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In Re: Peter DiPietro

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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 19-2001

IN RE: PETER DIPIETRO, Individually and as Trustee,
Petitioner

On a Petition for Writ of Mandamus from the
United States District Court for the District of New Jersey
(Related to D.N.J. Civ. No. 1-12-cv-02338)

Submitted Pursuant to Rule 21, Fed. R. App. P.
May 30, 2019
Before: AMBRO, KRAUSE and PORTER, Circuit Judges

(Opinion filed: June 13, 2019)

OPINION*

PER CURIAM

Petitioner Peter DiPietro has filed a mandamus petition seeking relief relating to the January 3, 2013 order entered in the United States District Court for the District of New Jersey, enjoining him “from filing any claims in [the District Court] relating to his 2000 New Jersey state court divorce and child custody case without prior permission of

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

the Court.” DiPietro v. Morisky, et al., D.N.J. Civ. No. 12-cv-2338 (Jan. 3, 2013). For the reasons that follow, we will deny the mandamus petition.

Because the parties are familiar with the background, we present only a summary. In April 2012, DiPietro filed his complaint alleging constitutional, statutory, and common law violations relating to his New Jersey state court divorce and custody case. He named as defendants numerous individuals connected with that matter, including his former attorneys, his former wife’s attorneys, court-appointed psychologists, and state and local entities and employees. After briefing, in October 2012, the District Court granted the defendants’ motion to dismiss and dismissed DiPietro’s complaint with prejudice. In addition, the District Court noted DiPietro’s multiple other lawsuits filed in the District of New Jersey against various defendants involved in his state court case. Upon the defendants’ motion, the District Court issued an order for DiPietro to show cause why the Court should not enter a preclusion order enjoining him from filing any future related claims in the District of New Jersey without prior permission of the Court. DiPietro did not respond to the order. The District Court thus entered its preclusion order on January 3, 2013. DiPietro did not appeal.

In his mandamus petition, DiPietro lists the case names and docket numbers of several cases he filed in the District Court in 2017, stating that the District Court dismissed all of them pursuant to the preclusion order, even though they have no relationship to his state court divorce and custody case. DiPietro seeks a writ of

mandamus to direct the District Court to: (1) vacate the January 3, 2013 preclusion order; (2) reinstate and reopen all of his District Court cases that had been assigned to the same District Court Judge who had entered the preclusion order, whether the cases were filed before or after the entry of the preclusion order, and with no fees due; and (3) order a writ of execution for damages relief against all defendants who failed to answer his complaints. DiPietro also asks this Court to direct the Federal Bureau of Investigation to investigate all of the defendants and the District Court Judge, in the interest of justice and under 18 U.S.C. § 4, Misprision of Felony. He further demands seizure of the District Court Judge's assets and property, as well as to open an investigation pursuant to President Trump's Executive Order Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption.

A writ of mandamus is a drastic remedy that is available in extraordinary circumstances only. See In re Diet Drugs Prods. Liab. Litig., 418 F.3d 372, 378 (3d Cir. 2005). To obtain the writ, a petitioner must show that (1) no other adequate means exist to attain the desired relief; (2) the petitioner's right to issuance of the writ is clear and indisputable; and (3) the writ is appropriate under the circumstances. See Hollingsworth v. Perry, 558 U.S. 183, 190 (2010) (per curiam). Upon consideration of DiPietro's petition and the various forms of relief sought, we conclude that he has not made that showing here. An appeal, not a mandamus petition, is the proper vehicle for obtaining relief concerning the District Court's rulings in his cases. See Madden v. Myers,

102 F.3d 74, 77 (3d Cir. 1996) (explaining that mandamus is not a substitute for an appeal). DiPietro could have raised his arguments concerning the rights and liabilities of the parties by way of our appellate jurisdiction, so mandamus relief is not warranted. See In re Chambers Dev. Co., 148 F.3d 214, 226 (3d Cir. 1998) (“[M]andamus is not a substitute for appeal and a writ of mandamus will not be granted if relief can be obtained by way of our appellate jurisdiction.”). As for the requests and demands for a federal investigation and seizure of assets, in addition to DiPietro’s failure to show that he is entitled to the writ, he has not established an appropriate basis for our authority to grant such relief.¹

For the foregoing reasons, we will deny the petition for a writ of mandamus.

¹ The Court has received DiPietro’s letter in which he refers to this mandamus action. In his letter, he restates his allegations of bias concerning the District Court Judge. He insists that the same judge must be removed from assignment in his recently filed habeas corpus proceedings. Those proceedings are unrelated to the litigation at issue here. To the extent that DiPietro seeks the judge’s recusal from his habeas case, he should file a separate appropriate action. We express no opinion on whether such relief is warranted.