, 382, 498 S.E.2d 689, 691 (Ct. App. 1998). This immunity is not limited to judges; the concept, sometimes referred to as "quasi-judicial immunity," extends to other judicial personnel such as Clerk Campbell. *See id.* (holding judicial immunity shielded a ministerial recorder from suit); *Fleming v. Asbill*, 326 S.C. 49, 57, 483 S.E.2d 751, 756 (1997) (holding quasi-judicial immunity shielded a guardian ad litem from suit); *Harden v. Bodiford*, No. C/A 6:09-2362-HFF-WM, 2009 WL 4042694, at *1-2 (D.S.C. Nov. 19, 2009) (holding the Clerk of Court for Greenville County was protected by judicial immunity).

Unlike other common law immunities, judicial immunity survived the General Assembly's adoption of the Tort Claims Act. *O'Laughlin*, 330 S.C. at 385, 498 S.E.2d at 692 ("[W]e find that absolute judicial immunity, defined by common law, survives the adoption of the Tort Claims Act."). In *McEachern v. Black*, our court of appeals explained the important role judicial immunity serves:

> The principle, therefore, which exempts judges of courts of superior or general authority from liability in a civil action for acts done by them in the exercise of their judicial functions, obtains in all countries where there is any well ordered system of jurisprudence. Without judicial immunity, losing parties would vent their ire on the presiding judge. Court dockets would explode and those willing to expose themselves to the lawsuit-prone job of judge would cower under the constant threat of legal retribution for good-faith errors. Simply stated, absolute judicial immunity is vital for the continuation of an independent judiciary and for the preservation of

judicial integrity.

329 S.C. 642, 647, 496 S.E.2d 659, 661-62 (Ct. App. 1998) (internal quotation marks and citation omitted).

Accordingly, "[j]udicial immunity is an absolute bar in the sense that it absolutely bars litigation against the judicial officer in certain circumstances." *O'Laughlin*, 330 S.C. at 385, 498 S.E.2d at 692. There are, however, three exceptions that may apply to prevent the application of judicial immunity in a given case. *Id.* First, judicial immunity does not exist to shield one who acts in the "clear absence of all jurisdiction." *Id.* (quoting *Stump v. Sparkman*, 435 U.S. 349, 357 (1978)). "Second, judicial immunity extends only to judicial acts." *Id.* "Finally, judges cannot claim judicial immunity for suits seeking only prospective, injunctive relief." *Id.*

In their Amended Complaint, Plaintiffs acknowledge Clerk Campbell is protected by judicial immunity, but they contend the third exception applies in this case. Plaintiffs contend that because their Amended Complaint requests declaratory relief, judicial immunity does not apply. The Court disagrees.

The court of appeals explained the scope of this exception in *O'Laughlin*: for an action against a judicial officer to proceed, it must only seek prospective, injunctive relief. 330 S.C. at 385, 498 S.E.2d at 692 ("[J]udges cannot claim judicial immunity for suits seeking only prospective, injunctive relief."). In other words, a suit against a judicial officer cannot proceed if it seeks damages.

Although Plaintiffs' Amended Complaint includes a claim for declaratory relief, it also seeks damages from Clerk Campbell. Plaintiffs entitled their pleading "Amended Verified Complaint *For Damages* Of Personal Knowledge (First-Hand Knowledge) & Jury Trial Demand." (emphasis added). In paragraph 246 of their Amended Complaint, Plaintiffs allege as follows:

We are entitled to this action for declaratory relief, attorneys fees and court costs

> and expenses, and as such, we demand those to be awarded to us and we request the jury trial *and all other damages to which we are entitled*, and we pray for all other relief available to us under the law, all just and proper in these premises.

(emphasis added). Because they also seek damages from Clerk Campbell, Plaintiffs' claim for declaratory relief is a red-herring and does not invoke the third exception to judicial immunity.

Accordingly, no exceptions to the doctrine of judicial immunity apply and the doctrine acts as an absolute bar to Plaintiffs' claims against Clerk Campbell.

B. The Tort Claims Act

It appears that some of Plaintiffs' claims against Clerk Campbell sound in tort. *See Food Lion, Inc. v. United Food & Com. Workers Int'l Union*, 351 S.C. 65, 69, 567 S.E.2d 251, 253 (Ct. App. 2002) (describing "[t]he abuse of process tort"). Plaintiffs' abuse of process claim, and any other tort claims, are also barred by The South Carolina Tort Claims Act ("TCA").[2]

The TCA is a limited waiver of governmental immunity that provides the exclusive remedy in tort against the State and its political subdivisions. *Steinke v. S.C. Dep't of Labor, Licensing, & Reg.*, 336 S.C. 373, 393, 520 S.E.2d 142, 152 (1999). The TCA sets out forty (40) exceptions to the waiver of sovereign immunity. S.C. Code Ann. § 15-78-60. Several exceptions to the waiver of sovereign immunity are applicable here, where Plaintiffs' claims stem out of Clerk Campbell's alleged tampering with the judicial docket:

> The governmental entity is not liable for a loss resulting from:
>
> (1) legislative, judicial, or quasi-judicial action or inaction;
>
> (2) administrative action or inaction of a legislative, judicial, or quasi-judicial nature;
>
> (3) execution, enforcement, or implementation of the orders of any court or execution, enforcement, or lawful implementation of any process;

[2] S.C. Code Ann. §§ 15-78-10, *et seq.*

. . .

(23) institution or prosecution of any judicial or administrative proceeding;

S.C. Code Ann. § 15-78-60. These exceptions apply under the facts alleged in Plaintiffs' Amended Complaint and bar Plaintiffs' action against Clerk Campbell.

C. Declaratory Relief

As the Court has explained, all of Plaintiffs' causes of action against Clerk Campbell are barred by the doctrine of judicial immunity and/or the TCA. However, even assuming Plaintiffs' declaratory claim is not barred, that claim also fails.

South Carolina's appellate courts have consistently held that a declaratory judgment claim cannot be used to "collaterally attack" a court's final judgment. *Charleston Cnty. Sch. Dist. v. S.C. State Ports Auth.*, 283 S.C. 48, 52, 320 S.E.2d 727, 730 (Ct. App. 1984) ("The South Carolina Supreme Court has refused to allow collateral attacks under the guise of a declaratory judgment action upon the final judgment of a court of competent jurisdiction."); *Henry v. Cottingham*, 253 S.C. 286, 291, 170 S.E.2d 387, 389 (1969) ("The order of the Probate Court . . . was a judgment of a court of competent jurisdiction, and not subject to collateral attack."); *Jackson v. Cannon*, 266 S.C. 198, 203, 222 S.E.2d 494, 497 (1976) ("Rights consecrated by final judgment of the Probate Court are not subject to collateral attack under the guise of a declaratory action seeking construction of the terms of a will in the Court of Common Pleas.").

Plaintiffs' claims against Clerk Campbell are merely a collateral attack on this Court's Orders in the Underlying Case. *See, e.g.*, Amended Compl. at ¶ 21 (arguing "all said orders [in the Underlying Case] must be reversed and set aside NOW"). Plaintiffs already have a mechanism for addressing any concerns they may have with the proceedings or rulings in the Underlying Case—an appeal. Plaintiffs' Amended Complaint fails to state a valid claim for declaratory relief

because South Carolina law prohibits collateral attacks on court orders disguised as declaratory actions.

IT IS THEREFORE ORDERED that Clerk Campbell's Motion to Dismiss is GRANTED and Plaintiffs' Amended Complaint is dismissed with prejudice. It is therefore unnecessary for the Court to rule on Clerk Campbell's Motion for a More Definite Statement.

II. Sanctions

Plaintiffs Gersh and Tatiana Zavodnik are citizens of Indiana. Indiana's courts have recognized that Plaintiffs are "frequent filers" and abusive litigants. In *Zavodnik v. Harper*, the Indiana Supreme Court stated: "Plaintiff Gersh Zavodnik is a prolific, abusive litigant." 17 N.E.3d 259, 262 (Ind. 2014). The Court explained Plaintiff Gersh's presence in the dockets of various Indiana courts as follows:

> A search of [Plaintiff Gersh's] name brings up 123 cases in Marion County and other counties on the Odyssey case management system (which is not yet in place in all Indiana counties). All but three of those cases were filed since January 2008. Mr. Zavodnik is also a party in thirty-four cases before the Court of Appeals and this Court, including twenty-three special judge requests.

Id. Describing Plaintiff Gersh's litigation tactics, the Court stated, "Mr. Zavodnik's abusive litigation practices in this case and others have included unrelenting attempts to replace the judges presiding over his cases for alleged delays in rulings pursuant to T.R. 53.1 and for alleged bias, prejudice, or misconduct by the judge." *Id.* at 269.

Other courts have provided similar accounts of Plaintiffs' vexatious litigation practices. In *Zavodnik v. Richards*, the Court of Appeals of Indiana stated that Plaintiff Gersh "does not deny" that he "attempts to make his living by filing lawsuits." 984 N.E.2d 699, 701 n.2 (Ind. Ct. App. 2013). Both Plaintiffs Gersh and Tatiana have also been reprimanded by the United States District Court for the Southern District of Indiana. *See Zavodnik v. Felix*, No. 1:18-cv-00870-SEB-MJD,

2018 WL 11274384, at *2 (S.D. Ind. Mar. 26, 2018) (dismissing a lawsuit Plaintiffs filed "not only for not being a short and plain statement of a claim, but as legally and factually frivolous and for failure to state a claim upon which relief may be granted").

Unfortunately, Plaintiffs are now bringing similar actions before this Court. In the Underlying Case, Plaintiffs sued Tony Morales, a California resident, asserting numerous causes of action arising out of alleged Facebook comments. After initiating the Underlying Case, Plaintiffs' abusive conduct continued. For example, on June 11, 2021, Plaintiffs filed a motion to disqualify Judge Curtis from hearing the Underlying Case. In their 70-page motion to disqualify, the Zavodniks argued as to Judge Curtis, "You are not a judge to us, you are an attorney for Defendant and soon enough you will become a Defendant yourself." Plaintiffs identified no facts or actions as the grounds for disqualification. In a separate order, the Court dismissed the Underlying Case.

In this case, Plaintiffs have simply sued every individual who had any involvement in the Underlying Case: Judge Curtis; Clerk Campbell; Morales; Morales' attorneys, G. Murrell Smith and Frederick N. Hanna, of the law firm Smith Robinson Holler DuBose and Morgan, LLC ("Smith Robinson"); Smith Robinson; and Jennifer Lisandrelli, a nonlawyer employee of Smith Robinson. To put it simply, Plaintiffs brought this action to harass the individuals they had contact with in the Underlying Case. In separate orders, the Court granted all other defendants' motions to dismiss this action.

To combat this abusive conduct, Clerk Campbell requested the Court to sanction Plaintiffs in his Motion to Dismiss. Clerk Campbell also joined in a joint motion for sanctions filed by all defendants. Pursuant to Rule 11, SCRCP, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §§ 15-36-10, *et seq.* ("FCPSA"), Clerk Campbell asks the Court to

impose nonmonetary sanctions against Plaintiffs to prevent future frivolous filings. After careful review, this Court finds that such remedies are within the inherent authority of the Court and are appropriate under these circumstances.

The FCPSA allows for imposition of sanctions for the initiation and prosecution of civil claims without merit where the court finds, by a preponderance of the evidence, that a reasonable attorney would believe:

> (a) that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;
>
> (b) his procurement, initiation, continuation, or defense of the civil suit was intended merely to harass or injure the other party; or
>
> (c) the case or defense was frivolous as not reasonably founded in fact or was interposed merely for delay, or was merely brought for a purpose other than securing proper discovery, joinder of proposed parties, or adjudication of the claim or defense upon which the proceedings are based.

S.C. Code Ann. § 15-36-10(C)(1). In determining whether an attorney or pro se litigant has violated the FCPSA, section 15-36-10(E) sets forth the following factors the court should consider:

> (1) the number of parties;
>
> (2) the complexity of the claims and defenses;
>
> (3) the length of time available to the attorney, party, or pro se litigant to investigate and conduct discovery for alleged violations of the provisions of subsection (A)(4);
>
> (4) information disclosed or undisclosed to the attorney, party, or pro se litigant through discovery and adequate investigation;
>
> (5) previous violations of the provisions of this section;
>
> (6) the response, if any, of the attorney, party, or pro se litigant to the allegation that he violated the provisions of this section; and
>
> (7) other factors the court considers just, equitable, or appropriate under the circumstances.

Similarly, Rule 11, SCRCP allows the court to impose sanctions in similar circumstances. *See Father v. S.C. Dep't of Soc. Servs.*, 353 S.C. 254, 262, 578 S.E.2d 11, 15 (2003) (stating the standard for sanctions is the same under Rule 11 and the FCPSA). Rule 11 requires every pleading, motion, or other paper to be signed by at least one attorney of record who is admitted to practice law in South Carolina or the unrepresented party. Rule 11(a), SCRCP. "The . . . signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay." *Id.* If a pleading, motion, or other paper is signed in violation of Rule 11:

> [T]he court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney's fee.

Id.

The decision of whether to award sanctions under Rule 11 or the FCPSA is treated as one in equity. *Pee Dee Health Care, P.A. v. Est. of Thompson*, 418 S.C. 557, 563, 795 S.E.2d 40, 43 (Ct. App. 2016). Under both Rule 11 and the FCPSA, the court has wide discretion when ordering sanctions. *See* Rule 11(a), SCRCP (empowering the court to impose "an appropriate sanction"); S.C. Code Ann. § 15-36-10(G) (stating sanctions may include reasonable costs and attorneys' fees; a reasonable fine to the court; or "a directive of a nonmonetary nature, including injunctive relief, designed to deter a future frivolous action or an action in bad faith). Additionally, both laws allow the court to award sanctions regardless of whether the case has been tried to verdict. *See* Rule 11(a), SCRCP; *Holmes v. East Cooper Community Hospital, Inc.*, 408 S.C. 138, 153, 758 S.E.2d 483, 491 (2014).

This Court acknowledges that Plaintiffs are acting *pro se*, as self-represented litigants; however, lack of familiarity of knowledge with legal proceedings is not an acceptable excuse to commit this sort of abuse, and the court will hold a *pro se*, self-represented litigant or party to the same standard as an attorney. *Hill v. Dotts*, 345 S.C. 304, 310, 547 S.E.2d 894, 897 (Ct. App. 2001). The applicable laws specifically provide that *pro se* litigants are subject to sanctions. S.C. Code Ann. § 15-36-10(C)(1); Rule 11(a), SCRCP.

South Carolina courts have acted on the FCPSA and Rule 11 and awarded sanctions against *pro se* litigants when the case was frivolous in nature; the *pro se* litigant could not substantiate claims with facts; and the *pro se* litigant engaged in tactics to delay proceedings, including appeals of interlocutory matters. *Holmes v. Haynsworth, Sinkler & Boyd, P.A.* 408 S.C. 620, 760 S.E.2d 399 (2014) (holding sanctions are proper against *pro se* appellant for frivolous and dilatory litigation tactics, and that Rule 11 sanctions were also appropriate given the conduct at issue).

This Court finds that Plaintiffs have violated both Rule 11 and the FCPSA. The lawsuits under case numbers 2020-CP-43-01819 and 2022-CP-43-01552 are examples of Plaintiffs' ongoing abuse of South Carolina's legal system. In addition to this Court's findings that Plaintiffs have violated the FCPSA and Rule 11, this Court notes the case of *Zavodnik v. Harper*, 17 N.E.3d 259, wherein Plaintiff Gersh Zavodnik has been deemed a "prolific, abusive litigant" who "filed numerous motions and other filings that are defective, repetitive, and lacking merit." This case, having been cited above is incorporated into this ruling by reference and is attached hereto. This Court notes the Indiana case because it reveals as evidence of the abusive nature of Plaintiffs' filings and conduct in Indiana, which is similar to the conduct of these same Plaintiffs in South Carolina.

Additionally, the Court notes that Plaintiffs have been on notice that their conduct could subject them to sanctions since the onset of their filings in this Court. On May 12, 2021, the Court issued an Order in the Underlying Case denying Plaintiffs' motion for an extension of time. *Zavodnik v. Morales*, C/A 2020-CP-43-01819, May 12, 2021 Order. In that Order, the Court explicitly stated: "All future filings with the court must comply with Rules 8 and 11, SCRCP. **Any filing that runs afoul of these rules may give rise to sanctions, pursuant to Rule 11, SCRCP.**" Order at 3 (emphasis added).

Despite this explicit warning, Plaintiffs' abusive conduct continues today. The Court finds that Defendants' requested relief of a sanction designed to deter future frivolous filings is appropriate. Both Rule 11 and the FCPSA are intended to deter future litigation abuse. Unfortunately, Plaintiffs' conduct before this Court—and their repeated threats to sue the Judges presiding over their cases—demonstrates that Plaintiffs will continue to bring frivolous litigation. The Court does not impose this sanction without substantial reflection. However, a less severe sanction would not adequately deter Plaintiffs from filing more frivolous lawsuits in the future. Accordingly, the Court imposes the following sanctions against Plaintiffs.

IT IS THEREFORE ORDERED that based on the pleadings and arguments of counsel, the Court finds by a preponderance of the evidence that Plaintiffs' motions and filing are frivolous and unduly burdensome. For all of the foregoing reasons, this Court finds that sanctions are appropriate pursuant to both Rule 11 and the FCPSA. The Court hereby grants Defendant's request for sanctions, and imposes a prefiling injunction directing the Sumter County Clerk of Court to reject any filings from Plaintiffs unless they are signed by an attorney licensed in South Carolina certifying that the filing complies with Rule 11, and, further, where Plaintiffs request a hearing, even with representation by counsel as indicated and required above, Plaintiffs shall and must

appear in the South Carolina courts in person.

IT IS SO ORDERED.

[*Electronic Signature to Follow*]

Honorable George McFaddin, Jr.

Sumter Common Pleas

Case Caption: Gersh Zavodnik , plaintiff, et al VS Kristi F Curtis , defendant, et al

Case Number: 2022CP4301552

Type: Order/Dismissal

So Ordered

S/George M. McFaddin, Jr., #2759