

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

October 2, 2026

Christopher M. Wolpert
Clerk of Court

NOE OCHOA,

Plaintiff - Appellant,

v.

KRISTEN STENSELL, CTCF Staff;
JACKIE C. PACINO, Unit #5 Control
Center; PHILLIP C. AUGUST, Officer
Working Unit #5 Control Center;
PACHECO, Chief of Security from CCCF;
NEIL BOURJALY, P.A. C.T.C.F. Clinical
Services; BARRY GOODRICH, Warden
CCCF; DEAN WILLIAMS; DAMOND T.
HININGER; BRYAN GALLEGOS;
EDGAR GONZALES; CARLOS
MARTINEZ; VICENTE PASCUAL;
PEDRO GONZALES,

Defendants - Appellees.

No. 25-1249
(D.C. No. 1:20-CV-00755-RMR-STV)
(D. Colo.)

ORDER AND JUDGMENT*

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

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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

Noe Ochoa, a Colorado prisoner proceeding pro se, appeals from the district court's orders dismissing his amended complaint in part and granting summary judgment on the remaining claims. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

Background

Ochoa filed an amended complaint in district court raising claims under 42 U.S.C. § 1983 arising from attacks on Ochoa by other inmates while he was incarcerated by the Colorado Department of Corrections (CDOC) at Crowley County Correctional Facility (CCCF). He alleged that prison employees violated his constitutional rights by acting with deliberate indifference in relation to the attacks.

Performing a screening under 28 U.S.C. § 1915(e), a magistrate judge issued a report and recommendation (R&R) recommending dismissal of several of Ochoa's claims but concluding that some of his claims should proceed. Ochoa did not object to the R&R. The district court adopted the R&R, noting Ochoa's failure to object.¹

Ochoa then filed an amended complaint (which we construe liberally), raising several constitutional claims under 42 U.S.C. § 1983 against CDOC and CCCF employees, as well as a claim for declaratory relief relating to the attacks against him and additional alleged mistreatment he experienced at prison facilities. He brought an Eighth Amendment failure-to-supervise claim against Chief Security Officer

¹ Instead of objecting to the R&R, Ochoa filed a motion to supplement his amended complaint with additional facts. The district court denied the motion, reasoning that the new facts would not impact the resolution of Ochoa's claims.

Pacheco and Warden Barry Goodrich. Ochoa also lodged Eighth Amendment deliberate-indifference claims against Officers Jackie Pacino and Phillip August, and against physician assistant Neil Bourjaly for inadequate medical care. Finally, Ochoa brought claims against therapist Kristin Stansell under the Fourteenth Amendment for mistreating him based on his gender and religion, and under the First Amendment for retaliating against him after he filed grievances against her.

The defendants filed motions to dismiss the amended complaint for failure to state a claim. The magistrate judge issued an R&R on the motions to dismiss, recommending that Ochoa's claim for declaratory relief be dismissed for lack of jurisdiction, and that all but one of his constitutional claims be dismissed for failure to state a claim. First, the magistrate judge determined that the failure-to-supervise claim against Pacheco and Goodrich failed because Ochoa did not allege facts showing that 1) either of them participated in the attacks, 2) a policy or custom led to Ochoa's injuries, or 3) either defendant was aware of the impending attacks. Second, the magistrate judge concluded that the deliberate-indifference claims against Pacino and August failed because Ochoa did not allege that the officers were aware of a risk of harm from their actions. Third, the magistrate judge determined that the deliberate-indifference claim against Bourjaly similarly failed because Ochoa did not allege what medical care Bourjaly deprived him of, that the deprivation was serious, or that Bourjaly acted recklessly in caring for Ochoa. Fourth, the magistrate judge determined that the Equal Protection claim against Stansell failed because Ochoa did not plead facts to show that he was treated differently from similarly situated

individuals. Last, the magistrate judge reasoned that Ochoa had plausibly stated a First Amendment retaliation claim against Stansell and recommended that the motions to dismiss be denied concerning that claim.

The district court adopted the R&R over Ochoa's objections, noting that they were vague and unspecific, and dismissed all his claims except the First Amendment retaliation claim against Stansell. Ochoa then submitted an additional request for counsel. Although it had denied his previous requests for appointment of counsel, the district court granted his motion.

Stansell moved for summary judgment. The district court granted her summary-judgment motion because Ochoa failed to provide any evidence that she retaliated against him by interfering with his parole. This timely appeal followed.

Discussion

Waiver

We construe Ochoa's pleadings 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) (internal quotation marks omitted).

Although Ochoa is proceeding pro se, his appellate materials must "explain to us why the district court's decision was wrong." *Nixon v. City & Cnty. of Denver*, 784 F.3d 1364, 1366 (10th Cir. 2015). He has not done so. Although he writes extensively about the injustice done to him, he does not confront the district court's

grounds for denying relief or otherwise specifically challenge either of the district court's dismissal orders,² nor does he mention or address the summary judgment granted to Stansell. Accordingly, Ochoa has waived any appellate challenge to the substance of the district court's rulings. *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)).

We turn now to the procedural issues raised in Ochoa's appellate brief.

Appointment of Counsel

Ochoa argues that the district court should have granted him counsel when he first requested it, contending that the court should have understood at the beginning of the case that he was raising complicated issues warranting the appointment of counsel. We are not persuaded.

"We review a district court's refusal to appoint counsel for an indigent prisoner in a civil case for an abuse of discretion." *Hill v. SmithKline Beecham Corp.*, 393 F.3d 1111, 1115 (10th Cir. 2004). Generally, there is no constitutional right to the appointment of counsel in civil cases. *Nelson v. Boeing Co.*, 446 F.3d 1118, 1120–22 (10th Cir. 2006). "Only in those extreme cases where the lack of

² This includes his assertions that the district court erred when it dismissed some of his claims with prejudice. First, Ochoa does not identify which claims against which defendants should not have been dismissed with prejudice. Second, he has not provided any argument or authority to explain why dismissal was improper. *See United States v. Garcia*, 946 F.3d 1191, 1210 n.11 (10th Cir. 2020) (noting a "party who fails to develop or provide any authority in support of [an] argument [has] waived it" (internal quotation marks omitted)).

counsel results in fundamental unfairness will the district court's decision be overturned." *Hill*, 393 F.3d at 1115 (internal quotation marks omitted).

We see no abuse of discretion in the district court's decisions regarding Ochoa's requests for counsel. When the court initially denied Ochoa's requests, it noted that his claims did not appear particularly complex and their merits could not be fully assessed at the earliest stages of litigation. Ochoa has identified no legal authority or evidence to refute this finding, and we will not disturb the district court's decisionmaking here, particularly in light of its decision to appoint counsel later in the proceedings.³

Judicial Bias

Ochoa appears to argue that the district court's actions throughout the course of litigation demonstrated bias against him. He says the district court denied him counsel, violated his due-process rights by dismissing his claims, and prevented him from obtaining discovery materials.

Ochoa's main complaints stem from rulings that did not favor him, namely, the dismissal orders and the denials of his requests for counsel. But "[a]dverse rulings alone do not demonstrate judicial bias." *Bixler v. Foster*, 596 F.3d 751, 762 (10th Cir. 2010). And Ochoa has identified no specific facts from his proceedings that call the district court's impartiality into question. The court gave him

³ Ochoa's appellate brief suggests that he believes appointed counsel was ineffective. But "ineffective assistance of counsel is not a basis for appeal" in civil cases. *Nelson*, 446 F.3d at 1119. Accordingly, we reject Ochoa's argument that he received ineffective assistance of counsel in his proceedings before the district court.

opportunities to amend his complaint, appointed him counsel as litigation proceeded, and treated all parties fairly. Ochoa has not shown that the district court was biased against him.

Conclusion

We affirm the district court's judgment. We grant Ochoa's "Motion for Leave to Proceed on Appeal Without Prepayment of Costs or Fees."

Entered for the Court

Harris L Hartz
Circuit Judge