

FILED
United States Court of Appeals
Tenth Circuit

AUG 15 1990

ROBERT L. HOECKER
Clerk

**UNITED STATES COURT OF APPEALS
TENTH CIRCUIT**

GARY LEE McCOLPIN,	)	
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	No. 90-3148
	)	(D. Kan. 90-3119-S)
NOLA FOULSTON,	)	
	)	
Defendant-Appellee.	)	

ORDER AND JUDGMENT*

Before **ANDERSON, BALDOCK, and EBEL**, Circuit Judges.

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); 10th Cir. R. 34.1.9. Therefore, the case is ordered submitted without oral argument.

Plaintiff filed a pro se § 1983 action in district court alleging that defendant fraudulently represented and concealed material facts in a state appellate brief in violation of defendant's constitutional rights. The district court dismissed the action pursuant to 28 U.S.C. § 1915(d) because the complaint

* This order and judgment has no precedential value and shall not be cited, or used by any court within the Tenth Circuit, except for purposes of establishing the doctrines of the law of the case, res judicata, or collateral estoppel. 10th Cir. R. 36.3.

lacked an arguable legal basis for imposing liability on defendant.

To the extent that plaintiff is challenging the legality of dismissals pursuant to § 1915(d), we reject his argument. The Supreme Court has explained that:

Congress recognized . . . that a litigant whose filing fees and court costs are assumed by the public, unlike paying litigant, lacks an economic incentive to refrain from filing frivolous, malicious, or repetitive lawsuits. To prevent such abusive or captious litigation, § 1915(d) authorizes federal courts to dismiss a claim filed in forma pauperis "if the allegation of poverty is untrue, or if satisfied that the action is frivolous or malicious."

Neitzke v. Williams, 109 S. Ct. 1827, 1831 (1989). After reviewing the record and plaintiff's motion for leave to appeal in forma pauperis, we deny plaintiff's motion for leave to proceed without prepayment of costs or fees and dismiss the appeal because there is not rational argument on the law and facts in support of the issues raised on appeal. Coppedge v. United States, 369 U.S. 438 (1962). The mandate shall issue forthwith.

Entered for the Court

David M. Ebel
Circuit Judge