

[DO NOT PUBLISH]

In the  
United States Court of Appeals  
For the Eleventh Circuit

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No. 24-11581

Non-Argument Calendar

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JENICE CLOUSE,

Plaintiff-Appellant,

*versus*

OUTBACK STEAKHOUSE,  
Brandon c/o Danielle Valentine,  
JACOB BOATWRIGHT,  
Manager, Brandon Outback,  
TREY LNU,  
Fry Chef, Outback,  
CJ LNU,  
Fry Chef, Outback,  
IDA LNU,

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Salad Maker, Outback,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Middle District of Florida  
D.C. Docket No. 8:23-cv-02514-TPB-AAS

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Before WILSON, LAGOA, and HULL, Circuit Judges.

PER CURIAM:

On November 3, 2023, plaintiff-appellant Jenice Clouse, proceeding *pro se*, filed a complaint alleging, *inter alia*, sexual harassment, wrongful termination, and violation of her First Amendment rights against her former employer Outback Steakhouse and several of her former coworkers. Four months later, on March 4, 2024, the district court entered an order directing Clouse to file proof of service and warning her that failure to comply could result in dismissal of her complaint without prejudice. Clouse filed a return of service, but it was for a separate action Clouse had filed against a different employer.

### I. ORIGINAL COMPLAINT

The district court, acting *sua sponte*, entered an order dismissing Clouse's *pro se* complaint without prejudice. The district

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court noted that Clouse had failed to serve the defendants within 90 days, as required by Federal Rule of Civil Procedure 4(m), and that the return of service Clouse had filed was “invalid as to this case.”<sup>1</sup> The district court stated that “[b]efore directing proper service,” it had undertaken a review of Clouse’s complaint and determined it failed to comply with the pleading requirements of the Federal Rules of Civil Procedure, including Rules 8 and 10(b). The district court granted Clouse leave to amend to cure the defects identified in its order.

## II. AMENDED COMPLAINT

On April 9, 2024, Clouse then filed a *pro se* amended complaint identifying Outback Steakhouse and former coworkers as defendants and alleging sexual harassment and racial discrimination under Title VII of the Civil Rights Act of 1964.

The district court, again acting *sua sponte*, dismissed Clouse’s amended complaint, but this time “without leave to amend,” so effectively *with prejudice*. The dismissal was not based on lack of service but on the merits of the amended complaint.

Specifically, the district court determined that Clouse’s amended complaint cured some but not all of the pleading defects and remained “facially deficient.” The district court also concluded Clouse could not allege a viable claim against her former

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<sup>1</sup> The district court also instructed the plaintiff that “[s]hould the case proceed,” she would “not be permitted to have a United States marshal serve Defendant without prior authorization of the Court.”

coworkers because relief under Title VII is available only against employers. The district court explained that Clouse’s amended complaint was dismissed “without leave to amend” because she already had been given an opportunity to amend her complaint and yet she did not cure all the previously identified pleading defects. Clouse *pro se* appealed.

### III. ANALYSIS

As a threshold matter, there is no indication on the docket that Clouse properly served any of the defendants. *See* Fed. R. Civ. P. 4. No defendant has filed an answer or entered an appearance in the district court (or on appeal for that matter). Without proper service, the district court lacked jurisdiction to dismiss Clouse’s amended complaint with prejudice. *See Pardazi v. Cullman Med. Ctr.*, 896 F.2d 1313, 1317 (11th Cir. 1990) (explaining that service of process is a jurisdictional requirement); Fed. R. Civ. P. 4(m) (providing that where the plaintiff fails to execute service, the district court “must dismiss the action without prejudice against that defendant or order that service be made within a specified time”).

Thus, we do not reach the merits of the district court’s dismissal order. Instead, we vacate the district court’s dismissal with prejudice and remand for further proceedings consistent with this opinion.

At present there is still no indication that any defendant has been served. On remand, if the district court intends to dismiss *sua sponte* Clouse’s amended complaint for lack of service, it shall first

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provide Clouse with notice and an opportunity to respond. *See* Fed. R. Civ. P. 4(m) (requiring dismissal without prejudice for lack of timely service “after notice to the plaintiff”).

**VACATED and REMANDED.**