FILED
United States Court of Appeals
Tenth Circuit

July 25, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

MEGAN KYTE,

Plaintiff - Appellant,

v.

DENVER HEALTH,

Defendant - Appellee.

No. 23-1199
(D.C. No. 1:23-CV-01431-LTB)
(D. Colo.)

ORDER AND JUDGMENT*

Before **PHILLIPS**, **BALDOCK**, and **ROSSMAN**, Circuit Judges.

Plaintiff–Appellant Megan Kyte, a pro se litigant, appeals the district court's dismissal of her complaint. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

In her complaint, Kyte alleges that she suffered adverse health effects from a COVID-19 booster shot administered by Denver Health. She alleges "medical negligence" because Denver Health "failed to obtain informed consent

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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

and improperly administered and prescribed a medication." For this, she seeks damages for her physical injury and emotional distress, as well as costs.

The district court did not address the merits of Kyte's claim, instead dismissing her complaint for noncompliance with a court order. Specifically, the district court had permanently enjoined Kyte from filing new cases in the District of Colorado unless she was represented by a licensed attorney or she received the court's permission to proceed pro se. Because she met neither condition, the district court dismissed the action without prejudice under Federal Rule of Civil Procedure 41(b).

On appeal, Kyte argues that the district court ignored the merits of her claim against Denver Health, contending that the court "never responded to [her] claim of medical negligence and mistreatme[nt]." Opening Br. 4. But she does not address the basis for the district court's dismissal: her noncompliance with the court's permanent injunction imposing filing restrictions. We review for abuse of discretion. *United States v. Nicholson*, 983 F.2d 983, 988 (10th Cir. 1993) ("District courts generally are afforded great discretion regarding trial procedure applications (including control of the docket and parties), and their decisions are reviewed only for abuse of discretion." (citations omitted)). And in our review, we construe Kyte's pleadings liberally, but we do not serve as her advocate. *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991).

Federal district courts enjoy broad discretion to "regulate the activities of abusive litigants by imposing carefully tailored restrictions under the

appropriate circumstances." *Cotner v. Hopkins*, 795 F.2d 900, 902 (10th Cir. 1986) (citations omitted). Here, the district court restricted Kyte's filing privileges after observing that, over the course of one year, it had dismissed almost a dozen of her lawsuits for pleading failures. *See Kyte v. Mayes*, No. 22-cv-02392, slip op. at 6 (D. Colo. Oct. 31, 2022).[1] And it noted that she kept filing meritless claims despite repeated warnings that her filings did not address important legal issues. *Id.*

Kyte does not contend that the district court was wrong to enforce the filing restrictions. Indeed, her opening brief does not even mention the issue. As a result, we have no reason to disturb the district court's careful choice to conserve its own limited resources and to prevent frivolous suits. *Link v. Wabash R.R.*, 370 U.S. 626, 630–31 (1962) (holding that Federal Rule of Civil Procedure 41(b) contemplates trial courts' "inherent power. . . to manage their own affairs so as to achieve the orderly and expeditious disposition of cases" (footnote omitted)). We thus see no abuse of discretion in the district court's enforcing its injunction against Kyte.[2]

[1] Though the district court's injunction order is not in the appellate record, we may take judicial notice of publicly filed court records. *United States v. Ahidley*, 486 F.3d 1184, 1192 n.5 (10th Cir. 2007) (citation omitted).

[2] In any event, Kyte has waived any argument about the district court's injunction by not making it here. *Sawyers v. Norton*, 962 F.3d 1270, 1286 (10th Cir. 2020) ("Issues not raised in the opening brief are deemed abandoned or waived." (citation omitted)).

Kyte has also moved for permission to proceed *in forma pauperis*. Fed. R. App. P. 24(a)(5). The district court denied her request below, finding that any appeal would not be in good faith under 28 U.S.C. § 1915(a)(3). We may grant Kyte's request to proceed *in forma pauperis* if she shows her inability to pay the required filing fees and that her appeal is nonfrivolous. § 1915(a), (e)(2); *Rolland v. Primesource Staffing, L.L.C.*, 497 F.3d 1077, 1079 (10th Cir. 2007). Though she has shown her inability to pay filing fees, she has not offered a nonfrivolous argument supporting her appeal. We thus deny Kyte's motion to proceed *in forma pauperis*.

We affirm the district court's dismissal without prejudice.

Entered for the Court

Gregory A. Phillips
Circuit Judge