FILED
United States Court of Appeals
Tenth Circuit

August 27, 2021

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

JERRY ERNEST LOPEZ,

Plaintiff - Appellant,

v.

CACHE COUNTY; JUDGE TERRY MOORE,

Defendants - Appellees.

No. 21-4027
(D.C. No. 1:19-CV-00117-HCN)
(D. Utah)

ORDER AND JUDGMENT*

Before **TYMKOVICH**, Chief Judge, **KELLY** and **HOLMES**, Circuit Judges.

Jerry Ernest Lopez, a former prisoner proceeding pro se, filed an amended complaint under 42 U.S.C. § 1983 against Cache County, Utah and Judge Terry Moore, alleging the County employed Judge Moore, who presided over a case in which Lopez was unconstitutionally convicted and sentenced.[1] The district court

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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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

[1] Because Lopez is pro se, we afford his materials a solicitous construction, but we will not advocate on his behalf, and like all litigants, he must comply with the

dismissed the case on screening for failure to state a claim, *see* 28 U.S.C. § 1915A, and denied Lopez's earlier motions for appointment of counsel and entry of default. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

On appeal, Lopez does not challenge the district court's grounds for dismissing his claims, thereby waiving appellate review of that ruling. *See Nixon v. City & Cnty. of Denver*, 784 F.3d 1364, 1366 (10th Cir. 2015) (recognizing that failure to challenge the district court's reasoning waives appellate review); *Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 841 (10th Cir. 2005) (holding that pro se litigants must follow the same rules of procedure that govern all litigants and that the failure to adequately brief an issue constitutes waiver). Even if he had challenged that ruling, there was no error in dismissing the claims against Cache County because Lopez improperly relied on a *respondeat superior* theory of liability by alleging the County employed Judge Moore. *See Waller v. City & Cnty. of Denver*, 932 F.3d 1277, 1283 (10th Cir. 2019) ("[A] municipality cannot be held liable under § 1983 on a *respondeat superior* theory." (internal quotation marks omitted)). Likewise, the claims against Judge Moore are barred by absolute judicial immunity because they are predicated on alleged action taken in the judge's judicial capacity, with no allegation that the judge acted in the absence of all jurisdiction. *See Stein v. Disciplinary Bd. of Sup. Ct. of N.M.*, 520 F.3d 1183, 1195 (10th Cir. 2008) ("[J]udges are generally immune from suits for money damages" unless "the

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fundamental requirements of our procedural rules. *See Yang v. Archuleta*, 525 F.3d 925, 927 n.1 (10th Cir. 2008).

act is not taken in the judge's judicial capacity" or "when the act, though judicial in nature, is taken in the complete absence of all jurisdiction." (brackets and internal quotation marks omitted)).

Neither did the district court abuse its discretion in denying Lopez's motions for appointment of counsel and entry of default. *See Hill v. SmithKline Beecham Corp.*, 393 F.3d 1111, 1115 (10th Cir. 2004) (reviewing denial of motion for counsel for abuse of discretion); *Bixler v. Foster*, 596 F.3d 751, 761 (10th Cir. 2010) (same regarding motion for default). Lopez says the complexity of this case warranted appointment of counsel, but nothing in the amended complaint is so complex as to suggest an abuse of discretion. And because the district court dismissed this case on screening, without service of either the initial complaint or the amended complaint, the motion for default was premature. *See* Fed. R. Civ. P. 12(a)(1)(A)(i) (specifying time to answer "after being served" the complaint); Fed. R. Civ. P. 15(a)(3) (specifying time to respond "after service" of an amended complaint).

The district court's judgment is affirmed.

Entered for the Court

Paul J. Kelly, Jr.
Circuit Judge