FILED
United States Court of Appeals
Tenth Circuit

April 24, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

VANCE DOTSON,

Plaintiff - Appellant,

v.

AWA COLLECTIONS,

Defendant - Appellee.

No. 22-6078
(D.C. No. 5:22-CV-00014-HE)
(W.D. Okla.)

VANCE DOTSON,

Plaintiff - Appellant,

v.

AD ASTRA RECOVERY SERVICES, INC.; JEFFERSON CAPITAL SYSTEMS; KANSAS COUNSELORS, INC.,

Defendants - Appellees.

No. 22-6096
(D.C. No. 5:22-CV-00264-C)
(W.D. Okla.)

ORDER AND JUDGMENT*

Before **PHILLIPS**, **McHUGH**, and **ROSSMAN**, Circuit Judges.

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* After examining the briefs 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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Vance Dotson, proceeding pro se,[1] appeals the district court's dismissal of these actions brought under the Fair Debt Consumer Practices Act, 15 U.S.C. §§ 1692-1692p (FDCPA). The district court determined Mr. Dotson lacked standing as an assignee to bring these actions. We consolidated the appeals for disposition. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

I

"The FDCPA prohibits a debt collector from using 'any false, deceptive, or misleading representation or means in connection with the collection of any debt.'" *Llewellyn v. Allstate Home Loans, Inc.*, 711 F.3d 1173, 1187 (10th Cir. 2013) (quoting 15 U.S.C. § 1692e). "Conduct that is a violation of this prohibition includes . . . 'communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed." *Id.* (brackets omitted) (quoting § 1692e(8)).

Mr. Dotson filed the underlying FDCPA actions in the United States District Court for the Western District of Oklahoma, alleging he is a "consumer" as defined by the FDCPA, 15 U.S.C. § 1692a(3), and the defendants are "debt collectors," *id.* § 1692a(6), who violated § 1692e(8) of the FDCPA by failing to communicate to credit reporting agencies (CRAs) that the debts they sought to collect were disputed. In the action

[1] We liberally construe Mr. Dotson's pro se materials but do not act as his advocate. *See James v. Wadas*, 724 F.3d 1312, 1315 (10th Cir. 2013).

underlying No. 22-6078, he named AWA Collections (AWA) as a defendant, while in the action underlying No. 22-6096, he named as defendants Ad Astra Recovery Services, Inc. (Ad Astra), Jefferson Capital Systems (Jefferson), and Kansas Counselors, Inc. (KCI). But he did not claim the debts were his. Rather, he alleged the debts were owed by other individuals who disputed the debts and assigned their FDCPA claims to him for prosecution. Specifically, in No. 22-6078, he alleged an individual named Doyle Hutson called AWA to dispute a debt, and AWA failed to communicate to CRAs that the debt was disputed. Mr. Dotson further alleged he "ha[d] been assigned 100 percent of these claim(s) . . . from Doyle Hutson." No. 22-6078, R. at 74, ¶ 3. Similarly, in No. 22-6096, Mr. Dotson alleged a person named Jordan Bundy disputed debts sought to be collected by Ad Astra, Jefferson, and KCI, and these entities failed to communicate to CRAs that the debts were disputed. As with Mr. Hutson's case, Mr. Dotson averred that Ms. Bundy "assigned 100 percent of [her] claim(s)" to him, No. 22-6096, R. at 5, ¶ 4.

On defendants' motions to dismiss, the district court concluded Mr. Dotson lacked standing to bring these claims as an assignee of Mr. Hutson and Ms. Bundy. The court reasoned the question of assignability was fundamentally one of state law and Oklahoma prohibits assignment of claims not arising out of contract. The court determined these FDCPA claims sounded in tort; consequently, they could not be assigned. The court dismissed the actions for lack of standing.[2]

[2] In No. 22-6078, the district court also ruled that Mr. Dotson failed to state a claim under Fed. R. Civ. P. 12(b)(6). Because the standing rulings are threshold and dispositive, we need not reach the Rule 12(b)(6) ruling. *See Robey v. Shapiro, Marianos & Cejda, L.L.C.*, 434 F.3d 1208, 1211 (10th Cir. 2006).

II

Before we address Mr. Dotson's standing, defendants in No. 22-6096 contend he failed to preserve his appellate arguments directed against Ad Astra and KCI because he did not respond to their joint motion to dismiss in the district court and he does not argue for plain-error review on appeal. *See Richison v. Ernest Grp., Inc.*, 634 F.3d 1123, 1131 (10th Cir. 2011) ("[T]he failure to argue for plain error and its application on appeal . . . surely marks the end of the road for an argument for reversal not first presented to the district court."). "This rule holds true even as to arguments in favor of subject matter jurisdiction" because "our duty to consider unargued *obstacles* to subject matter jurisdiction does not affect our discretion to decline to consider waived arguments that might have *supported* such jurisdiction." *Tompkins v. U.S. Dep't of Veterans Affs.*, 16 F.4th 733, 735 n.1 (10th Cir. 2021) (brackets and internal quotation marks omitted). Ultimately, "whether issues should be deemed waived is a matter of discretion." *United States v. Walker*, 918 F.3d 1134, 1153 (10th Cir. 2019).

Mr. Dotson did not respond to Ad Astra and KCI's motion to dismiss, but he did respond, albeit untimely, to Jefferson's separate motion to dismiss, which raised the same standing issue. And notwithstanding his partial failure to respond, the district court evaluated the jurisdictional allegations and dismissed for lack of standing. Under these circumstances, we need not decide whether Mr. Dotson failed to preserve his appellate arguments as to some defendants on the same jurisdictional issue because even if he did, we would reach the same result: the district court properly dismissed for lack of standing.

III

"[W]e review de novo a district court's standing ruling." *Lupia v. Medicredit, Inc.*, 8 F.4th 1184, 1190 (10th Cir. 2021). "[B]ecause Article III standing is a jurisdictional issue, we must satisfy ourselves that it exists here." *Kerr v. Polis*, 20 F.4th 686, 692 (10th Cir. 2021) (internal quotation marks omitted). "Standing to sue is a doctrine rooted in the traditional understanding of a case or controversy," and it "consists of three elements." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). "The plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Id.*

These appeals implicate the injury element. As a general matter, "[Article] III judicial power exists only to redress or otherwise to protect against injury *to the complaining party*." *Vt. Agency of Nat. Res. v. United States ex rel. Stevens*, 529 U.S. 765, 771 (2000) (internal quotation marks omitted). A plaintiff's "interest must consist of obtaining compensation for, or preventing, the violation of a legally protected right." *Id.* at 772. "An interest unrelated to injury in fact is insufficient to give a plaintiff standing." *Id.* In some instances, an assignee can establish Article III standing "based on his assignor's injuries." *Sprint Commc'ns Co. v. APCC Servs., Inc.*, 554 U.S. 269, 286 (2008); *see also Vt. Agency of Nat. Res.*, 529 U.S. at 773-74 (holding *qui tam* relator's Article III standing to bring claims under the False Claims Act, which effects a partial assignment of the government's injury in favor of the *qui tam* relator, was confirmed by history and tradition of *qui tam* actions). But without a valid assignment, an assignee

may be unable to show an injury in fact if they have not personally suffered an injury. *See US Fax L. Ctr., Inc., v. iHire, Inc.*, 476 F.3d 1112, 1120 (10th Cir. 2007) ("If a valid assignment confers standing, an invalid assignment defeats standing if the assignee has suffered no injury in fact himself.").

Mr. Dotson does not allege he *personally* suffered any injury; he relies solely on the alleged assignments from Mr. Hutson and Ms. Bundy. The question, then, is whether those assignments are valid.

All agree the validity of the assignments turns on state law. *See* No. 22-6078, Aplt. Opening Br. at 5 (arguing the district court's decision was premised on an incorrect interpretation of Okla. Stat. tit. 12, § 2017(D)); Aplee. Br. at 10 ("[T]he law of Oklahoma governs the assignability of claims created by federal statute."); R. at 130 (Dist. Ct. order of dismissal) ("Questions as to whether such assignments are recognized . . . are ordinarily questions of state law."); No. 22-6096, Aplt. Opening Br. at 5 (arguing the district court's decision was premised on an incorrect interpretation of Okla. Stat. tit. 12, § 2017(D)); Aplee. Br. at 10-12 (arguing the district court committed no error in concluding the assignments were invalid under Oklahoma law); R. at 59 (Dist. Ct. order of dismissal) (concluding claims could not be legally assigned under Oklahoma law); *accord Todd v. Franklin Collection Serv., Inc.*, 694 F.3d 849, 851-52 (7th Cir. 2012) (applying state law, albeit without explanation, to conclude assignment of FDCPA claim was void against state public policy prohibiting the unauthorized practice of law). But state law governs only part of the analysis. After all, these FDCPA claims arise under a

federal statute, and thus, we must delineate the extent to which state and federal substantive law bear on our disposition.

Claims arising under a federal statute raise federal questions governed by federal rules. *See Kamen v. Kemper Fin. Servs., Inc.*, 500 U.S. 90, 97 (1991) ("[A]ny common law rule necessary to effectuate a private cause of action under [a federal] statute is necessarily federal in character."). The characterization of an action is among those federal issues governed by federal law. *See, e.g.*, *Int'l Union, UAW v. Hoosier Cardinal Corp.*, 383 U.S. 696, 706 (1966) (holding that "characterization of th[e] action for the purpose of selecting the appropriate state limitations provision is ultimately a question of federal law").

But when federal law does not specify the rules of decision, we incorporate state law if it comports with the underlying federal policies embodied in the statute. *See Kamen*, 500 U.S. at 98 ("[F]ederal courts should incorporate state law as the federal rule of decision, unless application of the particular state law in question would frustrate specific objectives of the federal programs." (brackets and internal quotation marks omitted)).[3]

[3] "Congress enacted the FDCPA . . . with the express purpose to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses." *James*, 724 F.3d at 1315 (internal quotation marks omitted). Mr. Dotson does not contend Oklahoma law concerning assignment of claims undermines these federal objectives.

The FDCPA is silent as to whether assignments are permissible. We must therefore refer to Oklahoma law for the relevant rule of decision. In Oklahoma, "[t]he assignment of claims not arising out of contract is prohibited." Okla. Stat. tit. 12, § 2017(D). The question then becomes whether these FDCPA claims are properly characterized as tort claims or contract claims. This latter question is a matter of federal law. *See UAW*, 383 U.S. at 706.[4]

The district court determined these FDCPA claims sounded in tort, not contract. On appeal, Mr. Dotson does not appear to dispute that characterization. For example, he contends "[t]he District Court's analysis that FDCPA claims *sound in tort* was perhaps correct." No. 22-6078, Aplt. Opening Br. at 7; No. 22-6096, Aplt. Opening Br. at 7. But he contends the district court incorrectly interpreted § 2017(D), as a matter of state law, to bar assignment of tort claims, even if they arise from contract. According to Mr. Dotson, the district court's conclusion that his claims were not assignable "is inconsistent with the plain meaning of the language of Okla. Stat. tit. 12, § 2017(D) and Oklahoma appellate court decisions[] spanning more than 100 years, [which] have consistently found claims sounding in tort and arising from contractual relationships to be

[4] We note *UAW* observed "there is no reason to reject the characterization that state law would impose unless that characterization is unreasonable or otherwise inconsistent with [federal] policy." 383 U.S. at 706. Section 2017(D) distinguishes between "pure torts" and "torts arising out of contract"—*viz.*, torts that "are grounded in . . . contract[] and would not be capable of existing except for . . . contracts." *Chimney Rock Ltd. P'ship v. Hongkong Bank*, 857 P.2d 84, 88 (Okla. Civ. App. 1993). For the reasons we discuss, even if we accepted the state characterization of these FDCPA claims, they would be deemed pure torts.

freely assignable." No. 22-6078, Aplt. Opening Br. at 7 (italics omitted); No. 22-6096, Aplt. Opening Br. at 7-8 (italics omitted). He argues, as a matter of state law, § 2017(D) is broad enough to permit assignment of FDCPA claims so long as they arise from contract. We are not persuaded.

The flaw in this argument is its premise that state law governs the characterization of these FDCPA claims. As discussed, the proper characterization of these federal claims is a matter of federal law. On that score, we have observed § 1692e(8) "is rooted in the basic fraud law principle that, if a debt collector *elects* to communicate credit information about a consumer, it must not omit a piece of information that . . . the consumer has disputed a particular debt." *Llewellyn*, 711 F.3d at 1189 (internal quotation marks omitted). And more broadly, we have evaluated a plaintiff's standing under the FDCPA based on whether the harm alleged was similar to a type of harm that could be prosecuted as a traditional common law tort. *See Shields v. Pro. Bureau of Collections of Md., Inc.*, 55 F.4th 823, 827-30 (10th Cir. 2022) (concluding plaintiff's allegations failed to establish elements of common law torts of public disclosure of private facts and fraud); *Lupia*, 8 F.4th at 1190-91 (analogizing one type of proscribed conduct under the FDCPA—calling a plaintiff to collect a disputed debt—to the common law tort of intrusion upon seclusion). Likewise, the Eleventh Circuit has stated: "The thrust of the [FDCPA] is prevention of harassment and abuse as well as false, deceptive or misleading practices. It clearly falls into a traditional tort area analogous to a number of traditional torts." *Sibley v. Fulton DeKalb Collection Serv.*, 677 F.2d 830, 834 (11th Cir. 1982) (footnote omitted). We thus conclude, as a matter of federal law, Mr. Hutson and

Ms. Bundy's FDCPA claims were akin to tort claims, which, under state law, are not assignable.

Mr. Dotson resists this conclusion, contending these claims arise from contracts between Mr. Hutson and Ms. Bundy and their respective creditors. He argues defendants engaged in "an unlawful effort to enforce [those] contract[s] and collect upon a debt," so the FDCPA claims should be viewed as arising out of those contracts. No. 22-6078, Aplt. Opening Br. at 8-9; No. 22-6096, Aplt. Opening Br. at 9. He does not contend, however, that defendants are parties to those contracts, nor does he dispute that his claims are for statutory violations of the FDCPA. An FDCPA claim arises from the conduct that allegedly violates the statute. *See, e.g.*, *Johnson v. Riddle*, 305 F.3d 1107, 1113 (10th Cir. 2002) ("[W]here the plaintiff's FDCPA claim arises from the instigation of a debt collection suit, the plaintiff does not have a complete and present cause of action, and thus no violation occurs . . . , until the plaintiff has been served." (internal quotation marks omitted)). Mr. Dotson would have us characterize these claims by looking to defendants' efforts to enforce some third-party contracts, rather than the conduct that allegedly violated the FDCPA. We decline to endorse such an attenuated approach.

Mr. Dotson's contract theory contradicts his own allegations. He did not allege defendants violated the FDCPA by attempting to enforce his assignors' contracts with their creditors. Instead, he alleged defendants "violated 15 U.S.C. § 1692e(8) of the FDCPA by failing to disclose to the consumer reporting agencies [the] alleged debt was in dispute." No. 22-6078, R. at 84, ¶ 22; No. 22-6096, R. at 8,

¶ 22; *see* 15 U.S.C. § 1692e(8) (prohibiting debt collectors from using "any false, deceptive, or misleading representation . . . in connection with the collection of any debt," "including the failure to communicate that a disputed debt is disputed"). The statutory text indicates the claims are predicated on misleading representations, which, for example, AWA points out are analogous to the torts of fraud or misrepresentation. *See* No. 22-6078, Aplee. Br. at 14. The Restatement says of "Fraudulent Misrepresentation": "One who fraudulently makes a misrepresentation of fact . . . for the purpose of inducing another to act or to refrain from action in reliance upon it, is subject to liability to the other in deceit for pecuniary loss caused to him by his justifiable reliance upon the misrepresentation." Restatement (Second) of Torts § 525. "Representations of fact" include "the holding of an opinion [by] any person." *Id.* § 525 cmt. d. The misrepresentation is the omission of the material fact that the consumer disputed the particular debt. *See Llewellyn*, 711 F.3d at 1189. This is almost what Mr. Dotson alleged. He claimed defendants made a misrepresentation of fact by failing to communicate to CRAs that Mr. Hutson and Ms. Bundy disputed the debts, which caused them to suffer lower credit scores, personal and reputational harm, humiliation, and emotional and mental distress. These allegations confirm the FDCPA claims were akin to torts. Because tort claims are not assignable under Oklahoma law, the assignments were invalid, and

Mr. Dotson lacked standing to prosecute the claims. The district court properly dismissed these actions for lack of jurisdiction.[5]

IV

The judgments of the district court are affirmed.

Entered for the Court

Veronica S. Rossman
Circuit Judge

[5] Defendants submitted letters of supplemental authority, and Mr. Dotson responded with additional authority. *See* Fed. R. App. P. 28(j). These materials do not alter our disposition.