

**FILED**

**United States Court of Appeals  
Tenth Circuit**

**UNITED STATES COURT OF APPEALS**

**July 17, 2023**

**FOR THE TENTH CIRCUIT**

**Christopher M. Wolpert  
Clerk of Court**

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JARROD LOWREY,

Plaintiff - Appellant,

v.

SANDOVAL COUNTY CHILDREN  
YOUTH AND FAMILIES  
DEPARTMENT; CANTRELL MOSLEY,  
of Sandoval County CYFD, in her personal  
capacity acting under color of state law;  
BRENDA MADRID, of Sandoval County  
CYFD, in her personal capacity acting  
under color of state law; MISTY  
WILLIAMS, of Sandoval County CYFD,  
in her personal capacity acting under color  
of state law; JENNIFER BARTLESON, of  
Sandoval County CYFD, in her personal  
capacity acting under color of state law;  
JONATHAN CRESPIAN, of Sandoval  
County Sheriffs, in his personal capacity  
acting under color of state law; JOSHUA  
WILCKEN, of Sandoval County Sheriffs,  
in his personal capacity acting under color  
of state law; B. SANCHEZ, (SC93156), of  
Sandoval County Sheriffs, in his personal  
capacity acting under color of state law;  
JOHN CASTANEDA, of Sandoval County  
Sheriffs, in his personal capacity acting  
under color of state law,

Defendants - Appellees.

No. 23-2035  
(D.C. No. 1:22-CV-00565-DHU-LF)  
(D.N.M.)

**ORDER AND JUDGMENT\***

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Before **BACHARACH, KELLY, and MORITZ**, Circuit Judges.\*\*

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Plaintiff-Appellant Jarrod Lowrey appeals from the dismissal without prejudice of his case pursuant to Fed. R. Civ. P. 41(b). R. 257. The district court dismissed because Mr. Lowrey did not heed the court's directive to file a second amended complaint not exceeding 35 pages. Lowrey v. Sandoval Cnty. Children, Youth & Fams. Dep't, No. 1:22-cv-00565-DHU-LF, 2023 WL 2499716 at \* 4 (Mar. 14, 2023). Our jurisdiction arises under 28 U.S.C. § 1291, and we affirm.

Background

Mr. Lowrey's original complaint was 96 pages long with 539 paragraphs. The magistrate judge ordered Mr. Lowrey to file an amended complaint of no more than 35 pages, ordered him to show cause why his request for injunctive relief should not be denied, and denied his request for immediate discovery. R. 102–107. Mr. Lowrey then objected and filed a longer amended complaint that was 98 pages and 547

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\* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

paragraphs. R. 108. Defendants filed motions to dismiss based upon Mr. Lowrey's non-compliance with the magistrate judge's order. R. 213, 216. Mr. Lowrey then sought to strike the Defendants' motions to dismiss pursuant to Rule 12(f).

At this point, the district court overruled Mr. Lowrey's objections, ordered him to file a second amended complaint with a 35-page limit within 14 days, and denied the Defendants' motions to dismiss and Mr. Lowrey's motion to strike as moot.

Lowrey v. Sandoval Cnty. Children, Youth & Fams. Dep't, No. 1-22-cv-00565-DHU-LF, 2022 WL 17250377 at \*3 (Nov. 28, 2022). After having been warned that a failure to comply with the court's order to file a second amended complaint may result in dismissal, Mr. Lowrey did not file one and renewed his objections. R. 233.

Defendants again filed motions to dismiss based on Mr. Lowrey's non-compliance with the court's order. Mr. Lowrey did not respond to the motions to dismiss.

Thereafter, the district court overruled Mr. Lowrey's objections and granted the Defendants motions to dismiss without prejudice.

On appeal, Mr. Lowrey argues that (1) the assigned magistrate judge exceeded her jurisdiction by making judgments about the pleadings, ruling on injunctive relief, and ordering a litigant to downsize his complaint, (2) opposing counsel never sought a more definite statement, Fed. R. Civ. P. 12(e), or any other grounds under Rule 12, so they have waived the right to seek dismissal particularly in light of Rule 12(g)(2), (3) the district court erred in granting a Rule 41(b) dismissal because Mr. Lowrey complied with the orders of the court, (4) the district

court did not articulate sufficient reasons as to why the complaint was too long, (5) the district court did not consider the totality of the circumstances, and (6) the district court erred by dismissing the case, having rejected grounds supporting dismissal previously. Aplt. Br. at 3–4.

### Discussion

Our review is for an abuse of discretion. Nasious v. Two Unknown B.I.C.E. Agents, 492 F.3d 1158, 1161 (10th Cir. 2007). No particular procedure need be followed when the district court dismisses without prejudice for non-compliance with Fed. R. Civ. P. 8(a)(2) which requires that a complaint contain “a short and plain statement of the claim showing the pleader is entitled to relief.” See Nasious, 492 F.3d at 1162–63.

Given a referral for non-dispositive pretrial matters, a magistrate judge may point out deficiencies in the complaint, order a litigant to show cause, or consider a request for immediate discovery. See 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a). Mr. Lowrey’s remedy was to object, which he did. Id. We agree with the County Defendants that the magistrate judge’s order is not appealable in and of itself. See Phillips v. Beierwaltes, 466 F.3d 1217, 1222 (10th Cir. 2006). Indeed, Mr. Lowrey’s notice of appeal confirms that he is only appealing the order of the district court dismissing his case. R. 257. The stated basis for that order is “the Plaintiff’s willful failure to comply with the . . . [o]rder to file a second amended complaint not exceeding 35 pages.” Lowrey, 2023 WL 2499716 at \*4.

Mr. Lowrey's arguments concerning Defendants' claimed non-compliance with Rule 12 are misplaced because the relevant motions sought dismissal under Rule 41(b). Defendants' initial motions claimed that Mr. Lowrey violated the magistrate judge's order by filing an even longer first amended complaint that did not comply with Rule 8(a)(2). R. 213–20. After those motions were denied as moot, and Mr. Lowrey did not file a second amended complaint as directed by the district court, Defendants again moved for dismissal under Rule 41(b). R. 240–48. The fact that Defendants urged grounds for dismissal initially noticed by the magistrate judge, namely the overlong nature of the complaint, is of no moment. Mr. Lowrey is incorrect that the Defendants or the district court were somehow bound by the initial order denying the initial motions to dismiss. Moreover, the initial motions to dismiss were denied on mootness grounds, not on the merits. Regardless, the district court's first order denying the initial motions to dismiss was plainly interlocutory and additional grounds prompted the subsequent motions to dismiss.

Although Mr. Lowrey was entitled to object the magistrate judge's order, once those objections were overruled Mr. Lowrey did not comply with the district court's order to file a second amended complaint. Although Mr. Lowrey argues that he timely complied with the reasonable components of the order, he did not have the option to disregard the portion he deemed unreasonable.

Rule 8(d)(1) requires "simple, concise, and direct" allegations. The

complaint “must explain what each defendant did to him or her; when the defendant did it; how the defendant's action harmed him or her; and, what specific legal right the plaintiff believes the defendant violated.” Nasious, 492 F.3d at 1163. The purpose of these requirements is to provide notice to a defendant for preparing a defense and sufficient clarity for the court to adjudicate the merits. Id. Although Mr. Lowrey argues that the district court did not provide sufficient reasons why the complaint was too long, we disagree. The sheer length of the complaint makes it difficult to determine precisely what material facts support the various claims made.

We reject the argument that the district court did not consider the totality of the circumstances including Mr. Lowrey’s pro-se status, the delay caused, the cost involved, and considerations of justice. While a pro-se complaint is construed liberally, all litigants must follow the rules of procedure which are designed and administered “to secure the just, speedy, and inexpensive” resolution of cases for all parties, Fed. R. Civ. P. 1. The district court weighed the circumstances and decided in favor of a dismissal without prejudice (rather than with prejudice) given the early stages of the case and the preference for resolving cases on the merits. It did not abuse its discretion.

AFFIRMED.

Entered for the Court

Paul J. Kelly, Jr.  
Circuit Judge