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**Order and Judgment,
U.S. Court of Appeals for the Tenth Circuit (March 6, 2026)
Document 48**

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

March 6, 2026

Christopher M. Wolpert
Clerk of Court

SHANNON PERRY,

Plaintiff - Appellant,

v.

ENCORE AT BOULEVARD ONE
LLC; RICCI DONATI; JESSICA
BRANDL; MARK T. SCHETTER,

Defendants - Appellees.

No. 25-1128
(D.C. No. 1:23-CV-02188-GPG-
SBP)
(D. Colo.)

ORDER AND JUDGMENT*

Before **MATHESON**, Circuit Judge, **LUCERO**, Senior Circuit Judge, and
BACHARACH, Circuit Judge.

This appeal arises from a dispute over an eviction. During the
eviction proceedings in state court, the tenant sued in federal court under
the Fair Housing Act, the Americans with Disabilities Act, the Violence
Against Women Act, and 42 U.S.C. § 1983.

* The parties do not request oral argument, and it would not help us
decide the appeal. So we have decided the appeal based on the record and
the parties' briefs. *See* Fed. R. App. P. 34(a)(2)(C); 10th Cir. R. 34.1(G).

This order and judgment does not constitute binding precedent except
under the doctrines of law of the case, *res judicata*, and collateral estoppel.
But the order and judgment may be cited for its persuasive value if
otherwise appropriate. *See* Fed. R. App. P. 32.1(a); 10th Cir. R. 32.1(A).

Because the tenant proceeded in forma pauperis, the district court needed to screen the complaint to determine whether it stated a claim on which relief could be granted. 28 U.S.C. § 1915(e)(2)(B)(ii); D. Colo. L. Civ. R. 8.1(a).¹ The district court conducted the screening and ruled that the tenant could pursue only his cause of action under the Fair Housing Act.² Following this ruling, the tenant moved for a temporary restraining order to halt the eviction; but she was evicted while the motion was pending. So the district court denied the motion for a temporary restraining order based on mootness.

The defendants then moved to dismiss the claim under the Fair Housing Act; and the district court granted that motion. The tenant unsuccessfully moved to alter or amend the judgment; and she appeals, challenging the denial of a temporary restraining order, the summary dismissal, and the grant of the defendants' motion to dismiss the cause of action under the Fair Housing Act.

1. Mootness of the Ruling on the Temporary Restraining Order

The tenant asked the federal district court for a temporary restraining order to prevent the eviction. But before the court could rule on the

¹ Local Civil Rule 8.1(a) also required screening because the tenant was appearing pro se.

² The district court didn't address the Violence Against Women Act, but the tenant doesn't invoke this cause of action here.

request, the tenant was evicted, rendering a temporary restraining order moot. *See Tymiak v. Omodt*, 676 F.2d 306, 308 (8th Cir. 1982) (concluding that a “request for an injunction to enjoin [the plaintiff’s] ejectment . . . is moot because the record reveals that he was [already] evicted from those premises”). So the district court didn’t err in denying the tenant’s motion for a temporary restraining order.

2. Cause of Action Under the Fair Housing Act

As noted, the district court screened the complaint and declined to summarily dismiss the cause of action under the Fair Housing Act. But the defendants later moved to dismiss this cause of action for failure to state a valid claim, and the court granted the motion.

The tenant argues in her reply brief that the court shouldn’t have dismissed the claim after allowing it to survive screening. But the tenant needed to make this argument in her opening brief; the reply brief was too late. *Becker v. Kroll*, 494 F.3d 904, 913 n.6 (10th Cir. 2007).

We would reject the argument even if it had come earlier given the difference between screening and ruling on a motion to dismiss. Screening takes place without input from the defendants. *See Buchheit v. Green*, 705 F.3d 1157, 1161 (10th Cir. 2012) (“Dismissing a complaint without benefit of an adversarial presentation is often an uncertain and time-consuming task, and the district court should make the call as to if and when it is appropriate.”). So the district court can grant a motion to dismiss after

letting the case proceed past the screening stage. *See Garewal v. Sliz*, 611 F. App'x 926, 931 (10th Cir. 2015) (unpub.) (stating that the decision not to summarily dismiss a claim doesn't prevent the district court from later granting a motion to dismiss for failure to state a valid claim).³

As a result, we conclude that (1) the tenant waited too long to challenge the dismissal of her claim under the Fair Housing Act and (2) this challenge lacks merit.

3. Causes of Action Involving the Americans with Disabilities Act and the Double Jeopardy Clause.

In district court, the tenant claimed that the eviction had violated the Americans with Disabilities Act and the Double Jeopardy Clause. The district court summarily dismissed these claims, reasoning that

- the remedy for violating the Double Jeopardy Clause (42 U.S.C. § 1983) is available only to state actors, and the defendants are private actors;
- the Double Jeopardy Clause doesn't apply because an eviction involves a civil proceeding rather than a criminal punishment; and
- the claim under the Americans with Disabilities Act is invalid because the eviction involved an apartment residence rather than a place of public accommodation.

The tenant says that these rulings involve "clear error," but doesn't say why. Appellant's Opening Br. at 16. By failing to explain why the rulings

³ This opinion is persuasive, but not precedential. *See n.**, above.

are wrong, the tenant has waived her appellate challenges. *Nixon v. City & Cnty. of Denver*, 784 F.3d 1364, 1366 (10th Cir. 2015).

4. Dismissal Before Discovery

The district judge referred the case to a magistrate judge to do two things:

1. Convene a scheduling conference and enter a scheduling order and
2. propose recommended rulings on dispositive motions.

The tenant argues that the district court deviated from this process by allowing the magistrate judge to recommend dismissal before the parties had conducted discovery. We disagree.

Before the magistrate judge had convened a scheduling conference, the defendants moved to dismiss the action. So the referral required the magistrate judge to recommend a ruling on the motion. The magistrate judge didn't err by doing precisely what the referral required.

5. Denial of Reconsideration

After the district court dismissed the action, the tenant moved for reconsideration. The court denied the motion, reasoning that the tenant had just recycled her earlier arguments. On appeal, the tenant challenges the denial of this motion; but she doesn't say why she thinks that the district court was wrong. Instead, she suggests that the district court should have reconsidered the ruling based on new legal developments. Despite this

suggestion, she doesn't say what these developments were. So we reject the tenant's challenge to the denial of her motion for reconsideration. *See id.*; *Murrell v. Shalala*, 43 F.3d 1388, 1390 n.2 (10th Cir. 1994).

6. Appointment of a Guardian Ad Litem

On appeal, the tenant argues that the district court should have granted her requests to appoint a guardian ad litem. But the tenant didn't request a guardian ad litem; she requested appointment of an attorney.⁴ On appeal, the tenant insists that she needed legal representation because of her "diminished capacity to self represent." Appellant's Opening Br. at 6.

In civil cases, courts can "request" an attorney to take a case but can't force the attorney to take it. *Rachel v. Troutt*, 820 F.3d 390, 396 (10th Cir. 2016). In deciding whether to request counsel, district courts generally must selectively consider the justification because not every attorney is willing to accept. *Id.* at 397.

Given the inability to require legal representation, the district court regarded a request for counsel as premature. On appeal, the tenant doesn't

⁴ If the tenant had been incompetent and the district court had known of this condition, appointment of a guardian ad litem may have been necessary even without a request. Fed. R. Civ. P. 17(c)(2). But the tenant doesn't (1) identify facts that would have alerted the court to her incompetency or (2) say why her extensive litigation activity (filing motions, amending her complaint, and pursuing appeals) was consistent with incompetency. These omissions prevent meaningful appellate review. *See Nixon v. City & Cnty. of Denver*, 784 F.3d 1364, 1366 (10th Cir. 2015); *Murrell v. Shalala*, 43 F.3d 1388, 1390 n.2 (10th Cir. 1994).

say why this conclusion was wrong. Absent an explanation, the tenant waived her appellate challenge to this ruling. *Nixon v. City & Cnty. of Denver*, 784 F.3d 1364, 1366 (10th Cir. 2015).

7. Other Motions

The tenant has also filed six motions.

First, she seeks leave to proceed in forma pauperis (Doc. 8). The Court grants this request because she cannot afford to prepay the filing fee.

Second, she seeks certification of her status to proceed in forma pauperis (Doc. 37). We are not sure what the tenant is seeking: We're granting her request to proceed in forma pauperis and don't know what she means by certifying this status. So this request is denied.

Third, the tenant moves for affirmative relief (Doc. 38). We interpret the motion as a supplemental brief and have considered it in affirming the dismissal and denial of reconsideration.

Fourth, the tenant seeks to supplement the record with audio testimony from the eviction proceedings (Doc. 39). But she doesn't say why the audio testimony bears on the appellate issues. So we deny this request.

Fifth, the tenant filed a brief entitled "Appellant's disposition i[n] opposition of Appellees' Reply Brief" (Doc. 41). There the tenant states that the defendants improperly objected to her motion for leave to proceed in forma pauperis, failed to confer, and opposed supplementation of an

appendix. The Court doesn't understand these requests. The defendants presented their arguments for us to affirm, which is the purpose of a response brief. So we overrule the apparent objection to the response brief.

Sixth, the tenant filed a motion to supplement the record with two medical documents acquired after the dismissal (Docs. 45–46). For this motion, the tenant invoked Tenth Circuit Rule 10.3 and Federal Rule of Civil Procedure 60(b)(2), characterizing the two medical documents as “newly discovered” evidence. We again have difficulty understanding the request. Tenth Circuit Rule 10.3 addresses designation of the district court record rather than supplementation of the appellate record. Nor does Rule 60(b)(2) apply because the “newly discovered evidence must have been in existence” when the district court entered judgment. *Wolfgang v. Mid-Am. Motorsports, Inc.*, 111 F.3d 1515, 1530 (10th Cir. 1997). The two medical documents came into existence after dismissal of the action.

Given the inapplicability of Tenth Circuit Rule 10.3 and Federal Rule of Civil Procedure 60(b)(2), we deny the tenant's motion to supplement the record.

8. Conclusion

We affirm the dismissal and the denial of reconsideration, grant leave to proceed in forma pauperis, deny certification of status to proceed in forma pauperis, deny leave to supplement the record with audio testimony,

Case No. 1:23-cv-02188-GPG-SBP Document 270 filed 03/06/26 USDC Colorado
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Appellate Case: 25-1128 Document: 48-1 Date Filed: 03/06/2026 Page: 9

overrule the tenant's apparent objection to the defendants' response brief,
and deny leave to supplement the record with medical documents.

Entered for the Court

Robert E. Bacharach
Circuit Judge

Order Granting Motion for Leave to Proceed IFP,
U.S. Court of Appeals for the Tenth Circuit
(March 6, 2026)
Docket 47

PACER ECF DOC. NO 47 ENTRY

**ORDERED, FILED BY JUDGES MATHESON, LUCERO AND BACHARACH
GRANTING MOTION FOR LEAVE TO PROCEED IFP**

ON 3/6/2026

**FINAL ORDER TO BE FOUND IN CASE TERMINATION ENTRY (ECF DOC.
NO 47, 48, 49)**

Order Granting Motion for Leave to Proceed IFP,
U.S. Court of Appeals for the Tenth Circuit
(March 6, 2026) Document 47

PACER ECF DOC. NO 47 ENTRY

**ORDERED, FILED BY JUDGES MATHESON, LUCERO AND BACHARACH
GRANTING MOTION FOR LEAVE TO PROCEED IFP**

ON 3/6/2026

**FINAL ORDER TO BE FOUND IN CASE TERMINATION ENTRY (ECF DOC.
NO 47, 48, 49)**

10TH CIRCUIT COURT OF APPEALS ECF DOC. 47 25-1128 3.6.2026 ORDER
GRANTING MOTION TO LEAVE TO PROCEED IN FORMA PAUPERIS – SEE FINAL
ORDER PAGE 7 NUMBER 7 FIRST PARAGRAPH

03/06/2026 47 [11261455] Order filed by Judges Matheson, Lucero and
Bacharach granting Appellant's motion for leave to
proceed in forma pauperis. Served on 03/06/2026. Text
only entry - no attachment. Final order to be found in
case termination entry. [25-1128] [Entered: 03/06/2026
09:17 AM]

Final Judgment,
U.S. District Court for the District of Colorado
(March 28, 2025)
Document 251

PACER ECF DOC. NO. 251

1-FINAL JUDGEMENT IN FAVOR OF ENCORE AT BLVD ONE LLC, J.
BRANDL, MARK T. SCHETTER, R. DONATI AGAINST PLAINTIFF
SHANNON PERRY. 3/28/2025

03/28/2025	<u>251</u>	FINAL JUDGMENT in favor of Encore at Blvd One LLC, Jessica Brandl, Mark T. Schetter, and Ricci Donati against Shannon Perry. Entered by the Clerk on 03/28/2025. (dclem) (Entered: 03/28/2025)
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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 23-cv-02188-GPG-SBP

SHANNON PERRY,

Plaintiff,

v.

ENCORE AT BOULEVARD ONE LLC,
RICCI DONATI,
JESSICA BRANDL, and
MARK T. SCHETTER,

Defendants.

FINAL JUDGMENT

In accordance with the orders filed during the pendency of this case, and pursuant to Federal Rules of Civil Procedure 58(a), the following Final Judgment is hereby entered.

Pursuant to the [D. 250] Order entered by Judge Gordon P. Gallagher on March 31, 2025, it is

ORDERED that the Recommendation of the United States Magistrate Judge [D. 231] is AFFIRMED and ADOPTED as an Order of the Court. It is

FURTHER ORDERED that Defendants' Jessica Brandl, Ricci Donati and Encore At Blvd One LLC Motion to Dismiss [D. 164] is GRANTED. It is

FURTHER ORDERED that Defendant Mark T. Schetter's Motion to Dismiss [D. 188] is GRANTED. It is

FURTHER ORDERED that all claims against all Defendants are DISMISSED WITH PREJUDICE. It is

FURTHER ORDERED that Plaintiff's Motion to Strike [D. 233], Motion to Stay [D. 234], Opposition to Report and Recommendation (as it is superseded by D. 241) [D. 235], Motion to Strike [D. 238], Motion to Deny and Strike Motion to Dismiss [D. 239], Motion for order Compelling Disclosure [D. 240], Motion to Strike [D. 242], Motion to Stay [D. 243], and Motion for Leave to Proceed to Supreme Court are DENIED AS MOOT. It is

FURTHER ORDERED that the Objections [D. 241] (to the extent that they are at all properly presented) are OVERRULED. It is

FURTHER ORDERED that judgment is entered in favor of Defendants and against Plaintiff.

This case is closed.

Dated at Grand Junction, Colorado this 28th day of March 2025.

FOR THE COURT:
JEFFREY P. COLWELL, CLERK

By: s/D. Clement
Deputy Clerk

Order Adopting Report and Recommendation,
U.S. District Court for the District of Colorado
(March 28, 2025)
Document 250

PACER ECF DOC. NO. 250

1- ORDER ADOPTING ECF DOC NO. 231 REPORT AND
RECOMMENDATION AS ORDER GRANTING MOTION TO DISMISS ECF
DOC NO. 164, AND ECF DOC NO. 188 FOR FAILURE TO STATE A CLAIM.

BY DISTRICT JUDGE GORDON P. GALLAGHER ON 3/28/2025

03/28/2025	<u>250</u>	ORDER adopting ~~231~~ Report and Recommendation as an order of the court granting ~~164~~ Motion to Dismiss and ~~188~~ Motion to Dismiss for Failure to State a Claim. Entered by District Judge Gordon P Gallagher on 03/28/2025.(dclem) (Entered: 03/28/2025)
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Gordon P. Gallagher

Civil Action No. 23-cv-002188-GPG-SBP

SHANNON PERRY,

Plaintiff,

v.

ENCORE AT BOULEVARD ONE LLC,
RICCI DONATI,
JESSICA BRANDL, and
MARK T. SCHETTER,

Defendants.

ORDER

Before the Court is the Recommendation of United States Magistrate Judge Susan B. Prose issued on March 9, 2025 (D. 231). Judge Prose recommended that Defendants' Motions to Dismiss (D. 164 and D. 188) be granted. For the following reasons, the Court AFFIRMS and ADOPTS the Recommendation.

The parties were advised that they had fourteen days, after being served with a copy of the Recommendation, to file written objections in order to obtain reconsideration by the District Judge assigned to the case. *See* Fed. R. Civ. P. 72(b). Plaintiff Perry has, as of the time this Order was issued, filed two separate pleadings purporting to be objections (D. 235 (a 43-page missive) and

D. 241 (a 45-page missive mostly regurgitating D. 235)).¹ Neither can truly be construed as a proper legal objection—both documents instead consist of unfortunately rambling, misguided, and

¹ Plaintiff Perry's continued filings violate both this Court's practice standards which limit objections to ten (10) pages without leave of the Court, and in any event are not sufficiently specific to preserve any issues for de novo review or for appeal. *See United States v. 2121 E. 30th St.*, 73 F.3d 1057, 1060 (10th Cir. 1996).

Additionally, Plaintiff Perry has been repeatedly admonished to cease her abusive filing practices:

ORDER. Unfortunately, Plaintiff Perry has once again failed to head the Court's very specific instructions as to filing. Those instructions (see 214) were specific that Plaintiff must not to file any pleading without pre-approval from the Court due to Plaintiff's numerous frivolous filings. This case, currently at the motion to dismiss stage, has over 200 filings. This is excessive and detrimental to the Court's docket. Plaintiff has today filed two new pleadings. The first, 215 , is a series of criminal summons requests in a civil action for parties already served. This pleading is **STRICKEN**. The second, 216 , is a request to have the acting United States Attorney appointed to represent her in this civil FHA action. That pleading is also **STRICKEN**. The Court, while not at all certain that pro bono counsel could be found for this action, would consider a properly filed civil pro bono appointment of counsel request and Plaintiff can find the form for such on the Court website or consult the Pro Se Clinic, information for which may also be found on the Court's website. The Clerk of Court is hereby instructed to immediately revoke Plaintiff's CM/ECF electronic filing privileges. Plaintiff may now file only by mailing her pleadings to the Court or delivering such to the Clerk's Office. Plaintiff must request advance approval for filing in the method instructed in 214 . The Court hereby approves, in advance, a properly filed pro bono appointment request. Plaintiff is again warned that the Court will consider dismissal of this action for failing to comply with the Court's Orders. So Ordered by District Judge Gordon P Gallagher on 8/26/2024. Text Only Entry(schap,) (Entered: 08/26/2024)

(D. 217).

ORDER. This Court has already warned Plaintiff Perry (see D. 97) ("Ms. Perry, the only proper pleading to file at this juncture is a properly served summons. The Court has reviewed the pleadings at D. 25 , 27 , and 28 and those pleadings are NOT properly served summons complying with Federal Rule of Civil Procedure 4. Within sixty (60) days of this Order you must achieve service or otherwise show cause why the time for service should not be extended. NOTHING can happen in this case until you PROPERLY serve some Defendant. You keep filing pleadings that are irrelevant and have nothing to do with service of process. The Court will STRIKE any pleadings not having to do with service") that the only appropriate filings at this juncture are related to her attempts to serve process on any Defendant. Plaintiff continues to abuse her electronic filing privileges by filing inappropriate, irrelevant, and non-sensical filings on the Court docket. Thus, docket entries D. 115 , 117 , 118 , 119 , 120 , 121 , and 122 are hereby struck. Further filings not complying with this Order will be summarily struck. Plaintiff Perry is warned that should she not comply with this Order, her privilege of electronic filing may be revoked. So Ordered. By District Judge Gordon P Gallagher on 2/23/2024. Text Only Entry(ccuen,) (Entered: 02/23/2024)

(D. 130).

disjointed narratives rather than coherent and specific legal arguments. Simply put, Plaintiff Perry is wrong and has put forth no argument supporting a result contrary to what Judge Prose recommended. Nevertheless, this Court has conducted a full de novo review of the issues Judge Prose's Recommendation implicates and ADOPTS and AFFIRMS the Recommendation in full.

Under 28 U.S.C. § 636(b)(1)(B), this Court may designate a magistrate judge to consider dispositive motions and submit recommendations to the Court. When a magistrate judge submits a recommendation, the Court must "determine de novo any part of the magistrate judge's [recommended] disposition that has been properly objected to." Fed. R. Civ. P. 72(b)(3). A party's failure to file such written objections may bar the party from a de novo determination by the District Judge of the proposed findings and recommendations. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). When this occurs, the Court is "accorded considerable discretion" and "may review a magistrate's [judge's] report under any standard it deems appropriate." *Summers v. State of Utah*, 927 F.2d 1165, 1167 (10th Cir. 1991) (citing *Thomas*, 474 U.S. at 150).

After reviewing all the relevant pleadings, the Court concludes that Judge Prose's analysis was thorough and comprehensive, the Recommendation is well-reasoned, and that no clear error exists on the face of the record. Moreover, the Court has additionally conducted a full de novo review and independently finds that Defendants' motions to dismiss are appropriately granted. Accordingly, the Court AFFIRMS and ADOPTS Judge Prose's Recommendation as an order of

Just today, Plaintiff Perry has lodged sixteen (16) separate filings containing hundreds of pages. This must stop. All further filings, other than a notice of appeal to the United States Court of Appeals for the Tenth Circuit and any appropriate supporting document(s), e.g., a notice of completion of record on appeal, will be summarily stricken. The only thing left in this case is an appeal. For Plaintiff Perry's benefit (see D. 248 (purporting to proceed to be a "Motion for Leave to Proceed to Supreme Court in Forma Pauperis")) any appeal at this stage should be lodged with the United States Court of Appeals for the Tenth Circuit.

this Court (D. 231). Defendants' motions are GRANTED and all claims against all Defendants are DISMISSED WITH PREJUDICE.

DATED March 28, 2025.

BY THE COURT:



Gordon P. Gallagher
United States District Judge

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