

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

November 21, 2023.

Christopher M. Wolpert
Clerk of Court

ROBERT JAMES SWINT,

Plaintiff - Appellant,

v.

DISH NETWORK; VERIZON
WIRELESS; BANK OF AMERICA;
BEAR MAN PIG CLUB,

Defendants - Appellees.

No. 23-4098
(D.C. No. 2:23-CV-00282-HCN)
(D. Utah)

ORDER AND JUDGMENT*

Before **MATHESON, BRISCOE, and EID**, Circuit Judges.

Plaintiff Robert James Swint, appearing pro se, appeals the district court's dismissal of his civil action. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm the district court's order dismissing this case.

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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

I. BACKGROUND

A. Factual Background

In a report and recommendation entered by a magistrate judge, which the district court adopted, the magistrate judge did not describe Swint's factual allegations but rather noted that the allegations were indecipherable or incoherent. Swint provides the following factual summary, quoted verbatim, in the section of his appellate brief form intended to serve as a summary of the district court proceedings:

Dish network is an underground network that the United States government is using for trafficking humans, brainwashing subs into torpedos, And mind controlling victims into submission, kid spying you Name it, working with all branches of gov.

Aplt. Br. 2.

B. Procedural History

Following the magistrate judge's review of Swint's amended complaint, the magistrate judge issued a report and recommendation, recommending that the district court dismiss the action as indecipherable and without a plausible claim for relief. Swint filed objections, and the district court overruled the objections and adopted the report and recommendation, dismissing Swint's complaint pursuant to 28 U.S.C. § 1915(e)(2)(B). Swint appealed to this court.

II. STANDARD OF REVIEW

We review de novo the district court's dismissal of an action under 28 U.S.C. § 1915(e)(2) for failure to state a claim, applying the same standards we employ to review dismissals under Federal Rule of Civil Procedure 12(b)(6). *See Young v. Davis*,

554 F.3d 1254, 1256 (10th Cir. 2009). “To survive a motion to dismiss, 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) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “Threadbare recitals of a cause of action’s elements, supported by mere conclusory statements,” are insufficient. *Id.* at 663 (citing *Twombly*, 550 U.S. at 555). In conducting our review, we accept all well-pleaded facts as true, view them in the light most favorable to the plaintiff, and draw all reasonable inferences in the plaintiff’s favor. *Brooks v. Mentor Worldwide LLC*, 985 F.3d 1272, 1281 (10th Cir. 2021).

We “can affirm a lower court’s ruling on any grounds adequately supported by the record, even grounds not relied upon by the district court.” *Safe Streets All. v. Hickenlooper*, 859 F.3d 865, 879 (10th Cir. 2017) (quoting *Elwell v. Byers*, 699 F.3d 1208, 1213 (10th Cir. 2012)). Because Swint appears pro se, we construe his filings liberally, but we do not serve as his advocate. *See Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005). We may make allowances for failure to cite proper legal authority, confusion of legal theories, poor syntax and sentence construction, or unfamiliarity with pleading requirements, but we cannot take on the responsibility of constructing arguments and searching the record. *Id.* (citing *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991)).

III. DISCUSSION

In his appellate brief form, Swint responds as follows to the questions in the form regarding whether the district court applied the wrong law, incorrectly decided the facts, failed to consider important grounds for relief, or for any other reason was wrong:

I dont think they understood, probably went into shock, the courts Just ruled, this is actually illegal from the start And violates my first amendment

Yes, Samuel B. Roberts (Osama B. Laden) Robert S. Mueller Sept 11 2001 none of these were mentioned Robert Redfield CDC#18 2018, Robert S Bell/Murphy DEA Atlanta/Chicago,

never mentioned it because Its the United States Congress/gov underground International Paper: Dish Network there Premier Service 62 Billion club Verizon 1 plus more

Yes Because theres no way out plus Im sick of 7 years behind bars on 100% made up charges since the signing of the patriot act in 2001, I WANT A GUARANTEE 100%

Aplt. Br. 4.

“Issues will be deemed waived if they are not adequately briefed.” *Buhendwa v. Reg'l Transp. Dist.*, 745 F. App'x 297, 298 (10th Cir. 2018) (quoting *Garrett*, 425 F.3d at 840). “And an issue is not adequately briefed if the party’s argument is ‘incomprehensible.’” *Id.* (quoting *Zander v. Knight Transp., Inc.*, 688 F. App'x 532, 533 (10th Cir. 2017)). The only response that is comprehensible, and therefore not waived, is Swint’s statement that the district court’s decision was “illegal from the start And violates my first amendment.” Aplt. Br. 4. However, Swint provides no argument in support of this statement, and we cannot construct arguments on his

behalf. *See Garrett*, 425 F.3d at 840 (citing *Hall*, 935 F.2d at 1110). “In short, the inadequacies of [Swint’s] brief[] disentitle him to review by this court.” *Id.* at 841.

IV. CONCLUSION

For the foregoing reasons, we **AFFIRM** the district court’s dismissal of Swint’s complaint.

Entered for the Court

Mary Beck Briscoe
Circuit Judge

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

ROBERT JAMES SWINT,
Plaintiff,

v.

DISH NETWORK, VERIZON WIRELESS,
BANK OF AMERICA, ECHO STAR, and
BEAR MAN PIG CLUB,

Defendants.

**REPORT AND RECOMMENDATION
TO DISMISS ACTION PURSUANT TO
28 U.S.C. § 1915**

Case No. 2:23-cv-000282

District Judge Howard C. Nielson, Jr.

Magistrate Judge Daphne A. Oberg

Pro se plaintiff Robert James Swint, proceeding *in forma pauperis*, filed this action against Dish Network, Verizon Wireless, Bank of America, Echo Star, and Bear Man Pig Club.¹ After screening Mr. Swint's complaint under 28 U.S.C. § 1915(e)(2)(B) and identifying deficiencies, the court ordered Mr. Swint to file an amended complaint.² Mr. Swint was informed that once filed, his amended complaint would likewise be screened under 28 U.S.C. § 1915(e).³ Mr. Swint file an amended complaint on June 13, 2023.⁴ Where Mr. Swint's amended complaint is indecipherable, he fails to state a cognizable claim—and further

¹ (See Compl., Doc. No. 5.)

² (See Mem. Decision and Order to File Am. Compl., Doc. No. 6.)

³ (*Id.* at 5.)

⁴ (Doc. No. 8.)

opportunities to amend would be futile. Accordingly, the undersigned⁵ recommends the district judge dismiss this action pursuant to 28 U.S.C. § 1915(e)(2)(B).

LEGAL STANDARDS

Whenever a court authorizes a party to proceed *in forma pauperis*, the court must review the case under 28 U.S.C. § 1915(e)(2). Under this statute, the court must dismiss the case if it determines the complaint “fails to state a claim on which relief may be granted.”⁶ In making this determination, the court employs the standard for analyzing a motion to dismiss for failure to state a claim under Rule 12(b)(6) of the Federal Rules of Civil Procedure.⁷ To avoid dismissal under Rule 12(b)(6), a complaint must allege “enough facts to state a claim to relief that is plausible on its face.”⁸ The court accepts well-pleaded factual allegations as true, viewing them in the light most favorable to the plaintiff and drawing all reasonable inferences in the plaintiff’s favor.⁹ But the court need not accept a plaintiff’s conclusory allegations as true.¹⁰ “[A] plaintiff must offer specific factual allegations to support each claim.”¹¹

⁵ On May 25, 2023, this case was referred to the undersigned magistrate judge under 28 U.S.C. § 636(b)(1)(B). (See Doc. No. 7.)

⁶ 28 U.S.C. § 1915(e)(2)(B)(ii).

⁷ *Kay v. Bemis*, 500 F.3d 1214, 1217 (10th Cir. 2007).

⁸ *Hogan v. Winder*, 762 F.3d 1096, 1104 (10th Cir. 2014) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 547 (2007)).

⁹ *Wilson v. Montano*, 715 F.3d 847, 852 (10th Cir. 2013).

¹⁰ *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991).

¹¹ *Kan. Penn Gaming, LLC v. Collins*, 656 F.3d 1210, 1214 (10th Cir. 2011).

Because Mr. Swint proceeds pro se, his filings are liberally construed and held “to a less stringent standard than formal pleadings drafted by lawyers.”¹² Still, pro se plaintiffs must “follow the same rules of procedure that govern other litigants.”¹³ For instance, a pro se plaintiff “still has the burden of alleging sufficient facts on which a recognized legal claim could be based.”¹⁴ While the court must make some allowances for a pro se plaintiff’s “failure to cite proper legal authority, [her] confusion of various legal theories, [her] poor syntax and sentence construction, or [her] unfamiliarity with pleading requirements,”¹⁵ the court “will not supply additional factual allegations to round out a plaintiff’s complaint or construct a legal theory on a plaintiff’s behalf.”¹⁶

ANALYSIS

Mr. Swint’s original complaint failed to state a plausible claim because it lacked factual development and he lacked standing to bring certain criminal charges which he alleged.¹⁷ Mr. Swint was informed of these deficiencies and was explicitly advised his amended complaint would “*completely replace* all prior versions of the complaint” and “[c]laims which are not

¹² *Hall*, 935 F.2d at 1110.

¹³ *Garrett v. Selby, Connor, Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005).

¹⁴ *Jenkins v. Currier*, 514 F.3d 1030, 1032 (10th Cir. 2008) (internal quotation marks omitted).

¹⁵ *Hall*, 935 F.2d at 1110.

¹⁶ *Smith v. United States*, 561 F.3d 1090, 1096 (10th Cir. 2009) (internal quotation marks omitted).

¹⁷ (See generally Mem. Decision and Order to File Am. Compl., Doc. No. 6.)

realleged in the amended complaint will be deemed abandoned.”¹⁸ Mr. Swint’s amended complaint is comprised of three hand-written pages, and half of it is dedicated to listing numerous defendants, many of whom are newly named.¹⁹ The rest of Mr. Swint’s amended complaint is either indecipherable or so lacking in context as to be incoherent. Where the court is unable to determine the nature of claim(s) Mr. Swint attempts to allege, let alone evaluate the sufficiently of those claims, he has failed to state a cognizable claim.

Because Mr. Swint’s complaint fails to state a claim for relief, it is subject to dismissal under 28 U.S.C. § 1915(e)(2). Nevertheless, “[d]ismissal of a pro se complaint for failure to state a claim is proper only where it is obvious that the plaintiff cannot prevail on the facts he has alleged and it would be futile to give him an opportunity to amend.”²⁰ The court previously identified deficiencies in Mr. Swint’s original complaint and ordered him to amend his complaint to correct them.²¹ He failed to address or correct the identified deficiencies. Therefore, further opportunities to amend would be futile, and dismissal is appropriate.

RECOMMENDATION

Where Mr. Swint’s amended complaint is indecipherable, fails to state a plausible claim for relief, and further opportunities to amend would be futile, the undersigned RECOMMENDS the district judge dismiss this action pursuant to 28 U.S.C. § 1915(e)(2)(B). The court will send

¹⁸ (*Id.* (emphasis in original).)

¹⁹ (Am. Compl., Doc. No. 8 at 1–2.)

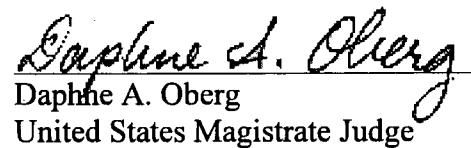
²⁰ *Kay*, 500 F.3d at 1217 (internal quotation marks omitted).

²¹ (See Mem. Decision and Order to File Am. Compl., Doc. No. 6.)

this Report and Recommendation to Mr. Swint, who is notified of his right to object to it. Any objection must be filed within fourteen days of service.²² Failure to object may constitute waiver of objections upon subsequent review.

DATED this 27th day of June, 2023.

BY THE COURT:


Daphne A. Oberg
United States Magistrate Judge

²² See 28 U.S.C. § 636(b)(1); Fed R. Civ. P. 72(b).

United States District Court

District of Utah

ROBERT JAMES SWINT,

Plaintiff,

JUDGMENT IN A CIVIL CASE

v.

DISH NEWTORK; VERIZON WIRELESS;
BANK OF AMERICA; ECHOSTAR; and
BEAR MAN PIG CLUB,

Case Number: 2:23-cv-00282-HCN-DAO

Defendants.

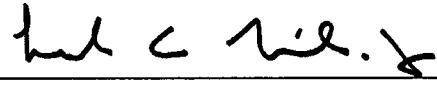
IT IS ORDERED AND ADJUDGED

That this action is dismissed without prejudice.

July 11, 2023

BY THE COURT:

Date


Howard C. Nielson, Jr.
United States District Judge