

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

FRANKLIN DAVID HARRIS JR., et al.,

Plaintiffs,

v.

DANIEL COOLEY, et. al,

Defendants.

Case No. 1:17-cv-540

Barrett, J.
Bowman, M.J.

MEMORANDUM OPINION AND ORDER

Plaintiffs, who are experienced pro se litigants, filed suit against their next-door neighbors under the Fair Housing Act. When the neighbors failed to appear, Plaintiffs obtained an entry of default. However, when Plaintiffs later sought to collect monetary damages by moving for the entry of default judgment, their motion was denied.

In a Report and Recommendation filed on April 11, 2019, the undersigned recommended denying Plaintiffs' motion for default judgment on multiple grounds. The undersigned explained that upon closer review, it was apparent the Plaintiffs' complaint, as amended, failed to state any claim as a matter of law and that this Court lacked jurisdiction over any of the alleged claims. On that basis, the undersigned recommended dismissal of the case. In the alternative, the undersigned recommended that the case be dismissed under the doctrine of abstention, due to the existence of related proceedings in state court. (Doc. 33).

The presiding district judge agreed with the primary analysis of the Report and Recommendation and adopted its conclusion that the complaint should be dismissed for

failure to state any claim and for lack of federal jurisdiction. (Doc. 36). Plaintiffs have filed an appeal in the Sixth Circuit Court of Appeals, which remains pending.

On December 5, 2019, Plaintiffs filed a motion in this Court seeking “correction or modification of the record” on appeal under Rule of Appellate Procedure 10(e)(2)(B). (Doc. 43). The referenced Rule allows the trial court to supplement the record on appeal only if a “material” item is “omitted from or misstated in the record by error or accident.” *Id.* The rule has no application here, where there was no mistake or omission by this Court. Plaintiffs’ motion seeks the addition of a copy of a related state court complaint. However, the referenced state court pleading was not included in the record considered by this Court.

Federal Rule of Appellate Procedure Rule 10(e) does not allow the addition of records that were not before this Court and is not intended “to enable the losing party to add new material to the record in order to collaterally attack the trial court’s judgment.” *United States v. Elizalde-Adame*, 262 F.3d 637, 641 (7th Cir. 2001). Therefore, the undersigned will deny this frivolous motion. This case was dismissed based upon the failure of the complaint to state any federal claim as a matter of law and a lack of federal jurisdiction. The state court complaint is irrelevant to that determination.

Accordingly, **IT IS ORDERED** that Plaintiffs’ motion to expand the record to include a state court pleading (Doc. 43) is **DENIED**.

s/ Stephanie K. Bowman
Stephanie K. Bowman
United States Magistrate Judge