

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

OCT 21 1991

LARRY K. MUNYON,
Plaintiff-Appellant,
v.
MICHAEL E. CLEARY,
Defendant-Appellee.

ROBERT L. HOECKER
Clerk

No. 90-3314
(D.C. No. 90-3420-S)
(District of Kansas)

ORDER AND JUDGMENT*

Before McKAY, Chief Judge, SEYMOUR 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. The case is therefore ordered submitted without oral argument.

This matter is before the court on appellant's motion for leave to proceed on appeal without prepayment of costs or fees.

* 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.

In order to succeed on his motion, an appellant must show both:

1. A financial inability to pay the required filing fees and
2. The existence of a reasoned, nonfrivolous argument on the law and facts in support of the issues raised on appeal.

See 28 U.S.C. § 1915(a); Coppedge v. United States, 369 U.S. 438 (1962); Ragan v. Cox, 305 F.2d 58 (10th Cir. 1962).

We conclude, pursuant to the reasons set out in the district court order, that appellant can make no rational argument on the law or facts in support of the issues raised on appeal.

Therefore, the motion for leave to proceed on appeal without prepayment of costs or fees is denied.

It is further ordered as follows:

1. The filing fee is waived;
2. The appeal is dismissed because no rational argument can be made; and
3. The mandate shall issue forthwith.

Entered for the Court

Monroe G. McKay
Chief Judge