

August 25, 2009

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

A. BURNS,

Plaintiff - Appellant,

v.

UNITED STATES OF AMERICA,

Defendant - Appellee.

No. 09-5091
(D.C. No. 09-CV-00271-GKF-PJC)
(N.D. Okla.)

ORDER AND JUDGMENT*

Before **KELLY, BRISCOE, and HOLMES**, Circuit Judges.**

Plaintiff-Appellant A. Burns is seeking leave to proceed in forma pauperis (“IFP”). “[I]n order to succeed on a motion to proceed IFP, the movant must show a financial inability to pay the required filing fees, as well as the existence of a reasoned, nonfrivolous argument on the law and facts.” Lister v. Dep’t of Treasury, 408 F.3d 1309, 1312 (10th Cir. 2005). We review the district court’s

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

** After examining the briefs and the appellate record, this three-judge panel has determined unanimously that oral argument would not be of material assistance in the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1(G). The cause is therefore ordered submitted without oral argument.

denial of leave to proceed IFP for abuse of discretion. Id.

The district court below denied leave to proceed IFP on the basis that Mr. Burns has \$3,000 in his checking account. R. Doc. 7. Mr. Burns now appeals the district court's order. R. Doc. 9. In his financial disclosure to this court, Mr. Burns has not shown that he is unable to pay the fees relating to his suit. See 28 U.S.C. § 1915(a)(1). Rather, as the district court noted, Mr. Burns' own financial disclosure form shows that he has funds available to pay the necessary fees. Mr. Burns has given us no indication why the district court's determination that he is able to pay was incorrect, let alone an abuse of discretion. Further, we note that Mr. Burns does not appear to advance a "reasoned, nonfrivolous argument," as he must in order to proceed IFP. See Lister, 408 F.3d at 1312.

Accordingly, Mr. Burns' motion for leave to proceed IFP is DENIED, and the appeal is DISMISSED.

Entered for the Court

Paul J. Kelly, Jr.
Circuit Judge