

## **Opinions for the week of February 24 – February 28, 2020**

**Anthony Martin v. Mark Wentz** No. 19-2820

Submitted February 24, 2020 — Decided February 24, 2020

Case Type: Prisoner

Northern District of Indiana, Fort Wayne Division. No. 1:13-cv-00244-SLC — **Susan Collins**, *Magistrate Judge*.

Before DIANE P. WOOD, *Chief Judge*; WILLIAM J. BAUER, *Circuit Judge*; MICHAEL B. BRENNAN, *Circuit Judge*.

### **ORDER**

Responding to reports of an armed robbery, Indiana state police officers gave chase to a vehicle driven by Anthony Martin, pursued him on foot, and eventually apprehended him. He brought this civil rights suit, alleging that those officers used excessive force when they arrested and interrogated him. The district court denied the officers' motion for summary judgment, concluding that disputed facts precluded an award of qualified immunity. Because this case turns entirely on disputed facts, we lack jurisdiction over the appeal and must dismiss it.

**USA v. Marlon P. Bush** No. 19-2541

Submitted February 24, 2020 — Decided February 24, 2020

Case Type: Criminal Southern District of Illinois. No. 3:18-CR-30077-SMY-1 — **Staci M. Yandle**, *Judge*.

Before DIANE P. WOOD, *Chief Judge*; WILLIAM J. BAUER, *Circuit Judge*; MICHAEL B. BRENNAN, *Circuit Judge*.

### **ORDER**

While serving as the director of the public library in East Saint Louis, Illinois, Marlon Bush stole over \$48,000 of the library's funds by making personal purchases on its credit cards and paying himself more than his approved salary. He pleaded guilty to one count of wire fraud, 18 U.S.C. § 1343, and one count of embezzlement, 18 U.S.C. § 666(a)(1)(A). The district court assessed Bush a within-guideline sentence of 12 months' imprisonment and two years of supervised release; the first six months of the latter would be on home detention. The court also ordered that Bush pay restitution of \$48,102.86. Bush appealed, but his appointed counsel asserts that the appeal is frivolous and moves to withdraw. See *Anders v. California*, 386 U.S. 738 (1967). Bush did not respond to counsel's brief, see CIR. R. 51(b), which explains the nature of the case and addresses the potential issues that an appeal of this kind might be expected to involve. Because counsel's brief appears thorough, we limit our review to the subjects that he discusses. See *United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014).... We GRANT the motion to withdraw and DISMISS the appeal.

**USA v. J. L. Houston** No. 19-2309

Submitted February 24, 2020 — Decided February 24, 2020

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 89 CR 908-20 — **Rebecca R. Pallmeyer**, *Chief Judge*.

Before DIANE P. WOOD, *Chief Judge*; WILLIAM J. BAUER, *Circuit Judge*; MICHAEL B. BRENNAN, *Circuit Judge*.

### **ORDER**

After the district court rejected his motion for a sentence reduction under 18 U.S.C. § 3582(c)(2), J.L. Houston filed two motions asking the court to reconsider its decision. The district court denied both, prompting this appeal. Although Houston's motions purportedly sought reconsideration of an earlier ruling, they in fact were successive § 3582(c)(2) motions. Because new motions based on the same amendment are prohibited, the district court was correct to deny them. So we affirm the judgment.

**Steven Stuckey v. Housing Authority of Cook Coun** No. 19-2136

Submitted February 24, 2020 — Decided February 24, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 16-cv-03443 — **Andrea R. Wood**, *Judge*.

Before DIANE P. WOOD, *Chief Judge*; WILLIAM J. BAUER, *Circuit Judge*; MICHAEL B. BRENNAN, *Circuit Judge*.

## ORDER

After his eviction from public housing, Steven Stuckey sued local and federal housing authorities for disability discrimination and denial of due process. The district court gave Stuckey two opportunities to fix some pleading defects before dismissing his second amended complaint with prejudice for failure to state a claim. We affirm the judgment, with one modification.

## **INTL FCStone Financial Inc. v. Louise Farmer** Nos. 19-2111 & 19-2123

Argued December 13, 2019 — Decided February 24, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. Nos. 19-cv-01438 and 19-cv-01629 — **Joan H. Lefkow**, *Judge*.

Before MANION, KANNE, and BRENNAN, *Circuit Judges*.

BRENNAN, *Circuit Judge*. Investors in commodities futures appeal an order to arbitrate their trading disputes. But they stumble out of the blocks: our review is limited to “final decisions of the district courts.” 28 U.S.C. § 1291. Here, the district court ordered arbitration and designated an arbitration forum, then stayed the case to address related issues, including the arbitration venue. Put more simply, the district court made non-final decisions. Although statutory exceptions exist to the rule of finality, none apply here. Because this case remained open to resolve certain issues, we dismiss defendants’ appeal for lack of jurisdiction.

## **Physicians Healthsource, Inc. v. A-S Medication Solutions, LLC** No. 19-1452

Argued January 16, 2020 — Decided February 24, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 12-cv-05105 — **Matthew F. Kennelly**, *Judge*.

Before FLAUM, MANION, and KANNE, *Circuit Judges*.

FLAUM, *Circuit Judge*. In February 2010, A-S Medication Solutions, LLC (“AMS”) sent a fax advertisement to 11,422 different numbers from a recently acquired customer list. Nearly two years later, Physicians Healthsource, Inc. (“PHI”) filed a putative class action suit asserting that those faxes violated the Telephone Consumer Protection Act of 1991 (“TCPA”), 47 U.S.C. § 227. The district court subsequently: certified the proposed class; granted PHI’s motion for summary judgment on liability against AMS and its CEO, Walter Hoff; entered a nearly \$6 million judgement; and approved a distribution plan for that judgment. On appeal, AMS challenges all those decisions but the certification of the class. We affirm.

## **Viamedia, Incorporation v. Comcast Corporation** No. 18-2852

Argued February 7, 2019 — Decided February 24, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 1:16-cv-05486 — **Amy J. St. Eve**, *Judge*.

Before BAUER, HAMILTON, and BRENNAN, *Circuit Judges*.

BRENNAN, *Circuit Judge*, concurs in part and dissents in part.

HAMILTON, *Circuit Judge*. Plaintiff Viamedia, Inc. has sued defendant Comcast Corporation for violating Section 2 of the Sherman Act, 15 U.S.C. § 2. Viamedia accuses Comcast of using its monopoly power in one service market to exclude competition and gain monopoly power in another service market. The district court dismissed Viamedia’s case, in part on the pleadings and in part on summary judgment. We

reverse. Viamedia's allegations and evidence are sufficient to state and support claims that should be presented to a jury. Because the district court dismissed part of the case on the pleadings and the rest on summary judgment, we must treat as true Viamedia's factual allegations and give it the benefit of factual disputes and favorable inferences from the evidence....We remand this case for any further necessary discovery and for trial.

**Sharif Pharmacy Inc. & Helen J. Scale, et al., v. Prime Therapeutics LLC** Nos. 18-2725 & 18-3003

Submitted October 7, 2019 — Decided February 24, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 1:17-cv-03464 — **Jorge L. Alonso**, *Judge*.

Northern District of Illinois, Eastern Division. No. 1:17-cv-06837 — **Robert W. Gettleman**, *Judge*.

Before KANNE, HAMILTON, and BARRETT, *Circuit Judges*.

HAMILTON, *Circuit Judge*. The issue in these consolidated appeals is whether plaintiffs in two similar cases have stated viable claims under Sections 1 or 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2. They have not. We affirm the judgments of both district courts dismissing the cases on the plaintiffs' pleadings, though in one case with slight modifications....The judgment of the district court in the J&S Pharmacy case dismissing the Sherman Act claims of J&S customers Scale, Thomas, and Brown with prejudice is **AFFIRMED** as to plaintiffs' damage claims; dismissal of those plaintiffs' claims for injunctive relief is **AFFIRMED AS MODIFIED** to dismiss those claims as moot; and dismissal of those plaintiffs' state law claims without prejudice is also **AFFIRMED**. In the Sharif Pharmacy case, the dismissal of the Sherman Act claims with prejudice and dismissal of the state-law claims without prejudice are **AFFIRMED**.

**Leo Stoller v. Executive Committee of the Uni** No. 20-1055

Submitted February 18, 2020 — Decided February 25, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 07-C-1435 — **Rebecca Pallmeyer**, *Chief Judge*.

Before KENNETH F. RIPPLE, *Circuit Judge*; ILANA DIAMOND ROVNER, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*.

**ORDER**

In 2007, the Executive Committee of the United States District Court for the Northern District of Illinois imposed a filing restriction against appellant Leo Stoller, prohibiting him from instituting any new civil action in the Northern District of Illinois without leave from the Committee. In December 2019, Stoller requested that the Committee vacate the order so he could take over litigation on behalf of his brother. The Committee denied Stoller's request, and he appealed. On appeal, Stoller requests summary disposition of the appeal in his favor. He relies on a 2012 order from this court, in which we lifted a 2009 filing bar against Stoller. See *In re Stoller*, No. 08-4240 (7th Cir. Oct. 29, 2012). He asserts that the district court's filing bar is unlawful because our 2012 order is controlling. He further argues that the bar is unconstitutional because (1) he did not have the opportunity to defend himself, (2) the order is perpetual and does not provide a process for rescinding the order, and (3) a sanction should be tailored to the abuse....Accordingly, **IT IS ORDERED** that the judgment of the Executive Committee is summarily **AFFIRMED**. Any pending motions are **DENIED** as moot.

**Gregory Koger v. Cook County, Illinois** No. 19-2892

Argued February 20, 2020 — Decided February 25, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 14 C 6361 — **Maria Valdez**, *Magistrate Judge*.

Before BAUER, EASTERBROOK, and MANION, *Circuit Judges*.

EASTERBROOK, *Circuit Judge*. While he was confined in the Cook County Jail, Gregory Koger accumulated books in his cell. Eventually guards removed more than 30, relying on a policy that prisoners may not have more than three books or magazines at a time (excluding religious and legal materials,

which do not count against the limit). A magistrate judge, presiding by consent under 28 U.S.C. §636(c), dismissed the resulting suit without reaching the merits. In a prior decision we agreed with that ruling in part but remanded with instructions to resolve two claims on the merits: whether the policy is valid and whether Koger is entitled to compensation for the books he lost as a result of its enforcement. *Lyons v. Dart*, 901 F.3d 828 (7th Cir. 2018)....The judgment is affirmed to the extent that it finds the Jail's three-book policy consistent with the First Amendment but otherwise is vacated, and the case is remanded for further proceedings consistent with this opinion.

**Amit Patel v. CBRE, Inc.** No. 19-2594

Submitted February 24, 2020 — Decided February 25, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 16-cv-10497 — **Charles R. Norgle, Sr.**, *Judge*.

Before DIANE P. WOOD, *Chief Judge*; WILLIAM J. BAUER, *Circuit Judge*; MICHAEL B. BRENNAN, *Circuit Judge*.

**ORDER**

Amit Patel, the sole shareholder of a dissolved Illinois corporation, settled a breach-of-contract lawsuit against his company's former landlord, 55 East Monroe Investors IV, LLC (operated by Glenstar, a management company, which we need not refer to separately again). Shortly after the settlement, Patel, as the assignee of his company's rights, sued CBRE, Inc., the landlord's leasing agent, alleging that it tortiously interfered with his lease by inducing the landlord to breach it. The district court entered summary judgment in favor of CBRE. Because Patel's claim against CBRE was released by the settlement agreement, we affirm the judgment.

**Adam Gibson v. Sue Myerscough** No. 19-2342

Submitted August 6, 2019 — Decided August 8, 2019

Published February 25, 2020

Case Type: Original proceeding

Central District of Illinois. No. 1:17-cv-01201-SEM-EIL — **Sue E. Myerscough**, *Judge*.

Before MANION, HAMILTON, and BRENNAN, *Circuit Judges*.

HAMILTON, *Circuit Judge*. Defendants in a civil rights case in the Central District of Illinois moved to disqualify the assigned judge under 28 U.S.C. § 455(a). When the judge denied their motion, defendants filed a petition for a writ of mandamus in this court seeking an order requiring the judge to disqualify herself on two grounds. We denied the petition by order of August 8, 2019, saying that an opinion would follow. As we explain below, neither ground for recusal required the judge to disqualify herself from this case....Defendant - petitioners have not shown that they are entitled to the extraordinary remedy of a writ of mandamus, and the record does not show a reasonable basis to question Judge Myerscough's impartiality. The petition is therefore DENIED.

**Simeon Lewis v. BNSF Railway Company** No. 9-1428

Submitted February 24, 2020 — Decided February 25, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 14-CV-07171 — **John J. Tharp, Jr.**, *Judge*.

Before DIANE P. WOOD, *Chief Judge*; WILLIAM J. BAUER, *Circuit Judge*; MICHAEL B. BRENNAN, *Circuit Judge*.

**ORDER**

Simeon Washa Amen Ra, who describes himself as an "indigent inhabitant traveler" and non-citizen "national" of the United States, believes that his employer, BNSF Railway Company, violated Title VII of the Civil Rights Act of 1964 by discriminating against him based on his national origin, retaliating against him, and harassing him. The district court entered summary judgment for BNSF, concluding that Amen

Ra did not timely file his claims with the Equal Employment Opportunity Commission (EEOC). We agree with the district court's reasoning and affirm the judgment.

**Sonya Newson v. Aurora Health Care, Incorporated** No. 19-2722

Submitted February 24, 2020 — Decided February 26, 2020

Case Type: Civil

Eastern District of Wisconsin. No. 17-CV-883 — **David E. Jones**, *Magistrate Judge*.

Before DIANE P. WOOD, *Chief Judge*; WILLIAM J. BAUER, *Circuit Judge*; MICHAEL B. BRENNAN, *Circuit Judge*.

**ORDER**

Aurora Health Care fired Sonya Newson after she disclosed patients' Protected Health Information in connection with a discrimination complaint she filed against Aurora with a state agency. She then sued Aurora in federal court, asserting that her termination was retaliatory and discriminatory and that she faced other discriminatory treatment—including a failure to promote her and a hostile work environment—while employed by Aurora. The district court entered summary judgment for Aurora, and because Newson lacks evidence that undermines the neutral reason for her termination or otherwise supports her claims, we affirm that decision.

**Demetrius Blankenship v. American Phoenix** No. 19-2255

Submitted February 24, 2020 — Decided February 26, 2020

Case Type: Civil

Western District of Wisconsin. No. 17-cv-847-jdp — **James D. Peterson**, *Chief Judge*.

Before DIANE P. WOOD, *Chief Judge*; WILLIAM J. BAUER, *Circuit Judge*; MICHAEL B. BRENNAN, *Circuit Judge*.

**ORDER**

Demetrius Blankenship, an African American man, sued his former employer for race discrimination and retaliation under Title VII of the Civil Rights Act of 1964. During discovery, the district court denied his motion to compel discovery and, a few months later, entered summary judgment for the employer, concluding that Blankenship had not introduced enough evidence to support his allegations. It then denied Blankenship's post-judgment motions to vacate the decision and compel discovery. Blankenship appeals the entry of summary judgment and the denial of his motions to compel. We agree with the district court's reasoning and affirm.

**Meriyu v. William Barr** No. 19-1892

Argued December 17, 2019 — Decided February 26, 2020

Case Type: Agency

Board of Immigration Appeals. No. A079-319-281

Before RIPPLE, SYKES, and ST. EVE, *Circuit Judges*.

RIPPLE, *Circuit Judge*. Meriyu, an Indonesian citizen who is of Chinese descent and of the Buddhist faith, petitions for review of the denial of her motion to reopen removal proceedings that concluded more than fourteen years ago. In 2002, Ms. Meriyu sought relief based on fear of persecution on account of race and religion but was ordered removed after she failed to appear at a hearing before an immigration judge. Fourteen years later, she moved to reopen the proceedings. The Board of Immigration Appeals ("the Board") upheld an IJ's ruling that the motion was untimely and that she could not show a material change in country conditions since the hearing. She subsequently filed two motions to reopen that were denied for similar reasons. In this petition for review, Ms. Meriyu challenges the denial of her most recent motion to reopen. The Board did not abuse its discretion in denying her motion, and we therefore deny her petition for review.

**Steven Lisle, Jr. v. Kevin Keller** No. 19-1339

Submitted February 24, 2020 — Decided February 26, 2020

Case Type: Prisoner

Central District of Illinois. No. 17-1530-CSB — **Colin S. Bruce**, *Judge*.

Before DIANE P. WOOD, *Chief Judge*; WILLIAM J. BAUER, *Circuit Judge*; MICHAEL B. BRENNAN, *Circuit Judge*.

**ORDER**

Steven Lisle, an inmate, sued prison officials at the Correctional Center in Pontiac, Illinois, for violations of his rights under the First, Fourth, Eighth, and Fourteenth Amendments. Lisle asserts that officers sprayed him with mace and then shut off the water in his cell, and later, other officers strip-searched and sexually assaulted him. The court granted summary judgment for defendants, concluding that Lisle failed to exhaust administrative remedies. Because the issue of exhaustion is contested, as defendants concede, we vacate and remand with respect to that issue. But the district court did not err in denying Lisle's other motions, so we affirm the remainder of the judgment.

**Steven Stathas, Jr. v. Judy Smith** No. 19-1259

Submitted February 24, 2020 — Decided February 26, 2020

Case Type: Prisoner

Eastern District of Wisconsin. No. 18-CV-1456 — **William E. Duffin**, *Magistrate Judge*.

Before DIANE P. WOOD, *Chief Judge*; WILLIAM J. BAUER, *Circuit Judge*; MICHAEL B. BRENNAN, *Circuit Judge*.

**ORDER**

Steven Stathas, a Wisconsin inmate, said he could not afford the photocopying costs for the brief he needed to file to appeal the revocation of his supervised release. Fearing that the state appellate court would dismiss his case for noncompliance with procedural rules, he sued prison and state officials under 42 U.S.C. § 1983 for denying him access to the courts. A magistrate judge screened the complaint under 28 U.S.C. § 1915A(a) and dismissed it for failure to state a claim. We affirm.

**USA v. James Ledonne** No. 18-2729

Argued January 29, 2020 — Decided February 26, 2020

Case Type: Criminal

Northern District of Indiana, South Bend Division. No. 3:14-cr-00055-JD-MGG-1 — **Jon E. DeGuilio**, *Judge*.

Before WILLIAM J. BAUER, *Circuit Judge*; FRANK H. EASTERBROOK, *Circuit Judge*; MICHAEL B. BRENNAN, *Circuit Judge*.

**ORDER**

After James LeDonne pleaded guilty to two counts of mail and wire fraud, the sentencing court included in his Guidelines calculation an enhancement for obstruction of justice based on false statements he made to a probation officer about his criminal history. On appeal, LeDonne argues that the court erred in finding that his statements could support the enhancement. We see no such error and therefore affirm the sentence.

**Lexington Insurance Company v. Chicago Flameproof & Wood Spec** No. 19-1062

Argued February 13, 2020 — Decided February 27, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 17-cv-03513 — **Elaine E. Bucklo**, *Judge*.

Before FLAUM, MANION, and BARRETT, *Circuit Judges*.

FLAUM, *Circuit Judge*. The district court held that Lexington Insurance Company ("Lexington") owed no duty to defend Chicago Flameproof & Wood Specialties Corporation ("Chicago Flameproof") in three

underlying lawsuits. We affirm. The underlying complaints do not allege an “occurrence”—or accident—as is required to trigger Lexington’s duty to defend under the insurance policy at issue.

**Gary McFadden v. Travis Dorvit** No. 19-2755

Argued February 13, 2020 — Decided February 28, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 17-cv-01097 — **Thomas M. Durkin**, *Judge*.

Before FLAUM, MANION, and BARRETT, *Circuit Judges*.

FLAUM, *Circuit Judge*. The named plaintiff in a failed state derivative action seeks to reverse the district court’s approval of a settlement in a related federal suit. The court below adequately considered the propriety of the settlement’s terms and we now affirm.

**Israel Ruiz v. Catalino Bautista** No. 19-1425

Submitted February 24, 2020 — Decided February 28, 2020

Case Type: Prisoner

Central District of Illinois. No. 18-cv-4155 — **Colin S. Bruce**, *Judge*.

Before DIANE P. WOOD, *Chief Judge*; WILLIAM J. BAUER, *Circuit Judge*; MICHAEL B. BRENNAN, *Circuit Judge*.

**ORDER**

Shortly after filing a prisoner’s rights complaint, Israel Ruiz applied for leave to proceed in forma pauperis (IFP). The district court concluded that Ruiz intentionally lied about his finances on the application and dismissed the suit with prejudice under 28 U.S.C. § 1915(e)(2)(A). Because the court’s decision rested on flawed factual findings, we reverse this part of the judgment and remand for further proceedings.