NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-13861
Non-Argument Calendar

TAVORIS K. SIMMONS,

Plaintiff-Appellant,

versus

WARDEN, CENTURY CORRECTIONAL INSTITUTION,
S. S. DOVE,
Assistant Warden,
SETTLEMIRES,
Captain,
ROBERT HORNAK,
Sergeant,
F. FAUST,
Officer,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Florida
D.C. Docket No. 3:23-cv-20567-LC-ZCB

Before ROSENBAUM, ANDERSON, and WILSON, Circuit Judges.

PER CURIAM:

Tavoris Simmons appeals the district court's dismissal without prejudice of his 42 U.S.C. § 1983 civil-rights action as a malicious abuse of process for failure to accurately disclose his litigation history. *See* 28 U.S.C. §§ 1915(e)(2)(B)(i) and 1915A(b)(1). After careful review, we conclude that the district court's judgment is not yet final and that, as a result, we lack jurisdiction. We therefore dismiss the appeal.

I.

In July 2023, Simmons filed a *pro se* civil-rights complaint under 42 U.S.C. § 1983 against prison officials at the Oskaloosa Correctional Institution. He asserted that they violated his constitutional rights when, in February 2023, they searched his cell and allegedly destroyed his legal materials in retaliation for filing a grievance.

Before service of the complaint, a magistrate judge twice ordered Simmons to file amended complaints on the proper form and to correct certain pleading deficiencies. Simmons filed his second amended complaint in November 2023, naming as defendants Florida Department of Corrections ("FDOC") Secretary Ricky Dixon,

Warden J. Kolodziej, Assistant Warden Susan Dove, Captain Settlemires, Sergeant R. Hornak, and Officer F. Faust. The second amended complaint included an additional instance of alleged retaliation in August 2023, based on the removal of Simmons's secure locker where he kept his legal materials and property, and alleged an ongoing "custom and policy" to retaliate against inmates for filing grievances or lawsuits.

The magistrate judge screened the second amended complaint *sua sponte* and recommended dismissing the supervisory liability claims against FDOC Secretary Dixon and the claims for injunctive relief. The district court adopted the magistrate judge's recommendation without objection. The magistrate judge then ordered Simmons to serve the remaining defendants.

After several defendants moved to dismiss in June 2024, Simmons asked to supplement his second amended complaint and submitted a proposed pleading. The proposed third amended complaint added new claims against Dove and five new defendants—Sergeant Small, Officer Welch, Lieutenant Day, Captain Ellis, Sergeant Stephens—based on additional alleged acts of retaliation since the initial complaint.

In July 2024, the magistrate judge entered an order granting leave to amend "to the extent that [Simmons's] proposed third amended complaint . . . was accepted by the Court for screening" under 28 U.S.C. § 1915A. The judge found that Simmons was "permitted to amend his complaint once on his own accord under Rule

15(a)(1)," since he had sought leave "within 21 days after Defendants moved to dismiss his complaint under Rule 12(b)(6)," and his prior amended complaints were "filed pursuant to this Court's orders and . . . not done under Rule 15(a)(1)."

But the magistrate judge reasoned that the second amended complaint would "remain the operative pleading in this case" because of "improper joinder present in the proposed third amended complaint." The judge found that the allegations in the third amended complaint were not logically related to, and should not be joined together with, the allegations in the second amended complaint. The judge therefore said he would "not order service of the proposed third amended complaint," and that the case would "proceed on the basis of the remaining claims in the second amended complaint."

Then, in October 2024, the magistrate judge issued a report and recommendation ("R&R"), recommending that the case be dismissed without prejudice as a malicious abuse of the judicial process under 28 U.S.C. §§ 1915(e)(2)(B)(i) and 1915A(b)(1). The magistrate judge found that Simmons failed to accurately disclose his litigation history on the second amended complaint form, omitting six proceedings in state court. The magistrate judge concluded that dismissal for "maliciousness" was warranted and that "[l]esser sanctions would be insufficient."

The district court overruled Simmons's timely objections, adopted the R&R, and dismissed the case without prejudice as to

all defendants as a malicious abuse of the judicial process under §§ 1915(e)(2)(B)(i) and 1915A(b)(1). Simmons appeals.

II.

We have a threshold obligation to ensure that we have jurisdiction to hear an appeal. *Corley v. Long-Lewis, Inc.*, 965 F.3d 1222, 1227 (11th Cir. 2020). We review jurisdictional issues de novo. *Univ. of S. Ala. v. Am. Tobacco Co.*, 168 F.3d 405, 408 (11th Cir. 1999).

Ordinarily, we have jurisdiction to review only "final decisions of the district courts." 28 U.S.C. § 1291. "A final decision is one that ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." *Jenkins v. Prime Ins. Co.*, 32 F.4th 1343, 1345 (11th Cir. 2022) (quotation marks omitted). Thus, "the district court's order generally must adjudicate all claims against all parties" to constitute a final decision. *Corsello v. Lincare, Inc.*, 276 F.3d 1229, 1230 (11th Cir. 2001).

Under Rule 15(a)(1)(B), Fed. R. Civ. P., a plaintiff "may amend its pleading once as a matter of course" within 21 days after service of a responsive pleading or a motion to dismiss. Fed. R. Civ. P. 15(a)(1)(B). When a plaintiff has the right to amend as a matter of course, courts ordinarily lack the discretion to refuse amendment. *Williams v. Bd. of Regents of Univ. Sys. Of Ga.*, 477 F.3d 1282, 1292 n.6 (11th Cir. 2007); *see Brown v. Johnson*, 387 F.3d 1344, 1348–49 (11th Cir. 2004) (stating that, notwithstanding "the screening provisions of the [Prison Litigation Reform Act]," a court abuses its discretion by denying amendment when a *pro se* plaintiff

"had the right to amend his complaint under Rule 15(a)"). And when an amended complaint is filed, it "supersedes the initial complaint and becomes the operative pleading in the case." *Lowery v. Ala. Power Co.*, 483 F.3d 1184, 1219 (11th Cir. 2007).

Here, we must conclude that the district court did not adjudicate all claims against all parties. *See id.* The magistrate judge found that Simmons filed the third amended complaint as a matter of course under Rule 15(a)(1)(B). Thus, the third amended complaint became the "operative pleading," even assuming it was deficient for improper joinder. *See Lowery*, 483 F.3d at 1219. Because the court accepted Simmons's third amended complaint under Rule 15(a)(1)(B), the court lacked the discretion to nonetheless treat the second amended complaint as the operative pleading. *See Williams*, 477 F.3d at 1292 n.6.

Nor did the district court make a final ruling on the operative third amended complaint, which added new claims and new defendants. In screening the third amended complaint, the magistrate judge ruled that Simmons improperly joined new claims that did not share a common set of facts, effectively dismissing those claims from the action going forward. The magistrate judge did so without issuing a report and recommendation or offering Simmons a chance to object.

Absent consent by the parties, which is not present in this case, magistrate judges have "no authority to make a final and binding ruling" on dispositive matters. *Williams v. McNeil*, 557 F.3d 1287, 1291 (11th Cir. 2009); *see* 28 U.S.C. § 636(b), (c); Fed. R. Civ.

P. 72. We acknowledge that magistrate judges may rule on motions for leave to amend. *See Smith v. Marcus & Millichap, Inc.*, 106 F.4th 1091, 1099–1100 (11th Cir. 2024). But here, the magistrate judge expressly accepted the third amended complaint as filed under Rule 15(a)(1)(B). So the court lacked the discretion to refuse leave to amend. *See Williams*, 477 F.3d at 1292 n.6.

Thus, the magistrate judge lacked the authority to dismiss the new defendants from the action on his own, making the judge's order the equivalent of a "nonfinal, nonappealable report and recommendation." *Rembert v. Apfel*, 213 F.3d 1331, 1335 (11th Cir. 2000). And while the district court ultimately dismissed the case as malicious as to all defendants, its ruling was based on the second amended complaint, and the failure to disclose litigation history in that pleading. The court did not consider or address the third amended complaint.

For these reasons, we conclude that the district court failed to resolve all claims against all defendants raised in the operative third amended complaint. *Corsello*, 276 F.3d at 1230. Because the judgment under review is not yet final, and no exception to the final-judgment rule appears to apply, we must dismiss the current appeal for lack of appellate jurisdiction.

DISMISSED.