FILED
United States Court of Appeals
Tenth Circuit

August 10, 2021

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

DAVID ANTHONY CIEMPA,

Plaintiff - Appellant,

v.

CITY OF DEL CITY; BRIAN E. LINLEY, SR., Mayor, and/or his predecessors, in his individual and official capacity; DEL CITY FIRE DEPARTMENT; MICHAEL DEAN, City Council member, and/or his predecessors, in his individual and official capacity; PAM FINCH, City Council member, and/or her predecessors, in her individual and official capacity; KEN BARTLETT, City Council member, and/or his predecessors, in his individual and official capacity; FLOYD EASON, City Council member, and/or his predecessors, in his individual and official capacity; JEFF KEESTER, Chief, and/or his predecessors, in his individual and official capacity; ZION WILLIAMS, Major, and/or his predecessors, in his individual and official capacity; WILLA JOHNSON, Oklahoma County Commissioner, and/or her predecessors, in her individual and official capacity; BRIAN MAUGHAN, Oklahoma County Commissioner, and/or his predecessors, in his individual and official capacity; RAY VAUGHN, Oklahoma County Commissioner, and/or his predecessors, in his official capacity; DAVID PRATER, D.A., and/or his predecessors, in his individual capacity; OKLAHOMA COUNTY PUBLIC DEFENDER'S OFFICE, individually and officially; ROBERT A. RAVITZ, Public

No. 20-6179
(D.C. No. 5:18-CV-00955-PRW)
(W.D. Okla.)

Defender, and/or his predecessors, in his individual and official capacity; KIMBERLY MILLER, Oklahoma County Public Defender, and/or her predecessors, in her individual and official capacity,

Defendants - Appellees,

and

COUNTY OF OKLAHOMA; OKLAHOMA COUNTY DISTRICT ATTORNEY'S OFFICE, individually and officially; BARRETT BROWN, Asst. D.A., and/or his predecessors, in his individual and official capacity; SARA DALY ROBINETT, Asst. D.A., and/or her predecessors, in her individual and official capacity; RAY VAUGHN, in his individual capacity; DAVID PRATER, in his official capacity,

Defendants.

ORDER AND JUDGMENT*

Before **MATHESON**, **BRISCOE**, and **CARSON**, Circuit Judges.

David Anthony Ciempa appeals pro se from the district court's adverse judgment entered on his complaint brought under 42 U.S.C. § 1983. Exercising

* 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.

jurisdiction under 28 U.S.C. § 1291, we affirm because Mr. Ciempa fails to advance any adequately developed argument.

I. BACKGROUND

In November 2015, Deputy Fire Chief Jeff Keester and Major Zion Williams ("the investigators") of the Del City, Oklahoma Fire Department were called to investigate a house fire. They suspected an accelerant or an incendiary device caused the fire. Easton Gibbs, an occupant of the home, reported that a loud crash awakened him. He went to the southeast bedroom, which was in flames, and saw a hole in the window. The investigators later recovered from that room the remnants of a bottle with a rag stuffed inside, which they believed was a Molotov cocktail. A forensics report could not rule out that the bottle had contained an accelerant.

The investigators learned that Mr. Ciempa had threatened Mr. Gibbs. They also learned from Donna Spegal, the grandmother of one of Mr. Ciempa's children, that on the night of the fire, Mr. Ciempa had confessed to starting the fire, had burns on his left hand, and bragged that he had "burned Easton out," ROA, Vol. 3 at 96. Ms. Spegal told Major Williams that she and her daughter were "terrified" of Mr. Ciempa, *id.*, and Mr. Gibbs indicated that he, too, was "afraid" of Mr. Ciempa, *id.* at 160.

Based on the investigation, Deputy Chief Keester and a detective prepared a warrant affidavit to arrest Mr. Ciempa. A state judge found probable cause. Mr. Ciempa was arrested and charged with First Degree Arson, but the case was dismissed due to an "uncooperative victim," *id.* at 152 (capitalization omitted).

Mr. Ciempa then filed this action, alleging constitutional violations by public officials and entities, including the City of Del City, its mayor, the fire department, several city council members, the district attorney and public defender's offices, and the investigators. The district court dismissed all claims except one alleging malicious prosecution against the investigators.[1]

The district court granted summary judgment to the investigators on the malicious prosecution claim because there was no evidence to support any of the elements, which require proof that "(1) the defendant caused the plaintiff's . . . prosecution; (2) the original action terminated in favor of the plaintiff; (3) no probable cause supported the original arrest . . . or prosecution; (4) the defendant acted with malice; and (5) the plaintiff sustained damages," *Wilkins v. DeReyes*, 528 F.3d 790, 799 (10th Cir. 2008).

In particular, the court said the criminal case was dismissed due to an uncooperative victim, not because Mr. Ciempa was actually innocent. *See id.* at 802-03 (explaining that to qualify as a favorable termination, a dismissal must indicate the accused's innocence or at least be inconsistent with guilt). It also noted that the state judge had determined there was probable cause for the arrest and prosecution, and that Mr. Ciempa could not show the investigators procured the warrant by knowingly or recklessly relying on false information. *See Sanchez v. Hartley*, 810

[1] Mr. Ciempa does not address any of the previously dismissed claims on appeal, and we do not consider them. *See State Farm Fire & Cas. Co. v. Mhoon*, 31 F.3d 979, 984 n.7 (10th Cir. 1994) (recognizing that failure to raise an issue constitutes waiver).

F.3d 750, 754 (10th Cir. 2016) (recognizing a plaintiff can establish a malicious prosecution constitutional violation by showing "officers . . . knowingly or recklessly rel[ied] on false information to institute legal process . . . result[ing] in an unreasonable seizure"). It further concluded Mr. Ciempa could not establish malice, which requires "a substantial showing of deliberate falsehood or reckless disregard for truth," *Snell v. Tunnell*, 920 F.2d 673, 698 (10th Cir. 1990). The court therefore granted summary judgment based on qualified immunity. Mr. Ciempa appealed the malicious prosecution ruling.

II. **DISCUSSION**

"Although we liberally construe *pro se* filings, we do not assume the role of advocate." *Yang v. Archuleta*, 525 F.3d 925, 927 n.1 (10h Cir. 2008) (quotations omitted). "Our rules of appeal require appellants to sufficiently raise all issues and arguments on which they desire appellate review in their opening brief." *Clark v. Colbert*, 895 F.3d 1258, 1265 (10th Cir. 2018) (brackets and quotations omitted). Among other things, "[a]n appellant's opening brief must identify appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies." *Bronson v. Swensen*, 500 F.3d 1099, 1104 (10th Cir. 2007) (quotations omitted).

"Consistent with this requirement, we routinely have declined to consider arguments that are not raised, or are inadequately presented, in an appellant's opening brief." *Id.* Moreover, we have "repeatedly insisted that pro se parties follow the same rules of procedure that govern other litigants." *Garrett v. Selby Connor*

Maddux & Janer, 425 F.3d 836, 840 (10th Cir. 2005) (quotations omitted). "When a pro se litigant fails to comply with [these] rule[s], we cannot fill the void by crafting arguments and performing the necessary legal research." *Id.* at 841 (quotations omitted). Instead, inadequately briefed issues "will be deemed waived." *Id.* (quotations omitted).

Mr. Ciempa's opening brief fails to advance any adequately developed argument. Although it twice uses the phrase "Malicious Prosecution," neither reference includes argument or explanation. Aplt. Br. at 2, 4. The brief asserts there was no probable cause for his arrest, the investigators repeatedly lied, and the criminal case terminated in his favor. But again, Mr. Ciempa provides no argument to support these assertions. Nor is there any citation either to the record or to legal authority. *See Blue Mountain Energy v. Dir., Off. of Workers' Comp. Programs*, 805 F.3d 1254, 1259 n.3 (10th Cir. 2015) (noting that perfunctory statements that fail to frame and develop an issue waive the issue).

Mr. Ciempa summarily contends that the district court erred in finding Deputy Chief Keester, Major Williams, Ms. Spegal, Mr. Gibbs, and Mr. Gibbs's family credible. But he does not identify supporting evidence. *See Gross v. Burggraf Constr. Co.*, 53 F.3d 1531, 1546 (10th Cir. 1995) (refusing to credit allegations made in appellant's brief without proper record citation and declining to search the record for evidentiary support). He also fails to explain how this credibility argument undermines the district court's reasoning. *See Nixon v. City & Cnty. of Denver*, 784 F.3d 1364, 1366 (10th Cir. 2015) (invoking waiver to the extent appellant failed "to

explain what was wrong with the reasoning that the district court relied on in reaching its decision").

Mr. Ciempa has waived any issue regarding his malicious prosecution claim. Even if he had properly challenged the disposition of that claim, our review of the district court's decision reveals no error.

III. **CONCLUSION**

We affirm the district court's judgment.

Entered for the Court

Scott M. Matheson, Jr.
Circuit Judge