

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Gallaway v. Turner

479 F. App'x 388 (2d Cir. 2012) · No. 11-1764-pr · Decided July 3, 2012

SUMMARY

The Second Circuit affirmed the district court's sua sponte dismissal of Derrick Gallaway's complaint for lack of subject matter jurisdiction and denial of his request for an extension of time to seek leave to amend. The court held that Gallaway abandoned any potential appellate claims by presenting no specific arguments challenging those rulings.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
WRITING FOR THE COURT	Per curiam; Rosemary S. Pooler; Debra Ann Livingston; Brian M. Cogan
JURISDICTION	Federal
DECIDED	July 3, 2012
DOCKET	11-1764-pr
DISPOSITION	affirmed
PROCEDURAL POSTURE	Gallaway appealed from the Southern District of New York's sua sponte dismissal of his complaint for lack of subject matter jurisdiction and denial of his request for an extension of time to seek leave to amend.
STANDARD OF REVIEW	Subject-matter-jurisdiction dismissal is reviewed de novo; denial of an extension of time is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Nonprecedential summary order
PARTIES	Derrick Gallaway v. Donald Turner, Alpha Chapman, Renee Gallaway

TOPICS

subject matter jurisdiction

appellate procedure

appellate jurisdiction

standard of review

preservation of error

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the notice of appeal should be construed to challenge the underlying dismissal as well as the order denying an extension of time.
2. Whether the district court properly dismissed the complaint sua sponte for lack of subject matter jurisdiction.
3. Whether the district court abused its discretion in denying Gallaway's request for an extension of time to seek leave to amend.
4. Whether Gallaway abandoned any appellate challenge by failing to present specific arguments.

HOLDINGS

1. A notice of appeal may be construed liberally, taking the parties' intentions into account; the court therefore treated Gallaway's appeal as challenging both the order denying an extension and the underlying dismissal.
2. An appellant who presents no specific arguments challenging the rulings below abandons any potential claims of error on appeal.

KEY QUOTATIONS

“we need not manufacture claims of error for an appellant proceeding pro se”

“arguments not made in an appellant’s opening brief are waived even if the appellant pursued those arguments in the district court or raised them in a reply brief.”

FACTUAL BACKGROUND

Gallaway filed a complaint that the district court determined it lacked subject matter jurisdiction to consider. After dismissal, he sought an extension of time to file a motion requesting leave to amend. On appeal, he did not present specific arguments challenging either the jurisdictional dismissal or the denial of the extension.

PROCEDURAL HISTORY

The district court dismissed Gallaway's complaint sua sponte for lack of subject matter jurisdiction and denied his request for an extension of time to file a motion for leave to amend. The Second Circuit construed the notice of appeal as challenging both rulings and affirmed.

DISPOSITION

affirmed

CASES CITED

- *Shrader v. CSX Transportation, Inc.*, 70 F.3d 255, 256 (2d Cir. 1995)

- Digitel, Inc. v. MCI Worldcom, Inc., 239 F.3d 187, 190 (2d Cir. 2001) (per curiam)
- Tancredi v. Metropolitan Life Insurance Co., 378 F.3d 220, 226 (2d Cir. 2004)
- LoSacco v. City of Middletown, 71 F.3d 88, 93 (2d Cir. 1995)
- JP Morgan Chase Bank v. Altos Hornos de Mexico, S.A. de C.V., 412 F.3d 418, 428 (2d Cir. 2005)

OPINION

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PER CURIAM.

11-1764-pr Gallaway v. Turner

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL. At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 3rd day of July, two thousand twelve. PRESENT:

ROSEMARY S. POOLER,

DEBRA ANN LIVINGSTON,

Circuit Judges,

BRIAN M. COGAN,

District Judge.* _____ Derrick Gallaway, Plaintiff-Appellant, v. 11-1764-pr Donald Turner, Alpha Chapman, Renee Gallaway, Defendants-Appellees.

_____ * The Honorable Brian M. Cogan, of the United States District Court for the Eastern District of New York, sitting by designation. 1 FOR APPELLANT: Derrick Gallaway, pro se, Folsom, Cal. FOR APPELLEES: No Appearance. Appeal from a judgment of the United States District Court for the Southern District of New York (Hellerstein, J.).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND

DECREED that the judgment of the district court is AFFIRMED. Derrick Gallaway, pro se, appeals from the district court's sua sponte dismissal of his complaint for lack of subject matter jurisdiction as well as the district court's denial of his request for an extension of time to file a motion requesting leave to file an amended complaint. While Gallaway's notice of appeal refers to

the district court's order, dated March 15, 2011, denying Gallaway's request for an extension of time, we interpret his appeal before this Court as challenging the district court's underlying dismissal of his complaint as well. See *Shrader v. CSX Transp., Inc.*, 70 F.3d 255, 256 (2d Cir. 1995) (“[W]e construe notices of appeal liberally, taking the parties’ intentions into account.”). We assume the parties’ familiarity with the underlying facts and the procedural history of the case. We review “the district court’s . . . sua sponte . . . dismiss[al] for lack of subject matter jurisdiction . . . de novo.” *Digitel, Inc. v. MCI Worldcom, Inc.*, 239 F.3d 187, 190 (2d Cir. 2001) (per curiam). “We review a district court’s [denial of an] extension of time for abuse of discretion.” 2 *Tancredi v. Metro. Life Ins. Co.*, 378 F.3d 220, 226 (2d Cir. 2004). Gallaway, however, has presented no specific arguments challenging the district court’s determination that it lacked subject matter jurisdiction to consider his complaint, or that the court erred by denying his request for an extension of time. Therefore, he has abandoned any potential claims on appeal. See *LoSacco v. City of Middletown*, 71 F.3d 88, 93 (2d Cir. 1995) (noting that, although “appellate courts generally do not hold pro se litigants rigidly to . . . formal briefing standards,” “we need not manufacture claims of error for an appellant proceeding pro se”); see also *JP Morgan Chase Bank v. Altos Hornos de Mexico, S.A. de C.V.*, 412 F.3d 418, 428 (2d Cir. 2005) (“[A]rguments not made in an appellant’s opening brief are waived even if the appellant pursued those arguments in the district court or raised them in a reply brief.”). Accordingly, we AFFIRM the judgment of the district court. FOR THE COURT: Catherine O’Hagan Wolfe, Clerk 3