[DO NOT PUBLISH]

In the

United States Court of Appeals

For the Eleventh Circuit

No. 21-12476

Non-Argument Calendar

MARIO HERRERA,
GITTE TOLDSTED,

Plaintiffs-Appellants,

versus

JOE BIDEN,
BARACK OBAMA,
ERIC HOLDER,
PAM BONDI,
HILLARY RODHAM CLINTON,
U.S. State Department, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Florida
D.C. Docket No. 4:20-cv-00555-AW-MAF

Before JORDAN, JILL PRYOR, and BRANCH, Circuit Judges.

PER CURIAM:

Mario Herrera and Gitte Toldsted, proceeding *pro se*, appeal the district court's order dismissing their second amended complaint as a shotgun pleading and for failing to state a claim upon which relief could be granted. Liberally construing the plaintiffs' brief, which is over a hundred pages long, we understand their argument to be that multiple defendants violated numerous rights and that government employees and entities, including the district court, attempted to cover up those violations. They also argue (1) that their motions to appeal *in forma pauperis* should have been granted and (2) that the district judge, the magistrate judge, and Eleventh Circuit Judges Charles R. Wilson and Robert J. Luck should have recused themselves from this case.

We affirm. As we write for the parties, our explanation of the facts and procedural history is brief.

Mr. Herrera and Mrs. Toldsted filed the second amended complaint after being told at least twice by the magistrate judge to comply with Federal Rule of Civil Procedure 8 by providing a short and plain statement of their claim, to follow the local rule regarding complaint formatting, to keep the complaint under 26 pages, and to be "simple, concise, and direct" in explaining their factual allegations. This complaint was 25 pages long (as opposed to the previous complaints—the first of which was about the same length but contained over 100 pages of additional material and the second of which was almost 200 pages long, not including the additional material). But rather than providing facts, the second amended complaint listed 24 statutes and constitutional amendments that had allegedly been violated. *See* D.E. 24. It claimed vaguely that the 42 listed defendants—mostly government officials and employees—"are directly involved in the chain of causation of federal criminal actions together with the whole U.S. Government and the whole Judicial System ending in collusion with . . . The Kingdom of Denmark," and that the "whole" U.S. government acted in bad faith by "hiding" the plaintiffs' previous "accusations," and "physical[ly], psychological[ly], economical[ly], and mora[ly] damag[ing]" the plaintiffs. *See id.* at 7 (emphasis omitted). As compensation, the plaintiffs requested 2.1 billion dollars.

The magistrate judge recommended dismissing the second amended complaint for failure to state a claim upon which relief could be granted. He concluded that the plaintiffs did not provide any factual allegations in the complaint regarding the defendants'

actions. The magistrate judge therefore concluded that the complaint was an impermissible shotgun pleading and did not satisfy Rule 8. The district court agreed, adopted and incorporated the report, and dismissed the complaint.[1]

Mr. Herrera and Mrs. Toldsted had also requested that the magistrate judge and the district judge recuse themselves or be removed from the case. These motions were denied.

The plaintiffs appealed. The district judge, and then Judge Luck, each denied the plaintiffs' motion to proceed *in forma pauperis* on appeal because the appeal was frivolous. In response, the plaintiffs filed a "motion of protest" requesting Judge Luck's recusal which Judge Luck denied. The plaintiffs then filed a second "motion of protest" requesting reconsideration of the order denying permission to proceed *in forma pauperis.* This motion was denied by Judges Wilson and Luck. The plaintiffs later filed a "motion for recusal," requesting that Judge Wilson be removed from the case—as well as Judge Luck, the district court judge, the magistrate judge, and any judge appointed by Presidents Bill Clinton, George W. Bush, Barack Obama, Donald Trump, or Joe Biden. They acknowledged that this would require the recusal of all active judges.

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[1] Later that same day, but after it dismissed the complaint, the district court received the plaintiffs' objections to the magistrate judge's report. The objections were never addressed by the court and the plaintiffs do not raise or address them on appeal, so we do not discuss them here.

I

We liberally construe *pro se* filings. *See Sconiers v. Lockhart*, 946 F.3d 1256, 1262 (11th Cir. 2020). However, like other litigants, a *pro se* appellant abandons an issue by failing to address it in his opening brief. *See Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008). A party fails to adequately brief a claim when it does not "plainly and prominently raise it." *Sapuppo v. Allstate Floridian Ins.*, 739 F.3d 678, 681 (11th Cir. 2014) (quotation marks omitted). An appellant abandons a claim when he "either makes only passing references to it or raises it in a perfunctory manner without supporting arguments and authority." *Id.* We will affirm a judgment when the appellant fails to challenge one of the grounds of the district court's decision. *See id.* at 680.

A

We review *de novo* a district court's dismissal of a complaint for failure to state a claim, "accept[ing] the allegations in the complaint as true and construe[ing] them in the light most favorable to the plaintiff." *Chua v. Ekonomou*, 1 F.4th 948, 952 (11th Cir. 2021). When reviewing a filing submitted *in forma pauperis*, a district court "shall dismiss the case at any time if the court determines that" the action "fails to state a claim on which relief may be granted." 28 U.S.C. § 1915(e)(2)(B)(ii). To prevent dismissal for failure to state a claim, plaintiffs must allege sufficient facts to state a claim for relief that is "plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A complaint must "give the defendant fair notice of what the claim is and the grounds upon

which it rests." *Id.* at 555 (cleaned up). It must contain more than "labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Id.* (quotation marks omitted).

We review the dismissal of a shotgun pleading under Rule 8 for an abuse of discretion. *See Vibe Micro, Inc. v. Shabanets*, 878 F.3d 1291, 1294 (11th Cir. 2018). Shotgun pleadings violate Rule 8(a)(2)'s "short and plain statement" requirement by "failing . . . to give the defendants adequate notice of the claims against them and the grounds upon which each claim rests." *Id.* at 1294–95 (cleaned up). A complaint can be considered a shotgun pleading if it is composed of "conclusory, vague, and immaterial facts not obviously connected to any particular cause of action," does "not separat[e] into a different count each cause of action or claim for relief," or "asserts multiple claims against multiple defendants without specifying which of the defendants are responsible for which acts or omissions, or which of the defendants the claim is brought against." *Weiland v. Palm Beach Cnty. Sheriff's Off.*, 792 F.3d 1313, 1321–23 (11th Cir. 2015).

A district court must allow a litigant at least one chance to remedy any deficiencies before dismissing the complaint. *See Shabanets*, 878 F.3d at 1295. But once the plaintiff has been given fair notice of the specific defects in his complaint and a meaningful chance to fix them, dismissal with prejudice is proper if the plaintiff files "an amended complaint afflicted with the same defects." *Jackson v. Bank of Am., N.A.*, 898 F.3d 1348, 1358–59 (11th Cir. 2018).

Mr. Herrera and Mrs. Toldsted make no argument on appeal that their second amended complaint did not fail to state a claim or was not a shotgun pleading. In fact, at one point in their brief, Mr. Herrera and Mrs. Toldsted contend that the "only role" of the appellate court in this case "is to determine if due-process was served" in the district court and conclude that it was not, primarily because they were not allowed to get to a jury and the judges did not recuse themselves. *See* Appellants' Brief at 90–91 (emphasis omitted). Because they did not address the failure to state a claim or shotgun pleading grounds in their opening brief, they have abandoned the arguments. *See Timson*, 518 F.3d at 874. We therefore affirm the district court's dismissal. *See Sapuppo*, 739 F.3d at 680.[2]

B

The plaintiffs claim that their motion to proceed *in forma pauperis* on appeal should not have been denied because their appeal is not frivolous. But again they provide no argument—no factual or legal bases—for why it was incorrect to conclude that their appeal is frivolous. At best, they restate some of the parties and statutes involved, focusing in particular on an executive order by

[2] If we were to consider the merits of whether the complaint failed to state a claim or was a shotgun pleading, we would still affirm. The plaintiffs were given fair notice of the defects of their complaint and two chances to fix them, but they did not do so.

President George W. Bush. This is not enough. *See Sapuppo*, 739 F.3d at 681.

II

A judge subject to a motion for recusal presides over that recusal decision. *See In re Evergreen Sec., Ltd.*, 570 F.3d 1257, 1278 (11th Cir. 2009). We review a district judge's decision whether to recuse himself for an abuse of discretion. *See Thomas v. Tenneco Packaging Co.*, 293 F.3d 1306, 1319–20 (11th Cir. 2002).

We have held that "a district judge must recuse himself 'in any proceeding in which his impartiality might reasonably be questioned.'" *Id.* at 1329 (quoting 28 U.S.C. § 455(a)). A district judge's impartiality may reasonably be questioned when "an objective, fully informed lay observer would entertain significant doubt about the judge's impartiality." *Id.* (quotation marks omitted). A district judge should also disqualify himself "[w]here he has served in governmental employment and in such capacity participated as counsel, adviser[,] or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy." *See* 28 U.S.C. § 455(b)(3). The same rules apply to magistrate judges and circuit judges. *See* § 455(a).

The plaintiffs argue that the magistrate judge, the district judge, and Judges Wilson and Luck should have recused because the people who appointed them to the bench are defendants in this case. But that is not enough to require their recusal. *See Straw v. United States*, 4 F.4th 1358, 1363 (Fed. Cir. 2021) ("There is no

support whatsoever for the contention that a judge can be disqualified based simply on the identity of the President who appointed him.").[3]

The plaintiffs also argue that the district judge, Judge Allen Winsor, should have recused because he was the Solicitor General of Florida and worked for Former Florida Attorney General Pam Bondi "in the same case." Construing their brief liberally, we understand the plaintiffs to be claiming that in 2013, while Judge Winsor worked for Ms. Bondi, the plaintiffs sent a letter with "accusations" to Florida Governor Rick Scott and asked him to forward it to Ms. Bondi. They claim that Mr. Scott, Ms. Bondi, and now-Judge Winsor destroyed those documents, and that that is the basis, at least in part, of their obstruction of justice claim in this case. This factual basis for the obstruction of justice claim, however, was not presented in the district court—nor was its alleged connection to Judge Winsor clear. At best the plaintiffs argued below that Judge Winsor was an employee of Ms. Bondi at the relevant time and that "this clearly impl[ied that] he saw all movements there." Because the district court was not presented with the factual basis for the claim and how Judge Winsor was allegedly

[3] The plaintiffs also request in their brief that a panel of senior judges review their claims, arguing that all the active judges have a conflict of interest because the suit involves the presidents who respectively appointed them. But because Mr. Herrera and Mrs. Toldsted have never offered any legal basis for the recusal of all active judges, their motion and request are DENIED. *See Straw*, 4 F.4th at 1363.

connected to it, it was not an abuse of discretion for him to deny the motion to recuse.

III

Accordingly, we affirm the dismissal of the plaintiffs' complaint.

AFFIRMED.