FILED
United States Court of Appeals
Tenth Circuit

November 2, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

C. MICHAEL MARTIN,

Plaintiff - Appellant,

v.

STATE OF UTAH; BRITTEN LUND; KIM DIMOND-SMITH; SCOTT HIGLEY; ATECH,

Defendants - Appellees.

No. 23-4045
(D.C. No. 2:20-CV-00006-RJS-DBP)
(D. Utah)

ORDER AND JUDGMENT*

Before **PHILLIPS**, **KELLY**, and **McHUGH**, Circuit Judges.

C. Michael Martin, pro se, filed suit against defendants for the alleged violation of: (1) his civil rights under 42 U.S.C. §1983; (2) the Fair Labor Standards Act; and (3) state wage laws. The magistrate judge granted Mr. Martin leave to proceed without prepayment of fees under 28 U.S.C. § 1915(a)(1). He was later granted leave to file an amended complaint.

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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

Following review of the amended complaint, the magistrate judge ordered Mr. Martin to clarify the relief he was seeking. In response to the order, Mr. Martin filed a proposed second amended complaint that named several new defendants, including the "Commander-in-Chief . . . Mr. President," the Governor of the State of Utah, and unnamed individuals described as "Private-Responde[a]t Superior" and "Public-Responde[a]t Superior." R. at 73. For his claim for relief, Mr. Martin alleged "[m]ultiplicity of claims, Count I – Count . . ." and requested "[r]emedies found at law, or upon premise(s) propounded at hearings or trial." *Id*. at 74.

The magistrate judge reviewed both the amended and proposed second amended complaint under 28 U.S.C. § 1915(e)(2)(B)(i)-(ii), which provides that when the court authorizes a party to proceed without prepayment of fees under § 1915, the court shall dismiss the case if it determines that "the action . . . is frivolous or malicious [or] fails to state a claim on which relief may be granted." The court determined that neither complaint stated proper claims for relief. Moreover, it found that "[b]ringing unsubstantiated and unsupported claims against the President of the United States is a frivolous pursuit." R. at 81.

The magistrate judge recommended that the proposed second amended complaint be dismissed for failure to state a claim.[1] The judge further notified Mr. Martin of his right to file written objections within fourteen days, and

[1] The court "appl[ies] the same standard of review for dismissals under § 1915(e)(2)(B)(ii) that [is] employ[ed] for Federal Rule of Civil Procedure 12(b)(6) motions to dismiss for failure to state a claim." *Kay v. Bemis*, 500 F.3d 1214, 1217 (10th Cir. 2007).

specifically warned that "[f]ailure to object may constitute a waiver of objections upon subsequent review." *Id*. at 82.

Mr. Martin filed a timely objection; however, the district court found that it was inadequate to preserve the issues for de novo review.[2] The court noted that it received a "Notice of Objection . . . via an email from Don Trump, [that] included no caption, and was unsigned. The Objection simply ended with: Signed to the court ( )." *Id*. at 152 (footnote omitted and internal quotation marks omitted); *see also id*. at 4, 131. The court summarized that "[t]he Objection simply state[d] Plaintiff objects to recommendation of the court and Plaintiff . . . agree[s] to the law that protects plaintiff from the nonpayment of wages." *Id*. at 156 (internal quotation marks omitted). The court determined the objection was not "sufficiently specific [to preserve] de novo review." *Id*. Following review of the recommendation for clear error, the court adopted the recommendation in its entirety and entered judgment in favor of defendants. Mr. Martin appealed.

"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." *Morales-Fernandez v. INS*, 418 F.3d 1116, 1119 (10th Cir. 2005). "This rule does not apply, however,

[2] "The district judge must determine de novo any part of the magistrate judge's disposition that has been *properly* objected to." Fed. R. Civ. P. 72(b)(3) (emphasis added). A proper objection is one that contains "*specific* written objections to the proposed findings and recommendations." Fed. R. Civ. P. 72(b)(2) (emphasis added).

when (1) a *pro se* litigant has not been informed of the time period for objecting and the consequences of failing to object, or when (2) the interests of justice require review." *Id*. (internal quotation marks omitted).

"[A] party's objections to the magistrate judge's report and recommendation must be both timely and specific to preserve" appellate review. *United States v. 2121 E. 30th St.*, 73 F.3d 1057, 1060 (10th Cir. 1996). "[O]nly an objection that is sufficiently specific to focus the district court's attention on the factual and legal issues that are truly in dispute" will suffice. *Id*.

We issued an order to Mr. Martin to show cause why he has not waived his right to appellate review by failing to file specific objections to the magistrate judge's recommendation. His response does not address the firm waiver rule in any meaningful way; instead, he complains that defendants' alleged failure to submit to the jurisdiction of the court somehow prevented him from filing a proper objection.

Neither exception to the firm waiver rule applies. First, the magistrate judge clearly informed Mr. Martin of the objection deadline and consequences of failing to object. Second, the interests of justice do not require review. In making this determination, we consider "a *pro se* litigant's effort to comply, the force and plausibility of the explanation for his failure to comply, and the importance of the issues raised." *Morales-Fernandez*, 418 F.3d at 1120. None of these factors are present here because (1) sending an unsigned objection via email from "Don Trump" with no meaningful argument does not demonstrate any effort to comply; (2) Mr. Martin's response to the show-cause order does not challenge the magistrate

judge's legal analysis; and (3) we discern no issues of importance. Thus, the firm waiver rule bars Mr. Martin's appeal.

The judgment of the district court is affirmed.

Entered for the Court

Carolyn B. McHugh
Circuit Judge