

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

October 4, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

\$422,268.00 IN UNITED STATES
CURRENCY,

Defendant.

GUILLERMO VALDEZ,

Claimant - Appellant.

No. 23-1119
(D.C. No. 1:22-CV-01655-WJM-NRN)
(D. Colo.)

ORDER AND JUDGMENT*

Before **PHILLIPS, KELLY, and McHUGH**, Circuit Judges.

During a drug-trafficking investigation, Colorado state troopers found \$422,268 in Guillermo Valdez’s truck and seized it. The government then filed this action seeking forfeiture of the money. Mr. Valdez filed a claim contesting forfeiture

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 This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel.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

but then disappeared, filing nothing for months and failing to appear for court proceedings. After several fruitless attempts to allow Mr. Valdez to pursue his claim, the district court struck the claim and ultimately entered judgment for the government. Mr. Valdez appeals. But his opening brief fails entirely to address the district court's decision to strike his claim. That amounts to a waiver of any challenge to the decision. And so we affirm.

Background

According to the government's verified complaint, investigators suspected that Mr. Valdez and another man had delivered cocaine to a buyer near Denver and received cash for the drugs. Investigators later worked with Colorado state troopers to pull over Mr. Valdez's truck. The troopers searched the truck and found a total of \$422,268—some of it wrapped in cellophane and electrical tape and the rest of it in vacuum-sealed bags. The government sought forfeiture of the money, alleging it had been furnished in exchange for a controlled substance. *See* 21 U.S.C. § 881(a)(6).

Mr. Valdez contested the forfeiture in a letter he wrote from a county jail. He asserted that the money was his "retirement." Suppl. R. at 6. About seven weeks later, he sent another letter from jail contesting the forfeiture.

The magistrate judge entered a minute order stating that Mr. Valdez's concerns would be addressed at an upcoming status conference. The minute order, mailed to Mr. Valdez at the jail, informed him how to appear by phone at the status conference. Yet Mr. Valdez did not appear. The magistrate judge rescheduled the status conference and ordered the courtroom minutes to be mailed to Mr. Valdez at an

additional address provided by the government. Mr. Valdez did not appear at the rescheduled conference either.

Having heard nothing from Mr. Valdez for more than two months, the magistrate judge entered an order directing Mr. Valdez to appear by phone and show cause why his claim should not be dismissed. The order cited, among other rules, a local rule requiring unrepresented litigants to give notice of an address change “not later than five days after the change.” D. Colo. Civ. R. 5.1(c). The order also directed Mr. Valdez to update his contact information and warned that his failure to comply would result in dismissal of his claim. The court sent the order both to the jail that had housed Mr. Valdez and to the additional address the government had provided.¹ But Mr. Valdez neither updated his address nor appeared at the show-cause hearing.

The magistrate judge recommended that the district court strike Mr. Valdez’s claim for his failure to prosecute it, his failure to appear, and his failure to comply with court orders. The recommendation noted that Mr. Valdez had failed to appear at three court proceedings, that neither the court nor the government had any way to contact him, and that “the resolution of his claim” could not “progress without his participation.” Suppl. R. at 9. The district court adopted the recommendation, struck Mr. Valdez’s claim, and later entered judgment granting forfeiture to the government.

¹ The copy sent to the jail was later returned as undeliverable.

Discussion

Because Mr. Valdez represents himself, we construe his filings liberally and hold them to a less stringent standard than we would if a lawyer had drafted them. *See Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005). But our liberal construction can go only so far. We cannot, for example, construct arguments for Mr. Valdez that he himself has not attempted to make. *See id.* Nor can we excuse him from following the procedural rules governing all litigants. *See id.*

One rule governing all appellants requires their opening briefs to contain their “contentions and the reasons for them.” Fed. R. App. P. 28(a)(8)(A). And “we routinely have declined to consider arguments that are not raised, or are inadequately presented, in an appellant’s opening brief.” *Bronson v. Swensen*, 500 F.3d 1099, 1104 (10th Cir. 2007). In other words, an appellant “may waive appellate review of an issue by not arguing it” in the opening brief. *In re Syngenta AG MIR 162 Corn Litig.*, 61 F.4th 1126, 1181 (10th Cir. 2023). We have “not hesitated to apply this waiver rule” against unrepresented litigants like Mr. Valdez. *Toevs v. Reid*, 685 F.3d 903, 911 (10th Cir. 2012).

Mr. Valdez’s opening brief requires us to conclude that he has waived any argument against the district court’s decision to strike his claim. His opening brief does not even mention the ruling striking his claim, let alone attempt to explain why it was wrong. His arguments appear to focus instead on the merits of his claim. He tells us, for example, that troopers found the money in his truck through an illegal

search and seizure. But the district court did not resolve Mr. Valdez’s claim on the merits. It struck the claim because Mr. Valdez failed to prosecute it, failed to appear, and failed to comply with court orders. Because his opening brief contains no challenge to the district court’s ruling striking his claim, Mr. Valdez has waived any such challenge. *See In re Syngenta*, 61 F.4th at 1181. And his waiver of any argument against the relevant ruling dooms his appeal.

Disposition

We affirm the district court’s judgment. We deny Mr. Valdez’s motion to return his “personal asset” (the \$422,268). We grant his motion to proceed on appeal without prepaying costs or fees.

Entered for the Court

Carolyn B. McHugh
Circuit Judge