NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted January 19, 2023*
Decided January 24, 2023

Before

FRANK H. EASTERBROOK, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 22-1606

ALENA KRILEY, et al.,
Plaintiffs-Appellants,

v.

NORTHWESTERN MEMORIAL HEALTHCARE, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 1:20-cv-05495

Thomas M. Durkin,
Judge.

O R D E R

Alena Kriley appeals the district court's dismissal of her case for lack of subject-matter jurisdiction. The court correctly ruled that it lacks diversity jurisdiction, federal-

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

question jurisdiction, and jurisdiction under the Alien Tort Statute, 28 U.S.C. § 1350. We thus affirm.

This suit arises from medical care in 2018 that Kriley sought from Northwestern Memorial Hospital to remove a blood clot. Her doctors completed a stenting procedure that involved the surgical insertion of a small mesh tube to keep an artery open. Kriley says she verbally withheld consent from that procedure. Two years later, Kriley and two co-plaintiffs, Frantz and Uladzislava Horbach, sued medical professionals involved in that care. Based in part on Kriley's assertion of her lack of consent, they raised state-law claims of negligence, medical battery, fraud, and "loss of chance."

Because Kriley and all but one of the defendants live in Illinois, the district court asked the parties to address whether it had diversity jurisdiction over the case, and it concluded that it did not. Kriley, who is from Belarus, argued that diversity of citizenship is present based on 28 U.S.C. § 1332(a)(2). Under that statute, diversity of citizenship occurs when a suit is between "citizens of a State and citizens or subjects of a foreign state, except . . . [in] an action between citizens of a State and citizens or subjects of a foreign state who are lawfully admitted for permanent residence in the United States and are domiciled in the same State." Kriley contended that the "except" phrase does not apply because she does not intend to remain in Illinois and is therefore not "domiciled" there. She also asserted that she was merely a "conditional permanent resident" and therefore not "lawfully admitted for permanent residence." The district court ruled that diversity jurisdiction was missing. Kriley's declared future intent to leave Illinois was, the court explained, undermined by several other facts. She resided in Illinois at the time she filed suit, she used her Illinois address and phone number in her legal briefs, she had an Illinois driver's license and bank account, and she conceded that any plan to leave Illinois depended on a pending custody decision. (The district court did not reach her contention about "conditional permanent residence.")

With diversity jurisdiction lacking, Kriley invoked jurisdiction under the Alien Tort Statute, 28 U.S.C. § 1350, and the federal-question statute, *id.* § 1331, because she alleged violations of national treaties and federal regulations. She cited the International Covenant on Civil and Political Rights, the Nuremberg Code, the Declaration of Helsinki, the International Bill of Human Rights, and the Belmont Report, as well as requirements for informed consent in the Code of Federal Regulations. The court was unpersuaded and dismissed the case for lack of subject-matter jurisdiction.

On appeal, Kriley argues that she established federal jurisdiction. We review dismissal for lack of federal jurisdiction de novo and a court's findings on jurisdictional facts for clear error. *Ill. Ins. Guar. Fund v. Becerra*, 33 F.4th 916, 922 (7th Cir. 2022).

Kriley contends that she established diversity jurisdiction, but her reasons are unavailing. First, she argues her status as "conditional permanent resident" means that diversity jurisdiction is present. But a conditional permanent resident is "lawfully admitted for permanent residence," just "on a conditional basis." 8 U.S.C. § 1186a(a)(1); *see also Gallimore v. Att'y Gen. of U.S.*, 619 F.3d 216, 227–28 (3d Cir. 2010); 8 C.F.R. § 216.1 ("A conditional permanent resident is an alien who has been lawfully admitted for permanent residence," and "the rights, privileges, responsibilities and duties which apply to all other lawful permanent residents apply equally" to conditional residents). Because 28 U.S.C. § 1332(a)(2) removes diversity jurisdiction in suits between foreigners like Kriley who are "lawfully admitted for permanent residence" and "domiciled in the same State" as any defendant, diversity jurisdiction is absent if she is so domiciled.

Despite Kriley's assertion to the contrary, the district court did not clearly err in finding that Kriley is domiciled in the same state as most of the defendants—Illinois. It reasonably found that Kriley's physical presence in Illinois (reflected by her use of her Illinois address in court filings, driver's license, and bank account) refuted her assertion that she planned to leave the state depending on the outcome of a custody case. *Sadat v. Mertes*, 615 F.2d 1176, 1181 (7th Cir. 1980). Moreover, Kriley did not establish a new domicile. "[I]t takes physical presence in a state, with intent to remain there, to establish domicile," *Denlinger v. Brennan*, 87 F.3d 214, 216 (7th Cir. 1996), and once established, a domicile "continues until it is superseded by a new domicil[e]." *Mertes*, 615 F.2d at 1181. Kriley did not identify facts showing that she had left Illinois and had established residence elsewhere.

Without diversity jurisdiction to support her case, Kriley repeats her argument that the district court had jurisdiction under the Alien Tort Statute. But her citation to that statute is not enough; she must also invoke a non-frivolous private right of action that the statute covers. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 89 (1998); *Hagans v. Lavine*, 415 U.S. 528, 536–37 (1974); *Roppo v. Travelers Com. Ins. Co.*, 869 F.3d 568, 587 (7th Cir. 2017). She cannot. As the Supreme Court explained in *Nestlé USA, Inc. v. Doe*, 141 S. Ct. 1931, 1939–40 (2021), under the Alien Tort Statute, federal courts cannot "recognize private rights of action for violations of international law beyond" three historical torts—violation of international safe conduct, infringement of ambassadors' rights, and piracy. Kriley does not invoke these torts; instead, she believes that the defendants violated the International Covenant on Civil and Political Rights, the International Bill of Human Rights, and other norms unrelated to these historical torts. But the Covenant and Bill do not create rights enforceable in federal courts. *See Sosa v. Alvarez-Machain*, 542 U.S. 692, 728, 734 (2004). And the Declaration of Helsinki, Nuremberg Code, and Belmont Report are not treaties but statements of

principles. Moreover, Kriley does not support her assertion that they create private rights of action. *See, e.g.*, *Ernst v. City of Chicago*, 837 F.3d 788, 800 n.6 (7th Cir. 2016).

That leaves federal-question jurisdiction, but this is also absent. Kriley argues that her case raises a federal question because she accuses the defendants of violating federal regulations on informed consent in human research. *See* 21 C.F.R. § 50.27; 16 C.F.R. § 1028.116. But again, her assertion of a federal question is frivolous. Nothing suggests that Kriley has even an arguable right to sue the defendants under these regulations. "Language in a regulation may invoke a private right of action that Congress through statutory text created, but it may not create a right that Congress has not." *Alexander v. Sandoval*, 532 U.S. 275, 291 (2001). And Kriley does not cite any statutory text or case law suggesting that she can sue under these regulations. *See Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 733 (1975) (upholding a private right of action under a federal regulation only because of the "longstanding acceptance by the courts" of the right and Congress's inaction to correct them).

Finally, Kriley contends in her reply brief that the defendants violated the Health Insurance Portability and Accountability Act, Pub. L. No. 104–191, 110 Stat. 1936 (1996). To the extent that she argues that a violation of this Act creates federal-question jurisdiction, she waived this argument by omitting it from her opening brief. *Wonsey v. City of Chicago*, 940 F.3d 394, 398 (7th Cir. 2019).

AFFIRMED