

APPENDICES

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OFFICE OF THE CLERK
UNITED STATES COURT OF APPEALS
FOR THIRD DISTRICT
21400 UNITED STATES COURTHOUSE
601 MARKET STREET
PHILADELPHIA, PA 19106-1790
Website: www.ca3.uscourts.gov

Patricia S. Dodszuweit
Clerk

TELEPHONE
215-597-2995

October 24, 2019

John A. Cerino
United States District Court for the District of Delaware
J. Caleb Boggs Federal Building
844 North King Street
Wilmington, DE 19801

RE: Nina Shahin v. Dale Boney, et al
Case Number: 19-1829
District Court Case Number: 1-17-cv-00413

Dear District Court Clerk,

Enclosed herewith is the certified copy of the order in the above-captioned case(s). The certified order is issued in lieu of a formal mandate and is to be treated in all respects as a mandate.

Counsel are advised of the issuance of the mandate by copy of this letter. The certified order is also enclosed showing costs taxes, if any.

Very truly yours,
Patricia S. Dodszuweit, Clerk

Appendix A, page 1

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

Nina Shahin,	)	No. 19-1829
)	
Petitioner-Appellant)	
v.	)	also related to Petition for
	)	Writ of Mandamus
CITY OF DOVER AND	)	No. 19-1682
OFFICER DALE BONEY,)	
)	
Appellees,)	

**PETITION FOR PANEL REHEARING BASED ON
THE ISSUE OF GROSS ABUSE OF JUDICIAL
DISCRETION, DENIAL OF ACCESS TO JUSTICE
TO A NATIONAL MINORITY AND *PRO SE*
LITIGANT, DISCRIMINATION AND
CORRUPTION**

In *Pro Se* Representation by Nina Shahin

103 Shinnecock Rd.,
Dover, DE 19904
Tel. No. (302)526-2152

Attorneys for the Appellees: Daniel A. Griffith, Esq
WHITEFORD TAYLOR
& PRESTON
The Renaissance Ctr.
405 North King. St.
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Plaintiff-Appellant thereby files her Petition for Panel rehearing because of the Court's gross abuse of judicial discretion, denial of justice to a national minority woman and *pro se* litigant, discrimination and resulting corruption of the entire judicial process. "Abuse of Judicial Discretion" is defined as a situation when a court does not apply the correct law or if it rests its decision on a clearly erroneous finding of a material fact. *See U.S. v. Rahm*, 993 F.2d 1405, 1410 (9th Cir.'93). A court may also abuse its discretion when the record contains no evidence to support its decision. *See MGIC v. Moore*, 952 F.2d 1120, 1122 (9th Cir.'91). The Petitioner's case has all the indications mentioned in the cited cases and even more: complete disregard of facts and even falsification of facts, complete disregard of the law and even fabrication of the legal standards that do not exist.

(1) The main legal and factual issue that the court used

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in its decision is the issue of "jurisdiction" which the Judge Anthony J. Scirica claimed federal courts lacked in the Petitioner's case which is a completely bogus claim, especially in view that no fact was used to support that claim. Neither any reference to any law or rules of procedure was made by the Judge to support that claim of lack of jurisdiction. Quite the opposite, the "Civil Cover Sheet" necessary for use to file a lawsuit in the US Court for the District of Delaware specifically defines characteristics of a lawsuit filed in that court for determination of jurisdiction in section II. 'Basic of Jurisdiction' indicated under # 3 'Federal Question' which, in the Petitioner's case is federal Civil Rights Statute under 42 U.S.C. § 1983 and, therefore, District Court had original jurisdiction because the case involves a federal statute of civil rights (i.e., 42 U.S.C. § 1983). In Petitioner's case it is a systematic pattern of Dover Police harassment that started in 2012 with her illegal

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arrest, illegal incarceration, beating and torture in prison and in this particular case (2013 or the following year which followed another two subsequent events of harassment in 2014 and 2015 – intentional falsification by Dover Police Officer Dale Boney of evidence which he used to charge Petitioner with motor vehicle violation, actions that constitute a crime. JUDGE'S DECISION IGNORED THOSE FACTS.

(2) Then Judge Scirica claimed that “§ 1443 authorizes removal by defendants, not plaintiffs like Shahin” with reference to the decision of the Court in *Balazik v. City of Dauphin*, 44 F.3d 209, 214 n. 7 (3d Cir. 1995) to support that claim. That is a fraudulent application of law because nothing in that decision considers or defines different procedural rights for transfer/removals between courts made either plaintiffs or defendants. The case was removed from a state to federal court by the defendants, Dauphin County, Dauphin Board of

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Assessment Appeals and Swatara' and no issue of the identity of the transferors claimed by the Judge was ever considered. Moreover, n. 7 cited by the Judge actually is located on page 215 not 214 and reads as follows:

"This argument, which amounts to the contention that §1447(d) bars review in all cases where a remand is required, must be rejected, as it contravenes the Supreme Court's ruling in *Thermtron* that review is barred only when the remand is based on § 1447(c): "There is no indication whatsoever that Congress intended to extend the prohibition against review to each remand orders entered on grounds not provided in the statute." *Thermtron*, 423 U.S. at 350, 96 S.Ct. at 592. Further, it fails to consider this Court's decisions reviewing, and in some cases affirming remand that were not based on §1447(c). As we have previously noted:

[W]hile section 1447(d) was intended to prevent delay in the trial of remanded cases by protracted litigation of jurisdictional issues, - and the district court is therefore given the last word on whether it has jurisdiction to hear the case, - that policy does not apply when the district court has reached beyond jurisdictional issues or issues of defective removal, and has remanded for other reasons. *Foster v. Chesapeake Inc., Co., Ltd.*, 933 F.2d 1207, 1211 (3d Cir.), *cert. denied*, 502 U.S. 908, 112 S.Ct. 302, 116 L.Ed.2d 245 (1991), the jurisdictional bar of §1447(d) does not apply, and we have jurisdiction to review the May 11, 1994 order of the district court."

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So, there is absolutely nothing in that citation that would support Judge Scirica's claim because the cited decision considers the merits of the transfer itself not the identity of the transferors. The problem with his argument is that although § 1443 authorizes removal by defendants the reason that "defendants" specifically mentioned in that section is the fact that without such authorization defendants would have been stuck with jurisdiction chosen by plaintiffs who have unlimited freedom to choose jurisdiction in cases where such choice is available. On the webpage of American Bar Association this situation is described as follows:

"While a plaintiff is the master of her complaint (and decides the forum in which she will file lawsuit) the defendant is not without any say in the matter."

So, the plaintiff, who, in this particular case is the Petitioner, *a priori* has a legal right to transfer the case to the District Court, especially since it has been filed under provisions of a federal civil rights statute, FACT

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COMPLETELY MISREPRESENTED AND FALSIFIED
BY THE JUDGE.

(3) And then the final Judge's argument that "Shahin has not shown that she has been "denied or cannot enforce [her] specified federal rights in the state courts" is nothing short of another ostensible lie and fraud because Shahin specifically argued that point in her "Objections" to the Court's Administrative Assistant determination of the legal deficiencies of her appeal filed in May of 2019 because she attached in support of that specific argument documentary evidence provided in **Exhibit C** which the presiding over her case Judge of the CCP court specifically refused to address issues raised under provisions of 42 U.S.C. § 1983. On Petitioner's appeal the State Superior and Supreme Court did not even touch that subject ruling exclusively on the basis of fraudulently interpreted and applied Delaware Municipal Tort Statute but complete disre-

gard that Officer Boney committed a crime (unlike the Court of Common Pleas judge who honestly refused to considerate) and after the District Court "remanded" the case to the State court absolutely nothing had happened to process the "remanded case" and therefore no any documentary evidence can be produced to demonstrate failure of the State Superior and Supreme Courts to consider Petitioner's claims filed under provisions of federal civil rights statute which only emphasizes the point of fraudulent claims made by the judge of the Third Circuit.

(4) And the last but not least. As it was indicated in the Administrative Assistant's communication of April 26, 2019 about alleged "jurisdictional defect" of the Petitioner's appeal that

"The order that you have appealed is an order remanding a case to a state court under 28 U.S.C. §1447(d) (enclosed), {It was not enclosed and that claim was a lie; remark by Petitioner, NS} an order remanding a case to the state court from it was removed is not reviewable on appeal or otherwise."

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Section 1447(d) reads as follows:

“An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except an order remanding a case to the State court from which it was removed pursuant to section 1442 or 1443 of this title shall be reviewable by appeal or otherwise.”

28 U.S.C. § 1443 ‘Civil rights cases’ reads as follows:

“Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:

(1) Against any person who is denied or cannot enforce in the court of such State a right under any law providing for the equal civil rights of citizens of the United States or of al persons within the jurisdiction thereof;

(2) For any act under color of authority derived from any law providing for equal rights under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law.”

Judge A.J. Scirica failed to address that fraudulent pretext under which Petitioner’s appeal had been denied by Administrative Assistant by injecting the issue of the right to transfer a case allegedly assigned only to “de-

endants" and not plaintiffs. Then he substituted claim of application of provisions of 28 U.S.C. § 1447(d) under which Petitioner's appeal had been denied by Administrative Assistant for 28 U.S.C. § 1447(c) that describes procedural steps and has nothing to do with issues of jurisdiction or procedural defects of transfer. So, the main issue of fraudulent denial of the Petitioner's appeal that falls under provisions of Civil Right Act and, therefore, should have been considered under the law was substituted in importance for issues of procedural steps mentioned in subsection (c) which has nothing to do with the essential issues of appeal: denial of civil rights or more precisely systematic harassment by Dover Police that started in 2012 with the Petitioner's illegal arrest, illegal incarceration, beatings and torture in prison as a result of which she came out as a complete invalid unable to walk and subsequent denial of access to justice in that case also

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exclusively in federal courts including Third Circuit Court of Appeals.

Since this decision of the Court signed by the Judge Anthony J. Scirica, is a gross abuse of judicial discretion filled with lies, falsifications of facts, and fraudulent claims of applicable law it resulted in denial of access to justice to a national minority woman and *pro se* litigant. Judge's actions are therefore evidence of corruption of that federal judicial system which was supposed to be fair and just and discrimination against a national minority *pro se* litigant. Petitioner, therefore is presenting copies of her "Objections" filed in May of this year with all supporting documents presented in Exhibits as well as original of this Petition to the FBI anticorruption unit as supporting documentary evidence (in addition to the evidence of the Petitioner's Writ of Mandamus case provided before) of complete corruption of the Delaware federal, State judicial system as well as

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appellate process and discrimination in systematic pattern of denying Petitioner's constitutional rights for a fair trial and access to justice. Petitioner has to mention also that after that 2012 illegal arrest and illegal incarceration professional attorneys who represented her in the subsequent legal battle and ensured "not guilty" verdict (Kevin Howard) was pushed out of legal profession and no longer practices law in Delaware. As he acknowledged to the Petitioner he was under tremendous pressure from the prosecutor in the case to pressurize Petitioner to accept some charges or *nolo contendere* plea which Petitioner flatly refused and produced 47 pictures of her injuries (from her forehead to her toes) made by forensic nurse in Christiana hospital immediately upon her release from prison. It has to be noted also that the same Judge who issues a court order to illegally incarcerate Petitioner in 2012 when she was unconscious issued "not guilty" order in

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this case of Officer Dale Boney's falsification of the underlying evidence which was presented in the court and accepted by the Judge. After that case of illegal arrest by Dover Police though no attorney in Delaware would touch in any court any of her cases. But in the US judicial system racial and national minorities and *pro se* litigants cannot compete with professional attorneys who are protected by judges in corrupt judicial system (state and federal)!

Respectfully submitted on this Twenty Third Day of September, 2019.

For the Appellant, s/Nina Shahin
NINA SHAHIN, CPA, MAS, MST

July 18, 2019

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

C.A. No. 19-1829

NINA SHAHIN, Appellant

VS.

DALE BONEY, Dover Police Officer, Badge # 10216; ET
AL.,

(D. Del. Civ. No. 1-17-cv-00413)

Present: CHAGARES, RESTREPO and SCIRICA,
Circuit Judges

Submitted are:

- (1) By the Clerk for possible dismissal due to jurisdictional defect;
- (2) By the Clerk for possible summary action under 3rd Cir. LAR 27.4 and Chapter 10.6 of the Court's Internal Operating Procedures; and
- (3) Appellant's response
in the above-captioned case.

Respectfully,

Clerk

ORDER

This appeal is dismissed for lack of appellate juris-
Appendix C, page 1

diction in part and summarily affirmed in part. To the extent that Shahin removed her action pursuant to 28 U.S.C. § 1441, we lack jurisdiction to review the District Court's order remanding the matter to state court or denying reconsideration because the District Court remanded for lack of subject matter jurisdiction. See 28 U.S.C. § 1447(c), (d); Powerex Corp. v. Reliant Energy Servs., Inc., 551 U.S. 224, 229 (2007); see also Agostini v. Piper Aircraft Corp., 729 F.3d 350, 353 (3d Cir. 2013) ("[I]f we do not have jurisdiction to review a remand order itself, we cannot have jurisdiction to review a motion to reconsider a remand order."). To the extent that Shahin maintains that removal was proper under 28 U.S.C. § 1443, we summarily affirm the District Court's remand order and denial of reconsideration because § 1443 authorizes removal only by defendants, not plaintiffs like Shahin, see Balazik v. City of Dauphin, 44 F.3d 209, 214 n. 7 (3d Cir. 1995), and because Shahin has not shown that she has been "denied or cannot enforce [her] specified federal rights in the state courts," Davis v. Glanton, 107 F.3d 1044, 1050 (3d Cir. 1997) (quotation marks omitted), as is necessary to remove under § 1443.

By the Court,

s/Anthony J. Scirica
Circuit Judge

Dated: September 11, 2019
Tmm/cc: Nina Shahin
Daniel A. Griffith, Esq.

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

Nina Shahin,	)	No. 19-1829
)	
Petitioner-Appellant)	
v.	)	Petition for Writ of
	)	Mandamus
OFFICER DALE BONEY,)	
	)	No. 19-1682
)	
Appellees,)	

**APPELLANT'S OBJECTIONS REGARDING
ADMINISTRATIVE ASSISTANT'S
DETERMINATION ABOUT JURISDICTION OF
THIS COURT OVER THIS PARTICULAR CASE**

In *Pro Se* representation by Nina Shahin

103 Shinnecock Rd.
Dover, DE 19904
Tel. No. (302) 526-2152

Attorney for the Appellee: Daniel A. Griffith, Esq.
WHITEFORD TAYLOR &
PRESTON
The Renaissance Center
405 N. King St., Suite 500
Wilmington, DE 19801

Appellant received communication from the Third Circuit Court of Appeals dated April 26, 2019, that was supposed to be signed by a clerk. Patricia S. Dodszeit, but actually signed by Maria Winans, Administrative Assistant, which raises a question about the reasons of why the clerk of the Third Circuit Court of Appeals hid under the name of Administrative Assistant in their harassment of the national minority and *pro se* litigant because that communication cannot be characterized in any other terms but a 'Deprivation of Rights under Color of Law' under provisions of Title 18 of the US Code, Part I, 'Crimes' Chapter 13 'Civil Rights,' section 242 which means that the administrative assistant committed a felony. Copy of that "administrative assistant's" communication is presented in **Exhibit A**.

1. In that Court's communication under the title 'Jurisdictional Defect' it is written the following:

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"The order that you have appealed is an order remanding a case to a state court. Under 28 U.S.C. Section 1447(d)(enclosed), an order remanding a case to the state court from which it was removed is not reviewable on appeal or otherwise."

Copy of the section 1447 of Title 28 U.S.C. was **not enclosed** regardless of the claim to the opposite which usually happens in those cases when the state or federal court harasses national minority and *pro se* litigant because the law they references was misrepresented and misapplied as in this case. Copy of that section is presented in **Exhibit B** and says the following:

"An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1442 or 1443 of this title shall be reviewable by appeal or otherwise."

28 U.S.C. § 1443 'Civil Rights Cases' (reverse of **Exhibit E**) stipulates the following:

"Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:

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(1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;

(2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law."

2. This case has been transferred to the US District Court through initiation process in the Court of Common Pleas of Kent County (State court) under provisions of 42 U.S.C. § 1983, 'Civil Action for deprivation of Rights' because of SYSTEMATIC Dover Police harassment including this case in which Officer Dale Boney falsified evidence on basis of which he issued fraudulent citation to the Appellant (felony under state and federal laws). That federal civil rights statute has exclusive federal subject matter jurisdiction and the Judge of the Federal District Court had no authority to transfer the case back to the State Court where it has already been adjudicated and Defendant office cleared

under provisions of The County and Municipal Tort Claims Act, 10 *Del.C.* § 4011. Moreover, remanding the case to the Court where it has already been adjudicated without any additional evidence would fall under principles of doctrine of *Res Judicata* and be subject automatic dismissal. In either of those two cases actions of the District Court Judge that remanded the case to the Court which had no jurisdiction over the case and which had already adjudicated the case would be questionable legally and on the basis of professional ethics. Copy of the Appellant's filing to that effect in the Court of Common Pleas is provided in **Exhibit C** along with a copy of the Court's decision of July 19, 2016. Note the Judge's remarks regarding application of provisions of 42 U.S.C. § 1983 on page 5 of the Court's decision: "The Court disregarded the plaintiffs 42 U.S.C. § 1983 claim because it was improper and outside the scope of the Court's Order." Copy of the decision of

Appendix D, page 5

the District Court denying Appellant's Motion for Reargument in which the Judge indicated the name of the Defendant as the 'Court of Common Pleas of the State of Dale Boney' is presented in **Exhibit D**. Therefore, provisions of 28 U.S.C. § 1443 are specifically applicable to the Appellant's case but omitted and completely ignored by the Court's communication wsigned by the Administrative Assistant who thus committed felony under 18 U.S.C. § 242.

CONCLUSION

In view of all these facts, Court's communication of April 26, 2019, which was not even signed by the Court's clerk (let alone any judge) is nothing short of intentional harassment, intimidation, deprivation of civil and constitutional rights and felony under provisions of 18 U.S.C. § 242. Appellant, therefore demands these "Objections" to be included to her Petition for Writ of Mandamus as supporting evidence that the Appellant's

Petition has also been mishandled by this Court in violation of provisions of 18 U.S.C. § 3771(d)(3) that provides not more than 5 days to enforce provisions of that section. Court failed to act on the Appellant's Petition according to its own 'Order' copy of which is provided in **Exhibit E**. Instead the Court additionally deprived the Appellant of her civil rights under color of law thus committing a felony. Appellant's appeal has to go through a formal process of submitting briefs and having the Appellant Court to consider the underlying material facts and the standards of applicable and controlling law!

These "Objections" were respectfully submitted on this Sixth Day of May, 2019.

For the Appellant, s/Nina Shahin
NINA SHAHIN, CPA, MAS, MST

UNITED STATES COURT OF APPEALS FOR THE
THIRD CIRCUIT

No. 19-1682

IN RE: NINA SHAHIN, Petitioner

On a Petition for Writ of Mandamus from the United
States District Court for the District of Delaware
(Related to Civ. Nos. 1-17-cv-00413 & 1-17-cv-01223)

Submitted Pursuant to Rule 21, Fed. R. App. P.
April 11, 2019
Before: CHAGARES, RESTREPO and SCHIRICA,
Circuit Judges

(Opinion filed: May 2, 2019)

OPINION*

PER CURIAM

PRO SE PETITIONER Nina Shahin has filed a petition

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

Appendix E, page 1

for a writ of mandamus, seeking relief under the Crime Victims' Rights Act (CVRA), 18 U.S.C. § 3771. For the reasons set forth below, we will deny the petition.

Shahin's petition is "closely related to two civil cases."

Pet. At 5. In the first case, she alleged that Sam's Club and Synchrony Bank engaged in "intentional and illegal harassment.. in response to [her] dissatisfaction with her failure to purchase a desired and advertised item."

D.Del.C. A. No. 17-cv-1223, ECF No. 7 at 24. In the second case, Shahin alleges that a police officer had filed a fabricated accident report against her, which cause her insurance company to deny her claim for reimbursement. D.Del. Civ. A. No. 17-cv-0413, ECF No. 13-2 at 2. She originally filed both actions in the Delaware Court of Common Pleas, and then sought to remove the actions to the United States District Court for the District of Delaware. In separate orders, the District Court remanded the matters to the Court of

Appendix E, page 2

Common Pleas, explaining, among other things, that there was no judicial jurisdiction, that removal was untimely, and there was nothing to remove because both actions had been fully adjudicated in the Court of Common Pleas.” Civ. A. No. 17-cv-1223, ECF No. 10 at 5; Civ. A. 17-cv-0413, ECF No. 20 at 5.

Now, Shahin has filed a petition for writ of mandamus. She argues that she is entitled to relief under CVRA. More specifically, she contends that there has been “a pattern of judicial harassment, intimidation, deprivations of constitutional rights to a fair trial and ‘due process’ and ‘equal protection’ in the Delaware judicial system (state and federal),” which has resulted in her being “victimized the second time in the judicial process.” Pet. At 5.

Shahin has not been denied any rights under CVRA that could form the basis for mandamus relief in this Court. The CVRA guarantees to the victim of federal crimes a

variety of rights, including the right to notice of a court proceeding involving the crime, the right to be present at any such public court proceeding, the right to be reasonably heard at such a proceeding, and the right to receive "full and timely restitution as provided in law."

18 U.S.C. § 3771(a). A crime victim can assert these rights in the District Court, and if the District Court denies relief, can file a petition for a writ of mandamus in a Court of Appeals. § 3771(d)(3).

However, in this case, Shahin is seeking only to advance her civil actions. "The rights codified by the CVRA...are limited to the criminal justice process; the Act is therefore silent and unconcerned with victims' rights to file civil claims against their assailants. United States v. Moussaoui, 483 F.3d 220, 234-35 (4th Cir. 2007); see also In re Siler, 571 F.3d 604, 610 (6th Cir. 2009). As the CVRA provides, "[n]othing in this chapter shall be construed to authorize a cause of action for damages or

to create, to enlarge, or to imply any duty or obligation to any victim or other person for the breach of which the United States or any of its officers or employees could be held liable in damages.” § 3771(d)(6). Accordingly, Shahin has failed to demonstrate a right to relief under CVRA.¹

We will therefore deny the mandamus petition.

¹ Shahin does not challenge the District Court’s remand orders, and we therefore do not consider whether we would have jurisdiction over such a challenge. See generally In re Fed.-Mogul Glob., Inc., 300 F.3d 368, 388 (3d Cir. 2002)

CLD-159

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

No. 19-1682

IN RE: NINA SHAHIN, Petitioner

**On a Petition for Writ of Mandamus from the United
States District Court for the District of Delaware
(Related to Civ. Nos. 1-17-00413 & 1-17-cv-01223)**

**Submitted Pursuant to Rule 21, Fed. R. App. P.
April 11, 2019
Before: CHAGARES, RESTREPO and SCHIRICA,
Circuit Judges**

JUDGMENT

This cause came to be considered on a petition for writ of mandamus submitted on April 11, 2019. On consideration whereof, it is now hereby **ORDERED** and **ADJUDGED** by this Court that the petition for writ of mandamus be, and the same is, denied. All of the above in accordance with the opinion of the Court.

ATTEST:

s/Patricia D. Dodszuweit

DATED: May 2, 2019

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OFFICE OF THE CLERK

UNITED STATES COURT OF APPEALS FOR THE
THIRD CIRCUIT

Patricia S. Dodszuweit
Clerk

TELEPHONE
215-597-2995

April 26, 2019

Nina Shahin 103
Shinnecock Rd.
Dover, DE 19904

RE: Nina Shahin v. Dale Boney, et al
Case Number: 19-1829
District Court Case Number: 1-17-cv-00413

Dear Ms. Shahin:

This will advise you that the above-captioned appeal will be submitted to a panel of this Court for possible dismissal due to a jurisdictional defect. The Court also will consider possible summary action pursuant to Chapter 10.6 of the Internal Operation Procedures of the United States Court of Appeals for the Third Circuit. See Third Circuit Local Appellate Rule 27.4.

Jurisdictional Defect

It appears that this Court may lack appellate jurisdiction for the following reasons:

The order that you have appealed is an order remanding a case to a state court. Under 28 U.S.C. Section 1447(d)(enclosed), an order remanding a case to the state court from which it was removed is not reviewable on appeal or otherwise.

Appendix F, page 1

Summary Action

Chapter 10.6 provides that the court sua ponte (by its own action) may take summary action on an appeal if it appears that no substantial question is presented or that subsequent precedent or a change in circumstances warrants such action. Specifically Court may affirm, reverse, vacate, modify, or remand the judgment or order appealed.

Issuance of the briefing schedule will be stayed pending action by the Court. All other filing requirements must be completed (i.e., payment of fees, entry of appearance, corporate disclosure statement, civil appeal information).

Responses

Jurisdictional defects cannot be remedied by the Court of Appeals. The parties may submit written argument regarding jurisdiction, or in support of or opposition to summary action. Any response must be received in the Clerk's Office within twenty-one (21) days from the date of this letter. Please submit to the Clerk an original copy of any response, and a certificate of service indicating that all parties have been served with a copy of the response. Upon expiration of the response period, the case will be submitted to the Court for consideration of the jurisdictional question and for possible summary action.

The parties will be advised of any order issued in this matter.

Very truly yours,

Appendix F, page 2

Patricia S. Dodszuweit,
Clerk

By:
Maria Winans, Administrative Assistant

cc: Daniel A. Griffith, Esq.

NINA SHAHIN,
:
:
Plaintiff, :
:
:
v. : Civil Action No. 17-413-LPS
:
Court of Common Pleas : Delaware in and for Kent
of the State of DALE BO- : County
NEY, et al., : C.A. No. CPU5-14-000682
:
Defendants. :

1. Introduction. Plaintiff Nina Shahin (“Shahin”), who proceeds *pro se*, filed a formal petition for transfer of a case she filed in the Court of Common Pleas for the State of Delaware in and for Kent County, *Shahin v. Boney*, C.A. No. CPU5-14-000682. (D.I. 1). The petition was docketed as a notice of removal. On March 13, 2018, The Court remanded the case to the Court of Common Pleas for the State of Delaware in and for Kent County. (D.I. 20, 21).

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2. Plaintiff filed a motion for reargument, construed by the court as a motion for reconsideration. (D.I. 24) Plaintiff moves for reconsideration on the grounds that there are errors in factual and procedural background, errors in judgment and application of legal standards, and the Court reached the wrong conclusions. Defendants oppose the motion.

3. **Motion for Reconsideration.** The purpose of a motion for reconsideration is to “correct manifest errors in law or fact or to present newly discovered evidence,” *Max’s Seafood Café ex rel. Lou-Ann, Inc. v. Quinteros*, 176 F.3d 669 (3d Cir. 1999). “A proper Rule 59(e) motion...must rely on one of three grounds: (1) an intervening change in controlling law; (2) the availability of new evidence; or (3) the need to correct a clear error of law or fact or to prevent manifest of injustice.” *Lazaridis v. Webmer*, 591 F.3d 666, 669 (3d Cir. 2010) (internal citation omitted).

4. Plaintiff's displeasure with this Court's ruling does not meet the requisites for reconsideration. Plaintiff's motions fail on the merits because she had not set forth any intervening changes in the controlling law; new evidence; or clear errors of law or fact made by the Court in its two orders to warrant granting reconsideration. *See Max's Seafood Café*, 176 F.3d at 677. Nor does she address the fact that her claims were fully adjudicated in State court. Nonetheless, once again the Court has considered the filing of the parties and the evidence of record. Plaintiff has failed to demonstrate any of the grounds to warrant a reconsideration. For these reasons, the motion will be denied.

5. **Conclusion.** The Court will deny Plaintiff's motion for reconsideration. (D.I. 24). An appropriate order will be entered.

March 12, 2019 /s/ Leonard P. Stark
Wilmington, Delaware HONORABLE LEONARD P.
 STARK, US DISTRICT JUDGE

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**IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF DELAWARE**

NINA SHAHIN,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 17-413-LPS
	:	
Court of Common Pleas	:	Delaware in and for Kent
of the State of DALE BO-	:	County
NEY, et al.,	:	C.A. No. CPU5-14-000682
	:	
Defendants.	:	

ORDER

At Wilmington this 12th day of March, 2019, for the
reasons set forth in the memorandum issued this date;

IT IS HEREBY ORDERED that:

Plaintiff's motion for reargument, construed as a motion
for reconsideration is DENIED. (D.I. 24)

/s/ Leonard P. Stark
HONORABLE LEONARD P. STARK
UNITED STATES DISTRICT JUDGE

IN THE SUPREME COURT OF THE STATE OF
DELAWARE

NINA SHAHIN, § No. 425, 2018
§
Appellant Below, § Court Below - Superior
Appellant, § Court of the State of
§ Delaware
v. §
§ C.A. No. K17A-12-004
DOVER POLICE §
OFFICER DALE BONEY §
Appellee Below, §
Appellee. §
§

Submitted: December 28, 2019

Decided: February 26, 2019

Before **STRINE**, Chief Justice, **VALIHURA** and
TRAYNOR, Justices.

ORDER

Upon review of the parties' briefs, the Superior Court record, and the record from the Court of Common Pleas, it appears to the Court that:

(1) The appellant, Nina Shahin, filed a complaint in the Court of Common Pleas against Dover Police Officer Dale Boney and State Farm Mutual Insurance Company

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(“State Farm”). The complaint arose out of a traffic ticket that Shahin received from Officer Boney when Shahin was involved in a minor traffic accident in the parking lot of a grocery store in Dover. Shahin also alleged that Officer Boney fabricated the police report, which caused State Farm to deny Shahin’s claim for reimbursement for damages caused to her vehicle in the accident.

(2) By order dated April 13, 2016, the Court of Common Pleas dismissed Shahin’s complaint against Officer Boney after finding that Officer Boney was immune from liability under the County and Municipal Tort Claims Act.¹ By order dated July 19, 2016, the Court of Common Pleas denied Shahin’s motion to alter or amend the April 13, 2016 judgment.²

(3) Following the dismissal of the complaint against

¹ 2016 WL 3152575 (Del. Com. Pl. April 13, 2016).

² 2016 WL 5660318 (Del. Comm. Pl. July 19, 2016).

Officer Boney, Shahin and State Farm filed cross-motions for summary judgment. The Court of Common Pleas denied Shahin's motion for reargument of the order granting summary judgment to State Farm and Shahin's motion for relief from the denial of the motion for reargument.

(4) Shahin appealed to the Superior Court. By order dated June 16, 2018, the Superior Court affirmed the judgment of the Court of Common Pleas.³ The court also denied Shahin's motion for reconsideration of the June 6, 2018 order.

(5) On appeal in this Court, Shahin challenges the Court of Common Pleas' dismissal of her complaint against Officer Boney. We apply the same standard of review as the Superior Court and review independently the underlying decision of the Court of Common Pleas.⁴

³ 2018 WL 2733372 (Del. Super. June 6, 2018).

⁴ *Hichlin v. Onyx Acceptance Corp.*, 970 A.2d 244, 248 (Del. 2009).

(6) Upon *de novo* review, we find no error in the Court of Common Pleas' dismissal of the complaint against Officer Boney for failure to state a claim, and we find no error in the Court of Common Pleas' denial of Shahin's motion to alter or amend the judgment. Shahin's complaint did not allege that Officer Boney caused personal injury, property damage, or death. For that reason, Officer Boney was immune from liability under the County and Municipal Tort Claims Act.⁵

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Karen L. Valihura
Justice

⁵ 10 Del.C. § 4011(c) (Supp. 2019).

IN THE SUPERIOR COURT OF THE STATE OF
DELAWARE

NINA SHAHIN,

Appellant,

v.

DOVER POLICE OFFICER
DALE BONEY, AND
STATE FARM AUTOMO-
BILE INSURANCE CO.,

Appellees.

C.A. No. K17A-12-004 NEP
In and for Kent County

ORDER

Submitted: June 20, 2018

Decided: July 17, 2018

UPON CONSIDERATION OF the Motion for Recon-
sideration filed by Appellant Nina Shahin (hereafter
"Appellant"), and the response in opposition filed by
Respondent Dale Boney, the Court finds that the Motion
for Reconsideration is without merit and is **DENIED**.

A motion for reconsideration or reargument filed
pursuant to Superior Court Civil Rule 59(e) will only be
granted if "the Court has overlooked a controlling prece-

Appendix I, page 1

dent or legal principles, or the Court has misapprehended the law or facts such as would have changed the outcome of the underlying decision.”¹ Motions for reargument should not be used to rehash arguments already decided by the Court, or to present new arguments that were not previously raised.² Using a motion for reargument for either of these improper purposes “frustrate[s] the efficient use of judicial resources, place[s] the opposing party in an unfair position, and stymie[s] the orderly process of reaching closure on the issues.”³ In order for the motion to be granted, the movant must “demonstrate newly discovered evidence, a change in the law, or manifest injustice.”⁴

¹ *Kennedy v. Invacare, Inc.*, 2006 WL 488590, at *1 (Del. Super. Jan. 31, 2006) (citing *Bd. of Managers of the Del. Criminal Justice Info. Sys. V Gannet Co.*, 2003 WL 1579170, at *1 (Del. Super. Jan. 17, 2003)).

² *Tilghman v. Del. State Univ.*, 2012 WL 5551233, at *1 (Del. Super. Oct. 16, 2012).

³ *Id.*, (citing *Plummer v. Sherman*, 2004 WL 63414, at *2 (Del. Super. Jan. 14, 2004)).

⁴ *Brenner v. Village Green Inc.*, 2000 WL 972649, at *1 (Del. Super. May 23, 2000) (citing *E.I. DuPont de Nemours Co., v. Admiral Ins. Co.*, 711 A.2d 45, 55 (Del. Super. 1995)).

“Delaware law places a heavy burden on a [party] seeking relief pursuant to Rule 59.”⁵

Here, the Court finds that Appellant’s motion fails to satisfy that heavy burden. The motion rehashes prior arguments and repeats factual allegations that were addressed in this Court’s June 6, 2018, order affirming the decision of the Court of Common Pleas. In addition, the motion for reargument fails to identify newly discovered evidence or change in the law, and fails to manifest injustice.

WHEREFORE, for the foregoing reasons, the motion is hereby **DENIED**.

IT IS SO ORDERED.

/s/Noel Eason Primos

Noel Easton Primos, Judge

NEP/wjs

Via File & ServeXpress

cc: Prothonotary

xc: Nina Shahin

Daniel A. Griffith, Esquire

Scott G. Wilcox, Esquire

Miranda D. Clifton, Esquire

⁵ *Newborn v. Christiana Psychiatric Serv., P.A.*, 2017 WL 394096 at *2 (Del. Super. Jan. 25, 2017).

IN THE SUPERIOR COURT OF THE STATE OF
DELAWARE

NINA SHAHIN, *

*

Appellant, * C.A. No. K17A-12-004 NEP

* In and for Kent County

v. *

DOVER POLICE OFFICER

DALE BONEY, AND *

STATE FARM AUTOMO-*

BILE INSURANCE CO., *

*

Respondents.*

*

**APPELLANT'S MOTION FOR
RECONSIDERATION**

Appellant files this Motion for Reconsideration of the Court's Order dated June 6, 2018 under provisions of Rule 59(e) because of complete falsification by the presiding Judge of the legal basis of the Appellant's Appeal to the Delaware Superior Court.

The second sentence of the Court's June 6, 2018 Order indicates of what type of confusion the presiding Judge was when he wrote that decision. The first two sentences of that Order are copied below to emphasize

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the point:

“Plaintiff-Below/Appellant Nina Shahin (hereinafter “Appellant”), appeals from an order of the Court of Common Pleas (hereinafter the “CCP”). *In that order, the CCP granted denied* (emphasis in *Italics* and underlining was added by the Appellant) *Appellant’s Court of Common Pleas Civil Rule 60(b) for relief.*”

Appellant has two issues with that statement: 1) The order of the CCP can be either granted or denied but not both. Apparently, Honorable Judge, Noel Eason Primos, was in complete state of confusion when he wrote his Order; 2) As he noted on page 3 of his Order Rule 60(b) of CCP Rules of Civil Procedure there are 6 reasons for filing Motion under that Rule and all of those reasons except for # 5 were presented in the Appellant’s Opening and Reply Brief (factual and legal) but the Judge decided to ignore all those reasons including all legal arguments and legal analysis presented in the Appellant’s Briefs without any indication of why those reasons (individually) were not meeting the standards.

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He further claimed that “relief under Rule 60(b) requires a showing of “extraordinary circumstances.” Appellant did show those “extraordinary circumstances” that included a systematic pattern of Dover Police harassment starting in 2012 with her illegal arrest, illegal incarceration, beatings and torture in prison that resulted in her rendered invalid and unable to walk. In this particular case the Defendant, officer Boney, falsified the evidence, fact not even mentioned in the Judge’s description of underlying material facts. If those circumstances are not “extraordinary” then he has to explain the reason of why there were not (may be the Appellant’s death would be the only “extraordinary” reason?) In view of that fact and the fact that the decision of the CCP were the clear cover-up of the criminal behavior of the Defendant his conclusion that “Appellant has failed to cite any authority relating to Rule 60(b), much less any authority indicating that the

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CCP's denial of her motion constituted an abuse of discretion" (sic!)

In order to convey legitimacy to his June 6, 2018 Order the Honorable Judge has to address the following issue: why Appellant's circumstances are not "extraordinary" and why five of six possible grounds for relief under Rule 60(b) were not satisfied in the Appellant's case based on the facts and circumstances without any omissions or disregards (let alone misrepresentations as this Judge in another Appellant's case on May 9, 2018) as the Judge did in this Order.

Respectfully submitted on this eleventh Day of June 2018.

For the Appellant, /s/Nina Shahin
NINA SHAHIN, CPA, MAS, MST
103 Shinnecock Rd.
Dover, DE 19904
(302) 526-2152

IN THE SUPERIOR COURT OF THE STATE OF
DELAWARE

NINA SHAHIN, :
:
Appellant, : C.A. No. K17A-12-004 NEP
: In and for Kent County
v. :
:
DOVER POLICE OFFICER
DALE BONEY, AND :
STATE FARM AUTOMO-:
BILE INSURANCE CO., :
:
Appellees. :

ORDER

Submitted: April 3, 2018
Decided : June 6, 2018

***Upon Consideration of Appellant's Appeal from the
Court of Common Pleas
AFFIRMED***

Plaintiff-Below/Appellant Nina Shahin (hereinafter
"Appellant"), appeals from an order of the Court of
Common Pleas (hereinafter the "CCP"). In that order,
the CCP granted denied Appellant's Court of Common
Pleas Civil Rule 60(b) motion for relief. This Court find
no merit to Appellant's appeal and affirms the CCP's

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order.

The record reflects that on September 3, 2013, Dover Police officer Dale Boney (hereinafter "Appellee") issued Appellant a traffic citation in connection with a traffic accident in a grocery store parking lot. A year later, on September 3, 2014, Appellant filed a civil complaint against Appellee and State Farm Mutual Automobile Insurance Co., (hereinafter "State Farm") in the CCP. Appellant alleged that Appellee had wrongfully issued Appellant a traffic citation, and that State Farm had breached its insurance agreement by denying her claim for reimbursement relating to the repair of her right rear bumper, allegedly damaged in the accident.

Appellee then moved for dismissal, claiming immunity from suit pursuant to 10 *Del.C.* § 4011. The CCP agreed and on April 13, 2016, dismissed Appellant's claim against Appellee. Later, Appellant sought to join All-State Insurance Co., (hereinafter "All-State") as an addi-

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tional indispensable party under Court of Common Pleas Civil Rule 19, claiming that All-State had insured the driver of the other vehicle involved in the accident, and possessed information about the details of the accident. On June 12, 2017, the CCP denied that motion, noting that Appellant's claim is related to State Farm's alleged breach of its insurance agreement with Appellant, and that All-State was not a party to that contract and has no interest in or connection to Appellant's breach of contract claim. Appellant filed a motion for reargument of that order on June 23, 2017. In a decision dated July 11, 2017, the Court denied Appellant's motion as meritless, noting that it merely repeated arguments previously made.

Appellant filed a CCP Rule 60(b) motion for relief of the CCP's July 11, 2017 order denying reargument (hereinafter the "60(b) Motion). On November 30, 2017, the CCP denied the 60(b) Motion, finding that it had

properly denied the motion for reargument on its merits and that no extraordinary circumstances were alleged. The CCP explained that the 60(b) Motion merely rehashed the arguments Appellant had made in the initial motion to join All-State as an indispensable party. Appealing that order to this Court, Appellant argues that the order is invalid because the CCP judge allegedly (1) violated Appellant's due process and equal protection rights; (2) colluded with opposing counsel to cover up misconduct; and (3) systematically harassed and intimidated Appellant and engaged in racketeering. Appellant's opening brief failed to address considerations relevant to this Court's review of the CCP's exercise of discretion, electing instead to accuse the CCP judge of criminal and civil rights violations, and to recount the "systematic harassment...illegal incarceration, beatings and torture" allegedly suffered by Appellant at the hands of the Dover Police Department.

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Motion for relief brought pursuant to Rule 60(b) are addressed to a court's sound discretion, and shall only be set aside if the appellate court finds an abuse of discretion.¹ Although not cited in Appellant's twenty-seven page opening brief, CCP Civil Rule 60 controls the disposition of a motion for relief from a decision of the CCP, setting forth six possible grounds for relief:

(1) Mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

A grant of relief under Rule 60(b) requires a showing of "extraordinary circumstances." Litigants are prohibited from using a 60(b) motion "as a substitute for a timely

¹ Wife B v. Husband B, 395 A.2d 358, 359 (Del. 1978).

filed appeal,”² or using a 60(b) as a motion for re-argument to “indefinitely challenge the underlying motion’s precepts.”³ On appeal, the appellant has an obligation to “marshal the relevant facts and establish reversible error by demonstrating why the action at trial was contrary to either controlling precedent or persuasive decisional authority from other jurisdictions.”⁴ Further, “Failure to cite any authority in support of a legal argument constitutes a waiver of the issue on appeal.”⁵

As an initial matter, the Court will only summarily address Appellant’s submitted questions for review, as they are procedurally improper. As previously indicated, Appellant’s opening brief is dedicated to accusing the Dover Police Department of various crimes and civil rights violations, and complaining that “[t]here is

² *White v. State*, 919 A.2d 562 (Del. 2007).

³ *Bryant v. Way*, 2012 WL 4086167, at *5 (Del. Super. Sept. 14, 2012).

⁴ *Flamer v. State*, 956 A.2d 130, 134 (Del. 2008).

⁵ *Id.*

nothing in the CCP but the endless corruption and systematic denial of justice.” As indicated above, this Court’s scrutiny is limited to a review of the order that has been appealed. However, Appellant has failed to cite any authority relating to Rule 60(b), much less any authority indicating that the CCP’s denial of her motion constituted an abuse of discretion. The Court considers Appellant’s failure to marshal relevant facts and authority to constitute waiver of the issue of abuse of discretion on appeal and necessitate affirmation of the CCP’s order. Nonetheless, the Court now turns to consider whether the CCP judge abuse his discretion.

This Court has reviewed Appellant’s motion to join All-State as an indispensable party as well as her motion for reargument of the CCP’s denial of that motion, and agrees with the CCP that the arguments presented therein are substantially identical, and that denial of the motion for reargument was not improper.⁶ The Court

IN THE SUPERIOR COURT OF THE STATE OF
DELAWARE
IN AND FOR KENT COUNTY

NINA SHAHIN,	*
	*
Appellant,	*
	* K17A-12-004 NEP
v.	*
	*
DOVER POLICE OFFICER,	*
DALE BONEY, AND STATE	*
FARM AUTOMOBILE	*
INSURANCE CO.,	*
	*
Respondents-Appellees.	*

APPELLANT'S MOTION FOR EXTENSION OF TIME
TO FILE HER ANSWERING BRIEF

Appellant represents herself in *pro se* representation:

NINA SHAHIN, CPA, MAS, MST
103 Shinnecock Rd.
Dover, DE 19904
(302) 526-2152

Attorneys representing Respondents:

1) Respondent – Dale Boney - Scott G. Wilcox
WHITEFORD TAYLOR PRESTON
The Renaissance Center
405 North King St., Suite 500
Wilmington, DE 19801
302-357-3255

2) Respondent – State Farm Auto Ins. Co.
Miranda D. Clifton
YOUNG & MCNELIS
300 South State St.,
Dover, DE 19901
302-674-8822

Appellant, Nina Shahin, thereby files her Motion for extension of time to file her Reply Brief because of the following circumstances:

- Answering Brief for the Respondent, Officer Dale Boney, was due March 5, 2018, deadline, which was not met by the attorney representing the Officer Dale Boney, Daniel A. Griffith. It is again the case where professional attorney commits professional incompetence “due to excusable negligence” and is not penalized but is replaced by another attorney.
- Then come professional dishonesty, lies and misrepresentations. New attorney, Mr. Scott G. Wilcox, claimed that “Mrs. Shahin will not be prejudiced at all if the Court allows the one day extension.” This is an ob-

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noxious lie in view of all the circumstances following that extension. That particular Mr. Cox's communication from which this quotation is taken is dated March 7, 2018, mailed the following day, i.e., March 8, 2018 (Thursday) and received by the Appellant on March 12, 2018 (Monday). His 'Answering Brief' was dated March 6, 2018, mailed from Baltimore on March 8, 2018 and received by the Appellant on March 13, 2018 (Tuesday), *see* copy of the envelope in **Exhibit A**.

- Judge's decision dated March 6, 2018 has a stamp of mailing as March 7, 2018 (Wednesday) but received also on Monday March 12, 2018. This raises a question of whether the envelope stamped with Pitney Bowes private mailing stamping machine was actually mailed on that date?! The envelope does not have as usual a post office actual date-stamp of mailing (*see* copy in **Exhibit B**). So, the only day extension turned out to be a week delay of receiving by the Appellant of both the

Motion for Extension and the Court's decision granting it which hardly can be claimed as not "prejudicial."

- Taking into consideration that the Appellant has to file her Reply Brief on the same date of March 19, 2018 in another case (case # K18A-01-001) Appellant has been prejudiced by the actions of the Court and to professional attorneys. In view of these facts Appellant timely asks this Court to grant this Motion and extend the deadline for filing her Reply Brief until March 26, 2018.

Respectfully submitted on this Fifteenth Day of March, 2018.

For the appellant, /s/Nina Shahin
NINA SHAHIN, CPA, MAS, MST
103 Shinnecock Rd.
Dover, DE 19904

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

NINA SHAHIN, :
 :
 :
 Plaintiff, :
 v. : Civil Action No. 17-413-LPS
 : Court of Common Pleas of
 DALE BONEY, et al., : of the State of Delaware in
 : and for Kent County
 Defendants. : C.A. No.CPU5-14-000682

Nina Shahin, Dover, Delaware. Pro Se Plaintiff.

Daniel A. Griffith, Esquire, Whiteford, Taylor &
Preston, L.L.C., Wilmington, Delaware. Counsel for
Dale Boney

MEMORANDUM OPINION

/s/ STARK, U.S. District Judge:

Plaintiff Nina Shahin (“Shahin”), who proceeds *pro se* ,
filed a formal petition for transfer of a case she filed in
the Court of Common Pleas for the State of Delaware in
and for Kent County, *Shahin v. Boney*, C.A. No. CPU5-
14-000682. (D.I. 1) The petition was docketed as a notice
of removal. For the reasons discussed below, the Court

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will summarily remand the case to the Court of Common Pleas for the State of Delaware in and for Kent County.

I. FACTUAL AND PROCEDURAL BACKGROUND

Shahin filed this case in the Court of Common Pleas in September 2014 against Defendants Dale Boney ("Boney") and State Farm Automobile Insurance Company ("State Farm"). (D.I. 1) She alleged that Boney, a police officer for the City of Dover, issued her a citation and fabricated a police report that caused State Farm to deny Shahin's claim for reimbursement for damages caused to her vehicle as a result of an accident between Shahin and another driver. (*See* D.I. 9-1 at 2). On April 13, 2016, the Court of Common Pleas granted Boney's motion to dismiss by reason of immunity under the County and Municipal Tort Claims Act, 10 Del.C. §4011. Thereafter, Shahin filed a motion for relief from judgment and requested a transfer of the matter to this

Court pursuant to 10 Del.C. § 1902. (D.I. 13-5 at 2-8). On July 19, 2016, the Court of Common Pleas denied both the motion and the request. ((*See id.*) The Court of Common Pleas stated that, “the plaintiff’s claim has been adjudicated and based on the fact of the Complaint and the law, the Court had subject matter jurisdiction over the plaintiff’s claim. Further, the plaintiff failed to follow the proper procedure for bringing her claim in federal court.” (*Id.* at 6)

Next, on August 19, 2016, Shahin filed a “motion ‘election’ for initiation of the process to transfer the case to federal court...under 10 Del.C. § 1902 and 42 U.S.C. §1983.” (D.I. 13-6 at 2-9). On January 23, 2017, the Court of Common Pleas denied Shahin’s “election,” noting that the claim against Boney had been dismissed and there is no claim to transfer. (D.I. 13-7 at 2-3). In addition, the Court of Common Pleas explained that 10 Del.C. § 1902 “only provides an avenue of relief for the

transfer of civil cases between State courts for lack of civil jurisdiction. Section 1902 does not provide for the transfer of cases to federal courts.” (*Id.* at 3). Shahin moved for reconsideration. (*Id.* at 4-8). On March 28, 2017, the Court of Common Pleas denied the motion for reconsideration of the denial of transfer. (*Id.* at 9).

Shahin then filed the petition to transfer (filed as a notice of removal on April 11, 2017). (D.I. 1). However, she continued with her filings in State court. Shahin filed a motion for reargument on her request to join an additional party, which was denied by the State Court on July 11, 2017. (D.I. 13-8 at 1). Shahin filed a motion for relief from judgment on July 31, 2017, which was denied by the Court of Common Pleas on November 30, 2017. (*Id.* at 2-4). At that point, the Court of Common Pleas advised Shahin that it would not consider further motions made by her in the action and advised the only avenue left was an appeal to the Superior Court. (*Id.* at

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4). Shahin filed a notice of appeal to the Superior Court of the State of Delaware in and for Kent County. *See Shahin v. Boney*, C.A. No. K17A-12-004 NEP. The Court takes judicial notice that the appeal is pending and a briefing schedule was entered on January 18, 2018.

On July 27, 2017, counsel for Boney advised the Court that, “it seems that an improperly filed letter by an aggrieved Plaintiff in a state court action was accepted as a “Notice of Removal” to this court.” (D.I. 9). The Court construed the letter as a motion to remand. Shahin responded by filing a motion for leave of Court to file amendments to her original complaint by adding a second defendant, City of Dover. (D.I. 11). Next, Shahin filed a motion for sanctions against defense counsel. (D.I. 12). On December 12, 2017, Boney filed a motion to dismiss. (D.I. 13). Shahin responded to the motion on February 12, to which Boney replied on March 9. (D.I. 17, 19). On February 12, Shahin also filed an amended

notice of transfer. (D.I. 15, 16).

II. LEGAL STANDARDS

The exercise of removal jurisdiction is governed by 28 U.S.C. § 1441(a), which states that “[e]xcept as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.” In order to remove a civil action from state court to federal court, a district court must have original jurisdiction by either a federal question or diversity of citizenship. *See* 28 U.S.C. §§ 1331, 1332, 1441(a). Sections 1441(a) and 1443 both provide that the action may removed by the defendant to the district court of the United States. *See id.* at §§ 1441(a) and 1446. The removal statutes are strictly construed, and require

remand to State court if any doubt exists over whether removal was proper. *See Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 104 (1941).

A court will remand a removed case “if at any time fore final judgment it appears that the district court lack subject matter jurisdiction.” 18 U.S.C. § 1447(c). The party seeking removal bears the burden to establish federal jurisdiction. *See Steel Valley Auth. v. Union Switch & Signal Div. Am. Standard, Inc.*, 809 F.2d 1006, 1010 (3d Cir. 1987); *Zoren v. Genesis Energy, L.P.*, F. Supp. 2d 598, 602 (D.Del. 2002). In determining whether remand based on improper removal is appropriate, the court “must focus on the plaintiff’s complaint at the time the petition for removal was filed,” and assume all factual allegations therein are true. *Steel Valley Auth.*, 809 F.2d at 1010. Upon a determination that a federal court lack subject matter jurisdiction, the District Court is obligated to remand,

sua sponte, to the State court from which it was removed. See *Scott v. New York Admin. For Children's Services*, 678 F. App'x 56 (3d Cir. Feb. 28, 2017).

II. DISCUSSION

Shahin's removal fails for a number of reasons. First, the removal statutes are construed narrowly, and doubts about removal are resolved in favor of remand. Second, removal by a plaintiff is not contemplated by 28 U.S.C. § 1446(a). By its plain language, the removal statute limits the rights of removal to the "defendant" or "defendants." *Gross v. Deberardinis*, 722 F. Supp. 2d 532, 534 (D.Del. 2010). Third, Shahin filed her petition for transfer, construed as a notice of removal well beyond the 30 days allowed by § 1446(b). Fourth, the Court of Common Pleas construed Shahin's Complaint (see D.I. 19-1) as raising a civil tort action finding no claim of violation of federal law pursuant to 42 U.S.C. § 1983, and gave no weight to

Shahin's argument in that regards. (Emphasis added by Petitioner NS) (D.I. 9-1 at 2, 3 n. 1). There is also not complete diversity among the parties and, therefore, jurisdiction does not lie under 28 U.S.C. §1332. Fifth, to the extent Shahin contends jurisdiction lies by reason of a federal question (although her position has been rejected), the removal statute provides that “all defendants” who have been properly joined and served must join in or consent to the removal of the action. *See e.g., Auld v. Auld*, 553 F. App’x 807 (10th Cir. Jan. 29, 2014) (removal defective when removing party clearly “lacked on objectively reasonable basis for seeking removal”); *Anderson v. Toomey, L.P.*, 2008 WL 4838139, at *3 (D. Utah Nov. 4, 2008) (only defendant may remove to federal court). It is unclear if both defendants even appeared in the Court of common Pleas. Even if they did, the record is devoid of any demonstration that they both joined in or consented to

the removal. Sixth, there is nothing left to remove. As stated succinctly by the Court of Common Plea when denying Shahin's numerous requests to transfer this case from the court of Common Pleas to this Court, "there is no claim against Boney to transfer."

The Court of Common Pleas case is not properly before this Court.

IV. CONCLUSION

For the above reasons, the Court will summarily remand the case to the Court of Common Pleas of the State of Delaware in and for Kent County. All pending motions will be denied as moot. (D.I. 11, 12, 13)

An appropriate Order will be entered.

IN THE UNITED STATE DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

NINA SHAHIN, :
 :
 :
 Plaintiff, :
 : Civil Action No. 17-413-LPS
 v. : Court of Common Pleas of
 : the State of Delaware in and
 DALE BONEY, et al., : for Kent County
 : C.A. No. CPU5-14-000682
 Defendants. :

ORDER

At Wilmington this 13th Day of March, 2018 for the reasons set forth in the memorandum opinion issued this date;

IT IS HEREBY ORDERED that:

1. All pending motions are DENIED as moot. (D.I. 11, 12, 13)
2. The case is SUMMARILY REMANDED to the Court of Common Pleas of the State of Delaware in and for Kent County. The clerk of Court is directed to mail a certified copy of the remand Order to the State court.

/s/ Leonard P. Stark
UNITED STATES DISTRICT JUDGE

WHITEFORD, TAYLOR & PRESTON L.L.C.
THE REIAISSANCE CENTRE, SUITE 500
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COUNSEL

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swilcox@wtplaw.com

March 7, 2018

**RE: *Nina Shahin v. Officer dale Boney and State
Farm Insurance Co., C.A. No. K17A-12-004 NEP***

Dear Judge Primos:

I represent Defendant City of Dover Police Officer Dale Boney in the referenced case. This matter comes to the Court on appeal from the Court of Common Pleas. After obtaining the record from the Court of Common Pleas, the Court set a briefing schedule. Office Boney was to file his Answering Briefs by March 5, 2018. At the time, Officer Boney was responding to several different matters filed by Ms. Shahin including this appeal and

Appendix N, page 1

an Amended request for transfer of the case to the Federal District Court. In her filings, Mrs. Shahin provides a detailed history of various cases she has filed in both State and Federal Court and asserted several claims against the Dover Police Department and Officer Boney. She relied on various legal theories in each of the filings. Officer Boney had to research and address each of Mrs. Shahin's claims. Ultimately, counsel for Officer Boney failed to recognize that the date for filing the Answering brief in this Court had passed. As such, he filed a motion for an extension of one day to file his Answering Brief (which was filed on March 6, 2018).

As the Court is aware, Delaware has a strong public policy that favors deciding cases on the merits. *Battaglia v. Wilmington Sav. Fund Soc'y*, 379 A.2d 1132, 1135 (Del. 1977); *Model Fin. Co. v. Barton*, 188 A2d 233 (Del. Super. 1963); *Kaiser-Frazer Corp v. Eaton*, 101 A.2d 345 (Del. Super. 1953). Courts apply rules with li-

beral construction because of the underlying public policy that favors a trial on the merits, as distinguished from a judgment based on a default. *Id.* This Court has control of its scheduling orders and is free to adjust them as it deems fit and reasonable.

In the instant case, Officer Boney's Answering Brief was not file on time due to excusable negligent by counsel. I simply failed to recognize the date set by the Court was March 5, 208 until that date passed. In Officer Boney's Answering Brief he asserts several meritorious arguments in opposition to Mrs. Shahin's appeal which should be considered. Mrs. Shahin will not be prejudiced at all if the Court allows the one day extension. The date for filing her Reply Brief can similarly be extended additional time, if necessary. As such, Officer Boney respectfully requests that the Court grant the extension of one day, accept his Answering Brief and decide this appeal on the merits.

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I apologize to the Court and Mrs. Shahin for my error
and I am available at the call of the Court to discuss this
matter further.

Respectfully submitted, */s/ Scott G. Wilcox*
Scott G. Wilcox (#3882)

cc: Nina Shahin (via certified mail to 103 Shinnecock
Road, Dover, DE 19904)

**IN THE COURT OF COMMON PLEAS FOR THE
STATE OF DELAWARE IN AND FOR KENT
COUNTY**

NINA SHAHIN,)	
)	
Plaintiff,)	
v.)	
	)	C.A. No.:2014-CU
DOVER POLICE OFFICER	)	514000682
DALE BONEY, BADGE #)	
10216, AND STATE FARM)	
MUTUAL AUTOMOBILE)	
INSURANCE COMPANY,)	
)	
Defendants.)	

**PLAINTIFF'S FORMAL RESPONSE TO THE
PRESIDING JUDGE'S CORRESPONDENCE OF
APRIL 13, 2017**

Plaintiff, Nina Shahin, is in receipt of the Honorable presiding Judge, Charles W. Welch's communication dated April 13, 2017 (copy is attached in **Exhibit A**) which was mailed five days later (i.e., on April 18, 2017 and accepted by mail one day later or on April 19, 2017, see copy of the envelope attached in **Exhibit B**). The letter mandated response within twenty days (sic!)

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Plaintiff was overseas for three weeks flying out of USA on April 12, 2017, returning on May 4, 2017, and receiving her accumulated mail on May 5, 2017 (see copy of her and her husband's e-ticket attached in **Exhibit C**). Just these facts raise a serious question of the Honorable Judge's actual intentions!

The first paragraph of the Honorable Judge's communication stated the following:

"The Court is in receipt of your communication dated April 11, 2017, for the above-referenced matter which was filed with the Court on the same date. In your correspondence, you question the mailing of the "substitution of Counsel" by the Court and not the attorney. You also stated that "[i]t appears that when one attorney lied to Court and presented fraudulent documents there is no punishment for professional attorneys and the Court covers up for those lapses of Rules of Professional Conduct by accepting those substitutions." You further allege that the Court is disregarding rules of accepting those substitutions." You further allege that the Court is disregarding rules of process and professional conduct to cover up actions of "such official dignitaries."

The second paragraph of the honorable Judge's communication contained warning for the alleged slan-

derous, disrespectful or threatening comments.”

In respect to the description of the first paragraph, warning of the second and the mandate to “Show Cause” Plaintiff formally mounts the following charges against the presiding Honorable Judge which can be considered as “uncivilized” although no explanations was given of why Plaintiff’s statements of facts he considers as “slanderous, disrespectful or threatening.”

Gross violations of her constitutional rights of due process and equal protection.

Now the Plaintiff would consider her referenced by the Judge “slanderous” statement in the light of the provisions of Rule 11(b) that the Judge recited in his another communication dated April 12, 2017 (case CPU5-14-000379) that information [any attorney and unrepresented party filing a pleading, written motion, or other paper, with the Court is certifying to be the best of their knowledge] that:

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- (1) It is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
- (2) The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument of new law;
- (3) The allegations and other factual contentions have evidentiary support, or if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
- (4) The denials of factual contentions are warranted on the evidence, or if specifically so identified, are reasonably based on a lack of information or belief.

In this particular case the original attorney (who is also a Delaware Bar Vice President of Executive Committee Solo and Small Firms, Kent County, or a “dignitary” in the Honorable Judge’s parlance) provided false document of the Plaintiff’s insurance coverage and then cited underlying material facts that had already been established by the Kent County Court of Peace in a fraudulent interpretation in her attempt to re-litigate the case that had not been appealed and now is considered as settled and legally enforceable. Instead of sanctioning that attorney for violations of Rule 11(b)

Presiding Judge allowed substitution for another counsel who is a President of Executive Committee of the Delaware Bar Executive Committee (another "dignitary"). Moreover, substitution of Counsel Notice was received from the Court and not attorney, fact not explained by the honorable Judge!

Presiding Judge also refused to transfer the case to the US Federal Court although he previously mentioned that there is a process for such a transfer but failed to indicate what the steps of such process are. Plaintiff secured US District Court's acceptance of the transfer and simultaneously with this letter filed her Demand for such a transfer.

All these facts provide a clear evidence of the presiding Judge's complete disregard to the own Court's rules of procedure, disregard of the Plaintiff's right of 'equal protection' and 'due process' and provides cover -up for "dignitaries" who are high functionaries within the De-

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laware Bar Association.

In view of these facts and the Honorable Judge's interpretations Plaintiff questions the Honorable Judge's respect for the US Constitution, underlying material facts of this case, rules of his own Court, and rules of ethics for the Delaware Judges and attorneys and his use of denigrating words as "slanderous, disrespectful or threatening" to the Plaintiff's description of facts that he does not like. In another case (case PA5-14-000379) original attorney, Sean Lynn, who is now a Delaware legislator (or another "dignitary") filed entry of appearance and his "Answer" on behalf of a wrong entity against whom no lawsuit had been filed but Motion for sanctions for that act of incompetence was covered up by the same Honorable Judge, Charles W. Welch. Moreover, the notice of Substitution of Counsel had never been mailed to the Plaintiff, fact the Honorable Judge systematically dis-

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As you know, the Court has previously warned you in this matter about the need for acceptable conduct for litigants and attorneys during a civil action. See *Shahin v. Boney*, C.A. No.: CPU5-14-00682 at 5-6 (Del. Com. Pl. July 19, 2019) (ORDER). All parties who come before a court must conduct themselves in a civil and courteous manner. Anyone refusing to do so may be subject to sanctions under Court of Common Pleas Civil Rule 11. You were advised that the Court will not tolerate the use of abusive language and shows of disrespect towards the Court, other parties, or the attorneys representing them. As you were previously advised, valid legal argument does not need to contain, and should not contain, slanderous, disrespectful or threatening comments.

This Correspondent constitutes a Rule to Show Cause why you should not be sanctioned by the Court pursuant to Court of Common Pleas Civil Rule 11(b)(1) for filing correspondence with the Court for your above-quoted accusations which appears to be for an "improper purpose such a to harass or to cause unnecessary delay or needless increase in the cost of litigation."

You are hereby ordered to file a response to this Rule to Show Cause within twenty days.

Sincerely,

/s/ Charles W. Welch
Charles W. Welch, III

CWW:mek

pc: Miranda D. Clifton, Esq.

Appendix P, page 2

**IN THE COURT OF COMMON PLEAS FOR THE
STATE OF DELAWARE IN AND FOR KENT
COUNTY**

NINA SHAHIN,)	
)	
Plaintiff,)	
v.)	
	)	C.A. No.:2014-CU
DOVER POLICE OFFICER	)	514000682
DALE BONEY, BADGE #)	
10216, AND STATE FARM)	
MUTUAL AUTOMOBILE)	
INSURANCE COMPANY,)	
)	
Defendants.)	

**PLAINTIFF'S MOTION-"ELECTION" FOR
INITIATION OF THE PROCESS TO TRANSFER
THE CASE TO FEDERAL COURT FOR THE
DISTRICT OF DELAWARE UNDER 10 DEL.C.
§1902 AND 42 U.S.C. § 1983.**

The presiding Judge, Honorable Charles W. Welch, III, issued what appears to be his 'Order' in the above-mentioned case (copy is attached) in response to the Plaintiff's Motion filed under provisions of Rules 59(b) and 60(b) of the CCP rules of Civil Procedure. In that communication the Honorable Judge made some questionable statement and claims and in response to

the Plaintiff's request to transfer the case to the US District Court, denied that request with reference to 10 *Del.C.* §1902 with claim that "...the plaintiff failed to follow the proper procedure for bringing her claim in federal court."

The Plaintiff, therefore, initiates by this SPECIFIC motion-"ELECTION" the "proper procedure" for transfer of the case related to the charges filed against the first Defendant, Officer Dale Boney, to the US Court for the District of Delaware leaving the charges against the State Farm Insurance in the State Court. To support the Plaintiff's "election" to transfer the case in relation to the first Defendant to the US District Court the Plaintiff provides the following legal and factual reasoning:

- It is impossible to reconcile the Judge's claim that "In Delaware, a motion to alter or amend judgment will be granted if the movant shows...(3) the need *to correct*

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clear error of law or to prevent manifest of injustice.” King v. McKenna, 2015 WL 5168481, at *3 (Del. Super. Aug. 24, 2015). “[T]he Court will deny the motion *if it merely restates arguments already considered and rejected during litigation.” Id.* with his another claim that “The Plaintiff’s *Response raised, for the first time, a claim under 42 U.S.C. §1983...*” (Emphasis by bold and *Italics* added by the Plaintiff).

- The previous Judge’s citation ended with words “and failed to address the immunity defense.” There was no law cited that would indicate that in such a Motion such a standard exists but the Plaintiff would like to clarify that point with some other Judge’s statements related to the Plaintiff’s claim for damages under 42 U.S.C. §1983. The Plaintiff would like to fill all the gaps in this “Election:”

(1) Since this section (i.e., 42 U.S.C. §1983) specifically indicated that liability exists for “deprivation of any

rights, privileges, or immunities secured by the Constitution and laws" the facts of this case clearly demonstrate that the Dover Police Officer, Dale Boney, fabricated the evidence and issued citation to the Plaintiff, although the other party was guilty in the occurred accident in violation of 'due process' and 'equal protection' provisions of the Fourteenth Amendment of the United States Constitution. Even if the actions of the officer were based on the fraudulent testimony of a witness he had his own eyes and could have examined the location of damages on both cars which he failed to do. In that regards his conduct was "arbitrary, or conscience shocking, in a constitutional sense" *Collins v. City of Harker Heights, Texas*, 503 U.S. 115, 128 (1992). Moreover, in constituting the Due Process Clause, the United States Supreme Court has held that negligent acts by state actors do not effect a "deprivation" for purposes of the Due Process Clause if the state provides a

Appendix Q, page 4

meaningful post-deprivation remedy, such as, for example, a tort remedy in its own courts. *Hudson v. Palmer*, 468 U.S. 517, 533 (1984). In this particular case the Court's 'Order' in response to which this "Election" has been filed specifically denied the Plaintiff a "tort remedy" under the state law making a transfer to a federal court a necessity.

(2) Although states and state agencies are entitled to Eleventh Amendment immunity in federal court, local governments have no immunity from damages flowing from their constitutional violations, and may not assert the good faith claims of its agents as a defense to liability.. *Owen v. City of Independence, MO*, 445 U.S. 621 (1980), *Monell v. Dept. of Social Services of New York*, 436 U.S. 658, 699-700 (1978). So, Dover Police Department does not have any immunity whatsoever.

(3) In contrast to the distinct lack of immunity available to local governments, individual capacity defen-

dants are protected by qualified immunity. *Harlow v. Fitzgerald*, 457 U.S. 800 (1982). See also, *Anderson v. Creighton*, 483 U.S. 635 (1987).

(4) Qualified immunity is a powerful tool that shields individual officials who are performing discretionary activities unless their conduct violates "clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow*, 457 U.S. at 817. A government official is entitled to qualified immunity unless his "act is so obviously wrong in the light of preexisting law, that only a plainly incompetent officer or one who was knowingly violating the law would have done such a thing." *Lassiter v. Alabama A & M University Board of Trustees*, 28 F.3d 1146, 1149 (11th Cir. 1994) (en banc). The qualified immunity inquiry is purely objective, the subjective intentions of the actor is irrelevant. *Crawford-El v. Britton*, 523 U.S. 574 (1998); *Anderson v. Creighton*, 483

U.S. 635, 641 (1987); *Harlow v. Fitzgerald*, 457 U.S. 800 (1982). In this particular case failure of the officer to see the obvious fact (location of the damages on the Plaintiff's car on the right not the left side of the car) is that 'objective' criteria that amounts to that level of either "negligence' or "intentional fabrication' that the Justice of the Peace Judge who had previously issued the Justice of the Peace Order (Honorable Ralph Grappenhous) to illegally incarcerate the Plaintiff in 2012 after illegal arrest by Dover Police officers when she was unconscious (apparently trusting police officers on bogus charges levied against the Plaintiff) found her in 2013 "not guilty."

- Plaintiff would question the presiding Judge's threats of sanctions under Rule 11 against a minority *pro se* litigant whose constitutional rights of 'due process' and 'equal protection' he systematically violates in this and other cases. Honorable Judge systematically

fails to sanction professional attorneys for their systematic and intentional violations of Delaware Lawyers Rules of Professional Conduct but intends to sanction a minority *pro se* litigant for her perceived but non-existent violations which will be a clear act of discrimination. The Judge's claim that the Plaintiff was not "harmed" by his almost two-year delay of the decision thus making filing of the Plaintiff's claim directly in the federal court outside of statute of limitations laughable and insulting. This claim is only additional manifestation of the partiality of the Judge and his discriminatory practices against the Plaintiff.

CONCLUSION

The Defendant, Dover Police Officer Dale Boney, is liable for actual and punitive damages under provisions of 42 U.S.C. § 1983 for deprivation of rights under color of law by denying the Plaintiff's basic constitutional right of 'due process' by intentionally falsifying evidence

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in his Police Report of the parking accident and pinning the blame for the collision on the Plaintiff although she was a victim not a perpetrator of the accident and thus denying her right for damages cause to her car. Plaintiff provided in this "Election" sufficient legal background for the transfer of the case to the US Court for the District of Delaware for deprivation of rights under color of law. Plaintiff specifically require the Court to promptly issue its decision on this "Election" and provide determination of any "discharge costs accrued" to the CCP so that those are paid to enable the Plaintiff to make a deposit to a federal court for filing fee there under provisions of 10 *Del.C.* §1902. The case is the evidence of a systematic and intentional Dover Police Department harassment of the Plaintiff that started in 2012 with her illegal arrest, illegal incarceration, beatings and torture in prison.

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Respectfully submitted on this Nineteenth Day of
August, 2016,

For the Plaintiff, /s/ Nina Shahin
Nina Shahin
103 Shinnecock Rd.
Dover, DE 19904
(302) 526-2152

**COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE
KENT COUNTY COURTHOUSE
38 THE GREEN
DOVER, DELAWARE 19901
PHONE: (302)735-3910**

**CHARLES W. WELCH, III
JUDGE**

July 19, 2016

Ms. Nina Shahin
103 Shinnecock Rd. Daniel A. Griffith, Esq.
Dover, DE 19904 Whiteford, Taylor & Preston, LLC
 The Renaissance Ctr., Suite 500
 405 North King Street
 Wilmington, DE 19801

RE: Nina Shahin v. Dover Police Officer Dale Boney,
 Badge # 10216, et al.

Decision on Plaintiff's Rule 59(d) Motion to Alter or
Amend Judgment

Dear Ms. Shahin and Mr. Griffith:

The Court is in receipt of the Motion to Alter and
Amend Judgment and, in the alternative, Motion for
Relief from Judgment that has been filed by the
plaintiff, Nina Shahin, for this matter. The motions
were filed pursuant to Court of Common Pleas Civil

Appendix R, page 1

Rules 59(d) and 60(b).¹ “Regardless how it is styled, a motion filed within ten days of entry of judgment questioning the correctness of a judgment may be treated as a motion to alter or amend the judgment under Rule 59[(d)].”² The Court will not consider the plaintiff’s motion under Rule 60(b). The Plaintiff’s Motion will be treated pursuant to Rule 59(d) because the motion was filed within 10 days after entry of judgment, does not state or rely on any proper grounds under Rule 60(b), solely relies on arguments raised under Rule 59(d), and the motion, in substance, questions the correctness of the Court’s judgment. After careful consideration by the Court, the plaintiff’s Motion

¹ Plaintiff’s motion cited to Rule 59(b) of the Court of Common Pleas Civil Rules. Rule 59(b) addresses motions for a new trial. However, in her motion, Plaintiff titled the motion as a motion to alter or amend judgment which is normally made under Rule 59(d).

² *Rankin v. Heckler*, 761 F.2d 936, 942 (3d Cir. 1985); *see also Desmond v. Super. Ct. of Del.*, 2016 WL 559404, at *2 n.1 (D. Del. Feb. 12, 2016) (Petitioner’s Motion to Alter or Amend Judgment and Motion for Relief was treated by the Court as a motion to alter or amend judgment).

to Alter and Amend Judgment is denied for the reasons provided below.

FACTS

On or about September 3, 2014, the plaintiff filed a civil tort action against the defendants, State Farm Mutual Automobile Insurance Co., and Officer Dale Boney ("Boney". In her complaint, the plaintiff alleged that Boney caused her damages when he issued her a citation and fabricated a police report that caused State Farm to deny her claim for reimbursement for damages caused to her vehicle by an automobile accident. The defendant, Officer Dale Boney, filed a motion to dismiss the plaintiff's claim against him, contending that he is immune from liability under The County Tort Claims Act, 10 *Del.C.* § 4011.

On December 15, 2015, the Court entered an order requesting additional argument from the plaintiff as to her position on Officer Dale Boney's immunity defense

under the County and Municipal Tort Claims Act. The plaintiff's Response raised, for the first time, a claim under 42 U.S.C. § 1983 and failed to address the immunity defense.

On April 13, 2016, the Court entered its Order granting the defendant's Motion to Dismiss pursuant to 10 *Del.C.* §4011.³ Thereafter, the plaintiff filed the instant motion. The plaintiff seeks to alter or amend the Court's April 13, 2016, Order granting the defendant's Motion to Dismiss.

STANDARD OF REVIEW

In Delaware, a motion to alter or amend judgment will be granted if the movant shows: "(1) an intervening change in controlling law; (2) the availability of new evidence; or (3) the need to correct clear error of law or to prevent manifest of injustice." *King v. McKenna*, 2015

³ See *Shahin v. Boney*, 2016 WL 3152575 (Del. Com. Pl. Apr. 13, 2016).

WL 5168481, at *3 (Del. Super. Aug. 24, 2015). “[T]he Court will deny the motion if it merely restates arguments already considered and rejected during litigation.” *Id.*

DISCUSSION

By her motion, the plaintiff seeks to alter or amend the Court’s disposition as to her claim against Officer Dale Boney. In her motion, the plaintiff raises the following arguments: (1) the Court’s first action was made one year and three months since the plaintiff’s filing and, therefore, the Court failed to timely prosecute her claim; (2) in the Court’s Letter Opinion, the Court failed to take any disposition as to the defendant, State Farm; (3) the Court failed to hold a pre-trial hearing to determine all the facts and legal responsibilities and, therefore, the Court made a decision without any hearing or calling of witnesses, which is a questionable legal procedure; and (4) the Court, in its decision, failed to state the standards

of applicable law under which the case has been filed.

In this instant matter, the plaintiff has not demonstrated any of the requirements for Civil Rule 59(d) relief. In her motion, the plaintiff has not alleged new evidence or change in controlling law. However, based on the arguments raised in the plaintiff's motion, the motion may be construed as asserting a claim to alter or amend judgment to correct clear error of law or to prevent manifest of injustice.

First, the plaintiff argues that the Court should alter or amend its decision due to clear error of law or manifest injustice because the Court's Order dismissing her claim against the defendant was entered one year and three months after she filed her claim. The plaintiff does not state any law to support her claim nor does she show that she suffered any prejudice due to the delay of the Court's adjudication of her claim. Furthermore, any delay in the disposition of the plaintiff's claim is partly

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attributable to the number of motions and pleadings filed by the plaintiff in this case that the court has had to review and consider.

Next, the plaintiff contends that the Court failed to provide any disposition for the defendant, State Farm. Again, the plaintiff fails to show that there was a clear error of law or manifest of injustice. This claim is meritless because the Court did not “fail” to provide a disposition as to her claim against State Farm. State Farm did not file a motion to dismiss and, therefore, no disposition has been required to date.

The plaintiff further asserts that the court failed to hold a pre-trial hearing to determine all the facts and legal responsibilities and, therefore, made a decision without any hearing or calling of witnesses, which is a questionable legal procedure. This claim is also meritless. Under Court of Common Pleas Civil Rule 16(c), the Court is not mandated, but, has discretion as

to whether to hold a pre-trial conference. Civil Rule

16(c) states the following:

Pre-Trial Conferences. In any action, the Court may in its discretion direct the attorneys for the parties and any unrepresented parties to appear before it for a conference to consider: (1) The simplification of the issues; (2) The necessity or desirability of amendments to the pleadings; (3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof; (4) The limitation of the number of expert witnesses; (5) The advisability of a preliminary reference of issues to a Commissioner for findings to be used as evidence at trial; (6) The selection of an ADR resolution method, appointment of an ADR Practitioner, or to otherwise facilitate ADR resolution when the parties have been unable to do so in accordance with Rule 16(a); (7) Such other matters as may aid in the disposition of the action.

Furthermore, the Court followed the proper legal procedure under the standard of review for a motion to dismiss. Under such standard, the Court is only required to examine the Complaint, accept all well-pleaded allegations as true, and determine whether the plaintiff may recover under any reasonably conceivable set of circumstances susceptible of proof. *Morabito v. Del.*

Sleep Disorder Ctrs., LLC, 2015 WL 3882609, at *2 (Del. Super. June 23, 2015) (citations omitted).

The plaintiff's final assertion is that the Court, in its Opinion, failed to state the standards of applicable law under which the case been filed. The plaintiff claims that the applicable law was 42 U.S.C. § 1983, civil action for deprivation of rights.⁴ To state a claim under 42 U.S.C. § 1983, a plaintiff must allege "the violation of a right secured by the Constitution or law of the United States and must show that the alleged deprivation was committed by a person acting under the color of state law." *Milbourne v. Beecher, et al*, 2016 WL 3583796, at *2 (D.Del. June 30, 2016). Court of Common Pleas Civil Rule 8(a) requires the Complaint to contain "(1) a short

⁴ "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction therefore to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit, in equity, or other proper proceeding for redress..." 42 U.S.C. § 1983.

and plain statement of the claim that the pleader is entitled to relief and (2) a demand for judgment for the relief to which the party deems itself entitled.” Nowhere in the plaintiff’s Complaint does the plaintiff allege a violation of a Constitutional right or right secure by law. The first mention of a 42 U.S.C. § 1983 was addressed in the plaintiff’s Response to the Court’s Order for additional argument concerning the defendant’s immunity defense under The County and Municipal Tort Claims Act. *The Court disregarded the plaintiff’s 42 U.S.C. §1983 claim because it was improper and outside the scope of the Court’s Order.* (Emphasis by *Italics*, bold and underlying was added by the Petitioner NS). The proper course was for the plaintiff to file a motion to amend pleadings. However, the plaintiff failed to do so and now seeks to alter or amend the Court’s judgment due to her own mishap. The County and Municipal Tort Claim Act, 10

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Del.C. § 4011, was the proper applicable law upon which the Court has made its decision to dismiss Boney from the case.

Finally, the Court wishes to address the plaintiff's request to transfer the case to the United States District Court for the District of Delaware pursuant to 10 *Del.C.* §1902.⁵ In threatening and disrespectful language, the plaintiff demands transfer of the case "to avoid accusation of violating the Plaintiff's constitutional rights of 'due process' and 'equal protection' because of his [the Court's] professional dishonesty and collusion with professional attorney representing Defendants and bias and discrimination against the national minority, *pro se* litigant [sic]."

The plaintiff's request is denied. The plaintiff's claim has been adjudicated and based on the face of the Complaint and the law, the Court had subject matter ju-

⁵ § 1902. Removal of actions from courts lacking jurisdiction.

isdiction over the plaintiff's claim. Furthermore, the plaintiff failed to follow the proper procedure for bringing her claim in federal court. Therefore, the request must be denied.

Finally, the Court would like to remind the plaintiff that the Court will not tolerate the use of abusive language and shows of disrespect towards the Court, other parties, or the attorneys representing them. All parties who come before this Court should conduct themselves in a civil and courteous manner. Anyone refusing to do so may be subject to Court or Common Pleas Civil Rule 11 sanctions. The Court, and all litigants, in this matter have been professional and courteous to the plaintiff. It expects the same courtesy from her. Valid legal argument does not need to contain, and should not contain, slanderous, disrespectful and threatening comments.

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CONCLUSION

For the foregoing reasons, the plaintiff's Motion to Alter or Amend Judgment is DENIED. The plaintiff's request to transfer case to the united States District Court for the District of Delaware pursuant to 10 *Del.C.* § 1902 is DENIED.

IT IS SO ORDERED this 19th day of July, 2016.

Sincerely, /s/ Charles W. Welch, III
Charles W. Welch, III

CWW:mek

**IN THE COURT OF COMMON PLEAS FOR THE
STATE OF DELAWARE IN AND FOR KENT
COUNTY**

NINA SHAHIN,)	
)	
Plaintiff,)	
v.)	
	)	C.A. No.:2014-CU
DOVER POLICE OFFICER	)	514000682
DALE BONEY, BADGE #)	
10216, AND STATE FARM)	
MUTUAL AUTOMOBILE)	
INSURANCE COMPANY,)	
)	
Defendants.)	

PLAINTIFF'S MOTION FILED UNDER
PROVISIONS OF RULES 59(b) AND 60(b) OF CCP
RULES OF CIVIL PROCEDURE

The Plaintiff, Nina Shahin, thereby filed her Motion under provisions of Rules 59(b) 'Motion to alter or amend a judgment' and 60(b) 'Relief from judgment or order' because of "Mistake, inadvertence, excusable neglect; newly discovered evidence; fraud, etc." for relief from and amendment of what appears to be the Court of Common Pleas judgment (albeit in the form of a letter)

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issued on April 13, 2016, mailed two days later (i.e., on April 15, 2016, see copy of the “judgment” in **Exhibit A** and a copy of the envelope in **Exhibit B**) for the following intentional omissions and neglects:

- By the Court’s another personal correspondence dated December 15, 2015, the Plaintiff was ordered to respond to the Defendant, Officer Boney’s argument that he is immune from the suit under 10 *Del. C.* § 4011 within twenty days. On 12/29/2015 Plaintiff complied and indicated that the officer deprived her of her right under color of law (42 U.S.C. § 1983) when he falsified the evidence in a parking accident that had occurred in September of 2013. Attorney for the Defendant, Mr. Daniel Griffith, filed his objections to that clarification on January 26, 2016. In the Court’s ‘judgment’ there is not a word mentioned about that statute. The Honorable Judge did not even bother to rehash the attorney’s argument because it was difficult for him to

argue about two-year "statute of limitations" when the lawsuit had been filed on the first anniversary of the accident (i.e., September 3, 2014) and the Judge's first action was made one year and three months later (i.e., on December 15, 2015). So much for the justice in the Delaware Court of Common Pleas that was supposed to act promptly.

- The Court "judgment" abridged to the title of the case and "et. al." failing to mention the second Defendant, State Farm Mutual Automobile Insurance Company, specifically to eliminate the name of the Defendant against whom the Court's judgment failed to indicate any disposition. Attorney for that Defendant, who filed her "Entry of Appearance" and "Answer" on behalf of the Defendant too late to take into consideration any actions on her part, in her communication to the Court of January 26, 2016 (copy in Exhibit C) fraudulently indicated that "there is no

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coverage for Plaintiff Shahin.”

- Both attorneys on many occasions asked the Court to hold hearing in this case to determine all the facts and the associated legal responsibilities of everybody involved in the accident and the police report related to that accident which the presiding Judge decided to ignore citing facts without any hearing or calling witnesses which is a questionable legal procedure.

All these glaring intentional omissions and negligence in the Court's failure to timely prosecute the Plaintiff's claim and failure to mention the standards of applicable law under which the case had been filed demand the Judge to ALTER and AMEND his judgment or, in the alternative, to transfer the case to the US Court for the District of Delaware (because it was timely filed in the CCP) to avoid accusation of violating the Plaintiff's constitutional rights of 'due process' and 'equal protection' because of his professional dishonesty and

collusion with professional attorneys representing Defendants and his bias and discrimination against the national minority, *pro se* litigant.

Respectfully Submitted on this Twenty First Day of April, 2016.

For the Plaintiff, /s/ Nina Shahin

NINA SHAHIN

103 Shinnecock Rd.

Dover, DE 19904

(302) 526-2152

**COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE
KENT COUNTY COURTHOUSE
38 THE GREEN
DOVER, DELAWARE 19901
PHONE: (302)735-3910**

**CHARLES W. WELCH, III
JUDGE**

April 13, 2016

Daniel A. Griffith, Esq. Mrs. Nina Shahin
Whiteford, Taylor & Preston, LLC 103 Shinnecock Rd.
The Renaissance Centre, Suite 500 Dover, DE 19904
405 North King Street
Wilmington, DE 19801

RE: Nina Shahin v. Dover Police Officer Dale Boney,
 Badge # 10216, et al.
 C.A. No.: CPU5-14-000682

Decision on Defendant Dover Police Officer Dale
Boney's Motion to Dismiss

Dear Mr. Griffith and Mrs. Shahin:

The Court has reviewed the Motion to Dismiss filed for the above-referenced matter by Defendant Officer Dale Boney ("Boney") of the Dover Police Department. The motion was filed pursuant to Court of common Pleas Civil Rule 12(b)(6). After a thorough examination of the file for this matter by the court, including all of the requisite pleadings filed by the parties, and the parties' submissions, Boney's motion is granted because the plaintiff is precluded from suing Boney for damages for the alleged torts in this action due to the County and Municipal Tort Claims Act, 10 *Del.C.* §4011.

Appendix T, page 1

This civil tort action arises from a motor vehicle accident that involved the plaintiff and another driver in the parking lot of a grocery store. Boney, while on duty as a police officer for the City of Dover, responded to the scene to investigate the accident. It is alleged by the plaintiff that Boney went inside the store for an unspecified amount of time. Upon exiting the store, he issued an inattentive driving citation to the plaintiff. Subsequently, the plaintiff, Nina Shahin, filed the instant tort action for damages against Boney. In her Complaint, the plaintiff alleges that Boney caused her damages when he issued a citation and fabricated a police report that caused the State Farm Mutual Automobile Insurance Company to deny her claim for reimbursement for damages caused to her vehicle in the accident. The plaintiff contends that Boney had no idea how the accident occurred when he wrongfully issued her the citation and fabricated facts about the accident in his police report. In support of her allegations, the plaintiff contends that the police report contained erroneous information regarding the damage to her vehicle. Moreover, the plaintiff contends that Boney falsified a witness because a witness failed to appear at the Justice of the Peace Court hearing for her inattentive driving citation. The plaintiff demands damages in the amount of \$ 188.37, to replace her right rear bumper that was damaged in the motor vehicle accident, and court costs. In response, Boney has filed this Motion to Dismiss on the grounds that he is immune from actions in tort under the County and Municipal Tort Claims Act.¹

¹ In a response to Boney's Motion to Dismiss, the plaintiff contends that Boney's legal responsibility falls under federal not state law. It is the plaintiff's position that she was deprived rights under the provisions of 42 U.S.C. §1983 because Boney denied her the basic constitutional right of "due process." Yet, the plaintiff's Complaint

STANDARD OF REVIEW

“When deciding a motion to dismiss, the Court must examine the complaint and accept all well-pleaded allegations as true.” *Morabito v. Del. Sleep Disorder Ctrs., LLC*, 2015 WL 3882609, at *2 (Del. Super. June 23, 2015) (citation omitted). “If the facts alleged in the complaint are sufficient to support a claim for relief, the motion should be denied.” *Id.* “The test for sufficiency is a broad one, that is, whether a plaintiff may recover under any reasonably conceivable set of circumstances susceptible of proof under the complaint.” *Id.* “An allegation, though vague or lacking in detail, is nevertheless ‘well-pleaded’ if it puts the opposing party on notice of the claim being brought against it.” *Id.*

DISCUSSION

The County and Municipal Tort Claim Act (“Tort Claims Act”) provides statutory immunity to all municipal, town and county governmental entities and their employees from suit on all tort claims. 10 *Del.C.* §4011. Section 4011(a) of the Tort Claims Act reads as follows:

§ 4011. Immunity from suit

(a) Except as otherwise expressly provided by statute, all governmental entities and their employees shall be immune from suit on any and all tort claims seeking recovery of damages. That a governmental entity has the power to sue or to be sued, whether appearing in its charter or statutory enablement, shall not create or be interpreted as a waiver of the immunity in this

contains no claim of a violation of federal law pursuant to 42 U.S.C. §1983. Therefore, the Court cannot provide any weight to her argument in this regard.

subchapter.

However, where a municipal, town or county governmental entity is immune under the Tort Claims Act, its employee can be held personally liable for his or her acts under § 4011(c) of the Act. Section 4011(c) reads as follows:

§ 4011. Immunity from suit

(c) An employee may be personally liable for acts or omissions causing property damage, bodily injury or death in instances in which the governmental entity is immune under this section, but only for those acts which were not within the scope of employment or which were performed with wanton negligence or willful and malicious intent.

In pertinent part, a “governmental entity” means “any municipality, town, county, administrative entity or instrumentality created pursuant to Chapter 8 of Title 22 or Title 9, [or] any municipality created by a special act of the General Assembly.” 10 *Del.C.* § 4010(2). An “employee” means “a person acting on behalf of a governmental entity in any official capacity.” § 4010(1).

In the current case, the Court takes judicial notice that the City of Dover Police Department is an agency of a municipal corporation, the City of Dover, which has been incorporated by the State of Delaware. “It is well established that municipal police departments are ‘not separate entities for the purpose of suit, but rather, are distinct departments or entities of the [city or municipal] government [themselves].’” *See Gregory v. Dover Police Dept’t*, 2012 WL 6915204, at note 7 (Del.

Super. Dec. 31, 2012) (citing *Breitigan v. State*, C.A. No. 02-1333-GMS, at *4 (D.Del. 2003)). Furthermore, it is not contested that Boney is an employee of the City of Dover Police Department.

Acts or Omissions Causing “Property Damage, Bodily Injury, or Death”

“An employee may be personally liable for acts or omissions causing property damage, bodily injury or death.” § 4011(c). The § 4011(c) exception to immunity found in the Tort Claims act “narrowly defines both the type of actions and the type of injuries for which immunity is waived.” *Carr v. Town of Dewey Beach*, 730 F. Supp. 591, 601-02 (D. Del. 1990). A covered employee is “only liable for ‘acts or omissions causing property damage, bodily injury or death’.” *Carr*, 730 F. Supp. At 602. “Economic harm [or loss] alone does not constitute ‘property damage’ as that term is used” under the Tort Claims Act. *Dale v. Town of Elsmere*, 702 A.2d 1219, 1223 (Del. 1997). “Economic loss” is defined as “any monetary loss[], costs of repair or replacement, loss of employment, loss of business or employment opportunities, loss of good will, and diminution of value.” *Brasby v. Morris*, 2007 WL 949485, at *6 (Del. Super. Mar. 2007) (citations omitted).

In *Carr v. Town of Dewey Beach*, the plaintiff sued for lost profits when the defendant, the Town of Dewey Beach and its employee, allegedly acted with malicious intent when they issued a stop work order that delayed the plaintiff's construction of his restaurant. *Carr*, 730 F. Supp. at 601. The court held that the plaintiff failed to allege that the employee caused “property damage, bodily injury or death” under the § 4011(c) exception to immunity because the plaintiff only claimed that the

employee caused lost profits and no physical damage to the plaintiff's property. *Id.* at 602.

In *Dale v. Town of Elsmere*, where the plaintiffs brought a nuisance action against the Town of Elsmere and its Mayor, the Supreme Court of Delaware adopted the holding in *Carr* and held that the plaintiffs failed to allege "property damage" necessary to implicate the §4011(c) exception to immunity because they only sought compensation for loss of enjoyment and value of their property. *Dale*, 702 A.2 at 1223.

In the instant matter, the plaintiff has failed to allege "property damage" as necessary to implicate the §4011(c) exception to hold Boney personally liable. The plaintiff alleges that Boney cause her property damage when State Farm denied her insurance claim after it relied on Boney's fabricated police report that states that the plaintiff was the driver at fault in the car accident in which she was involved. The plaintiff demands damages from Boney in the amount of \$ 188.37, for damage caused by the accident to her right rear bumper, and court costs in the amount of \$ 135.00. The court finds that the plaintiff is only claiming economic harm or economic loss resulting from State Farm's denial of her insurance claim. In her Complaint, the plaintiff does not allege that Boney caused the physical damage to her automobile. In fact, the property damage at issue resulted from the car accident in which the plaintiff was involved with another driver. Economic harm alone without sufficient allegations that Boney caused the physical damage to the plaintiff's property does not constitute "property damage" under the Tort Claims Act and does not satisfy the §4011(c) exception to hold Boney personally liable. *Dale*, 702 A.2 at 1223. As such, the Court finds that Boney is immune

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from his tort action pursuant to 10 *Del.C.* 4011.
Therefore, Boney's Motion to Dismiss is granted.

CONCLUSION

In examining the complaint and accepting all well-pleaded allegations as true, there are no reasonably conceivable set of circumstances susceptible of proof in which the plaintiff may recover from Boney. Therefore Boney's Motion to Dismiss is granted because he is immune from this tort action pursuant to 10 *Del.C.* §4011.

IT IS SO ORDERED, this 13th day of April 2016.

Sincerely, /s/ Charles W. Welch
Charles W. Welch, III

CWW: mek
pc: Reneta L. Green-Streett, Esq.

**IN THE COURT OF COMMON PLEAS FOR THE
STATE OF DELAWARE IN AND FOR KENT
COUNTY**

NINA SHAHIN,)	
)	
Plaintiff,)	
v.)	
	)	C.A. No.:2014-CU
DOVER POLICE OFFICER	)	514000682
DALE BONEY, BADGE #)	
10216, AND STATE FARM)	
MUTUAL AUTOMOBILE)	
INSURANCE COMPANY,)	
)	
Defendants.)	

**PLAINTIFF'S ADDITIONAL RESPONSE TO
DEFENDANT'S MOTION TO DISMISS**

The Plaintiff, Nina Shahin, hereby files this Additional Response to the Defendant's arguments and Motion to Dismiss as it was mandated by the Court's December 15, 2015 communication. Police Officer Dale Boney's legal responsibility falls under federal not state laws. In particular, he is responsible for the Plaintiff's deprivation of rights under provisions of 42 U.S.C. §1983 that specifically makes "every person who, under

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color of any statute, ordinance, regulation, custom, or usage, of any State or territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the united States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress...”

The Plaintiff who had been involved in a parking accident expected the officer who was called to investigate the accident to conduct it with all required standards of ‘due process’ and mandated by the Fourteenth Amendment of the United States Constitution which did not happen. Instead, the Defendant falsified the evidence and pinned the blame on the Plaintiff, who was the victim in the accident. In *Monroe v. Pape*, 365 U.S. 167, 180 (1961), United States

Supreme Court held that acts performed by a police officer in his capacity as police officer are acts taken "under color of law." As the Supreme Court stated in *United States v. Classic*, 313 U.S. 299, 326 (1941), "[m]isuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action taken "under color of state law." While qualified immunity is available to an official sued in his personal capacity, there is no qualified immunity available in an official capacity suit (see *Hafer v. Melo*, 112 S.Ct. 358, 361-62 (1991) (personal and official capacity suits distinguished). Plaintiff sued Officer Dale Boney in his official capacity as Dover Police Officer and not in his individual capacity as just Dale Boney, so he has no any qualified or unqualified immunity whatsoever. Moreover, qualified immunity is a tool that shield individual officials who are performing discretionary

Appendix U, page 3

activities unless their conduct violates "clearly established statutory or constitutional rights of which a reasonable person would have known." See *Harlow v. Fitzgerald*, 457 U.S. 800, 817 (1982). In the Plaintiff's case the officer not only falsified the evidence based on a witness's perjury (he has his own eyes and could have seen the damages were not on the left side of the Plaintiff's car but on the right side) but also intentionally omitted in his report facts well known to him (the other person involved in the accident had a passenger and a baby in her car, facts completely omitted in the officer's report). These facts point out to an intentional fraud not a simple negligence on the officer's part. That the witness committed perjury is another felony committed in this case and the question is how that can be proven and how that person should be investigated and prosecuted!

Since that federal Statute authorizes not only actual but

also punitive damages, the Plaintiff request with this Motion award of punitive damages to be awarded in the amount determined by the Court.

CONCLUSION

The Defendant, Dover Police Officer Dale Boney, is liable for actual and punitive damages under provisions of 42 U.S.C. § 1983 for deprivation of rights under color of law by denying the Plaintiff's basic constitutional right of 'due process' by intentionally falsifying evidence in his Police Report of the parking accident and pinning the blame for the collision on the Plaintiff although she was a victim not a perpetrator of the accident and thus denying her right for damages cause to her car. Plaintiff therefore asks the Court of award her not only the actual damages specified in her original Complaint but also punitive damages specifically authorized under the Statute in the amount determined by the Court depending on the gravity of the officers violations (i.e.,

Appendix U, page 5

intentional fraud).

Respectfully submitted on this Twenty Ninth Day of
December 2015.

For the Plaintiff, /s/Nina Shahin
NINA SHAHIN
103 Shinnecock Rd.
Dover, DE 19904
(302) 526-2152

**IN THE COURT OF COMMON PLEAS FOR THE
STATE OF DELAWARE IN AND FOR KENT
COUNTY**

NINA SHAHIN,)	
)	
Plaintiff,)	
v.)	
	)	C.A. No.:2014-CU
DOVER POLICE OFFICER	)	514000682
DALE BONEY, BADGE #)	
10216, AND STATE FARM)	
MUTUAL AUTOMOBILE)	
INSURANCE COMPANY,)	
)	
Defendants.)	

PLAINTIFF'S OBJECTIONS TO THE
DEFENDANT, DOVER POLICE OFFICER, DALE
BONEY'S MOTION TO DISMISS

The Plaintiff, Nina Shahin, thereby files Plaintiff's Objections to the Defendant, Dover Police Officer Dale Boney's Motion to Dismiss her Complaint against him on the following grounds:

1. In the first paragraph of the Motion the Defendant mentioned that the Plaintiff is a "frequent *pro se* litigant" although no comments or interpretations were

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presented to illuminate that fact or clarify the purpose of that reference or the Defendant's exact intent which could not be possibly friendly or positive to the Plaintiff. Since the Defendant failed to declare his intentions the Plaintiff would provide her own explanations and interpretations and especially very detailed ones related to facts of her illegal arrest, illegal incarceration, beatings and torture in prison and other facts of systematic harassment and intimidation by officers of Dover Police Department. Plaintiff's other cases are related to her (and sometimes her husband's) attempts to enforce federal mostly antidiscrimination laws: Expedited Funds Availability Act (Regulation CC), Title VII (Discrimination in Employment), Title VIII (Fair Housing Act), Truth in Lending Act (TILA or Regulation Z), Real Estate Settlement Procedure Act (RESPA or Regulation X) and others. Plaintiff painstakingly collects documentary evidence (documents of judicial

and/or administrative process as well as articles in local publications) to prove complete corruption of Delaware courts (federal and state) where the poor, minorities, *pro se* litigants cannot enforce any laws or win a case regardless of underlying material facts and standards of applicable and controlling law and procedure. The corruption is so deep and wide that it can be demonstrated on just one example: the heir of both DuPont family and a famous Wilmington attorney (Robert H. Richards IV) charged with sexual assault of his infant daughter was sentenced to psychiatric treatment at Massachusetts clinic which he skipped¹ without any penalties or punishment but a foreign born woman was arrested, incarcerated, beaten and tortured in prison for asking a bank a letter to which she was entitled as a matter of law. The poor, minorities, *pro se*

¹ DuPont Heir Never Got Ordered Care, *The News Journal*, 04/09/2014.

Litigants cannot enforce any of the antidiscrimination laws due to abuse of judicial discretion, collusion between judges and professional attorneys, and systematic judicial harassment through complete disregard and falsifications of standards of applicable and controlling law and procedure. Plaintiff will file a formal human rights violations complaint with the UN High Commissioner on Human Rights on the basis of all that collected material. In particular, the Plaintiff collects information related to a systematic pattern of Dover Police officers' harassment, intimidation, including her illegal arrest and incarceration in August of 2012 and this case is part of three instances she would use in her complaint. On August 10, 2012, the Plaintiff visited a local PNC bank office on a special invitation of that office assistant manager and requested a letter about closing costs related to her and her husband's home equity application which the PNC

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bank screwed up badly. That letter with closing costs the PNC bank was supposed to provide three weeks earlier in accordance with standards of federal laws: Truth in Lending Act (TILA) and Real Estate Settlement Procedure Act (RESPA). The day before (i.e., August 9, 2012) the Plaintiff's complaint about mishandling of their application filed with the Comptroller of the Currency had been transferred to the newly created Consumer Financial Protection Bureau, fact known to the assistant manager. The assistant manager refused to issue the requested letter and called police who without much of discussion arrested the Plaintiff which in view of the circumstances could only be interpreted as an act of intentional harassment and intimidation for an attempt to exercise her rights. At Dover police station when the Plaintiff was taken for fingerprinting she collapsed to the floor because of a sudden and unexpected drainage of her strength (her

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knees gave in) and was taken to Kent General Hospital where medical personnel in collusion with Dover police officers attempted to give her illegal drugs so that she would test positive for the use of illegal drugs. Since the Plaintiff was not told what drugs were those pills and why did she need them she refused to take them. Nurse who attempted to administer those drugs became very angry, immediately called police officers who pulled the Plaintiff out of the ER calling her "an ass hole" and "piece of shit," threw her into their car, and slammed the door on her toes. At that point the Plaintiff lost her consciousness. She regained her consciousness from a terrible pain on the left side of her upper back on the way to Delores Baylor correctional facility in Wilmington, DE. Although she was unable to move, she was ordered to get out and when she could not was threatened to be sprayed. Threat did not help. Plaintiff was dragged out of the case and dropped on the floor

where she spent the next from 12 to 16 hours. When she did not come home that night her husband called Dover Police and Kent General Hospital and both places denied that the Plaintiff had ever been there. Only when he personally came to Kent General Hospital, the security on duty there went through the hospital data base and informed him that the Plaintiff had been arrested, incarcerated and the bail was set at \$4,500 (\$500 for fabricated trespassing and \$2,000 each for fabricated 'resisting arrest' and 'refusing to take fingerprinting' charges).² The Plaintiff's husband immediately paid that bail with his credit card which occurred between 12:00 midnight and 1:00 am. Apparently, only after payment of the bail the Plaintiff was pulled out of the floor, processed, and forced to take shower. The nurse in the infirmary refused to house her

² Murderers in Delaware are getting bail set at \$1,000 which demonstrated how intentional discrimination and abuse of judicial discretion was in the Plaintiff's case.

there apparently because of the already paid bail which should have triggered the Plaintiff's immediate release. Prison administration could not put her to a regular cell either because of her physical condition or the paid bail. Instead the Plaintiff was stripped of the warm prison clothes, dressed in the knee length sleeveless dress made of padded synthetic material that not hold any body warmth and wheel chaired to a PCO unit where she was left on a dirty plastic mattress and nothing else. While undressing her one of the guards pounded Plaintiff's arthritic and scoliotic back with her fists claiming that she was a "good actress," claim that echoed the one made by the arresting Dover police officer who brought her to prison (Justin Z. Richey) who declared that the Kent General Hospital had determined that the Plaintiff "faked everything." The Plaintiff spent in this PCO unit another two nights and two days freezing to a degree that her titanium hip im-

plant was freezing in her body.³ She took off her dress and wrapped it around her body trying not to move to preserve her body warmth. Spending two nights and two days in such conditions made her a complete invalid (her arthritis in bones and joints caused degeneration to a degree that she needed another surgery which she could not afford because of lack of funds). On Sunday, August 12, 2012, late afternoon the Plaintiff was finally wheel chaired to Wilmington Hospital for 'external evaluation.' From there she was moved to Christiana hospital where a forensic nurse made 47 pictures of her injuries all over her body. (Copies of those photos are presented in **Exhibit A**). The Plaintiff's husband during all that time was lied to by prison administration who claimed that the bail papers had never been received. When the Plaintiff's husband, who is a full professor of Mathematics at Delaware State University, finally arrived to Delores Baylor correctional facility on

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Sunday afternoon of August 12, 2012, the same lie was repeated to his face although the Plaintiff was no longer in the prison. While there he received a call from a physician at Wilmington hospital and was redirected to Christiana hospital where he picked up the wheel chaired Plaintiff. The Plaintiff's civil rights lawsuit against Dover Police, arresting officer, prison personnel and others involved in her illegal arrest and incarceration was dismissed because the Motion to Proceed in *Forma Pauperis* was denied to the Plaintiff and she had no money to pay for the filing fee. Plaintiff could not walk for another four months and only after extensive chiropractor therapy she started to walk without cane but not for long. In January of 2013 because of nervous breakdown related to illegal arrest and illegal incarceration she had shingles that threw her back to pain and

³ According to Geneva Convention 'torture' is defined as "the act of deliberately inflicting sever physical or psychological pain and possibly injury to a person usually to one who is physically restrained or otherwise under the torturer's control or custody and unable to defend against what is being done to them."

incapacitation. She finally had a second hip replacement surgery on September 16, 2014. This case is a second case of Dover Police intentional falsification of evidence (fraud), harassment, and intimidation with illegal citation for violation she did not commit. The third case when a Dover police officer came to the Plaintiff's house and threatened her with arrest will be heard in this Court on October 7, 2014. This latter case affected her husband who is a diabetic with high blood pressure more than the Plaintiff who did not expect anything other than intimidation and harassment from Dover Police. Plaintiff's husband cancelled his trip to Austria and the following Sunday both of them came to Dover police station so that the Plaintiff could be arrested and her husband could control the bail process. Both of them came at 11:00 am, 5:00 pm, 7:00 pm and the officer (Katelyn Spoon-Roth) finally arrived to her job close to 12:00 midnight and by

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1:00 am the Plaintiff's case was presented to a Justice of the Peace Judge. Plaintiff's husband rebooked his flight to Austria the following Monday and the Delaware State University forked additional \$ 700 for the change of his flight with no compensation for his high blood pressure, high glucose levels all these days and harassment at Dover police station where the Plaintiff and her husband were given the wrong information again and again about the officer's initial time of the start of her duty.

2. In this particular case the Defendant, Dale Boney, officer of the Dover Police Department intentionally and fraudulently falsified the evidence related to the Plaintiff's car damages and issued the Plaintiff with a citation for violation she did not commit which is another example of intentional harassment and intimidation of the Plaintiff by the Dover police.

3. Plaintiff tried to resolve the issue with the City of Dover Human Relation Commission by filing complaint

against the officer. The answer of the City of Dover was quite specific "go and sue" (copy of the City of Dover response is attached in **Exhibit B**).

4-5. In those paragraphs the Defendant claimed that he is "immune" from any civil claims "but only for those acts which were not in the scope of employment or which were performed with wanton negligence or willful and malicious intent." (Emphasis is added by the Plaintiff). Intentional and fraudulent falsification of the evidence committed by the Defendant with intentional to illegally harass and intimidate the Plaintiff falls under the definition of "wanton negligence and willful and malicious intent" and does not shield the officer from personal responsibility for his illegal malicious and fraudulent actions.

6. Officer's falsification of evidence with reference to "eye witness" (who did not show up in court) caused the other Defendant, State Farm Mutual Automobile Com-

pany, to deny Plaintiff's claim for damages by parallel falsifications, insinuations, and an outright fraud presented to the Delaware Insurance Commissioner (it presented evidence of damages related to the opposing driver's car and not the Plaintiff's see copy of the State Farm's last response to the Delaware State Commissioner in **Exhibit C**) which raises a question of whether the State Farm actually understood the basic issue of the Plaintiff's case (sic!)

CONCLUSION

The Defendant's attorney in the Motion to Dismiss the Plaintiff's Complaint failed to prove by preponderance of evidence that the Plaintiff's complaint against the officer, Dale Boney, should be dismissed, and it should therefore be denied.

Respectfully submitted on this twenty Third Day of September 2014.

For the Plaintiff, /s/ Nina Shahin
Nina Shahin

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PRESIDENT WILLIAM BRADY OF THE DELAWARE
BAR ASSOCIATION THINKS **MORE THATN**
2000 NEW MEMBERS OF CITIZENS FOR A PRO-
BUSINESS DELAWARE DON'T KNOW THE FACTS.

(Picture below is of Mr. William P. Brady speaking to a
crowd of people)

(Below the picture:)

*"WE WOULD HOPE AND EXPECT THAT ONCE
BECOME AWARE OF THE TRUE FACTS OF THE
MATTER, THEY WILL DISACCIATE THEMSELVES
FROM THE CITIZENS GROUP."*

William P. Brady, President of the Delaware Bar Association

FACT: DELAWARE'S SUPREME COURT
HAS NEVER HAD AN AFRICAN
AMERICAN JUSTICE

FACT: DELAWARE RECEIVED AN "F"
FROM THE CENTER FOR PUBLIC
INTEGRITY IN JUDICIAL
ACCOUNTABILITY

FACT: NONE OF THE STATEMENT
MADE BY WILLIAM BRADY
ADDRESS THE LACK OF
TRANSPARENCY, ACCOUNTABI-
LITY AND DIVERSITY IN THE
DELAWARE COURT.