

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

April 15, 2024

Christopher M. Wolpert
Clerk of Court

JOHN D. HORTON,

Plaintiff - Appellant,

v.

DONALD EMMITT TAYLOE;
MICHAEL CHARLES FLANAGAN;
GERALD FRANK NEUWIRTH; JAY
STANLEY WALKER; TAYLOR
CURREL STEIN; JOHN WESLEY
KINSLOW; STEPHEN KEITH
NEWCOMBE; BRADLEY W.
BURGESS; SYLVIA M. BURGESS;
MANTON MONTY HIGHTOWER;
COLBY AUSTIN STEPHENSON;
CITY NATIONAL BANK,

Defendants - Appellees.

No. 23-6139
(D.C. No. 5:23-CV-00778-J)
(W.D. Okla.)

ORDER AND JUDGMENT*

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

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 This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel.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

John D. Horton, proceeding pro se, appeals from the district court's dismissal of his lawsuit under the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961-1968, for lack of jurisdiction. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm the dismissal, but we remand for the district court to amend its judgment.

BACKGROUND

Mr. Horton's complaint focused on an ongoing Oklahoma probate proceeding regarding his father's estate. He sought to bring civil RICO claims against various persons and entities involved in the proceeding, including current and former judges, current and former attorneys, financial institutions, the personal administrator of the estate, and another claimant to the estate. For relief, he requested money damages and "a writ of mandamus . . . [1] requiring that a forensic audit of the estate paid out of estate funds be concluded in three months . . . and [2] a scheduling order issued to the probate court to conclude the probate proceeding in the next 12 months." R. at 15-16. He also requested discovery related to the probate proceeding.

The district court summarily dismissed the action. It recognized that Mr. Horton "vaguely referenc[ed] the RICO Act in his Complaint," but noted that he "principally request[ed] that this Court interfere with the ongoing probate proceeding by ordering" a forensic audit and issuing a scheduling order. R. at 20-21. It therefore concluded that it lacked jurisdiction under the probate exception to federal jurisdiction, observing that "[a]lthough the federal courts may entertain collateral actions involving certain types of suits and claimants, the federal courts may not

interfere with the probate proceedings or assume general jurisdiction of the probate or control of the property in the custody of the state court.” *Id.* at 21 (internal quotation marks omitted). The court stated that Mr. Horton “appears unsatisfied with the speed and procedure of the ongoing probate proceeding, and he requests that this Court intervene for his benefit. The Court, however, lacks subject matter jurisdiction to award the relief Plaintiff seeks.” *Id.* It entered a separate judgment dismissing the action for lack of jurisdiction.

Mr. Horton appeals.

DISCUSSION

“When a district court dismisses for lack of subject-matter jurisdiction, our review is de novo.” *Česká Zbrojovka Defence SE v. Vista Outdoor, Inc.*, 79 F.4th 1255, 1259 (10th Cir. 2023). Because Mr. Horton proceeds pro se, we construe his filings liberally. *James v. Wadas*, 724 F.3d 1312, 1315 (10th Cir. 2013). But we do not act as his advocate, *id.*, and “[t]his liberal treatment is not without limits,” *Kay v. Bemis*, 500 F.3d 1214, 1218 (10th Cir. 2007). “[T]his court has repeatedly insisted that pro se parties follow the same rules of procedure that govern other litigants.” *Id.* (internal quotation marks omitted).

“[T]he probate exception reserves to state probate courts the probate or annulment of a will and the administration of a decedent’s estate; it also precludes federal courts from endeavoring to dispose of property that is in the custody of a state probate court.” *Marshall v. Marshall*, 547 U.S. 293, 311-12 (2006). “But it does not bar federal courts from adjudicating matters outside those confines and otherwise

within federal jurisdiction.” *Id.* at 312. In *Marshall*, the Supreme Court held that a tort claim brought by the decedent’s widow against the decedent’s son could be adjudicated in federal court without running afoul of the probate exception because she sought “an *in personam* judgment against [him], not the probate or annulment of a will” or “to reach a *res* in the custody of a state court.” *Id.* Relying on *Marshall*, Mr. Horton argues that the district court erred in dismissing the action because “federal courts have jurisdiction to entertain suits to determine the rights of creditors, legatees, heirs, and other claimants relating to an estate, so long as the federal court does not probate a will, administer an estate, take control of assets being administered by the probate court or interfere with the probate proceedings.” Aplt. Opening Br. at 2.

Mr. Horton sought both money damages and a writ of mandamus. We easily conclude the district court did not err in dismissing the request for a writ of mandamus. A writ controlling the progress of the probate proceeding would involve the federal district court in “the administration of a decedent’s estate,” which is not permitted. *Marshall*, 547 U.S. at 311. In addition, regardless of the applicability of the probate exception, the district court could not grant the requested writ because federal courts “have no authority to issue such a writ to direct state courts or their judicial officers in the performance of their duties.” *Knox v. Bland*, 632 F.3d 1290, 1292 (10th Cir. 2011) (internal quotation marks omitted).

That leaves the claims for money damages. Under *Marshall*, claims for damages payable by a defendant, rather than an estate, do not fall within the scope of

the probate exception. *See Marshall*, 547 U.S. at 312 (allowing the plaintiff to proceed with her tort claim where she sought “an *in personam* judgment” against the defendant). It thus appears that the district court erred in applying the probate exception to dismiss the claims for money damages.

Nevertheless, we affirm the dismissal of those claims.¹ Under 28 U.S.C. § 1915(e)(2)(B)(ii), “the court shall dismiss the case at any time if [it] determines that . . . the action . . . fails to state a claim on which relief may be granted.” “We apply the same standard of review for dismissals under § 1915(e)(2)(B)(ii) that we employ for Federal Rule of Civil Procedure 12(b)(6) motions to dismiss for failure to state a claim.” *Kay*, 500 F.3d at 1217. We thus apply Rule 12(b)(6) pleading standards in considering a dismissal under § 1915(e)(2)(B)(ii). *See id.* at 1218.

Under those standards, the complaint does not adequately plead a cause of action under RICO. As the district court noted, Mr. Horton’s complaint only “vaguely referenc[ed] the RICO Act.” R. at 20. It offered the type of “unadorned, the-defendant-unlawfully-harmed-me accusation[s],” “formulaic recitation[s] of the elements of a cause of action,” and “naked assertions devoid of further factual enhancement” that the Supreme Court has held to be insufficient to state a claim. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (brackets and internal quotation marks omitted). The complaint fell far short of “plead[ing] factual content that allows the

¹ “We can affirm a lower court’s ruling on any grounds adequately supported by the record, even grounds not relied upon by the district court.” *Elwell v. Byers*, 699 F.3d 1208, 1213 (10th Cir. 2012).

court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.*

A failure to state a claim, however, does not generally implicate subject-matter jurisdiction. *See Shapiro v. McManus*, 577 U.S. 39, 45 (2015). As noted above, the district court’s judgment dismissed the entire action for lack of subject-matter jurisdiction. In light of our conclusion that the district court had jurisdiction to consider the money-damages claims and our affirmance of the dismissal of those claims on a non-jurisdictional ground, we remand for the district court to amend the judgment to reflect dismissal for lack of subject-matter jurisdiction only in part.

CONCLUSION

We affirm the district court’s dismissal of Mr. Horton’s claims, but we remand for the district court to amend its judgment in accordance with this decision. We grant Mr. Horton’s motion to proceed without prepayment of costs or fees. The mandate shall issue forthwith.

Entered for the Court

Timothy M. Tymkovich
Circuit Judge