

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

January 11, 2022

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

JASON TEAGUE,

Plaintiff - Appellant,

v.

SERGEANT LEWIS RIDDLE,

Defendant - Appellee.

No. 21-2096
(D.C. No. 2:20-CV-00018-KWR-KRS)
(D. N.M.)

ORDER AND JUDGMENT*

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

Pro se Plaintiff-Appellant Jason Teague appeals the district court’s dismissal of this case without prejudice under Federal Rules of Civil Procedure 16(f) and 41(b).

Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.¹

* 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 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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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 Mr. Teague appears pro se, “we liberally construe his filings, but we will not act as his advocate.” *James v. Wadas*, 724 F.3d 1312, 1315 (10th Cir. 2013).

In his complaint, Mr. Teague alleged that Sergeant Lewis Riddle improperly confiscated his firearm during execution of a search warrant. Mr. Teague failed to comply with multiple court orders, including three orders to cooperate in preparing a Joint Status Report and Provisional Discovery Plan and two orders to show cause. He also failed to appear at a Rule 16(c) scheduling conference.

The magistrate judge, applying the factors set forth in *Ehrenhaus v. Reynolds*, 965 F.2d 916, 921 (10th Cir. 1992), recommended dismissal of the complaint without prejudice. The district court adopted the recommendation and entered judgment.

We review a dismissal without prejudice under Rules 16(f) and 41(b) for abuse of discretion. *Gripe v. City of Enid, Okla.*, 312 F.3d 1184, 1188 (10th Cir. 2002); *Olsen v. Mapes*, 333 F.3d 1199, 1204 (10th Cir. 2003).

In his brief on appeal, Mr. Teague does not challenge the grounds for the district court's dismissal. As a general rule, a party's failure to address an issue in the opening brief constitutes waiver of the issue. *See Wyoming v. Livingston*, 443 F.3d 1211, 1216 (10th Cir. 2006) ("Wyoming did not address this issue in its opening appellate brief. The issue is therefore waived."); *accord LifeWise Master Funding v. Telebank*, 374 F.3d 917, 927 n.10 (10th Cir. 2004). This rule applies equally to pro se litigants. *See Toevs v. Reid*, 685 F.3d 903, 911 (10th Cir. 2012). Mr. Teague therefore has waived an appellate challenge to the district court's dismissal.

We otherwise affirm for substantially the same reasons stated by the magistrate judge and the district court.

Affirmed.

Entered for the Court

Scott M. Matheson, Jr.
Circuit Judge