

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

GREGORY B. MYERS,

Plaintiff,

v.

Case No: 2:24-cv-285-JES-KCD

CITY OF NAPLES, FLORIDA,
TERESA HEITMANN, RALF
BROOKES, JAY BOODHESHWAR,
ERICA MARTIN, and NAPLES
COMMUNITY HOSPITAL, INC.,

Defendants.

OPINION AND ORDER

This matter comes before the Court on plaintiff's Motion to Accept Second Amended Complaint as Timely Filed (Doc. #59) filed on September 11, 2024. For the reasons stated below, the motion will be denied, and the case dismissed without prejudice.

On March 29, 2024, plaintiff initiated this case and filed an Amended Complaint (Doc.#3) on April 25, 2024. On May 14, 2024, defendants jointly moved to dismiss the case for failure to state a claim. (Doc. #4.) On June 13, 2024, upon finding no response, the Court directed plaintiff to respond by June 20, 2024. (Doc. #12.) The day after the deadline, plaintiff sought an extension of time. (Docs. #13, #15.) The request was granted, and the deadline extended to July 8, 2024. (Doc. #17.) Plaintiff responded on July 8, 2024. (Doc. #23.)

On July 24, 2024, an Opinion and Order (Doc. #25) was issued granting the motion to dismiss, finding no subject matter jurisdiction because plaintiff failed to state a federal claim, and allowing an amended complaint to be filed within 14 days, or August 7, 2024.

At the August 5, 2024, Zoom Rule 16(b) Conference¹, the Magistrate Judge granted an extension of time through August 21, 2024, to amend plaintiff's complaint. (Doc. #29.) On the day of the deadline, plaintiff sought an extension of time of one day that was granted. (Doc. #46.) Plaintiff filed another motion for extension of time the next day. (Doc. #47.) Again, the motion was granted, and the deadline was extended to August 26, 2024. (Doc. #48.) Plaintiff filed another motion on August 26, 2024, on August 29, 2024, and on September 3, 2024. (Docs. ## 50-52.) On September 4, 2024, the third motion was granted, and the deadline extended until September 5, 2024, with no further extensions to be granted. (Doc. #55.) On September 6, 2024, plaintiff filed the Second Amended Complaint (Doc. #58), one day late along with a motion to accept it as timely filed. In the motion, plaintiff states that he filed the pleading 36 minutes and 23 seconds after midnight, and that as a *pro se* litigant he should be granted the extension to prepare and present his argument.

¹ Plaintiff failed to appear at the original conference set for July 1, 2024. (Doc. #22.)

Defendant Naples Community Hospital, Inc. filed an Objection (Doc. #61) referring to its Motion to Dismiss (Doc. #60 at 2) and arguing that the untimely filing requires dismissal because the Opinion and Order has become a final judgment by failing to timely amend citing Auto. Alignment & Body Serv., Inc. v. State Farm Mut. Auto. Ins. Co., 953 F.3d 707, 719 (11th Cir. 2020) (“[A]n order dismissing a complaint with leave to amend within a specified time becomes a final judgment if the deadline to amend expires without the plaintiff amending its complaint or seeking an extension of time.”) and Fernandez v. Freedom Health, Inc., No. 22-13823, 2023 WL 4196950, at *2 (11th Cir. June 27, 2023) (“When the judgment became final, the district court “surrendered jurisdiction” and its orders entered “after that time were a nullity and must be vacated.”).

“A district court has inherent authority to manage its own docket ‘so as to achieve the orderly and expeditious disposition of cases.’ [] The court may dismiss a claim if the plaintiff fails to prosecute it or comply with a court order. Fed. R. Civ. P. 41(b). ‘The power to invoke this sanction is necessary in order to prevent undue delays in the disposition of pending cases and to avoid congestion in the calendars of the District Court.’” Equity Lifestyle Properties, Inc. v. Fla. Mowing & Landscape Serv., Inc., 556 F.3d 1232, 1240 (11th Cir. 2009) (internal citations omitted). After giving plaintiff several opportunities to comply with the

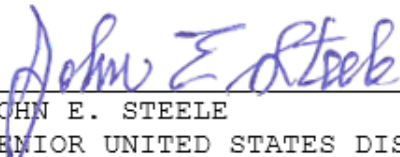
July 24, 2024, Opinion and Order, the untimely filing of the Second Amended Complaint requires the Court to dismiss the case because Mr. Myers has exhibited a disrespect for the Court's deadlines and because the Court no longer had jurisdiction to entertain the amended pleading. The dismissal will be without prejudice.

Accordingly, it is hereby

ORDERED:

1. Plaintiff's Motion to Accept Second Amended Complaint as Timely Filed (Doc. #59) is **DENIED**.
2. The Second Amended Complaint (Doc. #58) is **dismissed without prejudice**.
3. Defendant Naples Community Hospital, Inc.'s Motion to Dismiss (Doc. #60) is **DENIED** as moot.
4. The Clerk shall enter judgment dismissing the case without prejudice, terminate all deadlines, and close the file.

DONE and ORDERED at Fort Myers, Florida, this 13th day of September 2024.



JOHN E. STEELE
SENIOR UNITED STATES DISTRICT JUDGE

Copies:
Plaintiff
Counsel of Record