

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PRECEDENTIAL VALUE	Nonprecedential summary order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)

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