

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-11195
Non-Argument Calendar

AYMARA SORHEGUI,

Plaintiff-Appellant,

versus

PARK EAST HOME OWNERS ASSOCIATION, INC.,
LOURDES KRAUSE,
PEDRO PABLO ECHARTE, JR.,
ADAM CERVERA,
WILLIAM ESSIG, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:24-cv-23162-KMW

Before LUCK, ABUDU, and ANDERSON, Circuit Judges.

PER CURIAM:

Aymara Sorhegui and Park East Homeowners Association, Inc., have been involved in a protracted state court dispute about the association's management of the community where Sorhegui owned a condominium. After several losses in state court, Sorhegui turned to federal court, proceeding pro se and seeking prospective relief and damages against the association, two state court judges—Judge Pedro P. Echarte Jr., and Judge Lourdes Simon—and the association's attorneys (Lourdes Krause, Aleida Boada, Adam Cervera, Michael Gongora, Becker & Poliakoff, P.A., and William Essig). Sorhegui's federal complaint alleged that the defendants conspired to violate her civil rights and denied her due process. The defendants filed motions to dismiss, which the district court granted. After careful review, we affirm.

FACTUAL BACKGROUND

Sorhegui lived in Park East, a condominium complex in Miami, Florida. The association and its board of directors governed the condominium, and Sorhegui used to serve on the board. She uncovered and reported regulatory violations to the state of Florida and Miami-Dade County, which resulted in citations. In response, Sorhegui alleges, the association removed her from the board and filed a retaliatory nuisance action against her in state court.

The dispute, and issues spawning out of it, have been the subject of much litigation in state court. Three of the state court actions are relevant here. In the first, *Sorhegui I*, the association

25-11195

Opinion of the Court

3

sought to enjoin Sorhegui from engaging in disruptive conduct toward it and its board of directors. The case was assigned to Judge Echarte in the Eleventh Judicial Circuit of Florida. There, Sorhegui alleged that she uncovered that the law firm the association had hired, Becker & Poliakoff, P.A., and two of its attorneys, Michael Gongora and Adam Cervera, had an improper relationship with Judge Echarte and had contributed to his reelection campaign.

Judge Echarte, according to Sorhegui, began to issue improper rulings in the matter, and denied Sorhegui's recusal motion—a ruling Florida's Third District Court of Appeal later affirmed. In the end, the association won on summary judgment, was awarded attorney's fees, and obtained writs of execution against Sorhegui's condominium and bank account to satisfy the fee award.

In June 2023, the association brought the second relevant action, *Sorhegui II*, seeking quiet title to Sorhegui's former condo. Over Sorhegui's objection, the case was transferred to Judge Echarte. Sorhegui moved to reconsider the transfer, but she says that Judge Echarte closed the case before evaluating her motion.

In October 2023, Sorhegui brought the third relevant state court action, *Sorhegui III*, under a provision of Florida condominium law aimed at discouraging strategic lawsuits against public participation. *See* Fla. Stat. § 718.1224. The association moved to transfer the matter to Judge Echarte. Judge Lourdes Simon, the administrative judge of the civil division, initially denied that mo-

tion. But after the association successfully moved to reopen *Sorhegui I*, Judge Simon granted the transfer motion over Sorhegui's objection.

PROCEDURAL HISTORY

Sorhegui then brought this lawsuit pro se in the United States District Court for the Southern District of Florida. The suit named nine defendants—the association, two members of its board of directors, two Florida state court judges, one law firm, and three other attorneys involved in the state cases. Two claims are relevant here: conspiracy to violate civil rights under 42 U.S.C. section 1985(3); and violation of due process under 42 U.S.C. section 1983. As relief, the complaint sought: declaratory and injunctive relief against the judges to prevent them from issuing unfair decisions and to undo the existing ones; damages against the judges; damages for the private defendants' conspiracy to violate Sorhegui's civil rights under section 1985(3); and damages for the private defendants' violations of her due process rights under section 1983.

The defendants, organized into four groups (the association and its directors, two groups of attorneys, and the judges), each moved to dismiss. They argued that the district court should abstain under *Younger v. Harris*, 401 U.S. 37 (1971), and that the complaint failed to state a claim. Moreover, they argued that the complaint was barred by judicial immunity.

A magistrate judge recommended dismissal. As to the prospective relief Sorhegui sought against the judges, the magistrate judge explained, the district court should abstain under *Younger*.

25-11195

Opinion of the Court

5

And as to the damages sought against the judges, those claims should be dismissed because the judges had judicial immunity.

As to the remaining claims against the private defendants, the magistrate judge concluded that they failed to state a claim. Sorhegui had not alleged that she was a member of a protected class as section 1985(3) required. And her section 1983 due-process claim failed because she did not allege that the private defendants were state actors, and she had not plausibly alleged that adequate process was unavailable to her in state court. The magistrate judge denied leave to amend because Sorhegui had already been given one opportunity and any further amendment would be futile.

The district court adopted the magistrate judge's recommendation and dismissed Sorhegui's claims with prejudice. Sorhegui appeals the dismissal.

STANDARD OF REVIEW

Four different standards apply to this case. First, we review de novo a district court's order granting a motion to dismiss. *Dusek v. JPMorgan Chase & Co.*, 832 F.3d 1243, 1246 (11th Cir. 2016). Although pro se pleadings are liberally construed, liberal construction "does not give a court license to serve as de facto counsel for a party, or to rewrite an otherwise deficient pleading in order to sustain an action." *Campbell v. Air Jamaica Ltd.*, 760 F.3d 1165, 1168-69 (11th Cir. 2014) (citation modified).

Second, we review a district court's abstention under *Younger* for abuse of discretion. *Leonard v. Ala. State Bd. of Pharmacy*, 61 F.4th 902, 907 (11th Cir. 2023). Third, we review de novo

whether a judge is entitled to absolute judicial immunity. *Stevens v. Osuna*, 877 F.3d 1293, 1301 (11th Cir. 2017). And fourth, we review for abuse of discretion the denial of leave to amend a complaint, although we review de novo the underlying legal conclusion that an amendment to the complaint would be futile. *Chang v. JPMorgan Chase Bank, N.A.*, 845 F.3d 1087, 1093–94 (11th Cir. 2017).

DISCUSSION

We divide our discussion into three parts. First, we consider the dismissal of Sorhegui’s claims against the judicial defendants. Second, we address the dismissal of her claims against the private defendants. And third, we discuss the denial of leave to amend.

The judicial defendants

As to the judicial defendants, we begin by reviewing the dismissal of Sorhegui’s claims for prospective relief based on *Younger* abstention. We then discuss the dismissal of her claims for monetary relief based on judicial immunity.

Prospective relief

Starting with the prospective relief she sought against the judicial defendants, Sorhegui contends that the district court abused its discretion by abstaining under *Younger*. Three types of cases warrant *Younger* abstention: (1) criminal prosecutions; (2) civil enforcement proceedings; and (3) civil proceedings involving certain orders that uniquely further state court judicial functions. *Leonard*, 61 F.4th at 907-08. A court must abstain where the factors from

25-11195

Opinion of the Court

7

Middlesex County Ethics Commission v. Garden State Bar Association, 457 U.S. 423 (1982), are met: (1) the plaintiff seeks federal relief that would interfere with ongoing state judicial proceedings; (2) the federal proceedings implicate important state interests; and (3) there is an adequate opportunity to raise federal challenges in the state proceedings. *Id.* at 432.

As to the first *Middlesex* factor, the federal relief Sorhegui sought interfered with ongoing state judicial proceedings. “In order to decide whether the federal proceeding would interfere with the state proceeding, we look to the relief requested and the effect it would have on the state proceedings.” 31 *Foster Child. v. Bush*, 329 F.3d 1255, 1276 (11th Cir. 2003). Sorhegui did not dispute that the state court proceedings were ongoing. And Sorhegui sought an injunction requiring Judge Echarte to recuse himself, prohibiting Judge Simon from transferring matters to Judge Echarte, and requiring transfer of the title to the disputed property, effectively undoing the result of the state proceedings. In other words, Sorhegui sought relief that would “plac[e] decisions that are now in the hands of the state courts under the direction of the federal district court.” *See id.* at 1278. The first *Middlesex* factor was met here.

As to the second *Middlesex* factor, the federal proceedings implicated important state interests. A state has an important interest in administering its judicial system. *See Sprint Commc’ns, Inc. v. Jacobs*, 571 U.S. 69, 72–73 (2013). In particular, Florida has an important interest in enforcing its policy choice that “[l]itigants

have no standing to enforce internal court policy and have no right to have any particular judge hear their case.” *Rodriguez v. State*, 919 So. 3d 1252, 1278 (Fla. 2005). Sorhegui sought relief that would interfere with how Florida has chosen to administer its judicial system because her federal lawsuit sought to override Florida’s rules for assigning judges to allow her to select a judge she prefers. Because Florida has a strong interest in making those decisions itself, the second *Middlesex* factor was met here.

As to the third factor, Sorhegui had an adequate opportunity to raise federal challenges in the state proceedings. Sorhegui had the burden to show that the state proceedings did not provide an adequate opportunity to raise her federal claims. *31 Foster Child.*, 329 F.3d at 1279. “Adequacy in this context is not about the quality of the state proceedings, but rather about whether the challenge can be raised in the pending state proceedings at all.” *See Leonard*, 61 F.4th at 908 (citation modified). Sorhegui’s complaint shows that she had an opportunity to—and did—raise her federal claims in state court. Sorhegui moved to disqualify Judge Echarte. And the state appellate court evaluated her appeal. She was able to have the issue heard again on a petition for writ of prohibition. Nothing more was required. Thus, the district court did not abuse its discretion by dismissing Sorhegui’s claims for prospective relief based on *Younger*.

Sorhegui counters that she did not have an opportunity to raise constitutional challenges in state court because even when Judge Echarte was not assigned to her case, his rulings had

25-11195

Opinion of the Court

9

preclusive effect. But Sorhegui cites no authority for the proposition that, in Florida courts, a trial court's ruling has "preclusive effect" in an appellate court. And we can find none. Furthermore, she did not lack an adequate opportunity to raise her constitutional challenges because she either chose not to present her arguments in the state courts, or she did and received adverse rulings. *See id.*

Sorhegui also contends that *Younger's* bad-faith exception applies here. A district court should refuse to abstain if there is evidence that the state proceedings were motivated by bad faith. *Id.* But Sorhegui did not plausibly allege that the state court proceedings were motivated by bad faith.

Monetary relief

Turning to her claims seeking monetary relief against the judicial defendants, "[a] judge enjoys absolute immunity from suit for judicial acts performed within the jurisdiction of his court." *McCullough v. Finley*, 907 F.3d 1324, 1330 (11th Cir. 2018). "A judge's motivation is irrelevant to determining whether his act was judicial." *Id.* at 1331. Instead, whether an act is judicial depends on whether: (1) the act complained of constituted a normal judicial function; (2) the events occurred in the judge's chambers or in open court; (3) the controversy involved a case pending before the judge; and (4) the confrontation arose immediately out of a visit to the judge in his judicial capacity. *Id.* This immunity applies even when the judge's conduct was in error, malicious, or in excess of his authority, and will only be lost when a judge acts in the "clear

absence of all jurisdiction.” *Stevens*, 877 F.3d at 1301, 1304. A judge acting in the “clear absence of all jurisdiction” is rare, occurring only when the judge lacks subject matter jurisdiction. *McCullough*, 907 F.3d at 1332.

Sorhegui contends that the judicial defendants were not entitled to immunity because they acted in the absence of all jurisdiction when they “merged” *Sorhegui III* with *Sorhegui I*. But the acts Sorhegui complains of were judicial rulings—normal judicial functions performed in chambers in a pending proceeding, and often after a motion or hearing. And the judicial defendants were acting within their jurisdiction. Florida law grants its circuit courts exclusive jurisdiction over all actions at law not cognizable by county courts. Fla. Stat. § 26.012(2). Because Florida’s amount-in-controversy requirement was satisfied here, the judicial defendants were acting within their subject-matter jurisdiction. *See* Fla. Stat. § 34.01(1)(c). In addition, in Florida, “[t]he law is clear that the intra-circuit transferring of cases from one judge to another, whether within a designated division or different divisions, is a matter of internal administration of the court and does not affect the validity of orders or judgments entered.” *Sorhegui v. Park E. Home Owners Ass’n, Inc.*, 393 So. 3d 813, 814 (Fla. Dist. Ct. App. 2024) (citation modified). So, the district court did not err in applying judicial immunity.

25-11195

Opinion of the Court

11

The private defendants

As to the private defendants, we address three issues. First, did the district court apply the correct standard in dismissing Sorhegui's claims. Second, did the district court err in dismissing her section 1985(3) claim. And third, did the district court err in dismissing her section 1983 claim.

Motion-to-dismiss standard against private defendants

Sorhegui contends that the district court erred by using the wrong legal standard for a motion to dismiss. She argues instead that we should use the long-since abrogated "no set of facts" test from *Conley v. Gibson*, 355 U.S. 41 (1957), *abrogated by Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007).

But the district court applied the right standard. 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 *Twombly*, 550 U.S. at 570). Under the *Iqbal/Twombly* standard, "the court must accept all factual allegations in a complaint as true and take them in the light most favorable to [the] plaintiff . . . but legal conclusions without adequate factual support are entitled to no assumption of truth." That's the standard the district court applied here. *Dusek*, 832 F.3d at 1246 (citation modified).

Sorhegui responds that, even under the plausibility standard, the district court erred by failing to view the facts in the light most favorable to her. She says that the district court characterized the association's motions to transfer cases to Judge

Echarte as being based on “his familiarity with the underlying facts,” while she characterized Judge Echarte’s courtroom and chambers as “friendly confines.” But the district court was not required to use the same language Sorhegui did to set out the facts. The district court was only required to treat the facts in the light most favorable to her. That’s what it did. The district court did not err in applying the motion-to-dismiss standard.

Section 1985(3) claim

Next, Sorhegui argues that the district court erred in dismissing her section 1985(3) claim against the private defendants. Section 1985 prohibits conspiracies to interfere with civil rights. *See* 42 U.S.C. § 1985(3); *Childree v. UAP/GA Chem., Inc.*, 92 F.3d 1140, 1146–47 (11th Cir. 1996). It provides a cause of action to victims of a conspiracy to deprive any person of equal protection or privileges and immunities under the laws. 42 U.S.C. § 1985(3). The elements of a section 1985(3) claim are: (1) a conspiracy; (2) an intent to deprive a person of equal protection or privileges and immunities of the law; (3) an act in furtherance of the conspiracy; and (4) a resulting injury to person or property or deprivation of any right or privilege. *Childree*, 92 F.3d at 1146–47.

Importantly, under the second element, section 1985(3) “require[s] a showing of some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators’ action.” *Id.* at 1147. But Sorhegui never alleged that she was a member of a protected class, much less that the defendants acted with discriminatory animus toward her because of her

25-11195

Opinion of the Court

13

membership in that class. So, the district court did not err in dismissing her section 1985(3) claim.

Section 1983 claim

Sorhegui argues that the district court erred in dismissing her section 1983 claim against the private defendants. To state a procedural due-process claim under section 1983, Sorhegui had to allege: (1) a deprivation of a constitutionally protected liberty or property interest; (2) state action; and (3) constitutionally inadequate process. *Grayden v. Rhodes*, 345 F.3d 1225, 1232 (11th Cir. 2003).

Her claims against the private defendants failed for two reasons. First, she did not plausibly allege that she was denied a constitutionally inadequate process. While Sorhegui alleged her belief that Judge Echarte’s rulings were unfair, she did not allege that he ruled without giving her a chance to be heard. And her allegations were clear that she had the right to, and did, appeal any unfair rulings.

While Sorhegui argues that the state appellate court “completely misconstrued the [Fourteenth] [A]mendment’s guarantee of due process,” she never alleged that it deprived her of an opportunity to make her legal arguments. Adverse rulings, and even incorrect ones, do not show a lack of due process. *See Yarbrough v. Decatur Hous. Auth.*, 941 F.3d 1022, 1027 (11th Cir. 2019) (explaining that “a want of due process is not established by showing merely that the decision is erroneous” (quoting *United States ex rel. Vajtauer v. Comm’r of Immigr. at Port of N.Y.*, 273 U.S. 103, 106 (1927))).

Second, Sorhegui has not shown that the private defendants were state actors. We “recognize[] three tests for establishing state action by what is otherwise a private person or entity: the public function test, the state compulsion test, and the nexus/joint action test.” *Harvey v. Harvey*, 949 F.2d 1127, 1130 (11th Cir. 1992). Sorhegui did not allege that the homeowner’s association, by hiring lawyers and suing her, was performing a public function, was compelled by the state, or was performing a joint action with the state. Thus, the district court did not err in denying Sorhegui’s section 1983 claim.

Leave to amend

Finally, Sorhegui argues that the district court erred by denying her leave to amend her complaint. Generally, “a pro se plaintiff must be given at least one chance to amend the complaint before the district court dismisses the action with prejudice—at least, that is, where a more carefully drafted complaint might state a claim.” *Silberman v. Miami Dade Transit*, 927 F.3d 1123, 1132 (11th Cir. 2019) (citation modified). However, a district court need not allow amendment where it would be futile. *Id.* at 1133. An amendment would be futile if the amended complaint would still be properly dismissed. *Id.* Moreover, “when a request for leave to file an amended complaint simply is imbedded within an opposition memorandum, the issue has not been raised properly.” *Wiand v. ATC Brokers Ltd.*, 96 F.4th 1303, 1312 (11th Cir. 2024) (citation modified).

25-11195

Opinion of the Court

15

Here, Sorhegui had already been given a chance to amend her complaint. Many of Sorhegui's claims were barred by *Younger* abstention or judicial immunity, and others failed because they did not state a claim. The district court did not err in finding that additional attempts to amend would be futile because Sorhegui could not overcome these deficiencies. *See Silberman*, 927 at 1133. In addition, because Sorhegui's request to file an amended complaint was merely embedded in her opposition memorandum to the motions to dismiss, she did not properly raise the issue. The district court did not abuse its discretion in denying Sorhegui leave to amend.

AFFIRMED.