

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

September 17, 2026

Christopher M. Wolpert
Clerk of Court

DANIEL JOSEPH DAVISON,

Plaintiff - Appellant,

v.

FRANK J. BISIGNANO, Commissioner of
the United States Social Security
Administration*; UNITED STATES
SOCIAL SECURITY
ADMINISTRATION; UNITED STATES
OF AMERICA,

Defendants - Appellees.

No. 25-1251
(D.C. No. 1:24-CV-01677-RMR-CYC)
(D. Colo.)

ORDER AND JUDGMENT**

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

* Frank J. Bisignano became the Commissioner of the United States Social Security Administration on May 7, 2025, and he has been substituted as Defendant for Leland Dudek. *See* Fed. R. App. P. 43(c)(2).

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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

Daniel Joseph Davison, proceeding pro se,¹ appeals from the district court's dismissal of his complaint for lack of subject matter jurisdiction. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

I

Mr. Davison sued the Social Security Administration (SSA) in federal district court and invoked diversity jurisdiction, *see* 28 U.S.C. § 1332. In the operative Amended Complaint, he alleged he was gravely injured in 2006 when he was walking on the sidewalk and struck by a car. He alleged he “is entitled to retroactive Social Security Disability Insurance benefits for a Childhood Disability from the year 2006 to present,” but the SSA has “repeatedly denied [his] full claim, and still owe[s] \$165,796 to him in retroactive pay.” R. at 17. On these facts, he asserted four claims for relief under the Federal Tort Claims Act and a claim for breach of contract. The government moved to dismiss the Amended Complaint.

A magistrate judge issued an order and recommendation agreeing with the government that the Amended Complaint should be dismissed for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1). The recommendation concluded: (1) diversity jurisdiction under § 1332 did not exist because “the United States is not a citizen for diversity purposes, and federal agencies and administrators cannot be sued in diversity,” R. at 85 (internal quotation

¹ Because Mr. Davison 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).

marks omitted); and (2) federal question jurisdiction under 28 U.S.C. § 1331 did not exist because “42 U.S.C. § 405(g) provides a limited grant of jurisdiction in Social Security benefits cases, and the plaintiff neither properly invoked the statute nor provided facts in his Amended Complaint showing the administrative exhaustion^[2] that would support such an invocation,” R. at 88.³ Mr. Davison objected to the order and recommendation.

The district court reviewed de novo the portions of the recommendation to which Mr. Davison objected. *See* 28 U.S.C. 636(b)(1). It agreed with the magistrate judge “that Plaintiff’s Amended Complaint does not reference § 405(g) or completion of the necessary administrative steps, nor has he shown that grounds for alternative jurisdiction . . . exist here.”⁴ R. at 120-21. Although Mr. Davison asserted in his

² The Supreme Court has explained:

Modern-day claimants must generally proceed through a four-step process before they can obtain review from a federal court. First, the claimant must seek an initial determination as to his eligibility. Second, the claimant must seek reconsideration of the initial determination. Third, the claimant must request a hearing, which is conducted by an [Administrative Law Judge (ALJ)]. Fourth, the claimant must seek review of the ALJ’s decision by the Appeals Council. If a claimant has proceeded through all four steps on the merits . . . § 405(g) entitles him to judicial review in federal district court.

Smith v. Berryhill, 587 U.S. 471, 475-76 (2019) (citation omitted).

³ “[Section] 405(g), to the exclusion of 28 U.S.C. § 1331, is the sole avenue for judicial review for all claims arising under” the Social Security Act. *Heckler v. Ringer*, 466 U.S. 602, 615 (1984) (brackets and internal quotation marks omitted).

⁴ The district court noted Mr. Davison did not object to the magistrate judge’s conclusion that there was no diversity jurisdiction.

objections that he had been through the four-step administrative review process, the court observed those allegations were absent from the Amended Complaint. “[A]n objection to a magistrate judge’s recommendation,” the district court explained, “is neither a timely or proper filing in which to amend—or move to amend—the allegations in the operative complaint.” R. at 122. The district court said Mr. Davison could refile his action if he could allege a proper jurisdictional basis. The court overruled Mr. Davison’s objections, accepted the recommendation, granted the government’s motion to dismiss, and dismissed the Amended Complaint without prejudice. Mr. Davison now appeals.

II

We have carefully reviewed Mr. Davison’s pro se opening brief and construed it liberally. He asserts “[t]he Defendants’ representatives and the United States Magistrate Judge Cyrus Y. Chung’s opinions, and order and recommendation and opinion, are operant on faulty premises—and are wrong.” Aplt. Opening Br. at 3. But Mr. Davison has not developed any argument to advance his claim. Nor does he meaningfully address the district court’s reasons for dismissing his Amended Complaint.⁵

⁵ Mr. Davison spends much of his briefs disparaging the magistrate judge and opposing counsel. *See, e.g., id.* at 4 (contending the magistrate judge “intended to be sarcastic, secretive, and dishonest” in his recommendation); *id.* (stating the magistrate judge is delusional and “has somehow convinced himself of a truth (or lack of truth) so as to not reveal any self knowledge of the deception”); Aplt. Reply Br. at 4 (asserting that the magistrate judge “perpetuated” “a false narrative” in his recommendation); *id.* (describing opposing counsel’s response brief as restating an “erroneous, imagined, account of events to form his untrue story”); *id.* at 5

For example, Mr. Davison insists he completed the necessary four-step administrative process. But that is not enough to compel reversal. He does not rebut—or acknowledge—the district court’s conclusion that he failed to make this allegation in his Amended Complaint. To properly establish jurisdiction under § 405(g), he needed to allege facts in his Amended Complaint showing he completed the four-step administrative review process. He likewise fails to address the district court’s determination that saying he completed the four-step process in his objections was not a timely or proper way to amend his Amended Complaint. Nor does he develop any legal argument as to how the district court erred in dismissing his Amended Complaint for lack of subject matter jurisdiction.⁶

“Although a pro se litigant’s pleadings are to be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers, this court has repeatedly insisted that pro se parties follow the same rules of procedure that govern other litigants.” *Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005) (brackets, citation and internal quotation marks omitted). “Under

(characterizing opposing counsel’s filings and the magistrate judge’s recommendation as “false, misleading, unsound, and deceptive”).

⁶ Mr. Davison further asserts that the magistrate judge was prejudiced against him and should have recused, but he did not move for recusal. He explains he only “indirectly mention[ed]” recusal in his objections, and did not “give [his] actual reason why.” Aplt. Opening Br. at 6. Given these circumstances, Mr. Davison did not adequately present this issue to the district court. “Because we generally do not consider issues raised for the first time on appeal, and we find no compelling reason here to do otherwise, we decline to consider this issue.” *Ohlsen v. United States*, 998 F.3d 1143, 1163 n.11 (10th Cir. 2021) (brackets, citation, and internal quotation marks omitted).

[Federal Rule of Appellate Procedure 28], which applies equally to pro se litigants, a brief must contain more than a generalized assertion of error, with citations to supporting authority.” *Id.* at 841 (ellipses and internal quotation marks omitted); *see United States v. Pinson*, 584 F.3d 972, 975 (10th Cir. 2009) (explaining the “rule of liberal construction stops . . . at the point at which we begin to serve as [the pro se litigant’s] advocate”). “Arguments inadequately briefed in the opening brief are waived[.]” *Adams v. Fed. Aviation Admin.*, 168 F.4th 1271, 1285 (10th Cir. 2026); *see id.* at 1286 (“Consistent with circuit practice, we decline to consider [pro se appellant’s] inadequately developed arguments.”). That is the case here. Even liberally construing Mr. Davison’s briefs, he has not developed any appellate challenge to the district court’s dismissal of his Amended Complaint. Under these circumstances, we must decline to review Mr. Davison’s inadequately presented arguments.

III

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

Entered for the Court

Veronica S. Rossman
Circuit Judge