[DO NOT PUBLISH]

In the United States Court of Appeals

For the Eleventh Circuit

No. 22-10680

Non-Argument Calendar

JIMMY GLENN,
ESTATE OF ANDERSON CHILDS,
ROBIN CHILDS,

Plaintiffs-Appellants,

versus

CLEVELAND BROTHERS, INC.,
TIMOTHY WOODSON,
Administrator of the Estate of DoctorWoodson,
JACOB A. WALKER,
Judge,
WILLIE DUMAS,
of the Estate of Minnie Morgan,

LEE COUNTY CIRCUIT COURT, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Alabama
D.C. Docket No. 3:20-cv-00957-ECM-KFP

Before JILL PRYOR, BRANCH, and HULL, Circuit Judges.

PER CURIAM:

Plaintiffs-Appellants Jimmy Glenn, Robin Childs, and the Estate of Anderson Childs, proceeding *pro se*, appeal the district court's dismissal of their amended complaint, which raised several constitutional claims stemming from a land dispute and related state court proceedings. On appeal, plaintiffs-appellants present specific arguments as to the dismissal of only one of their claims. They also raise four general procedural challenges as to how their case was handled, including that the district court erred by: (1) referring their case to a magistrate judge; (2) considering materials outside their amended complaint when ruling on defendants' motions to dismiss; (3) denying their motion to consolidate their case with two state court proceedings; and (4) denying leave to amend their amended complaint.

For the reasons below, we (1) dismiss the appeal as to plaintiff-appellant Estate of Anderson Childs and (2) affirm the district court's order dismissing the other plaintiffs-appellants' amended complaint and denying their motions to consolidate and for leave to amend.

I. THE ESTATE OF ANDERSON CHILDS IS DISMISSED

In our October 21, 2022 order, we explained that plaintiff-appellant Estate of Anderson Childs could not proceed *pro se* or be represented by a non-lawyer on appeal. We cautioned that the Estate would be dismissed as a party to this appeal if it failed to obtain counsel and have counsel file an appearance and amended notice of appeal signed on the Estate's behalf within 30 days of our order. Because the Estate has not complied with our order, we **DISMISS** this appeal as to the Estate. We now turn to the other plaintiffs.

II. BACKGROUND

In November 2020, plaintiffs Glenn and Robin Childs ("plaintiffs"), filed an initial *pro se* complaint centering on a state court action between the heirs of Ben and Alice Woodson. While that state court action is largely unrelated to the issues on appeal, we briefly summarize it for context.

A. State Court Action

The state court action involved the ownership of 40 acres of land. Plaintiffs alleged that the land was worth approximately $300,000 per acre. Plaintiffs also alleged that Doc Woodson, one

of Ben and Alice Woodson's children, fraudulently obtained from his siblings ownership of the entire 40-acre property.[1] Thereafter, Cleveland Brothers, Inc. purchased part of that property from Doc Woodson's daughters. Cleveland Brothers then initiated a partition action in state court, and this federal suit eventually followed.

B. Initial Federal Complaint

In their initial *pro se* federal complaint, plaintiffs Glenn and Robin Childs sought, among other forms of relief, injunctive relief related to the state court proceedings and to Cleveland Brother's ability to claim "any estate, right, or title to the subject property other than a monetary interest." Plaintiffs' initial complaint sued defendants Cleveland Brothers; Timothy Woodson, as the administrator of the estate of Doc Woodson; the Lee County Circuit Court and Judge Jacob Walker; and Willie Dumas, as the administrator of the estate of Minnie Morgan.

The district court referred the case to a magistrate judge under 28 U.S.C. § 636 "for all pretrial proceedings and entry of any orders or recommendations as may be appropriate."

C. Amended Complaint and Motions for Leave to Amend

After Judge Walker and Cleveland Brothers filed motions to dismiss, plaintiffs sought, and the magistrate judge granted, leave to amend the initial complaint. Plaintiffs brought their amended

[1] Anderson Childs was the son of Frances Woodson Childs, one of Doc's siblings, and Jimmy Glenn and Robin Childs are Frances's grandchildren.

complaint against the following additional defendants: Lee County Circuit Court clerk Mary Roberson; state court judges John Denson and Bill English; an "Unnamed Bailiff assigned to Judge Walker"; and the Water Works Board of the City of Auburn (collectively with those listed in the initial complaint "defendants").

Plaintiffs raised several claims under the Fifth, Sixth, Seventh, Eighth, Thirteenth, and Fourteenth Amendments and 42 U.S.C. §§ 1983, 1985. Plaintiffs again sought injunctive relief related to the state court proceedings and an injunction preventing Cleveland Brothers from claiming certain rights and interests in the disputed land.

In relevant part, the amended complaint raised a claim against the unnamed state court bailiff under the First and Fourteenth Amendments and § 1983. Regarding this claim, plaintiffs alleged that on January 7, 2013, they were locked out of a state court courtroom in which a hearing on the disputed land was being held. Plaintiffs alleged that, "[u]pon knocking there was no response. At the close of the hearing the door was opened and no explanation given."

Before defendants responded to the amended complaint, plaintiffs, still *pro se*, filed a second motion for leave to amend, which the magistrate judge denied. The magistrate judge stated that plaintiffs had not set forth reasons supporting the need to amend, and that any future motion to amend had to provide such reasons and include the proposed second amended complaint. The magistrate judge cautioned that, if it granted leave to amend, "no

further amendments w[ould] be allowed absent exceptional circumstances." (Font altered.)

Plaintiffs, still *pro se*, filed a third motion to amend. Plaintiffs explained that they wished to amend the amended complaint to bring § 1985 and "discriminatory animus" claims against additional defendants, to "[i]nitiate contact with counsel representing unnamed Bailiff," and to reraise allegations from the initial complaint that were omitted in the amended complaint. In a July 12, 2021 order, the magistrate judge granted plaintiffs "one final opportunity to file an amended complaint." However, the magistrate judge cautioned that: (1) plaintiffs had until July 26, 2021 to file a second amended complaint; (2) "no extensions to this deadline w[ould] be granted"; (3) "no further amendments w[ould] be allowed absent exceptional circumstances"; and (4) the case would proceed on the amended complaint if plaintiffs failed to file a second amended complaint. Plaintiffs never filed a second amended complaint.

D. Plaintiffs' Motion to Consolidate with State Cases and Defendants' Motions to Dismiss

Plaintiffs, remaining *pro se*, filed a Federal Rule of Civil Procedure 42 motion to consolidate their federal case with two separate state court actions: (1) a state court proceeding against the City of Auburn and the Water Works Board, and (2) a state traffic

court proceeding involving Glenn.[2] Plaintiffs asserted that defendant Judge Walker presided over both state court proceedings and had retaliated against them because they named him as a defendant in their federal suit.

Several defendants filed motions to dismiss the amended complaint under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim for relief. Defendant Cleveland Brothers attached several documents to its motion to dismiss, including an affidavit, state court documents, and an obituary for Anderson Childs.

The magistrate judge submitted to the district court a report and recommendation ("R&R") that the defendants' motions to dismiss be granted because the amended complaint failed to state a viable claim against any defendant. The magistrate judge concluded, *inter alia*, that plaintiffs' allegations were largely conclusory, and some claims were barred by judicial immunity, Eleventh Amendment immunity, or the applicable statute of limitations.

Regarding plaintiffs' claim against the unnamed bailiff, the magistrate judge determined that three grounds supported dismissal: (1) fictitious-party pleading is generally not permitted in federal court; (2) plaintiffs' allegations—that they were locked out of court and were not permitted to enter when they knocked—failed to state a claim for relief against this unnamed bailiff; and

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[2] These actions appear to be different than the state court land dispute summarized earlier in this opinion.

(3) even if these allegations stated a claim for relief, plaintiffs alleged that the events giving rise to this claim took place in January 2013, meaning the two-year statute of limitations expired before plaintiffs' November 2020 initial complaint.

Plaintiffs objected to the R&R, and they requested leave to amend to correct deficiencies in the amended complaint. Among other objections, plaintiffs argued that their claim against the unnamed bailiff should not be dismissed because: (1) only one individual was assigned to a judge as a bailiff and plaintiffs provided the date of this individual's violations, meaning more specific information was unnecessary to identify this individual; and (2) the two-year statute of limitations had not expired because their claim was not actionable until the state court issued a final decision in March 2020.

The district court overruled plaintiffs' objections, adopted the R&R, granted defendants' motions to dismiss, denied leave to amend, denied all other pending motions as moot, and dismissed plaintiffs' amended complaint. The district court denied leave to amend further on two independent grounds. First, the district court found that plaintiffs already had a chance to amend their amended complaint and file a second amended complaint—which they failed to do—and granting additional leave to amend would prejudice defendants. The district court also noted that plaintiffs were warned that this prior chance to amend was their "one final opportunity," and they offered no explanation for their failure to file a second amended complaint. Second, the district court found

that amendment would be futile because plaintiffs had been unable to state a viable claim in their initial or amended complaints.

III. STANDARDS OF REVIEW

We review *de novo* a district court's Rule 12(b)(6) dismissal for failure to state a claim. *Davis v. City of Apopka*, 78 F.4th 1326, 1331 (11th Cir. 2023). We typically review for abuse of discretion the denial of leave to amend, although we review *de novo* a decision that a particular amendment would be futile. *Crawford's Auto Ctr., Inc. v. State Farm Mut. Auto. Ins. Co.*, 945 F.3d 1150, 1163 (11th Cir. 2019). We review for abuse of discretion the district court's denial of a motion to consolidate. *Eghnayem v. Bos. Sci. Corp.*, 873 F.3d 1304, 1313 (11th Cir. 2017). While we liberally construe *pro se* pleadings, we may not act as counsel or rewrite otherwise deficient pleadings in order to sustain an action. *Bilal v. Geo Care, LLC*, 981 F.3d 903, 911 (11th Cir. 2020).

IV. DISCUSSION

On appeal, plaintiffs raise one substantive claim as to the district court's dismissal order, arguing that the district court should not have dismissed their claim against the unnamed bailiff. They also raise four general procedural challenges as to how their whole case was handled. We review each in turn.

V. SUBSTANTIVE CLAIM

A. Substantive Challenge to the Dismissal of the Unnamed Bailiff Claim

Plaintiffs argue that the magistrate judge erred by finding that their claim against the unnamed bailiff was time barred. However, the R&R, which the district court adopted, recommended dismissing this claim for three independent grounds: (1) fictitious-party pleading is generally not permitted in federal court; (2) the amended complaint failed to state a claim against this unnamed bailiff; and (3) even if the amended complaint stated a claim for relief, the statute of limitations had expired. By presenting arguments on appeal as to only this third ground, plaintiffs abandoned any challenge to the other two independent grounds for dismissing this claim. *See Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 680 (11th Cir. 2014) ("When an appellant fails to challenge properly on appeal one of the grounds on which the district court based its judgment, he is deemed to have abandoned any challenge of that ground, and it follows that the judgment is due to be affirmed."). Accordingly, we affirm the dismissal of plaintiffs' claim against the unnamed bailiff on these two other independent grounds.

B. Statute of Limitations as to the Unnamed Bailiff Claim

Even if we were to reach the third ground, plaintiffs' claim as to the unnamed bailiff was undoubtedly time-barred under Alabama's two-year statute of limitations. *See* Ala. Code § 6-2-38(*l*); *McNair v. Allen*, 515 F.3d 1168, 1173 (11th Cir. 2008) (stating that

constitutional claims brought under § 1983 are subject to the statute of limitations for personal injury actions in the state in which the § 1983 action was filed). Plaintiffs' claim against the unnamed bailiff was based on allegations that the bailiff locked them out of a courtroom on January 7, 2013, at which point the facts supporting their cause of action were or should have been "apparent to a person with a reasonably prudent regard for his rights." *McNair*, 515 F.3d at 1173 (quotation marks omitted). But plaintiffs did not initiate the underlying lawsuit until November 2020, well past this two-year statute of limitations.[3]

VI. PROCEDURAL CHALLENGES

A. Referral to the Magistrate Judge

First, plaintiffs argue that the district court should not have referred their case to a magistrate judge because their initial and amended complaints sought injunctive relief.

A district court may designate a magistrate judge to "hear and determine" any pretrial matters pending before the court, except certain "dispositive" motions, including motions for injunctive relief. 28 U.S.C. § 636(b)(1)(A). However, a district

[3] In the "Statement of Issues" section, in the "Summary of Argument" section, and in an issue heading of their appellate brief, plaintiffs reference the district court's dismissal of some defendants based on immunity. But even liberally construing plaintiffs' appellate brief, they fail to raise any argument challenging the district court's immunity rulings. Accordingly, plaintiffs have abandoned this issue. *See Sapuppo*, 739 F.3d at 681-82 (holding that a party abandons an issue by making only passing references to it in the statement of the case, the summary of the argument, or the argument sections of a brief).

court may have a magistrate judge "conduct hearings" and submit to the district court "proposed findings of fact and recommendations for the disposition" of a motion for injunctive relief. 28 U.S.C. § 636(b)(1)(A), (B). The district court remains free to "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1); *see also Stephens v. Tolbert*, 471 F.3d 1173, 1176 (11th Cir. 2006).

Here, the district court referred the case to the magistrate judge "for all pretrial proceedings and the entry of any . . . recommendations as may be appropriate." Upon defendants' motions to dismiss, the magistrate judge submitted its recommendation to the district court that those motions be granted, and the district court adopted that recommendation after a *de novo* review of the record and objections. This procedure was proper under § 636(b)(1).

B. Dismissal under Rule 12(b)(6)

Second, plaintiffs argue that the district court erred by dismissing the amended complaint under Rule 12(b)(6) because the district court considered materials outside that pleading. With certain exceptions not relevant here,[4] if a district court considers

[4] For example, a district court may consider documents attached to a motion to dismiss without converting that motion into one for summary judgment if the attached documents are central to plaintiff's claim and are undisputed. *Horsley v. Feldt*, 304 F.3d 1125, 1134 (11th Cir. 2002). The parties do not argue that this exception applies here.

materials outside the complaint when ruling on a Rule 12(b)(6) motion, it must convert that motion into one for summary judgment and afford the parties full discovery. *Day v. Taylor*, 400 F.3d 1272, 1275-76 (11th Cir. 2005).

Here, Cleveland Brothers attached several documents to its motion to dismiss, including an affidavit, state court documents, and a news article. But plaintiffs do not direct us to any portion of the R&R or the district court's order where these outside materials were considered. And our independent review of the R&R and the district court's order reveals that they did not consider outside materials. Accordingly, the district court did not err in dismissing the amended complaint under Rule 12(b)(6).

C. Denial of Motion to Consolidate with State Court Cases

Third, plaintiffs argue that the district court erred by declining to consolidate their federal case with certain state court and traffic court cases under Rule 42(a). In addition to granting the defendants' motions to dismiss and dismissing the case, the district court denied as moot all remaining motions, which included plaintiffs' motion to consolidate. On appeal, however, plaintiffs argue only the merits of the motion to consolidate, and they fail to challenge the district court's dismissal of this motion as moot. Because we discern no error in the district court's dismissal of plaintiffs' amended complaint, we affirm the denial of their motion to consolidate as moot. *See Smith v. Sch. Bd. of Orange Cnty.*, 487 F.3d 1361, 1366 (11th Cir. 2007) (affirming the denial of objections to a summary judgment R&R as moot because the summary judgment

order was due to be affirmed and the party failed to argue on appeal that his objections were not moot).

But even if plaintiffs' motion to consolidate was not mooted by the dismissal of the amended complaint, the district court did not abuse its discretion by declining to consolidate plaintiffs' federal action with the two state court actions. The state court actions were necessarily not "before" the federal district court, as required to be consolidated under Rule 42(a). Fed. R. Civ. P. 42(a) (providing that "actions before the court involv[ing] a common question of law or fact" may be consolidated).

D. Leave to Amend was Unwarranted

Finally, plaintiffs argue the district court erred by denying their request for a second opportunity to amend the amended complaint because amendment would not have been futile. But the district court denied leave to amend for two reasons: (1) defendants would be prejudiced because the court had already granted leave to amend the amended complaint, which plaintiffs failed to do without explanation; and (2) amendment would be futile. Again, by failing to present argument on this first basis for denying leave to amend, plaintiffs "have abandoned any challenge" to its ruling that defendants would be prejudiced, "and it follows that the [denial of leave to amend] is due to be affirmed." *See Sapuppo*, 739 F.3d at 680. But we would affirm even if the

plaintiffs preserved a challenge to the district court's denial of leave to amend.

Under Federal Rule of Civil Procedure 15(a), a party may amend its pleading once as a matter of course, after which it must obtain the written consent of the opposing party or leave of the court. Leave to amend should be freely given, except where, among other things, there was undue delay in seeking leave to amend or the opposing party would be prejudiced. *Foman v. Davis*, 371 U.S. 178, 182 (1962); *Garfield v. NDC Health Corp.*, 466 F.3d 1255, 1270 (11th Cir. 2006).

Prior to the motions to dismiss, the magistrate judge granted plaintiffs leave to amend the amended complaint, but it cautioned plaintiffs that: (1) it was granting "one final opportunity to file an amended complaint"; (2) "no further amendments w[ould] be allowed absent exceptional circumstances"; (3) no extensions for filing a second amended complaint would be allowed; and (4) that absent a timely second amended complaint, the case would proceed on the amended complaint.

Despite these warnings, plaintiffs did not file a second amended complaint. It was not until plaintiffs objected to the R&R, well after the time to amend, that they again sought leave to amend their amended complaint. And in seeking this second chance to amend, plaintiffs failed to present anything approaching "exceptional circumstances" warranting further amendment, and they did not otherwise explain their failure to file a timely second amended complaint. Given these facts, the district court did not

abuse its discretion by declining to give plaintiffs a *second* chance to amend the amended complaint.

VII. CONCLUSION

For the reasons above, we dismiss this appeal as to the plaintiff-appellant Estate of Anderson Childs and affirm the district court's dismissal order as to plaintiffs-appellants Jimmy Glenn and Robin Childs.

DISMISSED IN PART, AFFIRMED IN PART.