

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

October 18, 2023

Christopher M. Wolpert
Clerk of Court

MARCUS ALLEN MURPHY,

Plaintiff - Appellant,

v.

EL PASO CO. (CO) DEPUTY SHERIFF
PEAK; EL PASO CO. (CO) DEPUTY
SHERIFF SHELHAMER; EL PASO CO.
(CO) DEPUTY SHERIFF MCCLELLAN;
EL PASO CO. (CO) DEPUTY SHERIFF
SPENCER; EL PASO CO. (CO) DEPUTY
SHERIFF BRANDT; EL PASO CO. (CO)
DEPUTY SHERIFF GIBBS; EL PASO
CO. (CO) DEPUTY SHERIFF
WILHELM; NURSE ZOE; CLERK
KING; JUDGE BRADY,

Defendants - Appellees.

No. 23-1245

(D.C. No. 1:23-CV-00588-LTB-KLM)
(D. Colo.)

ORDER AND JUDGMENT*

Before **BACHARACH, KELLY**, and **MORITZ**, Circuit Judges.

*After examining the brief 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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. But it may be cited for its persuasive value. Fed. R. App. P. 32.1(a); 10th Cir. R. 32.1(A).

Marcus Murphy, a pretrial detainee proceeding pro se, appeals the district court's order dismissing his 42 U.S.C. § 1983 complaint.¹ Because the district court did not abuse its discretion in concluding that Murphy's complaint was too conclusory and vague to comply with Federal Rule of Civil Procedure 8, we affirm.

Background

Murphy alleges violations of his rights under the Fourth, Fifth, Sixth, Seventh, Eighth, and Fourteenth Amendments and names as defendants ten individuals affiliated with a Colorado sheriff's office and county court. The operative second amended complaint alleges that sheriff's deputies, in violation of a court order for a stay of eviction, wrongfully entered Murphy's home; assaulted, searched, and arrested him; and damaged his property. Murphy also alleges that during his time in the county jail, deputies and other individuals left him bleeding and abandoned; denied him lunch, dinner, and medication; and prevented him from meeting with his public defender and accessing discovery materials. Additionally, Murphy asserts that his bail was excessive and that his speedy-trial rights have been violated.

The magistrate judge recommended dismissing Murphy's claims as inadequately pleaded under Rule 8 and barred by the abstention doctrine announced

¹ Murphy purports to be a licensed attorney and provides his Colorado attorney registration number. But according to the Colorado Supreme Court's Office of Attorney Regulation Counsel website, Murphy's license is suspended. *See Sierra Club v. U.S. Env't Prot. Agency*, 964 F.3d 882, 893 (10th Cir. 2020) (taking judicial notice of information on government website). We therefore treat him as any other pro se litigant, liberally construing his filings but not acting as his advocate. *See Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005).

in *Younger v. Harris*, 401 U.S. 37 (1971).² See Fed. R. Civ. P. 41(b) (authorizing district court to dismiss action for failure to comply with rules of civil procedure). Murphy filed timely objections to the magistrate judge’s recommendation, but the district court overruled them, adopted the recommendation in full, and dismissed Murphy’s claims without prejudice.

Murphy appeals.³

Analysis

Murphy first challenges the district court’s dismissal of his § 1983 claims pursuant to Rule 8.⁴ Our review is for abuse of discretion. See *Nasious v. Two Unknown B.I.C.E. Agents*, 492 F.3d 1158, 1161 (10th Cir. 2007).

Rule 8(a)(2) provides that “a pleading must contain a ‘short and plain statement of the claim showing that the pleader is entitled to relief.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 677–78 (2009) (quoting Fed. R. Civ. P. 8(a)(2)). “The pleading standard Rule 8 announces does not require ‘detailed factual allegations,’ but it

² The magistrate judge also noted that Murphy’s second amended complaint likely included defendants that could not be joined under Federal Rule of Civil Procedure 18 but did not recommend dismissal on that basis, explaining that “[m]isjoinder of parties is not a ground for dismissing an action.” R. 64 (quoting Fed. R. Civ. P. 21).

³ Because the district court dismissed both Murphy’s complaint and the action as a whole, we have appellate jurisdiction. See *Mobley v. McCormick*, 40 F.3d 337, 339 (10th Cir. 1994) (“A dismissal of the complaint is ordinarily a non[]final, nonappealable order (since amendment would generally be available), while a dismissal of the entire action is ordinarily final.”).

⁴ Murphy also makes several references to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), but that case pertains to suits against federal officers for constitutional violations and is inapposite here because Murphy names only local and state officials as defendants.

demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Id.* at 678 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Similarly, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Id.*

Here, Murphy concedes that the district court “correctly recite[d]” his “simple [and] concise” allegations. Aplt. Br. 3. But he contends that it abused its discretion in concluding that those allegations did not satisfy Rule 8. Reviewing those allegations, we see no abuse of discretion on the part of the district court, which concluded that Murphy’s operative complaint failed to “include adequate allegations as to what each defendant did to [him], when the defendant did it, how the defendant’s action harmed him, and what specific legal rights he believes each defendant violated.” R. 65.

Indeed, Murphy’s complaint is nearly completely devoid of facts and instead consists primarily of legal conclusions, which are not entitled a presumption of truthfulness at the pleadings stage. *See Iqbal*, 556 U.S. at 678. For example, Murphy writes that four deputies unlawfully assaulted and arrested him and illegally seized his property—but he does not otherwise describe any of the circumstances that gave rise to his arrest or describe with specificity what actions each individual officer took that allegedly violated his civil rights. These allegations, which “state[] an inference without underlying facts,” are too conclusory for Rule 8. *See Frey v. Town of Jackson*, 41 F.4th 1223, 1233 (10th Cir. 2022).

Similarly, Murphy writes that other deputies left him bleeding and abandoned in a court holding cell, denied him lunch and dinner, and refused to allow him to

meet with his attorney or engage in discovery, but he never explains which officer participated in which alleged deprivation. And in “a § 1983 action against multiple individual governmental actors, it is particularly important . . . that the complaint make clear exactly who is alleged to have done what to whom, to provide each individual with fair notice as to the basis of the claims against him or her.” *Bledsoe v. Carreno*, 53 F.4th 589, 607 (10th Cir. 2022) (omission in original) (quoting *Truman v. Orem City*, 1 F.4th 1227, 1235 (10th Cir. 2021)). We thus see no abuse of discretion in the district court’s Rule 8 dismissal.⁵

Two final matters require our attention. First, we grant Murphy’s motion to proceed IFP on appeal. Second, Murphy filed a motion requesting that we seal all files in this case containing classified information. “The party seeking to overcome the presumption of public access to the documents bears the burden of showing some significant interest that outweighs the presumption.” *United States v. Pickard*, 733 F.3d 1297, 1302 (10th Cir. 2013) (quoting *Helm v. Kansas*, 656 F.3d 1277, 1292 (10th Cir. 2011)). But Murphy states only that he is an Air Force intelligence officer and that his trailer home contained classified information. And in our review of the record, we have identified no classified information. Accordingly, Murphy has failed

⁵ As a result, we need not consider whether the district court correctly dismissed Murphy’s claims under the *Younger* abstention doctrine.

to overcome the presumption of public access in this case, and we deny his motion.

See Williams v. FedEx Corp. Servs., 849 F.3d 889, 905 (10th Cir. 2017).

Conclusion

We affirm the district court's order dismissing Murphy's complaint without prejudice because it did not abuse its discretion in determining that Murphy's allegations were too vague and conclusory to satisfy Rule 8. We also grant Murphy's IFP motion and deny his motion to seal.

Entered for the Court

Nancy L. Moritz
Circuit Judge