

UNITED STATES COURT OF APPEALS
FOR THE THIRS CIRCUIT

No. 25 1338

THOMAS LAMONT DYNO;JULIA DYNO
Appellants

v.

ALBERT DYNO, JR., in his official and personal capacity
as Executor of the Estate of Rosemarie Sterchak,
deceased

On Appeal from the United States District Court
For the Middle District of Pennsylvania
(D.C. Civil Action No 3:19-cv-01966
District Judge: Honorable Jospeh F. Saporito , Jr.

Submitted Pursuant to LAR 34.1(a)
November 21, 2025
Before: HARDIMAN< FREEMAN, and ROTH, Circuit
Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Middle District of Pennsylvania and was submitted pursuant to Third Circuit LAR 34.1(a) on November 21, 2025. In consideration whereof, it is now hereby

ORDERED and ADJUDGED by this Court that the judgment of the District Court entered February 7, 2025, be and the same is hereby affirmed. All of the above in accordance with the opinion of this Court.

Costs taxed against the appellants.

ATTEST

s/Patricia S. Dodszeuweit
Clerk

Dated: February 26, 2026

UNITED STATES COURT OF APPEALS
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November 21, 2025

Before: HARDIMAN, FREEMAN, and ROTH, Circuit Judges
(Opinion filed: February 26, 2026)

OPINION¹

PER CURIAM

Pro se Appellants Thomas and Julia Dyno appeal from the
District Court's order denying their motion to reopen their
case pursuant to Federal Rules of Civil Procedure 60(d) and

¹ This disposition is not an opinion of the full court and pursuant
to I.O.P. 5.7 does not constitute binding precedent

for leave to amend their complaint post-judgment, and its subsequent order denying reconsideration thereof. We will affirm the District Court's orders.

I.

As all parties are familiar with the facts, we discuss only the details relevant to our analysis. This case derives from a dispute over the estate of Rosemarie Sterchak. Before she died in 2015, she named the defendant, Albert Dyno, Jr., as executor of her estate, and left bequests of corporate stocks and cash to several individuals, including Appellants. At the time that Appellants filed their original complaint in the District Court in 2019, Pennsylvania state court proceedings were ongoing. The District Court determined that it lacked subject matter jurisdiction over the case, and we affirmed. See Dyno v. Dyno, No 20-3302, 2021 WL 3508252, at *2-3 (3d Cir. Aug. 10, 2021) (per curium).

On August 9, 2021, the Pennsylvania Orphans' Court Judge presiding over the estate matter entered an order directing the defendant to release eighty percent of the stock bequeathed to the Appellants, while retaining twenty percent for the payment of outstanding tax obligations. After unsuccessful appeals of this order in the Pennsylvania Courts, Appellants filed motions to reopen the case filed in the District Court pursuant to Rule 60(d) for fraud and requested leave to amend their complaint to include as additional defendants the defendant's attorney and the Orphans' Court Judge. In their motions, appellants challenged the legitimacy of the Orphans Court order and asked the District Court to vacate it on the ground that it constituted an illegal withholding of property. The District Court, adopting the Magistrate Judge's report and recommendation,

denied the motions to reopen the case and amend the complaint as untimely and meritless. Appellants moved for reconsideration, which the District Court denied. Appellants timely appealed.

We have jurisdiction under 28 U.S.C. § 1291. We exercise plenary review of any legal questions, and we review the District Court's decision to deny the motions for abuse of discretion. See Max's Seafood Cafe ex rel. Lou-Ann, Inc. v. Quinteros, 176 F.3d 669, 673 (3d Cir. 1999); Menkes v. Prudential Ins. Co. of Am., 762 F.3d 285, 290 (3d Cir. 2014); Jackson v. Danberg, 656 F.3d 157, 162 (3d Cir. 2011).

After a review of the record, we conclude the District Court did not abuse its discretion when it denyied [sic] Appellants' Rule 60(d) motions for relief. A District Court may vacate a judgment on a finding of fraud that is "supported by clear, unequivocal and convincing evidence" of "(1) an intentional fraud; (2) by an officer of the court; (3) which is directed at the court itself; and (4) in fact deceives the court." Herring v. United States, 424 F.3d 384, 386-87 (3d Cir. 2005) (citation omitted); see also In re Bressman, 874 F.3d 142, 150 (3d Cir. 2017). As the Magistrate Judge's recommendation explained, a Rule 60 motion cannot be used to remedy alleged fraud on the state court,² and Appellants did not provide any evidence of fraud directed at the District Court. See United States v. Washington, 549 F.3d 905, 912 (3d Cir. 2008) (explaining that "a federal court has the inherent power to vacate its own judgments when they have been procured by fraud").

² Although the Magistrate Judge reviewed the motions to reopen as if they were Rule 60(b)(3) motions, the same holds true for a motion to reopen pursuant to Rule 60(d)(3).

Because Appellants' motion to reopen the case pursuant to Rule 60(d) failed, the District Court did not err in denying Appellants' motion for leave to file a post-judgment amended complaint. See Ahmed v. Dragovich, 297 F.3d 201, 207-08 (3d Cir. 2002) (explaining that once a judgment is entered, an amended complaint may be filed under Federal Rule of Civil Procedure 15 only if the judgment has been set aside or vacated pursuant to Rule 59 or Rule 60). Nor did the District Court abuse its discretion in denying Appellants' motion for reconsideration.

Accordingly, we will affirm. ³

³ The Appellants move for leave to submit their reply brief in DVD format, in order to include hyperlinks. We grant this motion.

UNITED STATES COURT OF APPEAL FOR THE
THIRD CIRCUIT

No 25-1338

THOMAS LAMONT DYNO, JULIA DYNO
Appellants

v.

ALBERT DYNO, JR. in his official and personal capacity
as Executor of the Estate of Rosemarie Sterchak,
deceased

SUR PETITION FOR REHEARING

Present: CHAGARES, *Chief Judge*, HARDIMAN,
SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER,
MATEY, PHIPPS, FREEMAN, MONTGOMERY-
REEVES, CHUNG, BOVE, MASCOTT, AND ROTH, ¹
Circuit Judges.

The petition for rehearing on behalf of Appellants 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/Thomas M. Hardiman
Circuit Judge

Dated: April 9, 2026
Lmr/cc: Julia Dyno
Thomas Lamont Dyno
All Counsel of Record

¹ The vote of Judge Roth is limited to panel rehearing.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

THOMAS LAMONT DYNO. Et al., CIVIL ACTION
 Plaintiffs NO. 3:18-CV-1966
 v. (SAPORITO, J.)
ALBERT DYNO, JR. (CARLSON, M.J.)
 Defendant

ORDER

Now before the court is a report and recommendation of United States Magistrate Judge Martin C. Carlson, in which he recommends that the plaintiffs' motions to reopen the case, *Dyna v. Dyno*¹, and amend their complaint (Doc. 39; Doc. 40; Doc. 49) be denied.

Judge Carlson recommends that dismissal of the plaintiffs' motions is warranted under Rules 15 and 60 of the Federal Rules of Civil Procedure due to procedural and substantive flaws. He found that the plaintiffs' motions are procedurally untimely, time-barred, and fail to establish the necessary circumstances justifying the delay in filing their motions. Moreover, Judge Carlson found that the plaintiffs' claims additionally fail on their merits by providing numerous examples of substantive defects concerning those claims.²

The plaintiffs have filed their objections to Judge Carlson's report and recommendation.

¹ No. CV 3:19-1966, 2020 WL 7027605, at *2 (M.D. Pa. Nov. 30, 2020), *aff'd*, No. 20-3302, 2021 WL 3508252 (3d Cir. Aug. 10,

2021).

(Doc. 66; Doc. 67).³ We have conducted a de novo review of the contested portions of the report, but find the plaintiffs' objections to be unpersuasive.⁴ See 28 U.S.C. § 636(b)(1); *United States v. McLaughlin*, 607 F. Supp. 3d 522, 529 (M.D. Pa. 2022).

Following an independent review of the report and the record, and having afforded "reasoned consideration" to the uncontested portions of the report, *E.E.O.C. v. City of Long Branch*, 866 F.3d 93, 99 (3d Cir. 2017), we are satisfied "that there is no clear error on the face of the record," Fed. R. Civ. P. 72(b) advisory committee note to 1983 amendment. We find Judge Carlson's analysis to be well-reasoned and fully supported by the record and applicable law. Accordingly, the court will adopt the report and recommend in its entirety as the decision of the court.

²See, e.g., fraud allegations (Doc. 58, at 12), civil rights claims against an executor (*Id.* at 19), and absolute immunity (*Id.*).

³The plaintiffs filed their first objection to Judge Carlson's report and recommendation on October 29, 2024. (Doc. 66). On that same date, the plaintiffs further filed an additional objection, asking that it "replace Doc[.] 66 with [Doc. 67]." See (Doc. 67).

⁴We have given the most "liberal construction" to the plaintiffs' objections, *Rainey v. Warner*, 603 F.3d 189, 198 (3d Cir. 2010), but we find that they are largely unintelligible. We are therefore unable to locate any objections to the recommendations. See *McLearly v. Houser*, No. CV 21-5297, 2022 WL 22672320, at *1 n.1 (E.D. Pa. Sept. 14, 2022); see also *Pa Werts*, No. 10-4935, 2010 WL 4723371, at *1 n.2 (E.D. Nov. 12, 2010)

("[R]easonable efforts to decipher the nature of the claims ... failed to produce an understanding of the harm alleged or the relief sought.")

Accordingly, **IT IS HERELY ORDERED THAT:**

1. The report and recommendations of Judge Carlson (Doc, 58) **ADOPTED**, and
- 2, The plaintiffs' motions to reopen the case (Doc.39; Doc. 40; Doc. 49) and leave to amend (Doc. 49) are **DENIED**.
3. The clerk shall mark this case **CLOSED**.

Dated: January 28, 2025

/s/ JOSEPH F. SAPORITO, JR.
Unite States District Judge

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

THOMAS LAMONT DYNO, et al.,	CIVIL ACTION
Plaintiffs	NO 3.18-CV=1066
v.	SAPORITO, J.
ALBERT DYNO, JR.	CARLSON, M.J.
Defendant	

ORDER

October 1, 2024, United States Magistrate Judge Martin C. Carlson recommended that the plaintiffs' motion to reopen the case, *Dyno v. Dyno*,¹ and amend their complaint be denied. (Doc. 58). Judge Carlson found that the plaintiffs' motions were procedurally untimely, time-barred, and failed to establish the necessary circumstances justifying the delay in filing their motions. Moreover, Judge Carlson additionally found the plaintiffs' claims failed on their merits. On January 28, 2025, we adopted Judge Carlson's recommendation in its entirety. (Doc. 68). The plaintiffs have now filed a motion to reconsider concerning the actions outlined in this Order. (Doc. 69).

AND NOW, this day of February 7th, upon consideration of the plaintiffs' motion, **IT IS HEREBY ORDERED THAT** the plaintiffs' *pro se* motion for reconsideration (Doc. 69) is **DENIED**.

February 7, 2025 /s/ JOSEPH F. SAPORITO, JR.
United States District Judge

¹ No. CV 3:19-1966, 2020 WL 7027605, at *2 (M.D. Pa. Nov. 30, 2020), *aff'd*, No. 20-3302, 2021 WL 3508252 (3d Cir. Aug. 10, 2021).

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

THOMAS LAMONT DYNO , et al

Plaintiffs

v.

ALBERT DYNO JR. executor of
The ESTATE OF ROSEMARIE
STEARCHAK, deceased
Defendant

No 3:19-cv-01966

(Mannion J.)

(Saporito MJ)

REPORT AND RECOMMENDATION¹

I. Introduction

This litigation calls to mind Tolstoy's observation that: "All happy families are alike; each unhappy family is unhappy in its own way." For the past decade the principles in this lawsuit, family members who are embroiled in a contentious estate dispute, have repeatedly indulged in trial and appellate litigation in both state and federal court. The depth of the enmity that has developed between the parties is reflected in the persistence with which the

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We note that the plaintiffs have lodged an objection to this case referral to a magistrate judge, arguing that they have not consented to magistrate judge jurisdiction. (Doc. 50). This objection warrants only brief consideration since it rests upon a misconception regarding the ability of the district court to refer matters to magistrate judges. On this score, it is clear beyond peradventure that "[a plaintiffs] consent is not necessary for a Magistrate Judge to exercise jurisdiction under 28 U.S.C. § 636(b)(1), including the issuance of non-dispositive orders and Reports and Recommendations for this Court's review." *Brownlee v. United States*, No. 3:18-CV-1428, 2019 WL 2127315, at *2 (M.D. Pa. May 15, 2019); see also 1900 Cap. Tr. II by U.S. Bank Tr. Nat'l Ass'n v. Boldrini, No. 3:19-CV-1576, 2019 WL 5457034, at *4 (M.D. Pa. Oct. 24, 2019).

plaintiffs continue to pursue their claims, attempting to renew this federal lawsuit years after it was dismissed.

The instant motions aptly illustrate how the uniquely unhappy aspects of this familial estate dispute inspire continued acrimonious litigation. In October of 2020, this federal complaint was dismissed for want of subject matter jurisdiction. (Doc. 22). In August and September of 2021, the dismissal of this case was affirmed by the United States Court of Appeals for the Third Circuit. (Docs. 34, 35).

Undeterred, some three years later, in August of 2024, the plaintiffs filed a spate of additional pleadings in this case seeking to reopen this lawsuit and amend their complaint to sue not only their relative in this estate dispute, but the defendant's attorney and the trial court judge who is presiding over the related, pending state case. (Docs. 39, 40, 49). These motions are fully briefed and are, therefore, ripe for resolution.

For the reasons set forth below, it is recommended that the motions be denied.

II. Statement of Facts and of the Case

The parties are fully conversant in the details of their longstanding dispute. However, the background of this litigation was aptly summarized by the Third Circuit in its 2021 decision affirming the dismissal of this complaint, when the appellate court explained that:

This case derives from a dispute over the estate of Rosemarie Sterchak. Sterchak died in October 2015, leaving a will that named the defendant Albert Dyno, Jr., as her executor. In the will, Sterchak left bequests of specific corporate stocks and cash to several individuals, including both plaintiffs. The executor, through counsel, represented to the beneficiaries of these bequests that the residual estate lacked sufficient liquid assets to pay the inheritance taxes and administrative expenses of the estate. He assigned

each beneficiary a share of the estimated deficit and sought agreement from each beneficiary to either pay this share to the estate in cash or permit the executor to liquidate sufficient stocks from the beneficiary's bequest to cover the share.

The plaintiffs refused the executor's proposed agreement and filed a petition for inventory and accounting with the county Orphans' Court. The plaintiffs allege that the executor's proposals did not follow applicable Pennsylvania law regarding inheritance taxes and estate expenses. They also allege that the executor and his counsel improperly sought payments and fees for their own benefit. The executor filed a first inventory and accounting in late 2016, and the plaintiffs objected. Litigation before the Orphans' Court and the Pennsylvania appellate courts continued through the filing of this action in November 2019. At that time, the administration of the estate remained pending before the Orphans' Court

Dyno v. Dyno, No. 20-3302, 2021 WL 3508252, at *1 (3d Cir. Aug. 10, 2021).

Apparently frustrated with the pace and outcome of the state court litigation, in November of 2019, the plaintiffs launched a new assault upon the executor of this estate by filing this federal lawsuit. As the Third Circuit explained

Invoking 42 U.S.C. § 1983, the [plaintiffs] claimed that the executor was violating their rights under the Due Process Clause of the Fourteenth Amendment by depriving them of their specific legacies. They also asserted state-law claims for fraud and breach of fiduciary duty. For relief, the plaintiffs essentially requested a declaration that they were entitled to immediate possession of the stocks in their bequests and an order requiring the

executor to turn over the stocks, along with associated dividends, interests, and costs. Adopting a Magistrate Judge's Report and Recommendation over the plaintiffs' objections, the District Court granted the defendant's motion to dismiss for lack of subject matter jurisdiction.

In dismissing this complaint, which sought to have a federal court intervene in ongoing state court litigation involving the disposition of estate assets in the jurisdiction of the state probate court, the district court relied, in part, upon a venerable and settled legal tenet, the Princess Lida doctrine. As the district court explained:

In Princess Lida, the Supreme Court of the United States considered whether the exercise of jurisdiction by a state court over the administration of a trust deprived a federal court of jurisdiction over a later suit by some of the trust's beneficiaries seeking an accounting and removal of the trustees. The Supreme Court held:

[I]f the two suits are in rem, or *quasi in rem*, so that the court, or its officer, has possession or must have control of the property which is the subject of the litigation in order to proceed with the cause and grant the relief sought[,] the jurisdiction of the one court must yield to that of the other.... [T]he principle applicable to both federal and state courts that the court first assuming jurisdiction over property may maintain and exercise that jurisdiction to the exclusion of the other[] is not restricted to cases where property has been actually seized under judicial process before a second suit is instituted, but applies as well where suits are brought to marshal assets, administer trusts, or liquidate estates, and in suits of a similar nature where, to give effect to its jurisdiction,

the court must control the property. The doctrine is necessary to the harmonious cooperation of federal and state tribunals.

Princess Lida of Thurn & Taxis v. Thompson, 305 U.S. 456, 466 (1939) (footnotes omitted); see also *Hohensee v. Grier*, 373 F. Supp. 1358,

While we agree with the District Court's decision to dismiss this case for lack of jurisdiction, and to deny reconsideration of that decision when the plaintiff's motion merely stated their disagreement with the District Court's analysis, see *Max's Seafood Café ex rel. Lou-Ann, Inc. v. Quinteros*, 176 F.3d 669, 677 (3d Cir. 1999), the dismissal should have been without prejudice. See *N.J. Physicians, Inc. v. President of U.S.*, 653 F.3d 234, 241 n.8 (3d Cir. 2011) (explaining that dismissals for lack of subject matter jurisdiction are "by definition without prejudice"); cf. *Thorne v. Pep Boys Manny Moe & Jack Inc.*, 980 F.3d 879, 896 (3d Cir. 2020) ("The specter of serial litigation cannot imbue the District Court with jurisdiction it otherwise lacks.")

The plaintiffs' efforts to open a second front in this familial legal assault having been rebuffed by the federal courts, the parties resumed their internecine struggle in state court. As part of this state court litigation, it appears that on August 9, 2021, the Orphans' Court entered an Order directing the release of 80% of the stock bequeathed to the plaintiffs while retaining 20% for payment of outstanding tax obligations. This order, which would have resulted in a significant inheritance by the plaintiffs, forms the gravamen of the current federal court motions, and immediately inspired new rounds of litigation in state court. In this litigation, the plaintiffs asked the state courts to reject this 80% solution, insisting that they were entitled to be exempted from any offset for estate taxes. The State court litigation disputing this estate distribution

ultimately failed. The Superior Court affirmed this trial court decision in November of 2022, *In re Est. of Sterchak*, 289 A.3d 95 (Pa. Super. Ct. 2022), reargument denied (Feb. 2, 2023), appeal denied, 303 A.3d 706

(Pa. 2023), reconsideration denied (Oct. 18, 2023), and the Pennsylvania Supreme Court declined to further review this matter in August of 2023. *In re Est. of Sterchak*, 303 A.3d 706, 707 (Pa. 2023), reconsideration denied (Oct. 18, 2023).

Months then passed before the plaintiffs filed the instant motions in federal court in August and September of 2024, seeking to reopen their federal case based upon arguments which had been previously rejected and dismissed in multiple legal forums over the prior nine years. While their pleadings demand a great deal of the reader, it appears that the plaintiffs seek yet again to have the federal courts set aside these state court judgments. In particular, the plaintiffs insist that the Orphans Court August 9, 2021 order, which has been upheld by the state appellate courts, is somehow illicit. Therefore, they invite us to set that order aside. In addition, the plaintiffs attempt to amend their complaint to reassert federal civil rights claims under 42 U.S.C. § 1983 and invite the Court to add defense counsel and the state Orphans Court judge to the list of defendants in this civil rights lawsuit.

These motions are now ripe for resolution. For the reasons set forth below, we recommend that these motions be denied.

III. Discussion

A. The Plaintiffs' Motion to Reopen is Procedurally and Substantively Flawed.

The plaintiffs' invitation to relitigate these matters yet again in federal court fail for a host of reasons. At the outset, these motions run afoul of the standards which govern requests to reopen cases. Those exacting

standards are set forth in Rule 60 of the Federal Rules of Civil Procedure, which provides in part that:

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding.

On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding 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 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.

(c) Timing and Effect of the Motion.

- (1) *Timing.* 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 proceeding.

Fed.R.Civ.P.Rule 60(b) and (c)

Judged against these benchmarks, the plaintiffs' motions encounter insurmountable procedural and substantive hurdles. At the outset, the motions, which seem premised upon the notion that the plaintiffs are the victims of some sort of wide-ranging judicially crafted fraud in state court, are time-barred.

As the text of this rule implies, decisions regarding whether to reopen cases under Rule 60, rest "within the discretion of the trial court [although] [i]t is the trial judge's duty to construe the rule liberally in order to work substantial justice between the parties." *Home Box Office, Inc. v. Spectrum Electronics, Inc.*, 100 F.R.D. 379, 382 (E.D. Pa. 1983). In exercising this discretion, "the court must balance the ends of justice on the one hand . . . and the public interest in the finality of judgments on the other." *Aetna Cas. & Sur. Co. v. Home Ins. Co.*, 882 F. Supp. 1355, 1356 (S.D.N.Y. 1995). Because one of the cardinal considerations in assessing a Rule 60 motion is the public interest in the finality of judgments, Rule 60 motions must be made in a timely fashion. As the Rule itself states: "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 proceeding." Fed. R. Civ. P. 60(c).

To the extent that the plaintiffs are asserting some sort of inherent fraud in the August 9, 2021 Orphans Court order as ground for reopening this federal lawsuit, their motion is clearly untimely since such requests to reopen must be made no more than a year after the entry of the judgment or order or the date of the proceeding. Here the gist of the plaintiffs' motion is their contention that the Orphans Court entered an improper and fraudulent order in August of 2021. Yet the plaintiffs allowed three years to elapse before filing the instant motion, a period of delay that falls well beyond the one-year limitations period prescribed by Rule 60.

Nor can the plaintiffs save this delinquent filing by arguing that they are proceeding under the catch-all provision of Rule 60(b), which permits relief on "any other reason that justifies relief." Fed. R. Civ. P. 60(b)(6). "A motion under the catchall provision contained in Rule 60(b)(6) also must be made within a reasonable time. Relief under Rule

60(b)(6) requires a showing of extraordinary circumstances justifying the reopening of a final judgment.” *Arrieta v. Battaglia*, 461 F.3d 861, 865 (7th Cir. 2006) (cleaned up). A determination of:

What constitutes a “reasonable time” depends on the circumstances of each case. *Delzona Corp. v. Sacks*, 265 F.2d 157, 159 (3d Cir. 1959). A court considers many factors, including finality, the reason for delay, the practical ability for the litigant to learn of the grounds relied upon earlier, and potential prejudice to other parties. *Kagan v. Caterpillar Tractor Co.*, 795 F.2d 601, 610 (7th Cir. 1986); *Ashford v. Steuart*, 657 F.2d 1053, 1055 (9th Cir. 1981). What constitutes a “reasonable time” also depends on which Rule 60(b) clause a claimant is trying to avail. We have noted that relief under Rule 60(b)(6) is extraordinary because it can be given for “any other reason justifying relief” and is not subject to an explicit time limit. *Coltec Indus. Inc. v. Hobgood*, 280 F.3d 262, 273 (3d Cir. 2002). Therefore, a claimant must establish exceptional circumstances justifying the delay for filing under Rule 60(b)(6).

In re Diet Drugs

Phentermine/Fenfluramine/Dexfenfluramine) Prod. Liab. Litig., 383 F. App’x 242, 246 (3d Cir. 2010). One aspect of this showing of “exceptional circumstances justifying the delay for filing under Rule 60(b)(6),” is that a movant under this provision must show that he “has exercised due diligence to ascertain whether the judgment has been entered or has given sufficient reason for the lack of such diligence.” *Spika v. Vill. of Lombard, Ill.*, 763 F.2d 282, 285 (7th Cir. 1985).

In this case, the plaintiffs’ motion fails to demonstrate the type of extraordinary degree of diligence necessary to

justify the belated filing of a motion to reopen under Rule 60(b)(6). Quite the contrary, the three-year delay between the entry of this state court order and these motions to reopen shows extreme indolence rather than extraordinary diligence. Therefore, these Rule 60 motions are time-barred. *Harris v. Glunt*, No. 4:14-CV-2467, 2019 WL 1246950, at *4–5 (M.D. Pa. Feb. 12, 2019), report and recommendation adopted, No. 4:14-CV-02467, 2019 WL 1239696 (M.D. Pa. Mar. 18, 2019).

Moreover, these motions fail when considered on their merits. Stripped to its essence, the plaintiffs' Rule 60 motions seek to collaterally attack state court orders in federal court. Rule 60 does not allow such collateral attacks on state court proceedings. Rather:

[I]t has long been held that a state [party] cannot invoke Fed. R. Civ. P. 60 to attack a state court judgment. See, e.g., *Burnett v. Amrein*, 243 F. App'x 393, 395 (10th Cir. 2007) ("Last, the district court correctly denied the Burnetts' motion to vacate the state-court judgments. Fed. R. Civ. P. 60(b) 'does not authorize a federal district court to relieve the Burnetts of a judgment entered in state court' "); *Graham v. South Carolina*, C.A. No. 6:11-595, 2012 WL 527606, at *2 (D.S.C., Feb. 16, 2012) ("Petitioner misunderstands the import of Rule 60(b), which provides that a federal district court may provide relief from its own civil judgments. Rule 60(b) does not authorize a federal district court to review a state criminal conviction and judgment, as is the case here.").

Green v. Coleman, No. CIV.A. 14-74, 2014 WL 050542, at *2 (W.D. Pa. Mar. 18, 2014); see also 1900 Cap. Tr. II by U.S. Bank Tr. Nat'l Ass'n v. Boldrini, No. 3:19-CV-1576, 2019 WL 5457034, at *2 (M.D. Pa. Oct. 24, 2019).

Further, while the plaintiffs premise their motion on vague allegations of fraud in the state proceedings, they have failed to meet the exacting threshold showing necessary to reopen this federal case based upon claims of fraud. As we have noted in the past:

Rule 60(b)(3) motions alleging fraud must also meet exacting substantive thresholds. "Rule 60(b)(3) provides for relief from a final judgment where there has been 'fraud ..., misrepresentation, or other misconduct of an adverse party.' To prevail, the movant must establish that the adverse party engaged in fraud or other misconduct, and that this conduct prevented the moving party from fully and fairly presenting his case. See *Rozier v. Ford Motor Co.*, 573 F.2d 1332, 1341 (5th Cir. 1978)." *Stridiron v. Stridiron*, 698 F.2d 204, 206-07 (3d Cir. 1983).

Further, the court of appeals has:

[D]eclared general principles applicable to a 60(b)(3) motion. For example, in *Brown v. Pennsylvania Railroad Company*, 282 F.2d 522 (3d Cir. 1960), we stated that "[i]n order to sustain the burden of proving fraud and misrepresentation under Rule 60(b)(3), the evidence must be clear and convincing." *Id.* at 527. See also *Anderson v. Cryovac, Inc.*, 862 F.2d 910, 923 (1st Cir. 1988) (noting need for 'clear and convincing evidence' under 60(b)(3)). In *Seaboldt v. Pennsylvania Railroad Company*, 290 F.2d 296, 299 (3d Cir. 1961), we recognized that relief under Rule 60(b)(3) may be warranted, even though the newly disclosed evidence may not change the result, if such evidence "would have made a difference" in advancing the moving party's claim. Distilling these cases in *Stridiron v. Stridiron*, 698 F.2d 204 (3d Cir. 1983), we

instructed that “[t]o prevail [under Rule 60(b)(3)], the movant must establish that [1] the adverse party engaged in fraud or other misconduct, and [2] this conduct prevented the moving party from fully and fairly presenting his case.” *Id.* at 207.

Floor graphics Inc. v. News Am. Mktg. In-Store Servs., Inc., 434 F. App'x 109, 111-12 (3d Cir. 2011).

1900 Cap. Tr. II by U.S. Bank Tr. Nat'l Ass'n v. Boldrini, No. 3:19-CV-1576, 2019 WL 5457034, at *2-3 (M.D. Pa. Oct. 24, 2019). Nothing in the plaintiffs' current pleadings leads us to conclude that the defendants [1] engaged in fraud or other misconduct, and [2] this conduct prevented the moving parties from fully and fairly presenting their case. Quite the contrary, the plaintiffs have had multiple opportunities to advance their claims, but to no avail since those arguments have failed on the merits in state court. Therefore, these Rule 60 motions fail on their merits and should be dismissed.

B. The Plaintiffs' Motion to Amend Their Complaint Should Be Denied.

The plaintiffs' motion to amend their complaint to bring civil rights claims is also legally bankrupt. Rule 15 of the Federal Rules of Civil Procedure governs amendments and supplementation of pleadings. Fed. R. Civ. P. 15. Rule 15(a) authorizes a party to amend his pleading once as a matter of course within 21 days after serving it, or if the pleading is one to which a responsive pleading is required,

21 days after service of the responsive pleading, or 21 days after service of a dispositive motion under Rule 12, whichever is earlier. Fed. R. Civ. P. 15(a)(1)(A) and (B). “In all other cases, a party may amend its pleading only with the opposing party's written consent, or the court's leave,” which courts are to freely give “when justice so requires.” Fed. R. Civ. P. 15(a)(2). Consistent with this policy, leave to amend rests in the discretion of the court and may, when

justice so requires, be denied if the court finds "undue delay, bad faith or dilatory motive on the part of the movant, failure to cure deficiencies by amendments previously allowed undue prejudice to the opposing party by virtue of the allowance of the amendment, futility of amendment, etc." *Foman v. Davis*, 371 U.S. 178, 182 (1962); see also *Oran v. Stafford*, 226 F.3d 275, 291 (3d Cir. 2000).

"The decision of whether to permit a supplemental pleading is within this Court's discretion." *Hassoun v. Cimmino*, 126 F.Supp.2d 353, 360-361 (D.N.J. 2000) (citing *Owens Illinois, Inc. v. Lake Shore Land Co.*, 610 F.2d 1185, 1188-89 (3d Cir. 1979); *Burns v. Exxon Corp.*, 158 F.3d 336, 344 (5th Cir. 1998)). Therefore, decisions regarding motions to amend or supplement pleadings rest in the sound discretion of the district court and will not be disturbed absent an abuse of that discretion. See e.g., *Bjorgung v. Whitetail Resort, LP*, 550 F.3d 263 (3d Cir. 2008); *Cureton v. National Collegiate Athletic Ass'n.*, 252 F.3d 267 (3d Cir. 2001).

That discretion, however, is governed by certain basic principles, principles that are embodied in Rule 15 of the Federal Rules of Civil Procedure. In this regard, while Rule 15 provides that leave to amend should be freely given when justice so requires, the district court still retains broad discretion to deny a motion to amend, *Bjorgung v. Whitetail Resort, LP*, 550 F.3d 263 (3d Cir. 2008); *Cureton v. National Collegiate Athletic Ass'n.*, 252 F.3d 267 (3d Cir. 2001), and may deny a request:

[I]f the plaintiff's delay in seeking to amend is undue, motivated by bad faith, or prejudicial to the opposing party. *Adams*, 739 F.2d at 864. Delay becomes "undue," and thereby creates grounds for the district court to refuse leave, when it places an unwarranted burden on the court or when the

plaintiff has had previous opportunities to amend. Cureton, 252 F.3d at 273 (citing Adams, 739 F.2d at 868; Lorenz v. CSX Corp., 1 F.3d 1406, 1414 (3d Cir. 1993)). Thus, our review of the question of undue delay ... will "focus on the movant's reasons for not amending sooner," Cureton, 252 F.3d at 273, and we will balance these reasons against the burden of delay on the District Court. Coventry v. U.S. Steel Corp., 856 F.2d 514, 520 (3d Cir. 1988).

Bjorgung v. Whitetail Resort, LP, 550 F.3d at 266. Furthermore,

"Among the grounds that could justify a denial of leave to amend are undue delay, bad faith, dilatory motive, prejudice, and futility." In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1434 (3d Cir. 1997) ("Burlington"); Lorenz v. CSX Corp., 1 F.3d 1406, 1413-14 (3d Cir. 1993). "Futility" means that the complaint, as amended, would fail to state a claim upon which relief could be granted. Burlington, 114 F.3d at 1434.

Shane v. Fauver, 213 F.3d 113, 115 (3d Cir. 2000). Moreover, a party seeking to supplement pleadings must act in a diligent fashion. Thus, for example, "[a] District Court has discretion to deny a plaintiff leave to amend where the plaintiff was put

on notice as to the deficiencies in his complaint, but chose not to resolve them." Krantz v. Prudential Investments Fund Management LLC, 305 F.3d 140, 144 (3d Cir. 2002) (citing Rolo v. City Investing Co. Liquidating Trust, 155 F.3d 644, 654 (3d Cir. 1998)).

At the outset, we note that this motion to amend fails because the plaintiffs have not acted in a diligent fashion. The motion was filed nearly five years after the original complaint was lodged in federal court; nearly four years after that complaint was dismissed; and some three years after the dismissal was upheld on appeal. Nothing about

this dilatory approach to litigation meets Rule 15's due diligence standard.

In any event, the motion to amend fails on futility grounds "because the complaint, as amended, would fail to state a claim upon which relief could be granted" *Shane*, 213 F.3d at 115. Indeed, the amended complaint still runs afoul of at least five separate legal hurdles.

First, since the state courts are still actively exercising jurisdiction over the assets at dispute in this Orphans Court litigation, the *Princess Lida* doctrine still applies here and calls for continued abstention by the federal courts. See *Dyno*, 2021 WL 3508252, at *3 (3d Cir. Aug. 10, 2021).

Second, to the extent that this proposed amended complaint purports to bring claims arising out of the August 2021 Orphans Court order, these civil rights claims are time-barred. It is well-settled that claims brought pursuant to 42 U.S.C. ' 1983 are subject to the state statute of limitations for personal injury actions. *Wilson v. Garcia*, 471 U.S. 261, 266-67 (1985). In Pennsylvania, the statute of limitations for a personal injury action is two years. 42 Pa. C.S. ' 5524. A cause of action accrues for statute of limitations purposes when the plaintiff knows or has reason to know of the injury that constitutes the basis of the cause of action. *Samerica Corp. of Delaware, Inc. v. City of Philadelphia*, 142 F.3d 582, 599 (3d Cir. 1998); see also *Nelson v. County of Allegheny*, 60 F.3d 1010 (3d Cir. 1995).

While this two-year limitations period may be extended based upon a continuing wrong theory, a plaintiff must make an exacting showing to avail himself of this grounds for tolling the statute of limitations. For example, it is well settled that the A continuing conduct of [a] defendant will not stop the ticking of the limitations clock [once] plaintiff obtained requisite information [to state a cause of action]. On discovering an injury and its cause, a claimant must choose to sue or forego that remedy.@ *Barnes v. American*

Tobacco Co., 161 F.3d 127, 154 (3d Cir. 1998) (quoting *Kichline v. Consolidated Rail Corp.*, 800 F. 2d 356, 360 (3d Cir. 1986)). See also *Lake v. Arnold*, 232 F.3d 360, 266-68 (3d Cir. 2000). Instead

The continuing violations doctrine is an equitable exception to the timely filing requirement. @ *West v. Philadelphia Elec. Co.*, 45 F.3d 744, 754 (3d Cir.1995). Thus, when a defendant's conduct is part of a continuing practice, an action is timely so long as the last act evidencing the continuing practice falls within the limitations period; in such an instance, the court will grant relief for the earlier related acts that would otherwise be time barred. @ *Brenner v. Local 514, United Bhd. Of Carpenters and Joiners of Am.*, 927 F.2d 1283, 1295 (3d Cir.1991). In order to benefit from the doctrine, a plaintiff must establish that the defendant's conduct is more than the occurrence of isolated or sporadic acts. @ *West*, 45 F.3d at 755 (quotation omitted). Regarding this inquiry, we have recognized that courts should consider at least three factors: (1) subject matter-whether the violations constitute the same type of discrimination, tending to connect them in a continuing violation; (2) frequency-whether the acts are recurring or more in the nature of isolated incidents; and (3) degree of permanence-whether the act had a degree of permanence which should trigger the plaintiff's awareness of and duty to assert his/her rights and whether the consequences of the act would continue even in the absence of a continuing intent to discriminate. See *id.* at 755 n. 9 (citing *Berry v. Board of Supervisors of Louisiana State Univ.*, 715 F.2d 971, 981 (5th Cir.1983)). The consideration of "degree of permanence" is the most important of the factors. See *Berry*, 715 F.2d at 981.

Cowell v. Palmer Township. 263 F.3d 286, 292 (3d Cir. 2001).

Here, it is evident that the plaintiffs were acutely aware of what they perceived to be a legal harm in August of 2021, when the state judge they wish to name as a defendant filed the order they find objectionable. Therefore, their failure to act over the next three years now bars them from bringing some belated claims against the executor of this estate, his attorney, or the state court judge.

Likewise, the plaintiffs cannot sue the executor's counsel, a private attorney, because he has successfully defended the executor's interests in state court. Before a civil rights claim can be entertained under § 1983 it must be shown that the defendant was a state actor. On this score, it is well-settled that: "Attorneys performing their traditional functions will not be considered state actors solely on the basis of their position as officers of the court." *Angelico v. Lehigh Valley Hosp., Inc.*, 184 F.3d 268, 277 (3d Cir. 1999). This bedrock legal principle has been specifically applied to attorneys involved in state estate litigation. *Stephens v. Kenney*, 802 F. App'x 715, 719 (3d Cir. 2020). Therefore, this claim also fails as a matter of law. Nor can the plaintiffs bring a federal civil rights claim against the executor this estate, as they endeavor to do in their proposed amended complaint, since the Third Circuit has held that the executor of a private estate who becomes embroiled in state litigation is likewise not a state actor within the meaning of § 1983. *Id.*

In the same vein, the plaintiffs' proposed claims in their amended complaint against the presiding state Orphans Court judge are entirely without merit and run afoul of the longstanding immunity conferred upon judges. As the Third Circuit has observed when disposing of a similar claim made against a state judge arising out of acrimonious estate litigation: "A judicial officer in the performance of his duties has absolute immunity from suit and will not be

liable for his judicial acts.” Stephens, 802 F. App'x at 719 (quoting Capogrosso v. Sup. Ct. of N.J., 588 F.3d 180, 184 (3d Cir. 2009)).

Finally, to the extent that the plaintiffs in their proposed amended complaint invite us to reexamine, review, and reverse state court judgments, another federal abstention principle, the Rooker-Feldman doctrine, compels us to decline this invitation. Once again, the Third Circuit's opinion in Stephens v. Kenney, 802 F. App'x 715 (3d Cir. 2020), which addressed virtually identical *pro se* legal claims, is instructive. As the Court of Appeals noted in Stephens when rejecting a request by a *pro se* litigant to set aside state probate court rulings:

The Rooker-Feldman doctrine deprives federal courts of subject-matter jurisdiction over claims when “(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.” Great W. Mining & Mineral Co. v. Fox Rothschild LLP, 615 F.3d 159, 166 (3d Cir. 2010) (alterations omitted) (quoting Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284, 125 S.Ct. 1517, 161 L.Ed.2d 454 (2005)).

Id. at 718

So it is in the instant case. The plaintiffs are state court losers who continue to complain of state court judgments rendered when there was no federal litigation pending and invite the federal courts to set those rulings aside. This we cannot do.

Simply put, the plaintiffs' motion to amend their previously dismissed complaint fails because they have not acted with due diligence and any amendment would be futile given the

many legal obstacles which bar recovery on their part. Therefore, this motion should also be denied.

IV. Recommendation

Accordingly, for the foregoing reasons, IT IS RECOMMENDED that the plaintiffs' motions seeking to reopen this lawsuit and amend their complaint to sue not only their relative in this estate dispute, but the defendant's attorney and the trial court judge who is presiding over the related, pending state case, (Docs. 39, 40, 49), be DENIED.

The Parties are further placed on notice that pursuant to Local Rule 72.3:

Any party may object to a magistrate judge's proposed findings, recommendations or report addressing a motion or matter described in 28 U.S.C. § 636 (b)(1)(B) or making a recommendation for the disposition of a prisoner case or a habeas corpus petition within fourteen (14) days after being served with a copy thereof. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. The briefing requirements set forth in Local Rule 72.2 shall apply. A judge shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need not conduct a new hearing only in his or her discretion or where required by law, and may consider the record developed before the magistrate judge, making his or her own determination on the basis

of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions.

Submitted this 1st day
of October 2024.

S/ Martin C. Carlson
Martin C. Carlson
United States Magistrate
Judge

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 20-3302

THOMAS LAMONT DYNO;
JULIA DYNO,
Appellants

v.

ALBERT DYNO, JR., in his official and personal capacity
as Executor of the Estate of Rosemarie Sterchak,
deceased

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Civil Action No. 3-19-cv-01966)
District Judge: Honorable Malachy E. Mannion

Submitted Pursuant to Third Circuit LAR 34.1(a)
August 5, 2021

Before: AMBRO, PORTER and SCIRICA, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Middle District of Pennsylvania and was submitted pursuant to Third Circuit LAR 34.1(a) on August 5, 2021. On consideration whereof, it is now hereby ORDERED and ADJUDGED by this Court that the judgment of the District Court entered November 30, 2020, be and the same is hereby affirmed as modified. Each side shall bear its own costs. All the above in accordance with the opinion of this Court.

Dated: August 10, 2021

ATTEST:

s/s Patricia Dodszuweit
Clerk

Certified as a true copy and issued in lieu of a formal mandate on
09/20/2021 Teste: s/s Patricia Dodszuweit Clerk, U.S. Court of
Appeals for the Third Circuit

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 20-3302

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Before: AMBRO, PORTER and SCIRICA, Circuit Judges

(Opinion filed: August 10, 2021)

OPINION*

* This disposition is not an opinion of the full Court and
pursuant to 1.0.P. 5.7 does not constitute binding
precedent.

PERCURIAM

Pro se appellants Thomas Dyno and Julia Dyno appeal
from the District Court's orders granting the defendant's
motion to dismiss and denying their motion for

reconsideration. For the following reasons, we will affirm the District Court's judgment with a modification.

I.

As we write primarily for the parties, who are familiar with the facts, we will discuss the details only as they are relevant to our analysis. This case derives from a dispute over the estate of Rosemarie Sterchak. Sterchak died in October 2015, leaving a will that named the defendant, Albert Dyno, Jr., as her executor. In the will, Sterchak left bequests of specific corporate stocks and cash to several individuals, including both plaintiffs. The executor, through counsel, represented to the beneficiaries of these bequests that the residual estate lacked sufficient liquid assets to pay the inheritance taxes and administrative expenses of the estate. He assigned each beneficiary a share of the estimated deficit and sought agreement from each beneficiary to either pay this share to the estate in cash or permit the executor to liquidate sufficient stocks from the beneficiary's bequest to cover the share.

The plaintiffs refused the executor's proposed agreement and filed a petition for inventory and accounting with the county Orphans' Court. The plaintiffs allege that the executor's proposals did not follow applicable Pennsylvania law regarding inheritance taxes and estate expenses. They also allege that the executor and his counsel improperly sought payments and fees for their own benefit. The executor filed a first inventory and accounting in late 2016, and the plaintiffs objected. Litigation before the Orphans' Court and the Pennsylvania appellate courts continued through the filing of this action in November 2019. At that time, the administration of the estate remained pending before the Orphans' Court and the plaintiffs had filed a petition to the Pennsylvania Supreme Court concerning

certain motions, which was later denied.¹

The plaintiffs filed a complaint against the executor in the District Court.² Invoking 42 U.S.C. § 1983, they claimed that the executor was violating their rights under the Due Process Clause of the Fourteenth Amendment by depriving them of their specific legacies. They also asserted state-law claims for fraud and breach of fiduciary duty. For relief, the plaintiffs essentially requested a declaration that they were entitled to immediate possession of the stocks in their bequests and an order requiring the executor to turn over the stocks, along with associated dividends, interests, and costs.

Adopting a Magistrate Judge's Report and Recommendation over the plaintiffs' objections, the District Court granted the defendant's motion to dismiss for lack of subject matter jurisdiction and later denied the plaintiffs' motion for reconsideration. The plaintiffs appealed both rulings.

II.

We have jurisdiction under 28 U.S.C. § 1291. Our review of the District Court's dismissal of the complaint pursuant to Federal Rule of Civil Procedure 12(b)(1) is de novo. In re Horizon Healthcare Servs. Data Breach Litig., 846 F.3d 625, 632 (3d Cir. 2017). Since the defendant's motion is a facial, rather than factual, attack on jurisdiction, we

¹ The administration of the estate still remains pending before the Orphans' Court. The executor represents that this is because of the plaintiffs' continued litigation. Appellee's Br. 4, 3d Cir. ECF No. 26. The other beneficiaries appear to have accepted the executor's proposal or otherwise reached agreement and received the remainder of their bequests.

² The plaintiffs relied primarily on federal question jurisdiction and supplemental jurisdiction, but argued that diversity jurisdiction applied "if necessary". Compl., ¶ 5, ECF No. 1.

consider the allegations of the complaint as true. *Id.* We review "a denial of a motion for reconsideration for abuse of discretion, but we review the District Court's underlying legal determinations de novo and factual determinations for clear error." *U.S. ex rel. Schumann v. AstraZeneca Pharms. L.P.*, 769 F.3d 837, 848 (3d Cir. 2014) (quoting *Howard Hess Dental Labs. Inc. v. Dentsply Int'l Inc.*, 602 F.3d 237,246 (3d Cir. 2010)).

III.

The District Court determined that it lacked jurisdiction under the Princess Lida doctrine. *Princess Lida of Thum & Taxis v. Thompson*, 305 U.S. 456, 466 (1939). We agree. The Princess Lida doctrine "prevents a court in which an action is filed from exercising jurisdiction when a court in a previously filed action is exercising control over the property at issue and the second court must exercise control over the same property in order to grant the relief sought," even where the property has not actually been seized. *Dailey v. Nat'l Hockey League*, 987 F.2d 172, 175 (3d Cir. 1993). It is a "mechanical rule" that "applies when: (1) the litigation in both the first and second fora are in rem or quasi in rem in nature, and (2) the relief sought requires that the second court exercise control over the property in dispute and such property is already under the control of the first court." *Id.* at 176. We apply the rule based on the circumstances at the time the action was filed. *Id.* at 177; *Chevalier v. Estate of Barnhart*, 803 F.3d 789, 803 (6th Cir. 2015).

Here, the Orphans' Court exercised control over the estate property, including the bequests at issue. See *In re Estate of Craig*, 109 A.2d 190, 198 (Pa. 1954) (per curiam) ("[T]he accounting and distribution of a decedent's estate" is "a proceeding in rem."); *Three Keys Ltd. v. SR Util. Holding Co.*, 540 F.3d 220, 227-229 (3d Cir. 2008) (concluding that

a decedent's stock shares remained within the jurisdiction of the orphans' court until approval of any transfer).³

The plaintiffs argue that they were entitled to their specific legacies immediately upon Sterchak's death and that, absent proof of a deficiency in the residual estate, their legacies are not properly part of the estate or subject to the jurisdiction of the Orphans' Court, relying on *Beatty v. Hottenstein*, 112 A.2d 397, 399-400 (Pa. 1955) (ultimately quoting *In re Robinson's Estate*, 24 Pa. C. 588, 589, 591 (Huntingdon Cnty. Orphans' Ct. 1901)). But neither *Beatty* nor *Robinson's Estate* addresses the jurisdiction of the Orphans' Court and here, unlike in those cases, the executor represents that the residual estate is insufficient to pay debts and expenses. See *Beatty*, 112 A.2d at 400; *Robinson's Estate*, 24 Pa. C. at 589. ⁴

To grant the relief sought by the plaintiffs, the District Court would have had to exercise control over the shares of stock at issue. See *Three Keys*, 540 F.3d at 229 (determining that a request for declaratory judgment sought "a federal court determination of [the plaintiffs] ownership interest in" stock and "would dispose of Estate property under the jurisdiction of the Orphans' Court"); *Lefkowitz v. Bank of New York*, 528 F.3d 102, 107 (2d Cir.

³ *Three Keys* applies the "probate exception to federal courts' diversity jurisdiction." 540 F.3d at 222. But the third prong of that exception, applied in *Three Keys*, is a restatement of the *Princess Lida* doctrine. See *id.* at 227 (applying the principle that a federal court may not "assume in rem jurisdiction over property that is in the custody of the probate court"); see *Goncalves ex rel. Goncalves v. Rady Child's Hosp. San Diego*, 865 F.3d 1237, 1253 (9th Cir. 2017) (noting that this aspect of the probate exception is "an application of the prior exclusive jurisdiction [or *Princess Lida*] doctrine"); *Chevalier*, 803 F.3d at 803 ("The prior-exclusive-jurisdiction doctrine is similar- if not identical to- the probate exception.").

⁴ Furthermore, both cases predate significant statutory revisions, and *Beatty*, to the extent that it relies on the broad language of *Robinson's Estate*, does so only within in the context of entitlement to interest and proceeds. *Beatty*, 112 A.2d at 399.

2007) (concluding that providing requested specific performance and declaratory relief would require the federal court "to assert control over property that remains under the control of the state courts"). The practical effect of the relief, rather than the precise labelling of in rem or quasi in rem, is dispositive. See Dailey, 987 F .2d at 177. The plaintiffs asked the District Court to order the distribution of specific property subject to the jurisdiction of the Orphans' Court. The District Court thus lacked subject matter jurisdiction under the Princess Lida doctrine.

The District Court, adopting the Recommendation and Report of the Magistrate Judge, further considered whether the plaintiffs should be given leave to amend their complaint in order to seek money damages under§ 1983. ⁵ It determined that any such amendment would be futile.

While we agree with the District Court's decision to dismiss this case for lack of jurisdiction, and to deny reconsideration of that decision when the plaintiffs motion merely stated their disagreement with the District Court's analysis, see *Max's Seafood Cafe ex rel. Lou-Ann, Inc. v. Quinteros*, 176 F. 3d 669, 677 (3d Cir. 1999), the dismissal should have been without prejudice. See *NJ. Physicians, Inc. v. President of U.S.*, 653 F.3d 234, 241 n.8 (3d Cir. 2011) (explaining that dismissals for lack of subject matter jurisdiction are "by definition without prejudice"); *cf. Thome v. Pep Boys Manny Moe & Jack Inc.*, 980 F .3d 879, 896 (3d Cir. 2020) ("The specter of serial litigation cannot imbue the District Court with jurisdiction it otherwise lacks.").

IV.

⁵ The District Court did not consider any other potential amendments.

Accordingly, we will affirm except that we will modify the judgment to reflect that the dismissal of the plaintiffs' complaint was without prejudice.^{6 7}

⁶ As modified, the judgment no longer adopts the portions of the Magistrate Judge's report and recommendation concerning futility. Under the circumstances of this case, it was unnecessary to consider whether amendment was futile. See *Figueroa v. Buccaneer Hotel, Inc.*, 188 F.3d 172, 182 (3d Cir. 1999) (explaining that a dismissal for lack of subject matter jurisdiction is not an adjudication on the merits).

⁷ The plaintiffs move for permission to file additional copies of their brief on DVDs, in order to include hyperlinks. Mot., 3d Cir. ECF No. 22. We grant this motion.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

THOMAS LAMONT DYNO , et al

Plaintiffs

v.

ALBERT DYNO JR. executor of
The ESTATE OF ROSEMARIE
STEARCHAK, deceased
Defendant

No 3:19-cv-01966

(Mannion J.)

ORDER

Presently before the court is report and recommendation ("Report") of Magistrate Judge Joseph F. Saporito, Jr, (Doc. 11), which recommends that this action be dismissed for lack of subject matter jurisdiction. The plaintiffs have filed objections to the Report, (Doc. 12), and, in response, the defendant filed a brief in opposition to the objections, (Doc. 13). The plaintiffs subsequently filed a "Joint Motion for Order to Show Cause on Respondent, for Judge's Signature," Doc. 14), and a "Joint Motion for Declaratory Judgment," (Doc. 20) ^{1.1}

When objections are timely filed to the report and recommendation of a magistrate judge, the district court must review *de novo* those portions of the report to which objections are made. 28 U.S.C. §636(b)(1); *Brown v. Astrue*, 649 F.3d 193, 195 (3d Cir.2011). Although the standard is *de novo*, the extent of review is committed to the sound discretion of the district judge and the court may rely on the recommendations of the magistrate judge to the extent it deems proper. *Rieder v. Apfel*, 115 F.Supp.2d 496, 499 M.D.Pa.2000) (citing *U.S. v. Raddatz*, 447 U.S. 667, 676

¹ Although the plaintiffs have identified these motions as "joint" motions, they appear to misapprehend the term "joint" as it applies to legal motions. It appears that the plaintiffs were attempting to indicate that the motions were from both plaintiffs, as opposed to both parties

(1980)).

Even where no objection is made, the court should, as a matter of good practice, "satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Fed. R. Civ. P. 72(b) advisory committee notes; *see also Univac Dental Co. v. Dentsply Intern., Inc.*, 702 F.Supp.2d 465, 469 (M.D.Pa.2010) (citing *Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir.1987) (explaining judges should give some review to every report and recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, not accept, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. §636(b)(1); M.D. Pa. Local Rule 72.31.

In his Report, Judge Saporito observes that because both the state orphans' court proceeding and this case are *in rem* in nature, and because the relief requested by the plaintiffs—an injunction directing the executor to deliver to them the stocks bequeathed to them—would require this court to exercise jurisdiction over property already under the control of the orphans' court, this court lacks jurisdiction under the *Princess Lida* doctrine. *See Princess Lida of Thurn & Taxis v. Thompson*, 305 U.S. 456, 466 (1939) (requiring the second court to yield jurisdiction over a suit where both suits are *in rem* and the relief sought requires the second court exercise to control over property that is already under control of the first court); *see also Dailey v. Nat'l Hockey League*, 987 F.2d 172, 176 (3d Cir.1993). Judge Saporito notes that, while in other instances it would be appropriate to permit leave to amend the complaint to seek monetary damages, doing so is not appropriate here because the neither the estate nor the executor of an estate are state actors for purposes of Section 1983. Accordingly, Judge Saporito recommends that the court grant the defendant's motion to dismiss, (Doc. 7), and dismiss the complaint without permitting leave to amend, as any such amendment would be futile.

The plaintiffs have filed objections to Judge Saporito's Report; however, their objections do nothing more than restate the same arguments they raised elsewhere in their filings or express their fundamental misunderstanding of, and disagreement with, applicable law, including the jurisdiction of federal courts. The court has conducted a thorough review of all pertinent filings and finds the Report of Judge Saporito to be well-reasoned and well-supported. As such, the court will adopt the report in its entirety as the decision of the court.

Finally, because the court will adopt the Report and dismiss this action for lack of subject matter jurisdiction, the court will dismiss as moot the two subsequent "joint motions" filed by the plaintiffs on June 1, 2020, (Doc. 14), and September 13, 2020, (Doc. 20).

**NOW, THEREFORE, IT IS HEREBY ORDERED
THAT:**

- (1) Judge Saporito's Report, (Doc. 11), is **ADOPTED IN ITS ENTIRETY**;
- (2) The plaintiffs' objections to the Report, (Doc. 12), are **OVERRULED**;
- (3) The defendant's motion to dismiss, (Doc. 7), is **GRANTED**, and the Complaint, (Doc. 1), is **DISMISSED WITH PREJUDICE**;
- (4) The plaintiffs' motion for an order to show cause, (Doc. 14), and their motion for declaratory judgment, (Doc. 20), are **DISMISSED AS MOOT**; and
- (5) The Clerk of Court is directed to **CLOSE THIS CASE**

s/ Malachy E. Mannion
MALACHY E. MANNION
United States District Judge

DATE: October 13, 2020
19-1966-01

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

THOMAS LAMONT DYNO , et al

Plaintiffs

v.

ALBERT DYNO JR. executor of
The ESTATE OF ROSEMARIE
STEARCHAK, deceased
Defendant

No 3:19-cv-01966
(Mannion J.)

MEMORANDUM

Presently before the court is a motion for reconsideration filed by the plaintiffs Thomas Lamont Dyno and Julia Dyno. (Doc. 23). For the foregoing reasons, the motion will be **DENIED**.

I. BACKGROUND

Since the factual background of this case was set forth in the court's prior filings, it need not repeat it herein. Pertinent here, on October 22, 2020, the court adopted a report and recommendation by Magistrate Judge Joseph F. Saporito, Jr., (Doc. 11), that recommended dismissal of the plaintiffs' complaint, (Doc. 1), without leave to amend for several reasons. First, the complaint pertained to property which was the subject of a proceeding in the state orphans' court. Additionally, the relief sought, an injunction directing the executor to deliver to the plaintiffs the stocks bequeathed to them, would have required this court to exercise jurisdiction over property already under the control of the orphan's court. Thus, this court concluded it lacked jurisdiction under the *Princess Lida* doctrine and that dismissal of the complaint was appropriate. The court declined to grant the plaintiffs leave to amend their Section 1983 claim to seek monetary damages because to do so would be futile in that neither an estate, nor an executor of an estate, is a state actor for purposes of Section 1983.

On November 1, 2020, the plaintiffs filed the present motion for reconsideration, (Doc. 23), attached to which was an "Affidavit Statement of Material Facts," (Doc. 23-1), an "Appendix Exhibits Introduced by Statement of Facts," (Doc. 23-2), and a memorandum of law in support of the motion, (Doc. 23-3).

On November 9, 2020, the plaintiffs filed a "Notice to Certify Questions pursuant to 28 USC §2403(a)." (Doc. 24). The following day, November 10, 2020, the plaintiffs filed a notice of appeal to the Third Circuit. (Doc. 25).

On November 19, 2020, the defendant Albert Dyno, Jr. filed a brief in opposition to the motion for reconsideration. (Doc. 27). The plaintiffs responded the following day with a reply brief. (Doc. 28).

II. LEGAL STANDARD

"The purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence." *Harsco v. Zlotnicki*, 779 F.2d 906, 909 (3d Cir.1985). "Accordingly, a judgment may be altered or amended if the party seeking reconsideration shows at least one of the following grounds: (1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court granted the motion for summary judgment; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice." *Howard Hess Dental Labs. Inc. v. Dentsply Intern., Inc.*, 602 F.3d 237, 251 (3d Cir.2010) (internal quotation marks omitted); *see also Chesapeake Appalachia, LLC v. Scott Petroleum, LLC*, 73 F.Supp.3d 488, 491 (M.D. Pa. 2014) (Generally, reconsideration motions should be granted sparingly.). "The standard for granting a motion for reconsideration is a stringent one [A] mere disagreement with the court does not translate into a clear error of law." *Chesapeake Appalachia*, 73 F.Supp.3d at 491 (quoting *Mpala v. Smith*, No. 3:CV-06-841, 2007 WL 136750, at *2

(M.D. Pa. Jan. 16, 2007), *aff'd*, 241 Fed. App'x 3 (3d Cir.2007)).

III. DISCUSSION

Initially, as the defendant observes, the plaintiffs' motion for reconsideration is untimely. Pursuant to Local Rule 7.10, a motion for reconsideration "must be filed within fourteen (14) days after the entry of the order concerned." M.D. Pa. Local Rule 7.10. Since the order that the plaintiffs wish the court to reconsider was entered on October 13, 2020, their motion should have been filed by October 27, 2020. The plaintiffs, however, did not file their motion until November 1, 2020.¹ Accordingly, their motion would properly be denied as untimely pursuant to this court's Local Rules.

Even excusing the untimeliness of motion, however, denial is nevertheless appropriate based upon on the merits. In their motion, the plaintiffs largely rehash, and expand upon, their arguments from their earlier filings and their objections to Judge Saporito's report and recommendation, as well as set forth additional "material facts" regarding the history of the case. (Doc. 23-1). A motion for reconsideration is not a proper vehicle for such purposes. It is well settled that that a motion for reconsideration "may not be used to give a dissatisfied party a chance to [change] theories and try again, obtaining a second bite at the apple." *Kropa v. Cabot Oil & Gas Corp.*, 716 F.Supp.2d 375, 378 (M.D.Pa.2010) (internal quotation marks omitted). The plaintiffs' unhappiness with the court's October 13, 2020 order is not a sufficient basis to grant them relief.

Although they do cite to various historic cases, including some well over a century old, the plaintiffs do not identify any controlling authority that would change the outcome of this case. Likewise, the plaintiffs do not point to any

¹ Despite their *pro se* status, the plaintiffs are CM/ECF filers

recently-acquired evidence that would justify reconsideration. The burden for reconsideration is on the moving party and, put simply, the plaintiffs here have not demonstrated that any of the three grounds required for the court to grant reconsideration exist.

IV. CONCLUSION

Based on the foregoing, the plaintiffs' motion for reconsideration of the court's October 13, 2020 order dismissing their complaint without leave to amend is **DENIED**.

s/ Malachy E. Mannion
MALACHY E. MANNION
United States
District Judge

DATE: November 30, 2020
19-1966-01

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

Thomas Lamont Dyno et al

Plaintiffs

v

Albert Dyno J., Executor of
The Estate of Rosemarie
Sterchak decd.

Defendant

Civil Action No 3:19-cv-1966

Mannion J

Saporito. MJ

REPORT AND RECOMMENDATION

This is fee-paid, *pro se* civil action challenging the disposition of certain assets by the executor of an estate. The plaintiffs, Thomas Lamont Dyno and Julia Dyno (his mother), are residents of New York. The sole defendant in this action is Albert Dyno, Jr., Executor of the Estate of Rosemarie Sterchak. The defendant is a resident of Pennsylvania.¹ The amount in controversy exceeds \$75,000.²

In their *pro se* complaint, the plaintiffs accuse the executor of fraud, self-dealing, and breach of fiduciary duty with respect to administration of the estate. They claim that the executor has refused to convey to them certain stocks bequeathed to them by specific bequest in the decedent's will. They raised these same claims in state probate proceedings, challenging the executor's determination that

¹ We note that, for diversity purposes, the citizenship of the estate is based on that of its executor. See *Field v. Volkswagen Werk AG*, 626 F.2d 293, 302 (3d Cir. 1980); *Golden Gate Nat'l Senior Care, LLC v. Beavens*, 123 F. Supp. 3d 619, 627 n.2 (E.D. Pa. 2015).

² "Where the plaintiff in a diversity action seeks injunctive or declaratory relief, the amount in controversy is determined by 'the value of the object of the litigation.'" *AAMCO Transmissions, Inc. v. Romano*, 42 F. Supp. 3d 700, 704 (E.D. Pa. 2014) (quoting *Hunt v. Washington Apple Advertising Comm'n*, 432 U.S. 333, 347 (1977)).

it was necessary for the plaintiffs and other specific bequest beneficiaries under the will to make a *pro-rata* contribution toward payment of inheritance taxes and administrative expenses because the estate lacked sufficient liquid assets to satisfy these obligations. The plaintiffs' objections were rejected by the state probate court. At the time of the filing of this federal civil action, the plaintiffs' state court appeal had been quashed by the Superior Court of Pennsylvania and allocatur had been denied by the Supreme Court of Pennsylvania, but a petition for rehearing remained pending before the state supreme court. At the time of filing, administration of the estate remained incomplete and the stocks specifically bequeathed to the plaintiffs had not been sold.

Based on this alleged conduct in state probate proceedings, the plaintiffs claim that the executor has deprived them of property interests protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution, made actionable by 42 U.S.C. § 1983. In addition, the plaintiffs appear to assert supplemental state-law claims against the executor for fraud and breach of fiduciary duty³. For relief, the plaintiffs seek declaratory judgment and injunctive relief—an order directing the executor to deliver the specifically bequeathed stocks to them, including any dividends paid since the passing of the decedent.

The executor has moved to dismiss the action for lack of subject matter jurisdiction, pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure. (Doc. 7.) He contends

³ The plaintiffs allege that this Court may properly exercise federal question jurisdiction, 28 U.S.C. § 1331, and supplemental jurisdiction, 28 U.S.C. § 1367, over this case. In the alternative, and "if necessary," the plaintiffs allege that this Court may properly exercise diversity jurisdiction, 28 U.S.C. § 1332.

that this Court lacks jurisdiction under the probate exception to federal jurisdiction ⁴ and the *Princess Lida* doctrine⁵ In the alternative, the executor contends that this Court should exercise its equitable discretion and abstain from hearing this case pursuant to the *Burford* abstention doctrine ⁶

The motion is fully briefed and ripe for disposition. (Doc. 7; Doc. 9; Doc. 10.)

I. BACKGROUND

The decedent, Rosemarie Sterchak, died in October 2015. In her will, Sterchak named the defendant, Albert Dyno, Jr., as her executor. She also named fifteen beneficiaries to whom she bequeathed shares of various stocks, including the plaintiffs, Thomas Dyno (her nephew) and

⁴ “[T]he probate exception reserves to state probate courts the probate or annulment of a will and the administration of a decedent’s estate; it also precludes federal courts from endeavoring to dispose of property that is in the custody of a state probate court. But it does not bar federal courts from adjudicating matters outside those confines and otherwise within federal jurisdiction.” *Marshall v. Marshall*, 547 U.S. 293, 311–12 (2006).

⁵ “The *Princess Lida* doctrine ‘prevents a court in which an action is filed from exercising jurisdiction when a court in a previously filed action is exercising control over the property at issue and the second court must exercise control over the same property in order to grant the relief sought.’” *In re Allen*, 768 F.3d 274, 279 (3d Cir. 2014) (quoting *Dailey v. Nat’l Hockey League*, 987 F.2d 172, 175 (3d Cir. 1993)). See generally *Princess Lida of Thurn & Taxis v. Thompson*, 305 U.S. 456, 466 (1939).

⁶ Under the *Burford* abstention doctrine, “federal district courts should refrain from exercising jurisdiction when doing so would interrupt a state’s efforts to regulate an area ‘in which a state’s interests predominate’ and for which adequate and timely state review of the regulatory scheme is available.” *Jarman v. Capital Blue Cross*, 998 F. Supp. 2d 369, 380 (M.D. Pa. 2014) (quoting *Chiropractic Am. v. Lavecchia*, 180 F.3d 99, 104 (3d Cir. 1999)). See generally *Burford v. Sun Oil Co.*, 319 U.S. 315, 332–34 (1943).

Julia Dyno (her sister-in-law).⁷ But the executor determined that the estate lacked sufficient liquid assets to pay the inheritance tax and other obligations it owed⁸ In May 2016, the executor had counsel for the estate mail correspondence addressing this shortfall to several beneficiaries who were specifically bequeathed shares of stock. The correspondence sought each beneficiary's preference with respect to how his or her *pro rata* share of the inheritance tax and other obligations of the estate would be satisfied, inquiring whether each beneficiary wanted to pay some or all of the *pro rata* share from his or her own cash, or to liquidate some portion of the stocks bequeathed to him or her instead. The letter was in the form of a proposed letter-agreement between each beneficiary and the estate. The plaintiffs received but did not execute the letter-agreement.

On June 30, 2016, the plaintiffs filed a petition for inventory and accounting with the county orphans' court. In September 2016, the executor filed his first account and inventory. The plaintiffs objected. On November 16, 2017, the orphans' court dismissed the plaintiffs objections, and the plaintiffs took an appeal. On March 24, 2017, the orphans' court endorsed a stipulated order enjoining the sale of any stock specifically bequeathed to the plaintiffs pending approval of a second and final accounting and any proposed distribution approved by the orphans' court. The orphans' court's decision was affirmed on appeal by the

⁷ The will included a specific bequest of \$3,000 cash, 500 shares of Altria Group stock, 89 shares of Southern Union Company stock, and 533 shares of Union Pacific stock to Julia Dyno, and a specific bequest of \$1,000 cash, 400 shares of Exxon stock, and 100 shares of Fortune Brand stock to Thomas Dyno.

⁸ The plaintiffs dispute the executor's assessment on this point. They propose alternative plans for distribution of the estate's assets.

Superior Court of Pennsylvania, and allocatur was denied by the Supreme Court of Pennsylvania.

While the plaintiffs' petition for allocatur was pending before the state supreme court, the plaintiffs moved for further relief in the orphans' court, requesting orders imposing a constructive trust over the stock shares bequeathed to them and compelling the executor to respond to written discovery. On October 31, 2018, the orphans' court entered two separate orders denying the constructive trust and discovery motions. The plaintiffs appealed. The Superior Court later quashed the plaintiffs' appeal from these unappealable interlocutory orders. The plaintiffs petitioned for allocatur, which was denied by the Supreme Court of Pennsylvania. At the time of filing this action, a petition for rehearing was pending before the state supreme court.

At the time of filing of this action, administration of the estate was incomplete, and the stocks specifically bequeathed to the plaintiffs had not been distributed or liquidated, in accordance with the orphans' court order of March 24, 2017.

II. LEGAL STANDARD

The plaintiff bears the burden of establishing the existence of subject matter jurisdiction under Rule 12(b)(1). *See Kehr Packages, Inc. v. Fidelcor, Inc.*, 926 F.2d 1406, 1409 (3d Cir. 1991). A defendant may challenge the existence of subject matter jurisdiction in one of two fashions: it may attack the complaint on its face or it may attack the existence of subject matter jurisdiction in fact, relying on evidence beyond the pleadings. *See Gould Elecs. Inc. v. United States*, 220 F.3d 169, 176 (3d Cir. 2000); *Mortensen v. First Fed. Sav. & Loan Ass'n*, 549 F.2d 884, 891 (3d Cir. 1977). Where a defendant attacks a complaint as deficient on its face, "the court must consider the allegations of the complaint as true." *Mortensen*, 549 F.2d at 891. "In deciding a Rule 12(b)(1) facial attack, the court may only consider the allegations contained in the complaint and the

exhibits attached to the complaint; matters of public record such as court records, letter decisions of government agencies and published reports of administrative bodies; and 'undisputably authentic' documents which the plaintiff has identified as a basis of his claims and which the defendant has attached as exhibits to his motion to dismiss." *Medici v. Pocono Mountain Sch. Dist.*, No. 09-CV-2344, 2010 WL 1006917, at *2 (M.D. Pa. Mar. 16, 2010). However, when a motion to dismiss attacks the existence of subject matter jurisdiction in fact, "no presumptive truthfulness attaches to plaintiff's allegations," and "the trial court is free to weigh the evidence and satisfy itself as to the existence of its power to hear the case." *Mortensen*, 549 F.2d at 891. This case falls into the former category.

III. DISCUSSION

The executor contends that this federal district court lacks jurisdiction over this action under the probate exception to federal jurisdiction.

The "probate exception" to diversity jurisdiction" constitutes "a jurisdictional limitation" on federal courts' ability to entertain certain diversity suits. *Three Keys Ltd. v. SR Util. Holding Co.*, 540 F.3d 220, 226 (3d Cir. 2008). Indeed, the Supreme Court has expressly recognized that the "probate exception" precludes, under certain circumstances, an "otherwise proper" exercise of federal jurisdiction. *Marshall v. Marshall*, 547 U.S. 293, 308 (2006). Under this exception, a federal court generally lacks "jurisdiction to probate a will or administer an estate" and may not exercise jurisdiction in a manner which "disturb[s] or affect[s] the possession of property in the custody of a state court[.]" *Markham v. Allen*, 326 U.S. 490, 494 (1946). Although the precise contours of the probate exception were at one time unclear, "[i]t is clear after *Marshall* that unless a federal court is endeavoring to (1) probate or annul a will, (2) administer a decedent's estate, or (3) assume *in rem* jurisdiction over property that is in the custody of the probate court, the probate exception does

not apply.” *Three Keys*, 540 F.3d at 226–27. The probate exception “does not bar federal courts from adjudicating matters outside those confines and otherwise within federal jurisdiction.” *Marshall*, 547 U.S. at 312.

Here, the only relief requested by the plaintiffs is declaratory judgment and an injunction directing the executor to deliver the specifically bequeathed stocks to them, including any dividends paid since the passing of the decedent. Such relief would clearly fall within the ambit of the probate exception, as it would require this federal district court either to assume *in rem* jurisdiction over stocks and traceable dividends currently in the custody of a state probate court or to effectively administer the decedent’s estate by dictating the executor’s distribution of these estate assets. To the extent the plaintiffs rely on diversity to establish subject matter jurisdiction, the complaint is found wanting.

But the plaintiffs have relied on diversity jurisdiction only as an *alternative* to federal question jurisdiction—the plaintiffs cast this suit primarily as a federal civil rights action brought under 42 U.S.C. § 1983, over which we may exercise federal question jurisdiction under 28 U.S.C. § 1331, accompanied by state law claims, over which we may exercise supplemental jurisdiction under 28 U.S.C. § 1367. As this Court has previously recognized, “it is uncertain if the probate exception even applies to federal question cases.” *Thorpe v. Borough of Thorpe*, No. 3:CV-10-1317, 2013 WL 1703572, at *6 (M.D. Pa. Apr. 19, 2013) (collecting cases and noting circuit split) (internal quotation marks omitted), *aff’d in part and rev’d in part on other grounds*, 770 F.3d 255 (3d Cir. 2014); *see also United States v. Tyler*, No. 10-1239, 2012 WL 848239, at *4 (E.D. Pa. Mar. 13, 2012) (collecting cases and noting circuit split).

We need not decide this unresolved issue here, however, because the *Princess Lida* doctrine, which is not limited to diversity jurisdiction, precludes this Court from

exercising jurisdiction over the plaintiffs' claims. In *Princess Lida*, the Supreme Court of the United States considered whether the exercise of jurisdiction by a state court over the administration of a trust deprived a federal court of jurisdiction over a later suit by some of the trust's beneficiaries seeking an accounting and removal of the trustees. The Supreme Court held:

[I]f the two suits are in rem, or quasi in rem, so that the court, or its officer, has possession or must have control of the property which is the subject of the litigation in order to proceed with the cause and grant the relief sought[,] the jurisdiction of the one court must yield to that of the other. . . . [T]he principle applicable to both federal and state courts that the court first assuming jurisdiction over property may maintain and exercise that jurisdiction to the exclusion of the other[] is not restricted to cases where property has been actually seized under judicial process before a second suit is instituted, but applies as well where suits are brought to marshal assets, administer trusts, or liquidate estates, and in suits of a similar nature where, to give effect to its jurisdiction, the court must control the property. The doctrine is necessary to the harmonious cooperation of federal and state tribunals.

Princess Lida of Thurn & Taxis v. Thompson, 305 U.S. 456, 466 (1939) (footnotes omitted); see also *Hohensee v. Grier*, 373 F. Supp. 1358, 1365-66 (M.D. Pa. 1974) ("Federal courts should decline to interfere with property over which a competent state court has assumed jurisdiction.") (citing *Princess Lida*). "*Princess Lida* applies when: (1) the litigation in both the first and second fora are *in rem* or *quasi in rem* in nature, and (2) the relief sought requires that the second court exercise control over the property in

dispute and such property is already under the control of the first court." *Dailey v. Nat'l Hockey League*, 987 F.2d 172, 176 (3d Cir. 1993). Moreover, "*Princess Lida* is a 'mechanical rule' which requires that the court in which the second suit is brought yield its jurisdiction if the requisite 'property' showing is made." *Id.*; see also *Crawford v. Courtney*, 451 F.2d 489, 492 (4th Cir. 1971) (stating that *Princess Lida* abstention is "compulsory," not discretionary).

Here, it is beyond cavil that the state orphans' court proceedings and this federal case are both *in rem* in nature, and the relief requested by the plaintiffs—an injunction directing the executor to deliver to the plaintiffs the stocks specifically bequeathed to them, together with any traceable dividend payments—clearly requires this Court to exercise control over property already under the control of the state probate court. Accordingly, this Court lacks subject matter jurisdiction over this action in its entirety.

Before closing, we note that *Princess Lida* does not apply to actions for damages *in personam*. See *Martz v. Braun*, 266 F. Supp. 134, 138–39 (E.D. Pa. 1967). In another case, leave to amend to seek damages instead of equitable relief might be warranted, but not here. Although we do not reach the merits of the plaintiffs' claims as articulated in the complaint, we note that a § 1983 claim requires the defendant to be a state actor—an individual acting under color of state law—rather than a private citizen. The "under color of state law" element of § 1983 excludes from its reach "merely private conduct, no matter how discriminatory or wrongful." *Blum v. Yaretsky*, 457 U.S. 991, 1002 (1982). Although appointed by a state court, the executor of an estate is not a state actor for § 1983 purposes, nor is the estate itself. See *Howard v. Schwank*, No. 1:17-CV-1044, 2017 WL 3047851 (M.D. Pa. June 15, 2017) (executor); *Walker v. Stern*, No. 11-1659, 2012 WL 3731375, at *6 n.12 (E.D. Pa. Aug. 29, 2012) (administrator); *Egnotovich v. Greenfield Twp. Sewer*

Auth., No. 4:CV 05-1818, 2007 WL 61020, at *2 (M.D. Pa. Jan. 5, 2007) (estate). Thus, we recommend dismissal without leave to amend the complaint to seek monetary damages, as any such amendment would be futile.

IV. RECOMMENDATION

For the foregoing reasons it is recommended that:

1. The defendant's Rule 12(b)(1) motion to dismiss (Doc. 7) be **GRANTED**;
2. This action be **DISMISSED** for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure; and
3. The Clerk be directed to mark this case as **CLOSED**.

Dated: April 16, 2020 *s/Joseph F. Saporito, Jr.*

JOSEPH F. SAPORITO, JR.
United States
Magistrate Judge

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