

CLD-092

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 24-1080

GINA RUSSOMANNO,
Appellant

v.

SUMITOMO PHARMA AMERICA, INC., (SMPA) for affiliate,
Sunovion Pharmaceuticals, Inc.; SUNOVION PHARMACEUTICALS, INC.

On Appeal from the United States District Court
for the District of New Jersey
(D.C. Civil Action No. 3:23-cv-03684
District Judge: Honorable Michael A. Shipp

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 21, 2024

Before: KRAUSE, FREEMAN, and SCIRICA, Circuit Judges

(Opinion filed: April 16, 2024)

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.

In 2019, Gina Russomanno sued her former employer, claiming wrongful termination. See Russomanno v. Sunovion Pharms., D.N.J. Civ. No. 3:19-cv-05945. The District Court dismissed the suit with prejudice in May 2020. Russomanno did not immediately appeal from that decision, but she later filed an appeal that we dismissed as untimely, see C.A. No. 23-1186, and she has otherwise sought relief on her claims and from the District Court's judgment without success, see, e.g., Russomanno v. Sunovion Pharms., No. 22-2822, 2022 WL 17984869, at *1 (3d Cir. Dec. 29, 2022), cert. denied, 143 S. Ct. 2592 (2023).

In July 2023, Russomanno again attempted to get relief from the District Court's ruling. She filed, under Rule 60(d)(1) of the Federal Rules of Civil Procedure, an "Independent Action Relief Per NJ District Case No: [3:19-CV-05945]." ECF No. 1; see also ECF No. 5 (her amended filing); ECF No. 9 (her memorandum in support). Claiming that the District Court should have permitted her to amend her complaint when dismissing it, she asserted that the District Court's judgment was void as a matter of law and worked a grave miscarriage of justice. The defendants sought dismissal of the "Independent Action . . .," arguing, *inter alia*, that Russomanno's disagreement with the outcome of her earlier case did not warrant relief under Rule 60(d). See ECF No. 11. The District Court declined to grant relief, dismissing the action in a text-only order on the docket after highlighting the procedural history in this Court and stating that it could

“perceive no discernable basis for its jurisdiction over the matter” in light of that history. ECF No. 18. Russomanno appeals.

We have jurisdiction pursuant to 28 U.S.C. § 1291. We exercise plenary review over a district court’s conclusion about its own jurisdiction, see Gould Elecs. Inc. v. United States, 220 F.3d 169, 176 (3d Cir. 2000), and we review a district court’s decision to decline to grant relief on a Rule 60(d) motion for abuse of discretion, see Jackson v. Danberg, 656 F.3d 157, 162 (3d Cir. 2011). Upon review, we will summarily affirm because no substantial issue is presented on appeal. 3d Cir. L.A.R. 27.4; 3d Cir. I.O.P. 10.6.

Arguing in support of her appeal, Russomanno contends that the District Court was wrong to conclude that it lacked jurisdiction over her action. Sometimes, as we have noted in other contexts, courts use the term “jurisdictional” too loosely. See, e.g., Beazer E., Inc. v. Mead Corp., 525 F.3d 255, 260 (3d Cir. 2008) (describing the Supreme Court’s discussion in Arbaugh v. Y & H Corporation, 546 U.S. 500, 511 (2006), about the imprecise use of the term). And a litigant can bring an independent action to obtain post-judgment relief. See United States v. Beggerly, 524 U.S. 38, 45-46 (1998). Regardless, the bar to obtain such relief is high, and Russomanno did not present any discernable basis for relief.

“[A]n independent action should be available only to prevent a grave miscarriage of justice.” Beggerly, 524 U.S. at 47. Russomanno used the term miscarriage of justice

and claimed that the judgment was void. However, in essence, she merely sought to again challenge the judgment in her case. But a Rule 60(d) motion cannot be used as a substitute for appeal, see Morris v. Horn, 187 F.3d 333, 336 (3d Cir. 1999), or “as a vehicle for relitigation of the issues,” Travelers Indem. Co. v. Gore, 761 F.2d 1549, 1552 (11th Cir. 1985), particularly not after the disposition of an appeal of the challenged judgment, see Colorado Interstate Gas Co. v. Nat. Gas Pipeline Co. of Am., 962 F.2d 1528, 1534 (10th Cir. 1992).

Accordingly, the District Court did not abuse its discretion in declining to grant relief on Russomanno’s Rule 60(d) motion. We will affirm the judgment.

U.S. District Court
District of New Jersey [LIVE] (Trenton)
CIVIL DOCKET FOR CASE #: 3:23-cv-03684-MAS-DEA

RUSSOMANNO v. SUMITOMO PHARMA AMERICA, INC.

(SMPA) et al

Assigned to: Judge Michael A. Shipp

Referred to: Magistrate Judge Douglas E. Arpert

Related Case: 3:19-cv-05945-MAS-DEA

Case in other court: Third Circuit, 24-01080

Cause: 42:1983 Civil Rights Act

Date Filed: 07/08/2023

Date Terminated: 01/05/2024

Jury Demand: Plaintiff

Nature of Suit: 440 Civil Rights: Other

Jurisdiction: Diversity

Plaintiff

GINA RUSSOMANNO

represented by **GINA RUSSOMANNO**
4 CEDAR STREET
EATONTOWN, NJ 07724
(732) 841-4647
PRO SE

V.

Defendant

**SUMITOMO PHARMA AMERICA,
INC. (SMPA)**
*FOR AFFILIATE, SUNOVION
PHARMACEUTICALS, INC.*

represented by **IVAN R. NOVICH**
LITTLER MENDELSON, P.C.
ONE NEWARK CENTER
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NEWARK, NJ 07102
973-848-4700
Fax: 973-643-5626
Email: inovich@littler.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

**SUNOVION PHARMACEUTICALS,
INC.**

represented by **IVAN R. NOVICH**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
07/08/2023	<u>1</u>	Complaint Received. (Attachments: # <u>1</u> Waiver of Summons, # <u>2</u> Certificate of Service) (Received via Help Desk)(kht) (Additional attachment(s) added on 7/11/2023: # <u>3</u>)

		Notice of Appearance) (jal,). (Entered: 07/10/2023)
07/10/2023	<u>2</u>	Clerk's Letter: Complaint not accompanied by the filing fee or application to proceed in forma pauperis. (kht) (Entered: 07/10/2023)
07/10/2023	<u>3</u>	Notice of Guidelines for Appearing Pro Se (kht) (Entered: 07/10/2023)
07/11/2023		Filing fee: \$ 402, receipt number TRN133474 (kht) (Entered: 07/11/2023)
07/11/2023		COMPLAINT against SUMITOMO PHARMA AMERICA (SMPA), filed by GINA RUSSOMANNO.(kht) (Entered: 07/11/2023)
07/11/2023	<u>4</u>	SUMMONS ISSUED as to SUMITOMO PHARMA AMERICA (SMPA). Attached is the official court Summons, please fill out Defendant and Plaintiffs attorney information and serve. (kht) (Entered: 07/11/2023)
07/12/2023	<u>5</u>	AMENDED COMPLAINT against SUMITOMO PHARMA AMERICA, INC. (SMPA), SUNOVION PHARMACEUTICALS, INC. filed by GINA RUSSOMANNO. (Filed via ECF HelpDesk) (Attachments: # <u>1</u> Letter Requesting Summons, # <u>2</u> Waiver of Summons Request)(mg) Modified on 7/13/2023 (mg). (Entered: 07/13/2023)
07/13/2023	<u>6</u>	SUMMONS ISSUED as to SUMITOMO PHARMA AMERICA, INC. (SMPA), SUNOVION PHARMACEUTICALS, INC. Attached is the official court Summons, please fill out Defendant and Plaintiffs attorney information and serve. (mg) (Entered: 07/13/2023)
07/14/2023	<u>7</u>	NOTICE of Appearance and Rule 7.1 Personal Disclosure by GINA RUSSOMANNO. (Received via Help Desk) (mlh) (Entered: 07/14/2023)
07/17/2023	<u>8</u>	MOTION In Support of (Amended) Notice of Complaint by GINA RUSSOMANNO. (Received via Help Desk) (Attachments: # <u>1</u> Brief, # <u>2</u> Certificate of Service)(mlh) (Entered: 07/17/2023)
07/17/2023		Set Deadlines as to <u>8</u> MOTION In Support of (Amended) Notice of Complaint. Motion set for 8/21/2023 before Judge Michael A. Shipp. Unless otherwise directed by the Court, this motion will be decided on the papers and no appearances are required. Note that this is an automatically generated message from the Clerk's Office and does not supersede any previous or subsequent orders from the Court. (mlh) (Entered: 07/17/2023)
07/19/2023	<u>9</u>	BRIEF in Support of <u>5</u> Amended Complaint. (Received via Help Desk) (Attachments: # <u>1</u> Certificate of Service)(mlh) (Entered: 07/19/2023)
07/21/2023	<u>10</u>	SUMMONS Returned Executed by GINA RUSSOMANNO. SUMITOMO PHARMA AMERICA, INC. (SMPA) and SUNOVION PHARMACEUTICALS, INC. served on 7/17/2023, answer due 8/7/2023. (Received via Help Desk) (mlh) (Entered: 07/24/2023)
08/07/2023	<u>11</u>	Letter from Ivan R. Novich. (NOVICH, IVAN) (Entered: 08/07/2023)
08/08/2023		CLERK'S QUALITY CONTROL MESSAGE - Please be advised, when entering a first appearance in a case, counsel should add their name when prompted. The Clerks office has added IVAN R. NOVICH as representing SUMITOMO PHARMA AMERICA, INC. (SMPA) and SUNOVION PHARMACEUTICALS, INC. in this case. This submission will remain on the docket unless otherwise ordered by the court. This message is for informational purposes only. (mlh) (Entered: 08/08/2023)

08/08/2023	<u>12</u>	NOTICE of Appearance by IVAN R. NOVICH on behalf of SUMITOMO PHARMA AMERICA, INC. (SMPA), SUNOVION PHARMACEUTICALS, INC. (NOVICH, IVAN) (Entered: 08/08/2023)
08/09/2023	<u>13</u>	REPLY BRIEF and Memorandum of Law to Defendants Sumitomo Pharma America, Inc. and Sunovion Pharmaceuticals Response Letter to Judge Michael A. Shipp to Defendant's Letter Answer, filed by Gina Russomanno via ECF HelpDesk. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Certificate of Service)(mg) (Entered: 08/09/2023)
11/01/2023	<u>14</u>	ORDER terminating <u>8</u> Motion in Support of (Amended) Notice of Complaint. Signed by Magistrate Judge Douglas E. Arpert on 11/1/2023. (kht) (Entered: 11/01/2023)
11/04/2023	<u>15</u>	MOTION for Emergency Stay/Injunction in re <u>14</u> Order by GINA RUSSOMANNO. (Received via Help Desk)(kht) (Main Document 15 replaced on 11/6/2023) (jal,). (Entered: 11/06/2023)
11/04/2023	<u>16</u>	Letter to Judge Arpert from GINA RUSSOMANNO. (Received via Help Desk)(kht) (Entered: 11/06/2023)
11/06/2023		Set Deadlines as to <u>15</u> MOTION to Stay. Motion set for 12/4/2023 before Judge Michael A. Shipp. Unless otherwise directed by the Court, this motion will be decided on the papers and no appearances are required. Note that this is an automatically generated message from the Clerk's Office and does not supersede any previous or subsequent orders from the Court. (kht) (Entered: 11/06/2023)
11/13/2023	<u>17</u>	ORDER terminating <u>15</u> MOTION for Emergency Stay/Injunction in re <u>14</u> Order. Signed by Magistrate Judge Douglas E. Arpert on 11/13/2023. (mlh) (Entered: 11/13/2023)
01/05/2024	<u>18</u>	TEXT ORDER: This matter comes before the Court upon review of the docket. Plaintiff filed a Complaint (ECF No. <u>1</u>) and an Amended Complaint (ECF No. <u>5</u>) in this action seeking to vacate, under Rule 60(d)(1), certain orders in a separate civil action in this Court, Civ. No. 19-5945. Importantly, Plaintiff has already appealed this Court's orders in Civ. No. 19-5945 (ECF Nos. 61 , 62) to the Third Circuit, and the Third Circuit terminated her appeal of the challenged orders on timeliness grounds (ECF No. 96). Given that the Third Circuit has already considered Plaintiff's appeal of the same orders that Plaintiff now seeks to "reverse and vacate," the Court can perceive no discernable basis for its jurisdiction over this matter. As such, Plaintiff's Amended Complaint is dismissed with prejudice, and the Clerk of Court shall close this matter. So Ordered by Judge Michael A. Shipp on 1/5/2024. (jdb) (Entered: 01/05/2024)
01/05/2024		***Civil Case Terminated. (jdb) (Entered: 01/05/2024)
01/10/2024	<u>19</u>	NOTICE of Change of Address by GINA RUSSOMANNO. (Filed via ECF Help Desk) (amv) (Entered: 01/10/2024)
01/11/2024	<u>20</u>	APPLICATION to proceed IN FORMA PAUPERIS by GINA RUSSOMANNO. (Received via Help Desk)(kht) (Entered: 01/11/2024)
01/11/2024	<u>21</u>	NOTICE OF APPEAL as to <u>18</u> Text Order by GINA RUSSOMANNO. The Clerk's Office hereby certifies the record and the docket sheet available through ECF to be the certified list in lieu of the record and/or the certified copy of the docket entries. (IFP Pending before the Court) (Received via Help Desk)(kht) (Entered: 01/11/2024)

01/12/2024	<u>22</u>	USCA Case Number 24-1080 for <u>21</u> Notice of Appeal (USCA) filed by GINA RUSSOMANNO. USCA Case Manager Kirsi (Document Restricted - Court Only) (ca3kr) (Entered: 01/12/2024)
04/01/2024	<u>23</u>	Mail Returned as Undeliverable. Mail sent to GINA RUSSOMANNO (kht) (Entered: 04/01/2024)
04/15/2024	<u>24</u>	TEXT ORDER: This matter comes before the Court upon review of its docket. On January 11, 2024, Plaintiff Gina Russomanno ("Plaintiff") filed an application to proceed in forma pauperis ("IFP") in her appeal. (ECF No. <u>20</u> .) The Third Circuit granted Plaintiff's IFP application on February 1, 2024. (See USCA Case No. 24-1080, Docket Entry No. 6.) Accordingly, Plaintiff's IFP application (ECF No. <u>20</u>) is denied as moot. This matter shall remain closed. So Ordered by Judge Michael A. Shipp on 4/15/2024. (jdb) (Entered: 04/15/2024)
04/16/2024	<u>25</u>	USCA JUDGMENT affirming the judgment/order of the District Court as to <u>21</u> Notice of Appeal (USCA) filed by GINA RUSSOMANNO. (ca3kr) (Entered: 04/16/2024)
06/06/2024	<u>26</u>	NOTICE of Change of Address by GINA RUSSOMANNO. (Received via ECF Help Desk) (mlh) (Entered: 06/06/2024)
06/12/2024	<u>27</u>	MANDATE of USCA as to <u>21</u> Notice of Appeal (USCA) filed by GINA RUSSOMANNO (Finance notified) (Attachments: # <u>1</u> Mandate Letter, # <u>2</u> Opinion) (ca3kr) (Entered: 06/12/2024)
06/13/2024		Pursuant to Mandate of the USCA, the Judgment of the USDC entered on 1/5/2024 is hereby affirmed. (mlh) (Entered: 06/13/2024)
06/13/2024		Pursuant to Local Rule 79.4, notice is hereby given of the Appellate ruling filed on 6/12/2024. In the event that the mandate or judgment provides for costs or directs a disposition other than an affirmance, the prevailing party shall prepare and submit an order implementing the mandate or judgment. (mlh) (Entered: 06/13/2024)
06/26/2024	<u>28</u>	Mail Returned as Undeliverable. Mail sent to GINA RUSSOMANNO. (jdg) (Entered: 06/27/2024)

PACER Service Center			
Transaction Receipt			
07/25/2024 10:45:36			
PACER Login:	scotus2023	Client Code:	
Description:	Docket Report	Search Criteria:	3:23-cv-03684-MAS-DEA Start date: 1/1/1980 End date: 7/25/2024
Billable Pages:	4	Cost:	0.40
Exempt flag:	Exempt	Exempt reason:	Always

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 24-1080

GINA RUSSOMANNO,
Appellant

v.

SUMITOMO PHARMA AMERICA, INC., (SMPA) for affiliate,
Sunovion Pharmaceuticals, Inc.; SUNOVION PHARMACEUTICALS, INC.,

On Appeal from the United States District Court
for the District of New Jersey
(D.C. Civil No. 3-23-cv-03684)

SUR PETITION FOR REHEARING

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

The petition for rehearing filed by Appellant in the above-captioned 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.

* Judge Scirica's vote is limited to panel rehearing.

By the Court,

s/ Arianna J. Freeman
Circuit Judge

Dated: June 4, 2024

kr/cc: Gina Russomanno
Todd H. Girshon, Esq.

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