

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Hunter v. HCA

No. 19-4034 (10th Cir. May 18, 2020) · No. No. 19-4034 · Decided May 18, 2020

SUMMARY

The Tenth Circuit dismissed Edward G. Hunter's appeal because he failed to file objections to the magistrate judge's report and recommendation. The court applied its firm waiver rule, which waives appellate review of both factual and legal questions when a party fails to object. The court found no applicable exception because Hunter was represented by counsel and did not claim he failed to receive the report.

CASE DETAILS

COURT	United States Court of Appeals for the Tenth Circuit
WRITING FOR THE COURT	Allison H. Eid; Holmes; Bacharach; Eid
JURISDICTION	Federal
DECIDED	May 18, 2020
DOCKET	No. 19-4034
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appeal from district court's adoption of magistrate judge's report and recommendation granting summary judgment in favor of defendants on all claims; court ordered show cause on waiver issue.
PRECEDENTIAL VALUE	unpublished
PARTIES	Edward G. Hunter v. HCA; MountainStar Healthcare; Columbia Ogden Regional Medical Center; Mark Adams; Brian Lines; Mindy Boehm; Ed Ehrenberger; Carla Taylor; Steve Kier; Vicky McCall; Dann Byck; Keith Hancett; Jeff Stephens; Yasmeen Simonian; John Hemmersmeier; Don Cazel; Patrick Willis; John Diemel; Danielle Ihler

TOPICS

[appellate procedure](#)[preservation of error](#)[motions to dismiss](#)[summary judgment](#)[civil procedure](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the plaintiff's failure to file objections to a magistrate judge's report and recommendation constituted waiver of appellate review under the Tenth Circuit's firm waiver rule
2. Whether the firm waiver rule applies absent explicit statutory or rule-based waiver language for dispositive motions
3. Whether the interests-of-justice exception to the firm waiver rule applies

HOLDINGS

1. Failure to make timely objections to a magistrate judge's report and recommendation waives appellate review of both factual and legal questions under the firm waiver rule.
2. The firm waiver rule is neither statutory nor expressly dictated by a procedural rule; it was adopted by the court to advance the policies behind the Magistrate's Act.
3. The interests-of-justice exception applies to a counseled party only in the rare circumstance in which a represented party did not receive a copy of the R&R; plaintiff's contention that the notice language was unclear was insufficient.

KEY QUOTATIONS

"This court has 'adopted a firm waiver rule that provides that the failure to make timely objections to the magistrate[judge's] findings or recommendations waives appellate review of both factual and legal questions.'"

"We do not apply the rule 'when (1) a pro se litigant has not been informed of the time period for objecting and the consequences of failing to object, or when (2) the interests of justice require review.'"

"the interests-of-justice exception applies to a counseled party 'only in the rare circumstance in which a represented party did not receive a copy of the magistrate[judge's] R & R.'"

"[T]he level of notice required for pro se litigants is not pertinent [where] appellant . . . is represented by counsel."

FACTUAL BACKGROUND

Edward G. Hunter was employed by Utah Imaging Associates as an interventional radiologist physician assistant with privileges at Ogden Regional Medical Center. He experienced serious health conditions and personal problems that affected his work. He claimed that the hospital and related defendants improperly responded to his health, conduct, and performance issues, contributing to the loss of his medical privileges, termination of his employment with UIA, and loss of his Utah license.

PROCEDURAL HISTORY

Plaintiff filed employment-related action in the District of Utah. Defendants moved for summary judgment and plaintiff sought leave to amend his ADA claim. A magistrate judge issued an R&R recommending denial of the amendment as futile and granting summary judgment for defendants. Plaintiff failed to file objections. The district court adopted the R&R in full and entered judgment for defendants. Plaintiff appealed. The Tenth Circuit issued an order to show cause regarding waiver, referred the issue to the panel, and ultimately dismissed the appeal.

DISPOSITION

dismissed

CASES CITED

- United States v. One Parcel of Real Prop., 73 F.3d 1057 (10th Cir. 1996)
- Morales-Fernandez v. INS, 418 F.3d 1116 (10th Cir. 2005)
- Allman v. Colvin, 813 F.3d 1326 (10th Cir. 2016)
- In re Key Energy Res. Inc., 230 F.3d 1197 (10th Cir. 2000)
- Vega v. Suthers, 195 F.3d 573 (10th Cir. 1999)
- Moore v. United States, 950 F.2d 656 (10th Cir. 1991)
- Theede v. U.S. Dep't of Labor, 172 F.3d 1262 (10th Cir. 1999)