[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-11089
Non-Argument Calendar

D.C. Docket No. 4:17-cv-10033-JEM

MICHAEL S. KNEZEVICH,

Plaintiff-Appellant,

versus

WILLIAM REAGAN PTOMEY,
Sixteenth Judicial Circuit of Florida, official
and individual capacity,
PATRICK MCCULLAH,
MATTHEW J. WILDNER,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Florida

(February 7, 2019)

Before WILSON, JORDAN, and ANDERSON, Circuit Judges.

PER CURIAM:

Michael Knezevich appeals the dismissal of his *pro se* 42 U.S.C. § 1983 actions for violations of the Fourth, Fifth, Ninth, and Fourteenth Amendments, and unspecified United States and Florida laws. In his complaints, Knezevich asserted that Judge William Ptomey and attorneys Patrick McCullah and Matthew Wildner conspired to rule against him in a small claims case. On appeal, Knezevich argues that the district court erred by converting Florida civil conspiracy claims in one of his complaints into § 1983 conspiracy claims. Second, he argues that the district court erred in concluding that all claims against defendant Judge Ptomey were barred because of his absolute judicial immunity. Third, Knezevich asserts that the district court erred in denying his motion to amend one of his complaints because it would be futile. Finally, he also asserts that the district court erred in denying his motions to disqualify Judge Martinez.

I.

We review *de novo* the district court's grant of a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim, accepting the allegations in the complaint as true. *Powell v. Lennon*, 914 F.2d 1459, 1463 (11th Cir. 1990). In addition, we construe complaints by *pro se* plaintiffs more liberally than complaints drafted by lawyers. *Id.*

To preserve a claim for appeal, a plaintiff must first present it clearly to the district court, "in such a way as to afford the district court an opportunity to recognize and rule on it." *In re Pan Am. World Airways, Inc., Maternity Leave Practices & Flight Attendant Weight Program Litig.*, 905 F.2d 1457, 1462 (11th Cir. 1990). Additionally, an "amended pleading supersedes the former pleading; the original pleading is abandoned by the amendment." *Pintando v. Miami-Dade Hous. Agency*, 501 F.3d 1241, 1243 (11th Cir. 2007). Furthermore, objections to a magistrate judge's recommendation and report must be "specific" and "clear enough to permit the district court to effectively review the magistrate judge's ruling." *U.S. v. Shultz*, 565 F.3d 1353, 1360 (holding a one sentence statement as an objection was not enough to preserve an issue for appeal). When a party fails to raise a proper objection to the magistrate judge's report and recommendation, that party waives its right to review findings of facts and legal conclusions on appeal unless there was plain error. *See* 11th Cir. R. 3-1.

We conclude that the district court did not err in dismissing Knezevich's complaints because his only remaining claims were § 1983 civil conspiracy claims. Knezevich abandoned the Florida civil conspiracy claims in his original complaint when he filed an amended complaint. He also waived these claims by failing to raise a proper objection to the magistrate judge's report and recommendation concerning them.

II.

We review *de novo* the grant of absolute judicial immunity. *Smith v. Shook*, 237 F.3d 1322, 1325 (11th Cir. 2001). To obtain a reversal of a district court judgment that is based on multiple, independent grounds, an appellant must convince us that every stated ground for this judgment is incorrect. *Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 680 (11th Cir. 2014).

A district court may dismiss a complaint for failure to state a claim based upon the affirmative defense of judicial immunity "when the defense is an obvious bar given the allegations." *Sibley v. Lando*, 437 F.3d 1067, 1070 n.2 (11th Cir. 2005). A judge has absolute judicial immunity while acting in a judicial capacity unless he acts "in the clear absence of all jurisdiction." *Id.*at 1070. Absolute immunity applies even when the judge's acts were in error, malicious, or in excess of his jurisdiction. *Id.* Whether a judge acted in a judicial capacity depends on whether: (i) the act was a normal judicial function; (ii) the act occurred in chambers or open court; (iii) and the controversy involved a case pending before the judge. *Id.* Interpreting the law is a normal judicial function. *See Marbury v. Madison*, 5 U.S. 137, 177 (1803) ("It is emphatically the province and duty of the judicial department to say what the law is.").

We conclude that the district court did not err in barring Knezevich's claims against Judge Ptomey because he had absolute judicial immunity. Judge Ptomey's

action of interpreting the law in a case pending before him was a normal judicial function.

III.

Generally, we review a district court's denial of a motion to amend a complaint for an abuse of discretion but review *de novo* a district court's determination that an amendment to the complaint would be futile. *Cockrell v. Sparks*, 510 F.3d 1307, 1310 (11th Cir. 2007). Amending a complaint is futile "when the complaint as amended would still be properly dismissed." *Id.* "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A party may amend a complaint once as a matter of course within 21 days after service of a 12(b) motion or with the consent of the court or all opposing parties. Fed. R. Civ. P. 15(a)(1). "The court should freely give leave [to amend] when justice so requires." Fed. R. Civ. P. 15(a)(2).

To maintain an action under 42 U.S.C. § 1983, "the conduct complained of must have been committed by a person acting under color of state law and must result in a deprivation of rights, privileges, or immunities secured by the Constitution or laws of the United States." *Bendiburg v. Dempsey*, 909 F.2d 463, 468 (11th Cir.1990). "A plaintiff may state a § 1983 claim for conspiracy to violate constitutional rights by showing a conspiracy existed that resulted in the

actual denial of some underlying constitutional right." *Grider v. City of Auburn, Ala.*, 618 F.3d 1240, 1260 (11th Cir. 2010). A valid § 1983 conspiracy claim requires the plaintiff to show that "the defendants reached an understanding to violate his rights," and that an agreement existed between the defendants. *Rowe v. City of Fort Lauderdale*, 279 F.3d 1271, 1283-84 (11th Cir. 2002). Actions for which a person has absolute immunity are not considered in establishing a § 1983 conspiracy claim. *See Rowe*, 279 F.3d at 1281–82 (reasoning that actions taken by a prosecutor while in his prosecutorial role cannot be used to find evidence of a conspiracy).

We conclude that the district court did not err in denying Knezevich's motion to amend his complaint because the amendment would have been futile. Knezevich's proposed amended complaint would have been subject to dismissal because the claims against Judge Ptomey are barred by his absolute judicial immunity. Additionally, the claims against McCullah and Wildner would have been subject to dismissal because their actions of planning and instigating a litigation strategy are normal functions of opposing counsel.

IV.

We review a district court's denial of a recusal motion for an abuse of discretion. *Draper v. Reynolds*, 369 F.3d 1270, 1274 (11th Cir. 2004). A judge must disqualify himself "in any proceeding in which his impartiality might

reasonably be questioned." 28 U.S.C. § 455(a). In addition, a judge must also disqualify himself when a party files a sworn affidavit demonstrating that "the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party," and the affidavit is accompanied by a certificate from "a counsel of record stating that it is made in good faith." 28 U.S.C. § 144; *see* 28 U.S.C. § 455(b)(1).

The standard for questioning a judge's impartiality under § 455 "is whether an objective, fully informed lay observer would entertain significant doubt about the judge's impartiality." *Thomas v. Tenneco Packaging Co.*, 293 F.3d 1306, 1329 (11th Cir. 2002). Generally, "bias sufficient to disqualify a judge must stem from extrajudicial sources." *Id.* "The exception to this rule is when a judge's remarks in a judicial context demonstrate such pervasive bias and prejudice that it constitutes bias against a party." *Id*. Showing that a judge's prior decision benefits one party over another is not enough to reach the § 455 recusal standard, unless that decision demonstrates blatant "favoritism or bias" making a "fair judgment impossible." *Draper*, 369 F.3d at 1279. Additionally, "judicial rulings alone almost never constitute a valid basis" to sustain a recusal motion. *Id.*

We conclude that the district court did not err in denying Knezevich's motions to disqualify Judge Martinez. Knezevich's motions fail to demonstrate

that Judge Martinez has a personal bias or prejudice against Knezevich and do not comply with the requirements listed in § 144.

AFFIRMED.