NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 19-1691

ALBERT J. ROBUS,
Appellant

v.

DR. MICHAEL S. YOON; JEFFREY SMITH, Providence Medical Technologies Inc., Chief Executive Officer; JANIE MANDRUSOV, V.P. Regulatory Affairs; ABINGTON MEMORIAL HOSPITAL

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil Action No. 2-19-cv-00439)
District Judge: Honorable Juan R. Sánchez

Submitted Pursuant to Third Circuit LAR 34.1(a)
December 2, 2020

Before: JORDAN, MATEY and NYGAARD, Circuit Judges

(Opinion filed: December 9, 2020)

OPINION*

PER CURIAM

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

Pro se appellant Albert Robus appeals the District Court's order denying his "motion to amend/reconsider." For the reasons detailed below, we will affirm the District Court's order.

Robus filed a complaint in the District Court in which he alleged that, when performing spinal surgery, defendant Dr. Michael Yoon used a cervical-cage system manufactured by defendant Providence Medical Technologies, Inc. Robus claimed that this system was not appropriate for his condition, that he did not consent to its use, and that it has caused him to suffer severe and permanent pain. In addition to Dr. Yoon and Providence, Robus named as defendants Abington Memorial Hospital and two officers of Providence. The District Court granted Robus permission to proceed in forma pauperis, but then sua sponte dismissed the complaint for lack of jurisdiction without prejudice to Robus's refiling in state court. The Court determined that Robus could not maintain claims under 42 U.S.C. § 1983 because none of the defendants were state actors, and that there was no diversity jurisdiction because Robus, Dr. Yoon, and Abington Memorial were all citizens of Pennsylvania. See generally 28 U.S.C. § 1332.

Forty-two days later, Robus filed a motion to amend/reconsider. He stated that he did not intend to pursue claims against the out-of-state defendants, and that he "only wanted to assert a claim of ordinary negligence on the part of Dr. Michael Yoon." ECF No. 9 at 1. The District Court denied the motion. The Court noted that, to the extent that Robus sought relief under Fed. R Civ. P. 59(e), the motion was untimely. The Court further concluded that, while the motion would be timely under Fed. R. Civ. P. 60(b),

Robus was not entitled to relief because his argument—that he sought to pursue claims against only the Pennsylvania defendants—did not cure the lack of diversity jurisdiction. The Court stressed that "nothing in this Order or the Court's earlier Memorandum and Order prevents Robus from proceeding on his claims in state court." ECF No. 10 at 2. Robus then filed a notice of appeal. He has also filed a variety of motions in this Court.

Our jurisdiction is limited to review of the District Court's order denying Robus's motion to amend/reconsider. A notice of appeal must be filed within 30 days of the order that the party seeks to appeal. Fed. R. App. P. 4(a)(1). The District Court entered its order dismissing the complaint on February 4, 2019. Because, as the appellees argue, Robus did not file his motion to amend/reconsider within 28 days of that order, it did not toll the time to appeal. See Fed. R. App. P. 4(a)(4)(A)(iv) & (vi); Lizardo v. United States, 619 F.3d 273, 278 (3d Cir. 2010). Robus filed his notice of appeal on March 27, 2019—more than 30 days after the District Court's order dismissing his complaint—and we therefore lack jurisdiction over that order. See Bowles v. Russell, 551 U.S. 205, 214 (2007).[1] The notice of appeal is, however, timely as to the District Court's order denying the motion to amend/reconsider, so we have jurisdiction to review that order. We review the District Court's order for abuse of discretion. See Jang v. Boston Scientific Scimed,

[1] Just days after the District Court dismissed the complaint, Robus filed a motion "to correct the caption." See ECF No. 6. However, this motion does not affect the jurisdictional analysis. The District Court denied the motion on February 13, 2019, and Robus did not file a timely notice of appeal or motion for reconsideration as to that order, either.

Inc., 729 F.3d 357, 367 (3d Cir. 2013); Ahmed v. Dragovich, 297 F.3d 201, 209 (3d Cir. 2002).

The District Court did not abuse its discretion here. As the Court explained, for diversity jurisdiction to exist, "'no plaintiff may be a citizen of the same state as any defendant,' and the amount in controversy must exceed $75,000." GBForefront, L.P. v. Forefront Mgmt. Grp., LLC, 888 F.3d 29, 34 (3d Cir. 2018) (alterations omitted) (quoting Zambelli Fireworks Mfg. Co. v. Wood, 592 F.3d 412, 419 (3d Cir. 2010)). Robus, as the plaintiff in this case, was required to plead the grounds for jurisdiction. See Fed. R. Civ. P. 8(a)(1); Lincoln Ben. Life Co. v. AEI Life, LLC, 800 F.3d 99, 106 (3d Cir. 2015). In his motion to amend/reconsider, he stated that he sought to bring only a negligence claim against Dr. Yoon.[2] However, he pleaded that Dr. Yoon is a citizen of Pennsylvania (which Dr. Yoon has confirmed in his appellate brief). Therefore, the District Court properly denied Robus's motion to amend/reconsider because "the amended pleading . . . will not cure the [jurisdictional] defects in the original pleading that resulted in the judgment of dismissal." Ahmed, 297 F.3d at 209 (quotation marks omitted).[3]

In this Court, Robus argues that the District Court possessed jurisdiction under a

[2] "When a party requests post-judgment amendment of a pleading, a court will normally conjoin the Rule 60(b) and Rule 15(a) motions to decide them simultaneously[.]" Ahmed, 297 F.3d at 209.

[3] Indeed, in one of the motions he filed in this Court, Robus acknowledged that "[y]es, Judge Sánchez was correct in dismissing the complaint on the diversity question." Sept. 25, 2019 Mot. at 1.

variety of federal statutes. However, he did not identify any of these statutes (or the associated causes of action) in his complaint or his motion to amend/reconsider. See Mot. to Amend/Reconsider at 1 ("Robus[] respectfully requests of this Court permission to file an Amended Complaint solely pursuant to 28 U.S.C. [§] 1332 Jurisdictional Diversity."). We will not consider these claims for the first time on appeal. See Harris v. City of Phila., 35 F.3d 840, 845 (3d Cir. 1994). Further, to the extent that Robus contends that the District Court should have acted in some way to help him preserve the statute of limitations on his claims, we note that Robus may be able to transfer the action to state court under 42 Pa. Cons. Stat. § 5103(b). See generally McLaughlin v. Arco Polymers, Inc., 721 F.2d 426, 430–31 (3d Cir. 1983); Williams v. F.L. Smithe Machine Co., 577 A.2d 907, 910 (Pa. Super. 1990).

We will therefore affirm the District Court's order denying Robus's motion to amend/reconsider.[4]

[4] Robus's various motions are denied. He has filed three motions to expand the record, but the evidence he seeks to present has no bearing on the matter at issue here—that is, whether the District Court erred in denying his motion to amend/reconsider on the ground that even with his proposed amendment, Robus had not shown a basis for diversity jurisdiction. See generally Burton v. Teleflex Inc., 707 F.3d 417, 435 (3d Cir. 2013) (explaining that a party may supplement the record on appeal in only "exceptional circumstances"). We deny Robus's other motions because he has likewise shown no entitlement to the relief he seeks. To the extent that the appellees have asked us to enjoin Robus's filings, that request is also denied.