

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-11190
Non-Argument Calendar

SAMUEL GHEE, IV,

Plaintiff-Appellant,

versus

ALABAMA POWER COMPANY,
SOUTHERN COMPANY,
THE CITY OF VALLEY GRANDE, ALABAMA,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Alabama
D.C. Docket No. 2:24-cv-00216-JB-B

Before JILL PRYOR, BRANCH, and LAGOA, Circuit Judges.

PER CURIAM:

Samuel Ghee IV, proceeding pro se, appeals the district court's dismissal of his claims against the City of Valley Grande, Alabama, and Alabama Power Company under 42 U.S.C. § 1983 and the Fair Debt Collection Practices Act ("FDCPA"). He argues that his four claims were adequately pleaded to survive dismissal under Federal Rule of Civil Procedure 12(b)(6) and that the district court erred by failing to give him a chance to amend. Valley Grande and Alabama Power respond that we lack jurisdiction because Ghee's notice of appeal was untimely. They also contend that his complaint is an impermissible shotgun pleading and otherwise fails to state a claim.

Here, the district court dismissed Ghee's complaint without explaining whether it did so because the complaint was an impermissible shotgun pleading, because it failed to state a claim, or both.¹ We conclude that Ghee's appeal was timely and that he was entitled to notice and a meaningful opportunity to replead before the district court dismissed his action with prejudice. We thus vacate and remand for proceedings consistent with this opinion.

I.

This case concerns electrical service—or, more precisely, the lack of it. Samuel Ghee owns property in Alabama. When he contacted Alabama Power to request electrical service, a company representative told him that service could not be activated until two

¹ Because the district court did not determine if amendment would be futile, we decline to decide futility in the first instance.

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requirements were satisfied. First, the City of Valley Grande required an inspection of the previously unoccupied property. Second, Alabama Power required a partially refundable deposit of \$290. Ghee then contacted Valley Grande, whose representative confirmed the inspection requirement but, according to Ghee, ended the call when he sought further explanation. Electrical service has not been connected to the property.

Ghee sued in state court, challenging both requirements. His complaint named Valley Grande, Alabama Power, and Southern Company as defendants.² After the case was removed to federal court, Valley Grande and Alabama Power moved to dismiss, arguing that the complaint was an impermissible shotgun pleading and failed to state a claim. Ghee then filed an amended complaint.

The amended complaint asserted four claims. First, Ghee brought a Fourth Amendment claim under 42 U.S.C. § 1983, alleging that Valley Grande “willfully seized Plaintiff’s freedom to improve his property.” Second, he asserted a § 1983 conspiracy claim, alleging that Valley Grande and the Southern Company were “willfully conspiring” to deprive him of his constitutional rights. Third, he asserted a municipal-liability claim under § 1983, alleging that Valley Grande had adopted a “custom of usage with the force of law” to deny utility service. Fourth, he asserted an FDCPA claim, alleging that Southern Company—and Alabama Power—had used

² Although Southern Company is listed as a party, as discussed below, it was not served in either state or federal court. As a result, it is not a party to this appeal.

threats concerning an old debt to “extort” him into paying an inflated deposit.

The district court denied the original motions to dismiss as moot, and Valley Grande and Alabama Power again moved to dismiss. They renewed their shotgun-pleading objections and argued that the amended complaint failed to state a claim. The court set the motions for an in-person hearing on October 9, 2024. Ghee did not appear. The court granted the motions “for the reasons stated on the record” and directed the clerk to close the case. The court did not, however, enter a separate judgment.

Ghee filed a motion objecting “to any hearing since plaintiff as a party to the case has no access to the hearing through video teleconference.” The motion was dated October 4, 2024, but docketed on October 9. Because the motion did not “address any of the substantive grounds for dismissal,” the district court denied it on November 21, 2024.

Ghee moved for reconsideration. His motion for reconsideration was dated December 6, 2024, but docketed on December 11. In the accompanying memorandum, Ghee questioned, among other things, why his “reply to the Motion to Dismiss [was] not good enough” and why the defendants’ motion “state[d] throughout about ‘shotgun plea’ but refuse[d] to dispute material faces [sic] and legal structure of [his] claim.”

The district court granted the motion and held a second hearing by videoconference on January 28, 2025. At that hearing, Valley Grande argued that Ghee had failed to explain how its

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inspection requirement violated his constitutional rights. Ghee responded that requiring an inspection exceeded constitutional limits because entry onto private property required a warrant. He also questioned what Valley Grande needed to inspect beyond any inspection performed by Alabama Power’s electricians.

At the conclusion of the hearing, the court stated: “I’ve considered all of the papers, the motions to dismiss themselves, your response that you filed to each of them, and the reply that both defendants filed. And I do find, based on those papers, that the motions are due to be granted. And so, for the reasons stated in the briefs and stated on the record today, I’m going to grant those motions.”

The district court then entered an order granting the motions “[u]pon due consideration of the filings and for the reasons stated on the record at the January 28, 2025 hearing.” As with its October 2024 order, the court did not enter a separate judgment or grant Ghee leave to amend.

Ghee filed a notice of appeal on April 11, 2025.

II.

We review a district court’s dismissal of a complaint as a shotgun pleading for abuse of discretion. *Weiland v. Palm Beach County Sheriff’s Off.*, 792 F.3d 1313, 1320 (11th Cir. 2015). Although a district court has “inherent authority to control its docket” and may dismiss a shotgun pleading, *id.*, it ordinarily must give the litigant one opportunity to correct the deficiency before dismissing

the action with prejudice, *Vibe Micro, Inc. v. Shabanets*, 878 F.3d 1291, 1296 (11th Cir. 2018).³

We review de novo a district court’s dismissal for failure to state a claim, accepting the complaint’s factual allegations as true “and construing them in the light most favorable to the plaintiff.” *See Mills v. Foremost Ins. Co.*, 511 F.3d 1300, 1303 (11th Cir. 2008) (quotation omitted). “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Detailed factual allegations are unnecessary, but the complaint must allege enough facts “to raise a right to relief above the speculative level.” *Twombly*, 550 U.S. at 555. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Brooks v. Warden*, 800 F.3d 1295, 1300 (11th Cir. 2015) (quotation omitted).

“A district court’s discretion to deny leave to amend a complaint is ‘severely restricted’ by Fed. R. Civ. P. 15(a)(2),” which directs courts to “freely give leave to amend ‘when justice so requires.’” *Woldeab v. DeKalb County Board of Education*, 885 F.3d 1289, 1291 (11th Cir. 2018) (quotation omitted). Thus, “[w]here a more

³ Although the district court’s order did not use the words “with prejudice,” it dismissed the action and did not grant leave to amend. We therefore treat the dismissal as one with prejudice. *See Walters v. Sec’y, Fla. Dep’t of Corr.*, 743 F. App’x 401, 402 n.1 (11th Cir. 2018).

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carefully drafted complaint might state a claim,” a pro se plaintiff “must be given at least one chance to amend the complaint before the district court dismisses the action with prejudice.” *Id.* Leave is unnecessary when the plaintiff clearly indicates that he does not wish to amend or when amendment would be futile. *Id.*

We construe pro se pleadings liberally and hold them “to a less stringent standard than pleadings drafted by” counsel. *Tannenbaum v. United States*, 148 F.3d 1262, 1263 (11th Cir. 1998) (citation omitted). Even so, a pro se litigant must comply with the applicable procedural rules. *Albra v. Advan, Inc.*, 490 F.3d 826, 829 (11th Cir. 2007) (quoting *Loren v. Sasser*, 309 F.3d 1296, 1304 (11th Cir. 2002)).

III.

We are obligated “to examine our jurisdiction *sua sponte*” and review jurisdictional questions de novo. *Adams v. Monumental Gen. Cas. Co.*, 541 F.3d 1276, 1277 (11th Cir. 2008) (citations omitted). In a civil case, a timely notice of appeal “is a jurisdictional requirement,” *Green v. Drug Enf’t Admin.*, 606 F.3d 1296, 1300 (11th Cir. 2010) (quotation omitted), and the notice must ordinarily be filed “within 30 days after entry of the judgment or order appealed from,” Fed. R. App. P. 4(a)(1)(A).

Alabama Power and Valley Grande argue Ghee missed that deadline. The district court twice dismissed Ghee’s complaint—first on October 9, 2024, and again on January 28, 2025, after it granted Ghee’s motion for reconsideration and heard argument a

second time. Ghee ultimately filed his notice of appeal on April 11, 2025.

Alabama Power notes that Ghee filed his notice 73 days after the January order—43 days beyond the ordinary deadline. Valley Grande, for its part, measures from the October order, about six months earlier, and contends that the January order changes nothing. We disagree on both fronts.

To start, and relevant here, the district court never entered a separate judgment. When Rule 58 requires a separate document, a judgment is entered for purposes of Rule 4(a) when it is entered in the civil docket and the earlier of two events occurs: “the judgment is set forth in a separate document, or 150 days have run from entry of the judgment or order in the civil docket.” Fed. R. App. P. 4(a)(7)(A); Fed. R. Civ. P. 58(a), (c). Rule 58 generally requires a final judgment to be set out in a separate document, but no separate document is required for an order disposing of certain post judgment motions as outlined in Fed. R. Civ. P. 58(a). *See* Fed. R. App. P. 4(a)(7); Fed. R. Civ. P. 58(a); Fed. R. Civ. P. 54(a) (“‘Judgment’ as used in these rules includes a decree and any order from which an appeal lies.”). And the document must be “separate and apart from

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an accompanying opinion.” *State Nat. Bank of El Paso v. United States*, 488 F.2d 890, 893 (5th Cir. 1974).⁴

Here, the district court granted reconsideration, conducted another hearing on the motions to dismiss, and entered a new order granting those motions. The January 28 dismissal therefore required a separate judgment. The order itself did not satisfy the separate-document requirement because, rather than separately setting out the judgment, it recounted the proceedings and incorporated the reasons stated at the hearing. The judgment was therefore not entered until 150 days later, *see* Fed. R. App. P. 4(a)(7), and Ghee’s thirty days had not begun to run when he filed his notice on April 11—seventy-three days after the order. “A notice of appeal filed after the court announces a decision or order—but before the entry of the judgment or order—is treated as filed on the date of and after the entry.” Fed. R. App. P. 4(a)(2). Ghee’s appeal is therefore timely.

Valley Grande’s contention that the October 9 order, rather than the January 28 order, controls is mistaken. The district court did not set out its October 9 judgment in a separate document. Judgment therefore had not yet been entered under Rule 58 when Ghee’s motion for reconsideration was docketed on December 11, and the 28-day period prescribed by Rule 59(e) had not begun. Because Ghee’s motion called the dismissal into question, it is

⁴ In *Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981) (en banc), we adopted as binding precedent all decisions of the former Fifth Circuit rendered prior to October 1, 1981. *Id.* at 1209.

properly treated as a Rule 59(e) motion, no matter how it was styled. See *Finch v. City of Vernon*, 845 F.2d 256, 258–59 (11th Cir. 1988); see also *Tannenbaum*, 148 F.3d at 1263.

Valley Grande’s reliance on *FTC v. Minneapolis-Honeywell Regul. Co.*, 344 U.S. 206 (1952), is misplaced. There, the lower court merely reentered a judgment without altering it, and the Supreme Court held that the second entry did not restart the time to appeal. The appeal period begins anew “[o]nly when the lower court changes matters of substance, or resolves a genuine ambiguity, in a judgment previously rendered.” *Id.* at 211–12. That inquiry is “a practical one,” *id.* at 212, and turns on an order’s practical effect rather than its form, see *Martinez v. Carnival Corp.*, 744 F.3d 1240, 1243–44 (11th Cir. 2014).

This case is different. The district court expressly granted Ghee’s motion for reconsideration, conducted another hearing on the motions to dismiss, and then granted those motions “[u]pon due consideration of the filings and for the reasons stated on the record” at the January 28 hearing. The court thus adjudicated the motions anew rather than merely reentering or restating its October 9 order. That it ultimately reached the same result does not make the January 28 order a ministerial reentry of the earlier order. The January 28 order therefore became the operative dismissal order.

This conclusion also accords with our obligation to apply Rule 58 mechanically when necessary “to protect a party from losing the right to appeal,” *Kent v. Baker*, 815 F.2d 1395, 1397 (11th Cir.

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1987), while avoiding a “mindless[]” application of the rule. *Weinberger v. United States*, 559 F.2d 401, 402 (5th Cir. 1977).

Southern Company’s nominal presence in the case does not affect finality because it was never served. An unserved defendant is generally not a party for purposes of Rule 54(b). *See Loman Development Co. v. Daytona Hotel & Motel Suppliers, Inc.*, 817 F.2d 1533, 1536 (11th Cir. 1987) (collecting cases). The dismissal of all served defendants was therefore final. *See Bryant v. Rich*, 530 F.3d 1368, 1378 n.18 (11th Cir. 2008).

Accordingly, Ghee’s appeal was timely, and we have jurisdiction.⁵

IV.

The district court dismissed Ghee’s amended complaint “upon due consideration of the filings and for the reasons stated on the record at the January 28, 2025 hearing.” The order does not reveal whether the court dismissed the complaint as an impermissible shotgun pleading, for failure to state a claim, or both.

⁵ Contrary to Alabama Power’s assertion that nonexhaustion deprives this Court of subject-matter jurisdiction, “[t]he Supreme Court and this Court have held that there is no requirement that a plaintiff exhaust his administrative remedies before filing suit under § 1983.” *Beaulieu v. City of Alabaster*, 454 F.3d 1219, 1226 (11th Cir. 2006) (citing *Patsy v. Board of Regents*, 457 U.S. 496, 516 (1982)).

Alabama Power and Valley Grande advanced both grounds below and renew them on appeal.

Under either rationale, the district court should have afforded Ghee one meaningful opportunity to amend before dismissing the action with prejudice.

“To the extent the district court dismissed [Ghee’s] complaint as a shotgun pleading, the court ought to have given him the opportunity to replead, with instructions.” *Walters v. Sec’y, Florida Dep’t of Corr.*, 743 F. App’x 401, 402 (11th Cir. 2018) (collecting cases). To be sure, Ghee’s complaint exhibits several hallmarks of a shotgun pleading. Each count incorporates the allegations of all preceding counts, with the final count incorporating nearly the entire complaint. *See Weiland*, 792 F.3d at 1321 & n.11. The complaint is also “replete with conclusory, vague, and immaterial facts not obviously connected to any particular cause of action.” *Id.* at 1322. As a result, it fails “to give the defendants adequate notice of the claims against them and the grounds upon which each claim rests.” *See id.* at 1323.

Before dismissing a shotgun pleading on nonmerits grounds, however, a district court ordinarily must give the plaintiff one opportunity to replead. “[T]he district court should explain how the offending pleading violates the shotgun pleading rule so that the party may properly avoid future shotgun pleadings.” *Vibe Micro*, 878 F.3d at 1296. Although *Vibe Micro* involved a represented party, we see no reason that requirement should apply with less force to

a pro se plaintiff. *See Walters*, 743 F. App'x at 402–03; *Isaac v. United States*, 809 F. App'x 595, 599 (11th Cir. 2020).

Valley Grande relies on *Moore v. Jasper City Board of Educ.*, 2023 WL 3719151 (11th Cir. May 30, 2023), to argue that Ghee received notice of the defects and an opportunity to amend. But *Moore* illustrates what is missing here. There, the district court struck Moore's initial complaint as a shotgun pleading, permitted her to amend, "explicitly told her how to cure the pleading deficiencies," and "warned her that failure" to do so "would result in dismissal . . . 'with prejudice without further notice.'" *Id.* at *3. Only after receiving those instructions and warnings did Moore file an amended complaint that failed to substantially remedy the defects. *Id.*

Nor does *Jackson v. Bank of America, N.A.*, 898 F.3d 1348 (11th Cir. 2018), require a different result. There, the defendants moved for a more definite statement and fully explained the complaint's shotgun-pleading defects. *See Jackson*, 898 F.3d at 1358. The represented plaintiffs did not oppose the motions, stated that they were willing to amend, and were ordered by the district court "to file a sufficient complaint." *Id.* at 1358–59. When their amended complaint retained substantially the same defects, the court held that they had received fair notice of the deficiencies and a meaningful opportunity to cure them. *Id.* Although the district court had not itself elaborated on the defects, the defendants' detailed motions,

the plaintiffs’ nonopposition, and the court’s repleading order together satisfied the governing standard. *Id.*

Ghee did not receive the same combination of detailed notice and a court-directed opportunity to replead. Although defendants challenged his original complaint as a shotgun pleading and Ghee later amended, the district court never identified the defects, directed him to cure them, or warned him that failure to do so could result in dismissal with prejudice. *See Isaac*, 809 F. App’x at 599 (“[T]he district court never notified Isaac of the defects in his complaint before dismissal, and it did not furnish him an opportunity to fix them.”). And unlike the plaintiffs in *Moore* and *Jackson*, Ghee proceeds pro se. *See Moore*, 2023 WL 3719151, at *3 (explaining that the plaintiff was represented by counsel); *Jackson*, 898 F.3d at 1352 (same). On this record, his voluntary amendment after receiving motions to dismiss did not provide the court-directed opportunity to replead contemplated by our decisions.

The same conclusion follows if the district court dismissed the complaint for failure to state a claim. A pro se plaintiff ordinarily must receive at least one meaningful opportunity to amend before an action is dismissed with prejudice “for the legal insufficiency of its factual allegations.” *Walters*, 743 F. App’x at 403 (citing *Bryant v. Dupree*, 252 F.3d 1161, 1163 (11th Cir. 2001)); *Woldeab*, 885 F.3d at 1291–92. Although Ghee had amended after the defendants challenged his original pleading, the district court did not identify

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the deficiencies supporting dismissal or give him an informed opportunity to cure them.

“While leave to amend need not be granted if amendment would be futile, the court made no finding of futility.” *Walters*, 743 F. App’x at 403 (citing *Bryant*, 252 F.3d at 1163). Because the court did not identify the deficiencies in Ghee’s claims or determine whether those deficiencies could be cured—and because the complaint’s shotgun structure complicates that inquiry—“we decline to address the issue of futility in the first instance.” *Id.* Put simply, “[t]he district court should have advised [Ghee], proceeding pro se, of his complaint’s deficiency and given him the opportunity to amend . . . before the court dismissed with prejudice.” *Woldeab*, 885 F.3d at 1292.

We therefore vacate the dismissal of Ghee’s complaint and remand for further proceedings consistent with this opinion. We express no view on whether any claim in a second amended complaint would survive a renewed motion to dismiss.

VACATED AND REMANDED.