

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

August 24, 2021

Christopher M. Wolpert
Clerk of Court

JOHN W. WINNINGHAM, JR.

Plaintiff - Appellant,

v.

CITY OF BROKEN ARROW; BROKEN
ARROW POLICE; COUNTY OF TULSA;
CITY OF SALLISAW; L.
RADEMACHER, Broken Arrow Police
Patrol; T. JESSE, Broken Arrow Police
Patrol,

Defendants - Appellees.

No. 21-7004
(D.C. No. 6:20-CV-00086-RAW)
(E.D. Okla.)

ORDER AND JUDGMENT*

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

John W. Winningham, Jr., pro se, appeals the district court’s order dismissing his suit against the City of Broken Arrow, the Broken Arrow Police, the County of Tulsa, the City of Sallisaw, L. Rademacher, and T. Jesse. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

The complaint purports to assert claims under 42 U.S.C. § 1983 and Oklahoma state law relating to an arrest warrant issued in 1999 in Sequoyah County, Oklahoma, and Mr. Winningham’s arrest on the warrant in 2018 by officers Rademacher and Jesse. For his § 1983 claims, Mr. Winningham alleges that he was touched inappropriately during a pat down search, his vehicle was illegally searched, and the arrest was unlawful. The complaint also contains numerous state-law claims, including theft, false imprisonment, abuse of process, malicious prosecution, battery, and intentional infliction of emotional distress.

Mr. Winningham further alleges that he was illegally detained in Tulsa County, Oklahoma for fourteen days on the “[f]alsified charge and [f]alsified warrant” issued in 1999, R. at 9, and “[t]he crooked magistrate aka judge [who issued the warrant] will answer for his crimes,” *id.* at 10. The complaint also names the City of Sallisaw as a defendant on the grounds that the Sequoyah County District Court, which issued the 1999 arrest warrant, is in Sallisaw. And the City of Broken Arrow and Broken Arrow Police are alleged to be liable for the acts of Rademacher and Jesse in effectuating the arrest.

The district court granted defendants’ motions to dismiss on several grounds. First, the court found that although Mr. Winningham named Tulsa County as a defendant, there are no claims pled against it; rather, Mr. Winningham states in the complaint that he intends to have the FBI “investigate” the County. *Id.* at 22.

Second, as to the City of Sallisaw, the court found “[t]o the extent [Mr. Winningham] is attempting to assert any claim based upon a charge and/or warrant

made in 199[9], it is barred by the applicable two-year statute of limitations.” *Id.* at 145. Moreover, the court dismissed any claims against the City as “conclusory” because “[t]he only specific allegation is that a judge in the City of Sallisaw signed the allegedly false charge in 199[9].” *Id.* Therefore, Mr. Winningham “has not alleged plausible claims.” *Id.*

Third, the claims against the Broken Arrow Police were dismissed on the grounds that “[t]he Broken Arrow Police Department is a department within the City of Broken Arrow, not a separate entity capable of being sued.” *Id.* at 146. Next, the district court dismissed the § 1983 claims against the City of Broken Arrow because Mr. Winningham failed to “allege any facts regarding any specific policies or customs of the City of Broken Arrow or the Broken Arrow Police Department related to [Mr. Winningham’s] claims.” *Id.* And the state-law claims were dismissed as untimely under the Oklahoma Governmental Tort Claims Act.

Last, the district court dismissed the § 1983 claims against Rademacher and Jesse as “conclusory.” *Id.* at 145. “While [Mr. Winningham] ties the stop to the 199[9] Sallisaw warrant, he does not allege that the warrant was withdrawn or dismissed. He further offers no allegations as to how or why the officers would or should have had reason to know that the warrant was ‘falsified’ or invalid.” *Id.* And the state-law claims were dismissed as time barred under the statute of limitations.

“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 (10th Cir. 2008) (internal quotation marks 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 internal quotation marks 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) (internal quotation marks 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) (internal quotation marks 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 (brackets and internal quotation marks omitted). Instead, inadequately briefed issues “will be deemed waived.” *Id.* (internal quotation marks omitted).

Mr. Winningham fails to advance any adequately developed arguments on appeal. Indeed, he never mentions the district court’s order or *any* of the several grounds on which it granted the motions to dismiss. His failure to develop any arguments means the issues are waived. Even if Mr. Winningham had properly challenged the court’s order, which he failed to do, our review reveals no error.

The judgment of the district court is affirmed. We deny Mr. Winningham's motion to supplement the record.

Entered for the Court

Bobby R. Baldock
Circuit Judge