

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

October 23, 2024

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

J.T. RICH,

Plaintiff - Appellant,

v.

STEPHENS COUNTY; DEXTER LAWLEY, individual capacity as captain and internal affairs officer; CHEYENNE UNDERWOOD, individual capacity as Public Defender for Stephens County; CORY FAULK, individual capacity, Chief of Police over the Comanche P.D. in Oklahoma; BILL STRALEY, in his individual capacity and his official capacity as former chief of Police of Comanche, OK P.D./ Arresting officer; CORTNIE SIESS, in her individual capacity and official capacity as assistant District Attorney; JERRY HARBURGER, in his individual capacity and official capacity as preliminary magistrate for Stephens County District Courts; JAVIER MARTINEZ, in his individual capacity and official capacity as Jail Administrator, Paralegal Officer for county jail; TERRI TURLEY, in her individual capacity and official capacity as Jail Administrator; EVA GRAY, in her individual capacity and official capacity as Jail Administrator; BRUCE PITTMAN, in his individual capacity and official capacity as Detention Officer of Stephens County Jail; CHRISTY BAIRD, in her individual capacity and official capacity as Supervisor and Detention Officer of Stephens County Jail; BRENT RUSSELL, in his individual capacity and official capacity as presiding

No. 24-6016
(D.C. No. 5:23-CV-00883-J)
(W.D. Okla.)

judge of the Fifth Judicial District Court of Stephens County; CHRISTIN ELIZABETH ENSEY, individual, accuser of wrongful allegations; KEITH ERLS, in his individual capacity and official capacity as former detention officer of Stephens County Jail,

Defendants - Appellees.

ORDER AND JUDGMENT*

Before **PHILLIPS, MURPHY, and CARSON**, Circuit Judges.

Plaintiff J.T. Rich, proceeding *pro se*, appeals the district court’s dismissal of his complaint. The district court dismissed Plaintiff’s complaint for failure to comply with Federal Rule of Civil Procedure 8(a)(2). Exercising jurisdiction under 28 U.S.C. § 1291, we conclude Plaintiff’s arguments are wholly without merit. The district court’s dismissal is so plainly correct and the legal authority contrary to Plaintiff’s position is so clear that his appeal is frivolous.¹ We, therefore, dismiss the appeal. We also deny Plaintiff’s motion *in forma pauperis*.

* 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 An appeal is frivolous when, *inter alia*, “the judgment by the tribunal below was so plainly correct and the legal authority contrary to appellant’s position so clear that

I.

Plaintiff, a prisoner detained at the Stephens County Jail in Duncan, Oklahoma, brought a claim under 42 U.S.C. § 1983. After reviewing the complaint, the district court ordered Plaintiff to file an amended complaint to cure deficiencies by submitting one document that contains all allegations as it relates to defendants and the relief sought. Plaintiff filed his First Amended Complaint under 42 U.S.C. § 1983 and alleged that Defendants prohibited him from filing an official complaint against his arresting officer, receiving a fair preliminary tribunal, and using a law library or paralegal. Plaintiff further alleged that Defendants prevented him from firing his attorney, denied him access to medical care, and denied him protections the government owes to prisoners. Pursuant to 28 U.S.C. § 1915A(a), the district court screened Plaintiff's First Amended Complaint and determined that Plaintiff failed to state a claim as required in Federal Rule of Civil Procedure Rule 8(a)(2). The district court found Plaintiff failed to "make clear exactly *who* is alleged to have done *what* to *whom*, to provide each individual with fair notice as to the basis of the claims against him." Rich v. Stephens Cnty., No.CIV-23-883-J, 2024 WL 382201, at *1 (W.D. Okla. Jan. 31, 2024) (quoting Robbins v. Oklahoma, 519 F.3d 1242, 1250 (10th Cir. 2008)). The district court dismissed his First Amended Complaint without prejudice. Plaintiff appeals.

there is really no appealable issue." Finch v. Hughes Aircraft Co., 926 F.2d 1574, 1578-79 (7th Cir. 1991).

II.

We review de novo the district court’s decision to dismiss a complaint for failure to state a claim upon which relief may be granted—including when the dismissal occurs during the 28 U.S.C. § 1915(A)(a) screening process. Young v. Davis, 554 F.3d 1254, 1256 (10th Cir. 2009) (citing McBride v. Deer, 240 F.3d 1287, 1289 (10th Cir. 2001)). “We must accept all the well-pleaded allegations of the complaint as true and must construe them in the light most favorable to the plaintiff.” Id. (quoting Alvarado v. KOB-TV, L.L.C., 493 F.3d 1210, 1215 (10th Cir. 2007)).

Rule 8(a)(2) requires that complaints contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). “The burden is on the plaintiff to frame a ‘complaint with enough factual matter (taken as true) to suggest’ that he or she is entitled to relief.” Robbins, 519 F.3d at 1247 (10th Cir. 2008) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 556 (2007)).

Allegations against multiple defendants must specify which individuals “have done *what* to *whom*, to provide each individual with fair notice as to the basis of the claims against him.” Id. at 1250. (citing Twombly, 550 U.S. at 565–66 n.10). The district court may properly dismiss a *pro se* complaint for failure to state a claim “where it is obvious that the plaintiff cannot prevail on the facts he has alleged and it would be futile to give him an opportunity to amend.” Curley v. Perry, 246 F.3d 1278, 1281 (10th Cir. 2001) (quoting Perkins v. Kansas Dep't of Corrections, 165 F.3d 803, 806 (10th Cir. 1999)).

Plaintiff's complaint contains nothing more than a list of defendants and general allegations and, therefore, does not comply with Rule 8. The district court warned Plaintiff that his amended complaint had to specify how each Defendant had personally participated in the alleged constitutional violations. Although he attempted to cure his Rule 8 deficiencies, Plaintiff failed because the complaint merely contains conclusory allegations amounting to nothing more than vague and unsupported claims against Defendants. See Robbins, 519 F.3d at 1246–47 (10th Cir. 2008) (holding that conclusory allegations are not sufficient for the Rule 8(a) pleading standard). Thus, Plaintiff's complaint failed to put the Defendants on notice of the specific claims against them. Id. at 1250 (discussing how the plaintiff has the burden “to provide fair notice of the grounds for the claims made against each” defendant).

Even though we “liberally construe” *pro se* pleadings, Plaintiff's complaint must comply with Rule 8 and allege who did what to whom, which Plaintiff failed to do. James v. Wadas, 724 F.3d 1312, 1315 (10th Cir. 2013) (citing Garrett v. Selby Connor Maddux & Janer, 425 F.3d 836, 840 (10th Cir. 2005)). We will “not act as his advocate” when interpreting Plaintiff's pleadings. Id. (citing Garrett, 425 F.3d at 840).

The district court properly dismissed Plaintiff's frivolous claims. And on appeal, Plaintiff continues to advocate a frivolous position. We thus DISMISS this appeal as frivolous. We further DENY Plaintiff's motion to proceed *in forma pauperis* and remind Plaintiff of his obligation make full and immediate payment of

his appellate filing fees. Ford v. Pryor, 552 F.3d 1174, 1180 (10th Cir. 2008) (“An appeal is frivolous when the result is obvious, or the appellant's arguments of error are wholly without merit.”) (quoting Braley v. Campbell, 832 F.2d 1504, 1510 (10th Cir. 1987)).

Pursuant to 28 U.S.C. § 1915(g), a prisoner earns a “strike” when the court dismisses his claim “as frivolous, malicious, or for failure to state a claim”. Thomas v. Parker, 672 F.3d 1182, 1183 (10th Cir. 2012) (quoting 28 U.S.C. § 1915(g)).

Although a dismissal based on Rule 8(a) normally does not constitute a strike, repeated violations of Rule 8(a) will count as a strike. Paul v. Marberry, 658 F.3d 702, 705 (7th Cir. 2011). When the district court offers an opportunity for plaintiff to amend an unintelligible complaint to comply with Rule 8(a) and the plaintiff still fails to do so in the amended complaint, the district court dismisses for failure to state a claim. Id. So both that dismissal and Plaintiff’s frivolous appeal count as a strike against Plaintiff. Jennings v. Natrona Cnty. Ctr. Med. Facility, 175 F.3d 775, 780 (10th Cir. 1999), overruled in part on other grounds, Coleman v. Tollefson, 575 U.S. 532 (2015). We advise Plaintiff that if he accrues three strikes, 28 U.S.C. § 1915(g) will bar him from proceeding *in forma pauperis* in any civil action filed in federal court unless the court determines an “imminent danger of serious physical injury” exists. 28 U.S.C. § 1915(g).

Entered for the Court

Joel M. Carson III
Circuit Judge