

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

August 20, 2026

Christopher M. Wolpert
Clerk of Court

JEROME STOKES,

Plaintiff - Appellant,

v.

OFFICER T. ATKIN; OFFICER
CAMERON MCCULLOUGH;
WASHINGTON COUNTY
ATTORNEYS,

Defendants - Appellees.

No. 26-4067
(D.C. No. 4:25-CV-00038-AMA)
(D. Utah)

ORDER AND JUDGMENT*

Before **PHILLIPS, KELLY**, and **FEDERICO**, Circuit Judges.

After being investigated and prosecuted for stalking, Jerome Stokes, proceeding pro se,¹ sued both the law-enforcement officers involved in the

* After examining the briefs and appellate record, this panel has unanimously determined that oral argument would not materially help decide 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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. But it may be cited for its persuasive value, consistent with Federal Rule of Appellate Procedure 32.1 and Tenth Circuit Rule 32.1.

¹ Because Stokes proceeds pro se, we liberally construe his arguments but do not act as his advocate. *See Greer v. Moon*, 83 F.4th 1283, 1292 (10th Cir. 2023).

investigation and the Washington County Attorney's Office. A magistrate judge recommended dismissing the suit for claim splitting because Stokes had filed a second, nearly identical suit arising out of the same alleged harm. Nobody objected to the magistrate judge's recommendation, so the district judge dismissed the case and entered judgment. Stokes then moved for relief from the judgment under Federal Rule of Civil Procedure 60(b). The court denied his motion. Stokes now appeals.

Exercising jurisdiction under 28 U.S.C. § 1291, we affirm. Stokes does not show that the district court abused its discretion in dismissing his case.

BACKGROUND

I. Factual Background

In Utah in 2019, the St. George Police Department investigated Stokes for stalking. Officer T. Atkin “conducted interviews and prepared the initial case narrative” for the investigation. R. at 19. Stokes alleges that Atkin did so “without adequate due diligence or fair notice.” *Id.*

Officer Cameron McCullough submitted a police report as part of the investigation. McCullough's report stated that he called Stokes and, though the phone rang for over two minutes, Stokes never answered. According to Stokes, he never received that call. Stokes also says he had his phone examined by a “certified iPhone tech who confirmed [that] no such call occurred.” *Id.* at 18.

Ultimately, a warrant was issued for Stokes's arrest, and the Washington County Attorney's Office prosecuted the case. Stokes says this prosecution was

based on “the officers’ incomplete and inaccurate records.” *Id.* at 19. And he alleges that he was “deprived of notice” that the conduct leading to his investigation and prosecution was “unwanted” because “a Judge reportedly advised [Stokes’s alleged stalking victim] not to tell [Stokes] to cease contact.” *Id.* at 17.

II. Procedural History

Six years later, Stokes, proceeding pro se, sued under 42 U.S.C. § 1983. He claimed that McCullough, Atkin, and the Washington County Attorney’s Office had violated his Fourteenth Amendment right to procedural due process. In addition to money damages, Stokes requested that the court order that: (1) the case against him be dropped, (2) Officer McCullough be fired, and (3) the St. George Police Department be required “to improve [its] documentation + evidence standards.” *Id.* at 20.

The same day Stokes filed the complaint in this suit, he filed a second complaint in the same federal court against the same defendants for nearly the same conduct. In that suit, he alleged violations of his First, Fourth, and Fourteenth Amendment rights under § 1983.

This case was assigned to a magistrate judge for screening. *Stokes v. Atkin (Stokes I)*, No. 25-cv-00038, 2025 WL 1550086, at *1 (D. Utah Apr. 25, 2025). The magistrate judge recommended that Stokes’s complaint be dismissed with prejudice for claim splitting. *Id.* at *2; *see generally Katz v. Gerardi*, 655 F.3d 1212, 1217–18 (10th Cir. 2011). He noted that Stokes’s suits

involved the same parties, concerned claims arising “out of the same criminal stalking investigation,” and alleged facts that were “substantively the same.”

Id.

The magistrate judge ordered the parties to file any objections to the report and recommendation within fourteen days of service. *Id.* Stokes did not object, nor did the defendants. So on May 30, the district court adopted the R&R and dismissed the action with prejudice. The court entered judgment the same day.

Over five months later, Stokes filed a motion seeking relief from the judgment under Federal Rule of Civil Procedure 60(b). He stated he “was homeless, displaced, and without stable access to mail, PACER, or online records,” and thus hadn’t received the R&R. *Id.* at 34. He also said his disabilities—including depression, anxiety, PTSD, and cognitive impairments—“interfered with his ability to track court deadlines, review electronic filings, [and] understand procedural requirements.” *Id.*

Stokes said he was entitled to relief under Rule 60(b)(1) because he had “acted in good faith at all times” and “reopening the case would not create any unfair prejudice.” *Id.* at 35. He argued he was entitled to relief under Rule 60(b)(4) because the “[j]udgment [was] void due to lack of notice.” *Id.* He sought relief under Rule 60(b)(6) because his “homelessness, disabilities, lack of notice, and inability to access court filings” amounted to “a manifest

injustice.” *Id.* Stokes also said he was entitled to relief because he had discovered “new evidence and updated facts” relevant to the case. *Id.*

The district court denied Stokes’s motion. *Stokes v. Atkin (Stokes II)*, No. 25-cv-00038, 2026 WL 1329699, at *1 (D. Utah May 13, 2026). The court concluded that Stokes wasn’t entitled to relief under Rule 60(b)(1) because he hadn’t shown excusable neglect. *Id.* at *1–2. It also held that Stokes wasn’t entitled to relief under Rule 60(b)(2) because he hadn’t described his new evidence or explained why it couldn’t have been disclosed earlier. *Id.* And it held Rule 60(b)(4) didn’t entitle Stokes to relief because his “lack of notice was of his own making,” so he hadn’t shown an error rendering the court’s judgement void. *Id.* Finally, the court rejected Stokes’s request for relief under Rule 60(b)(6) because he hadn’t explained why relief was appropriate under that subsection. *Id.* at *2–3.

Stokes now appeals the district court’s post-judgment order.

DISCUSSION

On appeal, Stokes challenges the district court’s Rule 60(b)(1) and Rule 60(b)(6) analyses. He doesn’t challenge the court’s Rule 60(b)(2) or Rule 60(b)(4) analysis.

“We review the denial of a Rule 60(b) motion for abuse of discretion.” *Manzanares v. City of Albuquerque*, 628 F.3d 1237, 1240 (10th Cir. 2010). That means we won’t disturb the district court’s ruling unless “a definite, clear or [unmistakable] error occurred.” *Id.* (citation omitted).

I. Rule 60(b)(1)

Stokes argues that the district court erred by “failing to conduct the equitable analysis required” under Rule 60(b)(1) to determine whether his not responding to the R&R constituted excusable neglect. Open. Br. at 6. He says that he provided the court with evidence that he had been homeless, experienced “disruptions in the receipt of physical mail,” and received mental-health treatment. *Id.* Stokes also notes that he sought electronic filing access, reviewed the PACER docket, and promptly filed his Rule 60(b) motion upon “discovering docket entries reflecting alleged returned mail.” *Id.* He argues that the court should have considered these “demonstrated continuous good-faith efforts to protect his rights” when conducting its Rule 60(b)(1) analysis. *Id.*

Rule 60(b)(1) allows a court to relieve a party from a final judgment for excusable neglect. When determining “whether neglect is excusable,” courts must consider “all relevant circumstances surrounding the party’s omission.” *Jennings v. Rivers*, 394 F.3d 850, 856 (10th Cir. 2005) (citation omitted). Relevant factors include: (1) “the danger of prejudice to the opposing party;” (2) “the length of the delay and its potential impact on judicial proceedings;” (3) “the reason for the delay, including whether it was within the reasonable control of the movant;” and (4) “whether the movant acted in good faith.” *Id.* (citation modified). “Fault in the delay” is “perhaps the most important consideration” when determining whether neglect is excusable. *Id.* (citation

modified). The merits of the underlying claim are another consideration. *Id.* at 857.

The district court didn't abuse its discretion in denying Stokes's Rule 60(b)(1) motion. The court determined that Stokes's own error caused the delay. Under the District of Utah's local rules, Stokes had to "immediately notify the Clerk's Office in writing of any name, mailing address, or email address changes." DUCivR 83-1.6(b). Because he didn't do so, the court held that Stokes' "lack of notice was of his own making." *Stokes II*, 2026 WL 1329699, at *2. Though Stokes also claims that the court overlooked his evidence of "alleged postal delivery failures," Open. Br. at 6, the court noted that the magistrate judge's recommendation "was never returned to the Court as undeliverable," *Stokes II*, 2026 WL 1329699, at *2. What's more, because it's duplicative, Stokes's underlying claim isn't meritorious. *See Jennings*, 394 F.3d at 857 (discussing the importance of need to avoid frivolous litigation to Rule 60(b)(1) motions). So he isn't entitled to relief under Rule 60(b)(1).

Next, Stokes fails to explain how evidence of his medical treatment and his request for electronic-filing privileges were relevant to the excusable neglect analysis. True, a serious medical problem "can be sufficient for a finding of excusable neglect." *Perez v. El Tequila, LLC*, 847 F.3d 1247, 1253 (10th Cir. 2017). But Stokes never explained how his disabilities prevented him from timely responding to the magistrate judge's recommendation. So the district court didn't err in not crediting his mental-health treatment records. *See*

Crow Tribe of Indians v. Repsis, 74 F.4th 1208, 1216 (10th Cir. 2023)

(explaining that “the party requesting relief from judgment bears the burden of showing that relief is warranted”).

Similarly, Stokes hasn’t shown how his “subsequent authorization for electronic filing and electronic notice” demonstrates excusable neglect. Open. Br. at 7. At best, this argument could be construed as evidence that Stokes acted in good faith. But the district court never held otherwise. *See Stokes II*, 2026 WL 1329699, at *1–2. So though seeking electronic filing and notice privileges might indicate Stokes’s good faith in pursuing his claims, it alone doesn’t show excusable neglect. We see no indication that the court abused its discretion here.

II. Rule 60(b)(6)

Stokes next argues that the district court “abused its discretion by failing to evaluate the cumulative effect of [his] documented circumstances under Federal Rule of Civil Procedure 60(b)(6).” Open. Br. at 6. Again, he says the court didn’t account for his bouts of homelessness, his mental-health treatment, and his docket entries indicating mail returned as undeliverable.

Rule 60(b)(6) allows a court to “relieve a party . . . from a final judgment for . . . any other reason that justifies relief.” “[C]ircumstances that trigger Rule 60(b)(6) arise only when Rules 60(b)(1) through (b)(5) are inapplicable.” *Waetzig v. Halliburton Energy Servs., Inc.*, 145 F.4th 1279, 1283 (10th Cir. 2025) (citation modified).

The district court didn't abuse its discretion in denying Stokes's Rule 60(b)(6) motion. The court concluded that Stokes sought relief under this clause "for essentially the same reasons that he requested relief under the other clauses, which is improper." *Stokes II*, 2026 WL 1329699, at *3. Stokes doesn't explain why this reasoning was incorrect. In fact, he argues that he should have received Rule 60(b)(6) relief for essentially the same reasons he should have received Rule 60(b)(1) relief. So the district court didn't abuse its discretion in concluding that relief under Rule 60(b)(6) wasn't warranted. *See United States v. Buck*, 281 F.3d 1336, 1341 (10th Cir. 2002) ("The clear import of the language of clause (b)(6) is that the clause is restricted to reasons other than those enumerated in the previous five clauses.").

CONCLUSION

We affirm the district court's judgment.

Entered for the Court

Gregory A. Phillips
Circuit Judge