

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-11269

CAROL MUSZIK,

Plaintiff-Appellant,

versus

TOWN OF REDINGTON SHORES, FLORIDA,
MARYBETH HENDERSON,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 8:22-cv-02387-CEH-SPF

Before WILLIAM PRYOR, Chief Judge, and GRANT and LUCK, Circuit
Judges.

WILLIAM PRYOR, Chief Judge:

This appeal requires us to decide whether a district court
erred by entering a final judgment that deviated from the judgment

to which the parties agreed under Federal Rule of Civil Procedure 68(a). After Carol Muszik sued them, the Town of Redington Shores and its former mayor, Marybeth Henderson, offered to have judgment entered against them both. *See* FED. R. CIV. P. 68(a). Muszik accepted. But to be consistent with its earlier ruling about qualified immunity, the district court entered judgment in favor of Henderson on one claim. We vacate and remand with instructions to enter judgment against both Henderson and the Town.

I. BACKGROUND

Carol Muszik sued the Town of Redington Shores and its former mayor, Marybeth Henderson, for retaliation in violation of the First Amendment. *See* 42 U.S.C. § 1983. The district court granted Henderson summary judgment based on qualified immunity, but it allowed a claim against the Town to proceed to trial. It explained that it would not enter “a final judgment in favor of . . . Henderson” until “the conclusion of th[e] litigation” so that it could “avoid piecemeal judgments.” *See* FED. R. CIV. P. 54(b).

Before trial, the Town and Henderson “offer[ed] to allow Judgment to be entered against them in this action in the amount of \$300,000.00” to settle “all of [Muszik’s] claims for relief.” *See id.* R. 68(a). Muszik accepted, and the parties moved the district court to enter the agreed judgment. The district court entered judgment for Muszik on the claim against the Town. But contrary to the parties’ agreement, it entered judgment in Henderson’s favor “[p]ursuant to” its previous summary judgment.

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II. STANDARD OF REVIEW

We review an interpretation of Rule 68 *de novo*. See *Jordan v. Time, Inc.*, 111 F.3d 102, 105 (11th Cir. 1997).

III. DISCUSSION

The district court erred by entering a final judgment that deviated from the parties' agreement. "[A] party defending against a claim may serve on an opposing party an offer to allow judgment on specified terms" FED. R. CIV. P. 68(a). If the opposing party accepts, "[t]he clerk must then enter judgment." *Id.* The district court ordinarily has "no choice about entering the agreed judgment." 12 WRIGHT & MILLER'S FEDERAL PRACTICE & PROCEDURE § 3005 (3d ed. 2014); see also *Util. Automation 2000, Inc. v. Choctawhatchee Elec. Coop.*, 298 F.3d 1238, 1240 (11th Cir. 2002) (explaining that when a plaintiff accepts a Rule 68 offer, "the court automatically enters judgment in his favor"). The Town and Henderson served Muszik a valid offer of judgment under Rule 68, Muszik accepted, and the parties notified the district court. Rule 68(a) required the district court to "perform[] the ministerial act of entering a judgment" against the Town and Henderson as the parties agreed. See *Collar v. Abalux, Inc.*, 895 F.3d 1278, 1283 (11th Cir. 2018).

A ruling "that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties." FED. R. CIV. P. 54(b). The ruling "may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities."

Id. In other words, a district court retains the “authority to reconsider, revise, alter[,] or amend a non-final order before the entry of final judgment.” *Hornady v. Outokumpu Stainless USA, LLC*, 118 F.4th 1367, 1380 (11th Cir. 2024) (citation modified). The “mandatory language” of Rule 68 required it to give effect to the parties’ agreement regardless of its earlier ruling about qualified immunity. *See Jordan*, 111 F.3d at 105.

The Town and Henderson concede that the district court erred. But they contend that Muszik forfeited her challenge because she did not “give th[e] [district] court the opportunity to address the issue.” We disagree.

Muszik did not forfeit her objection to the final judgment because “[s]he had no opportunity to raise [it] at the district court level.” *Access Now, Inc. v. Sw. Airlines Co.*, 385 F.3d 1324, 1332 (11th Cir. 2004) (citation modified); FED. R. CIV. P. 46 (“Failing to object does not prejudice a party who had no opportunity to do so when the ruling or order was made.”). The error occurred when the district court entered the final judgment, and Muszik could not have foreseen it.

The Town and Henderson counter that Muszik should have “br[ought] this easily correctable matter before the [district] court” in a post-judgment motion. Perhaps doing so would have been sensible, but a post-judgment motion was not necessary to preserve the issue for appeal. *See* FED. R. CIV. P. 46.

The Town and Henderson also argue that Muszik waived her right to appeal by agreeing in the accepted offer to “release

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[her] claims as to the Town [and] all . . . former . . . officials.” To be sure, a party ordinarily lacks “standing to appeal a judgment to which he or she consented,” even absent an express appeal waiver. *Reynolds v. Roberts*, 202 F.3d 1303, 1312 (11th Cir. 2000) (citation modified). But that rule does not apply “if the judgment allegedly deviates from the terms of the parties’ agreement.” *Id.* (citation modified). The district court deviated from their agreement. So Muszik can bring this appeal.

IV. CONCLUSION

We **VACATE** and **REMAND** with instructions to enter a final judgment consistent with the parties’ agreement.