FILED
United States Court of Appeals
Tenth Circuit

September 28, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

JOHN PATRICK FLETCHER,

Plaintiff - Appellant,

and

ZACHARIAH CLARK DOBLER,

Plaintiff,

v.

DEAN WILLIAMS; AUSTIN CHRESTENSEN; SIMON DENWALT; SANDRA BROWNLEE; BRITTNEY GODWIN; JEFFREY ROMACK,

Defendants - Appellees.

No. 22-1371
(D.C. No. 1:21-CV-02125-PAB-NRN)
(D. Colo.)

ORDER AND JUDGMENT*

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

John Patrick Fletcher is an inmate in the Colorado Department of Corrections ("CDOC"). He brought suit against Dean Williams, the CDOC's Executive Director,

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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

and five CDOC case managers, defendants Austin Chrestensen, Simon Denwalt, Sandra Brownlee, Jeffrey Romack, and Brittney Godwin, alleging that defendants are violating his right to be from involuntary servitude. The district court dismissed his amended complaint. Proceeding pro se,[1] he now appeals.[2] Exercising jurisdiction pursuant to 28 U.S.C. § 1291, we affirm.

I. Background

The Thirteenth Amendment to the United States Constitution states: "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." U.S. Const. amend. XIII. The plain language of the Thirteenth Amendment demonstrates that the "restriction on involuntary servitude does not apply to prisoners." *Ruark v. Solano*, 928 F.2d 947, 949-50 (10th Cir. 1991), *overruled on other grounds by Lewis v. Casey*, 518 U.S. 343 (1996).

The Colorado constitution had a similar provision, but it was amended in 2018 to remove the language creating an exception for those parties who had been

[1] We liberally construe Mr. Fletcher's pro se filings, but we do not act as his advocate. *See James v. Wadas*, 724 F.3d 1312, 1315 (10th Cir. 2013).

[2] Mr. Fletcher initially filed the underlying complaint with another inmate, Zachariah Clark Dobler, but Mr. Dobler did not object to the Magistrate Judge's Report and Recommendation, file a Notice of Appeal, or sign the opening brief that Mr. Fletcher filed. We will therefore refer only to Mr. Fletcher in this decision other than where the district court referred to both plaintiffs.

convicted of a crime. It now states: "There shall never be in this state either slavery or involuntary servitude." Colo. Const. art. II, § 26 (amended December 19, 2018).

In his amended complaint, Mr. Fletcher asserted that the defendants "forc[ed] involuntary servitude and forced labor upon" him in violation of the Colorado constitution. R., vol. 1 at 142. He alleged that the defendants used the "threat of physical restraint and legal coercion . . . to intimidate [him] into performing involuntary servitude and forced labor," and that their conduct violated federal law. *Id.* at 143 (internal quotation marks omitted). He brought thirteen federal statutory claims under the Trafficking Victims Protection Act of 2000 ("TVPA") (specifically, 18 U.S.C. §§ 1584 & 1589) and the Racketeer Influenced and Corrupt Organizations Act ("RICO") (specifically, 18 U.S.C. § 1962(a)-(b)). The alleged TVPA violations were the predicate acts for the alleged RICO violations.

The defendants moved to dismiss the amended complaint under Rule 8 and Rule 12(b)(6) of the Federal Rules of Civil Procedure. Defendants argued the amended complaint failed to comply with Rule 8 because the allegations were vague and conclusory, the amended complaint failed to state a claim for relief and should be dismissed under Rule 12(b)(6), and they were entitled to qualified immunity. The magistrate judge issued a report and recommendation ("R&R"), recommending that defendants' motion to dismiss be granted. Mr. Fletcher filed objections to the R&R. The district court overruled the objections, accepted the R&R, and granted defendants' motion to dismiss. Mr. Fletcher now appeals.

II. Discussion

A. *Standard of review*

"We review the district court's dismissal under Rule 12(b)(6) de novo. Under 12(b)(6), we review for plausibility, specifically whether enough facts have been pled to state a plausible claim." *U.S. ex rel. Lemmon v. Envirocare of Utah, Inc.*, 614 F.3d 1163, 1167 (10th Cir. 2010) (citation omitted). "Rule 8(a) dismissals are reviewed for an abuse of discretion, but to overcome a motion to dismiss, a plaintiff's allegations must move from conceivable to plausible." *Id.*

B. *The magistrate judge's R&R*

In the R&R, the magistrate judge concluded that the amended complaint did "not fulfill Rule 8's mandate that a pleading contain a short and plain statement of the claims showing that Plaintiffs are entitled to relief." R., vol. 1 at 476. The magistrate judge noted that the allegations about the work Mr. Fletcher was forced to perform were conclusory and general, explaining "while Plaintiffs claim over and over again in general terms that they were subject to 'involuntary servitude' and 'forced labor,' they do not actually say what jobs or work they were required or forced to perform." *Id.* And the magistrate judge further noted that while the amended complaint did allege some injuries, those "injuries are not in any way linked to the affirmative acts of any of the named Defendants." *Id.* at 477.

The magistrate judge next concluded that the amended complaint was subject to dismissal pursuant to Rule 12(b)(6) because it failed to state a claim for relief under §§ 1584 and 1589 of the TVPA. Section 1589 prohibits knowingly providing

or obtaining the labor or services of a person by force, threats of force, threats of harm, abuse or threatened abuse of the law or legal process, or a scheme or plan intended to cause the person to believe that if they didn't perform the services, they would suffer serious harm or physical restraint. Section 1584 "makes it a crime knowingly and willfully to hold another person 'to involuntary servitude.'" R., vol. 1 at 478 (quoting § 1584).

Regarding Mr. Fletcher's claim for relief under § 1584, the magistrate judge explained that "'[b]y its terms the [Thirteenth] Amendment excludes involuntary servitude imposed as legal punishment for a crime.'" *Id.* at 479 (quoting *United States v. Kozminski*, 487 U.S. 931, 943 (1988)). And the magistrate judge "agree[d] with Defendants that Plaintiffs cannot use a federal statute enacted to implement the federal Thirteenth Amendment to criminalize behavior the Amendment plainly permits—notwithstanding a change to the Colorado constitution." *Id.*

Moreover, "involuntary servitude is limited to compulsion of service through physical or legal compulsion" and the magistrate judge concluded "that degree of coercion is not found in CDOC's inmate work programs, and certainly no such unlawful coercion is found in the operative Complaint." *Id.* (internal quotation marks omitted). Pursuant to the CDOC's Code of Penal Discipline (COPD), "an inmate who fails to work faces the following consequences: (1) up to 30 days' loss of good time; (2) up to 30 days' loss of privileges; or (3) up to 15 days' housing restriction sanction." *Id.* at 479-80. The magistrate judge determined that "[t]he threat that certain privileges may be forfeited if an inmate refuses to work does not implicate

§ 1584, which instead 'encompasses those cases in which the defendant holds the victim in servitude by placing the victim in fear of such physical restraint or injury or legal coercion.'" *Id.* at 480 (quoting *Kozminski*, 487 U.S. at 952). Likewise, the magistrate judge found "that the consequences outlined in the COPD do not amount [to] the abuse or threatened abuse of law or legal process within the meaning of [§ 1589]." *Id.* at 481 (internal quotation marks omitted).

Because the amended complaint did not state a claim for relief under the TVPA, the magistrate judge determined that the RICO claims, which were predicated on violations of §§ 1584 or 1589, must also fail. Finally, the magistrate judge concluded that "[b]ecause Plaintiffs have not sufficiently alleged that their statutory rights were violated or that Defendants' conduct violated any clearly established law, Defendants are entitled to qualified immunity on Plaintiffs' claims." *Id.* at 482.

In his closing remarks, the magistrate judge expressed his bewilderment as to Mr. Fletcher's choice of legal theories:

> The Court is puzzled why Plaintiffs chose such a convoluted and legally deficient way to accomplish what it suspects is Plaintiffs' ultimate goal: to challenge the CDOC's inmate work requirement under the *Colorado constitution*. Of course, such a challenge would properly be made in state, rather than federal, court. In any event, the Court essentially agrees with Defendants that this lawsuit is premised on Plaintiffs' misapprehension that §§ 1584 and 1589 can be used as a means to bring a state constitutional claim in federal court. It cannot, and this matter should be dismissed.

Id. (citation omitted).

C. *Mr. Fletcher's arguments*

Mr. Fletcher raises two issues on appeal. Construing his pro se brief liberally, he first appears to argue that the district court erred in concluding that defendants were entitled to qualified immunity. Mr. Fletcher objected to the R&R's conclusion that defendants were entitled to qualified immunity, explaining that the doctrine only applies when government officials are performing discretionary functions. He "asserted that when [the] Colorado constitution removed Defendants' discretion over involuntary servitude, it removed Defendants' eligibility for qualified immunity: no discretion—no qualified immunity." *Id.* at 491 (citation omitted). The district court overruled the objection, explaining that "[i]n order to overcome a defense of qualified immunity, plaintiffs must identify a violation of their federal constitutional or statutory rights," but plaintiffs had failed to do so. *Id.* at 524. The court further reasoned that because "plaintiffs cannot establish a violation of their rights that is cognizable under federal law, Mr. Fletcher's argument that any violation was not in defendants' discretion is irrelevant." *Id.*

In his brief, Mr. Fletcher does not explain how the district court erred in upholding the magistrate judge's conclusion that he did not show defendants violated his rights under federal law. Instead, he continues to argue that the defendants' actions violated the Colorado constitution. *See* Aplt. Opening Br. at 5 ("The Colorado constitution expressly forbids involuntary servitude under any circumstances[.]" (boldface omitted)); *id.* at 6 ("The Accused never denied they are acting as private citizens without legal authority under the Colorado constitution to

obtain involuntary servitude from the *pro se* Injured Parties[.]" (boldface omitted)); *id.* at 7 (arguing the defendants were "operat[ing] in their personal capacities as private citizens" and "lack[ed] legal authority under the Colorado constitution to mandate" that he "perform labor and service"). The only reference to federal law is Mr. Fletcher's statement that the district court's ruling "impl[ied] that private citizens, operating without legal authority, are entitled to qualified immunity for illegal conduct under federal statute." *Id.* at 7. But he never explains how the defendants' alleged violations of the Colorado constitution constitute illegal conduct under the federal statutes he cited in his complaint. Nor does he otherwise explain how the district court erred in its qualified-immunity ruling.

Mr. Fletcher next appears to challenge the district court's conclusion that his amended complaint failed to state a claim for relief under the TVPA and RICO and was therefore subject to dismissal under Rule 12(b)(6). He makes three arguments challenging that conclusion.

Mr. Fletcher first argues that "[w]hat constitutes coercion is a matter for a jury to decide at trial and not a district court on review of a motion to dismiss under Fed. R. Civ. P. 12(b)(6)." Aplt. Opening Br. at 9 (dashes and internal quotation marks omitted). But Mr. Fletcher did not raise this argument in his objections to the R&R. As the district court explained, "Mr. Fletcher's objection [did] not address the recommendation's conclusion that the loss of privileges cannot constitute coercion and [did] not argue that plaintiffs faced more consequences than a loss of privileges." R., vol. 1 at 528. Because Mr. Fletcher did not raise this argument in his objections

to the R&R, he has waived it. *See Soliz v. Chater*, 82 F.3d 373, 375 (10th Cir. 1996) (explaining that "a party's objections to the magistrate judge's report and recommendation must be both timely and specific to preserve an issue for appellate review" (ellipsis and internal quotation marks omitted)).

Mr. Fletcher next argues that "[a]lleging the violation of a federal right is not a pleading element of 18 U.S.C. §§ 1584, 1589, 1595, 1962, or 1964." Aplt. Opening Br. at 12 (boldface omitted). Mr. Fletcher did not raise this argument in his objections to the R&R, so it is waived. And we also note that Mr. Fletcher's new appellate argument fails to identify any error in the magistrate judge's conclusion that the amended complaint did "not allege any *actions* that violate [plaintiffs'] federal rights." R., vol. 1 at 523 (emphasis added).

Finally, Mr. Fletcher argues that his complaint "alleged sufficient facts to show a reasonable likelihood of mustering factual support for [his] claims." Aplt. Opening Br. at 13 (boldface and internal quotation marks omitted). Much of this section consists of a copy of the allegations from his amended complaint. *See id.* at 15-18. But Mr. Fletcher fails to challenge the magistrate judge's conclusion regarding the fundamental defect in his amended complaint—his "misapprehension that §§ 1584 and 1589 can be used to bring a state constitutional claim in federal court." R., vol. 1 at 482. Because Mr. Fletcher has not shown that federal law provides a remedy for an alleged violation of his rights under the Colorado constitution, he has not shown the district court erred in dismissing his amended

complaint under Rule 12(b)(6) for failure to state a claim on which relief can be granted.

III. Conclusion

We affirm the district court's judgment. We deny Mr. Fletcher's motion for leave to proceed on appeal without prepayment of costs or fees. And we deny as moot his "Motion for a Stay to Issue Certified Questions of Law to the Colorado Supreme Court."

Entered for the Court

Bobby R. Baldock
Circuit Judge