

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 26-1099

THOMAS I. GAGE,
Appellant

v.

BOROUGH OF HOPATCONG;
JOHN K. RUSCHKE, PE;
WILLIAM T. DONEGAN, SR.;
PETER A. FICO, Municipal Judge;
MORRIS COUNTY MUNICIPAL JIF, Insurer;
MUNICIPAL EXCESS LIABILITY JIF, Insurer

On Appeal from the United States District Court
for the District of New Jersey
(D.C. Civil Action No. 2:25-cv-3696)
District Judge: Honorable Brian R. Martinotti

Submitted Pursuant to Third Circuit LAR 34.1(a)
September 1, 2026
Before: BIBAS, CHUNG, and BOVE, *Circuit Judges*

(Opinion filed September 10, 2026)

OPINION*

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

PER CURIAM

Thomas I. Gage, proceeding pro se, appeals from orders of the United States District Court for the District of New Jersey granting the defendants' motions to dismiss and denying his motion for reconsideration of that order.¹ For the following reasons, we will affirm.

This is at least the third action that Gage has brought in federal court related to his applications to construct a single-family dwelling on property that he owns in Hopatcong, New Jersey. The Hopatcong Borough Land Use Board and the Borough's engineer, John K. Ruschke, repeatedly deemed Gage's applications "incomplete." Later, however, the Board deemed the application complete, contingent upon, among other things, a letter of interpretation from the New Jersey Department of Environmental Protection (NJDEP) confirming that any land developments would not disturb protected wetlands. Although Gage sought such a letter, the NJDEP determined that "State open waters, freshwater wetlands and their associated transition areas are present on and adjacent to the referenced property." *Gage v. N.J. Dep't of Env't Prot.*, 2022 WL 254599, at *2 (D.N.J. Jan. 27, 2022). In 2021 and 2024, Hopatcong Borough Zoning Officer William E. Donegan, III, inspected the property. As a result of those inspections, the Borough issued Gage notices for alleged violations of zoning ordinances. Municipal Court Judge Peter

¹ The District Court's orders also denied Gage's motions for default judgment, as well as his requests for recusal and transfer of venue. In addition, the District Court granted attorneys' fees and costs to one of the defendants.

A. Fico presided over some of the zoning violation proceedings in 2024 and 2025. (ECF 1, at 12, 13-14 of 19.)

Meanwhile, in May 2021, Gage filed a complaint against Ruschke and the NJDEP, raising claims related to his inability to obtain permission to develop his land. Both defendants filed motions to dismiss. The District Court granted those motions, holding that Ruschke was entitled to qualified immunity and that it lacked jurisdiction over the claims against the NJDEP pursuant to the state's Eleventh Amendment sovereign immunity. *Gage*, 2022 WL 254599, at *2-3. Gage filed a motion for reconsideration, which the District Court denied, warning Gage that "any future frivolous filings may be met with *sua sponte* sanctions, including payment of opposing counsels' fees." *Gage v. N.J. Dep't of Env't Prot.*, 2022 WL 4540834, at *1 n.1 (D.N.J. Sept. 28, 2022).

In March 2022, Gage filed a second complaint against Ruschke and the NJDEP, among others, raising similar claims.² The District Court again granted the defendants' motions to dismiss, holding that the claims against Ruschke were barred by *res judicata* and that the NJDEP was entitled to sovereign immunity. *Gage v. N.J. Dep't of Env't Prot.*, 2024 WL 1076675, at *4-5 (D.N.J. Mar. 12, 2024). The District Court noted that "this is [Gage's] second strike [and that] ... [i]f there is a third strike, the Court will not hesitate to impose sanctions." *Id.* at *7 n.9.

² The action was originally filed in the United States District Court for the District of Columbia, which transferred the case to the District of New Jersey.

Gage filed the underlying action in May 2025, raising claims against Ruschke, Donegan, the Borough of Hopatcong, and Judge Fico.³ He alleged that Ruschke and the Borough violated his constitutional rights by denying his land development applications, that the Borough had “taken” his property without just compensation, and that the Borough, Donegan, and Judge Fico conspired to pursue fraudulent zoning violations. Gage filed a motion for default judgment, asserting that the Borough did not file a timely answer to the complaint. The defendants filed motions to dismiss, arguing that Gage’s claims were barred by res judicata. The District Court agreed and, by order entered October 6, 2025, granted the motions to dismiss, and denied Gage’s motion for default judgment. At Ruschke’s urging, the District Court also concluded that Gage is “a vexatious litigant and is obligated to pay Ruschke an award of attorneys’ fees for the costs of defending this action.”

On October 9, 2025, Gage filed a motion for reconsideration, to recuse the District Court judge, and to transfer venue to the District Court for the District of Columbia. He also filed a nearly identical motion for default judgment and a motion for an extension of time to appeal. Ruschke submitted a certification of fees and costs. The District Court denied Gage’s motions and granted Ruschke’s application for attorneys’ fees and costs in the amount of \$9718.50. Gage timely appealed.

³ Gage also named two companies that allegedly provide insurance to the Borough. But, as the District Court accurately noted, Gage raised no individual causes of action against either company.

We have jurisdiction pursuant to 28 U.S.C. § 1291,⁴ and we may affirm on any basis supported by the record. *Murray v. Bledsoe*, 650 F.3d 246, 247 (3d Cir. 2011) (per curiam).

We exercise plenary review over the District Court’s dismissal on res judicata grounds. *See Erie Indemnity Co. v. Stephenson*, 157 F.4th 265, 276-77 (3d Cir. 2025). The elements of federal-law res judicata include “(1) a final judgment on the merits in a prior suit involving (2) the same parties or their privies and (3) a subsequent suit based on the same cause of action.” *Marmon Coal Co. v. Dir., Off. of Workers’ Comp. Programs*, 726 F.3d 387, 394 (3d Cir. 2013) (citation omitted). Applying these principles, we agree that res judicata bars the claims based on the denial of Gage’s land development applications, including his assertion that the Borough had “taken” his property without just compensation. First, the District Court’s 2022 decision granting the motions to dismiss filed by Ruschke and the NJDEP is a final judgment on the merits. *See Papera v. Pa. Quarried Bluestone Co.*, 948 F.3d 607, 610 (3d Cir. 2020). Second, Ruschke is named in both cases and two of the new defendants named in the underlying suit – Donegan and the Borough of Hopatcong – are in privity with him. Indeed, both Ruschke and Donegal worked for the Borough, and Gage alleged that all three defendants conspired to deprive him of his rights. *See Gambocz v. Yelencsics*, 468 F.2d 837, 841 (3d

⁴ Because Gage’s appeal from the denial of his timely post-judgment motion “brings up the underlying judgment for review,” we can review both the District Court’s order granting the defendants’ motions to dismiss and its order denying Gage’s motion for reconsideration and awarding attorneys’ fees and costs to Ruschke. *See McAlister v. Sentry Ins. Co.*, 958 F.2d 550, 552-53 (3d Cir. 1992).

Cir. 1972) (explaining that privity exists when there is a “close or significant relationship between successive defendants,” including when they are alleged to be co-conspirators) (citing *Bruszewski v. United States*, 181 F.2d 419 (3d Cir. 1950)); *Lubrizol Corp. v. Exxon Corp.*, 871 F.2d 1279, 1288 (5th Cir. 1989) (noting that most federal circuits have concluded that employer-employee relationships may ground a claim preclusion defense). Finally, both the prior and underlying complaints are based on causes of action stemming from the dispute over Gage’s ability to develop his property. *See Churchill v. Star Enters.*, 183 F.3d 184, 195 (3d Cir. 1999) (focusing on the similarity of the actions, and concluding that res judicata applies if the new allegations “seek[] recovery for essentially the same wrongful conduct” or a “single course of wrongful conduct”); *see also Sheridan v. NGK Metals Corp.*, 609 F.3d 239, 261 (3d Cir. 2010) (looking not to “the specific legal theory invoked,” but to “the *essential similarity* of the underlying events giving rise to the various legal claims” to determine if the lawsuits are based on the same cause of action (citation omitted)).

Res judicata, however, does not bar the claims stemming from the zoning violations because they arose after Gage filed the two prior lawsuits described above. Nevertheless, the claims lack merit. Gage’s vague allegation that the defendants pursued fraudulent zoning violations was insufficient to state plausible conspiracy or due process claims. *See D.R. by L.R. v. Middle Bucks Area Vocational Tech. Sch.*, 972 F.2d 1364, 1377 (3d Cir. 1992) (en banc) (affirming a dismissal of a conspiracy claim because of a failure “to assert any facts from which any type of conspiratorial agreement . . . can be

inferred”); *DeBlasio v. Zoning Bd. of Adjustment for Twp. of W. Amwell*, 53 F.3d 592, 597 (3d Cir. 1995) (explaining that “a state provides constitutionally adequate procedural due process when it provides reasonable remedies to rectify a legal error by a local administrative body”); *Eichenlaub v. Twp. of Indiana*, 385 F.3d 274, 286 (3d Cir. 2004) (stating that the “misconduct alleged here does not rise sufficiently above that at issue in a normal zoning dispute to pass the ‘shocks the conscience test’”).

We also conclude that the District Court did not abuse its discretion in denying Gage’s requests for recusal and his motions for default judgment.⁵ In his request for recusal, Gage alleged that Judge Martinotti “pick[ed] [a] side [o]n behalf of all Defendants” and “expressed an ‘appearance of partiality.’” (ECF 35, at 12, 14 of 21.) But those assertions were premised on adverse rulings, which, without more, do not establish that Judge Martinotti had a personal bias or prejudice against Gage, nor do they provide a basis upon which to reasonably question the judge’s impartiality. *See Securacomm Consulting, Inc. v. Securacom Inc.*, 224 F.3d 273, 278 (3d Cir. 2000); *Liteky v. United States*, 510 U.S. 540, 555 (1994) (adverse rulings alone generally do not constitute a sufficient basis for holding that a judge’s impartiality is in doubt). Furthermore, the District Court properly denied Gage’s motions for default judgment because, contrary to Gage’s belief, the attorneys who entered an appearance on behalf of

⁵ Gage’s opening brief does not challenge the District Court’s rejection of the claims against Judge Fico, the denial of his request for a change of venue, or the denial of his motion for reconsideration. Therefore, we will not consider those issues. *See In re Wettach*, 811 F.3d 99, 115 (3d Cir. 2016) (noting that arguments not developed in an appellant’s opening brief are forfeited).

the Borough filed an answer within the time extended by the District Court. *See United States v. \$55,518.05 in U.S. Currency*, 728 F.2d 192, 194 (3d Cir. 1984) (stating that “this court does not favor entry of defaults or default judgments”).

Gage also challenges the District Court’s award of attorneys’ fees and costs to Ruschke on the basis that “[t]here is no record which proves that . . . [he] has paid any attorneys’ fees or that he hired [an] attorney e[i]ther.” Appellant’s Br., at 19 of 40. The record belies Gage’s claim. Ruschke’s attorney entered an appearance. And after concluding that sanctions were warranted because Gage is a “vexatious litigant,” the District Court directed Ruschke’s attorney to submit “an itemized petition for reasonable attorneys’ fees with supporting materials . . . within 20 days.” (ECF 30, at 21 of 22.) Ruschke’s attorney complied with that order, filing a certification that explained the hours worked and the rates claimed, along with a detailed description of the time expended on each litigation task. (ECF 33.) Gage did not contest that submission. He has thus provided no basis to set aside the District Court’s order.

In his brief, and in documents captioned “Judicial Notice,” Gage seeks to raise new claims. In particular, he contends that counsel for the Borough were not authorized to represent their client. Gage also references the New Jersey Tort Claims Act, trespass and negligence, and the New Jersey Open Public Meetings Act. Because Gage did not raise these claims in his complaint, we will not consider them for the first time on appeal. *See Orie v. Dist. Att’y Allegheny Cnty.*, 946 F.3d 187, 195 (3d Cir. 2019). With respect to Gage’s request to expand the record on appeal, we note that our review is generally

limited to the record that was before the District Court. *See Acumed LLC v. Advanced Surgical Servs., Inc.*, 561 F.3d 199, 226 (3d Cir. 2009). None of the exceptional circumstances that might allow Gage to supplement the record on appeal are present here. *Id.*

For the foregoing reasons, we will affirm the District Court's judgment.⁶

⁶ Gage's motion for mediation and his motion to file a supplemental appendix are denied.