

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 02-2475

CRAIG W. SISK; MARY SISK,
Appellants

v.

VETERANS AFFAIRS, an agency of the Government of the United States;
ANTHONY J. PRINCIPI, Secretary, Department of Veterans Affairs;
KENNETH H. MIZRACH, Director, Department of Veterans Affairs,
New Jersey Health Care System; CHRISTOPHER TERRENCE, M.D.,
Chief of Staff of Veterans Affairs Medical Center at Lyons, New Jersey;
RISA GOLDSTEIN, Ph.D., Administrator,
Post Traumatic Stress Disorder Unit, Veterans
Affairs Medical Center at Lyons, New Jersey;
PATRICK TROY, Director of Patient Care, Veterans Affairs
Medical Center at Lyons, New Jersey;
LUCIA MANCINI, in her employment capacity as an employee of the
Veterans Affairs Medical Center at Lyons, New Jersey
and in her individual capacity; UNITED STATES OF AMERICA

Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Civil No. 01-cv-00937)
District Court Judge: Honorable A. Richard Caputo

Submitted Pursuant to Third Circuit LAR 34.1(a)
on December 20, 2002

Before: NYGAARD, ALITO and RENDELL, Circuit Judges

(Filed February 20, 2003)

OPINION OF THE COURT

RENDELL, Circuit Judge.

Craig and Mary Sisk (together “the Sisks”) brought this action against the Department of Veterans Affairs, the Secretary of the Department of Veterans Affairs, and a number of individual federal employees, seeking recovery under the Federal Torts Claims Act, 28 U.S.C. § 2671 et seq. On March 4, 2002, the District Court substituted the United States of America (“the Government”) for all of the defendants, except Lucia Mancini. Subsequently, the District Court entered summary judgment in favor of the Government. The Sisks now appeal.

Under 28 U.S.C. § 1291, we have jurisdiction over “final” orders of a district court. “Ordinarily, an order which terminates fewer than all claims, or claims against fewer than all parties, does not constitute a ‘final’ order for purposes of appeal under 28 U.S.C. § 1291.” Carter v. City of Philadelphia, 181 F.3d 339, 343 (3d Cir. 1999); see also Catlin v. United States, 324 U.S. 229, 233 (1945) (stating that, generally, a decision is final for purposes of section 1291 only when it “ends the litigation on the merits and leaves nothing for the court to do but execute the judgment”). Our review of the record has uncovered that the Sisks’ claims against Mancini have not been adjudicated in any way by the District Court and no exception to the rule that we review only final orders applies. See, e.g., Fed. R. Civ. P. 54(b) (stating that an order that does not adjudicate all claims against all parties may be considered “final” and immediately appealable under section 1291 when the district court

makes an express determination that there is no just cause for delay and expressly directs entry of final judgment). We asked the parties to address the issue and they have not pointed to any evidence indicating that Mancini is not a party to the action.

Accordingly, we will dismiss the appeal for lack of jurisdiction.

TO THE CLERK OF COURT:

Please file the foregoing opinion.

/s/ Marjorie O. Rendell

Circuit Judge