

UNITED STATES COURT OF APPEALS

September 10, 2013

FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

BRET DAVID LANDRITH,

Plaintiff-Appellant,

v.

DEREK SCHMIDT, Kansas Attorney General, in his personal capacity; DON JORDAN, former Secretary of SRS, in his personal capacity; ROB SIEDLECKI, former Secretary of SRS, in his personal capacity; BOB CORKINS, SRS General Counsel, in his official capacity; JOHN BADGER, former Chief Counsel of SRS, in his personal capacity; STANTON A. HAZLETT, Disciplinary Administrator, in his official capacity; BRIAN FROST; CRAIG E. COLLINS; YOUNG WILLIAMS, PC; DAVID WEBER, SRS case worker; PHYLLIS GILMORE, acting Secretary of SRS, in her official capacity; ROBERT D. DENNIS, Clerk of the Court, United States District Court, Western District of Oklahoma, in his official capacity; J. EDWARD BARTH, Chairman, Committee on Admission and Grievances, Western District of Oklahoma, in his official capacity; JOHN HERMES, Committee on Admissions and Grievances, Western District of Oklahoma, in his official capacity; JUDY HAMILTON MORSE, Esq., Committee on Admissions and Grievances, Western District of Oklahoma, in her official capacity; WILLIAM J. CONGER, Committee on Admissions and Grievances, Western District of Oklahoma, in his official capacity;

Nos. 12-3302 & 12-3332
(D.C. No. 2:12-CV-02161-CM-GLR)
(D. Kan.)

EMMANUEL E. EDEM, Committee on Admissions and Grievances, Western District of Oklahoma, in his official capacity; WILLIAM ROSS, Committee on Admissions and Grievances, Western District of Oklahoma, in his official capacity,

Defendants-Appellees.

ORDER AND JUDGMENT*

Before **MATHESON**, Circuit Judge, **PORFILIO**, Senior Circuit Judge, and **O'BRIEN**, Circuit Judge.

Pro se plaintiff Bret Landrith appeals the district court's dismissal of his civil rights complaint (appeal No. 12-3302) and imposition of filing restrictions on him (appeal No. 12-3332). The parties are familiar with the facts, so we do not recite them here.

Appeal No. 12-3302

The district court's dismissal of the First Amended Complaint is affirmed under the pleading principles set forth in *Bell Atlantic Co. v. Twombly*, 550 U.S. 544,

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist 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.

555-57 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662, 678-80 (2009). The complaint’s allegations do not “contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face,’” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). Particularly, Landrith’s “bare assertion[s] of conspiracy will not suffice.” *Twombly*, 550 U.S. at 556. “Rule 8 marks a notable and generous departure from the hyper-technical, code-pleading regime of a prior era, but it does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions.” *Iqbal*, 556 U.S. at 678-79.¹

The district court’s denial of Landrith’s motion for leave to file a second amended complaint also is affirmed because amendment would have been futile. *See Scott v. Hern*, 216 F.3d 897, 906 (10th Cir. 2000).

Appeal No. 12-3332

The injunction imposing filing restrictions is affirmed. It is well-established that a court has the inherent power “to regulate the activities of abusive litigants by

¹ Various claims also are subject to dismissal on other grounds, including (1) lack of standing to pursue claims for third parties, *see Wilderness Society v. Kane Cnty., Utah*, 632 F.3d 1162, 1168, 1170-72 (10th Cir. 2011) (en banc); (2) abstention under *Younger v. Harris*, 401 U.S. 37 (1971); (3) qualified immunity, *see Stewart v. Beach*, 701 F.3d 1322, 1329-30 (10th Cir. 2012); (4) lack of proper service of process, *see Fed. R. Civ. P. 4*; and (5) lack of personal jurisdiction, *see Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). Res judicata (claim preclusion) may also apply. *See Rhoten v. Dickson*, 223 P.3d 786, 798 (Kan. 2010) (“Both federal and Kansas courts have held a pending appeal does not suspend the finality of the lower court’s judgment for claim preclusion purposes.”); *but see State v. Roberts*, 259 P.3d 691, 700 (Kan. 2011) (“[C]onsistent with the doctrine of res judicata, the order of dismissal would not be final until the opportunity for an appeal had expired or was exhausted; only then would the order have preclusive effect.”).

imposing carefully tailored restrictions under the appropriate circumstances.” *Tripati v. Beaman*, 878 F.2d 351, 352 (10th Cir. 1989) (per curiam) (quotation omitted).

“[I]njunctive relief is proper where the litigant’s abusive and lengthy history is properly set forth.” *Id.* at 353. “[T]here must be some guidelines as to what plaintiff must do to obtain the court’s permission to file an action.” *Id.* at 354. And a litigant “is entitled to notice and an opportunity to oppose the court’s order before it is instituted.” *Id.* The district court’s injunction met each of these requirements.

The judgments of the district court are affirmed in both No. 12-3302 and No. 12-3332.

Entered for the Court

John C. Porfilio
Circuit Judge