

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

September 1, 2026

Christopher M. Wolpert
Clerk of Court

JOHN A. CROWE,

Plaintiff - Appellant,

v.

AMY GEE; ERIC NEWTON;
ERNESTO PADILLA,

Defendants - Appellees.

No. 25-2118
(D.C. No. 1:24-CV-00802-JHR-JFR)
(D. N.M.)

ORDER AND JUDGMENT*

Before **HARTZ, KELLY**, and **CARSON**, Circuit Judges.

John Crowe, proceeding pro se, appeals the district court's denial of his motion for default judgment and dismissal of his 42 U.S.C. § 1983 amended complaint. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

Background & Procedural History

In August 2024, Crowe filed an amended complaint against federal probation officers Ernesto Padilla, Eric Newton, and Amy Gee ("Defendants").

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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

Crowe served Defendants with the amended complaint on September 18, 2024. Because they were federal probation officers, Crowe also had to serve the United States with the amended complaint. *See* Fed. R. Civ. P. 4(i)(3). He properly served the United States Attorney's Office on November 4, 2024.¹ Defendants' deadline to answer the amended complaint was January 3, 2025. *See* R. at 3.

Crowe moved for default judgment against Defendants on November 22, 2024. He argued that he was entitled to default judgment because Defendants failed to timely respond to the amended complaint. Defendants opposed the motion. On December 26, 2024, they requested an extension of time to respond to the amended complaint, which the court granted.

The court set the new answer deadline for February 3, 2025. On February 3, Defendants moved to dismiss the amended complaint for failure to state a claim.

The district court denied Crowe's motion for default judgment and granted the motion to dismiss. It found that Crowe was not entitled to default judgment because Defendants filed a responsive pleading within the new deadline set by the magistrate judge. The court explained that Crowe's delayed service of the United States Attorney also delayed the deadline for Defendants to file an answer. Crowe filed a motion to reconsider, which the district court denied.

Crowe appeals.

¹ The United States Attorney's Office entered its appearance as counsel of record for Defendants on December 19, 2024.

Discussion

We construe Crowe’s filings liberally but do not serve as his advocate. *Luo v. Wang*, 71 F.4th 1289, 1291 n.1 (10th Cir. 2023). And we have “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) (alterations and internal quotation marks omitted).

Crowe’s appellate materials do not meaningfully challenge the district court’s dismissal of his amended complaint or the denial of his reconsideration motion. Accordingly, even under the rules of liberal construction, Crowe has abandoned any challenge to those orders on appeal. *See Sawyers v. Norton*, 962 F.3d 1270, 1286 (10th Cir. 2020) (“Issues not raised in the opening brief are deemed abandoned or waived . . . [as are] arguments that are inadequately presented” (internal quotation marks omitted)). Crowe dedicates the majority of his appellate brief to challenging the denial of his motion for default judgment. Liberally construing his appellate brief, he argues that (1) the district court erred by allowing the defendants to file untimely responses to his amended complaint, (2) the court ignored that the defendants failed to obtain timely representation, and (3) the district court treated him unfairly by holding him to the letter of the law but permitting the defendants to sidestep procedural rules.

We review the denial of a default judgment for abuse of discretion. *See Bixler v. Foster*, 596 F.3d 751, 761 (10th Cir. 2010). Under the abuse-of-discretion standard, “we will not disturb the district court’s decision unless we have a definite

and firm conviction that the lower court made a clear error of judgment or exceeded the bounds of permissible choice in the circumstances.” *State ex rel. Kobach v. U.S. Dep’t of Interior*, 72 F.4th 1107, 1124 (10th Cir. 2023) (internal quotation marks omitted).

Absent waiver of service, defendants have no duty to respond to a complaint until they are properly served. *See* Fed. R. Civ. P. 12(a)(1)(A). When, as here, a lawsuit names a “United States officer or employee sued in an individual capacity,” the defendant “must serve an answer to [the] complaint . . . within 60 days after service on the officer or employee or service on the United States attorney, *whichever is later*.” Fed. R. Civ. P. 12(a)(3) (emphasis added).

The district court did not abuse its discretion in denying Crowe’s motion for default judgment. Crowe’s appellate arguments revolve around his miscalculation of Defendants’ answer deadline. The service timeline makes clear that Defendants were not subject to default, as they filed their responsive pleadings within a timely manner. While Crowe served Defendants on September 18, 2024, he did not serve the United States Attorney until November 4, 2024. November 4, the later date, is when the 60-day period for Defendants to answer Crowe’s amended complaint began. *See id.* Accordingly, Defendants had until January 4, 2025, to file a responsive pleading. And they requested additional time to respond beyond that 60-day period, which the district court granted.² Defendants ultimately filed a timely motion to dismiss on

² And the district court was within its authority when it granted Defendants additional time to respond, despite Crowe’s contentions to the contrary. *See* Fed. R.

February 3, 2025. *See Marquez v. Cable One, Inc.*, 463 F.3d 1118, 1120 (10th Cir. 2006) (recognizing a motion to dismiss as a responsive pleading). Accordingly, Defendants were never out of time to answer Crowe’s amended complaint, and Crowe was not entitled to default judgment. The district court did not abuse its discretion in denying Crowe’s motion for default judgment.³

Crowe also argues that he was entitled to default judgment because Defendants were not represented by counsel until December 2024. But Defendants’ legal representation did not affect the timeline to respond to the amended complaint. Rather, as discussed above, Crowe’s perfection of service on the United States Attorney controlled the response deadline. Accordingly, the district court did not abuse its discretion by not considering when Defendants acquired counsel during the proceedings.

Crowe notes that Defendants incorrectly cited Rule 12(a)(2), rather than Rule 12(a)(3), when they opposed his motion for default judgment. But the district court correctly cited and applied Rule 12(a)(3) in its order. Crowe characterizes the district court’s correct citation of the rule as the court doing Defendants’ legal work for them, indicating bias against him. But the district court’s correct application of

Civ. P. 6(b)(1) (permitting an extension of time “for good cause”); *Rachel v. Troutt*, 820 F.3d 390, 394 (10th Cir. 2016) (“[D]istrict courts should normally grant extension requests, made before the deadline, in the absence of bad faith by the requesting party or prejudice to another party.”).

³ Crowe’s additional challenges to the district court’s default analysis hinge on his belief that there was a timeliness issue. Since there was no timeliness problem, these additional challenges fail.

the law when it ruled against Crowe does not indicate bias. *See Bixler*, 596 F.3d at 762 (“Adverse rulings alone do not demonstrate judicial bias.”). And the court did not allow Defendants to sidestep procedural rules, nor did it hold them to different standards than Crowe. Crowe’s arguments to the contrary are based on his miscalculation of Defendants’ deadline to respond, which we have determined to be without merit.

Conclusion

We affirm the district court’s judgment.

Entered for the Court

Paul J. Kelly, Jr.
Circuit Judge