584 F.3d 859, RICO Bus.Disp.Guide 11,764
(Cite as: 584 F.3d 859)

United States Court of Appeals,
Tenth Circuit.
George Milam HALL, Plaintiff-Appellant,
v.
Douglas P. WITTEMAN, Kansas State Official, in his official capacity as Coffey County Attorney and individually and personally; Phillip M. Fromme, individually and personally; Coffey County Commissioners, individually and personally; Coffey County, Kansas, Anderson County Commissioners, individually and personally; Coffey County Bar Association, individually and personally; James R. Campbell, as Attorney for the Anderson County Commissioners and individually and personally; City of Garnett, Kansas, Terry Solander, individually and personally; Brad Jones, individually and personally; Brian K. Joy, individually and personally; Bryan M. Hastert, individually and personally; Linda McMurray, individually and personally; Thomas Robrahn, individually and personally; Brenda Kelley, individually and personally; Stephen J. Smith, individually and personally; Scott Ryburn, individually and personally; Robert Green, individually and personally; Catherine Faimon; and Coffey County Republican, Defendants-Appellees.

Nos. 08-3251, 08-3299.
Oct. 19, 2009.[FN*]

FN* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist 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.

HARTZ, Circuit Judge.

George Milam Hall submitted to a local newspaper, the Coffey County Republican ("The Republican"), an advertisement opposing the election bid of Judge Phillip M. Fromme. He paid to have the ad run on two occasions. The paper ran the ad the first time but not the second, instead running an ad supporting Judge Fromme, which was paid for and signed by a number of attorneys, including Coffey County Attorney Douglas Witteman. Mr. Hall filed suit in the United States District Court for the District of Kansas against The Republican, Judge Fromme, the signatory attorneys, and a few others. His complaint included claims under federal civil-rights laws (42 U.S.C. §§ 1983 and 1985) and the federal Racketeer Influenced and Corrupt Organization (RICO) statute (18 U.S.C. §§ 1961-68), as well as a number of state-law claims. The heart of the allegations in the complaint's 153 paragraphs is that after Mr. Hall placed his advertisement, the defendants unlawfully convinced the paper's publisher to pull the second running of his advertisement in favor of their own, which contained defamatory remarks about him. This action, he contends, violated his right of free speech under the First Amendment, as applied to the states under the Fourteenth Amendment, as well as his Fourteenth Amendment right to equal protection of the law.

The district court dismissed Mr. Hall's federal claims for failure to state a claim upon which relief can be granted, *see* Fed.R.Civ.P. 12(b)(6), and denied his motion to amend his complaint. It declined to exercise supplemental jurisdiction over his state-law claims. Mr. Hall now appeals. We have jurisdiction under 28 U.S.C. § 1291 [FN1] and affirm. His civil-rights claims fail because he did not allege state action, and his RICO claims fail because he did not allege a threat of continuing racketeering activity.

FN1. Mr. Hall has filed two notices of appeal giving us jurisdiction. The first, in No. 08-3251, was premature, but our jurisdiction over that appeal ripened upon the district court's October 1, 2008, order finally adjudicating all claims against all parties. *See Lewis v. B.F. Goodrich, Co.*, 850 F.2d 641, 645 (10th Cir.1988). Mr. Hall filed the second notice of appeal, in No. 08-3299, after the district court had entered its final judgment.

I. BACKGROUND

Because we are reviewing a dismissal under Rule 12(b)(6), we assume the truth of the properly alleged facts in Mr. Hall's complaint. *Cory v. Allstate*, 583 F.3d 1240, 1244, No. 08-2168, 2009 WL 2871541, at *4 (10th Cir. Sept.9, 2009). In the fall of 2006, Mr. Hall campaigned against Judge Fromme's retention in

the election to be held that November. (His displeasure with Judge Fromme appears to stem from the manner in which Judge Fromme presided over litigation involving Mr. Hall's mother.) As part of this campaign, Mr. Hall placed an advertisement in The Republican. He paid the paper to run the ad on October 31 and November 3, but the paper published the ad only on October 31. On November 3, The Republican, instead of carrying Mr. Hall's ad, ran an advertisement placed by a group of attorneys who belonged to the Coffey County Bar Association (the "Responsive Ad"). The Responsive Ad was critical of Mr. Hall and called into question his motives in opposing Judge Fromme's retention. It was paid for and signed by defendants Stephen Smith, James Campbell, Douglas Witteman, Thomas Robrahn, Linda McMurray, Brenda Kelley, Brad Jones, and Bryan Hastert (the "Bar Association Defendants"),***863** each of whom, except Mr. Witteman, signed the Responsive Ad as "Attorney at Law." R., Vol. 1 Doc. 1 at 13. Mr. Witteman signed using his title as "Coffey County Attorney." *Id.*

Mr. Hall requested Mr. Witteman, in his capacity as Coffey County Attorney, to prosecute the Bar Association Defendants and others for their actions in placing the advertisement. He also appeared before the Coffey County Commissioners to discuss their potential liability for Mr. Witteman's actions. Neither Mr. Witteman nor the Commissioners took any action in response.

On November 2, 2007, Mr. Hall filed his 36-page, 9-count complaint in federal district court. Included as defendants in the complaint were the Bar Association Defendants, Judge Fromme, and The Republican and some of its personnel, as well as various other entities and individuals (including local governments and their officials) whose connection to the alleged conspiracy is not entirely clear from the complaint. In addition to the federal civil-rights and RICO claims, Mr. Hall's complaint asserts state-law causes of action for invasion of privacy, defamation, negligent and intentional infliction of emotional distress, tortious interference with contract, and fraud. "Mr. Hall's theory of the case," as he describes it in his opening brief on appeal, "is that [the defendants] violated his civil rights by intimidating and coercing a local newspaper from running a political advertisement submitted by Mr. Hall, and for which he paid." Aplt. Br. at 3.

The defendants moved to dismiss the complaint under Rule 12(b)(6), arguing primarily that Mr. Hall had failed to state a federal cause of action. The district court agreed. In orders dated August 6 and October 1, 2008, it concluded that the complaint failed to allege the requisite state action to support a § 1983 claim, and for various reasons failed to state claims under § 1985 and RICO. It dismissed those claims with prejudice and declined to exercise supplemental jurisdiction over the state-law claims, dismissing them without prejudice. Mr. Hall now challenges the court's dismissal of his federal claims.

II. DISCUSSION

We review de novo the dismissal of a complaint under Rule 12(b)(6). *See Christy Sports, LLC v. Deer Valley Resort Co.*, 555 F.3d 1188, 1191 (10th Cir.2009). "In doing so, we ask whether there is plausibility in the complaint. The complaint does not need detailed factual allegations, but the factual allegations must be enough to raise a right to relief above the speculative level." *Id.* (citations, brackets, and internal quotation marks omitted). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, ---U.S. ----, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009).

Iqbal stressed that it is not enough for the plaintiff to plead facts "merely consistent" with the defendant's liability. *Id.* (internal quotation marks omitted). Also, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id. Iqbal* suggested a two-step approach. First, the court "identif[ies] the [conclusory] allegations in the complaint that are not entitled to the assumption of truth." *Id.* at 1951. Then it "consider[s] the factual allegations in [the] complaint to determine if they plausibly suggest an entitlement to relief." *Id.*

Mr. Hall's pro se status entitles him to a liberal construction of his pleadings. *See* ****864*** *Van Deelen v. Johnson*, 497 F.3d 1151, 1153 n. 1 (10th Cir.2007). Nonetheless, "this court has repeatedly insisted that pro se parties follow the same rules of procedure that govern other litigants." *Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir.2005) (brackets and internal quotation marks omitted).

* * * *

C. RICO

"In order to bring a RICO claim, a plaintiff must allege a violation of 18 U.S.C. § 1962, which consists of four elements: (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity." *Gillmor v. Thomas*, 490 F.3d 791, 797 (10th Cir.2007) (internal quotation marks omitted). A " 'pattern of racketeering activity' requires at least two acts of racketeering activity." 18 U.S.C. § 1961(5). Those acts, commonly referred to as "predicate acts," must be violations of certain statutes. *See id.* § 1961(1). Mr. Hall's complaint alleges violations of federal mail-fraud, wire-fraud, and extortion statutes. Although the district court held those allegation to be inadequate, we need not address that issue. Even if the allegations of predicate acts were adequate, we agree with the district court that the complaint does not adequately allege a "pattern" of racketeering activity because it fails to allege sufficient continuity to sustain a RICO claim.

"RICO is not aimed at the isolated offender." *Tal v. Hogan*, 453 F.3d 1244, 1267 (10th Cir.2006) (internal quotation marks omitted). To satisfy RICO's pattern requirement, Mr. Hall needed to allege not only that the defendants had committed two or more predicate acts, but also "that the predicates themselves amount to, or that they otherwise constitute a threat of, *continuing* racketeering activity." *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 240, 109 S.Ct. 2893, 106 L.Ed.2d 195 (1989). As the district court concluded, however,

> At best, what plaintiff alleges is a closed-ended series of predicate acts constituting a single scheme to accomplish a discrete goal [publication of the Responsive Advertisement in lieu of ***868** Plaintiff's Advertisement] directed at only one individual [the plaintiff] with no potential to extend to other persons or entities.

R., Vol. 3 Doc. 126 at 38 (brackets in original). We agree. The district court therefore properly dismissed the RICO claim on this basis. *See Duran v. Carris*, 238 F.3d 1268, 1271 (10th Cir.2001) (upholding dismissal when plaintiff failed to allege "the type of long-term criminal activity envisioned by Congress when it enacted RICO").

D. Amendment of Complaint

Finally, we reject Mr. Hall's contention that the district court abused its discretion in denying his request to amend the complaint. We have long held that such a request "must give adequate notice to the district court and to the opposing party of the basis of the proposed amendment." *Calderon v. Kan. Dep't of Social & Rehab. Servs.*, 181 F.3d 1180, 1186-87 (10th Cir.1999). Without this information the district court is not required to recognize, let alone grant, a motion to amend. *See id.* at 1187. The district court generously considered Mr. Hall's request in this case even though he had failed to submit a proposed amendment or a separate motion under Rule 15. Although Mr. Hall's failure to attach a proposed amendment would not in itself have justified denying him leave to amend, he nowhere explained how a proposed amendment would cure the deficiencies identified by the district court. Because "we do not require district courts to engage in independent research or read the minds of litigants to determine if information justifying an amendment exists," we conclude that the district court did not abuse its discretion in denying leave to amend in this case. *Calderon*, 181 F.3d at 1187 (brackets and internal quotation marks omitted).

III. CONCLUSION

The judgment of the district court is AFFIRMED.

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