

24A45

IN THE SUPREME COURT OF THE UNITED STATES

ORIGINAL

ELAINE MICKMAN,  
*Petitioner*

V

: U.S. Court of Appeals  
No. 23-2777

SUPERIOR COURT  
OF PENNSYLVANIA  
In Their Official Capacity  
*Respondent*

: U.S. District Court case  
No. 2-23-cv-02047

Supreme Court, U.S.  
FILED  
JUN 14 2024  
OFFICE OF THE CLERK

**APPLICATION FOR EXTENSION OF TIME TO FILE**  
**PETITION FOR CERTIORARI**

Elaine Mickman is the Petitioner seeking a 60 day extension of time to file a Petition for Certiorari from an April 26, 2024 3rd Circuit Court of Appeals Order for the following reasons:

1. Petitioner is a senior with permanent medical disability who has various scheduled appointments for health conditions negatively impacting her and necessitating additional time to file.
2. Petitioner also needs additional time for legal research.

***Wherefore the reasons stated,*** Petition requests a 60 day extension of time to file a Petition for Certiorari.

*Respectfully Submitted,*

*Elaine Mickman*

June 14, 2024

Elaine Mickman, pro se

RECEIVED  
JUN 25 2024  
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SUPREME COURT, U.S.

**NOT PRECEDENTIAL**

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 23-2777

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ELAINE MICKMAN,  
Appellant

v.

SUPERIOR COURT OF PENNSYLVANIA,  
In Their Official Capacity

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On Appeal from the United States District Court  
for the Eastern District of Pennsylvania  
(D.C. Civil Action No. 2-23-cv-02047)  
District Judge: Honorable Harvey Bartle, III

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Submitted Pursuant to Third Circuit LAR 34.1(a)  
March 20, 2024

Before: KRAUSE, MATEY, and CHUNG, Circuit Judges

(Opinion filed: March 29, 2024)

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OPINION\*

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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.

PER CURIAM

Pro se appellant Elaine Mickman filed an action against the Pennsylvania Superior Court. The District Court granted Mickman's motion to proceed in forma pauperis, screened the complaint pursuant to 28 U.S.C. § 1915(e)(2)(B), and dismissed it without prejudice for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1). Mickman filed a post-judgment motion seeking reconsideration, which the District Court denied. This timely appeal ensued. For the following reasons, we will affirm.<sup>1</sup>

In her complaint,<sup>2</sup> Mickman alleged numerous violations of her constitutional rights stemming from the Superior Court's May 27, 2021 order quashing her appeal from an order in a child support proceeding. She cited various civil rights statutes, including 42 U.S.C. §§ 1981, 1983, 1985, and 1986.<sup>3</sup> Mickman sought injunctive, declaratory, and monetary relief.

We agree with the District Court that, to the extent Mickman sought injunctive and monetary relief, her claims are barred by the Eleventh Amendment, which protects a state or state agency from suit unless Congress has specifically abrogated the state's immunity,

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<sup>1</sup> We have appellate jurisdiction pursuant to 28 U.S.C. § 1291. See G.W. v. Ringwood Bd. of Educ., 28 F.4th 465, 468 & n.2 (3d Cir. 2022) (noting that a dismissal without prejudice for lack of subject matter jurisdiction is a final decision under § 1291). Our review is plenary. See Betts v. New Castle Youth Dev. Ctr., 621 F.3d 249, 252 (3d Cir. 2010).

<sup>2</sup> The District Court adjudicated Mickman's "Second Amended Complaint." As she did in her motion for reconsideration, Mickman notes on appeal that she only filed one amended complaint. It appears that the amended complaint was filed twice on the docket, but it was properly considered by the District Court as the operative complaint.

<sup>3</sup> Mickman also claimed that the Superior Court violated various criminal statutes, which the District Court properly noted do not give rise to a private cause of action. See ECF No. 6 at 3 n.4.

or the state has waived its own immunity. See Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 99–100 (1984); see also Bowers v. Nat’l Athletic Ass’n, 346 F.3d 402, 417 (3d Cir. 2003) (noting that the issue of Eleventh Amendment immunity can be considered sua sponte). As part of the state unified judicial system, the Superior Court is an “arm of the state” entitled to Eleventh Amendment immunity. Fitchik v. N.J. Transit Rail Operations, Inc., 873 F.2d 655, 658 (3d Cir. 1989) (en banc) (recognizing that a state agency or department is an “arm of the state” when a judgment against it “would have had essentially the same practical consequences as a judgment against the State itself”); see also Benn v. First Judicial Dist. of Pa., 426 F.3d 233, 240 (3d Cir. 2005) (explaining that Commonwealth courts are entitled to Eleventh Amendment immunity). Because Pennsylvania has not waived its immunity from suits in federal court, see Downey v. Pennsylvania Dep’t of Corr., 968 F.3d 299, 310 (3d Cir. 2020), and the Eleventh Amendment applies to all of Mickman’s civil rights claims, see ECF No. 6 at 6, the claims for injunctive and monetary relief were properly dismissed for lack of subject matter jurisdiction. See In re Hechinger Inv. Co. of Del., Inc., 335 F.3d 243, 249 (3d Cir. 2003) (noting that “where . . . the Eleventh Amendment precludes a suit, the court in which the plaintiff filed the action lacks subject matter jurisdiction”).

Although the Eleventh Amendment does not bar claims for declaratory relief, see Wheeling & Lake Erie R. Co. v. Pub. Util. Comm’n of Com. of Pa., 141 F.3d 88, 91 (3d Cir. 1998), Mickman failed to state a viable federal claim through which she could obtain that remedy. Finally, we perceive no error in the District Court’s determination that amendment of the complaint would have been futile, as there are no factual allegations

from which we can infer that Mickman could have an actionable claim for relief. See Grayson v. Mayview State Hosp., 293 F.3d 103, 112–13 (3d Cir. 2002).

For the foregoing reasons, we will affirm the judgment of the District Court.

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 23-2777

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ELAINE MICKMAN,  
Appellant

v.

SUPERIOR COURT OF PENNSYLVANIA,  
In Their Official Capacity

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On Appeal from the United States District Court  
for the Eastern District of Pennsylvania  
(No. 2-23-cv-02047)  
District Judge: Honorable Harvey Bartle, III

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PETITION FOR PANEL REHEARING

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BEFORE: KRAUSE, MATEY, CHUNG, *Circuit Judges*

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The petition for rehearing filed by appellant Elaine Mickman in the above-captioned matter has been submitted to the judges who participated in the decision of this Court. No judge who concurred in the decision asked for rehearing. It is now hereby **ORDERED** that the petition is **DENIED**.

BY THE COURT

s/ Paul B. Matey  
Circuit Judge

Dated: April 26, 2024  
PDB/cc: Elaine Mickman

IN THE SUPREME COURT OF THE UNITED STATES

ELAINE MICKMAN,	:	
<i>Petitioner</i>	:	U.S. Court of Appeals
	:	No. 23-2777
V	:	
	:	U.S. District Court case
SUPERIOR COURT	:	No. 2-23-cv-02047
OF PENNSYLVANIA,	:	
In Their Official Capacity	:	
<i>Respondent</i>	:	

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**CERTIFICATE OF SERVICE**

The Application for Time Extension to file Petition for Certiorari has been served to the following:

U.S. Court of Appeals for the Third Circuit  
21400 U.S. Courthouse  
601 Market St.  
Philadelphia, PA 19106  
Attn: Clerk's Office

U.S. District Court for Eastern District of Pennsylvania  
James A. Byrne U.S. Courthouse  
601 Market St.  
Philadelphia, PA 19106  
Attn: Clerk's Office



June 14, 2024

Elaine Mickman  
1619 Gerson Dr.  
Narberth, PA 19072