

UNITED STATES COURT OF APPEALS March 5, 2009

TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

TODD BRIAN SHARON,

Plaintiff - Appellant,

v.

ADAMS COUNTY SHERIFF'S
OFFICE, et al; SHERIFF DOUG
DARR; UNDERSHERIFF SISKA,
ACTING CAPTAIN LT. TWEEDEN,
(Acting Captain Replacing James
Wilburn); LT. T.J. COATES; LT.
NICASTLE; TECHNICAL SERVICES
MANAGER (T.S.M.) MELANIE
GREGORY; PROGRAMS
COORDINATOR STERRITT FULLER;
SGT HEINREICH (unsure last name
spelling); CLASSIFICATION
SERVICES SUPERVISOR (C.S.S.)
BAMBI K. MARTINEZ; MAIL
ROOM SUPERVISOR ELAINE
("E.M.") RIEDL; MAIL ROOM
TECHNICIAN DEBBIE LINDER;
PRISON HEALTH SERVICES, INC.,
("P.H.S.") HEAD ADMINISTRATOR
LAURA SCHEUFELE; PRISON
HEALTH SERVICES ("P.H.S.")
CHIEF MEDICAL PHYSICIAN DR.
IVOR GARLICK; SGT. MILLER,
(Senior); PRISON HEALTH
SERVICES ("P.H.S.") NURSING
SUPERVISOR DIANNE SCHISLER;
ARAMARK FOOD SERVICE CORP.
FOOD SERVICE DIRECTOR
("F.S.D.") FRED DEMENT;
ARAMARK FOOD SERVICE CORP.
ASSISTANT FOOD SERVICE

No. 08-1380
(D.C. No. 08-CV-01395-ZLW)
(D. Colo.)

DIRECTOR PEG O (last name unknown); ADAMS COUNTY SHERIFFS OFFICE DEPUTY NAYLOR; ADAMS COUNTY SHERIFFS OFFICE DEPUTY SPENCE,

Defendants - Appellees.

ORDER AND JUDGMENT*

Before **KELLY, ANDERSON, and BRISCOE**, Circuit Judges.**

Todd Brian Sharon, an inmate appearing pro se, appeals the dismissal of his civil rights complaint initially seeking \$5.9 million in damages under 42 U.S.C. § 1983. Sharon v. Adams County Sheriffs Office, No. 1:08-cv-01395-BNB, 2008 WL 4298520 (D. Colo. Sept. 18, 2008). We exercise jurisdiction pursuant to 28 U.S.C. § 1291 and affirm.

On July 8, 2008, Mr. Sharon filed his pro se conditions of confinement suit naming ten defendants and containing a long narrative. I R. Doc. 3. Attached

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

** After examining the briefs and the appellate record, this three-judge panel has determined unanimously that oral argument would not be of material assistance in the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1(G). The cause is therefore ordered submitted without oral argument.

were seventy-one exhibits. A magistrate judge ordered Mr. Sharon to file an amended complaint, including “a short and plain statement of his claims showing that he is entitled to relief,” within thirty days. Sharon v. Adams County Sheriffs Office, No. 1:08-cv-01395-BNB, 2008 WL 2910506, at *1-2 (D. Colo. July 24, 2008); see also Fed. R. Civ. P. 8(a)(2) (“A pleading that states a claim for relief must contain: . . . (2) a short and plain statement of the claim showing that the pleader is entitled to relief . . .”).

Mr. Sharon filed his amended complaint on September 9, 2008, I R. Doc. 15; however, the district court found that it still failed to comply with pleading requirements under Rule 8(a). The complaint did not set forth a short and plain statement of his claims, nor did it state clearly and concisely how the defendants had violated his rights. Sharon, 2008 WL 4298520, at *1. Thus, on September 18, 2008, Mr. Sharon’s complaints and the action were dismissed without prejudice for failing to comply with the pleading requirements of Rule 8. Id. at *2.

Mr. Sharon subsequently filed a “Motion for Reconsideration of Orders Entered September 18, 2008” pursuant to Rule 59(e) of the Federal Rules of Civil Procedure, I R. Doc. 20, and a “Motion for Court-Appointed Counsel,” I R. Doc. 19. Finding that Mr. Sharon could not establish any ground to justify reconsideration, see Servants of the Paraclete v. Does, 204 F.3d 1005, 1012 (10th Cir. 2000) (outlining the three grounds warranting reconsideration), the district

court denied the motion for reconsideration. I R. Doc. 29. The court also denied Mr. Sharon's motion for appointment of counsel. Id. On October 9, 2008, Mr. Sharon filed his appeal of the district court order entered on September 18, 2008. I R. Doc. 22.

We review the district court's decision to dismiss Mr. Sharon's complaint without prejudice for an abuse of discretion. Kuehl v. FDIC, 8 F.3d 905, 908-09 (1st Cir. 1993); see also Fed. R. Civ. P. 41(b) (permitting a dismissal for failure to comply with pleading rules and considering such dismissal an adjudication on the merits); Abdelsamed v. United States, 13 Fed. App'x 883, 884 (10th Cir. 2001) (unpublished). After reviewing the record, we conclude that the district court did not abuse its discretion in dismissing this complaint. Mr. Sharon's original complaint ballooned to twice its size when amended, and failed to include the "short and plain statement" required by Rule 8(a)(2). The district court gave Mr. Sharon the opportunity to eliminate the prolixity in his complaint, and advised him that it "'must explain what each defendant did to him . . . ; when the defendant did it; how the defendant's action harmed him . . . ; and, what specific legal right the plaintiff believes the defendant violated.'" Sharon, 2008 WL 2910506, at *1 (quoting Nasious v. Two Unknown B.I.C.E. Agents, 492 F.3d 1158, 1163 (10th Cir. 2007)). Though Mr. Sharon endeavored to comply by dividing his complaint into four claims (denial of access to the courts, denial of proper medical care, mail tampering and theft, and medically improper diet), each

claim is a long narrative followed by supporting exhibits, rather than a short and plain statement of a claim for relief.

AFFIRMED. All pending motions are DENIED and Mr. Sharon is ordered to make immediate payment of the unpaid appellate filing fee.

Entered for the Court

Paul J. Kelly, Jr.
Circuit Judge