FILED
United States Court of Appeals
Tenth Circuit

October 17, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

GEORGE L. WILLOUGHBY,

Plaintiff - Appellant,

v.

UNITED STATES OF AMERICA; INTERNAL REVENUE SERVICE,

Defendants - Appellees.

No. 23-5013
(D.C. No. 4:20-CV-00015-JFH-CDL)
(N.D. Okla.)

ORDER AND JUDGMENT*

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

Plaintiff-Appellant George L. Willoughby filed a complaint against the United States seeking relief from tax liabilities. The district court dismissed his claims and Mr. Willoughby appeals. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

I.

Mr. Willoughby, proceeding pro se, initiated this action on January 13, 2020. He alleged that he owed an outstanding tax debt, but also that the IRS had "seize[d]"

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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

his tax refunds for 2001 and 2002. *See* R. Vol. I at 8. He sought to recover those refunds, claiming they would more than pay his then-outstanding tax debt. *Id.* He also alleged that he owed penalties and interest he could not afford to pay, *id.*, and that his monthly income after IRS collections "ma[de] it not possible to survive," *id.* at 16. He sought to have the penalties and interest "di[s]missed." *Id.* at 8.

The United States moved to dismiss all claims under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), and Mr. Willoughby at the same time moved to amend his complaint. The district court granted the motion to dismiss and denied Mr. Willoughby's motion to amend, for the following reasons.

First, the district court dismissed Mr. Willoughby's claims for the 2001 and 2002 tax refunds for lack of subject matter jurisdiction, concluding the United States had not waived sovereign immunity for those claims. The court observed that 26 U.S.C. § 7422 permits tax refund suits, but is limited by 26 U.S.C. § 6511, which sets time limits for a taxpayer to file a claim for a refund, so that the "timely filing of [a refund] claim with the IRS is a jurisdictional prerequisite to maintaining a tax refund suit against the Government." R. Vol. I at 117 (quoting *Sorrentino v. IRS*, 383 F.3d 1187, 1188 (10th Cir. 2004)). Because § 6511(b)(2)(A) only allows a claim for "a refund of taxes paid within three years of submitting the refund claims," *id.* at 117, and Mr. Willoughby filed his 2001 and 2002 tax returns claiming refunds more

than three years after he paid the taxes, the court concluded his claims for those refunds are prohibited by the time limitations of § 6511(b)(2)(A).[1]

Second, as to Mr. Willoughby's request to dismiss penalties and interest, the district court again concluded it lacked subject matter jurisdiction, citing both the Anti-Injunction Act, which "prohibits suits by taxpayers for the purpose of re[s]training the assessment or collection of any tax," *id.* at 119 (internal quotation marks omitted; citing 26 U.S.C. § 7421(a)), and the Declaratory Judgment Act, which "prohibits [federal courts] from declaring the rights of litigating parties with respect to federal taxes," *id*. (internal quotation marks omitted; citing 28 U.S.C. § 2201(a)).

Third, the district court observed that Mr. Willoughby may have alleged a claim that § 6511 is unconstitutional. But because he did not identify any specific constitutional provision, the court dismissed any constitutional claim for failure to state a plausible claim, concluding the "failure to claim a tax refund within the statutory period simply does not give rise to a constitutional violation." *Id.* at 121.

The district court also denied Mr. Willoughby's motion to amend. It recognized that "[o]rdinarily, a court should provide a *pro se* plaintiff leave to amend." *Id.* But it concluded the proposed amendment would be futile because Mr. Willoughby's proposed amended complaint still "fail[ed] to allege he submitted

[1] Mr. Willoughby's 2001 and 2002 payments were through payroll withholdings, which are "deemed to have been paid . . . on the 15th day of the fourth month following the close of his taxable year," 26 U.S.C. § 6513(b)(1), i.e., April 15, 2002, and April 15, 2003, respectively. Mr. Willoughby's tax returns for 2001 and 2002 were filed more than three years later, on November 3, 2006, and June 3, 2006, respectively. *See* R. Vol. I at 52, 53, 118.

an administratively sufficient claim for a tax refund" for 2001 or 2002, "[did] not allege he paid these amounts within the statutory limitations period [of] § 6511(b)(2)," and did not sufficiently allege any constitutional violation, making his proposed amended complaint "subject to dismissal on the same bases." *Id.* at 122.

II.

Because Mr. Willoughby proceeds pro se, we "liberally construe" his pleadings "but we will not act as his advocate." *James v. Wadas*, 724 F.3d 1312, 1315 (10th Cir. 2013). As the party bringing the appeal, his "first task . . . is to explain . . . why the district court's decision was wrong." *GeoMetWatch Corp. v. Behunin*, 38 F.4th 1183, 1231 (10th Cir. 2022) (internal quotation marks omitted). Even a pro se party's briefing "must contain more than a generalized assertion of error." *Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 841 (10th Cir. 2005) (ellipsis and internal quotation marks omitted). When it does not, "we cannot fill the void by crafting arguments and performing the necessary legal research." *Id.* (internal quotation marks omitted).

"We review a dismissal for lack of subject-matter jurisdiction de novo, accepting the district court's findings of jurisdictional facts unless they are clearly erroneous." *Montoya v. Chao*, 296 F.3d 952, 954–55 (10th Cir. 2002).

"Generally, we review a denial of leave to amend for abuse of discretion." *Chilcoat v. San Juan Cnty.*, 41 F.4th 1196, 1217 (10th Cir. 2022). But "[w]hen a district court denies amendment based on futility," as occurred here, then "our review

for abuse of discretion includes de novo review of the legal basis for the finding of futility." *Id.* at 1218 (internal quotation marks omitted).

III.

We perceive no error in the district court's clear and well-reasoned order dismissing Mr. Willoughby's claims, and so affirm. On appeal, Mr. Willoughby has not pointed to any reasons "why the district court's decision was wrong." *See GeoMetWatch*, 38 F.4th at 1231. In particular, he does not identify any error in the conclusion that § 6511(b)(2)(A) prevents him from suing for refunds he did not claim within the required three-year period. He also has not identified any error in the conclusion that the Anti-Injunction Act and Declaratory Judgment Act prevent him from seeking dismissal of tax penalties and interest. Likewise, while Mr. Willoughby asserts his proposed amendment was not futile, he has not shown how it could have cured the fatal flaws identified by the district court.

Mr. Willoughby's briefs here largely emphasize his financial hardships and his view that application of § 6511 is unfair. But the court has no authority to grant relief on these bases. His financial hardships might provide a basis for administrative relief from the IRS—and his filings in fact indicate he has entered into an installment payment plan. But his individual circumstances neither show error by the district court nor change the rule that prevents him and other taxpayers from pursuing tax refunds not claimed within the required time limit. We are not free to grant him an individual exception to that rule. *See United States v. Brockamp*, 519 U.S. 347, 352 (1997) ("Congress did not intend courts to read . . . unmentioned, open-ended,

'equitable' exceptions into [§ 6511]"; holding equitable tolling doctrine does not apply to § 6511's time limitations), *superseded in part by amendment to § 6511 as recognized in Doe v. KPMG, LLP*, 398 F.3d 686, 689 (5th Cir. 2005).[2]

Mr. Willoughby's view that § 6511 is unconstitutional is also unavailing. On appeal he cites the Eighth and Sixteenth Amendments. But he did not identify those provisions to the district court, and his passing references now do not explain how or why he thinks § 6511 is unconstitutional. His constitutional arguments therefore fail. *See Little v. Budd Co.*, 955 F.3d 816, 821 (10th Cir. 2020) ("[A]bsent extraordinary circumstances, arguments raised for the first time on appeal are waived."); *United States v. Hardman*, 297 F.3d 1116, 1131 (10th Cir. 2002) ("Arguments raised in a perfunctory manner . . . are waived.").

Finally, Mr. Willoughby presents additional issues not included in his complaint or raised at the district court. These include arguments that his employer mis-reported his 2004 payroll withholdings, *see* Aplt. Opening Br. at 10, and that the IRS's Fresh Start Program is discriminatory because it is only available to "select" taxpayers, *id.* at 11. It is unclear how these arguments could provide Mr. Willoughby relief on the claims in this case, but in any event we will not address them for the first time on appeal. *See Little*, 955 F.3d at 821; *Regan-Touhy v. Walgreen Co.*,

[2] "In 1998, Congress amended [§ 6511] to permit tolling when a taxpayer . . . is prevented by a disability from seeking a refund." *Doe*, 398 F.3d at 689. Mr. Willoughby has not claimed that a disability prevented him from timely claiming his 2001 and 2002 refunds.

526 F.3d 641, 648 (10th Cir. 2008) ("We generally limit our review on appeal to the record that was before the district court . . . .").

In short, while Mr. Willoughby views his situation as unjust and asks us to provide him with relief, he has not pointed to any error in the district court's legal analysis or shown why it was wrong to dismiss his claims. Accordingly, having reviewed the briefing on appeal, the relevant portions of the record, and the applicable law, we see no reversible error and affirm for substantially the same reasons stated by the district court. *See* R. Vol. I at 112–23.

IV.

For the above reasons, we affirm.

Entered for the Court

Paul J. Kelly, Jr.
Circuit Judge