

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

CAROL MURPHY, )  
 )  
 Plaintiff )  
 )  
 v. ) 1:12-cv-00101-JAW  
 )  
 CORIZON, et als., )  
 )  
 Defendants. )

**ORDER**

As a result of earlier orders in this case, the only matters still remaining are Carol Murphy's claims against certain medical providers relating to her dental treatment and back pain issues while incarcerated as a prisoner at the Maine Correctional Center in Windham, Maine. Murphy is no longer incarcerated. The defendants have filed a motion for summary judgment (see ECF No. 103) on the issues remaining in the case. Prior to this Murphy filed motions for my disqualification as well as Chief Judge Woodcock's recusal, both of which were denied. (ECF No. 100.) Carol Murphy has filed an interlocutory appeal of my decision not to disqualify myself and Chief Judge Woodcock's similar Order (See ECF Nos. 96 & 97, entered September 3 & 4, 2013) and her appeal, presumably of those orders, which she filed on September 16, 2013<sup>1</sup>, remains pending. (ECF No. 104.)

Normally, filing a notice of appeal divests this court of jurisdiction. Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 58 (1982). There may be some "shared jurisdiction" over certain peripheral or ancillary aspects of the litigation, such as the motion to seal medical records filed

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<sup>1</sup> Technically, Murphy's appeal was filed before the final order on recusal at ECF No. 100 was entered, but I had already denied her motion for recusal and Chief Judge Woodcock had likewise entered a denial. Murphy then mistakenly filed her notice of appeal in the First Circuit Court of Appeals, which forwarded the notice to this court and directed that it be entered on our docket as of September 16, 2013. (See ECF No. 104-1.) Given the content of her notice of appeal it appears Murphy is appealing our refusal to disqualify ourselves from this case. I did not give the defendants leave to file their motion for summary judgment until September 20, 2013, after Murphy filed the interlocutory appeal with the First Circuit, but before that notice had been docketed in this court on September 23, 2013. Although the notice of appeal mentions that a motion for leave to file a late summary judgment motion had been filed, there was no order on the motion at the time the notice of appeal was filed.

in this case, but the principle of shared jurisdiction must avoid issues that may overlap appellate and trial court activities. In re Nineteen Appeals, 982 F.2d 603, 609, n.10 (1st Cir. 1992). A district court can also proceed if it finds that the notice of appeal is itself blatantly defective. See United States v. Brooks, 145 F.3d 446, 456 (1st Cir. 1998) (“[A] district court can proceed, notwithstanding the filing of an appeal, if the notice of appeal is defective in some substantial and easily discernible way (if, for example, it is based on an unappealable order) or if it otherwise constitutes a transparently frivolous attempt to impede the progress of the case.”) While there is abundant authority that a refusal to recuse is not an appealable final order, a denial of a recusal request has been reviewed prior to final judgment when review was based on mandamus. Taylor v. O’Grady, 888 F.2d 1189, 1201 (7th Cir. 1989) (failure of the trial judge to recuse herself under 28 U.S.C. § 455 (b)(1) on the ground that her impartiality might reasonably be questioned could be reviewed only by mandamus, not on appeal, although appellate court reviewed the moving party’s argument and found no basis for recusal in the course of its review of an appealable interlocutory order for injunctive relief).

While Murphy’s appeal appears to me to be a “transparently frivolous attempt to impede the progress of the case,” it may be perceived differently by the appellate court. Since the recusal of myself and/or Chief Judge Woodcock is the issue appealed by Murphy, it would appear unsound for this case to proceed to judgment, either on the pending motion or following a trial, while the interlocutory appeal remains pending in the Court of Appeals. Therefore, all further action on the motion for summary judgment and on this case is stayed pending resolution of the appeal filed by Murphy and ordered docketed in this court by the Court of Appeals.

#### CERTIFICATE

Any objections to this Order shall be filed in accordance with Federal Rule of Civil Procedure

72.

*So Ordered.*

November 14, 2013

/s/ Margaret J. Kravchuk  
U.S. Magistrate Judge

MURPHY v. CORIZON et al

Assigned to: JUDGE JOHN A. WOODCOCK, JR

Referred to: MAGISTRATE JUDGE MARGARET J.

KRAVCHUK

Demand: \$75,000

Case in other court: First Circuit Court of Appeals, 13-02175

Tennessee Eastern, 2:12-cv-00113

Cause: 42:1983 Prisoner Civil Rights

Date Filed: 03/28/2012

Jury Demand: None

Nature of Suit: 550 Prisoner: Civil  
Rights

Jurisdiction: Federal Question

**Plaintiff**

**CAROL MURPHY**

represented by **CAROL MURPHY**  
248 LANE ROAD  
NEW SHARON, ME 04955  
PRO SE

V.

**Defendant**

**CORIZON**

represented by **ROBERT C. HATCH**  
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*ATTORNEY TO BE NOTICED*

**Defendant**

**KEN TOPEL**

represented by **ROBERT C. HATCH**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Defendant**

**PRAVEEN PAVULURU**

represented by **ROBERT C. HATCH**  
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