

and the Underlying Case violates Rule 11 and S.C. Code Ann. §§ 15-36-10, *et seq.* Therefore, the Court grants Defendants' motion and sanctions Plaintiffs in the manner described below. Based upon these findings, the Court further does not permit or require the Plaintiffs to make a more definite and certain statement of the allegations.

STATEMENT OF FACTS

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 Zavodnik'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 Zavodnik'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 [Indiana Trial Rule] 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 Zavodnik "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 Zavodnik 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,¹ Plaintiffs sued Richard Anthony Morales, a California resident, in this Court. In their 328-paragraph Complaint, Plaintiffs alleged Mr. Morales made disparaging comments about artwork Plaintiff Gersh Zavodnik was attempting to sell on Facebook. Plaintiffs alleged causes of action against Mr. Morales for defamation, defamation *per se* through libel, violations of S.C. Code Ann. §§ 16-7-150 and 16-3-1700, tortious interference with prospective economic advantage, wrongful interference, harassment, cyberstalking, interstate stalking, intentional infliction of emotional distress, and violations of South Carolina anti-bullying laws and policies. Plaintiffs filed the instant suit against Judge Curtis and the Sumter County Clerk of Court after Judge Curtis ruled on a motion filed by the Plaintiffs. After counsel for Morales appeared and filed a responsive pleading on his behalf in the Underlying Case, Plaintiffs filed an amended summons and complaint adding Morales, his counsel, his counsel's law firm, and a legal assistant of the law firm as Defendants in this case.

¹ Judge Curtis filed a joint motion for sanctions with the other Defendants in the instant case, *Zavodnik v. Curtis, et al.*, C/A NO. 2022-CP-43-01552. However, in their motion, Defendants explained that Plaintiffs' sanctionable conduct also occurred in the Underlying Case. Furthermore, this court heard argument on motions related to the Underlying Case together with Judge Curtis' and the other Defendants' motions to dismiss during the February 21 hearing. Accordingly, it is proper for the Court to consider Plaintiffs' conduct in both cases in ruling on Defendants' motion.

CONCLUSIONS OF LAW

1. Defendant Curtis, a Judicial Officer in the performance of her duties has absolute immunity from suit. *Mireles v. Waco*, 502 U.S. 9, 12, 112 S.Ct. 286, 116 L.Ed.2d 9 (1991); *McEachern v. Black*, 329 S.C. 642, 647, 496 S.E.2d 659, 661 (Ct. App. 1998). Indeed, it has long been the rule that “ ‘judges of courts of superior or general jurisdiction are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction, and are alleged to have been done maliciously or corruptly.’ ” *Stump v. Sparkman*, 435 U.S. 349, 355–56, 98 S.Ct. 1099, 1104, 55 L.Ed.2d 331 (1978) (quoting *Bradley v. Fisher*, 80 U.S. (13 Wall.) 335, 20 L.Ed. 646 (1872)). Moreover, “[a] judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather he will be subject to liability only when he has acted in the ‘clear absence of all jurisdiction.’ ” *Stump*, 435 U.S. at 356–57, 98 S.Ct. at 1105. The immunity afforded to judges for their judicial acts is absolute, even if those acts are erroneous or in excess of their jurisdiction. *Id.*, 435 U.S. at 359, 98 S.Ct. at 1106.

2. Further, Defendant Curtis is an improper party to this matter and must be dismissed pursuant to the provisions of the South Carolina Tort Claims Act, specifically S.C. Code Ann. § 15-78-70(c) and (d). Furthermore, Defendant Curtis, a sitting Circuit Court Judge would be entitled to absolute judicial immunity under the provisions of the South Carolina Tort Claims Act, S.C. Code Ann. §§ 15-78-10 *et seq.*, because at the time in question she was and still is a sitting Circuit Court Judge under the auspices of the South Carolina Judicial Branch of Government, and the acts complained of were within her authority in exercising judicial acts with full jurisdiction over the subject matter and parties within her official duties.

3. Plaintiffs’ One hundred and forty-nine page Amended Complaint, consisting of three hundred and nine paragraphs along with other attached documents, does not comply with the

liberal requirements of Rule 8(a) of the South Carolina Rules of Civil Procedure. A plaintiff need only provide “a short and plain statement of the grounds including facts and statutes upon which the Court’s jurisdiction depends.” Rule 8(a), SCRCP. Further, the rule requires a pleading set forth a short and plain statement of the facts showing that the pleader is entitled to relief. *Id.* This Amended Complaint is so vague or incomprehensible that it is impossible to formulate a response for the following reasons:

A. Allegations do not fit the claims. The initial paragraphs of the Amended Complaint refer to the Underlying suit the Plaintiff’s brought in Civil Action 2020-CP-43-01819. The same defendant, Anthony Morales, has now been named as a defendant in this action along with any public official and attorney and paralegal who had any role in that action. This is the same pattern of abusive litigation that the Supreme Court of Indiana found the Plaintiff Gersh Zavodnik committed in *Zavodnik v. Harper*, 17 N.E.3d 259 (Ind. 2014).

B. Claims do not correspond to Defendants. The paragraphs make allegations, but fail to state which Defendant the allegations are directed to. The present amended complaint lists seven defendants, and it is practically impossible to confront this confused and unfocused complaint and attempt to decipher which defendant the Plaintiffs are referring to. In a similar matter, the Ninth Circuit in *McHenry v. Renne*, 84 F.3d 1172 (9th Cir. 1996), affirmed the district court’s decision granting the City of San Francisco’s motion for a more definite statement under Rule 12(e) of the Federal Rules of Civil Procedure in a civil rights case in which it was impossible to tell from the Complaint “which defendants were allegedly liable for which wrongs.” *Id.* at 1175. Ultimately, the court concluded, “[s]omething labeled a complaint but written more as a press release, prolix in evidentiary detail, yet without simplicity, conciseness and clarity as to whom plaintiffs are suing for what wrongs, fails to perform the essential functions of a complaint.” *Id.* at 1180. As such,

4. With respect to the question of sanctions, the Indiana Supreme Court and the United States District Court, Southern Division Indiana, Indianapolis Division have both found that Gersh Zavodnik and his mother Tatiana Zavodnik are prolific abusive litigants, whose vexatious litigation practices have denied good faith legitimate cases and litigants valuable judicial and administrative resources. *See, Zavodnik v. Harper*, 17 N.E. 3d 259 (Ind. 2014) and *Zavodnik v. Felix*, 2018 WL 11274384 (S.D. Ind. Mar. 26, 2018). Of particular concern is the statement in the plaintiffs' motion, which was filed along with the present amended complaint:

3. We will also bring a law suit on any judge who violates our said rights, and/or commits unlawful deprivations regardless who that judge happen to be, including this judge, because we believe that the judge in this case is biased and prejudiced against us, and he has a personal interest in this case to shield his peer(s) Curtis and her court and other court officials and to block an investigation into the misconduct committed by them, and as such we believe that this judge has already prejudged this case and its outcome, and simply decided to do us in no matter what.

This type of rhetoric and these threats make a mockery of the judicial system and are abusive. The Zavodniks, having been sanctioned and barred from attempting the same type of behavior in their home state, are now attempting to use the South Carolina Judicial System for similar malicious behavior. Therefore, this Court finds that the Amended Complaint is frivolous and/or malicious, and by the statements made, an award of sanctions is warranted pursuant to the South Carolina Frivolous Civil Proceedings Act, S.C. Code Ann. Sections 15-36-10, *et seq.*, and/or Rule 11, SCRCF.

5. 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, 547S.E.2d 894, 897 (Ct. App. 2001). The applicable law specifically provides that *pro se* litigants are subject to the Frivolous Civil

Proceedings Act, and “sanctions may be awarded regardless of whether or not the case has been tried to verdict so long as the trial court finds by a preponderance of the evidence that the party should be sanctioned,” *Holmes v. East Cooper Community Hospital, Inc.*, 408 S.C. 138, 758 S.E.2d 483 (2012). Plaintiffs are also subject to Rule 11. Rule 11(a), SCRPC (providing 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").

6. Pursuant to the South Carolina Frivolous Civil Proceedings Act, S.C. Code Ann. Sections 15-36-10, *et seq.*, and Rule 11, SCRPC, a *pro se* litigant, participating in a civil action may be sanctioned for filing a frivolous pleading, motion, or document, if: a reasonable attorney in the same circumstances would believe that 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; a reasonable attorney presented with the same circumstances would believe that the procurement, initiation, continuance, or defense of a civil cause was intended merely to harass or injure the other party... this is frivolous, interposed for merely delay, or merely brought for any purpose other than securing property discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based ... making frivolous arguments a reasonable attorney would believe were not reasonably supported by the facts. S.C. Code Ann § 15-36-10 (C)(1) (a)-(c). The Court has wide discretion when ordering sanctions, to include: (1) reasonable costs and attorney’s fees; (2) a reasonable fine to the court; or (3) a directive of a nonmonetary nature, including injunctive relief, designed to deter a future frivolous action or an action brought in bad faith. S.C. Code Ann. § 15-36-10 (G). This Court has similar discretion and authority under Rule 11. *See* Rule 11(a), SCRPC (providing that the court,

upon motion or upon its own initiative, may impose an appropriate sanction on a person who signs and files a pleading in violation of Rule 11).

South Carolina courts have acted on this statute and Rule 11 and awarded sanctions against *pro se* litigant when the case was frivolous in nature; the *pro se* litigant could not substantiate claims with facts; and *pro se* litigants engage 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). Plaintiffs were advised by previous Order of this Court that "[a]ll future filings with the court must comply with Rules 8 and 11, SCRCF," and that "[a]ny filing that runs afoul of these rules may give rise to sanctions, pursuant to Rule 11, SCRCF." See, Order Denying Plaintiff's Motion for Extension of Time to Effect Service of Process Under Rule 3(a), SCRCF, 2020-CP-43-1819 dated May 12, 2021.

This Court finds that Plaintiffs have violated both Rule 11 and the Frivolous Civil Proceedings Act. 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 South Carolina Frivolous Proceedings Act 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.

CONCLUSION

IT IS ORDERED that this action is dismissed with Prejudice as it relates to Defendant Kristi F. Curtis.

IT IS FURTHER ORDERED that based on the pleadings and arguments of counsel, the Court finds that Defendant Curtis has made the requisite showing 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, SCRCP and the Frivolous Civil Proceedings Act. The Court hereby grants Defendant's request for sanctions, and imposes a pre-filing 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, SCRCP, 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.

March __, 2023
Sumter, SC

George M. McFaddin, Jr.
Presiding Circuit Court Judge



Sumter Common Pleas

Case Caption: Gersh Zavodnik , plaintiff, et al VS Kristi F Curtis , defendant, et al
Case Number: 2022CP4301552
Type: Order/Other

So Ordered

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