[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

____

No. 19-12621
Non-Argument Calendar

____

D.C. Docket No. 1:17-cv-05205-MLB

JULIE P. WHITCHURCH,

Plaintiff-Appellant,

versus

ELARBEE THOMPSON WILSON & SAPP, LLP,
READ GIGNILLIANT, DOUGLAS DUERR,
REBECCA SHEPHARD, POOLE HUFFMAN, LLC,
VIZANT TECHNOLOGIES, LLC,
JUDGE RUSSELL VINEYARD, ET AL.

Defendants-Appellees.

____

Appeal from the United States District Court
for the Northern District of Georgia

____

(June 19, 2020)

Before WILSON, JORDAN, and ANDERSON, Circuit Judges.

PER CURIAM:

Julie Whitchurch filed a 110-page amended complaint, asserting 65 claims against 22 defendants (including a magistrate judge and a district judge). Generally speaking, the claims related to a dispute between Ms. Whitchurch and her former employer, Vizant Technologies; subsequent litigation in a Georgia state court and a Pennsylvania federal court between them; the alleged fraudulent behavior of Vizant's employees and agents in the litigation; alleged attempts by the district court judge in the Pennsylvania federal case to coerce her into settling; Ms. Whitchurch's non-appearance for a trial on damages in the Pennsylvania federal case; state and federal arrest warrants issued for Ms. Whitchurch; and Ms. Whitchurch's custodial transport from Georgia to Pennsylvania after her arrest.

Ms. Whitchurch asserted a federal RICO conspiracy claim, 55 predicate acts listed as substantive counts, and 10 state-law claims. In many portions of her complaint, Ms. Whitchurch collectively listed a number of predicate acts or claims, lumped together a number of defendants sued for those predicate acts or claims (without specifically indicating which defendant was sued for which act(s) or claim(s)), and listed a factual narrative purporting to apply to all of the predicate acts or claims and all of the listed defendants. *See, e.g.,* D.E. 16 at 83-84 (Counts 2

through 6, listing 18 U.S.C. §§ 1349, 371, and 1341 as the alleged predicate acts and substantive claims, and indicating that 9 defendants were sued under all of those Counts).

The district court considered the complaint to be a shotgun pleading, and ordered Ms. Whitchurch to file a second amended complaint which complied with Rule 8 and corrected other deficiencies. In that order, the district court described to Ms. Whitchurch the problems in her amended complaint and explained what needed to be corrected.

Despite receiving an extension of time, Ms. Whitchurch did not file a second amended complaint. Instead, she sought an interlocutory appeal, twice requested clarification, and requested the recusal of the district court judge. All of those filings were unsuccessful. A month after her extended deadline for filing the second amended complaint had passed, the district court dismissed the case with prejudice.

Ms. Whitchurch, again proceeding pro se, now appeals. For the reasons which follow, we affirm in part and reverse in part. We assume the parties' familiarity with the record, and set out only what is necessary to explain our decision. As to any issues not discussed in the text, we summarily affirm.

First, the district court judge did not abuse his discretion, *see Jenkins v. Anton*, 922 F.3d 1257, 1271 (11th Cir. 2019), in denying the motion to recuse under 28

U.S.C. § 455. None of the matters cited by Ms. Whitchurch—a Georgia statute requiring state judges to rule on motions within 90 days, the fact that the magistrate judge named as a defendant served in the same district, the possibility that the district court judge would have been called as a witness to testify to the conduct of the magistrate judge in a different case, and the district judge's rulings in the instant case—warranted recusal. *See generally Liteky v. United States*, 510 U.S. 540, 555 (1994) ("judicial rulings alone almost never constitute a valid basis for a bias or partiality motion"); *United States v. Scrushy*, 721 F.3d 1288, 1303 (11th Cir. 2013) (recusal under § 455(a) turns on "whether an objective, disinterested, lay observer fully informed of the facts underlying the grounds on which recusal was sought would entertain a significant doubt about the judge's impartiality").

Second, the district court's dismissal with prejudice as to the federal claims did not constitute an abuse of discretion. *See Foudy v. Indian River Cty. Sheriff's Office*, 845 F.3d 1117, 1122 (11th Cir. 2017) (failure to comply with a court order); *Vibe Micro, Inc. v. Shabanets*, 878 F.3d 1291, 1294 (11th Cir. 2018) (shotgun complaint). The district court informed Ms. Whitchurch that her second amended complaint needed to remedy the problems identified in the order, and had to—among other things—include a plain factual background, list each cause of action in separate counts, and specifically identify each defendant against whom a cause of action was brought and the particular factual basis for liability against each

defendant within each count. *See* D.E. 79 at 9-10. Ms. Whitchurch did not comply with the district court's order even though she received an extension of time to do so.

Failure to comply with a court order can result in a dismissal with prejudice, and when a litigant has been warned of the consequences of non-compliance such dismissal generally will not constitute an abuse of discretion. *See Moon v. Newsome*, 863 F.2d 835, 837 (11th Cir. 1989). Moreover, if a plaintiff is offered a "chance [to replead] . . . and fails to remedy the defects, the district court does not abuse its discretion in dismissing the case with prejudice on shotgun pleading grounds." *Jackson v. Bank of America, N.A.*, 898 F.3d 1348, 1358 (11th Cir. 2018). *Accord Shabanets*, 878 F.3d at 1296 (affirming dismissal with prejudice of federal claims in a shotgun complaint where the plaintiff did not replead after being given an opportunity to do so). Given our precedent, we see no reversible error as to the federal claims.

We do, however, agree with Ms. Whitchurch that the district court erred in one respect. We have held that, when a district court dismisses the claims in a complaint with prejudice on shotgun pleading (and therefore non-merits) grounds, it should dismiss any state law claims without prejudice so they can be refiled in state court. That is so even if the plaintiff was given the chance to amend the state law claims and failed to do so. *See Shabanets*, 878 F.3d at 1296-97. We therefore

reverse the district court's order to the extent that it dismissed the state law claims with prejudice, and remand so that the dismissal order will be amended to reflect that the dismissal of those claims is without prejudice.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.