

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

May 10, 2023

Christopher M. Wolpert
Clerk of Court

WILLIAM LORNES,

Plaintiff - Appellant,

v.

JOHNSON; WHITE; DONALD NUNEZ;
AUDET; CDOC; BARTON; LITTLE;
SANDOVAL; COLE,

Defendants - Appellees.

No. 22-1393
(D.C. No. 1:22-CV-02730-LTB)
(D. Colo.)

ORDER AND JUDGMENT*

Before **MATHESON, BRISCOE, and EID**, Circuit Judges.

Plaintiff William Lornes, a Colorado state prisoner, filed a pro se civil rights complaint in the district court. The district court dismissed Lornes' complaint without prejudice due to Lornes' failure to comply with a prior sanction order that limited his ability to file new pro se complaints. Lornes, continuing to appear pro se,

* 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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

now appeals from that dismissal order. Exercising jurisdiction pursuant to 28 U.S.C. § 1291, we dismiss his appeal as frivolous, deny his motions for leave to proceed on appeal without prepayment of costs and fees and for leave to file an amended complaint, and remind Lornes of his duty to pay both filing fees in full. In addition, as we explain in greater detail below, Lornes is now barred from proceeding in forma pauperis pursuant to 28 U.S.C. § 1915, unless he is under imminent danger of serious physical injury.

I

Lornes is a prisoner in the custody of the Colorado Department of Corrections (CDOC). Since 2012, Lornes has filed numerous lawsuits in the District of Colorado, but “failed to pursue any of them in a proper manner.” *Lornes v. Attorney Regulation Counsel*, 718 F. App’x 626, 627 (10th Cir. 2017). In August 2014, a judge in the District of Colorado, after reviewing Lornes’ litigation history, sanctioned Lornes by issuing an order restricting Lornes “from filing any further pro se actions” in the District of Colorado unless he first filed with the clerk of the District Court of Colorado a motion requesting leave to file a pro se action. *Id.* In any motion requesting leave to file a pro se action, Lornes was required to include (a) “[a] list of all lawsuits currently pending or filed previously in the District of Colorado, including the name, number, and citation, if applicable, of each case, and the current status or disposition of each case,” and (b) “[a] statement of the legal issues to be raised” in the proposed new pro se action “and whether he has raised the same issues in other proceedings in the District of Colorado” (and, if so, “he must cite the case

number and the docket number where the legal issues previously have been raised”). *Id.* at 628. Lornes was also required to “[s]ubmit,” along with his motion for leave to file a pro se action, “the proposed new pleading to be filed in the pro se action.” *Id.*

On October 14, 2022, Lornes filed a pro se civil rights complaint in the District of Colorado naming as defendants the CDOC and eight employees of the Colorado State Penitentiary. Lornes also filed a motion for leave to proceed pursuant to 28 U.S.C. § 1915. But Lornes did not first file a motion requesting leave to file this pro se action, as he was required to do under the August 2014 sanction order.

On October 19, 2022, the district court dismissed Lornes’ complaint without prejudice for failure to comply with the August 2014 sanction order. The district court also certified, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal of the dismissal order was “not taken in good faith,” and it therefore denied Lornes leave to proceed on appeal in forma pauperis. ROA at 23. Judgment in the case was entered the same day.

On November 4, 2022, Lornes filed both a notice of appeal and a motion for leave to file an amended complaint. On November 7, Lornes simultaneously filed a second notice of appeal, a pleading entitled “Declaration for Entry of Default,” and a second motion for leave to file an amended complaint. *Id.* at 35.

On January 13, 2023, the district court issued a minute order denying the two motions for leave to file an amended complaint. The minute order noted that the motions “fail[ed] to comply with the filing restrictions imposed against” Lornes. *Id.* at 44.

On April 3, 2023, Lornes filed an amended notice of appeal.

II

In this court, Lornes has filed an appellate brief, a motion for leave to proceed on appeal without prepayment of costs and fees, a motion for leave to file an amended complaint, a motion for judgment by default, and a motion for depositions by written questions. The clerk of this court denied the latter two motions by written order issued on April 25, 2023. Thus, we are left to address the merits of Lornes' appeal, as well as the remaining two motions.

Turning first to Lornes' appellate brief, we note that Lornes makes no attempt to address the basis for the district court's order of dismissal or to otherwise discuss his failure to comply with the filing requirements outlined in the August 2014 sanction order. Nor does Lornes question the continuing validity of the August 2014 sanction order. Instead, Lornes' appellate brief simply outlines the claims he seeks to assert in the district court. Thus, even liberally construing the allegations in Lornes' appellate brief, he offers no grounds upon which the district court's order of dismissal could be challenged. We are therefore left to conclude that his appeal is frivolous.

As for Lornes' motion for leave to proceed on appeal without prepayment of costs and fees, we must deny that motion because the district court certified in writing that the appeal was not taken in good faith. *See* 28 U.S.C. § 1915(a)(3) ("An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith."). We also remind Lornes of his duty to pay both filing

fees in full. Lastly, we deny as frivolous Lornes' motion for leave to file an amended complaint. Because the district court dismissed Lornes' original complaint without prejudice, Lornes remains free to revise his original complaint and file it in the district court, so long as he first complies with the requirements outlined in the August 2014 sanction order.

III

According to our records, Lornes has now, “on 3 or more . . . occasions, while incarcerated or detained in any facility, brought an action or appeal” in federal court “that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915(g). As a result, he is now barred from proceeding in forma pauperis in the district court or this court, unless he “is under imminent danger of serious physical injury.” *Id.* In other words, unless Lornes is under imminent danger of serious physical injury, he must now prepay all filing fees in full before filing a civil action in federal district court or appealing from a judgment entered in a civil action in federal district court. *See Hafd v. Fed. Bureau of Prisons*, 635 F.3d 1172, 1176 (10th Cir. 2011), *abrogated on other grounds by Coleman v. Tollefson*, 575 U.S. 532 (2015).

IV

The appeal is DISMISSED as frivolous. Lornes' motion to proceed on appeal without prepayment of costs and fees and his motion for leave to file an amended complaint are DENIED. Lornes is now barred from proceeding in forma pauperis

under 28 U.S.C. § 1915, unless he is under imminent danger of serious physical injury.

Entered for the Court

Mary Beck Briscoe
Circuit Judge