[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-14324
Non-Argument Calendar

D.C. Docket No. 2:17-cv-00693-ECM-WC

JEANETTA SPRINGER,
JACOB SPRINGER,

Plaintiffs-Appellants,

versus

WELLS FARGO BANK, N.A.,
as successor of Wachovia Bank, N.A.
formerly known as Southtrust Bank, N.A.,
SIROTE & PERMUTT, P.C.,
VERNON BARNETT,
Commissioner,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Alabama

(August 26, 2019)

Before WILLIAM PRYOR, GRANT, and ANDERSON, Circuit Judges.

PER CURIAM:

Jeanetta and Jacob Springer ("the Springers"), proceeding *pro se*, appeal the district court's orders denying their motion to recuse the assigned magistrate judge and dismissing with prejudice their complaint raising construed claims for wrongful foreclosure and due process violations against Wells Fargo, N.A., Sirote & Permutt, P.C. ("S&P"), and Vernon Barnett, the commissioner of the Alabama Department of Revenue (collectively "defendants"). They argue that the assigned magistrate judge abused his discretion in refusing to recuse himself because he had previously dismissed two of Mr. Springer's cases and was aware of a judicial inquiry that Mr. Springer filed against him, showing that he had personal bias or prejudice toward them. They further argue that the district court erred by dismissing their complaint for lack of subject matter jurisdiction because the *Rooker-Feldman* doctrine[1] and *res judicata* did not apply to their case. They also appeal the district court's decisions to take judicial notice of certain documents and to dismiss their complaint with prejudice without first allowing them an opportunity to amend the complaint.

[1] The *Rooker-Feldman* doctrine derives from *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923), and *D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983).

I.

We review a district court's denial of a motion to recuse for abuse of discretion. *United States v. Bailey*, 175 F.3d 966, 968 (11th Cir. 1999). Under the abuse-of-discretion standard, we affirm the refusal to recuse unless we "conclude that the impropriety is clear and one which would be recognized by all objective, reasonable persons." *Id.* A federal judge or magistrate judge must disqualify himself if his "impartiality might reasonably be questioned," or where he "has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding." 28 U.S.C. § 455(a), (b)(1). The standard for recusal is an objective one. *McWhorter v. City of Birmingham*, 906 F.2d 674, 678 (11th Cir. 1990). "The test is whether an objective, disinterested, lay observer fully informed of the facts underlying the grounds on which recusal was sought would entertain a significant doubt about the judge's impartiality." *Id.* (quoting *Parker v. Conners Steel Co.*, 855 F.2d 1510, 1524 (11th Cir. 1988)).

Ordinarily, a judge's rulings in the same or a related matter may not serve as the basis for a motion to recuse. *Id.* The judge's bias must be personal and extrajudicial; it must derive from something other than that which the judge learned by participating in the case. *Id.* Further, a party alleging that a judge has a personal bias or prejudice toward him must generally file an affidavit that states "the facts and the reasons for the belief that bias or prejudice exists." *See* 28

U.S.C. § 144. Arguments not raised in the district court are waived. *Bryant v. Jones*, 575 F.3d 1281, 1296 (11th Cir. 2009).

Here, as an initial matter, the Springers did not offer any facts in support of their motion below, and to the extent they argue on appeal that the magistrate judge was biased against them because of the judicial inquiry or the dismissal of two of Mr. Springer's prior cases, that argument is waived because it was not raised before the district court. In any event, the assigned magistrate judge did not abuse his discretion in denying the motion to recuse because nothing in the record suggested that he had personal bias or prejudice toward the Springers, nor any personal knowledge of disputed evidentiary facts in the proceedings. Although he recommended dismissal of two of Mr. Springer's prior cases and Mr. Springer filed a judicial inquiry against him, this was not enough to raise a substantial doubt about his impartiality. Further, his dismissal of two of Mr. Springer's cases and the judicial inquiry arose from his judicial duties, and not an extrajudicial source. Accordingly, we affirm as to this issue.

II.

We review "dismissals for lack of subject matter jurisdiction *de novo*." *Nicholson v. Shafe*, 558 F.3d 1266, 1270 (11th Cir. 2009). We also review *de novo* the district court's application of the *Rooker-Feldman* doctrine and *res judicata*. *Lozman*, 713 F.3d at 1069-70. "*Pro se* pleadings are held to a less stringent

standard than pleadings drafted by attorneys and will, therefore, be liberally construed." *Tannenbaum v. United States*, 148 F.3d 1262, 1263 (11th Cir. 1998). Issues not briefed on appeal are deemed abandoned. *Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008).

Among the federal courts, only the Supreme Court may "exercise appellate authority 'to reverse or modify' a state-court judgment." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). Accordingly, under the *Rooker-Feldman* doctrine, federal district courts lack jurisdiction to review the final judgment of a state court. *Lozman v. City of Riviera Beach, Fla.*, 713 F.3d 1066, 1072 (11th Cir. 2013). We have said that the *Rooker-Feldman* doctrine is confined to "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Id.* (citing *Exxon*, 544 U.S. at 284). "The [*Rooker-Feldman*] doctrine applies both to federal claims raised in the state court and to those 'inextricably intertwined' with the state court's judgment." *Casale v. Tillman*, 558 F.3d 1258, 1260 (11th Cir. 2009). The doctrine does not apply if a party did not have a "reasonable opportunity to raise his federal claim in state proceedings." *Id.* (citing *Powell v. Powell*, 80 F.3d 464, 467 (11th Cir. 1996)). A claim brought in federal court is inextricably intertwined with a state court judgment if it would "effectively nullify" the state court

judgment or if it "succeeds only to the extent that the state court wrongly decided the issues." *Id.*

When we are asked to give *res judicata* effect to a state court judgment, we must apply the *res judicata* principles of the state whose decision is set up as a bar to further litigation. *Green v. Jefferson Cty. Comm'n*, 563 F.3d 1243, 1252 (11th Cir. 2009). Under Alabama law, "the essential elements of *res judicata* are (1) a prior judgment on the merits, (2) rendered by a court of competent jurisdiction, (3) with substantial identity of the parties, and (4) with the same cause of action presented in both actions." *Id.* (applying Alabama *res judicata* principles). If all four elements are met, any claim that was, or could have been, adjudicated in the prior action is barred from future litigation. *Id.*

The party identity criterion "does not require complete identity, but only that the party against whom *res judicata* is asserted was either a party or in privity with a party to the prior action or that the non-party's interests were adequately represented by a party in the prior suit, and the relationship between the party and non-party is not so attenuated as to violate due process." *Dairyland Ins. Co. v. Jackson*, 566 So. 2d 723, 725-26 (Ala. 1990). Identity of the parties concerns two sets of persons. *N.A.A.C.P. v. Hunt*, 891 F.2d 1555, 1560 (11th Cir. 1990). The first includes those persons who were actual parties to the original action. *Id.* The second is comprised of those persons who are or were in privity with the parties to

the original suit. *Id.* Privity is defined as "a relationship between one who is a party of record and a nonparty that is sufficiently close so a judgment for or against the party should bind or protect the nonparty." *Id.* Privity exists where the nonparty's interests were represented adequately by the party in the original suit. *Id.* at 1560-61. Further, regardless of the exact legal theory advanced in the prior case, claims are "identical" for purposes of *res judicata* if they arise out of the same nucleus of operative facts and if the same evidence is applicable in both actions. *Green,* 563 F.3d at 1253.

Moreover, a party failing to object to a magistrate judge's findings or recommendations contained in a report and recommendation ("R&R) waives the right to challenge on appeal the district court's order based on unobjected-to factual and legal conclusions if the party was informed of the time period for objecting and the consequences on appeal for failing to object. 11th Cir. R. 3-1. In the absence of a proper objection, however, we may review on appeal for plain error if necessary in the interests of justice. *Id.*

As an initial matter, the Springers failed to object to the magistrate judge's legal conclusions that their claims were barred by the *Rooker-Feldman* doctrine and *res judicata* and have, thus, waived any challenge to those conclusions on appeal. Further, to the extent that they raised due process claims against Barnett below for the improper garnishment of Mr. Springer's property after the foreclosure

proceedings had concluded or against Wells Fargo for the manner in which the foreclosure sale was conducted, those arguments are abandoned and/or waived because they failed to raise them on appeal or object to the R&R on those bases. Notwithstanding the waiver, the district court was correct to conclude that the Springers' claims against Wells Fargo were barred by either the *Rooker-Feldman* doctrine or *res judicata*. And the Springers' claims against S&P were barred by *res judicata*. Although S&P was not a party to the state court proceedings, it was in privity with Wells Fargo in that it served as counsel for Wells Fargo in the state court proceedings. Accordingly, we affirm as to this issue.

III.

We analyze the district court's decision to take judicial notice of certain facts under an abuse of discretion standard. *See Lodge v. Kondaur Capital Corp.*, 750 F.3d 1263, 1273 (11th Cir. 2014). In general, a district court may not look beyond the pleadings on Rule 12(b)(6) review. *U.S. ex. rel. Osheroff v. Humana, Inc.*, 776 F.3d 805, 811 (11th Cir. 2015). A district court may only consider an extrinsic document if it is (1) central to the plaintiff's claim, and (2) its authenticity is not challenged. *Id.* Where a district court considers a motion to dismiss on jurisdictional grounds, however, it may consider matters "beyond the pleadings in order to determine whether it lacked subject matter jurisdiction." *Goodman v. Sipos*, 259 F.3d 1327, 1331 n.6 (11th Cir. 2001). In addition, a district court may

judicially notice a fact that "is not subject to reasonable dispute because it: (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). A court may consider judicially noticed documents without converting a motion to dismiss to a motion for summary judgment. *See Osheroff*, 776 F.3d at 811; *Bryant v. Avado Brands, Inc.*, 187 F.3d 1271, 1278 (11th Cir. 1999).

Here, as an initial matter, the Springers' argument that the magistrate judge improperly took judicial notice of the mortgage, foreclosure, and tax liability documents is waived because they failed to object to the R&R on this basis. In any event, the magistrate judge did not abuse his discretion by taking judicial notice of these documents because they were either filed in the state court foreclosure proceedings and are, thus, public records, or provided to the court by the Springers.

Finally, the district court was permitted to look beyond the pleadings in determining its subject matter jurisdiction without converting the motion to dismiss into a motion for summary judgment. Therefore, the Springers' argument that the court failed to provide them notice that it was converting the motion to dismiss into a motion for summary judgment is meritless. Accordingly, we affirm as to this issue.

IV.

We review a district court's decision to grant or deny leave to amend for abuse of discretion. *Forbus v. Sears Roebuck & Co.*, 30 F.3d 1402, 1404 (11th Cir. 1994). "A district court's discretion to deny leave to amend a complaint is severely restricted by Fed. R. Civ. P. 15, which stresses that courts should freely give leave to amend when justice so requires." *Woldeab v. Dekalb Cty. Bd. of Educ.*, 885 F.3d 1289, 1291 (11th Cir. 2018) (quotation marks omitted). We have a well-established rule that, where a more carefully drafted *pro se* complaint might state a claim, the "plaintiff must be given at least one chance to amend the complaint before the district court dismisses the action with prejudice." *Bank v. Pitt*, 928 F.2d 1108, 1112 (11th Cir. 1991), *overruled in part by Wagner v. Daewoo Heavy Indus. Am. Corp.*, 314 F.3d 541 (11th Cir. 2002) (*en banc*) (overruling *Bank* as to counseled plaintiffs, but deciding "nothing about a party proceeding *pro se*"). This rule applies even when the plaintiff does not seek leave to amend until after the district court rules. *Woldeab*, 885 F.3d at 1291. But, a district court is not required to grant leave to amend where the plaintiff expresses a desire not to amend or "a more carefully drafted complaint could not state a claim." *Id.* (quoting *Bank*, 928 F.2d at 1112). We do not address arguments raised for the first time in a *pro se* litigant's reply brief. *Timson*, 518 F.3d at 874.

Here, as an initial matter, the Springers waived any potential claims that they wish to raise in an amended complaint by failing to raise them in their objections to the magistrate judge's R&R. Further, they abandoned three of their eight proposed claims by raising them for the first time in their reply brief.

Notwithstanding the waiver, the district court did not abuse its discretion by failing to give the Springers an opportunity to amend their complaint before it dismissed the complaint with prejudice. We do not see any meritorious claim that the Springers could raise in a more carefully drafted complaint and, thus, allowing the Springers to amend their complaint in these circumstances would be futile. All their potential claims are barred by the *Rooker-Feldman* doctrine or *res judicata*. At the heart of their case, the Springers seek district court review and rejection of a valid state court foreclosure judgment, and we have no jurisdiction to review those types of claims.

Accordingly, the district court properly dismissed all of the Springers' claims against all of the defendants, and the judgment of the district court is

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

JEANETTA SPRINGER and JACOB SPRINGER,	)	
Plaintiffs,	)	
v.	)	**Case No. 2:17-cv-693-ECM-WC**
WELLS FARGO BANK, N.A., *et al.,*	)	
Defendants.	)	

FINAL JUDGMENT

In accordance with the order entered on this date adopting the Report and Recommendation of the Magistrate Judge, it is the ORDER, JUDGMENT and DECREE of the Court that this case is DISMISSED with prejudice.

The Clerk is DIRECTED to enter this document on the civil docket as a Final Judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

Done this 13th day of September, 2018.

/s/Emily C. Marks
EMILY C. MARKS
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-14324-CC

JEANETTA SPRINGER,
JACOB SPRINGER,

Plaintiffs - Appellants,

versus

WELLS FARGO BANK, N.A.,
as successor of Wachovia Bank, N.A.
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SIROTE & PERMUTT, P.C.,
VERNON BARNETT,
Commissioner,

Defendants - Appellees.

Appeal from the United States District Court
for the Middle District of Alabama

BEFORE: WILLIAM PRYOR, GRANT and ANDERSON, Circuit Judges.

PER CURIAM:

The Petition for Panel Rehearing filed by Appellants Jeanetta and Jacob Springer is DENIED.

ORD-41

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
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January 23, 2020

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 18-14324-CC
Case Style: Jeanetta Springer, et al v. Wells Fargo Bank, N.A., et al
District Court Docket No: 2:17-cv-00693-ECM-WC

The enclosed order has been entered on petition(s) for rehearing.

See Rule 41, Federal Rules of Appellate Procedure, and Eleventh Circuit Rule 41-1 for information regarding issuance and stay of mandate.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Carol R. Lewis, CC/lt
Phone #: (404) 335-6179

REHG-1 Ltr Order Petition Rehearing