

APPENDIX A

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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KIM DAVIS,

Appellant

v.

GENE R. MARIANO, ESQ.;

NEW PENN FINANCIAL LLC, d/b/a Shellpoint Mortgage Servicing; STATE  
OF NEW JERSEY COURTS;

STATE OF NEW JERSEY OCEAN COUNTY SHERIFF'S DEPARTMENT;  
BANK OF AMERICA, N.A.

Respondent(s)

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Judgment Filed on Feb. 21, 2023

AMBRO\*, KRAUSE, and SCIRICA, Circuit Judges

No. 22-1608

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On Appeal from the United States District Court  
for the District of New Jersey

(D.C. Civil Action No. 1-19 cv-13515)

District Judge: Honorable Noel L. Hillman

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Submitted Pursuant to Third Circuit LAR 34.1(a)

February 16, 2023

Before: AMBRO\*, KRAUSE, and SCIRICA, Circuit Judges

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**JUDGMENT**

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1 a

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FOR THE THIRD CIRCUIT

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No. 22-1608

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KIM DAVIS,

Appellant

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GENE R. MARIANO, ESQ.;  
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February 16, 2023  
Before: AMBRO\*, KRAUSE, and SCIRICA, Circuit Judges

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**JUDGMENT**

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This cause came to be considered on the record from the United States District Court for the District of New Jersey and was submitted pursuant to Third Circuit LAR 34.1(a) on February 16, 2023. On consideration whereof, it is now hereby

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\* Judge Ambro assumed senior status on February 6, 2023.



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ORDERED and ADJUDGED by this Court that the judgment of the District Court entered March 8, 2022, 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

Dated: February 21, 2023



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



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**NOT PRECEDENTIAL**

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 22-1608

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KIM DAVIS,

Appellant

v.

GENE R. MARIANO, ESQ.;  
NEW PENN FINANCIAL LLC, d/b/a Shellpoint Mortgage Servicing;  
STATE OF NEW JERSEY COURTS;  
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On Appeal from the United States District Court  
for the District of New Jersey  
(D.C. Civil Action No. 1-19-cv-13515)  
District Judge: Honorable Noel L. Hillman

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Submitted Pursuant to Third Circuit LAR 34.1(a)  
February 16, 2023

Before: AMBRO\*\*, KRAUSE, and SCIRICA, Circuit Judges

(Opinion filed: February 21, 2023)

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OPINION\*

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\*\* Judge Ambro assumed senior status on February 6, 2023.

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



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PER CURIAM

Kim Davis appeals pro se from an order of the District Court denying her motion for reconsideration under Federal Rules of Civil Procedure 59 and 60 of orders dismissing her complaint and denying her motion for leave to amend. For the following reasons, we will affirm the District Court's judgment.

I.

In 2016, Bank of America, N.A. ("Bank of America") filed an action against Davis, seeking to foreclose on her mortgaged New Jersey home. In 2018, the New Jersey Superior Court, Chancery Division entered a final judgment of foreclosure against Davis and issued a writ of execution directing the Ocean County Sheriff's Department ("Sheriff's Department") to sell Davis's property at a Sheriff's Sale. Davis filed a series of unsuccessful appeals in state court.

On June 6, 2019, Davis initiated this case in the District Court by filing a complaint against Bank of America and its attorney, Gene Mariano, as well as the Sheriff's Department, Davis's mortgage servicer, and the New Jersey Judiciary. The complaint alleged that the defendants had committed several consumer protection, due process, and common law violations. The defendants moved to dismiss the complaint for lack of subject matter jurisdiction and for failure to state a claim upon which relief may be granted. On May 27, 2020, the District Court granted the motions to dismiss and entered an order dismissing the complaint. The District Court ruled that it lacked subject matter jurisdiction under the Rooker-Feldman doctrine, and that even if that doctrine did



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not apply, Davis had failed to state a claim. It also noted that res judicata appeared to bar her claims.

Thirty days later, on June 26, 2020, Davis filed a motion to amend her complaint under Federal Rule of Civil Procedure 15 seeking to add, among other things, a claim under the Truth in Lending Act (“TILA”). A Magistrate Judge denied the motion on March 26, 2021, concluding that Davis still had not stated a claim for relief and that her TILA claim was time-barred. Then, on April 22, 2021, Davis filed a motion pursuant to Federal Rule of Civil Procedure 59(e) to reconsider the court’s order denying her motion to amend, and for Rule 60 relief from the court’s order dismissing her complaint. The District Court noted that Davis’s filing was untimely to the extent that she sought reconsideration of the dismissal order under Rule 59(e). It ruled that relief was not warranted under Rule 60 insofar as she argued that it had erred in dismissing her complaint under the Rooker-Feldman doctrine.<sup>1</sup> The District Court further ruled that, to the extent her filing could be deemed an appeal of the Magistrate Judge’s order denying leave to amend, the appeal lacked merit. Davis appealed.

## II.

We have jurisdiction to consider this appeal pursuant to 28 U.S.C. § 1291, but the scope of our review is limited. A notice of appeal in a civil case in which the United States is not a party must be filed within 30 days of the entry of the order or judgment being appealed. See Fed. R. App. P. 4(a)(1)(A); see also Bowles v. Russell, 551 U.S.

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<sup>1</sup> The District Court did not address Davis’s other challenges to the dismissal order because its ruling that it lacked subject matter jurisdiction was case dispositive.



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205, 214 (2007) (stating that this time limit is mandatory and jurisdictional). The District Court entered its order dismissing the complaint on May 27, 2020, and Davis filed this appeal far beyond the applicable 30-day window. While the filing of certain motions can toll the time to file an appeal, Davis did not timely file such a motion. See Fed. R. App. P. 4(a)(4)(A). The notice of appeal is, however, timely as to the District Court's order denying the motion to reconsider. We therefore have jurisdiction over Davis's appeal from that order, which we review for abuse of discretion. See Budget Blinds, Inc. v. White, 536 F.3d 244, 251 (3d Cir. 2008).

## III.

To the extent that Davis challenges the District Court's decision dismissing her complaint, that decision is, as noted above, beyond the scope of our review. As to the denial of her motion for reconsideration, Davis contends that the District Court erred insofar as it failed to recognize that she was alleging fraud on the part of the opposing parties. She appears to make two arguments. First, she argues that relief was due under Rule 60(b) because the District Court erred in dismissing her complaint without considering whether an exception to the Rooker-Feldman doctrine applied based on fraud in the state court action. To the extent that Davis adequately raised that contention in her motion below, it did not warrant relief under Rule 60(b) because it alleged a legal error that could have been raised on appeal. See Smith v. Evans, 853 F.2d 155, 158 (3d Cir. 1988) (explaining that "a Rule 60(b) motion may not be used as a substitute for appeal"), overruled on other grounds by Lizardo v. United States, 619 F.3d 273, 276-77 (3d Cir.



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2010). Davis's motion also failed to allege any "extraordinary circumstances" justifying relief under Rule 60(b)(6). See Budget Blinds, 536 F.3d at 255.

Davis next appears to argue that she was entitled to Rule 60(b) relief based on fraud in the District Court proceedings. See Fed. R. Civ. P. 60(b)(3). But her motion failed to present clear and convincing evidence that "the adverse part[ies] engaged in fraud or other misconduct, and that this conduct prevented [her] from fully and fairly presenting [her] case." Stridiron v. Stridiron, 698 F.2d 204, 207 (3d Cir. 1983); see Brown v. Pa. R.R. Co., 282 F.2d 522, 527 (3d Cir. 1960). Rather, her factual allegations in support of that claim are based only on assertions and legal arguments made in the defendants' motions to dismiss. The District Court stated that it had already considered Davis's opposition to such arguments, and thus her claims purporting to allege fraud in the District Court were insufficient to warrant Rule 60(b) relief.

To the extent that Davis contends that the District Court committed other legal errors in dismissing her complaint, such errors similarly do not warrant Rule 60(b) relief because they could have been raised on appeal. And to the extent that Davis challenges the denial of the motion to amend her complaint in order to add a claim of a conspiracy to deny her constitutional rights, she has not shown that relief was warranted given that her related constitutional claim was dismissed for lack of subject matter jurisdiction. She has also forfeited any challenge to the ruling that her TILA claim is time-barred by failing to raise such in her opening brief. See Barna v. Bd. of Sch. Dirs. of Panther Valley Sch. Dist., 877 F.3d 136, 145 (3d Cir. 2017).



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We will accordingly affirm the District Court's order denying the motion for reconsideration.



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OFFICE OF THE CLERK

PATRICIA S. DODSZUWEIT

CLERK



**UNITED STATES COURT OF APPEALS**

FOR THE THIRD CIRCUIT  
21400 UNITED STATES COURTHOUSE  
601 MARKET STREET  
PHILADELPHIA, PA 19106-1790

Website: [www.ca3.uscourts.gov](http://www.ca3.uscourts.gov)

TELEPHONE

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March 15, 2023

Mr. William T. Walsh  
United States District Court for the District of New Jersey  
Mitchell H. Cohen Building & United States Courthouse  
4th & Cooper Streets  
Room 1050  
Camden, NJ 08101

RE: Kim Davis v. Gene Mariano, et al

Case Number: 22-1608

District Court Case Number: 1-19-cv-13515

Dear District Court Clerk,

Enclosed herewith is the certified judgment together with copy of the opinion in the above-captioned case(s). The certified judgment is issued in lieu of a formal mandate and is to be treated in all respects as a mandate.

Counsel are advised of the issuance of the mandate by copy of this letter. The certified judgment is also enclosed showing costs taxed, if any.

Very Truly Yours,

s/ Patricia S. Dodszuweit  
Clerk

By: s/ James King, Case Manager  
Direct Dial: 267-299-4958

cc: Kim Davis  
Andrew C. Sayles  
Peter Sosinski  
Mathew B. Thompson  
Michael P. Trainor



APPENDIX B

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

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KIM DAVIS,

Appellant

v.

GENE R. MARIANO, ESQ.;  
NEW PENN FINANCIAL LLC, d/b/a Shellpoint Mortgage Servicing; STATE  
OF NEW JERSEY COURTS;  
STATE OF NEW JERSEY OCEAN COUNTY SHERIFF'S DEPARTMENT;  
BANK OF AMERICA, N.A.

Respondent(s)

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Order & Opinion Filed on March. 8, 2022  
Hon. Noel L. Hillman U.S.D.J.  
Case 1:19-cv-13515-NLH-MJS

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Order & Opinion

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UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

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KIM DAVIS,

Plaintiff,

v.

BANK OF AMERICA, NA, et al.,

Defendants.

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No. 1:19-13515-NLH-MJS

**ORDER**

For the reasons expressed in the Court's Opinion filed today,

IT IS on this 7<sup>th</sup> day of March, 2022

ORDERED that the Clerk shall reopen this matter for the purpose of deciding Plaintiff's Motion for reconsideration [Docket Number 54]; and it is further

ORDERED that Plaintiff's Motion for reconsideration [Docket Number 54] be, and the same hereby is, DENIED; and it is further

ORDERED that this matter be, and the same hereby is, dismissed with prejudice; and it is further

ORDERED that the Clerk shall mark this matter as closed.

At Camden, New Jersey

s/ Noel L. Hillman  
NOEL L. HILLMAN, U.S.D.J.



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UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

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KIM DAVIS,

Plaintiff,

v.

BANK OF AMERICA, NA, et al.,

Defendants.

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: No. 1:19-13515-NLH-MJS  
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: OPINION  
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APPEARANCES:

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*Attorney for Defendant Ocean County Sheriff's Department  
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Department)*

**HILLMAN**, District Judge

This matter comes back before the Court on Plaintiff's motion for reconsideration, styled as a motion to alter or amend the complaint and relief from judgment or order [Docket Number 54]. Plaintiff is specifically seeking reconsideration of the Court's May 27, 2020 Opinion and Order [Dkt. Nos. 37 and 38 respectively] dismissing her claims with prejudice and the more recent March 26, 2021 Order [Dkt. No. 53] by Magistrate Judge Skahill denying her motion for leave to file an amended complaint. Defendants Gene R. Mariano and Bank of America, N.A. ("BoA") oppose her motion. This motion for reconsideration is decided without oral argument pursuant to Federal Rule of Civil Procedure 78(b) and Local Civil Rule 78.1(b). The Court has considered the parties' submissions, and for the reasons expressed below, Plaintiff's motion will be denied.

#### **BACKGROUND**

The Court previously provided a detailed outline of the factual and procedural background of this case in its May 27, 2020 Opinion, [Dkt. No. 37], and assumes the parties'



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familiarity with the relevant history. Accordingly, it will only restate that background as necessary for the purposes of ruling on the presently pending motion.

In June 2007, Plaintiff Kim Davis executed a mortgage on a property located in Jackson, New Jersey in favor of Defendant Mortgage Electronic Services ("MERS"), which was later assigned to Defendant BoA. After she defaulted on the mortgage, BoA filed an action in mortgage foreclosure in 2016. A final judgment of foreclosure was entered by a state court on May 21, 2018.

Over the next year, Plaintiff filed a series of appeals and motions in an apparent attempt to stall the foreclosure and sale of the property; her tactics eventually failed after the state trial and appellate courts denied her requests. On June 6, 2019, Plaintiff initiated the instant action alleging Defendants mishandled her mortgage, asserting various causes of action. Defendants moved to dismiss the case, arguing the Court lacks subject matter jurisdiction and that Plaintiff had failed to state a claim upon which relief may be granted. The Court agreed, ruling on each of the then pending motions in an Opinion and Order issued on May 27, 2020. The Court found multiple bases for dismissal, including *res judicata*, failure to state a claim upon which relief may be granted, and, above all, that the Court lacked subject matter jurisdiction. Importantly, the



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Court held that “[t]he primary reason the Court must dismiss Davis’s claims is based on the Rooker-Feldman doctrine[,]” which, “[u]nlike the other defects in Davis’s complaint, **these defects cannot be cured.**”<sup>1</sup> Opinion, Dkt. No. 37, at 10 (emphasis added). Accordingly, the Court’s Order instructed the Clerk of the Court to close the case.

On June 26, 2020, a month after dismissal, Plaintiff filed a motion for leave to amend the complaint. Defendants opposed the motion. On March 26, 2021, the Honorable Matthew J. Skahill, U.S.M.J. issued an Order denying Plaintiff’s proposed amended pleading as futile. Order, [Dkt. No. 53]. Magistrate Judge Skahill also rejected Plaintiff’s reply papers, correctly noting that the papers were improper because they “not only contain[] new arguments but present[] an entirely new motion and proposed amended complaint complete with new parties, claims, and allegations.” Id. at 7.

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<sup>1</sup> See Vuyanich v. Smithton Borough, 5 F. 4th 379, 385 (3d Cir. 2021) (citations and quotations omitted) (“We have translated the Supreme Court’s approach to Rooker-Feldman into a four-pronged inquiry. To trigger the doctrine, the following requirements must be met: (1) the federal plaintiff lost in state court; (2) the plaintiff complains of injuries caused by the state-court judgments; (3) those judgments were rendered before the federal suit was filed; and (4) the plaintiff is inviting the district court to review and reject the state judgments. We have described Prongs 2 and 4 as the key requirements, but only meeting all four requirements prevents a district court from exercising jurisdiction under Rooker-Feldman.”).



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On April 22, 2021, Plaintiff filed the instant motion for reconsideration of the aforementioned rulings. Defendants BoA and Mariano have filed opposition. The motion for reconsideration is therefore fully briefed and ripe for adjudication.

**DISCUSSION**

Plaintiff's kitchen-sink styled motion seeks relief from the Court's rulings, moving pursuant to Federal Rule of Civil Procedure 59(a), 59(e), 60(a), and 60(b), as well as Local Civil Rule 56.1.<sup>2</sup> Among other things, Plaintiff argues that the Rooker-Feldman doctrine does not apply.<sup>3</sup> Plaintiff's motion requests: (1) this Court "alter or amend its March 26, 2021 [O]rder," and (2) "relief pursuant to Rule 60(a) from this

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<sup>2</sup> As an initial matter, the Court notes that Local Civil Rule 56.1 concerns summary judgment motions and is irrelevant to the instant motion for reconsideration. A closer look at the Local Civil Rules demonstrates that the more relevant rule is 7.1(i) as it concerns the rules governing motions for reconsideration. Although not addressed in the motion papers, Plaintiff's motion would be untimely under Local Civil Rule 7.1(i) since motions for reconsideration must be filed within fourteen (14) days from the date of the order at issue unless otherwise provided by statute or rule. See Local Civ. R. 7.1(i) ("Unless otherwise provided by statute or rule (such as Fed. R. Civ. P. 50, 52 and 59), a motion for reconsideration shall be served within 14 days after the entry of the order or judgment on the original motion by the Judge or Magistrate Judge").

<sup>3</sup> None of Plaintiff's additional arguments are relevant because the Court dismissed the complaint with prejudice because it lacked subject matter jurisdiction based on the Rooker-Feldman doctrine.



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courts [sic] May 27, 2020 [O]rder (Doc. No. 38) where the court may correct a mistake arising from oversight whenever one is found in a judgment or order." Plaintiff's Motion, [Dkt. No. 54], at 1. However styled, Plaintiff's motion ask the Court for one thing: to reconsider the prior rulings. Therefore, as a motion to alter or amend judgment under Fed. R. Civ. P. 59 or a motion for relief from judgement or order under Fed. R. Civ. P. 60 may be treated as a motion for reconsideration, the instant matter is plainly a motion for reconsideration.

The purpose of a motion for reconsideration "is to correct manifest errors of law or fact or to present newly discovered evidence." Max's Seafood Cafe ex rel. Lou-Ann, Inc. v. Quinteros, 176 F.3d 669, 677 (3d Cir. 1999). A judgment may be altered or amended only if the party seeking reconsideration shows: (1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court previously ruled; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice. Id. A motion for reconsideration may not be used to re-litigate old matters or argue new matters that could have been raised before the original decision was reached, P. Schoenfeld Asset Mgmt., L.L.C. v. Cendant Corp., 161 F. Supp. 2d 349, 352 (D.N.J. 2001), and mere disagreement with the Court will not suffice to show that the Court overlooked relevant facts or controlling law, United



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States v. Compaction Sys. Corp., 88 F. Supp. 2d 339, 345 (D.N.J. 1999), and should be dealt with through the normal appellate process, S.C. ex rel. C.C. v. Deptford Twp Bd. of Educ., 248 F. Supp. 2d 368, 381 (D.N.J. 2003); U.S. v. Tuerk, 317 F. App'x 251, 253 (3d Cir. 2009) (quoting Mayberry v. Maroney, 529 F.2d 332, 336 (3d Cir. 1976)) (stating that "relief under Rule 60(b) is 'extraordinary,' and 'may only be invoked upon a showing of exceptional circumstances'").

"[A] district court has considerable discretion to decide whether reconsideration is necessary to prevent manifest injustice." ADP, LLC V. Lynch, No. 16-01053, 2017 WL 3022320 at \*2 (D.N.J. July 17, 2017). But "[r]econsideration is an extraordinary remedy that is granted very sparingly." Brackett v. Ashcroft, No. 03-3988 (WJM), 2003 U.S. Dist. LEXIS 21312, at \*2 (D.N.J. Oct. 7, 2003) (internal citations omitted); see also L. Civ. R. 7.1(i), cmt. 6(d).

Determinatively, as this matter turns on the issue of subject matter jurisdiction, the Court focuses its analysis on Plaintiff's request for reconsideration of the Court's May 27, 2020 Opinion and Order. The Court's Opinion set forth multiple bases for dismissal, but the Court's application of the Rooker-Feldman doctrine was the core reason why the case had to be dismissed with prejudice. There the Court explained, in the relevant parts, that:



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The primary reason the Court must dismiss Davis's claims is based on the Rooker-Feldman doctrine. Unlike the other defects in Davis's complaint, these defects cannot be cured.

. . . . .

Though not explicitly pleaded in her complaint, Davis's requests would require (1) this Court's review of the state court decisions in her state court cases in order to find that the state court erred, and (2) this Court's independent review of the same claims she previously advanced in her state court case. Neither of these requests is proper under the Rooker-Feldman doctrine.

. . . . .

According to the Rooker-Feldman doctrine, lower federal courts lack subject matter jurisdiction to engage in appellate review of state court determinations or evaluate constitutional claims that are inextricably intertwined with the state court's decision in a judicial proceeding.

. . . . .

Four requirements must be met for the Rooker-Feldman doctrine to apply: "(1) the federal plaintiff lost in state court; (2) the plaintiff complain[s] of injuries caused by [the] state-court judgments; (3) those judgments were rendered before the federal suit was filed; and (4) the plaintiff is inviting the district court to review and reject the state judgments." Great Western Mining & Mineral Co. v. Fox Rothschild LLP, 615 F.3d 159, 166 (3d Cir. 2010) (quotations omitted discussing Exxon Mobil [Corp. v. Saudi Basic Indus. Corp.], 544 U.S. [280,] 284 [(2005)]). If these four requirements are met, the Rooker-Feldman doctrine prohibits the district court from exercising jurisdiction. Id.



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All four of these requirements are met in this case. As detailed above, Davis lost in state court. Davis now complains that her injuries are caused by the state court's decision. The Chancery Court entered its final judgment on May 21, 2018, well before this suit was filed. Davis asks the District Court to reject and review both the Chancery Court and the Appellate Division's judgments. Accordingly, this Court lacks subject matter jurisdiction over Plaintiff's complaint, and it must be dismissed on this basis.

[Opinion, [Dkt. No. 37], at 10-12.]

Plaintiff now seeks reconsideration of this ruling under Rule 60(a) and (b).<sup>4</sup> Plaintiff avers the May 27, 2020 Opinion

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<sup>4</sup> The Court notes that Fed. R. Civ. P. 60 is the relevant rule as the Court's Opinion and Order were a final judgment dismissing the claims and closing the case. This is noted because Plaintiff's moving papers intermix arguments under various theories of reconsideration. Moreover, Rule 60 is the only basis under which Plaintiff could seek reconsideration as her time has long since expired to seek reconsideration under Local Civil Rule 7.1(i), which sets forth a fourteen-day deadline to file for reconsideration. Likewise, Plaintiff would be out of time under Fed. R. Civ. P. 59, which sets forth a twenty-eight day deadline to seek reconsideration. Here, the Court issued its Opinion and Order on May 27, 2020, and Plaintiff filed the instant motion on April 22, 2021. Under Rule 60(c), "[a] motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the processing." Therefore, Plaintiff's motion is timely, despite the fact that she fails to explain why she waited nearly a year to seek reconsideration, perhaps occasioned by her procedurally incorrect attempt to seek amendment after her case was dismissed. See McNeil v. United States, 508 U.S. 106, 113 (1993) (holding, "[W]e have never suggested that procedural rules in ordinary civil litigation should be interpreted so as to excuse mistakes by those who proceed without counsel . . . ."). Regardless, there is no time limit to invoke Rule 60(a).



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and Order were "clearly an error of fact and law." Plaintiff's Motion, [Dkt. No. 54], at 1. Plaintiff argues the court erred in applying the Rooker-Feldman doctrine, asserting her claims here were never "actually litigated" in the prior state court actions. Brief in support of Motion for Reconsideration ("Brief"), [Dkt. No. 54-1], at 7. Likewise, Plaintiff claims the Court erred because she was not seeking "to void the foreclosure judgment" and that she was not asking this Court to "determine if the state court's decision was wrong or void." Id. at 9. However, Plaintiff's nonsensical arguments fail to articulate how the Court erred in applying the Rooker-Feldman doctrine such that reconsideration is appropriate under Rule 60.

Rule 60(a) provides that a "court may correct a clerical mistake or mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record." Therefore, Rule 60(a) is strictly confined to the correction of clerical or scrivener errors. Stradley v. Cortez, 518 F.2d 488, 493 (3d Cir. 1975) (unless a mistake is truly clerical in error, a plaintiff "cannot take advantage of . . . Rule 60(a)"). The Third Circuit has emphasized that the rule is "limited to the correction of 'clerical mistakes'; it encompasses only errors 'mechanical in nature, apparent on the record, and not involving an error of substantive judgment.'" Pfizer Inc. v. Uprichard, 422 F.3d 124, 129-30 (3d Cir. 2005) (quoting Mack



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Trucks, Inc. v. Int'l Union, UAW, 856 F.2d 579, 594 n. 16 (3d Cir. 1988)). The rule was adopted to make clear that courts can "correct judgments which contain clerical errors, or judgments which have been issued due to inadvertence or mistake." In re FleetBoston Fin. Corp. Sec. Litig., No. 02-cv-4561, 2007 WL 4225832, at \*4 (D.N.J. Nov.28, 2007) (quoting American Trucking Ass'ns v. Frisco Transp. Co., 358 U.S. 133, 145, 79 S.Ct. 170, 3 L.Ed.2d 172 (1958)). No such errors are present here.

Plaintiff's arguments center on the substance of the Court's Opinion and Order, making them inappropriate for relief under Rule 60(a). There was no clerical error or scrivener error that resulted in the Court's Opinion and Order failing to reflect its decision. This Court's May 27, 2020 ruling accurately reflected the Court's decision, which dismissed the matter for lack of subject matter jurisdiction. That was the Court's intent, and that is what the Order did. The Court therefore denies the motion under Rule 60(a).

Plaintiff further fails to articulate a cognizable basis for reconsideration under Rule 60(b), which provides relief from a final judgment only for the following reasons: "(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or



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extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief.”<sup>5</sup> Fed. R. Civ. P. 60(b). Insofar as Plaintiff seeks reconsideration under Rule 60(b)(1) and (3) the Court finds that Plaintiff’s moving brief and reply brief merely regurgitate the same arguments and facts presented in the motion to dismiss and the complaint papers – which the Court has already considered. Plaintiff fails to address any of the aforementioned and required Rule 60(b) factors to explain why she is entitled to a reassessment of the Court’s findings in the May 27, 2020 Opinion and Order. Moreover, as Defendant BoA correctly points out, even a cursory review of the complaint and Plaintiff’s arguments demonstrate that her claims are entirely based on defendants’ allegedly wrongful actions arising from the state court foreclosure proceedings. BoA Opposition Brief, [Dkt. No. 57], at 18. By its very terms, Plaintiff’s complaint seeks relief undermining and rejecting the state court rulings through: (1) a declaratory judgment stating that the current

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<sup>5</sup> Specifically, Plaintiff “seeks relief pursuant to Rule 690(b)(1), (3), and (6).” Plaintiff’s Motion, [Dkt. No. 54], at 1.



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beneficiary of the underlying mortgage is invalid, (2) injunctive relief preventing the defendants from seeking to evict or dispossess Plaintiff from the underlying property, and (3) a judgment rescinding or reforming the underlying note and mortgage. Id. Accordingly, as this action is an impermissible review of the state court's rulings, this Court properly determined it lacked subject matter jurisdiction under the Rooker-Feldman doctrine. Plaintiff's failure to pinpoint any error by the Court, other than generally disagreeing with the outcome, dictates that Plaintiff's motion for reconsideration must be denied pursuant to Rule 60(b)(1) and (3).

Plaintiff's motion for reconsideration also asserts a basis under the "catch-all provision" of Rule 60(b)(6), which permits a district court to vacate an order for "any other reason that justifies relief." Cox v. Horn, 757 F.3d 113, 120 (3d Cir. 2014) (citing Fed. R. Civ. P. 60(b)(6)). However, this remedy "is extraordinary, and special circumstances must justify granting relief under it." Moonlenaar v. Gov't of the Virgin Islands, 822 F.2d 1342, 1346 (3d Cir. 1987); Page v. Schweiker, 786 F.2d 150, 155 (3d Cir. 1986). Moreover, even legal errors do not warrant relief under Rule 60(b)(6) as they can be addressed on appeal. See Martinez-McBean v. Gov't of Virgin Islands, 562 F.2d 908, 912 (3d Cir. 1977). Rule 60(b)(6) is not a substitute for appeal because, were it otherwise, "the time



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limitations on appeal set by Fed. R. App. P. 4(a), and on motions to alter or amend judgments under Fed. R. Civ. P. 59(e), would be vitiated." Page, 786 F.2d at 154. Therefore, a court should not grant relief under Rule 60(b)(6) when a party could have sought the same relief on direct appeal. See, e.g., Holland v. Holt, 409 F. App'x 494, 497 (3d Cir. 2010) (holding Rule 60(b)(6) unavailable where the movant "could have raised on appeal his legal argument").

Here, Plaintiff fails to demonstrate any extraordinary circumstances that would entitle her to reconsideration pursuant to Rule 60(b)(6). She raises nothing more than disagreement with the Court's decision as alleged legal error. Her arguments are nothing new as she presented similar arguments in opposing the motions to dismiss. Moreover, Plaintiff could have challenged the Court's ruling on a direct appeal. See U.S. v. Compaction Sys. Corp., 88 F. Supp. 2d 339, 345 (D.N.J. 1999) (Mere disagreement with a court's decision is not an appropriate basis upon which to bring a motion for reconsideration as such disagreement should "be raised through the appellate process"). The Court will thus deny Plaintiff's motion under Rule 60(b)(6).

To the extent that Plaintiff's motion can be considered an appeal of the Magistrate Judge's March 26, 2021 Order denying leave to amend such an appeal would be without merit. Given the Court's denial of Plaintiff's motion for reconsideration, it



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should come as no surprise that she will not be granted leave to amend her complaint on the claims the Court had previously determined were barred by Rooker-Feldman and it was correct of the Magistrate Judge to have denied that relief as well. To the extent the March 26, 2021 Order addressed Plaintiff's attempt to add a new claim, this Court finds no error in the Magistrate Judge's determination that the amendment was time-barred and therefore futile. Plaintiff will not be granted an opportunity to further extend this action or to attempt to further delay or otherwise impact any ongoing activity related to the foreclosure or sale of the property at the center of this dispute.

In sum, this Court notes, again, that it lacks subject matter jurisdiction over Plaintiff's claims and that Plaintiff's attempts to challenge that ruling and modify or add new claims would be futile. The motion to seek reconsideration and for leave to file an amended complaint must be denied.

**CONCLUSION**

For the reasons set forth above, Plaintiff's Motion for reconsideration will be denied. This action will be dismissed with prejudice. An appropriate Order will be entered.

Date: March 7, 2022  
At Camden, New Jersey

s/ Noel L. Hillman  
NOEL L. HILLMAN, U.S.D.J.



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[Doc. No. 39]

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

**KIM DAVIS,**

**Plaintiff,**

**v.**

**Civil No. 19-13515 (NLH/MJS)**

**GENE R. MARIANO, ESQ. et al.,**

**Defendants.**

**ORDER**

This matter is before the Court on the "Motion for Leave to Amend Complaint" ("motion") [Doc. No. 39] filed by pro se plaintiff Kim Davis. The Court received the opposition filed by defendants Bank of America, N.A. and New Rez, LLC d/b/a Shellpoint Mortgage Servicing [Doc. No. 44], the Ocean County Sheriff's Department [Doc. No. 45], Gene R. Mariano, Esq. [Doc. No. 46], and State of New Jersey Judiciary [Doc. No. 47] (collectively, "defendants"). The Court also received plaintiff's reply [Doc. No. 48]. The Court exercises its discretion to decide plaintiff's motion without oral argument. See FED. R. CIV. P. 78; L. CIV. R. 78.1. For the reasons to be set forth in this Order, plaintiff's motion is DENIED.