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**OPINION*, U.S. COURT OF APPEALS
FOR THE THIRD CIRCUIT
(JANUARY 18, 2024)**

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

E. THOMAS SCARBOROUGH, III,

Appellant,

v.

COURT OF COMMON PLEAS OF
NORTHAMPTON COUNTY;
SUPREME COURT OF PENNSYLVANIA,

No. 23-2414

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil Action No. 5-18-cv-02436)

District Judge: Honorable Jeffrey L. Schmehl

Submitted Pursuant to Third Circuit LAR 34.1(a)

January 9, 2024

Before: KRAUSE, MATEY, and CHUNG,
Circuit Judges.

(Opinion filed January 18, 2024)

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

OPINION

PER CURIAM

Pro se appellant Thomas E. Scarborough III appeals from the District Court's order denying his motion to alter or amend a judgment under Rule 59(e) of the Federal Rules of Civil Procedure. For the following reasons, we will affirm.

In June 2018, Scarborough commenced an action pursuant to 42 U.S.C. § 1983 claiming that his due process rights had been violated during his child-custody proceedings in Northampton County.¹ In the complaint, which he later amended, he named as defendants the Court of Common Pleas of Northampton County and the Supreme Court of Pennsylvania. The court defendants moved to dismiss the amended complaint on the ground that they were immune from suit under the Eleventh Amendment. The District Court granted their motion and dismissed the amended complaint. We affirmed. *Scarborough v. Ct. of Common Pleas of Northampton Cnty.*, 794 F. App'x 238, 240 (3d Cir. 2020) (per curiam) (not precedential).

Approximately one and a half years later, Scarborough moved the District Court to "vacate a judgment obtained by fraud on the court" under Rule

¹ Specifically, Scarborough asserted that the Court of Common Pleas violated his due-process rights by improperly deferring to recommendations from a master; granting primary physical custody to Scarborough's ex-wife without holding a trial; ruling that Scarborough had agreed to a custody schedule when he had not actually agreed to it; and failing to fully consider his submissions. He also claimed that the Pennsylvania Supreme Court violated his due-process rights by dismissing his appeals.

60(d)(3).² Mot. i, ECF No. 17; *see* Fed. R. Civ. P. 60(d)(3) (recognizing an independent action to set aside a judgment for fraud on the court). In the motion, he continued to challenge the legitimacy of the state-court custody proceedings and asked the District Court to vacate the unconstitutional custody order on the ground that his ex-wife had obtained primary custody of their daughter through fraud. The District Court denied relief, explaining that Scarborough could not use Rule 60(d)(3) to address alleged fraud in the state-court proceedings. The District Court further explained that, to the extent that Scarborough was in essence seeking reconsideration of the order dismissing his amended complaint, he could not use Rule 60(d)(3) to relitigate matters of disagreement with the District Court. The District Court also denied Scarborough's various other requests for relief, including, as discussed further below, his request to file a post-judgment amended complaint.

Scarborough then filed a motion pursuant to Rule 59(e) challenging these rulings. The District Court denied relief, stating that Scarborough had yet again essentially recited the allegations of the underlying amended complaint. With respect to Scarborough's request to file a post-judgment amended complaint, the District Court stated that such use of Rule 59(e) was improper. Scarborough appealed.

² In addition to moving the District Court to vacate the custody order based on fraud on the court, Scarborough also asked the District Court "for judicial notice, for expedited discovery, for preliminary injunctive relief, for partial summary judgment and for leave to file an amended complaint." Mot., ECF No. 17.

We have jurisdiction under 28 U.S.C. § 1291. We first stress the narrow scope of this appeal. Scarborough's notice of appeal is timely only as to the District Court's order denying his fraud-on-the-court motion and its subsequent order denying reconsideration thereof, *see* Fed. R. App. P. 4(a)(4)(iv) (stating that a timely filed Rule 59 motion tolls the time to file an appeal); *York Grp., Inc. v. Wuxi Taihu Tractor Co.*, 632 F.3d 399, 401-02 (7th Cir. 2011); it is not timely as to the District Court's underlying order dismissing the amended complaint—which, in any event, we already reviewed and affirmed, *see Scarborough v. Ct. of Common Pleas of Northampton Cnty.*, 794 Fed. App'x 238 (3d Cir. 2020); Fed. R. App. P. 4(a)(4)(A)(vi) (stating that a Rule 60 motion suspends a judgment's finality only if it filed within the time to file a Rule 59(e) motion; that is, within twenty-eight days of its entry). We review the District Court's order denying the two motions for an abuse of discretion. *See Max's Seafood Café ex rel. Lou-Ann, Inc. v. Quinteros*, 176 F.3d 669, 673 (3d Cir. 1999); *United States v. Sierra Pac. Indus., Inc.*, 862 F.3d 1157, 1166 (9th Cir. 2017).

We have carefully reviewed the record and see no abuse of discretion here. First, the District Court acted within its discretion in denying Scarborough relief as to his fraud-on-the-court claim. A district court “may set aside a judgment based upon its finding of fraud on the court when an officer of the court has engaged in ‘egregious misconduct,’” such as bribery or fabrication of evidence. *In re Bressman*, 874 F.3d 142, 150 (3d Cir. 2017) (quoting *Herring v. United States*, 424 F.3d 384, 390 (3d Cir. 2005)). Such a finding “must be supported by clear, unequivocal and convincing evidence” of “(1) an intentional fraud; (2)

by an officer of the court; (3) which is directed at the court itself; and (4) in fact deceives the court.” *Herring*, 424 F.3d at 386 (citation omitted). In this case, Scarborough asked the District Court to “quash the unconstitutional [custody] order” on the ground that his ex-wife had fraudulently advised the state court that he had consented to the custody agreement. Br. 30, ECF No. 8. As the District Court explained, however, Scarborough could not use an independent action under Rule 60(d)(3) to remedy alleged fraud on the state court, and Scarborough did not provide any evidence of fraud directed at the District Court. *See United States v. Washington*, 549 F.3d 905, 912 (3d Cir. 2008) (explaining that “a federal court has the inherent power to vacate its own judgments when they have been procured by fraud” (emphasis added)).³

Second, the District Court did not err in denying Scarborough’s request for leave to file a post-judgment amended complaint. Among the factors justifying denial of leave to amend under Rule 15(a)(2) are

³ To the extent that Scarborough argues that the District Court erred in denying his motion in part on the ground that it was time-barred, he misconstrues the District Court’s reasoning. The District Court did not consider the timeliness of the motion in denying relief. Scarborough also argues that the District Court erred in declining to consider several new claims that he presented in his motion, including claims under “§ 1985(3); § 1986; § 1988; § 12202, Title VII of the Civil Rights Act (1964), 23 Pa. Cons. Stat. Ann. § 5327(a); § 5328(a)(b) and § 6303.” Br. 29, ECF No. 8. Scarborough could not present these new causes of action in his fraud-on-the-court motion, which, as previously noted, is limited to allegations that “an officer of the court has engaged in ‘egregious misconduct,’” such as bribery or fabrication of evidence. *In re Bressman*, 874 F.3d at 150. Further, as discussed below, he failed to show that he was entitled to amend his complaint to assert new claims.

undue delay, bad faith or dilatory motive, prejudice to the opposition, repeated failures to correct deficiencies with previous amendments, and futility of the amendment. *Mullin v. Balicki*, 875 F.3d 140, 149 (3d Cir. 2017) (citing *Forman v. Davis*, 371 U.S. 178 (1962)). Scarborough explains that he wished to file a new pleading in order to assert claims against Northampton County officers who “were the policy makers with regard to intentional discrimination, maliciously, abusing discovery and concealing fraud on the court.” Br. 40, ECF No. 8. But Scarborough had ample opportunity earlier in the case to name new defendants. It was thus within the District Court’s discretion to deny him leave to do so in connection with his Rule 60(d)(3) motion, which he filed more than three years after the District Court had dismissed his amended complaint. *See, e.g., Cureton v. Nat’l Collegiate Athletic Ass’n*, 252 F.3d 267, 273-74 (3d Cir. 2001) (affirming denial of post-judgment motion to amend because, inter alia, the motion was filed three years after the complaint was filed and almost two-and-a-half years after the plaintiffs learned the factual information on which the proposed amendment relied). For this reason, the District Court likewise acted within its discretion in denying Scarborough’s request for discovery and a “preliminary injunction” relating to the proposed defendants.

We have considered Scarborough’s remaining arguments and conclude that they are meritless. Accordingly, we will affirm.

**MEMORANDUM OPINION,
U.S. DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA
(AUGUST 1, 2023)**

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

E. THOMAS SCARBOROUGH, III,

Plaintiff,

v.

COURT OF COMMON PLEAS OF
NORTHAMPTON COUNTY, ET AL.,

Defendants.

Civil Action No. 18-2436

Before: SCHMEHL, Judge. /s/ JLS

MEMORANDUM OPINION

I. Introduction

Plaintiff, E. Thomas Scarborough, III, filed a counseled action in this Court in June of 2018 against the Court of Common Pleas of Northampton County and the Supreme Court of Pennsylvania, claiming that the Court of Common Pleas violated his due process rights in a variety of ways in a child custody matter. He also claimed that the Pennsylvania Supreme

Court violated his due process rights by dismissing his appeals. He asserted these claims under 42 U.S.C. § 1983.

On June 14, 2019, this Court dismissed Plaintiff's Complaint, as the two judicial defendants were immune from suit under the Eleventh Amendment. Plaintiff filed a *pro se* notice of appeal, and the Third Circuit agreed that the Supreme Court of Pennsylvania and the Northampton County Court of Common Pleas are entitled to immunity under the Eleventh Amendment. The Third Circuit denied Plaintiff's petition for rehearing *en banc*, and the United States Supreme Court denied Plaintiff's petition for writ of *certiorari*.

On December 17, 2021, Plaintiff filed a *pro se* motion in this Court that he called a "Motion to Vacate a Judgement Obtained by Fraud on the Court under F.R.C.P. 60(d)(3), for Judicial Notice, for Expedited Discovery, for Preliminary Injunctive Relief, for Partial Summary Judgment and for Leave to File an Amended Complaint." On September 7, 2022, this Court denied Plaintiff's motion. Thereafter, on September 16, 2022, Plaintiff filed another *pro se* motion that he called a "Motion to Alter or Amend Judgment Under F.R.C.P. 59(e)" (Docket No. 26). After a review of the filings in this matter, Plaintiff's motion will be denied.

II. Discussion

Despite fashioning his latest motion as one seeking to "Alter or Amend" this Court's September 7, 2022, Order on his Rule 60 Motion, Plaintiff's latest motion is in fact yet another recitation of the same allegations and complaints raised in his Amended Complaint, pertaining to the handling of his custody

matters in the Northampton County Court of Common Pleas. Despite this Court's dismissal of his claims based upon sovereign immunity, the Third Circuit's affirmance of that dismissal, and this Court's denial of his motion to reopen his case pursuant to F.R.C.P. 60(d)(3), Plaintiff now appears to assert that this Court erred for failing to permit him to file an Amended Complaint against wholly new and different Defendants within this closed case, years after a final judgment was entered.

Under Rule 59 of the Federal Rules of Civil Procedure, a party must satisfy a high standard in order to have a judgment altered or amended. *In North River Insurance Co. v. CIGNA Reinsurance Co.*, 52 F.3d 1194, 1218 (3d Cir.1995), the Third Circuit stated that a Rule 59 motion for an amended judgment must rely on one of three grounds: (1) an intervening change in controlling law; (2) the availability of new evidence that was previously unavailable; or (3) the need to either correct a clear error of law or prevent a manifest injustice. A motion for reconsideration is regarded as "the functional equivalent of a Rule 59 motion . . . to alter or amend judgment." *Venen v. Sweet*, 758 F.2d 117, 122 (3d Cir.1985). The standard for obtaining relief under Rule 59(e) is difficult for a party to meet. The United States Court of Appeals for the Third Circuit explained:

The scope of a motion for reconsideration, we have held, is extremely limited. Such motions are not to be used as an opportunity to relitigate the case; rather, they may be used only to correct manifest errors of law or fact or to present newly discovered evidence. *Howard Hess Dental Labs., Inc. v. Dentsply*

Int'l Inc., 602 F.3d 237, 251 (3d Cir. 2010). “Accordingly, a judgment may be altered or amended [only] if the party seeking reconsideration shows at least one of the following grounds: (1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court [issued the challenged decision]; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice.” *Id.* (quotation marks omitted).

Frazier v. Williams, 2019 WL 2285764, at *1-2 (W.D. Pa. May 29, 2019), citing *Blystone v. Horn*, 664 F.3d 397, 415-16.

To the extent Plaintiff’s Rule 59(e) motion seeks reconsideration of this Court’s order denying his motion to reopen, it must fail. A party may not invoke a motion for reconsideration to relitigate matters of disagreement with the court. *See Boretsky v. Governor of N.J.*, 433 F. App’x 73, 78 (3d Cir.2011); *Ogden v. Keystone Residence*, 226 F.Supp.2d 588, 606 (M.D.Pa.2002). Plaintiff’s motion fails to set forth an intervening change in controlling law or a manifest error of law or fact in the Court’s September 7, 2022, order, nor does it present newly discovered evidence. Rather, Plaintiff’s motion simply restates the same factual allegations raised in his Complaint, Amended Complaint and other numerous filings, both in this Court and in the Third Circuit.

Further, Plaintiff’s motion is procedurally improper in its apparent attempt to reopen this case and name wholly new and different defendants to a closed case four years after dismissal. Plaintiff first attempted to utilize Rule 60 for this endeavor, and now attempts to

utilize Rule 59. This use of Rule 59 is improper. As stated by the Third Circuit:

We also agree with the First Circuit that a construction of Rule 15(a) which would permit amendment until the end of time is a most implausible one for there could never be an end to a litigation or to the cloud created by a *lis pendens*. We conclude also that there is some discretionary power in a United States District Court to vacate or set aside a judgment of dismissal within the period of time prescribed by Rule 59(b) and (e), ten days, or by Rule 60(b), one year. To hold otherwise would be to put a plaintiff in the position he was in at common law when a demurrer to his *narr* had been sustained. We think that the framers of the Rules of Civil Procedure did not contemplate such a result.

Kelly v. Delaware River Joint Comm'n, 187 F.2d 93, 94-95 (3d Cir. 1951) (superseded by Rule 15 Amendment only as it pertains to treatment of 12(b)(e), or (f) Motions as responsive pleadings). Accordingly, Plaintiff's motion is denied.

III. Conclusion

For the foregoing reasons, Plaintiff's Motion to Alter or Amend Judgment is denied.

**ORDER DENYING
PETITION FOR REHEARING, U.S. COURT OF
APPEALS FOR THE THIRD CIRCUIT
(FEBRUARY 16, 2024)**

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

E. THOMAS SCARBOROUGH, III,

Appellant,

v.

COURT OF COMMON PLEAS OF
NORTHAMPTON COUNTY;
SUPREME COURT OF PENNSYLVANIA,

No. 23-2414

(E.D. Pa. No. 5-18-cv-02436)

Before: CHAGARES, Chief Judge, JORDAN,
HARDIMAN, SHWARTZ, KRAUSE, RESTREPO,
BIBAS, PORTER, MATEY, PHIPPS, FREEMAN,
MONTGOMERY-REEVES, and CHUNG,
Circuit Judges.

The petition for rehearing filed by Appellant E. Thomas Scarborough, III 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

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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

Dated: February 16, 2024

Tmm/cc: E. Thomas Scarborough, III
Megan Mallek, Esq.

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