FILED
United States Court of Appeals
Tenth Circuit

October 5, 2021

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

DELMART E.J.M. VREELAND, II,

Plaintiff - Appellant,

v.

ROBERT CHARLES HUSS,

Defendant - Appellee.

No. 20-1301
(D.C. No. 1:18-CV-00303-PAB-SKC)
(D. Colo.)

ORDER AND JUDGMENT*

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

Delmart Vreeland, II, proceeding pro se,[1] appeals the denial of his motion for a preliminary injunction under Fed. R. Civ. P. 65 and the denial of his motion for leave to amend his complaint. We exercise jurisdiction under 28 U.S.C. § 1292(a)(1) and affirm the denial of his motion for a preliminary injunction. We decline to exercise

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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

[1] Because Vreeland proceeds pro se, we construe his arguments liberally, but we "cannot take on the responsibility of serving as [his] attorney in constructing arguments and searching the record." *Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005).

pendent jurisdiction over the denial of his motion for leave to amend, so we dismiss that portion of the appeal.

BACKGROUND

Vreeland is a convicted sex offender and an inmate at the Colorado Department of Corrections (CDOC). Defendant Robert Huss is a former attorney with the Colorado Attorney General who once represented CDOC. In the lawsuit underlying this appeal, Vreeland alleges Huss illegally sabotaged efforts to settle another lawsuit Vreeland brought against the State of Colorado concerning his "S-code" designation at CDOC.

Under Colorado's Sex Offender Treatment and Monitoring Program (SOTMP), CDOC assigns all sex offenders an S-code, which affects their eligibility for different programs in the prison system, including housing at lower security level facilities. Vreeland's S-code is S-5-I. The "I" in the designation stands for "ineligible," and applies when "[t]he offender has more than four years to his/her parole eligibility date and is not yet eligible for SOTMP." CDOC Admin. Reg. 700-19§ IV(B)(4). In the other lawsuit, Vreeland sought to compel CDOC to change his S-code to "S-5-L." An "L" designation stands for "low " and means "[t]he offender may have an administrative, judicial, or institutional determination of a sex offense, but are a low resource priority for SOTMP services at the current time." *Id.* § IV(B)(5).[2]

[2] Vreeland refers to the "L" designation as indicating a low risk to reoffend, *see* Aplt. Opening Br. at 4, 22, 27, but CDOC regulations do not use this terminology.

In the midst of this lawsuit against Huss, Vreeland moved for a preliminary injunction under Fed. R. Civ. P. 65 ordering CDOC, a nonparty, to change his designation from S-5-I to S-5-L. In his motion, Vreeland stated he had "come up with a way where the Court can issue an order, and if the defense does not object to the order, the order and non-objection is sufficient to meet the requirements and/or specifications of the proposed offer to settle, and this matter can be closed, i.e., dismissed with prejudice." R. Vol. 2 at 24. The defendants did object to the motion, however, and the district court denied it. Vreeland appeals that denial. He also appeals the district court's earlier denial of his motion for leave to file a second amended complaint.

DISCUSSION

"We review a district court's denial of a preliminary injunction under an abuse of discretion standard." *Gen. Motors Corp. v. Urb. Gorilla, LLC*, 500 F.3d 1222, 1226 (10th Cir. 2007). A party seeking a preliminary injunction must make four showings to obtain relief: "(1) a substantial likelihood of success on the merits; (2) irreparable harm to the movant if the injunction is denied; (3) the threatened injury outweighs the harm that the preliminary injunction may cause the opposing party; and (4) the injunction, if issued, will not adversely affect the public interest." *Id.* "The main purpose of a preliminary injunction is simply to preserve the status quo pending the outcome of the case." *Tri-State Generation & Transmission Ass'n, Inc. v. Shoshone River Power, Inc.*, 805 F.2d 351, 355 (10th Cir. 1986). And "when a preliminary injunction would alter the status quo, . . . the movant bears a

heightened burden and must make a strong showing both with regard to the likelihood of success on the merits and with regard to the balance of harms." *Gen. Motors Corp.*, 500 F.3d at 1226 (internal quotation marks omitted).

Before the district court, Vreeland attached two documents to his motion—a mental health evaluation and a partial copy of CDOC Administrative Regulation 700-19. But as the district court noted, he did "not explain why the documents attached to the motion show that he ha[d] a likelihood of success on the merits of his retaliation claim against [Huss] and that this would entitle him to an S Code change." R. Vol. 2 at 725. Nor did he address any of the four showings necessary to obtain a preliminary injunction. And while he now raises some new arguments directed at the preliminary injunction factors, "absent extraordinary circumstances, arguments raised for the first time on appeal are waived," *Little v. Budd Co.*, 955 F.3d 816, 821 (10th Cir. 2020), so we will not consider those arguments now.

Vreeland also seeks to appeal the district court's denial of his motion for leave to file a second amended complaint. "In ordinary civil litigation, a case in federal district court culminates in a final decision, a ruling by which a district court disassociates itself from a case. A party can typically appeal as of right only from that final decision." *Bullard v. Blue Hills Bank*, 575 U.S. 496, 501 (2015) (alterations, citations, and internal quotation marks omitted). The order denying his motion for leave to amend is not a final decision. *See Fowler v. Merry*, 468 F.2d 242, 243 (10th Cir. 1972) ("Although an order refusing or permitting the filing of an amended complaint . . . is a discretionary action by the trial court and subject to

appellate review as part of an ultimate final judgment, the order itself is not appealable as such in isolation." (citation omitted)).

We do, in some circumstances, retain the discretion to exercise pendent jurisdiction over otherwise nonappealable claims, but "the exercise of our pendent appellate jurisdiction is *only* appropriate when the otherwise nonappealable decision is inextricably intertwined with the appealable decision, or where review of the nonappealable decision is necessary to ensure meaningful review of the appealable one." *Crowe & Dunlevy, P.C. v. Stidham*, 640 F.3d 1140, 1148 (10th Cir. 2011) (internal quotation marks omitted). These conditions do not apply here: we can meaningfully review the district court's denial of a preliminary injunction based on Vreeland's failure to make the required showing without considering whether the court appropriately denied his motion to further amend his underlying complaint. We therefore decline to exercise pendent jurisdiction over the denial of Vreeland's motion to file a second amended complaint.

CONCLUSION

We affirm the denial of a preliminary injunction and dismiss the appeal of the denial of leave to amend for want of jurisdiction. We deny Vreeland's motions to proceed in forma pauperis because he has not presented "a reasoned, nonfrivolous

argument on the law and facts in support of the issues raised on appeal."

DeBardeleben v. Quinlan, 937 F.2d 502, 505 (10th Cir. 1991).

Entered for the Court

Nancy L. Moritz
Circuit Judge