

IN THE SUPREME COURT OF THE UNITED STATES



Talley et al., v. Horn et al.,

PETITION FOR WRIT OF CERTIORARI

Appendix A

United States Court of Appeals for the Third Circuit, Order,
C.A. No. 24-1734 and C.A. No. 24-1917, Appeals, Dismissed

BLD-181

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **24-1734**

KENNETH R. TALLEY; JANICE A. TALLEY; KRISTEN KAREN TALLEY,
Appellants

v.

JUDITH HORN; ET AL.

(D. Del. Civ. No. 1-23-cv-00324)

Present: BIBAS, MATEY, and CHUNG, Circuit Judges

Submitted are:

- (1) By the Clerk for possible dismissal due to a jurisdictional defect;
- (2) Appellants' jurisdictional response;
- (3) Appellants' "Revised Petition for Permission to Appeal," which may be construed as a jurisdictional response;
- (4) Appellants' "Motion for Leave to Complete the Action Out-Of-Time," which may be construed as a jurisdictional response;
- (5) Appellants' "Motion for Competency Evaluation";
- (6) Appellants' "Document Preparation Certification"; and
- (7) Appellants' "Notice of Evidence"

in the above-captioned case.

Respectfully,

Clerk

ORDER

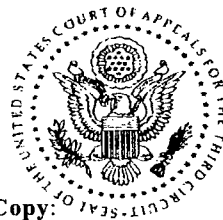
The foregoing appeal is dismissed for lack of appellate jurisdiction because the notice of appeal was untimely filed. A notice of appeal in a civil case in which the

United States is not a party must be filed within 30 days after the order appealed from is entered on the District Court's docket. See Fed. R. App. P. 4(a)(1)(A). That time limit is "mandatory and jurisdictional." Bowles v. Russell, 551 U.S. 205, 209 (2007) (citation omitted). The District Court entered the challenged order on February 7, 2024. Appellants did not file their notice of appeal until April 22, 2024, 45 days too late. Appellants' "Motion for Competency Evaluation" is dismissed as moot.

By the Court,

s/ Cindy K. Chung
Circuit Judge

Dated: September 19, 2024
JK/cc: Kenneth R. Talley
Janice A. Talley
Kristina Karen Talley
All Counsel of Record



A True Copy:

Patricia S. Dodszeit

Patricia S. Dodszeit, Clerk
Certified Order Issued in Lieu of Mandate

BLD-180

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **24-1917**

KENNETH R. TALLEY; JANICE A. TALLEY; KRISTEN KAREN TALLEY,
Appellants

v.

JUDITH HORN; ET AL.

(D. Del. Civ. No. 1-23-cv-00324)

Present: BIBAS, MATEY, and CHUNG, Circuit Judges

Submitted are

- (1) By the Clerk 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;
- (2) Appellants' summary action response; and
- (3) Appellants' "Official Document *Lis Pendens*"

in the above-captioned case.

Respectfully,

Clerk

ORDER


Appellants appeal from the District Court's denial of their motion to extend the time to appeal under Federal Rule of Appellate Procedure 4(a)(5). We have jurisdiction to hear this appeal pursuant to 28 U.S.C. § 1291, and we review denials of such motions for abuse of discretion. See Ragguette v. Premier Wines and Spirits, 691 F.3d 315, 322 (3d Cir. 2012) ("The district court abuses its discretion if its decision [regarding a 4(a)(5) motion] rests upon a clearly erroneous finding of fact, an errant conclusion of law, or the improper application of law to fact."). The District Court did not abuse its discretion in determining that the Rule 4(a)(5) motion was untimely filed. See Fed. R. App. P.

4(a)(5)(A)(i). Because the appeal fails to present a substantial question, we will summarily affirm the District Court's order. See 3d Cir. LAR 27.4 and I.O.P. 10.6.

By the Court,

s/ Cindy K. Chung
Circuit Judge

Dated: September 19, 2024
JK/cc: Kenneth R. Talley
Janice A. Talley
Kristina Karen Talley
All Counsel of Record

The seal of the United States Court of Appeals for the Third Circuit is circular. It features an eagle with spread wings perched on a shield. The shield is divided into sections, with a constellation of stars in the upper left. The words "UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT" are inscribed around the perimeter of the seal.
Certified ~~as a true copy~~ and issued in lieu
of a formal mandate on 10/28/2024

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

IN THE SUPREME COURT OF THE UNITED STATES



Talley et al., v. Horn et al.,

PETITION FOR WRIT OF CERTIORARI

Appendix B

United States Court of Appeals for the Third Circuit Order,
C.A. No. 24-1734 and C.A. No. 24-1917, Reargument, Denied

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 24-1734

KENNETH R. TALLEY; JANICE A. TALLEY; KRISTINA KAREN TALLEY,
Appellants

v.

JUDITH C. HORN; DARREN W. HORN, SR.; DARREN W. HORN, JR.;
KEVIN R. TALLEY; DELAWARE COURT OF CHANCERY; PATRICIA W.
GRIFFIN; SUPERIOR COURT OF DELAWARE; JUDGE MARK H. CONNER;
COMMUNITY LEGAL AID SOCIETY INC; OLGA BESKRONE;
SERGOVIC CARMEAN WEIDMAN MCCARTNEY & OWENS PA;
DAVID WEIDMAN; ROB BOOK, President of Delaware Electric Cooperative, Inc

(D. Del. No. 1-23-cv-00324)

Present: BIBAS, MATEY and CHUNG, Circuit Judges

1. Motion filed by Appellants Janice A. Talley, Kenneth R. Talley and Kristina Karen Talley to Allow Experts Evidence.

Respectfully,
Clerk/JK

ORDER

The foregoing motion is DENIED. As the petitions for rehearing have also been denied in this matter, the Appellants are advised that this matter is now final and that any further review must be sought in the United States Supreme Court in accordance with that Court's rules and procedures. The Court will not accept any additional filings in these appeals. The Clerk is directed to return any future submissions to Appellants without docketing them.

By the Court,

s/ Cindy K. Chung
Circuit Judge

Dated: October 18, 2024
JK/cc: Kenneth R. Talley

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 24-1917

KENNETH R. TALLEY; JANICE A. TALLEY; KRISTINA KAREN TALLEY,
Appellants

v.

JUDITH C. HORN; DARREN W. HORN, SR.; DARREN W. HORN, JR.;
KEVIN R. TALLEY; DELAWARE COURT OF CHANCERY; PATRICIA W.
GRIFFIN; SUPERIOR COURT OF DELAWARE; JUDGE MARK H. CONNER;
COMMUNITY LEGAL AID SOCIETY INC; OLGA BESKRONE;
SERGOVIC CARMEAN WEIDMAN MCCARTNEY & OWENS PA;
DAVID WEIDMAN; ROB BOOK, President of Delaware Electric Cooperative, Inc.

(D. Del. No. 1-23-cv-00324)

Present: BIBAS, MATEY and CHUNG, Circuit Judges

1. Motion filed by Appellants Janice A. Talley, Kenneth R. Talley and Kristina Karen Talley to Allow Experts Evidence.
2. Motion filed by Appellants Janice A. Talley, Kenneth R. Talley and Kristina Karen Talley to Allow Electronic Transcript Evidence.

Respectfully,
Clerk/JK

ORDER

The foregoing motions are DENIED. As the petitions for rehearing have also been denied in this matter, the Appellants are advised that this matter is now final and that any further review must be sought in the United States Supreme Court in accordance with that Court's rules and procedures. The Court will not accept any additional filings in these appeals. The Clerk is directed to return any future submissions to Appellants without docketing them.

By the Court,

s/ Cindy K. Chung
Circuit Judge

Dated: October 18, 2024

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

KENNETH R. TALLEY, et al.,)	
)	
Plaintiffs,)	
)	
v.)	C.A. No. 23-324 (MN)
)	
JUDITH C. HORN, et al.,)	
)	
Defendants.)	

MEMORANDUM OPINION

Kenneth R. Talley, Janice A. Talley, and Kristina Karen Talley, Milton, DE – Pro Se Plaintiffs.

Tyler Friedman, SERGOVIC CARMEAN WEIDMAN MCCARTNEY & OWENS, P.A., Georgetown, DE – Attorney for Judith C. Horn, Darren W. Horn, Sr., Sergovic Carmean Weidman McCartney & Owens, P.A., and David Wiedman.

Caneel Radinson-Blasucci, DELAWARE DEPARTMENT OF JUSTICE, Wilmington, DE – Attorney for Defendants Court of Chancery of The State of Delaware, Patricia W. Griffin, Superior Court of the State of Delaware, and Judge Mark H. Conner.

Matthew P. Donelson and John A. Elzufon, ELZUFON AUSTIN TARLOV & MONDELL PA, Wilmington, DE – Attorneys for Defendant Community Legal Aid Society, Inc. and Olga Beskrone.

David J. Soldo, MORRIS JAMES LLP, Wilmington, DE – Attorney for Defendant Rob Book.

Kevin R. Talley – Pro Se Defendant.

Darren W. Horn, Jr. – Pro Se Defendant

February 7, 2024
Wilmington, Delaware


NOREIKA, U.S. DISTRICT JUDGE:

Plaintiffs Kenneth R. Talley, Janice A. Talley, and Kristina Karen Talley, proceeding *pro se*, filed this lawsuit against several family members, two private practice attorneys, a law firm, a legal aid organization, two state court judges, two state courts, and an electrician. (D.I. 1). Plaintiffs' allegations arise from a dispute with their family members over the ownership of a home, and related state-court litigation. Defendants, in different pairings, move for dismissal of the Complaint for lack of jurisdiction and for failure to state a claim pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. (D.I. 8, 9, 10, 14, 23).

I. BACKGROUND

On March 23, 2023, Plaintiffs initiated this action. At the time, Delaware state courts had issued two judgments against them related to a home ownership dispute with their family.

Specifically, on October 21, 2022, the Court of Chancery issued an order entering judgment in favor of Judith and Darren Horn, and holding that Kenneth and Janice have no interest in the property at issue. (D.I. 8-1 at 15-39). On February 3, 2023, the Delaware Superior Court entered an ejectment order, directing Kenneth and Kristina to vacate the property by March 17, 2023. (*Id.* at 66-68). On February 13, 2023, Plaintiff appealed the ejectment order to the Delaware Supreme Court. (*Id.* at 70-71).

Plaintiffs' March 23, 2023 Complaint brings a Fifth Amendment claim under 42 U.S.C. § 1983, a claim for violation of 18 U.S.C. § 242, and several state law claims, including conspiracy, fraud and misrepresentation, elder abuse, and intentional infliction of emotional distress. They seek damages and injunctive relief.

II. LEGAL STANDARDS

A. Fed. R. Civ. P. 12(b)(1)

Rule 12(b)(1) of the Federal Rules of Civil Procedure permits the dismissal of an action for lack of subject matter jurisdiction. A Rule 12(b)(1) motion may be treated as either a facial or factual challenge to the court's subject matter jurisdiction. *See Davis v. Wells Fargo*, 824 F.3d 333, 346 (3d Cir. 2016). A facial attack contests the sufficiency of the pleadings, whereas a factual attack contests the sufficiency of jurisdictional facts. *See Lincoln Ben. Life Co. v. AEI Life, LLC*, 800 F.3d 99, 105 (3d Cir. 2015). When considering a facial attack, the court accepts the plaintiff's well-pleaded factual allegations as true and draws all reasonable inferences from those allegations in the plaintiff's favor. *See In re Horizon Healthcare Services Inc. Data Breach Litigation*, 846 F.3d 625, 633 (3d Cir. 2017).

B. Fed. R. Civ. P. 12(b)(6)

Because Plaintiffs proceeds *pro se*, their pleading is liberally construed and their Complaint, "however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). When presented with a motion to dismiss for failure to state a claim pursuant to Rule 12(b)(6), district courts conduct a two-part analysis. *Fowler v. UPMC Shadyside*, 578 F.3d 203, 210 (3d Cir. 2009). First, the Court separates the factual and legal elements of a claim, accepting "all of the complaint's well-pleaded facts as true, but [disregarding] any legal conclusions." *Id.* at 210-11. Second, the Court determines "whether the facts alleged in the complaint are sufficient to show . . . a 'plausible claim for relief.'" *Id.* at 211 (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009)).

"To survive a motion to dismiss, a civil plaintiff must allege facts that 'raise a right to relief above the speculative level on the assumption that the allegations in the complaint are true (even if doubtful in fact).'" *Victaulic Co. v. Tieman*, 499 F.3d 227, 234 (3d Cir. 2007) (quoting *Bell Atl.*

Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Dismissal under Rule 12(b)(6) is appropriate if a complaint does not contain “sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570); *see also Fowler*, 578 F.3d at 210. A claim is facially plausible “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678.

The Court is not obligated to accept as true “bald assertions” or “unsupported conclusions and unwarranted inferences.” *Morse v. Lower Merion Sch. Dist.*, 132 F.3d 902, 906 (3d Cir. 1997); *Schuylkill Energy Res., Inc. v. Pennsylvania Power & Light Co.*, 113 F.3d 405, 417 (3d Cir. 1997). Instead, “[t]he complaint must state enough facts to raise a reasonable expectation that discovery will reveal evidence of [each] necessary element” of a plaintiff’s claim. *Wilkerson v. New Media Tech. Charter Sch. Inc.*, 522 F.3d 315, 321 (3d Cir. 2008) (internal quotation marks omitted). A complaint may not be dismissed, however, for imperfect statements of the legal theory supporting the claim asserted. *See Johnson v. City of Shelby*, 574 U.S. 10, 11 (2014) (per curiam).

III. DISCUSSION

Federal courts have subject-matter jurisdiction over all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different states. 28 U.S.C. § 1332(a). This is often referred to as diversity jurisdiction. Plaintiffs assert in their briefing that this Court has diversity jurisdiction over their claims against *some* of the Defendants whom they assert are citizens of states other than Delaware. That, however, is not how diversity jurisdiction is applied; it is an all or nothing enterprise. *See Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 553 (2005) (explaining that, when the state of citizenship of a *single* defendant is the same as the plaintiff’s state of citizenship, this fact “deprives the district court of original diversity jurisdiction over the *entire* action”) (emphasis

added). Accordingly, because at least one Defendant is a Delaware resident, this Court lacks diversity jurisdiction over this matter in its entirety.

Federal courts also have jurisdiction over all actions “arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. This is sometimes referred to as federal question jurisdiction. Plaintiff attempts to bring claims under a federal statute, § 1983, against the State Court Defendants. State courts themselves, however, are immune from suit in federal court under the Eleventh Amendment, *see Benn v. First Judicial Dist. of Pa.*, 426 F.3d 233, 239-40 (3d Cir. 2005) (concluding that Pennsylvania’s First Judicial District is a state entity entitled to Eleventh Amendment immunity), and the judges are entitled to judicial immunity from Plaintiff’s allegations, *see Capogrosso v. The Supreme Court of New Jersey*, 588 F.3d 180, 184 (3d Cir. 2009) (“A judicial officer in the performance of [her] duties has absolute immunity from suit and will not be liable for [her] judicial acts.”) (quoting *Azubuko v. Royal*, 443 F.3d 302, 303 (3d Cir. 2006)).

With regard to the claims against the remaining Defendants, all of whom are private citizens or entities, to the extent that this Court has federal question jurisdiction,¹ Plaintiffs have failed to state any claims because none of these Defendants acted under the color of state law for purposes of § 1983. *See West v. Atkins*, 487 U.S. 42, 48 (1988); *see also Webb v. Chapman*, 852 F. App’x 659, 660 (3d Cir. 2021) (per curiam).

Furthermore, the Third Circuit has long held that § 242 is a criminal statute, which does not confer a private right of action. *See United States v. City of Phila.*, 644 F.2d 187, 198-99 (3d Cir. 1980) (holding that there is no private right of action under § 242); *see also Davis v.*

¹ *See Itiowe v. Trentonian*, 620 F. App’x 65, 67 n.2 (3d Cir. 2015) (per curiam) (noting that dismissal under Rule 12(b)(1) for lack of subject matter jurisdiction may be appropriate where a plaintiff brings constitutional claims against non-state actors without plausibly alleging that they acted under the color of state law); *see also Hagans v. Lavine*, 415 U.S. 528, 536-37 (1974).

Warden Lewisburg USP, 594 F. App'x 60, 61 n.3 (3d Cir. 2017) (per curiam) (noting that “§ 242 is a criminal statute, through which no private cause of action is created”).

To the extent that the Court has the option of exercising supplemental jurisdiction over Plaintiffs' state law claims,² it will decline to do so. *See* 28 U.S.C. § 1367(c)(3); *Sarpolis v. Tereshko*, 625 F. App'x 594, 598-99 (3d Cir. 2016). Plaintiffs' state law claims will be dismissed, without prejudice, for lack of jurisdiction.

IV. CONCLUSION

For the above reasons, the Court will grant Defendants' motions to dismiss. Amendment is futile. All state law claims are dismissed without prejudice to the extent that they would be more appropriately brought in state court.

An appropriate Order will be entered.

² Defendants suggest that this Court lacks jurisdiction under the *Rooker-Feldman* Doctrine, which precludes federal court consideration of “cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.” *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). The *Rooker-Feldman* doctrine applies when four requirements are met: (1) the federal plaintiff lost in state court, (2) the plaintiff complains of injuries caused by the state-court judgment, (3) that judgment issued before the federal suit was filed, and (4) the plaintiff invites the district court to review and reject the state-court judgment. *Phila. Entm't & Dev. Partners, LP v. Dep't of Revenue*, 879 F.3d 492, 500 (3d Cir. 2018) (citing *Great W. Mining & Mineral Co. v. Fox Rothschild LLP*, 615 F.3d 159, 165 (3d Cir. 2010)). Here, Plaintiffs clearly seek review of at least two state-court judgments which they lost. When the Complaint was filed in this action, however, Plaintiffs' appeal to the Delaware Supreme Court of the Delaware Superior Court's ejectment order was pending. Accordingly, the Court will decline to apply *Rooker-Feldman*.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

KENNETH R. TALLEY, et al.,

Plaintiffs,

V.


JUDITH C. HORN, et al.,

Defendants.

C.A. No. 23-324 (MN)

ORDER

At Wilmington, this 29th day of April 2024, having considered Plaintiffs' motion for an extension of time to file a notice of appeal (D.I. 58), IT IS HEREBY ORDERED that Plaintiffs' motion is **DENIED** as untimely.¹


The Honorable Maryellen Noreika
United States District Judge

By Memorandum Opinion and Order issued on February 7, 2024, the Court granted Defendants' motion to dismiss and dismissed this matter. On April 22, 2024, Plaintiffs filed a motion for an extension of time to file a notice of appeal (D.I. 58) and a notice of appeal (D.I. 59). Under the Federal Rules of Appellate Procedure, Plaintiffs had 30 days to file their notice of appeal. *See* Fed. R. App. P. 4(a)(1)(A). Rule 4 permits district courts to extend the time to file a notice of appeal if a party seeks an extension "no later than 30 days after the time prescribed by Rule 4(a) expires," and the "party shows excusable neglect or good cause." *See* Fed. R. App. P. 4(a)(5)(A). Accordingly, Plaintiffs had until Monday April 8, 2024 to seek an extension. Therefore, their April 22, 2024 extension request was untimely.

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