

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

June 16, 2022

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

GEORGE MENDOZA; RON ROWLETT,

Plaintiffs - Appellants,

v.

FERNANDO MACIAS, County Manager
Dona Ana County; DONA ANA
COUNTY; NELSON GOODIN, County
Attorney Dona Ana County; LETICA
DUARTE BENAVIDEZ, County Assessor
Dona Ana County; AMANDA LOPES,
County Clerk Dona Ana County;
GERALDO PEREIRA, Document
Specialist; DONA ANA COUNTY
COMMISSIONER; LYNN ELLIS,
Commissioners District 1; DIANA
MORELLO, Commissioners District 2;
SHANNON REYNOLDS, Commissioners
District 3; SUSANA CHAPARRAL,
Commissioners District 4; JUDGE
MANUAL ARRIETTA; THIRD
JUDICIAL DISTRICT COURT; JUDGE
JAMES MARTIN; MARK DE ANTONIO,
District Attorney Dona Ana County;
DONA ANA TITLE COMPANY, a/k/a
First American Title Company; SHAWNA
BLOUNT, President, of First American
Title Company; SYLVIA LAUER, Vice
President-First American Title Company;
LAS CRUCES POLICE DEPARTMENT;
PATRICK GALLAGHER, Police Chief
LCPD; ERIC COOK, Detective-Las
Cruces Police Department; BANK OF
AMERICA; BRIAN MOYNIHAN, CEO
for Bank of America -Creditor to
Mortgage; DOMINIC SULLIVAN, Risk
Management of Bank of America,

No. 22-2013
(D.C. No. 2:21-CV-01156-KG-GJF)
(D. N.M.)

Defendants - Appellees.

ORDER AND JUDGMENT*

Before **PHILLIPS, MURPHY**, and **EID**, Circuit Judges.**

George Mendoza and Ron Rowlett appeal the dismissal of their complaint. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

BACKGROUND

This case arises from an ownership dispute over Mendoza’s home and the alleged theft of Rowlett’s supersedeas bond. They allege that various individuals and entities violated their rights by depriving them of their property or failing to prevent that deprivation. They assert federal claims under 42 U.S.C. § 1983 and state-law claims.

After Mendoza and Rowlett filed their original complaint, they served Las Cruces Police Department (“LCPD”), Dona Ana Title Company, Dona Ana County, and Bank of America. But before any party responded, the magistrate judge screened

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

the complaint under 28 U.S.C. § 1915 and ordered Mendoza and Rowlett to file an amended complaint.¹ They did so on December 28, 2021.

LCPD, Dona Ana Title Company, and Dona Ana County never responded to the amended complaint. On January 11, 2022, Bank of America timely moved to dismiss. Under the district court's local rules, Mendoza and Rowlett had 14 days, or until January 25th, to respond. But on January 14th, before they responded, the district court sua sponte dismissed their federal claims without prejudice, declined supplemental jurisdiction over their state-law claims, and denied the motion to dismiss as moot. This appeal followed.

DISCUSSION

The district court sua sponte dismissed Mendoza's and Rowlett's § 1983 claims for failure to state a claim. We take that as a dismissal under Federal Rule of Civil Procedure 12(b)(6). Under that rule, a district court may dismiss a case sua sponte "when it is patently obvious that the plaintiff could not prevail on the facts alleged." *Andrews v. Heaton*, 483 F.3d 1070, 1074 n.2 (10th Cir. 2007) (citation and quotations omitted). We review dismissals under Rule 12(b)(6) de novo. *ASARCO LLC v. Union Pac. R.R. Co.*, 755 F.3d 1183, 1188 (10th Cir. 2014).²

¹ We are uncertain why the complaint was screened under § 1915. That section covers proceedings in forma pauperis. Mendoza and Rowlett didn't proceed in forma pauperis; they paid the filing fee on the same day that they filed their original complaint.

² The court's dismissal might also have been under Rule 41(b), which "permit[s] courts to dismiss actions sua sponte for a plaintiff's failure to prosecute or comply with the rules of civil procedure or court's orders." *Olsen v. Mapes*, 333 F.3d

Given the number of defendants sued, the amended complaint is complex. Despite that complexity, the district court thoroughly and thoughtfully analyzed the § 1983 claims alleged against each defendant. The court identified the relevant allegations from the 50-page complaint, quoted them, and then explained its bases for dismissing the § 1983 claims against each defendant. Every basis was supported by binding case law. We agree with the court’s analysis and see no basis on which to reverse.

Mendoza and Rowlett argue that the district court should not have dismissed their complaint before they could (1) oppose Bank of America’s motion to dismiss, and (2) file a motion for default against LCPD, Dona Ana County, and Dona Ana Title Company.³ Neither decision constitutes reversible error. Based on the amended complaint and the district court’s dismissal order, it’s patently obvious that Mendoza and Rowlett can’t prevail on their § 1983 claims against those entities.

Finally, it’s unclear whether Mendoza and Rowlett challenge the court’s decision to decline supplemental jurisdiction over their state-law claims. If they

1199, 1204 n.3 (10th Cir. 2003). Unlike dismissals under Rule 12(b)(6), Rule 41(b) dismissals are reviewed for abuse of discretion. *Id.* at 1204. Because we would affirm under either standard, we apply the more lenient de novo standard.

³ Mendoza and Rowlett attached a Motion for Default Judgment to their appeal brief. We decline to consider that motion because we generally don’t consider issues that weren’t presented to and decided by the district court. *United States v. Henson*, 9 F.4th 1258, 1274 (10th Cir. 2021). Mendoza and Rowlett were warned of this when they filed their opening brief. *See Op. Br.* at 1 (“New issues raised for the first time on appeal generally will not be considered. An appeal is not a retrial but rather a review of the proceedings in the district court.”).

meant to do so, we review the court's decision for abuse of discretion. *Exum v. U.S. Olympic Comm.*, 389 F.3d 1130, 1139 (10th Cir. 2004). We see no abuse of discretion given the appropriate dismissal of Mendoza's and Rowlett's § 1983 claims.

CONCLUSION

The district court's order is affirmed.

Entered for the Court

Gregory A. Phillips
Circuit Judge