

APPENDIX A

ELD-011

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 20-2386

ZOE AJJAHNON,

Appellant

v.

ST. JOSEPH'S UNIVERSITY MEDICAL CENTER;
RWJ BARNABAS HEALTH, INC.

On Appeal from the United States District Court
for the District of New Jersey
(D.C. Civil Action No. 2-19-cv-16990)
District Judge: Honorable Brian R. Martinotti

Submitted for Possible Dismissal Pursuant to 28 U.S.C. § 1915(e)(2)(B) or
Summary Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6
November 12, 2020

Before: AMBRO, BIBAS and PORTER, Circuit Judges

(Opinion filed: December 28, 2020)

1 a

OPINION*

PER CURIAM

Appellant Zoe Ajjahnon filed a complaint against two healthcare providers in which she brought a qui tam action under the False Claims Act and a civil rights claim under 42 U.S.C. § 1983, alleging that they violated her due process rights with bogus diagnoses and were part of a scheme “to falsify billing claims to government funded healthcare programs.”¹ Specifically, Ajjahnon alleged that she was taken to St. Joseph’s Medical Center after police responded to a call in which Ajjahnon’s mother claimed that she was threatened by Ajjahnon. After a cursory initial screening at the medical center, Ajjahnon was diagnosed with bipolar disorder, which led to a period of involuntary commitment. She was admitted to a short-term care facility operated by RWJ Barnabas Health, Inc., where she was again screened by a psychiatrist, who agreed with the bipolar diagnosis and added a diagnosis of schizophrenia. Ajjahnon claimed that the healthcare providers violated her due process rights by failing to give her an adequate clinical evaluation before diagnosing her. She asserts that her diagnoses were “done to falsify billing claims to government funded healthcare programs.”

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

¹ Because we write primarily for the benefit of the parties, we will recite only the facts necessary for the discussion.

The United States declined to intervene in the qui tam action. The District Court dismissed the complaint, reasoning that “a pro se litigant may not pursue a qui tam action on behalf of the government.” Ajjahnon appealed.

We have jurisdiction under 28 U.S.C. § 1291 and review the District Court’s dismissal de novo.² See Allah v. Seiverling, 229 F.3d 220, 223 (3d Cir. 2000). We may summarily affirm on any ground supported by the record if the appeal fails to present a substantial question. See Murray v. Bledsoe, 650 F.3d 246, 247 (3d Cir. 2011) (per curiam); 3d Cir. L.A.R. 27.4; I.O.P. 10.6.

The False Claims Act enables private parties, known as relators, to bring enforcement actions on behalf of the United States to recover funds which were fraudulently obtained, and to share in any resulting damages award. 31 U.S.C. § 3729, et seq.; see also United States ex rel. Wilkins v. United Health Grp., Inc., 659 F.3d 295, 304-05 (3d Cir. 2011). When a relator files a qui tam suit, the action is deemed to be brought “for the person and for the United States Government.” 31 U.S.C. § 3730(b)(1). Indeed, “while the False Claims Act permits relators to control the False Claims Act litigation, the claim itself belongs to the United States.” United States ex rel. Mergent Servs. v. Flaherty, 540 F.3d 89, 93 (2d Cir. 2008). We have held, however, that an individual proceeding pro se may not represent third parties in federal court. See Lazaridis v. Wehmer, 591 F.3d 666, 672 (3d Cir. 2010); see also 28 U.S.C. § 1654

² The District Court’s sua sponte dismissal of the complaint was permissible under 28 U.S.C. § 1915(e).

(providing that in federal court, “parties may plead and conduct their own cases personally or by counsel”). Therefore, a pro se litigant may not pursue a qui tam action on behalf of the Government. See Wojcicki v. SCANA/SCE&G, 947 F.3d 240, 245 (4th Cir. 2020) (recognizing that “[t]his stance is in accord with the decisions of our sister circuits that have addressed this issue”).

The District Court properly dismissed the complaint. The United States remains the party in interest in this action. See United States ex rel. Eisenstein v. City of New York, 556 U.S. 928, 934-35 (2009); Mergent Servs., 540 F.3d at 93. Ajjahnon brought the action to recover on behalf of the government for the defendants’ allegedly fraudulent billing practices. As such, the District Court did not err in concluding that Ajjahnon may not maintain this qui tam action in her pro se capacity as a relator on behalf of the United States. We will, however, amend the District Court’s judgment to reflect that the dismissal is without prejudice. See Georgakis v. Ill. State Univ., 722 F.3d 1075, 1077 (7th Cir. 2013) (“Dismissals for lack of proper representation [in qui tam actions] are . . . normally without prejudice, to give the plaintiff a chance to find a lawyer to handle the case.”).

It also appears that, pursuant to 42 U.S.C. § 1983, Ajjahnon challenged her involuntary commitment and diagnoses of bipolar disorder and schizophrenia. She claims that she was not clinically diagnosed under New Jersey law³ and that the

³ To the extent that she alleges that workers at the healthcare facilities violated a New Jersey state law, there can be no § 1983 claim for a violation of state law. Benn v. Universal Health Sys., Inc., 371 F.3d 165, 174 (3d Cir. 2004); Brown v. Grabowski, 922 F.2d 1097, 1113 (3d Cir. 1990).

evaluation procedure violated her due process rights. However, a § 1983 claim may only be brought against “a person who may fairly be said to be a state actor.” Lugar v. Edmondson Oil Co., 457 U.S. 922, 937 (1982). “[A] State normally can be held responsible for a private decision only when it has exercised coercive power or has provided such significant encouragement, either overt or covert, that the choice must in law be deemed to be that of the State.” Blum v. Yaretsky, 457 U.S. 991, 1004 (1982). The healthcare providers named in this action are private actors and the diagnoses—even though they may have been done with the aid of state statutory guidelines—were made independently of any state coercion or influence. See Pino v. Higgs, 75 F.3d 1461, 1466-67 (10th Cir. 1996).

Accordingly, we will summarily affirm the judgment of the District Court, but amend it to reflect that the dismissal of the qui tam claim is without prejudice

APPENDIX B

BLD-031

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 20-2386

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November 12, 2020

Before: AMBRO, SHWARTZ and PORTER, Circuit Judges

(Opinion filed: November 27, 2020)

OPINION*

PER CURIAM

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Appellant Zoe Ajjahnon filed a complaint against two healthcare providers in which she brought a qui tam action under the False Claims Act and a civil rights claim under 42 U.S.C. § 1983, alleging that they violated her due process rights with a bogus diagnosis and were part of a scheme “to falsify billing claims to government funded healthcare programs.”¹ Specifically, Ajjahnon alleged that after she was arrested for threatening her mother with a knife, she was taken to St. Joseph’s Medical Center and was diagnosed with bipolar disorder by a social worker, which led to a period of involuntary commitment. She was admitted to a short-term care facility operated by RWJ Barnabas Health, Inc., where her bipolar diagnosis was confirmed by a psychiatrist and an independent medical doctor. Ajjahnon claimed that the healthcare providers violated her due process rights by failing to give her an adequate clinical evaluation before diagnosing her. She asserts that her diagnosis was “done to falsify billing claims to government funded healthcare programs.”

The United States declined to intervene in the qui tam action. The District Court dismissed the complaint, reasoning that “a pro se litigant may not pursue a qui tam action on behalf of the government.” Ajjahnon appealed.

We have jurisdiction under 28 U.S.C. § 1291 and review the District Court’s dismissal de novo.² See Allah v. Seiverling, 229 F.3d 220, 223 (3d Cir. 2000). We may

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summarily affirm on any ground supported by the record if the appeal fails to present a substantial question. See Murray v. Bledsoe, 650 F.3d 246, 247 (3d Cir. 2011) (per curiam); 3d Cir. L.A.R. 27.4; I.O.P. 10.6.

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The District Court properly dismissed the complaint. The United States remains the party in interest in this action. See United States ex rel. Eisenstein v. City of New York, 556 U.S. 928, 934-35 (2009); Mergent Servs., 540 F.3d at 93. Ajjahnon brought

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It also appears that, pursuant to 42 U.S.C. § 1983, Ajjahnon challenged her involuntary commitment and diagnosis of bipolar disorder. She claims that she was not clinically diagnosed under New Jersey law³ and that the evaluation procedure violated her due process rights. However, a § 1983 claim may only be brought against "a person who may fairly be said to be a state actor." Lugar v. Edmondson Oil Co., 457 U.S. 922, 937 (1982). "[A] State normally can be held responsible for a private decision only when it has exercised coercive power or has provided such significant encouragement, either overt or covert, that the choice must in law be deemed to be that of the State." Blum v. Yaretsky, 457 U.S. 991, 1004 (1982). The healthcare providers named in this action are private actors and the diagnosis—even though it may have been done with the aid of state

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statutory guidelines—was made independently of any state coercion or influence. See Pino v. Higgs, 75 F.3d 1461, 1466-67 (10th Cir. 1996).

Accordingly, we will summarily affirm the judgment of the District Court, but amend it to reflect that the dismissal of the qui tam claim is without prejudice.

APPENDIX C

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

ZOE AIJAHNON,

Plaintiff,

v.

Case No. 2:19-cv-16990-BRM-JAD

ST. JOSEPH'S UNIVERSITY MEDICAL
CENTER and RWJ BARNABAS
HEALTH, INC.,

Defendant.

OPINION

MARTINOTTI, DISTRICT JUDGE

Before this Court is a *qui tam* action filed by *pro se* plaintiff Zoe Ajjahnon (“Plaintiff”) under the False Claims Act (“FCA”) (ECF No. 1) and Crossclaims by co-defendants St. Joseph’s Reginal Medical Center (“St. Joseph’s”) and RWJ Barnabas Health, Inc. (“Barnabas Health”) (together, “Defendants”) against each other (ECF Nos. 10, 14). Having reviewed the submissions filed in connection with the Complaint, for the reasons set forth below and for good cause appearing, Plaintiff’s Complaint is **DISMISSED**, and Defendants’ Crossclaims are **DISMISSED**.

I. BACKGROUND

This matter stems from Plaintiff’s purportedly fabricated diagnosis of bipolar disorder by practitioners at St. Joseph’s, which Plaintiff alleges was part of a scheme “to falsify billing claims to government funded healthcare programs” in violation of the FCA. (ECF No. 1 at 2.) St. Joseph’s is a healthcare service provider located in Paterson, New Jersey. (*Id.* at 9.)

On December 18, 2018, the Paterson police responded to a call from Plaintiff’s mother claiming Plaintiff threatened her with a knife. (*Id.* at 10.) Plaintiff, however, “categorically

Further, the FCA punishes any person who “knowingly makes, uses or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government.” *Id.* § 3729(a)(2).

The United States Attorney General or private persons may bring a civil action under the FCA. *Id.* § 3730. A private litigant bringing an FCA action is called the “relator” or *qui tam* plaintiff. *See Vermont Agency of Natural Resources v. U.S. ex rel. Stevens*, 529 U.S. 765 (2000). When commencing an FCA action, *qui tam* plaintiffs file their complaint under seal and give the government material evidence and the information in their possession. 31 U.S.C. § 3730(b)(2). After independent investigation, the government may elect to intervene and replace the *qui tam* plaintiff in prosecuting the case. Under § 3730(c)(3), a *qui tam* plaintiff retains the right to proceed with the claim if the government declines to intervene. However, circuit courts agree that a *pro se* litigant may not pursue a *qui tam* action on behalf of the government. *See Gunn v. Credit Suisse Grp. AG*, No. 13-4738, 2015 WL 1787011, at *157 (3d Cir. Apr. 21, 2015) (“While it does not appear that we have had occasion to address the issue, every circuit that has is in agreement that a *pro se* litigant may not pursue a *qui tam* action on behalf of the Government.”).

The United States Government declined to intervene in Plaintiff’s action. (ECF No. 7.) Therefore, as a *pro se* litigant bringing an FCA-based complaint, Plaintiff may not pursue a *qui tam* action on behalf of the government. *See Gunn*, 2015 WL 1787011, at *157.

Accordingly, for the reasons stated above, the Complaint is **DISMISSED**.

B. Defendants’ Crossclaims

Regarding indemnification and contribution of FCA defendants, the Third Circuit has not addressed the issue. Generally, “FCA defendants cannot pursue claims for indemnification and contribution that are based on their liability under the FCA.” *United States v. Campbell*, 2011 U.S.

Dist. LEXSIS 1207, *10 (D.N.J. 2011) (citing *United States ex rel. Miller v. Bill Harbert Int'l Const.*, 505 F. Supp. 2d 20, 26 (D.D.C. 2007) (“The unavailability of contribution and indemnification for a defendant under the [FCA] now seems beyond peradventure.”). District Courts in this Circuit have used this reasoning in dismissing crossclaims in FCA actions. *See United States ex rel. Salvatore v. Michael Fleming*, Civ. A. No. 11-1157, 2015 WL 1384653, at *1 (W.D. Pa. Mar. 25, 2015) (dismissing defendant’s crossclaim because it depended upon FCA liability).

The crossclaims for contribution and indemnification by St. Joseph’s against Barnabas Health (ECF No. 10) and vice versa (ECF No. 14) are based on FCA liability. As a result, the crossclaims are unavailable. *See United States ex rel. Salvatore v. Michael Fleming*, Civil Action No. 11-1157, 2015 WL 1384653, at *1 (W.D. Pa. March 25, 2015) (dismissing defendant’s crossclaim because it depended upon FCA liability).

Accordingly, for the reasons stated above, Defendants’ Crossclaims are **DISMISSED**.

C. CONCLUSION

For the reasons set forth above, Plaintiff’s Complaint is **DISMISSED**. Additionally, Defendants’ Crossclaims against each other are **DISMISSED**. An appropriate order will follow.

Date: June 29, 2020

/s/Brian R. Martinotti

HON. BRIAN R. MARTINOTTI
UNITED STATES DISTRICT JUDGE

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