United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
March 30, 2022
Lyle W. Cayce
Clerk

No. 21-40727
Summary Calendar

Prince Ella Green; James Green,

Plaintiffs—Appellants,

versus

The City of Texas City, Texas; George Fuller; Does 1-10,

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 3:20-CV-250

Before Southwick, Oldham, and Wilson, *Circuit Judges*.

Per Curiam:*

There are two questions presented. The first question is whether the district court abused its discretion in denying plaintiffs' motion to amend their complaint. The answer is no. The second question is whether the

* Pursuant to 5th Circuit Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Circuit Rule 47.5.4.

district court erred by dismissing plaintiffs' complaint without notice or opportunity to be heard. Again, the answer is no. We therefore affirm.

I.

Prince Ella Green and James Green (together, "plaintiffs") own a house in Texas City, Texas. On May 5, 2020, George Fuller, the City's Director of Community Development, allegedly visited the property while it was under repair for windstorm damage. Soon after Fuller's inspection, the City posted a notice of violation on the property, declaring the property substandard.

On June 3, 2020, plaintiffs sued the City and George Fuller (together, "defendants") in state court, alleging violations of their rights under the Fourteenth Amendment. Defendants removed the action to federal district court. After removal, plaintiffs amended their complaint twice.

On November 25, 2020, defendants moved to dismiss plaintiffs' second amended complaint. Plaintiffs opposed that motion. About nine months after defendants' opening motion, plaintiffs filed a motion for leave to amend their second amended complaint to add (1) "more factual specificity"; (2) "two additional defendants"; and (3) "state causes of action."

On September 23, 2021, the district court denied plaintiffs' motion for leave. The court also dismissed without prejudice the claims against George Fuller because Fuller had not been served within 90 days of the case's filing.

The same day, the district court granted defendants' motion to dismiss the remaining claims. Specifically, the court explained that plaintiffs failed to sufficiently allege "a policy, a policymaker, or ratification by the city

of Fuller's alleged abusive behavior" in accordance with *Monell v. Dep't of Soc. Servs. of City of N.Y.C.*, 436 U.S. 658 (1978).

Plaintiffs timely appealed. We have jurisdiction under 28 U.S.C. § 1291. Plaintiffs make no argument challenging the merits of the district court's motion-to-dismiss order, so that argument is forfeited. *See Cantu v. Moody*, 933 F.3d 414, 418 (5th Cir. 2019); *DeVoss v. Sw. Airlines Co.*, 903 F.3d 487, 490 n.1 (5th Cir. 2018). Instead, plaintiffs challenge only the district court's denial of their motion for leave to amend and the district court's purported failure to provide notice and an opportunity to be heard granting defendant's motion to dismiss.

II.

A.

Plaintiffs argue that the district court abused its discretion when it denied their request for leave to amend the complaint to add (1) "more factual specificity"; (2) "two additional defendants"; and (3) "state causes of action." *See Winzer v. Kaufman Cty.*, 916 F.3d 464, 471 (5th Cir. 2019) (review is for abuse of discretion). We disagree.

Under Federal Rule of Civil Procedure 15(a), when a party tries to amend her complaint after the time for amendment as a matter of course, the party must get "the opposing party's written consent or the court's leave." FED. R. CIV. P. 15(a)(2). The rule instructs that courts "should freely give leave when justice so requires." *Id.* Still, a district court may deny leave to amend "for undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies, undue prejudice to the opposing party, or futility of a proposed amendment." *Simmons v. Sabine River Auth. Louisiana*, 732 F.3d 469, 478 (5th Cir. 2013) (quotation omitted).

In denying plaintiffs' motion, the district court considered "a variety of [those] factors" and determined that denial was warranted because (1) "plaintiffs have already amended their complaint twice"; (2) "the deadline to amend pleadings and add parties passed some time ago"; and (3) plaintiffs "have not established excusable neglect or good cause." We cannot say that the district court abused its discretion.

Significantly, in denying plaintiffs' motion, the court relied on plaintiffs' violation of the court's deadline in its Scheduling Order for when a party may amend pleadings or add new parties. There is no dispute that when plaintiffs filed the relevant motion to amend their complaint, the deadline had long passed; indeed, on November 4, 2020, the magistrate judge acknowledged that the deadline passed.

To be sure, the Order states that even when the deadline passes, "a party seeking to amend a pleading must file a motion for leave demonstrating both good cause and excusable neglect in accordance with [Federal Rule of Civil Procedure] 6(b)(1)(B)." But plaintiffs have not tried to show "good cause and excusable neglect." The district court therefore did not abuse its discretion. *Cf. Barrie v. Nueces Cty. Dist. Attorney's Off.*, 753 F. App'x 260, 266 (5th Cir. 2018) (per curiam) ("This circuit has held that a district court may—within its discretion—deny leave to amend because of the moving party's failure to comply with local filing rules." (citing *Layfield v. Bill Heard Chevrolet Co.*, 607 F.2d 1097, 1099 (5th Cir. 1979); *Young v. U.S. Postal Serv. ex rel. Donahoe*, 620 F. App'x 241, 245 (5th Cir. 2015)); *cf. also Ward v. Circus Circus Casinos, Inc.*, 473 F.3d 994, 1000 (9th Cir. 2007).

B.

The district court also did not fail to give plaintiffs' notice and an opportunity to be heard before granting defendants' motion to dismiss. That is because plaintiffs opposed defendants' motion to dismiss. With the

briefing completed, plaintiffs had notice that the district court would rule on the motion to dismiss and had an opportunity to be heard from the briefing. *Cf. Hager v. DBG Partners, Inc.*, 903 F.3d 460, 464 (5th Cir. 2018); *Alexander v. Trump*, 753 F. App'x 201, 208 (5th Cir. 2018) (per curiam).

And to the extent that plaintiffs think the district court was obligated to consider their *unaccepted* complaint, they are mistaken. Because the court denied plaintiffs' motion for leave to amend, the unaccepted complaint never became operative. *See* 6 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1476 (3d ed. 2020).

* * *

We have considered plaintiffs' other arguments and find them unpersuasive. For these reasons, we see no reversible error in the district court's judgment.

AFFIRMED.