FILED
United States Court of Appeals
Tenth Circuit

June 21, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

DAVID REDIGER,

Plaintiff - Appellant,

v.

GARTH CROWTHER, in his official capacity,

Defendant - Appellee.

No. 22-1427
(D.C. No. 1:22-CV-01223-LTB-GPG)
(D. Colo.)

ORDER AND JUDGMENT*

Before **BACHARACH**, **KELLY**, and **MORITZ**, Circuit Judges.

Proceeding pro se, David Rediger appeals the district court's order denying his motion seeking relief under Federal Rule of Civil Procedure 60(b) from an earlier order that dismissed his 42 U.S.C. § 1983 complaint as untimely.[1] Because Rediger fails to challenge the district court's Rule 60(b) ruling, we affirm.

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* After examining the brief and appellate record, this panel has determined unanimously to honor the appellant's request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. But it may be cited for its persuasive value. *See* Fed. R. App. P. 32.1(a); 10th Cir. R. 32.1(A).

[1] Although we liberally construe Rediger's pro se filings, we do not act as his advocate or construct arguments for him. *See Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005).

In December 2008, Rediger was arrested and prosecuted in Colorado for (1) interference with a public employee in a public building and (2) interference with the staff, faculty, or students of an education institution. Almost a decade later, the Colorado Supreme Court vacated the public-employee conviction for insufficient evidence and reversed and remanded the interference-with-staff charge after finding a constructive amendment. *People v. Rediger*, 416 P.3d 893, 901, 904–05 (Colo. 2018). On remand, the state trial court granted the prosecution's motion to dismiss the interference-with-staff charge, thus definitively concluding the prosecution in Rediger's favor in September 2019.

More than two years later, Rediger filed a § 1983 complaint against Garth Crowther in his official capacity as the sheriff of Conejos County, Colorado, asserting constitutional claims arising from his 2008 arrest and prosecution. After granting Rediger leave to proceed in forma pauperis (IFP), a magistrate judge screened the complaint under 28 U.S.C. § 1915(e)(2) and ordered Rediger to show cause why his claims should not be dismissed as untimely under the applicable two-year statute of limitations. *See Vasquez Arroyo v. Starks*, 589 F.3d 1091, 1097 (10th Cir. 2009) (explaining that district court may sua sponte dismiss IFP complaint on statute-of-limitations grounds only if "it is clear from the face of the complaint that there are no meritorious tolling issues, *or* the court has provided the plaintiff notice and an opportunity to be heard on the issue" (emphasis added)).

In his response to the show-cause order, Rediger acknowledged that the two-year statute of limitations had expired but asked the court to apply equitable tolling.

In support, Rediger asserted that "after his arrest in December of 2008, he suffered extreme physical and psychological issues[] and was fighting for his freedom." R. 37. He also noted that he had "suffered through multiple health issues during the COVID-19 pandemic" and had filed similar claims in early 2020 that were ultimately "dismissed due to technical issues."[2] *Id.* After reviewing Rediger's response, the magistrate judge determined that he was not entitled to equitable tolling and therefore recommended dismissing the complaint as untimely. Rediger did not object to the magistrate judge's report, so the district court adopted it in full and entered judgment for the defendant.

Over a month later, Rediger filed a motion under Rule 60(b)(6), which authorizes a court to grant relief from a final judgment for "any . . . reason that justifies relief." Essentially restating his equitable-tolling arguments, Rediger stressed that he "ha[d] suffered greatly and ha[d] tried for years to move this matter forward" and argued that it "offend[ed] justice" to dismiss his complaint without giving him the opportunity to serve Crowther. R. 53. He therefore asked the district court to set aside the judgment.

In deciding Rediger's motion, the district court first explained that Rule 60(b) relief is an "extraordinary" remedy reserved for "exceptional circumstances." *Id.* at 54–55 (quoting *Dronsejko v. Thornton*, 632 F.3d 658, 664 (10th Cir. 2011)). It further explained that "Rule 60(b) may not be used to revisit arguments already

[2] The technical issue prompting dismissal of these prior claims was Rediger's failure "to cure certain filing deficiencies within the time allowed." R. 45.

considered or to raise new arguments that could have been raised previously." *Id.* at 55 (citing *Van Skiver v. United States*, 952 F.2d 1241, 1243 (10th Cir. 1991)). Applying those principles, the district court found no "reason to grant relief from [its] final order and judgment." *Id.* In particular, the district court noted that it appropriately screened Rediger's complaint under § 1915(e)(2) and that it had already rejected his equitable-tolling arguments. The district court therefore denied Rediger's Rule 60(b) motion.

Rediger now appeals. His notice of appeal—filed on December 8, 2022—specifies that he appeals only from the order "entered on November 7, 2022," which is the order denying Rule 60(b) relief. *Id.* at 57. Indeed, because Rediger filed his Rule 60(b) motion more than 28 days after the entry of judgment, that motion did not toll the 30-day deadline to appeal a judgment in a civil case. *See* Fed. R. App. P. 4(a)(1)(A) (providing 30 days to appeal in civil case), (a)(4)(A)(vi) (stating that Rule 60(b) motion tolls time to appeal only if filed within 28 days of judgment). So because Rediger filed his notice of appeal more than 30 days after the underlying judgment, but within 30 days of the order denying his Rule 60(b) motion, it is timely only as to the Rule 60(b) order.

Rediger's appellate brief, however, does not address the Rule 60(b) order. Instead, he states that he "seeks a review of the dismissal" and then reasserts the equitable-tolling arguments he first advanced in his response to the district court's show-cause order. Aplt. Br. 2. By failing to contest the district court's Rule 60(b) order, Rediger has waived any challenge to it. *See Nixon v. City & Cnty. of Denver*,

784 F.3d 1364, 1369 (10th Cir. 2015) (finding waiver and affirming dismissal because appellant's "opening brief contains nary a word to challenge the basis of the dismissal"); *Garrett*, 425 F.3d at 841 (explaining that even pro se litigants can waive appellate review through inadequate briefing).

We therefore affirm the order denying Rule 60(b) relief. We also deny Rediger's motion to proceed IFP on appeal because he has not asserted "a reasoned, nonfrivolous argument" in support of his position. *Lister v. Dep't of Treasury*, 408 F.3d 1309, 1312 (10th Cir. 2005).

Entered for the Court

Nancy L. Moritz
Circuit Judge