

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

October 6, 2021

Christopher M. Wolpert
Clerk of Court

EARL CROWNHART,

Plaintiff - Appellant,

v.

AMBER BUCK,

Respondent - Appellee.

No. 20-1410
(D.C. No. 1:20-CV-03304-LTB)
(D. Colo.)

ORDER AND JUDGMENT*

Before **MORITZ**, **BALDOCK**, and **EID**, Circuit Judges.**

Earl Crownhart appeals pro se the district court's dismissal of his action without prejudice pursuant to Fed. R. Civ. P. 41(b).¹ Exercising our jurisdiction under 28 U.S.C. § 1291, we affirm the district court's order of dismissal and

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

** 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.

¹ Because Crownhart is proceeding pro se, we liberally construe his filings. *See United States v. Pinson*, 584 F.3d 972, 975 (10th Cir. 2009). That said, liberally construing a pro se filing does not include supplying additional factual allegations or constructing a legal theory on the appellant's behalf. *See Whitney v. New Mexico*, 113 F.3d 1170, 1173–74 (10th Cir. 1997).

judgment. We also deny Crownhart’s motions: for leave to proceed *in forma pauperis*; to “File Pursuant to 28 U.S.C. 1915 § 28 U.S.C. 1989 Civil Rights 28 U.S.C. § 1983”; to “File Leave of Permission to Change Parties [sic] Name From Amber Buck to Change Parties to grand Jct [sic] Property Management in this Habeas Corpus Action § 2241”; to “Add to the Covid-19 Moratorium to Evict Pursuant to 16 U.S. Code § 5154”; to “File to Amend to Add to Brief Pursuant to 28 U.S.C. 636 4(c)(a), Property 28 U.S.C Chaper [sic] 31 and Rule 32.1”; and “In Response to Order to Show Relief to Seek Money Damages and Pain and Suffering from Eviction.” Finally, we impose a restriction on Mr. Crownhart from appealing *in forma pauperis* the dismissal of cases in which he has disregarded the filing restrictions placed upon him by the district court.

I.

In 2013, the District Court for the District of Colorado permanently enjoined Earl Crownhart from filing pro se actions in the court unless he first obtains leave of court to do so and complies with several filing restrictions. Order of Dismissal and Imposition of Sanctions, *Crownhart v. Suthers*, No. 13-cv-00959-LTB (D. Colo. June 14, 2013), ECF No. 5. Without obtaining leave of court and complying with the filing restrictions, Crownhart filed this pro se action in the District Court for the District of Colorado.

In his complaint, Crownhart alleges the property management of his apartment unlawfully discriminated against him when it evicted him. The district court dismissed his action without prejudice under Fed. R. Civ. P. 41(b) for failing to

comply with the sanction order. The district court also denied Crownhart’s “Motion to File Leave to File with Permisstion [sic] to File without State Councle [sic] to Proceed All Claims Pro Se Pursuant to 28 U.S.C. 1915 in Habeas Corpus Action Pursuant to 2241” and “Prisoner’s Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915.” Last, the district court denied Crownhart *in forma pauperis* status on appeal, certifying that pursuant to 28 U.S.C. § 1915(a)(3) any appeal from the order would not be in good faith. Crownhart now appeals, pro se, the district court’s dismissal of his action.

II.

We review a district court’s dismissal for failure to comply with a court order for abuse of discretion. *Cosby v. Meadors*, 351 F.3d 1324, 1326 (10th Cir. 2003). A district court abuses its discretion when it “makes ‘a clear error of judgment or exceed[s] the bounds of permissible choice in the circumstances.’” *Ecclesiastes 9:10-11-12, Inc. v. LMC Holding Co.*, 497 F.3d 1135, 1143 (10th Cir. 2007) (quoting *McEwan v. City of Norman Parks*, 926 F.2d 1539, 1553–54 (10th Cir. 1991)) (alteration in original). Fed. R. Civ. P. 41(b) determines that “[i]f the plaintiff fails to . . . comply with . . . a court order, a defendant may move to dismiss the action.” Fed. R. Civ. P. 41(b). The rule authorizes a defendant to move for dismissal but “has long been interpreted to permit courts to dismiss actions *sua sponte* for a plaintiff’s failure to . . . comply with the . . . court’s orders.” *Olsen v. Mapes*, 333 F.3d 1199, 1204 n.3 (10th Cir. 2003). “Although a district court must consider certain criteria before dismissing an action with prejudice for failing to comply with an order, it may

dismiss without prejudice ‘without attention to any particular procedures.’” *Smith v. United States*, 697 F. App’x 582, 583 (10th Cir. 2017) (mem.) (unpublished) (quoting *Nasious v. Two Unknown B.I.C.E. Agents*, 492 F.3d 1158, 1162 (10th Cir. 2007)).

We conclude the district court did not abuse its discretion when it dismissed Crownhart’s action without prejudice because Crownhart, in violation of the 2013 sanction order, did not obtain leave of the court and comply with the filing requirements to file this pro se action.

Moreover, Crownhart on appeal does not address the district court’s reasoning for dismissing his action. Instead, he replicates the arguments he made to the district court concerning the merits of his discrimination claim. Crownhart in turn forfeits any arguments challenging the dismissal by the district court. *See Bronson v. Swensen*, 500 F.3d 1099, 1104 (10th Cir. 2007) (“[T]he omission of an issue in an opening brief generally forfeits appellate consideration of that issue.”). We ultimately conclude the district court did not abuse its discretion when it dismissed Crownhart’s action without prejudice.

III.

We also deny Crownhart’s motion to proceed *in forma pauperis*. To proceed *in forma pauperis*, litigants must show a “reasoned, nonfrivolous argument on the law and facts in support of the issues raised in the action.” *Lister v. Dep’t of the Treasury*, 408 F.3d 1309, 1312 (10th Cir. 2005). As Crownhart does not present any law or facts to challenge the district court’s dismissal order, we conclude that his appeal is frivolous. We accordingly deny Crownhart’s motion for leave to proceed *in*

forma pauperis. We also deny as frivolous Crownhart’s motions: to “File Pursuant to 28 U.S.C. 1915 § 28 U.S.C. 1989 Civil Rights 28 U.S.C. § 1983”; to “File Leave of Permission to Change Parties [sic] Name From Amber Buck to Change Parties to grand Jct [sic] Property Management in this Habeas Corpus Action § 2241”; to “Add to the Covid-19 Moratorium to Evict Pursuant to 16 U.S. Code § 5154”; to “File to Amend to Add to Brief Pursuant to 28 U.S.C. 636 4(c)(a), Property 28 U.S.C Chapter [sic] 31 and Rule 32.1”; and “In Response to Order to Show Relief to Seek Money Damages and Pain and Suffering from Eviction.”

IV.

Furthermore, we find that Mr. Crownhart has needlessly burdened this court with excessive and vexatious filings. As such, we impose a restriction on Mr. Crownhart from appealing *in forma pauperis* the dismissal of cases in which he has disregarded the filing restrictions placed upon him by the district court. As we have previously observed, “Crownhart is no stranger to this court.” *Crownhart v. T-Mobile Wireless Customer Serv.*, 840 F. App’x 368, 369 (10th Cir. 2021). Crownhart’s “lengthy and abusive” filing history is well-documented. *See id.* (“[Crownhart’s] litigiousness has spanned fifteen-plus years and totals well over fifty suits.”); *Crownhart v. May*, 556 F. App’x 758, 760 n.3 (10th Cir. 2014) (describing the “ever-growing heap of federal-court filings by Crownhart”); *Crownhart v. Suthers*, 531 F. App’x 906, 906 (10th Cir. 2013) (noting the district court’s observation that Crownhart had filed eighteen habeas petitions and seventeen complaints since December 2005, and that all of them contained pleadings that were

unresponsive and unintelligible). Due to that history, the U.S. District Court for the District of Colorado has twice imposed filing restrictions upon Crownhart.

Crownhart v. Suthers, No. 13-CV-00959-BNB (D. Colo. June 14, 2013) (order imposing filing restrictions); *Crownhart v. T-Mobile Wireless Customer Serv.*, No. 20-CV-03046-LTB (D. Colo. Mar. 24, 2021) (order imposing supplemental filing restrictions).

Recently, we noted a “pattern where Mr. Crownhart makes little or no attempt to satisfy the district court’s filing restrictions and then appeals to this court without ever addressing the reasons for the initial dismissal.” *Crownhart v. Shield Found.*, Nos. 21-1077 & 21-1230, 2021 WL 4205300, at *2 (10th Cir. Sept. 16, 2021). Based on this pattern “and the resultant drain on judicial resources from these frivolous appeals,” we warned Crownhart that “additional filings of this nature will result in an order restricting him from appealing *in forma pauperis* the dismissal of cases in which he makes no effort to comply with the district court’s filing restrictions.” *Id.* Including this matter, each of the fourteen appeals Crownhart has filed since December 2019 is part of the aforementioned pattern. To date, this court has affirmed the district court or entered dismissal orders in twelve of the thirteen appeals that have been resolved.

“The right of access to the courts is neither absolute nor unconditional.” *Winslow v. Hunter (In re Winslow)*, 17 F.3d 314, 315 (10th Cir. 1994) (per curiam) (brackets and internal quotation marks omitted). “Federal courts have the inherent power to regulate the activities of abusive litigants by imposing carefully tailored

restrictions under appropriate circumstances.” *Ysais v. Richardson*, 603 F.3d 1175, 1180 (10th Cir. 2010). Filing restrictions are appropriate where the litigant’s lengthy and abusive history is set forth; the court provides guidelines as to what the litigant may do to obtain its permission to file an action; and the litigant receives notice and an opportunity to oppose the court’s order before it is implemented. *Id.*

Although “litigiousness alone is not a sufficient reason to restrict access to the court,” Crownhart’s “abusive and repetitive filings have strained the resources of this court.” *In re Winslow*, 17 F.3d at 315. As stated above, he has filed more than fifty lawsuits over the past fifteen-plus years, and he is under filing restrictions in the U.S. District Court for the District of Colorado. “[W]here . . . a party has engaged in a pattern of litigation activity which is manifestly abusive, restrictions are appropriate.” *Id.* (internal quotation marks omitted).

Consequently, we propose to restrict Crownhart from appealing *in forma pauperis* the dismissal of cases in which he makes no demonstrable effort to comply with the specific requirements set forth in the filing restrictions imposed upon him by the U.S. District Court for the District of Colorado. Crownhart shall have ten days from the date of this order and judgment to file written objections, limited to ten pages, to these proposed restrictions. Unless this court orders otherwise upon review of any objections, the restrictions shall take effect twenty days from the date of this order and judgment and shall apply to any appeal filed by Crownhart after that time.

V.

For the foregoing reasons, we AFFIRM the district court's dismissal of Crownhart's action and DENY Crownhart's motions: for leave to proceed *in forma pauperis*; to "File Pursuant to 28 U.S.C. 1915 § 28 U.S.C. 1989 Civil Rights 28 U.S.C. § 1983"; to "File Leave of Permission to Change Parties [sic] Name From Amber Buck to Change Parties to grand Jct [sic] Property Management in this Habeas Corpus Action § 2241"; to "Add to the Covid-19 Moratorium to Evict Pursuant to 16 U.S. Code § 5154"; to "File to Amend to Add to Brief Pursuant to 28 U.S.C. 636 4(c)(a), Property 28 U.S.C Chaper [sic] 31 and Rule 32.1"; and "In Response to Order to Show Relief to Seek Money Damages and Pain and Suffering from Eviction."

We also propose to restrict Crownhart from appealing *in forma pauperis* cases dismissed by the district court on the basis of Mr. Crownhart's flagrant disregard for the restrictions placed upon him. Consistent with the parameters for objecting we have provided to Mr. Crownhart *supra*, the restrictions shall take effect twenty days from the date of this order and judgment and shall apply to any appeal filed by Crownhart after that time.

Entered for the Court

Allison H. Eid
Circuit Judge