

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

April 5, 2022

Christopher M. Wolpert
Clerk of Court

SCOTT LOGAN GOLLAHER,

Plaintiff - Appellant,

v.

MORGAN COUNTY; WILLIAM Z.
WENTLAND; JANN L. FARRIS,

Defendants - Appellees.

No. 21-4061
(D.C. No. 2:16-CV-01258-DN)
(D. Utah)

ORDER AND JUDGMENT*

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

Scott Logan Gollaher filed a pro se lawsuit against Defendants Morgan County, William Z. Wentland, and Jann L. Farris, alleging violations of his constitutional rights stemming from an arrest and criminal charges. The district court granted Defendants' motion for summary judgment and this appeal followed.

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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

Morgan County and Mr. Farris brought a criminal case against Mr. Gollaher for aggravated sexual abuse of a child based on Detective Wentland's investigation. Mr. Farris later moved to dismiss the case without prejudice, and it was dismissed.

In his amended complaint, Mr. Gollaher brought three claims. He first alleged that Detective Wentland did not have probable cause to arrest him. He next alleged that Mr. Farris did not have probable cause to charge him with a crime. Finally, he alleged that Morgan County failed to properly supervise Detective Wentland, who was a detective with the Morgan County Sheriff's Office.

Defendants filed a motion for summary judgment. After a hearing on the motion, the magistrate judge granted Mr. Gollaher a three-month extension to conduct limited written discovery. Mr. Gollaher also clarified at the hearing what claims he was asserting. The magistrate judge then struck Defendants' initial motion as moot and ordered Defendants to submit a renewed motion for summary judgment after the close of the extended discovery period.

After Defendants filed their renewed motion, the magistrate judge issued a briefing schedule on the motion. Instead of filing a response on the due date, Mr. Gollaher filed a motion for extension of time. He claimed that the staff at the Utah State Prison had confiscated some of his legal materials. The magistrate judge granted Mr. Gollaher's request for an extension. Just prior to the newly extended deadline, Mr. Gollaher requested a second extension of time, asserting that the prison continued to deprive him of access to his legal materials. The magistrate judge granted the extension but indicated that no further extensions would be granted.

Mr. Gollaher, however, requested two more extensions and the magistrate judge ultimately granted him additional time to file his response.

On the day his response was due, Mr. Gollaher filed a motion for leave to file an overlength response and attached a 100-page proposed response in opposition to the motion for summary judgment (“Opposition”). Defendants objected to the request to file an overlength response, and the magistrate judge denied the motion after finding that Mr. Gollaher had not shown good cause for needing to file an overlength response.

The magistrate judge then issued a sealed report and recommendation, recommending that the motion for summary judgment be granted. After noting that Mr. Gollaher had not filed a timely objection to the report and recommendation, the district court adopted it, granted the motion, and entered judgment in Defendants’ favor. But shortly thereafter the court received Mr. Gollaher’s “Objection to the Magistrate Judge’s Order Denying Motion for Overlength and Sealed Ruling and Recommendation” (“Objection”), R., Vol. II at 432. The district court indicated it would take the Objection under advisement and Defendants were given the opportunity to file a response to the Objection.

The district court subsequently issued a “Corrected Memorandum Decision and Order Adopting Report and Recommendation,” *id.* at 655, in which it considered Mr. Gollaher’s Objection, after determining that the Objection was timely under the prison mailbox rule. Mr. Gollaher raised two main arguments in his Objection: (1) the magistrate judge should have waited for him to file a reply in support of his

motion for an overlength response before denying it; and (2) the magistrate judge should have considered his overlength Opposition to Defendants' motion for summary judgment.

The district court overruled both objections. The court then explained that it had conducted a de novo review of all the materials again, including Mr. Gollaher's overlength Opposition. Based on that review, the court determined that "the analysis and conclusion of the magistrate judge is still found to be correct." *Id.* at 657.

Mr. Gollaher now appeals. He argues: (1) the district court erred in failing to conduct a hearing on the Utah State Prison's interference with his ability to access the court; (2) the district court erred in failing to overrule the magistrate judge's denial of his motion to file an overlength response, which precluded consideration of his Opposition; (3) the district court erred when it initially adopted the magistrate judge's report and recommendation without considering his timely filed Objection; (4) the district court erred when it failed to give him notice that it provided Defendants with an opportunity to submit a response to his Objection and did so without giving him an opportunity to file a reply; and (5) the district court erred when it sua sponte adopted the report and recommendation a second time.¹

¹ Because he is proceeding pro se on appeal, we liberally construe Mr. Gollaher's appellate filings. *See Ledbetter v. City of Topeka*, 318 F.3d 1183, 1187 (10th Cir. 2003). But we "cannot take on the responsibility of serving as the litigant's attorney in constructing arguments and searching the record." *Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005).

We have considered the briefs, the record, and the district court's rulings; finding no reversible error, we affirm. We grant Mr. Gollaher's motion for leave to proceed without prepayment of costs or fees, but we remind him that he is obligated to continue making partial payments until the entire fee has been paid.

Entered for the Court

Bobby R. Baldock
Circuit Judge