NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 23-2350

ESHED ALSTON; PAMELA ALSTON

v.

KENT COUNTY LEVY COURT AND DEPARTMENT
OF PLANNING SERVICES, Division of Inspection & Enforcement;
BROOKS BANTA; SARAH KEIFER, AICP;
SCOTT TANNER, Chief Code Administrator; CEC ROBERT SILVAGNI

EShed Alston,
Appellant

On Appeal from the United States District Court
for the District of Delaware
(D.C. Civil Action No. 1:20-cv-00994)
District Judge: Honorable Gregory B. Williams

Submitted Pursuant to Third Circuit LAR 34.1(a)
February 2, 2024
Before: KRAUSE, MATEY, and CHUNG, Circuit Judges

(Opinion filed: February 9, 2024)

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.

In the United States District Court for the District of Delaware, EShed Alston filed a complaint seemingly related to a code enforcement officer's entry upon, and inspection of, his property, and the actions of the Kent County Levy Court and its members in response to the code enforcement officer's finding, among others, that Alson's rear porch appeared to be in imminent danger of collapse.[1] Alston made references to state and federal criminal statutes as well as well as federal constitutional provisions and federal civil rights statutes.

The defendants moved to dismiss the complaint for lack of subject-matter jurisdiction and failure to state a claim. The District Court (then-District Judge Stark presiding) agreed with the defendants that Alston could not impose criminal liability on them and dismissed his claims to the extent he sought to do so. The District Court further concluded that Alston's other claims were deficiently pleaded, noting that he cited 42 U.S.C. §§ 1981, 1983, 1985, 1986, and 1988 without explaining how those statutes were violated. The District Court accordingly granted the motion to dismiss but also gave Alston leave to amend any claims under those federal civil rights statutes.

Alston filed an amended complaint in which he challenged the District Court's order dismissing his initial complaint and presented new and amended claims. He again cited the federal civil rights statutes. He labeled the code inspector's findings "racially motivated false charges." ECF No. 51 at 23. He also argued that "JP Court 7"[2] verified a

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[1] The complaint was also filed on behalf of Alston's wife, but she is not a party on appeal, so we discuss the complaint as it relates to Alston only.
[2] A Delaware Justice of the Peace Court.

plausible claim, explaining that a judge acted unlawfully there and also that he prevailed against defendants' counsel in JP Court 7 actions. Id. at 8. In addition, he cited federal criminal provisions and stated that he was presenting a RICO[3] complaint and naming Judge Stark as a defendant. He seemed to allege that he was a federal whistleblower being impeded by a biased Judge Stark engaging in some sort of purported fraud and RICO violations, which also involve the Chief Judge and Circuit Executive of this Court and the Attorney General of the United States.

The defendants moved to dismiss Alston's amended complaint. The District Court (District Judge Williams presiding after the elevation of Judge Stark to the Court of Appeals for the Federal Circuit) granted the defendants' motion. The District Court dismissed the complaint, concluding that Alston had failed to remedy any of the deficiencies identified in the order dismissing the original complaint. Alston appeals.

In his brief, Alston focuses on why he believes that Judge Williams and Judge Stark are corrupt and why he thinks that their actions are fraudulent and racist and constitute unlawful witness tampering or intimidation. He styles himself a federal whistleblower who is being victimized by them as well as by the Chief Judge and Circuit Executive of this Court. He complains of bias and fraud in this Court, and the United States Attorney's failure to address either (or the alleged similar problems in the District Court). He further argues that Judge Williams deprived him of an opportunity to testify

[3] He apparently was referring to the Racketeer Influenced Corrupt Organizations Act of 1970.

in his civil action, that he had evidence about wins in JP Court 7, and that he had a motion for summary judgment and a motion to compel discovery that should have been heard before his amended complaint was dismissed. Alston also submits many additional documents to support his appeal (and to object to what he perceives as wrongdoing in this Court and the District Court) and requests, among other things, summary judgment in his favor on appeal.

We have jurisdiction under 28 U.S.C. § 1291. Our review of an order dismissing a complaint is plenary. See In re Schering Plough Corp. Intron/Temodar Consumer Class Action, 678 F.3d 235, 243 (3d Cir. 2012). However, we agree with the defendants that we do not have much to review here because Alston forfeited most issues by failing to raise them in his brief. See M.S. by & through Hall v. Susquehanna Twp. Sch. Dist., 969 F.3d 120, 124 n.2 (3d Cir. 2020) (holding that the appellant forfeited claims by failing to raise them in the opening brief). In particular, Alston does not challenge the District Court's stated basis for the dismissal of his amended complaint.[4]

To the extent that Alston argues that procedural irregularities undermine the District Court's ruling, we disagree. The District Court did not deprive Alston of his

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[4] It is hard to see how he could argue that he corrected the deficiencies in the original complaint where, to the extent that he circled back to the claims made in his original complaint, his allegations remained too conclusory to state a claim under the federal civil rights statutes that he cited (and he could not bring any type of criminal claim against another person). See Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (explaining that a complaint must include "more than labels and conclusions"); Linda R.S. v. Richard D., 410 U.S. 614, 619 (1973) (stating that a private citizen has no "judicially cognizable interest in the prosecution . . . of another").

right to testify by deciding this matter on the papers. The Federal Rules of Civil Procedure anticipate motion practice that may weed out claims before a plaintiff has an opportunity to testify. See, e.g. Fed. R. Civ. P. 12(b)(6). And motions to dismiss (and rulings on them) come at the outset of an action. See id. In this case, the District Court was not obligated to consider any motion for summary judgment or motion to compel discovery before assessing the sufficiency of Alston's amended pleading. And, with the opportunity to file that pleading, Alston had the opportunity to (and did) present allegations related to his wins in JP Court 7. His ability to provide evidence about them was curtailed only by the insufficiency of his pleading.

Finally, we roundly reject Alston's claims challenging the integrity of the District Judges. His claims of bias, racism, fraud, and corruption are baseless. We likewise reject his similar claims against this Court, its members, officials, and employees (and others) as unfounded and scurrilous attacks.

We have considered, in addition to Alston's brief, all his many filings on appeal, and we have found no argument that warrants further discussion or relief.[5] We will affirm the District Court's judgment.

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[5] To the extent that Alston made requests in those filings, those requests are denied.