[DO NOT PUBLISH]

In the

United States Court of Appeals

For the Eleventh Circuit

No. 21-12901

Non-Argument Calendar

DAWUD CANAAN STURRUP GABRIEL,

Plaintiff-Appellant,

versus

WINDY HILL FOLIAGE INCORPORATED,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 2:21-cv-14177-AMC

Before WILSON, LAGOA, and ANDERSON, Circuit Judges.

PER CURIAM:

Dawud Canaan Sturrup Gabriel, *pro se*, appeals the district court (1) striking without prejudice of his amended complaint as an impermissible shotgun pleading, (2) denying without prejudice his proposed second amended complaint because it too was a shotgun pleading, and (3) denying his motion to set aside those rulings as void. He contends that the district court abused its discretion in making those rulings. He also contends, for the first time on appeal, that the district court judge erred by not *sua sponte* recusing herself. After careful review, we find no error and affirm.

I.

Forfeiture occurs automatically whenever a party fails to timely assert their rights. *United States v. Campbell*, 26 F.4th 860, 874 (11th Cir. 2022) (en banc). But courts do have the ability to "resurrect" forfeited issues *sua sponte* in "extraordinary circumstances." *Id.* at 872 (quoting *Wood v. Milyard*, 566 U.S. 463, 471 n.5 (2012)). We have identified five situations in which we may exercise our discretion to consider a forfeited issue:

> (1) the issue involves a pure question of law and refusal to consider it would result in a miscarriage of justice; (2) the party lacked an opportunity to raise the issue at the district court level; (3) the interest of substantial justice is at stake; (4) the proper resolution is beyond any doubt; or (5) the issue presents significant

> questions of general impact or of great public concern.

Id. at 873. Additionally, *pro se* pleadings and other filings are liberally construed. *See Gomez-Diaz v. United States*, 433 F.3d 788, 791 (11th Cir. 2005).

A district judge must disqualify herself from any proceeding in which her impartiality might reasonably be questioned. 28 U.S.C. § 455(a). "Section 455(a) requires recusal when the objective circumstances create an appearance of partiality." *United States v. Cerceda*, 188 F.3d 1291, 1293 (11th Cir. 1999). But a charge of partiality must be supported by some factual basis. *Id.* "Recusal cannot be based on 'unsupported, irrational or highly tenuous speculation.'" *Id.* (quoting *In re United States*, 666 F.2d 690, 694 (1st Cir. 1981)). Furthermore, under 28 U.S.C. § 144,

> [w]henever a party to any proceeding in a district court makes and files a timely and sufficient affidavit 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, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

Here, although Gabriel has forfeited the recusal issue by failing to raise it below, we exercise our discretion to consider the forfeited issue because the proper resolution is beyond any doubt: the district judge did not err by not recusing herself *sua sponte*. Gabriel's claims to the contrary are based on unsupported

speculation. And § 144 does not apply because Gabriel did not file an affidavit with the district court stating that he believed the district judge harbored personal bias or prejudice against him. Accordingly, we affirm on this issue.

II.

We review orders dismissing complaints based on non-compliance with federal rules for an abuse of discretion. *Goforth v. Owens,* 766 F.2d 1533, 1535 (11th Cir. 1985). We review *de novo* a district court's ruling on a Federal Rule of Civil Procedure 60(b)(4) motion to set aside a judgment as void. *Burke v. Smith*, 252 F.3d 1260, 1263 (11th Cir. 2001).

To state a claim for relief, a pleading must include "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). "A party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances." Fed. R. Civ. P. 10(b). "If doing so would promote clarity, each claim founded on a separate transaction or occurrence . . . must be stated in a separate count." *Id.* *Pro se* litigants are "subject to the relevant law and rules of court, including the Federal Rules of Civil Procedure." *Moon v. Newsome*, 863 F.2d 835, 837 (11th Cir. 1989).

Complaints that violate either Rule 8(a)(2) or Rule 10(b), or both, are often referred to as "shotgun pleadings." *Weiland v. Palm Beach Cnty. Sheriff's Off.*, 792 F.3d 1313, 1320 (11th Cir. 2015). We have identified four rough types of shotgun pleadings:

(1) complaints "containing multiple counts where each count adopts the allegations of all preceding counts, causing each successive count to carry all that came before and the last count to be a combination of the entire complaint"; (2) complaints containing "conclusory, vague, and immaterial facts not obviously connected to any particular cause of action"; (3) complaints that do "not separat[e] into a different count each cause of action or claim for relief"; and (4) complaints that "assert[] 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." *Id.* at 1322–23. Shotgun pleadings violate Rule 8(a)(2)'s "short and plain statement" requirement by "fail[ing] . . . to give the defendants adequate notice of the claims against them and the grounds upon which each claim rests." *Vibe Micro, Inc. v. Shabanets*, 878 F.3d 1291, 1294-95 (11th Cir. 2018) (alteration in original) (quoting *Weiland*, 792 F.3d at 1323). Shotgun pleadings "waste scarce judicial resources, 'inexorably broaden[] the scope of discovery,' 'wreak havoc on appellate court dockets,' and 'undermine[] the public's respect for the courts.'" *Id.* (alterations in original) (quoting *Davis v. Coca-Cola Bottling Co. Consol.*, 516 F.3d 955, 979–80 & n.54 (11th Cir. 2008)).

While district courts may *sua sponte* dismiss a complaint on shotgun pleading grounds, we require them to allow a litigant one chance to remedy such deficiencies. *Id.* For example, in *Shabanets*, the plaintiff filed a "mostly incoherent complaint" with "duplicative," "inconsistent," and "wholly conclusory" allegations in

paragraphs spanning multiple pages. *Id.* at 1294. The district court gave the plaintiff an opportunity to replead and remedy his shotgun pleading issues, "and provided him with a veritable instruction manual on how to do so." *Id.* at 1293–95. We endorsed this approach, stating that, "[i]n these cases, even if the parties do not request it, the district court 'should strike the complaint and instruct counsel to replead the case.'" *Id.* at 1295 (quoting *Byrne v. Nezhat*, 261 F.3d 1075, 1133 n.113 (11th Cir. 2001)).

Under Rule 60(b)(4), "[o]n motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding [if] . . . the judgment is void." Generally, a judgment is void under this rule if the court that rendered it lacked jurisdiction, acted in a manner inconsistent with due process of law, or was powerless to enter it. *Burke*, 252 F.3d at 1263.

Here, the district court did not abuse its discretion in dismissing Gabriel's amended complaint as a shotgun pleading. First, the court properly concluded that the nearly 3,000-page amended complaint was a shotgun pleading. Second, the court followed our directive by giving Gabriel one chance to amend, along with a veritable instruction manual on how to do so. Finally, Gabriel has failed to explain why it was "impossible" for him to comply with the 25-page limit imposed by the court on his second amended complaint. As to his proposed second amended complaint, the minor alterations he claimed to have made make it no less of a shotgun pleading than his first amended complaint.

Additionally, the district court properly denied Gabriel's motion to set aside as void its order striking his shotgun pleading. Because, as explained above, the court properly complied with our precedent regarding shotgun pleadings and amendment, the order was not void. Accordingly, we affirm on this issue as well.

AFFIRMED.