

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

May 19, 2022

Christopher M. Wolpert
Clerk of Court

GREGORY CARL: WIND, JR.,
T.M.W.O.P., LLC,

Plaintiff - Appellant,

v.

ROBERT GALLARDO; TIFFANI
HOLUBEK; DAVID ALLEN; CAPTAIN
KIRK,

Defendants - Appellees.

No. 22-1012
(D.C. No. 1:21-CV-02243-LTB-GPG)
(D. Colo.)

ORDER AND JUDGMENT*

Before **MATHESON, KELLY, and ROSSMAN**, Circuit Judges. **

Plaintiff-Appellant Gregory Carl Wind, Jr., a state prisoner appearing pro se, appeals the dismissal of his 42 U.S.C. § 1983 action without prejudice under Rule 41(b). Wind v. Gallardo, No. 21-cv-02243, 2021 WL 6497034 (D. Colo. Dec. 17, 2021). Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

** 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.

Mr. Wind is no stranger to the federal court system. Since 2017, he has had several complaints dismissed for failure to comply with Federal Rule of Civil Procedure 8 and/or 41(b). Wind v. U.S. Inc., 821 F. App'x 942, 942 (10th Cir. 2020) (unpublished); see also Wind v. Colo. Att'y Gen., 774 F. App'x 449, 452 (10th Cir. 2019) (unpublished). Here, the district court overruled Mr. Wind's objections to the magistrate judge's report and recommendation. See Wind v. Gallardo, No. 21-cv-02243, 2021 WL 6497035 (D. Colo. Nov. 29, 2021). The action was dismissed for failure to comply with the magistrate judge's earlier order to amend the complaint to comply with the requirements of the various claims he appeared to be asserting. Wind, 2021 WL 6497034, at *1.

We review for abuse of discretion the district court's Rule 41(b) dismissal. Nasious v. Two Unknown B.I.C.E. Agents, 492 F.3d 1158, 1161 (10th Cir. 2007). The district court did not abuse its discretion. The magistrate judge's October 4, 2021 order both provided Mr. Wind with instruction and opportunity to amend his complaint and explained the consequences of improper amendment. R. 73–80. Instead, Mr. Wind filed various other pleadings that did not respond to the order. Wind, 2021 WL 6497035 at *4. On appeal, Mr. Wind fails to challenge the reasons for the district court's dismissal, and while we read his pro se pleadings liberally, we cannot fashion claims for him. Requena v. Roberts, 893 F.3d 1195, 1205 (10th Cir. 2018). We find no abuse of discretion.

AFFIRMED.

Entered for the Court

Paul J. Kelly, Jr.
Circuit Judge