

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

September 8, 2026

Christopher M. Wolpert
Clerk of Court

MICHELLE LEE,

Plaintiff - Appellant.

v.

KIMBERLY H. TYSON; TOM H.
CONNOLLY; JOHN SCANLAN,

Defendants - Appellees.

No. 25-1417
(D.C. No. 1:25-CV-02161-LTB-RTG)
(D. Colo.)

ORDER AND JUDGMENT*

Before **HARTZ, BACHARACH, and EID**, Circuit Judges.

Appellant Michelle Lee brought claims in federal district court against an attorney who represented her in bankruptcy proceedings, the bankruptcy judge, and the bankruptcy trustee. A magistrate judge twice ordered her to amend her complaint, then recommended that her second amended complaint be dismissed. Ms. Lee did not file written objections to the magistrate judge's recommendation but did file two additional proposed amended complaints. The district court struck those

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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

complaints because they were filed without leave of the court or consent from the opposing parties. *See* Fed. R. Civ. P. 15(a)(2). It adopted the magistrate judge’s recommendation and dismissed the action without prejudice.

After Ms. Lee appealed, we ordered her to explain why she had not waived her right to appellate review by not objecting to the magistrate judge’s recommendation. *See United States v. B.N.M.*, 107 F.4th 1152, 1168 (10th Cir. 2024) (“[T]he failure to timely object to a magistrate [judge’s] recommendations waives appellate review of both factual and legal questions.” (internal quotation marks omitted)). She responded, asserting she had included a timely objection to the recommendation within her third amended complaint.

We could treat Ms. Lee’s appeal as waived because she did not object to the magistrate judge’s recommendation in compliance with Federal Rule of Civil Procedure 72. *See B.N.M.*, 107 F.4th at 1168; *see also Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005) (stating pro se parties must “follow the same rules of procedure that govern other litigants” (internal quotation marks omitted)). But we will instead exercise our discretion to review her contentions on appeal. *See Silva v. United States*, 45 F.4th 1134, 1136–37 n.2 (10th Cir. 2022) (indicating application of the firm waiver rule is discretionary); *see also Garrett*, 425 F.3d at 840 (stating a pro se litigant’s pleadings are construed liberally and the court will “make some allowances for” her “unfamiliarity with pleading requirements” (internal quotation marks omitted)).

The district court adopted the following reasons given by the magistrate judge's recommendation to dismiss all of Ms. Lee's claims.

First, it concluded her claims alleging violations of federal criminal statutes must be dismissed because she cannot enforce those criminal statutes as a private plaintiff. *See* R. at 150 (citing *Andrews v. Heaton*, 483 F.3d 1070, 1076 (10th Cir. 2007) (stating federal criminal statutes generally “do not provide for a private right of action and are thus not enforceable through a civil action”)).

Second, it concluded her 42 U.S.C. § 1983 claims must be dismissed because she had not plausibly alleged any of the defendants were “acting under color of state law,” as must be the case to establish liability under § 1983. R. at 150–51 (internal quotation marks omitted).

Third, it ruled that her claims against the bankruptcy judge and trustee in their official capacities are barred by the doctrine of sovereign immunity, and that Ms. Lee “failed to identify a specific waiver of sovereign immunity that would allow her claims to proceed.” R. at 152.

Fourth, it ruled that claims brought against the bankruptcy judge in an individual capacity are barred by the doctrine of judicial immunity, *see* R. at 152–54, under which “[j]udges are absolutely immune from civil liability for judicial acts, unless committed in the clear absence of all jurisdiction.” *Whitesel v. Sengenberger*, 222 F.3d 861, 867 (10th Cir. 2000) (internal quotation marks omitted).

Fifth, it ruled her claims against the bankruptcy trustee are barred by *Barton v. Barbour*, 104 U.S. 126, 127–28 (1881), which “precludes suit against a bankruptcy

trustee for claims based on alleged misconduct in the discharge of a trustee's official duties absent approval from the appointing bankruptcy court.'” R. at 154 (quoting *Satterfield v. Malloy*, 700 F.3d 1231, 1234–35 (10th Cir. 2012)).

We have jurisdiction under 28 U.S.C. § 1291; we review the dismissal of Ms. Lee's claims de novo, *see Silva*, 45 F.4th at 1137; and we construe her filings liberally, *see Garrett*, 425 F.3d at 840. But she has not shown any error in the district court's rulings. Ms. Lee's brief on appeal reiterates various ways she alleges defendants violated her rights and acted unlawfully, and references actions taken in the bankruptcy case that she claims were in error. But other than referring to the Equal Protection and Due Process Clauses, she does not cite any legal authorities that support her request for reversal. *See* Fed. R. App. P. 28(a)(8)(A) (requiring an appellant to cite authority that supports its argument). Moreover, Ms. Lee does not acknowledge or address the sound reasons given by the magistrate judge's recommendation why she cannot pursue civil liability against the defendants on the bases alleged and her claims must be dismissed.

Accordingly, because Ms. Lee has not shown any error in the district court's rulings, we affirm. *See Nixon v. City & Cnty. of Denver*, 784 F.3d 1364, 1366 (10th Cir. 2015) (“The first task of an appellant is to explain to us why the district

court's decision was wrong. Recitation of a tale of apparent injustice . . . cannot substitute for legal argument.”).

Entered for the Court

Harris L Hartz
Circuit Judge