

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals**For the Seventh Circuit****Chicago, Illinois 60604**

Submitted January 27, 2025*

Decided January 27, 2025

BeforeMICHAEL Y. SCUDDER, *Circuit Judge*THOMAS L. KIRSCH II, *Circuit Judge*NANCY L. MALDONADO, *Circuit Judge*

No. 24-1076

ARMIN WAND, III,
*Plaintiff-Appellant,**v.*TEXTBEHIND,
*Defendant-Appellee.*Appeal from the United States District
Court for the Eastern District of
Wisconsin.

No. 22-cv-1392

William C. Griesbach,
*Judge.***ORDER**

Armin Wand III and Marcellous Walker, both Wisconsin prisoners, jointly sued TextBehind, a mail vendor for the Wisconsin Department of Corrections, alleging that TextBehind violated their First Amendment rights by refusing to process and destroying prisoner-to-prisoner mail related to legal matters. *See* 42 U.S.C. § 1983. The

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

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district court denied Wand's motion to sever his case from Walker's and granted TextBehind's motion for summary judgment. Wand appeals, and we affirm.

The Wisconsin Department of Corrections implemented a new mail policy in November 2021. The policy included contracting with TextBehind—a third-party mail processing vendor—to receive, scan, copy, and forward to the correct facilities all “non-legal” incoming prisoner mail, including inmate-to-inmate correspondence. From November 2021 to February 2022, when TextBehind inadvertently received privileged (legal or medical) mail, TextBehind would stamp the mail as undeliverable and return it to its sender. After a policy change in February 2022, TextBehind began forwarding any privileged mail to the correctional institution where the prisoner is incarcerated.

Wand and Walker—who were both incarcerated at the Wisconsin Secure Program Facility—sued TextBehind, the Wisconsin Department of Corrections, and several Department officials, alleging that this policy violated their constitutional rights. The district court screened their amended complaint, *see* 28 U.S.C. § 1915A, and dismissed the Department and certain Department officials from the suit. Later, the district court granted the remaining Department officials' motion for summary judgment and dismissed them as well.¹ The court did, however, allow Wand and Walker to proceed on their claim that TextBehind “has a policy of refusing to process documents related to legal matters that inmates mail to each other and instead destroys them despite having no valid penological reason for doing so.”

Practical challenges arose early concerning the prisoners' ability to jointly litigate the case. Walker moved for an order permitting him and Wand to meet three times a week to work on the case, as they were housed in separate prison units. The district court denied Walker's motion, stating that it would strain the prison's resources and create security concerns. Further, the court reminded Walker and Wand that Federal Rule of Civil Procedure 11(a) required both of them to sign every pleading, motion, and paper, and that subsequent filings that did not comply with Rule 11(a) would be stricken. The court acknowledged that “this requirement is difficult and costly for prisoner plaintiffs to comply with,” and noted that if Wand and Walker found it too challenging to litigate jointly, they could move to sever their claims into separate suits.

¹ Wand does not challenge the district court's screening order or its decision granting the officials' motion for summary judgment. The Department and its officials thus are not parties to this appeal.

Seven months later, TextBehind moved for summary judgment and submitted proposed findings of fact. Rather than respond to the motion, Wand filed a motion to sever his case from Walker's, stating that he had been transferred to a different facility, and it had become "even more difficult to litigate this case" at separate institutions. TextBehind opposed the motion, arguing that dividing the case would be costly and inefficient. The district court denied Wand's request, concluding that it came "too late" because severance at that stage would "multiply the time and resources needed to resolve" TextBehind's motion and would be highly prejudicial to TextBehind. The court granted Wand and Walker an extension to oppose TextBehind's motion and warned that response materials not signed by both plaintiffs would be stricken.

Wand objected to the denial of his motion to sever. He contended that he and Walker had been "unfairly prejudiced" by the decision and that the court had impeded their ability to litigate their claims. The district court overruled Wand's objection and again extended the time to respond to the summary judgment motion. The court once more reminded Wand that materials not signed by both plaintiffs would be stricken, and it warned that, if it did not receive response materials by the extended deadline, it would "decide the motion without Plaintiffs' input." Wand and Walker did not respond to the summary judgment motion.

After the response deadline had passed, the court granted TextBehind's summary judgment motion. Because Wand and Walker did not respond to TextBehind's proposed findings of fact, the court deemed the proposed facts to be admitted. The court concluded that the undisputed evidence showed that TextBehind "has a policy of processing all inmate-to-inmate mail even if related to legal matters and that [TextBehind] has never destroyed any document for any reason." Moreover, the court noted that, concerning specific items of mail identified in the amended complaint, TextBehind presented evidence that it "promptly processed each item after it received it and that any delays were not" TextBehind's fault.

After timely filing a notice of appeal, Wand submitted a motion to this court requesting relief pending appeal, citing a new mail processing policy that was implemented months after the court entered summary judgment. The motion sought to raise new claims against the Department and prison administrators—parties that were long ago dismissed from this case. We denied the motion without prejudice to renewal after Wand first presented the request to the district court. Wand did so, and the district court denied the motion.

On appeal, Wand first challenges the denial of his motion to sever, alleging that the district court abused its discretion by failing to consider the prejudice to Wand and Walker in proceeding jointly. We disagree. Federal Rule of Civil Procedure 21 “gives the court discretion to sever any claim and proceed with it separately if doing so will increase judicial economy and avoid prejudice to the litigants.” *Otis Clapp & Son, Inc. v. Filmore Vitamin Co.*, 754 F.2d 738, 743 (7th Cir. 1985) (quoting 6 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, *FEDERAL PRACTICE AND PROCEDURE* § 1591 (1st ed. 1971)). The district court explicitly recognized (on several occasions) the challenges prisoner plaintiffs face in joint litigation, informing Wand and Walker early on that they could move to sever their claims if proceeding jointly proved too difficult. But by the time Wand sought severance—after TextBehind had moved for summary judgment—the district court determined that it would be highly prejudicial to TextBehind, delay resolution of the case, and expend significant resources. We discern no abuse of discretion in the court’s conclusion that Wand’s motion to sever came too late.

Next, Wand contends that the district court impeded his right, under the First and Fourteenth Amendments, to access the courts by preventing him from filing submissions without Walker’s signature. This argument is unavailing. Federal Rule of Civil Procedure 11(a), which states that unrepresented parties must sign “[e]very pleading, written motion, and other paper” submitted to the court, is “mandatory when triggered.” *Marcure v. Lynn*, 992 F.3d 625, 628–30 (7th Cir. 2021). Because Wand is not a lawyer, he cannot represent anyone but himself; thus, both Wand and Walker were required to sign every filing. See *AsymaDesign, LLC v. CBL & Assocs. Mgmt., Inc.*, 103 F.4th 1257, 1258–59 (7th Cir. 2024). The district court therefore did not err when it refused to accept noncompliant filings. This is particularly so where the court twice granted Wand and Walker lengthy extensions to file a compliant response to TextBehind’s motion for summary judgment.

Wand also contests the district court’s entry of summary judgment, arguing that the court improperly granted the motion by relying only on the papers provided by TextBehind. This claim, too, falls short. Local Rule 56 for the Eastern District of Wisconsin provides that the party opposing a summary judgment motion must respond and identify factual disputes including “specific references to the affidavits, declarations, parts of the record, and other supporting materials relied upon.” E.D. WIS. CIV. L.R. 56(b)(2). Wand and Walker failed to dispute TextBehind’s proposed facts, so the court properly “deem[ed] uncontroverted statements of material fact admitted.” *Id.* 56(b)(4). Where, as here, the district court—in the absence of disputed facts presented by the opposing party—deems true all supported facts presented by the

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movant, “we consider, still in the light most favorable to [the opposing party], *only* the facts (and inferences drawn from them) presented in accordance with” Local Rule 56. *Flint v. City of Belvidere*, 791 F.3d 764, 767 (7th Cir. 2015).

On this record, the district court correctly concluded that TextBehind is entitled to summary judgment. The undisputed evidence shows that TextBehind diligently processed (and never destroyed) mail sent to or from Wand and Walker, and that any delays in receiving mail were caused by third parties, like the United States Postal Service. Wand asserted in a declaration he submitted with his complaint that during the period in which TextBehind returned privileged mail to its sender, he received a notice that a letter sent to him by a prospective expert witness was returned to the sender as undeliverable. The undisputed evidence reveals that the letter was indeed flagged as privileged and returned to the sender, but TextBehind shortly thereafter revised its policy and began forwarding privileged mail to each correctional institution for further processing. After the policy change, no other mail sent to or from Wand was returned. A single isolated instance of disrupted mail delivery is insufficient to sustain a First Amendment claim. *See Zimmerman v. Tribble*, 226 F.3d 568, 572–73 (7th Cir. 2000) (citing *Rowe v. Shake*, 196 F.3d 778, 782 (7th Cir. 1999)) (First Amendment claim properly dismissed where prisoner failed to allege “continuing pattern or repeated occurrences” of disrupted mail).

Finally, Wand raises challenges related to the district court’s denial of his motion seeking relief pending the outcome of this appeal. *See* FED. R. APP. P. 8(a). But because we affirm the district court’s judgment, there is no basis for relief.

AFFIRMED