

FILED

United States Court of Appeals  
Tenth Circuit

UNITED STATES COURT OF APPEALS

May 23, 2016

FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker  
Clerk of Court

KEVIN LEE KERKHOFF,

Plaintiff-Appellant,

v.

WEST VALLEY CITY DISTRICT  
COURT; ATTORNEY GENERAL'S  
OFFICE,

Defendants-Appellees.

No. 15-4038  
(D.C. No. 2:14-CV-00209-RJS-DBP)  
(D. Utah)

CORY R. WALL; THADEUS  
WENT; BRETT BOLTON; KEVIN  
BISHOP,

Defendants.

ORDER AND JUDGMENT\*

Before **BRISCOE**, **BACHARACH**, and **McHUGH**, Circuit Judges.

\* The Court concludes that oral argument would not materially aid our consideration of the appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). Thus, we have decided the appeal based on the briefs.

Our order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel.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

Mr. Kevin Lee Kerkhoff suffered physical injuries in a 1992 incident of workplace violence, which led to criminal proceedings against a third party. Decades later, Mr. Kerkhoff sued, alleging that the West Valley City District Court and the Utah Attorney General's Office had failed to enforce Utah laws and to notify Mr. Kerkhoff of his need to submit restitution information. According to Mr. Kerkhoff, he was unaware that restitution would be available.

The West Valley City District Court and the Utah Attorney General's Office moved to dismiss for failure to state a claim. *See* Fed. R. Civ. P. 12(b)(6). The district court granted the motion, reasoning that (1) the doctrine of claim preclusion barred the claims against the West Valley City District Court and (2) both defendants avoided liability because of Eleventh Amendment immunity and expiration of the statute of limitations. Mr. Kerkhoff appeals, appearing pro se. We affirm because Mr. Kerkhoff has not challenged some of the district court's rationales for the order of dismissal.<sup>1</sup>

We engage in de novo review of the district court's dismissal. *Schrock v. Wyeth, Inc.*, 727 F.3d 1273, 1280 (10th Cir. 2013). Because Mr.

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<sup>1</sup> When Mr. Kerkhoff appealed, the district court had not disposed of the claims against four other defendants. But while the appeal was pending, the district court entered a final decision terminating the remaining claims. Thus, if the notice of appeal was premature, it has ripened, creating appellate jurisdiction. *Fields v. Okla. State Penitentiary*, 511 F.3d 1109, 1111 (10th Cir. 2007). Mr. Kerkhoff has not appealed the rulings made during the pendency of this appeal.

Kerkhoff appears pro se, we construe his filings liberally. *See Yang v. Archuleta*, 525 F.3d 925, 927 n.1 (10th Cir. 2008).

Even liberally construed, Mr. Kerkhoff's appeal briefs do not address two of the district court's reasons for dismissing the claims: Eleventh Amendment immunity and the statute of limitations. Instead, Mr. Kerkhoff contends that a prior action was improperly dismissed.<sup>2</sup> We might credit these contentions as an attack on the district court's determination that claim preclusion bars his current claims against the West Valley City District Court. But even if we were to agree with Mr. Kerkhoff on claim preclusion, he has not addressed the district court's rationales based on Eleventh Amendment immunity and the statute of limitations. As a result, we would decline to disturb the district court's order of dismissal even if we were to credit Mr. Kerkhoff's appellate arguments. *See Bones v. Honeywell Int'l, Inc.*, 366 F.3d 869, 877 (10th Cir. 2004) (holding that the plaintiff waived the alternative ground given by the district court by challenging only the district court's first ground for the ruling).

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<sup>2</sup> In 2001, Mr. Kerkhoff brought a federal action against the Utah Third District Court (among others). Mr. Kerkhoff alleged that the Third District Court had failed to notify him of court proceedings. This 2001 claim against the Third District Court was dismissed based on Eleventh Amendment immunity.

We affirm.

Entered for the Court

Robert E. Bacharach  
Circuit Judge