

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

November 16, 2021

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

ABDELRAOUF ABDELMEGED,

Plaintiff - Appellant,

v.

DEPARTMENT OF ARMY,

Defendant - Appellee.

No. 21-1035
(D.C. No. 1:19-CV-03186-DDD-NRN)
(D. Colo.)

ORDER AND JUDGMENT*

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

Abdelraouf Abdelmeged, pro se, appeals from the district court’s order that granted the motion to dismiss filed by the Department of the Army (Army). For the reasons stated below, we dismiss the appeal.

Mr. Abdelmeged filed suit against the Army under the Federal Tort Claims Act (FTCA). According to the allegations in the amended complaint, in June 2008, while he was working as a contract interpreter for the Army in Iraq, “Sargent (sic) Chang

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 This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel.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

abused his power by attempting to shoot me when I questioned him about the whereabouts of civilian kids in Iraq.” Suppl. R. at 5. “[W]hen I asked him about [the kids], he pulled out his silencer pistole (sic) and put it to my head and tried to shoot me but it was empty.” *Id.* Mr. Abdelmeged further alleged that he “[c]omplained to Chang’s higher ups, Captains Sesame and Kraske,” but they failed to act. *Id.*

The following day, he was “put [on] a mission. I was on [a] tank . . . during this mission [and] they attempted to leave me behind after they destroyed some farmland. Luckily there was another tank in the area where I got a ride back to my unit.” *Id.* “When I made another complaint about Chang[,] [this time] to Captain Tom, Chang approached me and told me if you do not shut up[,] I will get you and your family. I know where you live.” *Id.* “Afterwards[,] [t]hey (Sesame, Chang) terminated me from Company L3.” *Id.* Mr. Abdelmeged sought damages in the form of his “army benefits . . . [o]r . . . my salary that I was supposed to get from L3 Company.” *Id.* at 6.

The Army moved to dismiss the amended complaint for several reasons including lack of subject-matter jurisdiction, failure to state a claim, and as time-barred under the applicable statute of limitations. The magistrate judge issued a thorough and well-reasoned recommendation in which it recommended granting the motion. At the conclusion of the recommendation, the judge issued the following warning:

NOTICE: Pursuant to 28 U.S.C. § 636(b)(1)(c) and Fed. R. Civ. P. 72(b)(2), the parties have fourteen (14) days after service of this recommendation to serve and file specific written objections to the

above recommendation with the District Judge assigned to the case. A party may respond to another party's objections within fourteen (14) days after being served with a copy. The District Judge need not consider frivolous, conclusive, or general objections. A party's failure to file and serve such written, specific objections waives *de novo* review of the recommendation by the District Judge . . . and also waives appellate review of both factual and legal questions.

R. at 79-80.

Following Mr. Abdelmeged's failure to file any objections to the magistrate judge's recommendation, the district court "reviewed the recommendation to satisfy itself that there is no clear error on the face of the record," and after finding no such error, adopted the recommendation and granted the Army's motion to dismiss. *Id.* at 82 (internal quotation marks omitted). Mr. Abdelmeged appealed.

On February 5, 2021, this court issued an order to Mr. Abdelmeged to show cause why he did not waive his right to appellate review by failing to object to the magistrate judge's recommendation. Mr. Abdelmeged filed a response; however, it did not address the issue raised in the show cause order. This court gave Mr. Abdelmeged a second opportunity to address the issue, but once again, his response was not on point and simply provided more detail on his experiences in Iraq and efforts to collect benefits from the Army.

Our firm-waiver rule holds that a party who does not object to a magistrate judge's recommendation "waives appellate review of both factual and legal questions." *Morales-Fernandez v. INS*, 418 F.3d 1116, 1119 (10th Cir. 2005). The rule has two exceptions. It does not apply if a pro se litigant has not been advised of

the objection deadline and the consequences of failing to object or we exercise our discretion to overlook the rule if the interests of justice require review. *See id.*

The first exception does not apply here because the magistrate judge's recommendation clearly informed Mr. Abdelmeged of the objection deadline and the consequences of failing to object. As to the second exception, we look at several factors, including "a pro se litigant's effort to comply, the force and plausibility of the explanation for his failure to comply, and the importance of the issues raised." *Id.* at 1120 (italics omitted). "In many respects, the interests of justice analysis . . . is similar to reviewing for plain error." *Id.* "Plain error occurs when there is (1) error, (2) that is plain, which (3) affects substantial rights, and which (4) seriously affects the fairness, integrity, or public reputation of judicial proceedings." *Id.* at 1122-23 (internal quotation marks omitted).

Because Mr. Abdelmeged failed to file any meaningful response to this court's show cause order, we have no information regarding his efforts, if any, to comply with the requirement to file objections or the plausibility of the reason he failed to do so. Moreover, we have carefully reviewed the magistrate judge's recommendation and district court's order and find no error. In sum, there is nothing to suggest we should overlook the firm-waive rule in the interests of justice.

The appeal is dismissed.

Entered for the Court

Allison H. Eid
Circuit Judge