

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

July 26, 2023

Christopher M. Wolpert
Clerk of Court

ERIKA JACOBS,

Plaintiff - Appellant,

v.

ASHLEY REGIONAL MEDICAL
CENTER,

Defendant - Appellee.

No. 23-4016
(D.C. No. 2:22-CV-00416-RJS)
(D. Utah)

ORDER AND JUDGMENT*

Before **MATHESON**, **BRISCOE**, and **EID**, Circuit Judges.

I.

Erika Jacobs filed suit against her former employer Ashley Regional Medical Center (“ARMC”).¹ The magistrate judge noted that Jacobs’s claims were subject to dismissal for lack of subject matter jurisdiction and directed her to file an amended complaint to cure the same. In response, Jacobs filed an amended complaint

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 This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel.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

¹ Because ARMC was never summoned below, no appellee has entered an appearance in this appeal.

asserting identical causes of action. The magistrate judge recommended that Jacobs's amended complaint be dismissed with prejudice.² Jacobs failed to object, and the district court entered an order noting her failure to object, adopting the magistrate's report and recommendation ("R&R"), and dismissing the action with prejudice.

Jacobs later appealed to this Court. If a litigant fails to object to a magistrate judge's recommendation, that party generally waives her right to appellate review under our "firm waiver rule." *Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991). The waiver rule applies to a pro se party unless: (1) the party has not been informed of the period within which to file objections and the consequences for failing to do so, or (2) the "interests of justice" require review. *Morales-Fernandez v. I.N.S.*, 418 F.3d 1116, 1119 (10th Cir. 2005) (cleaned up). The magistrate judge put Jacobs on notice that "[t]he parties must file any objections to this Report and Recommendation within fourteen days after being served with a copy of it. Failure to object may constitute waiver of objections upon subsequent review." R. Vol. I at 48–49. The district court later determined that Jacobs failed to file an objection. Nothing in the record demonstrates that the interests of justice require bypassing the firm waiver rule in this case.

² Jacobs twice attempted to appeal that recommendation to this court, but both appeals were summarily dismissed for lack of jurisdiction because the district court had not yet issued a final order.

We ordered Jacobs to explain why she did not waive her right to appellate review by failing to timely object to the magistrate judge’s R&R. Jacobs has not offered any valid reason for not timely objecting to the R&R. Therefore, we dismiss this appeal. *See Morales-Fernandez*, 418 F.3d at 1119 (“This court has adopted a firm waiver rule under which a party who fails to make a timely objection to the magistrate judge’s findings and recommendations waives appellate review of both factual and legal questions.”).

II.

We DISMISS Jacobs’s appeal.³

Entered for the Court

Allison H. Eid
Circuit Judge

³ During the pendency of this appeal, Jacobs submitted a “Motion for a Federal Judge of the Tenth Circuit to Review the Motion and Brief sent by Appellant” and a “Motion For Additional Information In Support Of Brief.” We GRANT Jacobs’s motions and consider the materials.