

Appendix A

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 21-3362

ERIKA JACOBS,
Appellant

v.

GEISINGER WYOMING MEDICAL CENTER

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Civil Action No. 3-21-cv-00918)
District Judge: Honorable Malachy E. Mannion

Submitted Pursuant to Third Circuit LAR 34.1(a)
May 4, 2022

Before: RESTREPO, PHIPPS, and RENDELL, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Middle District of Pennsylvania and was submitted pursuant to Third Circuit LAR 34.1(a) on May 4, 2022. On consideration whereof, it is now hereby

ORDERED and ADJUDGED by this Court that the judgment of the District Court entered December 9, 2021, be and the same is 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

Appendix A

Dated: May 18, 2022

Appendix A

NOT PRECEDENTIAL

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(Opinion filed: May 18, 2022)

OPINION*

PER CURIAM

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

Erika Jacobs, proceeding pro se, appeals from the District Court's order dismissing her complaint for lack of jurisdiction. For the following reasons, we will affirm.

Jacobs filed a complaint in the Middle District of Pennsylvania in May 2021, alleging claims for defamation, breach of contract, and wrongful termination against defendant Geisinger Wyoming Valley Medical Center (Geisinger). She claimed that Geisinger offered her a position as a Medical Technologist in March 2021; that she accepted the offer and relocated from her home in Colorado to Pennsylvania in reliance on that offer; that Geisinger then falsely claimed that she had failed to comply with onboarding requirements; and that Geisinger ultimately rescinded the job offer.

Geisinger moved to dismiss Jacobs's complaint because, among other things, she had failed to allege the required elements to establish the District Court's subject-matter jurisdiction. The District Court, adopting a Magistrate Judge's recommendation, dismissed the complaint for lack of jurisdiction.¹

We have jurisdiction under 28 U.S.C. § 1291 and review de novo the District Court's dismissal for lack of subject-matter jurisdiction. Metro. Life Ins. Co. v. Price, 501

¹ Jacobs declined to consent to the jurisdiction of a Magistrate Judge to conduct the full proceedings pursuant to 28 U.S.C. § 636(c). Subsequently, the District Court referred the case to a Magistrate Judge for recommendations on pretrial matters, including Geisinger's motion to dismiss, pursuant to § 636(b)(1)(A). The Magistrate Judge then appropriately provided a Report and Recommendation, see § 636(b)(1)(B), which the District Court adopted in its entirety. Despite Jacobs's contrary assertion, the Magistrate Judge did not render any dispositive rulings in the absence of consent or authority.

F.3d 271, 275 (3d Cir. 2007). We construe Jacobs's pro se complaint liberally. See Erickson v. Pardus, 551 U.S. 89, 94 (2007) (per curiam).

District courts have diversity jurisdiction where the parties are citizens of different states and "where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs." 28 U.S.C. § 1332(a). A plaintiff invoking diversity jurisdiction bears the burden of proving, by a preponderance of the evidence, that the amount in controversy exceeds \$75,000. See Auto-Owners Ins. Co. v. Stevens & Ricci Inc., 835 F.3d 388, 395 (3d Cir. 2016). "[T]he sum claimed by the plaintiff controls if the claim is apparently made in good faith. It must appear to a legal certainty that the claim is really for less than the jurisdictional amount to justify dismissal." Id. (quoting St. Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283, 288–89 (1938)). The amount in controversy is calculated when the complaint is filed; "later events [cannot] increase the amount in controversy and give rise to jurisdiction that did not properly exist at the time of the complaint's filing." Id. at 395–96.

Here, the District Court properly concluded that Jacobs had not satisfied the amount-in-controversy requirement necessary to confer diversity jurisdiction.² The

² The Magistrate Judge determined that Jacobs was a Colorado citizen and Geisinger was a Pennsylvania citizen, noting that Geisinger had not disputed that there was diversity of citizenship between the parties. See R. & R. 5 n.1. We review factual findings regarding domicile or citizenship for clear error. See Johnson v. SmithKline Beecham Corp., 724 F.3d 337, 345 (3d Cir. 2013). Although Jacobs made repeated statements in her complaint and the exhibits incorporated therein about her relocation from Colorado to Pennsylvania—indeed, her claims relied on this relocation in calculating damages—we cannot say that the factual determinations were clearly erroneous, as the pleadings are

complaint contains an itemized list of her alleged damages, which totaled \$20,161.78.

See Compl. 12–13. The same section claims that “[t]his is not the final compensation” for certain categories of damages and that Jacobs also “request[ed] any other due damages as awarded by a jury for the loss of time, hurt and pain, wages[,] etc.[,] by the company Geisinger *totaling no more than \$75,000.*” Id. at 13 (emphasis added).

Jacobs asserts on appeal that this prayer for relief satisfied the amount-in-controversy requirement because she “cannot determine the actual award to be issued by a jury[,] which can exceed \$75,00[0] with . . . compensatory and punitive damages.” Appellant Br. 2. However, the complaint clearly stated that such an award would not exceed the jurisdictional requirement; liberal construction cannot convert that statement into mere misunderstanding, as Jacobs had earlier quoted the amount-in-controversy requirement from § 1332(a). See Compl. 4. Her claimed damages were just over \$20,000, and the meter does not simply keep running after the date the complaint is filed without a claim in good faith for the eventual total.³ See Auto-Owners, 835 F.3d at 396.

ambiguous as to Jacobs’s intent to remain in Pennsylvania. See generally Frett-Smith v. Vanterpool, 511 F.3d 396, 402–03 (3d Cir. 2008).

³ Moreover, the complaint and supporting materials seemingly do not establish a claim for punitive damages at all, see Gertz v. Robert Welch, Inc., 418 U.S. 323, 350 (1974) (holding that a private defamation plaintiff cannot recover punitive damages without proving actual malice); DiGregorio v. Keystone Health Plan E., 840 A.2d 361, 370 (Pa. Super. Ct. 2003) (holding that plaintiffs “[can]not recover punitive damages for an action solely sounding in breach of contract”), let alone enough to get her “over the jurisdictional hump,” Munro v. Golden Rule Ins. Co., 393 F.3d 720, 721 (7th Cir. 2004).

Appendix A

Alternatively, Jacobs claims that the District Court erred by failing to consider that her complaint invoked federal-question jurisdiction. See 28 U.S.C. § 1331. As the District Court correctly held, the two definitional sections of the U.S. Code to which Jacobs cited in her complaint are irrelevant to her claims and do not provide her with a cause of action.⁴ See 28 U.S.C. § 4101(1) (defining “defamation” in relation to the recognition of foreign judgments in federal and state courts); 41 U.S.C. § 7101(8)(C) (defining “executive agency” for the purposes of public contracts). The words of a statute cannot be read in isolation, and instead “must be read in their context and with a view to their place in the overall statutory scheme.” Mejia-Castanon v. Att'y Gen., 931 F.3d 224, 234 (3d Cir. 2019) (quoting King v. Burwell, 576 U.S. 473, 492 (2015)).

Accordingly, the District Court did not err in dismissing Jacobs’s complaint for lack of subject-matter jurisdiction, and we will affirm.⁵

⁴ Jacobs’s appellate brief references 42 U.S.C. § 1985 as a possible basis for her claims. See Appellant Br. 8. Even assuming—which we do not—that her complaint could be liberally construed to allege a conspiracy to interfere with her civil rights, “arguments raised for the first time on appeal are not properly preserved for appellate review.” Simko v. U.S. Steel Corp., 992 F.3d 198, 205 (3d Cir. 2021), cert. denied, 142 S. Ct. 760 (2022).

⁵ “In affirming, we note that the District Court’s dismissal for lack of subject matter jurisdiction was by definition without prejudice.” N.J. Physicians, Inc. v. President of U.S., 653 F.3d 234, 241 n.8 (3d Cir. 2011).

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

ERIKA JACOBS, :
Plaintiff : **CIVIL ACTION NO. 3:21-918**
v. : **(JUDGE MANNION)**
GEISINGER WYOMING VALLEY :
MEDICAL CENTER, :
Defendant :
:

ORDER

Pending before the court is the report of Magistrate Judge Joseph F. Saporito, Jr., which recommends that the defendant's motion to dismiss (Doc. 14) be granted and the plaintiff's complaint (Doc. 1) be dismissed for lack of subject matter jurisdiction (Doc. 22). Also pending is a document filed by the plaintiff titled as a notice of appeal. (Doc. 24).

By way of relevant background, the plaintiff filed the instant action on May 20, 2021, and the matter was initially assigned to Judge Saporito. On May 30, 2021, the parties were sent a consent form for cases in which a magistrate judge is initially assigned pursuant to Standing Order 2021-08. (Doc. 12, Doc. 13). The plaintiff signed the form on June 28, 2021, indicating that she did not consent to proceed before the assigned magistrate judge (Doc. 24, Ex. A). Afterwards, on July 6, 2021, there was a verbal order

reassigning the case to the undersigned for ultimate disposition and referring the matter to Judge Saporito pursuant to 28 U.S.C. §§636(b)(1) for any pretrial matters.

On July 20, 2021, the defendant filed a motion to dismiss the plaintiff's complaint for lack of subject matter jurisdiction (Doc. 14). On November 8, 2021, in accordance with 28 U.S.C. §636(b)(1)(C), Judge Saporito issued a report for the undersigned's consideration recommending that the defendant's motion to dismiss be granted. (Doc. 22). In doing so, Judge Saporito indicated that the plaintiff asserts diversity jurisdiction pursuant to 28 U.S.C. §1332, which applies to civil actions between citizens of different states and where the amount in controversy exceeds \$75,000. While there appears to be no dispute that plaintiff and defendant are citizens of different states, the plaintiff a citizen of Colorado and the defendant a citizen of Pennsylvania, Judge Saporito found that the amount in controversy does not exceed the diversity threshold of \$75,000, as the plaintiff asserts damages in an amount totaling \$20,161.78. As such, he recommends that the action be dismissed on this basis.

Moreover, Judge Saporito indicated the plaintiff apparently also attempts to assert subject matter jurisdiction under 28 U.S.C. §1331. In doing so, the plaintiff references 28 U.S.C. §4101, a statute concerning the

recognition of foreign defamation judgments, and 41 U.S.C. §§7101, 7102, statutes that relate to disputes arising out of federal government contracts. Judge Saporito found neither statute applicable in the instant action and recommends dismissal on this basis as well.

Attached to the report was a notice informing the plaintiff that she had the right to file objections to the report within fourteen (14) days after being served with a copy of the report. Any objections were to specifically identify the portions of the report to which she objected and the basis of the objections.

On December 7, 2021, rather than filing objections, the plaintiff filed the instant “appeal.” In her filing, the plaintiff indicates that she did not receive Judge Saporito’s report in a timely manner. While the report is dated November 8, 2021, the plaintiff provides that she did not receive it until “a couple days before Thanksgiving.” In any event, the plaintiff argues that she did not consent to the jurisdiction of the magistrate judge and challenges his “judgement.”¹ In a most summary fashion, she further argues that her complaint has merit. The plaintiff does not, however, in any way challenge

¹ The court notes that Judge Saporito has not entered a judgment, but rather, has made a report to the undersigned recommending a disposition for this matter in accordance with the provisions of 28 U.S.C. §636.

Judge Saporito's finding that this court lacks subject matter jurisdiction over her claims.

Where no substantive objection is made to a report and recommendation, the court should, as a matter of good practice, "satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Fed. R. Civ. P. 72(b), advisory committee notes; see also Univac Dental Co. v. Dentsply Intern., Inc., 702 F.Supp.2d 465, 469 (M.D.Pa. 2010) (citing Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every report and recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, not accept, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. §636(b)(1); Local Rule 72.31.

As indicated above, although given the opportunity, the plaintiff failed to file objections to Judge Saporito's report finding that this court lacks subject matter jurisdiction over her claims. Upon review of the report and recommendation, the court finds no clear error of record. Moreover, the court agrees with the sound reasoning which led Judge Saporito to his conclusions. As such, the court will adopt the report and recommendation in its entirety.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

- (1)** The plaintiff's document filed as a notice of appeal (**Doc. 24**) is **DISMISSED**.
- (2)** The report and recommendation of Judge Saporito (**Doc. 22**) is **ADOPTED IN ITS ENTIRETY** as the decision of the court.
- (3)** Defendant's motion to dismiss the plaintiff's complaint (**Doc. 14**) is **GRANTED**.
- (4)** The plaintiff's complaint (**Doc. 1**) is **DISMISSED** for lack of subject matter jurisdiction.
- (5)** The Clerk of Court is directed to **CLOSE THIS CASE**.

s/ Malachy E. Mannion

MALACHY E. MANNION

United States District Judge

DATE: December 9, 2021

21-918-02

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

ERIKA JACOBS,

Plaintiff,

v.

GEISINGER WYOMING
MEDICAL CENTER,

Defendant.

CIVIL ACTION NO. 3:21-cv-00918
(MANNION, J.)
(SAPORITO, M.J.)

REPORT AND RECOMMENDATION

This action was commenced when the clerk received and lodged a *pro se* complaint by the plaintiff, Erika Jacobs, on May 20, 2021. (Doc. 1.) The complaint was accompanied by several documentary exhibits (Doc. 2), and an application for leave to proceed *in forma pauperis* (Doc. 3). On May 21, 2021, the plaintiff was granted leave to proceed *in forma pauperis* and the complaint was deemed filed. (Doc. 7.) That same day, the clerk mailed a request for waiver of service of process to the defendant, Geisinger Wyoming Medical Center (“Geisinger”). (Doc. 8.) On May 27, 2021, Geisinger entered its appearance through counsel and filed its waiver of formal service of process. (Doc. 9; Doc. 10; Doc. 11.)

On July 20, 2021, Geisinger filed a motion to dismiss this action

pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, together with a brief in support. (Doc. 14; Doc. 15.) On September 10, 2021, Jacobs filed her *pro se* brief in opposition. (Doc. 20.) On September 24, 2021, Geisinger filed its reply brief. (Doc. 21.)

The motion is now fully briefed and ripe for decision.

I. BACKGROUND

The complaint alleges that Jacobs applied for a medical technologist position at Geisinger in March 2021. Following an interview, she received a conditional offer of employment on March 16, 2021, with an anticipated start date of April 19, 2021. Although not mentioned in the written job offer submitted as an exhibit, the complaint alleges that Jacobs was offered a \$12,500 sign-on bonus as well. Later, as Jacobs sought to satisfy the various prerequisites to her start of employment, her anticipated start date was postponed. Ultimately, for reasons that are not material to the disposition of this case or the instant motion, Geisinger's job offer to Jacobs was rescinded.

In her complaint, Jacobs asserts state-law claims of defamation, breach of contract, and wrongful termination against Geisinger. For relief, she seeks compensatory damages “totaling *no more than* \$75,000.”

(Doc. 1, at 13 (emphasis added).) In support, the complaint includes an itemized list of pecuniary losses totaling \$20,161.78. (*Id.* at 12–13.)

II. LEGAL STANDARD

The plaintiff bears the burden of establishing the existence of subject matter jurisdiction when challenged under Rule 12(b)(1). *See Kehr Packages, Inc. v. Fidelcor, Inc.*, 926 F.2d 1406, 1409 (3d Cir. 1991). A defendant may challenge the existence of subject matter jurisdiction in one of two fashions: it may attack the complaint on its face or it may attack the existence of subject matter jurisdiction in fact, relying on evidence beyond the pleadings. *See Gould Elecs. Inc. v. United States*, 220 F.3d 169, 176 (3d Cir. 2000); *Mortensen v. First Fed. Sav. & Loan Ass'n*, 549 F.2d 884, 891 (3d Cir. 1977). Where a defendant attacks a complaint as deficient on its face, “the court must consider the allegations of the complaint as true.” *Mortensen*, 549 F.2d at 891. “In deciding a Rule 12(b)(1) facial attack, the court may only consider the allegations contained in the complaint and the exhibits attached to the complaint; matters of public record such as court records, letter decisions of government agencies and published reports of administrative bodies; and ‘undisputedly authentic’ documents which the plaintiff has identified as

a basis of his claims and which the defendant has attached as exhibits to his motion to dismiss.” *Medici v. Pocono Mountain Sch. Dist.*, No. 09-CV-2344, 2010 WL 1006917, at *2 (M.D. Pa. Mar. 16, 2010). However, when a motion to dismiss attacks the existence of subject matter jurisdiction in fact, “no presumptive truthfulness attaches to plaintiff’s allegations,” and “the trial court is free to weigh the evidence and satisfy itself as to the existence of its power to hear the case.” *Mortensen*, 549 F.2d at 891. This case falls into the former category.

III. DISCUSSION

In her complaint, Jacobs asserts that we may exercise diversity jurisdiction over this case. *See* 28 U.S.C. § 1332. As the Supreme Court has explained:

Congress empowered federal district courts to adjudicate civil actions between “citizens of different States” where the amount in controversy exceeds \$75,000. 28 U.S.C. § 1332(a)(1). A business organized as a corporation, for diversity jurisdiction purposes, is “deemed to be a citizen of any State by which it has been incorporated” and, since 1958, also “of the State where it has its principal place of business.” § 1332(c)(1).

Wachovia Bank v. Schmidt, 546 U.S. 303, 306 (2006).

Here, the parties do indeed appear to be diverse: Based on the pleadings, Jacobs appears to be a citizen of the State of Colorado and

Geisinger appears to be a citizen of the Commonwealth of Pennsylvania.¹ But, based on the allegations of the complaint, the amount in controversy in this case clearly does not exceed the diversity threshold of \$75,000. See 28 U.S.C. § 1332(a). Therefore, we may not exercise diversity jurisdiction in this case.

In her brief in opposition, Jacobs argues that we may also exercise subject matter jurisdiction under 28 U.S.C. § 1331, which confers this Court with “original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. In her complaint and in her brief, she has referenced a federal statute concerning the recognition of foreign defamation judgments in federal and state courts, 28 U.S.C. § 4101. While this statute may provide a definition of the term “defamation” in connection with the recognition of foreign defamation judgments in federal and state courts, it does not create a federal statutory cause of action for defamation, *see Kaul v. Christie*, 372 F. Supp. 3d 206, 236 (D.N.J. 2019), and the complaint does not allege any facts to suggest the involvement of a foreign defamation judgment here. Jacobs has also referenced federal statutes concerning

¹ At any rate, Geisinger has not disputed these allegations.

disputes arising out of federal government contracts, 41 U.S.C. §§ 7101, 7102. But the complaint does not allege any facts to suggest the involvement of any federal government agency in the contract dispute at issue here. Because she has failed to articulate any valid basis for federal question jurisdiction in this case, and because we ourselves are unable to discern any such basis from her pleadings, we may not exercise federal question jurisdiction in this case either.

IV. RECOMMENDATION

For the foregoing reasons, it is recommended that:

1. The defendant's motion to dismiss (Doc. 14) be **GRANTED**;
2. This action be **DISMISSED** for lack of subject matter jurisdiction, pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure; and
3. The clerk be directed to mark this case as **CLOSED**.

Dated: November 8, 2021

s/Joseph F. Saporito, Jr.
JOSEPH F. SAPORITO, JR.
United States Magistrate Judge

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

ERIKA JACOBS,

Plaintiff,

v.

GEISINGER WYOMING
MEDICAL CENTER,

Defendant.

CIVIL ACTION NO. 3:21-cv-00918

(MANNION, J.)
(SAPORITO, M.J.)

NOTICE

NOTICE IS HEREBY GIVEN that the undersigned has entered the foregoing Report and Recommendation dated November 8, 2021. Any party may obtain a review of the Report and Recommendation pursuant to Local Rule 72.3, which provides:

Any party may object to a magistrate judge's proposed findings, recommendations or report addressing a motion or matter described in 28 U.S.C. § 636(b)(1)(B) or making a recommendation for the disposition of a prisoner case or a habeas corpus petition within fourteen (14) days after being served with a copy thereof. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. The briefing requirements set forth in Local Rule 72.2 shall apply. A judge shall make a de novo determination of those portions of the report or specified

proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need conduct a new hearing only in his or her discretion or where required by law, and may consider the record developed before the magistrate judge, making his or her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions.

Failure to file timely objections to the foregoing Report and Recommendation may constitute a waiver of any appellate rights.

Dated: November 8, 2021

s/Joseph F. Saporito, Jr.
JOSEPH F. SAPORITO, JR.
United States Magistrate Judge

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