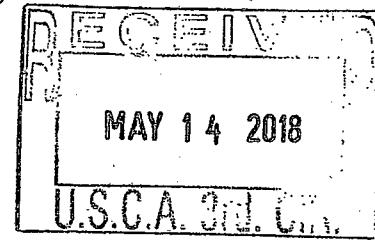


UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 18-1184



MURIEL COLLINS,
Appellant

v.

ALAN B. EPSTEIN;
JENNIFER M. CHALAL;
SPECTOR GADON ROSEN;
KIMBERLY CLARK CORP.;
KIMBERLY CLARK CHESTER PA LLC;
And All Legal Team Involved I My Plaintiff Case

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil Action No. 2-17-cv-05098)
District Judge: Honorable C. Darnell Jones, II

Submitted Pursuant to Third Circuit LAR 34.1(a)
May 1, 2018

Before: VANASKIE, COWEN and NYGAARD, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Eastern District of Pennsylvania and was submitted pursuant to Third Circuit LAR 34.1(a) on May 1, 2018. On consideration whereof, it is now hereby ORDERED and ADJUDGED by this Court that the judgment of the District Court entered January 12, 2018, is hereby affirmed.

Appendix A

All of the above in accordance with the opinion of this Court.

ATTEST:

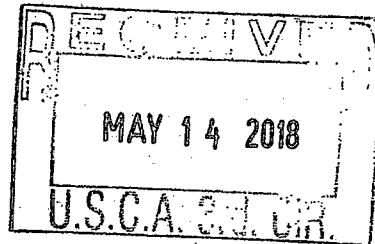
s/ Patricia S. Dodszuweit
Clerk

Dated: May 3, 2018

NOT PRECEDENTIAL

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

No. 18-1184



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Appellant**

v.

**ALAN B. EPSTEIN;
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Before: VANASKIE, COWEN and NYGAARD, Circuit Judges

(Opinion filed: May 3, 2018)

OPINION*

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

Appendix A
(2)

PER CURIAM

Pro se appellant Muriel Collins appeals from the District Court's order dismissing her complaint *sua sponte* for failure to state a claim, see 28 U.S.C. § 1915(e)(2)(B)(ii), and for lack of subject-matter jurisdiction. For the reasons discussed below, we will affirm.

I.

Because we write primarily for the parties, who are already familiar with this case, we include only those facts necessary to reach our conclusion.

In 2012, Collins filed a complaint alleging that the Kimberly-Clark Corporation had subjected her to race and sex discrimination. Attorneys Alan B. Epstein and Jennifer Myers Chalal of Spector Gadon & Rosen PC represented her. In March 2017, the District Court entered summary judgment in favor of Kimberly-Clark. On appeal, we affirmed the District Court's judgment. See Collins v. Kimberly-Clark Pa., LLC, 708 F. App'x 48 (3d Cir. 2017).

Collins then filed a new suit alleging that her attorneys committed legal malpractice. Among other things, Collins alleged that her attorneys failed to submit certain evidence and amend her complaint to include claims against Kimberly-Clark's legal team. Collins also asked the District Court to reconsider her discrimination claims, and to sanction the defendants.

The District Court dismissed the complaint *sua sponte* for failure to state a claim and for lack of subject-matter jurisdiction. This appeal ensued.

II.

We have jurisdiction under 28 U.S.C. § 1291. We review dismissal pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) under the same de novo standard of review as with our review of a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). See generally Allah v. Seiverling, 229 F.3d 220, 223 (3d Cir. 2000). “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)).

We review de novo a District Court's conclusion that it lacks subject-matter jurisdiction. See Metro. Life Ins. Co. v. Price, 501 F.3d 271, 275 (3d Cir. 2007). But we review any underlying factual findings, including those about domicile or citizenship, for clear error. See Johnson v. SmithKline Beecham Corp., 724 F.3d 337, 345 (3d Cir. 2013). “When reviewing for clear error, an appellate court ‘must accept the trial court's findings’ unless it is ‘left with the definite and firm conviction that a mistake has been committed.’” Id. (quoting Inwood Labs., Inc. v. Ives Labs., Inc., 456 U.S. 844, 855, (1982)).

III.

To the extent Collins' complaint attempted to reassert her discrimination claims, the District Court properly dismissed those claims under the doctrine of res judicata, which bars claims that were brought or could have been brought in a previous action. See In re Mullarkey, 536 F.3d 215, 225 (3d Cir. 2008). Res judicata applies where there

is “(1) a final judgment on the merits in a prior suit involving (2) the same parties or their privies and (3) a subsequent suit based on the same cause of action.” Id. (internal quotation marks and citations omitted). Thus, the District Court’s prior entry of summary judgment in favor of Kimberly-Clark bars any attempt by Collins to reassert her discrimination claims or any other claims she could have brought in the prior suit.¹

The remaining claims in Collins’ complaint are legal malpractice claims against her attorneys, which the District Court properly dismissed for lack of subject-matter jurisdiction. Collins has not asserted any basis for federal question jurisdiction, see 28 U.S.C. § 1331, and she failed to establish diversity jurisdiction over her state-law claims. A district court has diversity jurisdiction over state-law claims – such as the malpractice claims Collins has alleged here – if the amount in controversy exceeds \$75,000 and there is complete diversity among the parties. See 28 U.S.C. § 1332(a). Complete diversity means that “no plaintiff can be a citizen of the same state as any of the defendants.” Johnson, 724 F.3d at 346 (quoting Grand Union Supermarkets of the V.I., Inc. v. H.E. Lockhart Mgmt., Inc., 316 F.3d 408, 410 (3d Cir. 2003)). Thus, to establish diversity jurisdiction a plaintiff must allege, in good faith and after reasonable investigation, that each defendant is a citizen of a different state from her. See Lincoln Ben. Life Co. v. AEI Life, LLC, 800 F.3d 99, 106 (3d Cir. 2015).

¹ We decline to consider the new claims Collins attempts to raise in her appellate brief for this appeal. See Freeman v. Pittsburgh Glass Works, LLC, 709 F.3d 240, 249 (3d Cir. 2013).

“Citizenship is synonymous with domicile, and the domicile of an individual is his true, fixed and permanent home and place of habitation.” McCann v. Newman Irrevocable Tr., 458 F.3d 281, 286 (3d Cir. 2006) (internal quotation marks and citation omitted). “A corporation is a citizen both of the state where it is incorporated and of the state where it has its principal place of business.” Lincoln, 800 F.3d at 104.

Based on the little relevant information provided in Collins’s complaint, the District Court found that she and defendants Esptein, Chalal, and Spector Gadon and Rosen PC are all citizens of Pennsylvania. See McCann, 458 F.3d at 286 (“The party asserting diversity jurisdiction bears the burden of proof”). Collins has not shown clear error in the District Court’s factual determination of each party’s citizenship, and, indeed, has not disputed the issue on appeal. See Johnson, 724 F.3d at 345.²

Accordingly, we will affirm the judgment of the District Court.

² The District Court did not err in denying leave to amend and in offering that Collins was free to bring her malpractice claims in state court. See Grayson v. Mayview State Hosp., 293 F.3d 103, 108 (3d Cir. 2002).

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 18-1184

MURIEL COLLINS,
Appellant

v.

ALAN B. EPSTEIN;
JENNIFER M. CHALAL;
SPECTOR GADON ROSEN;
KIMBERLY CLARK CORP.;
KIMBERLY CLARK CHESTER PA LLC

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil Action No. 2-17-cv-05098)
District Judge: Honorable C. Darnell Jones, II

SUR PETITION FOR REHEARING

BEFORE: SMITH, Chief Judge, and MCKEE, AMBRO, CHAGARES, JORDAN,
HARDIMAN, GREENAWAY, Jr., VANASKIE, SHWARTZ, KRAUSE,
RESTREPO, BIBAS, COWEN, and NYGAARD, Circuit Judges

The petition for rehearing filed by appellant, Muriel Collins, in the above captioned matter having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the Court in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service who are not

Appendix A
(3)

disqualified not having voted for rehearing by the Court en banc, the petition for rehearing by the panel and the Court en banc is denied. Judge Cowen's vote and Judge Nygaard's vote are limited to denying rehearing before the original panel.

BY THE COURT:

s/ Robert E. Cowen
Circuit Judge

DATED: May 29, 2018
PDB/cc: Muriel Collins

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

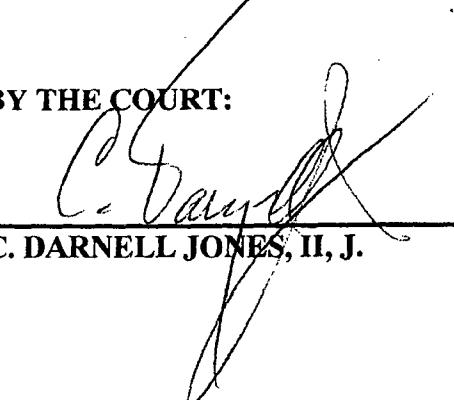
MURIEL COLLINS,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
ALAN B. EPSTEIN, <i>et al.</i> ,	:	NO. 17-5098
Defendants.	:	

ORDER

AND NOW, this //¹⁷ day of January, 2018, upon consideration of Ms. Collins's motion to proceed *in forma pauperis* and her *pro se* Complaint, it is ORDERED that:

1. Leave to proceed *in forma pauperis* is GRANTED.
2. The Complaint is DISMISSED for the reasons stated in the Court's Memorandum. Ms. Collins's employment discrimination claims are DISMISSED with prejudice as barred by *res judicata*. Her state law claims, including her legal malpractice claims, are DISMISSED without prejudice to her right to refile them in state court. Ms. Collins may not file an amended complaint in this matter.
3. Ms. Collins's request for the appointment of counsel is DENIED AS MOOT.
4. The Clerk of Court shall CLOSE this case.

BY THE COURT:


C. DARNELL JONES, II, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MURIEL COLLINS,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
ALAN B. EPSTEIN, <i>et al.</i> ,	:	NO. 17-5098
Defendants.	:	

MEMORANDUM

JONES, J.

JANUARY 11, 2018

Muriel Collins brings this civil action against Alan B. Epstein, Jennifer Myers Chalal, Spector Gadon & Rosen PC, the Kimberly-Clark Corporation, and Kimberly-Clark Chester PA LLC. Ms. Collins raises various claims concerning legal malpractice and employment discrimination. For the reasons set forth below, the Court will dismiss Ms. Collins's Complaint.

I. FACTS AND PROCEDURAL HISTORY

In 2012, Ms. Collins filed a complaint in this Court against Kimberly-Clark. *Collins v. Kimberly-Clark Global Sales, LLC*, No. 12-2173 (E.D. Pa. filed Apr. 23, 2012). In her complaint, Ms. Collins alleged that Kimberly-Clark had violated Title VII of the Civil Rights Act of 1964 by subjecting her to race and sex discrimination. Alan B. Epstein and Jennifer Myers Chalal of Spector Gadon & Rosen PC ultimately appeared to represent Ms. Collins. By Memorandum and Order entered on March 28, 2017, the Court granted the motion for summary judgment filed by Kimberly-Clark. *Collins v. Kimberly-Clark Pa., LLC*, 247 F. Supp. 3d 571 (E.D. Pa. 2017). On September 14, 2017, the United States Court of Appeals for the Third Circuit affirmed this Court's judgment. *Collins v. Kimberly-Clark Pa., LLC*, --- F. App'x ----, 2017 WL 4074535 (3d Cir. Sept. 14, 2017).

Approximately two (2) months later, Ms. Collins filed the instant suit. To form her Complaint, Ms. Collins used a combination of this Court's form complaints for filing a general civil suit and an employment discrimination suit. In her Complaint, she alleges that Defendants Epstein, Chalal, and Spector Gadon & Rosen PC committed legal malpractice as well as violations of the Code of Professional Conduct. (Compl. at 4.) According to Ms. Collins, these defendants committed malpractice by failing to amend her complaint in Civil Action No. 12-2173 to include a claim against Kimberly-Clark's legal team pursuant to Pennsylvania's whistleblower law. (*Id.* at 5.) She also alleges that these defendants failed to submit certain evidence in her case. (*Id.*) Ms. Collins requests that this Court reopen Civil Action No. 12-2173 and reconsider its grant of summary judgment to Kimberly-Clark. (*Id.* at 6.) She also asks for all Defendants to be sanctioned for violating the Code of Professional Conduct. (*Id.*)

II. STANDARD OF REVIEW

The Court will grant Ms. Collins leave to proceed *in forma pauperis* because it appears that she is not capable of paying the fees to commence this civil action. Accordingly, 28 U.S.C. § 1915(e)(2)(B) applies, which requires the Court to dismiss the complaint if it is frivolous, malicious, fails to state a claim, or seeks relief from an immune defendant. A complaint is frivolous if it "lacks an arguable basis either in law or in fact," *Neitzke v. Williams*, 490 U.S. 319, 325 (1989), and is legally baseless if it is "based on an indisputably meritless legal theory." *Deutsch v. United States*, 67 F.3d 1080, 1085 (3d Cir. 1995). "A court that considers whether an action is malicious must, in accordance with the definition of the term 'malicious,' engage in a subjective inquiry into the litigant's motivations at the time of the filing of the lawsuit to determine whether the action is an attempt to vex, injure or harass the defendant." *Id.* at 1086. In that regard, "a district court may dismiss a complaint as malicious if it is plainly abusive of the

judicial process or merely repeats pending or previously litigated claims.” *Brodzki v. CBS Sports*, Civ. A. No. 11-841, 2012 WL 125281, at *1 (D. Del. Jan. 13, 2012).

Whether a complaint fails to state a claim under § 1915(e)(2)(B)(ii) is governed by the same standard applicable to motions to dismiss under Federal Rule of Civil Procedure 12(b)(6), *see Tourscher v. McCullough*, 184 F.3d 236, 240 (3d Cir. 1999), which requires the Court to determine whether the complaint contains “sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quotations omitted). Conclusory statements and naked assertions will not suffice. *Id.* The Court may also consider matters of public record. *Buck v. Hampton Twp. Sch. Dist.*, 452 F.3d 256, 260 (3d Cir. 2006). Additionally, the Court may dismiss claims based on an affirmative defense if the affirmative defense is obvious from the face of the complaint. *See Ray v. Kertes*, 285 F.3d 287, 297 (3d Cir. 2002); *see also McPherson v. United States*, 392 F. App’x 938, 943 (3d Cir. 2010). Moreover, “if the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.” Fed. R. Civ. P. 12(h)(3). As Ms. Collins is proceeding *pro se*, the Court construes her allegations liberally. *Higgs v. Att’y Gen.*, 655 F.3d 333, 339 (3d Cir. 2011).

III. ANALYSIS

A. Employment Discrimination Claims

As noted above, Ms. Collins requests that the Court reopen Civil Action No. 12-2173 and reconsider its grant of summary judgment to Kimberly-Clark. To the extent Ms. Collins’s instant Complaint reasserts her claims of employment discrimination, those claims are barred by the doctrine of *res judicata*.

The doctrine of *res judicata* bars claims that were brought or could have been brought in a previous action. *In re Mullarkey*, 536 F.3d 215, 225 (3d Cir. 2008). Three elements are required for *res judicata* to apply: “(1) a final judgment on the merits in a prior suit involving (2) the same parties or their privies and (3) a subsequent suit based on the same cause of action.” *Marmon Coal Co. v. Dir., Office Workers’ Compensation Programs*, 726 F.3d 387, 394 (3d Cir. 2013) (internal quotation marks omitted). In Civil Action No. 12-2173, Ms. Collins asserts claims of race and sex discrimination and retaliation against Kimberly-Clark. This Court concluded that Ms. Collins had failed to establish *prima facie* cases of discrimination and retaliation. *See generally Collins*, 247 F. Supp. 3d 571. The Third Circuit affirmed. *See generally Collins*, --- F. App’x. ----, 2017 WL 4074535. Thus, any reasserted claims of employment discrimination, or claims that could have been raised in Civil Action No. 12-2173, are barred by *res judicata*.

B. Legal Malpractice Claims

Ms. Collins’s instant Complaint primarily raises legal malpractice claims against Defendants Epstein, Chalal, and Spector Gadon & Rosen PC. Because the Court has dismissed Ms. Collins’s federal claims, the Court will not exercise supplemental jurisdiction over Ms. Collins’s legal malpractice claims. Moreover, there is no basis for the Court to exercise jurisdiction over these claims pursuant to 28 U.S.C. § 1332(a), which grants a district court jurisdiction over a case in which “the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between . . . citizens of different States.” While Ms. Collins seeks \$10 million from each Defendant and thus appears to satisfy the amount in controversy requirement, diversity jurisdiction requires “complete diversity,” which in turn requires that “no plaintiff be a citizen of the same state as any defendant.” *Zambelli Fireworks*

Mfg. Co. v. Wood, 592 F.3d 412, 419 (3d Cir. 2010). Here, Ms. Collins has provided Pennsylvania addresses for herself and for Defendants Epstein, Chalal, and Spector Gadon & Rosen PC. Thus, diversity jurisdiction does not exist, and Ms. Collins's legal malpractice claims will be dismissed without prejudice to her right to refile them in state court.

IV. CONCLUSION

For the foregoing reasons, the Court will dismiss Ms. Collins's Complaint. To the extent Ms. Collins reasserts her claims of employment discrimination that were adjudicated in Civil Action No. 12-2173, those claims will be dismissed with prejudice as barred by *res judicata*. Ms. Collins's state law claims, including her claims of legal malpractice, will be dismissed without prejudice to her right to refile those claims in state court. Ms. Collins will not be given leave to amend because amendment would be futile. *See Grayson v. Mayview State Hosp.*, 293 F.3d 103, 112-13 (3d Cir. 2002). Ms. Collins's request for the appointment of counsel will be denied as moot. An appropriate order follows, which shall be docketed separately.

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