

March 29, 2013

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

SHERWOOD BROWN,

Plaintiff - Appellant,

v.

STACY WARNER, STATE FARM
MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendants - Appellees.

No. 13-6005

(W.D. Okla.)

(D.C. No. 5:12-CV-01324-M)

ORDER AND JUDGMENT*

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

After examining appellant's brief and the appellate record, this court has determined unanimously that oral argument would not materially assist 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.

Proceeding *pro se*, Sherwood Brown appeals the district court's *sua sponte* dismissal of the federal complaint he brought against Defendants. In 2007,

*This order and judgment is not binding precedent except under the doctrines of law of the case, *res judicata*, and collateral estoppel.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

Brown's automobile collided with a vehicle driven by defendant, Warner. He filed a lawsuit in Oklahoma state court seeking damages arising from that incident. The state trial judge entered an interlocutory order adverse to Brown. His state appeal from that ruling was dismissed as premature and the Oklahoma Supreme Court denied his petition for certiorari. In his federal complaint, Brown sought to appeal the decision of the Oklahoma Supreme Court. The federal district court dismissed Brown's federal suit, concluding it lacked subject matter jurisdiction to review the decision of a state court.

This court reviews a district court's dismissal for lack of subject matter jurisdiction de novo. *Johnson v. Rodrigues*, 226 F.3d 1103, 1107 (10th Cir. 2000). A de novo review of the record in this case reveals the district court correctly concluded Brown's federal suit seeks review of a state court judgment and, thus, there is no federal subject matter jurisdiction. The district court, however, erroneously dismissed Brown's complaint with prejudice. *See Brereton v. Bountiful City Corp.*, 434 F.3d 1213, 1214, 1219 (10th Cir. 2006) ("A longstanding line of cases from this circuit holds that where the district court dismisses an action for lack of jurisdiction, as it did here, the dismissal must be without prejudice.").

Accordingly, the judgment of the United States District Court for the Western District of Oklahoma is **modified** to reflect that dismissal of Brown's complaint is without prejudice. As so modified, the judgment is **affirmed**.

ENTERED FOR THE COURT

Michael R. Murphy
Circuit Judge