

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-13677

Non-Argument Calendar

BILL D. ALCIUS,
RICARDO FLORESTAL,
an individual,

Plaintiffs-Appellants,

versus

JOSHUA GRONTENHUIS,
individually,
RYAN RILLO,
individually,
BRYAN KALISH,
individually,
DANIEL MCEVOY,
individually,

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THOMAS MCGUIRE, et al.,
individually,

Defendants-Appellees,

PAUL SCHEEL,
individually,

Defendant.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 0:22-cv-60386-CMA

Before JILL PRYOR, BRANCH and LAGOA, Circuit Judges.

PER CURIAM:

This appeal is DISMISSED, *sua sponte*, for lack of jurisdiction. Bill D. Alcius and Ricardo Florestal appeal from the district court's October 4, 2023, judgment. However, that order is neither final nor appealable because claims remain pending against one defendant.

The plaintiffs filed a complaint against police officers Joshua Grotenhuis, Ryan Rillo, Bryan Kalish, Daniel McEvoy, Thomas

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McGuire, Paul Scheel, and Raul Toledo, alleging unlawful arrest and excessive force. The defendants answered the complaint jointly. The plaintiffs filed a stipulation of voluntary dismissal as to Scheel, and the district court dismissed all claims against Kalish at the summary judgment stage.

The jury rendered a verdict finding Grotenhuis, Rillo, McEvoy, McGuire, and Toledo not liable to the plaintiffs and, on October 4, 2023, the district court entered judgment in favor of the defendants and ordered the case closed. The plaintiffs filed a motion for a new trial and, shortly thereafter, filed a notice of appeal from the judgment, reserving the right to amend the notice of appeal after the disposition of the motion for a new trial. On December 1, 2023, the district court denied the plaintiffs' motion for a new trial, but the plaintiffs did not amend the original notice of appeal.

Because Scheel answered the plaintiffs' complaint, he could not be dismissed from the action by notice but required dismissal via a stipulation that complied with Federal Rule of Civil Procedure 41(a)(1)(A)(ii). *See* Fed. R. Civ. P. 41(a)(1)(A). However, the plaintiffs' stipulation of dismissal as to Scheel was defective because it was not signed by all parties that appeared in the action—it was signed by only counsel for the plaintiffs. *See id.*, R. 41(a)(1)(A)(ii); *City of Jacksonville v. Jacksonville Hosp. Holdings, L.P.*, 82 F.4th 1031, 1034, 1038 (11th Cir. 2023). Furthermore, the district court did not render the defective Rule 41(a)(1)(A)(ii) stipulation effective under Rule 41(a)(2) by entering an order setting forth the terms of the dismissal, or otherwise act to dismiss Scheel. *See* Fed. R. Civ. P.

41(a)(2); *Sanchez v. Disc. Rock & Sand, Inc.*, 84 F.4th 1283, 1287 (11th Cir. 2023); *Pontenberg v. Bos. Sci. Corp.*, 252 F.3d 1253, 1256 n.1 (11th Cir. 2001). Finally, the plaintiffs did not seek to eliminate the claims against Scheel by amending the complaint pursuant to Rule 15(a). See Fed. R. Civ. P. 15(a); *Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1106 (11th Cir. 2004). Therefore, Scheel was not dismissed from the action.

The verdict and October 4, 2023, judgment in favor of Grotenhuis, Rillo, McEvoy, McGuire, and Toledo did not fully resolve the action because the claims against Scheel remain pending. See *World Fuel Corp. v. Geithner*, 568 F.3d 1345, 1348 (11th Cir. 2009); *Martinez v. Carnival Corp.*, 744 F.3d 1240, 1243-44 (11th Cir. 2014). The district court's December 1, 2023, order denying plaintiffs a new trial also did not address or resolve the claims against Scheel. Additionally, the district court did not certify the October 4, 2023, judgement for immediate review pursuant to Rule 54(b). See Fed. R. Civ. P. 54(b); *Supreme Fuels Trading FZE v. Sargeant*, 689 F.3d 1244, 1246 (11th Cir. 2012). Accordingly, the plaintiffs' November 2, 2023, notice of appeal challenging the October 4, 2023, judgment is not final or immediately appealable and cannot invoke our jurisdiction. See 28 U.S.C. § 1291.

All pending motions are DENIED as moot. No petition for rehearing may be filed unless it complies with the timing and other requirements of 11th Cir. R. 40-3 and all other applicable rules.