

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-14521
Non-Argument Calendar

D.C. Docket No. 6:16-cv-02240-JA-GJK

DAVID MADISON CAWTHORN,

Plaintiff–Appellant,

versus

AUTO-OWNERS INSURANCE COMPANY,

Defendant–Appellee.

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

(July 14, 2021)

Before LAGOA, BRASHER, and TJOFLAT, Circuit Judges.

PER CURIAM:

On December 29, 2016, David Madison Cawthorn brought a third-party bad faith claim under Florida law against Auto-Owners Insurance Company for its

failure to initiate timely settlement negotiations with him. The United States District Court for the Middle District of Florida entered summary judgment for the Insurance Company because Cawthorn failed to show an essential element of his claim—the existence of an excess judgment. *Cawthorn v. Auto-Owners Ins. Co.*, No. 616CV2240ORL28GJK, 2018 WL 1996835, at *11 (M.D. Fla. Apr. 27, 2018), *aff'd*, 791 F. App'x 60 (11th Cir. 2019). Cawthorn appealed and we agreed with the District Court that the lack of an excess judgment doomed Cawthorn's claim, not only because it was an essential element, but also because it was a prerequisite to the existence of an Article III “case or controversy.” *Cawthorn v. Auto-Owners Ins. Co.*, 791 Fed. App'x 60, 66 (11th Cir. 2019).

Cawthorn recognized that no case or controversy means the District Court was without jurisdiction to enter a judgment on the merits, and accordingly moved the District Court to vacate its summary judgment order and dismiss the case without prejudice under Federal Rule of Civil Procedure 60(b)(4). But the District Court denied his motion. Cawthorn now appeals, arguing the District Court's refusal to vacate its summary judgment order was error.

Federal courts are without power to enter a judgment on the merits in cases where subject-matter jurisdiction is lacking. *Crowell v. Hockman-Lewis Ltd.*, 734 F.2d 767, 769 (11th Cir. 1984). When a Court enters a judgment that it lacked the power to enter, the judgment is void. *Burke v. Smith*, 252 F.3d 1260, 1263 (11th

Cir. 2001) (citation omitted). Rule 60(b)(4) is the appropriate vehicle for a party to seek relief from such a judgment. *Id.* Because we held there was no Article III “case or controversy” before the District Court, the proper response was for the District Court to vacate its summary judgment order and dismiss the case without prejudice. *Crowell*, 734 F.2d at 769. The Court therefore erred when it denied Cawthorn’s Rule 60(b)(4) motion.

**REVERSED AND REMANDED WITH INSTRUCTIONS TO
VACATE AND DISMISS WITHOUT PREJUDICE.**