F I L E D
United States Court of Appeals
Tenth Circuit

April 14, 2006

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

DAN HENRY TIJERINA, Plaintiff-Appellant, v. SCOTT V. CARVER, Defendant-Appellee.	No. 05-4276 (D.C. No. 2:04-CV-935-PGC) (D. Utah)

ORDER AND JUDGMENT[*]

Before **KELLY**, **McKAY,** and **LUCERO**, Circuit Judges.

After examining the briefs and the 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)(2). The case is therefore ordered submitted without oral argument.

Appellant, a prisoner appearing pro se, seeks relief pursuant to 42 U.S.C. § 1983. Appellant filed a motion for injunctive relief, requesting a restraining order prohibiting the Utah Department of Corrections from confiscating his legal

[*]This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

materials or denying him access to the courts. He alleged "that on May 30, 2005, prison officials required [him] to catalogue all his legal materials and place any excess materials into storage, thereby allowing [him] to access only a limited quantity of materials at a time." Order, 2 (D. Utah Sept. 23, 2005). Appellant asserts that this policy limits his right to access the courts.

The district court issued an order denying him injunctive relief. *Id*. at 3. In this interlocutory appeal, Appellant claims that he was wrongfully denied a preliminary injunction. We review a district court's denial of injunctive relief for abuse of discretion. *Davis v. Mineta*, 302 F.3d 1104, 1110-11 (10th Cir. 2002).

The district court explained that it "is well aware of the Utah State Prison's legal access polices and its practice of requiring inmates with excessive amounts of legal materials to catalogue and access them a limited amount at a time." Order, *supra*, at 2. The court stated that this practice had been determined a reasonable security measure. *Id*. at 2-3. In addition, the court noted that Appellant had failed to "allege any facts showing that the policy has been unreasonably applied in his case." *Id*. at 3.

We grant Appellant's motion for leave to proceed in forma pauperis on appeal. We remind Appellant of his obligation to continue to make partial payments of his filing fee until paid in full. We have carefully reviewed the briefs of Appellant and Appellee, the district court's disposition, and the record

on appeal.[1] We are in accord with the district court's denial of issuance of a preliminary injunction, and, for substantially the same reasons set forth by the district court in its September 23, 2005, order, we **AFFIRM** the district court's denial of injunctive relief.

Entered for the Court

Monroe G. McKay
Circuit Judge

[1]At this time, we deny Appellee's motion for summary disposition based on lack of appellate jurisdiction, which we also construe Appellee having conceded in its brief.