

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

October 7, 2026

Christopher M. Wolpert
Clerk of Court

FOR THE TENTH CIRCUIT

KERI L. VIEGAS; JAMES VIEGAS,

Plaintiffs - Appellants/Cross-
Appellees,

v.

MARCELLO G. ROJAS; TH MSR
HOLDINGS LLC; CHUCK
BROERMAN, El Paso County
Trustee in his official capacity;
STEVEN SCHLEIKER, El Paso
County Clerk and Recorder in his
official capacity,

Defendants - Appellees/Cross-
Appellants.

No. 25-1234
(D.C. No. 1:24-CV-03174-PAB-STV)
(D. Colo.)

KERI L. VIEGAS, JAMES VIEGAS,

Plaintiffs - Appellees,

v.

TH MSR HOLDINGS LLC,

Defendant - Appellant,

and

MARCELLO G. ROJAS; CHUCK
BROERMAN, El Paso County
Trustee in his official capacity;
STEVEN SCHLEIKER, El Paso

No. 25-1253
(D.C. No. 1:24-CV-03174-PAB-STV)
(D. Colo.)

County Clerk and Recorder in his
official capacity,

Defendants.

ORDER AND JUDGMENT*

Before **HOLMES**, Chief Judge, **MORITZ** and **FEDERICO**, Circuit Judges.

In these cross-appeals, Keri Lynn and James Viegas challenge the dismissal of their civil rights complaint, and TH MSR Holdings, LLC contests the denial of its motion for filing restrictions against the Viegases. We have jurisdiction under 28 U.S.C. § 1291 and, finding no error in either appeal, we affirm.

I

The underlying lawsuit arose from a foreclosure action involving the Viegases' property in El Paso County, Colorado. On two previous occasions in 2023 and 2024, the Viegases had filed similar foreclosure-related

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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 Federal Rule of Appellate Procedure 32.1 and Tenth Circuit Rule 32.1.

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.

lawsuits. This time, they sued Marcello G. Rojas, MSR Holdings, Chuck Broerman, and Steven Schleiker. The complaint alleged that Rojas was “an attorney acting as a debt collector for Roundpoint Mortgage Servicing LLC,” MSR Holdings was a “corporation who ‘collect[ed]’ debt without consideration,” Broerman was “acting as El Paso County Public Trustee,” and Schleiker was “acting as a El Paso County Clerk and Recorder.” R. I at 11–12.

According to the complaint, the defendants pursued foreclosure to seize the Viegases’ property without a jury trial, causing them to suffer “harassment and harm.” *Id.* at 14. The defendants’ alleged conduct included “unlawfully recording documents on a land patented property in a private trust without consent,” “filing unenforceable documents[,] and posting [the Viegases’] private information” online without due process. *Id.* at 10. The complaint thus sought relief for “land patent infringement,” violations of 42 U.S.C. §§ 1985 and 1988, and violations of the Fourth, Fifth, and Seventh Amendments under 42 U.S.C. § 1983. *See id.* at 18–21.

The several defendants moved to dismiss the complaint. MSR Holdings also moved “to enjoin further vexatious and unsupported filings by” the Viegases. *Id.* at 127. Upon referral, the magistrate judge issued a recommendation to grant the motions to dismiss and for filing sanctions. Over the Viegases’ objections, the district court affirmed and adopted the

magistrate judge’s recommendation in part – dismissing the Viegases’ claims with prejudice, but declining MSR Holdings’ request to impose filing restrictions at that time.

The Viegases and MSR Holdings timely cross-appealed.

II

The Viegases contend the district court erred in accepting the magistrate judge’s recommendation to dismiss their claims with prejudice. On appeal, they raise seven issues¹, many of which appear to be interrelated:

1. The defendants lacked standing to initiate foreclosure proceedings against the Viegases, and they did so by filing fabricated or void instruments.
2. Because MSR Holdings committed fraud by filing the fabricated or void instruments, it lost standing to pursue the foreclosure action.

¹ While not raised as a standalone issue, the Viegases argue throughout the opening brief that their claims are not barred by res judicata. According to them, the instant lawsuit should proceed because it arises from different constitutional violations alleged against different defendants than those involved in their prior foreclosure-related lawsuits in 2023 and 2024. But the magistrate judge did not recommend dismissal based on res judicata. To the contrary, the magistrate judge said he could not discern from the complaint’s “scant allegations” whether the claims in the instant and prior lawsuits were identical. R. II at 137. And the district court did not disagree with this assessment – it merely overruled the Viegases’ apparent objection to the magistrate judge referencing the prior lawsuits in the recommendation’s background section. *See id.* at 129–31 & n.1. We detect no error in this ruling.

3. Under 12 U.S.C. § 25b, national banks like MSR Holdings cannot invoke state foreclosure procedures (like Colorado Rule 120) where the effect is to deprive citizens of property without due process.
4. Colorado Rule 120 is unconstitutional because it provides a mechanism for nonjudicial foreclosure without due process.
5. Colorado Rule 120 is unconstitutional because its procedures did not afford the Viegases a meaningful opportunity to be heard.
6. Colorado Rule 120 is unconstitutional because it delegates Article III power to administrative actors (i.e., county trustees and clerks) to effectuate foreclosures.
7. The magistrate judge's recommendation to dismiss the complaint with prejudice (and the district court's acceptance of this recommendation) denied the Viegases a fair opportunity to vindicate their constitutional claims via discovery and jury trial.

A problem emerges at the outset. Under our firm waiver doctrine, an appellant waives review of any “issues that were not raised in objections to a magistrate judge’s report and recommendation.” *United States v. B.N.M.*, 107 F.4th 1152, 1168 (10th Cir. 2024). And an objection must have been “sufficiently specific to focus the district court’s attention on the factual and legal issues that [were] truly in dispute” to avoid application of the firm waiver doctrine. *United States v. 2121 E. 30th St.* 73 F.3d 1057, 1060 (10th Cir. 1996). Here, even construing their papers liberally,² the Viegases

² Because the Viegases proceed pro se on appeal, we construe their filings liberally but do not “serv[e] as [their] attorney in constructing arguments and searching the record.” *Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005).

did not raise the above-listed Issues 1, 2, 3, 6, or 7 before the district court – either with sufficient specificity, or at all. The Viegases have therefore waived these issues, and we will not consider them.

Construed liberally, the only issues the Viegases raised in their objections before the district court were Issues 4 and 5. They argued Colorado’s foreclosure procedures function to deprive homeowners – including in their case – of due process.³ *See* R. II at 159–60, 163; *see id.* at 197–98 (acknowledging and overruling these objections). We disagree. We have repeatedly explained, albeit in unpublished decisions, that Colorado’s nonjudicial foreclosure process provides homeowners with reasonable notice and a meaningful opportunity to be heard. *See, e.g., Silva v. U.S. Bank, Nat’l Ass’n*, 817 F. App’x 545, 549 (10th Cir. May 20, 2020); *Davis v. Deutsche Bank Nat’l Tr. Co.*, 737 F. App’x 379, 384–85 (10th Cir. June 5, 2018); *Mbaku v. Carrington Mortg. Servs., LLC*, 735 F. App’x 533, 538–40

³ In the complaint, the Viegases framed their due process claim in terms of the defendants’ filing of a defective Notice of Election and Demand in violation of Colo. Rev. Stat. § 38-38-102. *See* R. I at 10, 13–14, 20. But based on the Viegases’ later filings, both the magistrate judge and district judge appear to have construed their arguments as a broader challenge to whether Colorado’s foreclosure scheme – which encompasses Colorado Rule 120 – afforded them due process. *See* R. II at 143–44; *id.* at 197–98.

(10th Cir. June 6, 2018).⁴ The Viegases offer no sound opposition to the analysis in those decisions, and, finding the analysis persuasive, we adopt it here. What’s more, as both the magistrate judge and district court correctly observed, *see* R. II at 144, 197, the Viegases fail to specify what procedures they should have received, but did not, prior to foreclosure. All told, these defects are fatal to the Viegases’ due process arguments.

Based on the foregoing, we affirm the district court’s dismissal of the Viegases’ complaint.

III

MSR Holdings advances a single issue on appeal – the district court erred in rejecting the magistrate judge’s recommendation to impose filing restrictions. We are unpersuaded.

“Federal courts have the inherent power to regulate the activities of abusive litigants by imposing carefully tailored restrictions under appropriate circumstances.” *Ysais v. Richardson*, 603 F.3d 1175, 1180 (10th Cir. 2010). A court’s discretion to impose (or to abstain from imposing)

⁴ These decisions are unpublished and therefore are not binding precedent. *See* 10th Cir. R. 32.1. We nonetheless find their discussions of this procedural due process issue thorough and persuasive and hence adopt them here. *See United States v. Engles*, 779 F.3d 1161, 1162 n.1 (10th Cir. 2015) (stating that an unpublished decision “may be relied upon for the purpose of disposing of the issue presented if it has persuasive value with respect to a material issue in a case and would assist the court in its disposition”).

filing restrictions is “extremely broad,” and we will affirm its decision on the matter absent an abuse of its discretion. *See Tripati v. Beaman*, 878 F.2d 351, 354 (10th Cir. 1989) (per curiam).

Here, MSR Holdings argues the district court applied an incorrect legal standard in deciding not to impose filing restrictions. In its view, the court misconstrued the reasoning in *Winslow v. Hunter (In re Winslow)*, 17 F.3d 314 (10th Cir. 1994), and *MacIntyre v. Supreme Court of Colorado*, No. 1:23-cv-01765-CNS-KAS, 2024 WL 4338026 (D. Colo. July 12, 2024), to require a minimum number of filings or amount of time before filing restrictions are warranted. We read the court’s analysis differently. To begin, the court accurately recited the relevant legal standard:

Filing restrictions are appropriate where (1) the litigant’s lengthy and abusive history is set forth; (2) the court provides guidelines as to what the litigant must do to obtain permission to file an action; and (3) the litigant receives notice and an opportunity to oppose the court’s order before it is instituted.

R. II at 201 (internal quotation marks omitted); *see Ysaïs*, 603 F.3d at 1180 (same). Then, as MSR Holdings acknowledges, the court “correctly noted” the Viegases’ history of vexatious litigation. *Aplt. Br.* at 37; *see R. II* at 201–03. The court further agreed that the Viegases “have caused the Court to expend significant resources addressing [their] slew of frivolous actions.” *R. II* at 203 (brackets and internal quotation marks omitted).

But contrary to MSR Holdings’ suggestion, the court did not read *Winslow* or *MacIntyre* to require a threshold quantum of abusive conduct for filing restrictions. Rather, the court merely cited those cases (and others) for the general proposition that “[r]epeated, meritless attempts to challenge foreclosure proceedings can constitute a history of abusive litigation that warrants filing restrictions.” R. II at 201. It then distinguished the facts of *MacIntyre* – there, filing restrictions were imposed only after the vexatious litigant’s appeals had been fully resolved, whereas here, filing restrictions would have been premature because the merits of the Viegases’ pending appeals had yet to be evaluated or resolved.⁵ *See id.* at 203. The court similarly distinguished the facts of *Winslow* – unlike the vexatious litigants in that case, the Viegases had not “completely fail[ed] to advance any substantive argument” or “consistently commit[ted] wholesale violations of [the] court’s local rules.” *Id.* at 204 (brackets and internal quotation marks omitted). The district court, in short, did not derive or apply an incorrect legal standard from *Winslow* and *MacIntyre* – it simply used those cases as comparators to find that the Viegases’ conduct

⁵ We have since resolved all of those appeals. *See generally Viegas v. LoanDepot, Inc.*, No. 24-1504, 2025 WL 3896956 (10th Cir. July 8, 2025); *Viegas v. Kane*, No. 24-1368, 2025 WL 2089402 (10th Cir. July 25, 2025); *Viegas v. Owens*, No. 24-1366, 2025 WL 2089580 (10th Cir. July 25, 2025); *Viegas v. LoanDepot, Inc.*, No. 25-1202, Dkt. No. 16 (10th Cir. Aug. 27, 2025) (dismissing appeal for lack of prosecution pursuant to 10th Cir. R. 42.1).

“[did] not rise to the most extreme end of abuse of the judicial process.” *Id.* at 203 (internal quotation marks omitted). We deem this finding reasonable.

For these reasons, the district court did not abuse its discretion in declining to impose filing restrictions, and we affirm on that basis. Even so, given their litigation history in this court, we caution the Viegases that if they continue to pursue meritless appeals, they could face filing restrictions or other sanctions from this court. *See Tripati*, 878 F.2d at 353 (“[T]he right of access to the courts is neither absolute nor unconditional, and there is no constitutional right of access to the courts to prosecute an action that is frivolous or malicious.”) (citation omitted).

IV

Consistent with the foregoing analysis, we AFFIRM the district court’s judgment in appeal nos. 25-1234 and 25-1253.

Entered for the Court

Richard E.N. Federico
Circuit Judge