

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

October 5, 2026

Christopher M. Wolpert
Clerk of Court

JOHNNY LEE SANDERS, JR.,

Plaintiff - Appellant,

v.

AEROTEK, INC.; INTEGRIS BAPTIST
MEDICAL CENTER; ALICIA LOZANO;
TAYLOR SINGLETON,

Defendants - Appellees.

No. 25-6170
(D.C. No. 5:20-CV-01279-JD)
(W.D. Okla.)

ORDER AND JUDGMENT*

Before **TYMKOVICH**, **MATHESON**, and **PHILLIPS**, Circuit Judges.

Johnny Lee Sanders, Jr., appearing pro se, appeals the district court's dismissal of claims he attempted to assert under an Oklahoma statute that limits liability related to COVID-19 exposure. The court concluded that the statute does not create a private right of action and dismissed the claims. The court also denied Mr. Sanders's

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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

motion for reconsideration. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

I. BACKGROUND

According to his complaint, Mr. Sanders worked for a staffing agency, Aerotek, Inc., from December 18, 2019, until his termination on May 26, 2020. During that time, Aerotek assigned him to work as a housekeeper at Integris Baptist Medical Center. Due to the COVID-19 pandemic, Integris was a hazardous jobsite and required the use of personal protective equipment (“PPE”). Mr. Sanders was forced to clean COVID-19 rooms without PPE or without properly fitting PPE. His complaints went unheeded. An Aerotek employee eventually terminated his employment for failing to promptly respond to a supervisor on a walkie talkie and for not cleaning two COVID-19 rooms.

In December 2020, Mr. Sanders filed this action pro se. He asserted claims against Aerotek for breach of contract and violation of public policy due to unsafe working conditions precipitated by Aerotek’s alleged failure to follow federal regulations concerning hazardous jobsites.¹ As pertinent here, he based those claims on Okla. Stat. tit. 76, § 111, which limits or relieves Oklahoma businesses and their

¹ Federal jurisdiction stemmed from Mr. Sanders’s assertion of federal claims for age and race discrimination against Aerotek and several other defendants arising out of his assignment at Integris. *See* 28 U.S.C. § 1331. The district court dismissed or granted summary judgment on those claims. Mr. Sanders does not appeal those rulings.

agents from liability in civil actions related to COVID-19 exposure if they comply or act consistently with specified sources of written guidance related to the virus.

Aerotek filed a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). It argued that § 111 does not imply a private right of action but is only a limitation on liability. In his responsive filings, Mr. Sanders did not advance any counterargument. The district court agreed with Aerotek and granted its motion.

Mr. Sanders moved for reconsideration, arguing that § 111 provided him with an implied private right of action and that Aerotek could point to no official guidance that allowed its conduct. The district court denied that motion. It observed that in opposing Aerotek's motion to dismiss, Mr. Sanders did not respond to Aerotek's argument that § 111 does not create a private right of action, and that a motion for reconsideration was not appropriate to “advance arguments that could have been raised in prior briefing.” R. at 429 (quoting *Servants of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000)). The court also determined that Mr. Sanders had not shown the court had misapprehended the facts, his position, or controlling law.

Mr. Sanders appeals.

II. STANDARDS OF REVIEW

We review de novo the district court's grant of a Rule 12(b)(6) motion. *Albers v. Bd. of Cnty. Comm'rs*, 771 F.3d 697, 700 (10th Cir. 2014). “To survive a motion to dismiss, a plaintiff must plead facts sufficient to state a claim to relief that is plausible on its face.” *Id.* (internal quotation marks omitted). “[W]e must accept all

the well-pleaded allegations of the complaint as true and must construe them in the light most favorable to the plaintiff.” *Id.* (internal quotation marks omitted).

We review the denial of a motion for reconsideration for an abuse of discretion. *Fye v. Okla. Corp. Comm’n*, 516 F.3d 1217, 1224 (10th Cir. 2008). A district court abuses its discretion “when it makes a clear error of judgment, exceeds the bounds of permissible choice, or when its decision is arbitrary, capricious or whimsical, or results in a manifestly unreasonable judgment.” *United States v. Mobley*, 971 F.3d 1187, 1195 (10th Cir. 2020) (internal quotation marks omitted).

We construe Mr. Sanders’s pro se filings liberally, but we cannot act as his advocate. *Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005).

III. DISCUSSION

Section 111 is titled “Limitations on liability for exposure to COVID-19.” Its limitation on liability provides:

A person or agent of the person who conducts business in this state shall not be liable in a civil action claiming an injury from exposure or potential exposure to COVID-19 if the act or omission alleged to violate a duty of care of the person or agent was in compliance or consistent with federal or state regulations, a Presidential or Gubernatorial Executive Order, or guidance applicable at the time of the alleged exposure.

Okla. Stat. tit. 76, § 111(B). “Guidance” is defined as “written guidelines related to COVID-19 issued by the Centers for Disease Control and Prevention, Occupational Safety and Health Administration of the United States Department of Labor, Oklahoma State Department of Health, the Oklahoma Department of Commerce, or

any other state agency, board or commission.” § 111(A)(2). The statute also states that “[t]he provisions of this section shall apply to a civil action filed on or after the effective date of this act,” § 111(C), which was May 21, 2020.

In considering whether § 111 implies a private right of action, the district court applied the three-prong test set out in *Walker v. Chouteau Lime Co.*, 849 P.2d 1085 (Okla. 1993). Under that test, a plaintiff must first show he “belong[s] to that class for whose especial benefit the statute was enacted.” *Id.* at 1086 (internal quotation marks omitted). Second, “the statute must either explicitly or implicitly give some indication the legislature intended to create a private remedy rather, than to deny one.” *Id.* A court may ascertain intent “by scrutinizing the text for any implicit indication of the legislature to create or deny a remedy” and “should consider the precise wording of the [statute] in discerning legislative intent.” *Id.* And third, “the private remedy must not be inconsistent with the underlying purposes of the legislative scheme.” *Id.* at 1087.

The district court concluded that because § 111 “appears to relieve or limit a person’s . . . liability from injury from exposure or potential exposure to COVID-19,” Mr. Sanders did not belong to the class for whose benefit the statute was enacted. R. at 263. The court next concluded that § 111 does not “ ‘explicitly or implicitly’ indicate that Oklahoma’s legislature intended to create a private remedy.” *Id.* at 264. Finally, the court concluded that recognizing a private right of action would be inconsistent with the statute’s purpose—to protect businesses from liability during

the pandemic if they “follow COVID-19 federal and state regulations and guidelines.” *Id.*

In his opening brief, Mr. Sanders does little to question the district court’s analysis and conclusion. He contends the court erred by “failing to lawfully address [§] 111’s language and construction,” *Aplt. Opening Br.* at 2, but he provides no reasoning to support this conclusion. Instead, he purports to incorporate the arguments and authorities advanced in his motion for reconsideration. But even pro se litigants like Mr. Sanders must follow procedural rules that govern other litigants, including Fed. R. App. P. 28(a), which specifies the required content of an appellant’s brief. *See Garrett*, 425 F.3d at 840–41. And “[i]ncorporating by reference portions of lower court . . . briefs or pleadings is disapproved and does not satisfy the requirements of Fed. R. App. P. 28(a).” 10th Cir. R. 28.3(B). Thus, “we have repeatedly held that this court is under no obligation to consider arguments not fully set forth in a party’s appellate brief, including arguments incorporated by reference to prior pleadings or other materials.” *United States v. Gordon*, 710 F.3d 1124, 1137 n.15 (10th Cir. 2013) (brackets and internal quotation marks omitted). We take that path here.

Moreover, as the district court determined, Mr. Sanders raised the arguments in his motion for reconsideration too late; he should have made them during briefing on Aerotek’s motion to dismiss. Mr. Sanders has not argued that the district court abused its discretion in making that determination. Thus, he has waived appellate review of both (1) the denial of his motion for reconsideration, *see 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)); and (2) the arguments he raised in his motion for reconsideration, *see Impact Energy Res., LLC v. Salazar*, 693 F.3d 1239, 1246 n.3 (10th Cir. 2012) (explaining that failure to raise issue at appropriate time in the district court waives appellate review).²

Mr. Sanders also contends the district court’s judgment was wrong because of “[j]udicial bias, in particular confirmation bias: favoring information that aligns with pre-existing beliefs.” Aplt. Opening Br. at 3. This one-sentence, perfunctory argument is waived for two independent reasons. First, Mr. Sanders did not raise judicial bias in the district court and has not argued for plain-error review on appeal. An appellant waives an argument if he fails to raise it in the district court and has failed to argue for plain error and its application on appeal. *Richison v. Ernest Grp., Inc.*, 634 F.3d 1123, 1130–31 (10th Cir. 2011). Second, he has not sufficiently developed this argument on appeal. *See United States v. Clay*, 148 F.4th 1181, 1201 (10th Cir. 2025) (explaining that we do not consider “issues adverted to in a

² Even if we overlooked these shortcomings, we would find no error in the district court’s analysis of § 111 under the *Walker* test. The statute’s language plainly evidences only an intent to limit liability, provided that a person conducting business in Oklahoma follows official guidance. It does not grant a private right of action for the imposition of liability if the person’s acts or omissions are not consistent or in compliance with such guidance. Thus, Mr. Sanders does not belong to the class for whose benefit § 111 was enacted, and recognizing a private right of action would be inconsistent with § 111’s purpose. If, as Mr. Sanders claims, Aerotek owed him a duty of care and did not follow official guidance regarding exposure to COVID-19, § 111 does not provide a cause of action he could use to hold Aerotek liable for breaching such a duty. To do that Mr. Sanders needed to look for some other vehicle affording him a cause of action.

perfunctory manner, unaccompanied by some effort at developed argumentation, in the opening brief” (internal quotation marks omitted)), *cert. denied*, 146 S. Ct. 1788 (2026)

IV. CONCLUSION

We affirm the district court’s judgment as to its grant of Aerotek’s motion to dismiss and its order denying Mr. Sanders’s motion for reconsideration.

Entered for the Court

Scott M. Matheson, Jr.
Circuit Judge