

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-10118

Non-Argument Calendar

DEKORRIE K. BELL,

Plaintiff-Appellant,

versus

BIRMINGHAM BOARD OF EDUCATION,

Defendant- Appellee.

Appeal from the United States District Court
for the Northern District of Alabama
D.C. Docket No. 2:22-cv-00477-MHH

Before LAGOA, ABUDU, and ANDERSON, Circuit Judges.

PER CURIAM:

DeKorrie Bell, *pro se*, appeals the district court's dismissal of her case without prejudice for lack of subject matter jurisdiction. For the reasons stated below, we affirm.

Bell filed a complaint against the Birmingham Board of Education ("the Board") in federal court using the *pro se* general complaint form for civil cases. On the form, she checked the box designating "Constitutional or Federal Question" as the basis for jurisdiction, listed "title IV Civil Rights Act 1962 42 USC 2000 obstruction of Justice" as the basis for the federal court's jurisdiction, and sought \$40 million in damages. The district court, however, found that Bell failed to allege any facts establishing that it had subject matter jurisdiction and dismissed her case without prejudice.

We liberally construe a *pro se* plaintiff's pleadings, holding them "to less stringent standards than formal pleadings drafted by lawyers." *Campbell v. Air Jamaica Ltd.*, 760 F.3d 1165, 1168 (11th Cir. 2014). However, this liberal construction does not mean a court must serve as *de facto* counsel for the *pro se* party, nor does it oblige the court to rewrite a deficient pleading to sustain the action. *Id.* at 1168-69. Issues not raised on appeal by a *pro se* litigant are deemed abandoned. *Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008).

We review *de novo* a district court's determination that it lacks subject matter jurisdiction. *Campbell*, 760 F.3d at 1168. The

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Opinion of the Court

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party bringing the claim bears the burden of establishing that the district court has subject matter jurisdiction. *Williams v. Poarch Band of Creek Indians*, 839 F.3d 1312, 1314 (11th Cir. 2016). Federal courts have limited subject matter jurisdiction and are empowered to hear only those cases within its statutory or constitutional authority. *Taylor v. Appleton*, 30 F.3d 1365, 1367 (11th Cir. 1994). Thus, federal courts have jurisdiction over cases raising federal questions or cases involving diverse citizens where the amount in controversy exceeds \$75,000. *Id.*; *see also* 28 U.S.C. §§ 1331, 1332(a). “If jurisdiction is based on either of these, the pleader must affirmatively allege facts demonstrating the existence of jurisdiction and include a short and plain statement of the grounds upon which the court’s jurisdiction depends.” *Taylor*, 30 F.3d at 1367 (internal quotation marks omitted) (quoting Fed. R. Civ. P. 8(a)). Without such allegations, the court must dismiss the action if the plaintiff does not cure the deficiency. *Travaglio v. Am. Express Co.*, 735 F.3d 1266, 1268 (11th Cir. 2013); *see also* Fed. R. Civ. P. 12(h)(3) (explaining that a court must dismiss an action once it determines that it lacks subject matter jurisdiction).

As an initial matter, Bell does not challenge the district court’s conclusion that it lacked subject matter jurisdiction in her brief, meaning she has abandoned that issue on appeal. *Timson*, 518 F.3d at 874. Nevertheless, considering Bell’s *pro se* status, we will review the district court’s dismissal of Bell’s complaint for lack of subject matter jurisdiction. Upon such review, we conclude that the district court did not err in dismissing Bell’s case for that reason. Bell’s *pro se* complaint failed to allege facts establishing either

federal question jurisdiction or diversity jurisdiction. Thus, the district court's dismissal of Bell's complaint is **AFFIRMED**.

**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

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November 07, 2023

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 23-10118-CC

Case Style: DeKorrie Bell v. Birmingham Board of Education

District Court Docket No: 2:22-cv-00477-MHH

Electronic Filing

All counsel must file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Although not required, non-incarcerated pro se parties are permitted to use the ECF system by registering for an account at www.pacer.gov. Information and training materials related to electronic filing are available on the Court's website.

Enclosed is a copy of the court's decision filed today in this appeal. Judgment has this day been entered pursuant to FRAP 36. The court's mandate will issue at a later date in accordance with FRAP 41(b).

The time for filing a petition for rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing or for rehearing en banc is timely only if received in the clerk's office within the time specified in the rules. Costs are governed by FRAP 39 and 11th Cir. R. 39-1. The timing, format, and content of a motion for attorney's fees and an objection thereto is governed by 11th Cir. R. 39-2 and 39-3.

Please note that a petition for rehearing en banc must include in the Certificate of Interested Persons a complete list of all persons and entities listed on all certificates previously filed by any party in the appeal. See 11th Cir. R. 26.1-1. In addition, a copy of the opinion sought to be reheard must be included in any petition for rehearing or petition for rehearing en banc. See 11th Cir. R. 35-5(k) and 40-1 .

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation for time spent on the appeal no later than 60 days after either issuance of mandate or filing with the U.S. Supreme Court of a petition for writ of certiorari (whichever is later) via the eVoucher system. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

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OPIN-1 Ntc of Issuance of Opinion

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

DEKORRIE K. BELL,

Plaintiff,

v.

**BIRMINGHAM BOARD OF
EDUCATION,**

Defendant.

Case No.: 2:22-cv-00477-MHH

ORDER

Pro se plaintiff DeKorrie K. Bell filed this civil action against the Birmingham Board of Education on April 14, 2022. (Doc. 1). On April 27, 2022, the Court instructed Ms. Bell to file an amended complaint meeting the pleading standard the Court discussed in the order. The Court indicated that failure to amend would cause the Court to dismiss this case without prejudice. (Doc. 7). Ms. Bell did not amend her complaint, but she has filed several motions, including two motions requesting a hearing or telephone conference. (Docs. 8, 15).

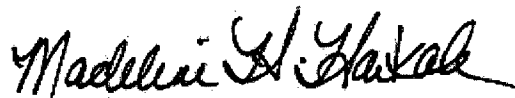
On September 26, 2022, the Court held a telephone conference with the parties to discuss the pending motions in the case. During the telephone conference, the Court asked Ms. Bell to explain the essential facts of her claim. Ms. Bell explained that she is suing the Birmingham Board of Education for its alleged negligent

supervision of those responsible for maintenance of her educational records. Ms. Bell alleges that despite diligent efforts, she has not been able to obtain her educational records because the records have been lost or destroyed.

The Court explained to Ms. Bell that based on the facts she alleges, a federal court may not hear her case because a federal court does not have original or diversity jurisdiction to preside over such a claim. A claim of negligent supervision does not arise under federal law, so it does not supply a basis for federal jurisdiction under 28 U.S.C. § 1331. For a federal court to hear this state law claim under 28 U.S.C. § 1332, the parties must be from different states. Ms. Bell is a citizen of Alabama and therefore is not diverse in citizenship from the defendant, also a citizen of Alabama. Ms. Bell has also not pleaded facts alleging that the jurisdictional threshold imposed by 28 U.S.C. § 1332 is met here.

As discussed during the September 26, 2022 telephone conference, the Court dismisses this case without prejudice for lack of subject matter jurisdiction. FED. R. CIV. P. 12(h)(3) (“If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.”). The Court directs the Clerk to please close the file.

DONE and **ORDERED** this September 28, 2022.

A handwritten signature in black ink, reading "Madeline H. Haikala", written over a horizontal line.

MADELINE HUGHES HAIKALA
UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

DEKORRIE K. BELL,

Plaintiff,

v.

BIRMINGHAM BOARD OF EDUCATION,

Defendant.

Case No.: 2:22-cv-00477-JHE

REASSIGNMENT ORDER

On April 14, 2022, Plaintiff DeKorrie K. Bell filed a *pro se* complaint on the form utilized in this court, (doc. 1), and a motion to proceed *in forma pauperis* requesting to commence this action without prepayment of fees or costs or the giving of security, as well as the appointment of an attorney, (doc. 2). As to Bell's request to proceed *in forma pauperis*, the undersigned finds Bell is indigent. Therefore, the motion is **GRANTED** pursuant to 28 U.S.C. § 1915(a)(1) to the extent Bell may commence this action without prepayment of fees or costs or the giving of security. However, Bell's request for an attorney is **DENIED**, and this case will be reassigned to a district judge.

When a plaintiff is granted *in forma pauperis status*, a court is required to review the plaintiff's complaint and dismiss it *sua sponte* if it is "frivolous or malicious," "fails to state a claim on which relief may be granted," or "seeks monetary relief against a defendant who is immune from such relief." See 28 U.S.C. § 1915(e)(2)(B). "A claim is frivolous if it is without arguable merit either in law or fact." *Thomas v. Pentagon Fed. Credit Union*, 393 F. App'x 635, 637 (11th Cir. 2010). A district court has discretion to dismiss a complaint "when it appears the plaintiff 'has little or no chance of success,'" meaning review of the face of the complaint leads

the district court to conclude “the factual allegations are ‘clearly baseless’ or that the legal theories are ‘indisputably meritless.’” *Carroll v. Gross*, 984 F.2d 392, 393 (11th Cir. 1993) (discussing § 1915(d), now § 1915(e)(2)(B)(i)).

Dismissal under § 1915(e)(2)(B)(ii) is governed by the same standard as dismissal under Rule 12(b)(6) of the Federal Rules of Civil Procedure. *Mitchell v. Farcass*, 112 F.3d 1483, 1490 (11th Cir. 1997). Dismissal under Rule 12(b)(6) is appropriate if a complaint does not “contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (citing *Twombly*, 550 U.S. at 556). “The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Id.* “[L]abels and conclusions,” “a formulaic recitation of the elements of a cause of action,” and “naked assertion[s] devoid of further factual enhancement” are insufficient. *Id.* (quoting *Twombly*, 550 U.S. at 555, 557) (internal quotations omitted). “*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). “This leniency, however, does not require or allow courts to rewrite an otherwise deficient pleading in order to sustain an action.” *Thomas*, 393 F. App’x 635, 637 (11th Cir. 2010).

In her complaint, Bell indicates she is suing under “Title IV Civil Rights Act 1962,” 42 U.S.C. § 2000, and for obstruction of justice. (Doc. 1 at 3). She says recent events would shed light on why “she was expelled behind on bathroom issue” and alleges she is “trying to bring a

conclusion and a close to ongoing issue.” (*Id.* at 5, 8). She attaches a reported complaint to the United States Department of Justice’s Civil Rights Division, indicating she has been “mistreated by police, correctional staff, or inmates” while in federal prison in FCI Terre Haute on October 12, 2014. (*Id.* at 9-10). In this reported complaint, Bell indicates a sexual assault occurred but was never fully investigated, and that she “will be suing Terre Haute Indiana or DOJ for negligence” (*Id.* at 10).

Bell has brought numerous lawsuits in this district against the Birmingham Board of Education, all based in some part on allegations that she was expelled from Carver High School in 1998 for using the female restroom. *See Bell v. Birmingham Bd. of Ed., et al.*, Case No. 2:20-cv-01200-ACA (dismissed October 14, 2020, *see id.* at docs. 15 & 16); *Bell v. Birmingham Bd. of Ed., et al.*, Case No. 2:20-cv-1620-CLM (dismissed October 20, 2020, *see id.* at docs. 3 & 4); *Bell v. Birmingham Bd. of Ed., et al.*, Case No. 2:20-cv-01648-AMM (dismissed January 15, 2021, *see id.* at doc. 10); *Bell v. Birmingham Bd. of Ed., et al.*, Case No. 2:21-cv-00075-AKK (dismissed January 25, 2021, *see id.* at docs 3 & 4); *Bell v. Birmingham Bd. of Ed., et al.*, Case No. 2:21-00621-RDP (dismissed May 17, 2021, *see id.* at doc. 6); *Bell v. Birmingham Bd. of Ed., et al.*, Case No. 2:21-00703-LSC (dismissed June 15, 2021, *see id.* at doc. 5). It is not totally clear what claims Bell is attempting to raise in this case, but the only named defendant is the Birmingham Board of Education. Thus, it strongly appears this case presents some variation on the claims Bell has attempted to raise in these previous cases.

Bell’s lawsuits have been dismissed on the basis that: (1) the expulsion occurred in 1998, so it is not actionable at this point due to the two-year time bar applicable to personal injury claims in Alabama, *see Rozar v. Mullis*, 85 F.3d 556, 560–61 (11th Cir. 1996); (2) Bell asserted no federal

claims, so the lawsuit is due to be dismissed for lack of subject matter jurisdiction; or (3) some combination of the two. The only federal claim Bell appears to raise comes from her reference to “Title IV Civil Rights Act 1962.” Title IV of the Civil Rights Act of 1964 (to which the undersigned assumes Bell refers), 42 U.S.C. § 2000c *et seq.*, relates to desegregation of public schools. *Swann v. Charlotte-Mecklenburg Bd. of Ed.*, 402 U.S. 1, 16 (1971). Bell raises no allegations that concern desegregation, nor is it clear how such allegations would make sense in this case. Furthermore, while Bell does note the possibility of filing claims in the future against Terre Haute or DOJ, she includes no factual allegations at all against the only named defendant: the Birmingham Board of Education.¹ Thus, Bell’s complaint fails to state a claim for relief.

The undersigned would ordinarily require Bell to file an amended complaint more clearly setting out her allegations. In light of Bell’s lengthy litigation history against the Birmingham Board of Education, though, it is highly doubtful any amended complaint would present claims plausible enough to survive screening under § 1915(e)(2)(B)(ii). Under these circumstances, the undersigned concludes Bell is not entitled to an opportunity to amend her complaint. *Woldeab v. Dekalb Cnty. Bd. of Educ.*, 885 F.3d 1289, 1291 (11th Cir. 2018) (when a more carefully drafted complaint might state a claim, a pro se plaintiff “must be given at least one chance to amend the complaint before the district court dismisses the action with prejudice.”). Thus, the undersigned will reassign this case to a district judge without further clarifying Bell’s claims. And because the undersigned concludes Bell’s claims are due to be dismissed, Bell’s request for the appointment of counsel is **DENIED**.

¹ As in Bell’s other cases, any such claims would likely be time-barred.

Due to these case-specific circumstances, the undersigned has determined he will likely not be able to obtain consent in this action. Therefore, consistent with the General Order For Referral of Civil Matters to the United States Magistrate Judges of the Northern District of Alabama, dated January 2, 2015, the Clerk is **DIRECTED** to reassign the case to a District Judge for all further proceedings.

DONE this 18th day of April, 2022.

A handwritten signature in black ink, appearing to read 'J. H. England, III', written over a horizontal line.

JOHN H. ENGLAND, III
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 23-10118-CC

DEKORRIE K. BELL,

Plaintiff - Appellant,

versus

BIRMINGHAM BOARD OF EDUCATION,

Defendant - Appellee.

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

Before: ROSENBAUM, LUCK, and BRASHER, Circuit Judges.

BY THE COURT:

The Birmingham Board of Education's (the "Board") motion to dismiss this appeal for lack of jurisdiction is GRANTED IN PART to the extent that the appeal concerns the district court's docketing of our January 11, 2023, order dismissing DeKorrie Bell's prior appeal for want of prosecution. Because that docketing action is not a final, appealable decision, we lack jurisdiction to review it. *See* 28 U.S.C. § 1291 (providing that we have jurisdiction to review "final decisions of the district courts"); *CSX Transp., Inc. v. City of Garden City*, 235 F.3d 1325, 1327 (11th Cir. 2000) ("A final decision is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment."); *Bogle v. Orange Cnty. Bd. of Cnty. Comm'rs*, 162 F.3d 653, 661 (11th Cir. 1998) (explaining that a notice of appeal must designate an existent judgment or order). Moreover, while Bell's notice of appeal can be liberally construed as challenging our

January 11, 2023, order, the proper procedure for such a challenge is to file a motion to reinstate the appeal in this Court. *See* 11th Cir. R. 42-2(e) (describing the requirements for a motion to reinstate an appeal after dismissal for want of prosecution in a civil case).

However, the Board's motion to dismiss is DENIED IN PART as to the district court's September 28, 2022, order dismissing Bell's complaint for lack of subject matter jurisdiction. While an appellant is not generally entitled to two appeals from the same judgment, Bell's original appeal in No. 22-13280 was not decided on the merits, but rather was dismissed for want of prosecution prior to briefing. *See United States v. Arlt*, 567 F.2d 1295, 1297 (5th Cir. 1978). As a result, it does not appear that reviewing the underlying judgment would result in duplicative litigation that would be a waste of judicial resources warranting partial dismissal of this appeal. *Cf. I.A. Durbin, Inc. v. Jefferson Nat'l Bank*, 793 F.2d 1541, 1551 (11th Cir. 1986). Because the district court did not enter a separate judgment, to timely seek review of the September 28 final order, Bell needed to file a notice of appeal by March 29, 2023. *See* 28 U.S.C. § 2107(a); Fed. R. Civ. P. 58(a), 58(c)(2); Fed. R. App. P. 4(a)(1)(A), 4(a)(7)(A). Thus, the instant notice of appeal, filed on January 12, 2023, is timely to appeal from the district court's September 28 final order. *See* 28 U.S.C. § 2107(a); Fed. R. Civ. P. 58(a), 58(c)(2); Fed. R. App. P. 4(a)(1)(A), 4(a)(7)(A). Accordingly, this appeal may proceed as to the September 28, 2022, final order.

**Additional material
from this filing is
available in the
Clerk's Office.**