

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

August 25, 2026

Christopher M. Wolpert
Clerk of Court

MARQUISE MILLER,

Plaintiff - Appellant,

v.

TIMOTHY D. DEGIUSTI, District
Judge, in his individual capacity,

Defendant - Appellee.

No. 25-6120
(D.C. No. 5:25-CV-00301-SWS)
(W.D. Okla.)

ORDER AND JUDGMENT*

Before **TYMKOVICH**, **McHUGH**, and **FEDERICO**, Circuit Judges.

Marquise Miller, appearing pro se,¹ appeals the district court's dismissal with prejudice of his lawsuit against Federal District Court Chief

* 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This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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 Federal Rule of Appellate Procedure 32.1 and Tenth Circuit Rule 32.1.

¹ Because Miller proceeds pro se, “we liberally construe his filings, but we will not act as his advocate.” *James v. Wadas*, 724 F.3d 1312, 1315 (10th Cir. 2013).

Judge Timothy DeGiusti, in his individual capacity. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

I

Miller sued Chief Judge DeGiusti alleging various constitutional and other claims. Chief Judge DeGiusti moved to dismiss under Federal Rule of Civil Procedure 12(b)(6) based on absolute judicial immunity. Miller responded to the motion, moved to strike the motion to dismiss, and moved to stay proceedings pending resolution of the motion to strike. Miller had also filed a motion for summary judgment early in the proceedings.

The district court determined the conduct about which Miller complained occurred while Chief Judge DeGiusti presided over a case Miller brought against Legacy Bank (the Legacy Bank Case). So, all of Miller's claims arose out of Chief Judge DeGiusti's conduct while acting in his judicial capacity. The district court concluded that absolute judicial immunity barred Miller's claims, dismissed the case with prejudice, and denied all pending motions. Miller appealed.

II

We review de novo a district court's Rule 12(b)(6) dismissal for failure to state a claim. *Stark v. Reliance Standard Life Ins. Co.*, 142 F.4th 1252, 1256 (10th Cir. 2025). "Our task is to assess whether the plaintiff's complaint alone is legally sufficient to state a claim for which relief may be

granted.” *Id.* (internal quotation marks omitted). In doing so, “we must accept all the well-pleaded allegations of the complaint as true and must construe them in the light most favorable to” Miller. *Waller v. City & Cnty. of Denv.*, 932 F.3d 1277, 1282 (10th Cir. 2019) (internal quotation marks omitted). Although a district court typically considers only the allegations in the complaint, it “may consider documents referred to in the complaint if the documents are central to plaintiff’s claim[s] and the parties do not dispute the documents’ authenticity.” *Hampton v. root9B Techs., Inc.*, 897 F.3d 1291, 1297 (10th Cir. 2018) (internal quotation marks omitted). And a court need not “accept as true a legal conclusion couched as a factual allegation” or “factual allegations that contradict a properly considered document.” *Peterson v. Martinez*, 707 F.3d 1197, 1206 (10th Cir. 2013) (ellipsis and internal quotation marks omitted).

Miller raises eleven issues on appeal but at bottom there are two challenges: (1) whether the district court erred when it ruled that absolute judicial immunity barred his claims against Chief Judge DeGiusti and dismissed the case; and (2) whether the district court abused its discretion when it denied his pending motions due to the dismissal.

Federal judges are absolutely immune from lawsuits grounded in the performance of their judicial function. *See Forrester v. White*, 484 U.S. 219, 225 (1988) (“[J]udicial immunity was the settled doctrine of the English

courts for many centuries, and has never been denied, that we are aware of, in the courts of this country.” (internal quotation marks omitted)); *Stump v. Sparkman*, 435 U.S. 349, 355-56 (1978) (“A judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority.”). Judicial immunity does not apply in two circumstances: (1) when the act is non-judicial and (2) when the judge acts “in the complete absence of all jurisdiction.” *Mireles v. Waco*, 502 U.S. 9, 11-12 (1991). To determine whether immunity applies, we consider whether the challenged conduct was judicial and whether the judge had subject matter jurisdiction when the challenged conduct occurred. *Van Sickle v. Holloway*, 791 F.2d 1431, 1435 (10th Cir. 1986).

Miller challenges rulings and orders Chief Judge DeGiusti made while he was presiding over the Legacy Bank Case in his judicial capacity. Miller does not dispute that the United States District Courts, and therefore Chief Judge DeGiusti, properly had jurisdiction over his claims in the Legacy Bank Case. Instead, he appears to challenge the district court’s decision to take judicial notice of the Legacy Bank Case filings in concluding Chief Judge DeGiusti had jurisdiction and was acting in his judicial capacity.

Because Miller does not challenge the district court’s observation that Chief Judge DeGiusti and the District Court for the Western District of

Oklahoma had jurisdiction over the Legacy Bank Case, we conclude he has waived any argument challenging it. *See Sawyers v. Norton*, 962 F.3d 1270, 1286 (10th Cir. 2020) (“Issues not raised in the opening brief are deemed abandoned or waived.” (internal quotation marks omitted)). And because Miller moved the district court to take judicial notice of all ECF docket entries in the Legacy Bank Case since “they are from this very court’s records,” R. at 100, he is judicially estopped from claiming any error in the district court’s decision to take judicial notice of the Legacy Bank Case filings. *See Queen v. TA Operating, LLC*, 734 F.3d 1081, 1087 (10th Cir. 2013) (observing judicial estoppel is appropriate when “a party’s subsequent position [is] clearly inconsistent with its former position.” (internal quotation marks omitted)).

After analyzing each of Miller’s claims, the district court concluded that Chief Judge DeGiusti had jurisdiction over the Legacy Bank Case and that Miller’s factual allegations cannot be construed to conclude Chief Judge DeGiusti took any nonjudicial action. After de novo review, we see no error in the district court’s analysis, and we conclude the court correctly determined Chief Judge DeGiusti is entitled to absolute judicial immunity.

Miller’s remaining challenges concern other motions that were pending when the district court determined judicial immunity barred his suit. But because judicial immunity applies, and because such immunity “is

an immunity from suit, not just from ultimate assessment of damages,”
Mireles, 502 U.S. at 11, any challenge to the denied motions is moot.

III

We affirm the district court’s judgment. We deny all pending motions.

Entered for the Court

Richard E.N. Federico
Circuit Judge