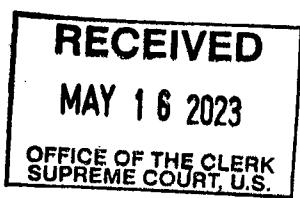


22-1640

Sara Elyas
917 Harvest Lane
Apartment 3
Lansing, MI 48917



UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Deborah S. Hunt
Clerk

100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Tel. (513) 564-7000
www.ca6.uscourts.gov

Filed: March 21, 2023

Sara Elyas
917 Harvest Lane
Apartment 3
Lansing, MI 48917

Re: Case No. 22-1640, *Sara Elyas v. Edward Johnston, et al*
Originating Case No.: 1:21-cv-00840

Dear Ms. Elyas,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Beverly L. Harris
En Banc Coordinator
Direct Dial No. 513-564-7077

cc: Mr. Andrew Collison
Mr. Charles C. Collison Jr.
Mr. Ryan K. Kauffman
Mr. Matthew T. Tompkins I

Enclosure

No. 22-1640

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

Mar 21, 2023
DEBORAH S. HUNT, Clerk

SARA ELYAS,

)

Plaintiff-Appellant,

)

v.

)

EDWARD ANDREW JOHNSTON, ET AL.,

)

Defendants-Appellees.

)

)

)

ORDER

BEFORE: GILMAN, GIBBONS, and READLER, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court.* No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

*Judge Bush recused himself from participation in this ruling.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

Feb 13, 2023

DEBORAH S. HUNT, Clerk

No. 22-1640

SARA ELYAS,

Plaintiffs-Appellants,

v.

EDWARD ANDREW JOHNSTON, et al.,

Defendants-Appellees.

Before: GILMAN, GIBBONS, and READLER, Circuit Judges.

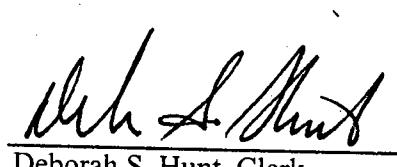
JUDGMENT

On Appeal from the United States District Court
for the Western District of Michigan at Grand Rapids.

THIS CAUSE was heard on the record from the district court and was submitted on the
briefs without oral argument.

IN CONSIDERATION THEREOF, it is ORDERED that the judgment of the district court
is **AFFIRMED**.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

RECEIVED

MAY 16 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

22-1640

Sara Elyas
917 Harvest Lane
Apartment 3
Lansing, MI 48917

NOT RECOMMENDED FOR PUBLICATION

No. 22-1640

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

Feb 13, 2023

DEBORAH S. HUNT, Clerk

SARA ELYAS,

Plaintiff-Appellant,

v.

EDWARD ANDREW JOHNSTON, et al.,

Defendants-Appellees.

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ON APPEAL FROM THE UNITED
STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF
MICHIGAN

O R D E R

Before: GILMAN, GIBBONS, and READLER, Circuit Judges.

Sara Elyas, a Michigan resident, appeals pro se the district court's judgment dismissing her civil suit for lack of subject-matter jurisdiction. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a). Because the district court's analysis was correct, we affirm.

In September 2021, Elyas brought suit in federal court against two insurance companies and several individuals concerning a car accident that caused her a disability. She complained that her state lawsuit about the car accident had been dismissed in January 2018, apparently because of issues with her representation and her failure to attend a deposition. She sought money damages and an order reinstating her prior state court lawsuit.

On the served defendants' motions, a magistrate judge recommended dismissing the complaint because it did not show that the court had either diversity or federal-question jurisdiction. *Elyas v. Johnston*, No. 1:21-cv-840, 2022 WL 2400925 (W.D. Mich. Mar. 15, 2022) (report and recommendation). Over Elyas's objections, the district court adopted the report and

recommendation and dismissed the case. *Elyas v. Johnston*, No. 1:21-cv-840, 2022 WL 2753518 (W.D. Mich. July 14, 2022) (order).

On appeal, Elyas reasserts the allegations in her complaint. In her reply brief, she asserts for the first time that the parties are diverse.

We review de novo a district court's dismissal for lack of subject-matter jurisdiction. *See Lindke v. Tomlinson*, 31 F.4th 487, 490 (6th Cir. 2022). A complaint is subject to dismissal if the allegations, accepted as true and viewed in the light most favorable to the plaintiff, show that the court lacks subject-matter jurisdiction. *See Carrier Corp. v. Outokumpu Oyj*, 673 F.3d 430, 440 (6th Cir. 2012). Pro se complaints are liberally construed and held to less stringent standards than those drafted by lawyers. *See Williams v. Curtin*, 631 F.3d 380, 383 (6th Cir. 2011).

"Federal courts are courts of limited jurisdiction," *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994), and thus can adjudicate cases only about "those subjects encompassed within a statutory grant of jurisdiction," *Home Depot USA, Inc. v. Jackson*, 139 S. Ct. 1743, 1746 (2019) (quoting *Ins. Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 701 (1982)). "A court that lacks subject-matter jurisdiction has no power but to dismiss the case; it may not address the merits." *Taylor v. Owens*, 990 F.3d 493, 496 (6th Cir. 2021).

Diversity jurisdiction exists when the amount in controversy exceeds \$75,000 and the parties are citizens of different states. 28 U.S.C. § 1332. Complete diversity of citizenship between the plaintiffs and each of the defendants is required. *See Evanston Ins. Co. v. Hous. Auth. of Somerset*, 867 F.3d 653, 656 (6th Cir. 2017). In her complaint, Elyas did not allege an amount in controversy or identify the citizenship of any of the defendants. In her reply brief, she claims that diversity jurisdiction exists, but she alleges no facts in support of that assertion, and on the proof-of-service page in her complaint, she provided Michigan addresses for the defendants. She therefore cannot rely on diversity jurisdiction to support her complaint.

Federal courts also have subject-matter jurisdiction in cases "arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. But Elyas cited no federal laws or constitutional principles in her complaint, and even reading her allegations generously, we

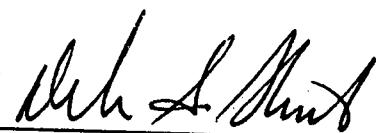
No. 22-1640

- 3 -

cannot discern a federal claim. Thus, the district court did not err in dismissing her complaint for lack of subject-matter jurisdiction.

For the reasons discussed above, we **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt
Deborah S. Hunt, Clerk

United States Court of Appeals for the Sixth Circuit

U.S. Mail Notice of Docket Activity

The following transaction was filed on 02/13/2023.

Case Name: Sara Elyas v. Edward Johnston, et al
Case Number: 22-1640

Docket Text:

ORDER filed : AFFIRMED. Mandate to issue, pursuant to FRAP 34(a)(2)(C), decision not for publication. Ronald Lee Gilman, Circuit Judge; Julia Smith Gibbons, Circuit Judge and Chad A. Readler, Circuit Judge.

The following documents(s) are associated with this transaction:
Document Description: Order

Notice will be sent to:

Sara Elyas
917 Harvest Lane
Apartment 3
Lansing, MI 48917

A copy of this notice will be issued to:

Mr. Andrew Collison
Mr. Charles C. Collison Jr.
Ms. Ann E. Filkins
Mr. Ryan K. Kauffman
Mr. Matthew T. Tompkins I

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SARA ELYAS,

Plaintiff,

v.

Case No. 1:21-cv-840

EDWARD ANDREW JOHNSTON, et al.,

HON. JANET T. NEFF

Defendants.

JUDGMENT

In accordance with the Opinion and Order entered this date:

IT IS HEREBY ORDERED that Judgment is entered for Defendants and against Plaintiff.

Dated: July 14, 2022

/s/ Janet T. Neff

JANET T. NEFF

United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SARA ELYAS,

Plaintiff,

v.

Case No. 1:21-cv-840

EDWARD ANDREW JOHNSTON, et al.,

HON. JANET T. NEFF

Defendants.

MEMORANDUM OPINION AND ORDER

Now pending before the Court are pro se Plaintiff's Objections to the Magistrate Judge's Report and Recommendation (ECF No. 34). The Magistrate Judge's March 15, 2022 Report and Recommendation recommended that Defendant Progressive's Motion for a More Definite Statement (ECF No. 5) be denied without prejudice, and Defendants' motions to dismiss (ECF Nos. 8, 20, & 25) be granted (ECF No. 33). The Report and Recommendation concluded that Plaintiff has not sufficiently established the Court's subject matter jurisdiction over this matter and recommended that the case be dismissed (*id.*).

Plaintiff's Objections are not responsive to the Magistrate Judge's analysis or establish this Court's subject matter jurisdiction over this matter (ECF No. 34). *See Weiler v. U.S. Dep't of Treasury-Internal Revenue Serv.*, No. 19-3729, 2020 WL 2528916, at *1 (6th Cir. Apr. 24, 2020) ("De novo review of a magistrate judge's recommendation is required only where the objections filed were not frivolous and only applies to factual disputes.").

Therefore,

IT IS HEREBY ORDERED that Plaintiff's Objections (ECF No. 34) are OVERRULED

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SARA ELYAS,

Plaintiff,

Hon. Janet T. Neff

v.

Case No. 1:21-cv-840

EDWARD ANDREW JOHNSTON, et al.,

Defendants.

REPORT AND RECOMMENDATION

Plaintiff, proceeding without benefit of counsel, initiated this action on September 28, 2021, against Auto Owners Insurance, Progressive Michigan Insurance Company, Edward Andrew Johnston, and four additional individuals. (ECF No. 1). Presently before the Court are: Defendant Progressive's Motion for More Definite Statement (ECF No. 5); Defendant Auto Owners' Motion to Dismiss (ECF No. 8); Defendant Johnston's Motion to Dismiss (ECF No. 20); and Defendant Progressive's Motion to Dismiss (ECF No. 25). Pursuant to 28 U.S.C. § 636(b)(1)(B), the undersigned recommends that Defendant Progressive's Motion for More Definite Statement be denied without prejudice and Defendants' motions to dismiss be granted. The undersigned further recommends that Plaintiff's claims against the remaining four individual defendants be dismissed for the reasons articulated herein and this matter terminated.

claim lies outside of this limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction.” *Ibid.* Defendants move to dismiss Plaintiff’s complaint pursuant to Federal Rule of Civil Procedure 12(b)(1). To survive a Rule 12(b)(1) challenge, Plaintiff must establish that the Court has subject matter jurisdiction over her claims. *See, e.g., Global Technology, Inc. v. Yubei (XinXiang) Power Steering System Co., Ltd.*, 807 F.3d 806, 810 (6th Cir. 2015).

To sufficiently allege jurisdiction, Plaintiff’s complaint must contain “facts which, if true, establish that the district court ha[s] jurisdiction over the dispute.” *Carrier Corp. v. Outkumpu Oyj*, 673 F.3d 430, 440 (6th Cir.2012). Because Defendants are challenging the sufficiency of Plaintiff’s allegations, rather than the accuracy of such, the allegations in Plaintiff’s complaint “must be taken as true” and assessed to determine whether such demonstrate that jurisdiction is proper in this Court. *See Carrier Corp.*, 673 F.3d at 440 (distinguishing between facial and factual challenges to a court’s subject matter jurisdiction).

A. Diversity Jurisdiction

Subject matter jurisdiction may be based on diversity of citizenship. As this action does not involve citizens or subjects of a foreign state, diversity is established only if the parties are “citizens of different states” and the amount in controversy is greater than \$75,000. 28 U.S.C. § 1332. Plaintiff’s complaint does not allege any amount in controversy. Plaintiff likewise fails to allege or identify the citizenship of any of the defendants. The undersigned concludes, therefore, that the Court cannot exercise

C. Unserved Defendants

Plaintiff also initiated the present action against the following individuals: Shane Sherman, Marilyn Moss, Shania Farquhar, and Chad Farquhar. Because Plaintiff has failed to effect service on these individuals, they are not yet participating in this matter. The Court, however, can address issues regarding subject matter jurisdiction *sua sponte*. See, e.g., *Zareck v. Corrections Corporation of America*, 809 Fed. Appx. 303, 305 (6th Cir., Apr. 14, 2020).

The analysis above applies with equal force to Plaintiff's purported claims against these defendants. Accordingly, for the reasons articulated above, the undersigned recommends that Plaintiff's claims against Defendants Shane Sherman, Marilyn Moss, Shania Farquhar, and Chad Farquhar be dismissed on the ground that the Court lacks subject matter jurisdiction over such. See *Zareck*, 809 Fed. Appx. at 305 (a court may sua sponte dismiss a complaint, on jurisdictional grounds, where there exists "no room for the inference" that jurisdiction can properly be exercised).

CONCLUSION

As discussed herein, Plaintiff has failed to allege facts sufficient to establish that this Court may properly exercise subject matter jurisdiction in this matter. Accordingly, the undersigned recommends that Defendant Auto Owners' Motion to Dismiss (ECF No. 8) be granted; Defendant Johnston's Motion to Dismiss (ECF No. 20) be granted; and Defendant Progressive's Motion to Dismiss (ECF No. 25) be granted. The undersigned further recommends that Plaintiff's claims against Defendants Shane