FILED
United States Court of Appeals
Tenth Circuit

August 19, 2019

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

ALBERTA ROSE JOSEPHINE JONES,

Plaintiff - Appellant,

v.

USAA CASUALTY INSURANCE COMPANY; HARTFORD UNDERWRITERS INSURANCE COMPANY; DONALD DAVID JONES; SHANDA L. ADAMS; PHILLIP SCOTT SPRATT; JOHN KUEHL; GARY ELLIS; SANDRA ELLIS; TERRI SCHAEFFER; DAVID C. LAREDO; INTERNATIONAL CODE COUNCIL; DOES 1 thru 10,

Defendants - Appellees.

No. 18-6154
(D.C. No. 5:17-CV-01324-M)
(W.D. Okla.)

ORDER AND JUDGMENT*

Before **TYMKOVICH**, Chief Judge, **BALDOCK** and **HARTZ**, Circuit Judges.

Alberta Rose Josephine Jones, proceeding pro se, sued numerous defendants after a large tree fell and damaged a rental property she co-owns in Pacific Grove,

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* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

California. After commencing the action, she voluntarily amended her complaint. Various defendants moved to dismiss. The district court determined that the First Amended Complaint failed to establish subject-matter jurisdiction and declined Ms. Jones's motions to file further amended pleadings and to add defendants because the proposed pleadings also failed to establish subject-matter jurisdiction. Exercising jurisdiction over Ms. Jones's appeal under 28 U.S.C. § 1291, we affirm.

STANDARD OF REVIEW

We review de novo both the dismissal for lack of jurisdiction and the denial of amendment on the ground of futility. *See Grynberg v. Kinder Morgan Energy Ptrs.*, 805 F.3d 901, 905 (10th Cir. 2015) (lack of jurisdiction); *Cohen v. Longshore*, 621 F.3d 1311, 1314-15 (10th Cir. 2010) (futility). In light of Ms. Jones's pro se status, we construe her filings liberally. *Merryfield v. Jordan*, 584 F.3d 923, 924 n.1 (10th Cir. 2009). "[B]ut we do not assume the role of advocate, and [her] pro se status does not relieve [her] of [her] obligation to comply with the fundamental requirements of the Federal Rules of Civil and Appellate Procedure." *Id.* (alterations and internal quotation marks omitted).

DISCUSSION

I. Diversity Jurisdiction

"[W]hen a plaintiff files a complaint in federal court and then voluntarily amends the complaint, courts look to the amended complaint to determine jurisdiction." *Rockwell Int'l Corp. v. United States*, 549 U.S. 457, 473-74 (2007). The First Amended Complaint invoked 28 U.S.C. § 1332, which creates diversity

jurisdiction. Ms. Jones notes she is a citizen of Oklahoma and one defendant is a citizen of California. But diversity jurisdiction requires "complete diversity," which means that all the defendants must be citizens of a different state than the plaintiff. *Grynberg*, 805 F.3d at 905. Because Ms. Jones is a citizen of Oklahoma and at least two of the named defendants allegedly also are citizens of Oklahoma, the district court correctly held that it lacked diversity jurisdiction.

II. Federal-Question Jurisdiction & Failure to Allow Amendment

Ms. Jones also briefly asserts that her proposed amended pleadings stated valid federal claims, specifically allegations under the Racketeer Influenced and Corrupt Organizations Act (RICO) and due-process allegations. Questions arising under federal law would invoke jurisdiction under 28 U.S.C. § 1331. We agree with the district court, however, that allowing amendment would have been futile. The proposed amended pleadings also failed to establish subject-matter jurisdiction.

"[J]urisdiction under § 1331 exists only where there is a 'colorable' claim arising under federal law." *McKenzie v. U.S. Citizenship & Immigration Servs., Dist. Dir.*, 761 F.3d 1149, 1156 (10th Cir. 2014). "[A] court may dismiss for lack of subject-matter jurisdiction when the claim is so insubstantial, implausible, foreclosed by prior decisions of this Court, or otherwise completely devoid of merit as not to involve a federal controversy." *Id.* at 1156-57 (internal quotation marks omitted).

The claims set forth as such in the proposed pleadings were all state-law claims. The proposed pleadings did allude to RICO and due-process violations. But the RICO allegations fell short of a colorable claim that any defendant conducted an

"enterprise" through a "pattern" of "racketeering activity." *Bixler v. Foster*, 596 F.3d 751, 760-61 (10th Cir. 2010) (listing RICO elements). And the bulk of the due-process allegations were vague or insubstantial. The most coherent due-process allegation was that the International Code Council violated Ms. Jones's constitutional rights by promulgating its International Property Maintenance Code. Such a claim, however, would be so meritless as to not involve a federal controversy. The proposed pleadings alleged that the Council is a Delaware corporation, not a governmental entity. "[P]rivate conduct, . . . however discriminatory or wrongful, is not subject to the Fourteenth Amendment prohibitions." *Marcus v. McCollum*, 394 F.3d 813, 818 (10th Cir. 2004) (internal quotation marks omitted).

III. Venue

Ms. Jones "believes strongly" that the district court should have transferred the case to the Northern District of California under 28 U.S.C. § 1404(a). Aplt. Opening Br. at 2. She does not identify in the record where any party requested such a transfer, and it appears that none did. *See* Resp. Br. of John Kuehl, Terri Schaeffer, and David C. Laredo at 7 (stating that "no party—including plaintiff—requested such a transfer"). Accordingly, the issue is reviewed only for plain error. *Richison v. Ernest Grp., Inc.*, 634 F.3d 1123, 1130 (10th Cir. 2011). Ms. Jones, however, has not argued for plain error, and "the failure to argue for plain error and its application on appeal . . . surely marks the end of the road for an argument for reversal not first presented to the district court." *Id.* at 1131.

IV. Remaining Issues

Any remaining issues that Ms. Jones intended to assert, including allegations of district court bias, are waived for being inadequately briefed. *See Femedeer v. Haun*, 227 F.3d 1244, 1255 (10th Cir. 2000) ("On appeal, . . . parties must do more than offer vague and unexplained complaints of error. Perfunctory complaints that fail to frame and develop an issue are not sufficient to invoke appellate review." (brackets and internal quotation marks omitted)).

CONCLUSION

The district court's judgment is affirmed. All pending motions and other requests, such as for attorney's fees and costs, are denied.

Entered for the Court

Bobby R. Baldock
Circuit Judge