

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-10365
Non-Argument Calendar

JULIETTE MOON,

Plaintiff-Appellant,

versus

WAYNE T. WILLIAMS, et al.,

Defendants,

SONY/ATV MUSIC PUBLISHING,

MJJ PRODUCTIONS,

R. KELLY PUBLISHING,

JIVE/ZOMBA GROUP,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:24-cv-02761-MHC

Before LUCK, LAGOA, and HULL, Circuit Judges.

PER CURIAM:

Juliette Moon, proceeding *pro se*, appeals from the district court's orders dismissing her copyright claims against (1) defendants Sony Music Entertainment ("Sony") and Wayne Williams as collaterally estopped by the district court's determination in Moon's previous case that it lacked personal jurisdiction over Sony and Williams; and (2) the four remaining defendants (Sony/ATV Music Publishing, MJJ Productions, R. Kelly Publishing, and Jive/Zomba Group) under Federal Rule of Civil Procedure 4(m) for Moon's failure to effectuate service of process after finding that Moon did not provide good cause for an extension of time.

After careful review, we (1) affirm the dismissal of Sony and Williams; (2) vacate the dismissal of Sony/ATV Music Publishing, MJJ Productions, R. Kelly Publishing, and Jive/Zomba Group; and (3) remand for the limited purpose of the district court considering whether the facts of the case justify a permissive extension of the service period as to these four remaining defendants.

I. PROCEDURAL HISTORY

A. Moon's Complaint

On June 24, 2024, Moon filed a complaint against Williams, Sony (also sued as Epic Records), Sony/ATV Music Publishing, MJJ Productions, R. Kelly Publishing, and Jive/Zomba Group alleging that they willfully infringed her copyright in her unpublished

poems by helping to create and profit from the Michael Jackson song, *You Are Not Alone*.

Moon alleged that *You Are Not Alone* was written by copying unique elements from her poems in JULIE'S BEST: POETRY WITH A PROFOUND TOUCH, specifically her poems "[Woman], You're Not Alone," "Without You Another Day," "She's Gentle and Yet Neglected," "Nature," and "It's Definitely Real." According to Moon, the defendants (1) infringed her copyright or benefited from the infringement; and (2) intentionally attributed the writing of the song to Robert Kelly to deflect from the lyrics willfully infringing on her copyrighted poems.

Thus, Moon asserted that Sony, Williams, and the other defendants committed willful copyright infringement and requested a jury trial. Moon alleged that the district court had personal jurisdiction over Sony based on (1) it doing business in Georgia and employing Georgia residents; (2) the alleged harm occurring in Georgia; and (3) through application of Georgia's long-arm jurisdiction statute.

On July 8, 2024, the Clerk of Court issued summons for Sony and Williams. Moon filed a return of service stating that Sony was served on July 9, 2024, but the summons for Williams was returned unexecuted.

B. The Motion to Dismiss

Defendants Sony and Williams moved to dismiss Moon's action under Federal Rules of Civil Procedure 12(b)(2) and 12(b)(6) and to take judicial notice under Federal Rule of Evidence 201.

Sony and Williams said this was the second time Moon had brought these copyright infringement claims against them in this district court in the Northern District of Georgia. Defendants Sony and Williams argued that the district court should again dismiss Moon's action because the court lacked personal jurisdiction over them.

Defendants Sony and Williams detailed the proceedings in the first action Moon brought against them as follows. In 2023, in the same district court, Moon filed her first copyright infringement action, district court case number 1:23-cv-4193-MHC, where she made the same allegations as this case that Sony and Williams infringed her copyright in her poems by using the words to create the Michael Jackson song, *You Are Not Alone*. The district court dismissed the first action without prejudice based on lack of personal jurisdiction. Moon did not appeal the district court's dismissal order.

Defendants Sony and Williams said Moon admitted that her present action in 2024 is "substantially the same" as the first action, with the only difference being that she previously alleged that Williams was a citizen of Illinois and now alleges that Williams is a resident of California. Accordingly, Sony and Williams argued that Moon's present action should be dismissed because the dismissal of her first action based on lack of personal jurisdiction had preclusive effect on Moon's present action. Sony and Williams also argued that Moon failed to state a claim for copyright infringement because she did not sufficiently allege that she had a registered

copyright in her poems, did not attach her poems, and failed to allege plausibly that the defendants had the opportunity to copy her poems.

Moon responded that she refiled the instant action in 2024 in the same court as her first action because (1) she had shown personal jurisdiction and sufficiently stated a copyright infringement claim in the first action, and (2) the district court erred in dismissing the first action because Sony and Williams “diverted the evidence that gave rise to the litigation.” Moon further argued that she sufficiently established personal jurisdiction in the instant action.

C. Dismissal of Sony and Williams

On November 22, 2024, the district court issued an order granting defendants Sony and Williams’s motion to dismiss. The district court reasoned that (1) Moon did not address whether the district court’s dismissal order in Moon’s first action had preclusive effect on the present action, thereby making defendants’ contention unopposed; (2) in any event, the district court adjudicated its lack of personal jurisdiction over the defendants in Moon’s first action; and (3) as a result, that first adjudication precluded Moon from pursuing the instant action in the same court under collateral estoppel.

D. The Show Cause Order

In the same order dismissing defendants Sony and Williams, the district court also addressed Moon’s apparent failure to effectuate service on the four remaining defendants. The district

court specifically noted there was no indication in the record that Moon had served those four defendants—Sony/ATV Music Publishing, MJJ Productions, R. Kelly Publishing, and Jive/Zomba Group—within the 90 days required by Rule 4(m). It therefore ordered that Moon show cause within fourteen days for why the case should not be dismissed without prejudice against those four remaining defendants for failure to timely effectuate service. The district court warned that “[a] failure to respond to this Order or to show good cause for the failure to serve any Defendant within the prescribed time period will result in this Court dismissing this action without prejudice.”

E. Moon’s Response to the Show Cause Order

Moon filed a response to the district court’s show cause order. In her response, Moon asserted that (1) Sony “owned” the four remaining defendants; (2) Moon thus tried to effectuate service on those four defendants through Sony’s registered agents twice in the previous year; and (3) Moon’s service attempts were returned “rejected.” Moon argued that her failure to serve the four remaining defendants was due to factors outside her control, including “asymmetric information, Sony Music Entertainment’s mergers, acquisitions, and/or dissolutions, and [d]efendants being unyielding.”

Moon’s response also contained lengthy arguments relitigating the district court’s previous rulings and assertions unrelated to the district court’s order to show cause. For example, Moon raised arguments about (1) her difficulty serving Williams

and (2) collateral estoppel. Moon did so despite the district court's previous order (1) dismissing the claims against Williams, and (2) ruling on the issue of collateral estoppel.

F. Dismissal of the Remaining Defendants

On January 3, 2025, the district court issued an order dismissing Moon's claims against the four remaining defendants—Sony/ATV Music Publishing, MJJ Productions, R. Kelly Publishing, and Jive/Zomba Group—for failure to timely effectuate service under Rule 4(m). In its dismissal order, the district court found that Moon's response to the show cause order (1) failed to detail any of Moon's efforts to serve the four remaining defendants; (2) did not demonstrate good cause as to why the case against those defendants should not be dismissed for failure to effectuate service; and (3) focused on unrelated issues such as the district court's previous rulings.

The district court dismissed Moon's action against the four remaining defendants without prejudice and closed the case. Moon timely appealed.

II. COLLATERAL ESTOPPEL

We first address whether the issue of collateral estoppel as to Sony and Williams is properly before this Court. *Pro se* pleadings are liberally construed and held to a less stringent standard than counseled pleadings. *Jacob v. Mentor Worldwide, LLC*, 40 F.4th 1329, 1334 (11th Cir. 2022). But both counseled and *pro se* litigants must conform to procedural rules. *Albra v. Advan, Inc.*, 490 F.3d 826, 829 (11th Cir. 2007). One such rule is that an issue is abandoned on

appeal if a *pro se* litigant does not brief it. *Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008). As such, we generally will not address an argument raised for the first time in a reply brief. *Id.*

In this appeal, Moon did not address the issue of collateral estoppel in her opening brief on appeal and, instead, addressed the issue in her reply brief. Moon therefore abandoned the issue of collateral estoppel, and we may affirm based on that abandonment alone. *Id.* Still, as explained below, the district court did not err in dismissing Moon’s copyright infringement claims against Sony and Williams as collaterally estopped.

We review *de novo* a district court’s determination of collateral estoppel. *Sellers v. Nationwide Mut. Fire Ins. Co.*, 968 F.3d 1267, 1272 (11th Cir. 2020). A district court’s conclusion that an issue was actually litigated in a prior action is reviewed for clear error.¹ *Richardson v. Miller*, 101 F.3d 665, 667-68 (11th Cir. 1996).

Collateral estoppel, also called issue preclusion, prevents successive litigation of an issue that was actually litigated and resolved in a prior judgment by a valid court determination. *Sellers*, 968 F.3d at 1272. An issue was “actually litigated” if the issue was raised properly in pleadings, submitted for determination, and determined. *Pleming v. Universal-Rundle Corp.*, 142 F.3d 1354, 1359-

¹ Clear error is a highly deferential standard of review and will not be found unless, although there is evidence in the record to support the finding, “the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.” *Morrisette-Brown v. Mobile Infirmary Med. Ctr.*, 506 F.3d 1317, 1319 (11th Cir. 2007) (citation modified).

60 (11th Cir. 1998). Relevant here, collateral estoppel bars successive litigation on the same question of personal jurisdiction. *Cf. N. Ga. Elec. Membership Corp. v. City of Calhoun*, 989 F.2d 429, 432-33 (11th Cir. 1993) (“Although the dismissal of a complaint for lack of [subject matter] jurisdiction does not adjudicate the merits so as to make the case res judicata on the substance of the asserted claim, it does adjudicate the court’s jurisdiction, and a second complaint cannot command a second consideration of the same jurisdictional claims.” (quoting *Boone v. Kurtz*, 617 F.2d 435, 436 (5th Cir. 1980))).² Only when the second complaint corrects the deficiency found in the first action will collateral estoppel not apply. *See id.* at 433.

For collateral estoppel to apply, the following elements must be established: (1) the issue was identical in both the prior and current actions; (2) the issue was actually litigated in the prior action; (3) the determination of the issue was critical and necessary to the judgment in the prior action; and (4) the party against whom the earlier decision is asserted had a full and fair opportunity to litigate the issue in the earlier proceeding. *CSX Transp., Inc. v. Bhd. of Maint. of Way Emps.*, 327 F.3d 1309, 1317 (11th Cir. 2003) (citing *I.A. Durbin, Inc. v. Jefferson Nat’l Bank*, 793 F.2d 1541, 1549 (11th Cir. 1986)).

All four elements were met here. First, the issue of jurisdiction in both Moon’s first action and the present case dealt

² This Court adopted as binding precedent all Fifth Circuit decisions prior to October 1, 1981. *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc).

with whether the same district court in Georgia possessed personal jurisdiction over identical defendants, Sony and Williams. *See id.*

Second, the parties actually litigated the issue of personal jurisdiction in Moon's first action. To wit, Sony and Williams raised it in their pleadings for the district court to determine, and the district court subsequently determined that it lacked personal jurisdiction over them. *See Fleming*, 142 F.3d at 1359-60. While that was a jurisdictional determination that resulted in dismissal without prejudice, collateral estoppel nonetheless applies to such a determination. *See N. Ga. Elec. Membership Corp.*, 989 F.2d at 432-33.

Third, the determination of the issue in Moon's first action was critical and necessary. The district court's finding that it did not have personal jurisdiction to hear Moon's claims against Sony and Williams resulted in the dismissal of Sony and Williams. *See CSX Transp.*, 327 F.3d at 1317; *see also N. Ga. Elec. Membership Corp.*, 989 F.2d at 432-33.

Finally, Moon had a full and fair opportunity to litigate the issue of personal jurisdiction in her first action. Moon filed multiple pleadings before the district court arguing she had established that the district court had personal jurisdiction over Sony and Williams. *See CSX Transp.*, 327 F.3d at 1317; *see also Fleming*, 142 F.3d at 1359-60.

We therefore affirm the district court's dismissal of Moon's claims against Sony and Williams as barred by collateral estoppel.

III. SERVICE OF PROCESS ON THE FOUR REMAINING DEFENDANTS

Moon contends that the district court erred when it dismissed without prejudice her remaining claims for failure to timely effectuate service on the four remaining defendants: Sony/ATV Music Publishing, MJJ Productions, R. Kelly Publishing, and Jive/Zomba Group. We review a district court's dismissal without prejudice for failure to timely effectuate service under Rule 4(m) for abuse of discretion.³ *Bilal v. Geo Care, LLC*, 981 F.3d 903, 918 (11th Cir. 2020); *Lepone-Dempsey v. Carroll Cnty. Comm'rs*, 476 F.3d 1277, 1280 (11th Cir. 2007).

A. The Two-Step Inquiry Following Failure to Effectuate Service Under Rule 4(m)

Upon filing a complaint, the plaintiff is responsible for ensuring the summons and complaint are served within the time required by Rule 4(m). Fed. R. Civ. P. 4(c)(1). Rule 4(m) requires that a defendant be served within 90 days of the filing of the complaint. *Id.* R. 4(m). If service is not effectuated within 90 days and the plaintiff does not demonstrate good cause for that failure, then the court must dismiss the action or order that service be effectuated within a specified time. *Id.* “Good cause requires the existence of some outside factor, such as reliance on faulty advice, rather than inadvertence or negligence.” *Bilal*, 981 F.3d at 919 (citation modified).

³ Under the abuse of discretion standard, we will affirm unless we conclude that the district court made a clear error of judgment or applied the wrong legal standard. *Richardson v. Johnson*, 598 F.3d 734, 738 (11th Cir. 2010).

Absent a showing of good cause, the district court still maintains discretion under Rule 4(m) to extend the time for service. *Horenkamp v. Van Winkle And Co., Inc.*, 402 F.3d 1129, 1132 (11th Cir. 2005). And this Court has instructed that even if a plaintiff cannot show good cause, “the district court must still consider whether any other circumstances warrant an extension of time based on the facts of the case.” *Lepone-Dempsey*, 476 F.3d at 1282. Examples of such circumstances where an extension may be appropriate include when the statute of limitations would prohibit refile, the defendant evades service, or the defendant obscures an issue with attempted service. *Bilal*, 981 F.3d at 919 (citing *Lepone-Dempsey*, 476 F.3d at 1282); *see also* Fed. R. Civ. P. 4(m) advisory committee’s note to 1993 amendments.

In short, there is a two-step inquiry when a district court considers whether to dismiss a case without prejudice for failing to effect timely service or direct that service be effectuated within a specified time pursuant to Rule 4(m). *See Bilal*, 981 F.3d at 919 (citing *Lepone-Dempsey*, 476 F.3d at 1282). First, the district court determines whether the plaintiff demonstrated good cause for failure to timely effectuate service. Second, even if the plaintiff failed to demonstrate good cause, the district court must determine whether the facts of the case justify a permissive extension of the service period. *See id.*

1. *Lepone-Dempsey v. Carroll County Commissioners*, 476 F.3d 1277 (11th Cir. 2007)

We first explicated this two-step inquiry in the 2007 case of *Lepone-Dempsey v. Carroll County Commissioners*, 476 F.3d 1277 (11th Cir. 2007). There, the issues before the Court were whether the district court erred in (1) granting a motion to dismiss for failure to timely effectuate service, and (2) denying a request for an extension of time to effectuate service that was embedded in the plaintiffs' response to the motion to dismiss. *Id.* at 1279-80. The district court also denied a motion to reconsider its rulings. *Id.* at 1280. In their motion for reconsideration, the plaintiffs argued in part that dismissal without prejudice would effectively preclude refiling since the statute of limitations had run. *Id.*

The Court first concluded that the district court did not abuse its discretion in determining that the plaintiffs did not demonstrate good cause for failing to timely serve the defendants. *Id.* at 1281. Indeed, the Court noted that the plaintiffs (1) failed to show diligence in their efforts to serve process on the defendants and (2) were negligent in their service efforts. *Id.* at 1281-82.

Then, this Circuit joined our sister circuits to “hold that when a district court finds that a plaintiff fails to show good cause for failing to effect timely service pursuant to Rule 4(m), the district court must still consider whether any other circumstances warrant an extension of time based on the facts of the case.” *Id.* at 1282. In so doing, the Court explained that factors outlined in the 1993 Advisory Committee Note to Rule 4(m), such as the statute of limitations precluding refiling and the evasion of service, provide

guidance for this inquiry. *Id.* (citing Fed. R. Civ. P. 4(m) advisory committee’s note to 1993 amendments).

Applying that holding, the Court concluded that “[t]he district court’s decision to dismiss th[e] case without prejudice for failure to timely effect service was premature, as it did not clearly consider, after finding that the plaintiffs failed to demonstrate good cause, whether a permissive extension of time was warranted under the facts of th[e] case.” *Id.* The Court specifically noted that “it was incumbent upon the district court to at least consider” the running of the statute of limitations since it effectively barred the refiling of the action. *Id.*

Because the district court did not undertake the second step of the inquiry, the Court reversed the district court’s dismissal order and remanded the case for “reconsideration” by the district court. *Id.*

2. *Bilal v. Geo Care, LLC*, 981 F.3d 903 (11th Cir. 2020)

In the 2020 case of *Bilal v. Geo Care, LLC*, 981 F.3d 903 (11th Cir. 2020), this Court reiterated *Lepone-Dempsey*’s two-step inquiry. *See id.* at 919. The district court in that case dismissed the action (1) for failure to state a claim on all but one count; and (2) on that remaining count, for failure to effectuate service under Rule 4(m). *Id.* at 910.

Unlike in *Lepone-Dempsey*, at the time of the district court’s dismissal order, there were no pending motions or requests for a third extension of the service period. *See id.* at 910-11. However, the plaintiff in *Bilal* filed a motion for reconsideration explaining his

(1) efforts at service and (2) indigent status. *Id.* at 910. The district court denied that motion, “not[ing] that Bilal had failed to comply with the court’s orders.” *Id.* at 911.

On appeal, the Court reversed some of the district court’s determinations regarding purported failures to state a claim. *Id.* at 912-18.

The Court then turned to the issue of service. *Id.* at 918-20. Quoting *Lepone-Dempsey*, the Court stated that “a district court’s dismissal of a case under Rule 4(m) after finding that the plaintiff did not demonstrate good cause but before considering whether the facts of the case justify a permissive extension of the service period is ‘premature.’” *Id.* at 919 (quoting *Lepone-Dempsey*, 476 F.3d at 1282).

The Court noted that (1) despite the district court giving the plaintiff two extensions, he failed to effectuate service on certain defendants within the applicable service period; (2) the district court did not perform either step of the *Lepone-Dempsey* inquiry “since it essentially concluded that its determination that the complaint failed to state a claim mooted the issue”; and (3) “even if [the Court] could read the district court’s order as implicitly finding no good cause to further extend the service period, the district court’s order does not indicate that the district court evaluated whether any other circumstances of the case justified a further extension.” *Id.* at 919-20.

Under these circumstances, the Court concluded that it “must vacate” the district court’s dismissal of the remaining

defendants under Rule 4(m) and remand the case “to allow the district court to consider whether good cause or other circumstances warrant a further extension of the service period.” *Id.* at 920.

B. Dismissal of the Four Remaining Defendants

Moon challenges the district court’s dismissal of the four remaining defendants.

We easily conclude that the district court did not abuse its discretion when determining that Moon failed to demonstrate good cause for her failure to timely effectuate service. At the time of the dismissal of the four remaining defendants, (1) approximately 193 days had elapsed since Moon filed her second action without effectuating proper service upon those defendants; (2) Moon’s response to the district court’s show cause order did not detail any of Moon’s efforts to serve the four remaining defendants; and (3) Moon’s response largely attempted to relitigate the district court’s prior unrelated rulings.

That said, the problem here is that the district court did not perform step two of the *Lepone-Dempsey* inquiry to consider if “any other circumstances warrant an extension of’ the service period “based on the facts of the case.” *Bilal*, 981 F.3d at 919 (quoting *Lepone-Dempsey*, 476 F.3d at 1282). Rather, in its dismissal order of the four remaining defendants, the district court solely addressed the first step of the *Lepone-Dempsey* inquiry regarding good cause.

Consequently, based on our precedent, we must (1) vacate the district court’s dismissal for failure to timely effectuate service

of process; and (2) remand for the district court to consider whether the facts of the case justify a permissive extension of the service period as to the four remaining defendants. We express no opinion on that issue.

IV. CONCLUSION

For these reasons, we (1) affirm the dismissal of Sony and Williams; (2) vacate the dismissal of Sony/ATV Music Publishing, MJJ Productions, R. Kelly Publishing, and Jive/Zomba Group; and (3) remand for the limited purpose of the district court considering whether the facts of the case justify a permissive extension of the service period as to these four remaining defendants.

AFFIRMED IN PART, VACATED AND REMANDED IN PART.