

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: May 31, 2022
Certiorari to the Court of Appeals, 2020CA1392 District Court, El Paso County, 2020CV206	
Petitioner: Jackie-De Vere Allen Cole, v.	Supreme Court Case No: 2022SC147
Respondent: Unknown El Paso County Sheriff's Office Records Clerk.	
ORDER OF COURT	

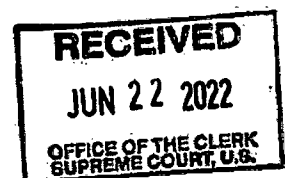
Upon consideration of the Petition for Writ of Certiorari to the Colorado Court of Appeals and after review of the record, briefs, and the judgment of said Court of Appeals,

IT IS ORDERED that said Petition for Writ of Certiorari shall be, and the same hereby is, DENIED.

BY THE COURT, EN BANC, MAY 31, 2022.

Exhibit

A



20CA1392 Cole v El Paso 02-10-2022

COLORADO COURT OF APPEALS

DATE FILED: February 10, 2022

Court of Appeals No. 20CA1392
El Paso County District Court No. 20CV206
Honorable Thomas K. Kane, Judge

Jackie-DeVere Allen Cole, a/k/a Jackie-De Vere Allen Cole,
Plaintiff-Appellant,
v.

Unknown El Paso County Sheriff's Office Records Clerk,
Defendant-Appellee.

ORDER AFFIRMED

Division II
Opinion by JUDGE ROTHENBERG*
Pawar and Kuhn, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(e)

Announced February 10, 2022

Jackie-De Vere Allen Cole, Pro Se

Diana K. May, County Attorney, Nathan Whitney, Senior Assistant County
Attorney, Colorado Springs, Colorado, for Defendant-Appellee

*Sitting by assignment of the Chief Justice under provisions of Colo. Const. art.
VI, § 5(3), and § 24-51-1105, C.R.S. 2021.

¶ 1 Jackie-De Vere Allen Cole appeals the dismissal of his complaint in which he claims that he was injured by the defendant's affirmative defense to his prior complaint in *Cole v. Elder*, No. 19CV279 (El Paso Cnty. Dist. Ct. Jan. 22, 2020) (the Elder Lawsuit).

¶ 2 In the Elder Lawsuit, Cole alleged that the El Paso County Sheriff's Office violated his First Amendment right to the free exercise of religion by refusing to serve him kosher meals during his incarceration. In response, the defendant submitted an affidavit establishing that Cole was served dental soft meals, rather than kosher meals, for a limited duration because Cole informed the medical staff that he could not chew. The court then dismissed the Elder Lawsuit because that medical information disproved Cole's claims.

¶ 3 Cole then filed this pro se lawsuit alleging a violation of his federal constitutional right to privacy when an unknown records custodian disclosed his relevant medical information in connection with the first lawsuit. Cole also lists a series of tort theories without any further development.

¶ 4 The district court dismissed this complaint pursuant to C.R.C.P. 12(b)(1) and (5) without allowing Cole to amend his complaint. It also found Cole to be a vexatious litigant and ordered him to obtain court permission before filing another pro se lawsuit in any Colorado state court. On appeal, Cole contends that the district court erred in each of these rulings.

¶ 5 We affirm the district court's order.

I. Failed to State a Claim

¶ 6 We conclude that the district court properly dismissed Cole's complaint pursuant to C.R.C.P. 12(b)(5) for failure to state a claim.

¶ 7 C.R.C.P. 8 requires a complaint to contain factual allegations that are sufficient, if accepted as true, to state a claim for relief that is plausible on its face.

¶ 8 Cole's complaint fails to meet this pleading standard. Even accepting Cole's claims as true, he waived any privilege with respect to the information about his dental condition when he put that information at issue by filing the Elder Lawsuit. *See Alcon v. Spicer*, 113 P.3d 735, 739 (Colo. 2005) ("One way a party can establish waiver is by showing that the privilege holder 'has injected his physical or mental condition into the case as the basis of a claim or

an affirmative defense.”) (citation omitted). And to the extent his complaint lists a variety of tort theories without development, these conclusory allegations were not entitled to an assumption that they were true and failed to plausibly suggest tortious conduct. *See Warne v. Hall*, 2016 CO 50, ¶ 27.

¶ 9 Cole contends for the first time on appeal that he asserted claims in his complaint under HIPAA. But because Cole did not raise any arguments concerning HIPAA before the district court, this new argument is not properly before us. *See Est. of Stevenson v. Hollywood Bar & Cafe, Inc.*, 832 P.2d 718, 721 n.5 (Colo. 1992) (“Arguments never presented to, considered or ruled upon by a trial court may not be raised for the first time on appeal.”).

¶ 10 And, because we conclude that the district court properly dismissed Cole’s complaint under C.R.C.P. 12(b)(5) for failure to state a claim, we need not address whether the district court also properly dismissed the complaint based on the Colorado Governmental Immunity Act.

II. Amending the Complaint

¶ 11 We next conclude that the district court did not abuse its discretion by denying Cole’s motion to amend his complaint.

¶ 12 Leave to amend a pleading “shall be freely given when justice so requires.” C.R.C.P. 15(a). “However, a court may deny leave to amend if the amendment would be futile. An amendment is futile if it could not withstand a motion to dismiss.” *Armed Forces Bank, N.A. v. Hicks*, 2014 COA 74, ¶ 41 (citations omitted).

¶ 13 Cole asked the district court for the “opportunity to amend the Complaint to add additional allegations or to elaborate to cure any Rule 8 issues.” Cole provided no further basis for his request.

¶ 14 We conclude any amendment would be futile because Cole failed to state any cognizable claim for relief in his complaint. See *id.* In his complaint, Cole contends that the defendant violated his privileged medical records by disclosing that Cole reported that he could not chew as an affirmative defense to his earlier Elder lawsuit that alleged that serving him dental soft meals instead of kosher meals violated his religious freedom. Because the facts establish that Cole waived that privilege, amending his complaint could not cure the deficiencies. See *Alcon*, 113 P.3d at 739.

III. Obtain Permission for Future Pro Se Litigation

¶ 15 We last conclude that the district court did not abuse its discretion by requiring Cole to obtain permission for future pro se litigation.

¶ 16 “Our constitution guarantees every person access to the courts of this state.” *Karr v. Williams*, 50 P.3d 910, 913 (Colo. 2002) (citing Colo. Const. art. II, § 6). A district court may enjoin a party from further pro se filings, however, if necessary to prevent abuse of judicial resources by a pro se litigant because such a litigant is not subject to the disciplinary rules that prevent attorneys from abusing the system. *Bd. of Cnty. Comm’rs v. Winslow*, 706 P.2d 792, 794 (Colo. 1985); see also *Karr*, 50 P.3d at 914 (noting that such injunctions have been ordered when “the enjoined party was using the judicial process not to vindicate his rights, but to harass and intimidate his adversaries by repeatedly filing groundless and vexatious claims against them”).

¶ 17 Such injunctions do not infringe upon a party’s constitutional right of access to the courts because the party may still obtain such access by retaining an attorney. *Winslow*, 706 P.2d at 794-95. In determining whether to issue such an injunction, the court should

consider the seriousness of the pro se party's abuses of the system. *Id.* at 795. Mere litigiousness is not grounds for such an injunction. *Karr*, 50 P.3d at 914.

¶ 18 In a letter to the Office of the County Attorney, Cole boasted that he was presently "litigat[ing] over 20 cases" and elaborated on his method of filing lawsuits for other inmates in order to fish for legal analysis in a motion to dismiss:

If you ever were curious how I litigated [10-CV-]274 with no knowledge of law, no education, and no law library it was from what I call fishing trips. I find an inmate with a similar injury. He provides me donations (as everyone in CJC is starving and money buys food) and I provide him a filed lawsuit. That lawsuit invokes a motion to dismiss which you provide all the citations and info I needed to come with a better one.

¶ 19 After dismissing Cole's complaint, the district court ruled:

[Cole] has repeatedly abused Colorado's judicial system by repeatedly filing frivolous lawsuits intended to harass and annoy members of the community. Consequently, the Court also determines that it is appropriate to impose sanctions upon [Cole] similar to those imposed in *Karr v. Williams*, 50 P.3d 910 (Colo. 2002). . . . Accordingly, the court hereby orders that [Cole] is prohibited from filing any future pro se lawsuits in any Colorado state court without first obtaining

permission [from] the particular state court to proceed pro se.

¶ 20 Similarly, we take judicial notice under CRE 201 that a second district court recently issued a thorough order finding that Cole is a vexatious litigant.

The court finds that Mr. Cole has filed frivolous and vexatious lawsuits against numerous persons and entities not for the purpose of vindicating valid rights, but in an attempt to exact vengeance and harass. He has further engaged in other conduct that constitutes an abuse, not only of the court's time and resources, but the time and resources of many innocent citizens. The court has reviewed the numerous cases that Mr. Cole has filed in this jurisdiction and around the state and has observed an avalanche of lawsuits against numerous private individuals, sheriffs and their officers, correctional custodial officials, physicians, apartment complexes and other — none of which have any merit.

At best [Cole] is a vexatious litigator; at worst, he is a serious public nuisance. The most recent case held by this division, required his appearance to speak to his alleged participation in, or knowledge of, fraudulent service of process and he "refused" to be transported.

Cole v. Clark, No. 19CV208 (El Paso Cnty. Dist. Ct. Nov. 6, 2020), appeal docketed, No. 20CA1986 (Colo. Ct. App. Nov. 20, 2020).

¶ 21 We conclude that the district court did not abuse its discretion in ordering that Cole must obtain court permission before filing future pro se litigation. See *Karr*, 50 P.3d at 914-16. The record supports the district court's findings that Cole has repeatedly abused Colorado's judicial system. Cole still has access to the Colorado justice system by retaining an attorney or by obtaining court permission to file a lawsuit. See *Winslow*, 706 P.2d at 794-95

IV. Conclusion

¶ 22 We affirm the district court's order.

JUDGE PAWAR and JUDGE KUHN concur.

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: September 15, 2022
Certiorari to the Court of Appeals, 2022CA752 District Court, El Paso County, 2022CV144	
Petitioner: Jackie-Devere Allen Cole, v. Respondent: The People of the State of Colorado.	Supreme Court Case No: 2022SC480
ORDER OF COURT	

Upon consideration of the Motion for remand to determine jurisdiction of new orders filed in the above cause, and now being sufficiently advised in the premises,

IT IS ORDERED that said Motion shall be, and the same hereby is, DENIED.

BY THE COURT, SEPTEMBER 15, 2022.

DISTRICT COURT, EL PASO COUNTY, COLORADO		DATE FILED: September 14, 2022
Court Address: 270 S. TEJON, COLORADO SPRINGS, CO, 80903		
Plaintiff(s) JACKIE ALLEN COLE v. Defendant(s) THE PEOPLE OF THE STATE OF COLORADO		<div style="text-align: center;">△ COURT USE ONLY △</div>
		Case Number: 2022CV144 Division: 3 Courtroom:
RE: Motion for Reconsideration		

The motion/proposed order attached hereto: DENIED.

Issue Date: 9/14/2022



THOMAS KELLY KANE
District Court Judge

Colorado Court of Appeals 2 East 14th Avenue Denver, CO 80203	DATE FILED: June 10, 2022
El Paso County 2022CV144	
Plaintiff-Appellant: Jackie-Devere Allen Cole, v. Defendant-Appellee: People of the State of Colorado.	Court of Appeals Case Number: 2022CA752
ORDER OF THE COURT	

To: The Parties and the District Court

Upon consideration of the response to the order to show cause dated May 17, 2022, the Court ORDERS that the order to show cause is made absolute.

IT IS THEREFORE ORDERED that the appeal is DISMISSED without prejudice for lack of a final, appealable judgment.

The Court DENIES as moot the other motions filed by appellant.

BY THE COURT
Richman, J.
Yun, J.
Kuhn, J.

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: March 10, 2022
Certiorari to the Court of Appeals, 2020CA1392 District Court, El Paso County, 2020CV206	
Plaintiff: Jackie-De Vere Allen Cole, v. Defendant: Unknown El Paso County Sheriff's Office Records Clerk.	Supreme Court Case No: 2022SC147
ORDER OF COURT	

Upon consideration of the Petitioners Pro Se Motion for Leave to Stay time allowed for Writ of Certiorari filing filed in the above cause, and now being sufficiently advised in the premises,

IT IS ORDERED that said Motion shall be, and the same hereby is, GRANTED TO AND INCLUDING APRIL 28, 2022 to file a Petition.

BY THE COURT, MARCH 10, 2022.

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Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: June 8, 2022
Transfer from the Court of Appeals, 2022CA747 District Court, El Paso County, 2022CV79	
Plaintiff-Appellant: Jackie Devere Allen Cole, v. Defendant-Appellee: Dean Williams.	Supreme Court Case No: 2022SA169
ORDER OF COURT	

After considering Petitioner's Pro Se Interlocutory Appeal from District Court's Order to Deny Motion for Default and Plaintiff's Cure to Court's May 20, 2022 Order (with Exhibit A), filed in the above-referenced case,

The Court DETERMINES that the Plaintiff-Appellant has cured the Certificate of Service deficiency noted in the May 20, 2022 Order.

However, the Court FURTHER DETERMINES that Plaintiff-Appellant failed to provide a copy of the judgment or order being appealed.

It appears that Plaintiff-Appellant seeks appellate review of case number 2022CV79, which is currently pending in the El Paso County District Court.

Appeals may be taken from final, appealable judgments or orders. C.A.R. 1(a)(1).

A final judgment is one which ends the particular action in which it is entered,

leaving nothing further for the court pronouncing it to do in order to completely determine the rights of the parties involved in the proceeding. *See Harding Glass Co. v. Jones*, 640 P.2d 1123, 1125 (Colo. 1982). It does not appear that the claims raised in the habeas petition below have been resolved. Nor does it appear that Plaintiff-Appellant can seek certification under C.R.C.P. 54(b) because no claim has been determined by the lower court.

Thus, IT IS ORDERED that Plaintiff-Appellant shall show cause, in writing and within 30 days from the date of this Order, why this appeal should not be dismissed without prejudice for lack of a final, appealable order. Failure to respond to this Order within 30 days will result in dismissal of the appeal without further notice to the parties.

BY THE COURT, JUNE 8, 2022.

Colorado Court of Appeals 2 East 14th Avenue Denver, CO 80203	DATE FILED: September 15, 2022
El Paso County 2019CR488	
Plaintiff-Appellee: People of the State of Colorado, v. Defendant-Appellant: Jackie Allen Cole.	Court of Appeals Case Number: 2020CA288
ORDER OF COURT	

To: All Parties and the Clerk of the District Court

The Court DENIES appellant's September 13, 2022, motion for a limited remand. The Court denied the same motion on September 9, 2022. See this Court's order of September 9, 2022.

The answer brief remains due October 11, 2022.

BY THE COURT

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

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

August 25, 2022

Ms. Jackie-DeVere Allen Cole
Prisoner ID CJC #A0331196
2739 E. Las Vegas Street
Colorado Springs, CO 80906

Re: Jackie-DeVere Allen Cole
v. Unknown El Paso County Sheriff's Office Records Clerk
Application No. 22A177

Dear Ms. Cole:

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 August 25, 2022, extended the time to and including September 28, 2022.

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

Sincerely,

Scott S. Harris, Clerk

by



Sara Simmons
Case Analyst

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: August 23, 2022
Original Proceeding El Paso County, 2021M8238	
Petitioner: Jackie Allen Cole, v. Respondent: William Elder, Sheriff, El Paso County.	<div style="text-align: center;">△ COURT USE ONLY △</div> <div>Case Number: 2022SA197</div>
ORDER AND NOTICE OF DEFICIENCY	

ISSUED.

This matter comes before the Court on review. On June 13, 2022, the Court issued a Notice and Order of Deficiency explaining that the Pro Se Petition for Writ of Habeas Corpus received by the Court on June 8, 2022 failed to indicate the parties served and the method of service. The Notice and Order allowed Petitioner, Jackie Allen Cole, 30 days to cure the deficiency with service.

Since that time, the Petitioner has filed several new documents with the Court. However, no document filed with the Court indicates that a copy of the Pro Se Petition for Writ of Habeas Corpus was provided to the Respondent, Sheriff of El Paso County William Elder. Thus, the deficiency with service has not yet been cured.

A copy of the Pro Se Petition for Writ of Habeas Corpus is included with this Notice and Order. To clarify, all documents filed must include a Certificate of Service in compliance with C.A.R. 25(c). This means that a copy of your document(s) must be provided by you to all parties to the case or their attorney if they are represented by counsel. The Certificate of Service must include: 1) the name of person(s) served, and 2) the manner of service including an address if served by mail. Your Certificate of Service must be signed.

Failure to file a Certificate of Service within 30 days of the date of this order showing that a copy of the Pro Se Petition for Writ of Habeas Corpus was provided to the Respondent will result in dismissal of the case with no further notice.

The Court will not consider any subsequent filing, even if that filing was properly served, until the Pro Se Petition for Writ of Habeas Corpus is served. See C.A.R. 21(d)(4).

The Court has also reviewed Petitioner's Combined Motion to Amend and Consolidate Petitions received by the Court on July 11, 2022; Petitioner's Pro Se Motion for Court's Assistance in Obtaining the Record received by the Court on July 14, 2022; and Declaration of Jackie-DeVere Allen Cole received by the Court on July 18, 2022. These documents are STRICKEN for failing to comply with the service requirements of C.A.R. 25(c).

Issue 8/23/2022

BY THE COURT

**Additional material
from this filing is
available in the
Clerk's Office.**