

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-13903
Non-Argument Calendar

NICHOLAS SAMMIE LEE SMITH, JR.,

Plaintiff-Appellant,

versus

TIMOTHY WEBSTER,
SHERLOCK STERLING,
COREY CHAPLIN,
MICHAEL WATTS,
ROBERT THACKER, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Florida
D.C. Docket No. 3:25-cv-00824-TKW-ZCB

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

PER CURIAM:

Nicholas Smith, Jr., appeals pro se from the district court's dismissal of his amended verified complaint with prejudice on shotgun-pleading grounds. For the reasons discussed below, we affirm.

We review a district court's dismissal of a complaint as an impermissible shotgun pleading for an abuse of discretion. *Vibe Micro, Inc. v. Shabanets*, 878 F.3d 1291, 1294 (11th Cir. 2018). The district court abuses its discretion when it “applies the wrong law, follows the wrong procedure, bases its decision on clearly erroneous facts, or commits a clear error in judgment.” *McNair v. Johnson*, 143 F.4th 1301, 1307 (11th Cir. 2025) (quotation marks omitted).

Rule 8 of the Federal Rules of Civil Procedure provides that “[a] pleading that states a claim for relief must contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Rule 10 provides that “[a] party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances” and that, “[i]f doing so would promote clarity, each claim founded on a separate transaction or occurrence . . . must be stated in a separate count.” Fed. R. Civ. P. 10(b).

A shotgun pleading is one that falls short of the Federal Rule of Civil Procedure 8 pleading standards by “fail[ing] to one degree or another, and in one way or another, to give the defendants adequate notice of the claims against them and the grounds upon which each claim rests.” *Weiland v. Palm Beach Cnty. Sheriff's Off.*, 792 F.3d 1313, 1323 (11th Cir. 2015). Moreover, shotgun pleadings

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are pleadings in which “it is virtually impossible to know which allegations of fact are intended to support which claim(s) for relief,” *Anderson v. Dist. Bd. of Trustees of Cent. Fla. Cmty. Coll.*, 77 F.3d 364, 366 (11th Cir. 1996), or are “so disorganized and ambiguous that it is almost impossible to discern precisely what it is that the [plaintiff is] claiming,” *Cramer v. Florida*, 117 F.3d 1258, 1261 (11th Cir. 1997).

We have identified four types of shotgun pleadings: (1) a complaint “containing multiple counts where each count adopts the allegations of all preceding counts, causing each successive count to carry all that came before and the last count to be a combination of the entire complaint”; (2) a complaint “replete with conclusory, vague, and immaterial facts not obviously connected to any particular cause of action;” (3) a complaint that fails to separate each cause of action or claim for relief into different counts; and (4) a complaint “asserting multiple claims against multiple defendants without specifying which of the defendants are responsible for which acts or omissions, or which of the defendants the claim is brought against.” *Weiland*, 792 F.3d at 1322-23. We have “little tolerance for shotgun pleadings” as they “waste scarce judicial resources, inexorably broaden the scope of discovery, wreak havoc on appellate court dockets, and undermine the public’s respect for the courts.” *Vibe Micro, Inc.*, 878 F.3d at 1295 (quotation marks omitted) (alterations adopted).

Generally, a district court must grant a pro se plaintiff at least one opportunity to amend before dismissing if it appears that a

more carefully drafted complaint might state a claim, even if the plaintiff never seeks leave to amend. *Silberman v. Miami Dade Transit*, 927 F.3d 1123, 1132 (11th Cir. 2019). The opportunity to amend may be a dismissal without prejudice and, because “[w]hat matters is function, not form,” the instructional requirement can be satisfied by a motion to dismiss that sufficiently explains the defects of the complaint. *Jackson v. Bank of Am., N.A.*, 898 F.3d 1348, 1358 (11th Cir. 2018). If the new complaint is also a shotgun pleading, dismissal with prejudice is justified. *Vibe Micro, Inc.*, 878 F.3d at 1296. A district court’s order instructing a plaintiff to replead the case “comes with an implicit ‘notion that if the plaintiff fails to comply with the court’s order—by filing a repleader with the same deficiency—the court should strike his pleading or . . . dismiss his case.’” *Id.* at 1295.

A judge’s critical comments about a party or his legal positions based on the evidence or record is not enough to show partiality or bias. See *Liteky v. United States*, 510 U.S. 540, 555 (1994); *Hamm v. Members of Bd. of Regents of State of Fla.*, 708 F.2d 647, 651 (11th Cir. 1983). In addition, the United States District Court for the Northern District of Florida’s local rules provide that the parties are not required to confer before filing, inter alia, “motion[s] that would determine the outcome of a case or a claim.” N.D. Fla. R. 7.1(D).

While we hold pro se pleadings to a less stringent standard than counseled pleadings and will liberally construe them, *Bilal v. Geo Care, LLC*, 981 F.3d 903, 911 (11th Cir. 2020), pro se litigants

are still “subject to the relevant law and rules of court.” *Moon v. Newsome*, 863 F.2d 835, 837 (11th Cir. 1989). We “cannot act as de facto counsel or rewrite an otherwise deficient pleading to sustain an action.” *Bilal*, 981 F.3d at 911. “[I]ssues not briefed on appeal” by pro se litigants “are deemed abandoned.” *Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008). To properly brief issues on appeal, a pro se litigant must “plainly and prominently” raise them, “for instance by devoting a discrete section of his argument” to them. *Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 681 (11th Cir. 2014) (quoting *Cole v. U.S. Att’y Gen.*, 712 F.3d 517, 530 (11th Cir. 2013)). A pro se litigant abandons an issue on appeal if he “makes only passing references to it or raises it in a perfunctory manner without supporting arguments and authority.” *Id.* We do not address issues raised for the first time in a pro se litigant’s reply brief. *Timson*, 518 F.3d at 874.

Here, we conclude that the district court did not abuse its discretion by dismissing Smith’s amended complaint on shotgun-pleading grounds. First, the district court gave Smith an opportunity to amend his initial complaint after dismissing it on shotgun-pleading grounds. Second, the amended complaint still contained conclusory, vague, and immaterial facts not obviously connected to any particular cause of action, adopted and realleged the statement of facts and 325 pages of separately-filed exhibits in every cause of action that it raised, and asserted multiple claims against multiple defendants without specifying which defendant was responsible for which act or omission. And finally, because Smith’s proposed second amended complaint was substantially similar to

his amended complaint, we conclude that the district court did not abuse its discretion by dismissing Smith's federal-law claims with prejudice.

For the reasons stated, we affirm the district court's dismissal of his amended verified complaint with prejudice on shotgun-pleading grounds.

AFFIRMED.¹

¹ We DENY Smith's motion for judicial notice.