

APPENDIX

APPENDIX

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APPENDIX A

PRECEDENTIAL

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

No. 20-1727

[Filed: August 16, 2021]

LAN TU TRINH,)
Appellant)
v.)
)
DAVID FINEMAN)

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil Action No. 2-19-cv-02305)
District Judge: Honorable Cynthia M. Rufe

Submitted Pursuant to Third Circuit LAR 34.1(a)
May 13, 2021

Before: GREENAWAY, JR., KRAUSE, and BIBAS,
Circuit Judges

(Opinion filed: August 16, 2021)

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OPINION OF THE COURT

KRAUSE, Circuit Judge.

Lan Tu Trinh appeals from an order of the United States District Court for the Eastern District of Pennsylvania, which dismissed her complaint on the ground that the defendant, a court-appointed receiver, is immune from suit. We will affirm, joining our sister courts in holding that court-appointed receivers are entitled to absolute, quasi-judicial immunity from suit when they act with the authority of the court.

I. Factual and Procedural Background

This case comes before us for the second time. Originally, Trinh filed a complaint in the District Court

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against David Fineman, who had been appointed by the Court of Common Pleas of Philadelphia County as a receiver in a case involving the dissolution of Trinh's beauty school. Her complaint alleged that Fineman did not give her a proper accounting of the escrow account related to that case and accused him of "the theft of [her] properties on behalf of the Court of Common Pleas for Kathleen Trinh's [her sister's] benefit." Compl. at *3, D.C. Dkt. No. 1. The District Court sua sponte dismissed the complaint for lack of subject matter jurisdiction, explaining that Trinh had not raised "any claims arising under federal law or [alleged] that the parties are citizens of different states." June 3, 2019 Order at *1 n.1, D.C. Dkt. No. 3.

In Trinh's first appeal, we affirmed that her complaint, as filed, did not establish subject matter jurisdiction, but we remanded to allow Trinh the opportunity to amend her complaint. Trinh v. Fineman, 784 F. App'x 116, 117 (3d Cir. 2019) (per curiam).

Her amended complaint again asserted federal question jurisdiction—this time on the ground that Fineman, as the receiver, was "abusing his state power." Am. Compl. at *3, D.C. Dkt. No. 10. And again, the District Court dismissed the complaint. Although it determined that Trinh's complaint arguably raised a § 1983 claim, the Court held that Fineman, as a court-appointed receiver, should be afforded quasi-judicial immunity. It therefore granted his motion to dismiss. *See* March 2, 2020 Orders, D.C. Dkt. Nos. 13 & 14.

In the instant appeal, in addition to the parties' regular briefing, we asked them to address:

whether any of the acts of the Defendant, David Fineman, alleged in Trinh’s amended complaint, were outside the scope of the authority granted him by the Court of Common Pleas of Philadelphia County. See Russell v. Richardson, 905 F.3d 239, 247 (3d Cir. 2018) (explaining that this Court uses a “functional approach” in determining whether quasi-judicial immunity should be applied).

Clerk Order at *1, App. Dkt. No. 10. That supplemental briefing is complete, and the case is now ripe for decision.

II. Discussion¹

Section 1983 establishes that “[e]very person who acts under color of state law to deprive another of a constitutional right [is] answerable to that person in a suit for damages.” Rehberg v. Paulk, 566 U.S. 356, 361 (2012) (alterations in original) (internal quotation marks omitted). But despite its broad language, courts have consistently held that in enacting § 1983, Congress did not intend to abolish the immunities recognized at common law. Id. The Supreme Court has recognized that those immunities include absolute immunity for certain officials, acting in their official capacities, judges among them. See Forrester v. White, 484 U.S. 219, 224–26 (1988). Today, we consider whether a state court-appointed receiver is also a type

¹ The District Court wielded jurisdiction under 28 U.S.C. § 1331, and we have jurisdiction under 28 U.S.C. § 1291. We exercise de novo review over a district court’s order granting immunity from suit. Figueroa v. Blackburn, 208 F.3d 435, 439 (3d Cir. 2000).

of official who would be immune from suit under common law.

A. Quasi-Judicial Immunity

We conclude that the policies underlying judicial immunity similarly support immunity for state court-appointed receivers. The adjudicative function that judges perform requires that they be immune from suit for damages, see Stump v. Sparkman, 435 U.S. 349, 355–56 (1978), for “[i]f judges were personally liable for erroneous decisions, the resulting avalanche of suits, most of them frivolous but vexatious, would provide powerful incentives for judges to avoid rendering decisions likely to provoke such suits,” Gallas v. Sup. Ct. of Pa., 211 F.3d 760, 768 (3d Cir. 2000) (quoting Forrester, 484 U.S. at 226–27). And that immunity extends to all judicial decisions, unless they were taken “in the clear absence of all jurisdiction.” Stump, 435 U.S. at 357 (quoting Bradley v. Fisher, 13 Wall. 335, 351 (1871)). Erroneous, controversial, and even unfair decisions do not divest a judge of immunity. Gallas, 211 F.3d at 769.

When the nature of an official’s functions is akin to that of a judge, we extend a similar immunity—quasi-judicial immunity. Keystone Redevelopment Partners, LLC v. Decker, 631 F.3d 89, 95 (3d Cir. 2011). As in the context of judicial immunity, we consider “the official’s job function, as opposed to the particular act of which the plaintiff complains.” Dotzel v. Ashbridge, 438 F.3d 320, 325 (3d Cir. 2006). Applying this logic, courts have extended quasi-judicial immunity to several roles closely associated with judges, such as federal hearing

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examiners, administrative law judges, federal and state prosecutors, and grand jurors. Cleavinger v. Saxner, 474 U.S. 193, 200 (1985).

In this case, our examination persuades us that a receiver, too, functions as an “arm of the court.” Hughes v. Long, 242 F.3d 121, 127 (3d Cir. 2001). Courts appoint receivers in litigation to take charge of property at issue, and a receiver “has no powers except such as are conferred upon him by the order of his appointment and the course and practice of the court.” Atl. Tr. Co. v. Chapman, 208 U.S. 360, 371 (1908). For that reason, the Supreme Court has observed, the appointment of a receiver causes the property at issue in the litigation to “pass[] into the custody of the law, and thenceforward its administration [is] wholly under the control of the court by its officer or creature, the receiver.” Id. at 370.

And in recognition of the receiver’s relationship to the court, our sister circuits have concluded that a court-appointed receiver is entitled to quasi-judicial immunity. See Kermit Constr. Corp. v. Banco Credito Y Ahorro Ponceno, 547 F.2d 1, 2–3 (1st Cir. 1976); Bradford Audio Corp. v. Pious, 392 F.2d 67, 72–73 (2d Cir. 1968); Davis v. Bayless, 70 F.3d 367, 373 (5th Cir. 1995); Smith v. Martin, 542 F.2d 688, 690–91 (6th Cir. 1976); New Alaska Dev. Corp. v. Guetschow, 869 F.2d 1298, 1303 (9th Cir. 1989); T & W Inv. Co. v. Kurtz, 588 F.2d 801, 802 (10th Cir. 1978); Prop. Mgmt. & Invs., Inc. v. Lewis, 752 F.2d 599, 603–04 (11th Cir. 1985); cf. Med. Dev. Int’l v. Cal. Dep’t of Corr. & Rehab., 585 F.3d 1211, 1222 (9th Cir. 2009) (declining to extend immunity to claim against court-appointed

receiver in his official capacity while managing an enterprise in receivership). Pennsylvania law also reflects that understanding, defining a court-appointed receiver as a “judicial officer.” 42 Pa. Cons. Stat. Ann. § 102; see also Gior G.P., Inc. v. Waterfront Square Reef, LLC, 202 A.3d 845, 856 (Pa. Commw. Ct. 2019) (noting that “[a] receiver is considered an officer and agent of the court that appoints the receiver”).

B. Fineman’s Official Functions

In this case, the District Court properly concluded that Fineman is the beneficiary of that quasi-judicial immunity. After careful review of the record and the briefs on appeal, we conclude that the District Court did not err in dismissing Trinh’s complaint. Fineman was duly appointed by the state court and the transcript of the state court hearing reflects that the judge was aware of, and approved of, all of his expenditures.² And the state court’s opinion makes plain that “[t]he fees provided to [Fineman] from the escrow account were reasonable and were approved by the court,” and that “[a]ny expenditures made were pursuant to either the terms of the settlement agreement, to satisfy outstanding legal fees, or pursuant to the winding-down of the business.” State Court Op. at *2, D.C. Dkt. No. 11-3. Thus, quasi-judicial immunity is warranted because Fineman

² The transcript is not in the District Court record, but Fineman submitted the transcript on appeal, and when reviewing a district court’s decision, we may “consider matters of public record, orders, exhibits attached to the complaint and items appearing in the record of the case.” Keystone, 631 F.3d at 95 (internal quotation marks and citation omitted).

was acting in all relevant respects “at the court’s request.” Russell, 905 F.3d at 247–48.

Trinh’s arguments to the contrary are in reality a disagreement with the outcome of Fineman’s court-ordained actions and, even then, are not supported by the record. In contrast to her protestations here, Trinh “ha[d] been offered the opportunity to inspect the receiver’s books multiple times” but “refused to take it.” State Court Op. at *2, D.C. Dkt. No. 11-3. And Trinh has not shown that Fineman acted outside of his authority in any way, so the policy behind immunity for receivers “to prevent vexing suits against public officials” who are simply performing their duties, Kermit, 547 F.2d at 3, applies here.

III. Conclusion

Because Fineman is entitled to quasi-judicial immunity for his court-ordered activities, the District Court did not err in dismissing Trinh’s complaint, and we will therefore affirm the District Court’s judgment.

APPENDIX B

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

CIV. ACTION NO. 19-2305

[Filed: March 2, 2020]

LAN TU TRINH)
Plaintiff,)
)
v.)
)
DAVID FINEMAN)
Defendant.)
)

ORDER

By order dated June 3, 2019, this Court dismissed Trinh’s Complaint without prejudice for lack of subject matter jurisdiction.¹ Trinh appealed, and the Court of Appeals stated “that Trinh’s complaint, as filed, does not establish subject matter jurisdiction.”² However, despite explaining that “[w]e are doubtful that Trinh can state a basis for federal subject matter jurisdiction,” the court remanded the case to provide

¹ Doc. No. 3.

² *Trinh v. Fineman*, 784 F. App’x 116, 117 (3d Cir. 2019).

Trinh an opportunity to assert a basis for jurisdiction in federal court.³

Trinh then filed an Amended Complaint using the Court's *pro se* form.⁴ The Amended Complaint explains that Trinh and her sister, Kathleen Trinh, co-owned a beauty school. Following a business dispute, Trinh sued Kathleen in the Court of Common Pleas. That court appointed Defendant David Fineman as Receiver to sell the property co-owned by Trinh and her sister and ordered "that the proceeds from the sale shall be placed in an interest bearing escrow account co-signed by Plaintiff's counsel, Defendant's counsel, and by the Receiver."⁵ Trinh asserts, however, that "[t]he purpose of Mr. Fineman's presence in the case up to now has only been to steal my properties from me in a manner that would be deemed legal."⁶ Specifically, Trinh alleges that Fineman forced her to sell her property and then failed to provide her with a proper accounting of an escrow account containing compensation from the sale. Fineman has moved to dismiss the Amended Complaint for lack of subject matter jurisdiction or, in

³ *See id.*

⁴ Doc. No. 10.

⁵ Exhibit A, Amended Complaint [Doc. No. 10].

⁶ Amended Complaint [Doc. No. 10] at 6.

the alternative, based on quasi-judicial immunity.⁷ Trinh has not responded to the motion to dismiss.⁸

“In order to have subject matter jurisdiction, a District Court must be able to exercise either federal question jurisdiction or diversity jurisdiction.”⁹ As in the original Complaint, Trinh indicated on the Amended Complaint that the basis for federal court jurisdiction was “federal question.”¹⁰ For the field asking for “the basis for federal question jurisdiction,” which specifies that litigants should “list the specific federal statutes, federal treaties, and/or provisions of the United States Constitution that are at issue in this case,” Trinh stated that:

The defendant violated my business and property rights by abusing his state power as a receiver. The refusal to show requested evidence of fair proceedings, specifically about the timely and correct handling of money that would be used to justify the seizure of my property and

⁷ Doc. No. 11.

⁸ Nevertheless, the Court will analyze Trinh’s claims on the merits. *See Ray v. Reed*, 240 F. App’x 455, 456 (3d Cir. 2007).

⁹ *Trinh*, 784 F. App’x at 117.

¹⁰ Amended Complaint [Doc. No. 10] at 3. Besides stating the amount in controversy, Trinh left the section on diversity jurisdiction blank. *See id.* Moreover, as both the Plaintiff and Defendant appear to be domiciled in Pennsylvania, even construing the *pro se* allegations liberally, there would be no basis for diversity jurisdiction. *See Higgins v. Att’y Gen.*, 655 F.3d 333, 339 (3d Cir. 2011).

dissolution of my business, is blatant avoidance and disregard for the just application of law. The amount in controversy is also over \$75,000.¹¹

“[U]nder the longstanding well-pleaded complaint rule ... a suit arises under federal law only when the plaintiff’s statement of [her] own cause of action shows that it is based upon [federal law].”¹² Construing Trinh’s Amended Complaint liberally, as the Court must do for a *pro se* plaintiff,¹³ Trinh’s reference to “abusing his state power” can be read as asserting claims pursuant to § 1983 based on the Takings and Due Process Clauses of the Fifth and Fourteenth Amendments.¹⁴

However, as Fineman argues, he is immune from this suit. “The doctrine of judicial immunity is supported by a long-settled understanding that the independent and impartial exercise of judgment vital to the judiciary might be impaired by exposure to

¹¹ *Id.*

¹² *Jordan v. Philadelphia Media Network*, 751 F. App’x 239, 242 (3d Cir. 2018) (quoting *Goldman v. Citigroup Global Markets Inc.*, 834 F.3d 242, 253 (3d Cir. 2016)).

¹³ *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

¹⁴ *See Carole Media LLC v. New Jersey Transit Corp.*, 550 F.3d 302, 311 (3d Cir. 2008) (explaining that the “textbook private taking” involves the “naked transfer of property from private party A to B solely for B’s private use and benefit”).

potential damages liability.”¹⁵ Moreover, “[t]hose who perform functions closely associated with the judicial process, such as court clerks and prothonotaries, enjoy quasi-judicial immunity when performing a function directly related to the court’s decision-making activities or carrying out a judicial order.”¹⁶ “When judicial immunity is extended to officials other than judges, it is because their judgments are ‘functional[ly] comparab[le]’ to those of judges—that is, because they, too, ‘exercise a discretionary judgment’ as a part of their function.”¹⁷ To determine whether an act is “judicial” the Court must look to “the nature of the act itself, *i.e.*, whether it is a function normally performed by a judge, and to the expectations of the parties, *i.e.*, whether they dealt with the judge in his judicial capacity.”¹⁸

Although the Third Circuit has not ruled on whether court-appointed receivers are entitled to

¹⁵ *Antoine v. Byers & Anderson, Inc.*, 508 U.S. 429, 435 (1993). The Court also notes that to the extent Trinh’s Complaint seeks injunctive relief, § 1983 bars this relief. *See Marn v. McCully Assocs.*, 667 F. App’x 978, 979 (9th Cir. 2016); *Acavino v. Wilson*, 789 F. App’x 308, 309 n.3 (3d Cir. 2020); *Capogrosso v. The Supreme Court of New Jersey*, 588 F.3d 180, 185 (3d Cir. 2009).

¹⁶ *Walton v. Denlinger*, No. 05-5170, 2007 WL 4615960, at *3 (E.D. Pa. Dec. 21, 2007) (citing *Lockhart v. Hoenstine*, 411 F.2d 455, 460 (3d Cir. 1969)).

¹⁷ *Antoine*, 508 U.S. at 436 (citing *Imbler v. Pachtman*, 424 U.S. 409, 423 n. 20 (1976)); *see also Cleavinger v. Samaar*, 474 U.S. 193, 200 (1985).

¹⁸ *Stump v. Sparkman*, 435 U.S. 349, 362 (1978).

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quasi-judicial immunity, the First,¹⁹ Second,²⁰ Fifth,²¹ Sixth,²² Ninth,²³ Tenth,²⁴ and Eleventh²⁵ Circuits have all held that “receivers are court officers who share the immunity awarded to judges.”²⁶ As the Ninth Circuit explained, “immunity for court-appointed receivers” is premised on the “functional approach to immunity”—“receiver[s] function[] as an arm of the court by making decisions about the operation of a business that the judge otherwise would have to

¹⁹ *Kermit Const. v. Banco Credito Y Ahorro Ponceno*, 547 F.2d 1, 2 (1st Cir. 1976).

²⁰ *Bradford Audio Corp. v. Pious*, 392 F.2d 67, 72 (2d Cir. 1968).

²¹ *Davis v. Bayless*, 70 F.3d 367, 373 (5th Cir. 1995).

²² *Smith v. Martin*, 542 F.2d 688, 690 (6th Cir. 1976); *Plassman v. City of Wauseon*, 85 F.3d 629 (6th Cir. 1996).

²³ *Marn*, 667 F. App’x at 979; *New Alaska Dev. Corp. v. Guetschow*, 869 F.2d 1298, 1303 (9th Cir. 1989).

²⁴ *T & W Inv. Co. v. Kurtz*, 588 F.2d 801, 802 (10th Cir. 1978); *Teton Millwork Sales v. Schlossberg*, 311 F. App’x 145, 150 (10th Cir. 2009).

²⁵ *Prop. Mgmt. & Investments, Inc. v. Lewis*, 752 F.2d 599, 603-04 (11th Cir. 1985).

²⁶ *Guetschow*, 869 F.2d at 1303 (collecting cases); *see also Rogers v. Mellman*, No. 16-1832, 2016 WL 3647324, at *2 (D.N.J. July 7, 2016) (“The Court finds that Defendants are entitled to quasi-judicial immunity. All of Rogers’ allegations are based on Mellman’s authorized actions as a court-appointed receiver pursuant to court order. Accordingly, Plaintiff’s complaint must be dismissed.”).

make.”²⁷ Moreover, “[a]bsent broad immunity, receivers would be ‘a lightning rod for harassing litigation aimed at judicial orders.’”²⁸ As set forth in the exhibits to the Amended Complaint, Fineman acted within the scope of his authority—the state court authorized him to sell the property and place the proceeds in an escrow account²⁹—and thus he is entitled to immunity from Trinh’s claim.³⁰

AND NOW, this 2nd day of March 2020, upon consideration of the Amended Complaint and the exhibits thereto [Doc. No. 10], and Defendant’s Motion to Dismiss [Doc. No. 11], it is hereby **ORDERED** that the Motion is **GRANTED**.

It is so **ORDERED**.

²⁷ *Guetschow*, 869 F.2d at 1303 n.6 (internal quotation and citation omitted); *Schlossberg*, 311 F. App’x at 150 (“[e]nforcing a court order ... is intrinsically associated with a judicial proceeding”) (citation omitted).

²⁸ *Id.* (quoting *Kermit*, 547 F.2d at 3).

²⁹ Exhibit A, Amended Complaint [Doc. No. 10].

³⁰ *See Plassman v. City of Wauseon*, 85 F.3d 629 (“In its March 18, 1993 judgment, the court authorized the receiver to sell all of the personal property on the premises and to obtain a contract for the repair or destruction of the building. Thus, the receiver’s actions did not exceed the scope of the authority granted him by court order, and he is entitled to judicial immunity for executing the court’s order.”).

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BY THE COURT:

/s/ Cynthia M. Rufe

CYNTHIA M. RUFÉ, J.

APPENDIX C

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

CIV. ACTION NO. 19-2305

[Filed March 2, 2020]

LAN TU TRINH)
Plaintiff,)
)
v.)
)
DAVID FINEMAN)
Defendant.)

ORDER

AND NOW, this 2nd day of March 2020, upon consideration of the Amended Complaint [Doc. No. 10] and Defendant's Motion to Dismiss [Doc. No. 11], it is hereby **ORDERED** that:

- 1) The Motion is **GRANTED** and all claims against Defendant Fineman are **DISMISSED WITH PREJUDICE**.
- 2) The Clerk is directed to **CLOSE** this case.

It is so **ORDERED**.

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BY THE COURT:

/s/ Cynthia M. Rufe

CYNTHIA M. RUFÉ, J.

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APPENDIX D

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

No. 20-1727

[Filed: September 23, 2021]

LAN TU TRINH,)
Appellant)
)
v.)
)
DAVID FINEMAN)

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. No. 2-19-cv-02305)
District Judge: Honorable Cynthia M. Rufe

SUR PETITION FOR REHEARING

Present: SMITH, *Chief Judge*, McKEE, AMBRO,
CHAGARES, JORDAN, HARDIMAN, GREENAWAY,
JR., SHWARTZ, KRAUSE, RESTREPO, BIBAS,
PORTER, MATEY, and PHIPPS, *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

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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.

BY THE COURT,

s/ Cheryl Ann Krause
Circuit Judge

Date: September 23, 2021

Sb/cc: Lan Tu Trinh

Eugene J. Maginnis, Esq.