FILED
United States Court of Appeals
Tenth Circuit

August 16, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

ERIC ADAMS,

Plaintiff - Appellant,

v.

OFFICER MARTINEZ,

Defendant - Appellee.

No. 22-1425
(D.C. No. 1:15-CV-2629-NRN)
(D. Colo.)

ORDER AND JUDGMENT*

Before **HOLMES**, Chief Judge, **HARTZ**, and **PHILLIPS**, Circuit Judges.

Eric Adams filed this lawsuit seeking damages under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). The district court (a magistrate judge sitting with the parties' consent) concluded that his claim could not proceed under *Bivens* and dismissed it. The court later denied Mr. Adams's postjudgment motions. Mr. Adams appeals the district court's rulings, and we affirm.

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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

Background

Mr. Adams, a federal inmate, filed this lawsuit against a corrections officer. Seeking damages under *Bivens*, he alleged that the officer violated his Eighth Amendment rights by tampering with his food. The officer moved to dismiss under Federal Rule of Civil Procedure 12(b)(6). He argued that a *Bivens* remedy did not exist for Mr. Adams's claim.

The Supreme Court has recognized a *Bivens* remedy—an implied cause of action for damages against federal officers for a constitutional violation—in only three cases. *See Ziglar v. Abbasi*, 582 U.S. 120, 130–31 (2017). The first, *Bivens* itself, involved a claim that agents violated the Fourth Amendment by entering the plaintiff's home, putting him in manacles, and threatening his family. 403 U.S. at 389. The second, *Davis v. Passman*, involved allegations of gender discrimination under the Fifth Amendment. 442 U.S. 228, 229–31 (1979). And the third, *Carlson v. Green*, involved a claim that prison officials violated the Eighth Amendment by failing to provide adequate medical treatment. 446 U.S. 14, 16–19, 16 n.1 (1980). In the decades since these three decisions, however, expanding *Bivens* has become not merely a "disfavored judicial activity," *Ziglar*, 582 U.S. at 135 (internal quotation marks omitted), but one "that is impermissible in virtually all circumstances," *Silva v. United States*, 45 F.4th 1134, 1140 (10th Cir. 2022).

Deciding whether to recognize a *Bivens* remedy is a two-step process. *See Egbert v. Boule*, 142 S. Ct. 1793, 1803 (2022).[1] First, a court asks if "the case presents a new *Bivens* context—*i.e.*, is it meaningfully different from the three cases in which the Court has implied a damages action." *Id.* (brackets and internal quotation marks omitted). "Second, if a claim arises in a new context, a *Bivens* remedy is unavailable if there are special factors indicating that the Judiciary is at least arguably less equipped than Congress to weigh the costs and benefits of allowing a damages action to proceed." *Id.* (internal quotation marks omitted).[2]

In this case, the district court concluded that Mr. Adams's claim presented a new *Bivens* context and that a special factor—the existence of alternative remedies—cautioned against recognizing a *Bivens* remedy. And so the district court dismissed the case under Rule 12(b)(6). Mr. Adams then moved to withdraw his consent to the magistrate judge's jurisdiction and to alter or amend the judgment under Federal Rule

[1] Mr. Adams says that *Ziglar* and *Egbert* should not apply to this case because the Supreme Court decided them after the events underlying this case occurred. But *Ziglar* and *Egbert* apply because they came down while this lawsuit has been pending. *See Harper v. Va. Dep't of Tax'n*, 509 U.S. 86, 97 (1993). And although Mr. Adams disagrees with *Ziglar*, *Egbert*, and *Silva*, we must follow those decisions. *See Tootle v. USDB Commandant*, 390 F.3d 1280, 1283 (10th Cir. 2004).

[2] The Court has said that the two steps in the *Bivens* analysis "often resolve to a single question: whether there is any reason to think that Congress might be better equipped to create a damages remedy." *Egbert*, 142 S. Ct. at 1803.

of Civil Procedure 59(e). The district court denied both motions. Mr. Adams appeals.[3]

Discussion

We start with Mr. Adams's challenges to the district court's Rule 12(b)(6) dismissal. We review that ruling de novo. *See Silva*, 45 F.4th at 1137. We accept as true all well-pleaded facts in Mr. Adams's complaint, view them in the light most favorable to him, and draw all reasonable inferences in his favor. *See Brooks v. Mentor Worldwide LLC*, 985 F.3d 1272, 1281 (10th Cir. 2021). To survive scrutiny under Rule 12(b)(6), a "complaint must allege sufficient facts to state a claim for relief plausible on its face." *Strain v. Regalado*, 977 F.3d 984, 989 (10th Cir. 2020).

The district court correctly concluded that Mr. Adams's claim presents a new *Bivens* context. Granted, his claim alleges an Eighth Amendment violation, and so did the claim in *Carlson*. *See* 446 U.S. at 17. But that does not clinch the issue for Mr. Adams: "A claim may arise in a new context even if it is based on the same constitutional provision as a claim in a case in which a damages remedy was previously recognized." *Hernandez v. Mesa*, 140 S. Ct. 735, 743 (2020). And unlike the claim in *Carlson*, Mr. Adams's claim does not allege deliberate indifference to medical needs. For that reason, Mr. Adams's claim seeks to expand *Bivens* to a new

[3] Mr. Adams represents himself, so we construe his filings liberally. *See Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991).

context.[4] *See Silva*, 45 F.4th at 1137 (noting that an Eighth Amendment excessive-force claim would expand *Bivens* beyond the claim recognized in *Carlson*).

The district court also correctly concluded that the existence of alternative remedies prevented it from recognizing a *Bivens* remedy for Mr. Adams's claim. "If there are alternative remedial structures in place, that alone, like any special factor, is reason enough to limit the power of the Judiciary to infer a new *Bivens* cause of action." *Egbert*, 142 S. Ct. at 1804 (internal quotation marks omitted). The prison grievance system available to Mr. Adams "offers an independently sufficient ground to foreclose" his *Bivens* claim. *Silva*, 45 F.4th at 1141.

Aside from the merits, Mr. Adams objects to the district court's dismissal on several other grounds. He claims the district court ignored a memorandum he filed and failed to address his arguments. The record belies these claims. The dismissal order, more than seven pages long, referenced the memorandum and adequately addressed the parties' arguments. In any event, we have reviewed the dismissal de novo, and Mr. Adams did not present any argument below that could change the outcome of this case.

[4] To the extent he argues otherwise, Mr. Adams's claim is meaningfully different from the one recognized in *Bivens*. Unlike Mr. Adams's claim, the claim in *Bivens* alleged a Fourth Amendment violation. *See* 403 U.S. at 389. Mr. Adams also relies on cases involving claims under 42 U.S.C. § 1983. Those § 1983 cases are irrelevant. What matters is whether his case is meaningfully different from the three cases in which the Supreme Court has recognized a *Bivens* remedy. *See Egbert*, 142 S. Ct. at 1803.

Mr. Adams also argues the court erred by refusing to consider his surreply opposing dismissal. But for support, he primarily relies on the practice standards of a judge who did not rule on the dismissal motion. And the surreply was unnecessary in any case because the officer's reply did not raise new issues. For these reasons, we see no abuse of discretion in the district court's declining to consider the surreply. *See Green v. New Mexico*, 420 F.3d 1189, 1196 (10th Cir. 2005) (reviewing the denial of leave to file a surreply for an abuse of discretion). Besides, any error in refusing to consider the surreply would have been harmless. We have reviewed the surreply, and its arguments do not change the *Bivens* analysis we articulated above.

Having concluded that the district court correctly dismissed Mr. Adams's claim, we take up his objections to the postjudgment rulings denying (1) his motion to withdraw his consent to the magistrate judge's jurisdiction and (2) his Rule 59(e) motion. We review these rulings for an abuse of discretion. *See Etherton v. Owners Ins. Co.*, 829 F.3d 1209, 1228 (10th Cir. 2016) (Rule 59(e) order); *Carter v. Sea Land Servs., Inc.*, 816 F.2d 1018, 1021 (5th Cir. 1987) (order denying leave to withdraw consent).

The district court did not err when it denied Mr. Adams's motion to withdraw his consent to the magistrate judge's jurisdiction. Mr. Adams asserted that the magistrate judge's failure to entertain the arguments in his response opposing dismissal amounted to "extraordinary circumstances" warranting withdrawal of his consent. 28 U.S.C. § 636(c)(4). The premise of that argument is incorrect—the magistrate judge adequately addressed Mr. Adams's arguments.

Nor did the district court err when it denied Mr. Adams's Rule 59(e) motion. The motion argued that the district court erred by ignoring Mr. Adams's surreply and memorandum, by concluding his claim presented a new *Bivens* context, and by failing to adequately address his arguments. We have rejected these same arguments above, and the district court did not abuse its discretion when it too rejected them.

Disposition

We affirm the district court's judgment. We grant Mr. Adams's motion to proceed on appeal without prepaying costs or fees.

Entered for the Court

Jerome A. Holmes
Chief Judge