FILED
United States Court of Appeals
Tenth Circuit

July 20, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

SCOTT B. SULLIVAN,

Plaintiff - Appellant,

v.

THE HARTFORD FINANCIAL SERVICES GROUP, INC.; CAROL MORRIS; LADUSKA ANNE HANEY; ZEKE DELGADO; MIKE FISKE; TWIN CITIES FIRE INSURANCE COMPANY; BERKSHIRE HATHAWAY; UNITED STATES LIABILITY INSURANCE COMPANY; CONCENTRA; TEGUMSEN WAKWAYA; PREMIER SPINE CARE; JOHN CICCARELLI; AMY SLESKY; ST. LUKE'S SOUTH PRIMARY CARE; STEPHEN NOLKER,

Defendants - Appellees.

No. 22-3118
(D.C. No. 2:22-CV-02095-KHV-ADM)
(D. Kan.)

SCOTT B. SULLIVAN,

Plaintiff - Appellant,

v.

WORKMARKET; PETER CANNONE,

Defendants - Appellees.

No. 22-3193
(D.C. No. 2:22-CV-02017-KHV-RES)
(D. Kan.)

ORDER AND JUDGMENT*

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

Scott B. Sullivan, proceeding pro se,[1] challenges the dismissal of two lawsuits against numerous defendants, whom he claims conspired against him to deny medical treatment. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

I. Background

The two interrelated actions at issue in these appeals are part of Mr. Sullivan's wide-ranging litigation efforts relating to a workplace injury in January 2012. He generally alleged that after his disabling injury, a number of individuals and entities conspired to deny him the appropriate medical treatment. He sued The Hartford Financial Group, Inc. and other insurance companies and health care providers ("the Hartford Defendants") and WorkMarket, the successor to OnForce, the company for whom Mr. Sullivan worked, and Peter Cannone, the CEO of WorkMarket (collectively, "WorkMarket"). His claims in these overlapping lawsuits included

---

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of these appeals. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The cases are 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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

[1] Because Mr. Sullivan appears pro se, "we liberally construe his filings, but we will not act as his advocate." *James v. Wadas*, 724 F.3d 1312, 1315 (10th Cir. 2013).

racketeering, fraud, breach of contract, civil rights violations, tortious interference, and negligence.

Mr. Sullivan's litigation has also been the subject of previous appeals in this Court. *See Sullivan v. Univ. of Kan. Hosp. Auth.*, 844 F. App'x 43 (10th Cir. 2021) ("*UKHA I*"). The *UKHA I* decision addressed three lawsuits that arose from the same set of facts as the two lawsuits at issue here. *See id.* at 46-47. The defendants in *UKHA I* included the University of Kansas Hospital Authority and related individuals and entities; Mr. Sullivan's family members; and religious entities and individuals related to Adventist Health Systems.

The district court issued orders dismissing each of Mr. Sullivan's lawsuits under the screening provisions of 28 U.S.C. § 1915(e)(2), which requires the district court to dismiss the lawsuit of any individual proceeding in forma pauperis, if the court determines the action is "frivolous or malicious" or "fails to state a claim on which relief may be granted." § 1915(e)(2)(B)(i)-(ii). In each case, a magistrate judge filed a report and recommendation that the claims be dismissed for failure to state a claim; Mr. Sullivan filed objections; and the district court overruled the objections and adopted the magistrate judge's report and recommendation in full. In each case, Mr. Sullivan filed a motion to alter or amend the judgment under Fed. R. Civ. P. 59(e). The district court also denied each of those motions. Mr. Sullivan has

appealed the dismissal of his lawsuits as well as the denials of his Rule 59(e) motions.[2]

II. Discussion

A. Failure to State a Claim

"We apply the same standard of review for dismissals under § 1915(e)(2)(B)(ii) that we employ for Federal Rule of Civil Procedure 12(b)(6) motions to dismiss for failure to state a claim." *Kay v. Bemis*, 500 F.3d 1214, 1217 (10th Cir. 2007). We review a dismissal under Rule 12(b)(6) de novo. *Smith v. United States*, 561 F.3d 1090, 1098 (10th Cir. 2009). "In doing so, we ask whether there is plausibility in the complaint." *Christy Sports, LLC v. Deer Valley Resort Co.*, 555 F.3d 1188, 1191 (10th Cir. 2009) (brackets and internal quotation marks omitted). "The complaint does not need detailed factual allegations, but the factual allegations must be enough to raise a right to relief above the speculative level." *Barnett v. Hall, Estill, Hardwick, Gable, Golden & Nelson, P.C.*, 956 F.3d 1228, 1234 (10th Cir. 2020) (internal quotation marks omitted). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).[3]

---

[2] Although the appeals have not been consolidated, we will discuss some of Mr. Sullivan's claims together without distinguishing between cases, to the extent they overlap.

[3] Mr. Sullivan appears to argue the *Iqbal/Twombly* standard does not apply given the contexts under which those cases were decided. *See Iqbal*, 556 U.S. at 668

1. RICO Claims

To state a claim under the Racketeer Influenced Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1962, Mr. Sullivan must plausibly allege "(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity." *Deck v. Engineered Laminates*, 349 F.3d 1253, 1257 (10th Cir. 2003) (internal quotation marks omitted). "A pattern of racketeering activity must include commission of at least two predicate acts." *Id.* Mr. Sullivan's RICO claims are predicated on allegations of witness intimidation, wire and mail fraud, and obstruction of justice. We agree with the district court that he has not plausibly alleged any of these predicate acts.

As the district court correctly noted, Mr. Sullivan's RICO allegations in these cases are very similar to those he made in the series of lawsuits addressed in *UKHA I*. Here, he alleges the Hartford Defendants, WorkMarket, and Mr. Cannone engaged in a conspiracy to deny him benefits to which he was entitled and to deprive him of proper medical care. In *UKHA I* he alleged the same broad conspiracy against other defendants, which he also claimed was predicated on alleged acts of intimidation, wire and mail fraud, and obstruction of justice. 844 F. App'x at 49-50. We concluded the district court properly dismissed Mr. Sullivan's RICO claims because

(*Bivens* action); *Twombly*, 550 U.S. at 550 (antitrust action). But the Supreme Court made clear in *Iqbal* that its "decision in *Twombly* expounded the pleading standard for all civil actions." *Iqbal*, 556 U.S. at 684 (internal quotation marks omitted). Accordingly, we have not hesitated to apply the standard when considering the factual specificity required under Rule 12(b)(6), regardless of the civil context. *See, e.g.*, *Clinton v. Sec. Benefit Life Ins. Co.*, 63 F.4th 1264, 1269, 1274-75 (10th Cir. 2023) (applying *Iqbal/Twombly* standard to RICO claims).

he "offered only conclusory allegations of criminal conduct, untethered to any specific factual averments." *Id.* at 50.

The same is true here.[4] Mr. Sullivan's conclusory allegations are insufficient to plausibly establish a RICO claim.[5] In short, we affirm the district court's dismissal of Mr. Sullivan's RICO claims.

2. Breach of Contract

Mr. Sullivan alleged that the predecessor to WorkMarket breached unspecified duties owed to him. But his amended complaint did not plead any facts supporting the elements of such a claim. The district court held:

> At no time does Mr. Sullivan allege that he signed a contract directly with [WorkMarket or Mr. Cannone], when such a contract was signed, the consideration for the contract[,] or the terms of the contract. This is fatal to his breach of contract claim. . . . [Mr. Sullivan] cannot state a breach-of-contract claim against a defendant with whom he never entered into a contract.

No. 22-3193, R. Vol. I at 788. Mr. Sullivan does not contend otherwise on appeal. *See Reedy v. Werholtz*, 660 F.3d 1270, 1275 (10th Cir. 2011) ("The argument section of Plaintiffs' opening brief does not challenge the court's reasoning on this point. We therefore do not address the matter.").

---

[4] We affirm Mr. Sullivan's common law conspiracy claim for the same reasons.

[5] Mr. Sullivan also asserted a separate claim for obstruction of justice. As the district court correctly noted—and as we observed in *UKHA I*, there is no private right of action for obstruction of justice under 18 U.S.C. §§ 1501-21. *See* 844 F. App'x at 51. Mr. Sullivan does not contend otherwise on appeal, and we therefore affirm the dismissal of his separate obstruction of justice claim.

Concerning his breach of contract claims against the Hartford Defendants, Mr. Sullivan appears to argue the Hartford Financial Services Group "promised to get me medical care and to evaluate my disabilities and to pay damages." No. 22-3118, Opening Br. at 20. But the operative complaint against the Hartford Defendants contains no such allegation. And even if it did, he provides no plausible facts to support this conclusory allegation. In short, the district court correctly dismissed Mr. Sullivan's breach of contract claims.

3. Tortious Interference

To establish a tortious interference claim under Kansas law, a plaintiff must establish: "(1) [a] contract; (2) the wrongdoer's knowledge thereof; (3) his intentional procurement of its breach; (4) the absence of justification; and (5) damages resulting therefrom." *Burcham v. Unison Bancorp, Inc.*, 77 P.3d 130, 150 (Kan. 2003) (internal quotation marks omitted). Here, the district court dismissed Mr. Sullivan's tortious interference claim because, among other things, he "[did] not identify any particular contract in his complaint." No. 22-3118, R. at 41. Again, Mr. Sullivan does not contend on appeal that the district court erred in this regard. We therefore affirm the district court's dismissal of his tortious interference claims. *See Silverton Snowmobile Club v. U.S. Forest Serv.*, 433 F.3d 772, 783 (10th Cir. 2006) ("[T]he failure to raise an issue in an opening brief waives that issue." (internal quotation marks omitted)).

4. Civil Rights Claims

The district court construed Mr. Sullivan's complaint against the Hartford Defendants as including civil rights claims brought under 42 U.S.C. §§ 1981-1988. The

district court meticulously examined his allegations under each section and determined that none stated a claim upon which relief could be granted. On appeal, Mr. Sullivan only challenges the district court's dismissal of his claim under § 1985(3), which creates a cause of action against two or more persons who conspire to deprive a plaintiff of equal protection or equal privileges or immunities. *See Kush v. Rutledge*, 460 U.S. 719, 725 & n.8 (1983).

Here, Mr. Sullivan alleges he was subject to disability-based animus. But as we have previously held, "a class of 'handicapped persons' was not in the contemplation of Congress in 1871, and was not included as a class in what is now § 1985(3)." *Wilhelm v. Cont'l Title Co.*, 720 F.2d 1173, 1177 (10th Cir. 1983). Mr. Sullivan urges us to reverse this precedent in light of the enactment of the Rehabilitation Act and the Americans with Disabilities Act. This panel, however, cannot overturn the decision of another panel of this court. *Nesbitt v. FCNH, Inc.*, 908 F.3d 643, 647 (10th Cir. 2018). Moreover, even if we were to conclude that disabled persons were included in § 1985(3), his complaint is devoid of any plausible allegations to support such a claim.

In short, we affirm the district court's dismissal of Mr. Sullivan's civil rights claims.

5. Kansas Consumer Protection Act

Mr. Sullivan asserted a claim under the Kansas Consumer Protection Act ("KCPA"), which requires a plaintiff to "allege that the parties meet the KCPA's definitions of consumer and supplier, that the consumer and supplier were involved in a consumer transaction, that the consumer sustained an injury from the supplier's

alleged violations, and that the supplier's actions were deceptive or unconscionable." *Robbins v. Dyck O'Neal, Inc.*, 447 F. Supp. 3d 1100, 1108 (D. Kan. 2020) (footnotes and internal quotation marks omitted). The district court dismissed Mr. Sullivan's KCPA claim because his amended complaint did not specify how OnForce or Mr. Cannone met the definition of a supplier or how Mr. Sullivan met the definition of a consumer. Mr. Sullivan contends the district court erred because he was not required to plead those elements with particularity under Rule 9(b) of the Federal Rules of Civil Procedure. Our review of the amended complaint, however, reveals that Mr. Sullivan did not attempt to plead the "supplier" and "consumer" elements at all, with particularity or otherwise. We therefore affirm the dismissal of the KCPA claim.

6. Kansas Workers Compensation Act Fraud Claim

The Kansas Workers Compensation Act ("KWCA") provides a private right of action to recover economic losses caused by fraudulent or abusive practices. *See* Kan. Stat. Ann. § 44-5,121(a). The district court dismissed Mr. Sullivan's KWCA claim because he failed to plead fraud with particularity as required by Rule 9(b).[6] Mr. Sullivan's opening brief does not address this basis for dismissal, instead focusing on whether the KWCA precludes federal jurisdiction "over disputes

[6] Mr. Sullivan also brought claims for common law fraud, which the district court dismissed for the same reason as the KWCA claim, and for personal injury, which the district court dismissed for failure to plausibly allege the elements of negligence. He does not challenge the dismissal of these claims on appeal, and we therefore affirm.

between employers and workers . . . ." No. 22-3193, Opening Br. at 21. Because Mr. Sullivan has not challenged the district court's basis for dismissing his KWCA claim, we affirm the district court's dismissal of the claim. *See Nixon v. City & Cnty. of Denver*, 784 F.3d 1364, 1366, 1369 (10th Cir. 2015) (stating that an appellant must "explain what was wrong with the reasoning that the district court relied on in reaching its decision" and affirming the dismissal of a claim where appellant did not challenge the district court's reasoning).

B. Appointment of Counsel

Mr. Sullivan contends the district court erred in failing to appoint him civil counsel. Contrary to his argument, however, there is no constitutional right to appointment of counsel in a civil case. *Johnson v. Johnson*, 466 F.3d 1213, 1217 (10th Cir. 2006). We therefore review the denial of appointment of counsel in a civil case for abuse of discretion. *Rucks v. Boergermann*, 57 F.3d 978, 979 (10th Cir. 1995).

In deciding whether to appoint counsel, the court considers the following: (1) the merits of the party's claims; (2) "the nature and complexity of the factual and legal issues"; and (3) the party's "ability to investigate the facts and present [the] claims." *Hill v. SmithKline Beecham Corp.*, 393 F.3d 1111, 1115 (10th Cir. 2004). The district court correctly found that Mr. Sullivan's claims are meritless, the nature of his claims are not complex, and he demonstrated an adequate ability to present his claims. We discern no abuse of discretion in the district court's denial of Mr. Sullivan's request to appoint counsel, and therefore affirm.

C. Prejudice and Bias

Mr. Sullivan argues in all three of these appeals that he was the victim of the district court's prejudice and bias. At no point, however, did he move in the district court to disqualify any of the participating judges under 28 U.S.C. § 144, which states in part:

> Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

Mr. Sullivan never filed such an affidavit, and we therefore consider this matter waived. *Gale v. City & Cnty. of Denver*, 962 F.3d 1189, 1194 (10th Cir. 2020) ("Failure to raise an issue in the district court generally constitutes waiver." (internal quotation marks omitted)).

Even if he had filed an affidavit, however, "[t]he simple filing of an affidavit does not automatically disqualify a judge." *United States v. Bray*, 546 F.2d 851, 857 (10th Cir. 1976). Rather, the movant "must show facts indicating the existence of a judge's *personal* bias and prejudice." *Id.* (emphasis added). Here, Mr. Sullivan appears to argue that the district court's substantive rulings are evidence of bias. But the mere fact that those rulings were adverse to Mr. Sullivan is not a ground for disqualification. *Id.* Mr. Sullivan has not demonstrated any personal bias on the part of any of the district court judges, whose rulings were thorough, meticulous, and well-reasoned.

D. Rule 59(e) Motions

In both lawsuits, Mr. Sullivan filed a Rule 59(e) motion to alter or amend the judgment. Such relief is available where there is: "(1) an intervening change in the controlling law, (2) new evidence previously unavailable, [or] (3) the need to correct clear error or prevent manifest injustice." *Servants of the Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000). A court may grant such a motion if it "has misapprehended the facts, a party's position, or the controlling law." *Id.* Motions under Rule 59(e) are "not appropriate to revisit issues already addressed or advance arguments that could have been raised in prior briefing." *Id.* We review the denial of a Rule 59(e) motion for abuse of discretion. *See Etherton v. Owners Ins. Co.*, 829 F.3d 1209, 1228 (10th Cir. 2016).

Mr. Sullivan did not identify any intervening change in the law. He alleges he has discovered new evidence relating to his medical condition but does not explain how it has any bearing on the district court's dismissal of his claims. And he has not identified a clear error in need of correction. In short, we discern no abuse of discretion in the district court's denial of his Rule 59(e) motions.

E. Denial of Motion for Leave to Amend

Finally, in appeal number 22-3193, Mr. Sullivan contends he was "prejudice[d]" when the district court denied him leave to amend his complaint. No. 22-3193, Opening Br. at 25. We disagree.

First, Mr. Sullivan has not accurately described the district court proceedings because the court did not deny him leave to amend. Rather, it denied his motion for an extension of time to file an amended complaint. *See* No. 22-3193, R. Vol. I at 4 (text

order denying motion because "[t]he requested extension is not necessary to protect any substantive rights of plaintiff, will not serve any judicial interests, and would be potentially prejudicial to WorkMarket"). Second, Mr. Sullivan filed an amended complaint anyway, *see id.* at 6, which he did "without seeking leave to amend," *id.* at 763. And the district court ultimately considered the complaint on its merits against both defendants. *Id.* at 851 ("[C]onsidering Mr. Sullivan's amended complaint . . . on its merits against both defendants, the amended complaint against WorkMarket and Peter Cannone is dismissed under Section 1915(e)(2)(B)(ii) for failure to state a claim on which relief can be granted."). Given these circumstances, Mr. Sullivan has failed to show he suffered any prejudice.

II. Conclusion

We affirm the district court's rulings in all respects.

Entered for the Court

Carolyn B. McHugh
Circuit Judge