NOT FOR PUBLICATION

In the United States Court of Appeals For the Eleventh Circuit

No. 24-11542
Non-Argument Calendar

RAZIEL OFER,

Plaintiff-Appellant,

versus

LAUREL ISICOFF,
Judge,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:23-cv-24738-wfjg

Before NEWSOM, GRANT, and LUCK, Circuit Judges.

PER CURIAM:

While Raziel Ofer's bankruptcy proceedings were still pending, he sued the bankruptcy judge for various civil rights violations.

Ofer alleged that the bankruptcy judge was part of an antisemitic "mafia" that conspired to dispossess him of his property because of the belief that "Jews . . . own[ed] too many properties and [Jewish] properties need[ed] to be confiscated."

The district court ordered Ofer to show cause why his civil rights lawsuit shouldn't be stayed until completion of the underlying bankruptcy litigation and appeal. In the show cause order, the district court explained that if Ofer failed to timely respond, it would dismiss the matter with prejudice.

In his response, Ofer deferred to the district court as to the stay but argued the matter could not be dismissed with prejudice because he had the right to amend the complaint as a matter of course since no responsive pleading had been filed. The district court ordered "a stay of this matter" pending the underlying bankruptcy litigation, and explained that Ofer could file a motion to lift the stay once the litigation was resolved.

The government moved for the district court to partially lift the stay and dismiss the complaint with prejudice. The district court granted the motion, explaining that the complaint was due to be dismissed under Federal Rule of Civil Procedure 12(b)(6) because the bankruptcy judge was entitled to absolute judicial immunity and because the claims were frivolous. The district court also concluded that it would be futile for Ofer to amend his complaint, so his complaint should be dismissed with prejudice. Ofer appeals the district court's dismissal with prejudice.

Ofer argues that the district court erred by dismissing his complaint with prejudice as futile without first allowing him the right to amend his complaint as a matter of course.[1] We agree. Rule 15(a) provides that a party may amend his complaint "once as a matter of course no later than . . . 21 days after service of a motion under [r]ule 12(b)." Fed. R. Civ. P. 15(a)(1)(B). Usually, "a district court may properly deny leave to amend the complaint under [r]ule 15(a) when such amendment would be futile." *Hall v. United Ins. Co. of Am.*, 367 F.3d 1255, 1262–63 (11th Cir. 2004) (citation omitted). But, "[w]hen the plaintiff has the right to file an amended complaint as a matter of course, . . . the plain language of [r]ule 15(a) shows that the court lacks the discretion to reject the amended complaint based on its alleged futility." *Williams v. Bd. of Regents of Univ. Sys. of Georgia*, 477 F.3d 1282, 1292 n.6 (11th Cir. 2007).

The government filed its rule 12(b) motion while the case was stayed. And the district court granted the motion at the same time it lifted the stay. So, at no time before the case was dismissed was the clock ticking for Ofer to amend his complaint. Ofer was at day one of the twenty-one-day deadline to amend his complaint as a matter of course under rule 15(a). Thus, the district court

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[1] We review de novo "the denial of leave to amend by reason of futility because futility is a legal conclusion that the amended complaint would necessarily fail." *L.S. ex rel. Hernandez v. Peterson*, 982 F.3d 1323, 1328 (11th Cir. 2020).

"lack[ed] the discretion to reject the amended complaint" even if it was futile. *Id.*

Though we (like the district court) express serious doubt that an amendment would save his claims, *see Padilla v. Smith*, 53 F.4th 1303, 1317 (11th Cir. 2022) ("[A] district court may dismiss a baseless 'claim' under Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim for relief . . . where such a claim is wholly insubstantial and frivolous."); *Neitzke v. Williams*, 490 U.S. 319, 328 (1989) (explaining that claims are frivolous if they "lack[] an arguable basis . . . in fact" such as claims "describing fantastic or delusional scenarios."), Ofer is entitled to amend once as a matter of course. We therefore vacate the dismissal with prejudice and remand with instructions for the district court to dismiss Ofer's complaint without prejudice.

VACATED AND REMANDED.