[DO NOT PUBLISH]

In the United States Court of Appeals

For the Eleventh Circuit

No. 21-12186

Non-Argument Calendar

GLORIA SMITH-GRIMES,

Plaintiff-Appellant,

versus

JUDGE GLENN D. KELLEY,
Circuit Court in Palm Beach County, Florida,
JUDGE JANNIS B. KEYSER,
Circuit Court of Palm Beach County,
JUDGE PETER D. BLANC,
Circuit Court of Palm Beach County,
SENATOR DAVE ARONBERG,
Palm Beach State Attorney General,
JERROLD JACOB GOLSOM,

Cherokee North Carolina. Murphy, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 9:21-cv-80046-KAM

Before JILL PRYOR, NEWSOM, and BRANCH, Circuit Judges

PER CURIAM:

Gloria Smith-Grimes, *pro se*, appeals the district court's dismissal of her amended complaint, denial of her subsequent motion for clarification of the dismissal order, and denial of her motion for recusal.

In January 2021, Smith-Grimes filed an amended complaint in federal court against multiple defendants—including several state judges who, at different points, presided over proceedings involving the foreclosure of her home—in their individual and official capacities. In February 2021, the judge defendants and defendant Aronberg filed a motion to dismiss the amended complaint. They argued that the judges were entitled to judicial immunity, that the statute of limitations had passed, and that the complaint contained no allegations against defendant Aronberg. Smith-

Grimes opposed the dismissal motion, explaining the sequence of events that led to the loss of her home but failing to explain how those facts could overcome the arguments in the defendants' motion to dismiss. On April 19, 2021, the district court granted the dismissal, but, notably, no separate document setting out the judgment was entered on the docket.

On May 3, 2021, Smith-Grimes filed a document entitled "Plaintiff's Motion for Clarification to Court Order to Dismiss." In that motion, she moved the court to reconsider the dismissal of her amended complaint. On May 18, 2021, the district court denied her "clarification" motion.

After the district court denied her clarification motion, Smith-Grimes filed a motion requesting that the federal district court judge presiding over the proceeding recuse himself. She argued that the federal district court judge was biased because he knew the judge defendants personally and ruled against the plaintiff. On June 2, 2021, the district court denied that motion as well, on the basis that Smith-Grimes had only requested recusal because of the previous adverse rulings against her, a reason insufficient to show bias or otherwise warrant recusal.

On June 28, 2021, Smith Grimes appealed the district court's various orders. Smith-Grimes argues that the district court erred in granting judicial immunity to the state judges. She also contends, albeit on grounds different from those she raised below, that

the district court judge was partial and thus erred in denying her motion for recusal.[1]

We issued a jurisdictional question to the parties, asking them to address whether the notice of appeal was timely as to the May 18 order denying Smith-Grimes's "clarification" motion. The defendants responded, essentially, that we lack jurisdiction over a challenge to the May 18 order because Smith-Grimes did not file the notice of appeal within 30 days of its entry. Smith-Grimes filed an opening brief but did not respond to the jurisdictional question.

Rather than respond to Smith-Grimes's opening brief, the judge defendants moved for summary affirmance of the district court's dismissal of Smith-Grimes's amended complaint and for a stay of the briefing schedule, arguing that her appeal is frivolous

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[1] To the extent Smith-Grimes intends to challenge the dismissal of her complaints and denial of her motion for recusal on grounds other than discussed herein, she has abandoned any such arguments by failing to plainly and prominently raise them in her initial brief or her response to the judge defendants' motion for summary affirmance. *See Irwin v. Hawk*, 40 F.3d 347, 347 n.1 (11th Cir. 1994); *Campbell v. Air Jam. Ltd.*, 760 F.3d 1165, 1168–69 (11th Cir. 2014) (although we liberally construe *pro se* pleadings, we will not "serve as *de facto* counsel for a party [or] rewrite an otherwise deficient pleading in order to sustain an action"). Smith-Grimes also sued numerous other defendants based on state-law claims, and the district court refused to exercise supplemental jurisdiction over those claims once it found that judicial immunity barred the federal claim that is the subject of this appeal. Because she failed to raise any argument as to the district court's dismissal of her state-law counts below, we will not consider her arguments for the first time on appeal. *See Finnegan v. Comm'r of Internal Revenue*, 926 F.3d 1261, 1271 (11th Cir. 2019).

and that no substantial question exists as to the outcome of the case. Smith-Grimes filed a response in which she reiterated her prior arguments.

I

As a threshold matter, we have an obligation to *sua sponte* assure ourselves of our own jurisdiction. *Reaves v. Sec'y, Fla. Dep't of Corr.*, 717 F.3d 886, 905 (11th Cir. 2013). The timely filing of a notice of appeal in a civil case is a jurisdictional requirement, and this Court cannot entertain an appeal that is out of time. *Green v. Drug Enf't Admin.*, 606 F.3d 1296, 1300 (11th Cir. 2010); *see also Hamer v. Neighborhood Hous. Servs. of Chi.*, 138 S. Ct. 13, 20 (2017).

To be timely, a notice of appeal in a civil case must be filed no later than 30 days after the challenged order or judgment is entered on the docket. 28 U.S.C. § 2107(a); Fed. R. App. P. 4(a)(1)(A). So, to figure out whether Smith-Grimes's appeal is timely, we must determine when each of the district court's orders was entered on the docket for the purpose of starting the countdown, and whether 30 days elapsed between those dates and her notice of appeal.

We start with Smith-Grimes's appeal of the April 19, 2021, order dismissing her amended complaint. That appeal is timely even though more than 30 days elapsed between the order and her appeal. This is so because, under Federal Rule of Civil Procedure 58(a), "[e]very judgment and amended judgment must be set out in a separate document," except orders that dispose of motions in

delineated circumstances. Fed. R. Civ. P. 58(a). When a separate document is required by Rule 58(a), a judgment or order is deemed entered for purposes of Federal Rule of Appellate Procedure 4(a) when either the judgment or order is set forth on a separate document or 150 days have run from entry of the judgment or order on the civil docket, whichever is earlier. Fed. R. App. P. 4(a)(7)(A); *see* Fed. R. Civ. P. 58(c)(2). The district court failed to set forth the judgment of dismissal in a separate document as required. Thus, Smith-Grimes had 150 days from entry of the judgment—meaning that she was required to file a notice of appeal challenging the April 19, 2021 final order on or before October 18, 2021. Because her notice of appeal was filed on June 28, 2021, it is timely to challenge the April 19, 2021 final order.

The appeal of the district court's May 18 denial of Smith-Grimes's "clarification" motion was untimely. That motion is best understood as a motion for reconsideration pursuant to Federal Rule of Civil Procedure 59(e) because it provided arguments as to why the case should not have been dismissed and requested that the district court reconsider its judgment. *Finch v. City of Vernon*, 845 F.2d 256, 258–59 (11th Cir. 1988) (holding that a timely filed postjudgment motion, which "calls into question the correctness of that judgment [] should be treated as a motion under Rule 59(e), however it may be formally styled"). As with the dismissal order discussed above, the district court did not enter judgment regarding its denial of reconsideration in a separate document. But "a separate document is not required for an order disposing of a

motion . . . to alter or amend the judgment, under Rule 59." Fed. R. Civ. P. 58(a)(4). A motion for reconsideration will be deemed a Rule 59(e) motion if it is timely and seeks "reconsideration of matters encompassed in a decision on the merits of the dispute, and not matters collateral to the merits," regardless of how it is actually labelled. *Finch*, 845 F.2d at 258–59; *Livernois v. Med. Disposables, Inc.*, 837 F.2d 1018, 1020–21 (11th Cir. 1988).

Thus, the statutory time limit required that Smith-Grimes file a notice of appeal challenging the May 18 denial of the clarification motion on or before June 17, 2021—30 days after the entry of the order. *See* 28 U.S.C. § 2107(a); Fed. R. App. P. 4(a)(1)(A). Because the notice of appeal was filed on June 28, 2021, the notice of appeal is untimely to challenge the May 18 order, and we lack jurisdiction to review it. *See Green*, 606 F.3d at 1300–01.

Lastly, the notice of appeal is timely to challenge the district court's June 2, 2021 order denying the motion to recuse as it was filed within 30 days of the entry of that postjudgment order.

* * *

In summary, Smith-Grimes's appeal of the district court's April 19 dismissal order and its June 2 order denying the motion to recuse were timely. But we don't have jurisdiction to review the district court's May 18 order denying Smith-Grimes's clarification motion because it was untimely appealed.

II

We now turn to whether the defendants are entitled to summary disposition of this case. Summary disposition is appropriate where, as relevant here, "the position of one of the parties is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case, or where, as is more frequently the case, the appeal is frivolous." *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).[2]

We start with Smith-Grimes's appeal of the district court's April 19 order dismissing her complaint. The district court correctly dismissed the case because the judge defendants were entitled to absolute judicial immunity. A judge enjoys absolute judicial immunity when she acts in her judicial capacity, so long as she does not act "in the clear absence of all jurisdiction." *Sibley v. Lando*, 437 F.3d 1067, 1070 (11th Cir. 2005) (quotation marks omitted). "Whether a judge's actions were made while acting in his judicial capacity depends on whether: (1) the act complained of constituted a normal judicial function; (2) the events occurred in the

[2] We review de novo a district court's dismissal for failure to state a claim, accepting the allegations in the complaint as true and construing them in the light most favorable to the plaintiff. *Sibley v. Lando*, 437 F.3d 1067, 1070 (11th Cir. 2005). However, only a complaint that states a plausible claim for relief can survive a motion to dismiss. *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). We also review de novo the grant of absolute judicial immunity. *Smith v. Shook*, 237 F.3d 1322, 1325 (11th Cir. 2001). We review for an abuse of discretion a district court's denial of a motion for recusal. *United States v. Scrushy*, 721 F.3d 1288, 1303 (11th Cir. 2013).

judge's chambers or in open court; (3) the controversy involved a case pending before the judge; and (4) the confrontation arose immediately out of a visit to the judge in his judicial capacity." *Id.* Absolute judicial immunity "applies even when the judge's acts are in error, malicious, or were in excess of his or her jurisdiction." *Id.*

The judge defendants in this case are entitled to judicial immunity. None of the allegations in Smith Grimes's amended complaint raised a plausible inference that any of the judge defendants took any actions in the clear absence of all jurisdiction, and the district court thus did not err in finding that they were entitled to absolute immunity. *See id.* Moreover, Smith-Grimes did not raise the arguments she makes in this respect before the district court, *see Finnegan v. Comm'r of Internal Revenue*, 926 F.3d 1261, 1271 (11th Cir. 2019), and even if she had preserved them, she, at most, alleges erroneous or malicious conduct insufficient to defeat judicial immunity. *See Sibley*, 437 F.3d at 1070.[3]

The defendants were also entitled to summary affirmance on Smith-Grimes's appeal of the order denying recusal. There are two types of recusals under 28 U.S.C. § 455. *United States v. Scrushy*, 721 F.3d 1288, 1303 (11th Cir. 2013). Section 455 requires recusal (i) in any proceeding in which the impartiality of a judge might reasonably be questioned, or (ii) if a judge has "a personal

[3] Additionally, the district court properly dismissed the case against defendant Aronberg as no allegations were made against him. Even Smith-Grimes concedes that she did not intend to include him as a defendant.

bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding." *Scrushy*, 721 F.3d at 1303 (citing 28 U.S.C. § 455(b)(1)).

To the extent that Smith-Grimes has preserved her arguments as to recusal, the district court did not abuse its discretion in denying her motion because she failed to show any bias on the part of the district court judge other than alleging that he knew the judge defendants, which was insufficient to raise a reasonable question as to impartiality. *See* 28 U.S.C. § 455(a); *Scrushy*, 721 F.3d at 1303.

Although we are not unsympathetic to Smith-Grimes's plight, the judge defendants' position is clearly correct as a matter of law, no substantial question exists as to the outcome of the case, and summary affirmance is proper in the above respects. *See Groendyke Transp., Inc.*, 406 F.2d at 1162.

* * *

After considering the parties' responses to the jurisdictional question, the instant appeal is **DISMISSED**, in part, for lack of jurisdiction as to the May 18, 2021 order. The appellees' motion for summary affirmance as to the June 2, 2021 order and the April 19, 2021 final order is **GRANTED**, and their motion to stay the briefing schedule is **DENIED** as moot.