[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-10313
Non-Argument Calendar

D.C. Docket No. 2:18-cv-00485-SPC-MRM

DAVID SCOTT HASTINGS,

Plaintiff - Appellant,

versus

WILBUR SMITH LAW FIRM, et al.,

Defendants,

JOSEPH VIACAVA,
SAWYER SMITH,
RYAN DOYLE,
THE WILBUR SMITH LAW FIRM 2065 LLC,
GERALDO OLIVO,

Defendants - Appellees.

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

(July 29, 2021)

Before JORDAN, GRANT and DUBINA, Circuit Judges.

PER CURIAM:

Appellant David Hastings appeals the district court's order denying his *pro se* motion to reconsider the court's prior dismissal of his complaint alleging legal malpractice and vicarious liability claims against his former attorneys and their employers (the "Firm") that arose from their representation of him in three state court proceedings. He contends that the district court erred in dismissing his complaint because it found that he did not establish probable cause to support his malpractice claim. After reviewing the record and reading the parties' briefs, we affirm the district court's order dismissing Hastings's complaint.

I.

In his third amended complaint, Hastings listed as defendants Joseph Viacava, Sawyer Smith, Ryan Doyle and Geraldo Olivo, who are his former attorneys, and the Wilbur Smith Law Firm, which employed Hastings's former attorneys. Hastings alleged that his former attorneys were liable for legal malpractice, for which the Firm was vicariously liable, in three state court proceedings that centered around a domestic violence case that resulted in a final injunction prohibiting Hastings from contacting his wife and daughter. In these cases, Hastings was represented by Viacava until he was terminated by the Firm, and then Smith, Doyle and Olivo represented Hastings. The concurrent

prosecutions (for stalking his wife and for stalking his daughter) resulted in Hastings pleading guilty and being placed on probation for the case involving his wife while the prosecution involving his daughter was *nolle prossed*.

Sawyer, Smith, Doyle and Olivo filed a motion to dismiss Hastings's complaint, noting that he had not received appellate or postconviction relief in his criminal cases and, thus, he could not prove that his former attorneys were the proximate cause of his injuries under Florida law. The Firm's motion to dismiss argued similarly, and it also argued that Hastings could not otherwise prove his vicarious liability claim. Despite being served with notice of the complaint, Viacava did not file a motion to dismiss.

The district court dismissed Hastings's complaint, construing the allegations as claims for legal malpractice. The district court found that Hastings could not maintain his malpractice claims against his former attorneys because he had not received appellate or postconviction relief. The district court also found that Hastings's vicarious liability claim against the Firm failed for the same reasons. The district court noted that Viacava failed to appear but stated that any disposition of the claims as to the other former attorneys would apply equally to Viacava.

Hastings filed a motion to reconsider, arguing that he did not receive the defendants' motions to dismiss. Out of an abundance of caution, the district court ordered Hastings to provide a supplement to his motion. Hastings's supplement

restated that he did not receive the defendants' motions to dismiss, and he added that he had obtained postconviction relief in the daughter case because it was *nolle prossed*. Hastings also filed a reply to the motions to dismiss, arguing that his former attorneys and the Firm were directly and vicariously liable for their legal malpractice in the daughter case only. The defendants responded to Hastings's motion for reconsideration, reiterating their previous arguments and arguing that none of the damages Hastings alleged stemmed from the daughter case.

The district court denied Hastings's motion to reconsider, finding that none of the damages Hastings alleged stemmed from the daughter case because it was *nolle prossed* and, thus, he could not prove proximate cause. The district court also addressed alternative reasons it was denying the motion to reconsider, particularly the statute of limitations for filing a legal malpractice claim. Hastings filed a notice of appeal, identifying only the district court's order denying his motion to reconsider as the appealable order.

II.

We are obligated to inquire into subject-matter jurisdiction *sua sponte* whenever it may be lacking. *Univ. of S. Alabama v. Am. Tobacco Co.*, 168 F.3d 405, 410 (11th Cir. 1999). The courts of appeals have jurisdiction over appeals from all final decisions of the district courts of the United States. 28 U.S.C. § 1291. A final decision is one which ends the litigation on the merits and leaves

nothing for the court to do but execute the judgment. *World Fuel Corp. v. Geithner*, 568 F.3d 1345, 1348 (11th Cir. 2009) (internal quotation marks omitted). We take a functional approach to finality, looking not to the form of the district court's order, but to its practical effect. *Martinez v. Carnival Corp.*, 744 F.3d 1240, 1243–44 (11th Cir. 2014).

Here, we view the district court's denial of Hastings's motion to reconsider and its dismissal of his complaint as to Viacava as an appealable final order. The district court stated in its dismissal of Hastings's complaint that, despite Viacava's failure to appear, "ultimately, the result for the other [former attorneys] equally applies to Viacava." In its denial of Hastings's motion to reconsider, the district court did not mention Viacava's failure to appear. The practical effect of the district court's treatment of Viacava's failure to appear was that it ended the litigation, and therefore, it was a final decision. *See Geithner*, 568 F.3d at 1348; *see Martinez*, 744 F.3d at 1243–44.

III.

We review a district court's denial of a motion for reconsideration for abuse of discretion. *Corwin v. Walt Disney Co.*, 475 F.3d 1239, 1254 (11th Cir. 2007). We review a district court's ruling on a motion to dismiss *de novo*. *Hill v. White*, 321 F.3d 1334, 1335 (11th Cir. 2003).

Federal Rule of Appellate Procedure 3 requires that a party seeking to appeal designate the judgment, order, or part thereof being appealed. Fed. R. App. P. 3(c)(1)(B). Ordinarily, we do not have jurisdiction to review orders not specified in the notice of appeal. *See Pitney Bowes, Inc. v. Mestre*, 701 F.2d 1365, 1375 (11th Cir. 1983) (citation omitted). However, we have liberally allowed appeals from orders not specified in the notice of appeal where they were entered prior to or contemporaneously with the specified order, and the overriding intent was effectively to appeal. *KH Outdoor, LLC v. City of Trussville*, 465 F.3d 1256, 1260 (11th Cir. 2006). Also, we liberally construe *pro se* filings. *See Winthrop-Redin v. United States*, 767 F.3d 1210, 1215 (11th Cir. 2014).

Here, we construe Hastings's notice of appeal as encompassing both the district court's denial of his motion for reconsideration and its dismissal of his complaint. Although Hastings's notice of appeal indicates that he only sought to appeal from the district court's order denying his motion for reconsideration, his supplement to his motion for reconsideration, in part, addressed the district court's dismissal of his complaint. Thus, his overriding intent was to appeal the dismissal of his complaint, and therefore, his notice of appeal is liberally construed as also seeking to appeal the court's order dismissing his complaint. *See Winthrop-Redin*, 767 F.3d at 1215; *see KH Outdoor, LLC*, 465 F.3d at 1260. However, we need not consider the district court's denial of Hastings's motion for reconsideration on

appeal because he faces a higher standard of review on his motion to reconsider claim than on his claim that the district court erred in dismissing his complaint. Thus, to succeed on his motion to reconsider, he must necessarily show that the district court erred in dismissing his complaint.

IV.

In reviewing a district court's ruling on a motion to dismiss, we view the complaint in the light most favorable to the plaintiff, and we accept as true all the plaintiff's well-pleaded facts. *Am. United Life Ins. Co. v. Martinez*, 480 F.3d 1043, 1057 (11th Cir. 2007). Further, in the case of a *pro se* action, the district court should construe the complaint more liberally than it would formal pleadings drafted by lawyers. *Powell v. Lennon*, 914 F.2d 1459, 1463 (11th Cir. 1990); *see also E.P. v. Hogreve*, 259 So.3d 1007, 1009–10 (Fla. 5th Dist. Ct. App. 2018) (construing allegations of professional negligence as legal malpractice).

Under Florida law, a legal malpractice claim has three elements: (1) the attorney's employment; (2) the attorney's neglect of a reasonable duty; and (3) the attorney's negligence resulted in and was the proximate cause of loss to the client. *Steele v. Kehoe*, 747 So.2d 931, 933 (Fla. 1999). Further, a convicted criminal defendant must obtain appellate or postconviction relief as a precondition to maintaining a legal malpractice action. *Id.* If the criminal defendant cannot meet this requirement, then his conduct must be presumed to be the proximate cause of

the injury in his subsequent legal malpractice case. *Id.* We have extended *Steele*'s holding to a negligent supervision claim brought by a criminal defendant against a Florida State Attorney in his official capacity, in which the criminal defendant alleged that the State Attorney's subordinate destroyed evidence. *See Rowe v. City of Ft. Lauderdale*, 279 F.3d 1271, 1274-75, 1286-87 (11th Cir. 2002).

Like the district court, we construe Hastings's phrasing of "gross negligence" in his complaint as a legal malpractice claim against his former attorneys and a vicarious liability claim against the Firm. *See Powell*, 914 F.2d at 1463; *see also Hogreve*, 259 So.3d at 1009-10. Our review of the record indicates to us that the district court properly dismissed Hastings's complaint because he did not demonstrate that his former attorneys proximately caused his injuries or that the Firm was vicariously liable for his former attorneys' actions. Regarding his former attorneys' alleged malpractice, Hastings admitted in his complaint that he has not yet received appellate or postconviction relief. *See Steele*, 747 So.2d at 933. Thus, under Florida law, he is presumed to have been the proximate cause of his damages, and therefore, cannot maintain his malpractice claim against his former attorneys. *Steele*, 747 So.2d at 933. Hastings's vicarious liability claim against the Firm fails for the same reason. *See Rowe*, 279 F.3d at 1286-87. Accordingly, based on the aforementioned reasons, we affirm the district court's order dismissing Hastings's complaint.

AFFIRMED.