

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

September 16, 2021

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

JAY STEVEN HEIDE,

Plaintiff - Appellant,

v.

JAN SATTERFIELD; CHARLES HART;
CHERYL M. PIERCE; BRITTANY MAE
TOPPER; BOB ALBERT; (LNU) (FNU)
(1); (LNU) (FNU) (2),

Defendants - Appellees.

No. 21-3129
(D.C. No. 5:21-CV-03111-SAC)
(D. Kan.)

ORDER AND JUDGMENT*

Before **MATHESON, BRISCOE, and PHILLIPS**, Circuit Judges.

Pro se Kansas prisoner Jay Steven Heide brought an action under 42 U.S.C. § 1983 against individuals who were involved in his criminal case—two state judges, a county prosecutor, an investigator, and the victim and her parents. He alleged wrongful incarceration and abuse from other inmates and prison staff.

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 This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel.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

The district court screened the complaint under 28 U.S.C. § 1915A and entered a Memorandum and Order to Show Cause (the “MOSC”). It said the claims were subject to dismissal as to (1) the judges based on judicial immunity; (2) the prosecutor based on prosecutorial immunity; (3) the victim and her parents because they did not act under color of state law, as § 1983 requires; and (4) the investigator because Mr. Heide’s civil rights claim, if successful, would imply the invalidity of his criminal conviction, which is barred under *Heck v. Humphrey*, 512 U.S. 477 (1994). ROA at 56-57.

The MOSC directed Mr. Heide to show cause why his complaint should not be dismissed for these reasons. He filed two responses. The district court said they did “not address the deficiencies set forth in the MOSC.” *Id.* at 57. It dismissed the complaint for failure to state a claim, *id.* at 61, and subsequently denied Mr. Heide’s motion for reconsideration under Federal Rule of Civil Procedure 59(e), *id.* at 111.

On appeal, Mr. Heide has filed a brief and a supplemental brief. Although we construe his pro se filings liberally, *see Erickson v. Pardus*, 551 U.S. 89, 94 (2007), we are not required to “fashion . . . arguments for him,” *United States v. Fisher*, 38 F.3d 1144, 1147 (10th Cir. 1994), nor are we to “assume the role of advocate,” *Yang v. Archuleta*, 525 F.3d 925, 927 n.1 (10th Cir. 2008) (quotations omitted); *see also United States v. Pinson*, 584 F.3d 972, 975 (10th Cir. 2009).

As a general rule, a party’s failure to address an issue in the opening brief constitutes waiver of the issue. *See Wyoming v. Livingston*, 443 F.3d 1211, 1216 (10th Cir. 2006) (“Wyoming did not address this issue in its opening appellate brief. The issue

is therefore waived.”); accord *LifeWise Master Funding v. Telebank*, 374 F.3d 917, 927 n.10 (10th Cir. 2004). This rule applies equally to pro se litigants. See *Toevs v. Reid*, 685 F.3d 903, 911 (10th Cir. 2012).

Mr. Heide’s briefs fail to address the reasons why the district court dismissed the complaint or why this court should reverse. He thus has waived the opportunity to contest the district court’s dismissal or its denial of his motion to reconsider on appeal.

Exercising jurisdiction under 28 U.S.C. § 1291, we affirm. We also deny Mr. Heide’s pending motions for release, to appoint counsel, to grant an appeal bond, and to drop charges.

Entered for the Court

Scott M. Matheson, Jr.
Circuit Judge