No. 24-6375

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

TERRENCE EDWARD HAMMOCK,

Plaintiff-Appellant,

v.

GAIL WATTS et al.,

Defendants-Appellees.

On Appeal from the United States District Court
for the District of Maryland at Baltimore
Case No. 1:22-cv-00482

JOINT SUPPLEMENTAL BRIEF

Regina Wang
Brian Wolfman
Becca Steinberg
GEORGETOWN LAW APPELLATE
COURTS IMMERSION CLINIC
600 New Jersey Ave., NW,
Suite 312
Washington, D.C. 20001
(202) 661-6741

Counsel for Appellant Terrence Edward Hammock

Joseph D. Allen
Federal Bar No. 20736
Assistant County Attorney
400 Washington Avenue
Towson, MD 21204
(410) 887-4374

Counsel for Appellees Director Gail Watts, Officer J. Sherman, Sergeant Bond, Major Alford, Sergeant A. Dupree, Sergeant A. Kelly, Sergeant B. Little, J. Paige, Sergeant C.E. Carter, Sergeant B. Rose, Library Officers, Officer Alston, Dietary Sergeant G. Carter, J. Dorsey

April 18, 2025

Table of Contents

Table of Authorities

Cases **Page(s)**

Other Authorities

Argument

This supplemental brief, filed jointly by the parties, responds to this Court's April 14, 2025, order. *See* Dkt. No. 67.

I. This Court has jurisdiction to review the district court's March 10, 2023, order.

When *Jackson v. Lightsey*, 775 F.3d 170 (2014), was decided, Federal Rule of Appellate Procedure 3(c)(1)(B) "require[d] that a notice of appeal 'designate the judgment, order, or part thereof being appealed.'" *Id.* at 176 (quoting Fed. R. App. P. 3(c)(1)(B) (2014). But in 2021, the Rule was revised to make clear that the notice of appeal must only "designate the judgment—or the appealable order—from which the appeal is taken." Fed. R. App. P. 3(c)(1)(B). This amendment sought "to avoid the misconception that it is necessary or appropriate to designate each and every order of the district court that the appellant may wish to challenge on appeal." Fed. R. App. P. 3 advisory committee note to 2021 amendment.

Under this amendment, "preliminary rulings that lead up to a final judgment merge into that final judgment and are designated for purposes of appeal by a notice of appeal that designates the final judgment." *68th St. Site Work Grp. v. Alban Tractor Co.*, 105 F.4th 222, 228 (4th Cir. 2024). If an earlier order "never made an express finding that its resolution of the claims against some of the parties qualified as a final judgment," then the earlier order "merge[s] into the order dismissing the last remaining defendant" and is

encompassed by the "notice of appeal's reference to the final order." *Id.* at 229.

That is exactly what happened in this case. The district court's March 10, 2023, order dismissed claims against some defendants but never made an express finding that the order qualified as a final judgment (presumably because it was not one). JA 80-81. The earlier order therefore "merged into the order dismissing the last remaining defendant." *68th St. Site Work Grp.*, 105 F.4th at 229; *see* Fed. R. App. P. 3(c)(4) (a notice of appeal "encompasses all orders that, for purposes of appeal, merge into the designated judgment or appealable order"); Fed. R. App. P. 3(c)(6) ("specific designations do not limit the scope of the notice of appeal").

Hammock then filed his notice of appeal, which designated the final judgment by stating: "I wish to appeal the denial / order dated 4-1-24 by the Honorable Judge Brendan A. Hurson in the U.S. District Court which is enclosed," JA 85, and attaching both the court's opinion and the separate document entering final judgment, JA 88-91; *see also* Dkt. No. 24 ¶ 3 (motion to amend docket explaining that notice of appeal was effective as to all orders that merged into the final order, such as the March 10, 2023, order); Dkt. No. 26 (granting motion). Hammock's notice of appeal therefore conferred jurisdiction on this Court to review the district court's March 10, 2023, order.

II. Hammock has not forfeited review of his First, Eighth, and Fourteenth Amendment claims.

This Court's Rule 34(b) provides specific instructions for the review of pro se appeals: "Appellant's informal brief and any informal response and reply briefs filed by the parties shall be considered, together with the record and other relevant documents, by the panel to which the proceeding has been referred. The Court will limit its review to the issues raised in the informal brief." 4th Cir. Rule 34(b). The Rule provides these instructions for how the Court "initially reviews cases that are informally briefed." *Id.* The Rule also allows a party to "file a formal brief only with the permission of the Court," but, importantly, it does not provide corresponding instructions limiting the Court's review when formal briefs are filed. *Id.*

After Hammock filed his informal pro se brief, his newly acquired counsel moved for leave to file formal briefing including regarding Hammock's First, Eighth, and Fourteenth Amendment claims, Dkt. No. 14, and the Court granted that motion, Dkt. No. 16. Counsel for Director Gail Watts, Officer J. Sherman, Sgt. Bond, Major Alford, Sgt. A. Dupree, Sgt. A. Kelly, Sgt. B. Little, J. Paige, Sgt. C.E. Carter, Sgt. B. Rose, Library Officers, Officer Alston, Dietary Officer G. Carter, and Dietary Officer J. Dorsey (collectively, the "Correctional Defendants") then entered her appearance. Dkt. No. 21. Because the docket at the time Hammock filed his informal brief did not include the Correctional Defendants, his counsel contacted the Correctional Defendants' counsel to confirm that they would not oppose a

motion to amend the docket so Hammock could pursue claims against the Correctional Defendants in this appeal. Counsel for Correctional Defendants indicated no opposition. *See* Dkt. No. 24 ¶ 6 (unopposed motion to amend caption and docket to add additional appellees). This Court then granted Hammock's motion to amend the docket. Dkt. No. 26.

After Hammock filed his formal opening brief asserting First, Eighth, and Fourteenth Amendment claims against the Correctional Defendants, Dkt. No. 44, the Correctional Defendants filed an answering brief that did not argue that Hammock had forfeited or waived these claims, Dkt. No. 46. The parties instead assumed that this Court would "treat the formal brief as definitive of the issues for review." *Slezak v. Evatt*, 21 F.3d 590, 593 n.2 (4th Cir. 1994); *see Chin-Young v. United States*, 774 F. App'x 106, 115 (4th Cir. 2019) ("we treat a formal brief by appointed counsel as controlling"). The Correctional Defendants never raised a waiver defense and instead consented to have Hammock's First, Eighth, and Fourteenth Amendment claims heard by this Court on their merits. Dkt. No. 46.

Indeed, the Correctional Defendants have consistently consented to have this case heard on the merits. *See, e.g.*, Dkt. No. 21 (appearance of counsel), Dkt. No. 24 (not objecting to motion to amend caption), Dkt. No. 46 (answering brief), Dkt. No. 65 (argument acknowledgment). Absent a jurisdictional bar, courts have an obligation to resolve cases on the merits. *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 77 (2013). Here, the parties have

briefed Hammock's First, Eighth, and Fourteenth Amendment Claims and are now ready to have those claims resolved.

Conclusion

This Court has jurisdiction to review the district court's March 10, 2023, order, and Hammock has not forfeited review of his First, Eighth, and Fourteenth Amendment claims against the Correctional Defendants, who, as explained, consent to litigating those issues on their merits before this Court.

Respectfully submitted,

/s/ Regina Wang
Regina Wang
Brian Wolfman
Becca Steinberg
GEORGETOWN LAW
APPELLATE COURTS IMMERSION CLINIC
600 New Jersey Ave., NW, Suite 312
Washington, D.C. 20001
(202) 661-6741
regina.wang@georgetown.edu
Counsel for Appellant

/s/ Joseph D. Allen
Joseph D. Allen
Federal Bar No. 20736
Assistant County Attorney
400 Washington Avenue
Towson, Maryland 21204
(410) 887-4374 Direct
jallen@baltimorecountymd.gov
Counsel for Appellees

April 18, 2025

Certificate of Compliance

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in 14-point Palatino Linotype, a proportionally spaced typeface.

/s/ Regina Wang
Regina Wang

Counsel for Plaintiff-Appellant
Terrence Edward Hammock

April 18, 2025