FILED
United States Court of Appeals
Tenth Circuit

June 20, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

CARLOS VELASQUEZ,

Plaintiff - Appellant,

v.

ROBERT BALDOCK; DEE BENSON; ALLISON EID; PAUL KELLY; DALE KIMBALL; CAROLYN MCHUGH; NANCY MORITZ; DAVID NUFFER; PAUL WARNER,

Defendants - Appellees.

No. 22-4098
(D.C. No. 2:22-CV-00133-HCN)
(D. Utah)

ORDER AND JUDGMENT*

Before **TYMKOVICH**, **BACHARACH**, and **ROSSMAN**, Circuit Judges.

Carlos Velasquez, pro se,[1] filed this appeal from an underlying civil action he brought against nine district and appellate judges. We dismiss the appeal in part for

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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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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 Mr. Velasquez is pro se, we construe his arguments liberally, but we "cannot take on the responsibility of serving as [his] attorney in constructing arguments and searching the record." *Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005).

lack of jurisdiction and, exercising jurisdiction under 28 U.S.C. § 1291, affirm in remaining part.

BACKGROUND

In two prior actions, Mr. Velasquez brought claims against the State of Utah and various state agencies. The district courts dismissed those actions, this court affirmed the dismissals, and the United States Supreme Court denied Mr. Velasquez's petitions for certiorari and petition for rehearing. *See Velasquez v. Utah* ("*Velasquez I*"), 775 F. App'x 420, 421 (10th Cir.), *cert. denied*, 140 S. Ct. 615 (2019), *reh'g denied*, 140 S. Ct. 1254 (2020); *Velasquez v. Utah* ("*Velasquez II*"), 857 F. App'x 971, 972 (10th Cir.), *cert. denied*, 142 S. Ct. 469 (2021).

In the action underlying this appeal, Mr. Velasquez sued the district and appellate judges in *Velasquez I* and *Velasquez II*. He asserted the adverse decisions the district judges entered in two prior district court cases contained "false conclusion[s]" and constituted "perjury and . . . fraud on the court." R. at 127 (italics omitted). He further asserted the judges from this court who presided over the subsequent appeals had "proven to be opaque and hostile to the questions [he] consistently presented" and that there had been an "absolute avoision [sic] of [his] pleadings," *id.* at 128 (italics omitted). He sought as relief an order setting aside the judgments in both prior cases and reinstating the second case.

On June 2, 2022, the district court dismissed the complaint with prejudice as frivolous and entered judgment the same day. On July 29, 2022, Mr. Velasquez filed a "Motion for Extraordinary Relief and New Trial," in which he requested

reconsideration of the dismissal and recusal of the district court judge. The district court denied that motion on August 25, 2022, and Mr. Velasquez filed a notice of appeal on October 18, 2022.

DISCUSSION

We "have an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party," so we "may sua sponte raise the question of whether there is subject matter jurisdiction at any stage in the litigation." *Image Software, Inc. v. Reynolds & Reynolds Co.*, 459 F.3d 1044, 1048 (10th Cir. 2006) (italics and internal quotation marks omitted). "[T]he timely filing of a notice of appeal in a civil case is a jurisdictional requirement." *Bowles v. Russell*, 551 U.S. 205, 214 (2007). Mr. Velasquez filed his "Motion for Extraordinary Relief and New Trial" more than 28 days after the district court entered judgment, so it did not extend the time to file his notice of appeal. *See* Fed. R. App. P. 4(a)(4)(A)(iv)–(vi); Fed. R. Civ. P. 59(b). And because Mr. Velasquez did not file his notice of appeal until 138 days after the underlying dismissal order, we lack jurisdiction to review it. *See* Fed. R. App. P. 4(a)(1)(B)(iii) (allowing 60 days to file notice of appeal where one of the parties is a United States employee). But we have jurisdiction to consider the denial of the motion for a new trial because he filed his notice of appeal within 60 days of the order denying that motion, *see id.*, and orders denying such motions are appealable even where, as here, there is no timely appeal from the underlying ruling, *see Servants of the Paraclete v. Does*, 204 F.3d 1005, 1008 (10th Cir. 2000).

We review the denial of the motion for a new trial for abuse of discretion. *See Price v. Philpot*, 420 F.3d 1158, 1167 n.9 (10th Cir. 2005). Mr. Velasquez does not demonstrate the district court abused its discretion when it denied his "Motion for Extraordinary Relief and New Trial." At most, his submissions before this court establish disagreement with the district court's underlying dismissal order, but as set forth above, we do not have jurisdiction to review that order. To the extent Mr. Velasquez articulated that disagreement in his motion for reconsideration and thereby seeks appellate review, "a motion for reconsideration . . . is not appropriate to revisit issues already addressed or advance arguments that could have been raised in prior briefing." *Servants of the Paraclete*, 204 F.3d at 1012.

CONCLUSION

We affirm the denial of Mr. Velasquez's "Motion for Extraordinary Relief and New Trial." We dismiss the remainder of the appeal for lack of jurisdiction. We also deny Mr. Velasquez's

- "Motion for Review En Banc" and
- "Motion for Efficient Review."

Entered for the Court
Per Curiam