

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

August 19, 2021

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

PEDRO J. AMARO,

Plaintiff - Appellant

v.

STATE OF NEW MEXICO; SUSANA MARTINEZ, Governor for the State of New Mexico; BILL RICHARDSON, former Governor for the State of New Mexico; HECTOR H. BALDERAS, Attorney General for the State of New Mexico; GARY R. KING, former Attorney General for New Mexico; DEPARTMENT OF HEALTH AND HUMAN SERVICES; NEW MEXICO DEPARTMENT OF CORRECTIONS; GREGG MARCANTEL; JOE WILLIAMS, Secretary of Corrections; JERRY ROARK, Director of Adult Prisons; TIM LEMASTER, Deputy Secretary of Operations; LARRY PHILLIPS, NMCD Grievance/Disciplinary Appeals; JAMES R. BREWSTER, General Counsel; ANGELA M. MARTINEZ, Health Services Administrator; Y. RIVERA, A.C.A. Monitor/Administrator for New Mexico; G. CHAVEZ; GEO GROUP, INC., a corporation registered to do business in New Mexico; JOE R. WILLIAMS, employed by GEO Group; FNU LNU, Wardens; FNU LNU, Chief of Security; FNU LNU, Grievance Lieutenants; CORIZON, LLC, a foreign corporation registered to do business in New Mexico; LISA STABER, M.D.; KATHY ARMIJO, employed by Corizons

No. 21-2039
(D.C. No. 1:16-CV-00993-KG-JHR)
(D. N.M.)

as Health Services; FNU LNU, John/Jane
Does,

Defendants - Appellees.

ORDER AND JUDGMENT*

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

Plaintiff Pedro Amaro, a New Mexico state prisoner appearing pro se, appeals from the district court’s decision dismissing his amended civil rights complaint without prejudice. Exercising jurisdiction pursuant to 28 U.S.C. § 1291, we affirm the district court’s decision.

I

At all times relevant to this case, Amaro was confined at the Guadalupe County Correctional Facility (GCCF) in Santa Rosa, New Mexico. GCCF is purportedly operated by The GEO Group, Inc. (GEO), under contract with the State of New Mexico. ROA at 31.

On the morning of December 28, 2012, Amaro was allegedly “subjected to a near-fatal episode of acute Carbon Monoxide Poisoning.” *Id.* Amaro was allegedly

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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

also “subjected to additional and cumulative episodes of Carbon Monoxide Exposure and/or Poisoning” on January 4, 2013, January 19, 2013, and January 21, 2013. *Id.* In addition, on February 6, 2014, he was “pale/wane, vomiting, and otherwise mentally affected and/or neurologically distressed/disoriented.” *Id.* According to Amaro, since the first episode on December 28, 2012, he has suffered from “varying degrees of anxiety” and has had “trouble going to sleep” out of fear “if he will wake up or not.” *Id.* at 33. Amaro also alleges that he “has not felt the same mentally and has become somewhat ‘disabled’ in regards [sic] to his mental faculties” since the December 28, 2012 episode. *Id.*

On September 2, 2016, Amaro initiated these federal proceedings by filing a complaint against the State of New Mexico, a host of named and unnamed state officials and employees, GEO, various named and unnamed officers and employees of GEO, including named and unnamed officers and employees at GCCF, and various unnamed individuals responsible for the design, engineering, construction, and ongoing maintenance of GCCF. The complaint recounted Amaro’s alleged exposures to carbon monoxide, and also alleged generally that prisoners confined at GCCF were being exposed to and poisoned by carbon monoxide. The complaint, which set forth seven specific counts, sought relief “under the Federal Civil Rights Act and the Constitutions of the United States and the State of New Mexico,” as well as “under New Mexico civil and/or common law,” including the New Mexico Tort Claims Act (NMTCA). *Id.* at 20.

On September 15, 2017, the district court dismissed Amaro's complaint pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) and entered final judgment in the case. In doing so, the district court reached the following conclusions regarding the allegations in Amaro's complaint:

- Amaro documented only “one incident of carbon monoxide exposure” that “occur[red] on December 28, 2012” at GCCF, but “did not file his civil rights Complaint until September 2, 2016,” *id.* at 100;
- Amaro's complaint did include allegations of an incident on February 6, 2014, when he was sick, but “d[id] not allege . . . an event of exposure to carbon monoxide on that date,” *id.* at 108;
- “To the extent Amaro” was “seek[ing] relief on claims other than his own, the Complaint fail[ed] to state a claim for relief and those claims w[ould] be dismissed,” *id.* at 102;
- “Although [Amaro] identifies specific individuals, specifies their official positions, and generally alleges that they acted under color of law, he makes almost no factual allegations of any act or omission by any individual defendant,” and thus “[t]he allegations of the Complaint are insufficient to state any plausible Section 1983 claim against any named individual defendant,” *id.* at 106;
- The allegations in the complaint were insufficient “to impose supervisory liability on any individual defendant,” *id.*;

- “[A]ll of Amaro’s claims are barred by the two-year statute of limitations of the NMTCA and the three-year statute of limitations governing Section 1983 claims,” *id.* at 109;
- Because “Amaro’s claims are barred by the statute of limitations,” “any amendment of those claims would also be subject to immediate dismissal,” and thus “leave to amend . . . would be futile,” *id.* at 110.

After unsuccessfully moving for reconsideration, Amaro appealed from the district court’s order of dismissal.

On June 13, 2018, this court issued an order and judgment affirming in part and reversing in part. In particular, this court affirmed “the dismissal of . . . all claims premised on the December 2012 or January 2013 incidents or the grievance process associated with those incidents,” but reversed Amaro’s claims arising out of the “February 2014 incident” and remanded those “claims with instructions for the district court to provide [Amaro] an opportunity to amend his complaint” to allege “sufficient individual specificity to state a valid claim for relief under § 1983.” *Id.* at 179.

On remand, the district court granted Amaro leave to amend his complaint. The district court emphasized that “[t]he amended complaint must be limited to [his] claims against individual state officials and prison employees for [the] alleged February 2014 incident and related grievance proceeding.” *Id.* at 182. Amaro filed an amended complaint on September 26, 2018.

On May 28, 2020, the district court issued a memorandum opinion and order dismissing the amended complaint without prejudice “for failure to comply with the Court’s Order and with the Federal Rules of Civil Procedure.” *Id.* at 328. The district court noted, in pertinent part:

Far from complying with the Court’s orders, Plaintiff Amaro’s Amended Complaint is 144 pages long. (Doc. 69). He names in excess of 300 defendants, up to and including “the owners of the real property bearing the street address of 1039 Agua Negra Rd, Santa Rosa, New Mexico.” (Doc. 69) at 57-58. The allegations expressly include official capacity claims and claims against defendants that were previously dismissed by this Court. (See, e.g., Doc. 69 at 7, 9, 10). He asserts 39 claims covering a 10-year period (Doc. 69 at 63, 60-141) and makes generalized allegations

Id. at 331. The district court also “[took] notice that Amaro ha[d] a pattern of making grossly overbroad and unsupported claims,” noting in support that in 2017 “Amaro filed a habeas corpus petition under 28 U.S.C. § 2254 seeking to have all criminal convictions by New Mexico’s Ninth Judicial District Court from 1979 through 2013 set aside and all convicted prisoners released from custody.” *Id.* The district court emphasized that its “dismissal [wa]s without prejudice,” and it noted that “[i]f Plaintiff Amaro believes he has civil rights claims, he may institute a new case by filing a new complaint that complies with the requirements of Fed. R. Civ. P. 8 and 11” *Id.* at 333.

Amaro filed a motion for relief from judgment, which was denied by the district court on March 23, 2021. Amaro then filed a timely notice of appeal.

II

Amaro argues on appeal that “the district court’s overall conduct,” including its reference to his 2017 habeas litigation, “clearly articulates a prejudicial ‘anti-prisoner’ and/or ‘anti’-Pro Se Plaintiff posture both directly and tacitly” Aplt. Br. at 4. Amaro further argues that the district court’s order granting him leave to amend his complaint “did not comport with this Court’s Mandate on reversal and remand, but prejudicially limited [him] to only one cause of action, with disregard for the ‘continuing injury’ constituted by the unabated risk of harm from the underlying conditions, in violation of the 8th Amendment.” *Id.* at 5. Ultimately, Amaro argues that his amended complaint complies with both this court’s mandate and with the district court’s order on remand granting him leave to amend his complaint, and therefore should not have been dismissed by the district court.

We review the district court’s decision to dismiss Amaro’s amended complaint for an abuse of discretion. *See United States ex rel. Lemmon v. Envirocare of Utah, Inc.*, 614 F.3d 1163, 1167 (10th Cir. 2010) (“Rule 8(a) dismissals are reviewed for an abuse of discretion”); *Nasious v. Two Unknown B.I.C.E. Agents*, 492 F.3d 1158, 1161 (10th Cir. 2007) (“We review a district court’s dismissal under Rule 41(b) for an abuse of discretion.”). Because Amaro is proceeding pro se, we construe his pleadings liberally, but he remains obligated to comply with the Federal Rules of Civil and Appellate Procedure, and we may not act as his advocate. *Yang v. Archuleta*, 525 F.3d 925, 927 n.1 (10th Cir. 2008).

In dismissing Amaro’s amended complaint, the district court effectively relied on Rules 8 and 41(b) of the Federal Rules of Civil Procedure. Rule 8 outlines the “General Rules of Pleading” and, as relevant here, requires a complaint to set forth “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Rule 41(b) authorizes the involuntary dismissal of an action or claim “[i]f the plaintiff fails to prosecute or to comply with” the Federal Rules of Civil Procedure “or a court order.” Fed. R. Civ. P. 41(b). Rule 41(b) “has long been interpreted to permit courts to dismiss actions sua sponte for a plaintiff’s failure to . . . comply with the . . . court’s orders.” *Olsen v. Mapes*, 333 F.3d 1199, 1204 n.3 (10th Cir. 2003).

After examining the record on appeal, including in particular Amaro’s amended complaint, we conclude the district court did not abuse its discretion in dismissing the amended complaint without prejudice. As a threshold matter, there is little question that the amended complaint fails to comply with Rule 8(a)(2). Instead of the “short and plain statement” required by Rule 8(a)(2), the amended complaint is approximately 142 pages in length and includes 1,031 paragraphs of allegations and claims. Further, and as the district court emphasized in its order of dismissal, the amended complaint fails to comply with the district court’s July 26, 2018 order granting Amaro leave to amend. Rather than focusing on the alleged February 2014 incident and related grievance proceedings, as this court’s mandate anticipated and as the district court directed in its order granting Amaro leave to amend, the amended complaint outlines a host of claims spanning multiple years. For example, the

amended complaint purports to set forth claims related to Amaro falling from his cell bunk in October 2014, ROA at 264, for a March 27, 2018 exposure to carbon monoxide, *id.* at 265, for “[d]efective construction of a correctional facility,” *id.* at 266, and for an unspecified “assault/battery with bodily intrusion,” *id.* at 268.

Lastly, we reject Amaro’s argument that the district court was “anti-prisoner,” “anti-pro se,” or otherwise biased against him. To be sure, the district court referenced a prior habeas action that was filed by Amaro. But we are not persuaded that this reference demonstrated any bias on the part of the district court.

III

The judgment of the district court is AFFIRMED.

Entered for the Court

Mary Beck Briscoe
Circuit Judge