

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 16-11295
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

October 30, 2017

Lyle W. Cayce
Clerk

D.C. Docket No. 3:16-CV-1836

LOU TYLER,

Plaintiff - Appellant

v.

OCWEN LOAN SERVICING; DEUTSCHE BANK,

Defendants - Appellees

Appeal from the United States District Court for the
Northern District of Texas

Before SMITH, WIENER, and HAYNES, Circuit Judges.

J U D G M E N T

This cause was considered on the record on appeal and the briefs on file.

It is ordered and adjudged that the appeal is dismissed as frivolous.

IT IS FURTHER ORDERED that plaintiff-appellant pay to defendants-appellees the costs on appeal to be taxed by the Clerk of this Court.

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 16-11295
Summary Calendar

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Fifth Circuit

FILED
October 30, 2017

Lyle W. Cayce
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LOU TYLER,

Plaintiff–Appellant,

versus

OCWEN LOAN SERVICING, L.L.C.; DEUTSCHE BANK,

Defendants–Appellees.

Appeal from the United States District Court
for the Northern District of Texas
No. 3:16-CV-1836

Before SMITH, WIENER, and HAYNES, Circuit Judges.

PER CURIAM:*

Lou Tyler moves for leave to proceed *in forma pauperis* (“IFP”) in her

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

No. 16-11295

appeal of the dismissal of her civil action against Ocwen Loan Servicing, L.L.C., and Deutsche Bank. Tyler's motion is a challenge to the district court's determination that her appeal is not taken in good faith. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997).

Before this court, Tyler reasserts her claims that foreclosure on her property would be improper because the defendants are barred from enforcing their interest by the statute of limitations and that they have engaged in a variety of wrongdoings, including harassment, unfair and misleading representations, deceptive practices, illegal attempts to foreclose, non-validation of debt, and deliberate mishandling of her mortgage and financial documents. By merely reasserting her claims, Tyler fails to address the district court's certification that her appeal was not taken in good faith and the district court's reasons for its certification decision. *See Baugh*, 117 F.3d at 202. In particular, she does not factually or legally challenge the district court's determination that Tyler's civil action is barred by res judicata.

Pro se briefs are afforded liberal construction. *See Yohey v. Collins*, 985 F.2d 222, 225 (5th Cir. 1993). Nevertheless, when an appellant fails to identify any error by the district court, it is the same as though the appellant had not appealed that issue. *See Brinkmann v. Dallas Cty. Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987). Because Tyler has failed to challenge the certification that her appeal is not taken in good faith and the reasons for such a certification, she has abandoned the issues in the appeal. *Id.*

The appeal lacks arguable merit and is frivolous. *See Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). Accordingly, Tyler's motion to proceed IFP is DENIED, and the appeal is DISMISSED as frivolous. *See Baugh*, 117 F.3d at 202 n.24; 5TH CIR. R. 42.2.

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 16-11295

LOU TYLER,

Plaintiff-Appellant,

versus

OCWEN LOAN SERVICING; DEUTSCHE BANK,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas

ON PETITION FOR REHEARING

Before SMITH, WIENER, and HAYNES, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing is DENIED.

ENTERED FOR THE COURT:

 /s/ Jerry E. Smith
UNITED STATES CIRCUIT JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

LOU TYLER,)	
)	
Plaintiff,)	
)	CIVIL ACTION NO.
VS.)	
)	3:16-CV-1836-G (BF)
OCWEN LOAN SERVICING, ET AL.,)	
)	
Defendants.)	

JUDGMENT

The court has entered its order accepting the findings, conclusions and recommendation of the United States Magistrate Judge.

It is **ORDERED, ADJUDGED** and **DECREED** that this case is **DISMISSED** with prejudice.

August 10, 2016.



A. JOE FISH
Senior United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

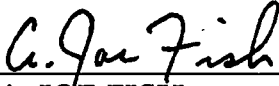
LOU TYLER,)	
)	
Plaintiff,)	
)	CIVIL ACTION NO.
VS.)	
)	3:16-CV-1836-G (BF)
OCWEN LOAN SERVICING, ET AL.,)	
)	
Defendants.)	

**ORDER ACCEPTING FINDINGS, CONCLUSIONS AND
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

The court has under consideration the findings, conclusions and recommendation of the United States Magistrate Judge Paul D. Stickney. The district court reviewed the proposed findings, conclusions and recommendation for plain error. Finding none, the court accepts the findings, conclusions and recommendation of the United States Magistrate Judge.

It is therefore **ORDERED** that the plaintiff's case be **DISMISSED** with prejudice because her causes of action are barred by res judicata.

August 10, 2016.



 A. JOE FISH
 Senior United States District Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

LOU TYLER,)
 Plaintiff,)
))
v.) **No. 3:16-CV-1836-G-BF**
))
OCWEN LOAN SERVICING and)
DEUTSCHE BANK,)
 Defendants.)

**FINDINGS, CONCLUSIONS AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

The District Court referred this removed civil action, arising out of foreclosure proceedings initiated against certain real property located in Dallas County, Texas, to the United States Magistrate Judge pursuant to the provisions of 28 U.S.C. 636(b) and an order of the Court. *See* Special Order 3. The findings, conclusions, and recommendation of the undersigned follows.

RES JUDICATA

In June 2016, Plaintiff Lou Tyler (“Ms. Tyler”), proceeding *pro se*, filed a petition in state court against Defendants Ocwen Loan Servicing and Deutsche Bank (collectively, “Defendants”) alleging harassment, false or misleading representations, unfair practices, illegal attempt to foreclose, deceptive practices, violations of the Real Estate Settlement Procedures Act, and violations of recommendations made by courts, agencies, and legal institutions. Ex. B-1 [D.E. 1-1 at 9]. These allegations are nearly identical to the allegations she made against Defendants in a previous suit. *See Tyler v. Ocwen Loan Servicing, LLC, et al.*, 3:15-cv-01117-N-BK (N.D. Tex. 2015).

In this case, Ms. Tyler’s claims against Defendants are barred by the doctrine of res judicata. Under res judicata, a prior judgment bars a subsequent action where: (1) the parties are identical in both suits; (2) the prior judgment was rendered by a court of competent jurisdiction; (3) there was

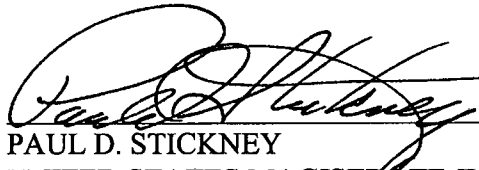
a final judgment on the merits; and (4) the same cause of action was involved in both cases. *Nilsen v. City of Moss Point*, 701 F.2d 556, 559 (5th Cir. 1983). Further, the doctrine of res judicata “bars all claims that were or *could have been* advanced in support of the cause of action on the occasion of its former adjudication.” *Id.* at 560 (citing *Allen v. McCurry*, 449 U.S. 90, 94 (1980)) (emphasis original).

The parties in the case at hand are identical to the parties in the previous suit. *See Nilsen*, 701 F.2d at 559. In the previous case, Ms. Tyler was the plaintiff, and the defendants were Ocwen Loan Servicing and Deutsche Bank. *See Tyler*, 3:15-cv-01117-N-BK. The Court was of competent jurisdiction when it rendered its previous judgment on Ms. Tyler’s allegations. *See id.* Further, the final judgment entered in the previous case was based on its merits. *See id.* Finally, all the causes of action brought by Ms. Tyler are the same as, or could have been brought, in the previous action. *See id.* Because all of the necessary elements are present, the principle of res judicata applies to this suit. *See Nilsen*, 701 F.2d at 559-561.

RECOMMENDATION

The undersigned recommends that this case be dismissed with prejudice, because the allegations brought by Plaintiff Lou Tyler are barred by res judicata.

SO RECOMMENDED this 20th day of July, 2016.


PAUL D. STICKNEY
UNITED STATES MAGISTRATE JUDGE

**Additional material
from this filing is
available in the
Clerk's Office.**