

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

June 4, 2021

Christopher M. Wolpert
Clerk of Court

LEILA MCCOY,

Plaintiff - Appellant,

v.

COLORADO DEPARTMENT OF
HUMAN SERVICES; ANDREA
OLIVER, Reg. Director USDHHS, in
individual & professional capacities; KIDS
CROSSING; SAVIO HOUSE OF
COLORADO SPRINGS,

Defendants - Appellees.

No. 20-1411
(D.C. No. 1:20-CV-02378-LTB)
(D. Colo.)

ORDER AND JUDGMENT*

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

Leila McCoy commenced this civil rights action by filing a pro se complaint alleging that the defendants had harmed her by violating various federal statutes. After screening her complaint, a magistrate judge ordered her to file an amended complaint and a properly signed application to proceed without prepayment of fees or

* After examining the briefs and appellate record, this panel has determined unanimously to honor the parties' request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore 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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

costs, on proper court-approved forms. The magistrate judge's order warned her that if she failed to comply within thirty days the action would be dismissed without further notice.

Two months later, the district court found that McCoy had failed to cure the deficiencies within the time allowed. It therefore dismissed the action without prejudice pursuant to Fed. R. Civ. P. 41(b) for failure to comply with the prior order in full within the time allowed and for failure to prosecute. McCoy appeals the dismissal. We have jurisdiction, *see* 28 U.S.C. § 1291, and we affirm.

BACKGROUND

McCoy filed her initial complaint in this action, along with an application to proceed without prepayment of fees or costs (IFP application) using a court-approved "short form," on August 10, 2020. On August 11, a magistrate judge ordered her to re-submit her complaint using the court's current court-approved complaint form, and to file her IFP application using a court-approved "long form." She was ordered to cure these deficiencies within 30 days.

On August 20, McCoy filed an amended complaint. During the following month she filed additional pleadings including a motion to further amend her amended complaint, two statements to accompany her proposed second amended complaint, and an unsigned long form IFP application.

On September 16, 2020, the magistrate judge entered a second order requiring McCoy to cure deficiencies in her filings. He noted she had complied with his earlier order by submitting an amended complaint on a current court-approved complaint

form, and that she had also submitted an IFP application using the proper long form. But she had not signed the IFP application. In addition, the pleadings she had filed seeking to further amend her complaint, if granted, would have had the effect of superseding the complaint filed on the court-approved form with a deficient complaint. The magistrate judge therefore ordered her, within 30 days, to submit a single complaint on a proper court-approved form that asserted all her claims and named all defendants, along with a signed IFP long form. The magistrate judge also notified McCoy that no other pleadings besides those he had ordered would be accepted. Finally, he warned her that if she failed to timely comply with the order the court would dismiss the complaint and the action without further notice.

During the following two months, McCoy filed many additional pleadings including motions to add defendants; motions to add additional claims for relief; motions to amend, correct, or modify her complaint; and a motion to add a plaintiff. Finally, on November 2, 2020, she filed two versions of a “Motion to Amend and Replace All Previous Filings With Revised Complaint Filed on 11/02/2020 and Seal the Case from [Public] Access,” together with two copies of a proposed amended complaint (11/02/2020 Complaint), one signed and one unsigned. *See* R. at 139-52; 153-66. Although the caption of each of the new accompanying complaints identified the plaintiff as “Leila McCoy,” the section of the complaint requiring “Plaintiff Information” identified the plaintiff using a different name. R. at 153-54; 158-59.

On November 12, 2020, the district court entered an order dismissing the complaint and this action without prejudice. It found that the 11/02/2020 Complaint was signed and dated and had been submitted on a proper court-approved form. But the court determined the complaint was nonetheless deficient because its second page identified the plaintiff using a name other than “Leila McCoy.” In addition, McCoy had failed to submit the required signed IFP long form. Because she had failed to comply with the September 16 order within the time allowed, the district court dismissed the complaint and action without prejudice.

DISCUSSION

1. Dismissal

We review a district court’s dismissal under Rule 41(b) for an abuse of discretion. *See Nasious v. Two Unknown B.I.C.E. Agents*, 492 F.3d 1158, 1161 (10th Cir. 2007). Rule 41(b) provides that “[i]f the plaintiff fails to . . . comply with . . . a court order, a defendant may move to dismiss the action.” “Although the language of Rule 41(b) requires that the defendant file a motion to dismiss, the Rule has long been interpreted to permit courts to dismiss actions sua sponte for a plaintiff’s failure to . . . comply with the . . . court’s orders.” *Olsen v. Mapes*, 333 F.3d 1199, 1204 n.3 (10th Cir. 2003). And when the action is dismissed without prejudice, “a district court may, without abusing its discretion, enter such an order without attention to any particular procedures.” *Nasious*, 492 F.3d at 1162.

Because McCoy proceeds pro se, we liberally construe her pleadings, but we do not act as her advocate. *See Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir.

1991). She raises several arguments that we construe as attempts to show an abuse of discretion. She complains the district court failed to accommodate her visual disability because it did not provide “accessible audio format instructions” and “plain text fillable forms.” Aplt. Opening Br. at 2; *see also id.* at 4. But she does not explain how the failure to provide these accommodations prevented her from complying with the district court’s order. She completed and filed the proper IFP long form, for example—she just failed to sign it. But she signed other pleadings, showing she was familiar with signature requirements. And even after the district court specifically explained to her that the IFP form was deficient due to her failure to sign it, she still failed to submit a signed form. She has not shown the visual accommodations she mentions excuse her lack of compliance.

McCoy also complains the district court “dismissed the case claiming [she] did not use the correct form however the form [she used] came directly off the pro se clinic website for the court.” *Id.* at 2. But the district court did not dismiss this case because McCoy used the wrong forms. It dismissed because the complaint purportedly contained inaccurate information concerning the plaintiff’s identity¹ and because the IFP form was not signed.

¹ The record suggests that the allegedly incorrect name McCoy used in her amended complaint was in fact her birth name. *See R.* at 105. But she does not challenge this aspect of the district court’s ruling, and we therefore need not determine whether this was an appropriate reason for dismissal under Rule 41(b). *See Bronson v. Swensen*, 500 F.3d 1099, 1104 (10th Cir. 2007) (“[W]e routinely have declined to consider arguments that are not raised, or are inadequately presented, in an appellant’s opening brief.”).

McCoy further claims she electronically filed the “long form” to request a fee waiver, and that the form she filed met the requirements for a waiver. *See id.* at 3. But again, the form was not signed as required. The district court therefore did not abuse its discretion in dismissing based on non-compliance with its previous order.

2. Sealing of Case

In its final order the district court restricted the public’s access to the filings and orders on its docket and redacted McCoy’s address. Those restrictions remain in effect in district court. We take judicial notice that the district court has also sealed at least three other cases brought by McCoy involving similar subject matter.

We provisionally sealed the entire appeal. But we issued an order directing McCoy to show cause whether and why her address and/or the filings in this appeal needed to remain sealed. She has filed a response.

A party seeking to file court records under seal must overcome a presumption, long supported by courts, that the public has a common-law right of access to judicial records. To do so, the parties must articulate a real and substantial interest that justifies depriving the public of access to the records that inform our decision-making process.

Eugene S. v. Horizon Blue Cross Blue Shield of N.J., 663 F.3d 1124, 1135-36 (10th Cir. 2011) (citations and internal quotation marks omitted).

McCoy asserts that she and her children are survivors of domestic violence and human trafficking, are the subject of state-court protective orders, and are at risk of being killed if they are located. The docket, the record, and the filings in this appeal reflect her street address, and the panel has determined it is appropriate to redact that

information. To the extent McCoy seeks to seal other information in this case, however, she has failed to satisfy her burden. We therefore order as follows:

1. The clerk of this court shall unseal this appeal.
2. The record on appeal and any documents separately filed under seal (*e.g.* her motion to proceed IFP in this court) shall remain under seal.
3. The clerk shall redact McCoy's address, including her telephone number and email address, from the court's docket and from orders, pleadings, and correspondence filed in this appeal, including accompanying envelopes.

CONCLUSION

McCoy has failed to show the district court abused its discretion by dismissing this case under Fed. R. Civ. P. 41(b). We therefore affirm the dismissal. Her request for appointment of counsel is denied. We grant her motion to proceed without prepayment of costs or fees on appeal. This appeal shall be unsealed, but the record on appeal shall remain under seal and the clerk shall redact McCoy's address, including her telephone number and email address, from this court's docket and from orders, correspondence, and pleadings filed in this appeal.

Entered for the Court

Joel M. Carson III
Circuit Judge