

APPENDIX A

Case 1:19-cv-00269-RAL Document 29-17 Filed 01/14/20 Page 1 of 1

IN RE: UPSET SALE, TAX CLAIM
BUREAU McKEAN COUNTY ON
SEPTEMBER 9, 2019

IN THE COURT OF COMMON PLEAS OF
McKEAN COUNTY, PENNSYLVANIA
CIVIL DIVISION
NO. 822 C.D. 2019

ORDER

2019 DEC-14 PM 01:34
McKEAN COUNTY COURT HOUSE

AND NOW, this 4th day of December 2019, the Exceptions to the Upset Tax Sale of Pamela Bond of her property situate at 316 Dawson Street, Kane, PA, are DISMISSED. Plaintiff received notice of the September 9, 2019 sale date, took no action to obtain a stay of the sale of her property by reason of her purported filing of a federal lawsuit challenging "pre-dated taxation" and "pre-dated penalties" and did not prior to November 2, 2019 (the date by which exceptions were to be filed) file any cognizable exceptions to the upset sale or, in particular, the sale of her property.

BY THE COURT:

Christopher G. Hauser
CHRISTOPHER G. HAUSER, JUDGE

Certification/12-4-19
I hereby certify the within to be a
true & correct copy thereof as filed
in the office of the Prothonotary of
McKean County, Pennsylvania.

Laura R. Hauser
Prothonotary

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EXHIBIT

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APPENDIX B

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

PAMELA BOND,)
)
 Plaintiff) Case No. 1:19-cv-0269 (Erie)
)
 vs.)
) RICHARD A. LANZILLO
 MCKEAN COUNTY,) UNITED STATES MAGISTRATE JUDGE
)
)
 Defendants) MEMORANDUM OPINION ON
) DEFENDANT'S MOTION TO
) DISMISS/OR IN THE ALTERNATIVE,
) FOR SUMMARY JUDGMENT
)
) ECF NO. 29

Plaintiff Pamela Bond (Bond) has sued McKean County, Pennsylvania (County). See ECF No. 1. The County has filed a motion to dismiss Bond's Complaint pursuant to Rules 12(b)(1) and 12(b)(6), or in the alternative, for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. ECF No. 29. Upon review, the Court will grant the County's motion and dismiss Bond's Complaint based upon lack of subject matter jurisdiction and the Complaint's failure to state a claim.¹ The Court further finds that the Complaint is subject to dismissal as frivolous under 28 U.S.C. § 1915(e)(2)(B)(ii).

I. Legal Standards

A. Motions to Dismiss pursuant to Rule 12(b)(1) and Rule 12(b)(6)

A facial challenge to this Court's jurisdiction pursuant to Rule 12(b)(1) "attacks the complaint on its face without contesting its alleged facts...." *Hartig Drug Co. Inc. v. Senju Pharm. Co.*, 836 F.3d 261, 268 (3d Cir. 2016) (quoting *Petruska v. Gannon Univ.*, 462 F.3d 294, 302 n.3 (3d Cir.

¹ Given this disposition, the Court need not reach the County's arguments pursuant to Rule 56.

2006) (internal quotation marks omitted)). In this regard, it “is like a 12(b)(6) motion in requiring the court to ‘consider the allegations of the complaint as true.’” *Id.*

A motion to dismiss pursuant to Rule 12(b)(6) tests the legal sufficiency of the complaint. *Kost v. Kozakiewicz*, 1 F.3d 176, 183 (3d Cir. 1993). In deciding a motion to dismiss, the Court is not deciding whether a plaintiff is likely to prevail on the merits; instead, a plaintiff must only present factual allegations sufficient “to raise a right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556, 127 S. Ct. 1955, 167 L.Ed.2d 929 (2007) (citing 5 C. Wright & A. Miller, *Federal Practice and Procedure* § 1216, pp. 235-236 (3d ed. 2004)). *See also Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 173 L.Ed.2d 868 (2009). A complaint should only be dismissed under Rule 12(b)(6) if it fails to allege “enough facts to state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570, 127 S. Ct. 1955 (rejecting the traditional Rule 12 (b)(6) standard established in *Conley v. Gibson*, 355 U.S. 41, 78 S. Ct. 99, 2 L.Ed.2d 80 (1957)). The court must accept as true all well-pled factual allegations in the complaint and views them in a light most favorable to the plaintiff in making this determination. *U.S. Express Lines Ltd. v. Higgins*, 281 F.3d 383, 388 (3d Cir. 2002). Because Bond proceeds pro se, her pleadings are liberally construed and her Complaint, “however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (citations omitted).

B. Dismissal Pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii)

Where the Court has granted the plaintiff *in forma pauperis* status and thereby authorized her to litigate without the payment of filing and other court fees, the Court is obliged to dismiss the plaintiff’s action “at any time” it determines that the action “is frivolous or malicious” or “fails to state a claim on which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B). A complaint filed *in forma pauperis* is not automatically frivolous because it fails to state a claim, however. *See Dooley v. Wetzel*, 957 F.3d. 366, 374 (3d Cir. 2020) (quoting *Neitzke v. Williams*, 490 U.S. 319, 331 (1989)); *see also*

Grayson v. Mayview State Hosp., 293 F.3d 103, 112 (3d Cir. 2002). “Rather, a claim is frivolous only where it depends ‘on an “indisputably meritless legal theory” or a “clearly baseless” or “fantastic or delusional” factual scenario.’” *Dooley v. Wetzel*, 957 F.3d at 374 (quoting *Mitchell v. Horn*, 318 F.3d 523, 530 (2003) and *Neitzke*, 490 U.S. at 327-28). Before dismissing a complaint for failure to state a claim upon which relief may be granted pursuant to § 1915(e)(2)(B), a court must grant a plaintiff leave to amend her complaint unless amendment would be inequitable or futile. *See Grayson v. Mayview State Hosp.*, 293 F.3d at 114.

II. The Complaint

Bond’s Complaint alleges three distinct factual scenarios on which she bases three separate claims. The Court accepts the factual allegations as true for purposes of the County’s motion to dismiss. Bond applied for public housing assistance with the McKean Housing Authority. ECF No. 1, p. 3, ¶1. The housing authority doubled her rent, locked her out of her apartment on Bushnell Street, and voided her lease despite Bond’s seven-month record of payment. *Id.*, at p. 3, ¶¶ 1-3. By way of damages, she asks for an “actualization of her rental history” and reimbursement for motel bills due to her eviction. *Id.*

Next, the Complaint makes allegations concerning Bond’s automobile and her failure to have it inspected according to Pennsylvania law. Sixth months after passing inspection in 2017, a state policeman ticketed Bond for operating the vehicle with an expired inspection sticker. *Id.*, p. 4, ¶¶ 1-2. Bond was summoned to state court and fined. *Id.*, p. 4, ¶¶ 3-4. According to Bond, a vandal “scraped off and put an expired sticker on the car.” *Id.*, at 4, ¶ 5. She asks this Court to clear her driving record, revoke the fine imposed by the state court, and prohibit the revocation of her driver’s license. *Id.*, p. 5.

The last set of allegations concern Bond's property tax arrearage on her Dawson Street property, and the disposition of that property at a later sheriff's sale for her failure to pay those taxes. She alleges:

Plaintiff has been notified that her house is being sold for \$3,000.00 for back taxes. Plaintiff has not even lived in the house for two years, but there are huge late fees applied to the bill. You are considered late with paying taxes the first day of the year coinciding with your tax bill. Kane Borough does not allow residency without prepaying property tax. They have now set up a sale date for the 316 Dawson Street residence for they (sic) regard as back taxes. Payments on the part of the Plaintiff at settlement had not been applied.

Id., p. 5. By way of relief, Bond's Complaint asks this Court for "a public accounting of the bill."

Id.

III. Discussion

Bond's Complaint will be dismissed. It fails to state a claim under any legal theory and, to the extent it purports to do so, none of the claims falls within the subject matter of this Court. In most respects, the Complaint is frivolous.

As to Bond's first claim concerning her rental of an apartment from the McKean Housing Authority, she has sued the wrong party. The enabling provisions of the Housing Authorities Law provide that a housing "Authority shall constitute a public body, corporate and politic, exercising public powers of the Commonwealth as an agency thereof." *Al-Athariyyah v. Wilkes-Barre Hous. Auth.*, 2009 WL 9102291, at *2 (Pa. Commw. Ct. Dec. 22, 2009) (citing 35 Pa. C. S. § 1550). "Each such Authority may be known as the housing authority of the city or the county, as the case may be, but shall in no way be deemed to be an instrumentality of such city or county, or engaged in the performance of a municipal function." *Id.* (citing 35 Pa. C.S. § 1544(a)). Thus, McKean County is not legally responsible for the actions of the McKean Housing Authority. Therefore, Bond's claim against it relating to her apartment will be dismissed. And, because the McKean Housing Authority

would be immune from suit, any amendment to add the Authority as a defendant would be futile.

See Al-Athariyyah, 2009 WL 9102291, at *3; *Byard v. Philadelphia Housing Authority*, 629 A.2d 283 (Pa. Cmwlth.), *petition for allowance of appeal denied*, 536 Pa. 618, 637 A.2d 278 (1993); *Battle v. Philadelphia Housing Authority*, 594 A.2d 769 (Pa. Super. Ct. 1991) (Philadelphia Housing Authority is a Commonwealth agency for purposes of sovereign immunity); *Crosby v. Kotch*, 580 A.2d 1191 (Pa. Cmwlth. 1990) (Luzerne County Housing Authority is a Commonwealth agency for purposes of sovereign immunity); *Irish v. Lehigh County Housing Authority*, 751 A.2d 1201 (Pa. Cmwlth. 2000), *petition for allowance of appeal denied*, 567 Pa. 732, 786 A.2d 991 (2001) (Lehigh County Housing Authority protected by sovereign immunity).

The Court has already touched on Bond's claims regarding her automobile citations. *See* ECF No. 27. In an order denying her "Motion to Request Court Perusal of Plaintiff's Driving Record," this Court noted that Bond failed to "name as defendant any entity or body responsible for issuing or restoring driving privileges in Pennsylvania, and her motion states no legally cognizable grounds for her requested relief." *Id.*; see also ECF No. 22 (motion). The basis for that order is the same as the Court's basis for dismissing this claim: Bond presents no legally cognizable grounds for relief, nor can this Court award her the relief requested. *See, e.g., Hammer v. Lossing*, 2007 WL 1965524, at *1 (M.D. Pa. July 3, 2007).

A careful reading of Bond's Complaint demonstrates that she ask this Court to 1) consider issues that should have been raised initially in the state court, and/or 2) involve this Court in the workings of the Pennsylvania Department of Motor Vehicles, without cause to do so. Thus, as the Court can ascertain no cognizable grounds for subject matter jurisdiction, we will dismiss this claim without leave to amend as any attempt at amendment would be futile. *See Hammer*, 2007 WL 1965524, at *1.

Bond's last claim will likewise be dismissed. By way of remedy, she asks this Court for a "public accounting of the [tax] bill." ECF No. 1, p. 5. Here, Bond seeks relief that the Court cannot grant. *See, e.g., Funk v. Obama*, 2012 WL 6642688, at *4 (M.D. Pa. Sept. 27, 2012), *report and recommendation adopted*, No. 3:12-CV-01830, 2012 WL 6642729 (M.D. Pa. Dec. 20, 2012). Because Bond's Complaint is frivolous under the standards provided by 28 U.S.C. § 1915(e)(2)(B)(i) and (ii) and because the Court cannot order a "public accounting" of her tax bill, it would be futile to allow her to amend her Complaint as to this claim. *See Funk*, 2012 WL 6642688, at *4 (M.D. Pa. Sept. 27, 2012), *report and recommendation adopted*, 2012 WL 6642729 (M.D. Pa. Dec. 20, 2012).

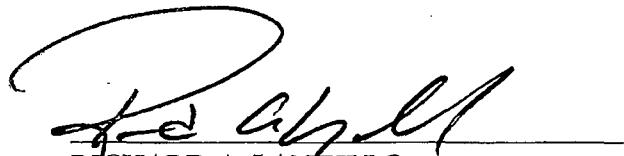
IV. Conclusion

For the reasons set forth above, the Complaint will be dismissed with prejudice as frivolous and for a failure to state a claim on which relief can be granted. An order follows.

ORDER

Upon review, and for the reasons stated in the accompanying Memorandum Opinion, the Defendant's Motion to Dismiss [ECF No. 29] is hereby GRANTED. Plaintiff's Complaint is hereby dismissed, with prejudice, as legally frivolous under 28 U.S.C. §1915(e)(2) and for failure to state a claim. The Clerk of Court is ordered to close this case.

Entered and Ordered this 25th day of August, 2020.



RICHARD A. LANZILLO
United States Magistrate Judge

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 21-1686

PAMELA BOND.

Appellant

v.

MCKEAN COUNTY

On Appeal from the United States District Court
for the Western District of Pennsylvania
(D.C. Civil Action No. 1-19-cv-00269)

Magistrate Judge: Honorable Richard A. Lanzillo

Submitted Pursuant to Third Circuit LAR 34.1(a)

February 7, 2022

Before: RESTREPO, PHIPPS and COWEN, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Western District of Pennsylvania and was submitted pursuant to Third Circuit LAR 34.1(a) on February 7, 2022. On consideration whereof, it is now hereby ORDERED and ADJUDGED by this Court that this appeal is dismissed in part and that the orders of the District Court entered August 25, 2020, be and the same are hereby affirmed. Costs taxed against the appellant. All of the above in accordance with the opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

Dated: April 20, 2022



Teste: *Patricia S. Dodszuweit*
Clerk, U.S. Court of Appeals for the Third Circuit

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 21-1686

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Appellant

v.

MCKEAN COUNTY

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(D.C. Civil Action No. 1-19-cv-00269)
Magistrate Judge: Honorable Richard A. Lanzillo

Submitted Pursuant to Third Circuit LAR 34.1(a)
February 7, 2022
Before: RESTREPO, PHIPPS and COWEN*, Circuit Judges

(Opinion filed: April 20, 2022)

OPINION**

* The Honorable Robert E. Cowen participated in the decision in this case. Judge Cowen assumed inactive status on April 1, 2022 after the submission date, but before the filing of the opinion. This opinion is filed by a quorum of the panel pursuant to 28 U.S.C. § 46(d) and Third Circuit I.O.P. Chapter 12.

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

PER CURIAM

Pamela Bond appeals following the dismissal of her complaint and other rulings as described herein. We will dismiss this appeal in part and will otherwise affirm.

I.

Bond filed a complaint against McKean County, Pennsylvania, raising three apparently unrelated claims. First, she alleged that she had been wrongfully removed from public housing, and she sought the relief discussed where relevant below. Second, she alleged that her car had been wrongfully ticketed for an expired inspection, and she sought to clear her record and to expunge a resultant fine. Third, she challenged the sale of her private house for unpaid taxes, and she sought an assessment of her tax records.¹ McKean County moved to dismiss Bond's complaint on various grounds. The District Court, acting through a Magistrate Judge on the parties' consent, granted that motion and dismissed McKean's complaint. The District Court later entered three orders following two post-judgment motions that Bond filed, and Bond appeals.

II.

In her brief, Bond asserts that she is challenging the District Court's underlying order dismissing her complaint. As McKean County argues, we lack jurisdiction to

¹ Bond also raised claims regarding the sale of her house in the separate action at W.D. Pa. Civ. No. 1-18-cv-00176. In that action, the District Court denied her motion to stay the sale of her house and later entered summary judgment against her. We affirmed the judgment. See Bond v. State Farm Ins. Co., 837 F. App'x 138, 140 (3d Cir. 2021).

review that ruling (because Bond's notice of appeal was untimely as to that ruling (though that issue is less straightforward than McKean County claims).²

We do, however, have jurisdiction over two of the District Court's post-judgment orders. After the District Court denied Bond's motion at ECF No. 42, Bond filed a "motion to admit information to case file." (ECF No. 44). Like Bond's motion at ECF No. 42, her motion at ECF No. 44 is not a notice of appeal because it does not "specifically indicate [her] intent to seek appellate review" of the District Court's previous order. Smith, 502 U.S. at 248. Instead, Bond's motion at ECF No. 44 appears to be in the nature of a post-judgment motion to amend her complaint, which she could do at that stage only by obtaining relief under Fed. R. Civ. P. 59(e) or 60(b) from the order of dismissal. See Burtch v. Milberg Factors, Inc., 662 F.3d 212, 230 (3d Cir.

² The District Court issued its order dismissing Bond's complaint on August 25, 2020. That order is not "set out in a separate document" as required by Fed. R. Civ. P. 58(a) because it is combined with the court's opinion and is not separately captioned, paginated, or docketed. See LeBoon v. Lancaster Jewish Cnty. Ctr. Ass'n, 503 F.3d 217, 224 (3d Cir. 2007). Thus, the order is deemed entered 150 days later, or on January 22, 2021. See Fed. R. Civ. P. 58(c)(2)(B); Fed. R. App. P. 4(a)(7)(A)(ii). Any appeal was due 30 days later, or by February 22, 2021 (February 21 being a Sunday). See Fed. R. App. 4(a)(1)(A). Bond did not file a notice of appeal within that time. She did file within that time a "motion to request a copy of the [court's] most recent decision" and for "permission to respond in a timely manner." (ECF No. 42.) We do not construe that motion as a notice of appeal from the order of dismissal because it does not refer to that order and does not otherwise "specifically indicate the litigant's intent to seek appellate review" of that order. Smith v. Barry, 502 U.S. 244, 248 (1992). Bond's motion conceivably could be construed as one for relief under Fed. R. Civ. P. 59(e) (the denial of which, if timely appealed, would bring up the underlying order for review) or Fed. R. App. P. 4(a)(5) or 4(a)(6) (the denial of which could be appealed as well). The court denied that motion in relevant part by text-only order on February 10, 2021, but Bond did not file a timely notice of appeal as to that ruling either.

2011). That motion was not timely under Rule 59(e) as to the order of dismissal, see Fed. R. Civ. P. 59(e) (establishing a 28-day deadline), so we construe it as a motion under Rule 60(b). See *Walker v. Astrue*, 593 F.3d 274, 279 (3d Cir. 2010); cf. *Burtch*, 662 F.3d at 230 & n.7. The District Court denied that motion by text-only order on March 9, 2021. (ECF No. 45.) The same day, it entered another text-only order requiring Bond to update her address of record. (ECF No. 46.) Bond finally filed a notice of appeal on April 2, 2021. (ECF No. 48.)³ Her notice is timely as to the District Court’s March 9 orders, so we have jurisdiction under 28 U.S.C. § 1291 to that extent.

To the same extent, we will affirm. Bond’s notice of appeal appears to challenge the District Court’s order at ECF No. 46 requiring her to update her address, but she has not challenged that order in her brief and there appears no basis for such a challenge.⁴ Bond also has not specifically challenged the court’s order at ECF No. 45 denying her motion at ECF No. 44. But even if she had, we discern no reversible error. Bond’s motion did not challenge any of the District Court’s reasons for dismissing her complaint.

³ Bond asserts in her brief that she filed her notice of appeal in “December 2020.” The District Court docket does not reflect any filing by Bond in or around that month. Nor has Bond explained that assertion in response to McKean County’s arguments that this appeal is untimely, which McKean County first raised in a jurisdictional response before Bond filed her brief.

⁴ In her notice of appeal, Bond asserts that the order requiring her to update her address reflects an “outlandish assumption regarding females.” Our review suggests that the court merely required Bond to update her address after she used different addresses in filings that could be construed to assert that she did not receive a copy of the order of dismissal sent to her address of record. We note that Bond has not raised any argument based on non-receipt or delayed receipt of that order. Nor has she specified when she received it.

Instead, Bond asserted that she was willing to 放弃 the public-housing claim that the District Court already had dismissed.⁵ Thus, Bond's motion did not state any basis for the court to reconsider its order of dismissal, permit amendment, or otherwise reopen this case.

Finally, we note that Bond's brief also does not state any basis for relief from the order of dismissal itself. Bond has not mentioned any of the District Court's specific rulings, let alone raised anything calling them into question. Thus, if we had jurisdiction over the order of dismissal, Bond's brief would give us no reason to do anything other than affirm. But because we lack such jurisdiction, we do not reach that issue.

III.

For these reasons, we will dismiss this appeal to the extent that Bond challenges the District Court's order of dismissal and will affirm the District Court's orders entered March 9, 2021. Bond's motions in this Court are denied.

⁵ Bond's complaint requested two forms of relief on this claim: (1) relief that she believed would result in "a good reference for future rental situations," and (2) reimbursement of money that she spent on a hotel after being turned away from public housing. (ECF No. 1 at 3.) Bond's motion advised the court that she had found new public housing, and thus apparently had not received a bad reference, but she repeated her request for reimbursement of her hotel bill.