

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

October 16, 2023

Christopher M. Wolpert
Clerk of Court

LARON ANTONIO DONALD,

Plaintiff - Appellant,

v.

DOUGLAS L. PEARSON, Dentist;
MARK FAIRBAIRN, Warden; LINDSAY
GOUTY, H.S.A.; MICHAEL HALE, Chief
of Dentistry; MICHELLE BRODEUR,
Director of Clinical and Correctional
Services; CHRISTOPHER MAUL, Chief
Medical Officer,

Defendants - Appellees.

No. 23-1288
(D.C. No. 1:22-CV-01312-RM-NRN)
(D. Colo.)

ORDER

Before **TYMKOVICH**, **MATHESON**, and **MORITZ**, Circuit Judges.

This matter is before the court on: (1) the jurisdictional show cause order it issued on September 20, 2023; and (2) *pro se* appellant LaRon Antonio Donald's response.

Upon consideration of these materials, the district court docket, and the applicable law, the court dismisses Mr. Donald's appeal for the reasons it sets forth below.

In the case underlying this appeal, Mr. Donald sued six defendants under 42 U.S.C. § 1983, alleging that he could not obtain satisfactory dental care while in the custody of the Colorado Department of Corrections. [See ECF No. 9]. Defendants

Fairbairn, Gouty, Hale, Brodeur, and Maul (the “CDOC Defendants”) filed a motion to dismiss. Defendant Pearson filed a separate motion to dismiss.

The district court granted the CDOC Defendants’ motion to dismiss and granted Pearson’s motion to dismiss in part, but stated that “Plaintiff may proceed with his retaliation claim against Defendant Pearson only.” [ECF No. 75]. Mr. Donald’s retaliation claim against Defendant Pearson remains pending and Mr. Pearson has answered Mr. Donald’s amended complaint. [ECF No. 79].

This court has jurisdiction to review final decisions of the district courts. *See* 28 U.S.C. § 1291. Piecemeal review of interlocutory orders is generally not allowed. *See* 28 U.S.C. § 1291; *Southern Ute Indian Tribe v. Leavitt*, 564 F.3d 1198, 1207 (10th Cir. 2009); *see also United States v. Nixon*, 418 U.S. 683, 690-92 (1974) (“The finality requirement of 28 U.S.C. § 1291 embodies a strong congressional policy against piecemeal review, and against obstructing or impeding an ongoing judicial proceeding by interlocutory appeals.”).

The district court case remains pending. Accordingly, the district court’s order of partial dismissal is not a final order that is appealable under § 1291. *See Utah v. Norton*, 396 F.3d 1281, 1286 (10th Cir. 2005) (“Final decisions are those that end the litigation on the merits and leave nothing for the court to do but execute the judgment.” (citations, alterations, and internal quotation marks omitted)).

Mr. Donald argues that the district court’s order of partial dismissal is nonetheless appealable under the collateral order doctrine. Under that doctrine, this court may review certain orders as appealable final decisions within the meaning of § 1291 even though the

district court has not entered a final judgment. *See Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546 (1949). “To establish jurisdiction under the collateral order doctrine, defendants must establish that the district court's order (1) conclusively determined the disputed question, (2) resolved an important issue completely separate from the merits of the case, and (3) is effectively unreviewable on appeal from a final judgment.” *Gray v. Baker*, 399 F.3d 1241, 1245 (10th Cir. 2005) (citing *Midland Asphalt Corp. v. United States*, 489 U.S. 794, 799 (1989)).

Here, however, the district court’s dismissal of Mr. Donald’s claims against the CDOC Defendants and of some but not all of Mr. Donald’s claims against Mr. Pearson resolved the merits of those claims and is reviewable upon entry of final judgment as to all claims and all parties. *See* § 1291. Therefore, the collateral order doctrine does not apply. The court finds Mr. Donald’s arguments to the contrary unavailing.

For the foregoing reasons, this court lacks jurisdiction over this appeal.

APPEAL DISMISSED. The court thus denies Mr. Donald’s *Motion to Proceed Pursuant to Fed. R. App. P. 24(3) Prior Approval* as moot.

Entered for the Court

A handwritten signature in black ink, appearing to read 'Christopher M. Wolpert', with a long horizontal stroke extending to the right.

CHRISTOPHER M. WOLPERT, Clerk