

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

September 23, 2026

Christopher M. Wolpert
Clerk of Court

JABARI J. JOHNSON,

Plaintiff - Appellant,

v.

JOAQUIN REYNA; BRETT CORBIN,

Defendants - Appellees.

No. 25-1080
(D.C. No. 1:20-CV-00459-PAB-CYC)
(D. Colo.)

ORDER AND JUDGMENT*

Before **MATHESON, CARSON**, and **ROSSMAN**, Circuit Judges.

Jabari Johnson, proceeding pro se¹, appeals the district court's dismissal of his 42 U.S.C. § 1983 action under Federal Rule of Civil Procedure 41(b) for failing to appear at his deposition. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

* 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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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 Because Johnson proceeds pro se, we construe his arguments liberally, but we “cannot take on the responsibility of serving as [his] attorney in constructing arguments and searching the record.” *Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005).

I

Johnson is a prisoner currently incarcerated at Colorado Territorial Correctional Facility in Cañon City, Colorado. In 2018, he was incarcerated at the Limon Correctional Facility in Limon, Colorado. Based on events at the Limon facility, he sued in federal district court alleging violations of his Eighth and Fourteenth Amendment rights by three employees of the Colorado Department of Corrections (CDOC). The defendants moved to dismiss the complaint under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).

The district court granted the motions to dismiss. But on appeal, we reversed in part, reviving Johnson’s § 1983 claims against two defendants: Joaquin Reyna and Brett Corbin.² See *Johnson v. Reyna*, 57 F.4th 769, 779 (10th Cir. 2023) (“We affirm the district court’s dismissal of Johnson’s § 1983 complaint against Wargo. But we reverse the district court’s dismissal of Johnson’s § 1983 complaint against Reyna and Corbin and remand for further proceedings.”).³

² In the caption to the district court’s order that Johnson is appealing, the two individual defendants are identified only by the last names “Reyna” and “Korin.” See R. vol. 2 at 163. This differs from the characterization of those same two individual defendants in this court’s prior decision in the same case. See *Johnson v. Reyna*, 57 F.4th 769, 772 (10th Cir. 2023) (describing defendants as “Sergeant Joaquin Reyna, [and] Lieutenant Brett Corbin.”); *id.* at n.2 (“Johnson misspelled Corbin’s name in the complaint as ‘Korin.’ We use the spelling provided by Corbin’s counsel.”).

The case caption and textual reference have been changed to be consistent with the full names as specified in the Response Brief: Joaquin Reyna and Brett Corbin.

³ In *Johnson*, this court detailed the allegations giving rise to the §1983 claim. See 57 F.4th at 772–73.

Following remand, the district court opened discovery. During discovery, Reyna and Corbin moved to conduct a video deposition of Johnson. The district court granted their motion, and the parties ultimately scheduled the deposition to take place on October 18, 2023, at Colorado State Penitentiary (CSP) (the facility where Johnson was housed). But on the day of the deposition, Johnson refused to appear.

On October 23, 2023, Johnson filed a document the magistrate judge construed as a request for an order compelling CSP (then a nonparty) to provide him with a wheelchair for his deposition. Four days later, Reyna and Corbin moved to dismiss the action pursuant to Rule 41(b) for Johnson’s failure to attend his deposition. In his response to that motion, Johnson attached a single-page document from the CSP dispensary dated February 15, 2023 which states, in relevant part, “your file states you do have a wheelchair accommodation.” R. vol. 1 at 178. The magistrate judge denied Johnson’s October 23 request for a wheelchair at his deposition, finding there was “no legal basis to support such an order.” *Id.* at 25.

The magistrate judge recommended the district court grant the motion to dismiss under Rule 41(b). The dismissal sanction, the magistrate judge reasoned, was appropriate under the factors in *Mobley v. McCormick*, 40 F.3d 337, 340–41 (10th Cir. 1994), which guide the exercise of a court’s discretion under Rule 41(b). Discussing Johnson’s culpability, the magistrate judge considered his litigation history⁴ and evidence Reyna and Corbin submitted indicating Johnson—despite his

⁴ As we have explained, Johnson “is a prolific pro se litigant. By his own count, he has brought over sixty civil suits against prison officials under the Eighth

claims to the contrary—did not medically require a wheelchair. This evidence included an affidavit from a CSP Health Services Administrator confirming CDOC clinical staff had not approved Johnson to use a wheelchair and that “an updated Psychological Evaluation of [Johnson] completed in November of 2022 . . . finds [Johnson] appears to be intentionally fabricating or grossly exaggerating physical symptoms in regard to his foot injury and mobility.” R. vol. 1 at 232 (internal quotation marks omitted). Relatedly, an affidavit from CSP’s Litigation Coordinator stated, “evidence gathered by CDOC confirms that [Johnson] is very capable of standing, walking and moving around when he decides that he wants to do so.” *Id.* at 233 (internal quotation marks omitted). As to the CSP dispensary note on which Johnson relied to claim indefinite entitlement to a wheelchair, the magistrate judge concluded Reyna and Corbin “made a convincing argument that [it] was fraudulent.” *Id.* at 230. The magistrate judge also found that, “[i]n addition to the issues surrounding [Johnson]’s request for a wheelchair and his refusal to attend his deposition, the record demonstrates that [Johnson] has periodically refused to accept Court mail.” *Id.* at 233.

Johnson timely objected to the magistrate judge’s recommendation. In his objection, he challenged the court’s refusal to continue the deposition and the denial of his wheelchair request. The district court reviewed and overruled the objections,

and Fourteenth Amendments.” 57 F.4th at 772. And his complaints have been dismissed for similar reasons. *See id.* (“Except for those complaints that are still pending, all of Johnson’s complaints have been dismissed on grounds that he failed to prosecute or failed to comply with court orders or procedural rules.”).

stating it “share[d] the magistrate judge’s view that the exhibit . . . which [Johnson] claims shows his indefinite right to a wheelchair[] is likely fraudulent.” R. vol. 2 at 171. The court therefore dismissed the action pursuant to Fed. R. Civ. P. 41(b). This appeal followed.

II

Federal Rule of Civil Procedure 41(b) provides: “If the plaintiff fails to . . . comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it.” We review the district court’s dismissal under Rule 41(b) for abuse of discretion. *See Mobley*, 40 F.3d at 340 (treating an order of dismissal as an involuntary dismissal and reviewing for abuse of discretion). In so doing, we review the district court’s factual findings for clear error. *See Crawford v. Ne. Okla. State Univ.*, 713 F.2d 586, 588 (10th Cir. 1983) (“In granting a dismissal under Rule 41(b), the trial court may . . . make findings of fact. When a trial court does so, its findings of fact are reversible only if clearly erroneous.”). A finding of fact is “clearly erroneous” when “although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.” *Anderson v. City of Bessemer City*, 470 U.S. 564, 573 (1985) (quotations omitted). “Where there are two permissible views of the evidence, the factfinder’s choice between them cannot be clearly erroneous.” *Id.*

On appeal, Johnson challenges the district court’s denial of his request to order prison officials at CSP to provide him with a wheelchair. Relatedly, he challenges

the district court’s finding that he lacked a legitimate excuse for failing to appear at his scheduled deposition. We are not persuaded.

In *Mobley*, we described criteria a district court can consider in deciding whether involuntary dismissal under Rule 41(b) is proper in a given case:

- (1) the degree of actual prejudice to the defendant;
- (2) the amount of interference with the judicial process;
- (3) the culpability of the litigant;
- (4) whether the court warned the party in advance that dismissal of the action would be a likely sanction for noncompliance; and
- (5) the efficacy of lesser sanctions.

40 F.3d at 340 (quoting *Erenhaus v. Reynolds*, 965 F.2d at 921) (ellipses omitted).

Here, the district court discussed each *Mobley* factor in detail, and its findings were supported by the record, including multiple affidavits from CDOC officials.

Johnson insists the court should have construed as true the allegations in his complaint concerning his need for a wheelchair, but the district court was not obligated to so construe his allegations in evaluating whether to dismiss his action for failure to comply with its orders. *See id.* at 340 (distinguishing standard of review applicable to a Rule 12 motion to dismiss from that applicable to “an involuntary dismissal pursuant to Rule 41(b)”).

And we see no clear error in the additional findings of the magistrate judge (which the district court accepted) that Johnson had adequate time to prepare for his deposition, *see* R. vol. 1 at 228–29 (discussing Johnson’s three motions for continuance of his scheduled deposition); that his refusal to appear for it prejudiced the defendants, who had to travel to and prepare for it, *see id.* at 234–35; that he was

clearly on notice of the likely consequences of failing to follow court rules, *see id.* at 235–36; and that lesser sanctions would be inadequate in light of his extensive history of bringing lawsuits but not prosecuting them to completion, *see id.* at 236–37.

Reviewing the record as a whole does not leave this court with a definite, firm conviction the district court made a mistake when it found CDOC’s refusal to provide a wheelchair did not excuse Johnson’s refusal to attend his deposition. Johnson has advanced no availing contrary argument. On the record before us, the district court did not abuse its discretion when it dismissed the action under Rule 41(b).

III

We affirm the judgment of the district court. We deny Johnson’s motion requesting the appointment of appellate counsel.

Entered for the Court

Veronica S. Rossman
Circuit Judge