

APPEAL NO. 22-12038 and 22-12411

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

WILLIAM M. WINDSOR,
Plaintiff – Appellant,

versus

JAMES N. HATTEN, et al,
Defendants

**Appeal from the United States District Court
for the Northern District of Georgia, Atlanta Division
D.C. Docket No. 1:11-CV-01923-TWT
Judge Thomas Woodrow Thrash**

**APPELLANT’S PETITION FOR REHEARING
AND EN BANC DETERMINATION**

APPENDIX 141

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No. 22-12038-JJ & No. 22-12411-JJ

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

WILLIAM M. WINDSOR,
Plaintiff-Appellant,

v.

B. GRUTBY, ET AL.,
Defendant-Appellee.

On appeal from the United States District Court
for the Northern District of Georgia
No. 1:11-CV-01923-TWT

**BRIEF OF APPELLEE
B. GRUTBY, ET AL.**

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William M. Windsor v. B. Grutby, et al.
No. 22-12038-JJ & No. 22-12411-JJ

**CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT**

In addition to those listed in Appellant's brief, the following people and entities have an interest in the outcome of this appeal:

Sommerfeld, Lawrence R., Assistant United States Attorney

STATEMENT REGARDING ORAL ARGUMENT

Oral argument is unnecessary in this case. The issues and positions of the parties, as presented in the record and briefs, are sufficient to enable the Court to reach a just determination.

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*Citations primarily relied upon. 11th Cir. R. 28-1(e).

No. 22-12038-JJ & No. 22-12411-JJ

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

WILLIAM M. WINDSOR,

Plaintiff-Appellant,

v.

B. GRUTBY, ET AL.,

Defendant-Appellee.

STATEMENT OF JURISDICTION

- (A) The district court had subject matter jurisdiction over the underlying case based on 28 U.S.C. § 1331.
- (B) This Court previously determined that it lacked jurisdiction over Windsor’s challenge to the district court’s July 15, 2011, February 12, 2018, and February 27, 2018 orders, but permitted the appeal to proceed as to the district court’s May 26, 2022, and June 30, 2022 orders. (11th Cir. Doc. 27-1). For the reasons discussed below, the Court lacks jurisdiction over Windsor’s remaining claims.
- (C) The notices of appeal were timely filed on June 6, 2022, within 60 days of the entry of the district court’s orders on May 26, 2022 and June 30, 2022, respectively. Fed. R. App. P. 4(b)(1)(A).
- (D) This appeal is from two orders denying Windsor’s requests to file new actions.

STATEMENT OF THE ISSUES

1. This Court already dismissed Windsor's appeal to the extent it challenged the district court's 2011 injunction and 2018 modification of that injunction. Can Windsor ignore this Court's order and relitigate his untimely claims?
2. This Court's precedent holds that a post-judgment order enforcing a permanent injunction is not a final order unless it holds a party in contempt of court or imposes a sanction for violating the injunction. The district court's May and June 2022 orders denied Windsor the right to file certain new actions but did not hold Windsor in contempt or impose sanctions. Does this Court have jurisdiction over Windsor's appeal of the 2022 orders?
3. Windsor's brief exclusively asserts errors in the original 2011 injunction and neither identifies any specific errors in the 2022 orders nor presents and arguments as to those orders. Has he abandoned any claim as to the 2022 orders?

STATEMENT OF THE CASE

A. Course of Proceedings and Statement of Facts

Appellant William Windsor has a history of filing vexatious and frivolous lawsuits directed at federal judges, officers of the court, and federal employees, particularly those of the Eleventh Circuit and the Northern District of Georgia. A search of Windsor's name on this Court's website reveals dozens of cases.

1. 2011 Injunction, 2018 Modification, and Appeals

Windsor's actions led the district court to set certain pre-filing conditions for the filing of suits by Windsor. On July 15, 2011, in response to Windsor's demonstrated history of abusing the judicial process, the district court enjoined him from filing any new lawsuit without first obtaining the permission of a federal judge in the district in which the suit was to be filed, giving a copy of the district court's injunction to the reviewing judge, and paying a bond if he sought to name a federal judge or other court personnel as a defendant. (Doc. 74). Though Windsor initially appealed the 2011 injunction, he abandoned his appeal. (Doc. 239-2).

On February 1, 2018, Windsor sought modification of the injunction pursuant to Fed. R. Civ. P. 60(b)(5) to release him from some of these pre-filing conditions – including review of state court

lawsuits, providing a copy of the district court's injunction to the reviewing judge, and paying a bond. (Doc. 225). The district court granted in part and denied in part his motion on February 22, 2018, clarifying that the injunction did not apply to appeals in actions already in existence on July 15, 2011, criminal complaints, or petitions for protective orders that Windsor feels necessary to protect his personal safety. (Doc. 226).

This Court affirmed the district court's order, holding that "Windsor has not identified any factual or legal changes since the district court issued the 2011 injunction, much less changes that render its continued enforcement 'detrimental to the public interest' or otherwise inequitable." (Doc. 239-3-4). The Court held that Windsor continued to advance arguments against the 2011 injunction itself—arguments that he should have pursued at that time but abandoned. (*Id.*). The Court held that the district court did not abuse its discretion in denying Windsor's requested modifications. (*Id.*).

2. 2022 Orders

In the years since, Windsor has repeatedly filed motions seeking leave to file new actions, many of which were granted. (Docs. 241-243, 250-254). On May 26, 2022, the district court denied a new request to file a state court guardianship action by Windsor. (Docs. 263, 264). Then, on June 30, 2022, the district court denied several new requests

by Windsor to file a state court action in Texas (either on his own behalf or on behalf of a woman named Wanda Dutschmann) and a federal civil rights complaint against Texas state court clerks. (Docs. 269, 270, 271, 278).

Windsor timely appealed these orders. (Docs. 265, 278).

3. Jurisdictional Question and Order

Prior to issuing a briefing schedule, this Court issued jurisdictional questions regarding Windsor's appeals and determined that it "lack[s] jurisdiction to entertain a challenge to the July 15, 2011, February 12, 2018, and February 27, 2018" district court orders. (11th Cir. Doc. 27-1). This Court made no ruling as to whether it had jurisdiction over Windsor's remaining claims but allowed the appeal to proceed as to the district court's May 26, 2022, and June 30, 2022 orders. (*Id.*).

B. Standard of Review

Whether this Court has subject-matter jurisdiction to hear a matter is a question of law that it reviews de novo. *Molinos Valle Del Cibao, C. por A. v. Lama*, 633 F.3d 1330, 1340 (11th Cir. 2011).

SUMMARY OF THE ARGUMENT

This Court already correctly determined that it lacks jurisdiction to hear Windsor's untimely challenges to the district court's 2011 injunction and 2018 modification of that injunction, and dismissed Windsor's appeal insofar as it challenges those orders. Nevertheless, Windsor's opening brief does little more than dispute this Court's prior jurisdictional determination and raise claims that became untimely more than a decade ago.

To the extent Windsor challenges the district court's 2022 orders, this Court also lacks jurisdiction over those claims. Moreover, the cursory references to those orders in Windsor's brief fail to identify any legal error in the 2022 orders, rather than repeating stale claims about the 2011 and 2018 orders that this Court already dismissed.

Windsor's appeal should be dismissed for lack of jurisdiction. Alternatively, the district court's orders should be affirmed.

ARGUMENT AND CITATIONS OF AUTHORITY

1. This Court correctly held that it lacks jurisdiction over Windsor's challenges to district court's 2011 and 2018 orders.

After raising questions as to its jurisdiction, this Court correctly determined that “we lack jurisdiction to entertain a challenge to the July 15, 2011, February 12, 2018, and February 27, 2018 orders.” (11th Cir. Doc. 27-1). As this Court recognized, Windsor's notices of appeal in June and July 2022 are untimely as to both orders, and thus this Court lacks jurisdiction to review those orders. (*Id.*). Windsor did not move to reconsider the dismissal of these claims, which were untimely and barred by the law of the case.

Rule 4 of the Federal Rules of Appellate Procedure provides that “[i]n a civil case, . . . the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after entry of the judgment or order appealed from.” Fed. R. App. P. 4(a)(1)(A). Further, “the timely filing of a notice of appeal in a civil case is a jurisdictional requirement.” *Bowles v. Russell*, 551 U.S. 205, 214 (2007).

Moreover, this Court already heard and denied Windsor's appeal of the 2018 modification order and recognized that he abandoned his appeal of the original 2011 injunction. (Doc. 239). Thus, any appeal as to those orders is both jurisdictionally foreclosed and the Court's prior opinion is also the law of the case. See *Heathcoat v. Potts*, 905

F.2d 367, 370 (11th Cir. 1990) (“Under the ‘law of the case’ doctrine, the findings of fact and conclusions of law by an appellate court are generally binding in all subsequent proceedings in the same case in the trial court or on a later appeal.”).

As this Court already held, it lacks jurisdiction to review either the 2011 or 2018 orders. Windsor’s appeal as to these orders was properly dismissed.

2. This Court lacks jurisdiction over Windsor’s appeal of the 2022 orders.

While this Court already held that it lacked jurisdiction over Windsor’s appeal from the 2011 and 2018 orders, it did not opine as to its jurisdiction over an appeal of the May and June 2022 orders. (11th Cir. Doc. 27-1). Since neither 2022 order constitutes a final order for purposes of § 1291, this Court lacks jurisdiction and Windsor’s appeal should be dismissed.

Though postjudgment decisions necessarily follow a final judgment, such orders “are themselves subject to the test of finality.” *Thomas v. Blue Cross & Blue Shield Ass’n*, 594 F.3d 823, 829 (11th Cir. 2010) (quoting *Delaney’s Inc. v. Ill. Union Ins. Co.*, 894 F.2d 1300, 1304 (11th Cir. 1990)). And in the context of a post-judgment order enforcing a permanent injunction, this Court has held that such an order is not final under § 1291 unless it holds a party in contempt of

court or imposes a sanction for violating the injunction. *Mamma Mia's Trattoria, Inc. v. Original Brooklyn Water Bagel Co., Inc.*, 768 F.3d 1320, 1324-25 (11th Cir. 2014). Because the May and June 2022 orders do not involve contempt or sanctions, they are not final orders appealable under § 1291.

The other possible source of jurisdiction is § 1291(a)(1), which permits interlocutory review of orders “granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions.” 28 U.S.C. § 1292(a)(1). But this Court has explained that “ § 1292(a)(1) must be construed narrowly so as to limit the availability of interlocutory appeals in cases involving injunctions.” *Birmingham Fire Fighters Ass'n 117 v. Jefferson Cnty.*, 280 F.3d 1289, 1293 (11th Cir. 2002); *see Switz. Cheese Ass'n v. E. Horne's Mkt., Inc.*, 385 U.S. 23, 24 (1966) (“[W]e approach this statute somewhat gingerly lest a floodgate be opened that brings into the exception many pretrial orders.”); *United States v. City of Hialeah*, 140 F.3d 968, 973 (11th Cir. 1998) (“Congress did not intend for the injunction exception to open the floodgates to piecemeal appeals.”); *Sierra Club v. Marsh*, 907 F.2d 210, 214 (1st Cir. 1990) (allowing “an interlocutory appeal at every succeeding step after an injunction had been granted” would be “opening Pandora's jar”).

This piecemeal approach, the opening of “Pandora’s jar,” is precisely what Windsor attempts in these two consolidated appeals, having already failed in Case No. 18-11067 to appeal the 2018 modification (and having abandoned his various appeals of the original 2011 injunction, Case Nos. 11-13244, 11-13391, 11-13363, etc.). Windsor’s piecemeal effort is forbidden by this Court’s precedent. This Court “may review an order that modifies a previously entered injunction, but (and the caveat is critical here) an order clarifying or interpreting an existing injunction is not appealable.” *Mamma Mia's Trattoria*, 768 F.3d at 1326.

Here, the May 26, 2022 order denied Plaintiff’s motion to file guardianship actions and appeals in Texas state court, acts that were barred by the injunction. (Docs. 226, 263, 264). Similarly, the June 30, 2022 order denied Plaintiff’s motion to file actions in Texas state court and a federal complaint against Texas state court clerks, acts that were likewise barred by the injunction. (Docs. 269, 270, 271, 278). Each of these orders constitutes an interpretation, not a modification, of the existing injunction. *See Marsh*, 907 F.2d at 213 (“Because the district court did not change the nature or scope of the judicially

imposed prohibition, the court did not ‘modify’ the injunction within the meaning of section 1292(a)(1).”¹

And this Court’s precedent forbids “analyz[ing] the injunction and the order in detail. To plunge into the details would collapse the jurisdictional inquiry into a decision on the merits, thwarting the purpose of § 1292(a)(1) ... [and] letting piecemeal appeals, cloaked in the guise of jurisdictional inquiries, come in through the back door.” *Birmingham Fire Fighters*, 280 F.3d at 1293. As a result, “our inquiry is circumscribed. We ask not whether the district court's reading of the consent decree is in error, but whether it is a gross misinterpretation of the decree's original command.” *Id.*

Because the district court's interpretation in the May 26, 2022 and June 30, 2022 orders was “certainly not so implausible as to amount to a blatant misinterpretation,” it was not an appealable modification. *Id.* at 1294. And “[w]ithout jurisdiction to entertain this matter,” the Court can “pass no judgment on whether the district court acted within its broad equitable authority in issuing so sweeping an injunction.” *Mamma Mia's Trattoria*, 768 F.3d 1320 at 1330 (11th Cir. 2014); *see also Birmingham Fire Fighters*, 280 F.3d at 1294 (“The district

¹ By contrast, the 2018 modification of the injunction was appealable. This Court heard and denied Windsor’s appeal of that order. (Doc. 239).

court's interpretation might be reversed if the issue were before us on appeal from a final judgment, but it is not. What we hold, and all that we hold, is that the district court's interpretation of the key language does not so blatantly misinterpret the decree as to 'modify' it and thereby create interlocutory appellate jurisdiction under § 1292(a)(1).”).

This Court lacks jurisdiction to review the 2022 orders and Windsor's appeal should be dismissed.

3. Windsor abandoned any challenge to the 2022 orders by failing to identify any legal errors specific to those orders.

Refusing to accept this Court's dismissal of his appeal as to the 2011 and 2018 orders, Windsor's brief is dedicated to conclusory assertions that this Court has jurisdiction over those orders and repetitions of his untimely challenges to those orders. (*See, e.g.*, Pl. Br. at xxv (“This Court is in error regarding jurisdiction over all orders providing injunctions.”); *id.* at 16-17 (“The DISTRICT COURT's decisions to impose a filing injunction or restriction is Clear Error.”)).

Other than summarily implying that the 2022 orders are void because “[a]ll orders in Case 01923 must be declared void”—another untimely attack on the original 2011 injunction—Windsor identifies no errors in the 2022 orders themselves (Pl. Br. at 18). Instead, he argues only that the original 2011 injunction is void because it

improperly restricted his right to file state court actions. (*Id.* at 15-17). This is the argument that Windsor raised in his 2019 appeal, where this Court recognized that “Windsor advances arguments against the 2011 injunction itself—arguments that he should have pursued in his earlier, abandoned appeal.” (Doc. 239 at 4). The same holds true here.²

Windsor thus abandoned any appeal as to the 2022 orders by failing to “advanc[e] any arguments or cit[e] any authorities to establish that [the district court's ruling] w[as] error.” *Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 681 (11th Cir. 2014); *see also id.* (“We have long held that an appellant abandons a claim when he either makes only passing references to it or raises it in a perfunctory manner without supporting arguments and authority.”).

² Windsor also complains about the denials of in forma pauperis (“IFP”) status by the district court and this Court. (Pl. Br. at 22). Neither the May nor June 2022 district court orders contained a denial of IFP status and instead only denied leave to file state court actions. Windsor’s complaints about his IFP status is beyond the scope of this appeal.

CONCLUSION

Defendants respectfully request that this Court dismiss Windsor's appeal for lack of jurisdiction or affirm the district court's orders.

Respectfully submitted,

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/s/Gabriel A. Mendel

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**CERTIFICATE OF COMPLIANCE WITH TYPE-
VOLUME LIMIT, TYPEFACE REQUIREMENTS, AND
TYPE-STYLE REQUIREMENTS**

This document complies with the type-volume limit of Fed. R. App. P. 32(a)(7)(B)(i) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), this document contains 2,421 words.

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July 10, 2023

/s/Gabriel A. Mendel
GABRIEL A. MENDEL
Assistant United States Attorney

CERTIFICATE OF SERVICE

This day the Appellee's Response Brief was filed and served using the Court's CM/ECF system, which automatically sends notification to parties and counsel of record. The listed pro se litigants, and attorneys who are exempt from electronic filing, were served this day by mail at the listed address as set forth in Fed. R. App. P. 25:

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July 10, 2023

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