FILED
United States Court of Appeals
Tenth Circuit

October 2, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

MIKE R. SERNA,

Plaintiff - Appellant,

v.

DAVID WEBSTER; MARGETTE WEBSTER,

Defendants - Appellees.

No. 23-2091
(D.C. No. 1:23-CV-00349-MLG-KK)
(D. N.M.)

ORDER AND JUDGMENT[*]

Before **TYMKOVICH**, **McHUGH**, and **CARSON**, Circuit Judges.

Pro se Plaintiff-Appellant Mike Serna appeals the district court's order dismissing with prejudice his federal claims and declining to exercise supplemental jurisdiction over his state-law claims. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm. Mr. Serna's amended complaint alleges violations to federal statutes that do not provide for private causes of action and fails to allege facts necessary to maintain causes of action under 42 U.S.C. §§ 1983 and 1985. And Mr.

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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

Serna's brief on appeal advances no legal argument for why the reasoning that the district court relied on in dismissing his federal and state claims was erroneous.

I. Background

This case has a long procedural history, starting with Mr. Serna losing a home in a state-court foreclosure action that David Webster and Margette Webster filed. After judgment, Mr. Serna began a series of lawsuits against the Websters. He asserted that the Websters conspired to wrongfully evict him from the home and accused them of various torts and conspiratorial actions.

In the first of these cases, *Serna I*, the magistrate judge found that the complaint failed to state Fourth and Fourteenth Amendment claims and recommended dismissing the action. The district court later dismissed the federal claims with prejudice and declined to retain jurisdiction over the state claims.

The present case, *Serna II*, follows much the same script. Mr. Serna filed suit, advancing similar allegations against the Websters. Another magistrate judge observed that the complaint lacked adequate facts to establish federal jurisdiction and ordered Mr. Serna to demonstrate the court's jurisdiction. And because of the disposition in *Serna I,* the magistrate judge also ordered Mr. Serna to explain why res judicata principles did not bar Mr. Serna's federal claims related to the property's possession. Mr. Serna responded by amending his complaint, incorporating various federal-law claims and introducing other state-law claims. He failed to address the court's res judicata concerns. The district court dismissed Mr. Serna's complaint sua sponte under Federal Rule of Civil Procedure 12(b)(6).

II. Discussion

Mr. Serna now appeals the district court's sua sponte dismissal. To survive dismissal, "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quotation omitted). While the "plausibility standard is not akin to a probability requirement" it asks for "more than a sheer possibility that a defendant has acted unlawfully." *Id*. Mr. Serna proceeds *pro se*, so we liberally construe his arguments. *See Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005). But we "cannot take on the responsibility of serving as [his] attorney in constructing arguments and searching the record." *Id*.

A. Failure to State a Claim

Applying the foregoing principles, Mr. Serna's appeal ends where it began. While we review the district court's Rule 12(b)(6) dismissal de novo, *see Thomas v. Kaven,* 765 F.3d 1183, 1190 (10th Cir. 2014), Mr. Serna's appeal fails to "challenge the basis of the dismissal," *Nixon v. City & Cnty. of Denver*, 784 F.3d 1364, 1369 (10th Cir. 2015). That said, the district court properly dismissed Mr. Serna's claims for three reasons.

First, the district court correctly concluded that Mr. Serna's claims under 18 U.S.C. §§ 241, 242, 371, 471[1], and 1324c[2] failed to state valid claims.[3] As a general matter, federal criminal statutes that "do not provide for a private right of action" are "not enforceable through a civil action." *Andrews v. Heaton*, 483 F.3d 1070, 1076 (10th Cir. 2007). These statutes do not provide for private causes of action. *See, e.g.*, *id*. (claims alleging violations of 18 U.S.C. §§ 241 and 371 properly dismissed because "these are criminal statutes that do not provide for a private right of action and are thus not enforceable through a civil action."); *Shaw v. Neece*, 727 F.2d 947, 949 (10th Cir. 1984) (claims alleging violations of 18 U.S.C. §§ 241 and 242 properly dismissed because "a plaintiff cannot recover civil damages for an alleged violation of a criminal statute."); *see also Henry v. Albuquerque Police Dep't*, 49 F. App'x 272, 273 (10th Cir. 2002) ("18 U.S.C. §§ 241 and 242 . . . do not provide for a

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[1] 18 U.S.C. § 471 prohibits, among other things, fraudulently counterfeiting any obligation or security of the United States. Mr. Serna does not show that the language or history of 18 U.S.C. § 471 "explicitly or implicitly demonstrate[s] that Congress intended to create a private right of action." *Kaw Nation v. Springer*, 341 F.3d 1186, 1191 (10th Cir. 2003).

[2] Mr. Serna asserts a cause of action under 18 U.S.C. § 1324c. But there is no such provision. To the extent Mr. Serna asserts a cause of action under 8 U.S.C. § 1324c, he failed to state a claim because 8 U.S.C. § 1324c "provides only for governmental investigation and enforcement," and Mr. Serna "provides no evidence that Congress intended a private right of action in favor of domestic workers...." *United States v. Richard Dattner Architects*, 972 F. Supp. 738, 744 (S.D.N.Y. 1997).

[3] The district court properly found no private right of action to enforce the provision of the Dodd Frank Wall Street Reform and Consumer Protection Act that Mr. Serna cites. *See* 12 U.S.C. § 5531(c)(2) ("In determining whether an act or practice is unfair, the Bureau may consider established public policies as evidence to be considered with all other evidence. Such public policy considerations may not serve as a primary basis for such determination.").

private civil cause of action."). And because Mr. Serna asserted claims under federal statutes that do not provide for private causes of action, amendment "would not cure [that] legal defect." *Serna v. Denver Police Dep't*, 58 F.4th 1167, 1172 (10th Cir. 2023). So the district court properly dismissed these claims. *Id*. at 1172-73.

Second, the district court correctly concluded Mr. Serna's claims under 42 U.S.C. §§ 1983 and 1985 did not contain "sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *See Iqbal*, 556 U.S. at 678. Mr. Serna's complaint alleged that that the Websters evicted him "with the use of the deputies," despite a right "exist[ing] for [him] to reside at the Property of the 'Irrevocable Trust.'" But—as the district court correctly noted—"when a private person invokes the aid of state personnel and institutions to seize property from someone, the private person does not act under color of state law unless the state law being applied is unconstitutional or the private person has participated in a conspiracy with the state personnel." *Welch v. Saunders*, 720 F. App'x 476, 479 (10th Cir. 2017) (citing *Yanaki v. Iomed, Inc.*, 415 F.3d 1204, 1209–10 (10th Cir. 2005)).[4] So because the complaint neither alleged that the state law being applied was unconstitutional nor alleged that the Websters conspired with state personnel to seize the property, the district court properly dismissed Mr. Serna's § 1983 claim.[5]

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[4] While not binding, this case is cited for its persuasive value. *See* Fed. R. App. P. 32.1; 10th Cir. R. 32.1.

[5] The district court also properly dismissed the 42 U.S.C. § 1985 claim because Mr. Serna did not allege any "racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action." *Jones v. Norton*, 809 F.3d 564, 578 (10th Cir. 2015).

On appeal, Mr. Serna's brief includes more factual details than appeared in the original amended complaint. But we consider "only the facts alleged in [Mr. Serna's] [a]mended [c]omplaint," *Wittner v. Banner Health*, 720 F.3d 770, 775 (10th Cir. 2013), and we do not consider "allegations that are newly made on appeal." *Cohon ex Rel. Bass v. New Mexico Dept. of Health*, 646 F.3d 717, 730 (10th Cir. 2011).

In any case, even if these new facts had been included in Mr. Serna's amended complaint, the amended complaint still would not have sufficiently stated plausible U.S.C. §§ 1983 and 1985 claims. Mr. Serna basically asserts that the Websters "hired the Sheriff's department" to "collect [the property] without a judgment" and "hired the deputies a second time" to evict him. Again, Mr. Serna did not allege that the state law being applied was unconstitutional or that the Websters conspired with state personnel to seize the property. Nor did Mr. Serna allege any racial or otherwise class-based discriminatory animus behind any action allegedly taken. Dismissal was thus appropriate.

Third, the district court properly declined to exercise its discretion to issue a declaratory injunction. Mr. Serna's complaint requested the district court to declare that "the state Court judge erred in his ruling" and "undo the foreclosure sale." But "a federal district court does not have subject matter jurisdiction to review a case that was resolved by state courts." *Guttman v. Khalsa*, 446 F.3d 1027, 1031 (10th Cir. 2006). The district court properly declined to entertain this request and appropriately dismissed this claim.

B. Supplemental Jurisdiction

After disposing of all Mr. Serna's federal claims, the district court declined to exercise supplemental jurisdiction over the state-law claims. "We review the district court's decision to decline supplemental jurisdiction for abuse of discretion." *Exum v. United States Olympic Committee*, 389 F.3d 1130, 1139 (10th Cir. 2004).

Here, again, Mr. Serna fails to "explain what was wrong with the reasoning that the district court relied on in reaching its decision." *Nixon*, 784 F.3d at 1366. "A district court may decline to exercise supplemental jurisdiction over a claim when it has dismissed all claims over which it had original jurisdiction." *Exum*, 389 F.3d at 1138 (citing 28 U.S.C. § 1367(c)(3)). Indeed, the Supreme Court "has encouraged the practice of dismissing state claims or remanding them to state court when the federal claims to which they are supplemental have dropped out before trial." *Barnett v. Hall, Estill, Hardwick, Gable, Golden & Nelson, P.C.*, 956 F.3d 1228, 1238 (10th Cir. 2020); *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 726 (1966) ("Certainly, if the federal claims are dismissed before trial . . . the state claims should be dismissed as well."). The district court did not abuse its discretion when it dismissed Mr. Serna's state-law claims.

Accordingly, we **AFFIRM** for substantially the same reasons as the district court.

Entered for the Court

Timothy M. Tymkovich
Circuit Judge