

**UNPUBLISHED**

**UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

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**No. 20-1015**

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LISA MARIE KERR,

Plaintiff - Appellant,

v.

SANDRA BAILEY; TERESA EAGLE; DAVID PITTENGER; JOHN ANDREW HESS; ANDREW PATRICK BALLARD, individual in personal capacity; JEROME GILBERT, an individual in personal and official capacity; MARSHALL UNIVERSITY BOARD OF GOVERNORS, an entity in personal and official capacity,

Defendants - Appellees.

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Appeal from the United States District Court for the Southern District of West Virginia, at Huntington. Robert C. Chambers, District Judge. (3:19-cv-00443)

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Submitted: October 27, 2020

Decided: November 6, 2020

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Before MOTZ and QUATTLEBAUM, Circuit Judges, and SHEDD, Senior Circuit Judge.

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Affirmed by unpublished per curiam opinion.

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Lisa Marie Kerr, KERR LAW PLLC, Charleston, West Virginia, for Appellant. Ancil G. Ramey, Anders W. Lindberg, Andrew P. Smith, STEPTOE & JOHNSON PLLC, Huntington, West Virginia, for Appellees.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Lisa Marie Kerr appeals the district court's order granting Defendants' Fed. R. Civ. P. 12(b)(6) motion and dismissing her civil action filed in June 2019 and its order denying her motion under Fed. R. Civ. P. 60(d)(1), (3) for reconsideration and to reopen the judgment in her 2014 civil action for fraud on the court or, alternatively, an evidentiary hearing. We have reviewed the record and the parties' briefs and find no reversible error by the district court. Kerr's 2019 civil action was untimely filed,\* and we reject as without merit her arguments that her claims are timely under West Virginia's continuing tort doctrine and that the action was an action for fraud on the court not time-barred by any statute or rule. The district court also did not reversibly err in denying Kerr's Fed. R. Civ. P. 60(d) motion, which did not establish actionable fraud on the court. *See Fox ex rel. Fox v. Elk Run Coal Co.*, 739 F.3d 131, 135-37 (4th Cir. 2014). We therefore affirm the district court's orders on these bases. *Kerr v. Bailey*, No. 3:19-cv-00443 (S.D.W. Va. Dec. 4 & 16, 2019).

We deny Kerr's motion to disqualify law firm Steptoe & Johnson, PLLC from representing Gene Kuhn and Judith Southard and dispense with oral argument because the

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\* *See Owens v. Baltimore City State's Att'ys Office*, 767 F.3d 379, 388-89 (4th Cir. 2014); *Stanley v. Trs. of Cal. State Univ.*, 433 F.3d 1129, 1134 (9th Cir. 2006); *McCausland v. Mason Cnty. Bd. of Educ.*, 649 F.2d 278, 279 (4th Cir. 1981); W. Va. Code § 55-2-12; *State ex rel. Gallagher Bassett Servs., Inc. v. Webster*, 829 S.E.2d 290, 298, 300 (W. Va. 2019); *Herbert J. Thomas Mem'l Hosp. Ass'n v. Nutter*, 795 S.E.2d 530, 545-45 & nn.32-33 (W. Va. 2016); *Prieser v. MacQueen*, 352 S.E.2d 22, 29 (W. Va. 1985).

facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

*AFFIRMED*