



193 Fed.Appx. 744

Page 1

193 Fed.Appx. 744, 2006 WL 2053769 (C.A.10 (Colo.))

**(Not Selected for publication in the Federal Reporter)****(Cite as: 193 Fed.Appx. 744, 2006 WL 2053769 (C.A.10 (Colo.)))****C**

This case was not selected for publication in the Federal Reporter.

Not for Publication in West's Federal Reporter. See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also Tenth Circuit Rule 32.1. (Find CTA10 Rule 32.1)

United States Court of Appeals,  
Tenth Circuit.

Sanford B. SCHUPPER, Plaintiff-Appellant,

v.

William EDIE; Robyn Cafasso; Jeanne Smith; David Zook; Linda Dix, in their individual and official capacities; Ann Kaufman, Defendants-Appellees.

**No. 05-1156.**

July 25, 2006.

**Background:** Following dismissal of complaint in the United States District Court for the District of Colorado, plaintiff appealed.

**Holdings:** The Court of Appeals, [Timothy M. Tymkovich](#), Circuit Judge, held that:

- (1) district court did not abuse its discretion in striking 38-page pro se complaint for failing to meet the concise pleading requirement;
- (2) plaintiff failed to show excusable neglect for filing untimely motion for extension of time to file amended complaint;
- (3) dismissal of complaint was warranted for plaintiff's failure to abide by court order; and
- (4) plaintiff was not entitled to reconsideration.

Affirmed.

West Headnotes

**[1] Federal Civil Procedure 170A**  **1781**

170A Federal Civil Procedure

170AXI Dismissal

170AXI(B) Involuntary Dismissal

170AXI(B)4 Particular Actions, Insufficiency of Pleadings in

170Ak1781 k. In General. **Most Cited**

**Cases**

District court did not abuse its discretion in dismissing 38-page pro se complaint for failing to meet the concise pleading requirement of Federal Rules of Civil Procedure; complaint did not give defendants fair notice of claims and complaint was overly long, prolix, vague, confusing, and sometimes intelligible. [Fed.Rules Civ.Proc.Rule 8\(a\)](#), 28 U.S.C.A.

**[2] Federal Civil Procedure 170A**  **840**

170A Federal Civil Procedure

170AVII Pleadings and Motions

170AVII(E) Amendments

170Ak839 Complaint

170Ak840 k. Time for Amendment.

**Most Cited Cases**

Plaintiff failed to show excusable neglect for filing untimely motion for extension of time to file amended complaint; motion for extension of time was filed three days after deadline for filing amended complaint. [Fed.Rules Civ.Proc.Rule 6\(b\)\(2\)](#), 28 U.S.C.A.

**[3] Federal Civil Procedure 170A**  **1741.3**

170A Federal Civil Procedure

170AXI Dismissal

170AXI(B) Involuntary Dismissal

170AXI(B)2 Grounds in General

170Ak1741.3 k. Violation of a Court

Order or Rule in General. **Most Cited Cases**

(Formerly 170Ak1741)

Dismissal was warranted for plaintiff's failure to abide by court order to file amended complaint in timely manner; although there was little danger of prejudice to defendants, plaintiff delayed filing amended complaint by more than five months from original deadline, and more than two months from

extended deadline. [Fed.Rules Civ.Proc.Rule 41\(b\)](#), 28 U.S.C.A.

#### [4] Federal Civil Procedure 170A 1840

170A Federal Civil Procedure

170AXI Dismissal

170AXI(B) Involuntary Dismissal

170AXI(B)5 Proceedings

170Ak1839 Vacation

170Ak1840 k. Grounds and Objec-

tions. [Most Cited Cases](#)

Plaintiff was not entitled to reconsideration of dismissal for failure to abide by court order to file amended complaint in timely manner; plaintiff's motion for extension of time to file amended complaint was filed three days after deadline for filing amended complaint.

\*745 Sanford B. Schupper, Santa Monica, CA, pro se.

[Jay Allen Lauer](#), El Paso County Attorney, [David H. Zook](#), District Attorney's Office, Colorado Springs, CO, for Defendants-Appellees.

Before [HARTZ](#), [ANDERSON](#), and [TYMKOVICH](#), Circuit Judges.

### ORDER AND JUDGMENT<sup>FN\*</sup>

<sup>FN\*</sup> After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist 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. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited

under the terms and conditions of 10th Cir. R. 36.3.

[TIMOTHY M. TYMKOVICH](#), Circuit Judge.

\*\*1 Sanford B. Schupper, proceeding pro se on appeal as he did in the district court, appeals the district court's dismissal of his action. We have jurisdiction over this appeal under [28 U.S.C. § 1291](#), and we AFFIRM.

#### I.

Mr. Schupper initiated his district court lawsuit with a 38-page complaint containing 292 paragraphs, plus 120 pages of exhibits. The magistrate judge struck the complaint for violating [Fed.R.Civ.P. 8\(a\)](#), particularly [Rule 8\(a\)\(2\)](#)'s requirement of "a short and plain statement of the claim showing that the pleader is entitled to relief." The court gave Mr. Schupper until July 12, 2004, and then until October 4, to file an amended complaint that complied with [Rule 8\(a\)](#). Three days after the deadline, on October 7, Mr. Schupper filed a motion for a further extension of time to file his amended complaint. On December 16, he tendered an amended complaint that the district court received but did not file.

The magistrate judge found that Mr. Schupper had not established excusable neglect for failing timely to file either his amended complaint or a request for another extension. He recommended that Mr. Schupper's motion for further time be denied. The district court accepted the recommendation and granted defendants' motion to dismiss the action because Mr. Schupper had failed to file an amended complaint within the deadline. The court then denied Mr. Schupper's motion for reconsideration. Mr. Schupper appeals both the dismissal of his action and the denial of his motion for reconsideration.

#### II.

## A.

[1] Mr. Schupper first argues that the district court erred in dismissing his original complaint. We review a district court's dismissal of a complaint under Rule 8(a) for abuse of discretion. See *Kuehl v. FDIC*, 8 F.3d 905, 908 (1st Cir.1993). "When reviewing for an abuse of discretion, the district court's decision is overturned only if it is arbitrary, capricious, whimsical, or manifestly unreasonable." *Pac. Frontier v. Pleasant Grove City*, 414 F.3d 1221, 1231 (10th Cir.2005) (quotation omitted).

Although a pro se litigant's pleadings are entitled to a liberal construction, he must follow the rules of federal procedure. *Ogden v. San Juan County*, 32 F.3d 452, 455 (10th Cir.1994). The policy behind Rule 8 is to "give the defendant fair notice \*746 of what the plaintiff's claim is and the grounds upon which it rests." *Leatherman v. Tarrant County Narcotics Intelligence and Coord. Unit*, 507 U.S. 163, 168, 113 S.Ct. 1160, 122 L.Ed.2d 517 (1993) (quotation omitted).

Having reviewed Mr. Schupper's original complaint, we cannot say that the district court abused its discretion in striking it. The complaint does not give the defendants fair notice of Mr. Schupper's claims. As the magistrate judge noted, it "is overly long, prolix, vague, confusing and sometimes unintelligible." R. Doc. 103 at 7. It is not the role of either the court or the defendant to sort through a lengthy, poorly drafted complaint and voluminous exhibits in order to construct plaintiff's causes of action. See *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir.1991); *Glenn v. First Nat'l Bank*, 868 F.2d 368, 371-72 (10th Cir.1989); see also Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1281, at 709 (3d ed.2004).

## B.

\*\*2 [2] Mr. Schupper also challenges the district court's refusal to grant him any further extensions

to file an amended complaint. Under Fed.R.Civ.P. 6(b)(2), where a party moves after a deadline for an extension of time to do some required act, the district court may grant the extension by finding "the failure to act was the result of excusable neglect." We also review this decision for abuse of discretion. See *Quigley v. Rosenthal*, 427 F.3d 1232, 1237 (10th Cir.2005).

In determining whether a movant has shown excusable neglect, courts consider the circumstances, including "the danger of prejudice to the [opposing party], the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith." *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd.*, 507 U.S. 380, 395, 113 S.Ct. 1489, 123 L.Ed.2d 74 (1993) (stating factors in context of "excusable neglect" test of Bankruptcy Rule 9006(b)); *Panis v. Mission Hills Bank, N.A.*, 60 F.3d 1486, 1494 (10th Cir.1995) (applying *Pioneer* definition in Rule 6(b) context).

The district court considered each of the applicable factors and concluded that Mr. Schupper had failed to show excusable neglect for filing his amended complaint or at least filing his motion for further time prior to his October 4 deadline. For the same reasons given by the district court, we conclude that the district court's finding of no "excusable neglect" was not an abuse of discretion.

## C.

[3] Next, Mr. Schupper argues that the district court erred in dismissing the action. Essentially, the court dismissed the action because Mr. Schupper had failed to comply with its order to file an amended complaint in a timely manner, leaving nothing to adjudicate. A district court may dismiss an action for failure to comply with a court order. See Fed.R.Civ.P. 41(b). This court also reviews such dismissals for abuse of discretion. See *Mobley v. McCormick*, 40 F.3d 337, 340 (10th Cir.1994).

A court generally should consider certain criteria before dismissing a complaint under [Rule 41\(b\)](#), including “(1) the degree of actual prejudice to the defendant; (2) the amount of interference with the judicial process; (3) the culpability of the litigant; (4) whether the court warned the party in advance that dismissal of the action would be a likely sanction for noncompliance; and (5) the efficacy of lesser sanctions.” *Id.* (quotations and alteration \*747 omitted). The district court briefly discussed the first three factors in connection with the motion for additional time (the same order in which it dismissed the action), stating, “[a]lthough there is little danger of prejudice to Defendants, the Plaintiff has delayed filing his Amended Complaint by more than five months from the July 12 deadline-and more than two months from the October 4 deadline-and the fault for such delay lies with him.” R. Doc. 156 at 8.

**\*\*3** We have upheld an order of dismissal even where the district court did not explicitly consider each factor on the record. See [Archibeque v. Atchison, Topeka and Santa Fe Ry. Co.](#), 70 F.3d 1172, 1175 (10th Cir.1995). Here, the district court did consider the majority of the requisite factors, and its decision is supported by the record. We find no abuse of discretion.

#### D.

[4] Finally, Mr. Schupper contends the court erred in denying his motion for reconsideration. As with the other issues in this appeal, we review for abuse of discretion. See [Phelps v. Hamilton](#), 122 F.3d 1309, 1324 (10th Cir.1997). Mr. Schupper's motion essentially reiterated his arguments as to excusable neglect in greater detail and with further explanation. For the same reasons that the court did not abuse its discretion in dismissing the action, the court also did not abuse its discretion in denying Mr. Schupper's motion for reconsideration.

The judgment of the district court is AFFIRMED.

C.A.10 (Colo.),2006.

Schupper v. Edie

193 Fed.Appx. 744, 2006 WL 2053769 (C.A.10 (Colo.))

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