FILED
United States Court of Appeals
Tenth Circuit

August 21, 2019

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

KASEBAJALE A. MAYO,

Plaintiff - Appellant,

v.

PERFORMANCE PROPERTY MANAGEMENT, INC.; GREGORY S. BERAN; OTIEBO INVESTMENTS, LTD.; LANE ANDREW, a/k/a Andrew Lane,

Defendants - Appellees.

No. 19-1143
(D.C. No. 1:18-CV-03009-LTB)
(D. Colo.)

ORDER AND JUDGMENT*

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

Plaintiff-Appellant KaSebajale Mayo, proceeding pro se,[1] appeals the district court's sua sponte dismissal of her housing-discrimination complaint as legally

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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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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 of her pro se status, we liberally construe Ms. Mayo's filings. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam). But we will not serve as her advocate or craft legal arguments on her behalf. *See Yang v. Archuleta*, 525 F.3d 925, 927 n.1 (10th Cir. 2008).

frivolous and uncompliant with the pleading requirements. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

BACKGROUND

According to Ms. Mayo, in August 2017 she began renting an apartment managed by Performance Property Management (PPM). Because of her history as a violent-crime victim, two separate organizations paid two months' rent on her behalf. But PPM rejected a third offered monthly payment. That's where this dispute begins.

On October 11, 2018, Ms. Mayo sought rental assistance from Mile High Behavior Health of Colorado. Her caseworker from Mile High contacted PPM by telephone and offered to pay Ms. Mayo's October rent in full, including any late fees. PPM refused the offer, requiring that Ms. Mayo pay the rent herself without outside assistance. Using PPM's text server,[2] Ms. Mayo asked why PPM had refused the payment. Later that day, Ms. Mayo returned home to find a "Three-Day Notice" placed on her door, demanding that she either pay the owed rent or relinquish possession of the residence. The next day, October 12, 2018, Ms. Mayo once again contacted PPM via the text server, inquiring as to the date for the eviction process.

On October 16, 2018, Ms. Mayo found a Complaint Under Simplified Civil Procedure (Unlawful Detainer) placed on her door, along with a Summons in Forcible Entry and Unlawful Detainer, with a court date of October 24, 2018. On October 17, 2018, Ms. Mayo filed her answer, arguing that her eviction violated the

[2] The text server is an online message portal through which tenants can communicate with PPM.

Fair Housing Act and the Colorado Anti-Discrimination Act. The next day, a Demand for Compliance or Possession was posted to Ms. Mayo's door for a noise violation. Ms. Mayo then once again contacted PPM via the text server, questioning the validity of the demand and requesting that PPM stop harassing and intimidating her. Ms. Mayo asserts that PPM, Gregory Beran, Otiebo Investments, and Andrew Lane attempted to coerce her to move out before they had received a court order. Ms. Mayo further alleges that the Defendants pursued her eviction knowing that she was receiving treatment for the residual effects from being a victim of violent crime the previous year.

For these reasons, on November 22, 2017, Ms. Mayo filed a pro se complaint in the United States Court of Federal Claims, alleging wrongful eviction in violation of the Fair Housing Act, the American with Disabilities Act, and Colorado law. Because the Court of Federal Claims lacked jurisdiction over the matter, it transferred the case to the United States District Court for the District of Colorado. The district court directed Ms. Mayo to file an Amended Complaint using the court-approved complaint form and an application to proceed in forma pauperis (IFP). On December 6, 2018, Ms. Mayo attempted to comply with the court's order and filed her First Amended Complaint. But deficiencies remained, so the district court again directed Ms. Mayo to the court-approved complaint form. On December 27, 2018, Ms. Mayo filed a Second Amended Complaint, asserting claims under the Fair Housing Act (FHA), 42 U.S.C. §§ 3604 and 3617, and HUD regulations, 24 CFR 100.400(a), (c)(2), (c)(5), and (c)(6).

The district court found the Second Amended Complaint insufficient. In its January 30, 2019 order, the district court concluded that Ms. Mayo had failed to "allege any facts to show that she is handicapped within the meaning of the FHA." ROA at 106. The court then outlined the required elements of a failure-to-accommodate claim and directed Ms. Mayo to "file a third amended complaint that adequately alleges an FHA claim pursuant to § 3604." *Id.* The court further discussed the required elements for claims under § 3617 of the FHA and the cited HUD regulations, which the court concluded were also not properly pleaded.

In response, Ms. Mayo filed two separate Amended Complaints on February 25, 2019. Only one was on the court-approved complaint form, so the court considered that one. After assessing the adequacy of the Third Amended Complaint, the district court sua sponte dismissed the complaint under 28 U.S.C. § 1915(e)(2)(B) as legally frivolous and failing to comply with the pleading requirements. Finally, although the district court initially granted Ms. Mayo leave to proceed IFP in this action, it denied her IFP status for appeal. Ms. Mayo filed a timely notice of appeal anyway and asks us to grant her leave to proceed IFP.

DISCUSSION

Because Ms. Mayo filed her Third Amended Complaint with IFP status, § 1915(e)(2)(B) requires that the district court dismiss her claims if they are frivolous or fail to state a claim on which relief may be granted. A claim is frivolous when "it lacks an arguable basis in either law or fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). "Where, as here, a frivolous determination 'turns on an issue of law,' we

review that determination de novo." *Sturgell v. Coffman*, 689 F. App'x 620, 621 (10th Cir. 2017) (quoting *Fogle v. Pierson*, 435 F.3d 1252, 1259 (10th Cir. 2006)). We also review de novo a determination that a complaint fails to satisfy pleading requirements. *Curley v. Perry*, 246 F.3d 1278, 1281 (10th Cir. 2001). In analyzing the sufficiency of Ms. Mayo's pleadings, we "accept as true only the plaintiff's well-pleaded factual contentions, not [her] conclusory allegations." *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991).

In her Third Amended Complaint, Ms. Mayo asserts that she "is alleging discrimination under the FHA[, 42 U.S.C. §§ 3601–3619,] which Prohibits Discrimination in Housing because of race, color, religion, sex, national origin, familial status, and disabilities." ROA at 130. She further states that although the district court "construed the Amended Second complaint for Accommodations for Housing," "this case is not about accommodations though the Plaintiff's payment of rent in full with any late fees was offered by Mile High Behavior Health of Colorado on October 11, 2018." *Id.* Reiterating that her claim is not one for failure to accommodate, she further emphasizes that "[t]he alleged acts of [PPM] denying/refusing payment of rent for the Plaintiff was not about accommodations." *Id.* Instead, she argues that this case is about the "blatant violations of Ms. Mayo's Civil Rights." *Id.* at 130–31. She then quotes 42 U.S.C. § 3604(a) and (b).

> Subsections 3604(a) and (b) specify that is it is unlawful:
>
> (a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny,

> a dwelling to any person because of race, color, religion, sex, familial status, or national origin.
>
> (b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.

Neither subsection provides Ms. Mayo a basis for relief—she does not allege that the Defendants discriminated against her based on her race, color, religion, sex, familial status, or national origin.

Rather, despite her statements to the contrary, her Third Amended Complaint seems to be more of an attempt to file a failure-to-accommodate claim by a person with a disability. She challenges PPM's refusal to accept payment from a third party, which would fall under 42 U.S.C. § 3604(f)(3)(B). We see why the district court—liberally construing her Second Amended Complaint as a reasonable-accommodation claim—directed Ms. Mayo to comply with the pleading requirements to state a valid FHA claim in a Third Amended Complaint. But in her Third Amended Complaint, Ms. Mayo repeats that this matter is "not about accommodations." ROA at 130. But this not being a failure-to-accommodate claim, Ms. Mayo has not otherwise pleaded facts giving a plausible claim that the Defendants have violated her civil rights. That is not enough to survive a § 1915 screening. *See Hall*, 935 F.2d at 1110. Accordingly, we conclude that Ms. Mayo's Third Amended Complaint fails to satisfy the pleading standards of Federal Rule of Civil Procedure 8.

On appeal, Ms. Mayo makes no intelligible argument challenging the substantive rulings of the district court. First, Ms. Mayo makes a blanket statement

that the court must liberally construe her complaint. But the district court accurately applied the rule of liberal construction for pro se pleadings, and in any event, this court considers the sufficiency of her pleadings de novo. Second, Ms. Mayo argues that PPM attempted to intimidate and coerce her, in violation of 42 U.S.C. § 3617. But in her Third Amended Complaint, Ms. Mayo has not pleaded the elements of a § 3617 claim, even though the district court requested that she do so in its January 30, 2019 order. Instead, she briefly mentions that "Discriminatory Housing Practices is []an act that is unlawful under section[s] 3604, 3605, 3606 and 3617 of [the FHA]." ROA at 134. Third, Ms. Mayo contends the court misconstrued her complaint as one for housing accommodations. But Ms. Mayo pleaded in her Third Amended Complaint that she is not asserting a failure-to-accommodate claim, and the district court acknowledged that in its analysis.

Even under the most liberal construction, Ms. Mayo's arguments lack merit. Ms. Mayo's Third Amended Complaint has failed to adequately plead a claim under the FHA, the only statute she cites in her complaint. The district court thus properly dismissed the complaint without prejudice. We therefore affirm the dismissal.

Finally, because Ms. Mayo has failed to offer a nonfrivolous argument on appeal, we deny Ms. Mayo's request to proceed IFP on appeal and advise her that she is responsible for the immediate payment of the unpaid balance of her appellate filing fee. *See DeBardeleben v. Quinlan*, 937 F.2d 502, 505 (10th Cir. 1991) (noting that to proceed IFP on appeal, "an appellant must show a financial inability to pay the

required filing fees and the existence of a reasoned, nonfrivolous argument on the law and facts in support of the issues raised on appeal").

Entered for the Court

Gregory A. Phillips
Circuit Judge