OPINION OF THE THIRD CIRCUIT

MONICA BIRCH-MIN, Individually and as Executrix of the Estate of Aung Min and as Administrator Ad Prosequendum on behalf of the Estate of Aung Min, Appellant
v.
MIDDLESEX COUNTY BOARD OF SOCIAL SERVICES;
PLAINSBORO POLICE DEPARTMENT;
ADULT PROTECTIVE SERVICES;
DOES 1 THROUGH 100 INCLUSIVE

No. 18-2467

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Submitted: December 12, 2018
January 23, 2019

NOT PRECEDENTIAL

On Appeal from the United States District Court for the District of New Jersey
(D.C. Civ. No. 3-14-cv-00476)
District Judge: Brian R. Martinotti

Submitted Pursuant to Third Circuit LAR 34.1(a)
December 12, 2018

Before: CHAGARES, BIBAS and GREENBERG, Circuit Judges

OPINION*

PER CURIAM

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Monica Birch-Min appeals from an order of the District Court granting summary judgment to the defendants and denying her Rule 60(b) motion and motion for reconsideration of the order denying her Rule 60(b) motion. For the reasons that follow, we will dismiss the appeal in part for lack of appellate jurisdiction and affirm in part to the extent of our jurisdiction.

Birch-Min, individually and as executrix for the estate of her late husband Aung Min, sued the Middlesex County Department of Social Services and the Plainsboro Police Department in the United States District Court for the District of New Jersey, alleging a violation of the couple's Due Process rights. Specifically, she alleged that her husband, who at the time was 93 years old,1 was unlawfully taken

from her care and imprisoned against his will by the Division of Adult Protective

Services and forced to participate in unnecessary medical testing. In a second amended complaint, Birch-Min asserted four causes of action: (1) a survival/wrongful death claim, pursuant to N.J. Stat. Ann. § 2A:15-3, et seq., and N.J. Stat. Ann. § 2A:31-1, et seq.; a Monell claim, see Monell v. Dep't of Social Services, 436 U.S. 658 (1978), pursuant to 42 U.S.C. § 1983 against Middlesex County Social Services; a Monell claim against the Plainsboro Police Department; and a conspiracy claim. The defendants moved separately for summary judgment and Birch-Min moved for summary judgment.

In an order entered on March 16, 2017, the District Court awarded summary judgment to the defendants and against Birch-Min. The Court reasoned in the main that

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all four of Birch-Min's causes of action were dependent upon the existence of an allegedly unlawful policy, practice, or custom enacted by either Middlesex County Social Services and/or the Plainsboro Police Department, and that she had offered no evidence whatever of such policies, practices, or customs. Birch-Min timely filed a motion for reconsideration and moved to disqualify the District Court. She also filed a notice of appeal on March 27, 2017, resulting in the appeal docketed in our Court at C.A. No. 17-1670. That appeal was stayed pursuant to Federal Rule of Appellate Procedure 4(a)(4)(A). In an order entered on April 18, 2017, the District Court denied Birch-Min's motion to disqualify and stated in its opinion that the matter of reconsideration was administratively closed. The Rule 4(a)(4) stay in this Court was lifted but Birch-Min's appeal then was dismissed by Order of the Clerk when she failed to pay the appellate docketing fees.2

Meanwhile, on May 1, 2017, and thus more than 28 days after the District Court's order granting summary judgment to the defendants was entered on the docket, Fed. R. Civ. P. 59(e) ("A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment."), Birch-Min filed a second motion for reconsideration. In an order entered on November 28, 2017, the District Court denied it.

On December 8, 2017, Birch-Min filed a motion to vacate the March 16, 2017 summary judgment order and November 28, 2017 order denying reconsideration,

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pursuant to Fed. R. Civ. P. 60(b). See Docket Entry No. 152. Birch-Min argued in a supporting affidavit that the summary judgment in favor of the defendants was void and should be vacated because it was based on "false facts" ... constituting Fraud." In an order entered on May 17, 2018, the District Court denied the Rule 60(b) motion. Birch-Min timely moved for reconsideration of that order. In an order

entered on May 30, 2018, the District Court denied reconsideration.

On June 29, 2018, Birch-Min filed a notice of appeal to this Court, seeking review of the District Court's March 16, 2017 order granting summary judgment to the defendants and against her, and orders denying her Rule 60(b) motion and motion for reconsideration of the order denying her Rule 60(b) motion. The matter has been fully briefed and is ripe for disposition.

We will dismiss the appeal for lack of appellate jurisdiction to the extent that Birch-Min seeks review of the District Court's March 16, 2017 order awarding summary judgment to the defendants and against her. Her June 29, 2018 notice of appeal was not timely filed within 30 days of either the March 16 order or the District Court's April 17, 2017 order denying disqualification and acknowledging the administrative termination of her original and timely motion for reconsideration. Fed. R. App. P. 4(a)(1)(A) (providing for 30-day appeal period); Fed. R. App. P. 4(a)(4)(A) (if party files in district court motion for reconsideration under Rule 59(e), and does so within the time allowed by that rule, the time to file an appeal runs from the entry of the order disposing of that motion).

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See also Bowles v. Russell, 551 U.S. 205, 209 (2007) (holding that taking of appeal within prescribed time is mandatory and jurisdictional).3

Birch-Min's appeal from the District Court's orders denying her Rule 60(b) motion and motion for reconsideration of the order denying her Rule 60(b) motion is timely filed, Fed. R. App. 4(a)(1); Fed. R. App. P. 4(a)(4)(A). We have jurisdiction under 28 U.S.C. § 1291.

We will affirm. We review a District Court's denial of a Rule 60(b) motion for an abuse of discretion, which occurs when the Court's decision "'rests upon a clearly erroneous finding of fact, an erroneous conclusion of law or an improper application of law to fact.'" See Reform Party v. Allegheny County Dep't of Elections, 174 F.3d 305, 311 (3d Cir. 1999) (en banc) (quoting International Union, UAW v. Mack Trucks, Inc., 820 F.2d 91, 95 (3d Cir.1987)). Rule 60(b) allows a party relief from a final judgment for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud, misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied; or (6) any other reason that justifies relief. Fed. R. 60(b)(1)-(6).

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The summary judgment record established the following. On January 20, 2012, Maxine Reid, of Adult Protective Services went to the couple's home to see Mr. Min because the agency had received an anonymous report that he was in distress. Birch-Min would not grant Reid access to the home and so Reid sought assistance

from the Plainsboro Police Department in executing her duties. Officers from the

Plainsboro Police Department, along with emergency medical personnel, arrived and ultimately gained entry into the home and took Mr. Min to the hospital (and then to a long-term care facility) against Birch-Min's wishes. Following the events of January 20, 2012, guardianship proceedings were commenced and the state probate court appointed a guardian and issued a judgment of incapacity, declaring that "Aung Min is an incapacitated person as a result of unsoundness of mind and is incapable of governing himself and managing his affairs and unable to consent to medical treatment."

Based on the summary judgment record, the District Court determined that Birch-Min had offered no evidence at all to support her contention that either the Plainsboro Police Department or Middlesex County Social Services had in place any unlawful policy, practice, or custom, or that the events of January 20, 2012 were in any way related to such an unlawful policy, practice, or custom. Instead, the summary judgment record showed only that a legitimate complaint concerning the health and well-being of Mr. Min was appropriately investigated and addressed. In seeking to reopen the judgment pursuant to Rule 60(b), Birch-Min argued that the District Court's decision, and subsequent decisions denying reconsideration, were based on fraud because she ultimately received a decision favorable to her, when on June 21, 2012, the Probate Court

vacated its Judgment of Incapacity and Order Appointing Guardian. In her Informal Brief, Birch-Min argues that "the Defendants [thus] should never have bothered the Mins." Appellant's Informal Brief, at 7.

We uphold the District Court's orders denying Birch-Min's motion to reopen the judgment and order denying reconsideration of the order denying her Rule 60(b) motion. Birch-Min sought to reopen the summary judgment on the ground that, because the probate court vacated the judgment of incapacity and order of guardianship, this circumstance necessarily meant that Mr. Min was never incapacitated, and that the defendants thus perpetrated a fraud on the District Court. We note that Birch-Min appeared at the hearing to contest guardianship and requested that she be permitted to move her husband from New Jersey to Monserrat in the Caribbean. The judgment of incapacity was issued but the hearing was continued and it later was determined that Mr. Min could travel. And so, on June 21, 2012, the Probate Court vacated the judgment of incapacity and order of guardianship for the purpose of allowing Mr. Min "to be discharged from Roosevelt Care Center and relocate to Monserrat with his wife, Monica Min, with the assistance of a home health aide."4 This determination to allow Mr. Min to move to Monserrat was not, however, an express or even implied repudiation of the Probate Court's earlier judgment of incapacity. The only inference to be drawn from the Probate Court's June, 2012 decision is that Mr. Min improved enough, following his stay at an extended care facility, to leave New Jersey with the assistance of Birch-

Min and a

home health aide. No fraud was perpetrated on the District Court by the defendants in their motions for summary judgment, and there were no misrepresentations by the defendants, and thus no basis for reopening the judgment pursuant to Rule 60(b).

Last, Birch-Min's motion for reconsideration of the District Court's order denying her Rule 60(b) relief was properly denied because she did not argue an intervening change in the law, new evidence, or a clear error of law. See Max's Seafood Café v. Quinteros, 176 F.3d 669, 673 (3d Cir. 1999).

For the foregoing reasons, we will dismiss the appeal in part for lack of appellate jurisdiction and affirm the orders denying Birch-Min's Rule 60(b) motion and motion for reconsideration of the order denying her Rule 60(b) motion.

Footnotes:

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

1. Mr. Min passed away on August 18, 2014.

2. Birch-Min moved to reopen the appeal. We denied the motion but granted her leave to supplement it with the required information. She never did so, and thus the appeal remains closed.

3. Birch-Min's May 1, 2017 motion for reconsideration did not toll the time for taking an appeal because it was not filed within 28 days of the District Court's March 16 summary judgment order, Fed. R. Civ. Pro. 59(e). The District Court did not have the authority to extend the time for filing the Rule 59(e) motion, Fed. R. Civ. P. 6(b)(2) ("When an act may or must be done within a specified time, the court may, for good cause, extend the time," except that a "court must not extend the time to act under Rules 50(b) and (d), 52(b), 59(b), (d), and (e), and 60(b)."). See also Long v. Atlantic City Police Dep't, 670 F.3d 436, 444 n.16 (3d Cir. 2012).

4. The couple then moved to Monserrat.

ORDER DENYING REHEARING

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 18-2467

MONICA BIRCH-MIN, Individually
and as Executrix of the Estate of
Aung Min and as Administrator Ad
Prosequendum on Behalf of the
Estate of Aung Min, Appellant v.

MIDDLESEX COUNTY BOARD OF SOCIAL SERVICES;
PLAINSBORO POLICE DEPARTMENT; ADULT PROTECTIVE SERVICES;

On Appeal from the United States District
Court for the District of New Jersey
(D. N.J. No. 3-14-cv-00476)

SUR PETITION FOR REHEARING

Present: SMITH, Chief Judge, McKEE, AMBRO, CHAGARES, JORDAN, HARDIMAN, GREENAWAY, JR., SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY and [1]GREENBERG, Circuit Judges

The petition for rehearing filed by Appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

Dated: May 20, 2019
Tmm/cc: Monica Birch-

Min Edward J. Florio,
Esq. Michael J. Stone,
Esq.

[1]Hon. Morton I. Greenberg's vote is limited to panel rehearing.

BY THE COURT,
s/Michael A. Chagares
Circuit Judge

OPINION OF THE DISTRICT COURT GRANTING SUMMARY JUDGMENT

MONICA BIRCH-MIN, et al., Plaintiffs,
v.
MIDDLESEX COUNTY BOARD OF SOCIAL SERVICES, et al., Defendants.

Civil Action No. 14-476-BRM-DEA

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

March 16, 2017

NOT FOR PUBLICATION

OPINION

MARTINOTTI, DISTRICT JUDGE

Before this Court are the following motions: (1) Defendant Plainsboro Police Department's ("Plainsboro PD") motion for summary judgment (ECF No. 106); (2) Defendant Middlesex County Board of Social Services' ("MCBSS," together with Plainsboro PD, the "Defendants") motion for summary judgment (ECF No. 109)1; (3) Plaintiff Monica Birch-Min's ("Plaintiff") cross-motion for summary judgment (ECF No. 110); and (4) Plaintiff's motion to strike Defendants' motions for summary judgment (ECF No. 116). All motions are opposed. (ECF Nos. 114 to 115, 117 to 121.) Pursuant to Fed. R. Civ. P. 78, no oral argument was heard. For the reasons set forth below, Plaintiff's motion to strike is DENIED, Defendants' motions for summary judgment are GRANTED, and Plaintiff's cross-motion for summary judgment is DENIED.

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I. BACKGROUND2

A. FACTUAL BACKGROUND

This action arises out of an incident that occurred on January 20, 2012 involving Plaintiff and her husband, Aung Min. (ECF No. 59 at ¶ 10.) Plaintiff alleges Maxine Reid, an MCBSS employee, arrived at Plaintiff's home and "demanded Aug Min come to the door [because] there was an anonymous report that he was in distress." (Id.) Shortly thereafter, officers from Plainsboro PD arrived

in response to a call for assistance by Ms. Reid. (Id.) Plaintiff contends "Aug Min appeared at the door and asked the agent and police officers summoned by Ms. Reid to leave the[ir] residence." (Id.) Plaintiff contends the Plainsboro PD refused to leave and, instead, "the officers broke into [P]laintiff's home at 3403 Fox Run Drive, Plainsboro Township, New Jersey, and attacked Aug Min [] in his bed where he was beaten and restrained protesting removal from his home." (Id. at ¶ 11.) Additionally, Plaintiff alleges she "was handcuffed and apprehended after attempting to make a formal complaint." (Id. at ¶ 12.) The gravamen of Plaintiff's complaint is the allegation she and her husband "were falsely imprisoned against their will and forced to participate in unnecessary medical testing." (Id. at ¶ 15.)

Following the events on January 20, 2012, a guardianship proceeding was commenced in the Superior Court of New Jersey, Chancery Division, Probate Part, Middlesex County, bearing Docket Number 235478. (See ECF No. 106-1 (MCBSS's Answers to Interrogatories) at 8.) In that action, MCBSS applied for an Order to Show Cause requesting a temporary guardian be appointed for Aung Min. (Id.) The Order to Show Cause application included an affidavit of Ms. Reid's observations from January 20, 2012, together with certifications of two of Mr. Min's treating physicians. (Id.) The application was granted by the Middlesex County Surrogate, Hon. Frank M.

Ciuffani, P.J.Ch., and Gary Ben Cornick, Esq., was named as the temporary guardian of Aung Min and Ann L. Renaud, Esq., appointed as counsel to represent Mr. Min's interests. (Id. at 10.) Judge Ciuffani held an initial hearing on March 9, 2012. (Id.) Plaintiff appeared pro se to contest the guardianship, but was not a party to the matter. (Id.) On March 13, 2012, Judge Ciuffani indicated that Aung Min was incapacitated but continued the hearing to determine if Plaintiff could arrange to transport Mr. Min to Monserrat. (Id.) On April 13, 2012, Judge Ciuffani executed a Judgement of Incapacity and order Appointing the Public Guardian as the Guardian of Aung Min. (Id. at 11.) Judge Ciuffani's April 13, 2012 Order states "Aung Min is an incapacitated person as a result of unsoundness of mind and is incapable of governing himself and managing his affairs and unable to consent to medical treatment." (Id. at 45.) After it was determined that Mr. Min could, in fact travel, on June 21, 2012, Judge Ciuffani vacated his April 13, 2012 Order for the express purpose of allowing Aung Min "to be discharged from Roosevelt Care Center and relocate to Monserrat with his wife, Monica Min, with the assistance of a home health aide." (Id. at 50.)

B. PROCEDURAL BACKGROUND

More than one year later, on January 16, 2014, Plaintiff and Mr. Min

commenced this action alleging "defendants' conduct [on January 20, 2012] deprived plaintiffs of life, liberty, and property without due process of law." (ECF No. 1 at ¶ 20.) Thereafter, Plaintiff advised the Court that Mr. Min had passed away on August 18, 2014. (See ECF No. 43.) On December 16, 2014, the Estate of Aung Min obtained counsel, Robert Brotman, Esq. (see ECF No. 54), and, on April 23, 2015, a Second Amended Complaint was filed pursuant to court Order (see ECF Nos. 58, 59).3

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In her Second Amended Complaint, Plaintiff alleges "[e]ach defendant, individually and in concert with the others, acted maliciously, wantonly, unlawfully, willfully, knowingly, and with the specific intent to deprive plaintiffs of . . . rights [] secured to plaintiffs by the Fourth, Sixth, and 14th Amendments to the Constitution of the United States, and by 42 U.S.C.A. §§ 1983, 1988." (Id. at ¶ 16.) Plaintiff asserts four causes of action: (1) a survival/wrongful death claim, pursuant to New Jersey's Survivor Act, N.J.S.A. 2A:15-3, et seq., and New Jersey's wrongful death statute, N.J.S.A. 2A:31-1, et seq. (ECF No. 59 at ¶¶ 22-25); (2) a Monell claim, pursuant to 42 U.S.C. § 1983, alleging MCBSS "established an illegal custom, policy, and practice designed to conspicuously violate . . . due process of law" (id. at ¶¶ 26-31); (3) a Monell claim against Plainsboro PD, based on the same allegations (id. at ¶¶ 32-37); and (4) an apparent conspiracy claim against all "'tortfeasors' who were employed" by any of the defendants and "are intricately involved as operatives . . . with the subject incident . . . or otherwise responsible for maintaining illegal customs, policies, or practices" (id. at ¶39).

Defendants now move for summary judgment dismissing the Complaint in its entirety. (ECF Nos. 106, 109.) Plaintiff cross-moves for summary judgment (ECF No. 110) and also moves to strike Defendants' motions for summary judgment (ECF No. 116).

II. LEGAL STANDARD

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). A factual dispute is genuine only if there is "a sufficient evidentiary basis on which a reasonable jury could find for the non-moving party," and it is material only if it

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has the ability to "affect the outcome of the suit under governing law." Kaucher v.

County of Bucks, 455 F.3d 418, 423 (3d Cir. 2006); see also Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). Disputes over irrelevant or unnecessary facts will not preclude a grant of summary judgment. Anderson, 477 U.S. at 248. "In considering a motion for summary judgment, a district court may not make credibility determinations or engage in any weighing of the evidence; instead, the non-moving party's evidence 'is to be believed and all justifiable inferences are to be drawn in his favor.'" Marino v. Indus. Crating Co., 358 F.3d 241, 247 (3d Cir. 2004) (quoting Anderson, 477 U.S. at 255)); see also Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587, (1986); Curley v. Klem, 298 F.3d 271, 276-77 (3d Cir. 2002).

The party moving for summary judgment has the initial burden of showing the basis for its motion. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). "If the moving party will bear the burden of persuasion at trial, that party must support its motion with credible evidence . . . that would entitle it to a directed verdict if not controverted at trial." Id. at 331. On the other hand, if the burden of persuasion at trial would be on the nonmoving party, the party moving for summary judgment may satisfy Rule 56's burden of production by either (1) "submit[ting] affirmative evidence that negates an essential element of the nonmoving party's claim" or (2) demonstrating "that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim." Id. Once the movant adequately supports its motion pursuant to Rule 56(c), the burden shifts to the nonmoving party to "go beyond the pleadings and by her own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial." Id. at 324; see also Matsushita, 475 U.S. at 586; Ridgewood Bd. of Ed. v. Stokley, 172 F.3d 238, 252 (3d Cir. 1999). In deciding the merits of a party's motion for summary judgment, the court's role is not to evaluate the evidence

and decide the truth of the matter, but to determine whether there is a genuine issue for trial. Anderson, 477 U.S. at 249. Credibility determinations are the province of the factfinder. Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3d Cir. 1992).

There can be "no genuine issue as to any material fact," however, if a party fails "to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex, 477 U.S. at 322-23. "[A] complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." Id. at 323; Katz v. Aetna Cas. & Sur. Co., 972 F.2d 53, 55 (3d Cir. 1992).

III. DECISION

A. PLAINTIFF'S MOTION TO STRIKE

The Court will first address Plaintiff's "Motion to Strike Defendants[] . . . Motion[s] For Summary Judgment." (ECF No. 116.) Defendants oppose Plaintiff's motion, arguing Plaintiff's "unsupported and baseless assertions . . . in the body of the Motion" are insufficient to justify the relief sought. (ECF No. 118 at 4; ECF No. 119 at 1.) They further argue Rule 12(f) only authorizes a court to strike portions of "pleadings," and not motions. (Id.) Even if it did, Defendants argue Plaintiff has not met her burden under Rule 12(f). The Court agrees.

Initially, the Court notes Plaintiff's motion to strike on its face seeks "an order striking Defendant's [sic] Answer in this action pursuant to Fed. R. Civ. P. Rule 12(f)." (Id. at 1.) Rule 12(f) provides, in pertinent part, that the "court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). Pursuant to this Rule, "the court may act on motion made by a party either before responding to the pleading or, if a response is not allowed, within 21 days after being served with the pleading." Fed. R. Civ. P. 12(f)(2).

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Here, Plainsboro PD and MCBSS filed their Answers to Plaintiff's Second Amended Complaint on April 24, 2015 and April 29, 2015, respectively. (See ECF Nos. 60, 61.) Plaintiff's motion to strike, however, was not filed until September 6, 2016, nearly 16 months after being served with Defendants' answers. Thus, on its face, Plaintiff's motion for "an order striking Defendant's [sic] Answer" is untimely under Fed. R Civ. P. 12(f). Insofar as Plaintiff's motion seeks to strike Defendants' motions for summary judgment, Rule 12(f) authorizes no such relief, see Fed. R. Civ. P. 12(f) (authorizing courts to "strike from a pleading" certain material, without reference to court's authority to strike "motions"), and Plaintiff's application would still be untimely because it was filed after responding to Firstsource's motion for summary judgment, see id. More importantly, however, Plaintiff has not provided any factual or legal authority to support her argument. Indeed, Plaintiff makes no effort to address the requirements of Rule 12(f), and offers no authority to justify an expanded application of Rule 12(f) to a dispositive motion. Even construing Plaintiff's brief liberally, no credible argument was made to support striking either of the Defendants' Answer(s) or summary judgment motion(s). Instead, Plaintiff simply attacks Defendants' factual contentions in their motions, which are arguments that should be raised in an opposition brief (or, as is the case here, a cross-motion) and not a separate motion to strike. Accordingly, Plaintiff's Motion to

Strike is DENIED.

B. MOTIONS FOR SUMMARY JUDGMENT

Defendants raise a number of nearly-identical arguments in support of their motions for summary judgment. (See ECF No. 106-2 (Plainsboro PD's Mem.); ECF No. 109-5 (MCBSS's Mem.).) First, Defendants argue Plaintiff's claims relating to the January 20, 2012 removal of Mr. Min from his home are barred by the Supreme Court's decision in Heck v. Humphry, 512 U.S. 477 (1994), because New Jersey Superior Court "Judge Ciuffani subsequently entered a Judgment of

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Incapacity and executed an Order Appointing a Guardian for Aung Min dated April 13, 2012" that has not been invalidated. (ECF No. 106-2 at 1-3; ECF No. 109-5 at 1-3.) Second, Defendants argue summary judgment should be granted in their favor on Plaintiff's § 1983 claim because "Plaintiff has not identified any policy, custom or practice which caused a constitutional violation or identified any policy, custom or practice that [either of the Defendants] failed to enact which caused a violation of Plaintiffs [sic] civil rights." (ECF No. 106-2 at 4; ECF No. 109-5 at 4.) Third, Defendants argue Plaintiff cannot maintain her § 1983 claim because "[t]here are no individuals named as defendants and therefore there are no viable claims." (ECF No. 106-2 at 8; ECF No. 109-5 at 8.) Fourth, Defendants argue that, because probable cause existed to remove Mr. Min from his home, their conduct was not a proximate cause of Plaintiff's alleged constitutional deprivations. (ECF No. 106-2 at 13-18; ECF No. 109-5 at 13-18.) Fifth, Plainsboro PD argues it is entitled to summary judgment because "[p]olice departments may not be sued independently of the municipalities which they serve." (ECF No. 106-2 at 19.) Sixth, Defendants argue their conduct is protected by the doctrine of qualified immunity. (Id. at 20-21; ECF No. 109-6 at 19-20.) Next, Defendants argue the Estate of Aung Min cannot proceed pro se and Plaintiff is precluded from receiving an award of attorneys' fees because she is pro se. (ECF No. 106-2 at 22-24; ECF No. 109-6 at 21-23.) Finally, Defendants argue that punitive damages cannot be awarded to a municipality under § 1983. (ECF No. 106-2 at 25; ECF No. 109-6 at 24.)

Plaintiff cross-moves for summary judgment, arguing Defendants "have not presented a material issue at law that supports the defenses presented in the[ir] answer[s]. . . ." (ECF No. 110-1 (Plf. Mem.) at 3.) The thrust of Plaintiff's argument is that Defendants did not have "the required Court Order signed by a judge before violating Plaintiffs [sic] due process Constitutional Rights on the days of January 20, 24, or 26, 2012." (Id.) According to Plaintiff, "this violation was also

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found in the original case [in] Middlesex County" where the judge found "[t]he actions of the parties was illegal." (Id.) Plaintiff contends this "prove[s] that her due process rights were violated indefinitely." (Id.) This deprivation allegedly occurred when "all Defendants in concert were abusive against the Mins." (Id.) Additionally, Plaintiff contends she "can prove that Defendants [sic] culpability exceeded negligence and deliberate indifference that reaches a level of gross negligence. (Id. at 5 (citing Miller v. City of Philadelphia, 174 F.3d 368 (3d Cir. 1999)).) Plaintiff suggests "the evidence proves that Mr. Min was misdiagnosed to allow the County officials to exploit Plaintiffs and deprive them of certain rights protected by the Constitution." (Id. at 6.) Next, Plaintiff argues "qualified immunity [is] not applicable here because the law was clearly established at the time of the alleged violation, and the court must determine if the officers involved reasonably could have believed the conduct to have been permissible." (Id. at 6-7 (citing Karnes v. Skutski, 62 F.3d 485, 491 (3d Cir. 1995)).) Finally, Plaintiff argues "even if the Defendants were to have presented a legal defense and did present a genuine issue as to a material fact, they would still be barred by the doctrine of res judicata for the simple fact that the initial proceeding brought by [MCBSS] was unsuccessful." (Id. at 9.)

Plaintiff's Complaint asserts four causes of action, all of which depend upon the existence of an allegedly unlawful policy, practice, or custom enacted by either MCBSS and/or Plainsboro PD. Specifically, Plaintiff, "as Executrix of the estate of Aung Min," brings claims pursuant to "New Jersey Survivor's Act, N.J.S.A. 2A:15-3, et seq., and a Wrongful Death Action in accordance with N.J.S.A. 2A:31-1, et seq., all of which are encompassed in Plaintiffs' claims under 42 U.S.C. [§] 1983." (ECF No. 59 at ¶ 23.) Plaintiff's second and third causes of action are claims under 42 U.S.C. § 1983 against MCBSS and Plainsboro PD, respectively. (Id. at ¶¶ 26-27.) These causes of action allege the Defendants "established an illegal custom, policy, and practice designed

to conspicuously violate the constitutional rights of Plaintiffs to be free from unreasonable searches and seizures and to enjoy the rights accorded by due process of law." (Id. at ¶¶ 27, 33.) Finally, Plaintiff's fourth cause of action is asserted against "DOES 1 through 100" whom Plaintiff "broadly describe[s] as 'tortfeasors' who were employed as agents, servants, employees, officers or independent contractors [of the Defendants] . . . and are intricately involved as operatives, either directly with the subject incident, or in establishing, implementing, ratifying, or otherwise responsible for maintaining illegal customs, policies, or practices." (Id. at ¶ 39.) Thus, at a minimum, all of Plaintiff's claims depend on the existence of an alleged "illegal custom, policy or practice." But Plaintiff has failed to offer the

slightest shred of evidence to support her contention that such a custom, policy, or practice exists.

In Monell v. Dept. of Social Services, 436 U.S. 658 (1978), the United States Supreme Court held that "[l]ocal governing bodies . . . can be sued directly under § 1983 for monetary, declaratory, or injunctive relief where . . . the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers. Id. at 690. Additionally, the Court explained, "local governments, like every other § 1983 'person,' by the very terms of the statute, may be sued for constitutional deprivations visited pursuant to governmental 'custom' even though such custom has not received formal approval through the body's official decisionmaking channels." Id. at 691 (quoting Adickes v. S.H. Kress & Co., 398 U.S. 144, 167-68 (1970)) ("Although not authorized by written law, such practices of state officials could well be so permanent and well settled as to constitute a 'custom or usage' with the force of law."). "On the other hand, the language of § 1983 . . . compels the conclusion that Congress did not intend municipalities to be held liable unless action pursuant to official municipal policy of some nature caused a constitutional tort." Id.

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Thus, the Supreme Court "conclude[d] that a municipality cannot be held liable solely because it employs a tortfeasor - or, in other words, a municipality cannot be held liable under § 1983 on a respondeat superior theory." Id.; see also Montgomery v. DeSimone, 159 F.3d 120, 126-27 (3d Cir. 1998 ("Under 42 U.S.C. § 1983, municipal defendants cannot be held liable under a theory of respondeat superior; municipal liability only arises when a constitutional deprivation results from an official custom or policy.").

Plaintiff's claims against the municipal defendants rest on the allegations that an "illegal policy was in existence and manifested as follows: a) An official with final decision-making authority ratified the illegal policy and/or actions[;] b) There existed a policy of inadequate training or supervision[; and] c) The existence of a custom or tolerance or acquiescence of federal rights violations." (ECF No. 59 at ¶¶ 27, 33.) To the extent these claims are based upon a respondeat superior theory (such as Plaintiff's fourth cause of action asserted against "'tortfeasors' who were employed by" one of the Defendants), they are barred under Monell. 436 U.S. at 690; see also DeSimone, 159 F.3d at 126.

"Furthermore, a municipality's failure to train police officers only gives rise to a constitutional violation when that failure amounts to deliberate indifference to the rights of persons with whom the police come into contact." DeSimone, 159 F.3d

at 126-27 (citing City of Canton, Ohio v. Harris, 489 U.S. 378, 388 (1989)). The Third Circuit has also "held that a failure to train, discipline or control can only form the basis for section 1983 municipal liability if the plaintiff can show both contemporaneous knowledge of the offending incident or knowledge of a prior pattern of similar incidents and circumstances under which the supervisor's actions or inaction could be found to have communicated a message of approval to the offending subordinate. Id. at 127 (citing Bonenberger v. Plymouth Township, 132 F.3d 20, 25 (3d Cir. 1997)). Here, however, Plaintiff's

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failure to train claim is based on the conclusory and unsupported contention that Plainsboro PD and MCBSS never trained any of their employees not to "conspicuously violate the constitutional rights of Plaintiffs to be free from unreasonable searches and seizures and to enjoy the rights accorded by due process of law." (ECF No. 59 at ¶¶ 27, 33.) Plaintiff, however, points to no inadequacy in either Plainsboro PD's or MCBSS's training program or any evidence to suggest their training programs are, in fact, inadequate (e.g., a history of similar conduct). Plaintiff also fails to allege any action or inaction by either of the Defendants that could be interpreted as encouraging the allegedly offensive actions. Finally, Plaintiff has not even identified the "official" who allegedly ratified the complained of policy. "Mere speculation about the possibility of existence of such facts does not entitle [Plaintiff] to go to trial." Development Group, LLC v. Franklin Township Board of Supervisors, 162 F. App'x 158, 160 (3d Cir. 2006); see also DeSimone, 159 F.3d at 127 ("Because [plaintiff]'s allegations do not implicate the type of deliberate indifference required for section 1983 municipal liability, the district court was correct in granting summary judgment in favor of the municipal defendants on [plaintiff]'s section 1983 claims.").

Plaintiff has offered no evidence whatsoever to support her contention that either Plainsboro PD or MCBSS had established an unlawful official custom or policy. Indeed, Plaintiff has failed to even identify such a custom or practice. Nor has Plaintiff offered any evidence to suggest the events of January 20, 2012 occurred because any individual was acting pursuant to such a policy or was the result of any alleged failure to train. To the contrary, even when viewed in the light most favorable to Plaintiff and drawing all inferences in her favor, the evidence establishes only that MCBSS was investigating a complaint concerning the health and well-being of Mr. Aung Min and requested assistance from Plainsboro PD to ensure they complied with their

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statutory and other legal obligations. In fact, the Superior Court of New Jersey

ultimately determined Mr. Min could not care for himself or make decisions about his medical care, which demonstrate Defendants' actions on January 20, 2012 were objectively reasonable.4 See Brower v. County of Inyo, 489 U.S. 593, 599 (1989) ("'Seizure' alone is not enough for § 1983 liability; the seizure must be 'unreasonable.'"). In short, Plaintiff's allegations simply "do not implicate the type of deliberate indifference required for section 1983 municipal liability." DeSimone, 159 F.3d at 127; see also Martinez v. State of Cal., 444 U.S. 277, 285 (1980) ("Although a § 1983 claim has been described as 'a species of tort liability,' it is perfectly clear that not every injury in which a state official has played some part is actionable under that statute.").

Because Plaintiff has not presented any evidence to support her contention that Plainsboro PD and/or MCBSS had in place any unlawful policy, practice, or custom, or that the events of January 20, 2012 were in any way related to such an alleged policy, practice, or custom, Defendants' motions for summary judgment is GRANTED and Plaintiff's cross-motion for summary judgment is DENIED.

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IV. CONCLUSION

For the reasons set forth above, Plaintiff's Motion to Strike (ECF No. 116) is DENIED, Defendants' Motions for Summary Judgment (ECF Nos. 106 and 109) are GRANTED, and Plaintiff's Cross-Motion for Summary Judgment (ECF No. 110) is DENIED. An appropriate Order will follow.

Date: March 16, 2017

/s/ Brian R. Martinotti
HON. BRIAN R. MARTINOTTI
UNITED STATES DISTRICT JUDGE

Footnotes:

1. For reasons that are unclear to the Court, MCBSS's motion is captioned as a "Motion to Appoint Ad Litem." (See ECF No. 109.) The papers make clear, however, MCBSS is, in fact, moving for summary judgment. (Id.)

2. The facts set forth in this Opinion are taken from Plaintiff's Second Amended Complaint (ECF No. 59), the parties' briefs and related filings.

3. After Mr. Brotman filed a motion to withdraw as counsel, on July 28, 2015,

Magistrate Judge Arpert entered an Order: (1) granting Mr. Brotman's motion to withdraw as counsel; (2) confirming that Plaintiff, in her individual capacity, was now proceeding pro se; and (3) directing Plaintiff, in her capacity as Executrix of the Estate of Aung Min, to obtain new counsel for the Estate of Aung Min by August 31, 2015. (ECF No. 76.) Plaintiff failed to obtain new counsel for the Estate of Aung Min, which remains unrepresented to date.

4. Plaintiff's contention "that even if the Defendants were to have presented a legal defense and did present a genuine issue as to material fact, they would still be barred by the doctrine of res judicata for the simple fact that the initial proceeding brought by [MCBSS] was unsuccessful" (ECF No. 110-1 at 9) is both a distortion of the facts and, in all events, entirely misplaced. First, there was nothing "unsuccessful" about MCBSS's position in the Superior Court case. Second, and more importantly, Plaintiff was not a party to the guardianship action, nor was Plainsboro PD. Therefore, as it relates to the guardianship action, the doctrine of res judicata cannot be asserted by Plaintiff or against Plainsboro PD.

OPINION ON DENIAL OF MOTION PURSUANT TO RULE 60

MONICA BIRCH-MIN, et al., Plaintiffs,
v.
MIDDLESEX COUNTY BOARD OF SOCIAL SERVICES, et al., Defendants.

Civil Action No. 14-0476-BRM-DEA

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

May 17, 2018

NOT FOR PUBLICATION

OPINION

MARTINOTTI, DISTRICT JUDGE

Before this Court is Plaintiff Monica Birch-Mîn's ("Plaintiff") Motion (ECF No. 152), filed pursuant to Federal Rule of Civil Procedure 60, to vacate this Court's Order dated November 28, 2017 (ECF No. 151), denying her Motion for Reconsideration, as well as her Objection to the Court's "proposed findings of fact and conclusions of law" (ECF No. 153). Pursuant to Federal Rule of Civil Procedure 78(b), the Court did not hear oral argument. For the reasons set forth below, Plaintiff's Motion to Vacate is DENIED.

I. BACKGROUND

The underlying facts and procedural history of this matter are set forth in the Court's prior opinions: (1) granting Defendants' and denying Plaintiff's motions for summary judgment, dated March 16, 2017 (ECF No. 126) and (2) denying Plaintiff's Motion for Reconsideration of the March 16, 2017 Order and Opinion (ECF No. 150). While the underlying facts giving rise to this litigation are not relevant to Plaintiff's Motion, Plaintiff

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relies on portions of the state court guardianship proceeding, which the Court summarized in its March 16, 2017 Opinion. The Court incorporates the procedural and factual recitations set forth in the prior opinions and supplements them with the following background pertinent to this matter.

A guardianship proceeding for Plaintiff's husband, Aung Min, was commenced

in the Superior Court of New Jersey, Chancery Division, Probate Part, Middlesex County, Docket Number 235478. (See Certification of Michael John Stone, Esq. (ECF No. 106-1), Ex. A (Middlesex County Board of Social Services Answers to Interrogatories) at 8.) Ultimately, the application was granted by the Middlesex County Surrogate, Hon. Frank M. Ciuffani, P.J.Ch., and Gary Ben Cornick, Esq., was named as the temporary guardian of Aung Min and Ann L. Renaud, Esq., appointed as counsel to represent Aung Min's interests. (Id. at 10.) Judge Ciuffani held an initial hearing on March 9, 2012. (Id.) Plaintiff appeared pro se to contest the guardianship, but was not a party to the matter. (Id.) On March 13, 2012, Judge Ciuffani indicated that Aung Min was incapacitated but continued the hearing to determine if Plaintiff could arrange to transport Aung Min to Monserrat. (Id.) On April 13, 2012, Judge Ciuffani executed a Judgement of Incapacity and Order Appointing the Public Guardian as the Guardian of Aung Min, stating, "Aung Min is an incapacitated person as a result of unsoundness of mind and is incapable of governing himself and managing his affairs and unable to consent to medical treatment." (ECF No. 106-1, Ex. D.) After it was determined Aung Min could, in fact travel, on June 21, 2012, Judge Ciuffani vacated his April 13, 2012 Order for the express purpose of allowing Aung Min "to be discharged from Roosevelt Care Center and relocate to Monserrat with his wife, Monica Min, with the assistance of a home health aide." (ECF No. 106-1, Ex. E.)

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On January 16, 2014, Plaintiff and Aung Min1 commenced this action alleging "defendants' conduct [on January 20, 2012] deprived plaintiffs of life, liberty, and property without due process of law." (ECF No. 1 at ¶ 20.) A Second Amended Complaint was filed on April 23, 2015. (ECF No. 59.)

On August 23 and 25, 2016, Defendants filed motions for summary judgment. (ECF Nos. 106 and 109.) On August 25, 2016, Plaintiff filed a cross-motion for summary judgment. (ECF No. 110.) On September 6, 2016, Plaintiff filed a Motion to Strike Defendants' replies to their motions for summary judgment. (ECF No. 116.) On March 16, 2017, the Court denied Plaintiff's motion to strike, granted Defendants' motions for summary judgment, and denied Plaintiff's motions for summary judgment, finding "Plaintiff [] offered no evidence whatsoever to support her contention that either Plainsboro PD or MCBSS had established an unlawful official custom or policy." (ECF No. 126 at 6-7, 12.)

On March 20, 2017, Plaintiff filed a motion to disqualify the undersigned, which was denied on April 18, 2017. (ECF Nos. 128 and 141.) On March 27, 2017, while the Motion to Disqualify was pending, Plaintiff filed an appeal of the Court's March 16, 2017 Order and Opinion (ECF No. 131), Birch-Min v. Middlesex Cty. Bd. of Soc. Servs., Dkt. No. 17-1670 (3d Cir. 2017), as well as a Petition for a Writ of

Prohibition, In re Birch-Min, Dkt. No. 17-1827 (3d. Cir. 2017), requesting the Third Circuit order the undersigned to recuse himself. Plaintiff failed to pay the filing fee for the appeal and, on April 26, 2017, it was dismissed. (ECF No. 143.) On June 14, 2017, the Third Circuit denied Plaintiff's petition for a writ of prohibition, which it alternatively construed as a petition for a writ of mandamus, because "Birch-Min's

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allegations appear to rest on the District Court's factual and legal determinations in resolving her case" despite the court "repeatedly stat[ing] that a party's displeasure with legal rulings does not form an adequate basis for recusal." In re Birch-Min, 690 F. App'x 795, 796 (3d Cir. 2017) (quoting Securacomm Consulting, Inc. v. Securacom Inc., 224 F.3d 273, 278 (3d Cir. 2000)). The court further noted, "Birch-Min [did] not identify any other relevant basis for bias or prejudice in seeking the District Judge's removal from the case." (Id.)

On May 1, 2017, after the Third Circuit dismissed her appeal2 but while the Petition was pending, Plaintiff filed a Motion for Reconsideration of the Court's March 16, 2017 Order and Opinion. (ECF No. 144.) Plaintiff's Motion for Reconsideration was based on her allegation that a "disparity" existed "between the facts [the Court] used [in the March 16, 2017 Summary Judgment decision] and those the Plaintiffs [sic] Min already proved, gained judicial approval for, and submitted to this US Court." (ECF No. 144 at 1-2.) Therefore, she argued, "the dispute is not just 'merely disagreeing with his decision', but a more serious fundamental dispute of the existence of facts well presented by the Plaintiffs which the Judge falsely distorted to arrive at his denial decision against the Mins and in favor of the Defendants." (Id.) She further questioned the Court's ability to dismiss her case without a hearing or oral argument.

On November 28, 2017, the Court denied Plaintiff's Motion for Reconsideration, finding "Plaintiff [did] not assert: (1) there has been an intervening change in the controlling law; (2) there is new evidence available that was not available when the Court granted

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Defendants motions for summary judgment, which would have dictated a different ruling; or (3) the March 16, 2017 Opinion contains a clear error of law or fact." (ECF No. 150 at 6 (citing United States ex rel. Schumann v. AstraZeneca Pharms. L.P., 769 F.3d 837, 848-49 (3d Cir. 2014)).) The Court further found Plaintiff's attempts to "argue the Court misunderstood or distorted the facts before it" or to "relitigate the issues previously decided in the March 16, 2017 Order and Opinion" were "not a valid basis for a motion for reconsideration." (Id. (citing Blystone v. Horn, 664 F.3d

397, 415 (3d Cir. 2011).)

On December 8, 2017, Plaintiff moved to vacate this denial under Federal Rule of Civil Procedure 60, arguing the judgment in favor of Defendants is void and should be vacated because it is based on "false facts presented against them [sic] constituting Fraud [sic]." (Affidavit of Monica Birch-Min (ECF No. 152-1) at 1.)3

II. LEGAL STANDARD

"Rule 60(b) allows a party to seek relief from a final judgment, and request reopening of his case, under a limited set of circumstances including fraud, mistake, and newly discovered evidence," Gonzalez v. Crosby, 545 U.S. 524, 529 (2005), as well as "inadvertence, surprise, or excusable neglect," Fed. R. Civ. P. 60(b)(1). "The remedy provided by Rule 60(b) is extraordinary, and special circumstances must justify granting relief under it." Jones v. Citigroup, Inc., No. 14-6547, 2015 WL 3385938, at *3 (D.N.J. May 26, 2015) (quoting Moolenaar v. Gov't of the Virgin Islands, 822 F.2d 1342, 1346 (3d Cir. 1987). A Rule 60(b) motion "may not be used as a substitute for appeal, and . . . legal error, without more cannot justify granting a Rule 60(b) motion." Holland v. Holt, 409 F. App'x 494, 497 (3d Cir. 2010)

(quoting Smith v. Evans, 853 F.2d 155, 158 (3d Cir. 1988)). A motion under Rule 60(b) may not be granted where the moving party could have raised the same legal argument by means of a direct appeal. Id.

III. DECISION

While Plaintiff argues she is entitled to relief under any and all subsections of Rule 60, the Court need not address each of them, as it gleans a single, common argument throughout the Motion. Plaintiff argues Defendants' summary judgment motion, and the Court's subsequent decisions, were based on fraud because Plaintiff already received a favorable "tried and proven . . . final decision" from Judge Ciuffani on June 21, 2012. For reasons unknown, Plaintiff believes the one-page Order Vacating the Judgment of Incapacity and Order Appointing Guardian, dated June 21, 2012, and entered by Judge Ciuffani in the Middlesex County Chancery Division, is dispositive of the case she filed in this district. Perhaps more confusing is Plaintiff's challenge to this Court's Opinion denying her Motion for Reconsideration, where she argues "Judge Martinotti states that he wrote the decision for this trial and the fact finding on March 16, 2016 [sic] which is completely false, because the name is Judge Ciuffani and the date is 6/21/12 not 3/16/16 [sic] by Judge named Martinotti." (ECF No. 152-1 at 3.) It appears Plaintiff is conflating the state and federal cases and believes her complaint, which alleges

constitutional claims and which she filed in federal court in 2014 after the guardianship order was vacated, was adjudicated in state court in 2012.4

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Plaintiff fails to show the existence of mistake, inadvertence, surprise, excusable neglect, newly discovered evidence, fraud, a void or satisfied judgment, or any other reason justifying relief, as required on a Rule 60 motion. See Fed. R. Civ. P. 60(b). The Court reviewed Judge Ciuffani's order in deciding summary judgment (see ECF No. 126 2-3), and Plaintiff may not continue to relitigate issues or raise issues that could have been raised previously or on appeal.

Finally, in support of her Motion, Plaintiff filed an "Objection to Order Contrary to Evidence and Previous Finding of Fact." (ECF No. 153.) Nothing therein satisfies Plaintiff's burden under Rule 60. To the extent Plaintiff argues the Court's decisions are an endorsement of Defendants' alleged conduct, that accusation is baseless and further demonstrates Plaintiff's misunderstanding of the legal standards employed by the Court in its prior decisions.

IV. CONCLUSION

Accordingly, for the reasons set forth above, Plaintiff's Motion to Vacate is DENIED. An appropriate order will follow.

/s/ Brian R. Martinotti
HON. BRIAN R. MARTINOTTI
UNITED STATES DISTRICT JUDGE

Dated: May 17, 2018

Footnotes:

1. Aung Min passed away on August 18, 2014. (See ECF No. 43.) Plaintiff appears as executrix of the estate.

2. At this point, Plaintiff's appeal had been dismissed for her failure to pay the filing fee. Plaintiff filed a motion to reopen her appeal, which was denied on June 16, 2017. The Third Circuit gave Plaintiff a final opportunity to supplement her motion to reopen, but she did not submit anything further. See In re Birch-Min, Dkt. No. 17-1827 (3d Cir. 2017).

3. Because Plaintiff's Affidavit is more akin to a legal memorandum, the Court

considers it as such.

4. Plaintiff's Motion is riddled with references to the alleged dispositive nature of the state court order or demonstrating Plaintiff's misunderstanding. (See, e.g., ECF No. 152-1 at 4 ("The Plaintiffs should not have to request a new trial, because their facts were proven and judged in the original NJ State Court."); id. at 5 ("The Original case in NJ State Court with Judge Ciuffani's found facts and decided [sic] . . . voids Judge Martinotti's decision to deny the Mins' facts and presentation for Summary Judgment."); id. ("This issue was demonstrated where Judge Martinotti erroneously states he made that decision, not Judge Ciuffani on 6/21/12. He reversed original trial judge and change all those facts proven and decided to validate his decision to make the Defendants and Attorneys . . . right and their unlawful unconstitutional procedure no proper when it was thrown out in NJ.").)

Additionally, as with her prior motions, Plaintiff filed an annotated copy of the Court's Opinion denying her Motion for Reconsideration, providing her comments on the Court's Opinion. The Court has reviewed her comments and finds them to be equally unpersuasive and baseless.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

MONICA BIRCH-MIN, et al., Plaintiffs, v. MIDDLESEX COUNTY BOARD OF SOCIAL SERVICES, et al. Defendants.	Civil No. 14-476 (BRM)(DEA) ORDER

This matter comes before the Court on Plaintiff's motion [ECF No. 122] to seal certain documents filed in connection with Plaintiff's "Motion to Strike [Defendants'] Motion for Summary Judgment". Specifically, Plaintiff moves to seal the documents filed at ECF No. 121, which appear to be exhibits to her reply brief. Under Local Civil Rule 5.3(c)(3), a party seeking to seal documents must show "(a) the nature of the materials or proceedings at issue; (b) the legitimate private or public interest which warrant the relief sought; (c) the clearly defined and serious injury that would result if the relief sought is not granted; (d) why a less restrictive alternative to the relief sought is not available; (e) any prior order sealing the same materials in the pending action; and (f) the identity of any party or nonparty known to be objecting to the sealing request." L. Civ. R. 5.3(c). It appears, as Plaintiffs states, that there is confidential information contained in the filing in question. The exhibits contain, among other things, records of a personal nature that should remain under seal. Consequently,

IT IS on this 21st day of February, 2017,

ORDERED Plaintiff's motion to seal [ECF No. 122] is GRANTED.

Isl Douglas E. Arpert
DOUGLAS E. ARPERT
United States Magistrate Judge

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

MONICA BIRCH-MIN, et al., Plaintiffs, v. MIDDLESEX COUNTY BOARD OF SOCIAL SERVICES *et al.*, Defendants.	Civil Action No. 14-476 (BRM)(DEA) ORDER

This matter comes before the Court by way of an application by *pro se* Plaintiff Monica Birch-Min ("Plaintiff") seeking a "Court injunction" with respect to a recent filing by Defendant Plainsboro Police Department ("Defendant"). On August 23, 2016, Defendant filed a motion for summary judgment with supporting documents (ECF No. 106). As best as the Court can construe from Plaintiffs application, Plaintiff asserts that Defendant's motion papers contain certain "sensitive" documents (although Plaintiff does not specify exactly which documents) and that by filing them on the public electronic docket, Defendant violated a Protective Order issued by the Superior Court of New Jersey in a separate litigation. *See* ECF No. 72 at Exhibit B (Protective Order dated September 15, 2014). Plaintiff asks that "[t]he documents ... be removed from PACER immediately and stricken from the record." The Court has reviewed Defendant's motion papers and, out of an abundance of caution, will temporarily seal the papers from public access until this issue is resolved. Accordingly,

IT IS on this 24th day of August 2016,

ORDERED that the Clerk is to place the filing at ECF No. 106 under seal until further Order of the Court; and it is further

APPENDIX

Helen C. Doçlick, Esquire
Acting Public Guardian for Elderly Adult$ of New Jersey
P. O. Box 812
Trenton, New Jersey 08625-0812
(609) 341·5555
By: Jeanne Ketcha Chestnut, Esquire

FILED
JUN 21 2012
Frank M. Ciuffani, P.J., Ch.

In the Matter of

Aung Min,

An Incapacitated Person.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION: PROBATE PART
COUNTY OF MIDDLESEX
DOCKET NO.: 235478

Civil Action
ORDER VACATING the JUDGMENT OF INCAPACITY AND the ORDER APPOINTING GUARDIAN

THIS MATTER having been opened to the Cotlrt initially by Thomas Downs, Board Counsel, attorney for the petitioner, Middlesex County Board of Social Services, and the Couli having read the papers, reviewed the evidence, heard the argument of counsel;

It is on the 2j day of June, 2012, ORDERED;

1. The Judgment of Incapacity and Order Appointing Guardian entered on April 13, 2012 is hereby VACATED.
2. That the Public Gtlardian be and hereby is relieved as guardian for Aung Min with the appreciation of the Court.
3. That Aung Min is permitted to be discharged from Roosevelt Care Center and relocate to Montserrat with his wife, Monica Min, with the assistance of a home health aide.

Honorable Frank M. Ciuffani, P.J.Ch.

THE COURT: Whatever the purpose was, I do have an order vacating the prior orders of the court. So I'm not sure, at least at this early stage of my association with this case, that I can start delving into that level of nuance on what too place below.

Anyway, go ahead, Mr. Downs.

MR. DOWNS: That -- that was my --

THE COURT: That was your comment. Okay. Well, Ms. Birch-Min, what I'd like you to do is to file on the docket, or send to the Clerk's Office for filing on the docket, a copy of the power of attorney that you have for Dr. Min, and for the limited purpose now of getting the case established, that will suffice.

And we'll determine what ultimately has to be done with respect to representation as we get further down the line. Okay? So --

MS. BIRCH-MIN: I will do so.

THE COURT: All right. Thank you. Why don't you, if you would -- I've read the papers that have been submitted, including your amended complaint filed on April 17th. But if you would give me a brief factual summary of the basis of your complaint and the claims that you're asserting against these defendants, and the relief that you seek, it would be helpful.

MS. BIRCH-MIN: Yes. On -- starting on January 20th, there were three incidents that I noted that brought in the --