

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 26-11079
Non-Argument Calendar

GREG OGLES,

Plaintiff-Appellant,

versus

CITY OF BIRMINGHAM,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Alabama
D.C. Docket No. 2:23-cv-00835-RDP

Before BRANCH, LUCK, and LAGOA, Circuit Judges.

PER CURIAM:

Greg Ogles filed an amended complaint against the City of Birmingham (“City”) seeking relief under various civil rights stat-

utes for alleged employment discrimination. His amended complaint comprised nine total counts of: failure to promote (Counts I-IV) and pay discrimination under four statutes (Counts VI-IX); and a single count of pay discrimination under another statute—the Equal Pay Act (“EPA”) (Count V).

On May 15, 2025, the parties filed a pro tanto joint stipulation of dismissal, purporting to stipulate dismissal of Count V. The same day, the City filed a motion for summary judgment noting the purported stipulation as to Count V but not referencing Count V again.

On May 21, the district court entered an order referencing the stipulation and purporting to dismiss Count V with prejudice.

On March 5, 2026, the court entered a memorandum opinion stating that the City’s motion for summary judgment was due to be granted but did not reference Count V or the EPA. Instead, it stated that Ogles asserted “a disparate pay claim,” citing the portions of his amended complaint that listed Counts VI-IX, but not Count V. The same day, the court entered a separate order granting the City’s motion. Ogles now appeals that order.

We issued a jurisdictional question (“JQ”) asking the parties to address whether this appeal is taken from a final decision, including whether the May 15 stipulation disposed of Count V of the amended complaint or whether Count V otherwise was resolved.

Ogles responds that, despite the ineffective stipulation, the district court’s May 21 order either properly dismissed Count V under Federal Rule of Civil Procedure 41(a)(2) or effectively amended

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the complaint under Rule 15 to eliminate Count V. He references an unpublished, non-binding order in which we concluded that a plaintiff's concession, in response to a motion for summary judgment, that two claims could not succeed on the merits was correctly treated by the district court as an effective amendment of the complaint under Rule 15(a). Thus, he concludes Count V was properly disposed of in the May 21 order.

The City responds that the May 21 order purporting to dismiss Count V was ineffective but argues that the district court “expressly addressed and resolved Count V” in its favor in the portion of its memorandum opinion generally discussing the pay discrimination claims. Thus, the City concludes that the court properly disposed of Count V.

Upon review of the record and the parties' JQ responses, we conclude that Count V is still pending before the district court. As to the stipulation and May 21 court order that referenced it, neither were effective as they purported to dismiss only Count V. See 28 U.S.C. § 1291; *Supreme Fuels Trading FZE v. Sargeant*, 689 F.3d 1244, 1246 (11th Cir. 2012) (explaining that a ruling that disposes of fewer than all claims of all parties is not final); Fed. R. Civ. P. 41(a)(1)(A) (allowing a plaintiff to dismiss “an action” under certain circumstances); *id.* R. 41(a)(2) (allowing a court to dismiss “an action” on terms it consider proper); *CMYK Enters., Inc. v. Advanced Print Techs., LLC*, 154 F.4th 1329, 1336 (11th Cir. 2025) (“As the text [of Rule 41] makes clear, it authorizes dismissal of ‘an action’—not

individual claims within it.”). Further, our non-binding, unpublished order in a previous, unrelated appeal is unpersuasive and distinguishable because Ogles’s response to the City’s motion for summary judgment did not mention Count V, and the district court entered an ineffective dismissal order. *See Breeding v. Integrated Behavioral Health Inc.*, No. 22-10374, manuscript ord. at 2 (11th Cir. June 7, 2022) (“Thus, it appears that the district court did not simply order dismissal in accordance with Rule 41(a), but instead interpreted [the plaintiff’s] summary judgment response . . . as a concession that [two of the counts] could not survive summary judgment, and dismissed those claims on the merits.”).

Last, we cannot conclude that the district court resolved Count V on the merits in its memorandum opinion, as it did not specifically reference Count V, the EPA, or any framework under which to analyze the EPA. The opinion’s statement that the City’s motion was due to be granted “on the pay disparity claim,” referenced what the court construed as the surviving claims—Counts VI-IX—not Count V. Thus, we conclude that Count V is still pending before the district court, and its March 5, 2026 order granting the City’s motion for summary judgment is not a final order. *See Sargeant*, 689 F.3d at 1245-46.

Accordingly, this appeal is DISMISSED for lack of jurisdiction.