

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

January 3, 2024

Christopher M. Wolpert
Clerk of Court

MIKE R. SERNA,

Plaintiff - Appellant,

v.

COUNTY OF BERNALILLO SHERIFF'S
DEPARTMENT; ROBERT WARRICK;
GARLAND LEATHERMAN; ALTON
SMITH,

Defendants - Appellees.

No. 23-2095
(D.C. No. 1:23-CV-00254-MIS-SCY)
(D. N.M.)

ORDER AND JUDGMENT*

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

Mike Serna filed a pro se lawsuit in United States District Court for the District of New Mexico, alleging civil rights claims under 42 U.S.C. § 1983 and related state-law tort claims against the Bernalillo County Sheriff's Department and three of its deputies. The district court dismissed the claims, and Mr. Serna appealed. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

This appeal stems from efforts by David and Margette Webster to collect on a judgment against Mr. Serna and his wife Emma Serna. Mr. Serna's claims against the defendants are premised largely on the deputies' involvement in executing the court orders resulting from those collection efforts.

The allegations in the operative complaint cover three incidents. First, Mr. Serna alleged that in April 2017, the deputies executed a writ based on an invalid judgment, requiring Emma Serna to pay \$20,000. Second, he alleged that in September 2022, the deputies executed a writ of assistance authorizing them to evict the Sernas. He contends the writ of assistance was invalid because it was unsigned, but that one of the deputies called the clerk's office to confirm a signed writ was on file. Third, Mr. Serna alleged that he filed a lawsuit against the Websters in early 2023 and the deputies refused to effect service.

After Mr. Serna filed an amended complaint, the defendants moved to dismiss his claims under Rule 12(b)(6) of the Federal Rules of Civil Procedure. The district court granted the motion, holding: (1) Mr. Serna's claim based on the April 2017 incident was barred by the three-year statute of limitations; (2) in evicting the Sernas, the deputies were acting on a facially valid court order and therefore entitled to quasi-judicial immunity; (3) the deputies' failure to serve the Websters with a summons did not deprive Mr. Serna of a federally protected right as required by § 1983; and (4) the Bernalillo County Sheriff's Department is not a suable separate entity.

Mr. Serna’s opening brief does not challenge any of these bases for the district court’s dismissal. “Under [Fed. R. App. P.] 28, which applies equally to pro se litigants, a brief must contain more than a generalized assertion of error, with citations to supporting authority.” *Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 841 (10th Cir. 2005) (ellipsis and internal quotation marks omitted). Although we review a pro se litigant’s pleadings liberally, we will not “take on the responsibility of serving as the litigant’s attorney in constructing arguments and searching the record.” *Id.* at 840. Therefore, any argument not clearly made in a party’s opening brief will be deemed waived. *Toevs v. Reid*, 685 F.3d 903, 911 (10th Cir. 2012). Accordingly, we hold that Mr. Serna has waived any challenge to the district court’s ruling and affirm the dismissal of the lawsuit.

Entered for the Court

Carolyn B. McHugh
Circuit Judge