NOT FOR PUBLICATION

In the

United States Court of Appeals

For the Eleventh Circuit

No. 25-13092
Non-Argument Calendar

DAVID W. FOLEY, JR.,
JENNIFER T. FOLEY,

Plaintiffs-Appellants,

versus

ORANGE COUNTY,
a political subdivision of Florida,
ASIMA M. AZAM,
TIM BOLDIG,
individually and together, in their personal capacities,
FRED BRUMMER,
RICHARD CROTTY,
individually and together, in their personal capacities,
et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 6:22-cv-00456-RBD-E_K

Before BRASHER, ABUDU, and ANDERSON, Circuit Judges.

PER CURIAM:

David and Jennifer Foley, proceeding pro se, appeal the district court's order awarding (1) $52,250.00 in attorney's fees to Orange County, Florida and (2) $62,881.50 in attorney's fees to certain employees of Orange County whom the Foleys had sued in their individual capacity.

First, the Foleys argue that the district court abused its discretion in finding excusable neglect as to the County's and the Employees' supplemental motions for attorney's fees, which were filed over 80 days after the deadline imposed by the local rules. Second, the Foleys argue that the district court abused its discretion in finding their claims frivolous and awarding attorney's fees to the County and the Employees. Third, the Foleys argue that the fee order is void because it was based on a claim that the Foleys did not actually plead.

Upon review, we reject these arguments and affirm the award of attorney's fees.

I.

We begin with the Foleys' first argument: that the district court erred in granting a motion for attorney's fees that was filed after the deadline imposed by the local rules. The district court determined that the failure to meet the deadline was excusable neglect. The Foleys argue that this decision was in error.

We review a district court's finding of excusable neglect under an abuse-of-discretion standard. *Advanced Estimating Sys., Inc. v. Riney*, 130 F.3d 996, 997 (11th Cir. 1997). And we "give 'great deference to a district court's interpretation of its local rules' and review a district court's application of local rules for an abuse of discretion." *Mann v. Taser Int'l, Inc.*, 588 F.3d 1291, 1302 (11th Cir. 2009) (quoting *Clark v. Hous. Auth. of Alma*, 971 F.2d 723, 727 (11th Cir. 1992)).

District courts may extend the time to file motions after the time for filing has elapsed if the party failed to act because of excusable neglect. FED. R. CIV. P. 6(b)(1)(B). The relevant factors to consider in determining whether a litigant has shown excusable neglect are: (1) "the danger of prejudice" to the non-moving party; (2) "the length of the delay and its potential impact on judicial proceedings"; (3) "the reason for the delay, including whether it was within the reasonable control of the movant"; and (4) "whether the movant acted in good faith." *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993).

The Middle District of Florida's Local Rule 7.01 requires a party seeking attorney's fees to file a motion within 14 days of entry of judgment. M.D. Fla. R. 7.01(b). Once the court issues an order granting the motion, the party has 45 days to file a supplemental motion that details the amount and reasonableness of the requested fees, among other requirements. M.D. Fla. Civ. R. 7.01(c).

The Employees and the County failed to meet this deadline. Nevertheless, the district court determined that this error was excusable neglect and granted their motions for attorney's fees. The Foleys argue that this was in error.

But, because of the broad discretion that we give in interpreting local rules, we cannot say that the district court erred in concluding that the error was excusable neglect. In making this determination, the court carefully applied the *Pioneer* factors. 507 U.S. at 395. The court determined that three of the four *Pioneer* factors weighed in favor of a finding of excusable neglect. But the Foleys make no argument challenging the court's application of the *Pioneer* factors, and we have no reason to think that the court applied the factors erroneously.

Further, contrary to the Foleys' contention otherwise, we have never held that a district court is always barred from finding excusable neglect based on a mistake of law. We *have* previously held that a mistake of *statutory* law cannot constitute excusable neglect. *Advanced Estimating*, 130 F.3d at 998. This makes sense. Statutory law is binding on the courts. But district courts, again, have broad discretion over the interpretation and application of local rules. Accordingly, the *Advanced Estimating* rule about mistake of statutory law does not apply here, and we reject the Foleys' first argument.

II.

We now turn to the Foleys' second argument: that the district court erred when it concluded that their claims were frivolous and awarded the County and the Employees attorney's fees.

We review a district court's decision on whether to award attorney's fees for abuse of discretion. *Ela v. Destefano*, 869 F.3d 1198, 1203 (11th Cir. 2017). We also review a district court's determination that a case was frivolous for purposes of awarding attorney's fees for abuse of discretion. *Beach Blitz Co. v. City of Miami Beach*, 13 F.4th 1289, 1297 (11th Cir. 2021).

"A claim is frivolous if it is without arguable merit either in law or fact." *Bilal v. Driver*, 251 F.3d 1346, 1349 (11th Cir. 2001). District courts consider the following factors when determining whether a claim is frivolous: "(1) whether the plaintiff established a prima facie case; (2) whether the defendant offered to settle; and (3) whether the trial court dismissed the case prior to trial or held a full-blown trial on the merits." *Sullivan v. Sch. Bd. of Pinellas Cnty.*, 773 F.2d 1182, 1189 (11th Cir. 1985). Another factor is "whether there was enough support for the claim to warrant close attention by the court." *Beach Blitz Co.*, 13 F.4th at 1302. And we have determined that claims did not require close attention when they were "dismissed based on long-established precedent" and "[t]he district court was not required to grapple with a novel area of law, nor was there any case law supporting the claims." *Id.* at 1303.

The court determined that the Foleys' claims were frivolous because they were barred, on their face, by res judicata. When "'a case arises out of the same nucleus of operative facts, or is based upon the same factual predicate, as a former action,'" res judicata applies. *Griswold v. County of Hillsborough*, 598 F.3d 1289, 1293 (11th Cir. 2010) (quoting *Ragsdale v. Rubbermaid, Inc.*, 193 F.3d 1235, 1239 (11th Cir. 1999)). "Res judicata bars the filing of claims that were raised or could have been raised in an earlier proceeding." *Ragsdale*, 193 F.3d at 1238.

Here, the district court did not abuse its discretion in finding that the Foleys' claims were frivolous and awarding attorney's fees to the County and the Employees. The Foleys had already raised their Fourteenth Amendment due process claim in state court and their Fifth Amendment takings claim arose out of the same nucleus of operative facts—as the Foleys themselves admit in their complaint. *See Griswold*, 598 F.3d at 1293. As a result, the Foleys' claims were plainly barred by res judicata. Indeed, we previously held as much. *See Foley v. Orange County*, 2024 WL 49134 (January 4, 2024). Therefore, we cannot say that the district court abused its discretion in ruling that the Foleys' claims were facially barred and, thus, frivolous.

Accordingly, we reject the Foleys' second argument.

III.

We now turn to the Foleys' third and final argument: that the district court impermissibly usurped their ability to define their claim when it dismissed their complaint. Because this Court has already determined that res judicata barred the Foleys' claims, the law-of-the-case doctrine precludes this argument. Accordingly, this argument, like the Foleys' first two, fails.

We review a district court's order granting a motion to dismiss for failure to state a claim de novo. *EEOC v. STME, LLC*, 938 F.3d 1305, 1313 (11th Cir. 2019).

In sum, the Foleys' argument goes like this: contrary to their assertion in the complaint that the underlying claims here arise out of the same "incidents" as their prior litigation, the regulatory takings argument they raised below did not accrue until *after* the previous incidents. But, because the district court dismissed their complaint on res judicata grounds, it denied them the ability to define their claim as distinct from those earlier claims. They argue this dismissal was in error and, thus, the award of attorney's fees is void.

It is true that a regulatory takings claim does not accrue for statute of limitations purposes until state judicial authorities make a final determination on the status of the subject property and the state fails to provide an adequate post-deprivation remedy. *New Port Largo v. Monroe County*, 985 F.2d 1488, 1493-95 (11th Cir. 1993), *abrogated in part by Knick v. Township of Scott*, 588 U.S. 180 (2019). Accordingly, it is at least plausible that the Foleys' takings argument could be legally distinct from their earlier claims even if arising out of the same original property dispute.

But we—in an earlier ruling—already determined that the Foleys' claim here *was not* distinct from their earlier claims. *Foley v.*

Orange County, 2024 WL 49134, at *3 (11th Cir. Jan. 4, 2024). Accordingly, the Foleys' argument that the claims are distinct, and that the district court erred in dismissing their complaint as a result, is precluded by the law-of-the-case doctrine. *Stout by Stout v. Jefferson Cnty. Bd. of Educ.*, 882 F.3d 988, 1014 (11th Cir. 2018) (restating that the law-of-the-case doctrine "provides that earlier decisions bind all subsequent proceedings in the same case as to both findings of fact and conclusions of law" (citation modified)).

For this reason, we reject the Foleys' third argument and **AFFIRM** the district court's grant of attorney's fees.