

DLD-316

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 09-1896

BERNARD THOMPSON,
Appellant
v.

MARC ALTSHULER, M.D.;
THOMAS JEFFERSON UNIVERSITY

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil No. 09-cv-00906)
District Judge: Honorable Paul S. Diamond

Submitted for Possible Summary Action Pursuant to
Third Circuit LAR 27.4 and I.O.P. 10.6
September 17, 2009

Before: BARRY, AMBRO and SMITH, Circuit Judges

(Opinion filed October 19, 2009)

OPINION

PER CURIAM

On March 4, 2009, Appellant, Bernard Thompson, commenced an action in the

United States District Court for the Eastern District of Pennsylvania against Marc Altshuler, M.D. and Thomas Jefferson University Hospital. In the complaint, Thompson alleged that Dr. Altshuler, his primary care physician, negligently over-medicated him with the drug Lipitor. By order entered on March 24, 2009, the District Court dismissed Thompson's complaint without prejudice for lack of subject matter jurisdiction. See Fed. R. Civ. P. 12(h)(3). This appeal followed.¹

The District Court correctly concluded that it lacked subject matter jurisdiction over Thompson's complaint, as Thomas did not allege a violation of the Constitution or federal law under 28 U.S.C. § 1331, nor did he allege any facts that would provide a basis for diversity of citizenship among the parties under 28 U.S.C. § 1332. Rather, as the District Court noted, Thompson, a Philadelphia resident, sought to bring a medical malpractice claim against a physician practicing in a Philadelphia hospital.

Accordingly, we will summarily affirm the District Court's order.² See Third Cir. LAR 27.4 and I.O.P. 10.6.

¹We have jurisdiction over this appeal pursuant to 28 U.S.C. § 1291.

²We will deny Thompson's motion for a protection from abuse order.