FILED
United States Court of Appeals
Tenth Circuit

June 24, 2021

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

HITOSHI OMBE,

Plaintiff - Appellant,

v.

GEORGE COOK; JESSICA MARTINEZ; JEFFREY ANDERSON; VICTORIA CURLEY; LAWRENCE VILLANUEVA; DOMINIC VILLANEUVA; CLINE CORNERS; CLINES CORNER TRAVEL CENTER; CLINES CORNERS OPERATING COMPANY; CLINES CORNERS RETAIL CENTER, LLC; CLINES CORNERS REAL ESTATE, LLC; CLINES CORNERS PROPERTY, LLC; T-BIRD, INC; EL MERCADO DEL SOL, INC,

Defendants - Appellees.

No. 20-2166
(D.C. No. 2:20-CV-00786-RB-GBW)
(D. N.M.)

ORDER AND JUDGMENT*

Before **TYMKOVICH**, Chief Judge, **BRISCOE** and **BACHARACH**, Circuit Judges.

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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

Appendix A

Plaintiff Hitoshi Ombe appeals the district court's sua sponte dismissal, under 28 U.S.C. § 1915(e)(2), of his claims for employment discrimination. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

BACKGROUND

Mr. Ombe worked as a cashier at Clines Corners Travel Center. A former university professor and mathematician, he was diagnosed with autism later in life and reports he has also suffered from depression and anxiety.

Mr. Ombe sued his former employers alleging violations of the Americans with Disabilities Act (ADA), 42 U.S.C. § 12112(a); Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a)(1); and the Civil Rights Act of 1866, 42 U.S.C. § 1981(a). He also pled state tort claims. Mr. Ombe had previously raised similar claims in three lawsuits he filed in 2016, and he described the instant case as a continuation of the first.[1] *See* R. at 38 ("The plaintiff filed this case with the US District Court for the District of New Mexico on 10/07/16"). The district court consolidated and dismissed Mr. Ombe's earlier claims, and we affirmed. *See Ombe v. New Mexico*, 755 F. App'x 754, 756–57, 760 (10th Cir. 2018) ("*Ombe I*").

[1] While the claims in *Ombe I* also related to Mr. Ombe's employment, the defendants there included the State of New Mexico and Disability Rights of New Mexico, Inc., a nonprofit agency, as well as employees and individuals connected with those entities. Mr. Ombe alleged those defendants did not provide adequate assistance to him in his efforts to secure employment better suited to his interests and abilities and failed to accommodate his disabilities when they worked with him. *See* 755 F. App'x at 756–57. Here, he sought relief from the convenience store where he worked as a cashier, alleging discriminatory treatment and discharge.

In this action, Mr. Ombe's complaint specified "[t]his claim has to do with the plaintiff['s] employment with the defendants. It lasted from April 2011 to October 2016." R. at 38. The complaint stated the Equal Employment Opportunity Commission (EEOC) issued a "right to sue" letter on July 11, 2016. *See id.* After issuing a show-cause order and reviewing Mr. Ombe's response thereto, the district court dismissed the federal claims due to the expiration of the statute of limitations and declined to exercise supplemental jurisdiction over the remaining state-law claims. Mr. Ombe now appeals.

DISCUSSION

Because Mr. Ombe proceeds pro se, we construe his arguments liberally, but we "cannot take on the responsibility of serving as [his] attorney in constructing arguments and searching the record." *Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005). Mr. Ombe argues throughout his briefs that, due to his disability, he is entitled to an even more favorable construction than we normally afford to pro se litigants. *See* Opening Br. at 17 ("The trouble is that [*Garrett*] is a pre-standards case determined in 2005 (the standards are in effect since 01/01/09) and the disability factor is totally absent in it. It is a[] totally incorrect precedent."); *id.* at 24 ("[L]iberal interpretation of pleadings is insufficient to protect my rights."); Aplt. App. B1 at 4 ("Not only [is *Garrett*] outdated, but also the disability factor is completely missing from the cited case."). We previously rejected similar arguments in *Ombe I*, and we do so again here. *See* 755 F. App'x at 758 ("Mr. Ombe is mistaken in believing that the district court was required to disregard

the legal rules that govern civil lawsuits in response to his cognitive and mental health issues or his pro se status.").[2]

We review de novo the district court's dismissal under 28 U.S.C. § 1915(e)(2) for failure to state a claim upon which relief can be granted. *See Perkins v. Kan. Dep't of Corr.*, 165 F.3d 803, 806 (10th Cir. 1999). We likewise review de novo "[w]hether a court properly applied a statute of limitations," *Nelson v. State Farm Mut. Auto. Ins. Co.*, 419 F.3d 1117, 1119 (10th Cir. 2005), but "[w]e review the district court's refusal to apply equitable tolling for an abuse of discretion." *Alexander v. Oklahoma*, 382 F.3d 1206, 1215 (10th Cir. 2004) (internal quotation marks omitted).[3]

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[2] As in *Ombe I*, *see* 755 F. App'x at 758 & n.3, Mr. Ombe's briefs and submissions are laced with unnecessary and unfounded invective directed at the district court. *See, e.g.*, Opening Br. at 9 ("[The district court judge] failed to observe[] disability principle and judicial principle. He mindlessly or negligently observed bureaucratic principle."); *id.* at 30 ("Judges and lawyers are too complacent and smug. This is their attitudinal problem."); *id.* at 45 ("[The district court judge] has miserably and totally failed on this essential requirement. And he has been penalizing me all the time for the consequence of his total failure. He has been deliberately refusing to have even one hearing when he does not know the nature of autism disability at all. This is because he has false pride based on his position."); Aplt. App. B1 at 2 ("Here, [the district court judge] processed the matter as the mindless or thoughtless bureaucratic routine."); *id.* at 9 ("Clearly, I am a victim of these ignorant bureaucrats with titles of judicial officials."); *id.* at 11 ("Thoughtless, mindless, and ignorant bureaucrats – defendants and judges – and lawyers forced me to swallow the above totally insulting and senseless nonsense.").

[3] Mr. Ombe does not challenge the district court's decision not to exercise supplemental jurisdiction over his state-law claims, so we do not consider that issue further. *See Sawyers v. Norton*, 962 F.3d 1270, 1286 (10th Cir. 2020) ("Issues not raised in the opening brief are deemed abandoned or waived." (internal quotation marks omitted)).

The statute of limitations for Mr. Ombe's Title VII and ADA claims ran ninety days after the EEOC's issuance of its "right to sue" letter. *See* 42 U.S.C. § 2000e–5(f)(1); *E.E.O.C. v. W.H. Braum, Inc.*, 347 F.3d 1192, 1198 (10th Cir. 2003) ("[O]nce the EEOC determines not to pursue the charge, the employee has ninety days from receipt of the right to sue letter in which to file suit."); *id.* at 1197 ("Title I [of the ADA] expressly adopts the statutory scheme of Title VII."). The EEOC issued its right to sue letter in July 2016; therefore, the statute of limitations expired in October 2016. The statute of limitations for Mr. Ombe's § 1981 claim is three years, *see Garcia v. Univ. of Kan.*, 702 F.2d 849, 850 (10th Cir. 1983) ("[S]ince there is no applicable federal statute of limitations relating to civil rights actions brought under section[] 1981 . . ., federal courts must apply the most appropriate one provided by state law.") (internal quotation marks omitted), *overruled in part on other grounds by Garcia v. Wilson*, 731 F.2d 640, 643 (10th Cir. 1984); N.M. Stat. Ann. § 37-1-8 ("Actions must be brought . . . for an injury to the person . . . within three years."). It therefore ran no later than October 2019, three years after the end of his employment. Mr. Ombe did not file his claims until August 2020, so all three of his federal claims were time-barred.

In his first issue on appeal, Mr. Ombe does not dispute the statutes of limitations had expired, but he argues the district court should have equitably tolled them. "Generally, equitable tolling requires a litigant to establish two elements: (1) that he has been pursuing his rights diligently, and (2) that some extraordinary

circumstance stood in his way." *Yang v. Archuleta*, 525 F.3d 925, 928 (10th Cir. 2008) (internal quotation marks omitted.).

The district court declined to equitably toll the statutes of limitations in part because, notwithstanding the severity of Mr. Ombe's mental impairment, it "was not so extraordinary as to prevent him from actively prosecuting his other civil rights cases from August 2014 through February 2018, appealing the final judgment, and filing a petition for writ of certiorari in May 2019." R. at 202. We discern no abuse of discretion in this conclusion. It was reasonable for the district court to conclude that having conducted multiple federal lawsuits against other defendants from inception to appeal within the statute of limitations, Mr. Ombe could not credibly assert that he faced an extraordinary circumstance that prevented him from timely filing a claim against these defendants.

In his second issue on appeal ("How the court must respond to the poor, i.e., pro se litigants in order to avoid to generate undue issues like the First Issue," Opening Br. at 34), Mr. Ombe offers suggestions for practices the court could adopt to better accommodate similarly situated litigants, including updates to the District of New Mexico's Guide for Pro Se Litigants. To the extent Mr. Ombe is asserting the district court should have applied a different set of rules to him than to other litigants, we reject this contention for the same reasons we set forth in *Ombe I*. *See* 755 F. App'x at 759 ("[W]hile Mr. Ombe insists that the district court was required to modify or ignore otherwise applicable procedural and substantive rules as an accommodation to his cognitive and mental health issues, he cites no legal

authority that supports this proposition and we are aware of none.").[4] And, the arguments Mr. Ombe presents in connection with his second issue on appeal fail to demonstrate the district court's dismissal of his untimely claims was erroneous, so we do not consider them further.

CONCLUSION

We affirm the judgment of the district court. We grant Mr. Ombe's "Motion to Request the Court['s] Understanding of the Issues Related to the Court['s] General Rule About Review vs. New Trial," "Motion to Request to Understand the Ultim[a]te Issue," and "Motion for Leave [to] 'Supplement' which is Significantly Deviated from Rule 28(j)" to the extent Mr. Ombe asks us to consider additionally submitted arguments, and we have considered those arguments to the extent they are relevant. We deny those motions to the extent Mr. Ombe asks us to apply a different standard of law to him than we would to other litigants. We grant Mr. Ombe's motion to withdraw his "Motion to Request to Continue to Abate the Case for the Entire Period of Case Build-Up." We deny Mr. Ombe's motion to proceed in forma pauperis because he did not present "a reasoned, nonfrivolous argument on the law and facts

[4] In connection with his argument that the district court did not sufficiently accommodate his autism, Mr. Ombe references a portion of the ADA that sets forth the Congressional purposes in enacting it. *See* 42 U.S.C. § 12101(b)(3). But this provision in no way indicates the district court ought to have altered or deviated from the rules applicable to everyone for the benefit of Mr. Ombe, or that it erred in concluding his claims were time-barred.

in support of the issues raised on appeal." *DeBardeleben v. Quinlan*, 937 F.2d 502, 505 (10th Cir. 1991).

Entered for the Court

Timothy M. Tymkovich
Chief Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

HITOSHI OMBE,

Plaintiff,

v.

No. 2:20-cv-00786-RB-GBW

GEORGE COOK, et al.,

Defendants.

FINAL JUDGMENT

Pursuant to Federal Rule of Civil Procedure 58(a), and consistent with the Court's Memorandum Opinion and Order dismissing Mr. Ombe's case,

IT IS ORDERED that this case is **DISMISSED.** Mr. Ombe's federal law claims are dismissed with prejudice, and his state law claims are dismissed without prejudice.

ROBERT C. BRACK
SENIOR U.S. DISTRICT JUDGE

Appendix B

FILED
United States Court of Appeals
Tenth Circuit

August 2, 2021

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

HITOSHI OMBE,

Plaintiff - Appellant,

v.

GEORGE COOK, et al.,

Defendants - Appellees.

No. 20-2166
(D.C. No. 2:20-CV-00786-RB-GBW)
(D. N.M.)

ORDER

Before **TYMKOVICH**, Chief Judge, **BRISCOE** and **BACHARACH**, Circuit Judges.

Appellant's petition for rehearing is denied.

The petition for rehearing en banc was transmitted to all of the judges of the court who are in regular active service. As no member of the panel and no judge in regular active service on the court requested that the court be polled, that petition is also denied.

Appellant's "Extraordinary Motion to Demand to Think and Understand a Perfect Example of How the Court Must Respond to Pro Se Litigant with Autism Disability" is denied.

Entered for the Court

CHRISTOPHER M. WOLPERT, Clerk

Appendix C

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

October 20, 2021

Mr. Hitoshi Ombe
PO Box 3893
Truth or Consequences, NM 87901-3893

Re: Hitoshi Ombe
v. George Cook, et al.
Application No. 21A88

Dear Mr. Ombe:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Gorsuch, who on October 20, 2021, extended the time to and including December 30, 2021.

This letter has been sent to those designated on the attached notification list.

Sincerely,

Scott S. Harris, Clerk

by

Redmond K. Barnes
Case Analyst

Appendix D

FILED
United States Court of Appeals
Tenth Circuit

November 8, 2018

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

HITOSHI OMBE,

Plaintiff - Appellant,

v.

STATE OF NEW MEXICO; NEW MEXICO PUBLIC EDUCATION DEPARTMENT; NEW MEXICO DIVISION OF VOCATIONAL REHABILITATION SERVICES; SUSANA MARTINEZ, HANNA SKANDERA, ROSA LIMA, RICHARD SMITH, JOHN FULLINWIDER, TERRI DOUGLASS, ADRIAN APODACA, SUSAN LOPEZ, REYES R. GONZALES, AVA GUTIERREZ, LEE MARTINEZ, GARY LUCAS, CAROL DAY, TANYA SHATZ, MARTHA JARAMILLO, PATRICIA GUILINO, EARNEST O. PACHECO, RALPH VIGIL, and ADAM CARRASCO, in their official, personal, and conjugal partnership capacities;; DISABILITY RIGHTS NEW MEXICO; THE BOARD OF DIRECTORS OF DISABILITY RIGHTS NEW MEXICO, INC.; JAMES JACKSON, BERNADINE CHAVEZ, JASON C. GORDON, NANCY KOENIGSBERG, and TIM GARDNER, in their personal, official, and conjugal partnership capacities as members of the Board of Directors of Disability Rights New Mexico, Inc.,

Defendants - Appellees.

No. 18-2031
(D.C. Nos. 1:14-CV-00763-RB-KBM,
1:14-CV-00856-RB-KBM and
1:14-CV-00857-RB-KBM)
(D. N.M.)

Appendix E

ORDER AND JUDGMENT*

Before **TYMKOVICH**, Chief Judge, **McKAY** and **MATHESON**, Circuit Judges.

Hitoshi Ombe, appearing pro se, appeals from the final judgment entered against him in three consolidated civil rights suits. In those cases, he asserted claims for disability discrimination, age discrimination and other civil rights violations against the state of New Mexico, its Division of Vocational Rehabilitation (DVR), its Public Education Department (PED) and numerous state employees (collectively "State Defendants"), as well as the non-profit Disability Rights of New Mexico, Inc., its board of directors, and several of its employees (collectively "DRNM Defendants").

Mr. Ombe also appeals the district court's order imposing filing restrictions on him and seeks leave to proceed in forma pauperis on appeal. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm the district court's judgment and order and deny Mr. Ombe leave to proceed in forma pauperis.

* 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.

BACKGROUND

Mr. Ombe is a mathematician and former university professor of Japanese origin who was diagnosed with Asperger's Syndrome, a form of autism, later in life. He also reports that he suffers from severe depression because of difficulties he has experienced as a result of his autism disorder.

One of these difficulties was Mr. Ombe's years of underemployment as a cashier at a gas station sometime after his university position ended. In an effort to obtain a job better suited to his skills and interests, Mr. Ombe applied for services offered by DVR, which is a division within the PED that seeks to increase the independence of individuals with disabilities through employment. Mr. Ombe became dissatisfied with DVR's services, and asked DRNM to help him in dealing with the state agency. Mr. Ombe also became dissatisfied with DRNM's efforts on his behalf. As a result, Mr. Ombe filed two actions against the State Defendants and an additional action against the DRNM Defendants. The essence of Mr. Ombe's claims in each case was that these entities and their employees failed to provide him with adequate assistance and did not properly accommodate his disabilities in communicating with him, thereby violating his civil and constitutional rights and impermissibly discriminating against him on account of his disabilities, race, national origin, and age.

The district court consolidated the three cases and granted the DRNM Defendants' motion to dismiss the claims against them for failure to state a claim. It also granted in part and denied in part the State Defendants' motions to dismiss

Mr. Ombe's claims for failure to state a claim and for lack of jurisdiction. The district court subsequently denied Mr. Ombe's motions to reconsider its decisions granting these motions to dismiss, denied his motions to amend his complaint, granted summary judgment to the State Defendants on the remaining claims, and entered final judgment dismissing his cases with prejudice. It also denied Mr. Ombe's motion to proceed in forma pauperis on appeal.

In addition, after providing Mr. Ombe with notice and an opportunity to object, the district court issued a post-judgment order imposing restrictions on his district court filings in this matter. This order was issued at the request of the State Defendants in response to Mr. Ombe's excessive filings in this case, many of which disparaged the Court and opposing counsel in derogatory and abusive terms.

DISCUSSION

A. Appellate Jurisdiction

The State and DRNM Defendants assert that our jurisdiction in this appeal is limited by Mr. Ombe's failure to identify all of the district court orders he challenges in his notice of appeal. *See* Fed. R. App. P. 3(c)(1)(B) (notice of appeal must "designate the judgment, order, or part thereof being appealed"); *Williams v. Akers*, 837 F.3d 1075, 1078 (10th Cir. 2016) ("Rule 3(c)(1)(B)'s designation requirement is jurisdictional."). They are mistaken.

Mr. Ombe's notice of appeal states that he is appealing the district court's final judgment and its filing restrictions order. *See* R. Vol. I at 476. "[A] notice of appeal which names the final judgment is sufficient to support review of all earlier orders

that merge in the final judgment." *McBride v. CITGO Petroleum Corp.*, 281 F.3d 1099, 1104 (10th Cir. 2002). And as "a general rule . . . all earlier interlocutory orders merge into final orders and judgments," with the result that "[h]aving appealed from the judgment, the appellant is free to attack any nonfinal order or ruling leading up to it." *Id.* (internal quotation marks omitted). As a result, our jurisdiction in this appeal extends to any of the district court's pre-judgment, nonfinal rulings that Mr. Ombe opted to challenge on appeal, as well as the filing restriction order he separately designated in his notice.

The State and DRNM Defendants do not contend any of the district court's pre-judgment rulings were final orders that fall outside of these rules.[1] Instead, they assume that Mr. Ombe's notice of appeal from the district court's judgment only encompasses the orders the district court specifically referenced in its judgment, which were its recent orders granting the State Defendants' motion for summary

[1] With respect to the DRNM Defendants and their motion to dismiss on jurisdictional grounds, we note that the district court's September 3, 2015 order dismissing the claims asserted against them was not a final, appealable order because the district court did not direct entry of final judgment regarding these claims at that time. *See Perington Wholesale, Inc. v. Burger King Corp.*, 631 F.2d 1369, 1370 n.2 (10th Cir. 1979) ("In multiparty actions such as this, unless the trial judge expressly directs entry of a final judgment as to less than all the parties in accordance with the requirements of Fed.R.Civ.P. 54(b), the order [dismissing claims against a single defendant] does not become final until entry of judgment adjudicating all the claims, rights and liabilities of all the parties."); *Trinity Broad. Corp. v. Eller*, 827 F.2d 673, 675 (10th Cir. 1987) (per curiam) (adopting "the rule that a judgment in a consolidated action that does not dispose of all claims shall not operate as a final, appealable judgment under 28 U.S.C. § 1291. To obtain review of one part of a consolidated action, appellant must obtain certification under Fed.R.Civ.P. 54(b)").

judgment and denying Mr. Ombe's motions asking the court to reconsider its previous dispositive decisions and to allow him to amend his complaint. The Defendants' assumption is incorrect for the reasons stated above.

B. Issues on Appeal

Because Mr. Ombe is appearing pro se, we liberally construe his filings.[2] *See Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005). Even so, we have some difficulty discerning the issues Mr. Ombe is attempting to raise on appeal. But it is clear Mr. Ombe argues that he was wronged by the district court, the magistrate judge, and defense counsel because, he contends, they did not understand his autism disorder and depression, did not appreciate how difficult it was for him to prosecute his suits given these conditions, failed to accommodate his disabilities in managing his case and deciding motions, and improperly focused on what he describes as "lawyer's nonsense," Reply Br. at 15, instead of "basic fairness," Opening Br. at 5. By "lawyer's nonsense," Mr. Ombe apparently refers generally to the district court's and the defendants' adherence to the applicable legal rules, both procedural and substantive, in addressing his claims.

Construing his opening brief liberally, it also appears that Mr. Ombe seeks to challenge several specific district court's rulings, including the district court's decision to consolidate his three cases, its denial of his request for help in serving one of the

[2] In addition to his opening and reply briefs, Mr. Ombe has filed various motions to amend or supplement his briefing and to provide the court with supplemental authorities. We grant these motions below, and have considered these additional filings and attached materials as relevant in our review.

individual State defendants, some aspects of its orders dismissing or granting summary judgment against his claims, and its filing restrictions order. Throughout, Mr. Ombe colors his complaints with disrespectful language directed at the district court and magistrate judges and the other participants in the proceedings below, thus repeating a pattern that is pervasive in the district court record.[3]

In his briefing and other supplementary materials, Mr. Ombe has provided us with a great deal of information concerning his autism disorder and depression and how both affect his cognitive functions, and we appreciate his efforts to inform the court on these subjects. We also note that Mr. Ombe provided much of this information to the district court as well in an effort to educate it on his conditions. But Mr. Ombe is mistaken in believing that the district court was required to disregard the legal rules that govern civil lawsuits in response to his cognitive and mental health issues or his pro se status. *See James B. Beam Distilling Co. v. Georgia*, 501 U.S. 529, 543 (1991) ("The applicability of rules of law is not to be switched on and off according to individual hardship."); *Garrett*, 425 F.3d at 840 ("[T]his court has repeatedly insisted that pro se parties follow the same rules of procedure that govern other litigants." (internal quotation marks and brackets omitted)). These rules are not mere technicalities or legal nonsense, as Mr. Ombe contends, but rather serve to bring order, consistency, and

[3] Whether borne of frustration or other motivations, such language has no place in this or any court. *See Garrett*, 425 F.3d at 841 (stating that appellate briefing that impugns the integrity of the district judge will not be tolerated and may be stricken).

predictability to legal proceedings. And while Mr. Ombe insists that the district court was required to modify or ignore otherwise applicable procedural and substantive rules as an accommodation to his cognitive and mental health issues, he cites no legal authority that supports this proposition and we are aware of none.[4] Nor was it "the proper function of the district court to assume the role of advocate" for Mr. Ombe, as he apparently assumes. *See Garrett*, 425 F.3d at 840 (internal quotation marks omitted). In short, Mr. Ombe's report that he "[s]imply . . . could not handle" the applicable legal rules as a result of his autism and severe depression does not make the district court's adherence to them "completely wrong or unfair" as Mr. Ombe claims. Opening Br. at 23 & n.60; *cf. Sieverding v. Colo. Bar Ass'n*, 469 F.3d 1340, 1343 (10th Cir. 2006) ("[T]he right of access to the courts is neither absolute nor unconditional." (internal quotation marks omitted)).

Mr. Ombe's attempt to challenge the district court's filing restriction order and some of its other specific decisions also falls short. In presenting these issues for our review, Mr. Ombe was required to provide reasoned argument in his opening brief

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[4] Mr. Ombe briefly refers to the American Disabilities Act, Section 504 of the Rehabilitation Act, the First and Fourteenth Amendments and various civil rights statutes in his general complaints regarding the district court proceedings, but does not identify any authority holding that these laws required the district court or defense counsel to act differently than they did. Mr. Ombe's assertion that 34 C.F.R. § 361.18(c)(2)(ii) is relevant here is incorrect for several reasons, including that it applies to state agencies that provide vocational rehabilitation services and thus has no application in a judicial proceeding. *See id.* § 361.18. Nor is there a "Federal Court Policy on Disability," as Mr. Ombe reports, *see, e.g.*, Opening Br. at 6, or any other court policy that required the district court to modify or abandon otherwise applicable legal rules in response to his conditions.

describing how he thinks the district court erred in each challenged order or decision, with citations to the legal authorities and parts of the record on which he relies. *See* Fed. R. App. P. 28(a)(8)(A); *Habecker v. Town of Estes Park*, 518 F.3d 1217, 1223 n.6 (10th Cir. 2008) (refusing to consider argument where appellant failed to "advance reasoned argument as to the grounds for the appeal" (internal quotation marks and brackets omitted)). The purpose of this rule, which applies to all appellants, is to ensure that an appellant provides us with the information necessary to decide the appeal, because it is not our role to serve as the appellant's attorney in constructing arguments, researching the law, or searching the record. *See Garrett*, 425 F.3d at 840.

Mr. Ombe's arguments regarding the specific district court orders and decisions he apparently seeks to challenge do not comply with this rule because they are conclusory and not supported by relevant legal authority. *See, e.g., Nixon v. City & Cty. of Denver*, 784 F.3d 1364, 1370 (10th Cir. 2015) ("A brief must contain an argument consisting of more than a generalized assertion of error, with citations to supporting authority." (internal quotation marks and brackets omitted)); *Garrett*, 425 F.3d at 841 (holding issues are inadequately briefed if they are supported by "conclusory allegations with no citations to the record or any legal authority"). In other words, Mr. Ombe's arguments regarding these decisions are inadequately presented for purposes of appellate review. When this occurs, we deem the inadequately briefed arguments waived and do

not review them on appeal.[5] *See, e.g.*, *Nixon*, 784 F.3d at 1368 (arguments "not adequately developed in a party's [opening] brief" are waived); *Garrett*, 425 F.3d at 841 (same). Accordingly, we do not consider Mr. Ombe's challenges to any specific district court order or decision in this appeal.

CONCLUSION

For the reasons stated above, we AFFIRM the district court's final judgment and order imposing filing restrictions.

With respect to the pending motions, we DENY the DRNM Defendants' motion to dismiss the appeal against them for lack of jurisdiction because, as discussed above, the interlocutory order dismissing the claims against them merged into the final judgment Mr. Ombe properly appealed. We also DENY Mr. Ombe's motion to withdraw his motion for an extension of time to file his reply brief, filed June 11, 2018, as moot, but GRANT his motions seeking leave to file amendments or supplements to his briefs and to file supplemental authority, filed on July 11, July 19, August 29, October 1, and November 1, 2018, respectively. Finally, we DENY Mr. Ombe's motion to proceed in forma pauperis on appeal because, for the reasons discussed above, his briefs do not demonstrate "the existence of a reasoned,

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[5] In addition, we do not consider any issues Mr. Ombe raised in his reply brief or supplemental filings that were not included in his opening brief, because the appellees had no opportunity to respond to them. *See Stump v. Gates*, 211 F.3d 527, 533 (10th Cir. 2000). Except in very limited circumstances, we also do not consider issues that were not raised before the district court, *see Richison v. Ernest Group, Inc.*, 634 F.3d 1123, 1127-28 (10th Cir. 2011), such as Mr. Ombe's contention for the first time in this court that he was not able to respond to the State Defendants' summary judgment motion because it was not properly served on him.

nonfrivolous argument on the law and facts in support of the issues raised on appeal."

DeBardeleben v. Quinlan, 937 F.2d 502, 505 (10th Cir. 1991).

Entered for the Court
Per Curiam

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

HITOSHI OMBE,

Plaintiff,

vs.

STATE OF NEW MEXICO, *et al.*

Defendants.

No. CV 14-00763 RB-KBM

No. CV 14-00856 RB-KBM
No. CV 14-00857 RB-KBM
(consolidated)

RULE 58 JUDGMENT

THIS MATTER comes before the Court on the Court's Memorandum Opinions and Orders, which denied Plaintiff's Motions to Amend and Reconsider, and granted summary judgment against Plaintiff's remaining claims. (*See* Docs. 192–94.)

IT IS ORDERED that Plaintiff's three consolidated cases are **DISMISSED with prejudice.**

ROBERT C. BRACK
UNITED STATES DISTRICT JUDGE

Appendix F

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

HITOSHI OMBE,

Plaintiff - Appellant,

v.

STATE OF NEW MEXICO, et al.,

Defendants - Appellees.

No. 18-2031

ORDER

Before **TYMKOVICH**, Chief Judge, **McKAY**, and **MATHESON**, Circuit Judges.

These matters are before the court on Appellant's petition for rehearing en banc and Motion for Leave to File Attachments to the Petition for Rehearing en Banc. The petition for rehearing is denied. The Motion for Leave to File Attachments to the Petition for Rehearing en Banc is granted. The attachments will be filed as of the date they were received, November 23, 2018.

The petition for rehearing en banc was transmitted to all of the judges of the court who are in regular active service. As no member of the panel and no judge in regular active service on the court requested that the court be polled, that petition is also denied.

Entered for the Court

Elisabeth A. Shumaker

ELISABETH A. SHUMAKER, Clerk

Appendix G