[DO NOT PUBLISH]

In the

United States Court of Appeals

For the Eleventh Circuit

No. 24-10224

Non-Argument Calendar

BRADLEY JAMES ALBERT,
an individual,

Plaintiff-Appellant,

versus

DISCOVER BANK,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:23-cv-01530-MLB

Before NEWSOM, GRANT, and WILSON, Circuit Judges.

PER CURIAM:

Plaintiff-Appellant Bradley James Albert, proceeding pro se, challenges the district court's dismissal of his amended complaint alleging 12 claims against Defendant-Appellee Discover Bank (Discover), including violation of the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692 *et seq*. After careful review, we dismiss in part and affirm in part.

I.

We review de novo a district court's grant of a motion to dismiss under Rule 12(b)(6) for failure to state a claim, accepting the allegations in the complaint as true and construing them in the light most favorable to the plaintiff. *Veritas v. Cable News Network, Inc.*, 121 F.4th 1267, 1274 (11th Cir. 2024). To survive a 12(b)(6) motion to dismiss, a complaint must allege sufficient facts to state a claim plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "[P]laintiffs must do more than merely state legal conclusions; they are required to allege some specific factual bases for those conclusions or face dismissal of their claims." *Jackson v. BellSouth Telecomms.*, 372 F.3d 1250, 1263 (11th Cir. 2004). We liberally construe the pleadings of pro se litigants, but we will not "serve as *de facto* counsel" or "rewrite an otherwise deficient pleading." *Campbell v. Air Jamaica Ltd.*, 760 F.3d 1165, 1168–69 (11th Cir. 2014) (quotation marks omitted).

II.

Albert argues that the district court (1) erred on his motion for reconsideration by finding that his complaint failed to state claims for relief and by not granting his motion to strike arguments made by Discover; (2) erroneously found that Discover was not a "debt collector" under the meaning of the Fair Debt Collection Practices Act; and (3) denied him due process of law by imposing deadlines on his responsive filings without accounting for the time it took for documents to reach him by mail. We address each argument in turn.

A.

To show that the district court erred in ruling on his motion for reconsideration, Albert asserts the district court erred by: (1) finding that his amended complaint failed to state a claim, "or by not being clear as the blue sky on what is wrong with [Albert's] statement of claim and provide opportunities to correct;" (2) dismissing the claim for punitive damages; (3) awarding summary judgment to Discover despite the existence of genuine issues of material fact; and (4) not ruling on Albert's motion to strike.

After the district court dismissed Albert's complaint with prejudice, he filed both his motion for reconsideration and his notice of appeal on the same day. Later, the district court denied in part and granted in part Albert's motion for reconsideration and clarification. After that order was entered, Albert filed nothing else on the district court docket.

In civil cases, the timely filing of a notice of appeal is a prerequisite to the exercise of appellate jurisdiction. *Green v. Drug Enf't Admin.*, 606 F.3d 1296, 1300–02 (11th Cir. 2010). In addition to being timely filed, a notice of appeal must ordinarily indicate the party taking the appeal, the judgment or order being appealed, and the court to which the appeal is taken. Fed. R. App. P. 3(c)(1). A notice of appeal must designate an already existing judgment or order, not one that is merely expected to be entered. *Sabal Trail Transmission, LLC v. 3.921 Acres of Land*, 947 F.3d 1362, 1370 (11th Cir. 2020). We lack jurisdiction to review any order issued after a notice of appeal has been filed, unless the appellant files an additional or amended notice of appeal referring to that order. *Bogle v. Orange Cnty. Bd. of Cnty. Comm'rs*, 162 F.3d 653, 661 (11th Cir. 1998).

Thus, we lack jurisdiction to hear Albert's challenges to the district court's order on his motion for reconsideration because it was entered after Albert filed his notice of appeal, and he did not file an additional or amended notice of appeal.

B.

Next, we turn to Albert's argument that the district court erred in finding that Discover was not a "debt collector" under the meaning of the FDCPA. To state a plausible claim under the FDCPA, "a plaintiff must allege, among other things, (1) that the defendant is a debt collector and (2) that the challenged conduct is related to debt collection." *Reese v. Ellis, Painter, Ratterree & Adams, LLP*, 678 F.3d 1211, 1216 (11th Cir. 2012) (quotation marks omitted). To survive a motion to dismiss, a plaintiff must "plead factual

content that allows the court to draw the reasonable inference that [the defendant] is a debt collector under the FDCPA and therefore liable for the misconduct alleged." *Davidson v. Cap. One Bank (USA), N.A.*, 797 F.3d 1309, 1313 (11th Cir. 2015) (internal quotation marks omitted).

Under the FDCPA, a debt collector is defined as a person who uses "any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another." 15 U.S.C. § 1692a(6). The statutory definition specifically exempts any person collecting on a debt provided such activity "concerns a debt which was originated by such person." *Id.* § 1692a(6)(F).

Albert argues extensively that Discover meets the statutory definition of a debt collector, but he does not engage with the statutory exemption. And Albert's complaint makes clear that Discover sought to collect on an account that it originated. As the originator of those loans, Discover is plainly not subject to the provisions of the FDCPA. Thus, we conclude that Discover is not a debt collector as that term is defined by the FDCPA, and the district court did not err in dismissing Albert's FDCPA claim.[1]

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[1] Albert also asserts that there was a genuine issue of material fact that precluded summary judgment. But the district court was reviewing Albert's complaint at the motion to dismiss stage, which does not require resolution of disputes of fact. Instead, at the motion to dismiss stage, the court construes the

C.

Albert next argues that the district court denied him due process of law by imposing deadlines on his responsive filings without accounting for the time it took for documents to reach him by mail.

The Northern District of Georgia has promulgated local rules to prescribe how long parties have to respond when motions are filed. Local Rule 7.1(b) gives a party fourteen days to respond to any motion, excluding a motion for summary judgment. Additionally, if a magistrate judge issues a report and recommendation that handles a dispositive motion, like a motion to dismiss, the parties are given fourteen days to file objections. N.D. Ga. Local Rule 72.1(E); *see also* Fed. R. Civ. P. 72(a) ("A party may serve and file objections to [a magistrate's] order [on a nondispositive pretrial matter] within 14 days after being served with a copy.").

The district court complied with the Federal Rules of Civil Procedure and its own Local Rules. But even if the district court violated Albert's due process rights by giving him only fourteen days to respond as prescribed by the rules, Albert has not explained how the imposition of deadlines on Albert's responsive filings affected his substantial rights. *See* Fed. R. Civ. P. 61 (Any error that does not affect the substantial rights of any party is harmless and is not grounds for "disturbing a judgment or order."). The district court also gave Albert additional time, past the prescribed fourteen

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allegations in the complaint in the plaintiff's, here Albert's, favor. *See Veritas v. Cable News Network, Inc.*, 121 F.4th 1267, 1274 (11th Cir. 2024).

days, to respond to Discover's motion to dismiss and to object to the R&R. Thus, we reject Albert's argument that the district court violated his due process rights.

III.

Finally, Discover moves for sanctions against Albert pursuant to Federal Rule of Appellate Procedure 38, arguing that his appeal is frivolous. In his reply brief, Albert argues that he should not be forced to answer the motion, characterizing it as a fraudulent "RICO claim." He states that a ruling for Discover will only "create more litigation," asserting that he plans to bring further claims against Discover, as well as claims against "the Federal Courts and individual justices."

This court may, "after a separately filed motion or notice from the court and reasonable opportunity to respond, award just damages and single or double costs to the appellee." Fed. R. App. P. 38. "Rule 38 sanctions have been imposed against appellants who raise clearly frivolous claims in the face of established law and clear facts." *Farese v. Scherer*, 342 F.3d 1223, 1232 (11th Cir. 2003) (per curiam) (quotation marks omitted). But generally, where the appellant is pro se, we have declined requests to impose sanctions under Rule 38. *See Woods v. I.R.S.*, 3 F.3d 403, 404 (11th Cir. 1993) (per curiam) (declining to impose sanctions against the plaintiff because he was pro se even though the appeal was frivolous). Still this court has sometimes imposed sanctions against pro se appellants who were explicitly warned by the district court that their claims were frivolous. *See, e.g.*, *United States v. Morse*, 532 F.3d 1130,

1132–33 (11th Cir. 2008) (per curiam) (imposing sanctions on pro se appellant who had been warned in the district court that his tax claims were "utterly without merit"); *Pollard v. Comm'r*, 816 F.2d 603, 604–05 (11th Cir. 1987) (per curiam) (imposing sanctions on pro se appellant who brought tax claims found to be frivolous in a previous suit, and for which appellant had been sanctioned).

While we do not find Albert's appeal frivolous[2] and decline to impose sanctions against him, Albert's response to Discover's motion causes us concern that Albert will continue to pursue future claims based on the same underlying facts. Thus, we caution Albert that he may face sanctions if he brings future appeals regarding the same underlying facts. Discover's motion for sanctions is denied.

IV.

We lack jurisdiction to review Albert's challenges to the district court's order ruling on his motion for reconsideration, and we affirm the district court's original order of dismissal.

DISMISSED IN PART and AFFIRMED IN PART.

[2] Albert misconstrues the district court's order granting in part his motion for reconsideration as an acknowledgment that Counts Four, Ten, and Eleven were sufficiently plead. That is not the case. Instead, the district court's order is an acknowledgment that it lacked subject-matter jurisdiction over those claims and is required to dismiss those counts without prejudice.