FILED
United States Court of Appeals
Tenth Circuit

August 16, 2019

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

MICHAEL T. COCHRAN,

Plaintiff - Appellant,

v.

CITY OF WICHITA; JEFF LONGWELL; LAVONTA WILLIAMS; PETE MEITZNER, JAMES CLENDENIN; JEFF BLUBAUGH, BRYAN FRYE; JANET MILLER; TROY LIVINGSTON,

Defendants - Appellees.

No. 19-3059
(D.C. No. 6:18-CV-01007-JWB-GEB)
(D. Kan.)

ORDER AND JUDGMENT*

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

Michael Cochran, proceeding pro se,[1] appeals the district court's dismissal of his complaint, pursuant to Fed. R. Civ. P. 8(a). Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

[1] Because Cochran is a pro se litigant, we must construe his pleadings liberally. *United States v. Pinson*, 584 F.3d 972, 975 (10th Cir. 2009). In doing so, however, this court neither "assume[s] the role of advocate for the pro se litigant" nor

I.

On January 8, 2018, Plaintiff-Appellant Michael T. Cochran filed suit against the City of Wichita, current and former members of Wichita's City Council, and Wichita's Mayor, Vice Mayor, and Deputy Police Chief (the City Defendants). In his complaint, Cochran alleges that the City Defendants conspired to enact several panhandling-related ordinances and to deprive him of his First Amendment rights to free speech, free exercise of religion, and peaceable assembly.

On May 9, 2018, Cochran filed a Motion for a Default Judgment against Defendants Lavonta Williams and Janet Miller. The district court concluded that Cochran had not established that Williams and Miller had been properly served and denied the motion.

On August 9, 2018, upon the City Defendants' motion, the district court dismissed Cochran's complaint for lack of subject matter jurisdiction but allowed Cochran to file an amended complaint. Cochran filed an amended complaint on August 22, 2018. The City Defendants moved to dismiss the amended complaint, both for failure to state a claim and for failure to comply with the pleading requirements set forth in Fed. R. Civ. P. 8.

On February 21, 2019, the district court dismissed Cochran's amended complaint without prejudice after concluding that it failed to comply with Rule 8's pleading requirements. Mr. Cochran timely appealed.

"relieve[s] the plaintiff of the burden of alleging sufficient facts on which a recognized legal claim could be based." *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991).

II.

"We review a Rule 8 dismissal for abuse of discretion." *Ward v. Garnett*, 639 F. App'x 568, 569 (10th Cir. 2016) (citing *Nasious v. Two Unknown B.I.C.E. Agents*, 492 F.3d 1158, 1162 n.3 (10th Cir. 2007)). Rule 8 requires that a complaint "contain . . . a short and plain statement of the claim showing that the [plaintiff] is entitled to relief." Fed. R. Civ. P. 8(a)(2). "It is sufficient, and indeed all that is permissible, if the complaint concisely states facts upon which relief can be granted upon any legally sustainable basis. Only a generalized statement of the facts from which the defendant may form a responsive pleading is necessary or permissible." *Frazier v. Ortiz*, No. 06-1286, 2007 WL 10765, at *2 (10th Cir. Jan. 3, 2007) (emphasis omitted) (quoting *New Home Appliance Ctr., Inc. v. Thompson*, 250 F.2d 881, 883 (10th Cir. 1957)).

After reviewing Cochran's 70-page amended complaint, we conclude that the district court did not abuse its discretion when it dismissed Cochran's amended complaint for failure to comply with Rule 8's pleading standards. The court correctly observed that the amended complaint is a "long-winded recitation of facts, conclusory allegations, and . . . legal quotations" that "fails to sufficiently and succinctly identify [Cochran's] claims and facts alleged against each [individual] Defendant." ROA at 421. We agree that, "by scattering and concealing in a morass of irrelevancies the few allegations that matter," Cochran has made his complaint "unintelligible." *Mann v. Boatright*, 477 F.3d 1140, 1148 (10th Cir. 2007) (quotations omitted). The district court, therefore, did not abuse its discretion in

concluding that Cochran's amended complaint lacks the "short and plain statement of the claim" required under Rule 8.

III.

We also review for abuse of discretion a district court's order denying a motion for default judgment. *Grandbouche v. Clancy*, 825 F.2d 1463, 1468 (10th Cir. 1987).[2] "A trial court is vested with broad discretion in deciding a default judgment question." *Id.*

To grant a motion for default judgment, the district court must first determine whether the defendants in question were properly served. *See Petersen v. Carbon Cty.*, 156 F.3d 1244 (10th Cir. 1998) (table). Here, the district court concluded that there was no proof City Defendants Williams and Miller were properly served.

Both Williams and Miller were former members of the Wichita City Council, and Cochran did not show that the authorized agent used to serve the other City Defendants was the authorized agent for Williams and Miller. Further, the district court noted that there was no proof service had been attempted at Williams's or Miller's dwellings as required "under Kansas law." Memorandum & Order at 2, *Cochran v. City of Wichita, et al.*, No. 18-cv-1007 (D. Kan. May 14, 2018) (citing Kan. Stat. Ann. § 60–304(a)). Accordingly, the district court did not abuse its

[2] "The denial of [a] motion for default judgment [is] an interlocutory order and [can]not be appealed until the trial court [has] issued a final judgment." *Grandbouche*, 825 F.2d at 1468. Whether the district court erred in denying Cochran's motion for default judgment is, therefore, properly before us.

discretion in denying Cochran's motion to enter default judgment against Defendants Williams and Miller.

IV.

The judgment of the district court is AFFIRMED.

Entered for the Court

Allison H. Eid
Circuit Judge