

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 22-1133, 22-1644 & 22-1900 (consolidated)

IN RE: PETITION OF LESLIE WILLIS TO PERPETUATE EVIDENCE PERTAINING
TO "THE TRUST FOR ANNIE PEARL (WHITE) WILLIS"

Leslie Willis,
Appellant

On Appeal from the United States District Court
for the Western District of Pennsylvania
(D.C. Civil Action No. 2-20-cv-01833)
District Judge: Honorable David S. Cercone

Submitted Pursuant to Third Circuit LAR 34.1(a)
February 21, 2023

Before: SHWARTZ, BIBAS, and FREEMAN, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Western District of Pennsylvania and was submitted pursuant to Third Circuit LAR 34.1(a) on February 21, 2023. On consideration whereof, it is now hereby ORDERED and ADJUDGED by this Court that the judgments of the District Court entered December 21, 2021, March 7, 2022, and April 8, 2022, be and the same are hereby affirmed. Costs taxed against the appellant. All of the above in accordance with the opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

Dated: March 1, 2023

NOT PRECEDENTIAL

**UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

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On Appeal from the United States District Court
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District Judge: Honorable David S. Cercone

Submitted Pursuant to Third Circuit LAR 34.1(a)
February 21, 2023

Before: SHWARTZ, BIBAS, and FREEMAN, Circuit Judges

(Opinion filed: March 1, 2023)

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.

Pro se appellant Leslie Willis appeals the District Court's orders dismissing her petition to perpetuate testimony under Fed. R. Civ. P. 27, denying her motion to reopen, and denying her motion to recuse. We will affirm.

For the last decade, Willis has been challenging the administration of her grandmother's estate. She began in Pennsylvania state court, and in 2014, the Orphan's Court denied Willis's request to restrain the sale of her grandmother's real property, and in 2017, the court issued a decree of distribution. Willis then moved to federal court, where she filed, among other things, a petition to perpetuate testimony under Rule 27. More specifically, Willis asked for the production from PNC Bank of the trust document for her grandmother's trust. See W.D. Pa. Civ. No. 2-22-mc-00570, ECF No. 1-1. Willis believes that this would establish that she is the sole beneficiary of the trust, that she had title to the real property that was sold, and that the executrix for her grandmother's estate has violated her rights.

Approving and adopting a Magistrate Judge's report and recommendation, the District Court granted PNC Bank's motion to dismiss the Rule 27 petition. See ECF Nos. 153 & 178. Willis appealed; that appeal has been docketed at C.A. No. 22-1133. Willis then challenged the Magistrate Judge's refusal to recuse. The District Court overruled the objections and affirmed the denial of the motion, see ECF No. 189, and Willis appealed. That appeal has been docketed at C.A. No. 22-1644. Willis also filed a motion to vacate the order dismissing her petition. The District Court denied that motion, see ECF No. 196, and Willis appealed. That third appeal has been docketed at C.A. No. 22-

1900. The Clerk of this Court consolidated the three appeals. See C.A. No. 22-1133, ECF No. 29. Willis has filed numerous documents in this Court.

We agree with the District Court's orders.¹ As the District Court explained, Rule 27 is not a substitute for discovery; rather, it is "available in special circumstances to preserve testimony which could otherwise be lost." Ash v. Cort, 512 F.2d 909, 912 (3d Cir. 1975); see also Qin v. Deslongchamps, 31 F.4th 576, 581 (7th Cir. 2022).² Willis made no showing that the trust document was in danger of being lost, and the District Court therefore did not err in dismissing the petition. Further, given that Willis amended her Rule 27 petition once and filed dozens of other supporting documents, the Court did not err in dismissing without providing further leave to amend, see generally Grayson v. Mayview State Hosp., 293 F.3d 103, 108 (3d Cir 2002), or in denying the motion to vacate.³

¹ We have jurisdiction under 28 U.S.C. § 1291. See Ash v. Cort, 512 F.2d 909, 912 (3d Cir. 1975); Ohntrup v. Firearms Ctr., Inc., 802 F.2d 676, 678 (3d Cir. 1986) (per curiam). We review for abuse of discretion the District Court's order dismissing the Rule 27 petition, see Ash, 512 F.2d at 912, and its order denying the motion to recuse, see Butt v. United Bhd. of Carpenters & Joiners of Am., 999 F.3d 882, 891 (3d Cir. 2021).

² The Rule itself refers only to depositions, but Courts have concluded that it also includes the inspection of documents. See Application of Deilemar Compagnia Di Navigazione S.p.A. v. M/V Allegra, 198 F.3d 473, 478 n.5 (4th Cir. 1999).

³ Willis also argues that the District Court should have ordered that the marshal serve her Rule 27 petition on Dolores Willis, the executrix of the estate. While we are satisfied that we may review the orders denying these requests, see Fed. R. App. P. 3(c)(4), (6), Willis is entitled to no relief. It is not clear that Willis identified Dolores Willis as an "expected adverse party" who needed to be served under Fed. R. Civ. P. 27(a)(2). See Rule 27 Petition, ECF No. 27 at 18 & 24 (listing "adverse parties" but not including Dolores Willis). In any event, given that we agree with the District Court that the Rule 27 petition lacked merit, Willis cannot show that any error with respect to service affected her

Nor did the District Court err in denying Willis's motion to recuse. Under 28 U.S.C. § 455(a), recusal is required when a "reasonable person, with knowledge of all the facts, would conclude that the judge's impartiality might reasonably be questioned." In re Kensington Int'l Ltd., 368 F.3d 289, 301 (3d Cir. 2004). Willis argues that, because the Magistrate Judge has been involved with organizations that "support[] homosexual/same-sex gender relationships," while Willis "does not embrace homosexuality," Br. at 47–48, the Magistrate Judge was biased against her. However, a recusal motion must be based on "objective facts," not mere "possibilities" and "unsubstantiated allegations." United States v. Martorano, 866 F.2d 62, 68 (3d Cir. 1989). Willis's allegations would not cause a reasonable person to believe that the Magistrate Judge was biased. See generally MacDraw, Inc. v. CIT Grp. Equip. Fin., Inc., 157 F.3d 956, 963 (2d Cir. 1998) (explaining that "it is intolerable for a litigant, without any factual basis, to suggest that a judge cannot be impartial because of his or her . . . political background").⁴

substantial rights. See Fed. R. Civ. P. 61 (explaining that "the court must disregard all errors and defects that do not affect any party's substantial rights"); see generally Stanciel v. Gramley, 267 F.3d 575, 580 (7th Cir. 2001).

⁴ Willis complains at some length that in a prior action, the Magistrate Judge referred to her using male pronouns. See W.D. Pa. Civ. No. 2:18-cv-00290. In that case, the Magistrate Judge explained that the offending document was a form order that is entered in all in forma pauperis cases, and "[t]he Court apologize[d] for not making changes to the gender references." ECF No. 47. Nothing in this exchange would cause a reasonable person to think the Magistrate Judge was biased.

Accordingly, we will affirm the District Court's judgments.⁵

⁵ The parties have filed several motions in this Court. The appellees' motion to file a supplemental appendix is granted. We also grant Willis's requests to file oversized opening and reply briefs and her motion for an extension of time to file a reply brief, and we have considered her reply brief as filed. Willis also filed a motion to correct the District Court's "omission" in failing to rule on one of her requests, see 3d Cir. ECF No. 9, but because the District Court has since done so, see ECF No. 189, that motion is denied. All of Willis's other requests for relief also are denied.

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

IN RE:

PETITION OF LESLIE WILLIS TO
PERPETUATE EVIDENCE PERTAINING
TO THE TRUST FOR ANNIE PEARL
(WHITE) WILLIS

Petitioner,

v.

PNC FINANCIAL SERVICES GROUP,
INC; PNC BANK, N.A.

Respondents.

2:20-CV-01833-DSC-LPL

District Judge Cercone
Magistrate Judge Lenihan

ECF NO. 74

REPORT AND RECOMMENDATION

I. RECOMMENDATION

It is respectfully recommended that the Motion to Dismiss filed by Respondents, PNC Bank, N.A. and PNC Financial Services Group, Inc. (ECF No. 74) be granted.

II. REPORT

A. FACTUAL ALLEGATIONS

On November 25, 2020, Petitioner, Leslie Willis initiated this action in an effort to “Perpetuate Evidence Pertaining to the ‘Trust for Annie Pearl (White) Willis.’” ECF Nos. 1, 27. This action is Petitioner’s most recent attempt to obtain confidential financial information from Respondents, PNC Bank, N.A. and PNC Financial Services Group, Inc.

Petitioner believes that Respondents hold account(s) and trust(s) as to her deceased grandmother, Annie Pearl (White) Willis. Over the past eight (8) years, Petitioner has made numerous attempts to obtain information on the existence of, and details concerning, the purported accounts and/or trusts. Respondents have denied Petitioner access to any information regarding accounts and/or trusts in her grandmother's name because Petitioner has failed to provide documentation showing authorization to act on behalf of her grandmother's Estate. ECF No. 11-1. Petitioner frequently sends "demand notices" and "cease and desist letters" related to Respondents' non-disclosure of the requested financial information. ECF No. 75-8.

Both state and federal courts have rejected Petitioner's requests for information concerning these alleged accounts. Petitioner has created and filed "emergency motions for reconsideration" (ECF No. 75-1) and "emergency motions to compel" (ECF No. 75-2). Petitioner has filed multiple lawsuits in an attempt to discover the supposed evidence she seeks to perpetuate with this Petition. ECF Nos. 75-4, 75-6. Petitioner has exhausted appeals in the courts of the Commonwealth. On May 4, 2021, Petitioner filed a Petition for a Writ of Certiorari in the Supreme Court of the United States, challenging the Third Circuit's "refus[al] to perpetuate evidence of financial resources that may be available." ECF No. 75-7.

B. LEGAL STANDARDS

Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6)

The United States Court of Appeals for the Third Circuit summarized the standard to be applied in deciding motions to dismiss filed pursuant to Rule 12(b)(6):

Under the "notice pleading" standard embodied in Rule 8 of the Federal Rules of Civil Procedure, a plaintiff must come forward with "a short and plain statement of the claim showing that the pleader is entitled to relief." As explicated in *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), a claimant must state a "plausible" claim for relief, and "[a] claim has facial plausibility when the pleaded factual

content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Although “[f]actual allegations must be enough to raise a right to relief above the speculative level,” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007), a plaintiff “need only put forth allegations that raise a reasonable expectation that discovery will reveal evidence of the necessary element.” *Fowler v. UPMC Shadyside*, 578 F.3d [203,][[213 [(3d Cir. 2009)] (quotation marks and citations omitted); *see also Covington v. Int’l Ass’n of Approved Basketball Officials*, 710 F.3d 114, 117–18 (3d Cir.2013).

Thompson v. Real Estate Mortg. Network, 748 F.3d 142, 147 (3d Cir. 2014).

In addition to the complaint, courts may consider matters of public record and other matters of which a court may take judicial notice, court orders, and exhibits attached to the complaint when adjudicating a motion to dismiss under Rule 12(b)(6). *Oshiver v. Levin, Fishbein, Sedran & Berman*, 38 F.3d 1380, 1384 n.2 (3d Cir. 1994) (citing 5A Wright and Miller, *Federal Practice and Procedure: Civil 2d*, § 1357; *Chester Cnty. Intermediate Unit v. Pennsylvania Blue Shield*, 896 F.2d 808, 812 (3d Cir. 1990)).

Importantly, the Court must liberally construe the factual allegations of the complaint because pleadings filed by pro se plaintiffs are held to a less stringent standard than formal pleadings drafted by lawyers. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). Therefore, if the Court “can reasonably read [the] pleadings to state a valid claim on which [plaintiff] could prevail, it should do so despite failure to cite proper legal authority, confusion of legal theories, poor syntax and sentence construction, or [plaintiff’s] unfamiliarity with pleading requirements.” *Wilberger v. Ziegler*, No. 08-54, 2009 WL 734728, at *3 (W.D. Pa. March 19, 2009) (citing *Boag v. MacDougall*, 454 U.S. 364 (1982) (*per curiam*)).¹

¹ The Court notes that in footnote one (1) of her Brief in Opposition (ECF No. 127 at 1 n.1), Petitioner indicates that she “had to prepare this document expeditiously.” The docket reflects that Petitioner was granted three extensions of time in which to prepare her response. The original due date of June 7, 2021 was extended to June 28, 2021 at ECF No. 95. At ECF No. 106, a new deadline was set for July 21, 2021. Finally, Petitioner was granted a third

C. ANALYSIS

1. Requirements of Rule 27

Federal Rule of Civil Procedure 27 allows “[a] person who wants to perpetuate testimony about any matter cognizable in a United States court [to] file a verified petition in the district court for the district where any expected adverse party resides[.]” before an action is filed. Fed. R. Civ. P. 27(a). If satisfied that perpetuating the testimony may prevent a failure or delay of justice, the court must issue an order to perpetuate the testimony. *Id.*

2. Petitioner Must Expect to be a Party to an Action Cognizable in a United States Court

The basis for the Petition to perpetuate evidence is Petitioner’s belief as to the existence of accounts and/or trusts for which Petitioner is the alleged beneficiary. ECF No. 127 at 7-8. Petitioner believes access to this information may allow her to bring a declaratory action against Respondents. *Id.* at 8. Respondents argue that this Court has already recognized Petitioner’s failure to articulate a cognizable claim in the April 16, 2020, Court order denying Motion for Service by a U.S. Marshall. ECF No. 68. After numerous attempts to obtain the same confidential financial information requested in this Petition, Respondents suggest Petitioner is using Rule 27 as a “last-ditch effort” to access the requested information, citing ECF No. 75-1 (Court of Common Pleas of Allegheny County, Pennsylvania, Orphans’ Court Division, Order Denying Emergency Motion to Enforce Compliance with Subpoena to Produce Documents, No. 02-11-00397 (April 15, 2014)) and ECF No. 75-2 (United States Court of Appeals for the Third Circuit Order Denying Petitioner’s Motion Seeking to Direct/Compel PNC, Case No. 19-2094 (August 19, 2020)).

extension until August 16, 2021 (ECF No. 121) in which to file her response. Petitioner requested no further extensions.

Here, Petitioner alleges that the testimony sought may allow her to bring an action for declaratory judgement. ECF No. 127 at 8. This allegation suggests a hypothetical claim. The purpose of Rule 27 is to perpetuate testimony relating to an actual claim which may “otherwise become unavailable before the complaint could be filed.” *In re Vratoric*, No. 02:09-MC-00284, 2009 WL 3526562, at *1 (W.D. Pa. Oct. 23, 2009) (citing *In re Boland*, 79 F.R.D. 665, 667 (D.D.C. 1978)). “Petitioners must demonstrate that they have an actual rather than a hypothetical claim, and that, for some reason beyond their control, they cannot bring the claim now.” *In re Vratoric*, 2009 WL 3526562, at *1. Petitioner’s allegations suggest an attenuated possibility for a lawsuit and fail to demonstrate an underlying action cognizable in this Court. Based on the numerous lawsuits already dismissed regarding the pursuit of the information sought, Petitioner’s allegation that she may demonstrate an actual claim is implausible. *See* ECF No. 75-4 (Court of Common Pleas of Allegheny County, Pennsylvania, Orphans’ Court Division, Docket Report for the Estate of Annie Pearl Willis, No. 02-11-00397) & ECF No. 75-6 (Court of Common Pleas of Allegheny County, Pennsylvania, Orphans’ Court Division, Docket Report for the Estate of John A. Willis, Sr.3 No. 02-04-7644). *See also Willis v. O’Toole*, 2:18-CV-00290-DSC, 2019 WL 1585099, at *1 (W.D. Pa. March 8, 2019); *aff’d*, 804 F. App’x 116 (3d Cir. 2020); *Willis v. Barkman*, 2:16-CV-00075-DSC-LPL (W.D. Pa. March 1, 2017) (granting Plaintiff’s request for voluntary dismissal without prejudice). *See also Twombly*, 550 U.S. at 555.

Authorizing Petitioner’s discovery of the financial information may permit Petitioner to manufacture a cause of action. “[I]t is well settled that Rule 27(a) is not a method of discovery to determine whether a cause of action exists, and if so, against whom action should be instituted.” *Id.* “Courts generally agree that to allow Rule 27 to be used for the purpose of discovery before an action is commenced to enable a person to fish for some ground for bringing suit would be an

abuse of the rule.” *Id.* at *2. The Court agrees that Petitioner’s efforts to uncover information as the basis for a new lawsuit would be a misuse of Rule 27.

Additionally, Petitioner fails to demonstrate special circumstances to preserve testimony that would otherwise be lost. Concern about a document retention period is not a legally sufficient basis to perpetuate evidence under Rule 27. *See United Heritage Prop. & Cas. Co.*, No. 6:18-MC-00285-AA, 2018 WL 2437538, at *2 (D. Or. May 30, 2018) (finding that petitioner’s concerns regarding cellphone data retention policy, without more, was insufficient to satisfy petitioner’s burden under Rule 27(a)(1)(C) and denying petition to inspect cell phone records pursuant to Rule 27).

In *Whitehead*, the Third Circuit articulated that the subjective belief that testimony will be lost is insufficient to warrant the perpetuation of testimony. *See In re Whitehead*, 476 F. App’x 281, 282 (3d Cir. 2012). Petitioner’s sole belief that the information sought will be lost does not demonstrate that access to the information is “necessary to prevent or delay justice,” and does not warrant the perpetuation of testimony.

3. Basis for Federal Jurisdiction

Respondents argue that because Petitioner does not have a cognizable claim, she does not have federal jurisdiction for this Petition. Respondents further state that, taken to its logical conclusion, Petitioner’s request for information is prohibited by the probate-exception to federal jurisdiction. *Luellen v. Luellen*, 972 F. Supp. 2d 722, 728 (W.D. Pa. 2013). The Court agrees. Petitioner seeks to involve this Court in the proscribed re-administration of the Estate of Annie Pearl (White) Willis, which was closed on April 25, 2017. ECF No. 75-5.

Petitioner asserts there is Supplemental Jurisdiction under 28 U.S.C. § 1367 for the underlying declaratory judgement action. Petitioner’s failure to demonstrate a cognizable claim

underlying the Petition extends to the establishment of federal jurisdiction. *See, e.g., Dresser Indus. v. United States*, 596 F.2d 1231, 1238 (5th Cir. 1979). (“[I]t must be shown that in the contemplated action, for which the testimony is being perpetuated, federal jurisdiction would exist and thus is a matter that may be cognizable in the federal courts.”).²

Further, the Petition is moot, because as noted above, Petitioner’s numerous requests for this same confidential financial information have already been adjudicated in state and federal courts.³ *See, e.g., Dresser Indus., Inc.*, 596 F.2d at 1238 (holding that the Rule 27 controversy was moot because the contemplated actions have already taken place in the form of subpoena enforcement proceedings).

III. CONCLUSION

For the above reasons, it is respectfully recommended that the Motion to Dismiss filed by Respondents, PNC Bank, N.A. and PNC Financial Services Group, Inc. (ECF No. 74) be granted.

In accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Rule 72.D.2 of the Local Rules of Court, the parties are allowed fourteen (14) days from the date of service of a copy of this Report and Recommendation to file objections. Any party opposing the objections shall have fourteen (14) days from the date of service of objections to respond thereto. Failure to file timely objections will constitute a waiver of any appellate rights.

Dated: October 27, 2021

² Petitioner also directs this Court to her previous federal lawsuit at Civil Action No. 18-290 as a basis for federal jurisdiction herein. ECF No. 127 at 11-12. The District Court’s Opinion in that civil rights action was affirmed by the United States Court of Appeals for the Third Circuit. *Willis v. O’Toole*, 2:18-CV-00290-DSC, 2019 WL 1585099, at *1 (W.D. Pa. March 8, 2019); *aff’d*, 804 F. App’x 116 (3d Cir. 2020). It cannot provide the basis for federal jurisdiction for the entirely new proceeding at bar.

³ State and federal courts have entered orders denying Petitioner’s variously titled efforts to compel Respondent to provide the requested information to Petitioner (both before and after closure of the Estate of Annie Pearl (White) Willis). ECF Nos. 75-1, 75-2, 75-5, & 75-10.

BY THE COURT

A handwritten signature in black ink, appearing to read 'Lisa P. Lenihan', written in a cursive style.

LISA PUPO LENIHAN

United States Magistrate Judge

The parties were informed that in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Rule 72.D.2 of the Local Rules of Court, that they had fourteen (14) days to file any objections. After an extension was granted, Petitioner filed her objections (ECF No.177) on December 20, 2021.

After review of the pleadings and documents in the case, together with the Report and Recommendation and Petitioner's Objections, the following Order is entered:

AND NOW, this 21st day of December, 2021,

IT IS HEREBY ORDERED that the Motion to Dismiss (ECF No. 74) filed by Respondents is **GRANTED**.

IT IS FURTHER ORDERED that the Report and Recommendation (ECF No. 153) dated October 27, 2021 is adopted as the Opinion of the Court.

IT IS FURTHER ORDERED that Petitioner Leslie Willis' Emergency Motion for Review of Motion to Disqualify Magistrate Judge (ECF No. 175) is **DENIED** as moot as a consequence of this Court's adoption of the Report and Recommendation.

IT IS FURTHER ORDERED that the Clerk shall mark the case **CLOSED**.

s/ DAVID STEWART CERONE
David Stewart Cercone
United States District Judge

cc: Leslie Willis
Bridget J. Daley, Esquire
Magistrate Judge Lisa Pupo Lenihan

(Via CM/ECF Electronic Mail)

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 22-1133, 22-1644 & 22-1900

IN RE: PETITION OF LESLIE WILLIS TO PERPETUATE EVIDENCE PERTAINING
TO "THE TRUST FOR ANNIE PEARL (WHITE) WILLIS"

Leslie Willis,
Appellant

(W.D. Pa. D.C. Civil Action No. 2-20-cv-01833)

SUR PETITION FOR REHEARING

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

The petition for rehearing filed by Appellant 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 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/Patty Shwartz
Circuit Judge

Dated: August 21, 2023

kr/pdb/cc: Leslie Willis
Jordan M. Webster, Esq.

ALD-105

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 22-2048 & 22-2049 (Cons.)

In re: PETITION OF LESLIE WILLIS TO PERPETUATE FROM DOLORES WILLIS
EVIDENCE (TRUST DOCUMENTS) PERTAINING TO “The Trust for Annie Pearl
(White) Willis”

&

In re: SECOND PETITION OF LESLIE WILLIS TO PERPETUATE FROM
DOLORES WILLIS EVIDENCE (TRUST DOCUMENTS) PERTAINING TO “The
Trust for Annie Pearl (White) Willis”

Leslie Willis,
Appellant

On Appeal from the United States District Court
for the Western District of Pennsylvania
(D.C. Civil Action Nos. 2-22-mc-00570 & 2-22-mc-00588)
District Judge: Honorable David S. Cercone

Submitted for Possible Dismissal Pursuant to 28 U.S.C. § 1915(e)(2)(B) or
Summary Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6

March 16, 2023

Before: HARDIMAN, RESTREPO, and BIBAS Circuit Judges

(Opinion filed: April 6, 2023)

OPINION*

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

PER CURIAM

Pro se appellant Leslie Willis appeals the District Court's orders dismissing her petitions to perpetuate testimony under Fed. R. Civ. P. 27 and denying her motion to recuse. Because these consolidated appeals present no substantial question, we will summarily affirm the District Court's judgments. See 3d Cir. L.A.R. 27.4; 3d Cir. I.O.P. 10.6.¹

Primarily at issue here are two petitions to "perpetuate testimony" under Fed. R. Civ. P. 27, which permits a party to secure evidence before a case is filed in certain limited circumstances. In the first petition, Willis asked for the production from a trustee of a trust document and a beneficiary designation for her grandmother's trust. See W.D. Pa. Civ. No. 2-22-mc-00570, ECF No. 1-1. The District Court dismissed the petition on the grounds that it had recently dismissed a similar petition in No. 2:20-cv-01833 and the petition presented no colorable claim. See ECF No. 3.

The day after the District Court entered that order, Willis filed another, nearly identical petition, again seeking the same trust information from the trustee. See W.D. Pa. Civ. No. 2-22-mc-00588, ECF No. 1-1. The District Court denied this petition as well, stressing that Willis's petition was duplicative of past petitions and did not meet the

¹ We have jurisdiction under 28 U.S.C. § 1291. See Ash v. Cort, 512 F.2d 909, 912 (3d Cir. 1975). We review the District Court's orders for abuse of discretion. See id.; Butt v. United Bhd. of Carpenters & Joiners of Am., 999 F.3d 882, 891 (3d Cir. 2021).

requirements of Rule 27. See ECF No. 4. The Court also denied Willis's motion to recuse. Willis appealed the orders in both cases, and the two appeals were consolidated.

We have recently affirmed the denial of another Rule 27 petition in which Willis sought these same documents. See In re Willis, No. 22-1133, 2023 WL 2300655 (3d Cir. Mar. 1, 2023) (per curiam). As we explained in that opinion, Rule 27 is not a substitute for discovery and instead is "available in special circumstances to preserve testimony which could otherwise be lost." Ash v. Cort, 512 F.2d 909, 912 (3d Cir. 1975). These consolidated appeals suffer from the same shortcoming we identified in Willis's prior appeal: because "Willis made no showing that the trust document was in danger of being lost," the District Court did not err in dismissing the petitions. In re Willis, 2023 WL 2300655, at *1.²

Accordingly, we will summarily affirm the District Court's judgments.³

² Willis also sought the recusal of the District Judge. However, the District Court did not err in denying that motion because no "reasonable person, with knowledge of all the facts, would conclude that the judge's impartiality might reasonably be questioned." In re Kensington Int'l Ltd., 368 F.3d 289, 301 (3d Cir. 2004). Rather, Willis made unsupported allegations of the type we rejected in her prior appeal. See In re Willis, 2023 WL 2300655, at *2 (stressing that "a recusal motion must be based on objective facts, not mere possibilities and unsubstantiated allegations" (quotation marks omitted)).

³ Willis has filed a variety of documents in this Court. Her motion to proceed on the original record and to be relieved of filing paper copies is granted. To the extent she has requested any other relief, it is denied.

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

IN RE:)	
)	
PETITION OF LESLIE WILLIS)	
TO PERPETUATE EVIDENCE)	
PERTAINING TO "THE TRUST FOR)	2:22-mc-570
ANNIE PEARL (WHITE) WILLIS")	Electronic Filing
)	

MEMORANDUM ORDER

May 25, 2022

Petitioner, Leslie Willis ("Willis" or "Petitioner"), initiated this action on May 20, 2022, by filing a Motion for Leave to Proceed *In Forma Pauperis* and a Petition to "Perpetuate Evidence Pertaining to the 'Trust for Annie Pearl (White) Willis.'" (ECF No. 1). As it appears that Petitioner is unable to pay the costs of commencing this suit, leave to proceed *in forma pauperis* will be granted.

Congress recognized, however, that a litigant whose filing fees and court costs are assumed by the public, unlike a paying litigant, lacks an economic incentive to refrain from filing frivolous, malicious, or repetitive lawsuits. *Neitzke v. Williams*, 490 U.S. 319, 324 (1989); *Deutsch v. United States*, 67 F.3d 1080, 1084 (3d Cir.1995). Therefore, when complaints are filed *in forma pauperis*, Congress has given the courts statutory authorization for *sua sponte* dismissal. See 28 U. S. C. § 1915(e)(2)(B). Section 1915 provides:

Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that—

(A) the allegation of poverty is untrue; or

(B) the action or appeal—

- (i) is frivolous or malicious;
- (ii) fails to state a claim on which relief may be granted; or
- (iii) seeks monetary relief against a defendant who is immune from such relief.

28 U.S.C. § 1915 (e)(2). In order to avoid a dismissal under § 1915(e) a complaint must present a colorable legal argument, *Dreibelbis v. Marks*, 675 F.2d 579, 580 (3d Cir. 1982); *see also United States ex rel Walker v. Fayette County*, 599 F.2d 573, 575 (3d Cir. 1979) (per curiam), with a realistic chance of ultimate success on the merits. *Clark v. Zimmerman*, 394 F. Supp. 1166, 1178 (M.D. Pa. 1975); *Daves v. Scranton*, 66 F. R. D. 5, 7 (E. D. Pa. 1975).

In this instance Willis' Petition is frivolous, duplicative of 2:20-cv-1833, which was dismissed by this Court, presents no colorable legal claim, and because there is no realistic chance of ultimate success on the merits, this complaint will be dismissed pursuant to 28 U.S.C. § 1915(e).

Accordingly,

ORDER OF COURT

IT IS HEREBY ORDERED that the Motion for Leave to Proceed *In Forma Pauperis* (ECF No. 1) filed by Petitioner, Leslie Willis, is **GRANTED**. The Clerk is directed to file Willis' Petition.

IT IS FURTHER ORDERED that Willis' Petition is hereby **DISMISSED** pursuant to 28 U.S.C §1915(e). The Clerk shall mark this case closed.

s/ David Stewart Cercone
David Stewart Cercone
United States District Judge

cc: Leslie Willis

(Via CM/ECF Electronic Mail)

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Nos. 22-2048 & 22-2049

In re: PETITION OF LESLIE WILLS TO PERPETUATE FROM DOLORES
WILLIS EVIDENCE (TRUST DOCUMENTS) PERTAINING TO
“The Trust for Annie Pearl (White) Willis”
Leslie Willis,
Appellant

(W.D. Pa. Nos. 2-22-mc-00570 & 2-22-mc-00588)

SECOND AMENDED PRO SE PETITION FOR REHEARING

Present: 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 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 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/ L. Felipe Restrepo
Circuit Judge

Dated: October 4, 2023
PDB/cc: Leslie Willis

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